

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**In the Matter of the Application of
North Dakota Pipeline Company LLC
for a Certificate of Need for the
Sandpiper Pipeline Project**

MPUC Docket No. PL-6668/CN-13-473

OAH Docket No. 8-2500-31260

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATIONS REGARDING A CERTIFICATE OF NEED FOR THE
PROPOSED SANDPIPER PROJECT**

MARCH 13, 2015

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INTRODUCTION

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on January 27-30, 2015.

North Dakota Pipeline Company LLC (“NDPC”) seeks a certificate of need (“CON”) from the Minnesota Public Utilities Commission (the “Commission”) for the Sandpiper Pipeline project (the “Project”). The Project consists of a pipeline and associated facilities that will transport crude oil from NDPC’s Beaver Lodge Station, south of Tioga, North Dakota, to Clearbrook, Minnesota, and then on to an existing Enbridge terminal in Superior, Wisconsin. In Minnesota, the Project is approximately 302 miles long and will transport 225,000 barrels per day (“bpd”) of crude oil from North Dakota to Clearbrook, Minnesota, where an additional 150,000 bpd would enter the Project from NDPC’s existing Line 81 pipeline, resulting in a total annual capacity of 375,000 bpd on the Project from Clearbrook, Minnesota, to Superior, Wisconsin.

PROCEDURAL HISTORY

1. On June 7, 2013, NDPC filed a Notice Plan for the Project with the Commission.¹
2. On September 11, 2013, the Commission approved the Notice Plan after NDPC made revisions requested by Department of Commerce, Division of Energy Resources (“DOC-DER”).²
3. On November 8, 2013, NDPC filed applications for a CON and a pipeline route permit to construct the Project, including the required environmental information report.³
4. On December 5, 2013, Kennecott Exploration Company (“Kennecott”) filed a petition to intervene.
5. On January 31, 2014, NDPC filed revised CON and Route Permit applications. The supplemental filing indicated, *inter alia*, that the company’s name had changed from Enbridge Pipelines (North Dakota) LLC to NDPC.⁴
6. NDPC is a limited liability company duly organized under the laws of the State of Delaware and qualified to do business in Minnesota. North Dakota Pipeline Company. NDPC is a joint venture between Enbridge Energy Partners, L.P. and Marathon Petroleum Corporation (“Marathon”). Enbridge Energy Partners operates the Enbridge Mainline System, the U.S. portion of an operationally integrated pipeline system spanning 3,300 miles across North America to connect producers and shippers of crude oil and natural gas liquids in western Canada with markets in the United States and eastern Canada. Marathon is the fourth largest crude oil refiner in the U.S., operating seven 85 refineries in six states (Illinois, Michigan, Ohio,

¹ Ex. 37.

² Ex. 38.

³ Ex. 1.

⁴ Ex. 3.

Kentucky, Louisiana, and Texas) with a total crude oil refining capacity of approximately 1.7 million bpd. Marathon is the largest refiner and marketer in the Midwest

7. On January 31, 2014, the Commission established a comment period in the Route Permit proceeding from January 31, 2014, through April 4, 2014, to provide the public an opportunity to comment on potential human and environmental impacts and to suggest alternative pipeline routes to be considered in the comparative environmental analysis (“CEA”) to be prepared by Department of Commerce, Energy, Environmental Review and Analysis unit (“DOC-EERA”).

8. On February 11, 2014, the Commission issued an order finding NDPC’s Application to be substantially complete upon supplementation and referring the matter to the Office of Administrative Hearings (“OAH”) for contested case proceedings. The Order authorized DOC-EERA to: (1) facilitate the development of route proposals beyond those proposed by the Company; (2) to prepare an analysis of alternative route proposals on the basis of their harm to the environment; and (3) take other procedural steps to enable an evaluation of the Company’s proposed pipeline route.⁵

9. On February 11, 2014, the Commission granted party status to Kennecott and DOC-DER.⁶

10. On February 27, 2014, Administrative Law Judge (“ALJ”) Eric L. Lipman issued the First Prehearing Order, which reassigned the dockets to the ALJ and set a First Prehearing Conference for March 17, 2014.

11. Between March 3 and March 13, 2014, staff from the Commission and DOC-EERA conducted seven public information meetings in six different counties along the route proposed by NDPC.

12. On March 11, 2014, Honor the Earth (“HTE”) filed a petition for intervention.

13. On March 12, 2014, Carlton County Land Stewards (“CCLS”) filed a petition to intervene in the routing docket; CCLS subsequently filed a petition to intervene in the CON docket.

14. On March 19, 2014, NDPC filed supplemental information for sections 7853.0510 and 7853.0530 of its Application.⁷

15. On March 24, 2014, the Commission issued a letter deeming the Application complete as of March 19, 2014.

16. Before the close of the initial public comment period, Friends of the Headwaters (“FOH”) submitted alternative routes for consideration. FOH’s routes (System Alternatives

⁵ Ex. 42.

⁶ Ex. 42.

⁷ Ex. 4.

designated SA-04, SA-05, SA-06 and SA-07) follow existing pipeline rights-of-way to serve Midwestern refineries.

17. The Minnesota Pollution Control Agency (“MPCA”) also filed a preliminary alternative to the Project, designated SA-03.

18. On April 8, 2014, the ALJ issued the Second Prehearing Order. The Second Prehearing Order granted HTE’s petition to intervene and set forth a schedule and procedures for the contested case proceedings.

19. On April 14, 2014, the Commission, in response to a motion by HTE, issued a notice extending the public comment period from April 4, 2014, to May 30, 2014. On the same day, the Commission denied HTE’s request for additional public information meetings. Also on the same day, the Commission issued a notice of comment period on whether to separate the CON and Route Permit proceedings.⁸

20. On April 21, 2014, FOH submitted a petition to intervene in the CON proceeding.

21. On April 22, 2014, the ALJ issued the Third Prehearing Order. The Third Prehearing Order established a date for oral argument on HTE’s motion to dismiss and altered certain other dates in the schedule.

22. On May 1, 2014, White Earth Band of Ojibwe (“WEBO”) submitted a petition to intervene.

23. On May 5, 2014, the ALJ issued the Fourth Prehearing Order, which established procedures for the hearing on HTE’s motion to dismiss.

