

November 21, 2017

Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101-2147

RE: In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border  
OAH 65-2500-32764  
MPUC PL-9/CN-14-916

In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border  
OAH 65-2500-33377  
MPUC PL-9/PPL-15-137

Dear Mr. Wolf,

Enclosed please find in the above-captioned matters the Department of Commerce, Energy Environmental Review and Analysis exceptions to the Administrative Law Judge's report regarding the adequacy of the final environmental impact statement for the Line 3 Pipeline Replacement Project (OAH Sub-Docket 8-2500-34602).

Sincerely,

/s/ John Wachtler  
Energy Program Director  
Energy Environmental Review and Analysis

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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 SEVENTH PLACE EAST  
ST. PAUL, MINNESOTA 55101-2147**

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Mathew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of  
Enbridge Energy, Limited Partnership for a Certificate  
of Need for the Proposed Line 3 Replacement Project  
in Minnesota from the North Dakota Border to the  
Wisconsin Border

OAH 65-2500-32764  
MPUC PL-9/CN-14-916

OAH 65-2500-33377  
MPUC PL-9/PPL-15-137

OAH Sub-Docket No. 8-2500-34602

In the Matter of the Application of Enbridge Energy,  
Limited Partnership for a Route Permit for the  
Proposed Line 3 Replacement Project in Minnesota  
from the North Dakota Border to the Wisconsin Border

**DEPARTMENT OF COMMERCE  
ENERGY ENVIRONMENTAL REVIEW AND ANALYSIS  
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S REPORT**

Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) respectfully submits the following exceptions to the Findings of Fact, Conclusions of Law, and Recommendations (ALJ report) issued by Administrative Law Judge Eric L. Lipman (ALJ) regarding the adequacy of the Final Environmental Impact Statement for the proposed Line 3 oil pipeline project (project).

These Exceptions consist of two parts. Part one provides suggested clarifications and corrections to findings of fact located throughout the ALJ report. Part two provides a suggested revision to findings of fact 170 through 183 in Section V.C: Analysis of Alternatives Minn. R. 4410.2300 (G).

**I. CLARIFICATIONS AND CORRECTIONS**

EERA staff recommends minor edits to the following findings to clarify the record and

to correct minor errors:

11. More recently, because of operational and safety issues, Enbridge has not been operating the Line 3 pipeline at this rated capacity. To avoid stress on the pipeline, or mishaps, Enbridge has been shipping on average ~~390,000~~360,000 bpd from Neche, North Dakota, to Superior, Wisconsin, through Line 3.<sup>11</sup>

13. Enbridge proposes a new pipeline, as a replacement for the existing Line 3, as part of an effort to reclaim a 760,000 bpd throughput capacity from oil terminals in ~~North Dakota~~Edmonton, Alberta to Superior, Wisconsin.<sup>13</sup>

<sup>13</sup>. See Certificate of Need Application at 1-1, 1-6, 2-5 (eDocket Nos. 20154-109653-03, 20154-109653- 01) and Route Permit Application, Section 1 at 1-1, (eDocket Nos. 20154-109661-07, 20154-109661-08, 20154-109661-09)

69. As noted above, Enbridge filed Certificate of Need and Routing Permit applications for the Project on April 24, 2015. On July 20, 2015, the Commission and DOC-EERA issued a notice of public information and scoping meetings for the Project.<sup>69</sup>

69a. On August 12, 2015, the Commission issued an order finding the Route and Certificate of Need Applications substantially complete and among other things varied Minn. R. 7852.1300, subp. 1, to authorize public information meetings in areas near the proposed pipeline route in lieu of meetings within every county along the route.<sup>69a-</sup>

<sup>69a</sup>. Commission Order Finding Application Substantially Complete and Varying Timelines, August 12, 2015 (eDocket No. 20158-113179-01).

