

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota

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DOCKET NO. PL-6668/PPL-13-474

DOCKET NO. PL-6668/CN-13-473

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

ORDER SEPARATING CERTIFICATE OF NEED AND ROUTE PERMIT PROCEEDINGS AND REQUIRING ENVIRONMENTAL REVIEW OF SYSTEM ALTERNATIVES

**PROCEDURAL HISTORY**

On November 8, 2013, North Dakota Pipeline Company LLC (the Company) filed two applications with the Commission: the first for a certificate of need and the second for a pipeline routing permit to construct the Sandpiper Pipeline Project (the project), a new 612-mile pipeline to transport crude oil from its Beaver Lodge Station south of Tioga, North Dakota to a Company affiliate terminal in Superior, Wisconsin.

Following proceedings in which the Commission accepted the applications as complete, referred both matters to the Office of Administrative Hearings for joint contested case proceedings, held public meetings, and solicited public comments regarding alternative routes, the Commission met on August 7, 2014.<sup>1</sup> At that meeting, the Commission heard comments from the parties as well as from the public regarding the selection of additional route and/or system alternatives for further consideration in these matters. The Commission also authorized a 14-day comment period following the August 7 hearing.

On August 12, 2014, the Commission issued a Notice of Comment Period requesting comments on the following topics by August 21, 2014:

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<sup>1</sup> Previous orders in these dockets have recited in detail the factual and procedural background of these proceedings to date.

- what if any of the eight system alternatives identified in the EERA Alternative Routes Summary Report should be considered further in these proceedings?
- what is the legal basis for determining whether a system alternative should be considered in the certificate of need proceedings?
- what is the legal basis for determining whether a system alternative should be considered in the route permit proceeding?

On August 25, 2014, the Commission issued its Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures. In its order, the Commission took the following actions:

- accepted the 53 route alternatives recommended by the Minnesota Department of Commerce Energy Environmental Review and Analysis unit (EERA);
- accepted system alternative SA-03 as modified by EERA;
- accepted expanded route widths in seven areas along the Company's proposed route as recommended by EERA and as modified by the Company;
- forwarded the 53 route alternatives, the modified system alternative SA-03, and the seven expanded route widths to the administrative law judge for consideration in the route permit contested case hearings;
- approved the issuance of a generic pipeline route permit template; and
- required the Company to prepare a pipeline safety report to be filed as part of its direct testimony by a sponsoring witness as a separate document for issuance into the record.

On September 11, 2014, the Commission met to consider the issues raised.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of Action Taken**

In this Order, the Commission takes the following steps in the permitting process for the Sandpiper Pipeline Project:

- finds just cause to separate the certificate of need proceeding from the route permit proceeding;
- finds good cause to postpone action on the route permit application until a Commission decision has been made on the certificate of need, thereby extending the deadline for a decision on the route permit; and
- authorizes environmental review by the EERA staff of six of the eight system alternatives identified by the Minnesota Pollution Control Agency (MPCA) in its August 21, 2014 comments (SA-03, 04, 05, 06, 07, and 08), to be completed prior to commencement of the certificate of need contested case hearings.

## **II. The Proposed Project**

As proposed by the Company, the Sandpiper Pipeline would transport crude oil 612 miles from Beaver Lodge Station south of Tioga, North Dakota, to terminals in Clearbrook, Minnesota, and Superior, Wisconsin. Approximately 299 miles of the new pipeline would be located in Minnesota.<sup>2</sup>

The Company's proposed route would pass through Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton counties, and would require the acquisition of 25 to 50 feet of new right-of-way, plus an additional 40 to 70 feet of temporary right-of-way.

In its certificate of need application, the Company stated that the purpose of and need for the pipeline project is to transport crude oil produced in North Dakota to the terminals in Clearbrook, Minnesota and Superior, Wisconsin.

## **III. Comment Process**

Following the August 12 notice of comment period, the Commission received some 158 comment letters from parties, state and local government agencies, citizen groups and associations, and members of the public.

A significant majority of those offering comments in the docket urged the Commission to include some or all of the eight system alternatives for further consideration in these matters in an effort to reduce potential impacts to the environment and human health.

Comments from the citizen groups and associations as well as the private citizens did not generally provide answers to the questions posed in the August 12, 2014 Notice of Comment period, but instead addressed various concerns regarding the proposed project, including potential harm to human health and the environment; surface water (e.g. Mississippi River and Lake Itasca); groundwater; wild rice areas; tourism; wildlife; pipeline safety; and possible cumulative impacts arising from additional pipelines within the new corridor.

