

Received Date: 11/3/14

Document ID: 201411-104384

Docket #: 13-473

On Behalf Of: NDPC

Document Type: Other – Letter regarding Petition for a Separate Docket and Protective Order

This is NDPC's response to DOC-DER's 10/27/14 letter regarding NDPC's Petition for a Separate Docket and Protective Order for Highly Sensitive Nonpublic Data. "NDPC appreciates DOC-DER's comments and believes the suggested edits to paragraphs 4 and 7 of the proposed protective order provide reasonable clarifications that will help facilitate implementation of the protective order. Similarly, NDPC has no objection to the inclusion of the Minnesota Department of Administration and public agency counsel as suggested by DOC-DER."

The letter goes on to explain that the Form TSAs already contain all of the "substantive" data and are available to the public, while the Executed TSAs contain the highly sensitive nonpublic data. Since these two different forms of TSA currently exist NDPC doesn't see a need for an additional public version of the TSAs, as requested by DOC-DER.

Finally, NDPC requests that the separate docket be established and the protective order be issued "as soon as possible" to that they might provide the DOC-DER with the requested information in a protected manner. If the Commission has any further questions NDPC suggests a conference call to address them.

Received Date: 11/5/14

Document ID: 201411-104439

Docket #: 13-473

On Behalf Of: Carlton County Land Stewards

Document Type: Other – Second Request for Information from Enbridge

This request is a follow up to an initial request for information on October 10, 2014. It contains five specific requests for updates and files used in the Desktop Analyses provided to the PUC in Appendix A of Enbridge's August 21, 2014 submission to the Commission. Request date of 11/4/14. Due date 11/18/14.

Received Date: 11/5/14
Document ID: 201411-104450
Docket #: 13-473, 13-474
On Behalf Of: PUC
Document Type: Minutes

This contains the minutes of the September 11, 2014 Commission meeting, with the portion for 13-473 and 13-474 pasted here.

Chair Heydinger moved to take the following action:

1. Based on the record, find good cause to separate the certificated of need proceedings from the route permit proceedings;
2. Based on the record, find 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
3. Authorize environmental review by the EERA staff of the six system alternatives identified by the MPCA in its August 21, 2014 comments, to be completed prior to commencement of the contested case hearings.

The motion passed 3-2, with Commissioners Boyd and Wergin voting no.

Commissioner Lipschultz moved to also adopt the following action:

Refer the six system alternatives identified by the MPCA in its August 21, 2014 comments for consideration in the Certificate of Need proceeding with the understanding that those alternatives and the Applicant's proposed Sandpiper alternative will be examined to the extent advanced by parties or developed in the record, at a minimum, with respect to (a) assessing their relative human, socioeconomic and environmental impacts; and (b) determining whether, to what extent and where a need exists for additional crude oil pipeline capacity from the perspective of the Applicant and the public interest.

The motion failed by a vote of 2-3, with Chair Heydinger and Commissioners Boyd and Wergin voting no.

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Docket #: 13-473
On Behalf Of: OAH
Document Type: Order

The OAH has ordered that a separate docket, accessible only to the NDPC, MPUC, and DOC-DER be established and called 14-954 for the purposes of holding the Executed TSAs, with provisions for other parties to receive limited data from these as available in the Form TSAs. Also included are a few clauses regarding references to the nonpublic data during *in camera* sessions and the appropriate method for marking Highly Sensitive Nonpublic Data.

Received Date: 11/5/14
Document ID: 201411-104478
Docket #: 13-473, 13-474
On Behalf Of: PUC
Document Type: Minutes – Erratum September 11, 2014

A side-by-side check of the 13-473 portions revealed no changes from the original minutes.

Received Date: 11/6/14
Document ID: 201411-104485
Docket #: 13-473, 13-474
On Behalf Of: Friends of the Headwaters
Document Type: Reconsideration - Response to NDPC Petition for Reconsideration

FOH requests that the Commission deny NDPC's petition to reconsider its decision to bifurcate the Certificate of Need and Route Proceedings and grant the parties' petitions to reconsider its decision to order a level of environmental review that does not comply with MEPA.

- "1. The Commission Appropriately Bifurcated The Certificate Of Need And Route Proceedings.
A. The Commission's decision to bifurcate the proceedings was well within its discretion.
B. The public interest in bifurcation prevails over the private interests of the company.
2. Under The Minnesota Environmental Policy Act ("MEPA"), The Commission May Not Make A Determination On Need Until An EIS Is Completed.
A. The Certificate of Need is a "major governmental action" that must undergo and EIS.
B. The environmental report ordered by the Commission does not fulfill the requirements of MEPA."
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Received Date: 11/6/14
Document ID: 201411-104489
Docket #: 13-473, 13-474
On Behalf Of: NDPC
Document Type: Other – Response in Opposition to FOH Petition for Reconsideration and Amendment

NDPC believes that the FOH Petition for Reconsideration and Amendment should be denied because “it misconstrues the purpose of the CN proceeding, is inconsistent with the Commission’s past practices, and is contrary to settled law.”

