August 21, 2014

Mr. Burl Haar, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: Enbridge Sandpiper Pipeline Project
Docket Nos. PL-6668/CN-13-473 (Certificate of Need) and PL-6668/PPL-13-474 (Route Permit)

Dear Mr. Haar:

This is the response of the Minnesota Pollution Control Agency (MPCA) to the Notice of Comment Period issued by the Minnesota Public Utilities Commission (Commission) on August 12, 2014, for the Enbridge Sandpiper Pipeline project (Sandpiper). The Sandpiper project includes a Route Permit and Certificate of Need proceeding. It is our understanding that the Certificate of Need decision will likely not be made for several months.

The Commission identified three topics open for comment in its August 12, 2014 Notice:

- **What, if any, of the eight system alternatives identified in the Department of Commerce Alternative Routes Summary Report should be considered further in these proceedings?**

  The MPCA evaluated system alternatives SA-03, SA-04, SA-05, SA-06, SA-07, and SA-08 using a number of criteria described below. All these system alternatives have fewer potential environmental effects than the Sandpiper proposal. At a minimum, we recommend system alternatives SA-03, SA-04 and SA-05 for further consideration in these proceedings.

- **What is the legal basis for determining whether a system alternative should be considered in the certificate of need proceeding?**

  The legal basis supporting our position is discussed on page 2 of our response.

- **What is the legal basis for determining whether a system alternative should be considered in the route permit proceeding?**

  See above.

The MPCA is the state agency with responsibilities and authorities related to the issuance of various permits that may be required for the project, including permits and regulations administered under state and/or federal programs for construction stormwater, industrial stormwater, wastewater, and spill and emergency response. A part of our mission is to protect and improve the environment. The MPCA submitted earlier comment letters and provided remarks at the August 7, 2014 prehearing meeting describing our concerns about the potential for adverse environmental effects from the proposed Sandpiper project route. Comments provided by the MPCA included system alternatives that it believes have lesser potential environmental effects.
The MPCA appreciates that the Route Permit and Certificate of Need parts of the Sandpiper proceeding are separate approval processes, each with its own requirements. Our offer of system alternatives was not intended to conflate the Route Permit process with the Certificate of Need process. The MPCA defers to the Commission regarding matters of interpretation and implementation of the Commission’s specific statutory authorities and regulations, and of practice and procedure before the Commission. The MPCA’s comments, in furtherance of its mission, are intended to provide information regarding the potential environmental effects from the Sandpiper route and to encourage the Commission to obtain additional environmental analysis on system alternatives to inform its Certificate of Need decision. We believe that the Commission has discretion under the Minnesota Environmental Policy Act (MEPA), Minnesota Statutes ch. 116D, to gather information it needs to include in the administrative record and to decide how to gather such information, including soliciting such analysis.

In addition, as the Department of Commerce Division of Energy Resources (DOC-DER) indicates in its August 18, 2014 letter filed in these proceedings, the Commission has authority under Minnesota Rule 7853.0130 to consider system alternatives that can better achieve the claimed need. That rule requires the applicant to meet four separate criteria before the Commission shall grant a Certificate of Need. Analysis of alternatives is governed by Subpart B of this Rule, which states in relevant part:

A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant...

As the DOC-DER states in its August 18 letter, this subpart allows a party, or individual, who proposes an alternative to provide evidence showing that its alternative can better achieve the claimed need as stated by the applicant or that the claimed need is not reasonable.

Below we provide comment with respect to the need for additional information and assessment of environmental effects to inform your decision-making on the Certificate of Need and with respect to the potential adverse environmental effects of the proposed Sandpiper route for consideration in the Route Permit process as appropriate.

Analysis of Environmental Effects - Certificate of Need

While no environmental report is expressly required by Commission enabling laws or its regulations, the Commission as a governmental entity has discretion under MEPA to investigate environmental effects. Minnesota Stat. § 116D.03. A comparative analysis of system alternatives would provide valuable information to the Commission to be weighed along with other information of record when making the need decision. Conducting environmental analysis of system alternatives in this need decision is similar to what is done in non-pipeline need decisions. The MPCA believes that certain system alternatives present lesser potential for adverse environmental effects than does the proposed Sandpiper route and that they represent more prudent and environmentally protective options. Given the potential for environmental harm from the proposed Sandpiper route noted in the MPCA’s previous comments and in this letter, it is reasonable to investigate the potential environmental effects of system alternatives as part of the need decision. The MPCA respectfully requests that the Commission exercise its discretion under MEPA to ensure that environmental values are given equal consideration along with economic and technical considerations.

The MPCA agrees with the comments filed by the Department of Commerce Energy Environmental Review and Analysis (EERA) unit on August 21, 2014 concerning the Commission’s authority to consider environmental impacts of system alternatives in these proceedings. EERA emphasized that MEPA requires all departments and agencies to consider environmental impacts and alternatives in their decision making. MEPA further notes in 116D.06, subdivision 2, that the requirements and goals of the act are supplementary to those set forth in agencies’ existing authorizations. MPCA supports EERA’s conclusion that the Commission has the ability to determine what it needs to insure that the record
developed in the Certificate of Need proceeding, or any proceeding, is adequate for its decision making, be it through testimony from parties, supplemental reports from the applicant or an Environmental Report-like (ER-like) document prepared by EERA, as was requested in the Xcel Competitive Resource Acquisition proceeding (12-1240).

