Minnesota Center for
Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

26 East Exchange Street - Suite 206
Saint Paul, MN 55101-1667

651.223.5969
651.223.5967 fax

info@mncenter.org
www.mncenter.org

February 11, 2016

Dan Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

VIA ELECTRONIC SERVICE

Re: In the Matters of the Application of North Dakota Pipeline Company LLC for a Certificate of Need and Routing Permit for the Sandpiper Pipeline Project in Minnesota

MPUC Docket Nos. PL-6668/CN-13-473
PL-6668/PPL-13-474
OAH Docket Nos. 8-2500-31260
60-2500-31259

Dear Mr. Wolf,

In connection to the above-captioned dockets please find the enclosed Response to Minnesota Department of Commerce's Request for Clarification and other parties' Motions for Reconsideration, filed on behalf of Friends of the Headwaters. Also attached is an Affidavit of Service.

Sincerely,

/s/ Kathryn M. Hoffman
Kathryn M. Hoffman
Staff Attorney

KMH/em

Enclosure

cc: Service List

STATE OF MINNESOTA
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Matthew Schuerger	Commissioner

In the Matters of the Applications of North Dakota Pipeline Company LLC for a Certificate of Need and Pipeline Routing Permit for the Sandpiper Pipeline Project	MPUC Docket Nos. PL-6668/CN-13-473 PL-6668/PPL-13-474 OAH Docket Nos. 8-2500-31260 8-2500-31259

RESPONSE TO MINNESOTA DEPARTMENT OF COMMERCE'S REQUEST FOR CLARIFICATION AND OTHER PARTIES' MOTIONS FOR RECONSIDERATION

On Behalf of

FRIENDS OF THE HEADWATERS

February 11, 2016

TABLE OF CONTENTS

I. THE COMMISSION SHOULD CLARIFY THAT THE EIS MUST CONSIDER SYSTEM ALTERNATIVES, AND OTHER REASONABLE ALTERNATIVES, IF THE SCOPING SUPPORTS IT.

The DOC's "request for clarification" on alternatives at this stage of the EIS process demonstrates a rather extraordinary misunderstanding of the Minnesota Environmental Policy Act and EISs in general. The scoping must drive the reasonable alternatives. After scoping, the RGU may determine which alternatives are reasonable based on the scoping comments. But the RGU may not predetermine reasonable alternatives before the public or other agencies have had the opportunity to comment. The purpose of scoping is to assist the RGU in determining the scope of the EIS, including reasonable alternatives. To take any steps to limit alternatives prior to scoping is tantamount to eliminating alternatives before the MEPA process begins, in violation of Minnesota law.

A. The Purpose Of Scoping Is To Determine Alternatives. Scoping Has Not Yet Started For This EIS.

Under MEPA, the purpose of the scoping process is to focus the EIS on the relevant issues by:

> Identify[ing] only those potentially significant issues relevant to the proposed project, define the form, level of detail, content, *alternatives*, time table for preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.[1]

A scoping Environmental Assessment Worksheet ("EAW") should be prepared by the Responsibility Governmental Unit ("RGU"), in this case the PUC or its delegate, Department of Commerce. But this EAW is "preliminary and subject to revision based on the entire record of the scoping process."[2] After releasing the scoping EAW, the RGU must provide a minimum of 30 days for written comment, and also at least one public meeting where interested parties may comment.[3]

After scoping is complete, the RGU will make a "scoping decision" that contains, among other things, the alternatives that will be addressed in the EIS.[4] Thus, it is appropriate for DOC to turn to the Commission for a scoping decision on alternatives, but it is premature to do so prior to scoping.

B. Determining The Alternatives Prior To Scoping Violates MEPA.

Eliminating alternatives prior to scoping is illegal under MEPA. This Commission's decision to grant a certificate of need to the Sandpiper Pipeline was overturned by the Court of Appeals because, under MEPA, the State may not grant a permit to a project prior to completion

[1] Minn. R. 4410.2100, subp. 1 (emphasis added).
[2] *Id.* at subp. 2.
[3] *Id.* at subp. 5.
[4] *Id.* at subp. 6.

of an EIS.[5] But the reason for this prohibition is that agencies may not pre-determine significant decisions about the project prior to the EIS process.[6] The EIS process is designed to thoroughly vet a proposed project; it is not designed to affirm a decision that was already made. Courts have regularly overturned efforts by agencies to control and limit the outcome of an EIS in this way.

The alternatives section of the EIS is "the heart of the environmental impact statement."[7] The purpose of the alternatives section is to "rigorously explore[] and objectively evaluate[] all reasonable alternatives including the proposed action."[8] The alternatives section should "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public."[9] Generally, the agency leading the EIS process bears the responsibility for deciding which alternatives to consider in an EIS, and for "defining at the outset the objectives of an action."[10]

The Minnesota Court of Appeals ordered the Commission to conduct an EIS for the proposed Sandpiper Pipeline based on Section 2b of MEPA, which prohibits state action prior to completion of an EIS. Federal law, like state law, has an explicit prohibition against any actions prior to completion of environmental review that would "have an adverse environmental impact" or "limit the choice of reasonable alternatives."[11] "The [Environmental Impact] Statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made."[12] "Agencies shall not commit resources prejudicing selection of alternatives before making a final decision."[13]

Federal courts have held that agencies that take steps to limit the range of potential alternatives prior to completion of environmental review violate NEPA. For instance, one federal court found that where the U.S. Government and a tribe signed a contract committing the U.S. to supporting the tribe's bid to hunt whales before environmental review on whale hunting was completed, the U.S. Government had violated NEPA and was ordered to suspend implementation of the agreement with the tribe.[14] In *Metcalf,* the U.S. Government negotiated an

---

[5] Minn. Stat. § 116D.04, subd. 2b; *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693, 698 (Minn. Ct. App. 2015)("Therefore, based on the plaint language of subdivision 2b, the MPUC's issuance of a certificate of need constitutes a final governmental decision that is prohibited until the required environmental review is completed.").

[6] *In Re NDPC,* 869 N.W.2d at 698-99 ("In this case, the completion of an EIS at the certificate of need stage satisfies the imperative identified above by ensuring decision-makers are fully informed regarding the environmental consequences of the pipeline, before determining whether there is a need for it.").

[7] 40 C.F.R. § 1502.14.