Their Analysis is outlined here:

I. PIPELINE CN PROCEEDINGS DO NOT REQUIRE AN EIS.

- A. The EQB Rules Do Not Require an EIS in CN Proceedings.
- B. Environmental Review under MEPA is Project-Based.
- C. FOH’s Argument is Inconsistent with MEPA’s Non-Duplication Goal.
- D. The Commission has Never Required an EIS in a Pipeline CN Proceeding.

II. THE ORDER ALLOWS ADEQUATE TIME AND OPPORTUNITY FOR PUBLIC PARTICIPATION.

III. THE ALJ’S SCHEDULING ORDER IS CONSISTENT WITH THE COMMISSION’S OCTOBER 7, 2014 ORDER.

IV. FOH’S EIS FOCUS FAILS TO RECOGNIZE THAT THE PURPOSE OF THE CN PROCEEDING IS TO ANALYZE PROJECT NEED.

NDPC claims that “(t)here is no legal or factual support for the arguments advanced by FOH in its Petition for Reconsideration” and requests denial of request.

Received Date: 11/6/14

Document ID: 201411-104490, 201411-104491

Docket #: 13-473, 13-474

On Behalf Of: Minnesota Chamber of Commerce

Document Type: Comments – MCC Request for Reconsideration of Sandpiper Order

The Minnesota Chamber of Commerce supports NDPC’s requests for reconsideration and opposes Friends of the Headwaters request for reconsideration for the following reasons:

“A. The Decision to Bifurcate the Certificate of Need (“CON”) and Route Permit Proceeding is Unreasonable and Inconsistent with Minnesota Law.

- i. The Commission Ignored the Strong Statutory Preference for Joint Proceedings.
- ii. The Commission’s Previous Decisions in the Docket are Inconsistent with the October Order.
- iii. The Commission Decision to Bifurcate the Proceedings is Not Supported by the Record and Contradicts Minnesota Law.
- iv. Bifurcating the Proceedings at this Time Will Likely Lead to Greater Confusion Among Members of the Public.

B. The Commission’s Decision to Bifurcate the CON and Route Proceeding Creates a Perilous New Precedent That Will Cause Unintended Consequences in Future Dockets.

C. The State of Minnesota Will Be Harmed by the Commission's Decision to Bifurcate the Dockets.

i. Current Practice Favors Administrative Timeliness and Efficiency.

For all of the aforementioned reasons the Minnesota Chamber of Commerce respectfully requests that the Commission reconsider its October 7, 2014 Order and grant the relief requested by NDPC to resume the route permit proceeding as soon as practicable.”

Received Date: 11/6/14

Document ID: 201411-104498-01, 201411-104499-01

Docket #: 13-473, 13-474

On Behalf Of: Carlton County Land Stewards

Document Type: Reconsideration – CCLS Response to Request for Reconsideration

I. Introduction

CCLS supports Friends of the Headwaters in their concern that the environmental review contemplated by DOC-EERA is completely unworkable. Their argument has two main parts. First, “the process being adopted here is virtually unrecognizable as a MEPA environmental review, and the stripped down nature of the review...destroys its essential function.” Second, there is no reason to conduct a review under these tight guidelines and with these restrictions, because (a) the federal environmental review for Sandpiper has not even begun---According to the US Army Corps of Engineers, Enbridge's application is incomplete, and Enbridge has failed to make an effort to provide the information necessary for that review; (b) Enbridge has just announce that it is commencing a second proceeding for another major pipeline, which it intends to run over an expanded right of way. “It is inconceivable that Enbridge is going to attempt to construct Sandpiper on that right of way, and then come back a second time and construct a second pipeline, mobilizing equipment, trekking across wetlands and private property all over again.” (c) Environmental reviews are required for MPCA and DNR permits, and there exists no waiver applicable to them.

CCLS submits the following outline with support for its statements:

II. The Pipeline EERA Procedure Creates Significant Obstacles to Parties Seeking Actively to Participate in the Environmental Review and Those Obstacles Exponentially Increase the Need for Additional Time in the Schedule.

- (a) No Scoping Disclosure
- (b) No Draft Environmental Statement
- (c) Final Environmental Impact Statement does not Address Significant Public Comments
- (d) Direct Testimony Due One Month before Environmental Review.

III. Elongating the Scheduled Environmental Review Will not Prejudice Applicant and Will Likely Create Significant Economies.

IV. Need Criteria Expressly Include Environmental Factors.

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Document ID: 201411-104498-02, 201411-104499-02

Docket #: 13-473, 13-474

On Behalf Of: Carlton County Land Stewards

Document Type: Reconsideration – Affidavit In Support of CCLS Response to Request for Reconsideration

This purpose of this affidavit is to “describe the difficulties under the current system for parties to obtain information about the scope of the environmental review or to monitor its progress.” Eleven separate points of issue are included which present the position of CCLS as well as presenting a review of the data requests made by CCLS, dialogs between CCLS and various government agencies, dialogs between CCLS and NDPC, and the difficulties CCLS has experienced in obtaining complete and timely information from either one.

