



SUMMARY OF FOH MOTION

- *This is the first pipeline EIS that has been prepared by the state of Minnesota.*
- *This is a huge and complex project and will require an EIS that is more difficult to prepare than the Polymet EIS.*
 - *DOC is experienced only in a very limited environmental review process for pipelines, and is relying on that experience, rather than MN law in the form of MEPA; according to its February 12 filing with the Commission, this inexperience has led to legal misinterpretations and errors and a position advocated by the pipeline company in a proceeding that the Minnesota courts have nullified.*
 - *According to information from the DOC, it is allowing the pipeline company to prepare the scoping EAW, which would form the foundation for the EIS; this is illegal under MEPA.*
 - *A technical advisory committee, which MN law requires, would help the Commission to address problems that have come to light so far, as well as providing public transparency to a process that has taken place with no public knowledge or participation.*
 - *According to information from the DOC, it is going forward with critical spill assessment work that will become part of the EIS even before it has begun any scoping process.[this is not in the Motion]*

FOH MOTION TO ESTABLISH AN EXPERT ADVISORY COUNCIL UNDER MINN. STAT. 116D.03 (An attempt to summarize/condense the Motion)

Purpose: Create a group of experts to assist in properly scoping the EIS and ensure compliance with law and regulations dealing with environmental review. As the RGU, the Commission is the agency designated as the right one (NOT DOC) to establish an expert advisory council. State law requires RGUs to use “all practicable means and measure, including financial and technical assistance” to protect Minnesota’s environment. (Minn.Stat 116D.02)

FOH is very concerned with expertise of DOC– concerns that could be at least partially addressed and resolved with the creation of an expert advisory council:

- DOC appears to lack the knowledge or experience to adequately scope and prepare an EIS. This is just the kind of situation where the Department will benefit from expert consultation and advice. This fact alone justifies creation of a technical advisory committee.
- DOC appears to be violating law and established process.
- Successful court appeals that will come with a flawed process and document will only lengthen delays that company claims to be concerned about and which the PUC has said it wishes to avoid.
- An advisory council can advise DOC about MEPA compliance and implementation and environmental impacts of proposed pipelines.
- Filings made by DOC to PUC demonstrate lack of knowledge of legal requirements for EIS scoping and document preparation.
- This is the first MN EIS for proposed oil pipelines that FOH knows about; it is more complex than a proposal like Polymet’s NorthMet proposal.

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- The project proposer, NDPC, has had a privileged position in scoping activity, which parties and public have had no access to. NDPC's public statements indicate that it does not understand the legal requirements for environmental review in MN.

Technical advisory councils:

- MN law says that agencies "shall" establish advisory councils or other forums to improve the quality of environmental documents and decisions. Minn. Stat 116D.03.
- The technical advisory council requirement is tailor made for this situation: we have an inexperienced agency that has been directed to perform a technical, difficult, perhaps overwhelming task. Evidence so far suggests its unfamiliarity with basic and vital MEPA provisions and procedures, and relying on legally incorrect advice from the pipeline company.
- The council could include experts in environmental review as well as those who know about specific scientific and technical issues that the EIS must address.
- MN law requires that the council must be *neutral* and *transparent*. These requirements allow the Commission to avoid the appearance that the pipeline company is in charge of the EIS process, and to help assure that the process is fair and unbiased. This will increase public confidence in the integrity of the document that is prepared.

Specific problems with the DOC:

The DOC has become used to the CEA process; it has never prepared a pipeline EIS.

FOH believes that DOC is using work originally intended for the CEA it intended to prepare for these pipelines, without public knowledge, participation or scrutiny.

There is currently no way that anyone except the DOC and the pipeline company can be involved in the scoping and EIS preparation.

DOC's Comments, filed Feb. 12, 2016, reveal a basic misunderstanding of environmental review in general and MEPA's legal requirements in particular.

FOH understands that DOC is renegotiating an earlier contract with Cardno, rather than putting out and RFP; negotiations are taking place without oversight, or assistance.

DOC's inexperience and errors can jeopardize the integrity of the process and the EIS document.

FOH is concerned that DOC is allowing the pipeline company to prepare the scoping EAW, which violates MEPA. The Commission is responsible for the content of both the scoping EAW and the EIS and cannot delegate that responsibility to the pipeline company.

The DOC's February 23 comments seek to narrow the alternatives that will be considered in the EIS, which is illegal under MEPA.

Commission responsibilities:

As the RGU, the PUC bears final responsibility for the quality and legality of the EIS process and product; it cannot delegate this responsibility to the DOC or to the Office of Administrative Hearings, as the DOC's Comments assume.

Minnesota courts require that the Commission take a "hard look" at issues analyzed by the EIS before there is a decision.

The Commission must be in charge of all phases of the process – it must oversee the entire process to ensure that the permitting decision incorporates a proper consideration of environmental effects.

The Commission correctly determined its responsibilities by requiring the permitting phase, contained in contested case proceedings, to follow issuance of a final EIS.

The Commission needs to consider the very high risk that DOC's inexperience and incorrect understanding of the law at this early stage so that it can correct the problems before they taint the entire process.