

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Minnesota Energy Resources Corporation for a Route Permit for the Rochester Natural Gas Pipeline Project in Olmsted County

ISSUE DATE: February 3, 2016

DOCKET NO. G-011/GP-15-858

ORDER FINDING APPLICATION COMPLETE AND GRANTING VARIANCE; NOTICE OF HEARING

PROCEDURAL HISTORY

On November 3, 2015, Minnesota Energy Resources Corporation (MERC) filed an application for a route permit for a natural gas pipeline to expand the capacity of MERC’s natural gas distribution system in and around the city of Rochester. MERC stated that the project would require construction of a 13.1 mile high pressure distribution pipeline and associated facilities that would tie together the northern and southern portions of MERC’s existing distribution system. MERC filed the application under Minn. R. Ch. 7852.

On November 9, 2015, MERC filed nine supplemental tables documenting existing environmental conditions for the three route segment alternatives MERC considered for the proposed project.

On November 30, 2015, the Department of Commerce Energy Environmental Review and Analysis staff (EERA) filed comments recommending that the Commission accept the application as complete, grant a variance to Minn. R. 7852.1400 to extend the 70-day time limit on proposing route alternatives, and approve a project-review budget of \$100,000.

On January 13, 2016, MERC filed revised application information to make two technical corrections. The first included an update to staff contact information on p. 8 of the application. The second labeled page 10 of the application as “revised” to reflect a correction to data included in Table 2 on that page.

On January 14, 2016, the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

No person may construct a pipeline line without a route permit from the Commission.¹ A pipeline is defined as “pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport a hazardous liquid by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility; or pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.”² Pipelines requiring a route permit include those used to “transport natural or synthetic gas at a pressure of more than 90 pounds per square inch.”³

MERC’s proposed project requires a route permit because it would include the following: 5.1 miles of 16-inch outside diameter steel pipeline anticipated to operate at 400 to 475 pounds per square inch gauge (psig); and 8 miles of 12-inch outside diameter steel pipeline to operate at 250 to 275 psig. Under the project’s design specifications, the maximum allowable operating pressure would be 500 psig for both pipelines.

II. Application Completeness

The EERA reviewed the route permit application under Minn. R. 7852.1400 to analyze whether the application contains the required information. Based on its analysis, the EERA stated that the application contains the required information and recommended that the Commission accept the application as complete. The Commission concurs with the EERA that the application meets the requirements of Minn. R. 7852.1400, with the technical corrections subsequently made by MERC, and will accept the application as complete.

The Commission’s finding of completeness is as to form only; it implies no judgment on the merits of the application, including cost recovery, which is being considered by the Commission in a separate ongoing docket.⁴ When queried at the January 14 Commission meeting on whether MERC would prefer to withdraw its permit application pending the outcome of the cost recovery docket, the Company declined.

III. Environmental Review

Minn. R. 7852.1500 requires that a comparative environmental analysis be prepared to analyze all pipeline routes accepted for consideration at public hearings. To fulfill this requirement, the Commission will authorize the EERA to begin preparation and development of the comparative environmental analysis, including administering the route development process. The Commission will also request that the EERA file a summary, analysis, and recommendation on all route alternatives identified during the public comment period.

¹ Minn. Stat. § 216G.02, subd. 2.

² Minn. Stat. § 216G.02, subd. 1.

³ Minn. Stat. § 216G.01, subd. 3.

⁴ See Docket No. G-001/M-15-895, *In the Matter of the Petition of Minnesota Energy Resources Corporation for Evaluation and Approval of Rider Recovery for its Rochester Natural Gas Extension Project*.

The Commission will also request that the EERA issue the comparative environmental analysis in draft form for public comment and file comments in response to comments received. The Commission will request that the EERA's response comments be filed as pre-filed testimony at least 14 days prior to the date of public hearings.

IV. Rule Variances

A. Minn. R. 7852.1400, subp. 3

Public information meetings on pipeline applications are held under Minn. R. 7852.1300, which requires the Commission to explain the route designation process to the public. Under Minn. R. 7852.1400, subp. 3, persons proposing a route or a route segment for Commission consideration must do so within 70 days of the Commission's decision finding the application complete. The EERA recommended that the Commission vary the 70-day time period to extend the time allowed for public input on other possible routes identified through the route designation process, a process not likely to be completed within the 70-day time period.

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

The Commission concurs with the Department that enforcement of the rule would impose an excessive burden on those affected by the rule by potentially limiting public input on other route alternatives prior to environmental review of the project. Further, granting the variance would not adversely affect the public interest, and would, in fact, serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process. And finally, granting the variance would not conflict with standards imposed by law, since the time frame is set by rule and not by statute.

