BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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

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

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS REGARDING A CERTIFICATE OF NEED FOR THE PROPOSED SANDPIPER PROJECT
INTRODUCTION


North Dakota Pipeline Company LLC ("NDPC" or the "Applicant") seeks a certificate of need ("CN") from the Minnesota Public Utilities Commission (the "Commission" or "MPUC") for the Sandpiper Pipeline project (the "Project"). The Project consists of a pipeline and associated facilities that will transport crude oil from NDPC’s Beaver Lodge Station, south of Tioga, North Dakota, to Clearbrook, Minnesota, and then on to an existing Enbridge terminal in Superior, Wisconsin. In Minnesota, the Project is approximately 302 miles long and will transport 225,000 barrels per day ("bpd") of crude oil from North Dakota to Clearbrook, Minnesota, where an additional 150,000 bpd would enter the Project from NDPC’s existing Line 81 pipeline, resulting in a total annual capacity of 375,000 bpd on the Project from Clearbrook, Minnesota, to Superior, Wisconsin.

PROCEDURAL HISTORY

1. On June 7, 2013, NDPC filed a Notice Plan for the Project with the Commission.1 The notice plan identified two potential routes, one corresponding to the currently existing Enbridge (Lakehead) Mainline running through Clearbrook to Superior (Northerly route) and a second, entering Clearbrook then striking out in a southerly direction from Clearbrook to Park Rapids, then turning east crossing Aitkin County into Carlton County and then heading northeast to Superior (Southerly Route).

2. On June 26, 2013, the Department of Commerce, Division of Energy Resources ("DOC-DER") recommended that the Commission accept NDPC’s proposed Notice Plan, subject to certain revisions.2

3. On July 17, 2013, NDPC provided the revisions suggested by DOC-DER, and, on July 26, 2013, DOC-DER recommended that the Commission accept the proposed Notice Plan.

4. On September 11, 2013, the Commission approved the Notice Plan.3 NDPC revised its plan to remove the Northerly Route from consideration and chose to apply only for the Southerly Route.

5. NDPC implemented the Notice Plan between October 4 and October 17, 2013.4

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1 Ex. 37 (CN Notice Plan).
2 Comments of the Minnesota Department of Commerce, Division of Energy Resources (June 26, 2013) (E-Dockets Document No. 20136-88522-01).
3 Ex. 38 (Order Approving Notice Plan).
4 Ex. 40 (Notice Plan Compliance Filing).
6. On October 4, 2013, NDPC completed direct mail notice to tribal governments and to the governments of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the Project.\(^{5}\)

7. Between October 8 and October 16, 2013, NDPC completed direct mail notice to landowners pursuant to the Notice Plan.\(^{6}\)

8. Between October 10 and October 17, 2013, NDPC published notice of its intent to file a CN Application in a series of local newspapers.\(^{7}\)

9. On November 8, 2013, NDPC filed applications for a CN and a pipeline route permit to construct the Project.\(^{8}\) NDPC also submitted an environmental information report ("EIR") for the Project.\(^{9}\)

10. On November 14, 2013, the Commission established a comment period on the completeness of the NDPC applications.\(^{10}\)

11. On December 5, 2013, DOC-DER recommended that the Commission declare NDPC’s applications complete upon the submission of additional information.\(^{11}\)

12. Also on December 5, 2013, Kennecott Exploration Company ("Kenscott") filed a petition to intervene.\(^{12}\)

13. On January 31, 2014, NDPC filed revised CN and Route Permit applications, as well as a revised EIR (hereinafter, the original and revised CN applications are referred to collectively as the "Application"). The supplemental filing indicated that the company’s name had changed from Enbridge Pipelines (North Dakota) LLC to NDPC and provided information regarding modifications to the proposed route through Carlton County, Minnesota.\(^{13}\)

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\(^{5}\) NDPC Compliance Filing, at 90 (Dec. 15, 2013) (E-Dockets Document No. 201312-94648-02).

\(^{6}\) NDPC Compliance Filing, at 8, 61 and 84 (Dec. 15, 2013) (E-Dockets Document No. 201312-94648-02).


\(^{9}\) Ex. 1 (EIR).

\(^{10}\) Ex. 39 (Notice of Comment Period on Completeness).


\(^{13}\) Ex. 3 (Revised Application and EIR); Revised Application for Pipeline Routing Permit MPUC Docket No. PL-6668/PPL-13-474 (Jan. 31, 2014) (E-Dockets Document No. 20141-96101-01).
14. The applicant, North Dakota Pipeline Company LLC, is a limited liability company duly organized under the laws of the State of Delaware and qualified to do business in Minnesota. North Dakota Pipeline Company. NDPC is a joint venture between Enbridge Energy Partners, L.P. ('EEP') and Marathon Petroleum Corporation ('MPC'). EEP operates the Enbridge Mainline System, the U.S. portion of an operationally integrated pipeline system spanning 3,300 miles across North America to connect producers and shippers of crude oil and natural gas liquids in western Canada with markets in the United States and eastern Canada. MPC is the fourth largest crude oil refiner in the U.S., operating seven 85 refineries in six states (Illinois, Michigan, Ohio, Kentucky, Louisiana, and Texas) 86 with a total crude oil refining capacity of approximately 1.7 million barrels per day 87 ("bpd"). MPC is the largest refiner and marketer in the Midwest.

15. On February 11, 2014, the Commission issued an order finding NDPC’s Application to be substantially complete upon supplementation. On the same date, the Commission issued an order finding that NDPC’s Route Permit Application was substantially complete. The Order authorized the EERA to 1) facilitate the development of route proposals beyond those proposed by the Company; 2) to prepare an analysis of alternative route proposals on the basis of their harm to the environment; and 3) take other procedural steps to enable an evaluation of the Company’s proposed pipeline route. In both orders, the Commission referred the matters to the Office of Administrative Hearings (“OAH”) for contested case proceedings. The Commission also granted party status to NDPC, DOC-DER and Kennecott.14

16. NDPC filed identical Minnesota Environmental Information Reports (herein referred to as “EIR”, the document is also known as an Environmental Assessment Supplement) with Certificate of Need and Routing applications. The Environmental Information Reports state that they were prepared in accordance with the MPUC’s Pipeline Routing rules (Chapter 7853) and supplement information provided in both the PRP and CN applications as follows: Location of Preferred Route and Description of Environment (PRP, Section 7852.2600); Environmental Impact of Preferred Route (PRP, Section 7852.2700); Right-of-Way Protection and Restoration Measures (PRP, Section 7852.2800); Evidence of Consideration of Alternative Routes (PRP, Section 7852.3100); Information Required (CN, Section 7853.0600); Alternatives (CN, Section 7853.0540); Location (CN, Section 7853.0610); Wastewater, Air Emissions, and Noise Sources (CN, Section 7853.0620); Pollution Control and Safeguards Equipment (CN, Section 7853.0630); and Induced Developments (CN, Section 7853.0640).

17. The EIR as prepared by NDPC represents an inventory of the types of geographic features, designed to be a “straightforward comparison” of the resources, by which NDPC meant simply using the quantity of numbers or data to compare alternative systems. (Ploetz pg. 37, lines 20-24)15. NDPC did not weigh in any way the different resources that were being counted, because it considered that a difficult, if not impossible task to achieve. Ploetz Tr. 41, lines 17-22); (pg. 108, lines 4-7). Although the EAS is actually submitted in both dockets, the tables

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14 Ex. 42 (Order Finding Application Substantially Complete Upon Supplementation and Varying Timelines; Notice of and Order for Hearing).
15 (page.37, lines 20-24)
reported density of resources only\textsuperscript{16}. There was no attempt to quantify or compare potential routes based upon how they would be impacted by a spill\textsuperscript{17}, nor was there any consideration of the potential increased risk of spill connected to the Line 3 replacement\textsuperscript{18}.

18. During the month of February, NDPC filed an application with the United States Army Corps of Engineers for a section 404 Clean Water Act Permit for the project. A completed application would have triggered an environmental review under the National Environmental Policy Act (NEPA). A Section 404 permit is a prerequisite for construction of the pipeline. However the application was ruled by the USACE to be incomplete and NDPC has not yet filed a completed application. The failure to complete the section 404 application terminated the federal environmental review that would otherwise have been commenced.

19. On February 27, 2014, Administrative Law Judge ("ALJ") Eric L. Lipman issued the First Prehearing Order, which reassigned the dockets to the ALJ and set a First Prehearing Conference for March 17, 2014.\textsuperscript{19}

20. Between March 3 and March 13, 2014, staff from the Commission and the Minnesota Department of Commerce, Energy Environmental Review and Analysis unit ("DOC-EEERA" or "EEERA") conducted seven public information meetings in six different counties along the route proposed by NDPC.\textsuperscript{20}

21. On March 11, 2014, Honor the Earth ("HTE") filed a petition for intervention,\textsuperscript{21} and on March 12, 2014, Carlton County Land Stewards (CCLS) filed a petition to intervene in the routing docket; CCLS subsequently filed a petition to intervene in the CON docket.

22. On March 16, 2014, HTE filed a motion to dismiss NDPC’s applications. It supplemented its motion with a brief, filed on April 8, 2014.\textsuperscript{22}

23. On March 19, 2014, NDPC filed supplemental information for sections 7853.0510 and 7853.0530 of its Application.\textsuperscript{23}

24. On March 24, 2014, the Commission issued a letter deeming the Application complete as of March 19, 2014.\textsuperscript{24}

\textsuperscript{16} (Pg.123-lines 19-25, pg.124)
\textsuperscript{17} pg.62, 15-19
\textsuperscript{18} Tr. 106, lines 17-23.
\textsuperscript{19} First Prehearing Order (Feb. 27, 2014) (E-Dockets Document No. 20142-96862-01).
\textsuperscript{21} HTE’s Petition to Intervene (Mar. 11, 2014) (E-Dockets Document No. 20143-97200-01).
\textsuperscript{22} Notice of \textit{Lis Pendens} and Motion to Dismiss for Lack of Jurisdiction (Mar. 16, 2014) (E-Dockets Document No. 20143-97361-02).
\textsuperscript{23} Ex. 4 (Supplemental Application Information Sections 0510 and 0530).
25. A comment period was initially open in the Route Permit proceeding from January 31, 2014, through April 4, 2014, to provide the public an opportunity to comment on potential human and environmental impacts and to suggest alternative pipeline routes to be considered in the comparative environmental analysis ("CEA") to be prepared by DOC-EERA.\(^{25}\)

26. On April 4, 2014, HTE submitted a "Motion to Extend or Suspend the Current Deadlines for Alternative Routes and Add Community Public Hearings," which asked the Commission to provide additional public hearings, extend the deadline to submit comments on alternative pipeline routes, and bifurcate the CN and Route Permit proceedings.\(^{26}\)

27. On April 8, 2014, the ALJ issued the Second Prehearing Order. The Second Prehearing Order granted HTE's petition to intervene and set forth a schedule and procedures for the contested case proceedings.\(^{27}\)

28. On April 14, 2014, the Commission issued a notice extending the public comment period from April 4, 2014, to May 30, 2014. On the same day, the Commission denied HTE's request for additional public information meetings. Also on the same day, the Commission issued a notice of comment period on whether to separate the CN and Route Permit proceedings.\(^{28}\)

29. On April 21, 2014, Friends of the Headwaters ("FOH") submitted a petition to intervene in the CN proceeding.\(^{29}\)

30. On April 22, 2014, the ALJ issued the Third Prehearing Order. The Third Prehearing Order established a date for oral argument on HTE's motion to dismiss and altered certain other dates in the schedule.\(^{30}\)

31. On May 1, 2014, White Earth Band of Ojibwe ("WEBO") submitted a petition to intervene.\(^{31}\)

\(^{24}\) Letter from the MPUC to Kevin Walli (Mar. 24, 2014) (E-Dockets Document No. 20143-97531-01).


\(^{26}\) MPUC Docket No. PL-6668/PPL-13-474, Motion to Extend or Suspend the Current Deadlines for Alternative Routes and Add Community Public Hearings (Apr. 4, 2014) (E-Dockets Document No. 20144-97971-01).


\(^{28}\) Ex. 43 (Notice of Comment Period on Motion to Separate Certificate of Need and Route Permit Proceedings).


\(^{31}\) Petition to Intervene (May 1, 2014) (E-Dockets Document No. 20145-99115-01).
32. On May 5, 2014, the ALJ issued the Fourth Prehearing Order, which established procedures for the hearing on HTE’s motion to dismiss.32

33. On May 7, 2014, the ALJ issued the Fifth Prehearing Order. The Fifth Prehearing Order certified HTE’s request to extend the comment period and bifurcate the proceedings to the Commission.33

34. On May 9, 2014, the ALJ issued the Sixth Prehearing Order, which granted intervention to WEBO and FOH.34

35. On May 20, 2014, the ALJ issued the Seventh Prehearing Order, denying HTE’s motion to dismiss NDPC’s CN and Route Permit applications.35

36. On May 28, 2014, the ALJ issued the Eighth Prehearing Order, which cancelled and rescheduled the prehearing conference.36

37. On June 9, 2014, the ALJ issued the Ninth Prehearing Order, which suspended the deadlines set forth in the Second Prehearing Order and ordered the parties to confer on a new schedule for the proceedings.37

38. On June 12, 2014, the Minnesota Chamber of Commerce (the “Chamber”) submitted a petition to intervene.38


40. On July 7, 2014, the Commission issued an order reaffirming its decision to extend the comment period until May 30, 2014, and denying HTE’s motion to bifurcate the proceedings.40

41. On July 8, 2014, the ALJ issued the Tenth and Eleventh Prehearing Orders. The Tenth Prehearing Order denied HTE’s request for reconsideration of the Seventh Prehearing Order. The Eleventh Prehearing Order granted intervention to the Chamber and LDC.41

34 Sixth Prehearing Order (May 9, 2014) (E-Dockets Document No. 20145-99352-01).
38 Chamber’s Petition for Intervention (June 12, 2014) (E-Dockets Document No. 20146-100359-01).
40 Ex. 44 (Order Reaffirming May 30, 2014 Comment Deadline and Denying Motion to Bifurcate Proceedings).
42. On July 11, 2014, the ALJ issued the Twelfth and Thirteenth Prehearing Orders. The Twelfth Prehearing Order is the Protective Order governing these proceedings. The Thirteenth Prehearing Order set forth an amended schedule for the proceedings.\footnote{Tenth Prehearing Order (July 8, 2014) (E-Dockets Document No. 20147-101294-01); Eleventh Prehearing Order (July 8, 2014) (E-Dockets Document No. 20147-101295-01).}

43. On July 17, 2014, DOC-EERA filed comments and recommendations summarizing the alternative route designation process and identifying 54 route alternatives and eight “system alternatives” it considered (SA-01 through SA-08).\footnote{Twelfth Prehearing Order (July 11, 2014) (E-Dockets Document No. 20147-101387-01); Thirteenth Prehearing Order (July 11, 2014) (E-Dockets Document No. 20147-101390-01).} In addition, DOC-EERA suggested a potential modification to SA-03 (“SA-03, as modified”) to create a connection at Clearbrook. EERA recommended that the Commission consider 53 route alternatives. DOC-EERA further recommended that the Commission not consider the eight system alternatives because “they do not meet the purpose of the project as identified in the permit application and are, therefore, not alternative routes for accomplishing the purpose of the project.”\footnote{MPUC Docket No. PL-6668/PPL-13-474, Comments and Recommendations of DOC-EERA Staff (July 17, 2014) (E-Dockets Document No. 20147-101573-03).}

44. On August 6, 2014, the Minnesota Pollution Control Agency submitted comments to the PUC urging that the Commission expand the alternatives. Given the high potential of additional pipelines and replacement or upgrading of existing pipelines in the near future, and within the same corridors, it is critical that the current effort consider multiple alternatives, including both route and system alternatives. MPCA stated that limiting the alternatives to route options alone at this stage would unnecessarily narrow the scope of project options to reduce environmental and public health risks.

45. The MPCA’s August 6 2014 comments raised concerns about unresolved issues including: “Future access to potential release sites; construction and operation of the break-out tanks; cumulative impacts from construction of additional pipelines and infrastructure in the area; emergency responsiveness and spill prevention; inspections and monitoring conducted during construction; proposed water body crossing methods and time frames; wastewater issues; and water quality, watershed and wetland issues.”