Environmental Effects - Proposed Routing Project

The MPCA seeks to provide additional comment regarding the potential for negative environmental effects and a scoring analysis of six system alternatives, known as SA-03, SA-04, SA-05, SA-06, SA-07, SA-08, and the Enbridge's Sandpiper route in the context of the criteria set forth in Minnesota Rule 7852.1900 subp. 3 and 7853.0130 as these criteria pertain to the MPCA's regulatory authority. Please note that proposed system alternative SA-02 is not addressed in the following comments because previous examination of this route showed that it did not merit further consideration based on the risk to natural resources that MPCA believes must be considered. SA-01 was also not entered in the following comparison because it would require crossing the border into Canada. This would appear to change the jurisdiction and authority over the project from the state level to federal, and would thus no longer be under Commission authority.

The MPCA's comments are intended to demonstrate the importance and the utility of the Commission developing an environmental effects analysis of the various system alternatives in the Certificate of Need part of this combined proceeding.

Minnesota Rule 7852.1900 Subp. 3, B, D, E, F, G, H, I and J Criteria

MPCA has considered the criteria in Minnesota Rule 7852.1900 Subp. 3 to compare the proposed system alternatives and the Sandpiper route by identifying corresponding Geographic Information System (GIS) layers to these criteria, and then visually examining the resulting maps. Without having access to specific locations of the proposed system alternatives, a detailed quantification is not possible; however, the MPCA presents this high level approach to help identify the system alternatives which seem to meet the required considerations most effectively. A more detailed analysis of the environmental impacts of system alternatives would be performed in an ER-like document suggested by MPCA and EERA. In the information below, lower numbers represent greater potential environmental effects, while higher numbers represent lesser environmental effects. The information is meant to illustrate one way of roughly comparing one alignment to another.

Minnesota Rule 7852.1900 Subp. 3.B. The natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water and recreational lands.

Several layers were used to depict these criteria, including Cumulative Disturbance Index (a score showing how human activity has affected the environment which could be used as an indicator of the quality of wildlife habitat), a map showing Water Quality mean score (the score for overall water quality within a watershed), and another map identifying public land ownership, state parks, and wildlife management areas.
The above map shows Cumulative Disturbance Index scores for the state. The green areas are undisturbed or minimally disturbed areas. The yellow and darker orange to red indicate areas of increasingly heavy human impact, and likely have poor habitat for wildlife; the areas in white have not been assessed. Based on this illustration, it appears that the proposed Sandpiper route has the greatest potential to impact pristine areas of the state and/or areas that have high habitat scores, while the potential for impact decreases with system alternatives located further south in the state.
This map shows mean scores for water quality in the state watersheds. Dark green identifies the best water quality in the state; yellow and orange identify areas of lesser water quality. In this depiction, the proposed Sandpiper route has the greatest potential to impact the areas of the state with the best water quality, while system alternatives SA-04, SA-05, and SA-06 traverse areas of fewer surface waters and lower water quality.
The map above identifies state and federal ownership of lands, state forests, state parks, wildlife management areas, and areas under conservation easements (Nature Conservancy). Wildlife management areas on the map are identified as light pink, darker purple areas are conservation lands, light green are state parks, dark green are national forests, yellow areas are state forests, and bright blue areas are U.S. Forest Service land. Notable on this map is that the proposed Sandpiper route borders or crosses a substantial amount of state forest land, and borders several wildlife management areas and one area of nature conservancy land near the North Dakota border. SA-03 crosses near Camp Ripley. All of the proposed system alternatives encroach on some state land, but it appears from this context that the proposed Sandpiper route poses a greater risk to state forests, state parks, and wildlife management areas than any of the system alternatives.

Environmental and natural resource protection and the prevention of impacts tend to be less costly and more effective than restoration; therefore, scoring in this instance is based on preventing impacts to higher quality areas. Scoring of the proposed system alternatives based on criteria in Minnestoa Rule 7852.1900 Subp. 3.B. is as follows:
• 5 points (small potential impact to criteria): SA-04, SA-05, SA-06
• 3 points- (moderate potential impact to criteria): SA-03, SA-07, SA-08
• 1 point (stronger potential to impact criteria): Sandpiper

_Minnesota Rule 7852.1900 Subp. 3.D. Economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations._

It is noted that an Enbridge pipeline would help the Minnesota economy by creating temporary jobs and also paying property taxes; however, for the purpose of this comparison, these economic benefits would occur regardless of where the pipeline is located. Therefore, this analysis addresses other economies that may be impacted based on where the Sandpiper pipeline is located.

The following map identifies both major industrial lands (paper company lands, potato farms, mining lands, etc. in gray), major non-industrial lands (livestock operations, miscellaneous trusts, sugar beet operations, etc. in tan).
In this example, the proposed Sandpiper route encroaches on relatively few industrial-related facilities compared to SA-06 or SA-08, but the Sandpiper comes closest to or directly encroaches on a number of major industrial lands, particularly potato farms and paper company forests. SA-03 also comes near to several livestock operations. In this view, it appears that SA-04 poses the least potential impact to any of the facilities or lands depicted in this layer.

This map identifies cropland in Minnesota, and also stands of wild rice (black squares with black dots). The yellow or dark green areas are corn and soybeans, while the lighter green and blue-green are forested areas. The state appears fairly evenly divided between forest land above SA-03, and heavily cropped land (mostly corn and soybeans) below SA-03. Of special note on this map is the high concentration of stands of wild rice around the proposed Sandpiper route. Unlike corn, soybeans or other exports, stands of wild rice are uniquely sensitive to water quality and disturbance of its native habitat. Therefore, the MPCA concluded that the proposed Sandpiper route would pose a higher threat to the stands of wild rice economy than the system alternatives would pose to other crops. Other Minnesota economic