

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger  
Nancy Lange  
Dan Lipschultz  
John A. Tuma  
Betsy Wergin

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

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

ISSUE DATE: August 3, 2015

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

ORDER AUTHORIZING  
RECOMMENCEMENT OF ROUTE  
PERMIT PROCEEDING AND  
PROVIDING DIRECTION FOR THE  
SCOPE OF THE COMPARATIVE  
ENVIRONMENTAL ANALYSIS

**PROCEDURAL HISTORY**

On November 8, 2013, North Dakota Pipeline Company LLC (the Applicant or the Company)<sup>1</sup> 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.

On February 11, 2014, the Commission issued its *Order Finding Application Substantially Complete upon Supplementation and Varying Timelines; Notice and Order for Hearing*, referring the cases to the Office of Administrative Hearings (OAH) for contested case proceedings.<sup>2</sup>

The Commission then held public informational meetings, and solicited public comments regarding alternative routes.

On August 7, 2014, 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 this case.

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<sup>1</sup> Applicant is a joint venture between Enbridge Energy Partners, L.P., the Company's former sole parent entity, and Williston Basin Pipeline LC, a wholly-owned indirect subsidiary of Marathon Petroleum Corporation (Marathon).

<sup>2</sup> For a full recitation of the procedural history in the certificate of need matter, see ALJ Report, this Docket, Findings 43-120 (April 13, 2015).

On August 25, 2014, the Commission accepted the 53 route alternatives recommended by the Department of Commerce Energy Environmental Review and Analysis staff (EERA) in its July 17, 2014, report<sup>3</sup> as well as System Alternative SA-03 as modified (SA-03 AM) and seven expanded route widths for referral in the route permit proceedings.

The certificate of need and route permit proceedings initially proceeded jointly.<sup>4</sup> The two proceedings were subsequently bifurcated by the Commission in an October 7, 2014 Order, to ensure that the pipeline project need could be fully considered before any decisions were made on a possible route for the pipeline.<sup>5</sup> The contested case proceeding in the certificate of need docket followed.

On April 13, 2015, the Administrative Law Judge filed his Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation in the certificate of need proceeding. The ALJ recommended that the Commission grant a certificate of need for the Sandpiper project and refer only the Company's proposed project to the route permit proceeding for further consideration.

On June 5, 2015, the Commission met to consider the certificate of need proceeding and the recommencement of the route permit docket.

By separate order issued this date, the Commission granted Applicant a certificate of need with conditions for the Sandpiper project.<sup>6</sup>

## **FINDINGS AND CONCLUSIONS**

### **I. Reauthorization of Referral of System Alternative -03 AM to the Route Permit Proceeding**

Despite the Commission's August 25, 2014 Order referring system alternative SA-03 AM directly to the route permit proceeding for development (along with the 53 route alternative segments and the seven expanded route widths), SA-03 AM was addressed by the parties in the contested case proceedings for the certificate of need. Further, the Administrative Law Judge made a number of findings regarding the alternative in his report.

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<sup>3</sup> Comments and Recommendations of Minnesota Department of Commerce Energy Environmental Review and Analysis, this docket (July 17, 2014).

<sup>4</sup> Order Finding Application Substantially Complete Upon Supplementation and Varying timelines – Notice and Order for Hearing, this docket (February 11, 2014).

<sup>5</sup> *Id.*, Order Separating Certificate of Need and Route Permit Proceedings and Requiring Environmental Review of System Alternatives, (October 7, 2014).

<sup>6</sup> *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, Docket No. PL-6688/CN-13-473, Order Granting Certificate of Need with Conditions.

Upon the recommendations of the Department of Commerce Division of Energy Resources and the EERA to remove these references from the Administrative Law Judge's Report (ALJ Report), the Commission Order in the Certificate of Need deleted the majority of the findings in the ALJ Report addressing this alternative.

Accordingly, the Commission reaffirms the August 25, 2014 Order referring alternative SA-03-AM to the administrative law judge for consideration in the routing proceeding.

## **II. Recommencement of the Route Proceeding**

In its October 7, 2014 Order, the Commission found good cause to postpone action on the route permit application until a decision on the certificate of need had been made. The Commission also extended the deadline for a decision in the route permit docket. Having concluded the certificate of need proceeding, the Commission will now recommence the route permit proceeding, subject to the requirements and recommendations set out in the ordering paragraphs below.

In the course of the CN proceeding, significant environmental data was offered for the Commission's need decision. In addition to the evidence and arguments relevant to the certificate of need decision, parties and commenters also raised many concerns and offered many helpful suggestions about the evaluation of pipeline route alternatives and possible mitigation that are appropriate instead to this routing proceeding.

