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St. Paul, MN 55155-4194

MINNESOTA ENVIRONMENTAL QUALITY BOARD

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www.eqb.state.mn.us

May 18, 2016

**Meeting Location: MPCA Board Room
St. Paul, Minnesota
1:00 p.m. – 4:00 p.m.**

AGENDA

General

This month's meeting will take place in the Minnesota Pollution Control Agency board room at 520 Lafayette Road in St. Paul. The Environmental Quality Board ("EQB" or "Board") meeting will be available via live webcast on May 18 from 1:00 p.m. to 4:00 p.m. You will be able to access the webcast on our website: www.eqb.state.mn.us

The Jupiter Parking Lot is for all day visitors and is located across from the Law Enforcement Center on Grove Street. The Blue Parking Lot is also available for all day visitors and is located off of University and Olive Streets.

I. *Adoption of Consent Agenda

Proposed Agenda for May 18, 2016 Board Meeting
April Meeting Minutes

II. Introductions

III. Chair's Report

IV. Executive Director's Report

V. *Designation of a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Pipeline.

VI. Public Comment

VII. Minnesota River Basin Integrated Study Update

VIII. Adjourn

** Items requiring discussion may be removed from the Consent Agenda*



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ANNOTATED AGENDA

General

This month’s meeting will take place in the Minnesota Pollution Control Agency board room at 520 Lafayette Road in St. Paul. The Environmental Quality Board (“EQB” or “Board”) meeting will be available via live webcast on May 18 from 1:00 p.m. to 4:00 p.m. You will be able to access the webcast on our website: www.eqb.state.mn.us

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- I. *Adoption of Consent Agenda**
Proposed Agenda for May 18, 2016 Board Meeting
April Meeting Minutes
- II. Introductions**
- III. Chair’s Report**
- IV. Executive Director’s Report**
- V. *Designation of a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC’s proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership’s proposed Line 3 Replacement Pipeline**

Presenter: Courtney Ahlers-Nelson
Planning Director, Environmental Review
Environmental Quality Board (651-757-2183)

Materials enclosed:

- Draft Resolution, Findings, Conclusions, and Order
- Two Written Requests for EQB’s Designation of a Different Responsible Governmental Unit and Supporting Documents

* Items requiring discussion may be removed from the Consent Agenda

- Letters from the Minnesota Public Utilities Commission, the Department of Commerce, the Pollution Control Agency and the Department of Natural Resources
- Letter from the Proposers – North Dakota Pipeline Company LLC and Enbridge Energy, Limited Partnership
- Written Comments on the Request for EQB’s Designation of a Different Responsible Governmental Unit

Issue before the Board:

The EQB has been asked to designate a different responsible governmental unit (“RGU”) for the environmental review of the North Dakota Pipeline Company (“NDPC”) LLC’s proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership’s (“Enbridge”) proposed Line 3 Replacement Pipeline. Since March 10, 2016, three requests have been submitted for the EQB to relieve the Minnesota Public Utilities Commission (“Commission”) of its current RGU status for the above-entitled projects and replace it with either:

- 1) A joint RGU consisting of the Minnesota Pollution Control Agency (“PCA”) and the Minnesota Department of Natural Resources (“DNR”), or
- 2) the PCA or the DNR, or
- 3) the EQB.

Background:

On November 8, 2013, the NDPC applied to the Commission for a certificate of need (“CN”) and pipeline route permit to construct the proposed Sandpiper Pipeline. NDPC is proposing to construct and operate a new 616-mile oil pipeline that would extend from Beaver Lodge Station, south of Tioga, North Dakota through a new terminal at Clearbrook, Minnesota and then on to an Enbridge affiliate’s terminal and tank farm in Superior, Wisconsin. The proposed project would traverse Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

The proposed project includes approximately 303 miles of new pipeline in Minnesota with a 24-inch diameter pipeline from the North Dakota border to Clearbrook and a 30-inch diameter pipeline from Clearbrook to the Wisconsin border. The project also includes construction of a new oil terminal at Clearbrook and upgrades to the existing Pine River facility.

Minnesota Rules 4410.4400, Subp. 24, Pipelines designates the Commission as the responsible governmental unit (“RGU”) for the proposed Sandpiper Pipeline.