24. On May 7, 2014, the ALJ issued the Fifth Prehearing Order. The Fifth Prehearing Order certified HTE’s request to extend the comment period and bifurcate the proceedings to the Commission.

25. On May 9, 2014, the ALJ issued the Sixth Prehearing Order, which granted intervention to WEBO and FOH.

26. On May 20, 2014, the ALJ issued the Seventh Prehearing Order, denying HTE’s motion to dismiss NDPC’s CON and Route Permit applications.

27. On May 28, 2014, the ALJ issued the Eighth Prehearing Order, which cancelled and rescheduled the prehearing conference.

28. On June 9, 2014, the ALJ issued the Ninth Prehearing Order, which suspended the deadlines set forth in the Second Prehearing Order and ordered the parties to confer on a new schedule for the proceedings.

⁸ Ex. 43.

29. On June 12, 2014, the Minnesota Chamber of Commerce (the “Chamber”) submitted a petition to intervene.

30. On June 30, 2014, Laborers’ District Council of Minnesota and North Dakota (“LDC”) submitted a petition to intervene.

31. On July 7, 2014, the Commission issued an order reaffirming its decision to extend the comment period until May 30, 2014, and denying HTE’s motion to bifurcate the proceedings.

32. On July 8, 2014, the ALJ issued the Tenth and Eleventh Prehearing Orders. The Tenth Prehearing Order denied HTE’s request for reconsideration of the Seventh Prehearing Order. The Eleventh Prehearing Order granted intervention to the Chamber and LDC

33. On July 11, 2014, the ALJ issued the Twelfth and Thirteenth Prehearing Orders. The Twelfth Prehearing Order is the Protective Order governing these proceedings. The Thirteenth Prehearing Order set forth an amended schedule for the proceedings.

34. On July 17, 2014, DOC-EERA filed comments and recommendations summarizing the alternative route designation process and identifying 54 route alternatives and eight “system alternatives” it considered (SA-01 through SA-08). In addition, DOC-EERA suggested a potential modification to SA-03 (“SA-03, as modified”) to create a connection at Clearbrook. DOC-EERA recommended that the Commission consider 53 route alternatives.

35. DOC-EERA’s report describes the System Alternatives as follows:

- SA-04 would follow the existing Alliance Pipeline through North and South Dakota, Minnesota, Iowa and Illinois. It entirely avoids the concentrated areas of clear water lakes, wild rice lakes, wetlands, and vulnerable aquifers (the “Lake Country’s Environmentally Sensitive Resources”) that NDPC’s Preferred Route traverses, and crosses primarily agricultural land. It is approximately 1,050 miles long, and does not connect with terminals in Clearbrook or Superior.
- SA-05 also follows an existing gas pipeline, the Northern Border Natural Gas Pipeline that cuts across southwestern Minnesota, which is primarily an agricultural area. It avoids the Lake Country’s Environmentally Sensitive Resources. It also does not connect with terminals in Clearbrook or Superior. SA-05 is approximately 1,100 miles long.
- SA-06 follows Minnesota Highway 9 south until it joins the Magellan Products pipeline. It follows the existing Magellan Products line south and east, where it intersects with the existing MinnCan crude oil pipeline. SA-06 could connect back to the terminal in Superior after it intersects with the existing Enbridge right-of-way, or it could proceed south to the Chicago area. It avoids the Lake Country’s Environmentally Sensitive Resources.
- SA-07 would follow I-94 to an existing Magellan Product pipeline south and east to a point where it intersect with the MinnCan 24-inch crude oil pipeline and follow it to

Minnesota's two refineries. At those points the pipeline can proceed northward to the Superior terminal or follow an existing Magellan Product pipeline east into Wisconsin until it intersects the existing Enbridge right-of-way at which point a pipeline could be built to carry the oil back up to Superior or down to Illinois. It avoids the Lake Country's Environmentally Sensitive Resources.

- SA-08 was proposed by Honor The Earth, and delivers oil directly to the Minnesota refineries by following the I-29 and I-94 corridors. It avoids the Lake Country's Environmentally Sensitive Resources.
- SA-03, proposed by MPCA, bypasses the Lake Country's Environmentally Sensitive Resources (and the Clearbrook Terminal), follows existing corridors south, then heads east to the I-35 corridor and back north to terminate in Superior. SA-03 is approximately 360 miles long.

36. On August 6, 2014, MPCA submitted comments to the Commission urging that the Commission expand the alternatives given the high potential for additional pipelines and replacement or upgrading of existing pipelines in the near future within the same corridor. MPCA commented that it is critical that the current effort consider multiple alternatives, including both route and system alternatives. MPCA stated that limiting the alternatives to route options alone at this stage would unnecessarily narrow the scope of project options designed reduce environmental and public health risks.

37. MPCA's August 6, 2014 comments raised concerns about unresolved issues including: "Future access to potential release sites; construction and operation of the break-out tanks; cumulative impacts from construction of additional pipelines and infrastructure in the area; emergency responsiveness and spill prevention; inspections and monitoring conducted during construction; proposed water body crossing methods and time frames; wastewater issues; and water quality, watershed and wetland issues."

38. On August 7, 2014, the Commission met to consider which route alternatives would be accepted for further consideration in the CEA and the Route Permit Application public hearings.

39. On August 8, 2014, NDPC filed the direct testimony of the following individuals: Neil Earnest, A.J. Johnson, Robert Steede, Paul Eberth, Art Haskins, William Rennie, John Glanzer, Michael Palmer, Dr. Richard Lichty, Barry Simonson, and Sara Ploetz.⁹

40. On August 12, 2014, the ALJ issued the Fourteenth Prehearing Order, which clarified several deadlines set forth in the Thirteenth Prehearing Order.

41. On August 12, 2014, the Commission issued a notice providing for an additional 14-day comment period concerning further review of the eight system alternatives and whether they should be considered, and, if so, in the CON or the Route Permit docket.

⁹ Exs. 6-16.

