

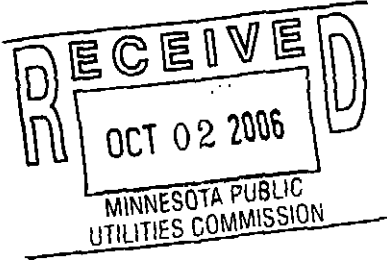


STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700  
100 Washington Avenue South  
Minneapolis, Minnesota 55401-2138

TELEPHONE: (612) 341-7600

TTY: (612) 341-7346



September 29, 2006

To Persons on Attached Service List

Re: *In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline and In the Matter of the Application of Minnesota Pipe Line Company for a Routing Permit for a Crude Oil Pipeline*  
PL-5/CN-06-02; PL-5/PPL-05-2003  
OAH Docket No. 15-2500-17136-2

Dear Persons on Attached Service List:

Enclosed herewith and served upon you by mail is the Administrative Law Judge's Order Denying Motion to Intervene and Granting Participant Status in the above matter.

Sincerely,

BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (612) 341-7606

BJH:mo  
Encl.

---

Providing Impartial Hearings for Government and Citizens  
An Equal Opportunity Employer

## EXHIBIT A

### In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline and in the Matter of the Application of Minnesota Pipe Line Company for a Routing Permit for a Crude Oil Pipeline

PUC Docket No. PL-5/CN-06-02 (Certificate of Need),  
PUC Docket No. PL-5/PPL-05-2003 (Routing Permit).  
OAH Docket No. 15-2500-17136-2.

#### Service List as of September 29, 2006.

Burl W. Haar (10 copies)  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 Seventh Place East  
St. Paul, MN 55101-2147  
FAX: 651-297-7073

Eric F. Swanson  
Winthrop & Weinstine  
Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402  
*eswanson@winthrop.com*  
(612) 604-6511

Beverly Jones Heydinger (Original and 1 copy)  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
100 Washington Avenue South  
Minneapolis, MN 55401-2138  
*beverly.heydinger@state.mn.us*

**For Certificate of Need:**  
Valerie M. Smith  
Assistant Attorney General  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101  
*valerie.smith@state.mn.us*, (651) 296-6170

Sharon Ferguson (4 copies)  
Minnesota Department of Commerce  
85 Seventh Place East, Suite 500  
St. Paul, MN 55101  
*sharon.ferguson@state.mn.us*  
(651) 297-3652

**For Routing Permit:**  
Karen Finstad Hammel  
Assistant Attorney General  
1400 Bremer Tower  
445 Minnesota Street  
St. Paul, MN 55101  
*karen.hammel@state.mn.us*, (651) 297-1852

#### **For Atina and Martin Diffley as Gardens of Eagan:**

Paula Goodman Maccabee  
Attorney at Law  
1961 Selby Avenue  
St. Paul, MN 55104  
651-646-8890  
fax: 651-646-5754  
*pmaccabee@visi.com*

#### **NOTE:**

If a document relates to both the  
Certificate of Need Proceeding and the  
Routing Permit Proceeding, eight copies  
must be filed with the Department of  
Commerce and an original and two copies  
with the ALJ.

**Participant:**

Amy L. Court  
McGrann Shea Anderson Carnival  
Straughn & Lamb, Chartered  
U.S. Bancorp Center  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402-7035  
(612) 338-2525  
fax: (612) 339-2386

**Participant:**

John E. Drawz  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
*jdrawz@fredlaw.com*  
(612) 492-7074  
fax: (612) 492-7077

**Participant:**

Kathleen Michaela Brennan  
McGrann Shea Anderson Carnival  
Straughn & Lamb, Chartered,  
U.S. Bancorp Center  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402-7035  
(612) 338-2525  
fax: (612) 339-2386

