

BEFORE THE MINNESOTA PUBLIC UTILITIES Commission
600 North Robert Street
St. Paul, Minnesota 55164

FOR THE MINNESOTA PUBLIC UTILITIES Commission
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Enbridge Commission Docket No. PL9/CN-13-153
Energy Limited Partnership for a Certificate of
Need for the Line 67 Station Upgrade Project – OAH Docket No. 8-2500-30952
Phase 2 – In Marshall, Clearwater, Itasca,
Kittson, Red Lake, Cass and St. Louis
Counties

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATIONS REGARDING A CERTIFICATE OF NEED FOR THE
PROPOSED LINE 67 PROJECT**

May16, 2014

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INTRODUCTION

Enbridge Energy, Limited Partnership filed the current request for a Certificate of Need (“CN”) with the Minnesota Public Utilities Commission (“Commission”) on June 28, 2013, with an amended application on August 16, 2013 (the “Application”).¹ Enbridge proposes to expand the permitted capacity of its Line 67 Pipeline from 570,000 barrels per day to 800,000 barrels per day (“bpd”) as part of its ongoing efforts to meet North America’s needs for reliable and secure transportation of petroleum energy supplies. Enbridge intends to do so through the installation of new pump facilities adjacent to or near existing Enbridge owned facilities at the Donaldson, Plummer, Cass Lake, and Floodwood Station sites, which are located in Kittson, Red Lake, Cass, and St. Louis Counties, Minnesota, respectively (the “Project”). All station upgrades will be constructed on land that Enbridge owns. No new pipeline construction will be required outside of these station sites.

Enbridge has not complied with a number of requirements of Minn. Stat. § 216B.243 and Minn. R. Ch. 7853. In particular, it has not provided data supporting the forecast it provided to allow the Commission to determine the accuracy of its forecast of need for the Project. Further, it has not provided reliable data related to its existing and permitted capacity to transport heavy crude oil. In addition, the record fails to contain evidence of State of Minnesota petroleum conservation programs. Finally, the record shows that the Project will contribute to substantial increases in greenhouse gas emissions that will have adverse impacts on Minnesota’s economy, public health, and the natural environment. Therefore, the Commission should not grant a Certificate of Need to Enbridge for the proposed Project.

PROCEDURAL HISTORY

1. Enbridge filed a notice plan for the Project, as required by Minn. R. 7829.2560, on February 28, 2013 (the “Notice Plan”).² The Notice Plan was revised on April 9, 2013,³ and accepted by the Commission on May 8, 2013.⁴
2. Enbridge implemented the Notice Plan between May 29, 2013 and June 5, 2013.⁵ Direct mail notice was provided to landowners along the route of Line 67 as well as to those adjacent to the facilities involved in the Project.⁶ The letter to landowners along the route of Line 67 was mailed on June 5, 2013, and the letter to landowners adjacent to the proposed facilities was mailed on June 4, 2013.⁷

¹ Ex. 1 (Public Version of the Application); Ex. 2 (Trade Secret Version). The Application was assigned Commission Docket No. PL-9/CN-13-153.

² Certificate of Need Notice Plan, February 28, 2013 ([E-Dockets Document No. 20132-84295-01](#)).

³ Reply Comments and Revised Notice Plan, April 9, 2013 ([E-Dockets Document No. 20134-85561-01](#)).

⁴ Order Approving Notice Plan, Commission Docket No. PL-9/CN-13-153, May 8, 2013 ([E-Dockets Document No. 20135-86802-01](#)).

⁵ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 4 ([E-Dockets Document No. 20138-89924-03](#)).

⁶ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 1.

⁷ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 2.