70. The 2015 scoping period, conducted under Minn. R. ch. 7852 (2015), occurred between July 20 and September 30, 2015. DOC-EERA and Commission staff held 15 public meetings between August 11 and 27, ~~2017~~2015.<sup>70</sup>

70a. DOC-EERA issued a revised public meeting notice on August 17, 2015, to accommodate a request from the Mille Lacs Band of Ojibwe to hold a meeting at the East Lake Community Center.<sup>70a</sup>

<sup>70a.</sup> Revised Public Meeting Notice filed on August 19, 2015 (eDocket No. 20158-113372-01)

~~81. The Commission conducted public scoping for the EIS in April and May 2016.~~<sup>81</sup>

82. ~~DOC-EERA~~The Commission prepared a Scoping EAW and DSDD.<sup>82</sup>

~~83. The Commission accepted Enbridge's completed data portions of the Scoping EAW for use in EIS scoping, and determined Enbridge's Scoping EAW data submittal to be complete for scoping purposes.~~<sup>83</sup>

84. ~~DOC-EERA published the A~~DOC-EERA published the A Scoping EAW and DSDD ~~were issued~~ on April ~~11~~12, 2016.<sup>84</sup>

121. With respect to a No Action Alternative, the FSDD pledged that the EIS would evaluate the expected condition if the CN is not granted and the existing Line 3 is not replaced

as proposed. The FSDD pledged that this analysis would include options for an integrity monitoring and repair program for the Existing Line 3, as well as the potential that additional volumes of oil would be transported using alternative methods and technologies.<sup>121</sup>

139. Additionally, the DEIS-EQB published notice of the availability of the DEIS in the May 15, 2017 issue of the EQB Monitor. The notice included the dates, times, and locations of the public meetings; notices of where the DEIS was available for public review; and indicated that the comment period would close on July 10, 2017.<sup>139</sup>

208. Enbridge commissioned a modeling analysis of hypothetical crude oil releases on behalf of, and with input from state and federal agency staff, including DOC-EERA, Minnesota Department of Health, and the DNR and MPCA. Staff from the U.S. Army Corps of Engineers were also involved. The analysis modeled the impacts following seven different hypothetical crude oil releases. The computer modeling involved “simulating the chemical and physical behavior of hypothetical oil spills in the selected environments under specified conditions, including weathering processes.”<sup>208</sup>

215. The FEIS also analyzed the potential effects of reducing the pipeline diameter from 34-36 inches, as proposed by Enbridge, to 24-34 inches. DOC-EERA noted that while the “probability of an incident leading to a crude oil release would . . . be similar for a smaller diameter pipeline,” because the construction and operation impacts “are generally the same, a smaller diameter pipeline configuration was not evaluated as a Project configuration

alternative.”<sup>215</sup>

241a. Regarding upstream and downstream life-cycle greenhouse gas emission estimates, the FEIS did not include a detailed market analysis of whether the proposed project would induce new oil demand. The FEIS did review the extensive analyses of the issue of whether the approval of a particular oil pipeline could affect upstream production or downstream oil consumption in two recent State Department EIS’s on Canadian crude oil pipelines, one for Keystone XL and one for the Line 67 upgrade. The FEIS found those analyses to be inconclusive. Therefore, the FEIS includes calculations of potential life-cycle carbon emissions using several scenarios that would bracket the possible outcomes.<sup>241a</sup>

<sup>241a.</sup> FEIS at 5-452

277a. The FEIS finds that the project and other alternatives would have a disproportionate and adverse impact to both low-income and minority populations along the proposed route, as well as those populations residing or using lands near the Project, in particular, American Indian populations. RA-06, RA-07, and RA-08 would have direct impacts on reservation lands (Leech Lake and Fond du Lac Reservations). Based on the discussion of tribal resources in Chapter 9, any of the routes, route segments, and system alternatives would cross treaty lands and also would have a long-term detrimental effect on tribal members.<sup>277a</sup>

<sup>277a.</sup> FEIS at 11-22

277b. The FEIS includes a list of potential mitigation measures that could reduce the impacts of these impacts.<sup>277b</sup>

<sup>277b.</sup> *Id.*

## **II. REVISION TO SECTION V(C): ANALYSIS OF ALTERNATIVES MINN. R. 4410.2300 (G)**

EERA staff recommends the following findings to replace 170 through 183:

170. Since the primary purpose of the Commission’s Certificate of Need decision is to determine the need for the project, the FEIS does not separately assess the proposed project’s underlying “need.” Instead, the FEIS focuses on providing the information required for the Commission to make informed decisions regarding the environmental impacts of its Certificate of Need and route permit decisions.<sup>170</sup>