[8] *Id.*

[9] *Id.*

[10] 42 U.S.C. § 4332(2)(C)(iii).

[11] 40 C.F.R. 1506.1(a).

[12] 40 C.F.R. § 1502.5.

[13] 40 C.F.R. § 1502.2; *see also* 40 C.F.R. § 1506.1 (prohibiting any action concerning the proposal which would "limit the choice of reasonable alternatives" prior to completion of an environmental impact statement).

[14] *Metcalf v. Daley*, 214 F.3d 1135 (9th Cir. 2000).

agreement with the Makah Tribal Council to support the Makah's application to the International Whaling Commission for a hunting quota of five grey whales.[15] That agreement was signed in 1996.[16] They did not prepare an environmental review document, however, until 1997.[17] The court observed that "proper timing is one of NEPA's central themes."[18] In order to comply with NEPA, an agency must initiate the NEPA process "*at the earliest possible time*" and "before any irreversible and irretrievable commitment of resources."[19] The court held that by initiating environmental review after it had agreed to support the Makah's request for a quota of five grey whales, it had already made a commitment by the time it conducted environmental review, and as a result it failed to "comply with NEPA's requirements concerning the timing of their environmental analysis, thereby seriously impeding the degree to which their planning and decisions could reflect environmental values."[20] By making a firm commitment before preparing the environmental review document, "the Federal Defendants failed to take a 'hard look' at the environmental consequences of their actions, and, therefore, violated NEPA."[21]

Similarly, if the Commission instructs Commerce to eliminate certain alternatives from consideration prior to the scoping process, it will violate MEPA and fail to take a "hard look" at the environmental consequences of this pipeline. As the above law demonstrates, the prohibition against action by the state prior to the EIS is not limited merely to granting a permit, but to *any* action that would limit the range of alternatives considered in the EIS too early in the process, thereby "seriously impeding the degree to which their planning and decisions could reflect environmental values."[22] The EIS stage is deliberative – as the Court of Appeals noted, it is intended to study the project and the alternatives early in the process, such that "important environmental effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[23] To refuse to study system

[15] *Id.* at 1139.
[16] *Id.*
[17] *Id.* at 1143.
[18] *Id.* at 1142.
[19] *Id.* at 1143.
[20] *Id.* at 1143-44 (quoting *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718-19 (9th Cir. 1988)).
[21] *Id.; see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (noting that the timely preparation of an EIS "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning the significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision"); *Connor v. Burford*, 848 F.2d 1441 (9th Cir. 1988) ("The purpose of an EIS is to apprise decisionmakers of the disruptive environmental effects that may flow from their decisions at time when they retain a maximum range of options.") (quotation omitted); *Sierra Club v. Marsh*, 872 F.2d 497, 504 (1st Cir. 1989) (stating that agencies must comply with NEPA as early as possible in the decisionmaking process because of the "difficulty of stopping a bureaucratic steam roller, once started").

[22] *Metcalf*, 214 F.3d at 1143-44 (quoting *Save the Yaak Comm. v. Block*, 840 F.2d 714, 718-19 (9th Cir. 1988)).
[23] *In re North Dakota Pipeline Co., LLC*, 869 N.W.2d 693 (Minn. Ct. App. 2015).

alternatives at this stage is no different than granting a certificate of need prior to an EIS – it commits the State to a project before the environmental effects have been fully understood.

C. The Purpose And Need For The Project Must Be Stated Broadly To Ensure That Reasonable Alternatives Are Considered.

The Purpose and Need stated in the EIS and the reasonable alternatives considered are closely related, because the alternatives that do not meet the Purpose and Need may be eliminated. If the Department of Commerce defines the "purpose and need" of the project as narrowly as NDPC would like, the Department would exclude reasonable alternatives and violate MEPA. Rather, the Department should adopt a broad purpose and need statement initially as part of the scoping EAW, and then, if necessary, tailor it accordingly after the scoping process is complete.

Under MEPA, alternatives considered may include "alternative sites, alternative technologies, modified designs or layouts, modified scale or magnitude, and alternatives incorporating reasonable mitigation measures identified through comments received during the comment periods for EIS scoping or for the draft EIS."[24] Alternatives that do not meet the "purpose and need" of the proposed project may be eliminated from consideration.[25]

Since the Purpose and Need Statement for the project define the range of alternatives, it is a key part of the EIS. When defining the objectives of an action, the agencies may not attempt to define its objectives in unreasonably narrow terms. "One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence)."[26]

The Department may be tempted to simply adopt NDPC's narrow Purpose and Need statement as stated in the application:

> The Project's purpose is to transport growing supplies of oil produced in North Dakota to the terminals in Clearbrook, Minnesota and Superior, Wisconsin."[27]

But that is NDPC's purpose. It is not necessarily the State's purpose. The State's purpose may, for example, be stated this way:

> The purpose of this project is to ensure that oil moves through the state of Minnesota in the safest manner possible. Any pipeline built in the state of Minnesota must be protective of its most sensitive natural resources, and the impact of any potential spill from the pipeline must be minimized.

The Council on Environmental Quality, the board that oversees implementation of NEPA, has clearly instructed agencies that the purpose and need of the project are driven by "common sense," not merely the applicant's need. The Council said that, "[r]easonable alternatives include those that are practical or feasible from the technical and economic

[24] Minn. R. 4410.2300.
[25] *Id.*
[26] *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664,666 (7th Cir. 1997).
[27] NPDC Application for Certificate of Need for the Sandpiper Pipeline, filed January 30, 2014, p. 2 of Application Summary.

standpoint and using common sense rather than simply desirable from the standpoint of the applicant."[28] The clear implication is that the purpose and need must be broad enough to include alternatives besides the applicant's, even if that means that the EIS considers reasonable alternatives that the applicant does not support.

The Purpose and Need statement is an iterative process in which the Department, based on public comments from citizens and other agencies, tailors the statement to ensure that reasonable alternatives are considered, and not eliminated merely because the purpose and need statement has been framed too narrowly. This is not to say that the State should disregard NDPC's stated purpose, only that it is an error for the State to adopt it uncritically and automatically simply because NDPC has proposed it. The State must enter the scoping process, and ultimately conduct the EIS, in a way that allows for analysis of the State's interest, including alternative locations for a project.