3. Direct mail notice to local governments was provided on June 3, 2013.⁸
4. Enbridge also published notice of its intent to file an application for a CN for the Project in newspapers between May 29, 2013 and June 5, 2013.⁹
5. Some minor issues occurred during implementation of the Notice Plan. One paper published the notice on July 2, 2013, instead of June 4, 2013 as scheduled.¹⁰ Additional mailings to one township, one township supervisor, and to some corrected addresses for local governments were made on June 5, 14, and 21, 2013.¹¹
6. Enbridge also provided notice to individuals that had expressed interest in receiving documents for Enbridge's prior Phase 1 project. This was done through direct mail on June 5, 2013.¹²
7. Enbridge filed its Application for the Project with the Commission on June 28, 2013.¹³
8. The Application considered Enbridge's entire discussion of forecast data in Application Section 7853.0520 to be trade information pursuant to Minn. R. 7829.0500 and did not disclose it. As a consequence, public commenters had no opportunity to comment on the completeness of the information in Application Section 7853.0520.
9. The Commission established a comment period on the June 28, 2013 version of Enbridge's application through an order issued on July 3, 2013.¹⁴
10. Comments were received from the Minnesota State Historic Preservation Office on July 3, 2013, indicating that no historic properties will be affected by the Project.¹⁵
11. The Minnesota Department of Natural Resources filed comments on July 24, 2013.¹⁶
12. The Minnesota Department of Commerce, Division of Energy Resources (the "Department") filed comments on the June 28, 2013 version of Enbridge's application on July 24, 2013. The Department recommended that the Commission declare the application complete pending submittal of additional information by Enbridge.¹⁷

⁸ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 3.

⁹ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 3.

¹⁰ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 1, note 1.

¹¹ Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 2.

¹² Notice Plan Compliance Filing, Public Version, August 5, 2013, p. 2.

¹³ Application Cover Letter and Affidavit of Service, June 28, 2013 ([E-Dockets Document No. 20136-88672-01](#)).

¹⁴ Notice of Comment Period on the Application of Enbridge Energy, Limited Partnership For A Certificate of Need for the Line 67-Phase 2 Upgrade Project, July 3, 2013 ([E-Dockets Document No. 20137-88853-01](#)).

¹⁵ Minnesota State Historic Preservation Office Comment Letter, July 3, 2013 ([E-Dockets Document No. 20137-88920-01](#)).

¹⁶ Minnesota Department of Natural Resources Comments, July 24, 2013 ([E-Dockets Document No. 20137-89507-01](#)).

¹⁷ Comments of the Minnesota Department of Commerce, Division of Energy Resources, July 24, 2013 ([E-Dockets Document No. 20137-89504-01](#)).

13. MN350 also filed reply comments on completeness of the June 28, 2013 version of Enbridge's application on August 16, 2013.¹⁸
14. Donovan and Anna Dyrdal (the "Dyrdals") also filed comments on the June 28, 2013 version of Enbridge's application on August 16, 2013.¹⁹
15. Enbridge filed an amended version of its application on August 16, 2013,²⁰ as well as reply comments regarding completeness.²¹ This version also claimed that all of Application Section 7853.0520 was trade secret information pursuant to Minn. R. 7829.0500.
16. On September 17, 2013, the Commission issued a Notice and Order for Hearing in which it rejected MN350's objections related to the completeness of the Application and determined that Enbridge's Revised Application was substantially complete. The Commission allowed Enbridge to include the additional information that it provided in the Revised Application and referred the matter to the Office of Administrative Hearings ("OAH") for a contested case proceeding. The Commission failed to object to Enbridge's classification of Application Section 7853.0520 as trade secret information, even though on its face almost all of the information in this section was public information. The Application was assigned Commission Docket No. PL-9/CN-13-153.²²
17. Enbridge mailed copies of the Application on CD-ROM to local libraries on September 17, 2013.²³
18. The Honorable Eric L. Lipman, Administrative Law Judge ("ALJ") issued the First Prehearing Order on October 22, 2013.²⁴
19. A prehearing conference was held on November 5, 2013.²⁵
20. The Second Prehearing Order was issued on November 14, 2013.²⁶ In the Second Prehearing Order, MN350, now joined by the Sierra Club, was granted party status, as was the Department.²⁷ A schedule for hearing milestones and other matters was also established in the Second Prehearing Order.²⁸

¹⁸ MN350 Reply Comments Regarding Completeness, August 16, 2013 ([E-Dockets Document No. 20138-90359-01](#)),

¹⁹ Dyrdal Comments re Completeness, August 16, 2013 ([E-Dockets Document No. 20138-90360-01](#)).

