

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: October 30, 2014.....Agenda Item **2

Company: North Dakota Pipeline Company LLC

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 in Minnesota

PL-6668/PPL-13-474

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

Issues: Should the Commission reconsider its August 25, 2014 Order Accepting Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures?

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Relevant Documents

- Commission Order Accepting Alternative Routes and System Alternatives August 25, 2014
- NDPC Petition for Reconsideration of August 25th Order September 15, 2014
- Carlson County Land Stewards Response to Reconsideration Petition..... September 25, 2014
- Friends of the Headwaters Response to Reconsideration Petition..... September 25, 2014
- Honor the Earth Response to Reconsideration Petition..... September 25, 2014
- White Earth Band of Ojibwe Response to Reconsideration Petition.....October 3, 2014

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. STATEMENT OF THE ISSUES

Should the Commission reconsider its August 25, 2014 Order Accepting Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures?

II. STATUTES AND RULES

Under Minn. R. 7829.3000, subp. 1, a party or a person aggrieved and directly affected by a Commission decision or order may file a petition for reconsideration within 20 days of the date the decision or order is issued. A petition for reconsideration must set forth the specific grounds relied upon or the errors claimed in accordance with Minn. R. 7829.3000, subp. 2.

Minn. R. 7829.3000, subp. 4, provides other parties to the proceeding an opportunity to file answers to the petition within ten days of filing of the petition.

Under Minn. R. 7829.3000, subp. 6, the Commission has the authority to accept or decline a petition for reconsideration with or without a hearing or oral argument. The Commission may reverse, change, modify, or suspend its original decision if it finds its decision unlawful or unreasonable.¹

III. PROCEDURAL HISTORY

On August 25, 2014, the Commission issued an Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures in the matter of North Dakota Pipeline Company's (NDPC) certificate of need and pipeline route permit applications for the Sandpiper Pipeline Project.

Specifically, the Commission:

- Accepted the 53 route alternatives recommended by Department of Commerce Energy Environmental Review and Analysis (EERA) and system alternative SA-03 as modified by EERA.
- Accepted the seven expanded route width areas recommended by EERA and the increased width expansion proposed by NDPC for route alternative RA-52.
- Approved the issuance of a generic pipeline route permit template.

¹ Minn. Stat. § 216B.27, subd. 3.

- Directed NDPC to prepare a pipeline safety report as part of NDPC's direct testimony by a sponsoring witness and as a separate document.
- Directed NDPC to: (1) supply Commission staff with the mailing addresses for all landowners located on NDPC's proposed route or route segment and any alternative route accepted for hearing; (2) send the staff-approved notice of alternative routes to the comprehensive landowner mailing list; and (3) assist with publication of the staff-approved notice in the appropriate newspapers.

IV. NDPC PETITION FOR RECONSIDERATION

On September 15, 2014, NDPC filed a Petition for Reconsideration of the Commission's August 25, 2014 Order. NDPC argued that the Order is "inconsistent with Minnesota rules governing pipeline routing permit applications and is unreasonable..." NDPC requested that the Commission reconsider its decisions to:

- Accept system alternative SA-03 as modified by EERA for consideration at the public hearing;
- Require NDPC to supply staff with the mailing addresses for all landowners located on NDPC's proposed route, any alternative route segments, and any alternative routes accepted for hearing (i.e., system alternative SA-03); and
- Require NDPC to send the staff-approved notice of alternative routes to the comprehensive landowner mailing list.

With regard to alternative route SA-03, NDPC maintained that: (1) the alternative route should not be considered further because it was not submitted in accordance with the provisions of Minn. R. 7852.1400, which provides guidance for route proposal acceptance; (2) the route, as accepted, is not being evaluated in the certificate of need proceeding; and (3) the route is unreasonable because it is longer, less efficient, and has more impacts than the NDPC's proposed route.

Concerning the requirement to provide a comprehensive landowner mailing list and assist with the distribution of staff-approved notices, NDPC argued that it is no longer necessary to notify the over 8,600 landowners on route alternatives until that time the route permit proceeding resumes.

V. RESPONSES TO PETITION FOR RECONSIDERATION

Consistent with Minn. R. 7829.3000, subp. 4, answers to NDPC's Petition were filed by Carlton County Land Stewards (CCLS), Friends of the Headwaters (FOH), and Honor the Earth (HTE) within ten days of the filing of the Petition. A late filed answer to the Petition was White Earth Band of Ojibwe (White Earth) on October 3, 2014.

