

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of
North Dakota Pipeline Company
LLC, for a Certificate of Need and
Routing Permit for the Sandpiper
Pipeline Project In Minnesota

PUC Dkt Nos.CN-13-473/RP 13-474

HONOR THE EARTH'S
RESPONSE IN SUPPORT OF WHITE EARTH BAND OF OJIBWE'S
***Amended* MOTION FOR COMMENCEMENT OF ENVIRONMENTAL**
IMPACT STATEMENT and IDENTIFICATION OF RESPONSBLE
GOVERNMENT UNIT and ENGINEERING FIRM(S)

To: The Public Utilities Commission (PUC)

Comes now *Honor the Earth* to support the *Amended Motion* by the White
Earth Band o Ojibwe (WEBO) dated December 21, 2015 pursuant to direction of
the PUC at the December 17, 2015 scheduling hearing for this matter. The

Amended Motion calls for commencement of an environmental impact statement (EIS) and identification of responsible government unit (RGU) and engineering firms. The White Earth Band requested that the PUC relinquish its status as the RGU and defer to the Environmental Quality Board (EQB) to identify an RGU.

ARGUMENT

The PUC must relinquish the RGU role

Honor the Earth supports the objection by the White Earth Band to the PUC serving in the role of the RGU arguing that “it is a conflict of interest given its relationship to the Department of Commerce and because of its approval of the prior environmental review completed by the Department of Commerce which was determined to be inadequate by the court of appeals.” This is polite short-hand for more concerning appearance of conflicts of interest and loss of public confidence.

Particularly since the Court of Appeals the reversed the PUC grant of certificate of need September 14, 2015, the PUC and DOC have taken actions and given *notices* for parties to continue to participate in questionable, if not arguably unnecessary legal work, and the CEA and notice for scoping comments are a prime example. A major part of the confusion results from the attempted re-start of routing proceedings (13-474) from the PUC order granting CN. It appears that the PUC and or DOC are unwilling or unable to integrate the same scheduling realities

and demands expected of the parties, by the PUC.

On Sept. 18, 2015, ALJ LaFave held a prehearing conference where many of the intervening parties argued that in light of the Appellate Court's order at the beginning of the week reversing the grant by the PUC and requiring an EIS, routing proceedings must be stayed or continued based upon the Commission's Oct. 7, 2014 order bifurcating the proceedings and staying the routing proceedings. Unfortunately, ALJ LaFave's order resulting from the Sept. 18 prehearing was not issued until October 21 on the routing eDocket for 13-474, requesting certification of the order of continuance by the PUC or other direction. By this time the PUC and Enbridge had filed petitions for review for the Court of Appeals decision, publicly signaling PUC disagreement with the decision. Similarly, *Honor the Earth* is uncertain that the PUC ever acted on the ALJ request for certification for his order of continuance for the routing matter over 2 months ago.

At the PUC hearing October 1, 2015, the PUC denied all motions for Reconsideration, and then reopened and stayed the Aug. 3 Order, and asked parties for comments on how the PUC process should proceed, due at the end of October, with 2 weeks left for the PUC and/or Enbridge to decide whether to appeal. (The PUC and Enbridge both filed timely petitions for review on or about October 15, 2015.) The next agenda item for the PUC at the Oct. 1, 2015 Commission hearing

was to direct that the DOC go forward with the PUC planned Comparative Environmental Assessment (CEA), anyway. This PUC decision raised lots of questions with the public asking about what parts of the law apply to whom, when, and explanations of deference for an agency, interpretations of its law and the political dynamics within separations of powers, etc. in state government while exercising rights to appeal. Ironically, comments submitted by DOC supported an EIS, as did NDPC. But no one withdrew petitions for review to appeal the Appellate Court ordered EIS.

Late on the afternoon of Nov. 16, 2015, the DOC Executive Secretary issued a *Notice Requesting Information From Official Parties* for comments from the official parties on the *Draft Scoping Document for the Sandpiper Pipeline Environmental Review* filed by the Department of Commerce on Friday, November 13, 2015. (3 days before). The Notice indicated the 2 week comment period closing Monday, November 30, 2015, just after Thanksgiving week. Most comments submitted were not for scoping, but about the poor timing and brevity of time with the Minnesota Supreme Court having not issued a decision about granting an appeal.

