

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Enbridge Pipelines
(North Dakota) LLC's Application for a
Certificate of Need for the Sandpiper Pipeline
Project in Minnesota from the North Dakota
Border to the Wisconsin Border

ISSUE DATE: September 11, 2013

DOCKET NO. PL-6668/CN-13-473

ORDER APPROVING NOTICE PLAN

PROCEDURAL HISTORY

On June 7, 2013, Enbridge Pipelines (North Dakota) LLC (Enbridge North Dakota or the Company) submitted a Notice Plan proposal for its proposed Sandpiper Pipeline Project in Minnesota. The Company also requested a variance to the rule requiring it to implement the plan within 30 days of its approval.

On June 26, 2013, the Minnesota Department of Commerce, Division of Energy Resources (the Department) filed comments on the Notice Plan, recommending that the Commission accept the Notice Plan subject to the provision of certain information and correction of certain information in reply comments. The Department also recommended that the Commission grant the requested variance.

On July 17, 2013, the Company filed reply comments and a revised Notice Plan incorporating the comments of the Department.

On July 26, the Department filed a letter stating that the Company had satisfactorily addressed the Department's concerns,

On August 22, 2013, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. The Proposed Project

Enbridge North Dakota has proposed to construct a new 565- to 608-mile, 24-inch diameter pipeline to transport the Company's increasing production of crude oil from the Bakken Formation in North Dakota from its Beaver Lodge Station south of Tioga, North Dakota to an Enbridge affiliate terminal in Superior, Wisconsin. The initial capacity of the pipeline will be

225,000 barrels per day (bpd) into Clearbrook and 375,000 bpd into Superior, Wisconsin. The planned in-service date for the Project is in the first quarter of 2016.

The Company has identified two potential routes for the Minnesota portion of the Project, both of which commence at the Minnesota –North Dakota border south of Grand Forks, North Dakota and follow the Company’s existing pipeline right-of-way to Clearbrook:

- The northern route proceeds east from Clearbrook and follows the Enbridge Energy, Limited Partnership System Mainline Corridor approximately 256 miles across Polk, Red Lake, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitken, St. Louis, and Carlton Counties.
- The southern route proceeds south from Clearbrook to Hubbard, and then east, crossing greenfield areas and following portions of electric transmission and railroad lines for approximately 302 miles across Polk, Red Lake, Clearwater, Hubbard, Cass, Crow Wing, Aitkin, and Carlton Counties.

The Project will include three or four new pumping stations, requiring the acquisition of approximately 25 to 50 feet of new right-of-way and 40 to 80 feet of temporary right-of-way depending on the route selected.

II. Legal Requirements

Under Minn. Rules 7829.2560, any person intending to apply for a certificate of need for any pipeline must first file a proposed notice plan for providing notice to all persons reasonably likely to be affected. A notice plan must be submitted at least three months prior to a certificate of need application.

The Rule sets out filing and service requirements, procedural schedule requirements, types of notice and notice content requirements, and further filing requirements. Minn. Rules 7829.2560, subp. 3 requires the following types of notice:

- direct mail notice, based on county tax assessment rolls, to landowners reasonably likely to be affected by the proposed pipeline;
- direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed pipeline;
- direct mail notice to tribal governments and to the government of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed pipeline; and
- newspaper notice to members of the public in areas reasonably likely to be affected by the proposed pipeline.

Finally, under Minn. Rules 7829.2560, subp 6, an applicant must implement its Notice Plan within 30 days of its approval by the Commission.

III. The Company’s Proposed Notice Plan

The Company defined its proposed notice area as 350 feet on either side of the proposed centerlines for the northern and southern pipeline routes. The Notice Plan included maps of the proposed pipeline routes and proposed notice areas as Attachments 1a and 1b to its initial filing.

Under Minn. Rules 7829.2560, Enbridge North Dakota proposed the following mail and published notice for the Project:

- direct mail notice to landowners with property that is crossed by the centerline of the proposed northern and southern pipeline routes;
- direct mail notice to landowners and mailing addresses within 350 feet on either side of the proposed centerline;
- direct mail notice to relevant tribal, local, county, state, and federal government officials; and
- general notice for publication in local and state-wide newspapers.