On April 24, 2015, Enbridge applied to the Commission for a CN and route permit for the proposed Line 3 Replacement Pipeline in order to address safety and integrity issues associated with the existing Line 3 Pipeline. The pipeline replacement is proposed to follow existing Line 3 from the Minnesota-North Dakota border to Clearbrook and then follow the same route proposed for the Sandpiper pipeline from Clearbrook to the Minnesota-Wisconsin border.

The Line 3 route is approximately 337 miles long in Minnesota and would traverse Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties. The project also includes upgrades to existing pump stations at Clearbrook, Donaldson, Plummer, and Viking, and construction of new pump stations at Backus, Cromwell, Palisade, and Two Inlets.

Minnesota Rules 4410.4400, Subp. 24, Pipelines designates the Commission as the RGU for the proposed Line 3 Replacement Pipeline.

Currently, the Commission is carrying out the role as the RGU for both of the proposed pipeline projects.

Since receiving two requests in March 2016, the EQB has provided for a public comment period from April 1 through May 2 for the submission of written comments on the issue before the Board. Additionally, during the regularly scheduled April Board meeting, the EQB listened to comments from the public, tribal representation, the requestors and the project proposers. Commenters are asked to provide information relevant to Minnesota Rules 4410.0500 Subp. 5 and 6 which provide criteria for the selection of the RGU in making their comments. It was at the April 20, 2016 Board meeting in which EQB received a third, verbal request, to designate a different RGU for the proposed projects.

Discussion:

EQB has concluded a 30-day public comment period and considered the information gathered from all parties to develop a draft Resolution, Findings of Fact, Conclusions of Law and Order for the Board's consideration.

In order to designate a different RGU, the EQB must look to Minnesota Rules 4410.0500, subpart 6 and determine if a "...designee has greater expertise in analyzing the potential impacts of the project."

The potential impacts to be considered here include, but are not limited to, the effect of the proposed projects upon the natural and socioeconomic environments, the efficiency and reliability of the energy products, and considerations such as "the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate (Minnesota Rules 7853.0130, C)."

The draft materials conclude that each agency identified in the March 3, 2016 Memorandum of Understanding ("MOU"), including the Commission, COMM, DNR and PCA collectively provide the greatest expertise in analyzing the potential impacts of the proposed Sandpiper and Line 3 Replacement pipelines. Each agency brings with it its independent expertise on issues related to the potential impacts.

The public comment period produced a significant amount of information and questions related to the proposed projects, pipeline development in Minnesota and the pipeline approval process. However, to address the request before the Board, the draft Resolution, Findings of Fact, Conclusions of Law and Order focuses on the criteria in Minnesota Rules 4410.0500, subpart 6. Consequently, the EQB finds that no other designee could have greater expertise than the shared expertise amongst the agencies, COMM, DNR and PCA, using an interdisciplinary approach under an MOU as directed by the current RGU, the Public Utilities Commission.

Staff Recommendation:

Staff recommends adopting the resolution and approving the Findings, Conclusions of Law, and Order to not designate a different RGU for the environmental review of the NDPC LLC's proposed Sandpiper Pipeline and Enbridge's proposed Line 3 Replacement pipelines.

VI. Public Comment

VII. Minnesota River Basin Integrated Study Update

Presenter(s): Erik Cedarleaf Dahl
Environmental Quality Board Staff (651-757-2364)

Jason Smith, PE
Army Corps of Engineers (309-794-5690)

Materials enclosed:

- Study – Fact Sheet
- Decision Support System – Fact Sheet
- Technical Work Group – Fact Sheet
- Communications & Public Engagement – Fact Sheet
- Seven Mile Creek Informational Poster

Issue before the Board: Staff will provide an update on the Minnesota River Integrated Watershed Study.

Background: The Minnesota River Basin Integrated study is a federal watershed planning project for the Minnesota River Basin begun in 2008. The goal of the study is to develop a decision support system (DSS) and watershed plan to assist water resource efforts in the Minnesota River Basin. The study is being conducted by the Army Corps of Engineers (Corps) in collaboration with state and federal partners. The EQB, as the “non-federal co-sponsor,” is responsible for co-leading the collaborative effort, coordinating state agency involvement, and managing the State share of the project study. The Corps and EQB coordinate and receive input from an Interagency Study Team comprised of state agencies, federal participants, tribal interests, the Metropolitan Council, the University of Minnesota and Minnesota State University at Mankato, and the Minnesota River Board.