42. On August 25, 2014, the Commission issued its written Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures. In that order, the Commission accepted the 53 route alternatives recommended by DOC-EERA, as well as SA-03, as modified, for consideration in the Route Permit contested case hearing. The Commission also directed NDPC to prepare a “pipeline safety report” to be filed with direct testimony in the Route Permit proceeding.¹⁰

43. On August 26, 2014, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the “UA”) submitted a petition to intervene.

44. On August 27, 2014, the Greater North Dakota Chamber (“GNDC”) submitted a petition to intervene.

45. On August 29, 2014, CCLS submitted a petition to intervene in the CON proceeding.

46. On September 4, 2014, the ALJ issued the Fifteenth Prehearing Order, which set a prehearing status and scheduling conference.

47. On September 9, 2014, the ALJ issued the Sixteenth Prehearing Order, granting intervention to the UA, GNDC, and CCLS.

48. On September 11, 2014, the Commission met to consider the comments received in response to its August 12 notice regarding further consideration of system alternatives SA-01 through SA-08.¹¹ At that meeting, the Commission decided to bifurcate the CON and Route Permit proceedings.¹²

49. On September 15, 2014, NDPC petitioned for reconsideration of the Commission’s August 25, 2014 Order.

50. On September 19, 2014, the ALJ issued the Seventeenth Prehearing Order, which cancelled all deadlines in the Route Permit proceedings, set forth amended deadlines for the CON proceeding, and established other procedures for the CON proceeding.

51. On October 7, 2014, the Commission issued the written order resulting from its September 11, 2014 meeting (the “October 2014 Order”). The Commission separated the CON proceeding from the Route Permit proceeding and postponed action on the Route Permit Application until the Commission made a decision on the Application. In addition, the Commission requested that DOC-EERA prepare “high-level” environmental report on six system alternatives (SA-03 through SA-08). The Commission requested that DOC-EERA staff complete the environmental report prior to the contested case proceeding in the CON docket. The Order stated that “The Commission anticipates that this review should evidence, from a broad environmental perspective, the relative risks and merits of choosing a different system

¹⁰ Ex. 46.

¹¹ Ex. 47.

¹² Ex. 48.

alternative. The analysis need not, and likely cannot, include the significant analytical detail used in the comparative environmental analysis to be conducted in the routing process.”¹³

52. The PUC further stated that “to ensure that an environmental review is available to the public and the parties, the Commission requests that the EERA prepare an environmental review document that examines and evaluates the potential impacts of the proposed project with those of the six alternative system configurations, and other alternative methods to satisfy need.”¹⁴

53. On October 14, counsel for FOH withdrew from representation.

54. On October 15, 2014, NDPC submitted a petition for a separate docket and protective order for highly sensitive nonpublic data which would govern certain information.

55. On November 5, 2014, the ALJ granted NDPC’s petition, and MPUC Docket No. 14-954 was established to limit the parties that could access certain trade secret information to various state agencies.

56. On October 27, 2014, NDPC, FOH, and the UA each submitted petitions for reconsideration of the Commission’s October 2014 Order.

57. On October 30, 2014, the Commission addressed NDPC’s petition for reconsideration of the August 25, 2014 Order.

58. On November 5, 2014, the ALJ issued the Eighteenth Prehearing Order, which granted NDPC’s petition for a separate docket and protective order for highly sensitive nonpublic data.

59. On November 6, 2014, NDPC, CCLS, HTE, FOH, and WEBO submitted responses to the October 27, 2014, petitions for reconsideration.

60. On November 7, 2014, the Commission issued an order denying NDPC’s petition for reconsideration of the August 25, 2014 Order.¹⁵

61. On November 19, 2014, the following parties submitted direct testimony: the Chamber, GDNC, CCLS, DOC-DER, FOH, HTE, UA, and LDC.¹⁶

62. On November 26, 2014, substitute counsel for FOH, the Minnesota Center for Environmental Advocacy, filed its notice of appearance.

63. On December 1, 2014, HTE submitted a Request for PUC to Modify CON Calendar of Milestones to the Commission.

¹³ Ex. 48.

¹⁴ Ex. 48.

¹⁵ Ex. 100.

¹⁶ Exs. 50-52; 110; 130; 180-81; 200-01; 210-12; 220; 230.

64. On December 4, 2014, the Commission held a meeting at which it addressed the parties' petitions for reconsideration of the October 2014 Order. On December 5, 2014, the Commission issued an order denying parties' petitions for reconsideration of the October 2014 Order.¹⁷

65. On December 15, 2014, the Commission published in the State Register a Notice of Filing and Comment Period in the Matter of the Application of NDPC for a CON for the Sandpiper Pipeline Project in Minnesota. The notice provided that the Commission would hold public hearings to receive comments on NDPC's Application for the Project between January 5 and January 9, 2015, in the following Minnesota cities: St. Paul, Duluth, Bemidji, Crookston, and St. Cloud. The notice further provided that interested persons could submit written comments on the Project by January 23, 2015.¹⁸

66. On December 17, 2014, the Commission referred HTE's Request for the Commission to Modify the CON Calendar of Milestones to the ALJ.

67. On December 18, 2014, FOH filed a Request for Continuance asking the ALJ to modify the schedule for the CON proceedings in part due to its need to find substitute counsel. WEBO and CCLS submitted similar requests on December 24 and December 29, respectively. NDPC submitted a response in opposition to the requests on December 29, 2014.

68. Also on December 18, 2014, DOC-EERA filed the Comparison of Environmental Effects of Reasonable Alternatives (the "DOC-EERA Report"), along with related maps and appendices. The DOC-EERA Report quantified the environmental features present in a two-mile wide Study Area for SA-03 through SA-08 and the Preferred Route.¹⁹ The DOC-EERA report did not describe or compare the environmental impacts of the System Alternatives on the environment.

69. On January 2, 2015, the ALJ issued the Nineteenth Prehearing Order, denying the requests for a continuance.

70. On January 5, 6, 7, 9, and 12, 2015 the ALJ presided over public hearings in St. Paul, Duluth, Bemidji, St. Cloud, and Crookston.

