

Organic Excerpt - Judge Heydinger's Findings of Fact MinnCan Pipeline Route Proceeding

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155. After the Environmental Assessment Supplement was filed, MPL and the MDA were asked to add protections to the AIMP to address organic farms. In response, MPL, the MDA, and Atina and Martin Diffley on behalf of GOE, an organic farm, negotiated an Appendix to Agricultural Impact Mitigation Plan for Organic Agricultural Land. That plan was also supported by Dakota County.

156. The Appendix defines organic agricultural lands, adds provisions to increase preservation of organic soils, control erosion, prevent contamination of organic lands with prohibited substances, provide soil restoration more consistent with organic management plans, and provide compensation for crop yield and crop quality losses as well as organic decertification. The Appendix identifies reasonable and prudent mitigation measures that apply specifically to farms that are Organic Certified or farms that are in active transition to become Organic Certified. Requiring that the Routing Permit include the Appendix to the AIMP will assure that organic agriculture issues are adequately addressed for farms that are Organic Certified or in the process of becoming certified.

157. Many members of the public expressed concern about the effect of the pipeline on their organic farms. Not all of the organic farmers have sought organic certification because the farmers do not sell what they produce. Requiring MPL to adhere to requirements similar to those in the Appendix would benefit these landowners. Some members of the public requested that the Appendix apply to all agricultural land.

158. The PUC may wish to consider as a condition of the Routing Permit requiring MPL to retain an organic certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or lose organic certification for any farm that is Organic Certified or in active transition to become so.

159. One member of the public questioned why there is not a central registry for organic farms. He is quite concerned that maintenance conducted along the right-of-way may adversely affect his organic farm. He has attempted to contact the governmental units and utilities that maintain rights-of-ways near his property, but he is not sure that he has identified all of the proper entities, or that those entities have a systematic approach to checking for organic land prior to conducting maintenance. MPL witness, Dr. Richard Skarie, testified that he MDA maintains a list of organic farms but there was no evidence that a company or government agency must check the list prior to performing maintenance,

160. Each year MPL mails a notice to landowners with MPL contact information. In addition, MPL ordinarily contacts landowners whose property is crossed by the pipeline will have the opportunity to work the company to assure that proper maintenance practices are followed. However, MPL's standard form Right of Way Grant does not require MPL to give notice to the landowner or to conform its maintenance practices to the landowner's wishes, nor is there a method to notify nearby landowners or protect them from chemical spraying.

161. The PUC may wish to consider as a condition of the routing permit requiring MPL to give notice to landowners prior to conducting maintenance.

162. As more landowners and tenants engage in organic farming, the Commission may wish to promote a central registry or other approach that minimizes the risk of damage to organic farms from right-of-way maintenance.

163. The PUC may wish to consider as a condition of the routing permit requiring MPL to notify each landowner annually of the opportunity to register organic farms and the landowner's or tenant's Organic System Plan with MPL and hold MPL responsible for the damage caused by any maintenance practice that is inconsistent with the landowner's or tenant's Organic System Plan on file or the express written approval of the farmer. The PUC may also wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers who have not developed an Organic System Plan, as that term is defined in the AIMP Appendix.

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18. The Routing Permit should require MPL to retain an Organic Certifier at its expense to assist any landowner to negotiate terms to the right-of-way agreement that will minimize damage during construction and delay or loss of organic certification for any farm that is Organic Certified or in active transition to become Organic Certified.

19. The Routing Permit should require MPL to notify each landowner annually of the opportunity to register organic farms and the landowner or tenant's Organic System Plan with MPL. The Routing Permit should require that MPL will be responsible for the damage caused by any maintenance practice that is inconsistent with the landowner or tenant's Organic System Plan on file or the express written approval of the landowner. The PUC may wish to consider whether additional conditions should be added to the Routing Permit to address the concerns of organic farmers who have not developed an Organic System Plan, as that term is defined in the AIMP Appendix.

20. The Routing Permit should require that MPL contact landowners prior to entering the property or conducting maintenance along the route and avoid maintenance practices, particularly the use of fertilizer or pesticides, inconsistent with the landowner's or tenant's use of the land.

Recommendations

2. Subject to the conditions set forth in the Conclusions, MPL's application for a routing permit for a crude oil pipeline known as the MinnCan Project including the Staples Alternative, Belle Plaine Alternative, GOE Stipulation, and other conditions, should be GRANTED.