Staff will provide an update on recent activities of the project.

VIII. Adjourn

**MINNESOTA ENVIRONMENTAL QUALITY BOARD
MEETING MINUTES**

**Wednesday, April 20, 2016
MPCA Room Board Room
520 Lafayette Road North, St. Paul**

EQB Members Present: Brian Napstad, Mike Rothman, John Saxhaug, Charlie Zelle, Dr. Ed Ehlinger, Tom Landwehr, Julie Goehring, Kate Knuth, John Linc Stine, Erik Tomlinson, Kristin Eide-Tollefson, Leah Hedman from the Attorney General's office

EQB Members Absent: Dave Frederickson, Adam Duininck, Katie Clark-Sieben, Matt Massman

Staff Present: Will Seuffert, Courtney Ahlers-Nelson, Erik Dahl, Mark Riegel

I. Adoption of Consent Agenda and Minutes

II. Introductions

III. Chair's Report

Brian Napstad, Vice Chair of the EQB, chaired the meeting in Dave Frederickson's absence.

IV. Executive Director's Report

This is Water Action Week.

The EQB is filling a Planner position dedicated to outreach and communication. The position will be posted through next Wednesday.

Thank you to Board members and staff who participated in the workshop on April 1st. It was very productive. We are moving forward with developing our 2017 Energy and Environmental Report Card based on your input and staff will provide a status update at the June Board Meeting.

The next Board Meeting will be May 18th. The United States Army Corp of Engineers will be presenting a report on the Minnesota River Basin Integrated Study, and the Board will be taking action on the re-designation of the Regulated Governmental Unit for the proposed Sandpiper Pipeline and proposed Line 3 Replacement Pipeline being discussed today.

V. Additional Opportunity for Public Comment on the Request for EQB's Designation of a Different Responsible Governmental Unit for the Environmental Review of the North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Pipeline.

Presenter: Courtney Ahlers-Nelson

Commenters were asked to provide information relevant to Minnesota Rules 4410.0500 Subp. 5 and 6 which provide criteria for the selection of the RGU in making their comments.

The following people provided oral testimony:

- Willis Mattison – Citizen Advocate
- Christina Brusven – Representative for Enbridge and North Dakota Pipeline Company

- Emily Moore – Divest/Invest Minnesota
- Chuck Diessner – Park Rapids
- Steve Roe – Pine River Watershed Alliance Board
- Daniel Stenseng – Clearwater County
- Cheryl Grover – Clearwater County
- Janet Hill - Big Sandy Lake Association
- Jean Ross – Sierra Club North Star Chapter
- John Munter – Warba, MN
- Bob Merritt – Detroit Lakes, MN
- Mahyer Sorour – MPIRG and MN350
- Kathy Hollander – MN350
- Thane Maxwell – Honor the Earth
- Corey Northrup – Fond du Lac Band Member
- Jeff Kolstad, Mahtomedi, MN
- Alan Muller
- Carol Overland – Red Wing, MN
- Cameron Winton – Minnesota Chamber of Commerce

The audio recording of the meeting is the official record and can be found at this link:
ftp://files.pca.state.mn.us/pub/EQB_Board/

Webcast is also available on the EQB website: <https://www.eqb.state.mn.us/>

**RESOLUTION OF THE
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

Designation of a Different Responsible Governmental Unit for Environmental Review of the North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Pipeline.

BE IT RESOLVED, that the Minnesota Environmental Quality Board approves and adopts the Findings of Fact, Conclusions and Order; and

BE IT FURTHER RESOLVED, that David J. Frederickson, Chair of the Board, is authorized to sign the adopted Findings of Fact, Conclusions and Order.

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

In the Matter of the Request to Designate a Different Responsible Governmental Unit for the Environmental Review of North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Pipeline