## **IV. Separating the Need and Routing Process**

### **A. Background**

In its February 11, 2014 orders in the two proceedings, the Commission found that joint hearings in the certificate of need and route permit dockets would provide certain administrative

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<sup>2</sup> As proposed, a 24-inch diameter pipeline with a capacity of 225,000 barrels per day would enter Minnesota approximately two miles south of Grand Forks, North Dakota. It would follow Enbridge Energy Partners' existing pipeline right-of-way for 75 miles to Clearbrook Minnesota. There, the Company proposes to build a new terminal and other facilities.

After Clearbrook, the pipeline would expand to a diameter of 30 inches and a capacity of 375,000 barrels per day, and extend for another 224 miles. It would generally follow the existing Minnesota Pipeline Company right-of-way south to Hubbard, Minnesota. From Hubbard the route would proceed east traversing undeveloped area and follow portions of existing rights-of-way for electric transmission lines and railroads. Finally, the pipeline would cross the Minnesota-Wisconsin border approximately five miles east-southeast of Wrenshall, Minnesota.

efficiencies and a more convenient means for the public to provide comments. Again, in its July 7, 2014 order in these dockets,<sup>3</sup> the Commission declined to separate the public hearings in the two proceedings as requested by Honor the Earth, finding that, at that stage of the proceedings, separate proceedings were not necessary.

As these proceedings have evolved, however, the issues raised have become significantly more complex and increased the likelihood of public confusion by proceeding with joint proceedings. On July 17, the Minnesota Department of Commerce, Energy Environmental Review and Analysis staff (EERA) identified and recommended for further consideration in the route permit proceeding some 53 different route alternatives, derived from the various routing proposals put forward by the Company as well as numerous other commenters in the proceeding. The EERA also identified eight system alternatives it had considered in making its recommendation, but did not recommend them for further consideration in the route permit proceeding.<sup>4</sup>

## **B. Positions of the Parties**

Following the EERA's filing on July 17, the parties and public commenters submitted extensive written and oral comment raising serious concerns regarding the environmental and natural impacts of proceeding with the Company's proposed route, and strongly recommending further consideration of the system alternatives proposed in the certificate of need proceeding.

Honor the Earth and the White Earth Band of Ojibwe asked that the certificate of need and route permit proceedings be handled separately, and that the certificate of need determination precede the route determination. The parties argued that due to the increased complexity of the issues now faced by the parties and the Commission, the process would proceed in a much more orderly fashion if the matters were handled separately.

The Minnesota Pollution Control Agency (MPCA) and the Department of Natural Resources (DNR) asserted that bifurcation of the two proceedings would allow for more cogent and directed public comment in the two proceedings, with a better understanding by the public and the parties of the issues being considered in each of them. These parties, as well as the Department and other commenters, also stated that the certificate of need proceeding is the appropriate forum for consideration of the system alternatives.

The MPCA also recommended that the certificate of need proceeding precede the route proceeding, to ensure a more efficient use of agency and public resources. MPCA asserted that the separation of the need and route proceedings, with the need proceeding going first, would also help to assist the public to more effectively understand what process they are weighing into, and help focus their comments

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<sup>3</sup> These dockets, Order Reaffirming May 30, 2014 Comment Deadline and Denying Motion to Bifurcate Proceedings (July 7, 2014).

<sup>4</sup> In these proceedings, the EERA defined what it identified as a "system" alternative as a pipeline route that is generally separate or independent of the pipeline route proposed by the Company, and that does not connect to the specified Project endpoints (the North Dakota border to Clearbrook and Clearbrook to Superior, Wisconsin).

The Company opposed separating the certificate of need proceeding from the route proceeding, arguing that the Commission had already twice considered and rejected such a request. The Company further argued that separation of the need and route proceedings at this time would inevitably cause confusion to the public, and, importantly, would delay implementation of the project, all of which would threaten the project's intended benefits.

The Company asserted that, if the system alternatives were to be considered further in these proceedings, review should only be undertaken in the certificate of need proceeding, and only if fully supported by substantial evidence by a party's testimony in that proceeding. The Company argued that presently there is insufficient evidence to justify consideration of any of the system alternatives in the certificate of need docket.

