

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: Tuesday, October 30, 2007. **Agenda Item # 4

Company: Enbridge Energy Limited Partnership & Enbridge Pipelines (Southern Lights) LLC

Docket No. PL-9/CN-07-465 & PL-9/PPL-07-361

In the Matter of the Application for Certificate of Need and the Application for a Pipeline Route Permit of Enbridge Energy for the Alberta Clipper and Southern Lights Diluent Projects

Issue(s): Should the Commission grant the motion to table the deadline for filing route alternatives, and the deadline for a final decision on the certificate of need & route permit applications for the above noted pipeline projects east of Clearbrook, Minnesota?

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Relevant Documents

Enbridge Motion to separate and delay consideration of Alberta Clipper and Southern Lights Diluent pipeline projects (east of Clearbrook) and request to certify question to Commission. October 3, 2007

Administrative Law Judge's Order Certifying Motion to Commission and Second Prehearing Order. October 26, 2007

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Statement of the Issue

Should the Commission approve Enbridge Energy's petition to delay consideration and extend the statutory deadlines for issuing a certificate of need and a route permit on the Alberta Clipper and Southern Lights Diluent pipeline projects, east of Clearbrook?

Background

Enbridge filed its LSr (Lakehead System) certificate of need and route permit applications in April of 2007. The LSr project is for a 20 inch pipe that would be routed north and west of Clearbrook. Agency staffs were also aware that Enbridge was intending to file another set of CoN and Route Permit applications for separate projects (Alberta Clipper & Southern Lights Diluent¹). Further consideration of the initial LSr applications were delayed until Enbridge filed the second set of permit applications. The process for the LSr applications continued once the Alberta Clipper & Southern Lights Diluent applications were filed, which occurred on June 22, 2007.

Given that all of the projects proposed in the applications were to be routed within or adjacent to the Applicant's existing right of way, it was assumed that confusion could be minimized, and efficiencies could be obtained by processing all four applications simultaneously. Completeness of the four applications was considered by the Commission at its July 12, 2007 Agenda Meeting. Orders finding the applications complete and sending the matters to the Office of Administrative Hearings for contested case proceedings were issued in late July and early August.

Informational meetings on the project, required by rule and conducted by the Department were held in mid-August in the counties traversed by the projects. In meetings to the west of Clearbrook, both the LSr and Alberta Clipper projects were discussed. In the meetings to the east of Clearbrook, the Alberta Clipper and Southern Lights Diluent projects were discussed.

Enbridge Motion

On October 3, 2007, Enbridge filed a motion with the Administrative Law Judge pertaining to the Alberta Clipper project east of Clearbrook and to the Southern Lights Diluent project. The motion proposed that the October 10, 2007 deadline for proposing route alternatives for all projects be suspended with respect to the projects east of Clearbrook. The motion also requested that the Alberta Clipper and Southern Lights Diluent route permit be separated into west and east of Clearbrook proceedings. Finally, the motion requested that the question of extending the deadline for a final decision on the route permit be certified back to the Commission.

Enbridge indicated in its motion that detailed survey work had identified that further route

¹ The Alberta Clipper project is a proposal for a 36-inch pipe from the Minnesota/North Dakota border to Superior, Wisconsin. The Southern Lights Diluent project is a proposal for a 20-inch pipe from Clearbrook, Minnesota to Superior, Wisconsin.

revisions would be necessary. In particular, Enbridge indicated that the requirements of sound engineering construction practices, potential permit requirements of the Minnesota Department of Natural Resources and/or the United States Army Corps of Engineers may require greater distances between the pipeline locations in environmentally sensitive areas than was initially proposed. Also, in heavily settled areas, Enbridge indicated it may need additional latitude in pipeline placement in order to address landowner concerns and to minimize the impact on land use.

NOTE: The issues raised by the motion were initially discussed in a phone conference with the Applicant, the staff of the Commission and representatives of the Department.

Second Prehearing Conference

On October 18, 2007 a second prehearing conference was held to discuss the motion and other procedural issues. During the conference there were extensive discussions among the participants regarding how to proceed with respect to the Alberta Clipper/Southern Lights Diluent CoN and Route Permit applications. Significant agreement on going forward was reached.