46. On August 7, 2014, the Commission met to consider which route alternatives would be accepted for further consideration in the CEA and the Route Permit Application public hearings.\footnote{Ex. 80, at 19 (EERA Report); see also Evid. Hr’g Tr. Vol. 7, at 245:17-18 (Pile). (“None of the system alternatives were recommended to go into routing.”).}

\footnote{MPUC Docket No. PL-6668/PPL-13-474, Notice of Commission Meeting (E-Dockets Document No. 20147-101743-02).}
47. On August 8, 2014, NDPC filed the direct testimony of the following individuals: Neil Earnest, A.J. Johnson, Robert Steede, Paul Eberth, Art Haskins, William Rennicke, John Glanzer, Michael Palmer, Dr. Richard Lichty, Barry Simonson and Sara Ploetz.\textsuperscript{46}

48. On August 12, 2014, the ALJ issued the Fourteenth Prehearing Order, which clarified several deadlines set forth in the Thirteenth Prehearing Order.\textsuperscript{47}

49. On August 12, 2014, the Commission issued a notice providing for an additional 14-day comment period concerning further review of the eight system alternatives and whether they should be considered, and, if so, in the CN or the Route Permit docket.\textsuperscript{48}

50. On August 25, 2014, the Commission issued its written Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice and Setting Procedures. In that order, the Commission accepted the 53 route alternatives recommended by DOC-EERA, as well as SA-03, as modified, for consideration in the Route Permit contested case hearing. The Commission also directed NDPC to prepare a “pipeline safety report” to be filed with direct testimony in the Route Permit proceeding.\textsuperscript{49}

51. On August 26, 2014, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the “UA”) submitted a petition to intervene.\textsuperscript{50}

52. On August 27, 2014, the Greater North Dakota Chamber (“GNDC”) submitted a petition to intervene.\textsuperscript{51}

53. On August 29, 2014, Carlton County Land Stewards (“CCLS”), which had previously intervened in the routing proceeding, submitted a petition to intervene in the CON docket.\textsuperscript{52}

\textsuperscript{46} Ex. 6 (Eberth Direct); Ex. 7 (Steede Direct); Ex. 8 (Glanzer Direct); Ex. 9 (Simonson Direct); Ex. 10 (Johnson Direct); Ex. 11 (Ploetz Direct); Ex. 12 (Haskins Direct); Ex. 13 (Palmer Direct); Ex. 14 (Earnest Direct); Ex. 15 (Rennicke Direct); and Ex. 16 (Lichty Direct).

\textsuperscript{47} Notice of Comment Period (Aug. 12, 2014) (E-Dockets Document No. 20148-102215-01).

\textsuperscript{48} Notice of Comment Period (Aug. 12, 2014) (E-Dockets Document No. 20148-102195-01). The order requested briefing on (1) What if any of the eight system alternatives identified in the Department of Commerce Alternative Routes Summary Report should be considered further in these proceedings? (2) What is the legal basis for determining whether a system alternative should be considered in the certificate of need proceeding? (3) What is the legal basis for determining whether a system alternative should be considered in the route permit proceeding?

\textsuperscript{49} Ex. 46 (Order Accepting Alternative Route and System Alternatives for Evidentiary Development, Requiring Notice, and Setting Procedures).

\textsuperscript{50} UA’s Petition to Intervene (Aug. 26, 2014) (E-Dockets Document No. 20148-102526-01).

\textsuperscript{51} GNDC’s Petition to Intervene (Aug. 27, 2014) (E-Dockets Document No. 20148-102583-01).
54. On September 4, 2014, the ALJ issued the Fifteenth Prehearing Order, which set a prehearing status and scheduling conference.\textsuperscript{53}

55. On September 9, 2014, the ALJ issued the Sixteenth Prehearing Order, granting intervention to the UA, GNDC and CCLS.\textsuperscript{54}

56. On September 11, 2014, the Commission met to consider the comments received in response to its August 12 notice regarding further consideration of system alternatives SA-01 through SA-08. At that meeting, the Commission decided to bifurcate the CN and Route Permit proceedings.\textsuperscript{55}

57. On September 19, 2014, the ALJ issued the Seventeenth Prehearing Order, which cancelled all deadlines in the Route Permit proceedings, set forth amended deadlines for the CN proceeding, and established other procedures for the CN proceeding.\textsuperscript{56}

58. On October 7, 2014, the Commission issued the written order resulting from its September 11, 2014 meeting (the “October 2014 Order”). The Commission separated the CN proceeding from the Route Permit proceeding and postponed action on the Route Permit Application until the Commission made a decision on the Application. In addition, the Commission authorized environmental review of six system alternatives (SA-03 through SA-08). The Commission requested that DOC-EERA staff complete the environmental review prior to the contested case hearings in the CN docket.\textsuperscript{57} The Order stated that “The Commission anticipates that this review should evidence, from a broad environmental perspective, the relative risks and merits of choosing a different system alternative. The analysis need not, and likely cannot, include the significant analytical detail used in the comparative environmental analysis to be conducted in the routing process.”

59. The PUC further stated that “to ensure that an environmental review is available to the public and the parties, the Commission requests that the EERA prepare an environmental review document that examines and evaluates the potential impacts of the proposed project with those of the six alternative system configurations, and other alternative methods to satisfy need.”\textsuperscript{58}

60. On October 15, 2014, NDPC submitted a petition for a separate docket and protective order for highly sensitive nonpublic data which would govern certain information which it was otherwise prohibited from disclosing pursuant to federal law. On November 5,

\textsuperscript{52} CCLS’ Petition to Intervene (Aug. 29, 2014) (E-Dockets Document No. 20148-102617-01).
\textsuperscript{53} Fifteenth Prehearing Order (Sept. 4, 2014) (E-Dockets Document No. 20149-102868-01).
\textsuperscript{54} Sixteenth Prehearing Order (Sept. 9, 2014) (E-Dockets Document No. 20149-102950-01).
\textsuperscript{55} Ex. 47 (Notice of Commission Meeting).
\textsuperscript{56} Seventeenth Prehearing Order (Sept. 19, 2014) (E-Dockets Document No. 20149-103165-01).
\textsuperscript{57} Ex. 48 (Order Separating Certificate of Need and Route Permit Proceedings and Requiring Environmental Review of System Alternatives).
\textsuperscript{58} Id., p 12
2014, the ALJ granted NDPC's petition, and MPUC Docket No. 14-954 was established for the limited purpose of facilitating the secure disclosure of certain information by NDPC to various state agencies.  


62. On October 30, 2014, the Commission held a meeting at which it addressed the parties' petitions for reconsideration of the August 25, 2014 order.  

63. On November 5, 2014, the ALJ issued the Eighteenth Prehearing Order, which granted NDPC's petition for a separate docket and protective order for highly sensitive nonpublic data.  


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61 Ex. 49 (Notice of Commission Meeting).
64 Ex. 100 (Order Denying Reconsideration and Clarifying Procedural Posture).
66. On November 19, 2014, the following parties submitted direct testimony: the Chamber, GDNC, CCLS, DOC-DER, FOH, HTE, UA and LDC.\(^{65}\)

67. On December 1, 2014, HTE submitted a Request for PUC to Modify CN Calendar of Milestones to the Commission.\(^{66}\)

68. On December 4, 2014, the Commission held a meeting at which it addressed the parties’ petitions for reconsideration of the October 2014 Order.\(^{67}\) On December 5, 2014, the Commission issued an order denying parties’ petitions for reconsideration of the October 2014 Order.\(^{68}\)

69. On December 15, 2014, the Commission published in the State Register a Notice of Filing and Comment Period in the Matter of the Application of NDPC for a CN for the Sandpiper Pipeline Project in Minnesota. The notice provided that the Commission would hold public hearings to receive comments on NDPC’s Application for the Project between January 5 and January 9, 2015, in the following Minnesota cities: St. Paul, Duluth, Bemidji, Crookston and St. Cloud. The notice further provided that interested persons could submit written comments on the Project by January 23, 2015.\(^{69}\)

70. On December 17, 2014, the Commission referred HTE’s Request for PUC to Modify CN Calendar of Milestones to the ALJ.\(^{70}\)

71. On December 18, 2014, DOC-EERA filed the Comparison of Environmental Effects of Reasonable Alternatives (the “EERA Report”), along with related maps and appendices. The EERA Report described the environmental features present in a two-mile wide Study Area for SA-03 through SA-08 and the Preferred Route.\(^{71}\) The EERA report did not describe or compare the environmental impacts of the system alternatives on the environment.

72. Also on December 18, 2014, FOH filed a Request for Continuance asking the ALJ to modify the schedule for the CN proceedings. WEBO and CCLS submitted similar

\(^{65}\) Exs. 50-52 (Heinen Direct); Ex. 110 (Chapman Direct); Ex. 130 (LaDuke Direct); Ex. 180 (Stolen Direct); Ex. 181 (Smith Direct); Ex. 200 (Blazar Direct); Ex. 201 (Younggren Direct); Ex. 210 (Olson Direct); Ex. 211 (Engen Direct); Ex. 212 (Duncombe Direct); Ex. 220 (Barnett Direct); Ex. 230 (Herauf Direct).


\(^{67}\) Notice of Commission Meeting (Nov. 21, 2014) (E-Dockets Document No. 201411-104822-23).

\(^{68}\) Ex. 101 (Order Denying Reconsideration).

\(^{69}\) Ex. 104 (Notice in State Register).

\(^{70}\) Letter to the Honorable Eric Lipman re HTE’s Motion (Dec. 17, 2014) (E-Dockets Document No. 201412-105478-02).

\(^{71}\) Ex. 80 (EERA Report).
requests on December 24 and December 29, respectively. NDPC submitted a response in opposition to the requests on December 29, 2014.72

73. On January 2, 2015, the ALJ issued the Nineteenth Prehearing Order, which denied the requests for a continuance.73

74. On January 5, 6, 7, 9 and 12, the ALJ presided over public hearings in St. Paul, Duluth, Bemidji, St. Cloud and Crookston.

75. NDPC filed its rebuttal testimony on January 5, 2015.74 Included in NDPC’s rebuttal testimony was its environmental and engineering analysis of two-mile wide corridors (the “Study Areas”) for each system alternative, SA-03, as modified, and the Preferred Route. DOC-DER filed rebuttal testimony on January 6, 2015.75 CCLS and HTE filed rebuttal testimony on January 7, 2015.76

76. On January 15, 2015, FOH submitted requests for subpoenas from Minnesota Department of Natural Resources (“MDNR”) and Minnesota Pollution Control Agency (“MPCA”).77 On January 16, 2015, the ALJ issued the Twentieth Prehearing Order, which denied the subpoena requests.78

77. The following parties filed surrebuttal testimony on January 21, 2015: NDPC, FOH, CCLS, and DOC-DER.79 On January 22, 2015, MDNR and MPCA also submitted testimony.80

74 Ex. 17 (Eberth Rebuttal); Ex. 18 (Earnest Rebuttal); Ex. 19 (Glanzer Rebuttal); Ex. 20 (Steede Rebuttal); Ex. 21 (MacPhail Rebuttal); Ex. 22 (Palmer Rebuttal); Ex. 23 (Simonson Rebuttal); Ex. 24 (Trade Secret Simonson Rebuttal); Ex. 25 (Haskins Rebuttal); Ex. 26 (Baumgartner Rebuttal); Ex. 27 (Ploetz Rebuttal); Ex. 28 (Wuolo Rebuttal); and Ex. 29 (Rennicke Rebuttal).
75 Ex. 53 (Heinen Rebuttal).
76 Ex. 111 (Chapman Rebuttal); Ex. 131 (LaDuke Rebuttal).
77 Requests for Subpoenas to be Served on Employees of the MPCA filed on behalf of the FOH (Jan. 15, 2015) (E-Docket Document No. 20151-106203-01); Requests for Subpoenas to be Served on Employees of the MDNR filed on Behalf of the FOH (Jan. 15, 2015) (E-Docket Document No. 20151-106253-01).
79 Ex. 183 (Smith Surrebuttal); Ex. 30 (Crane Surrebuttal); Ex. 184 (Stolen Surrebuttal); Ex. 31 (Earnest Surrebuttal); Ex. 112 (Chapman Surrebuttal); Ex. 54 (Heinen Surrebuttal); Ex. 182 (Reddy Surrebuttal).
80 MDNR also made an agency representative available for questions at the evidentiary hearing; MPCA declined to do so. Testimony of Scott Lucas, MPCA (Jan. 22, 2015) (E-Dockets Document No. 20151-106473-01); Ex. 185 (Schrenzel Direct); Testimony of Nathan Kestner,
78. On January 23, 2015, the Minnesota Department of Natural Resources submitted its official position regarding the Certificate of Need. The DNR determined that "Comparison of Environmental Effects of Reasonable Alternatives" was inadequate to identify which system alternative would have the least environmental impact, stating: "In general, due to the limited scope requested for this document, the broad geographic area, and challenges related to the type of data and analysis used, DNR was not able to use this document alone to identify the least environmentally impacting System Alternatives."

79. When only comparing applicant's proposed route and SA-03, DNR found:

SA-03 appears to impact less natural resources than SA-Applicant. SA-Applicant features that would incur impacts greater than those identified for SA-03 are: forest and wetland acreage, river and stream segment crossings, and crossings of public lands. Cultivated lands and occurrences of already-impaired waters are greater along SA-03, indicating the developed state of lands along this route.

80. The DNR found that routes located south of I-94 appeared feasible from a natural resources perspective and were environmentally superior to the northerly routes:

Within Minnesota, more southern routes (south of I-94 corridor) have less concentration of natural resources (regardless of length) within the 2-mile corridor. Therefore, there is a greater opportunity for avoidance of resources with the more southern System Alternatives...From a natural resource perspective, the more southern routes appear to be feasible and prudent System Alternatives that merit consideration.

81. The Minnesota Pollution Control Agency submitted its official position regarding the Certificate of Need on January 23, 2015. The MPCA wrote:

SA-Applicant presents significantly greater risks of potential environmental impacts and encroaches on higher quality natural resources than SA-03 and several other system alternatives. Minn. Rule 7853.0130.8(3). The effects of SA-Applicant on the natural environment support a determination in favor of other alternatives. Minn. Rule 7853.0130.C(2) and C(3).

82. The MPCA's position continued:


During these proceedings, the MPCA has commented extensively on the environmental concerns regarding the route proposed by Applicant in comparison to alternative routes and system alternatives. MPCA's prior comments can be found in Document Nos. 20146-100780-01, 20148-102458-02 and 20148-102458-04, each incorporated by reference. These prior comments have addressed such specific items as access to potential release sites in surface waters, potential to impact ground water, wild rice, the state's highest-quality surface water systems, wildlife habitat, low income populations, watersheds currently being assessed for restoration and protection strategies, fisheries, economies, and numerous other parameters.

In these comments, the MPCA concluded that with respect to protection of the highest-quality natural resources in the state, the SA-Applicant route presents significantly greater risks of potential impacts to environment and natural resources than several of the system alternatives, including SA-03. (emphasis added)

83. As described in more detail below, the Commission received numerous comments on NDPC's Application by the close of the comment period on January 23, 2015.

84. Between January 27 and January 30, 2015, the ALJ held evidentiary hearings in St. Paul, Minnesota.

SUMMARY OF PUBLIC COMMENTS

85. Over 2,000 written comments regarding the Project were submitted, including comments from individual members of the public, state agencies, state legislators, counties, townships, cities, tribal groups, chambers of commerce and other business organizations, environmental groups, watershed organizations, property owner associations, labor and trade unions, consulting, engineering, construction, and other professional service companies, industry associations, and energy and power companies.

86. A significant number of comments advocated for a pipeline as opposed to rail, truck, or the no-action alternative. Many comments advocated for the positive economic benefits of a pipeline to carry Bakken petroleum through Minnesota including the following reasons: the economic benefits associated with job opportunities and tax revenue; transportation of oil by pipeline is safer than transportation by rail or truck; approval of a pipeline would alleviate rail congestion and free up rail capacity for other commodities such as agricultural products, taconite, and coal; and, moving toward energy independence by using domestic oil supplies.

87. Many of the comments supporting the Applicant's project indicated that the commenter favored a pipeline solution in general without identifying reasons why the Applicant's project would be superior to a system or route alternative.
88. Several commenters stated they were speaking from personal experience as former or current employees or contractors of Enbridge regarding the company’s commitment to safety and environmental stewardship.

89. A number of commenters, including parties, contended that the environmental review was inadequate.

90. Many comments expressed concern over the Commission’s decisions to bifurcate the CN and Route Permit applications and require analysis of six system alternatives. These comments generally stated that the Commission’s decision was inconsistent with the established regulatory processes and creates uncertainty for any company considering building energy infrastructure in Minnesota.

91. Numerous counties, townships, cities, associations, and organizations passed resolutions in support of a Project or issued letters of support for a Project\textsuperscript{82}. The majority of these comments were filed prior to completion of the comparative environmental analysis. Some cited a specific preference for the applicant’s preferred project\textsuperscript{83}, others supported a pipeline project as opposed to rail\textsuperscript{84}, specifically focused on tax revenue that the pipeline would bring to their jurisdiction\textsuperscript{85}, or contended that the PUC should accept whichever route could be constructed first, so as to alleviate rail congestion\textsuperscript{86} or realize the benefits of a project. Few, if any of the local and county government comments indicated that they had engaged in diligence to examine the project from a land use planning or environmental perspective.

92. Approximately 60 State of Minnesota legislators signed letters supporting a pipeline project.

93. Written comments submitted in opposition to the Project generally included the following concerns: climate change and global warming; preference for renewable energy

\textsuperscript{82} Aitkin County Board of Commissioners, Carlton County Board of Commissioners, Clearwater County Assessor, Clearwater County Board of Commissioners, Clearwater County Treasurer, Nelson County Board of Commissioners, Polk County Board of Commissioners, Red Lake County Board of Commissioners, Lake Pleasant Township, Red Lake County Township Association, Timothy Township Board, City of Crookston, City of Gonvick, Beltrami County Farm Bureau, Cass County Farm Bureau, Wadena County Farm Bureau, Bemidji Chamber of Commerce, Brainerd Lakes Chamber of Commerce, Dakota County Regional Chamber of Commerce, Duluth Area Chamber of Commerce, Grand Forks/East Grand Forks Chamber, Grand Rapids Area Chamber of Commerce, Hibbing Area Chamber of Commerce, International Falls Area Chamber of Commerce, Laurentian Chamber of Commerce, McGregor Area Chamber of Commerce, TwinWest Chamber of Commerce, Winona Area Chamber of Commerce, Belle Taine Lake Association, Conservationists with Common Sense, Duluth Seaway Port Authority, Grand Forks Region Economic Development, Gully Tri Coop Association, Mid-America Chamber Executives Advocacy Alliance, Minnesota AgriGrowth Council, Minnesota/Wisconsin Petroleum Council, North Dakota Petroleum Council, and Up North Jobs Inc.