In addition, the Company identified the following information that will be provided as part of the notice:

- maps showing the location of the proposed northern and southern routes;
- a general description of the route location, as well as a statement that the Company intends to acquire property rights for the right-of-way that the proposed pipeline requires;
- a notice that the Commission must certify the pipeline expansion is needed before the expansion can be constructed;
- the Commission's mailing address, telephone number, and website;
- an explanation of how to get on the Sandpiper Pipeline Project certificate of need mailing list; and
- a statement that pipeline certifications are governed by certain Minnesota laws.

Finally, the Company requested that the Commission modify the timeframe in Minnesota Rules, part 7829.2560, subp. 6, to instead require implementation of the notice plan within 60 days of its approval to allow the notice to more closely coincide with the certificate of need filing.

IV. The Department's Comments

The Department recommended approval of the Notice Plan with the following changes:

1) corrections to the lists of elected and agency government officials identified in Attachments 4a and 4b of the Company's initial filing; 2) the addition of the Commissioner of the Department of Agriculture to the list of government officials to be noticed; and 3) a revision to the cover page for the maps included with the filing.

The Department also recommended that the Commission grant the Company's request for a variance to Minn. Rules, part 7829.2560, subp. 6, to allow implementation of the Notice Plan within 60 days of Commission approval.

The Company did not oppose the Department's proposed revisions, and incorporated all of the Department's recommendations into its revised Notice Plan that it submitted on July 17, 2013.

V. Commission Action

A. Notice Plan

Having considered the Company's proposed Notice Plan and revised Notice Plan, and the comments of Enbridge North Dakota and the Department, the Commission will approve the Notice Plan as revised by the Company with one modification.

The Company proposed to send only the Project Overview Map (Attachment 1a to the Company's initial filing) with the letters to notice recipients, and not the Project Route Maps (Attachment 1b). The Project Route Maps would only be available on the project website or the Commission's website.

The proposed Overview Map, however, does not include county boundaries, city and township locations, major roads, and other geographical features that would enable an interested person to determine whether and how the project might impact him or her. The Commission therefore finds that the proposed Overview Map does not provide adequate notice to recipients of the impact the Project may have on their land, homes, or businesses. Accordingly, the Commission will require the Company to revise the Project Overview Map to include greater detail. The Commission will also delegate to its Executive Secretary the authority to approve the revised Overview Map to be submitted by the Company.

With that modification, the Commission finds that the notice plan meets the requirement of Minn. Rules, part 7829.2560.

B. Notice Time Frame Varied

The rules require applicants to implement notice plans within 30 days of their approval. Here the Company asked the commission to vary that time frame to 60 days, since it was not sure when it would complete its certificate of need application and wanted to ensure that the notice did not become stale if the application were delayed. The Department recommended granting the variance.

Under Minn. Rules 7829.3200, the Commission is authorized to vary any of its rules upon making the following findings:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with any standard imposed by law.

Here, to allow the notice to more closely coincide with the Company's certificate of need filing, ensuring more effective public participation, the Commission will vary Minn. Rules 7829.2560, subp. 6. The Commission will allow Enbridge to implement the approved Notice Plan within 60 days of its approval, making the following findings:

1. Enforcing the 30 day time frame would impose an excessive burden on the Company and notice recipients, by separating the delivery of the notice from the start of the certificate of need process;
2. Granting the variance would not adversely affect the public interest, but would serve the public interest by more closely coordinating the notice and certificate of need processes; and

3. Granting the variance would not conflict with any standards imposed by law, since the 30-day timeline is set by rule, not statute and may therefore be waived.

ORDER

1. Enbridge shall revise the Project Overview map (Attachment 1a to its initial filing), to include greater detail as set forth herein.
2. The Commission delegates to its Executive Secretary the authority to approve the revised Overview Map to be submitted by the Company.
3. Enbridge's Notice Plan, as modified by the Company's revised Notice Plan proposal, and with the addition of the revised Overview Map, is approved.
4. The Commission varies Minn. Rules 7829.2560, subp. 6 to allow Enbridge to implement the approved Notice Plan within 60 days of its approval in this Order.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary



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