ALJ Order

On October 25, 2007 the Administrative Law Judge issued his Order Certifying Motion to Commission and Second Prehearing Order (October 25 ALJ Order). With respect to the motion, pursuant to Minn. Rules 1400.7600, the ALJ identified and certified the following questions to the Commission:

1. Whether the nine-month statutory deadline for the issuance of the Routing Permit for the Alberta Clipper and Southern Lights Diluent projects in docket PL-9/PPL-07-361 should be extended from March 22, 2008 to July 22, 2008?
2. Whether the twelve-month statutory deadline for the Alberta Clipper and Southern Lights Diluent Projects in docket PL-9/CN-07-465 should be extended from June 22, 2008 to July 22, 2008?
3. Whether the October 10, 2007 deadline for the submission of Route Proposals for the Alberta Clipper and Southern Lights Diluent projects east of Clearbrook should be suspended?

The ALJ's October 25, 2007 Order also contained the Second Prehearing Order for all four applications. This Order denies Enbridge's request to separate the Alberta Clipper, east of Clearbrook and the Southern Lights Diluent project from the Alberta Clipper projects west of Clearbrook. This Order also contained a tentative schedule for moving forward developed by the conference participants.

Tentative Schedule - moving forward

Staff provides the following discussion regarding some of the implications contained in the tentative schedule to try and clarify how the applications will be processed moving forward.

First, the LSr project (CoN and Route) is unaffected by the motions or changes in schedule. It is before you today to determine the final alternative routes to be examined at the public hearings. The DOC EFP staff has provided a separate briefing paper with respect to this issue.

Second, the proceedings on the Alberta Clipper route permit, west of Clearbrook, are not directly affected by the motions or changes in schedule. For the meeting today, this portion of the Alberta Clipper project is also discussed in the DOC EFP staff paper regarding final route alternatives to be considered.

The Alberta Clipper/Southern Lights CoN, in its entirety, will be held in abeyance until further route-related filings are submitted by the Applicant in early January.

As indicated in tentative schedule of the Second Prehearing Order, Enbridge will file a preferred route alignment for the Alberta Clipper/Southern Lights Diluent projects east of Clearbrook on January 7, 2008. With the exception of an accelerated time line of 30 days (rather than 70 days) for the submission of route alternatives, the route permit process would essentially start over again. It has not yet been determined whether additional initial informational hearings would be held again in each county.

STAFF COMMENTS

Three significant results of the changes discussed above are as follows:

- Record development on the Alberta Clipper and Southern Lights Diluent applications is delayed;
- there will be two ALJ Reports, one on the LSr CoN and Route applications in March of 2008 and a second on the Alberta Clipper/Southern Lights Diluent CoN and Route applications in late-June of 2008;
- the public hearings on the projects east of Clearbrook, both for the CoN and route permit applications, will be delayed from late November 2007 to late March or early April.

Notice

There is one major issue not identified in the tentative schedule. It is staff's understanding that Enbridge has agreed to provide an initial notice to potentially affected landowners and local units of government at the time it files its preferred route alternative. This notice would incorporate the information required for initial notice in transmission lines proceedings as outlined in 7829.2550. There is no mention of this notice in the ALJ's Second Prehearing Order.

Staff believes the Commission should include such a requirement in its Order on this proceeding.

Time Line Extensions

With respect to the first question certified to the Commission, the Pipeline Routing process is governed by Minn. Stat. § 216G. In relevant part, Minn. Stat. § 216G.02, Subd. 3 (5) requires the Commission to issue a final route permit within 9 months after the application is received, unless the Commission extends the deadline for cause.

With respect to the second question certified to the Commission, the Certificate of Need process is governed by Minn. Stat. § 216B.243. In relevant part, Minn. Stat. § 216B.243 Subd. 5 requires a final decision on the application within 12 months of a complete application, Subd. 5, however, permits the Commission to extend the time allowed with the consent of the parties or on its own motion, for good cause, provided an Order is issued justifying the extension.