\textsuperscript{83} E.g., Duluth Seaway Port Authority (20151-106537-01); Lake Pleasant Township (20151-106367-02)

\textsuperscript{84}Eg., Laurentian Chamber of Commerce (20151-106367-02); Hibbing Area Chamber of Commerce (20151-106367-02)

\textsuperscript{85}Eg., Lake Pleasant Township (20151-106367-02)

\textsuperscript{86} "Minnesota AgriGrowth Council, and cosigners Minnesota Petroleum Council (API), Cass County Farm Bureau Gully Tri-Co-Op Association, McGregor Chamber of Commerce, Wadena County Farm Bureau, Beltrami County Farm Bureau (201410-103922-01);"
sources; risk of spills, fires, and leaks; existing or other proposed pipelines being adequate to transport oil; potential environmental impacts on lakes, rivers, wetlands, watersheds, aquifers, and wild rice; interference with tribal rights to hunt, fish, and gather; and potential impacts on tourism. Several comments referred to the oil spill on the Kalamazoo River in Michigan and the recent oil spill from the Bridger Pipeline LLC Poplar Pipeline on the Yellowstone River in Montana.

94. A number of comments questioned the need for the Project, citing the recent decline in oil prices and uncertainty of continued production from the Bakken field of North Dakota. Some comments also disagreed with statements that the pipeline would lead to a significant reduction in rail traffic because oil would continue to be transported by rail regardless of the Project. Other comments disagreed with statements about the economic benefits associated with job opportunities because many of the jobs created would be temporary in nature and filled by out-of-state workers.

95. A number of comments requested that a full Environmental Impact Statement ("EIS") be prepared for the Project. A number of comments also requested that additional consideration be given to the SA-04 and/or SA-03 system alternatives as environmentally preferable and feasible routes.

STATE AGENCY POSITIONS

96. The Minnesota Department of Natural Resources has broad jurisdiction over Minnesota’s public waters (including rivers, streams, lakes and wetlands) Minnesota Chapter 103G, game and fish, Chapter 97-102, and broad powers over conservation, state lands, forestry and lands and minerals. The commissioner of the DNR has charge and control of all...waters of the state and of the use, sale, leasing, or other disposition thereof....Minn. Stat. § 84.027 subdiv. 2. The Department of Natural Resources issues pipeline permits for crossings over public waters and thus has important regulatory authority over pipelines that cross public waters and public lands. All utility crossings (transmission and distribution) of wild, scenic or recreational rivers, or of state lands within their land use districts which are under the control of the commissioner, require a permit from the commissioner pursuant to Minnesota Statutes, section 84.415 or 103G.245 under Minn. Rules 6105.0170. The position of the Department of Natural Resources on matters within its jurisdiction are thus entitled to great weight.

97. Minnesota Rule 6135.1600, administered by the Department of Natural Resources, explicitly states that utility crossing permits are subordinated to the Minnesota Environmental Policy Act as follows:

There are other Minnesota and Federal laws and rules and regulations concerned with utility crossings and the environment. In case of conflict with other environmental regulations, the parts included herein will be subordinated to any law, rule, or regulation which is stricter in its protection of the environment. Other related environmental laws and rules and regulations include but are not limited to those associated with: A. federal and state wild, scenic, and recreational rivers; B. the Minnesota Environmental Protection Act; and C. natural and scientific areas.
Minnesota Rule Section, 6135.1100 also under Minnesota DNR jurisdiction, explicitly incorporates the avoidance and least impact principles of MEPA as follows:

Subp. 4. Crossing public waters. With regard to crossing of public waters: A. avoid streams, but if that is not feasible and prudent, cross at the narrowest places wherever feasible and prudent, or at existing crossings of roads, bridges, or utilities; and B. avoid lakes, but where there is no feasible and prudent alternative route, minimize the extent of encroachment by crossing under the water.

The DNR found that the environmental reviews conducted by Applicant and Department of Commerce were inadequate to complete a proper alternatives review. The DNR found that

"Within Minnesota, more southern routes (south of I-94 corridor) have less concentration of natural resources (regardless of length) within the 2-mile corridor. Therefore, there is a greater opportunity for avoidance of resources with the more southern System Alternatives. The DNR found that “When only comparing the SA-03 route and the applicant’s route, DNR found, SA-03 appears to impact less natural resources than SA-Applicant. SA-Applicant features that would incur impacts greater than those identified for SA-03 are: forest and wetland acreage, river and stream segment crossings, and crossings of public lands. Cultivated lands and occurrences of already-impaired waters are greater along SA-03, indicating the developed state of lands along this route.”"

The Minnesota Pollution Control Agency was established

“To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state...” Minn. Stat. § 116.01. The Commission has extensive experience in the preparation of environmental reviews under its statutory authority. Minn. Stat. § 116.02. It has broad and extensive jurisdiction in the protection of Minnesota’s waters, and has regulatory authority over pollution in cooperation with the federal Environmental Protection Agency and the United States Army Corps of Engineers under the Clean Water Act.

The MPCA found,

“SA-Applicant presents significantly greater risks of potential environmental impacts and encroaches on higher quality natural resources than SA-03 and several other system alternatives. Minn. Rule 7853.0130.8(3). The effects of SA-Applicant on the natural environment support a determination in favor of other alternatives. Minn. Rule 7853.0130.C(2) and C(3).”.....“The MPCA concluded that with respect to protection of the highest-quality natural resources in the state, the SA-Applicant route presents significantly greater risks of potential impacts to
environment and natural resources than several of the system alternatives, including SA-03.”

102. MPCA’s permitting and environmental review jurisdiction entitle its position statement on matters within its jurisdiction to great weight.

TRIBAL SOVEREIGNS

103. The Mille Lacs Band’s position statement requests that the Public Utilities Commission deny the North Dakota Pipeline Company’s (NDPC) application for a certificate of need for the Sandpiper pipeline. It writes:

“The pipeline route proposed by NDPC would have greater negative impacts to wild rice, water and other natural resources utilized by the Band than several of the system alternatives proposed by the Minnesota Pollution Control Agency (MPCA) and citizen groups. The proposed route for the Sandpiper pipeline project borders our Minisinaakwaang (East Lake) Community and threatens the Big Sandy Lake and Rice Lake watersheds, in which the Band's members and their ancestors have gathered wild rice and harvested other natural resources for generations. Neither the Comparative Environmental Analysis (Doc. # 201412-105544, Dec. 18, 2014) prepared for the proposed route and the six system alternatives identified by the MPCA nor the revised Environmental Information Report submitted by the North Dakota Pipeline Company (Doc. # 20141-96101-02) discuss the impacts that pipeline construction and operation could have on wild rice waters or other natural resources of critical importance to the Band.”

104. The Fond du Lac Band of Lake Superior Chippewa position statement writes:

“Changes in hydrology affect wetland type, and indirectly affect wetland functions, including wildlife habitat, fisheries habitat, groundwater recharge, surface water retention, nutrient transformation, sediment retention, conservation of biodiversity, etc. The Alberta Clipper and Southern Lights projects have already impacted the Fond du Lac wetlands along the Enbridge pipeline corridor. A Geographical Information Systems (GIS) analysis reveals up to forty (40) newly developed intermittent streams since the pipelines were installed. The National Wetland Inventory (NWI) documents a wetland type change from one side of the pipeline corridor to the other, clearly showing hydrology impacts from pipeline installations.”

105. Tribal sovereigns have a right to express their environmental concerns insofar as a project impacts tribal lands or treaty rights in the NEPA process. NDPC has not yet commenced the USACE Section 404 permitting process.

APPLICABLE LAW

106. Applicant has been, or intends to, assemble its pipeline route using the power of eminent domain under Minnesota Statutes Section 117.48 which grants an entity engaged in the business of transporting crude petroleum by pipeline as a common carrier certain powers of eminent domain for purpose of its common carrier business. A variety of federal state and local permitting requirements are necessary for the operation and construction of a petroleum pipeline. Large energy facility certificate of need and routing permits are required. The applicant’s proposal is subject to the requirements of Minnesota Chapter 116D, and is subject to applicable provisions for a project that has potential for significant environmental effects.

107. The exercise of public domain requires a declaration of public purpose and necessity that the taking of land for the proposed purpose is in the public interest and is necessary for that public purpose. Neither Minnesota Constitutions nor the United States Constitution authorizes a taking for a private purpose. The responsibility is to determine that the proposed project’s purpose is a public purpose and that the particular land chosen belongs to the State government.

108. Permits required by a petroleum permit include utility of public waters, of wild, scenic or recreational rivers, or of state lands within their land use districts which are under the control of the commissioner, pursuant to Minnesota Statutes, section 84.415 or 103G.245 under Minn. Rules 6105.0170. Minnesota Pollution Control Agency permits and US Army Corps of Engineers Clean Water Act permits.

Minnesota Environmental Policy Act

109. Minn. St. 116D.03, subd. 2(c), states that all departments and agencies shall “(i)dentify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations.”

110. Minn. St. 116D.04, subd. 6, prohibits the issuance of a permit for natural resources management and development if it is likely to have an adverse impact on the environment “so long as there is a feasible and prudent alternative.” “Economic considerations alone shall not justify such conduct.” This policy is echoed elsewhere in the statutes88.

111. Once project opponents have demonstrated that a project inflicts major environmental damage, the burden shifts to the project proponent to demonstrate that there exists no feasible lesser impact alternative89.

89 State by Archabal v. Cnty. of Hennepin, 495 N.W.2d 416, 423 (Minn. 1993) See People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental
112. Minnesota’s Environmental Policy Act provides that information on environmental impacts must be collected and publicly provided so that decision makers and the public will be fully informed on those impacts, before governmental action at any level and before final public comment is provided. Section 116D.04 subdivision 2a provides that

Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.

113. The Minnesota Environmental Quality Board authorized alternative routing regulations under authority granted to it under Environmental Quality Board Rules 4410.3600.90

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90 Subpart I. Implementation. Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions: A. the process identifies the potential environmental impacts of each proposed project; B. the aspects of the process that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner; C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process; D. measures to mitigate the potential environmental impacts are identified and discussed; E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public; F. the governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the project (a copy of environmental documents on projects reviewed under an alternative review procedure shall be submitted to the EQB; the EQB shall be responsible for publishing notice of the availability of
Acting pursuant to that Rule, the Environmental Quality Board sought to provide the same level of early environmental review required in MEPA’s Section 116D.04 subdivision 2a. To this end, applicants were required to provide an environmental impact statement quality document which analyzed a proposal’s significant adverse environmental impacts and appropriate alternatives.

114. Among the requirements for the alternative review established by the EQB were the following:

A. The process identifies the potential environmental impacts of each proposed project and alternatives; the term “impact” is a synonym for effects.

B. The aspects of the process that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

C. Alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process;

D. Measures to mitigate the potential environmental impacts are identified and discussed;

E. A description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public.

115. The intent of MEPA and the alternative review that implements it is that at the time of application, there will be a fully MEPA compliant environmental review document submitted by the applicant. All other procedures in the Certificate of Need and Routing Rule depend upon submission of that environmentally impact statement quality document, in the form of an Environmental Assessment Supplement or Environmental Information Review.

116. Minn. Stat. § 216B.243 governs the issuance of CNs for large energy facilities, including crude oil pipelines like the Project. Pursuant to Minn. Stat. § 216B.243, subd. 2, a large energy facility cannot be sited or constructed without a CN issued by the Commission.
117. Subject to MEPA compliance described in the preceding paragraphs., Minn. R. Ch. 7853 contains specific requirements and criteria related to certificates of need for petroleum facilities, and, more specifically, crude oil pipelines. Specifically, Minn. R. 7853.0130 provides that “[a] certificate of need shall be granted to the applicant” if the Commission determines:

A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states;

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by the parties or persons other than the applicant;

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and,

D. It has not been demonstrated on the record that the design, construction or operation of the proposed facility will fail to comply with those relevant policies, rules and regulations of other state and federal agencies and local governments.

**FINDINGS OF FACT**

**I. THE APPLICANT.**

118. NDPC is a Delaware limited liability company that is qualified to do business in Minnesota. NDPC is a joint venture between Enbridge Energy Partners, L.P., NDPC’s former sole parent entity, and Williston Basin Pipeline LLC, a wholly owned indirect subsidiary of Marathon Petroleum Corporation (“Marathon”).

119. NDPC owns and operates a crude oil interstate transportation system (the “NDPC System”) that gathers crude oil from points near producing wells in North Dakota and Montana and allows shippers to transport these products to both the Enbridge Mainline System and Minnesota Pipe Line Company System (“MPL” or “MPL System”) at Clearbrook, Minnesota. The Enbridge Mainline System is the United States portion of an operationally integrated pipeline system spanning 3,300 miles across North America. Once on the Enbridge Mainline System, shippers have access to most major crude oil refinery markets in the Midwest (which is described by the Department of Energy as Petroleum Administration for Defense District (“PADD”) 2).

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91 Ex. 6, at 7:201-204 (Eberth Direct).
92 Ex. 6, at 7:204-2208 (Eberth Direct).
93 Ex. 1, Part 7853.0230, at 2 (Application).
94 Ex. 1, Part 7853.0230, at 2 (Application).
120. Marathon is an independent petroleum refining, transportation, and marketing company with more than 125 years of experience in the energy industry. Marathon purchases more than 50 million barrels of crude oil each month from sources all over the world for its seven-refinery system. Marathon is the fourth largest crude oil refiner in the U.S., operating seven 85 refineries in six states (Illinois, Michigan, Ohio, Kentucky, Louisiana, and Texas) 86 with a total crude oil refining capacity of approximately 1.7 million barrels per day 87 ("bpd"). Marathon is the largest refiner and marketer in the Midwest.

121. NDPC represents a combination of an interstate petroleum carrier and a dominant Midwestern refinery. Minnesota law and its constitution do not provide for the exercise of eminent domain for refineries or their business operations. Insofar as NDPC is seeking a certificate of need and corresponding eminent domain authority, the business interests of NDPC as a shipper and refiner of petroleum do not furnish a public purpose.

122. In November 2013, Marathon committed to funding 37.5% of the Project, as well as being an anchor shipper on the Project. In exchange, once the Project goes into service, Marathon will have an approximately 27% equity interest in the NDPC System. Marathon has made a commitment to either ship or pay for capacity on the Project.

123. The NDPC System is operated by Enbridge Operating Services, LLC, which will construct and operate the Project on behalf of NDPC. Enbridge is a leading North American energy transportation and delivery company, which operates the longest crude oil pipeline system in the world, delivering nearly 2.2 million barrels of crude oil every day to markets in the United States and Canada.

II. THE PROJECT.

A. Project Description.

124. The primary purpose of the project is to deliver petroleum from the Bakken fields in North Dakota, approximately 1000 miles by pipeline to refineries located in Chicago, Patoka, and eastward. NDPC’s proposed implementation of that purpose consists of a pipeline and associated facilities that will transport crude oil from NDPC’s Beaver Lodge Station, south of Tioga, North Dakota, to Clearbrook, Minnesota, and then on to an existing Enbridge terminal in Superior, Wisconsin. The Project is approximately 616 miles long, of which approximately 300

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95 Ex. 13, at 3:82-90 (Palmer Direct). Marathon’s interest in NDPC is held through a wholly-owned indirect subsidiary. Marathon Petroleum Company, LP, also an indirect wholly-owned subsidiary of Marathon Petroleum Corporation, signed the Sandpiper Transportation Services Agreement. For ease of reference, all of the Marathon entities are referred to as “Marathon.”


98 “Enbridge” is used throughout these findings to refer to Enbridge, Inc. and its affiliates, with the exception of North Dakota Pipeline Company LLC, which is referred to as “NDPC.”

