March 15, 2014

The Honorable Eric L. Lipman
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

Re: In the Matter of the Application of North Dakota Pipeline Company for a Certificate of Need
MPUC Docket No. PL-6668/CN-13-473
OAH Docket No. 8-2500-31260

Dear Judge Lipman:

The Minnesota Department of Commerce, Division of Energy Resources (Department or DOC DER) provides this brief letter response to the Petition for a Protective Order of North Dakota Pipeline Company LLC (NDPC or the Company).

The Department supports NDPC’s request for a Protective Order, and wishes to facilitate the Company’s efforts to complete its application in a timely manner. To that end, the Department has spoken with the Company and offered the following suggestions.

First, the Department and NDPC have attempted to identify specific Shipper-related data that may be provided on an aggregate basis within the rule requirements in order to alleviate some of the concerns of the Company’s customers.

Second, DOC DER would support the opening of a second, affiliated docket to provide particular protection of the required Shipper-related information, consistent with Enbridge’s request. Additional details regarding creation of a second docket are addressed in subsequent paragraphs of this letter.

Third, as to the present docket, CN-13-473, the Company’s filing includes several pages designated as Trade Secret under the Minnesota Government Data Practices Act (Data Practices Act), Minn. Ch. 13. It is the Department’s understanding that Enbridge seeks a Protective Order for this already-filed data because there are non-government parties to the case that likely will wish to review it. The Department provided Enbridge with proposed edits to the proposed
Protective Order today that would make the structure of this document similar to the structure of other protective orders.

**Fourth, as to a second docket created solely for the purpose of** filing the Shipper-related data, a prehearing order could identify parties to the CN-13-473 matter that would be parties to the second docket. A prehearing order could identify the service list for that second docket and identify the parties that may have Trade Secret access (to the Shipper-related data) in written format or through electronic access to information designated as Trade Secret as Your Honor deems appropriate.

**Fifth, in addition as to a second docket,** the Department supports issuance of a Protective Order specific to that docket. DOC DER provided Enbridge edits to the Company’s Proposed Protective Order today that would apply specifically to the Shipper-related data to be filed in a second docket. Of course, as an initial matter, information that is eFiled with a Trade Secret designation is not available electronically to non-government parties including Enbridge, absent Your Honor’s approval. The Department highlights this fact because Enbridge may wish to eFile its Shipper-related data in a second docket as soon as the docket is created in order to accomplish completeness even though discussion between parties of specific Protective Order terms may be ongoing.

Finally, creating a docket-specific Protective Order for a second docket is intended as a streamlining suggestion. It should eliminate efforts to define gradations of “trade secret” data through use of terms like “Highly Sensitive Trade Secret” that are not terms used in the Data Practices Act. Additionally, having such a docket-specific Protective Order for the Shipper-related data would ease administrative, if not legal, difficulties of government agencies regarding their management within a single docket of multiple levels of protection for data, and may help clarify for non-government agencies the uses and procedures applicable specifically to Shipper-related data.

The Department will continue to work with the Company as well as interested parties in advance of the prehearing conference on Monday, March 17, 2014.

Sincerely,

/s/ Julia E. Anderson

Julia E. Anderson  
Assistant Attorney General  
Atty. Reg. No. 0138721  
445 Minnesota Street, Suite 1800  
St. Paul, MN 55101-2134  
Telephone: (651) 757-1202  
Fax: (651) 297-1235  
julia.anderson@ag.state.mn.us  
Attorney for Minnesota  
Department of Commerce, DOC DER