71. NDPC filed its rebuttal testimony on January 5, 2015.²⁰ DOC-DER, CCLS, and HTE filed rebuttal testimony on January 6, 2015.²¹

72. On January 15, 2015, FOH submitted requests for subpoenas from Minnesota Department of Natural Resources ("MDNR") and MPCA. On January 16, 2015, the ALJ issued the Twentieth Prehearing Order, which denied the subpoena requests without prejudice.

¹⁷ Ex. 101.

¹⁸ Ex. 104.

¹⁹ Ex. 80.

²⁰ Exs. 17-29.

²¹ Exs. 53; 111; 131.

73. On January 20, 2015, FOH renewed its subpoena requests providing additional supporting information and argument.

74. The following parties filed surrebuttal testimony on January 21, 2015: NDPC, FOH, CCLS, and DOC-DER.²²

75. MDNR and MPCA also offered testimony on January 21, 2015, but only the surrebuttal testimony of Jamie Schrenzel from MDNR was offered as an exhibit at the evidentiary hearing.²³

76. On January 22, 2015 the ALJ denied FOH's renewed subpoena request at a prehearing conference.

77. On January 23, 2015 both MDNR and MPCA submitted comments on the relative environmental impacts of the System Alternatives.²⁴ Both agencies concluded that NDPC's Preferred Route presented greater environmental risks than the System Alternatives.

78. MPCA refused to appear at the evidentiary hearing absent a subpoena, but MDNR agreed to offer Jamie Schrenzel as a witness to answer questions about the comments MDNR had offered in this matter subject to the stipulation of all parties that Ms. Schrenzel would be appearing on behalf of MDNR rather than on behalf of any party.²⁵

79. Between January 27 and January 30, 2015, the ALJ held evidentiary hearings in St. Paul, Minnesota.

80. On January 29, 2015 FOH moved for disclosure of the Transportation Service Agreement ("TSA") between NDPC and Marathon filed in Docket No. 14-954 based on the fact that Marathon had waived its right to enforce the prohibition on NDPC's disclosure of the contents of that TSA by voluntarily appearing at the hearing and disclosing the strategically favorable contents of the TSA. The ALJ denied the motion on the record at the hearing.²⁶

81. Over 2,000 written comments regarding the Project were submitted, including comments from individual members of the public, state agencies, state legislators, counties, townships, cities, tribal groups, chambers of commerce and other business organizations, environmental groups, watershed organizations, property owner associations, labor and trade unions, consulting, engineering, construction, and other professional service companies, industry associations, and energy and power companies.

82. During the initial comment period, 402 citizens and 55 organizations and businesses wrote to oppose the proposed pipeline, as did one local unit of government and one tribal entity. Only 30 citizens and five organizations or businesses wrote to support the project. Among the concerns raised, over 380 raised environmental concerns, over 350 comments

²² Exs. 182-84; 30-31; 112; Ex. 54.

²³ Ex. 185.

²⁴ *Id.*

²⁵ Transcript of the Evidentiary Hearing ("T.") Vol. I.

²⁶ *Id.* at Vol. VII at 135:15-16.

expressed concern about water quality specifically, and 347 comments expressed a preference for an alternative route.

83. Written comments submitted in opposition to the Project generally included the following concerns: climate change and global warming; preference for renewable energy sources; risk of spills, fires, and leaks; existing or other proposed pipelines being adequate to transport oil; potential environmental impacts on lakes, rivers, wetlands, watersheds, aquifers, and wild rice; interference with tribal rights to hunt, fish, and gather; and potential impacts on tourism. Several comments referred to the oil spill on the Kalamazoo River in Michigan and the recent oil spill from the Bridger Pipeline LLC Poplar Pipeline on the Yellowstone River in Montana.

84. A number of comments questioned the need for the Project, citing the recent decline in oil prices and uncertainty of continued production from the Bakken field of North Dakota. Some comments also disagreed with statements that the pipeline would lead to a significant reduction in rail traffic because oil would continue to be transported by rail regardless of the Project. Other comments disagreed with statements about the economic benefits associated with job opportunities because many of the jobs created would be temporary in nature and filled by out-of-state workers.

85. A number of comments requested that a full Environmental Impact Statement (“EIS”) be prepared for the Project. A number of comments also requested that additional consideration be given to the SA-04 and/or SA-03 system alternatives as environmentally preferable and feasible routes.

86. Many of the comments supporting the Applicant’s Project indicated that the commenter favored a pipeline solution in general without identifying reasons why the Applicant’s project would be superior to a system or route alternative.

87. Many of the comments supporting the Applicant’s Project advocated for a pipeline as opposed to rail, truck, or the no-action alternative. Many comments advocated for the positive economic benefits of a pipeline to carry Bakken petroleum through Minnesota including the following reasons: the economic benefits associated with job opportunities and tax revenue; transportation of oil by pipeline is safer than transportation by rail or truck; approval of a pipeline would alleviate rail congestion and free up rail capacity for other commodities such as agricultural products, taconite, and coal; and, moving toward energy independence by using domestic oil supplies.

LEGAL FRAMEWORK

88. “[N]o proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.” Minn. Stat. § 216B.243, subd. 2.

89. It is the applicant’s burden to justify the need for the facility. Minn. Stat. § 216B.243, subd. 3. The legislature identified a number of criteria for the

Commission to use when assessing need and empowered the Commission to adopt, through rule, assessment of need criteria. *Id.*, subds., 1, 3. Minnesota’s Administrative Rules also place the burden of proof on the party proposing the action. “The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.” Minn. R. 1400.7300.

90. The Commission established four criteria that must *all* be demonstrated by NDPC for a CON to be granted. Minn. R. 7853.0130.

91. Minnesota Environmental Policy Act (“MEPA”) and Minnesota Environmental Rights Act (“MERA”) prohibit the construction of any project that would cause pollution, impairment or destruction of any of the state’s natural resources “so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare of the state’s paramount concern for the protection of [its natural resources]. Economic considerations alone shall not justify such conduct.” Minn. Stat. § 116D.04, subd. 6; *see also* Minn. Stat. § 116B.03 (establishing private cause of action for pollution, impairment or destruction of natural resources). The statutes define “pollution, impairment or destruction” to include “any conduct which materially adversely affects or is likely to materially adversely affect the environment.” Minn. Stat. § 116B.02, subd. 5.