**Participant:**

Russell and Judy Martin  
11600 270th St.  
Elko, MN 55020  
952-461-3352

**Participant:**

Joyce Osborn  
14916 Sharon Lane  
Burnsville, MN 55306  
952-435-5984

**Participant:**

Robert Schestak, DMD, PA  
241 Cleveland Avenue South  
St. Paul, MN 55406

**Participant:**

Brian J. Slovut  
Associate General Counsel  
University of Minnesota  
360 McNamara Alumni Center  
200 Oak Street S.E.  
Minneapolis, MN 55455  
(612) 624-4100  
fax: (612) 626-9624

**Participant:**

Ronald Cummins  
Organic Consumers Association  
6771 South Silver Hill Drive  
Finland, MN 55603  
218-226-4164

**Participant:**

Minnesota Public Interest Research Group  
Attn: Nicholas Keener, Canvas Director  
1313 5th Street Southeast  
Minneapolis, MN 55414  
*nkeener@mpirg.org*  
phone: 612.627.4035  
fax: 612.627.4050

**Participant:**

Diane Staricka  
3281 70th St.  
Swanville, MN 56382  
320-573-2447

**Participant:**

Ray and Sharon Neubauer  
11530 270th St. East  
Elko, MN 55020  
952-461-2696

**For the Commission Staff:**

Certificate of Need:  
David Jacobson  
Public Utilities Commission  
350 Metro Square  
121 Seventh Place East  
St. Paul, MN 55101

**Court Reporter:**

Janet Shaddix Elling, RPR  
Suite 122  
9100 West Bloomington Freeway  
Minneapolis, MN 55431  
952-888-7687

**Participant:**

Roger and Joyce Tupy  
26445 Langford Ave.  
New Prague, MN 56071  
952-758-3757

**Project Manager:**

Larry B. Hartman, Project Manager  
Department of Commerce  
Energy Facility Permitting  
85 Seventh Place East, Suite 500  
St. Paul, MN 55101-2198  
651-297-5089  
fax: 651-297-7891  
Larry.Hartman@state.mn.us

**Routing Permit:**

Robert Cupit  
Public Utilities Commission  
350 Metro Square  
121 Seventh Place East  
St. Paul, MN 55101



15-2500-17136-2  
PL-5/CN-06-02  
PL-5/PPL-05-2003

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of  
Minnesota Pipe Line Company for a  
Certificate of Need for a Crude Oil  
Pipeline  
and  
In the Matter of the Application of  
Minnesota Pipe Line Company for a  
Routing Permit for a Crude Oil Pipeline

**ORDER DENYING MOTION TO  
INTERVENE AND GRANTING  
PARTICIPANT STATUS**

*Appearances:*

Eric F. Swanson, Winthrop & Weinstine, 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402, and Heidi Larson on behalf of Minnesota Pipe Line Company.

Karen Finstad Hammel, Assistant Attorney General, and Valerie M. Smith, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101, on behalf of the Department of Commerce.

Paula Goodman Maccabee, Attorney at Law, 1961 Selby Avenue, St. Paul, MN 55104, on behalf of Atina and Martin Diffley as Gardens of Eagan.

Commission staff member Robert Cupit, and Project Manager Larry B. Hartman, Department of Commerce, Energy Facility Permitting, 85 7th Place East, Suite 500, St. Paul, MN 55101-2198.

On September 14, 2006, the Minnesota Public Interest Research Group (MPIRG) submitted a Petition to Intervene in both the Certificate of Need and Routing Permit proceedings. Although the Petition was not signed, it was submitted by MPIRG and also some property owners: Russell and Judy Martin, Diane Staricka, Joyce Osborn, Roger and Joyce Tupy and Ray and Sharon Neubauer (Landowners). No affidavit or certificate of service was filed, but it appears that the parties to the proceeding received copies of the Petition. It is not clear if the Petition was filed with the Public Utilities Commission, although its staff was aware of the Petition.

The Minnesota Pipe Line Company (MPL) objected to the Petition on several grounds, including the lateness of the filing, MPIRG's failure to demonstrate that it met the legal requirements for intervention set forth in Minn. R. 1400.6200, subp. 1, or Minn. R. 1405.0900, subp. 1, and MPIRG's failure to follow certain procedural requirements.