This point is highlighted by this particular case, as there is considerable discrepancy between the prior record in this case and the purpose and need as expressed by the proposer. FOH has made this point throughout these proceedings – the actual destination of this crude oil is Illinois and nearby refineries, and it makes more sense to ship the oil there directly. FOH proposed SA-04 and SA-05, which are existing pipeline routes, early on to fulfill this purpose.

Although NDPC and Marathon's stated purpose is to bring Bakken crude to terminals in Clearbrook and Superior, Marathon officials testified at the evidentiary hearing that their true goal is to bring the crude to their pipeline hub at Patoka, Illinois.[29] Those officials also made clear that their commitment to the Sandpiper project is contingent on the development of an additional pipeline from Chicago to Patoka.[30] In other words, the *anchor shipper* on the Sandpiper project is interested not in getting oil delivered to Superior, but to Illinois. Their commitment depends on it, in fact. This record raises substantial questions about the stated purpose and need of bringing the oil to Superior. For the RGU to accept that stated purpose without question, *particularly* when the record itself tends to *undercut* that purpose, would be a very clear violation of MEPA. This is exactly the sort of issue contemplated by the federal courts who are wary of agencies trying to "slip past the strictures of NEPA [by] contriv[ing] a purpose so slender as to define competing 'reasonable alternatives' out of consideration."[31] Even worse in this case, the RGU would be doing so based on an unsupported statement of need. MEPA is specifically designed to prevent this very sort of procedural inertia in which permit applications become foregone conclusions.

---

[28] 46 FR 18026 (1981).

[29] Testimony of Michael Palmer, Docket No. 13-473, Jan. 28, 2015, at page 48, ln. 22-page 49, ln 1 ("Well, the intent is that the oil will be shipped down to Patoka, Illinois, which is a pipeline hub for Marathon. And once we get the oil to Patoka, we can distribute the oil to any of the four refineries within the Midwest.").

[30] *Id.* at page 50, ln. 10-16 ("Well, certainly from Marathon's standpoint, as I indicated just a moment ago, the intent would be for that oil to move all the way to Patoka, Illinois. So without the Southern Access Extension, which is a pipeline that runs from south of Chicago down to Patoka, there's no way to move that oil to that Patoka hub.").

[31] *Simmons,* 120 F.3d at 666.

D. The EIS Is Different Than The Certificate Of Need And Route Permit Process, And The Alternatives May Differ As Well.

Under an EIS, the Commission and the Department of Commerce must set aside the question of whether something is a "reasonable and prudent alternative" under Minnesota Rule 7853.0130, or whether it has met the standard of an alternative route proposal under Minnesota Rule 7852.1500. Alternatives under MEPA are not the same as alternatives under the Commission's rules, which are governed by Minnesota Statute § 116D.01 *et seq* and Minnesota Rules Chapter 4410.

Perhaps more importantly, alternatives under MEPA are not hindered by the same procedural flaws as the certificate of need rules. At the certificate of need hearing, the Commission wrestled with the question of burden of proof, and whether any "reasonable and prudent alternative" could be brought forth under the certificate of need rules by an entity who is not a pipeline company, as the ALJ report suggested. Happily, the Commission can set those questions aside during the EIS process.

Under MEPA, the RGU can decide which reasonable alternatives to consider, and then, in the scoping decision, require further investigation into those alternatives. The RGU need not take the Company's claims at face value. For instance, NDPC has always insisted that shippers will not support proposed system alternatives. But no party in the need proceedings had the resources to challenge that claim, despite the fact that precious few shippers have come forward to support NDPC's proposal, while others outright opposed it in the FERC proceedings. Even worse, the evidence to support NDPC's claim has been kept almost entirely out of public view, even from represented parties who had signed confidentiality agreements to receive trade secret documents.[32]

The Commission, within the context of an EIS, has both the authority and the resources to independently evaluate NDPC's claim that it could never build a pipeline in any other location due to lack of shipper support. If anything, NDPC bears the burden of proof to support its own stated purpose and need. Based on the objections of some shippers, and the St. Paul Refineries at the FERC hearings, it appears that at least some, if not all, of NDPC's route may be better categorized as a "want" than a "need." But the Commission can investigate this itself as part of the EIS process. It can hire an oil economist to look at oil markets and shipper demand. Such expertise is warranted anyway, at a time when the price of oil is reaching historic lows. As noted in FOH's previous briefings, the Commission may charge the cost of expertise hired for the EIS back to NDPC.[33]

Finally, considering reasonable alternatives, including system alternatives, is not the same as permitting them. Simply because system alternatives are studied in the EIS does not mean that the Commission must select them. Often referred to as a "double-winnowing process," after scoping, the RGU may select reasonable alternatives for further study. Once the reasonable alternatives have been thoroughly analyzed, only then does the RGU make a selection on the preferred alternative. All the RGU is committing to after scoping is studying the alternatives.

---

[32] *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, Eighteenth Prehearing Order (Protecting Order), November 5, 2014.

[33] *See* Minn. Stat. § 116D.045.

E. The Commission Should Clarify That The Department Cannot Proceed Without An Interagency Agreement.

To FOH's knowledge, the Department has not fulfilled the Commission's Order that it engage in an interagency agreement with the Minnesota Pollution Control Agency and the Department of Natural Resources in order to fulfill the requirements of MEPA. It is not appropriate for Commerce to be proceeding with scoping without the input of these other agencies.

This is particularly concerning because the Pollution Control Agency *suggested* SA-03, one of the system alternatives that the Department is now seeking guidance on whether to consider as part of the EIS. PCA also recommended in earlier comments that SA-03, SA-04 and SA-05, at a minimum, are worthy of further consideration.[34] It is inappropriate for Commerce to eliminate any alternatives prior to scoping; it is even more inappropriate to eliminate an alternative without the input of the very state agency that suggested it in the first place.

This is precisely the reason that FOH sought stronger language regarding the role of MPCA and DNR in the EIS at the hearing on December 17, 2015. FOH shares Commissioner Lange's concerns that the involvement of these agencies has been far too limited so far, and FOH remains concerned that the Department will not avail itself of these other agencies' resources. If the PCA and DNR acted as co-leads on the EIS, they would be accountable for the content of the EIS and its adequacy. There is no other way to ensure quality participation by these other agencies. But at a minimum, any agreement should be in place before the Department proceeds.