<sup>170.</sup> FEIS at 1-7

170a. Therefore, wWhen searching for “reasonable alternatives to the proposed project,” the ~~DOC EERA~~FEIS reviewed pipeline alternatives that interconnected with “the crude oil supply region near Edmonton, Alberta” and “served the same Clearbrook and Superior destinationsdid not use “need” to screen out potential alternatives because “need” is the primary issue the Commission must assess in its Certificate of Need decision.<sup>170a</sup>

<sup>170a.</sup> Alternatives Screening Report, supra, at Section 4.1; FEIS at 1-7. See also Sierra Club Scoping Comment Letter, May 26, 2016 at 5 (eDocket No. 20165-121701-02)



170b. Similarly, the FEIS does not include a separate, redundant market analysis of the economic feasibility of other pipeline endpoints or competing pipeline systems. The cost of a detailed, redundant oil demand market study in the FEIS, which in addition to similar analyses completed in the Certificate of Need process, would exceed its relevance and importance in making an informed decision among alternatives. <sup>170b</sup>

<sup>170b</sup>. FSDD at 36

171. ~~None of the other non-Enbridge pipelines that are now (or will be) capable of bringing crude oil from Canada connect to Superior, Wisconsin. The Keystone XL pipeline, TransCanada Energy East pipeline, or the Minnesota pipeline are not capable of bringing crude oil to a refinery in Superior, Wisconsin.~~ <sup>171</sup> The FEIS considered other non-Enbridge pipelines including the Keystone XL and TransCanada Energy East pipeline that could be contemplated by the commission as alternatives to meet a need that may be identified in the Certificate of Need process. The FEIS concluded that the relevant environmental impacts of these projects either have been or will be addressed in other jurisdictions and EERA determined that the cost and effort of further analysis in the EIS would exceed its relevance and importance in making an informed decision among alternatives. <sup>171</sup>

172. Friends of the Headwaters, Honor the Earth and other stakeholders maintain that DOC-EERA improperly credited Enbridge's stated purpose for the project (namely, to link crude oil supplies coming from Alberta, Canada to pipeline terminals in Clearbrook, Minnesota

and Superior, Wisconsin). These stakeholders maintain that DOC-EERA undertook the wrong inquiries because the true purpose of the project is to “get crude oil to refineries in the Chicago area, the Gulf Coast, and conceivably overseas.”<sup>172</sup>

~~173. The Administrative Law Judge disagrees. Because of the nature of Minnesota’s market for crude oil, it was not irrational or inappropriate for the DOC EERA to focus upon proposals that could deliver crude oil to terminals in Clearbrook, Minnesota and Superior, Wisconsin. In this context it is important to emphasize that Minnesota refineries have not imported crude oil from a country other than Canada since 2008. Moreover, the only pipeline by which “non-Canadian” crude oil imports could be delivered to Minnesota refineries, was taken out of service in 2013.<sup>173</sup> Thus, while not all of the crude oil that is shipped on Enbridge’s Mainline system remains in Minnesota (or Superior, Wisconsin), the oil that is needed by Minnesota companies travels on this interstate network. The FEIS did appropriately include a description of the applicant’s stated purpose in the chapter that describes the applicant’s proposed project.<sup>173a</sup> A description of the proposed project is a standard part of any EIS.<sup>173b</sup>~~

<sup>173a</sup>. FEIS Chapter 2 at 2-4

<sup>173b</sup>. Minn. R. 4410.2300, (E)

~~174. Further, because crude oil supplies for refineries in Minnesota and Wisconsin travel alongside supplies that are destined for other parts of the country, a rise in demand from these other locations that is not matched by increases in pipeline capacity results in “apportionment” on the pipeline and delays of oil shipments to Midwestern companies.<sup>174</sup>~~

~~175. For these reasons, connectivity to terminals in Clearbrook and Superior were key features to be assessed in the FEIS, albeit not the only features that were evaluated.~~<sup>175</sup>

176. The Sierra Club, Mr. Willis Mattison and others argue that the real need to be assessed in this matter is improved access to “energy,” and not merely increases in the supplies of crude oil. This error in focus, their argument continues, inappropriately excludes alternative technologies, such as electric cars, which could meet the transportation needs of Minnesotans. Because the FEIS evaluates alternatives that deliver crude oil, they maintain that it is inadequate.<sup>176</sup>

