

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

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| Beverly J. Heydinger | Chair |
| Nancy Lange | Commissioner |
| Dan Lipschultz | Commissioner |
| John Tuma | Commissioner |
| Betsy Wergin | Commissioner |

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

MPUC Docket No. PL-6668/CN-13-473
OAH Docket No. 8-2500-31260

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

MPUC Docket No. PL-6668/PPL-13-474
OAH Docket No. 60-2500-31259

PETITION FOR REJOINDER AND COMMENT PERIOD

I. INTRODUCTION

North Dakota Pipeline Company LLC (“NDPC”) respectfully submits this Petition for Rejoinder and Comment Period (“Petition”) requesting that the Commission establish a joint proceeding for NDPC’s Applications for a Certificate of Need and Route Permit for the Sandpiper Pipeline Project in Minnesota (the “Project”) in light of the decision by the Minnesota Court of Appeals in *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, A15-0016 (Minn. Ct. App. Sept. 14, 2015) (the “Decision”).

Based on the Decision, NDPC submits that the certificate of need and route permit proceedings should be rejoined and considered through a joint proceeding to ensure that the Commission’s decision in both dockets can be informed by the Comparative Environmental Analysis (“CEA”) that will be prepared pursuant to Minnesota Rule 7852.1500.

II. PROCEDURAL HISTORY

NDPC submitted applications for a certificate of need and route permit on November 13, 2013 (the “Applications”). The Commission accepted the route permit application as complete on February 11, 2014.¹ It accepted the certificate of need application as complete on March 19,

¹ Order Finding the Application Substantially Complete and Varying Timelines – Notice for Hearing. MPUC Docket No. PL6668/PPL-13-474, eDockets ID No. 20142-96351-01 (February 11, 2014).

2014.² The Commission made two separate decisions, on February 11, 2014 and July 7, 2014, to process the Applications through joint proceedings.³

On October 7, 2014, the Commission issued an order separating the certificate of need and route permit proceedings and staying the route permit proceeding to allow the Commission to first make a decision as to the certificate of need.⁴

On August 3, 2015, the Commission issued an Order Granting a Certificate of Need with Conditions to NDPC for the Project.⁵

On August 3, 2015, the Commission also issued an Order Authorizing Recommencement of the Route Permit Proceeding and Providing Direction for the Scope of the CEA.⁶

On September 14, 2015, the Minnesota Court of Appeals issued a decision reversing and remanding the grant of the certificate of need and holding that, “[w]here routing permit proceedings follow certificate of need proceedings, [the Minnesota Environmental Policy Act] requires that an [environmental impact statement] must be completed before a final decision is made on issuing a certificate of need.”⁷ In making its decision, the Court of Appeals recognized that when certificate of need and route permit proceedings are combined, the CEA prepared for the Commission’s review before rendering its decision is authorized by the Environmental Quality Board as an alternative means of environmental review.⁸

On September 18, 2015, Administrative Law Judge (“ALJ”) LaFave conducted a prehearing conference in the route permit docket. At that conference, ALJ LaFave did not set a schedule and instead, based on the uncertainty created by the Decision, requested that parties

² DOC-DER Completeness Letter, eDocket ID. 20143-97478-01 (March 19, 2014).

³ Order Finding the Application Substantially Complete and Varying Timelines – Notice for Hearing. MPUC Docket No. PL6668/PPL-13-474, eDockets ID No. 20142-96351-01 (February 11, 2014) and Order Reaffirming May 30, 2014 Comment Period Deadline and Denying Motion to Bifurcate Certificate of Need and Route Permit Proceedings, MPUC Docket Nos. PL6668/CN-13-473 and PPL-13-474; eDockets ID No. 20147-101234-01 (July 7, 2014).

⁴ Order Separating the Certificate of Need and Route Permit Proceedings and Order Environmental Review of System Alternatives, Docket Nos. PL6668/CN-13-473 and PPL-13-474, eDockets ID No. 201410-103639-02 (October 7, 2014).

⁵ The Commission will meet on October 1, 2015, to consider the petitions for reconsideration concerning the grant of a Certificate of Need for the Project. In light of the Decision, the Commission may determine that the reconsideration petitions are moot, and that the Project’s Certificate of Need is suspended pending further proceedings.

⁶ MPUC Docket No. PL/6668/RP-13-474, eDockets ID No. 20158-112978-01 (August 3, 2015).

⁷ *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, A15-0016 (Minn. Ct. App. Sept. 14, 2015).

⁸ *Id.* at 7.

submit questions regarding the going-forward process in the route permit docket by September 25, 2015, so that he could consider whether and how to receive further direction from the Commission regarding the procedure to be followed in the route permit docket.

III. PETITION

In light of these events, NDPC proposes that it would be prudent to rejoin the certificate of need and route permit proceedings at this time, following the “usual practice” under which the Commission has previously permitted pipeline projects and which the Minnesota Court of Appeals recognized as providing “effective access to a MEPA-compliant environmental review while considering both applications.”⁹ NDPC respectfully suggests that this decision should be made forthwith to avoid additional delay.

NDPC recognizes that the Commission may wish to receive input on this issue from the parties and other stakeholders. NDPC respectfully requests that the Commission establish a 10-day comment period so that the parties may provide comments on rejoinder or other procedures the Commission should follow during its consideration of NDPC’s Applications in light of the Decision.

Establishing this comment period would be consistent with the Commission’s prior solicitation of public comments in these dockets. For instance, the Commission established a short comment period (from August 12 through August 21, 2014) seeking comments on whether and/or how any of the “system alternatives” should be considered in these proceedings. In addition, establishing a comment period at this time would provide the Commission with the perspective of the parties and public and allow the Commission to efficiently and prudently advance these proceedings.

As noted above, ALJ LaFave determined that he could not proceed with further scheduling in the route permit docket without additional procedural guidance from the Commission. NDPC will offer comments to ALJ LaFave prior to September 25, 2015, as requested. However, given that ALJ LaFave is charged only with conducting a contested case proceeding on the route permit application, the questions he certifies back to the Commission are unlikely to fully encompass the procedural issues regarding the certificate of need, route permit and environmental review processes the Commission must address in light of the Decision. Accordingly, NDPC suggests that the Commission consider any questions certified by ALJ LaFave in addition to comments received during the comment period requested in this Petition.

NDPC further requests that the Commission consider NDPC’s present Petition and the comments received during the comment period at one of the Commission’s October meetings to avoid any further delay. The Legislature provided a 12-month process for certificates of need and a nine-month process for pipeline route permits.¹⁰ The Applications were filed in 2013, and now, due to the procedural irregularity introduced at bifurcation, these proceedings will be extended

⁹ *Id.* at 7.

¹⁰ See Minn. Stat. §§ 216B.243, subd. 5 and 216G.02, subd. 3(5).

well into at least 2016. NDPC supports and looks forward to the robust environmental review required under Minn. R. Ch. 7852. It is time to set a procedural course following existing Minnesota law for pipelines and to allow the merits of the Project to be evaluated through a joint contested case proceeding.

IV. CONCLUSION

NDPC respectfully requests that the Commission grant this Petition for Rejoinder and Request for Comments. Due to the importance of timely Commission guidance on these matters, NDPC requests expedited consideration of this Petition. Specifically, NDPC requests that the Commission establish a 10-day comment period and then place this matter on a Commission agenda meeting in October 2015.

Dated: September 21, 2015

Respectfully submitted,

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