A. Carlton County Land Stewards

CCLS did not appear to provide any arguments that specifically related to NDPC's reconsideration request. Rather, CCLS discussed the route and certificate of need proceedings on a big picture level and provided citations to other Minnesota rules and statutes that relate to environmental review.

B. Friends of the Headwaters

In its letter, FOH requested that the Commission stay its consideration of the Petition until after (1) issuance of an order for its September 11, 2014, decision; and (2) allow briefing and/or oral argument by the parties on possible modifications of the August 25th Order.

C. Honor the Earth

HTE largely discussed the merits of the various alternative routes including SA-03. HTE recommended that the Commission: (1) reject consideration of alternative route SA-03 as identified in the August 25th Order, and instead requested evaluation of the Minnesota Pollution Control Agency (MPCA) version of alternative route SA-03; and (2) require NDPC to provide notice to landowners as directed for alternative route SA-03 as proposed by MPCA.

D. White Earth Band of Ojibwe

White Earth mainly discussed the Minnesota Environmental Policy Act (MEPA) and its relation to the docket. White Earth also requested that the Commission deny NDPC's Petition to remove alternative route SA-03 for further consideration and took no position with regard to the issue of mailing lists and notices.

VI. STAFF DISCUSSION

Staff has reviewed NDPC's Petition for Reconsideration and the position of the parties. Staff provides the following as it relates to NDPC's Petition.

A. Removal of Alternative Route SA-03 from Further Consideration

Staff believes that is appropriate to continue the inclusion of alternative route SA-03 as identified in the Commission's August 25, 2014 Order. The Order specifically relates to the route permit proceedings in this matter which are on hold until the time that a decision is made on the certificate of need. The inclusion of SA-03, as identified in the August 25th Order, in the route permit proceedings has no bearing on the certificate of need process.

The certificate of need process will continue to evaluate the proposed need of the project and any alternatives to the need (e.g., delivery by rail or truck, alternative existing or proposed pipelines, etc.). The certificate of need does not focus on the actual route of a pipeline (i.e., alternative route SA-03), but instead focuses on the need to deliver oil from North Dakota to Superior, Wisconsin. Therefore, SA-03 may still be properly evaluated in the routing docket depending on the decision that is made on the need.

Staff maintains that alternative route SA-03 was properly proposed under Minn. R. 7852.1400. Department of Commerce Energy Environmental Review and Analysis (EERA) was tasked with evaluating alternative routes proposed during the prescribed comment period.² EERA staff provided a thorough and comprehensive report that included: (1) detailed description of the steps taken to satisfy the requirements of the pipeline route designation process; (2) the methodology used in determining the alternatives recommended for consideration at hearing and evaluation in the comparative environmental analysis; and (3) a comprehensive description of the proposed alternative routes and route segments received, including maps.

Further, under Minn. R. 7852.1400, subp. 1, the Commission "may accept for public hearing any other route or route segment it considers appropriate for further consideration." Thus, the Commission considered alternative route SA-03 appropriate for further review in the route permit proceeding. Pursuant to Subpart 4, "The Commission determined that the route proposal contained the required information..."

However, notwithstanding the Commission's decision, a proposer of a route or route segment accepted by the Commission for consideration at hearing must still make an affirmative presentation of facts on the merits of the route proposal under Minn. R. 7852.1400, subp. 1.

² EERA, Comments on Alternative Route Proposals and Sandpiper Alternative Routes Summary Report (July 16, 2014): eDocket ID 20147-101573-01 to 04.

B. Landowner Mailing List and Notice Distribution

The noticing requirements discussed in the August 25, 2014 Order specifically apply to pipeline route permit proceedings and not the certificate of need proceedings.³ Because the two dockets have been separated and will proceed sequentially with the certificate of need first and routing second, there is no need to reconsider the requirement of NDPC to provide a comprehensive landowner mailing list and assist with the distribution of staff-approved notices. Should the route permit proceeding resume these notices will be required under rule. Therefore, staff sees no need for the Commission to reconsider these requirements at this time.

COMMISSION DECISION ALTERNATIVES

1. Grant reconsideration or rehearing of the August 25, 2014 Commission Order Accepting Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures.
2. Deny reconsideration or rehearing of the August 25, 2014 Commission Order Accepting Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures.
3. Take some other action deemed appropriate.

³ See Minn. R. 7852.1600.