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

FINDINGS OF FACT

1. On November 8, 2013, the North Dakota Pipeline Company ("NDPC") LLC applied to the Minnesota Public Utilities Commission ("Commission") for a certificate of need ("CN") and pipeline route permit to construct the proposed Sandpiper pipeline.
2. NDPC is proposing to construct and operate a new 616-mile oil pipeline that would extend from Beaver Lodge Station, south of Tioga, North Dakota, through a new terminal at Clearbrook, Minnesota, and then on to a terminal and tank farm in Superior, Wisconsin.
3. The proposed Sandpiper pipeline will traverse 303 miles through Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties in Minnesota.
4. On April 24, 2015, Enbridge Energy, Limited Partnership ("Enbridge") applied to the Commission for a CN and route permit for the proposed Line 3 Replacement pipeline in order to address safety and integrity issues associated with the existing Line 3 Pipeline.
5. The Line 3 Replacement pipeline is proposed to follow existing Line 3 from the Minnesota-North Dakota border to Clearbrook and then follow the same route proposed for the Sandpiper pipeline from Clearbrook to the Minnesota-Wisconsin border.
6. The Line 3 Replacement pipeline route is approximately 337 miles long in Minnesota and would traverse Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.
7. The Line 3 Replacement pipeline includes upgrades to existing Minnesota pump stations at Clearbrook, Donaldson, Plummer, and Viking, and construction of new pump stations at Backus, Cromwell, Palisade, and Two Inlets.
8. The proposed Sandpiper and Line 3 Replacement pipelines ("proposed projects") each require a CN and a route permit. The Commission has jurisdiction over the CN and route permit to construct the proposed pipelines according to Minnesota Statute §216B.243 and Minnesota Statute §216G.02, respectively.

9. Minnesota Rule 4410.0200, subpart 33 reads:

Governmental action. "Governmental action" means activities including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by governmental units, including the federal government.

Minn. R. 4410.0200, subpart 33.

10. Minnesota Rule 4410.0200, subpart 65 reads:

Project. "Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.

Minn. R. 4410.0200, subpart 65.

11. The EQB finds that each proposed pipeline project requires a "governmental action" under Minnesota Rule 4410.0200, subpart 33.

12. Each proposed pipeline is an individual "project" under Minnesota Rule 4410.0200, subpart 65 and the construction of the pipelines will result in the physical manipulation of approximately 303 miles for the Sandpiper pipeline and approximately 337 miles for the Line 3 Replacement pipeline.

13. Minnesota Rule 4410.0300, subpart 4 generally describes the objectives of environmental review procedures established in the Minnesota Environmental Policy Act ("MEAP"). Subpart 4 in relevant part reads:

Objectives. The process created by parts 4410.0200 to 4410.6500 is designed to:

C. delegate authority and responsibility for environmental review to the governmental unit most closely involved in the project;

Minn. R. 4410.0300, subpart 4.

14. Minnesota Rule 4410.4400 establishes mandatory categories for the preparation of an environmental impact statement ("EIS"). Subpart 24 reads:

Pipelines. For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is the RGU.

Minn. R. 4410.4400, subpart 24.

15. The EQB finds that Minnesota Rules 4410.4400, subpart 24 requires that for the routing of each of the proposed projects, Sandpiper and Line 3 Replacement, an EIS be completed.
16. The EQB finds that Minnesota Rules 4410.4400, subpart 24 also designates the Commission as the responsible governmental unit (“RGU”) for the EISs.
17. On August 3, 2015, the Commission issued its Order to grant a CN for the proposed Sandpiper pipeline.
18. On September 14, 2015, the Minnesota Court of Appeals issued its opinion *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need and Route Permit for the Sandpiper Pipeline Project*, Case No. A15-0016.
The opinion’s decision reads:

“When routing permit proceedings follow certificate of need proceedings, MEPA requires that an EIS must be completed before a final decision is made on issuing a certificate of need. Therefore, we reverse the grant of a certificate of need and remand to the MPUC to complete an EIS before conducting certificate of need proceedings consistent with its opinion.”

In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need and Route Permit for the Sandpiper Pipeline Project, Case No. A15-0016 at pg. 11.
19. On September 30, 2015, the Court clarified its decision stating that when a CN proceeding occurs prior to the routing permit proceedings for a large oil pipeline, the Minnesota Environmental Protection Act requires that an EIS be completed before a final decision is made on a CN.
20. The Court of Appeals remanded the matter to the Commission and directed them to complete an EIS before a final decision on the CN is made.
21. On October 14, 2015, both the Commission and NDPC petitioned the Minnesota Supreme Court for review of the Court of Appeals’ September 14, 2015 decision.
22. On December 15, 2015, the Minnesota Supreme Court denied the petitions for further review of the Minnesota Court of Appeals’ decision.
23. On January 11, 2016, the Commission rejoined the proposed Sandpiper CN and routing permit proceedings and ordered that an EIS be completed for the proposed Sandpiper pipeline CN and route permit.