Received Date: 11/6/14

Document ID: 201411-104503, 201411-104505

Docket #: 13-473, 13-474

On Behalf Of: Marathon Petroleum Company

Document Type: Other – Support for NDPC Petition for Reconsideration

Marathon Petroleum Company (MPC) sent this letter in support of the October 7, 2014 Petition for Reconsideration. They first state their interest in the proceeding as a major U.S. refiner of oil. They are having a difficult time getting their desired quantities of crude oil from the Bakken region at this time because of a current lack of pipeline capacity.

MPC is committed to supporting the Sandpiper Pipeline through a take and pay arrangement in its TSA (whereby they pay whether they use the capacity or not) and its agreement to fund 37.5% of the Sandpiper project. They chose to support Sandpiper because Enbridge is “a reliable, experienced pipeline company”.

The bifurcation of the proceedings is causing harmful delay to MPC and its customers and causing more crude oil to be moved using the rail system through Minnesota.

If nothing else, the route proceeding should be staggered rather than run sequentially in order that NDPC can use the 2016 construction season.

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Document ID: 201411-104501

Docket #: 13-473

On Behalf Of: Clearwater County

Document Type: Other – Clearwater County Sandpiper Resolution

Resolution in support of NDPC Sandpiper Pipeline adopted by County Board on November 4, 2014.

Received Date: 11/6/14

Document ID: 201411-104502

Docket #: 13-473

On Behalf Of: Carlton County

Document Type: Other - NDPC Resolution

Resolution in support of NDPC Sandpiper Pipeline adopted by County Board on September 9, 2014.

Received Date: 11/7/14

Document ID: 201411-104507

Docket #: 13-473

On Behalf Of: Red Lake and Clearwater County

Document Type: Letter

Resolution in support of NDPC Petition for Reconsideration and in support of Enbridge's preferred Sandpiper Pipeline.

Received Date: 11/7/14

Document ID: 201411-104508

Docket #: 13-473, 13-474

On Behalf Of: Laborers' District Council of MN and ND

Document Type: Other - Brief

This comment supports the petition for reconsideration and NDPC's proposed remedy to restart the routing process as soon as the need proceedings are closed rather than wait until the CN is complete. The Laborers' District lists some potential benefits to this proposed plan, including a lesser dependency on rail for oil transport. They then assure the Commission that

whether this certificate of need is not granted the route work begun in the meantime will not have been wasted, as there will be more pipelines proposed anyway. Their third point was difficult for me to understand so I'll quote it here: "But we would argue that a higher standard should not be applied to vetting a route that would be built if permitted, and that will inform future decision-making even if not permitted."

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Document ID: 201411-104509

Docket #: 13-473, 13-474

On Behalf Of: Honor the Earth

Document Type: Reply Brief

Honor the Earth opposes the requests to recombine the two proceedings and: "Honor the Earth urges this Commission to dismiss these Sandpiper dockets and combine with the announced Line 3 Replacement pipeline dockets desiring the same route, so that fair and reasonable time can be given for meaningful and informed decision-making by all parties.

Exhibit A: Letter dated 9/23/14, signed by Rep. Frank Hornstein, Senator Scott Dibble, Rep. Jean Wagenius, and Senator John Marty to William Seuffert, Executive Director Environmental Quality Board "recommending that the EQB white paper on pipelines examine three specific areas of concern with regard to Minnesota's pipeline industry:

--Spill response

--Lessons from the Enbridge Kalamazoo River disaster

--Spill history, and safety violations involving the pipeline industry

Exhibit B: Minneapolis StarTribune Article of 10/27/14 headlined "Enbridge files to replace problem Minn. Pipeline"

Exhibit C: New York Times Article of 11/3/14 headlined "U.S. Oil Prices Fall Below \$80 a Barrel"

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Document ID: 201411-104523

Docket #: 13-473, 13-474

On Behalf Of: PUC

Document Type: Order

1. The Company's petition for reconsideration or rehearing of the August 25, 2014 Order Accepting Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures is denied.

2. No party is required to take further action on the order issued August 25, 2014, until the petitions filed on October 27, 2014, are addressed, or deemed denied by operation of law.
3. This order shall become effective immediately.

Received Date: 11/7/14

Document ID: 201411-104532, 201411-104531

Docket #: 13-473, 13-474

On Behalf Of: White Earth Band

Document Type: Reconsideration – Response to Petition

The White Earth Band requests the Petition for Reconsideration be denied because it is within the law for the PUC to have bifurcated the proceedings and NDPC has not demonstrated that reconsideration is warranted or necessary. The Commission has acted “within its authority and in the best interests of the proceedings and all involved parties, agencies, and the public, as required.”