### **C. Commission Action**

The Commission finds just cause to separate the certificate of need proceeding from the route permit proceeding based on the record at this point in the proceedings. The Commission further finds that there is good cause to postpone action on the route permit application until a Commission decision has been made on the certificate of need, and will, accordingly, extend the deadline for its decision on the route permit. These actions are explained below.

In making these decisions, the Commission is cognizant of the statutory preference for joint hearings for a certificate of need and a routing permit for large energy facilities. The Commission is also aware, however, that Minn. Stat. § 216B.243, subd. 4, recognizes that there may be circumstances where it would be infeasible, inefficient, or otherwise contrary to the public interest to hold joint hearings.

Importantly, the Commission is also guided by the clear statutory dictate found in Minn. Stat. § 216B.243, subd. 2, that it must make a decision on the certificate of need for a large energy facility prior to making its decision on the route permit. And, while the Commission has previously followed the preferred course of joint proceedings, it now finds just cause to separate the proceedings, and allow the need process to proceed prior to the routing process to assure the project need can be fully considered before any decisions are made on a possible route for the pipeline.

First, the number and complexity of the issues raised since July have become increasingly confusing to the public, and significantly more complicated, due to the necessary consideration of some 53 different route alternatives and a modified system alternative in the route permit proceeding.

Further, the introduction of eight unanticipated system alternatives into the proceedings has engendered extensive discussion and debate by the parties as to: 1) which, if any, of the system alternatives should be further considered; 2) in which proceeding further consideration should be undertaken; 3) whether the eight system alternatives merit environmental review; 4) which party or state agency should conduct the environmental review to be undertaken; and 5) the appropriate parameters of the environmental evaluation to be conducted.

Given the increasing complexity of the issues recently raised in these matters, including the environmental concerns discussed below, as expressed by the MPCA and the DNR, the state agencies tasked with protecting the environment and the public lands, the Commission finds that continuing to conduct simultaneous certificate of need and routing proceedings in this matter has

become infeasible and inefficient, and, for these and other reasons, no longer in the public interest. The Commission therefore concludes that the certificate of need docket must be considered separately from, and precede consideration of, the route permit docket.

It is also clear at this point that the task of developing the information necessary to conduct these two proceedings simultaneously, including conducting and analyzing discovery, hiring experts, and preparing testimony has become confusing and burdensome for the parties and the public, due in large part to the number of route options as well as system alternatives. The discussion and evaluation of each of the numerous route alternatives relies, of necessity, solely on the context of the need decision and the identified purpose of the project. Thus, a decision to separate the two dockets and to have the decision on the need for this project prior to a route decision will benefit and help to bring clarity to these proceedings.

Further, the public resources needed to conduct joint proceedings, now significantly more complex, must be considered. While the Company and the public agencies are able to expend the necessary resources to simultaneously develop the need and routing proceedings, the parties that are interested in system alternatives and the public are less able to do so.

The Commission recognizes the Company's concerns about the confusion and delay that could arise from the bifurcation of the need and routing proceedings at this time; however, the Commission disagrees that these concerns should prevail. The Commission finds that the facts and circumstances presented in these matters now require the Commission to separate the need and route processes.

The discussion and evaluation of appropriate route alternatives relies solely on a finding of need; thus, a decision on the need for the project prior to a route decision will bring additional clarity to the proceedings in both dockets. To assure the project can be fully considered before any decisions are made on a possible route for the pipeline, the Commission will postpone any further action of the route permit proceeding until a decision has been made by the Commission on the certificate of need.

Finally, based on the decision herein to separate the need and route proceedings, and to delay the route proceeding until the Commission has addressed the question of need, the Commission finds cause to, and will extend the deadlines previously set for a decision on the route permit proceeding pursuant to Minn. Stat. § 216G.02, subd. 3(b)(5).

## **V. Further Consideration of System Alternatives in the Certificate of Need Docket**

As requested by the Commission, the parties have submitted comments addressing which if any of the eight system alternatives identified in the EERA's July 17, 2014 Alternative Routes Summary Report should be considered further in these proceedings. The Company and several of the commenters oppose including any of the system alternatives in the certificate of need proceeding, arguing, among other things, that as currently proposed, the eight system alternatives do not appear to meet the claimed needs of the Company, as summarized in the Company's Revised Application.<sup>5</sup>

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<sup>5</sup> Section 7853.0230, subp. D.2 of the Company's January 31, 2014 Revised Application in the Certificate of Need proceeding. Docket No. 13-473.

