

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of the Application of
Minnesota Pipe Line Company, LLC for a
Certificate of Need for the Minnesota Pipe
Line Reliability Project to Increase Pumping
Capacity on the Line 4 Crude Oil Pipeline in
Hubbard, Wadena, Morrison, Meeker,
McLeod, and Scott Counties

ISSUE DATE: August 31, 2015

DOCKET NO. PL-5/CN-14-320

ORDER GRANTING CERTIFICATE
OF NEED

PROCEDURAL HISTORY

I. Petition for Certificate of Need

On July 25, 2014, Minnesota Pipe Line Company, LLC (Minnesota Pipe Line Company) filed a certificate of need application to increase the pumping capacity on the system's newest pipeline – MPL Line 4 – to supply crude oil to Minnesota refineries.

On October 17, 2014, the Commission found the application substantially complete and referred the case to the Office of Administrative Hearings for contested case proceedings. In that same order, the Commission requested that the Energy Environmental Review and Analysis staff of the Department of Commerce (EERA) conduct an environmental review of the proposed project to analyze the potential effects of the project and system alternatives identified in the application.

On February 24 and 25, 2015, public hearings were held on the proposed project in Park Rapids, Motley, Litchfield, and New Prague. Administrative Law Judge (ALJ) Jeanne Cochran conducted the hearings.

On April 9, 2015, the Department of Commerce, Division of Energy Resources, Energy Regulation and Planning (DOC-DER) filed its comments on the merits of the certificate of need application, recommending that the Commission grant a certificate of need.

On May 26, 2015, the Administrative Law Judge filed her Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (the ALJ's Report), recommending that the Commission grant a certificate of need.

On June 10, 2015, Minnesota Pipe Line Company filed exceptions recommending a technical correction to the ALJ's Report.

On June 10, 2015, DOC-DER filed exceptions to the ALJ's Report, recommending that the Commission grant the certificate of need but add a condition requiring the company to implement a neutral footprint action plan, which would identify steps the company would take to reduce its future energy footprint.

II. Environmental Review

On February 6, 2015, the EERA filed a comparative environmental review for the project, which included an evaluation of the proposed project and possible alternatives to the proposed project.

On March 20, 2015, the Commission received comments from two state agencies: the Department of Natural Resources (DNR) and the Pollution Control Agency (PCA). Both agencies requested that additional information be filed on issues such as oil spill response and stormwater treatment.

On April 9, 2015, the EERA filed comments with the Administrative Law Judge addressing the issues identified by the DNR and the PCA.

On July 30, 2015, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

The proposed project would increase the pumping capacity of the 305 mile-long Line 4, the newest pipeline on the company's system, from approximately 165,000 barrels of crude oil per day to its original design capacity of approximately 350,000 barrels per day. The company stated that the pipeline itself would not change, that no new pipeline would be installed, that no new pipeline right-of-way would be required, and that it does not anticipate operating the line at or near its full capacity.

Line 4 supplies two refineries in Minnesota. The first is the St. Paul Park refinery located in St. Paul Park and the other is the Pine Bend refinery located in Rosemount. The company stated that the proposed project will increase the availability of crude oil within the company's pipeline system, which currently operates near the system capacity of 465,000 barrels per day. The company stated that the proposed project would give the company the flexibility to shift volumes to its newest pipeline, Line 4, in the event of an outage on other segments of the pipeline system or to conduct maintenance.

As part of the proposed project, the company would upgrade two existing pump stations on Line 4 in Clearbrook and Albany and would install six new pump stations along the current Line 4 route. The new pump stations would be located in the counties of Hubbard, Wadena, Morrison, Meeker, McLeod, and Scott on properties owned by the company. According to the company, work at the pump stations would be the only construction necessary to complete the proposed project.

II. The Legal Standard for a Certificate of Need

Under Minn. R. 7853.0030 (D), a certificate of need is required for any pipeline project that would expand an existing large petroleum pipeline by more than 20 percent of its rated capacity, or 10,000 barrels per day (bpd), whichever is greater. The project would increase the existing Line 4 capacity by more than 20 percent, from approximately 165,000 bpd to approximately 350,000 bpd, and the company therefore filed an application for a certificate of need for the proposed upgrade.