92. Minnesota law contains two strong policy preferences: (1) a preference for the public interest over private interests; and (2) an overarching state policy in favor of environmental protection. The legislature has specifically instructed that it intends for Minnesota laws to be interpreted “to favor the public interest as against any private interest.” Minn. Stat. § 645.17. The legislature has expressed similar intent to protect the environment. “The legislature . . . directs that, to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in [the Minnesota Environmental Policy Act].” Minn. Stat. § 116D.03, subd. 1. It is the state’s objective to “discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner.” Minn. Stat. § 116D.02, subd. 2. In particular, it is the state’s policy to “minimize the environmental impact from energy production and use.” *Id.* State agencies are required to ensure that “environmental amenities and values . . . will be given at least equal consideration in decision making along with economic and technical considerations.” Minn. Stat. § 116D.03, subd. 2.

93. Environmental considerations must be paramount when comparing alternatives, and economics alone cannot justify the selection of an alternative. Minn. Stat. § 116D.04, subd. 6.

94. Minnesota Rule 7853.0130 outlines the criteria for determining whether a CON may be granted and requires that all four criteria weigh in the applicant’s favor. It states:

A [CON] shall be granted to the applicant if it is determined that:

A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the

applicant, to the applicant's customers, or to the people of Minnesota and neighboring states . . .

- B. 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 . . .
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate . . .

and...

- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rule and regulations of other state and federal agencies and local governments.

Minn. R. 7853.0130.

95. The requirement in Minn. R. 7853.0130(B) that a reasonable and prudent alternative must be demonstrated “by a preponderance of the evidence on the record by parties or persons other than the applicant” must be read in light of the authorizing statute and legislative intent. A rule “adopted in pursuit of legislative goals cannot subvert the primary purpose behind the legislation.” *Weber v. City of Inver Grove Heights*, 461 N.W.2d 918, 922 (Minn. 1990). “[W]hile administrative agencies may adopt regulations to implement or make specific the language of a statute, they cannot adopt a conflicting rule.” *Green v. Whirlpool*, 389 N.W.2d 504, 506 (Minn. 1989). Thus, to the extent that Minnesota Rule 7853.0130 appears to shift the burden of proof for need to the other parties that are not proposing a pipeline, it is inconsistent with Minn. Stat. § 216B.243.

FINDINGS OF FACT

I. Background

96. NDPC is seeking approval to construct the Minnesota portion of the proposed Sandpiper Pipeline Project, a new 616-mile, 24- to 30-inch diameter pipeline and associated facilities to transport crude oil from Enbridge's Beaver Lodge Station south of Tioga, North Dakota to an existing Enbridge terminal in Superior, Wisconsin.²⁷

97. Approximately 302 miles of the new pipeline installation would be located in Minnesota.²⁸

²⁷ Ex. 3 at 1.

²⁸ *Id.*

98. The proposed route from Clearbrook to Superior is only partially in an existing right-of-way for pipelines.²⁹ Some of the route also follows existing right-of-ways, but approximately 25 percent of the route is a “greenfield” route. There is no analysis in the record regarding the compatibility of the pipeline with non-pipeline linear facilities, such as whether or not there will be overlap with existing areas disturbed by the non-pipeline linear facilities.

99. The Project also includes a new terminal with two 150,000 barrel tanks and a new pump station near Clearbrook.³⁰

100. The initial capacity of the pipeline will be 225,000 bpd into Clearbrook and 375,000 bpd from Clearbrook into Superior.³¹ However, the Project is designed to accommodate a future expansion to 406,000 bpd into Clearbrook, and 711,000 bpd from Clearbrook to Superior.³²

101. In November 2013, Marathon committed to funding 37.5% of the Project, as well as being an anchor shipper on the Project. In exchange, once the Project goes into service, Marathon will have an approximately 27% equity interest in the NDPC System. Marathon has made a commitment to either ship or pay for capacity on the Project.³³

II. Facts Relevant Under Minnesota Rule 7853.0130(A)

102. The only potential beneficiaries of the Clearbrook delivery point on NDPC’s Preferred Route would be the two refineries in Minnesota—St. Paul Park Refining Co. (“SPPRC”) and Flint Hills.³⁴

103. These refineries are served by Line 81 to Clearbrook and the Minnesota Pipe Line Company pipeline system south to the Minneapolis/St. Paul area.³⁵

104. The shipping capacity between Clearbrook and these refineries will not increase, nullifying any potential benefit to these refineries.³⁶

105. These refineries have not expressed support for the Project. NDPC admits that the Project will increase the costs paid by current users of Line 81, including Minnesota refineries.³⁷ NDPC acknowledges that the Project will increase costs to its existing shippers by approximately \$0.40 per barrel.³⁸

106. In the Federal Energy Regulatory Commission (“FERC”) proceedings related to the tariff rates for the proposed Project, SPPRC opposed the pipeline stating that the Project

²⁹ *Id.* at 3-4.

³⁰ *Id.*

³¹ *Id.* at 6.

³² *Id.* at 7, Table 7853-0230-1-D.5-1.

³³ Ex. 13, at 4:119-5:128.

³⁴ Ex. 20 at 10:283-84.

³⁵ Ex. 8 at 4: 104-18.

³⁶ Ex. 9 at 5:158-60.

³⁷ Ex. 50 at 26:7-9.