The Department of Commerce did not object to MPIRG's intervention in post-hearing proceedings concerning the Certificate of Need, but stated that the Petition was filed after the deadline for intervention set in the First Prehearing Order entered March 30, 2006, and failed to meet certain procedural requirements. The Department also pointed out that the Petition failed to show how MPIRG's legal rights, duties or privileges would be affected by the Certificate of Need proceeding, and thus did not believe that the Petition met the standards for discretionary intervention.

In a separate filing, the Department of Commerce supported the request of the Landowners to intervene in the Routing Permit proceeding because its outcome could directly affect their property and potentially lead to its loss through the exercise of the power of eminent domain, and because the initial proposed pipeline alignment did not cross their property, but proposed changes to the route realignment could.

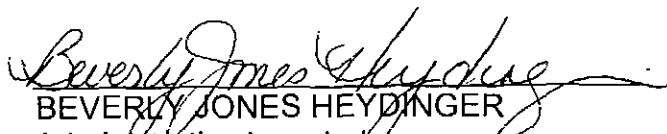
Atina and Martin Diffley as Gardens of Eagan did not oppose the Petition to Intervene.

Based on the record in this proceeding, and for the reasons more fully set forth in the Memorandum, attached hereto and incorporated herein,

IT IS HEREBY ORDERED:

1. MPIRG's Petition to Intervene is DENIED.
2. MPL shall provide each Landowner with a copy of the proposed alignment of the pipeline as of September 15, 2006, in the area where their property is located.
3. MPIRG and the Landowners shall be included on the Service List as Participants.

Dated this 29<sup>th</sup> day of September, 2006.

  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

## MEMORANDUM

MPL filed its Certificate of Need Application with the Public Utilities Commission on January 3, 2006, and its Route Permit Application on January 5, 2006. At the direction of the Minnesota Public Utilities Commission (MPUC), MPL worked with MPUC staff and the Department of Commerce to develop a letter to landowners living along the "centerline" of the proposed route and to other landowners along the route corridor, notifying them of MPL's applications.<sup>1</sup>

On February 16, 2006, the MPUC issued several orders initiating this proceeding. On February 21, 2006, the Department of Commerce issued a Notice of Application Acceptance and Public Information Meetings, with information for the public about the process to be followed, including the May 30, 2006 deadline for proposing alternative routes, and notice of information meetings in each county that the proposed pipeline would cross. That notice was published in newspapers in each of those counties, and mailed to persons listed on the Department's service list.<sup>2</sup>

On March 17, 2006, the first prehearing conference was held, a schedule was set for the proceeding, including intervention deadlines: April 17, 2006 for the *Certificate of Need* and May 30, 2006 for the *Route Permit*.<sup>3</sup>

Several alternative route alignments were filed with the Department of Commerce by May 30, 2006. Atina and Martin Diffley for the Gardens of Eagan filed a timely Petition to Intervene in the Route Permit proceeding, and the petition was granted. The Organic Consumers Association filed a timely Petition to Intervene in the Route Permit proceeding, but amended it and requested non-party participant status which was granted.

Direct Testimony in the Certificate of Need Proceeding was filed by June 21, 2006, the deadline set in the First Prehearing Order. Direct Testimony in the Route Permit Proceeding was filed by August 7, 2006, also pursuant to the prehearing order, as amended.

Public hearings on both the Certificate of Need and Route Permit were held in 14 communities between August 24 and September 14, 2006. A full-page notice of the public hearings was published in 19 newspapers, each one listing the date, time and location of each of the public hearings, and each one stating how any person could participate at the public hearing.<sup>4</sup> MPIRG filed its Petition to Intervene on September 14, 2006. An evidentiary hearing was conducted on September 15, 2006 at the MPUC. The record was left open for limited

---

<sup>1</sup> See Ex. 86 and Hearing Transcript Volume ("T.") 12 at 79-80.

<sup>2</sup> Exs. 17 and 19.