Minn. Stat. § 216B.243, subd. 3, sets forth criteria for demonstrating the need for a proposed project; those criteria are incorporated into Minn. R. 7853.0130 (A)-(D).

Minn. R. 7853.0130 directs the Commission to issue a certificate of need when the applicant demonstrates the following:

- A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:
 - (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
 - (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;
 - (3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;
 - (4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and
 - (5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

- 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;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:
- (1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;
 - (2) 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;
 - (3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and
 - (4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

III. The ALJ's Report and Recommendation

The ALJ found that Minnesota Pipe Line Company has satisfied the criteria set forth in Minn. Stat. § 216B.243, as incorporated into Minn. R. 7853.0130 for the proposed project. In her report, the ALJ discussed the criteria relevant to each section of part 7853.0130 for the proposed project, as discussed below.

- A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:**
- (1) The accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;**

According to its forecast, the company is operating its pipeline system close to its total capacity and expects modest increases in demand for crude oil. As a result, out-of-service conditions or unplanned maintenance could result in disruption to crude oil supplies.

The DOC-DER analyzed the company's forecast, which included a review of historical throughput data, an evaluation of expected increases in demand at the Pine Bend and St. Paul Park refineries, and a comparison of the company's forecast to forecasts available from the Energy Information Administration. No party contested the company's forecast. The DOC-DER stated that the company's forecasted energy demand is substantially similar to the growth that the company's system has seen in the past five years and stated that, based on its review, the company's forecast is reasonable.

The ALJ found that the company's forecast is accurate and shows that denying a certificate of need would have an adverse impact on the future adequacy, reliability, and efficiency of energy supply to Minnesota refineries.

(2) The effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

The ALJ found that the company's forecast, and the comparison forecast conducted by the DOC-DER, showed that conservation programs and increased efficiencies were taken into consideration when developing the forecasts.

The ALJ also found that the company continually explores ways to improve energy efficiency through conservation efforts but that those efforts address the efficiency of the company's system, not the underlying need for crude oil and the products made from refined crude oil. The ALJ concluded that conservation efforts do not eliminate the need for the proposed project.

(3) The effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;

The ALJ found that the proposed project is supported by the company's shippers and the refineries who have a need for continued access to a stable and reliable crude oil supply and that there is no evidence that promotional activities gave rise to the need for the proposed project.

(4) The ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and

The ALJ concluded that there are no current or planned facilities that can meet the need for increased pumping capacity; there are no other pipeline systems that supply crude oil to the two Minnesota refineries.

She found that pipelines, as they age, require more frequent inspections and maintenance, which are conducted by taking pipelines out of service, occasionally for extended periods. She also found that unplanned events can cause slowdowns and outages, that delays in restarts of a pipeline following an inspection or maintenance can result in a crude oil shortage, and that such conditions would adversely affect the supply of transportation fuels and other refined products to Minnesota and the region.

She concluded that there were no other modifications to the company's current pipeline system that would provide the additional pumping capacity needed.

(5) The effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

The ALJ found that increasing the capacity of Line 4 to its originally designed capacity will provide the flexibility to shift capacity as necessary to maintain reliable crude oil supplies to the two refineries without adding unnecessary infrastructure, such as a new pipeline.

The ALJ also found that barrels shipped on Line 4 use less energy on a per barrel basis than the barrels shipped on the other lines (Lines 1, 2, and 3) and that as a result the proposed project would reduce power consumption on a per barrel basis by approximately 37 percent.

The ALJ concluded that the record establishes that the proposed project will make efficient use of resources.

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:

The company evaluated the following alternatives: take no action; trucking; rail transport; a new pipeline; and the Wood River pipeline.

In addition to these alternatives, the Department had asked the company to consider constructing storage tanks as an alternative to the proposed project but stated that use of storage tanks do not appear to be a viable option because the company does not own a sufficient amount of land near the refineries to build the tanks. The ALJ found that storage tanks were not a reasonable alternative due to the limited amount of land available to the company in the area of the refineries and that further analysis of storage tanks, such as their costs and environmental impacts, was not warranted.