F. The Commission Should Form An Expert Advisory Committee To Assist With The EIS.

FOH respectfully requests that this Commission form an Expert Advisory Committee pursuant to Minnesota Statute 116D.03, subd. 2(2), which allows this agency to utilize "advisory councils or other forums for consultations with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible."

Commerce has become accustomed to the Comparative Environmental Assessment process authorized under Minnesota Rules Chapter 7852. They have never conducted an EIS on a pipeline before. Indeed, no agency in Minnesota ever has, to FOH's knowledge. Such a novel situation cries out for additional consultation and advice.

FOH urges this Commission to establish an Expert Advisory Committee to provide advice on the EIS process. Even now, Commerce is making critical decisions that will affect the quality of the EIS. For instance, FOH understands that Commerce is currently renegotiating an earlier contract with Cardno, rather than put out a new Request For Proposal from other consultants. Selecting Cardno is potentially treacherous. Cardno was originally hired to conduct the Keystone XL pipeline EIS, but was then terminated early in the process because of a conflict.

[34] Letter to Burl Haar, Executive Secretary, Public Utilities Commission, from Bill Sierks, Minnesota Pollution Control Agency, August 21, 2014 at 15.

They had previously worked for Transcanada.[35] FOH does not know whether Cardno has a similar conflict in this case. Even if they don't, the Keystone XL EIS provides an excellent case study for why the consultant hired to conduct the EIS matters. The second contractor, ERM, was also conflicted, but that was not discovered until it produced an EIS that was extremely favorable to the company and concluded that there were essentially no environmentally impacts from a pipeline thousands of miles long carrying hundreds of thousands of barrels of oil across the US.[36] The final contractor was not conflicted, and produced a quality EIS that ultimately resulted in the rejection of that proposed pipeline.

The recent National Academies of Science (NAS) report on diluted bitumen also demonstrates the need for additional expertise as part of the EIS.[37] Line 3, which will be part of the Sandpiper EIS, would ship diluted bitumen across Minnesota. The NAS report is a comprehensive description of environmental impacts of spills from diluted bitumen, and specifically highlights the way in which the impacts of diluted bitumen are unique:

> [D]iluted bitumen spills in the environment pose particular challenges when they reach water bodies. Progressive evaporative loss of the diluent leaves behind the relatively dense and viscous bitumen, which can then become submerged, perhaps first by adhering to particles, and ultimately sink to the sediments. The density of the residual oil need not exceed that of the water to submerge if conditions are conducive to the formation of oil-particle aggregates with densities greater than water, and this may be a common situation in inland and coastal waters where suspended particulate matter abounds. The loss of the lighter fraction and resultant potential for submergence of residual oil manifests more quickly and will involve a greater fraction of the spilled oil than in the case of light and medium crude oils. Toxicity of the residual bitumen has received little study, although toxic effects of both organic substances and associated metals have been observed in the vicinity of oil sands deposits in western Canada. The difficulty of recovering sunken oil and the recalcitrant nature of bitumen mean that aquatic biota may be exposed to the material for longer periods than in the case of lighter oils that sometimes sink to the bottom but are relatively biodegradable.[38]

The NAS report is also critical of the current regulatory framework governing spill response at the federal level, stating that additional requirements must be imposed to effectively deal with the risks posed by diluted bitumen.[39]

Commerce will make a series of other internal decisions going forward that are not subject to public scrutiny yet are extremely significant, especially for an agency that has not previously conducted a full EIS on a pipeline. An advisory committee would not have a "veto"

---

[35] *See, e.g.* Elisabeth Rosenthal and Dan Frosch, *Pipeline Review is Faced with Questions of Conflict*, The New York Times, Oct. 7, 2011.
[36] *See, e.g.*, Brad Wieners, *Secrets, Lies and Missing Data: New Twists in the Keystone XL Pipeline*, Business Week, July 11, 2013.
[37] National Academies of Sciences, Engineering, and Medicine. 2016. *Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*. Washington, DC: The National Academies Press.
[38] *Id.* at 58.
[39] *Id.* at 89-94.

over any of these decisions, but would provide Commerce the opportunity to obtain input before making an important decision. Council members could include retired DNR scientist Paul Stolen, an expert who specializes in diluted bitumen, such as an author of the NAS report, and representatives of both the White Earth and Mille Lacs tribes. Other Intervenors may wish to nominate additional experts.

II. THE PUC HAS UNAMBIGUOUS DISCRETION TO ORDER A FINAL EIS BEFORE CONTINUING CONTESTED CASE PROCEEDINGS ON THE CERTIFICATE OF NEED AND ROUTE PERMITS.

The decision to defer development of contested case proceedings on the permits until issuance of the final EIS was a reasoned, deliberate decision grounded in the desire to avoid overly contentious or duplicative proceedings. In its January 11, 2016 Order rejoining the CON and route permit dockets, the Commission expressed concern that proceeding with contested case hearings after the *draft* EIS has been completed may result in unnecessary delay, as any revisions to the draft EIS would have rippling effects in the contested case hearings. "To best reconcile the contested case process with the MEPA process, and to avoid delay related to use of the EIS document in that process," the Commission concluded that contested case proceedings must begin after the issuance of the *final* EIS.[40] Commission Staff also indicated that it believed that the final EIS would be submitted as prefiled testimony under Minn. R. 7852.1500 and 1504.1900, and that therefore the final EIS should be completed prior to contested case hearings.[41]

Both of these rationales are reasonable and justified. As such, the Commission's decision to conduct proceedings in a manner it determines to be most likely to avoid duplication, delay, and unnecessary disputes need not be revisited. It was a decision fundamentally rooted in statutory discretion, and entirely consistent with state policy.

A. NDPC And Its Supporters Mistake A Common Practice For A Legal Requirement.

NDPC[42] places great weight on the contention that the preparation of a final EIS prior to commencing contested case proceedings on the CON and route permits is unprecedented and somehow unlawful. NDPC cites cases referring to a different type of environmental review – the alternative form of environmental review under Minnesota Rule Chapter 7852, not an EIS under Minnesota Rule Chapter 4410. When EISs are conducted, it is not uncommon for permitting

[40] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *ORDER LIFTING STAY, REJOINING NEED AND ROUTING DOCKETS, AND REFERRING FOR CONTESTED CASE PROCEEDINGS*, January 11, 2016, at page 6.

[41] *Staff Briefing Papers for December 17, 2015 Meeting of the PUC*, Docket No. PL-6668/CN-13-473, PL-6668/PPL-13-474, at page 16.