³⁸ *Id.* at 25:18-19.

upstream from Clearbrook is neither “necessary [n]or desirable to meet the transportation needs of SPPRC.” It also stated that SPPRC “has not suffered from chronic prorationing on the NDPC system,” and “has seen no operational evidence that the system is subject to persistent excess demand.” SPPRC stated that the proposed Sandpiper Pipeline would have “no value” to it, but would only require it to pay a higher transportation cost than it pays now. The effect of the pipeline would be simply to “harm, not benefit, the business of SPPRC and its customers” due to increased costs.³⁹

107. Flint Hills Resources intervened in the Sandpiper docket at the FERC to express its concerns. It expressed concern about whether uncommitted shippers would bear financial responsibility for underutilization of the pipeline if NDPC’s predictions about shipper demand prove overly optimistic. It also sought to ensure that the rights of non-committed shippers to challenge future rate changes were preserved if NDPC is forced to allocate costs associated with underutilization of the pipeline.⁴⁰

108. DOC-DER also concluded that Minnesota does not benefit from the Clearbrook connection, and that Minnesota refineries would not benefit from the proposed pipeline.⁴¹ DOC-DER confirmed that the pipeline is likely to increase the cost of crude oil to Minnesota refineries.⁴² DOC-DER’s witness stated that while redundancy is potentially a benefit, it is not clear whether Minnesota refiners would benefit from redundancy in this case.⁴³

109. NDPC is unable to quantify any of the alleged redundancy benefits that Minnesota refineries might receive.⁴⁴

110. There are only two shippers on record supporting the Project: Marathon Petroleum Company, which (1) co-owns the Project,⁴⁵ (2) committed to ship the majority of the committed volume,⁴⁶ and (3) prefers delivery in Superior,⁴⁷ and Enerplus.

111. The Superior refinery is very small, and does not need any crude oil beyond the 2.3 million bpd that Enbridge already ships into Superior.⁴⁸

112. Marathon plans to ship the oil that it receives in Superior through Wisconsin to Patoka, Illinois.⁴⁹

113. Marathon is upgrading its refinery in Robinson, Illinois to increase its capacity to refine light crude in expectation of the Project, and the expansion is expected to coincide with

³⁹ Ex.183, Sch. 4 at 42-43.

⁴⁰ *Id.* at 159-60.

⁴¹ Ex. 50 at 24:1-19; Ex. 54 at 30:13-17.

⁴² *Id.* at 25-26.

⁴³ *Id.* at 27-28.

⁴⁴ T. Vol. III at 92:1-8.

⁴⁵ Ex. 183, Sch. 4 at 183; T. Vol. III at 71:20-24.

⁴⁶ T. Vol. III at 40:12-41:1.

⁴⁷ *Id.* at 77:13-18

⁴⁸ T. Vol. II at 45:15-18.

⁴⁹ T. Vol. III at 77:13-18.

the construction of the Project.⁵⁰ Marathon is also investing in a Kentucky facility to increase the capacity of light, sweet crude that the facility can process.⁵¹ The crude oil from the Project would travel via pipeline to these facilities.⁵²

114. The TSA between Marathon and NDPC is dependent upon the Southern Access Extension, which is designed to enable Marathon to supply crude oil to its Illinois and Ohio refineries.⁵³

115. A pipeline that does not go through Clearbrook would not increase shipping costs to shippers using Line 81 because the pipeline would not be considered an “expansion” according to the FERC.⁵⁴ NDPC would therefore not be able to raise the prices charged to captive uncommitted shippers currently shipping on Line 81.⁵⁵

116. Increased fuel economy and decreased vehicle miles traveled have resulted in flat or declining demand for crude oil nationally.⁵⁶

117. NDPC took a calculated business risk to obtain approval from FERC to increase its rates associated with the proposed Sandpiper Pipeline, and also signed contracts with two or more shippers to ship oil on a pipeline before it had state approval to construct the pipeline.⁵⁷

118. NDPC’s two shippers of record, Marathon and Enerplus, made calculated business decisions by upgrading refineries in the Illinois area to accommodate oil shipped on the Sandpiper Pipeline, and signing railroad contracts expected to terminate at the time that the Sandpiper Pipeline could come on line.⁵⁸

119. NDPC entered into its agreement with Marathon for Marathon to become an investor and “anchor shipper” prior to commencing the “open season” to solicit other shippers.⁵⁹

120. The record demonstrates that Marathon can supplement the supply of crude to its refineries with light crude from other sources, including domestic, Canadian, and non-Canadian foreign sources.⁶⁰

III. Facts Relevant Under Minnesota Rule 7853.0130(B)

121. NDPC confirmed that the crude oil shipped via the Project would be refined in the Midwest.⁶¹ This could include up to 15 refineries, only one of which is located in Superior.⁶²

⁵⁰ Ex. 13 at 7:179-84.

⁵¹ *Id.* at 7:186-92.

⁵² T. Vol. III at 45:13-21.

⁵³ Ex. 183, Sch. 4 at 41.

⁵⁴ T. Vol. II at 70:25-71:6.

⁵⁵ T. Vol. II at 70:20-24.

⁵⁶ Ex. 50 at 13:11-15:17.

⁵⁷ T. Vol. II at 70:1-8, 69:3-6.

⁵⁸ T. Vol. III at 48: 8-18; Enerplus Comments, January 7, 2015.

⁵⁹ Ex. 13 at 4; T. Vol. III at 37:1-8.

⁶⁰ Ex. 13 at 10:253-58.

122. The record does not contain a true cost comparison between the routes that includes the cost of shipping oil on the various system alternatives to its final destination—a refinery. NDPC did not ask its economic expert to consider any of the indirect economic costs of the Project, and there is no consideration of the potential remediation costs or other costs in the event of a spill.⁶³

123. Every independent expert who compared the System Alternatives concluded that NDPC’s Preferred Route was the most environmentally damaging of all of the System Alternatives. Both MPCA and MDNR concluded that NDPC’s Preferred Route posed the greatest environmental risk compared with all of the System Alternatives. MDNR concluded that “[w]ithin Minnesota, more southern routes (south of I-94 corridor) have less concentration of natural resources (regardless of length) within the 2-mile corridor. . . . From a natural resource perspective, the more southern routes appear to be feasible and prudent System Alternatives that merit consideration.”⁶⁴ Similarly, MPCA stated in its comments filed January 23, 2015 “that with respect to protection of the highest-quality natural resources in the state, the SA-Applicant route presents significantly greater risks of potential impacts to environment and natural resources than several of the System Alternatives.” MPCA stated that “the Applicant’s proposed route encroaches on higher quality resources, superior wildlife habitat, more vulnerable ground water, and more resources unique to the State of Minnesota than do many of the proposed System Alternatives.”