The DNR recommended that the Fish Trap pump station be relocated to a site with fewer sensitive wetland and surface water natural resource features and that further information be provided regarding safety measures to protect public waters in the area of the St. Patrick pump station, in the case of an adverse event at that site. The DNR also stated that pump station noise can adversely affect wildlife and ecosystems and that the parties should address this issue.

The ALJ found that no other pumping station sites that could meet the system's needs were identified. Further, the EERA responded to the DNR's concerns, stating that the company had described applicable safety and integrity programs, incident response plans, and responder training programs. The EERA also stated that noise from the proposed project would comply with applicable PCA noise standards, that there are no PCA guidelines for non-human response to sound, and that extensive similar habitat adjacent to the proposed project site should cause minimal disruption or displacement to wildlife.

The PCA recommended additional information to evaluate the need for permanent stormwater best management practices at the pumping stations. The EERA stated that the company had addressed this issue by developing a stormwater pollution prevention plan for each site and use of construction best management practices.

The ALJ concluded that the issues identified by the DNR and the PCA had been adequately addressed by the company and the EERA.

(1) The appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

The ALJ found that none of the alternatives identified were more reasonable, considering size, type and timing. For the trucking alternative, she found that a fleet of more than 1,000 trucks would be necessary and for the rail alternative, that more than 2,000 rail cars would be required. She found that these resources were not as readily available as increasing the capacity of Line 4.

The ALJ found that constructing a new pipeline would not be as efficient as utilizing existing pipeline infrastructure. She also found that use of the Wood River Pipeline, which originates in Illinois and terminates in Rosemount, has been inactive since 2013 and does not have the capacity to meet the company's needs. Further, she found that use of the Wood River Pipeline would be more costly because the crude oil would be shipped over a longer distance.

For these reasons, the ALJ concluded that the proposed project better meets the size, type, and timing requirements compared to 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;

The ALJ found that the cost of the proposed project is approximately \$125 million and would keep the total tariff rate between Clearbrook and the two refineries below \$2.00 per barrel. The ALJ found that the truck and rail alternatives would likely increase shipper costs to between \$7.50 and \$9.50 per barrel. She found that a new pipeline or use of the Wood River Pipeline would more than double the costs of the proposed project.

The ALJ concluded that the record demonstrates that the proposed project is more cost effective compared to reasonable alternatives.

(3) The effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

The comparative environmental review conducted by the EERA stated that the proposed project was superior compared to any of the alternatives identified in the application.

The ALJ found that the direct impacts from the proposed project will affect areas within and around the proposed pump stations, which would be constructed on land owned by Minnesota Pipe Line Company that is directly adjacent to the existing line, Line 4.

The ALJ relied on testimony by the DOC-DER in finding that any increase in the likelihood of an oil spill as a result of the higher operating volume of Line 4 were slight; data from testing of Line 4, prior to its in-service date, showed that the line can safely accommodate the higher operating volumes proposed. There is no evidence in the record to support a conclusion that the proposed project would materially increase the risk or severity of a leak from Line 4 or the associated pump stations, and the company's spill response plan, approved by the Pipeline and Hazardous Materials Safety Administration, addresses minimizing the impact of a spill.

The ALJ also found that the proposed project would provide the socioeconomic benefit of a continuing, stable, reliable, and efficient source of crude oil supply to the two Minnesota refineries, which are the source of most of the state's transportation fuel and other refined products, such as heating fuels and asphalt. Disruptions in the delivery of crude oil would have negative cost impacts on end-users and their customers.

In comparison to alternatives, the ALJ found that the proposed project would have fewer impacts than the trucking, rail, new pipeline, or existing Wood River Pipeline alternatives.

Use of a trucking alternative would increase air emissions and add to traffic levels. Use of a rail alternative would also increase air emissions and present a greater risk of accident due to collision danger from signaling or alert problems, which would require separate overpasses or underpasses to separate vehicle and train traffic.