25. Minnesota Rule 4410.2200 reads:

EIS Interdisciplinary Preparation.

An EIS shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural, environmental, and social sciences. The RGU may request that another governmental unit help in the completion of the EIS. Governmental units shall provide any unprivileged data or information, to which it has reasonable access, concerning the subjects to be discussed and shall assist in the preparation of environmental documents on any project for which it has special expertise or access to information.

Minn. R. 4410.2200.

26. Additionally, in the January 11, 2016 Order, the Commission directed the Department of Commerce (“COMM”), to “...enter into an agreement with the Department of Natural Resources and the Pollution Control Agency to ensure that the EIS fulfills the requirements of MEPA.”
27. On February 1, 2016, the Commission Ordered that an EIS be completed for the proposed Line 3 Replacement pipeline CN and route permit.
28. On March 3, 2016, a Memorandum of Understanding (“MOU”) between COMM, the Department of Natural Resources (“DNR”) and the Pollution Control Agency (“PCA”) for the interdisciplinary preparation of an EIS for the proposed project was filed with the Commission.
29. The EQB finds that the MOU between COMM, DNR and PCA meets the intent of the EIS interdisciplinary approach described in Minnesota Rules 4410.2200 for the preparation of the environmental review documents for the proposed projects.
30. On March 10, 2016, the Environmental Quality Board (“EQB”) received a request for the EQB to designate a different RGU for the environmental review of the proposed projects. More specifically, the request is for the EQB to relieve the Commission of its current RGU status for the above-entitled projects and replace it with a joint RGU consisting of the DNR and the PCA.
31. Between March 10, 2016, and March 29, 2016, the requester submitted the following documents:
- a. Cover Letter EQB Change for RGU Final 3-9-16.doc
 - b. ATTACHMENT A Evaluation Criteria for RGU 3-9-16.doc
 - c. Attachment B – Evaluation Findings – PUC-DOC Environmental Review 3-9-16.doc
 - d. CEA vs. EIS – A Comparison 10-07-15.pdf
 - e. MNDNR letter 5-3014 20146-100305-02.pdf
 - f. MDNR Letter 6-10-14 20146-100305-01.pdf
 - g. MDNR Letter 7-2-13 20144-98005-03.pdf

- h. MDNR Letter 8-14-13 Early Coord 201312-94938-02.pdf
 - i. mdnr letter 8-21-14 20148-102441-01.pdf
 - j. MPCA Enbridge Letter 6-20-14.pdf
 - k. MPCA Letter 6-24-14.pdf
 - l. Stine MPCA Letter to PUC on Routes 8-6-14.pdf
 - m. MPCA Comments Final 1-23-15 20151-106572-01.pdf
 - n. MPCA 5-12-15 Letter Application Inadequate for Alternatives.pdf
 - o. MPCA 6-4-15 supplemental doc revised w Maps.pdf
 - p. DOC Recommendation eliminating Alternative Routes 20147-101573-01.pdf
 - q. PUC Staff Email re ER on CON.doc
 - r. COE Letter Suspending Review 12-17-2015 application complete.pdf
 - s. MDNR 8-21-14 Letter Urging expansion of Scope 8-21-14 CON 20148-102442-01.pdf
 - t. Corps of Eng Info Paper on Sandpiper.pdf
 - u. FOH Motion for Revised MOU and Expert Panels 20163-119012-01.pdf
 - v. USFWS Email Confirming No Contract w Minnesota on Sandpiper.doc
 - w. DOC's MOU w MPCA and DNR on Sandpiper EIS0001
 - x. Enbridge Letter Rejecting System Alternatives on Project Purpose Basis 20145-99996-01.pdf
 - y. Friends of the Headwaters comments PUC w complaint re Public Participation.pdf
 - z. FOH Supplemental 5-30-14 w alternative route map overlays.pdf
 - aa. White Earth Band of Ojibwe Motion the Change RGU 201512-116694-01 (1).pdf
 - bb. White Earth Tribe Requests Consultation 20156-111006-01.pdf
 - cc. Excerpt from July 14, 2014 DOC Brief to PUC on Proj Purpose.doc
32. Pursuant to Minnesota Statutes chapter 116D and Minnesota Rules 4410, the EQB has jurisdiction over RGU designation.
 33. On March 15, 2016, the EQB sent letters to the current RGU, the Commission, COMM, the proposed new RGUs, the PCA and the DNR, and the project proposers, NDPC and Enbridge, requesting each party submit information regarding the request to designate a different RGU.
 34. On March 23, 2016, the Minnesota Center for Environmental Advocacy ("MCEA"), representing Friends of the Headwaters ("FOH"), requested that the EQB provide a 30-day public comment period on the request to designate a different RGU for the environmental review of the proposed projects.
 35. On March 24, 2016, the Commission denied a motion by the White Earth Band of Ojibwe requesting that the Commission remove itself from RGU status for the EIS on the proposed Sandpiper and Line 3 Replacement pipelines.
 36. On or about March 25, 2016, the EQB received a second request to designate a different RGU for the environmental review of the proposed projects. The request was for the EQB to relieve the Commission of its current RGU status for the proposed projects and replace it with either the DNR or the PCA.