~~177. The Administrative Law Judge disagrees. To the extent that some of the crude oil supplies sought by area refiners is intended to be fashioned into pharmaceuticals, plastics or asphalt, it was not error for the DOC EERA to focus on methodologies that were capable of delivering supplies of oil from one point to another. Technologies like electric powered automobiles or electricity from wind turbines are arguably substitutes for gasoline or diesel fuel, but they are not genuine alternatives to the other, wider range of products that are manufactured from petroleum.~~The FEIS evaluates the environmental impacts of the potential outcomes of denying the Certificate of Need should there be demand for the amount of crude oil transportation requested by the applicant: continued use of Existing Line 3, use of other pipelines, System Alternative SA-04, rail, trucks, and a combination of these.<sup>177</sup> Substituting wind-energy for oil is not a reasonably likely outcome of a commission decision to deny the Certificate of Need for the proposed project. The Commission is of course free to

evaluate whether wind energy and other renewable energy technologies may eventually reduce or eliminate the need for 370,000 or 760,000 barrels per day of crude oil in the region and in North America. The Commission, however, cannot order this outcome in this docket.

<sup>177</sup> See, e.g., Comment of Flint Hills (eDocket No. 20177-134089-01) (Flint Hills Resources' Pine Bend refinery in Rosemount, Minnesota "produces a significant percentage of the asphalt used in Minnesota and across the country as well as heating fuels and the chemical building blocks for numerous other essential products, including plastics, fertilizers, medicines and synthetic materials"); Comment of Todd Borgmann (eDocket No. 20177-134089-01) (the Calumet refinery in Superior, Wisconsin produces "500 thousand gallons per day of Asphalt and Fuel Oil"); Comment of the Duluth Seaway Port Authority (July 10, 2017) (eDocket No. 20177-134089-01) ("The crude oil that moves through Line 3 is refined for use as fuel and as a feedstock for a wide variety of products that all of us use every day, including medical supplies, eye and sun glasses, bike parts, auto and jet components, asphalt for roads and roofs, and poly-fiber fabrics used to make clothing, outdoor gear and tents"); Bemidji Public Hearing Transcript, at 94 (Suave); FEIS at 4-3

177a. Therefore, for purposes of the FEIS, the installation of tens of thousands of megawatts of wind-turbine capacity and the associated use of electric vehicles in the region is not evaluated as a reasonable outcome of the denial of the certificate of need for the proposed crude oil pipeline at issue here. The FEIS is not inadequate because it did not evaluate the feasibility and impacts of such renewable energy alternatives.

178. As the U.S. Council on Environmental Quality observed in a similar context "[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."<sup>178</sup>

~~179. In this case, the ability of the proposed project to transport crude oil is more than a feature that is "desirable from the standpoint of the applicant;" it is a key expectation among~~

~~Enbridge's customers who use petroleum to manufacture a wide range of products.~~<sup>179</sup>

180. The Mille Lacs Band suggests that operating the other Enbridge-owned pipelines in Minnesota closer to full capacity would be sufficient to meet any need for transporting crude oil to Superior, Wisconsin; and could do so without the impacts of a new pipeline. Because this option is not squarely addressed in the FEIS, the Band maintains that the FEIS is inadequate.<sup>180</sup>

181. It does not appear that the Mille Lacs Band raised this suggestion during either the scoping process or in its comments to the DEIS, giving DOC-EERA (or others) a reasonable opportunity to respond.<sup>181</sup> ~~Still, the hearing record includes valuable detail on this important question.~~

181a. As with other "need" related issues, the FEIS did not complete a separate, redundant analysis to that in the Certificate of Need process regarding whether existing pipelines in the Enbridge Mainline could meet the project's stated "need." Still, the hearing record includes valuable detail on this important question.

~~182. The Enbridge Mainline system consists of Line 3 and other pipelines, including Line 1 (237,000 bpd), Line 2A (442,000 bpd), Line 2B (442,000 bpd), Line 4 (796,000 bpd), and Line 67 (890,000 bpd).~~<sup>182</sup>

~~183. The record suggests only a fraction of the oil that Enbridge proposes to ship along a refurbished Line 3 could be transported by other nearby pipelines.<sup>183</sup> For this reason, the DOC-EERA did not commit error by not detailing this particular suggestion as an alternative to the proposed project.~~

EERA staff appreciates the opportunity to submit these exceptions.

Dated: November 21, 2017

Respectfully Submitted,

**s/ John N. Wachtler**

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