Constructing a new pipeline would require more than 300 miles of new pipeline, resulting in more significant impacts to the natural environment. Use of the existing Wood River Pipeline is not feasible because that line is not capable of providing the additional transport capability available from the proposed project and would likely require additional truck or rail transport.

(4) The expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

The ALJ found that the record evidence shows that the expected reliability of the proposed project exceeds the expected reliability of the alternatives presented. The proposed project will utilize the newest pipeline and increase efficiency whereas the alternatives lack the necessary infrastructure and pose a greater likelihood of accidents.

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) The relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

The ALJ found that the additional capacity on Line 4 will improve the overall efficiency of the company's pipeline system, allowing the company to shift volumes to Line 4 to perform maintenance and inspections and to shift volumes at times of unplanned outages or slowdowns. Shortages in crude oil would adversely impact regional economies and no one contested the relevance of the proposed project in meeting the energy needs of the state and the region.

(2) 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;

The ALJ found that without the additional capacity from the proposed project, the company's system will lack capacity to address shortfalls, that use of an alternative would be required to meet the need, and that the alternatives proposed are less beneficial than the proposed project.

She found that safeguards are in place to ensure compliance with applicable environmental requirements and permit conditions and that the company has established practices to address spills, including an Emergency Response Action Plan. She concluded that the record demonstrates that the benefits of the proposed project weigh more heavily in favor of the proposed project than against it.

(3) The effects of the proposed facility or a suitable modification of it, in inducing future development; and

The ALJ found that the effects of the proposed project on inducing future development would be minimal, although some electric utility infrastructure would be required to connect the new pump stations to the electric grid.

She concluded that the economic benefits of the proposed project include: increasing local tax bases by approximately \$125 million; adding 40 to 50 construction jobs, some of which will be permanent; and protecting the state and regional economy by maintaining adequate, reliable, and efficient crude oil supplies that are used to produce products such as heating fuel.

(4) Socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; and

The ALJ found that continuing to provide crude oil reliably and efficiently is essential to the continuing operation of the refineries and that the resulting benefits to the end-users of the products made from crude oil provide benefits that outweigh the alternative of not adding increasing the capacity of Line 4.

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

The ALJ found that the application meets this requirement. She found that the application includes a full list of other agencies with various regulatory responsibilities for the proposed project and includes a statement from the company that it will obtain all necessary permits for the proposed project. She found that the record details safety and integrity management efforts and concluded that the proposed project will comply with applicable requirements of other government agencies. She also found that it is reasonable to condition the certificate of need on the company's receipt of the permits listed in Table 7853.0230-A of its application.

IV. Commission Action

A. Certificate of Need

The Commission, having taken into consideration all the factors identified in statute and rule, finds that Minnesota Pipe Line Company has proved the need for increasing the pumping capacity on the system's newest pipeline – MPL Line 4 – to supply crude oil to Minnesota refineries.

Throughout the duration of the Commission's proceedings, no person disputed the company's need for the proposed project. The DOC-DER and the EERA recommended, after the lengthy analysis summarized above, that the Commission should grant the company a certificate of need. As shown above, the ALJ's recommendation to grant the certificate of need was based on an examination of each of the four criteria listed in Minn. Rules, part 7853.0130.

Having reviewed the ALJ's Report, and the record as a whole, the Commission makes findings on these four points:

First, based on a consideration of the factors set forth at Minn. R. 7853.0130 (A), the Commission concludes that denying Minnesota Pipe Line Company's application would likely harm the future adequacy, reliability, or efficiency of the energy supply to the company's customers.

Second, based on a consideration of the factors set forth at Minn. R. 7853.0130 (B), the Commission concludes that a more reasonable and prudent alternative to Minnesota Pipe Line Company's proposed facility has not been demonstrated by a preponderance of the evidence on the record.

Third, based on a consideration of the factors set forth at Minn. R. 7853.0130 (C), the Commission concludes that the preponderance of the evidence on the record demonstrates that Minnesota Pipe Line Company's proposed facility will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health.

Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with the relevant policies, rules, and regulations of other state and federal agencies and local governments, as required by Minn. R. 7849.0120 (D).