37. The second requestor submitted the following document:
 - a. Chuck Diessner_Received_3.28.16.pdf
38. In consultation with the EQB Chair, the EQB finds that the proposed projects have statewide implications that deserve an additional public process and public comment period, to better understand the concerns of the requestors and the public.
39. On March 31, 2016, in a letter to MCEA, representing FOH, the EQB Executive Director granted the request for the 30-day comment period.
40. On April 1, 2016, the 30-day comment period on the request for the EQB to designate a different RGU for the environmental review for the proposed projects began. The comment period closed at 4:30 pm on May 2, 2016.
41. Commenters were asked to address Minnesota Rules 4410.0500, subpart 5 and 6, which provide for the selection of an RGU.
42. Information regarding the request and how to comment during the 30-day comment period was posted on the EQB website, distributed via the EQB *Monitor* on April 4, 2016, as well as through electronic distribution lists maintained in EQB's Gov.Delivery system.
43. In addition to notifying the general public of a comment period, on April 7, 2016, the EQB Executive Director sent letters to the White Earth Nation, the Fond du Lac Band of Lake Superior Chippewa, the Leech Lake Band of Ojibwe and the Mille Lacs Band of Ojibwe in Minnesota.
44. On April 8, 2016, the EQB received the scoping environmental assessment worksheet ("EAW") and draft scoping decision documents for each proposed pipeline.
45. On April 11, 2016, the scoping EAWs and draft scoping decision documents for each proposed pipeline were noticed in the EQB *Monitor*.
46. On April 20, 2016, at the EQB's regularly scheduled meeting, the EQB provided an additional opportunity for public comment on the request to designate a different RGU for the environmental review of the proposed projects.
47. On April 20, 2016, commenters, including the project proposer and the requestors to designate a different RGU for the proposed projects addressed the EQB.
48. On April 20, 2016, a commenter provided a verbal request that the EQB assume RGU status for the proposed Sandpiper and Line 3 Replacement pipelines.
49. The EQB finds that the requests for the EQB to designate a different RGU for the environmental review of the proposed Sandpiper and Line 3 Replacement pipelines are similar and will be considered together.

50. In total 78 written and verbal comments were received. All of the comments can be broken down into the following predominant themes:
- a. The applicability of Minn. R. 4410.
 - b. Commenters in support of the EQB designating a different RGU for the proposed projects.
 - c. Commenters against EQB designating a different RGU for the proposed projects.
 - d. The concept of regulatory capture amongst state agencies.
 - e. Concerns regarding COMM completing the environmental review.
 - f. Requests that a EIS to be completed for both proposed projects.
 - g. Concerns about the parameters of interagency participation in the EIS.
 - h. Concerns for the proposed locations of the pipelines relative to specific natural resources, such as waterbodies.
 - i. Concerns with environmental impacts of the proposed pipelines.
 - j. Request a federal EIS be completed.
 - k. Tribal involvement in environmental review.
 - l. Public engagement practices.
 - m. Anticipated benefits of the project.

51. On May 2, 2016, two requestors submitted additional documents:

- a. April 22---EQB #2.docx
- b. EQB Signature Pg 1.pdf
- c. Regulatory Capture; Sources and Solutions – Scott Hempling.pdf
- d. SPP_Draft Scoping Decision Document_April_8_v3.pdf

52. The EQB finds that the commenters provided information and had questions on a wide range of topics related to large oil pipelines.