99 Ex. 6, at 7:222-25 (Eberth Direct).
miles of 24-inch diameter pipe will be constructed in North Dakota,\textsuperscript{100} 302 miles in Minnesota (73 miles of 24-inch diameter pipe and 229 miles of 30-inch diameter pipe), and 14 miles of 30-inch diameter pipe in Wisconsin. The Project will also include construction of a new Clearbrook West Terminal, just west of the existing Enbridge Clearbrook Terminal, and additional facilities at Pine River, Minnesota.\textsuperscript{101}

125. NDPC proposes constructing the Project along a route that consists of the route NDPC submitted with its January 31, 2014 Revised Pipeline Routing Permit Application with the addition of the route alternatives submitted by NDPC on April 4, 2014, and May 30, 2014, and the Crow Wing Chain WMA route alternatives developed at the request of DOC-EERA and submitted to DOC-EERA on June 27, 2014 (the “Preferred Route”).\textsuperscript{102}

126. The Project will transport 225,000 barrels bpd of crude oil from North Dakota to Clearbrook, Minnesota, where an additional 150,000 bpd will enter the Project from NDPC’s existing Line 81 pipeline, resulting in a total annual capacity of 375,000 bpd on the Project from Clearbrook, Minnesota, to Superior, Wisconsin.\textsuperscript{103}

127. The Project serves to increase capacity from Beaver Lodge, North Dakota, to Clearbrook, Minnesota, and then on to Superior, Wisconsin. In addition, the Project is designed to enhance the reliability of the existing NDPC System, including deliveries from the existing Line 81. Line 81 provides deliveries to the MPL System, which serves the two Minnesota refineries. The Project will be able to deliver Bakken crude oil to the MPL System in the event that Line 81 is not in service.\textsuperscript{104}

128. Once the Project is placed in service, the existing interconnection at Clearbrook between Line 81 and the Enbridge Mainline System will be terminated, and all Line 81 volumes intended for delivery to Superior will be transported via the Project, rather than the Enbridge Mainline System.\textsuperscript{105} This will reduce possible apportionment to NDPC shippers trying to deliver to the Enbridge Mainline System at Clearbrook.\textsuperscript{106}

129. While the applicant prefers delivering petroleum through Clearbrook and Superior, the central purpose and need demonstrated is to deliver petroleum from the Bakken fields to refineries in Patoka, Chicago and others served by Enbridge’s Lakehead System. SA-03, both as modified and as originally proposed, SA-04 meet this core purpose.

**B. Environmental Review of Applicant’s Proposed Project**

\textsuperscript{100} The North Dakota portion of Sandpiper has already been approved by the North Dakota Public Service Commission. Evid. Hr’g Tr. Vol. 3, at 103:24-104:3 (Steede).

\textsuperscript{101} Ex. 6, at 2:51-59 (Eberth Direct).

\textsuperscript{102} Ex. 17, Schedule 1, at 181 (Eberth Rebuttal).

\textsuperscript{103} Ex. 6, at 2:62-65 (Eberth Direct).

\textsuperscript{104} Ex. 6, at 3:70-76 (Eberth Direct); Ex. 7, at 10:287-96 (Steede Direct).

\textsuperscript{105} Ex. 6, at 3:78-81 (Eberth Direct).

\textsuperscript{106} Ex. 6, at 3:82-83 (Eberth Direct).
130. The environmental review for Applicant’s Proposed Project does not satisfy the Chapter 116D and the requirements of Minnesota Rules parts 7852.2100-3100 and the requirements for alternative environmental review in Minnesota Rules part 4410.3600.

131. Under the alternative environmental review authorized in the routing rule, the primary environmental review document is prepared by the applicant and submitted with the certificate of need and routing applications. The Environmental Assessment Supplement presented for public review, merely counted features quantitatively and made no qualitative judgments regarding environmental impacts\(^{107}\). Neither the environmental review provided in this docket, nor the information yet supplied by the parties, allows a systematic, fair comparison of system alternatives from an environmental effects standpoint. As a result, the process thus far does not give policy-makers a complete or fair assessment of alternatives\(^{108}\).

132. The MPCA, DNR and other parties provided persuasive evidence that there were route or system alternatives (that is route alternatives with different endpoints than those proposed by applicant) that should have been studied in the environmental assessment supplement submitted by the applicant\(^ {109}\).

133. In general, the alternative environmental review documents failed to fulfill the requirements of the alternative review, in its:

A. failure to identify the potential environmental impacts of the proposed project;

B. failure to address substantially the same issues as an Environmental Impact Statement

C. failure to use procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

D. failure to consider alternatives to the proposed project in light of their potential environmental impacts

E. Failure to adequately analyze potential mitigation measures where environmental impacts are identified

F. Both Minnesota Environmental Policy Act – MEPA— (and its implementing regulations) and the National Environmental Policy Act --NEPA—(and its implementing regulations) call for close coordination between the federal and state environmental reviews. When an applicant proposes to use the alternative environmental review described by the routing rule, it is thus imperative that the

\(^{107}\) Ploetz Tr. pg. 22, 37, 41.

\(^{108}\) Dr. Chapman Surrebuttal, paragraph 1.; (WS_MPCA-1) page 1 paragraph 1, page 14; JS-2 page 1 paragraph 3

\(^{109}\) (WS_MPCA-1) page 1 paragraph 1, page 14; JS-2 page 1 paragraph 3; (WS_MPCA-2) page 5
applicant trigger that cooperation before the application and environmental assessment supplement are submitted.

134. The environmental review documents were inadequate to satisfy the needs of both the Minnesota Pollution Control Agency and the Department of Natural Resources for use in connection with its permitting process.

135. The environmental review’s treatment of impacts to undisturbed lands versus previously disturbed lands is inadequate\(^{110}\) and fails adequately to

i. Include impacts of fragmentation to forests due to the construction of corridors

ii. Include sites containing area sensitive avian species

iii. Describe the impact of invasive species introduced

iv. Acknowledge construction through undisturbed areas results in habitat loss, conversion, degradation, and fragmentation

v. Recognize ag land has impacted soils already

vi. Recognize that BMPs are not practical for undisturbed areas

vii. Consider the impact to natural ecoregions versus ag land or developed regions

viii. Recognize the distinction between regular ag land and agricultural land that is devoted to sustainable or organic farming.

136. The environmental review fails to consider the value of water resources being crossed and provide alternative routes or systems to avoid these areas.\(^{111}\)

137. The environmental review fails to consider the Tamarack state mineral lease in route determination and fails to identify safety concerns on the possibility of having both future crude oil pipeline and mining operations on the same state-owned land.\(^{112}\)

138. The environmental review failed to discuss the potential of additional/future pipeline infrastructure constructed through Clearbrook, MN and did not assess the site from an environmental impact view, failing to recognize the Clearbrook area as one of Minnesota’s largest concentration of sensitive surface and groundwater. The potential impacts to the natural

\(^{110}\) JS 1, pages 3-4; (WS_MPCA-1) page 11, page 13 paragraph 1

\(^{111}\) JS 1, page 5

\(^{112}\) JS 1, page 6 paragraph 4
resources of this area include degradation due to oil spills or releases into some of the State’s most valuable surface and groundwater resources.\textsuperscript{113}

139. The environmental review failed to assess impact of contamination to Minnesota’s most susceptible groundwater areas through which the proposed route crosses.\textsuperscript{114}

140. The environmental review failed to include a risk assessment of potential damages as a result of an oil leak.\textsuperscript{115}

141. The environmental review failed to adequately address Minnesota State listed threatened and endangered species and Minnesota sites of biodiversity significance.\textsuperscript{116}

142. The environmental review failed to evaluate impacts to sensitive species, including plants, permanent alteration due to disruption of sensitive-specific and balanced conditions.\textsuperscript{117}

143. The environmental review failed to adequately address standard measures of preserving undisturbed soil, organic and sustainable agricultural, and related impact to undisturbed areas.\textsuperscript{118}

144. The environmental review failed to adequately conduct hydraulic conductivity ratings at appropriate standard pipeline depths.\textsuperscript{119}

145. The study, Stream-Aquifer Interactions in the Straight River Area, Becker and Hubbard Counties, Minnesota, studied a representative portion of the investigation area that is underlain by an extensive surficial aquifer consisting of glacial outwash. Stark Study, page 3. The study explains: This aquifer is part of a large surficial aquifer system, called the Pinelands Sands (Helgesen, 1977), which underlies 770 square miles of Becker, Cass, Hubbard, and Wadena Counties. Confined drift aquifers also underlie most of the investigation area. (Stark Study, page 3).

146. According to the study, the aquifer system in this region is characterized by values of vertical hydraulic conductivity, which are higher than those reported for other parts of the glaciated northern United States. Stark Study page 32. The study further indicates that residence-time data obtained in the study are “significant because they indicate that waters in both the surficial and in the uppermost confined-drift aquifers are susceptible to contamination from local recharge.” Stark Study page 48. Further, the study indicates that this region includes

\textsuperscript{113}(WS_MPCA-2) page 14 paragraph 2
\textsuperscript{114}(WS_MPCA-2) page 12
\textsuperscript{115}JS 1, page 6
\textsuperscript{116}Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7
\textsuperscript{117}(WS_MCPA-1) page 12 paragraph 1
\textsuperscript{118}Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7
\textsuperscript{119}Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7
The Straight River which contains water that is underlain by highly transmissive surficial and confined-drift aquifers.

147. The environmental review failed to distinguish between all public lands and inadequately address the functionality and services provided by said lands to the public.\textsuperscript{120}

148. The environmental review failed to clearly define the definition of impaired water across different regions crossed in the suggested route; therefore it fails to adequately account for existing water quality conditions.\textsuperscript{121}

149. The environmental review failed to account for the biological quality ranking of specific communities; hydrological continuity, species diversity, disease, regeneration and presence of invasive species.\textsuperscript{122}

150. The environmental review failed to quantify the acres of public land crossed, therefore the varying sizes of parcels is not accounted for and the impact assessment cannot be evaluated appropriately\textsuperscript{123}

151. The environmental review failed to adequately provide information regarding the Spire Valley AMA therefore impact assessment does not include all potential impacts and ramifications.\textsuperscript{124}

152. The environmental review failed to provide an adequate cost analysis based on evaluation of a system’s ability to reduce the risk of a costly spill to a sensitive environment area\textsuperscript{125} It fails to recognize that the cost associated with restoration and rehabilitation of a site is significantly greater compared to preservation and protection methods. The Evaluation of Spill Response, failed to include factors that minimize potential for costly spills or discharge and failed to evaluate the risk associated with limited access to potential release sites.\textsuperscript{126}

153. The environmental review failed to adequately consider limited access to water bodies crossed by the proposed systems.

154. The environmental review failed to adequately evaluate damage to aquatic systems from potential spills\textsuperscript{127} including impact assessment of cleanup processes.

\textsuperscript{120} Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 8
\textsuperscript{121} Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 10; see also (William Sierks 1/23/15 Letter -WS_MPCA-1) page 7, paragraph 3
\textsuperscript{122} Exhibit 185, page 10
\textsuperscript{123} Exhibit 185, page 10
\textsuperscript{124} (JS-3) (Jamie Schrenzel 5/30/14 Letter) page 2, paragraphs 1-2
\textsuperscript{125} (WS_MPCA-1) page 3, paragraph 2-3
\textsuperscript{126} (WS_MPCA-1) page 4, paragraph 2; (WS_MPCA-2) page 10
\textsuperscript{127} (WS_MPCA-1) page 8 paragraph 3
155. Failed to recognize that significant data gathering must be performed in the SA-Application route that transverses glacial moraines prior to understanding the movement of oil discharge in the area and understand the difficulty to accurately assess the potential for groundwater contamination based solely on GIS layers.\textsuperscript{128}

156. The environmental review failed to adequately include an impact assessment for the native wild rice of Minnesota\textsuperscript{129} and failed to assess the cultural importance of wild rice in Minnesota.

157. The environmental review failed to adequately recognize Minnesota's wild rice crops sensitivity and ecoregion-specific qualities which limit its ability to grow abundantly in other areas or after contamination to its native site.

158. The environmental review failed to recognize that temporary economic benefits would occur regardless of project location, therefore analysis should include other economies that may potentially be effected permanently.\textsuperscript{130}

159. The environmental review failed to adequately assess potential damage from hydrostatic testing discharges and failed to include passable prevention methods.\textsuperscript{131}

160. The environmental review failed to seriously evaluate impacts to potentially undetectable sites that limited access may prevent timely detection.\textsuperscript{132}

161. The environmental review failed to adequately provide a systematic, fair comparison of system alternatives from an environmental effects standpoint. As a result, the process thus far does not give policy-makers a complete or fair assessment of alternatives.\textsuperscript{133}

162. The environmental review failed to provide comparison of potential environmental effects among the system alternatives, including failing to complete a water sensitivity analysis and flow path analysis.

163. The MPCA, DNR and other parties provided persuasive evidence that there were route or system alternatives (that is route alternatives with different endpoints than those

\textsuperscript{128} (WS_MPCA-1) page 10, paragraph 1
\textsuperscript{129} (WS_MPCA-1) page 10, paragraph 3; (WS_MPCA-2) page 8
\textsuperscript{130} (WS_MPCA-2) page 7
\textsuperscript{131} (WS_MPCA-1) page 9 paragraph 2
\textsuperscript{132} (WS_MPCA-1) page 13 paragraph 3
\textsuperscript{133} Dr. Chapman Surrebuttal, paragraph 1.; (WS_MPCA-1) page 1 paragraph 1, page 14; JS-2 page 1 paragraph 3
proposed by Applicant) that should have been studied in the environmental assessment supplement submitted by the Applicant.\(^{134}\)

164. Instead, the assessment documents merely list the number of resources in the region, which does not provide adequate data to determine which potential routes pose the greatest risk to resources.

165. The environmental reviews are materially and substantially incomplete, and in the absence of a complete environmental review, neither a certificate of need nor routing permit can be granted.

166. NDPC’s Project is based on the business objectives of its joint owner Marathon and Enbridge’s desire to route petroleum to Midwestern refineries. The primary motivating factor was its emphasis on the finding the lowest cost route to deliver petroleum from Bakken to Midwestern refineries, except for the existing Enbridge route which crosses Indian Reservations, without considering environmental factors.

167. During the course of its route selection, NDPC made binding commitments to shippers based on the assumption that it would receive a Certificate of Need and Routing permit, but before completion and acceptance of an adequate environmental review. NDPC’s contention that these commitments furnish a compelling reason for approving the application is barred by Minn Rules 4410.3100 which prohibits an applicant from taking action which prejudices the outcome of the governmental decision.

168. NDPC considered and appropriately rejected non-pipeline system alternatives rail\(^{135}\) and truck.\(^{136}\)

169. Applicant’s environmental review considered and rejected the existing route to Superior, even though that route follows an existing pipeline right of way throughout its course, and even though that route is shorter than Applicant’s preferred route.

170. Applicant’s environmental review considered the proposed Plains All American Pipeline L.P. reversal, which would have carried Bakken oil via Canada and then via third party carriers to Cushing, Oklahoma, because the project had not met its scheduled construction date.\(^{137};^{138}\)

\(^{134}\) (WS_MPCA-1) page 1 paragraph 1, page 14; JS-2 page 1 paragraph 3; (WS_MPCA-2) page 5

\(^{135}\) Environmental Information Review (Section 2.2.3)

\(^{136}\) EIR (Section 2.2.2)

\(^{138}\) EIR (Section 2.2.1, page 2-3).
171. Applicant's environmental review considered Koch Pipeline Company, L.P.'s possible Dakota Express Pipeline from western North Dakota through Minnesota to Hartford and Patoka, Illinois with a connection that would possibly serve Gulf Coast refineries.\textsuperscript{139}

172. Applicant's environmental review failed to consider the Bakken Pipeline route which would follow an existing pipeline to Patoka without inflicting any environmental impacts on Minnesota.

173. Applicant's environmental review rejected all other possible routes based upon the assertion that: "Any other pipeline system would require entirely new right-of-way as well as new pump station sites, power supplies, valve sites, and potential access roads that would likely be equal to or greater in impact than the proposed Project.\textsuperscript{140}" However, this rejection was based upon Applicant's faulty assumption that all environmental impacts, in whatever ecological environment, are inherently equal.

174. In selecting the preferred route, NDPC gave no serious consideration to alternatives other than its existing route from Clearbrook to Superior and its preferred route. When negotiating shipper agreements, NDPC and its potential shippers were legally obligated to recognize that a Minnesota certificate of need could not be granted unless the environmental assessment supplement submitted with the application complied with Minnesota Statutes Chapter 116D by exploring system alternatives and by providing a compliant analysis of the environmental impacts of each alternative.\textsuperscript{141}

175. Applicant's proposal extends beyond Clearbrook to Superior because NDPC prefers the lowest cost route to Marathon's Midwestern refineries and Enbridge's Lakehead System.

176. NDPC determined that the optimum design for a pipeline from Beaver Lodge to Clearbrook was a 24-inch pipeline. This 24-inch pipeline would have an annual capacity of 250,000 bpd from Beaver Lodge to Berthold and a 225,000 bpd capacity from Berthold to Clearbrook. NDPC further determined that a 30-inch design from Clearbrook to Superior would allow for the transportation of the combined volume of the Beaver Lodge to Clearbrook section plus Line 81 volumes net of MPL deliveries. NDPC decided to use a 30-inch pipeline to achieve the desired annual capacity of the Project. In addition, the use of a 30-inch pipeline from Clearbrook to Superior also resulted in elimination of three pump stations along that portion of the line.\textsuperscript{142}

177. Associated facilities for the Project include the Clearbrook West Terminal, and a new terminal approximately 3.8 miles west of the existing Enbridge Clearbrook Terminal. Associated facilities at the Clearbrook West Terminal include the following:

\textsuperscript{139} EIR (Section 2.2.1, page 2-3).
\textsuperscript{140} Id.
\textsuperscript{141} Minn Rules 4410.3100
\textsuperscript{142} Ex. 8, at 4:133-5:144 (Glanzer Direct).
• Two storage tanks;
• Two sets of receiver and launch traps;
• Two 450 horse power ("HP") injection pumps;
• One 300 HP transfer pump;
• A pump station, including four 5,500 HP pumps with four variable frequency drives, a 24-inch PIG receiver, a 30-inch PIG launcher, and association pump station piping and valves;
• Associated terminal piping, interconnections, valves, manifold, and sumps;
• A fire suppression system;
• Maintenance, pump shelter, and cold storage buildings;
• Metering equipment; and,
• Power and communications equipment.  