[42] FOH refers to NDPC in describing the arguments for reconsideration in this matter, but notes that other parties to this case make identical arguments, including the Laborers District Council, the United Association, and the Chamber of Commerce. As such, FOH hereby responds to those parties through this pleading.

proceedings to take place only after issuance of a final EIS. Mostly famously, of course, the EIS for the proposed copper-nickel mine, the PolyMet project, will be completed before the DNR or PCA commence any permit proceedings.[43]

In an attempt to bolster its claim that requiring a final EIS before contested case proceedings is somehow unprecedented, NDPC cites a litany of cases, all without any context, explanation, or specificity.[44] This lack of detail is telling, for the cases cited do not support the contention that finalizing environmental review before permitting is unprecedented. Many of them illustrate the opposite. In many of the cases cited, environmental review was completed prior to the commencement of permitting proceedings, as in this case.[45] Other cases involved somewhat overlapping processes, but with the final EIS being filed many months in advance of the ALJ's recommendations,[46] while still others involved final EISs filed before reopened contested case proceedings.[47] In this case, the Commission has exercised its discretion to ensure that the primary requirement of MEPA is met - that the environmental review is begun early enough that it may inform the decision.[48]

B. MEPA Does Not Require Concurrent Preparation Of An EIS.

NDPC argues that MEPA does not *require* completion of a final EIS prior to initiating permitting proceedings.[49] Even if this is the case, MEPA certainly does not *require* concurrent preparation of an EIS. Rather, Minnesota law clearly confers broad discretion on state agencies to determine the appropriate timing of EIS preparation. This discretion is codified at § 116D.03, subd. 1, stating that "the legislature authorizes and 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 sections 116D.01 to 116D.06."[50] This language is mirrored in § 116D.04 as well, confirming the legislature's clear intent to allow agencies the discretion to determine the timing of EIS preparations as practical. NDPC chooses to read this language out of

---

[43] "Final EIS for PolyMet's proposed Copper-Nickel Mine Released," MDNR News Release, Nov. 6, 2015 ("If the DNR determines the final environmental impact statement is adequate, the environmental review process is complete for the state. The proposed project would then move forward to the permitting process. ")(available at http://news.dnr.state.mn.us/2015/11/06/final-environmental-impact-statement-for-polymets-proposed-copper-nickel-mine-released/) (last visited 2/10/16).

[44] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NDPC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, at 7, fn. 12.

[45] *See, e.g.*, Docket Nos. CN-06-02, PPL-05-2003; PL9/CN-07-464; PL9/PPL-07-360; PL-9/CN-07-465; PL-9/PPL-07-361;

[46] *See, e.g.*, Docket Nos. ET-2, E-002/TL-09-1056

[47] *See* Docket Nos. CN-05-619; TR-05-1275.

[48] *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390, 406, 98 S. Ct. 2718, 2728 (1976) (the statutory minima of NEPA is that the EIS be finalized before the agency makes a decision on the proposal for which the EIS was prepared) .

[49] Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NDPC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, at page 8.

[50] Minn. Stat. § 116D.03, subd. 1 (2015).

the statute, thereby changing a preference into a legislative command. This is contrary to common sense and the guidance of Minnesota courts.

Quoting language stating that concurrent EIS and permit proceedings should be used "whenever practical," NDPC argues that this is a requirement of MEPA.[51] The language quoted is patently not a "statutory directive," as is apparent by its plain meaning. Rather, the statute makes the Commission's discretion clear. The desire for concurrency is aspirational, but the discretion to depart from concurrent proceedings is embodied in the language itself, which is based on the assumption that concurrency may not always be practical. A determination of "practicality," moreover, is a quintessential function of an administrative agency, and there is no legal basis for a court to "second guess" the Commission's discretionary determination in this matter that concurrency is not practical.

The central premise of MEPA is that in environmental review, procedure (and therefore, timing) matters. NDPC essentially argues that it does not, and that the Commission might as well attempt environmental and permitting review simultaneously to save some time. In its discretion, and based on the clear teaching of MEPA that EISs "shall be prepared as early as practical in the formulation of an action,"[52] the Commission determined that concurrency would create undue delays.[53] This third reference to actions taken "as practical" further solidifies the Commission's discretion to determine timing of the EIS preparation as it relates to the decision-making proceedings for which EIS is completed. The Commission has determined that the earliest practical time for preparing the EIS is prior to filing direct testimony in the permitting proceedings. The Commission was justifiably concerned that concurrent proceedings would turn the contested case process into a "second arena in which to vet the EIS."[54] NDPC can point to nothing in this record that would indicate that this was not a valid concern, or that the exercise of discretion was in any way unsupported.

Rather than point to a specific deficiency in the Commission's reasoning for delaying permitting proceedings until after the final EIS has been prepared, NDPC simply asserts that the Commission had no reason to believe that concurrent environmental review and permitting proceedings would create delays related to use of the EIS in the contested case process.[55] They maintain that the Commission's concerns are "unrealistic," and that in reality the lack of concurrency will lengthen the proceedings overall.[56] It is of course up to the Commission to determine what is realistic or unrealistic in regards to the proceedings in which they are engaged on a daily basis. There is quite simply no basis for upsetting the Commission's conduct of their

[51] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NDPC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, at page 6.
[52] Minn. Stat. § 116D.04, subd. 2a (2015).
[53] Order at 6.
[54] Order at 6.
[55] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 6.
[56] *Id.*

own proceedings on the grounds that their concerns on timing are "unrealistic." Any contrary result would be an undue and illegal usurpation of administrative decision-making.[57]

NDPC, unsurprisingly, would like to proceed with pipeline construction as soon as possible. The Commission is well aware of this preference. However, such business preferences are not legally cognizable concerns at this stage. If the RGU produces an inadequate EIS, NDPC's desire to ship oil quickly is not a legal defense, and the EIS is vulnerable to challenge. Moreover, if NDPC had consented to a full EIS at an earlier stage in the proceedings, such as when FOH first recommended an EIS in comments filed in early 2014, the document could have been completed by now. Depending on its contents and conclusion, the permitting process might have been well underway. Instead, FOH had to resort to appealing the environmental review determination, and the ruling of the Court of Appeals is now a settled issue. It cannot be avoided by arguing about the amount of time that the proceedings have already taken. These delays are of NDPC's own making. To rush the process now, in contravention of the Commission's authority to conduct proceedings as they see fit, would be as unfair as it would be unlawful.

