PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
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March 4, 2022

Via e-filing

Consumer Affairs Office
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul MN 55101

Re: In the Matter of a Commission Investigation into Potential Rule Amendments Related to Liquified Carbon Dioxide, PUC Docket Number: U999/CI-21-847

Dear Consumer Affairs and Commission Staff,

Public Employees for Environmental Responsibility (PEER) respectfully submits these reply comments on the Minnesota Public Utilities Commission's (Commission) above-captioned comment period.

I. Correction to PEER's January 31st comments

In PEER's January 31st initial comment[1] we discussed Commission staff's intentions behind the hazardous pipeline rules when they were adopted in 1988. However, as the Notice for this comment period made clear, the rules at issue here were drafted by the Environmental Quality Board (EQB) and transferred to the Commission in 2007. Therefore, the relevant staff and decisionmakers would have been at the EQB, not the Commission. Nonetheless, the original point—that the agency in 1988 did not intentionally exclude carbon pipelines from its definitions—holds regardless of the agency that originated the rules. Minnesotans should not be endangered today because an illustrative list did not precisely describe projects 34 years ahead of their proposed construction.

II. Response to comments

PEER generally agrees with the vast majority of agency and private party comments, saying that it would be appropriate and consistent with law and good governance for the Commission to amend its rules as proposed in the Notice. It is relatively noncontroversial to say that the Commission has long had authority over hazardous liquid pipeline routing, and it is noncontroversial among the perspectives presented in the initial comment period that supercritical carbon dioxide is indeed a hazardous liquid.[2] As covered in PEER's initial comment

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[1] *Available at* Docket No. 20221-182242-01 at 15–22 [hereinafter PEER Initial Comment].

[2] Great Plains Institute's (GPI) comment remains an outlier in attempting to argue that the Commission should regulate carbon pipelines without ever calling them "hazardous." Aside

supercritical carbon dioxide is also a high-pressure gas that easily fits within the Commission's existing regulatory definitions, so clarifying that this type of pipeline is subject to regulation functionally doesn't change carbon pipeline's legal status under existing law. PEER therefore limits these reply comments to a few specific issues and commenters.

1. **Department of Commerce Energy Environmental Review and Analysis (EERA) comment**[3]

Since EERA's expertise includes the routing of interstate hazardous liquid pipelines under existing Minnesota law, the office's perspective is informed by considerably more relevant experience than project proponents and outside experts seeking to hasten along carbon pipeline projects. PEER agrees with all state agencies' conclusions that carbon pipelines should be regulated by the PUC under existing statutory authority. Nonetheless, two issues raised by EERA could be slightly improved upon.

First, while EERA proposes that the Commission proceed with expedited rulemaking under Minnesota Statute 14.389, the agency's letter does not provide a statutory authority that allows the Commission to use this expedited process in the instant rulemaking. Ultimately, this is a harmless omission, because even if the Commission does not proceed with expedited rulemaking under Minnesota Statute 14.389, it has ample authority to proceed under Minnesota Statute 14.388's good cause exemptions because there is a "serious and immediate threat to the public health, safety, or welfare" and the proposed clarification of the definition of "hazardous liquid" would not "alter the sense, meaning, or effect of" the existing rule.[4] PEER agrees with EERA's overall point that the Commission has statutory authority to rapidly adopt this regulatory definition and apply it uniformly to carbon pipeline projects.

Secondly, while EERA's proposed regulatory language is a large improvement on existing law, it could use one additional comma to clarify the overall meaning:

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from being a legally dubious proposition (asking the Commission to regulate these pipelines' routing while asking them to deny any legal justification for such regulation) it's chilling that GPI's arguments so closely resemble the climate denial presented in years past by experts for Peabody Coal. See, *e.g.*, Testimony of Dr. Roger H. Bezdek, June 1, 2015, Docket No. 14-643, *available at* Docket No. 20156-111054-02 (arguing "The environmental benefits of carbon dioxide emissions are enormous . . . CO_2 is not harmful and is actually good for the planet"). While GPI's representative chose to present this fringe view in initial comments, it is not debatable within the scientific community that carbon dioxide is harmful to the climate, nor that highly concentrated carbon dioxide is deadly when it explodes from a pipeline or geologic formation. *See What we all should know about Carbon Pipelines: A look at the impacts on humans and the environment*, Clean Up the River Environment, Feb. 3, 2022, https://www.youtube.com/watch?v=m1JyqKF1kuw (detailing the serious human health risks associated with carbon pipeline explosions, including chronic disease among people who survive, and the 1700 people who were killed in the Lake Nyos disaster).