178. In addition, NDPC proposes to install new facilities at Pine River, including a receiver and launcher trap, Coriolis metering equipment, and an electrical service building.  

PROJECT BACKGROUND AND DEVELOPMENT

179. To ensure the Project's viability, NDPC sought to gauge the interest of its shippers to determine whether, if built, the Project would be utilized so that NDPC would be able to recover its investment. NDPC attracted Marathon as a shipper by granting Marathon a significant ownership interest in the project. To preserve the Commission's flexibility to follow Minnesota law and to avoid prejudicing the outcome of an alternatives review, NDPC had an obligation to refrain from conditioning its shipper obligations on a single routing choice.

180. In addition to having conversations with shippers, NDPC also filed a Petition for Declaratory Order and Offer of Settlement in 2012 (the "2012 Petition") seeking confirmation that NDPC would be able to recover the costs of the Project through a cost-based surcharge.  

In the 2012 Petition, NDPC proposed that the pipeline would be funded entirely through a cost-of-service surcharge on existing rates for all shippers using the Project between Beaver Lodge and Clearbrook, and new cost of service rate for the downstream pipeline segment between Clearbrook and Superior.  

Under the 2012 Petition, all shippers on the Project would be uncommitted shippers, similar to the existing structure utilized on the NDPC System today.  

The Federal Energy Regulatory Commission ("FERC") denied NDPC's 2012 Petition without prejudice because, under FERC precedent, a settlement proposal such as the 2012 Petition must

143 Ex. 10, at 3:86-4:125 (Johnson Direct).
144 Ex. 10, at 4:122-25 (Johnson Direct).
145 Ex. 21, at 7:206-209 and Schedule 2 (MacPhail Rebuttal).
146 Ex. 21, Schedule 2, at 6 (MacPhail Rebuttal).
147 Ex. 7, at 4:123-126 (Steede Direct); Ex. 21, Schedule 2, at 6-7 (MacPhail Rebuttal).
have unanimous support from all shippers, which the Project did not have on the FERC record.  

181. In response to FERC’s decision on the 2012 Petition, NDPC engaged in extensive discussions with its shippers and its co-owner Marathon, to determine a revised tariff rate and service structure that would comply with the FERC’s policies and have broad support among its shippers.  

182. NDPC then designed a rate structure for committed and uncommitted shippers. For committed shippers, the rate to be paid reflected the selected delivery point, the level of service requested, and the volume commitments. NDPC created a pro-forma TSA that set forth the contractual obligations of NDPC and the committed shippers. This TSA was made available to interested shippers through the open season.  

183. In addition to the revenues provided by the committed shippers, NDPC proposed to recover a portion of the costs of the Project through cost-based rate components charged to uncommitted shippers. Based on the design of the Project and its integration into the existing NDPC System, NDPC proposed a different rate component for the upstream portion of the Project between Beaver Lodge and Clearbrook and the downstream portion from Clearbrook to Superior.  

184. Regarding the upstream segment between Beaver Lodge and Clearbrook, uncommitted shippers would pay a surcharge that would be added to the existing Clearbrook rates at the time the Project enters service. NDPC designed the Project to conform to precedents in which the FERC has allowed the costs of an expansion to be imposed through a surcharge on both new and existing barrels. In other words, NDPC requested that it be allowed to recover the cost of the Project from both shippers on the new pipeline capacity and shippers on its existing pipeline capacity. The rationale for this rate structure is that the new pipeline is really an expansion of the existing system to Clearbrook because it is freeing up space on the existing constrained line and serving the same markets.  

185. The economics of the rate, cost, and cost-recovery is significantly different when the largest shipper and largest Midwestern refinery holds a significant ownership interest in a  

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148 Ex. 21, at 7:206-213 (MacPhail Rebuttal). None of the shippers that opposed NDPC’s Petition before the FERC have asserted in this proceeding that the Project is not needed.  
149 Ex. 21, at 7:219-222 (MacPhail Rebuttal).  
150 Ex. 21, Schedule 2, Attachment A, at 158-159 (MacPhail Rebuttal).  
151 Ex. 21, Schedule 2, Attachment A, at 108-165 (MacPhail Rebuttal).  
152 Ex. 7, at 6:187-190 (Steede Direct).  
153 Ex. 21, at 9:282-284 (MacPhail Rebuttal).  
154 Ex. 21, at 9:288-290 (MacPhail Rebuttal).  
155 Ex. 21, at 9:291-10:294 (MacPhail Rebuttal).
pipeline project. As an owner, Marathon has multiple economic interests which differ from that of a non-owner shipper, and from that of a disinterested common carrier.

186. The FERC approved NDPC's 2014 Petition on May 15, 2014, confirming that the rate structure and terms of the TSAs were reasonable given the design of the Project.\textsuperscript{156}

\textbf{THE RECORD CONTAINS SIGNIFICANT FACTS RELATED TO THE SPECIFIC CRITERIA THAT THE COMMISSION MUST EVALUATE.}

A. The probable result of denial of the application would not adversely affect the future adequacy, reliability or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

187. The first criterion under Minn. R. 7853.0130 is whether the probable result of a denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. When assessing this criterion, the Commission considers the following factors, which are analyzed in more detail below:

1. The accuracy of NDPC's forecast of demand for the type of energy that would be supplied by the proposed facility;
2. The effects of NDPC's existing or expected conservation programs and state and federal conservation programs;
3. The effects of NDPC's promotional practices that may have given rise to the increase in the energy demand;
4. The ability of current facilities and planned facilities not requiring certificates of need, and to which NDPC has access, to meet the future demand; and,
5. The effect of the proposed facility, or a suitable modification of it, in making efficient use of resources.\textsuperscript{157}

188. Considering these factors, the record evidence shows that denial of a pipeline certificate of need for some pipeline, properly located, to carry Bakken petroleum to the eastern-Midwestern refineries would have an adverse effect on the future adequacy, reliability, and efficiency of energy supply to NDPC's potential customers served by the Lakehead system in the eastern Midwest, but it has not shown that denial of a certificate to Applicant's proposed project would have a negative impact on its customers, and to the people of Minnesota and neighboring states. On the contrary, the evidence shows that there is sufficient demand for pipeline services such that any of the system alternatives could meet the need for pipeline services. The probable

\textsuperscript{156} Ex. 21, at 7:201-203 and North Dakota Pipeline Company LLC, 147 FERC ¶ 61,121 (2014).

\textsuperscript{157} Minn. R. 7853.0130(A).
result of a denial of the Project would not adversely affect the future adequacy, reliability, or efficiency of energy supply to the Applicant, to the Applicant’s customers, because there exists suitable alternatives with lesser environmental impacts.

1) **The Accuracy of the Applicant’s Forecast of Demand for the Type of Energy That Would be Supplied by the Proposed Facility.**

189. Record evidence shows that until the recent significant changes in the market price, Bakken production forecasts continued to grow. Crude oil production has been rapidly rising in the Williston Basin, and it now ranks as one of the largest producing areas in the world.\textsuperscript{158} North American light crude oil supply is expected to continue to grow for at least the next decade, and then remain well above historical levels for many more years. The breakthrough in technological advances in unconventional crude oil production has resulted in rapidly changing petroleum supply and demand trends in North America. According to the most recent statistics available from the United States Energy Information Administration, now accessible shale formations have helped increase United States crude oil production from 5,652 thousand barrels per day ("kbpd") in 2011 to 6,488 kbpd in July 2013. At the same time, United States crude oil reserves increased from 25.2 billion barrels in 2010 to 29.0 billion barrels in 2011.\textsuperscript{159} Applicant’s prediction is predicated on the assumption that that the recent glut of worldwide petroleum supplies is a temporary phenomenon and that the market price will ultimately rise substantially.

190. The Williston Basin, which includes the Bakken and Three Forks formations, is one of the major sources of the United States unconventional crude oil supply. The United States Geological Survey ("USGS") estimates that the Three Forks formation holds about 3.73 billion barrels of technically-recoverable crude oil and that the Bakken formation holds 3.65 billion barrels of technically-recoverable crude oil. This 2013 combined estimate almost doubles the initial assessment the USGS made back in 2008.\textsuperscript{160}

191. Crude oil production in North Dakota has significantly increased over the last six years, rising from 138,000 bpd in January 2008 to 911,000 bpd in August 2013. Before the recent market swing, supply forecasts from the North Dakota Pipeline Authority predicted a continued growth in the Bakken production over the next 8 to 10 years and then a gradual decline over the next 10 years before moderating at production levels above 1 million bpd.\textsuperscript{161}

192. Until recent market swings, as a result of increasing production in the Bakken and Three Forks formations, NDPC is experiencing increasing demand for additional pipeline capacity from North Dakota on the NDPC System. In addition, refineries served by the Enbridge Mainline System in the Midwest, upper Great Lakes region, and Ontario/Quebec need access to

\textsuperscript{158} Ex. 14, Schedule 2, at 26 (Earnest Direct).
\textsuperscript{159} Ex. 3, Part 7853.0240, at 3 (Revised CN Application).
\textsuperscript{160} Ex. 3, Part 7853.0240, at 3 (Revised CN Application).
\textsuperscript{161} Ex. 3, Part 7853.0240, at 3-4 (Revised CN Application).
secure and reliable crude oil supplies, which also drives demand for additional pipeline capacity.\textsuperscript{162}

193. NDPC prepared a pre-market swing forecast of North Dakota-produced crude oil supply in its evaluation of future pipeline capacity needs.\textsuperscript{163} The forecast predicted the volume of crude oil available for transportation on the NDPC System based on base case and high case production forecasts prepared by the North Dakota Pipeline Authority, as well as production forecasts developed by NDPC.\textsuperscript{164} All three forecasts showed steady increases in production over the next five years, followed by a sustained period of high production. Even using the most conservative forecasts, there is sufficient crude oil supply to fully utilize the existing and planned North Dakota refineries and outbound pipelines. Even after the Project is in service, through at least 2030, rail will need to be used to transport a portion of the Bakken crude oil production to market.\textsuperscript{165}

194. While some parties questioned whether the forecasted production levels would remain high given the recent drop in crude oil prices, NDPC demonstrated that, even using conservative assumptions, production levels are forecasted to stay high under a wide range of potential pricing scenarios.\textsuperscript{166} NDPC’s forecast analysis looked at West Texas Intermediate (“WTI”) prices ranging from as low as $10 per barrel to as high as $120 per barrel.\textsuperscript{167} This sensitivity analysis showed that current North Dakota production levels would be maintained between $70 and $80 per barrel WTI using historical price differentials to the wellhead.\textsuperscript{168} Even at sustained prices as low as $40 per barrel North Dakota production rates would remain above 700,000 bpd for the majority of the next 15 years,\textsuperscript{169} and the Project would remain full until late in the forecast period.\textsuperscript{170}

195. The results of NDPC’s forecast analysis are consistent with historical trends in United States crude oil production. The crude oil market has experienced a number of abrupt, sizable price fluctuations since 1995, and yet United States crude oil production has generally remained constant or increased over the last 20 years.\textsuperscript{171} There remain major uncertainties in the petroleum market in the short and long run.

196. Record evidence shows that refiners in key Project markets are using sizeable volumes of light sweet crude oil. Refiners in PADD 2 rely on a variety of crude oil products,

\textsuperscript{162} Ex. 7, at 2:62-67 (Steede Direct).
\textsuperscript{163} Ex. 14, Schedule 2, at 26-27 (Earnest Direct).
\textsuperscript{164} Ex. 14, Schedule 2, at 26-27 (Earnest Direct).
\textsuperscript{165} Ex. 14, Schedule 2 at 6-7 (Earnest Direct).
\textsuperscript{166} See, Ex. 30 (Crane Surrebuttal).
\textsuperscript{167} Ex. 30, at 5:125-127 (Crane Surrebuttal).
\textsuperscript{168} Ex. 30, at 8:203-206 (Crane Surrebuttal).
\textsuperscript{169} Ex. 30, at 9:207-210 (Crane Surrebuttal).
\textsuperscript{170} Ex. 31, at 3:74-4:79 (Earnest Surrebuttal).
\textsuperscript{171} Ex. 31, at 1:17-2:42 (Earnest Surrebuttal).
including light and heavy crude oil, from a number of producing regions to make the refined products. 172

197. As United States crude oil production has increased, Midwestern refiners have reduced their imports of foreign crude oil shipped from the Gulf Coast in favor of increased North American crude oil sources. 173 Based on the best available information regarding the light crude oil refining slate, the Upper Midwest, Lower Midwest, Ontario/Quebec and United States East Coast are net short light crude oil. 174 Shippers on the Project will be able to ship to these large Upper Midwest, Lower Midwest, and Ontario/Quebec markets via the Enbridge Mainline System. 175 Secondary markets exist in the Mid-Continent and Gulf Coast, which are accessible from the Enbridge Mainline System via the Flanagan South and Spearhead pipelines. 176

198. A number of refiners in the Upper Midwest and Lower Midwest have recently engaged in expansions that have increased their demand for crude. 177 The estimated total light sweet crude oil demand in the markets interconnected to the Project includes the following submarkets: 178

<table>
<thead>
<tr>
<th>Submarkets Accessible via Enbridge Mainline</th>
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<tbody>
<tr>
<td>Submarket</td>
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<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Upper Midwest</td>
</tr>
<tr>
<td>Lower Midwest</td>
</tr>
<tr>
<td>Ontario/Quebec</td>
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<tr>
<td>Mid-Continent</td>
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<td>Gulf Coast</td>
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199. As demonstrated in the record, the Project will serve a number of markets, directly or via connections to the Enbridge Mainline System, that have significant demand for light sweet crude oil. These refineries are located in Chicago, Patoka and points east of those cities, none of which depend upon additional pipeline capacity running through Clearbrook and

172 Ex. 14, Schedule 2, at 11-13 and Figure 4 (Earnest Direct).
173 Ex. 14, Schedule 2, at 11 (Earnest Direct); Ex. 13, at 9:238-245 (Palmer Direct).
174 Ex. 14, Schedule 2, at 11-12 and Figure 4 (Earnest Direct).
175 Ex. 14, Schedule 2, at 12 (Earnest Direct).
176 Ex. 14, Schedule 2, at 13 (Earnest Direct).
177 Ex. 14, Schedule 2, at 14-15 (Earnest Direct).
178 Ex. 14, at 5:88-89 (Earnest Direct).
Superior. Refiners in these markets have shown a preference for increasing their reliance on North American sources of crude oil.

200. Further, models in the record show that the Project will be utilized under a robust set of forecast and price assumptions. NDPC engaged Mr. Neil Earnest of Muse Stancil to run an optimization model to predict Project utilization. NDPC’s optimization modeling considered a number of different supply forecasts, the takeaway capacity of other existing pipelines and rail transportation alternatives, tolls and other transportation costs, and refining capacity and constraints.179 The additional take-away capacity added by the Project is a small portion of the forecasted increase in production from the Williston Basin over the next 15 years.180 NDPC estimates that the projected shipments on the Project would satisfy about 25 percent of the total estimated light crude oil demand in the core marketing area (Midwest and Ontario/Quebec) for the Project’s shippers.181 Thus, the modeling results found that the Project will operate at, or close to, capacity throughout the 2016-2035 forecast period.182

201. In addition, NDPC conducted a sensitivity analysis for the year 2019 and confirmed that a project delivering petroleum to Midwestern refineries would be fully utilized under a number of differing crude oil supply scenarios and a lower rail transportation cost scenario.183

202. The recent lower oil prices will not decrease Bakken crude oil production to such an extent that additional pipeline capacity delivering petroleum to eastern Midwestern refineries will not be needed.184 NDPC conducted a sensitivity analysis assuming a variety of crude oil pricing scenarios from as low as $10 per barrel WTI to as much as $120 per barrel and confirmed that, even at $40 per barrel over a sustained period, the Project would remain full until late in the forecast period.185

203. Significant volatility in crude oil prices has long been a component of the business environment in the oil industry. NDPC has concluded that current downward price movement is one of the more extreme fluctuations in recent history, but it is by no means the largest fluctuation nor the lowest price point reached in recent times.186 Further, many in the oil industry generally expect oil prices to rebound in the next year or so.187 However, there exist major uncertainties in the petroleum market in the short and long term.

179 Ex. 14, Schedule 2, Appendix 1, at 56-57 (Earnest Direct).
180 Ex. 14, at 7:142-44 (Earnest Direct).
181 Ex. 14, Schedule 2, at 49 (Earnest Direct).
182 Ex. 14, Schedule 2, at 8 (Earnest Direct).
183 Ex. 14, Schedule 2, at 8 (Earnest Direct).
184 Ex. 18, at 8:221-24 (Earnest Rebuttal).
185 Ex. 31, at 3:74-4:79 (Earnest Surrebuttal).
186 Ex. 31, at 1:24-2:31 (Earnest Surrebuttal).
187 Ex. 31, at 2:45-46 (Earnest Surrebuttal).
204. NDPC provided forecasts over a range of prices and using robust and reasonable assumptions demonstrating substantial demand for a project delivering petroleum from Bakken to Midwestern refineries over the next several decades. DOC-DER analyzed the assumptions used in the modeling and concurred that that the data was acceptable.\textsuperscript{188} Although overall demand for petroleum products is projected to remain relatively stable over the forecast period, domestic supply will increasingly become a more significant portion of total petroleum supply in the United States market.\textsuperscript{189}

205. Demand for the Project is also clearly demonstrated by the executed TSAs, which are long-term, ship-or-pay contracts, equaling 155,000 bpd, which equates to more than half of the additional capacity added by a project delivering petroleum from Bakken fields to Midwestern refineries. These committed shipper volumes are sufficient to make a project delivering petroleum from Bakken fields to Midwestern refineries economically feasible.\textsuperscript{190}

206. There is no evidence in the record that, absent the Sandpiper Pipeline, or if the Sandpiper Pipeline is built in an alternative location, shippers, refiners or consumers will suffer any sort of shortage or unreliable energy supply. (Ex. 13 at 5:134-35.) (Ex. 13 at 10:253-58.)