124. CCLS witness Chapman conducted a GIS study of the various System Alternatives and analyzed the actual impacts of pipelines on those features based on his expertise as an ecologist.⁶⁵ Based on his study and analysis, he concluded that NDPC’s Preferred Route posed the greatest environmental risk.⁶⁶

125. These experts also noted that the potential impacts of spills in NDPC’s preferred location will be more significant when compared to the System Alternatives sponsored by FOH.⁶⁷

126. FOH witness Stolen documented in detail how certain landscapes, such as the Lake Country Environmentally Sensitive Resources, may be more sensitive to oil spills, harder to clean up, or more difficult to access than other landscapes.⁶⁸

127. MPCA stated: “An Alternative that avoids or impacts fewer sensitive ecosystems and water bodies than SA-Applicant will have a smaller likelihood of incurring significant response costs. As documented by the U.S. Environmental Agency (‘USEPA’), **it costs considerably more to restore or rehabilitate water quality than to protect it.** The areas of the state traversed by the SA-Applicant have waters and watersheds that are currently subject to

⁶¹ Ex. 14 at 6:104-07.

⁶² T. Vol. I at 123:2-17; *see also* Ex. 3, Table 7853.0240-C.1 at 6.

⁶³ T. Vol. IV at 59:15-60:6; 73:22-74:6.

⁶⁴ Ex. 185 at 2.

⁶⁵ Ex. 110.

⁶⁶ Ex. 112 at 9.

⁶⁷ Ex. 185; MPCA Comments, dated January 23, 2015.

⁶⁸ Ex. 184 at 11.

protection in the state's 'Watershed Restoration and Protection Strategy' program, financed through the Clean Water Fund and aided by significant volunteer participation of Minnesota citizens. **By keeping these waters as clean as possible before they become impaired, extensive costs of restoring waters to state standards can be avoided. Location of oil pipelines in these areas place their pristine waters at risk, and also place potentially millions of dollars in state and federal funds allocated for protection of these areas at risk.**⁶⁹ MPCA also stated that "[L]ong-term impacts from a spill can be much more damaging in areas containing features such as environmentally sensitive areas and those with limited access."⁷⁰

128. MPCA noted that "A primary rule of thumb when planning for response to an oil leak is that a release in soil is better than a release in water, and a release in stagnant water is better than a release in flowing water."⁷¹ MPCA stated that when evaluating spill response costs, certain factors make one corridor preferable to another, including: "fewer crossings of flowing water, fewer adjacent water bodies; quality of those waters; presence of especially sensitive areas or habitats or species or uses; better access to downstream oiled areas; tighter soils; and closer and more equipped and prepared responders."⁷² MPCA concluded that "[f]rom the perspective of minimizing risk of major environmental incidents due to inability to access potential leak sites in Minnesota, **the proposed Sandpiper route fares more poorly than any of the proposed System Alternatives.**"⁷³

IV. Facts Relevant Under Minnesota Rule 7853.0130(C)

129. The record does not demonstrate any positive consequences to the end consumer in Minnesota or across the U.S. as a result of the Project. The Energy Information Agency's 2014 Annual Energy Outlook "predicts flat to declining petroleum consumption in the United States between now and 2040."⁷⁴ In Minnesota, consumption of petroleum products decreased approximately 14% from 2005 to 2012.⁷⁵

130. "Environmental risks are posed by all aspects of pipeline construction and operation, including post-spill recovery and restoration activities. The primary and most significant risks are associated with the long-term effects upon environmental and natural features that will be permanently altered, eliminated, or otherwise impacted by the presence of a pipeline, as well as the potential impacts of the release of crude oil as the result of a spill event during the potential 40 years or more that the pipeline will be operational. Those risks include environmental damages such as loss of wildlife, contamination of drinking water, destruction of fisheries, loss of habitat, and alteration of ecological systems."⁷⁶

⁶⁹ MPCA Comments, dated January 23, 2015 (footnotes omitted, emphases added.)

⁷⁰ *Id.* at 7.

⁷¹ *Id.* at 13.

⁷² *Id.* at 3.

⁷³ *Id.* at 14 (emphasis added).

⁷⁴ Ex. 50 at 13:13-14.

⁷⁵ *Id.* at 19:13-15.

⁷⁶ MPCA Comments, dated January 23, 2015 at 4.

131. Oil spills can be highly toxic and persistent. Bakken oil is particularly toxic in its initial effects, and may persist for decades. Bakken oil is chemically similar to diesel. This gives it a tendency to spread quickly, more quickly than heavy crudes such as tar sands oil, for instance. Additionally, diesel spills may cause immediate and widespread wildlife kills. Diesel spills may also persist in the environment over decades, still impacting wildlife many years later.⁷⁷

132. Evaporation and natural attenuation may limit the impacts of oil spills in some locations, but the effects of these natural phenomena vary greatly based on the location of a spill, and may be quite limited.⁷⁸

133. While microbes may consume some compounds very effectively, they are naturally “finicky” and it is very challenging to predict how they react in different situations.⁷⁹ In addition, each oil spill is unique.⁸⁰

134. The record demonstrates that even small spills and leaks present a great risk.⁸¹ Very small leaks, or pinhole leaks, can go undetected for months, resulting in potentially very large leaks over time (e.g. 35,300 gallons per month over several months).⁸²

135. Very little is currently known about how Bakken oil will behave if an oil spill occurs.⁸³ Bakken oil is highly variable in its content, and the content may dramatically change where oil goes, the damages it causes, and decisions on how and even whether to remediate a spill.⁸⁴

136. All of the economic benefits of building a pipeline will come to Minnesota whether the pipeline is built in NDPC’s Preferred Route or in the location of one of the System Alternatives.⁸⁵

137. NDPC has already announced plans to locate a second pipeline, Line 3, along this corridor.⁸⁶ Line 3 will carry tar sands oil from the Alberta tar sands region,⁸⁷ and may carry as much as 760,000 bpd.⁸⁸ Thus, in all, this corridor will carry over one million bpd. The section of the route from Clearbrook to the Park Rapids already has several other pipelines, and therefore will carry as much as 1.8 million bpd.⁸⁹

⁷⁷ Ex. 182

⁷⁸ *Id.* at 8-10.

