

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Nancy Lange
Dan Lipschultz
Matthew Schuenger
Katie Sieben
John Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

MPUC Docket No. PL-9/CN-14-916;
OAH Docket No. 65-2500-32764

and

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

MPUC Docket No. PL-9/PPL-15-137;
OAH Docket No. 65-2500-33377

**ENBRIDGE ENERGY,
LIMITED PARTNERSHIP'S COMMENTS
ON THE REVISED FINAL
ENVIRONMENTAL IMPACT
STATEMENT**

INTRODUCTION

Enbridge Energy, Limited Partnership (“Enbridge”) submits these comments concerning the Revised Final Environmental Impact Statement (“Revised FEIS”) for the Line 3 Replacement Project (“Project”). Because the Revised FEIS addresses the four specific issues identified in the Minnesota Public Utilities Commission’s (“Commission”) December 14, 2017, Order Finding Environmental Impact Statement Inadequate (“Order”), the Commission should determine that the Revised FEIS is adequate under Minnesota law.¹

¹ As set forth in prior pleadings, Enbridge continues to assert that the August 2017 FEIS met the requirements of Minn. R. 4410.2800, subp. 4 and should have been found adequate, since it: (1) addressed the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained were analyzed; (2) provided responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and (3) was prepared in compliance with the procedures set forth in the relevant statutes and rules. Enbridge will not repeat those arguments again here.

THE REVISED FEIS

I. SA-04.

With respect to SA-04, the Order required the Revised FEIS to:

(i) indicate how far and where SA-04 would need to be moved to avoid karst topography it would otherwise traverse and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.²

The Revised FEIS complied with both of these. Specifically, the Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”) worked with the Minnesota Department of Natural Resources (“MDNR”) and Minnesota Pollution Control Agency (“MPCA”) to prepare a new Appendix U. Although the agencies were unable to identify a variation on SA-04 that completely avoided karst topography (aside from a route through northern Minnesota), Appendix U identifies and analyzes two SA-04 reroute options that attempt to minimize crossing karst topography. Appendix U includes both a narrative explaining the agencies’ process and conclusions, as well as detailed tables identifying and comparing resources potentially impacted by SA-04 and the two reroute options. Therefore, the Revised FEIS complies with the Order.

II. Quantitative v. Qualitative Analysis.

Next, the Order required the Revised FEIS to:

clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.³

² Order at 3.

³ Order at 3.

As DOC-EERA explained, the agency added text to Chapters 5 and 6 of the Revised FEIS explaining that datasets should be used in context and that, in isolation, each dataset has limitations.⁴ For example, the Revised FEIS states:

In most cases, no single “factor” provides a perfect indication of impacts to a resource. Therefore, for each resource, a collection of factors was analyzed that together provide a reasonably comprehensive indication of the potential impacts. For example, impacts to wetlands are a function of the number and acreage of wetlands crossed, wetland type and quality, and a number of other factors. There is no readily available composite dataset that effectively combines all of these individual factors, so the “wetlands” section of the EIS instead evaluates a suite of factors, including acreage of forested and scrub/shrub wetlands, acres of emergent wetlands, acres of Public Waters Inventory wetlands, acres of calcareous fen, acres of wetland reserve program wetland, and acreage of wetland mitigation bank easement within the Project footprint. Taken together, all of these factors provide a fairly complete picture of wetland impacts for a given alternative and provide the information necessary for a valid comparison of impacts across alternatives.⁵

The Revised FEIS also provides examples with respect to various different resource categories.

For example, with respect to groundwater, the Revised FEIS explains:

No single one of the datasets listed above provides a complete indication of all relevant impacts to groundwater. Together, though, these datasets provide a reasonably comprehensive indication of the potential impacts. For example, public water supply well counts do not consider the influence that overlying geology may have on the susceptibility of public water supply wells to impacts. However, data from the aquifer vulnerability dataset can aid the reader in understanding the influence that overlying geology may have on the susceptibility of groundwater along the route to impacts. Furthermore, the quantitative information from the analysis of these datasets should be coupled with the qualitative descriptions of impacts that are contained in the text. The summary table at the end of the groundwater section provides counts, for example, of DWSMAs and a general

⁴ DOC-EERA Filing Letter at 2; *see also* Revised FEIS at 5-7 – 5-8.

⁵ Revised FEIS at 5-4.

assessment of the duration and magnitude of potential impacts; however, a more complete discussion of the qualitative nature of impacts that could occur to DWSMAs is contained in the text of this section.⁶

Thus, in accordance with the Order, the Revised FEIS both discusses quantitative and qualitative impacts and provides readers with additional context concerning how to interpret that data.