[3] *Available at* Docket No. 20221-182133-01.

[4] *See* Minn. Stat., Subd. 1(1)&(4). *See also* PEER Initial Comment (explaining how the Commission can invoke the good cause exemption to update the hazardous liquid definition).

> "Hazardous liquid" means a substance transported in pipelines and associated facilities, including pipelines and associated facilities only affecting intrastate commerce[,] that otherwise would be subject to regulation under Code of Federal Regulations, title 49, section 195.1, as amended.

Without the addition of a comma between "commerce" and "that" there may be some confusion about the offset phrase "including pipelines and associated facilities only affecting intrastate commerce" and whether or not it was the only part of the sentence that would be defined by federal regulations. Otherwise, with the additional comma this definition appears to be sufficiently comprehensive to allow the Commission to proceed with regulatory certainty that its definition will continue to be co-extensive with federal hazardous liquid safety standards going forward. The Commission could adopt this definition under the good cause exemption within Minnesota Statute 14.388 or could consider doing so under expedited rulemaking consistent with EERA's original comment.

2. Summit Carbon Solutions, LLC, comment[5]

Understandably companies that are currently trying to build carbon pipelines, Summit Carbon Solutions, LLC, (Summit) and Navigator Heartland Greenway, LLC, (Navigator) would prefer to avoid Commission oversight—especially if any later projects by other companies proposed for Minnesota would be held to a higher regulatory bar, thus decreasing the potential for competition in the burgeoning carbon sewering industry. Navigator's comment states as much, they simply would rather not be held to the same laws as other projects that may come after them. At least this position is honest self interest in search of profit. This perspective is more fully responded to in subsection 5 below.

However, the Summit comment goes further and contains incorrect statements about the Commission's authority under existing statutes. While citing to the same statutes that PEER discussed at length in its initial comments, the letter from Summit suggests that because there are two different definitions of "hazardous liquid" offered in statute the Commission has no ability to interpret its authority and should instead wait for legislative amendment before updating regulations.[6] This argument is as absurd as it is self-serving. The definition in Minnesota Statute § 216G.01, Subd. 1, controls the Commission's regulatory authority "notwithstanding" the other definition found in Chapter 216G, and this operative definition applies to all "hazardous liquids" without any limitation.[7]

Furthermore, the Summit comment misleads in that it attempts to make a distinction in federal law where there is none. While it is true that federal pipeline safety rules define hazardous liquids and carbon pipelines in two different definitions, those rules nevertheless apply the same safety standards to both types of pipelines and have done so since 1991.[8] Applying hazardous liquid

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[5] *Available at* Docket No. 20221-182271-01 [hereinafter Summit Initial Comment].
[6] *See* Summit Initial Comment at 2, 3 (ultimately arguing "an expansion of the Commission's permitting authority is likely better accomplished through legislative action rather than Commission rulemaking").
[7] Minn. Stat. § 216G.02, subd. 1.
[8] *See* discussion of the 1991 final rulemaking Federal Register notice in PEER Initial Comment.

pipeline safety standards is within the Commission's existing authority and has been proven workable by decades of federal experience under the rules that EERA referred to in its proposed regulatory definition.

If the Commission lacked authority to engage in rulemaking and oversight of utilities every time there was ambiguity or the potential for different interpretations of statute or rule, then the Commission simply would not have authority at all. The entire body of statutes that this agency interprets are full of definitions and authorities that may overlap or conflict to some extent, but that does not reduce the Commission's authority to a nullity. Much to the contrary, the Commission's existing experience interpreting complex statutory authorities is more than a match for two definitions, one of which explains it is the operative definition to be applied to the Commission's rulemaking authority.

PEER agrees with Summit to the extent that it has argued that carbon pipelines should be regulated regardless of their diameter.[9] The good news is that, as discussed in PEER's initial comments, these pipelines are already within regulatory definitions as pressurized gas pipelines, so the diameter issue Summit raised in its comment is surmountable under existing regulatory authority.