C. The Commission's Exercise Of Discretion In The Conduct Of Its Own Proceedings Is Not Contrary To Federal Policy.

The Supreme Court of the United States has been clear that "the only procedural requirements imposed by NEPA are those stated in the plain language of the Act."[58] The only requirements imposed on the agency are the "statutory *minima*," and once that has been met, all other procedural decisions are irrevocably vested in the agency's discretion.[59] The statutory minima for NEPA is that the EIS be finalized before the agency makes a decision on the proposal for which the EIS was prepared.[60] In this case, the agency chose to finalize the EIS early enough to avoid unnecessary delays caused by relitigating the adequacy of the EIS in the contested case proceedings. It is within its sound discretion to do so. NDPC has essentially asked the Commission to try to speed up the process by running concurrent proceedings for environmental review and permitting, brushing aside the Commission's concerns that concurrency in this case would actually *cause* further delays, rather than prevent them. There is no basis in federal or state law to upset this sort of discretionary, procedural decision. This was made quite clear by the Supreme Court itself. Justice Rehnquist, writing for the majority in *Vermont Yankee*, noted that:

---

[57] *See, e.g. Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 526, 98 S. Ct. 1197, 1202 (1978) (holding that the federal courts has "improperly intruded into the agency's decisionmaking process" when it "seriously misread or misapplied th[e] statutory and decisional law cautioning reviewing courts against engrafting their own notions of proper procedures upon agencies entrusted with substantive functions.").

[58] *Id.* at 548, 98 S. Ct. at 1214 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 405-06, 96 S. Ct. 2718, 2728-29, 49 L. Ed. 2d 576 (1976)).

[59] *Id.* ("In short, nothing in the APA[or] NEPA" allowed a court to interfere with the agency's procedural decisions "so long as the [agency] employed at least the statutory *minima*, a matter about which there is no doubt in this case.").

[60] *Kleppe v. Sierra Club*, 427 U.S. 390, 406, 98 S. Ct. 2718, 2728 (1976).

> Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them. This is not to say necessarily that there are no circumstances which would ever justify a court in overturning agency action because of a failure to employ procedures beyond those required by the statute. But such circumstances, if they exist, are extremely rare.[61]

NDPC's argument that federal laws "do not require the agency to complete the EIS process before commencing the merits phase of the proceeding" is simply misdirected.[62] Federal law enables agencies to conduct such proceedings as they see fit in their judgment drawn from experience and expertise, such that the EIS process precedes and informs all permitting and other substantive decisions. This is perhaps the oldest and most well established principle of administrative law:

> NEPA does set forth significant substantive goals for the Nation, but its mandate to the agencies is essentially procedural. It is to ensure a fully informed and well-considered decision, not necessarily a decision the judges of the Court of Appeals or of this Court would have reached had they been members of the decisionmaking unit of the agency. Administrative decisions should be set aside in this context, as in every other, only for substantial procedural or substantive reasons as mandated by statute, not simply because the court is unhappy with the result reached.[63]

It is simply not the case that either MEPA, NEPA, or any other law *requires* the timing that NDPC prefers. Decisions such as this – where an agency determines the appropriate timing of proceedings before it, based on its own experience and expertise – are resolutely vested in the agencies themselves.

D. Completing The Final EIS Prior To Contested Case Proceedings Is Consistent With MEPA Timelines.

NDPC's argues that the Commission must "establish a process that concludes within 12 months or its Order," based on the statutory goal of reaching a CON decision within one year of application.[64] NDPC, however, also acknowledges that these goals are preempted by the requirement for a full EIS imposed by the Court of Appeals in this case. The statutory goal of reaching a decision within one year of application is already a moot point, and restricting the Commission's ability to conduct its own proceedings as it sees fit will accomplish nothing in terms of meeting statutory deadlines.

---

[61] *Id.* at 524, 98 S. Ct. at 1202.

[62] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 9.

[63] *Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 558, 98 S. Ct. 1197, 1218 (1978) (citations omitted).

[64] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 10.

NDPC also points to the timing goals of § 116D.04, subd. 2a(h), which state that an adequacy determination on the EIS be made within 280 days of the notice of EIS preparation, "*unless* the time is extended by consent of the parties."[65] What NDPC does not acknowledge is that the 280 goal is largely aspirational by design. In practice, agencies often find it difficult to complete the EIS in time to meet the 280 day deadline. If the deadline is not met, the agency must declare the EIS "inadequate." Since this result is rarely in anyone's best interests, the 280 days deadline is routinely extended by consent of the parties, so that an inadequacy determination can be avoided. Given these norms of EIS practice, it is misleading for NDPC to suggest that the statute "offers only limited exceptions for extension, none of which apply here."[66] NDPC is free to refuse its consent to extend the deadline. Its choice to do so, however, would result in the EIS being declared inadequate, causing even more of the delays with which it is so concerned.[67] It is disingenuous for NDPC to argue that the extension of the 280-day deadline does not apply here.

Lastly, NDPC points to the 30-day deadline of § 116D.04, subd. 3a, which states that final decisions on the permits must be made within 30 days after "final approval of an environmental impact statement." Final approval in this case refers to the determination of EIS adequacy, which will occur within 30 days of the final decision, as laid out by NDPC's own timeline on page 12 of its motion. The contested case proceedings will occur after the final EIS has been *issued*, and will conclude roughly simultaneously with the determination of adequacy, thus constituting final *approval* of the EIS. Because NDPC's own timeline demonstrates compliance with the statute, the Commission has no reason to expect that its schedule will violate the 30-day deadline of Minnesota Statute § 116D.04, subd. 3a.

E. NDPC's Due Process And Commerce Clause Claims Are Misplaced.

Due Process

NDPC's allegation that the Commission has unlawfully "treat[ed] Sandpiper differently than it has prior pipeline and other large energy facility applicants"[68] is without basis in law. As described above, the Commission has been expressly given the discretion to conduct environmental review in a manner it deems practical, as long as the review is completed prior to any decisions being made. In this case, this decision was made based on the Commission's experience in pipeline permitting proceedings as well as its familiarity with the particular proceedings in this case. Its decision to finalize the EIS prior to contested case proceedings on the CON and route permits is based on its concerns for duplication and delay.[69] If this decision deviates at all from other cases, it does so based on the Commission's judgment, experience, and

[65] Minn. Stat. § 116D.04, subd. 2a(h) (2015).
[66] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 13.
[67] *See* Minn. Stat. § 116D.04, subd. 11 (2015).
[68] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 14.
[69] Order at 6.

expertise, not on any animus toward NDPC. As such, there are no due process rights invoked by this decision.