III. Co-Location.

Third, the Order required the Revised FEIS to:

Clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive – i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.⁷

The FEIS already contained information concerning which impacts would or would not be additive. In accordance with the Order, the Revised FEIS now contains additional discussion and clarification of this issue to aid a reader’s understanding. For example, the Revised FEIS states:

Descriptions of existing conditions reflect the current state of the environment. Where past projects have impacted or altered the environment, these impacts or alterations are captured in the description of the existing environment. For example, where forest has been cleared, or habitat has been fragmented by the existing mainline, this is part of the discussion in the relevant “existing conditions” section.⁸

⁶ Revised FEIS at 5-13; *see also, e.g.*, Revised FEIS at 5-48 (describing waterbody analysis) and 5-114 (describing wetland analysis); Revised FEIS at 6-5 and 6-10 – 6-11.

⁷ Order at 3.

⁸ Revised FEIS at 5-2; *see also* Revised FEIS at 5-3 and 6-3 – 6-4.

More specifically, for example, the Revised FEIS explains:

Between Clearbrook and Carlton, the Applicant's preferred route is co-located with other oil pipelines for 66.2 miles, with transmission line infrastructure for 92.0 miles, and with roadways for 2.9 miles of its 220.9-mile length (see Section 6.7). Descriptions of existing conditions within the land use and planning ROI for the Applicant's preferred route reflect the current state of resources in the environment along this existing infrastructure. Where past projects have impacted or altered the condition of the environment, the altered state of the environment is the existing condition described in this section.⁹

In accordance with the Order, the Revised FEIS provides a similar discussion for each alternative.¹⁰

IV. Traditional Cultural Properties Survey.

Finally, the Order required the Revised FEIS to “clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.”¹¹ In compliance with the Order, the Revised FEIS states: “. . . the Commission specified that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in the Line 3 Project proceeding.”¹²

CONCLUSION

As discussed in these comments, the Revised FEIS complies with the Commission's Order. With this additional information, the Commission should find that the Revised FEIS is adequate and adopt the Report of the Administrative Law Judge modified only by: (1) the

⁹ Revised FEIS at 6-12.

¹⁰ *See, e.g.*, Revised FEIS at 6-16.

¹¹ Order at 4.

¹² *E.g.*, Revised FEIS at 5-620.

exceptions submitted by DOC-EERA on November 21, 2017; and (2) the additional findings concerning the Revised FEIS included here at **Attachment A**.

Dated: February 27, 2018

Respectfully submitted,

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I. Updated Procedural History.

1. On November 1, 2017, ALJ Lipman issued the Report of the Administrative Law Judge on the Adequacy of the FEIS. The Report recommended that the Commission determine the FEIS to be adequate.¹

2. On December 7, 2017, the Commission met to make a decision on the adequacy of the Final Environmental Impact Statement (“FEIS”). It issued its Notice of Final Environmental Impact Statement Adequacy Determination Line 3 Replacement Project on December 13, 2017.² The Commission’s Order Finding Environmental Impact Statement Inadequate (“FEIS Order”) was filed on December 14, 2017.³

3. On December 20, 2017, the Commission provided notice of the FEIS Order in the *EQB Monitor*.⁴

4. On January 2, 2018, the Fond du Lac Band and Sierra Club submitted petitions for reconsideration of the FEIS Order. On January 3, 2018, Enbridge did the same.⁵

5. On January 12, 2018, YCI, HTE, DOC-EERA, Enbridge, Sierra Club, and Fond du Lac Band submitted responses to the requests for reconsideration submitted on January 2 and 3, 2018.⁶

6. On January 16, 2018, YCI, Mille Lacs Band, Sierra Club, Fond du Lac Band, and HTE submitted responses to Enbridge’s petition for reconsideration.⁷

¹ Report of the Administrative Law Judge (Nov. 1, 2017) (eDocket No. [201711-137079-01](#) (CN)).

² Notice of FEIS Adequacy Determination (Dec. 13, 2017) (eDocket No. [201712-138116-01](#)).

³ Order Finding EIS Inadequate (Dec. 14, 2017) (eDocket No. [201712-138168-02](#)).

⁴ EQB Monitor Notice of FEIS Adequacy Determination (Dec. 20, 2017) (eDocket No. [201712-138313-02](#)).

⁵ Joint Tribal Petition to Reconsider (Jan. 2, 2018) (eDocket No. [20181-138561-01](#)); Sierra Club Petition for Reconsideration and Request for Supplemental EIS (Jan. 2, 2018) (eDocket No. [20181-138549-03](#)); Enbridge Petition for Reconsideration (Jan. 3, 2018) (eDocket No. [20181-138620-03](#)).