207. NDPC concedes that conservation efforts have effectively reduced demand for petroleum products in Minnesota, and does not dispute the Department of Commerce-Division of Energy Resources’ observation that demand for petroleum in Minnesota, neighboring states, and the U.S. as a whole is down dramatically and is not expected to rebound fully for decades.

2) The Effects of the Applicant’s Existing or Expected Conservation Programs and State and Federal Conservation Programs.

208. Neither NDPC’s nor federal and state conservation programs will be sufficient to meet the demand or displace the need for the Project. Despite numerous conservation developments, Minnesota and the surrounding region will have a continuing demand for petroleum-based fuels for the foreseeable future.\textsuperscript{191}

209. When considered as a common carrier, NDPC does not buy or sell crude oil or petroleum products, but rather, NDPC serves as a transportation company shipping crude oil to markets where it can be refined. This role is complicated by its partial ownership by Marathon. Thus, apart from Marathon’s activities, NDPC’s conservation efforts do not have significant impact on crude oil supply or demand.\textsuperscript{192}

\textsuperscript{188} Ex. 50, at 46:7-11 (Heinen Public Direct).
\textsuperscript{189} Ex. 50, at 16:14-18 (Heinen Public Direct).
\textsuperscript{190} Ex. 21, at 8:245-246 (MacPhail Rebuttal); Ex. 50, at 8:6-8 and Schedule AJH3 (Heinen Direct).
\textsuperscript{191} Ex. 14, Schedule 2, at 24 (Earnest Direct).
\textsuperscript{192} Ex. 50, at 46: 13-17 (Heinen Public Direct).
210. NDPC considered the effects of state and federal conservation programs, as well as its own energy conservation efforts in the Application and its testimony. NDPC analyzed the 2012 Quadrennial Report prepared under Minn. Stat. § 216C.18 (the "2012 Quad Report") to analyze the relationship of the Project the state’s overall energy needs.\(^{193}\) According to the 2012 Quad Report, gasoline (net of ethanol) is slightly more than 50 percent of total petroleum demand in Minnesota, followed in volume by distillate (primarily diesel fuel).\(^{194}\) The 2012 Quad Report discusses a number of fuel replacement programs at the state and federal levels, including Minnesota’s nation-leading efforts on ethanol and biodiesel utilization.\(^{195}\) The 2012 Quad Report also highlights that there are around 50 known publicly accessible electrical vehicle charging stations in Minnesota.\(^{196}\) The 2012 Quad Report does not provide quantitative estimates of how the in-place and proposed conservation and replacement measures will impact demand for petroleum products in Minnesota, but it is clear that the current conservation efforts will not eliminate the need for petroleum products by the people of Minnesota.\(^{197}\)

211. NDPC does implement significant electric energy conservation efforts as part of its operations. Power costs represent the largest single recurring expense in pipeline operation.\(^{198}\) NDPC engages in multi-faceted efforts to ensure that energy efficiency and conservation are employed throughout its operations. As a primary example, the design of the Project utilizing 24-inch and 30-inch diameter pipe resulted in significant energy efficiency over a design that utilized only 24-inch pipe. By utilizing both the 24-inch and 30-inch pipe diameters, NDPC was able to eliminate three pump stations between Clearbrook and Superior, resulting in energy savings.\(^{199}\) NDPC also employs variable frequency drives, energy efficient pumps and motors, and operates the system utilizing applied hydraulics and pipe control to minimize energy consumption.\(^{200}\)

212. NDPC is also committed to implementing Enbridge’s neutral footprint program as part of the Project. Under this program, Enbridge seeks to ensure that: (i) one tree is planted for each merchantable tree that must be removed to build the new facilities, (ii) one acre of wilderness land is conserved for every acre permanently impacted by the Project, and (iii) one kilowatt hour of renewable energy is generated for every kilowatt hour of energy consumed by the Project.\(^{201}\) In addition, NDPC will commit to going beyond its neutral footprint program for the Project by purchasing or acquiring renewable energy offsets equal to the energy consumed by the Project in Minnesota.

\(^{193}\) Ex. 14, Schedule 2, at 20-24 (Earnest Direct).
\(^{194}\) Ex. 14, Schedule 2, at 21 (Earnest Direct).
\(^{195}\) Ex. 14, Schedule 2, at 22 (Earnest Direct).
\(^{196}\) Ex. 14, Schedule 2, at 23 (Earnest Direct).
\(^{197}\) Ex. 14, Schedule 2, at 23-24 (Earnest Direct).
\(^{198}\) Ex. 1, Part 7853.0260, at 1 (CN Application).
\(^{199}\) Ex. 9, at 4:116-124 (Simonson Direct).
\(^{200}\) Ex. 1, Part 7853.0260, at 1-3 (CN Application).
\(^{201}\) Ex. 17, at 11: 273-300 (Eberth Rebuttal); Ex. 11, at 11:270-276 (Ploetz Direct).
3) The Effects of the Applicant’s Promotional Practices that May Have Given Rise to the Increase in the Energy Demand.

213. NDPC has not undertaken promotional activities that would increase demand for crude oil supplies to Minnesota or the surrounding region, but its owner Marathon has done so.

214. NDPC (but not its owner Marathon) has an obligation to operate as a common carrier.\textsuperscript{202} As a common carrier, NDPC responds to shipper demand. NDPC (but not its owner Marathon) cannot create demand for crude oil, and has not undertaken activities that have promoted increased demand for refined petroleum products nor the crude oil used by refineries to meet public energy needs. NDPC has worked diligently to meet shippers’ demand for crude oil produced from the Williston Basin to which Sandpiper will be connected. Eastern Midwestern refineries are demanding this crude oil to reduce reliance on crude oil sources from other regions.\textsuperscript{203}

4) The Ability of Current Facilities and Planned Facilities not Requiring Certificates of Need, and to Which the Applicant has Access, to Meet the Future Demand.

215. Record evidence demonstrates that current pipeline facilities to which NDPC and/or its customers have access are not sufficient to meet the current, let alone future, demand for crude oil from the Bakken. In addition, planned pipeline facilities not requiring a CN, and to which NDPC and/or its customers have access, are similarly not sufficient to meet future demand for crude oil from the Bakken.

216. Before proposing the Project, NDPC invested approximately $1 billion in expansions to the existing NDPC System from 2006 to 2012.\textsuperscript{204} These improvements included a number of operational changes not requiring a CN, including hydrotesting lines to restore full capacity and adding pump stations in North Dakota to remove bottlenecks.\textsuperscript{205} These operational changes increased the available capacity on Line 81 from 65,000 bpd to 210,000 bpd on the portion of the pipeline between the Williston Basin and Clearbrook, Minnesota.\textsuperscript{206}

217. Despite these improvements, shipper demand for pipeline capacity on the NDPC System continues to far outpace the available capacity.\textsuperscript{207} When demand for transportation service exceeds available pipeline capacity, the NDPC System goes into apportionment.\textsuperscript{208}

\textsuperscript{202} Evid. Hr’g Tr. Vol. 1, at 45:13-22 (Eberth).
\textsuperscript{203} Ex. 1, Part 7853.0250, at 4 (CN Application).
\textsuperscript{204} Ex. 7, at 3:72-78 (Steede Direct).
\textsuperscript{205} Ex. 7, at 3:73-75 (Steede Direct).
\textsuperscript{206} Ex. 20, at 6:163-166 (Steede Rebuttal).
\textsuperscript{207} Ex. 7, at 3:70-72; 3:80-84 (Steede Direct).
\textsuperscript{208} Ex. 7, at 3:95-96 (Steede Direct).
NDPC System was in constant apportionment from 2006-2012, intermittent apportionment in 2013, and back into apportionment again in 2014. 209

218. When a pipeline is apportioned, the available pipeline capacity is allocated to the shippers on the basis set forth in the tariff(s) approved by the FERC. Shippers must either reduce their expected volume of crude oil or find alternative ways to transport it.210

219. When apportionment is announced, refineries, including Flint Hills and St. Paul refineries in Minnesota, are unable to obtain all of the crude oil originally directed to them through the apportioned carrier. This requires a refinery to obtain its shortfall from other crude sources, other shippers, or via alternative transportation modes such as rail. Apportionment has an immediate negative impact on producers, shippers, and refiners.211 Apportionment is likely to have a neutral or negative impact on Minnesota refineries; apportionment will not have a positive impact on Minnesota refineries.212

220. Apportionment is best addressed by providing additional capacity.213 A pipeline project delivering additional petroleum from Bakken to Midwestern refineries would reduce potential apportionment of the light crude currently delivered to Minnesota and refineries from approximately 20% to 0%.214 Apportionment would be successfully addressed by any of the system alternatives.

221. To ensure that there was adequate commercial interest in development of the Project among its non-Marathon shippers, NDPC conducted an open season for the Project in which parties were offered the opportunity to enter into TSAs for committed service of substantial volumes on a long-term, ship-or-pay basis. The initial open season for the expanded capacity created by the Project began on November 26, 2013, and ended on January 24, 2014. NDPC received executed TSAs containing ship-or-pay commitments for 155,000 bpd on the Project.215 The remaining uncommitted capacity will be divided between historical and new shippers.216 These commitments from NDPC’s shippers strongly indicate that a pipeline by the Project size, type, and timing proposed delivering petroleum from Bakken fields to Midwestern refineries, offering incremental capacity of 225,000 bpd at the tariff rates, is needed over an alternative that would not require a CN.

222. It is doubtful that shippers would commit to long-term ship or pay agreements if NDPC could increase the amounts of light crude oil it transports without new infrastructure.

209 Ex. 7, at 3:80-84 (Steede Direct).
210 Ex. 7, at 3:91-4:107 (Steede Direct).
211 Ex. 20, at 4:129-134 (Steede Rebuttal).
212 Ex. 18, at 4:102-110 (Earnest Rebuttal).
213 Ex. 8, at 7:177-183 (Glanzer Direct).
214 Ex. 8, at 7:187-188 (Glanzer Direct).
215 Ex. 7, at 6:177-193 (Steede Direct).
216 Ex. 7, at 8:244-245 (Steede Direct).
However, there has been no showing that shippers would have rejected alternative pipelines, had that opportunity been advanced to them. In fact, the success of the Bakken Pipeline demonstrates demand for such alternatives.

223. Marathon decided to support and invest in the Project because it is currently unable to acquire sufficient quantities of Bakken crude via existing transportation options, and because it was offered an attractive ownership arrangement giving it a financial stake in the profits of NDPC. Without the Project, or a suitable pipeline alternative, Marathon would either have to obtain crude from other sources, or would have to transport Bakken crude via other means, such as rail. Either option is likely to increase the costs that Marathon would have to pay to obtain crude.217 The evidence does not demonstrate that a line paralleling the Bakken pipeline could not meet Marathon’s needs or the need to deliver Bakken petroleum to Midwestern refineries.

224. Marathon supports the Project, but the evidence does not establish that Marathon would refuse to offer similar support to an alternative project, either system or route alternative, that delivers the same amount of petroleum from Bakken to its Midwestern refineries. In addition, Marathon supported the Project because of Enbridge’s experience in the pipeline industry and its confidence in Enbridge’s ability to execute the Project efficiently.218

225. As set forth in more detail in Sections III (B)(c) and (d), truck and rail are not preferable alternatives to the Project. The current rail system in Minnesota does not have the capacity required to support the increase in crude-by-rail traffic that will occur if the Project is not approved.219 Further, the majority of shippers that utilize the NDPC System support the development and construction of the Project because it affords them a transportation alternative to truck and rail,220 and because pipeline delivery costs as much as $5 per barrel less than its rail alternative.

226. Other things being equal refiners prefer lower prices for crude oil feedstocks. Both Minnesota refiners may find Bakken crude oil an increasingly attractive feedstock over time, especially as there are over 1 million bpd of it being produced in an adjacent state.221 For instance, in the second quarter of 2013, Northern Tier Energy completed an expansion of its sweet crude unit at the St. Paul refinery. For the third quarter of 2014, Northern Tier Energy is projecting that its Bakken crude oil throughput will be between 62,000 and 65,000 bpd, indicating that Northern Tier Energy has recently significantly increased its consumption of Bakken crude oil.222

218 Ex. 13, at 5:142-6:153 (Palmer Direct).
219 Ex. 15, at 2:36-38 (Rennicke Direct).
220 Ex. 7, at 9:275-277 (Steeed Direct).
221 Ex. 18, at 2:45-57 (Earnest Rebuttal).
222 Ex. 18, at 2:35-43 and Schedule 3 (Earnest Rebuttal).
227. Similarly, Marathon is in the process of completing other system upgrades at its Midwest refineries that will benefit from the Project. Marathon is investing approximately $160 million to upgrade its Robinson, Illinois refinery, increasing its light crude refining capacity by 30,000 bpd. In addition, Marathon is investing approximately $250 million to install condensate splitters at its Canton, Ohio refinery and Catlettsburg, Kentucky refinery during 2014 and 2015, which will increase the capacity of light, sweet crude that can be processed by each facility by 25,000 bpd and 30,000 bpd, respectively.223

228. Any comparable new pipeline or expansion project located in Minnesota, such as this Project, would require a Minnesota CN.224 Therefore, there are no existing or planned facilities that can meet all of the future demand for pipeline services without a CN.

5) The Effect of the Proposed Facility, or a Suitable Modification of it, in Making Efficient Use of Resources.

229. There is record evidence establishing that the Project, or a suitable modification -- including system alternatives -- will make efficient use of resources from a strictly economic perspective.

230. First, there is record evidence that the Project is designed in some respects to efficiently utilize existing pipeline infrastructure.225 However, the proposed pipeline location exacerbates a problem created with the location of Clearbrook 50 years ago by creating a new pipeline in new locations in environmentally sensitive areas of Minnesota’s lake country.

231. The only potential customer beneficiaries of the Clearbrook delivery point on NDPC’s Preferred Route would be the two refineries in Minnesota—St. Paul Park Refining Co. (“SPPRC”) and Flint Hills. (Ex. 20 at 10:283-84.) These refineries do not appear to be shippers, and have not expressed support for the Project. Moreover, the shipping capacity between Clearbrook and these refineries will not increase, nullifying any potential benefit to these refineries.226

232. Any Clearbrook advantages, arise from its establishment fifty years ago at a time when regulation of pipelines were not impacted by MEPA and other environmental protections. However, Clearbrook is located in a particularly environmentally sensitive area. The placement of the new terminal construction west of the proposed Clearbrook location as suggested by MPCA in SA-03 would assure that future pipelines are located west and south of these pristine areas, thus avoiding the resources that the state is spending millions of dollars to protect. Meanwhile, the continued expansion of the Clearbrook facility that will coincide with

223 Ex. 13, at 7:179-192 (Palmer Direct).
224 See Minn. R. 7853.0030.
225 Ex. 17, at 15:422-425 (Eberth Rebuttal).
226 Ex. 9 at 5:158-60; (Ex. 50 at 24:1-19; Ex. 54 at 30:13-17.); Ex. 50 at 25-26.
construction in the SA-Applicant location will mean continued impact and potential impact to the highest value pristine waters in Minnesota as a result of future pipeline construction.\textsuperscript{227}

233. NDPC has failed to prove that there is sufficient demand to require that Bakken petroleum must be transported to Illinois and other Midwestern pipelines through Superior. Other than co-owner Marathon, few shippers have shown interest in the Project, and fewer still have been willing to publicly support it.\textsuperscript{228}

MORE REASONABLE AND PRUDENT ALTERNATIVE

234. The second criterion under Minn. R. 7853.0130 is that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.\textsuperscript{229} This criteria can only be considered after a valid and complete environmental review has been approved. When assessing this criterion, the Commission considers the following factors, which are analyzed for each alternative in more detail below:

(1) The appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) The cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) The effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) The expected reliability of the proposed facility compare to the expected reliability of reasonable alternatives.

235. NDPC’s assertion that it is the burden of other parties to demonstrate the existence of superior alternatives is inconsistent with Minnesota environmental law. Under Minnesota Chapter 116D.04, it is applicant’s burden first to establish that there are no feasible alternatives which deliver Bakken crude to Midwestern refineries, and NDPC has not met that burden. No evaluation of superior alternatives can occur, and no determination can be made by the Commission, until NDPC first supplies an adequate environmental review, and an adequate review has not been supplied or approved. Further, the evidence supplied by MPCA, DNR, and interveners establishes that in fact there are superior alternatives.

1) \textbf{The Project}.