The Executive Secretary did extend the deadline for scoping comments to Dec 23, 2015. The Notice requesting scoping comments was withdrawn by the

PUC at the long hearing on Dec. 17, 2015, because the Supreme Court had denied the petitions for review by the PUC and Enbridge 2 days before.

At the same December 17 PUC scheduling hearing the Deputy Commissioner for Department of Commerce Bill Grant spoke to the PUC about his concerns about comments *continually raising doubts about the DOC ability to carry out this environmental review being demeaning to mhis staff and damaging to this process*. While there are likely many root causes for these lack of confidence comments about the DOC, on information and belief it was Commissioner Lange at the June 5, 2015, PUC hearing that commented something to the effect that she was ultimately voting to grant the certificate of need without further environmental review or considerations because of the lack of state resources and/or capabilities.

Presumably these are lack of Responsible Government Unit (RGU) resources and capabilities are with the DOC, as both the Minnesota Pollution Control Agency and Department of Natural Resources have had their comments ignored repeatedly. Over a year and half ago the MPCA clearly articulated that

Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either south or east will cross

dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

(See MPCA Comments—Supplemental Comments Replacing MPCA Letter dated May 30, 2014, filed with PUC as Doc 20146-100780-01 at p. 15, Emphasis added).

Arguably, if the MPCA was the RGU a year and a half ago, it is much more likely that an EIS would have been an obvious requirement and completed by now.

Consequently, because the PUC has demonstrated an inability to choose the correct environmental procedures, shown a reluctance to accept the EIS, on information or belief the DOC has never performed an EIS, it is therefore in the interest of public confidence that the PUC must relinquish its RGU status back to the Environmental Quality Board.

EQB should designate MPCA or DNR as RGU

The White Earth Band also requested that “the EQB designate the Minnesota Pollution Control Agency or Minnesota Department of Natural Resources as the RGU because of particular expertise of these agencies in the independence and objectivity of these agencies in the present proceedings.” Honor the Earth supports

this request to provide a fresh look and fully developed EIS.

White Earth should be appointed as cooperating agency

The White Earth Band also requested that "the RGU appoint [White Earth] as a "cooperating agency" because White Earth has expertise in cultural, historical and environmental matters that directly relate to the pipeline corridor preferred by the North Dakota Pipeline Company and Enbridge; and because White Earth is able to identify in a timely manner significant issues in which the applicants proposed route will impact the human and natural environment." This request was before the PUC at the Dec. 17, 2015 hearing in the original motion served and filed by White Earth. However, neither the PUC nor DOC found a way to appoint White Earth as a cooperating agency, citing state law and non-inclusion in the Governor's 13-10 government-to-tribal government consultations. Agencies like the MPCA and DNR having working relationships with tribal environmental departments and are more likely to continue past practice and include a tribal government.

Engage Independent Environmental Engineering Firm(s)

The White Earth Band requested that the RGU “ensure that Exponent and/or Battelle, the environmental engineering firms that completed the EIS for Keystone XL pipeline, receive RFPs for the EIS” for Sandpiper and Line 3. Cumulative environmental and climatic change impacts analysis are completely missing from what is obviously one of the greatest saturations of oil pipeline risks for Minnesota. Together Sandpiper and Line 3 are carrying Tar sands and Bakken crude, which are some of the dirtiest crude oils on the planet, which both involve ultra-dangerous activities that require some of the most extreme extraction methods, which then compound degradation of adjacent environments and ecosystems, in and out of Minnesota, by knowingly-increasing, irreversible and negative, climate change impacts. Minnesota is downwind from both projects field operations, and much of the United States drinking water is downstream of the Headwaters of the Mississippi and Lake Superior.

This is the time to pause and think ahead about whether and if, a smart corridor for ultra-dangerous, fracking and tar sands open pit mining activities to avoid three (3) of the most significant watersheds of the North American continent where millions of Americans get their drinking water every day, is worth 20+ full-time jobs in Minnesota?

CONCLUSION