B. DOC-DER's Proposed Certificate of Need Condition

The DOC-DER recommended that the Commission grant the certificate of need, with a condition requiring the company to implement a neutral footprint action plan, which would identify steps the company would take to reduce its future energy footprint. The plan would include requiring the company to generate a kilowatt-hour of renewable energy for every incremental kilowatt-hour of energy consumed by the project (or purchase renewable energy credits) or to participate in other programs to offset the incremental energy it consumes at the pump stations.

The DOC-DER stated that while the increase in capacity of Line 4 will cause the company to use less energy in the short run because the line is a newer and more efficient pipeline, there is a likelihood that total energy consumption will increase in the long run because shipper activity is likely to increase. Specifically, the DOC-DER recommended that the Commission modify Findings 215, 216, 217, and 218 of the ALJ's Report to require Minnesota Pipe Line Company to implement a neutral-footprint program, similar to the Commission's decision in the Enbridge Line 67 case.¹

The DOC-DER also stated that even if the system operates more efficiently on a per barrel basis in the long run, it is reasonable to require the company to take steps to reduce its future energy footprint because it is still likely that overall energy consumed by the pipeline system will increase in the long run.

The company stated that its forecast and the DOC-DER's analysis of its forecast do not support a conclusion that the company will use more energy in the long run. The company stated that it does not anticipate operating Line 4 at or near its maximum capacity and stated that the pipeline system will likely use less electricity in the long run because the company does not expect a significant increase in the total barrels shipped, based on the two shippers' estimated usage.

The Commission declines to adopt the DOC-DER's recommended certificate of need condition to require the company to implement a neutral-footprint program. The Commission concurs with the ALJ that it is unnecessary to require the company to implement a neutral-footprint policy. The proposed project is expected to result in a net reduction in energy use by the company's pipeline system, the company currently participates in environmental programs, and there is no cost data in the record addressing the cost of complying with a neutral-footprint policy.

¹ See *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project – Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need (November 7, 2014). The Commission required Enbridge to apply its neutral footprint objectives and to file, within 90 days of the Phase 2 pumps becoming operational, a report on how it intends to implement its neutral footprint policy and how it intends to document compliance with the policy.

The company participates in the following four environmental programs:

- Project Green Fleet, a collaborative effort with the Environmental Initiative to retrofit school buses, heavy duty trucks, and other diesel equipment with pollution control equipment;
- The Environmental Initiative Clean Air Dialogue, a collaboration of business, nonprofit, and government agencies that works to develop and implement strategies for improving air quality.
- Friends of the Mississippi, which works to restore habitats around the Mississippi River near the Pine Bend refinery; and
- Ducks Unlimited, an organization that protects and restores Minnesota’s lakes, wetlands, and grasslands.

The record does not include a cost comparison between the proposed neutral-footprint condition and the company’s actions listed above. Further, there is no data on the costs to the company of purchasing renewable energy credits, and there was no discussion of whether the proposed condition would be in addition to, or in lieu of, any of the work the company does with the projects listed above.

For these reasons, the Commission will not impose the recommended condition.

C. Technical Correction to ALJ’s Report

Minnesota Pipe Line Company recommended a technical correction to the third sentence of Finding 1 of the ALJ’s Report to state “~~New~~ Northern Tier Energy.”

The Commission will adopt Minnesota Pipe Line Company’s recommended technical correction to Finding 1 of the ALJ’s Report. With this correction, the Commission will adopt the ALJ’s Report and grant Minnesota Pipe Line Company a certificate of need to increase pumping capacity on Line 4.

ORDER

1. The Commission hereby adopts the ALJ’s Findings of Fact, Summary of Public Testimony, Conclusions of Law, and Recommendation for the Minnesota Pipe Line Reliability Project, as modified by Minnesota Pipe Line’s correction to Finding 1 to state “Northern Tier Energy” instead of “New Tier Energy.”

2. The Commission hereby grants a certificate of need to Minnesota Pipe Line Company, LLC for the Minnesota Pipe Line Reliability Project to increase pumping capacity on the Line 4 crude oil pipeline.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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