A. \textbf{Size, Type, and Timing}.

\textsuperscript{227} MPCA Position Statement January 23, 2015.
\textsuperscript{228} Ex. 183, Sch. 4 at 182-83. Tr. Vol. III at 77:13-18.
\textsuperscript{229} Minn. R. 7853.0130(B).
236. The Project will transport light sweet crude oil. The Project will have an annual capacity of 225,000 bpd from Berthold, North Dakota to Clearbrook, Minnesota, and an annual capacity of 375,000 bpd from Clearbrook, Minnesota to Superior, Wisconsin. NDPC determined that using both 24- and 30-inch pipe for the Project provided the most efficient design. 230

237. Although NDPC contends that the Commission should approve the preferred route because the preferred route can be approved more quickly than environmentally superior alternatives, the reasons offered do not provide adequate justification for grant of a Certificate of Need. The following factors lead to this conclusion:

a. NDPC intentionally filed an application proposing only a single route alternative, when the facts and circumstances should have led NDPC to recognize that alternatives were likely to be considered in order to comply with Minnesota law.

b. NDPC failed to proceed with its US Army Corps of Engineers Permit and has thus intentionally delayed the environmental review required under NEPA.

c. NDPC submitted a defective Environmental Information Review which fails to comply with Chapter 116D and the alternative environmental review. There is no legal basis for sanctioning a defective environmental review to facilitate a more rapid approval.

d. NDPC should have allowed for potential system alternatives in its shipper agreements, since it could not presume acceptance of the only route that it submitted.

e. NDPC knew or should have known that it intended to submit a Line 3 application traversing the same route, but failed to treat those applications as connected action for environmental review purposes.

f. NDPC acknowledges the existence of a glut of oil in today’s markets. While NDPC is planning for the long run, current market conditions do not support NDPC’s suggestion that suitable alternatives should be ignored simply to facilitate more rapid approval cannot be sustained.

238. The Preferred Route is not significantly shorter than the system alternatives and SA-03, as modified or other alternatives. The distance traversed by petroleum to Midwestern refineries is on the order of 1000 miles. The cost difference involved in a longer line is insignificant as compared to the rail-pipeline price differential.

B. Effect on Natural and Socioeconomic Environments.

239. The record does not demonstrate that the Project is compatible with the natural and human environments.

230 Ex. 9, at 4:116-24 (Simonson Direct).
240. NDPC's Application contained a discussion of the geographic features adjoining the proposed route but did not provide an adequate discussion of environmental impacts of the Project.

241. The environmental review and NDPC's position statements contend that environmental impacts can be assessed by counting resource categories such as the number of watersheds, but the positions of MPCA, DNR, and Chapman testimony all support the conclusion that a counting of resources crossed is not equivalent to an environmental impact study. In the absence of a true accounting for environmental impacts, NDPC cannot show that its route is compatible with the natural and human environments.

242. NDPC’s Environmental Protection Plan (“EPP”) outlines construction-related environmental policies, procedures, and general mitigation measures. The EPP also includes spill prevention, containment, and control measures designed to minimize the likelihood of a construction-related spill and designed to quickly and successfully conduct clean-up activities. The EPP further addresses erosion control, drilling mud releases, noxious and invasive weeds, and restoration/revegetation measures. However, it is conceded that these protection plans cannot eliminate the possibility of catastrophic spills. An important environmental issue therefore is whether there are alternative routes which reduce the potential spill impacts, and the testimony establishes that there is.

NO-ACTION ALTERNATIVE

A. Size, Type, and Timing.

243. Under the no-action alternative, the Project would not be constructed, and shippers would be required to continue to find alternative ways to get crude oil from the Bakken region to market. The no-action alternative does not meet the objective of conveying Bakken oil to Midwestern refineries because it does not meet the needs of shipper or refiners for reliable and efficient access to crude oil, unless an alternative pipeline conveying petroleum from Bakken to the Midwest is constructed. Unless an alternative pipeline is constructed, it also does not meet the needs of the petroleum-consuming public, which requires secure and reliable sources of crude oil.

244. As a result of the increase in Bakken production, there is a need to increase the pipeline capacity out of North Dakota in order to deliver crude oil to Midwestern refineries. Concluding that the no-action alternative was not a reasonable alternative to the Project, Mr. Heinen stated that “it is clear that production levels in the Bakken formation have increased, and

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231 Ex. 17, Schedule 1, at 185 (Eberth Rebuttal). See Section III(B)(f) for more detail regarding the human and environmental features identified in each system alternative Study Area.

232 Ex. 17, Schedule 1, at 185 (Eberth Rebuttal).

233 Ex. 11, at 11:261-267 (Ploetz Direct).

234 Ex. 6, at 10:328-331 (Eberth Direct).
will continue to increase, and that these crude oil volumes will seek a way to market.\textsuperscript{235} Accordingly, selection of the no-action alternative amounts to selection of rail, trucking, or the construction of an alternative pipeline. Only the construction of an alternative pipeline in an appropriate location is a feasible alternative.

245. There is extensive evidence in the record showing that present pipeline and rail capacity is not sufficient, and that crude-by-rail is generally undesirable.\textsuperscript{236}

B. Cost.

246. Although the no-action alternative would not result in construction costs, shippers would face increased costs to secure crude oil by other means if the Project is not constructed.\textsuperscript{237}

C. Effect on Natural and Socioeconomic Environments.

247. However, there is substantial evidence in the record that the oil to be transported by the Project will not remain in the ground absent the Project; rather, it will move to market via other means, likely at a higher environmental cost, or that an alternative pipeline will be constructed to meet the need.\textsuperscript{238}

D. Reliability.

248. Absent location of an alternative pipeline, the No Action Alternative is less reliable than the Project because producers and shippers would be required to seek other transportation means that are less safe and more costly than the proposed pipeline or reduce production of petroleum-based products. The only other alternatives for shippers delivering into the NDPC System would be to (1) truck or rail all or portions of the increased Bakken production to refineries outside North Dakota with attendant problems, or (2) transport crude oil on non-NDPC pipeline systems that are also at capacity and, thus, would require new pipe or facilities to be constructed.\textsuperscript{239}

249. If the Project does not proceed, it is likely that some other Bakken pipeline project will be built in an environmentally superior location.

RAIL ALTERNATIVE

\textsuperscript{235} Ex. 50, at 54:6-9 and Schedule AJH29 (Heinen Direct).

\textsuperscript{236} See infra Sections III(B)(c).

\textsuperscript{237} Ex. 14, at 8:147-9:173 and Schedule 2, at 39 (Earnest Direct); Ex. 13, at 7:196-208 (Palmer Direct); Ex. 6 at 10:328-11:341 (Eberth Direct).

\textsuperscript{238} Ex. 11, at 6:186-90 (Ploetz Direct).

\textsuperscript{239} Ex. 3, Part 7853.0540, at 2 (Revised CN Application).
250. Under the rail alternative, the crude oil to be transported by the Project would
instead be transported via rail. The rail alternative is not a reasonable alternative to the
Project.\textsuperscript{240} Rail delivery prices are approximately $5 per barrel higher than pipeline services.

251. Significant amounts of Bakken crude are already transported through Minnesota
by rail as the crude oil is shipped to refineries throughout the United States. In 2008, United
States Class I railroads transported only 9,500 carloads of crude oil. By 2013, the number
of crude oil carloads increased to 407,642. That represents an increase of more than 4,190% in five
years. For 2014, the number was expected to be around 650,000 carloads.\textsuperscript{241} Most of the
Bakken crude oil moved on freight railroads in Minnesota passes through major population
centers on tank cars as part of large unit trains. A suitably located pipeline provides an
alternative means of transporting Bakken crude oil to refineries that is safer, less environmentally
harmful, and more economical.\textsuperscript{242}

**PIPELINE ALTERNATIVES**

In its Application, NDPC analyzed the following pipelines as alternatives to the Project: Plains
Bakken North Pipeline Project; High Prairie Pipeline Project; and, the Koch Pipeline Dakota
Express Pipeline.\textsuperscript{243} In addition, DOC-DER witness Adam Heinen analyzed the Bakken Pipeline
and the Enterprise Products Partners’ Pipeline as alternatives to the Project.\textsuperscript{244}

1. **Energy Transfer Partners’ Bakken Pipeline.**

252. The Bakken Pipeline is an approximately 1,100-mile, 30-inch proposed pipeline
that would run from the Bakken region to Patoka, Illinois. The pipeline has a proposed initial
capacity of 320,000 bpd and an ultimate capacity of up to 570,000 bpd. Energy Transfer
Partners anticipates an in-service date at the end of 2016, at a cost of $3.7 billion.\textsuperscript{245}

253. The Bakken Pipeline avoids Minnesota altogether and delivers petroleum to
Midwestern refineries.

254. The Bakken Pipeline declared a binding open season on June 25, 2014, and
received commitments for the entire initial capacity of 320,000 bpd. Energy Transfer Partners
issued another open season on September 22, 2014, which suggests that the pipeline will be
constructed to a higher initial capacity. The results of the open season for the Bakken Pipeline
and the results of the open season for the Project suggest that there is sufficient commercial
interest in both pipelines.\textsuperscript{246} Moreover, the interest demonstrates that there is an economically

\textsuperscript{240} Ex. 50, at 72:2-3 (Heinen Direct).
\textsuperscript{241} Ex. 15, Schedule 2, at 10 (Rennicke Direct).
\textsuperscript{242} Ex. 3, Part 7853.0240, at 4 (Revised CN Application).
\textsuperscript{243} Ex. 3, Part 7853.0540, at 3-5 (Revised CN Application).
\textsuperscript{244} Ex. 50, at 62:20-63:8 (Heinen Direct).
\textsuperscript{245} Ex. 50, at 58:6-13 (Heinen Direct).
\textsuperscript{246} Ex. 50, at 59:23-60:8 (Heinen Direct).
feasible pipeline alternative that avoids the sensitive Minnesota environmental resources as recommended by the MPCA and DNR.

2. Enterprise Products Partners’ Pipeline.

255. The Enterprise Products Partners’ Pipeline is an approximately 1,200 mile, 30-inch proposed pipeline that would run from Stanley, North Dakota, to Cushing, Oklahoma. The pipeline has a proposed initial capacity of 340,000 bpd and an ultimate capacity of up to 700,000 bpd.\textsuperscript{247}

256. Following the unsuccessful close of its extended open season, Enterprise Products Partners announced that it had decided not to move forward with the pipeline. Therefore, it is not a reasonable alternative to the Project.\textsuperscript{248}

**SYSTEM ALTERNATIVES**

257. In addition to the alternatives to the Project discussed above, the Commission determined that an analysis of six “System Alternatives,” which had been identified in the Route Permit docket, would provide it with valuable information.\textsuperscript{249} The System Alternatives are alternatives to the Project which do not connect to Clearbrook, Minnesota, and/or Superior, Wisconsin.\textsuperscript{250}

258. SA-Applicant presents significantly greater risks of potential environmental impacts and encroach on higher quality natural resources than SA-03 and several other system alternatives. Minn. Rule 7853.0130.8(3). The effects of SA-Applicant on the natural environment support a determination in favor of other alternatives. Minn. Rule 7853.0130.C(2) and C(3).\textsuperscript{251} The testimony and position statements of MPCA and DNR establish that several of the System Alternatives present clear environmental advantage as compared to the Project when balancing all applicable CN rule criteria.

259. At the Commission’s request, DOC-EERA conducted a high-level environmental analysis of each system alternative, as well as the Project, by establishing two-mile wide Study Area analysis corridors around the general location of each alternative.\textsuperscript{252} In addition, NDPC completed its own environmental, engineering, and cost review of each System Alternative, as

\textsuperscript{247} Ex. 50, 61:13-21 (Heinen Direct).
\textsuperscript{248} Ex. 18, at 7:191-197 and Schedule 4 (Earnest Rebuttal).
\textsuperscript{249} Ex. 80, at 12 (EERA Report).
\textsuperscript{250} Ex. 80, at 12 (EERA Report).
\textsuperscript{251} MPCA Position Statement January 23, 2015; DNR letter of January 23, 2015; Chapman Surrebuttal Testimony;
\textsuperscript{252} Ex. 80, at 13 (EERA Report).
well as the Project and SA-03, as modified. These reviews are not true environmental impact analyses, but rather represent a counting of geographic resources.

260. NDPC and DOC-EERA approached their reviews by counting geographic features, but the counting of geographic features is not an environmental impact assessment, it is a geographic inventory. The fact that a system alternative study area contains more cities, counties, populated areas, residences, structures, schools, churches, cemeteries, wind turbines, railroads, roads, and communication towers than the Preferred Route Study Area, as contended by NDPC is not an indicator of environmental superiority.

261. Record evidence demonstrates that the consequences to Minnesota of granting the CN for the Project are less favorable than the consequences of denying the CN and approving a system alternative.

262. Numerous counties, townships, cities, associations, and organizations passed resolutions in support of a Project or issued letters of support for a Project. The majority of these comments were filed prior to completion of the comparative environmental analysis. Some cited a specific preference for the applicant’s preferred project, others supported a pipeline project as opposed to rail, specifically focused on tax revenue that the pipeline would bring to their jurisdiction, or contended that the PUC should accept whichever route could be

253 Ex. 17, at 5:100-102 (Eberth Rebuttal).
254 Aitkin County Board of Commissioners, Carlton County Board of Commissioners, Clearwater County Assessor, Clearwater County Board of Commissioners, Clearwater County Treasurer, Nelson County Board of Commissioners, Polk County Board of Commissioners, Red Lake County Board of Commissioners, Lake Pleasant Township, Red Lake County Township Association, Timothy Township Board, City of Crookston, City of Gonvick, Beltrami County Farm Bureau, Cass County Farm Bureau, Wadena County Farm Bureau, Bemidji Chamber of Commerce, Brainerd Lakes Chamber of Commerce, Dakota County Regional Chamber of Commerce, Duluth Area Chamber of Commerce, Grand Forks/East Grand Forks Chamber, Grand Rapids Area Chamber of Commerce, Hibbing Area Chamber of Commerce, International Falls Area Chamber of Commerce, Laurentian Chamber of Commerce, McGregor Area Chamber of Commerce, TwinWest Chamber of Commerce, Winona Area Chamber of Commerce, Belle Taine Lake Association, Conservationists with Common Sense, Duluth Seaway Port Authority, Grand Forks Region Economic Development, Gully Tri Coop Association, Mid-America Chamber Executives Advocacy Alliance, Minnesota AgriGrowth Council, Minnesota/Wisconsin Petroleum Council, North Dakota Petroleum Council, and Up North Jobs Inc.
255 E.g., Duluth Seaway Port Authority (20151-106537-01); Lake Pleasant Township (20151-106367-02)
256 E.g., Laurentian Chamber of Commerce (20151-106367-02); Hibbing Area Chamber of Commerce (20151-106367-02)
257 E.g., Lake Pleasant Township (20151-106367-02)
constructed first, so as to alleviate rail congestion\textsuperscript{258} or realize the benefits of a project. While the tax revenues received from a pipeline project are not insignificant, tax revenues will derive from any Minnesota route or system alternative, and the fact that tax revenues are payable to a particular township or county is not material to the factors involved in granting a Certificate of Need to a particular project. The Effects of the Proposed Facility or a Suitable Modification of it, in Inducing Future Development.

263. Record evidence does not demonstrate that selection of this project will have significantly greater positive impacts on the economy as compared to an alternative project. The economic benefits of an environmentally superior pipeline would actually be greater than an environmentally inferior pipeline\textsuperscript{259}.

264. As already described in Section III(C)(b)(1), the construction and operation of the Project is expected to have positive socioeconomic impacts. These impacts however, are not unique to this particular project and would be realized by an environmentally superior pipeline project.

265. David Barnett submitted direct testimony on behalf of the UA.\textsuperscript{260} Approximately 7,800 UA members live in Minnesota.\textsuperscript{261} Mr. Barnett stated that the UA’s members receive substantial training and are experienced in the construction of pipelines.\textsuperscript{262} Mr. Barnett stated that the UA expects that the Project could result in as many as 1,500 construction jobs.\textsuperscript{263} Mr. Barnett noted that the Project also has the potential to create manufacturing jobs to produce the materials and components used for the Project.\textsuperscript{264} Mr. Barnett stated that the UA supports the Project and asks for the Commission’s approval.\textsuperscript{265} These same benefits would be realized by an alternative project.

266. Further, Helene Herauf submitted direct testimony on behalf of the GNDC.\textsuperscript{266} GNDC represents nearly 1000 business members, including businesses in the transportation and oil and gas industries.\textsuperscript{267} Ms. Herauf explained that North Dakota businesses and individuals

\textsuperscript{258} "Minnesota AgriGrowth Council, and cosigners Minnesota Petroleum Council (API), Cass County Farm Bureau
Gully Tri-Co-Op Association, McGregor Chamber of Commerce, Wadena County Farm Bureau, Beltrami County Farm Bureau (201410-103922-01);
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\textsuperscript{259} Lichty Tr. 60-64.
\textsuperscript{260} Ex. 220 (Barnett Direct).
\textsuperscript{261} Ex. 220, at 6:39-7:1 (Barnett Direct).
\textsuperscript{262} Ex. 220, at 3:22-4:19 (Barnett Direct).
\textsuperscript{263} Ex. 220, at 5:32-6:8 (Barnett Direct).
\textsuperscript{264} Ex. 220, at 6:27-36 (Barnett Direct).
\textsuperscript{265} Ex. 220, at 11:31-34 (Barnett Direct).
\textsuperscript{266} Ex. 230 (Herauf Direct).
\textsuperscript{267} Ex. 230 at 2 (Herauf Direct).
will benefit from the construction of Sandpiper through increased sales of goods and services, as well as increased tax revenue. These same benefits would be realized by construction of an environmentally superior project.