3. Clean Up the River Environment (CURE) comment[10]

PEER agrees that updating the definition of hazardous liquid to include supercritical carbon dioxide is necessary to protect rural Minnesota communities from an established public health and safety threat. As CURE stated in its initial comments, the first two carbon pipeline proposals in the state are currently before the Commission, awaiting some exercise of regulatory authority to protect human life and the environment from a class of hazardous liquid that has been shown to endanger rural communities that already are crossed by such infrastructure. It is not too much to ask of Minnesota to catch up to the federal government's 1991 regulation of carbon pipelines or the existing regulations in numerous states where this technology has been operating for much longer than it has been proposed here. It is not unreasonable to think that the Commission—given oversight of all hazardous liquid and pressurized gas pipelines (excluding natural gas pipelines)—is the most fit state agency to, with the assistance of EERA, oversee and decide upon where such projects may be built in the state. To turn away from this issue and allow such projects to be built without Commission oversight would make Minnesota an outlier and would deny rural communities the basic public safety controls inherent in routing standards for infrastructure that could sicken and kill entire communities without warning.

[9] *See* Summit Initial Comment at 2 (describing how Summit's proposed project would include pipes of different diameters below and above the diameter that is relevant for a "hazardous liquid" pipeline).
[10] *Available at* Docket No. 20221-182198-01.

4. **Fond du Lac Band of Lake Superior Chippewa Reservation Business Committee (Fond du Lac) comment and Upper Sioux Community comment**[11]

As the Fond du Lac Band and the Upper Sioux Community reminded the Commission in their initial comments, state agencies continue to owe Tribal Nations in the region a voice in stewarding tribal resources, including lands that may be crossed by carbon pipelines. The Commission has recently updated its Tribal Engagement/Consultation Policy[12] and has expressed every intention of doing better going forward in coordinating its work in concert with tribal expertise and interests.[13]

While PEER does not speak for Tribal Nations or Native peoples, it is clear that the Commission can only fulfill its duties to engage with tribes if it exercises its authority over these projects. Without oversight by the Commission, these projects will at best be regulated by local units of government such as rural county boards. While local government has many important roles to play in protecting health and safety and overseeing things like zoning, they are generally ill equipped to engage in full-fledged consultative processes with sovereign nations. As a matter of upholding the Commission's existing commitments to engage and consult, and in order to spare local units of government the need to fundamentally change the way they conduct all business, the Commission would do well to follow through and exercise its authority over the routing of these dangerous pipelines through tribal lands, near tribal communities, and respecting all tribal rights reserved under treaties or other law.

5. **Navigator[14] and Valero Renewables[15] comments**

Both Navigator and Valero Renewables, in support of Navigator's project, indicate that their concern is mainly about regulatory certainty and maintaining their construction timelines so that they can maximize government subsidies and profits. Of course, no large infrastructure project being built in Minnesota should assume that there are no regulatory controls or public safety standards, so to the extent that the companies have not planned for regulatory compliance that is their own failure to plan. Companies should not count on taxpayer subsidies while also assuming no government oversight of dangerous activities. Nevertheless, considering these companies' interest in regulatory certainty, it would be appropriate for the Commission to adopt this new regulatory definition as soon as possible under the good cause exception—assuring that they will be subject to Commission oversight and routing just like other hazardous liquid pipelines.

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[11] *Both available at* Docket No. 20221-182242-01 at 5–7, 25–26.
[12] MINNESOTA PUBLIC UTILITIES COMMISSION TRIBAL ENGAGEMENT/CONSULTATION POLICY (Jan. 2022), https://mn.gov/puc/assets/Tribal%20Consultation_2022_final_tcm14-516813.pdf.
[13] *See* OFFICE OF THE LEGISLATIVE AUDITOR, PUBLIC UTILITIES COMMISSION'S PUBLIC PARTICIPATION PROCESSES EVALUATION REPORT at 26 (2020), https://www.auditor.leg.state.mn.us/ped/pedrep/puc2020.pdf.
[14] *Available at* Docket No. 20221-182270-01.
[15] *Available at* Docket No. 20223-183370-01.

III. Conclusion

For the reasons stated above the Commission should update its definition of "hazardous liquid" in Minnesota Rule 7852.0100, subpart 18, to clarify that carbon dioxide pipelines are hazardous liquid pipelines subject to full Commission oversight. This is consistent with the full diversity of interests represented in comments within this docket, and would bring Minnesota's standards in line with other states and the Commission's existing commitments to tribal governments. The only commenters who oppose such regulation are three entities that would profit from Commission delay on such a rulemaking—but pipeline routing is a matter of life or death risks and it would be inappropriate for the Commission to ignore two dangerous projects. For the sake of public safety, rural communities, and tribal sovereignty the Commission should adopt EERA's proposed definitional language under the good cause exemption or expedited rulemaking in Minnesota Statute, and proceed with regulating these hazardous liquid pipelines consistent with federal and numerous states' standards on the same.

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