B. Minn. R. 7852.1400, subp. 4

The Commission will also vary Minn. R. 7852, 1400, subp. 4, which requires the Commission to decide whether to accept any other route proposal, for consideration at public hearings, within 10 days after receiving such proposal. The Commission will vary the rule to extend the 10-day time limit for considering other route proposals.

The Commission finds that enforcement of the rule would impose an excessive burden on those affected by the rule by limiting the Commission's consideration of and input on other route alternatives prior to environmental review of the project. Further, granting the variance would not adversely affect the public interest, and would, in fact, serve the public interest by enabling a more comprehensive evaluation of public comment at the outset of the review process. And finally, granting the variance would not conflict with standards imposed by law, since the time frame is set by rule and not by statute.

V. Budget Proposal

The EERA requested that the Commission approve a project-review budget under Minn. R. 7852.4000 of \$100,000. The EERA stated that this is an estimate of the costs necessarily and reasonably expected to be incurred for processing the application, permit compliance activities, administrative overhead, and legal expenses. The EERA stated that the applicant has reviewed the proposed budget and will be provided with an accounting of all expenditures and that any unspent funds will be returned to the applicant.

The Commission finds the Department's analysis to be sound and consistent with the objectives of Minn. R. 7852.4000 and will approve the proposed budget.

VI. Referral for Contested Case Proceedings

The Commission finds that it cannot satisfactorily resolve all questions regarding the proposed pipeline project on the basis of the current filings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings under Minn. Stat. § 14.57 *et. seq.*

The administrative law judge assigned to this case will conduct hearings as described in this Notice and submit a report to the Commission.⁵ Following receipt of the administrative law judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 216G.

VII. Issues to be Addressed

The ultimate issue in this case is whether MERC's proposed pipeline project meets the route permitting criteria set forth in Minn. Stat. Ch. § 216G and Minn. R. Ch. 7852. This issue turns on numerous factors that are best developed in formal evidentiary proceedings. The parties to this proceeding should address whether the proposed project meets these criteria and address these factors. The parties may also raise and address other issues relevant to the application.

VIII. Review Process

To facilitate review of the application, and the public's participation in that review, the Commission will take the steps listed below:

- Delegate administrative authority over this case to the Executive Secretary.
- Request that the Department continue to study issues and indicate, during the hearing process, its position on the reasonableness of granting a route permit.
- Require MERC to facilitate, in every reasonable way, the continued examination of the issues raised by the Department and Commission staff.

⁵ Minn. R. 1405.2400.

- Require MERC to place a copy of the application (printed or electronic format) for review in at least one government center or public library in each county where the proposed pipeline is located.
- Direct Commission staff to work with the administrative law judge and the EERA staff in selecting suitable locations for public hearings on the application.
- Direct MERC to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior to the hearing, and request that such notice be in the form of visible display ads and that proof of publication of such ads be obtained from the newspapers selected.

IX. Public Advisor

Minn. R. 1405.0500, subp. 1 (G), states that notice of the hearing must include the name, address, and telephone number, and function of the agency's designated public advisor. The Commission will designate the following staff member to facilitate and coordinate public participation in this proceeding:

Tracy Smetana, Public Advisor
 Minnesota Public Utilities Commission
 121 Seventh Place East, Suite 350
 St. Paul, Minnesota 55101-2147
 (651) 296-0406 or 1-800-657-3782
consumer.puc@state.mn.us

X. Procedural Outline

A. Administrative Law Judge

The administrative law judge assigned to the contested case is Eric L. Lipman. His address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota, 55101; (651) 361- 7881. The mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.62; the rules of the Office of Administrative Hearings, Minn. R. 1405.0200 to 1405.2800; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100 to 7829.3200.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association. Hearings may be recessed and reset by the administrative law judge pursuant to Minn. Rules, parts 1405.1400 to 1405.2300.

Copies of these rules and statutes may be purchased from Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.mn.gov.

Minn. R. 1405.0500, subp. 1.H. states that a notice of hearing must include the name, address, and telephone number of the member of the attorney general's staff who may be contacted for advice on matters dealing with procedures. The Commission designates Lisa Crum, Office of Minnesota Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2131, (651) 757-1291.

- *Availability of Materials*

People may review all filed materials, including all prefiled testimony, on the Department's web site.⁶ Alternatively, they may view documents at the Department's offices at 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198. To arrange a viewing of these materials, interested persons may contact John Wachtler at the Minnesota Department of Commerce or by phone at (651) 539-1837.