Whether or not the system alternatives as currently proposed will meet all the Company's claimed needs, however, does not preclude them from further analysis in the certificate of need proceeding. Both Minn. Stat. § 216B.243 and Minn. R. 7853 address Commission consideration of system alternatives within the certificate of need proceedings.

Minn. Stat. § 216B.243, Subd. 3(6) provides as follows:

No proposed large energy facility shall be certified for construction . . . unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate: . . . (6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities . . . .

Minn. R., part 7853.0130 (B) states that a certificate of need must be granted if it is determined that:

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, considering:

- (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
- (2) 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 and the cost of energy that would be supplied by reasonable alternatives;
- (3) the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and
- (4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.

Accordingly, this provision allows a party or individual who proposes an alternative to the Company's proposed facility to provide evidence in the certificate of need proceeding showing that the alternative can better achieve the claimed need articulated by the applicant, or that the claimed need is not reasonable.

Therefore, should parties or individuals wish to challenge the Company's stated need or advance certain system alternatives within the certificate of need proceeding, they will have the opportunity to do so, within the parameters of the Commission's guiding statute and rules.

## **VI. Environmental Review to be Conducted in the Certificate of Need Proceeding**

Minn. R. 7852.1500 provides for a comparative environmental analysis, within the routing docket, of all of the pipeline routes accepted for consideration at the public hearing. The Commission has

authorized the EERA to prepare the comparative environmental analysis required for the routing proceeding, in accord with Minn. R. 7852.1500.<sup>6</sup>

Minn. R. Ch. 7853, which governs pipeline certificate of need proceedings, requires the Commission to consider environmental impacts within the certificate of need docket. However, it does not directly call for the preparation of a separate environmental document within those proceedings.

The question of the appropriate level of environmental review, if any, to be conducted in the certificate of need proceedings has been raised by the parties, and will be addressed herein.

## **A. Positions of the Parties**

### **1. The Company**

The Company took the position that Minn. R. Ch. 7853, which governs pipeline certificate of need proceedings, does not contemplate the preparation of a separate environmental document within those proceedings. The Company stated that the applicable rules (Minn. R. 7853.0600) require that an applicant submit certain environmental information into the certificate of need record, and that the Company has complied by providing the required environmental impact information for each of the alternatives it considered in its application and the accompanying environmental information report submitted with its application.

Despite arguing that no additional environmental review is necessary in the certificate of need docket, in its August 21, 2014 comments the Company also argued that none of the system alternatives convey any significant environmental benefit as compared to the proposed project. The Company, did, however, submit data into the record that it had gathered regarding the additional costs and environmental demands that would be posed by the system alternatives in terms of added pipe length, associated facilities, power usage, and costs.

The Company also submitted broad level environmental data it gathered from publicly available information on the system alternatives in a series of tables demonstrating, e.g., the number of stream crossings, perennial waterbodies, wetlands, state forest lands, and other factors .

### **2. EERA**

The EERA observed that the provisions of the Minnesota Environmental Protection Act (MEPA), Minn. Stat. Chapter 116D, specifically require that all departments and agencies consider environmental impacts and alternatives in their decision-making. The EERA also noted that Minn. Stat. § 116D.06, subd. 2, states that the requirements and goals of MEPA are supplementary to those set forth in an agency's existing authorizations.

The EERA argued that the Commission has the discretion under MEPA to determine what it needs to ensure that the record developed in the certificate of need proceeding, or any proceeding, is adequate for its decision making. The EERA noted that consideration of the environmental

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<sup>6</sup> Docket PL-6668/PPL-13-474, Order Finding Application Substantially Complete (February 11, 2014).



impact of system alternatives in the certificate of need process would call for a different level of analysis than the mandatory comparative environmental analysis alternative form of review previously imposed by the Environmental Quality Board for a pipeline routing process. The EERA likened the environmental analysis it could do in the certificate of need proceeding to the corridor review once conducted under the Power Plant Siting Act prior to the route review.

The EERA observed that the Commission could ensure there is an adequate environmental record developed in the certificate of need proceeding through the testimony from parties, supplemental reports from the applicant, or an “Environmental Report-like” document to be prepared by EERA. The EERA stated that the timing of such an environmental report would depend on the number of system alternatives to be considered.

### **3. MPCA**

The MPCA evaluated six of the eight system alternatives (SA-03, 04, 05, 06, 07, and 08) and asserted that all six alternatives had fewer potential environmental effects than the Company’s proposed route.<sup>7</sup> The MPCA recommended that these six system alternatives be considered further in the certificate of need proceeding.