The cases relied on by NDPC to support its allegation that its due process right have been violated are not in support of its claim. At best, they suggest that the Commission may not depart from its own precedent without giving reasons for doing so. If the Commission does have reason for doing so, on the other hand, it is "not bound to strict adherence to its precedents."[70] The only restriction on the Commission's authority to decide matters as circumstances dictate is that it may not *arbitrarily and without reason* depart from "prior norms and decisions."[71] Their decision in this case, however, was the result of a lengthy hearing involving all parties, at which the Commission clearly specified its reasons for preferring a final EIS prior to contested case proceedings. All that is required of the Commission is that it "articulate a rational connection between facts found and the decision made."[72] This type of decision, in which the Commission tailors particular procedures to the demands of the case before it, is well within their authority and not contrary to any decision of any court.

Commerce Clause

NDPC's Commerce Clause arguments are similarly without merit. As a preliminary matter, this claim fails on its face, as it is based on the assumption that the Commission's decision will lengthen the overall process more so than if environmental and permitting review were concurrent. The Commission clearly disagreed with this assumption, and believed that concurrency would unnecessarily delay and complicate the permitting process. NDPC and its supporters are free to disagree with the Commission with regards to what will produce delay and what will not, but this disagreement cannot make the Commission's decision unconstitutional.

As a secondary matter, NDPC's argument relies on an "excessive and unconstitutional burden on interstate commerce" resulting from delay already experienced to date.[73] As noted above, if a full EIS had been prepared at the outset, as FOH requested in early 2014, the permitting process might have been completed by now. The delays experienced to date are the direct result of this refusal to prepare a full EIS and the resulting appeals process to establish that yes, indeed, a full EIS should have been prepared prior to a decision in the CON process. NDPC cannot conceivably maintain a Commerce Clause violation by acting in such a way to precipitate procedural delays, and then invoking those delays as evidence of unconstitutional discrimination.

The Dormant Commerce Clause is invoked when a state law (e.g., not an administrative procedural decision) discriminates against interstate commerce by differentially treating in-state and out-of-state economic interests to benefit the former and burden the latter.[74] It simply cannot be said that the Commission's decision to finalize an EIS before commencing contested case

---

[70] *Central Tel. Co. v. Minnesota Public Utilities Comm'n*, 356 N.W.2d 696, 702 (Minn. Ct. App. 1984).
[71] *Id.*
[72] *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. Ct. App. 2006).
[73] *See* Docket Nos. PL-6668/CN-13-473, PL-6668/PPL-13-474, *NORTH DAKOTA PIPELINE COMPANY LLC'S PETITION FOR RECONSIDERATION OF THE COMMISSION'S JANUARY 11, 2016 ORDER*, February 1, 2016, at page 16.
[74] *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 550 U.S. 330, 127 S. Ct. 1786 (2007).

hearings is a form of economic protectionism justifying constitutional scrutiny. NDPC's arguments in this regard are wishful thinking, as Justice Roberts states:

> The dormant Commerce Clause is not a roving license to federal courts to decide what activities are appropriate for state and local government to undertake, and what activities must be the province of private market competition.[75]

NDPC is no doubt frustrated that it has been unable to obtain permitting for its proposed pipeline to date. Frustration, unfortunately, is not the basis for a constitutional claim of economic protectionism.

Even if this claim were generously construed as alleging substantially discriminatory effect on interstate commerce, such a claim would fail if the state can prove that it enacted the law for a legitimate, non-protectionist purpose.[76] If the law were construed as having only an incidental effect on interstate commerce, it would be subject to a balancing test that looked at the burden imposed as compared to the local benefits.[77] That NDPC has not engaged in the type of analysis required to support its claim, preferring instead to merely cast aspersions of discrimination, is a testament to its faith in the merits of the claim. Since it has been 25 years since the Supreme Court has invalidated a state law on such grounds, their lack of faith is justified.

CONCLUSION

DOC's recent request for "clarification" is extremely concerning to FOH. DOC's request is rooted in a fundamental misunderstanding of MEPA and the scoping process, and indicates a strong need for oversight from experts and this Commission to ensure that system alternatives are given fair consideration in the EIS process.

NDPC and its supporters, meanwhile, are attempting to challenge the Commission's valid use of administrative discretion with vague allegations of unfairness that are based in neither law nor fact, and should be disregarded.

Based on the foregoing, FOH respectfully requests that the Commission:

(1) Deny NDPC's motion for reconsideration;

(2) Respond to DOC's "Request for Clarification" by ordering DOC to conduct a scoping process for the Sandpiper EIS consistent with MEPA that allows for fair consideration of all reasonable alternatives, including system alternatives; and

(3) Under its authority as an RGU, form an Expert Advisory Panel that includes retired DNR expert Paul Stolen, an expert on diluted bitumen, and tribal representatives, among others, who can advise DOC on all significant decisions related to the EIS, including hiring of consultants, the "purpose and need" of the project, and the scoping process.

---

[75] *Id.* at 343, 127 S. Ct. at 1796.
[76] *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 270-71 (1984).
[77] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Dated: February 11, 2016

Respectfully submitted,

/s/ Kathryn M. Hoffman

Kathryn M. Hoffman
Kevin Lee
Minnesota Center for Environmental Advocacy
26 East Exchange Street, Suite 206
St. Paul, MN 55101
Phone: (651) 223-5969
Fax: (651) 223-5967
khoffman@mncenter.org
klee@mncenter.org

Attorneys for Friends of the Headwaters

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE 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 in Minnesota

AFFIDAVIT OF SERVICE

MPUC Docket Nos. PL-6668/CN-13-473
OAH Docket Nos. 8-2500-31260

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Erin Mittag, being duly sworn, says that on the 11th day of February, 2016, she served via e-dockets the following:

- Response to Minnesota Department of Commerce's Request for Clarification and other parties' Motions for Reconsideration, filed on behalf of Friends of the Headwaters.

on the following persons, in this action, by filing through e-dockets or mailing to them a copy thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the post office at St. Paul, Minnesota, directed to said persons at the last known mailing address of said persons:

Attached Service List.