- *Right to Counsel to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Michael Kaluzniak, Energy Facilities Planner, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2257 (voice), (651) 297-7073 (fax), mike.kaluzniak@state.mn.us (email).

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the administrative law judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

⁶ See <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&showEdocket=true&userType=public>. Because documents related to this matter are filed in Docket No. 15-858, people may find these documents by looking for the Docket Number line and entering 15 as the year and 858 as the case number.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the administrative law judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the administrative law judge after consultation with the Commission and intervening parties. Hearings may be recessed and reset by the administrative law judge under Minn. R. 1405.1400 to 1405.2300.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the administrative law judge within 20 days of the date of this Notice for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the administrative law judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties in this case are MERC and the Department. The names and addresses of the persons designated to receive all notices on behalf of the Applicants are included on the attached service list.

Those who wish to become parties in this proceeding may petition to intervene in accordance with Minn. R. 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition. Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and people need not intervene as parties to participate. Public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony orally or in writing, to question persons who testify, and to submit comments to the administrative law judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law under Minn. R. 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. R. 1405.0500, subp. 1, and is not intended to be comprehensive. Interested persons are encouraged to review Minn. Rules Chapter 1405 to identify the scope of rights and authority to act given “persons” or restricted to “parties” under the various provisions of that chapter.

D. Prehearing Conference

A prehearing conference will be held at a date, time, and place to be set by the administrative law judge in consultation with Commission staff.

The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.⁷

The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the administrative law judge.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

XI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to pipeline routing cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 539-1180, or (800) 657-3889 with any questions.

XII. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

⁷ Minn. R. 1405.1100.

ORDER

1. The Commission accepts MERC's application, as amended, for a pipeline route permit under the full permitting process as complete.
2. The Commission authorizes the Department to begin preparation of a comparative environmental analysis for the project; to hold public information meetings; to collect and analyze all route alternative proposals; and to provide a summary, analysis and recommendation for the Commission's review and determination of routes to be considered at hearing.
3. The Commission requests that the Department issue the comparative environmental analysis in draft form for public comment and reply to substantive comments received as pre-filed testimony at least 14 days prior to the public hearing.
4. The Commission refers the matter to the Office of Administrative Hearings for contested case proceedings.
5. The Commission delegates administrative authority to the Executive Secretary.
6. The Commission also takes the following steps set forth below:
 - a. Request that the Department continue to study issues and indicate, during the hearing process, its position on the reasonableness of granting a route permit.
 - b. Require MERC to facilitate, in every reasonable way, the continued examination of the issues raised by the Department and Commission staff.
 - c. Require MERC to place a copy of the application (printed or electronic format) for review in at least one government center or public library in each county where the proposed pipeline is located.
 - d. Direct Commission staff to work with the administrative law judge and the EERA staff in selecting suitable locations for public hearings on the application.
 - e. Direct MERC to work with Commission staff to arrange for publication of the notice of hearings in newspapers of general circulation at least ten days prior to the hearing, and request that such notice be in the form of visible display ads and that proof of publication of such ads be obtained from the newspapers selected.
7. The Commission authorizes the Department to administer the route development process and the development of the comparative environmental analysis.
8. The Commission hereby varies the time period in Minn. R. 7852.1400, subp. 3, to extend the 70-day time limit for the Commission to determine the route alternatives.

9. The Commission hereby varies the time period in Minn. R. 7852.1400, subp. 4, to extend the 10-day time limit for the Commission to determine the route alternatives to be considered at hearing.
10. The Commission approves the Department's proposed project-review budget of \$100,000.00.
11. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

OAH Docket Number: 8-2500-33180

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Minnesota
Energy Resources Corporation for a Route Permit
for the Rochester Natural Gas Pipeline Project in
Olmsted County

NOTICE OF APPEARANCE

TO: Administrative Law Judge Eric L. Lipman, 600 North Robert Street, PO Box 64620,
St. Paul, MN 55164

PLEASE TAKE NOTICE that:

1. The party named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the party named below hereby acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into electronic notice from the Office of Administrative Hearings with respect to this matter. **Note: Provision of an email address DOES NOT constitute the party's consent to electronic service from the opposing party/ies in this proceeding.**

3. The party named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any change in all parties' email address(es).

Party's Name: _____

Email Address: _____ Telephone: _____

Mailing Address: _____

Attorney's Name: _____

Email Address: _____ Telephone: _____

Firm Name: _____

Mailing Address: _____

Opposing Party's Name: _____

Opposing Party's Email Address (if known): _____

Dated: _____

Signature of Party or Attorney