⁷⁹ Ex. 182 at 11:23-12:3.

⁸⁰ T. Vol. VI at 42:17-19; Ex. 182 at 12:4-7.

⁸¹ *Id.* at 10:17-19.

⁸² Ex. 184 at 23:18-26.

⁸³ Ex. 182 at 5:1-8.

⁸⁴ *Id.* at 7:1-14.

⁸⁵ T. Vol. I at 64:24-65:8.

⁸⁶ Ex. 184 at 22:16-28.

⁸⁷ T. Vol. VI at 27:3.

⁸⁸ Ex. 183, Sch. 2 at 24.

⁸⁹ Ex. 180 at 78.

138. The construction of the Project and Line 3 will prompt further expansion of pipelines out of Superior, which is not the final destination for any of the oil NDPC plans to transport.⁹⁰ In order to get the crude oil shipped on the Sandpiper and Line 3, shippers will need additional pipeline capacity to carry the oil to refineries in the lower Midwest.⁹¹

V. Facts Relevant Under Minnesota Rule 7853.0130(D)

139. NDPC's that System Alternatives are not feasible are based on speculative financial harm to shippers.⁹² Marathon claims that the longer pipeline routes are not reasonable because they will result in increased costs to shippers of \$0.33-\$0.36 per barrel.⁹³ NDPC claims that the System Alternatives are not reasonable because they put the viability of the TSAs and FERC approval at risk.⁹⁴ These are all economic considerations.

CONCLUSIONS OF LAW

140. NDPC has not established any of the four criteria it must prove to obtain a CON.

141. NDPC has failed to prove that "the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states" under Minn. R. 7853.0130(A).

142. NDPC's forecast of the demand to ship crude oil on the proposed Sandpiper Pipeline is not accurate. Minn. R. 7853.0130(A)(1). The only shipper that has requested the pipeline to go to Superior is Marathon, which actually wants the crude oil delivered to Illinois.

143. Consideration of programs to conserve petroleum consumption and limit greenhouse gas emissions weigh against granting the CON. Minn. R. 7853.0130(A)(2).

144. All of the alleged adverse effects of denying a CON for a pipeline in NDPC's Preferred Route are due to NDPC's promotional practices. Minn. R. 7853.0130(A)(3). A company must bear its own risks, and the Commission will not consider the impacts to the applicant and its shippers where those risks were self-created. *See, e.g., Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 997 (8th Cir. 2011) (halting construction of a power plant despite \$800 million investment because the company began construction before an Army Corps of Engineers permit had been granted); *Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002) (ordering injunction despite evidence of financial loss due to existing contractual obligations because the harm was largely self-inflicted caused by "entering into contractual obligations that anticipated a pro forma result"). There would be no need for the Sandpiper Pipeline in NDPC's preferred corridor absent its promotional activities.

⁹⁰ T. Vol. II at 114:18-115:10.

⁹¹ *Id.* at 99:25-100:1-5.

⁹² Ex. 14, Sch. 2 at 52.

⁹³ Ex. 22 at 2:47-48.

⁹⁴ Ex. 21 at 5:139-42; 166-69.

145. NDPC has not proven that current facilities cannot meet demand. Minn. R. 7853.0130(A)(4). There is no evidence in the record of crude oil shortages at either Clearbrook or Superior.

146. NDPC has failed to establish that a more reasonable and prudent alternative to building the Sandpiper Pipeline in the Preferred Route has not been demonstrated by a preponderance of the evidence in the record. Minn. R. 7853.0130(B). The System Alternatives that terminate in Illinois have been demonstrated to be more reasonable and prudent in light of the public interest and considering environmental effects, as required by the rule. NDPC has failed to establish that the System Alternatives that go to Illinois are not feasible alternatives to the Project.

147. The record contains no evidence that the size, type, or timing of NDPC's Preferred Route necessitates its selection over one of the System Alternatives. Minn. R. 7853(B)(1).

148. NDPC has not demonstrated that the "cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives" necessitates the Project to be located in NDPC's Preferred Route. Minn. R. 7853.0130(B)(2).

149. The Project's effects on the natural environment compared to the System Alternatives demonstrate that the System Alternatives are more reasonable and prudent. Minn. R. 7853.0130(B)(3).

150. NDPC has not presented any evidence that there is demand for a pipeline to go through Clearbrook to Superior or that current facilities cannot adequately meet that demand. Any delay caused by forcing NDPC to apply for a CON for a System Alternative in an environmentally appropriate location will not cause any reliability concerns. Minn. R. 7853.0130(B)(4).

151. NDPC has failed to demonstrate that "the consequences to society of granting the [CON] are more favorable than the consequences of denying the certificate." Minn. R. 7853.0130(C).

152. The record demonstrates that the Project does not serve the energy needs of the State of Minnesota. Minn. R. 7853.0130(C)(1).

153. Consideration of the environmental effects of a pipeline in NDPC's Preferred Route weighs against approval. Minn. R. 7853.0130(C)(2).

154. Future development is already planned in NDPC's Preferred Route if a CON is granted for the Project, and this weighs against NDPC's application. *See* Minn. R. 7853.0130(C)(3).

155. The "output" of the Project does not have socially beneficial uses, particularly when considering if those uses are "to protect or enhance environmental quality." Minn. R. 7853.0130(C)(4).

156. NDPC failed to establish that it “has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.” Minn. R. 7853.0130(D). The operation of this pipeline will fail to comply with both MEPA and MERA.

157. Building the Project in NDPC’s Preferred Route will cause pollution, impairment, or destruction of the state’s natural resources and NDPC cannot proceed with the Project under MERA or MEPA because feasible and prudent alternatives exist. NDPC’s economic considerations alone are insufficient to warrant choosing its Preferred Route. Minn. Stat. §§ 116D.04, subd. 6; 116B.09, subd. 2.

RECOMMENDATION

Because NDPC has failed to establish the criteria in Minnesota Rule 7853.0130, the Commission should deny NDPC’s application for a certificate of need for a pipeline in its Preferred Route.

Dated: _____

THE HONORABLE ERIC L. LIPMAN
Administrative Law Judge
Office of Administrative Hearings