In its August 6 comments, the MPCA stated its understanding that the Department conducts an environmental review of system alternatives in its high voltage transmission line certificate of need proceedings, but that such review is not currently undertaken for pipeline certificate of need proceedings. The MPCA recommended that the Commission request the Department to conduct an environmental review analysis of the system alternatives selected for further consideration in this certificate of need docket.

In its August 21 comments, the MPCA presented a high level comparison of the proposed system alternatives and the Sandpiper proposed route by identifying corresponding Geographic Information System (GIS) layers to the criteria used in Minn. R. 7852.1900, subp. 3. The MPCA prepared numerous maps in connection with its high level demonstration of environmental effects.

The MPCA agreed with the EERA that the Commission has the authority to consider environmental impacts of the proposed system alternatives in the certificate of need proceeding as well as the route permit proceeding, and again encouraged the Commission to request the preparation of an environmental report type document of the system alternatives to more fully inform its certificate of need decision.

The MPCA recommended that, as it does for landfills, the Commission should consider doing a high level environmental review which precedes both the certificate of need and route permit contested case processes. The MPCA offered to support the EERA in the environment review process.

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<sup>7</sup> The MPCA recommended that SA-01 and SA-02 not be further considered in these proceedings.

#### **4. DNR**

The DNR recommended that the Commission further consider analysis of one or more system alternatives that have fewer environmental and natural resource impacts than the Company's proposed route. The DNR recommended that environmental review of such system alternatives be equivalent to the analysis conducted for route alternatives in the route permit proceedings.

The DNR based its recommendation on the following factors: 1) the Company's proposed route crosses an area of the state that contains a concentration of sensitive environmental areas, including lakes, trout streams, public conservation lands, and mineral and forestry resources, as well as "greenfield" areas (where there has been no previous disturbance to the natural environment); and 2) the potential for the proposed route to become a new corridor for additional pipelines in the future.

#### **5. Friends of the Headwaters**

Friends of the Headwaters also urged the Commission to conduct an environmental analysis of the proposed system alternatives in the certificate of need proceeding, relying on various provisions of MEPA, rather than Minn. Stat. § 216B. 243 or Minn. R. 7853. Friends of the Headwaters stated that Minn. Stat. § 116D.04, subd. 2a, requires preparation of a detailed environmental impact statement where there is a potential for significant environmental effects resulting from major governmental action. Arguing that granting a certificate of need is a major governmental action within the meaning of MEPA, Friends of the Headwaters asserted that the Commission must prepare an environmental document that evaluates both route alternatives and non-route alternatives.

The association agreed with some of the other commentators that the legal basis for determining acceptance and evaluation of a system alternative within the certificate of need proceeding is governed by Minn. Chapter 116D, rather than § 216B.243 and Minn. R. Ch. 7853.

#### **6. Carlton County Land Stewards**

Carlton County Land Stewards also asserted that the Commission's certificate of need and route permit proceedings are subject to the statutory requirements found in Minn. Stat. Chapters 116D and 116B. Carlton County Land Stewards argued that under MEPA, policy makers cannot make necessary choices regarding proposals for governmental action until an environmental review is completed, and citizens have the opportunity to use the data generated to advocate for their position on the need for a proposed project.

The organization argued that while Minn. R. 7853.0130(B) may appear to shift the burden of proof to citizens by requiring opponents to show that, "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 . . .", the provision refers to Chapter 216 issues, not MEPA and the Minnesota Environmental Review Act (Minn.Stat. Chapter 116B). Carlton County Land Stewards also argued that Minn. R. 7853.0130 (B) appears to conflict with MEPA, in that the primary purpose of the Environmental Policy Act is to relieve citizens from the burden of having to develop the environmental record.

Finally, the organization argued that as the “Responsible Government Unit,” it is the Commission that has the responsibility to conduct the appropriate environmental review, and that, under MEPA, that review should be done prior to the permit proceedings for use by parties and citizens wishing to bring forward system alternatives for further consideration.