53. The EQB finds that the issue before the EQB is narrower than many of the comments received, and the issue before the EQB is limited to determining whether to designate a different RGU according to criteria contained in Minnesota Rule 4410.0500.

54. Minnesota Rule 4410.0500 provides for selection of the RGU for environmental reviews. Subpart 1 reads:

RGU for mandatory categories. For any project listed in part 4410.4300 or 4410.4400, the governmental unit specified in those rules shall be the RGU unless the project will be carried out by a state agency, in which case that state agency shall be the RGU. For projects listed in both parts 4410.4300 and 4410.4400, the RGU shall be the unit specified in part 4410.4400. For any project listed in two or more subparts of part 4410.4300 or two or more subparts of 4410.4400, the RGU shall be determined as specified in subpart 5.

Minn. R. 4410.0500, subpart 1.

55. Minnesota Rule 4410.4400 establishes mandatory categories for the preparation of an EIS. Subpart 24 reads:

Pipelines. For routing of a pipeline subject to the full route selection procedures under Minnesota Statutes, section 216G.02, the Public Utilities Commission is the RGU.

Minn. R. 4410.4400, subpart 24.

56. The EQB finds Minnesota Rule 4410.4400, subpart 24 applies to the proposed Sandpiper and Line 3 Replacement pipelines.

57. Minnesota Rule 4410.0500, subpart 5 in relevant part reads:

RGU selection generally. For any project where the RGU is not listed in part 4410.4300 or 4410.4400 or which falls into more than one category in part 4410.4300 or 4410.4400, or for which the RGU is in questions...

Minn. R. 4410.0500, subpart 5.

58. The EQB finds that Minnesota Rules 4410.0500, subpart 5 does not apply as the proposed projects are listed 4410.4400, subpart 24.
59. The EQB finds that the Minnesota Court of Appeals reversed the Commission's granting of a certificate of need and remanded to the Commission to complete an EIS before conducting certificate of need proceedings.
60. The EQB finds that Minnesota Rules 4410.4400, subpart 24 identifies the RGU as being the Commission for the completion of an EIS for the routing of the proposed projects.
61. Minnesota Rule 4410.0500, subpart 6 reads:

Exception. Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

Minn. R. 4410.0500, subpart 6.

62. The EQB finds that the requests to designate a different RGU for the environmental review of the proposed projects were received on March 10, 2016 and March 25, 2016 respectively, before the completed data portions of the scoping EAW had been received and published in the EQB *Monitor* on April 11, 2016.
63. The EQB finds that the third request to designate a different RGU was received on April 20, 2016.

64. The EQB finds that in its history of applying Minnesota Rules 4410.0500, subpart 6, the designation of a different RGU has not been completed “within five day of receipt of the completed data portion of the EAW” and that rarely is a data submittal made prior to EQB’s decision.
65. The EQB finds that there are several examples of the EQB processing requests to designate a different RGU without a data submittal nor within five days of the data submittal. For example the following projects did not have data submittals submitted prior to an EQB decision:
 - a. Living Word Bible Camp – proposed recreational development, 2013
 - b. Minnesota Sands, LLC – proposed silica sand projects, 2013
 - c. Lock and Dam Number 1 – proposed courting project, 2015
66. The EQB finds that making a decision within the five days of the EAW data submittal is not practical to facilitate an adequate open and public dialogue.
67. The EQB believes that it was never the intent of the five day limitation to limit public participation or comment.
68. The EQB finds that to designate a different RGU other than the Commission under Minnesota Rules 4410.0500, subpart 6, that the EQB must determine that such a designee has greater expertise in analyzing the potential impacts of the proposed pipeline projects.
69. In previous requests for the designation of a different RGU, the EQB finds it has identified permitting authorities as a source of expertise in analyzing the potential impacts from the projects.
70. The EQB finds that the Commission has been responsible for deciding certificate of need for pipelines since 1983.
71. The EQB finds that the Commission has been implementing all environmental review for both the certificate of need and routing of pipelines since 2005.
72. The EQB finds that the Commission has the most experience in pipeline permitting and the associated environmental review.
73. The Commission has the greater expertise due to its experience applying Minnesota Rules 7853.0130 for CN and Minnesota Rules 7852.1900, subpart 3 for pipeline routing.
74. The EQB finds that the criteria listed in Minnesota Rules 7853 and 7852, includes, but is not limited to, an analysis of alternatives to the proposed projects, the efficiency and reliability of the energy product, effect of the proposed projects upon the natural and socioeconomic environments as well as cumulative effects. Moreover, there is analysis such as the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

