

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of North
Dakota Pipeline Company LLC for a
Pipeline Routing Permit for the
Sandpiper Pipeline Project in Minnesota
DOCKET NO. PL-6668/PPL-13-474

***HONOR THE EARTH'S MOTION TO
EXTEND OR SUSPEND THE
CURRENT DEADLINES FOR
ALTERNATIVE ROUTES, AND ADD
COMMUNITY PUBLIC HEARINGS***

To: The above-named Commission

Recognizing the pipeline review process follows Minn. Stat. 216G and Minn. Rules 7852 and that pursuant to Minn. R. 7829.3200, the Commission is authorized to vary any of its rules upon making *certain* findings, *Honor the Earth* moves this Commission to extend the present deadlines to in order to provide additional community public hearings and the extension of the current April 4 deadline for submission of alternative routes.

Pursuant to Minn. Stat. 216G.02 Subd. 3(a)(5) *Honor the Earth's* motion is based on good cause, which includes:

1. The *Energy and Environmental Strategy Report* required by Minn. Stat. 116D.10, which "the governor shall transmit to the energy and environment and natural resources committees of the legislature a concise, comprehensive written report on the energy and environmental strategy of the state" . . . "due on or before January 1 of each even-numbered year", due Jan 2014 has not been issued or made available to the public.

2. The *Minnesota Environmental Review Mandatory Categories* (MERC) 2013 interagency Report identifies weaknesses in DOC environmental processes which were integral parts of EQB role and that Report suggests Legislative fixes for 2014 (which have not been initiated by state agencies or Governor).
3. Ignoring important Federal off-reservation Chippewa treaty and conservation rights.
4. Jurisdictional challenges to Minnesota's PUC authority under this above-captioned matter to unilaterally consent to and grant a *Route Permit*, which should be argued and decided first, as it is customary when jurisdiction is challenged, no further proceedings should occur until proper legal authority is shown to exist at law.
5. Best interests of our common environmental protection and respect for our federal rights to protect our ecosystem are not present in these PUC proceedings because under Minn. Stat. 216G.02 Subd. 3(a) "The Public Utilities Commission shall adopt rules governing the routing of pipelines [but] The rules apply only to the route of pipelines and may not set safety standards for the construction of pipelines."
6. Because fundamental fairness and due process protections under this schedule are not required to begin because the application is only partially (or *substantially*) completed, and a meaningful and viable alternative route needs to be given similar time to be identified and considered, simultaneously, which due to late production of Applicant's *actual preferred route information*, and
7. other incomplete application areas, as well as state agencies not meeting statutory deadlines, in the weighing of the factors (and absence of), warrants reasonable and prudent delay to protect all stakeholders' rights and interests.

This PUC Commission may extend deadlines for cause. (216G.02, Subd. 4)

However, in consideration of the foregoing significant constitutional issues being raised and the extreme eminent domain authority and risk to the environment (because pipeline routing permits supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local, and special purpose governments) these proceedings must remember the United States Constitution recognizes treaties as the supreme law of the land. Therefore federal and treaty protected

property interests require fundamental fairness in the federal *due process* due, which seems absent under the present rules and state PUC process.

Since 1973, the declared purposes of the state environmental policy under Minn. Stat. 116D.01 is to

encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

116D.02 DECLARATION OF STATE ENVIRONMENTAL POLICY.
Subdivision 1. **Policy.** The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, *declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.*

(Emphasis added). *In cooperation with federal and local governments* seems to be missing for Chippewa Reservations and off-reservation conservation rights. *Other concerned public and private organizations* are not seeing the necessary state agency discussions about promoting “efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human

beings; and [. . .] to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.” (Id.)

While it may be convenient and affordable for Applicant Enbridge, as well as the Minnesota agencies to have the Commission authorize public hearings jointly addressing NDPC’s application for a certificate of need and its application for a routing permit, bifurcating the proceedings with routing to be considered only after a certificate of need is issued would also put the cart behind the horse and give a fair chance to public participation and due process.

Enforcing the request to vary the rules would not impose an excessive burden upon the applicant, other than time, and Applicant has vast oil resources, for which the value increases over time. Others affected would also benefit by a more inclusive and meaningful public hearing process because granting the time variance would not adversely affect the public interest, but instead it will provide an opportunity for Applicant Enbridge to explain to Chippewa tribal members how their federal rights and environmental safeguards are being incorporated into the *current preferred route*.

Most importantly, granting the variance of extending time until after Labor Day would not conflict with any standards imposed by law, as shown by the *Order Finding Application Substantially Complete and Varying Timelines; Notice of Hearing* dated Feb. 11, 2014, with many variances granted under the rule. Instead, granting this variance for extensions of time and public meetings shows how all citizens’ of the lands of Minnesota rights under federal, state and tribal laws are respected and incorporated into ALL the

public's due process right to participate and meaningful opportunity to be heard, before deprivation of property rights and interests.

Honor the Earth supplements this Motion with a copy of Winona LaDuke's letters to Minnesota Governor Dayton dated March 31, 2014 and to Department of Commerce Commissioner Rothman dated April 1, 2014, also courtesy copied to Executive Secretary Burl W. Harr. Wherefore, based upon all the filings, delays of statutorily mandated information by the Governor relevant to these very proceedings, partial or *substantial* completion of the Enbridge Application being incomplete, Petitioner prays this Commission will grant variances necessary, proper and fair and meet the spirit of all the federal, state and tribal laws and provide for an extended time for the deadlines until after Labor Day for alternative routes, additional public hearings and subsequent comment periods.

Respectfully submitted April 2, 2014.

/s/ Frank Bibeau

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