E Mittag
Erin Mittag

Subscribed and sworn to before me
this 11th day of February, 2016

Karen E Moss
Karen Moss

KAREN E. MOSS
NOTARY PUBLIC - MINNESOTA
My Commission Expires 01/31/2021

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street Haskell, OK 74436	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Erik	Best	erik.best@riotinto.com	Kennecott Exploration Company	224 N 2200 W Salt Lake City, UT 84116	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118 Deer River, Minnesoa 56636	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Paul	Blackburn	paul@paulblackburn.net		PO Box 17234 Minneapolis, MN 55417	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW Washington, DC 20016	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Vanta E.	Coda II	N/A	Avon Township	1200 Port Terminal Drive Duluth, MN 55802-2609	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Michelle	Cote	michelle.cote@co.polk.mn.us	Polk County Property Records	612 N. Broadway Street suite 207 Crookston, MN 56716	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Leigh	Currie	lcurrie@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St., Suite 206 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources	500 Lafayette Rd, PO Box 25 Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Peter	Erlinder	proferlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John R.	Gasele	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	150 S Fifth St Ste 2300 Minneapolis, MN 54002	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jon	Godfread	Jon@ndchamber.com	Greater North Dakota Chamber	2000 Schafer Street Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620 Saint Paul, Minnesota 55164-0620	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Lowell	Hassler	lhassler@blm.gov	BLM Bureau Land Management	920 NE Main Lewistown, MT 59457	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Danny	Hendrix	N/A	Pipeliners Union 798	PO Box 470798 Tulsa, OK 74147-0798	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Helene	Herauf	Laney@ndchamber.com	Greater North Dakota Chamber	PO Box 2639 Bismarck, ND 58502	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kathryn	Hoffman	khoffman@mncenter.org	Minnesota Center for Environmental Advocacy	26 E. Exchange St Ste 206 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Frank	Hornstein	Rep.Frank.Hornstein@house.mn		100 MLK Blvd saint paul, mn 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Patrice	Jensen	patrice.jensen@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd N St. Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Karen	Kromar	karen.kromar@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Eric	Le Dain	N/A	Enerplus Resources (USA) Corporation	US Bank Tower, Suite 2200 950 - 17'h Street Denver, CO 80202-2805	Paper Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Eric	Lipman	eric.lipman@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Brian	Meloy	brian.meloy@stinson.com	Stinson,Leonard, Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jessica	Miller	Jessica.Miller@whiteearth-nsn.gov	White Earth Band of Ojibwe	P.O. Box 238 White Earth, MN 56591	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Charles	Nauen	cnnauen@locklaw.com	Lockridge Grindal Nauen	Suite 2200 100 Washington Avenue South Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Bob	Patton	bob.patton@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418 White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Neil	Roesler	nroesler@vogellaw.com	Vogel Law Firm	218 NP Avenue PO Box 1389 Fargo, ND 58107	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jeremy	Sanoski	jeremy.sanoski@state.mn.us	MN Pollution Control Agency	7678 College Rd Suite 105 Baxter, MN 56425	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Robert	Schoneberger	bob.schoneberger@unitedpiping.us	United Piping Inc	4510 Airport Road Duluth, MN 55811	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Jamie	Schrenzel	jamie.schrenzel@state.mn.us	Minnesota Department of Natural Resources	500 Lafayette Road Saint Paul, MN 55155	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Shaffer	david.shaffer@startribune.com		425 Portland Minneapolis, MN 55488	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Eileen	Shore	eileenshore@outlook.com	Eileen Shore	3137 42nd Ave So Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Bill	Sierks	bill.sierks@state.mn.us	State of MN - MPCA	520 Lafayette Rd N St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Byron E.	Starns	byron.starns@stinson.com	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Randy V.	Thompson	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	5001 American Blvd W Ste 595 Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kirk	Titus	kirk.titus@crowwing.us	Crow Wing County Land Services	322 Laurel Street Suite 12 Brainerd, MN 56401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497 St. Cloud, MN 56302	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710 St. Paul, MN 55102	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Cam	Winton	cwinton@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-473_OFF_SL_13-473_Official
David	Zoll	djzoll@locklaw.com	Lockridge Grindal Nauen PLLP	100 Washington Ave S Ste 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-473_OFF_SL_13-473_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street Haskell, OK 74436	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118 Deer River, Minnesoa 56636	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	4748 Wisconsin Ave NW Washington, DC 20016	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
John E.	Drawz	jdrawz@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Peter	Erlinder	proferlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
John R.	Gasele	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Andrew	Gibbons	andrew.gibbons@stinson.com	Stinson Leonard Street	150 S Fifth St Ste 2300 Minneapolis, MN 54002	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Jon	Godfread	Jon@ndchamber.com	Greater North Dakota Chamber	2000 Schafer Street Bismarck, ND 58501	Electronic Service	No	OFF_SL_13-474_Official Service List - CC

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Emerald	Gratz	emerald.gratz@state.mn.us	Office of Administrative Hearings	PO Box 64620 Saint Paul, Minnesota 55164-0620	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Helene	Herauf	Laney@ndchamber.com	Greater North Dakota Chamber	PO Box 2639 Bismarck, ND 58502	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Brian	Meloy	brian.meloy@stinson.com	Stinson,Leonard, Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Joseph	Plumer	joep@whiteearth.com	White Earth Band of Ojibwe	P.O. Box 418 White Earth, Minnesota 56591	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_13-474_Official Service List - CC

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Neil	Roesler	nroesler@vogellaw.com	Vogel Law Firm	218 NP Avenue PO Box 1389 Fargo, ND 58107	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC
Eileen	Shore	eileenshore@outlook.com	Eileen Shore	3137 42nd Ave So Minneapolis, MN 55406	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Byron E.	Starns	byron.starns@stinson.com	Stinson Leonard Street LLP	150 South 5th Street Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Randy V.	Thompson	rthompson@nmtlaw.com	Nolan, Thompson & Leighton	5001 American Blvd W Ste 595 Bloomington, MN 55437	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Gerald	Von Korff	jvonkorff@rinkenoonan.com	Rinke Noonan	PO Box 1497 St. Cloud, MN 56302	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 710 St. Paul, MN 55102	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_13-474_Official Service List - CC
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_13-474_Official Service List - CC