<sup>3</sup> First Prehearing Order, March 31, 2006.

<sup>4</sup> Ex. 115.

additional submissions, but the testimony and cross-examination were completed on that date.

MPIRG representatives attended several hearings and asked questions or made statements at seven of them.<sup>5</sup> It offered several exhibits into the hearing record.<sup>6</sup> The public also had the opportunity through September 22, 2006, to submit additional comments, and MPIRG submitted additional comments on that date.

In its Petition, MPIRG has not stated when it first became aware of this proceeding, but among the letters that it submitted into evidence at the public hearings were letters dated as early as July 18 and July 19, 2006.<sup>7</sup>

MPIRG has failed to show why it could not have filed its Petition much earlier in the proceedings, if not prior to the intervention deadline, at least prior to the commencement of the hearings.

In its Petition to Intervene, MPIRG has not clearly stated what type of participation it seeks since all of the testimony has been taken and the hearing completed. MPIRG states that no party has presented views opposing the MPL applications, and that access to information has been limited because of lack of publicity and an unwillingness of the Department of Commerce and MPUC staff to clearly communicate with the public. Apparently, it wants to assure that its views are taken into account. Yet its representatives had the opportunity to speak and ask questions at each of the public hearings, and to submit additional comments and information into the record, and they did so. Its opposition to the certificate of need and routing permit is clear. MPIRG has not clarified how party status would have altered the role that it has played up to this point in the proceeding or going forward.

To the extent that the petition expresses concern about the safety record of MPL, Koch Pipeline Company, and other affiliates, it offers no additional evidence to supplement the record, beyond that which it presented at the hearings. In the event that the certificate of need and route permit are issued, the Office of Pipeline Safety and several federal, state and local agencies will oversee the safe installation and operation of the pipeline. None of those agencies have taken a position in this proceeding that MPL (or Koch Pipeline Company, its operator) is incapable of operating a safe pipeline.

MPIRG's stated purpose for intervention is to assure that if a Certificate of Need is granted that: the pipeline does not cross or impair the Landowners'

---

<sup>5</sup> E.g. Nicholas Keener (T. 6 at 14, 47; T. 8 at 33, T. 10 at 106; T. 11 at 63, 78, 87; T. 13 at 44; T. 16 at 83); Tracey Pollock (T. 8 at 27; T. 10 at 60, 89; T. 15 at 54, 75); Annika Brink (T. 10 at 34, 104; T. 15 at 64, 72); Leslie Selting (T. 14 at 62, 72; T. 15 at 59; T. 10 at 58, 125).

<sup>6</sup> See e.g. Exs. 53, 83, 84, 87, 88.

<sup>7</sup> Ex. 112.



property; that the construction, operation, maintenance and restoration practices included in the Environmental Assessment Supplement and Agricultural Impact Mitigation Plan, including the Appendix addressing Organic Farms, are followed; and that a comprehensive woodland mitigation program is developed. Each of these bases relates to the routing permit.

It is unclear why MPIRG has an interest in the pipeline not crossing or impairing the property of the Landowners that is separate from the Landowners' interest. As individuals, the Landowners certainly have an interest in the route that the pipeline will follow. Each of them has participated in the proceeding. Russell Martin, Diane Staricka, Roger Tupy, and Joyce Osborn spoke at the public hearings and filed written comments as well.<sup>8</sup> Ray and Sharon Neubauer submitted written comments.<sup>9</sup> MPIRG's Petition does not specify what additional role the Landowners hope to play as parties that they do not have without party status. To the extent that the Petition requests intervention to assert the Landowner's right to object to the pipeline crossing their property, their opposition is already a matter of record.

MPIRG also requests that MPL be required to follow certain practices set forth in its application, and develop a comprehensive woodland mitigation program. In the event that the routing permit is granted, the MPUC may consider incorporating certain construction, operation, maintenance and restoration practices, and require a comprehensive woodland mitigation program as conditions to the permit. MPIRG's request will be treated as part of the public comment and considered in developing the findings of fact, conclusions and recommendation to the MPUC.