The Sandpiper Pipeline is a complex and controversial project that may significantly affect the human and natural environment. Accordingly, it warrants careful evaluation. In addition to the other materials in the record, the Department of Commerce will conduct the Comparative Environmental Analysis of the route alternatives accepted for consideration and has access to the full CN record, with the comments and suggestions that were offered. Some of those suggestions are incorporated into the Order. To assure that the Comparative Environmental Analysis is sufficiently robust, and that the parties have an opportunity to comment on its reach while their comments can be fully considered, as set forth in this Order, the Department will be directed to file an outline of its proposed Comparative Environmental Analysis, and the Commission will provide an opportunity to offer comments on the Department's outline.

### **ORDER**

1. The Commission reaffirms the August 25, 2014 Order referring alternative SA-03-AM to the administrative law judge for consideration at the routing proceeding.
2. The Commission directs that, in light of the length of the proposed Project, the sensitivity of the environment that would be crossed by the proposed route alternatives, the need for an in-depth environmental review of many alternatives, the need to confer with the parties and affected Indian bands, and the failure of the Applicant to propose a viable alternative for consideration in this proceeding, either in its application or to date, the Routing Proceeding shall be recommenced, subject to the following:

- a. Within 90 days of this Order, the Department of Commerce shall file a document outlining the scope of the Comparative Environmental Analysis to be conducted and the time required to complete it.
  - b. Upon receipt, the Commission delegates to the Executive Secretary authority to establish a comment period for addressing the Department's submission. The Commission shall review the Departments' scope and timeline, and the comments received, for compliance with this Order and may offer suggestions or modifications.
3. The Commission directs that the Comparative Environmental Analysis give full consideration to the human and environmental impacts, including not only the issues as described in Minn. R. 7852.1900, subp. 3, but also including but not limited to the disruptions to nearby residents, local businesses, roads and transportation, local government and judicial, private and county ditches.
4. The Commission directs that the Comparative Environmental Analysis provide a description and analysis of any measures that might be taken to mitigate these potential human impacts, including the estimated costs of such measures.
5. In addition to complying with the specific provisions of statute and rule, the Commission encourages the Department of Commerce to confer with the parties, including the parties' experts, and the affected Indian bands, the Pollution Control Agency, the Department of Natural Resources, the Army Corps of Engineers, the United States Fish and Wildlife Service, and counties and other applicable units of government to develop the appropriate scope for the Comparative Environmental Analysis, taking into account the intensity, extent and duration of environmental impact. The Department is encouraged to consider: appropriate hydrologic testing, taking into account the specific characteristics and composition of construction materials and the product to be transported through the pipeline; the impact on wild rice resources; impact of forest fragmentation; stream-specific scour analysis; slope calculation and topsoil removal; possible use of directional drilling to avoid or minimize shoreline or river-edge habitat impact; lands identified for historical, archeological and cultural significance.
6. The Commission also encourages the Department of Commerce to consider mitigation of the potential risk to the environment that could be addressed through route permit conditions that may exceed the minimum pipeline safety requirements but would minimize significant potential risk of environmental harm. This may include changes to the pipeline design, such as pipe-wall thickness, number and location of shut-off valves, protection of the pipeline, inspection plans and reports, requirements for leak detection (including information about the minimum size of detectable leaks) and reporting, and plans to identify and address pipeline exposure, leaks and ruptures. It should also consider possible changes to the size and location of the right-of-way necessary to protect the environment during construction, and site-specific remediation, as well as the type and number of independent inspectors to be retained during construction and operation. Special attention should be given to mitigation in High Consequence Areas.

7. The Commission also encourages the Department of Commerce to consult with state and federal pipeline safety authorities, and include risk analysis in its Comparative Environmental Analysis, specifically, the risks of rupture in proximity to multiple pipelines and any increased protections needed to access and address such a rupture.
8. As required by the rules, the Comparative Environmental Analysis shall also include the human impact of the route alternatives, including proximity to homes and businesses, parks and recreation areas, historic sites and landmarks and cultural resources, local government development plans, and the creation of or addition to the need for expanded utilities or public services.
9. In light of the Applicant's intention to seek approval of reconstruction of Line 3, the Comparative Environmental Analysis should take into account the potential impact of a second line and corresponding wider right-of-way running adjacent to the proposed project, including the specific characteristics of the pipeline and the product to be transported through it.
10. The Comparative Environmental Analysis shall also include a qualitative as well as quantitative analysis of the environmental impacts of the various route alternatives; and consider the environmental impact of the Sandpiper facility alone and the cumulative impact of both the Sandpiper facility and the Line 3 Replacement Project.
11. For good cause shown, the deadline for completion of the route permit proceeding shall be extended to allow for completion of a thorough environmental review and the remaining steps of the routing process.
12. The Commission requests the Administrative Law Judge to consult with the parties to schedule at least one hearing on the route permit at a location convenient to the affected Indian Bands.
13. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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