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In re Enbridge Energy, Limited Partnership

Court of Appeals of Minnesota - June 3, 2019 - N.W.2d - 2019 WL 2333920

Oil transportation company filed application for certificate of need and routing permit to build new pipeline, and the Public Utilities Commission found the final environmental impact statement (FEIS) required for the certificate and permit to be adequate.

Environmental organizations and tribal bands filed three certiorari appeals, which were consolidated.

The Court of Appeals held that:

- Commission's definition of the purpose of and the need for oil pipeline project was reasonable;
- Analysis of the "no action" alternative was reasonable;
- Failure to address the environmental impact of an oil spill on the Lake Superior watershed was arbitrary and capricious;
- FEIS adequately analyzed potential resource impacts of an oil spill, potential impacts to greenhouse-gas emissions, comparative impacts to historic and cultural resources, and the potential environmental impact of alternative routes; and
- There were no "danger signals" that Commission was not genuinely engaged in reasoned decision-making.

Public Utilities Commission's decision to define the purpose of and the need for oil pipeline project with reference to oil transportation company's stated purpose of replacing an existing line in poor condition connecting two terminals was reasonable, and thus Commission was not required to consider alternatives that did not connect the terminals; existing line had been in operation since the 1960's, suffered a high amount of corrosion and long-seam cracking, had been operating at a decreased pressure, and was required to be replaced under a consent decree.

Public Utilities Commission analysis of the "no action" alternative in final environmental impact study (FEIS) for proposed oil pipeline was reasonable based on the record; there was no evidence that any upgrades to the existing pipeline would meet the capacity provided by the project, and agency's analysis of different routes for rail alternative was supported by information the agency had in hand about oil transportation.

Public Utilities Commission's failure to address the environmental impact of an oil spill on the Lake Superior watershed in final environmental impact statement (FEIS) for proposed oil pipeline was arbitrary and capricious; although the effect of an oil spill on Lake Superior and the Great Lakes was identified as a concern in final scoping decision document (FSDD), and raised in public comments, none of the seven sites analyzed were located in the Lake Superior watershed, and neither the agency response to comments nor FEIS addressed this issue.

Final environmental impact study (FEIS) for proposed oil pipeline reasonably focused on analyzing the potential resource impacts of an oil spill at all locations along the applicant's preferred route

(APR) and alternatives, rather than specific impacts that would result from an oil spill originating from a particular location, where the impact of any particular spill depended on multiple variables, many of which were subject to chance.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed potential impacts to upstream and downstream greenhouse-gas (GHG) emissions, where FEIS relied on recent information, summarized market forecasts, and estimated the range of impacts the project could have to GHG emissions.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed comparative impacts to historic and cultural resources, and thus did not require completion of National Historic Preservation Act (NHPA) survey, where FEIS contained extensive analysis of the potential impacts to traditional cultural properties and other cultural resources along the route of the proposed pipeline, in compliance with the Minnesota Environmental Policy Act (MEPA), and included a summary of all known cultural resources located in each of the route alternatives.

Final environmental impact study (FEIS) for oil transportation company's proposed pipeline project adequately analyzed the potential environmental impact of alternative routes, when clarifications to FEIS requested by Public Utilities Commission included information on additive or incremental impacts where the alternative route included an existing pipeline, and the Commission determined that the requested revisions were sufficient.

Public Utilities Commission's assignment of environmental impact statement (EIS) for oil transportation company's proposed pipeline project to the Department of Commerce's Energy Environmental Review and Analysis division (DOC-EERA), rather than Department of Natural Resources (DNR) or Minnesota Pollution Control Agency (MPCA), was not a "danger signal" that Commission was not genuinely engaged in reasoned decision-making, so as to require Court of Appeals to intervene; Commission had authority to request assistance from another governmental unit, and DOC-EERA was statutorily obligated to provide technical expertise related to pipeline-routing matters.