⁶ YCI Reply to Tribes Joint Petition for Reconsideration (Jan. 12, 2018) ([20181-138892-02](#)); HTE Response to Joint Tribal Petition for Reconsideration (Jan. 12, 2018) (eDocket No. [20181-138891-03](#)); DOC-EERA Reply (Jan. 12, 2018) (eDocket No. [20181-138890-01](#)); Enbridge Reply to Petitions for Reconsideration of Tribes and Sierra Club (Jan. 12, 2018) (eDocket No. [20181-138884-04](#)); Fond du Lac Band Response to Sierra Club Petition for Reconsideration and Hearing and Request for Supplement to the EIS (Jan. 12, 2018) (eDocket No. [20181-138868-01](#)); Sierra Club Reply to Joint Tribal Petition (Jan. 12, 2018) (eDocket No. [20181-138859-02](#)); YCI Response to Sierra Club Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-138893-02](#)).

⁷ YCI Reply to Enbridge Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-138999-01](#)); Mille Lacs Reply to Enbridge Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-138962-02](#)); Sierra Club Answer to Enbridge Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-138990-04](#)); Fond du Lac Band Answer to Enbridge Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-138998-01](#)); HTE Reply to Enbridge Petition for Reconsideration (Jan. 16, 2018) (eDocket No. [20181-139002-01](#)).

7. On February 12, 2018, DOC-EERA released the Revised FEIS.⁸ On the same day, a Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project was released, setting a comment period until February 27, 2018.⁹

8. On February 22, 2018, the Commission met to consider the petitions to reconsider the FEIS Order. An order denying reconsideration was issued on _____, 2018.

II. Revised FEIS.

9. In accordance with the FEIS Order, the Revised FEIS was revised to:

(a) (i) Indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse and (ii) Provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.

(b) Clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.

(c) Clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.

(d) Clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.

A. SA-04.

10. The FEIS Order required the Revised FEIS to, first, “indicate how far and where SA-04 would need to be moved to avoid karst topography it would otherwise traverse.”¹⁰

⁸ See [Revised] FEIS – Abstract (Feb. 12, 2018) (eDocket No. 20182-139960-03); EERA Letter (Feb. 12, 2018) (eDocket No. [20182-139959-06](#)).

⁹ Notice of Availability and Comment Period for Revised FEIS (Feb. 12, 2018) (eDocket No. 20182-139993-02).

¹⁰ FEIS Order at 3.

11. DOC-EERA, working with MDNR and MPCA, was unable to identify a variation on SA-04 that completely avoided karst topography (aside from a route through Northern Minnesota). However, the Revised FEIS identifies and analyzes two SA-04 reroute options that attempt to minimize crossing karst topography.¹¹

12. The FEIS Order also required the Revised FEIS to “provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.”¹²

13. Appendix U of the Revised FEIS includes both a narrative explaining the agencies’ process and conclusions, as well as detailed tables identifying and comparing resources potentially impacted by SA-04 and the two reroute options.

B. Quantitative v. Qualitative Analysis.

14. The FEIS Order required the Revised FEIS to “clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives.”¹³

15. In accordance with the FEIS Order, the Revised FEIS both discusses quantitative and qualitative impacts and provides readers with additional context concerning how to interpret that data. Specifically, DOC-EERA added text to Chapters 5 and 6 of the Revised FEIS explaining that datasets should be used in context and that, in isolation, each dataset has limitations.¹⁴

C. Co-Location.

16. The FEIS Order required the FEIS to “identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive.”¹⁵

17. The FEIS already contained information concerning which impacts would or would not be additive and, in accordance with the FEIS Order, the Revised FEIS contains additional discussion and clarification of this issue.

18. For example, the Revised FEIS states:

Between Clearbrook and Carlton, the Applicant’s preferred route is co-located with other oil pipelines for 66.2 miles, with

¹¹ Revised FEIS at Appx. U.

¹² Order at 3.

¹³ FEIS Order at 3.

¹⁴ DOC-EERA Filing Letter at 2; *see also* Revised FEIS at 5-7 – 5-8; Revised FEIS at 5-4; Revised FEIS at 5-13; *see also, e.g.*, Revised FEIS at 5-48 (describing waterbody analysis) and 5-114 (describing wetland analysis); Revised FEIS at 6-5 and 6-10 – 6-11.

¹⁵ FEIS Order at 3.

transmission line infrastructure for 92.0 miles, and with roadways for 2.9 miles of its 220.9-mile length (see Section 6.7). Descriptions of existing conditions within the land use and planning ROI for the Applicant's preferred route reflect the current state of resources in the environment along this existing infrastructure. Where past projects have impacted or altered the condition of the environment, the altered state of the environment is the existing condition described in this section.¹⁶

19. The Revised FEIS provides a similar discussion for each alternative.¹⁷

D. Traditional Cultural Properties Survey.

20. The FEIS Order required the Revised FEIS to “clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.”¹⁸

21. The Revised FEIS states: “the Commission specified that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in the Line 3 Project proceeding.”¹⁹

¹⁶ Revised FEIS at 6-12.

¹⁷ *See, e.g.*, Revised FEIS at 6-16.

¹⁸ FEIS Order at 4.

¹⁹ *E.g.*, Revised FEIS at 5-620.