75. The EQB finds that the DNR has expertise in protecting the natural, recreation and cultural resources in Minnesota. The DNR has jurisdiction over wildlife and outdoor recreation systems throughout the state.
76. The EQB finds that the DNR Lands and Minerals Division coordinates review for utilities that cross state or public lands and issues licenses to cross public waters and state lands managed by the DNR.
77. In addition, the EQB finds that the DNR also issues water use (appropriation) permits for when users withdraw more than 10,000 gallons of water per day or one million gallons per year, usually during pipeline construction.
78. The EQB finds that the PCA has expertise in the regulatory oversight for the construction, installation, and operation of pipelines, tank terminals, and refineries which may require MPCA permits for air quality, aboveground storage tanks, wastewater, stormwater and Section 401 Water Quality Certification.
79. The DNR and PCA state in a March 25, 2016 joint letter to the EQB Executive Director that the two agencies have resource-specific permitting authority, but "...neither MPCA nor the DNR has such a singular regulatory role to play that warrants removing the RGU status from the PUC."
80. The EQB has no permitting authority or oversight authority for large oil pipelines in the state.
81. The EQB finds that COMM, as previously directed by the Commission, is the only state agency that has prepared an environmental review for a pipeline in Minnesota.
82. The EQB finds that the March 3, 2016, MOU filed with the Commission provides that the assisting agencies, DNR and PCA, shall contribute to "...identifying issues, alternatives, routes and alternative route proposals, data, and analysis to address environmental review topics and requirements..."
83. The EQB finds that the MOU provides that the DNR and PCA assist in issues analysis within the environmental review, in addition to "...help Commerce ensure that each EIS fulfills applicable MEPA requirements" for both the proposed Sandpiper and Line 3 Replacement pipelines.
84. The EQB finds that the Commission's experience is augmented through the MOU that enables the Commission to access the technical resources of the DNR and PCA, agencies charged with environmental protection.
85. The EQB finds that no single governmental agency can provide greater expertise in analyzing potential impacts than the combination of these agencies, the Commission, COMM, DNR and PCA, conducting an interdisciplinary approach to the environmental review.

86. The EQB finds that a combination of the DNR and PCA as a joint RGU and without the Commission would not be as capable of analyzing the potential effects of the proposed projects and that the Commission brings with it considerable expertise in the permitting of the projects.

DRAFT

Based on the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

CONCLUSIONS OF LAW

1. Any of the foregoing Findings of Fact more properly designated as Conclusions of Law are hereby adopted as such.
2. The EQB concludes that pursuant to Minnesota Statutes chapter 116D and Minnesota Rules 4410, the EQB has jurisdiction over RGU designation.
3. The EQB concludes that the proposed Sandpiper and Line 3 Replacement pipelines each require environmental review pursuant to Minnesota Rules 4410.4400, subpart 24.
4. The EQB concludes that the proposed Sandpiper pipeline requires a full EIS with the September 14, 2015 Minnesota Court of Appeals opinion *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need and Route Permit for the Sandpiper Pipeline Project*, Case No. A15-0016.
5. The EQB concludes that the Minnesota Court of Appeals directed the Commission to prepare an EIS for the proposed Sandpiper pipeline prior to the Commission's decision regarding a CN.
6. The EQB concludes the request for EQB to decide the question whether to designate a different RGU for the proposed project was properly brought to the EQB Board.
7. The EQB concludes that under the MOU, the expertise of the Commission, COMM, DNR and PCA provides the greatest expertise in analyzing the potential effects of the proposed projects.

Based on the Findings of Fact, Conclusions and the entire record of this proceeding, the Minnesota Environmental Quality Board hereby makes the following:

ORDER

The EQB hereby denies the requests to designate a different responsible governmental unit for the environmental review of North Dakota Pipeline Company LLC's proposed Sandpiper Pipeline and Enbridge Energy, Limited Partnership's proposed Line 3 Replacement Pipeline and orders the Minnesota Public Utilities Commission to remain the responsible governmental unit for the proposed projects.

Approved and adopted this 18th day of May, 2016.

David J. Frederickson, Chair
Minnesota Environmental Quality Board