A. **SOCIALLY BENEFICIAL USES OF THE OUTPUT OF THE PROPOSED FACILITY, OR A SUITABLE MODIFICATION OF IT, INCLUDING ITS USES TO PROTECT OR ENHANCE ENVIRONMENTAL QUALITY.**

267. Record evidence shows that there are multiple and numerous socially beneficial uses for the Project’s output – light sweet crude oil.

268. The refineries that receive crude oil from the MPL System and the NDPC System produce a wide range of industrial and commercial products, including transportation fuels, heating oil, and asphalt.

269. Following the development of these products, Midwestern refineries ship these products to markets within Minnesota and the Midwest. Because the distribution system for these products is highly integrated, refined products produced from crude oil are readily available in each of these markets. The people of Minnesota and neighboring states benefit from access to these products, which they use in every aspect of their lives, including transportation, heating their homes, clothing, food, medicine, and feedstock.

B. **IT HAS BEEN DEMONSTRATED ON THE RECORD THAT THE DESIGN, CONSTRUCTION, OR OPERATION OF THE PROPOSED FACILITY WILL FAIL TO COMPLY WITH THOSE RELEVANT POLICIES, RULES, AND REGULATIONS OF OTHER STATE AND FEDERAL AGENCIES AND LOCAL GOVERNMENTS.**

270. Finally, the fourth criterion under Minn. R. 7853.0130 is that it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

271. The Project is subject to permitting or consultation with numerous state, federal, and local agencies, ranging from federal agencies, such as the United States Army Corps of Engineers, to state agencies, such as the MDNR and MPCA, to county-level governments.

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268 Ex. 230 at 2 (Herauf Direct).
269 *E.g.*, Ex. 3, Part 7853.0240, at 7 (Revised CN Application); Ex. 13, at 12:315-324 (Palmer Direct).
270 Ex. 14, at 5:93-6:122 (Earnest Direct).
271 Ex. 1, Part 7853.0240, at 7 (CN Application); Ex. 13, at 12: 315-324 (Palmer Direct).
272 Minn. R. 7853.0130(D).
273 Ex. 3, Part 7853.0230, at 9-11 (Revised CN Application).
None of the state permits may be granted unless a MEPA compliant environmental review has
been completed. The federal USACE permit has not been applied for. The Applicant
assembled a table identifying the various state, federal, and local agencies with whom it must
interact to obtain permits or approvals for the Project.274 That table inaccurately claims that an
application has been submitted to the United States Army Corps of Engineers, but in fact it has
not been. NDPC provided updated information about the status of the various required state,
federal, and local approvals for the Project, some of which is inaccurate.275

272. NDPC has not designed the Project to meet all applicable federal and state
pipeline regulations. The MPCA and DNR determinations that the environmental review is
inadequate bars issuance of MPCA and DNR permits. The failure to submit an application to the
USACE leaves the record inadequate to demonstrate compliance. While NDPC has affirmed
that it will obtain and abide by the conditions contained within any permit required by law,276
that affirmation is inadequate to demonstrate that permits will be complied with.

OTHER ISSUES


273. DOC-DER recommended that the Commission make clear that NDPC is
financially responsible for all clean-up costs of any spills and that it maintain sufficient
insurance.277 DOC-DER also requests that NDPC provide a full discussion of the funding
mechanism NDPC has in place to fully account for all recovery and remediation efforts in the
event of an incident.278

274. NDPC’s assets consist of the pipeline and shipper agreements. In the event of a
catastrophic spill of the magnitude which occurred near Kalamazoo Michigan, the evidence
establishes that the pipeline’s financial viability could be jeopardized. It would not be consistent
with the public interest to insulate the assets of NDPC’s ownership, Marathon and Enbridge from
responsibility for remediation and damages. If, in fact, adequate arrangements have been made
for future potential losses, then there is no harm to Enbridge and Marathon to be required to
guarantee future liabilities of NDPC. Since it is responsibility of the ownerships to assure that
adequate financial arrangements have been made, Enbridge’s owners, and not the public, should
bear the risk that they have failed to do so.

275. NDPC is responsible for emergency response and for funding emergency
response at the time of an incident.279 Consistent with its obligations under federal and state law

274 Ex. 3, Part 7853.0230, at 10-11 (Revised CN Application).
275 Ex. 27, at 1:13-4:14 (Ploetz Rebuttal).
276 Ex. 9, at 12:348-51 (Simonson Direct).
277 Ex. 50, at 119:9-10 (Heinen Public Direct); Ex. 54, at 55:21-23 (Heinen Surrebuttal).
278 Ex. 50, at 121:10-12 (Heinen Public Direct).
279 Ex. 17, at 14:371 and 14:382-384 (Eberth Rebuttal); Ex. 33, at 3:72-73 (Eberth Sur-
Surrebuttal).
and its obligations as a responsible owner, NDPC employs a multi-level approach to ensuring it is prepared in the event of an emergency.\textsuperscript{280}

276. NDPC possesses substantial resources, including significant capital, to fund the cost of a response and remediation, but it is not at all clear that in a worst case scenario, those assets will be sufficient.\textsuperscript{281} NDPC will also maintain a comprehensive insurance program that includes commercial general liability insurance consistent with coverage considered customary for the industry.\textsuperscript{282} The record does not establish that NDPC will be financially able to respond to a major catastrophic incident should the need arise.

B. Pipe Wall Thickness.

277. While Minnesota statutes and rules governing route permits for pipeline projects clearly provide that the Commission may not set safety standards for the design and construction of pipelines. Minn. Stat. § 216G.02, subd. 3(a) provides that “[t]he Public Utilities Commission shall adopt rules governing the routing of pipelines. The rules apply only to the route of pipelines and may not set safety standards for the construction of pipelines.” (Emphasis added.) Minn. Stat. § 216B.243 sets out the requirements for a CN for a large energy facility but does not purport to regulate pipeline safety.\textsuperscript{283}

278. NDPC’s refusal to provide additional protection against possible spills on the grounds that the protection exceeds safety standards, combined with the positions taken by the two major Minnesota regulatory agency’s charged with protecting natural resources, supports denial of the Certificate of Need, unless NDPC locates the line where the results of spills and leaks will be less catastrophic.

279. Similarly, Minn. R. 7852.0100, subp. 28 defines “pipeline routing permit” as “the written document issued by the commission to the permittee that designates a route for a pipeline and associated facilities, conditions for right-of-way preparation, construction, clean-up, and restoration. The permit may not set safety standards for pipeline construction.” (Emphasis added.) Minn. R. 7852.0200, subp. 2 establishes the scope of pipeline route permit regulations and specifically states “[t]his chapter does not set safety standards for the design or construction of pipelines” and “[t]he pipeline routing permit must not contravene applicable state or federal jurisdiction, rules, or regulations that govern safety standards for pipelines nor shall the permit set safety standards for the design or construction of pipelines.” (Emphasis added.)

C. System Alternatives.

\textsuperscript{280} See, e.g., Minn. Stat. §§ 115E.02-.04; 49 C.F.R. Part 194; Ex. 17, Schedule 2, at 21-30 (Eberth Rebuttal).

\textsuperscript{281} Ex. 17, at 14:371-373 (Eberth Rebuttal).

\textsuperscript{282} Ex. 17, at 14:389-391 (Eberth Rebuttal).

280. The record evidence demonstrates that system alternatives (SA-03 through SA-08 and SA-03, as modified) are more reasonable and prudent alternatives than the Project. As a result, the Certificate of Need should be denied.

281. SA-04 through SA-08 do not connect to Clearbrook and/or Superior. The demonstrated need, however, is to deliver petroleum from Bakken fields to Patoka, Chicago, and other Midwestern refineries. NDPC cannot place a straitjacket on the location of a pipeline to meet that need by defining the interior points of the pipeline in such a way that it is impractical for the PUC to consider superior alternatives.

282. By refusing to consider alternatives unless the pipeline travels through Clearbrook and Superior, NDPC has rendered its environmental review useless for its intended purpose and deprived the Commission of comparative environmental impact analysis necessary to comply with Chapter 116D.

D. The Design, Construction, or Operation of the Proposed Facility Does Not Comply With Those Relevant Policies, Rules, and Regulations of Other State and Federal Agencies and Local Governments.

283. The Project is subject to permitting or consultation with numerous state, federal, and local agencies, ranging from federal agencies, such as the United States Army Corps of Engineers, to state agencies, such as the MDNR and MPCA, to county-level governments. The Applicant assembled a table identifying the various state, federal, and local agencies with whom it must interact to obtain permits or approvals for the Project.  

284. The Ploetz table and written testimony inaccurately states that NDPC has submitted an application to the United States Army Corps of Engineers for Clean Water Act Permits. In fact, NDPC was notified that its application was incomplete and NDPC has not advanced a completed application to the USACE.

285. One of the federal permits required is issued under title 33 USC Section 1344 (Act section 404). The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq., applies to the federal permits required for this project. NEPA requires the preparation of an EIS for “major Federal actions significantly affecting the human environment.” 42 U.S.C. 4332(2)(C). NEPA was intended not only to insure that the appropriate responsible official considered the environmental effects of the project, but also to provide persons receiving a recommendation or proposal with a sound basis for evaluating the environmental aspects of the particular project or program. Save Our Ten Acres v. Kreger, 472 F.2d 463 at 466 (5th Cir.1973). Environmental Defense Fund, Inc. v. Corps of Engineers of U.S. Army, 492 F.2d 1123, 1140 (5th Cir.1974) (emphasis added). USACE Section 404 permits involve an environmental sequencing which requires the applicant to demonstrate that the project complies with the section 404(b)(1) guidelines' least environmentally damaging practicable alternative requirement. See 40 CFR Part 230. The evidence submitted by MPCA, DNR and others demonstrates that the Project is unlikely to meet that requirement.

284 Ex. 27, at 1:13-4:14 (Ploetz Rebuttal).
286. NDPC’s failure to submit a completed Section 404 application has deprived the PUC of the information it needs from the USACE and NEPA process to determine whether a permit can or will be granted for this project.

287. Applications have not been, commenced as necessary to facilitate timely review and approval by governmental entities with oversight authority. NDPC provided updated, but inaccurate, information about the status of the various required state, federal, and local approvals for the Project. NDPC has affirmed that it will obtain and abide by the conditions contained within any permit required by law, but that affirmation is not adequate to establish that the project will comply with state and federal law.\textsuperscript{285}

288. The Project proposes to cross Minnesota public waters, including rivers, streams and wetlands. DNR and MPCA regulations include implicitly or in some cases explicitly, a least impact requirement. The official positions of the DNR and MPCA in these proceedings establish that the project does not meet that requirement.

**CONCLUSIONS OF LAW**

1. The environmental review for Applicant’s Proposed Project does not satisfy the requirements of Minnesota Rules parts 7852.2100-.3100 and the requirements for alternative environmental review in Minnesota Rules part 4410.3600.

2. Under the alternative environmental review authorized in the routing rule, the primary environmental review document is prepared by the applicant and submitted with the certificate of need and routing applications. The Environmental Assessment Supplement presented for public review merely counted features quantitatively and made no qualitative judgments regarding environmental impacts. Neither the environmental review provided in this docket, nor the information yet supplied by the parties, allows a systematic, fair comparison of system alternatives from an environmental effects standpoint. As a result, the process thus far does not give policy-makers a complete or fair assessment of alternatives.

3. The MPCA, DNR and other parties provided persuasive evidence that there were route or system alternatives (that is route alternatives with different endpoints than those proposed by applicant) that should have been studied in the environmental assessment supplement submitted by the applicant.

4. In general, the alternative environmental review documents failed to fulfill the requirements of the alternative review, in that it:

   \begin{itemize}
   \item[A.] failed to identify the potential environmental impacts of the proposed project;
   \item[B.] failed to address substantially the same issues as an Environmental Impact Statement
   \end{itemize}

\textsuperscript{285} Ex. 9, at 12:348-51 (Simonson Direct).
C. failed to use procedures similar to those used in preparing an EIS but in a more
timely or more efficient manner;

D. failed to consider alternatives to the proposed project in light of their potential
environmental impacts.

E. failed to adequately analyze potential mitigation measures

F. failed to comply with the Minnesota Environmental Policy Act -- MEPA-- (and
its implementing regulations) and the National Environmental Policy Act --
NEPA—(and its implementing regulations) by discontinuing its federal permit
applications.

G. failed to include an environmental assessment of the impacts of the second and
proposed parallel line.

5. The environmental review documents were inadequate to satisfy the needs of both
the Minnesota Pollution Control Agency and the Department of Natural Resources for use in
connection with its permitting process.

6. The parties have disagreed on who bears the burden of proof on certain contested
issues of fact or mixed law and fact. However, it is clear that any allocation of the burden of
proof assumes that the applicant has first met its responsibility to provide and complete an
environmental review. Since the environmental review fails to comply with Minnesota law, the
allocation of burden of proof is moot. A Certificate of Need cannot be granted until a complete
environmental review is conducted. Minn. Stat sec 116D.04 subd. 2b.

7. Regarding Minn. R. 7853.0130(A):

(a) The record demonstrates demand for both crude oil from the Bakken
region to be delivered to the refineries in Chicago, Patoka and other
Midwestern locations east of Lake Michigan. Accordingly, Minn. R.
7853.0130(A)(1) weighs in favor of issuing a certificate of need for some
project that meets that needs, provided that the pipeline is properly located
and designed and a compliant environmental review is conducted, but not
the applicant’s preferred project.

(b) No conservation programs, at either the state of federal level, will
eliminate the need for a pipeline that meets the needs described in
paragraph 7(a). As a common carrier, NDPC does not have a conservation
program aimed at public demand for refined products. It does, however,
have conservation programs that are aimed at reducing NDPC’s impact on
the environment. As a result, Minn. R. 7853.0130(A)(2) weighs in favor of
issuing a certificate of need for a project that meets the need as defined in
paragraph 1(a), provided that a compliant environmental review is
completed, but not the applicant’s preferred project.
(c) NDPC has not conducted promotional practices which have created the need for a project, but NDPC has conducted promotional practices designed to limit the need to the single pipeline location narrowly defined as meeting the need through a pipeline traversing Clearbrook to Superior. Rather, the need for a pipeline project is created by increased production from the Bakken region, insufficient pipeline capacity out of the Bakken region, and refineries seeking to meet the public demand for refined products. The need for the specific Project, however was created by granting Marathon an ownership interest in the project thus giving Marathon an economic incentive to demand a Clearbrook-Superior route as opposed to all other pipelines that would meet the need. Thus, Minn. R. 7853.0130(A)(3) weighs against issuing a certificate of need for the Project, but would weigh in favor of issuing a Certificate of need for an alternative environmentally acceptable project meeting the need described in paragraph 1(a)/.

(d) There are no existing or planned facilities that can satisfy the demand for the Project, because Applicant restricted consideration of its project proposal to the Project and no other alternative project which could meet the need. Accordingly, Minn. R. 7853.0130(A)(4) weighs against issuing a CN for the Project.

8. Regarding Minn. R. 7853.0130(B): In the absence of a completed environmental review, neither party can be required to demonstrate by a preponderance of the evidence a more reasonable and prudent alternative to the Project. Accordingly, Minn. R. 7853.0130(B) weighs against the granting NDPC’s Application for a certificate of need.

9. Regarding Minn. R. 7853.0130(C):

(a) Record evidence does demonstrate that a suitably located pipeline project will enhance the future adequacy, reliability, and efficiency of the energy supply needed by the surrounding region. Accordingly, Minn. R. 7853.0130(C)(1) would weigh in favor of issuing a certificate of need for a project which meets the need described in paragraph 7(a), after completion of a compliant environmental review.

(b) Record evidence does not demonstrate that the Project will have positive socioeconomic impacts on Minnesota and that the Project is compatible with the natural environment. Thus, Minn. R. 7853.0130(C)(2) weighs against issuing a certificate of need for the Project.

(c) Record evidence demonstrates that a properly located project, approved and located in compliance with environmental law, state and federal permitting, would have a positive impact on future development through increased economic activity, greater employment, and additional property tax revenues for local governments. In addition, record evidence establishes that such a project would facilitate development by providing a
reliable, efficient, and safe method for transporting Bakken crude oil to market. Accordingly, Minn. R. 7853.0130(C)(3) weighs in favor of issuing a certificate of need for a properly located project, but against a certificate of need for the Project.

(d) A pipeline project is the most socially beneficial method to transport crude oil, which will be turned into refined products, including fuel and petrochemicals required by Minnesota consumers. Thus, Minn. R. 7853.0130(C)(4) also weighs in favor of issuing a certificate of need for a properly located project, but not in favor of issuing a certificate of need for the proposed Project.

10. Regarding Minn. R. 7853.0130(D):

(a) Record evidence does not demonstrate that the design, construction, and operation of the Project will comply with the relevant policies, rules, and regulations of other state and federal agencies and local governments. Thus, Minn. R. 7853.0130(D), like the other criteria, weighs against granting a certificate of need for the proposed Project.

**RECOMMENDATION**

The Minnesota Public Utilities Commission should deny a certificate of need to NDPC for the Project.