## **B. Commission Action**

In considering the issues posed in these proceedings, the Commission must exercise discretion in how it chooses to address the system alternatives within the certificate of need process, and the environmental review, if any, to be undertaken. As explained below, the Commission finds that environmental review of the six system alternatives recommended for further consideration by the MPCA, and the Company’s proposed alternative is appropriate in this case, and should be accomplished prior to commencement of the certificate of need contested case hearings. The Commission will request the EERA to immediately undertake an environmental review of the six system alternatives recommended for further review by the MPCA, and the Company’s proposed Sandpiper alternative, for consideration in the certificate of need proceedings. These actions are explained below.

As a preliminary matter, the Commission will limit the environmental review of system alternatives in the certificate of need proceeding to those alternatives described in the Company’s application and system alternatives 03, 04, 05, 06, 07, and 08, as proposed by the MPCA. As explained by the MPCA, system alternative 01 would require crossing the border into Canada, potentially changing the jurisdiction and authority over the project from the state to the federal government. MPCA did not include system alternative 02 for further consideration due to the heightened risk to natural resources it would pose. The Commission concurs with the agency’s recommendation to omit system alternatives 01 and 02 from environmental review in the certificate of need proceeding at this time.

The Commission’s decision to request that an environmental analysis be conducted in the certificate of need proceeding is guided by its enabling statute and rules as well as by the general charge of the Minnesota Environmental Protection Act (MEPA), Minn. Stat. § 116D. 03, that all departments and agencies consider environmental impacts and alternatives in their decision-making.

Minn. R. 7853.0130 requires, in determining if a certificate of need be granted, that consideration be paid to the “natural and socioeconomic environments compared to the effects of reasonable alternatives,”<sup>8</sup> and “the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility.”<sup>9</sup>

In this matter, the Commission concludes that an environmental analysis of the six system alternatives MPCA recommended for further analysis in this proceeding would provide it with valuable information to be weighed along with other information of record while making its need decision. Given the concerns about environmental harm from the proposed Sandpiper route raised by the parties and commenters in these proceedings, the Commission believes it is reasonable to

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<sup>8</sup> Minn. R. 7853.0130, subp. B (3).

<sup>9</sup> Minn. R. 7853/0130, subp. C (2).

investigate the potential natural and socioeconomic environmental impacts, as well as the economic and technical considerations posed by system alternatives, as part of the need decision.

Further, the Commission recognizes that the environmental review conducted at the certificate of need stage will not be equivalent in terms of the specificity and level of detail to a comparative environmental analysis undertaken in the route permit proceeding. The Commission emphasizes that, by its action in this unique case, it is not attempting to establish a separate form of alternative environmental review for certificate of need proceedings.

Instead, the certificate of need decision is a preliminary decision, involving a high level of examination and review appropriate for the type of decision being made. Accordingly, the Commission seeks to ensure that the record in the certificate of need proceeding contains an adequate, albeit preliminary, environmental analysis of the system alternatives. The Commission recognizes that the environmental analysis, of necessity, will be a more tiered, broader-based analysis, reflecting a high-level review appropriate to the level of detail of the alternative being considered. The more detailed and site-specific environmental review will be completed as part of the routing proceeding, if need is shown.

Further, the environmental review of the Company's proposed Sandpiper corridor in the need proceeding will have to be adapted to the level of specificity or granularity appropriate for the system alternatives, to ensure a reasonable basis for comparison and contrast. The Commission anticipates that this review should evidence, from a broad environmental perspective, the relative risks and merits of choosing a different system 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.

To ensure that an adequate environmental record is developed in the certificate of need process for access and use by the public and the parties in the contested case proceedings, the Commission will direct the EERA to conduct the necessary environmental analysis of the six system alternatives, as well as the Company's proposed corridor (and other alternatives included in the Company's application such as the no-build option, rail, truck and other pipelines) at this time. The Commission further directs that this analysis be completed and filed prior to commencement of the contested case hearings in the certificate of need docket. In that way, the environmental information may be used by any party who chooses to advocate for consideration of a system alternative within the certificate of need docket.

Accordingly, 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. This review is to be conducted and completed prior to the commencement of the contested case proceeding in the certificate of need docket.

## ORDER

1. Based on the record, the Commission finds just cause to now separate the certificate of need proceedings from the route permit proceedings.
2. Based on the record, the Commission finds good cause to postpone action on the route permit application until a Commission decision has been made on the certificate of need and extends the deadline accordingly.
3. The Commission authorizes environmental review of the six system alternatives identified by the MPCA in its August 21, 2014 comments in this proceeding to be conducted by the EERA staff, to be completed prior to commencement of the contested case hearings in the certificate of need docket.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar  
Executive Secretary



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