The rules governing pipeline routing provide liberal opportunity for public participation without seeking party status. Minn. R. 1405.0800 states that:

[A]ll persons will be allowed and encouraged to participate without the necessity of intervening as parties. Such participation shall include, but not be limited to:

- A. Offering direct testimony with or without benefit of oath or affirmation and without the necessity of pre-filing as required by part 1405.1900.
- B. Offering direct testimony or other material in written form at or following the hearing....

---

<sup>8</sup> Not all of the written comments have been reviewed. The citations to submissions by the Landowners that are included here may not be complete. Russell and Judy Martin (T. 10 at 70; T. 11 at 35; T. 14 at 52; T. 16 at 78; Ex. 82A, letter from Judy Martin received Sept. 18, 2006; letter from Russ and Judy Martin received Sept. 18, 2006); Diane Staricka (T. 13 at 38; Ex. 89; electronic mail sent May 15, 2006); Roger and Joyce Tupy (T. 10 at 118; T. 11 at 77; T. 13 at 44; T. 14 at 43, 91; T. 15 at 68; letter dated Sept. 18, 2006, ); Joyce Osborn (T. 10 at 54, 95; T. 11 at 14, 85; T. 16 at 51, 121; letter dated Sept. 18, 2006).

<sup>9</sup> Ex. 97.

C. Questioning all persons testifying....

MPIRG and the Landowners took full advantage of the opportunity to participate. Admittedly, the rule also states that testimony offered without benefit of oath or affirmation or written testimony not subject to cross-examination will receive only the weight the administrative law judge deems appropriate, but at no point did MPIRG or the Landowners ask to present a substantive witness or submit testimony under oath. It could have done so without party status. At this late stage of the proceeding, the hearing has ended. MPIRG has failed to request that the hearing record be reopened, or what additional evidence it would submit if it were. It has failed to specify what additional rights it wishes to assert if party status is granted.

It is not entirely clear if party status is required to appeal a final decision of the MPUC on the routing permit.<sup>10</sup> Nor is it clear that MPIRG could demonstrate that it is an "aggrieved" person. However, if the routing permit is issued and the route crosses the property of one or more of the Landowners, the Landowners may be able to make such a showing. Although not included in the petition to intervene, the Landowners have submitted information during the course of the proceeding that the pipeline alignment may cross their property.<sup>11</sup> Had they requested to intervene as individuals, perhaps they would have addressed the issue of whether intervention was necessary to protect their right to appeal, but no such argument has been made.

In order to assure that the Landowners are aware of MPL's current proposed alignment, MPL is directed to provide each Landowner with a map showing its current proposed alignment in the area of their property, as submitted to the administrative law judge on September 29, 2006, so that they are able to ascertain whether they will be directly affected. In addition, with this Order, MPIRG and the Landowners will be provided a copy of the letter from MPL's counsel dated September 28, 2006, describing its reduced pipeline corridor, and the attachments to that letter.

The parties shall add MPIRG and the Landowners as Participants to the service list, and shall provide them with copies of any submissions filed with the administrative law judge from this date.

It is apparent from MPIRG's submission that it did not have the opportunity to retain the assistance of counsel. The petition was not signed or served properly, it was not timely, it failed to set forth what legal rights, duties or privileges will be affected if it is not granted party status, and failed to set forth

---

<sup>10</sup> See Minn. Stat. §§ 14.63, 116C.65.

<sup>11</sup> T. 10 at 70 (stating that a company representative spoke with Mr. Martin in the middle of May about the alignment crossing his property); Ex. 89 (Staricka); Ex. 97 (Neubauer); Letter from Joyce Osborn, dated September 18, 2006; T. 10 at 54-56; T. 10 at 115 (Mr. Tupy learned at the information meetings in March that the alignment could cross his property).

the purpose of its intervention that had not been addressed through the participation of its representatives, and by the Landowners on their own behalf. Under the circumstances, the petition must be denied.

**B. J. H.**