Staff believes good cause for extending the deadlines for the Alberta Clipper/Southern Lights Diluent CoN and Route proceedings has been provided, given the delay in finalizing the preferred route for the projects east of Clearbrook.

However, since the extent of the changes to the route are unknown at this time, staff recommends the Commission reserve a sufficient and appropriate amount time to process and review the application before making a final decision. The Commission could recommend to the ALJ that the contested case proceed expeditiously, but in general compliance with the timing requirements under the rules, and with notification to landowners as required in the Commission's August 1, 2007 *Order Accepting Application, Initiating Full Review, Referring Matter to OAH & Order and Notice of Hearing* in the Alberta Clipper/Southern Lights Diluent CoN docket. Staff believes that the Commission should extend the statutory deadline to no later than 9 months from the date of the supplemental filing.

October 10, 2007 Deadline for Alternatives

In regard to the third question referred to the Commission by the ALJ, staff believes the Commission should vary the requirements under Minn. Rules 7852.1400, subp. 3 (C) with respect to the October 10, 2007 deadline for route alternatives for the Alberta Clipper and Southern Lights Diluent projects east of Clearbrook.

Minn. Rules 7829.3200 provides that the Commission may vary its rules upon a showing that enforcement of the rule would impose an excessive burden upon the applicant; granting the variance would not adversely affect the public interest; and granting the variance would not conflict with standards imposed by law.

Staff believes the three part test is met with respect to suspending the October 10, 2007 deadline for route proposals. First, the deadline has passed and cannot be met. In addition, given the Applicant's difficulty in determining the final preferred route for this portion of the Alberta

Clipper and Southern Lights Diluent projects, and the resulting delay, enforcement of the rule would impose an excessive burden upon the applicant. Staff does not believe the public interest will be harmed by delaying consideration and further developing the Applicant's preferred route. Finally, staff is unaware of any conflicts with standards imposed by law.

Tentative Schedule

Staff has labeled the schedule found in the ALJ's Second Prehearing Order as tentative. While staff has indicated a willingness to remain flexible and work with the Applicant to accommodate its timing concerns, staff has reserved the right to review the January supplement before committing to a schedule for review. In addition to the notice concern identified above, staff is also concerned with the accelerated schedule proposed for submitting route alternatives in response to the newly identified preferred route of the Applicant. Since the extent of the changes in route are not currently known, due process concerns prohibit staff from supporting a second variance to Minn. Rules 7852.1400 that would allow an accelerated schedule for determining route alternatives.

Decision Alternatives

I. Statutory Deadlines for Final Decision (ALJ Referral Questions 1 and 2.)

1. Extend the deadlines for final decisions on the Alberta Clipper and Southern Lights Diluent certificate of need and route permit applications to no later than 9 months after the receipt of the supplemental material
2. Extend the deadlines for final decisions on the Alberta Clipper and Southern Lights Diluent certificate of need and route permit applications to July 22, 2008.
3. Decline to extend the deadlines for final decisions on the Alberta Clipper and Southern Lights Diluent certificate of need and route permit applications to July 22, 2008.

II. October 10, Deadline for Route Alternatives (ALJ Referral Question 3.)

1. Grant a variance to Minn. Rules 7852.1400 and suspend the deadline for submitting route alternatives in the Alberta Clipper and Southern Lights Diluent route application.
2. Decline to grant a variance to the October 10, 2007 deadline; order Enbridge to submit its alternatives by a date certain.

III. Notice

In addition to the notice requirements identified in the October 25, 2007 ALJ Order in this matter, the Commission should:

1. Require Enbridge to work with Commission staff to develop and issue a notice to potentially affected landowners and local officials in conformance with Minn. Rules 7829.2550 at the time it submits its final preferred route, currently scheduled for January 7, 2008.
2. Require the Company to provide notice to potentially affected landowners and local officials in conformance with Minn. Rules 7829.2550 at some other appropriate time.

Recommendation

Staff recommends decision options I.1.; II. 1.; and III. 1.