²⁰ Ex. 1 (Public Version); Ex. 2 (Trade Secret Version).

²¹ Enbridge Reply Comments Regarding Completeness, August 16, 2013 ([E-Dockets Document No. 20138-90363-02](#)).

²² Commission Notice and Order for Hearing, September 17, 2013 ([E-Dockets Document No. 20139-91374-01](#)).

²³ Public Hearing Notice Compliance Filing, Public Version, Exhibits 3a, 3b, 3c ([E-Dockets Document No. 20144-97993-02](#)),

²⁴ First Prehearing Order, October 22, 2013 ([E-Dockets Document No. 201310-92846-01](#)).

²⁵ Second Prehearing Order, November 14, 2013 ([E-Dockets Document No. 201311-93694-01](#)).

²⁶ Second Prehearing Order, November 14, 2013.

²⁷ Second Prehearing Order, November 14, 2013, p. 1.

²⁸ Second Prehearing Order, November 14, 2013, p. 2.

21. The Dyrdals were granted party status in the Third Prehearing Order, issued on November 18, 2013.²⁹
22. On November 26, 2013, in order to gain access to Enbridge's trade secret forecast information, Environmental Interveners requested a draft protective order and nondisclosure agreement from Enbridge. On the same day, counsel for Enbridge responded that a protective order might not be necessary in light of the public version of a forthcoming revised Application Section 7853.0520.
23. Enbridge filed a revised version of Section 7853.0520 of the Application on December 4, 2013, including both public and trade secret versions.³⁰ This revised section considered only two lines of data comprised of 16 numbers in Table 7853.0520-B.1 to be trade secret. A comparison of this revised Section 7853.0520 to the trade secret version filed with the Applications in June and August shows that these documents are all very similar and are comprised primarily of obviously publicly available information, such as: a basic project description, which information is available in other non-trade secret Application sections; a general description of CAPP and Enbridge project-specific forecasting methodology; a general description of Enbridge's operations in Minnesota, which are also described in other non-trade secret Application sections; descriptions of public forecasts and forecasting methodologies prepared by the CAPP and the National Energy Board of Canada ("NEB"); and general descriptions of other announced Enbridge pipeline projects that are publicly available.
24. Enbridge also filed a Status Report Regarding Venues and Notice Documents on December 4, 2013, updating the ALJ and the parties regarding venue options and schedules for the public hearings to be held in March, 2014.³¹
25. Enbridge filed a second Update Regarding Venues on December 10, 2014 to provide a status report to the ALJ and parties regarding venue options and schedules for the upcoming public hearings.³²
26. On December 6, 2013, Environmental Interveners informed counsel for Enbridge that the revised public version of section 7853.0520 did not satisfy their need for information, and therefore, repeated their request for a nondisclosure agreement that would allow access to trade secret information. One week later, on December 13, 2013, counsel for Enbridge responded by saying that a draft protective order was under review and would be circulated early the following week. On Wednesday, December 18, 2013, counsel for Enbridge provided a proposed protective order and nondisclosure agreement.
27. Enbridge filed the direct testimony of witness Neil K. Earnest,³³ together with an expert report titled "Benefits Analysis for the Line 67 Station Upgrade Project - Phase 2"³⁴ on

²⁹ Third Prehearing Order, November 18, 2013 ([E-Dockets Document No. 201311-93779-01](#)).

³⁰ Ex. 4 (Public), Ex. 5 (Nonpublic).

³¹ Status Report re Venues and Notice, December 4, 2014 ([E-Dockets Document No. 201312-94330-02](#)).

³² Update Regarding Venues, December 10, 2013 ([E-Dockets Document No. 201312-94479-02](#)).

³³ Ex. 6.

December 20, 2014, in advance of the January 10, 2014 deadline for Enbridge's initial pre-filed testimony established in the Second Prehearing Order.

28. On Friday, December 20, 2013, Environmental Interveners objected to the proposed protective order because it contained novel and unprecedented terms, relative to prior protective orders issued in other Commission proceedings, that were prejudicial to them and other parties. Enbridge responded by sending an email to all parties stating that it planned to circulate a revised version of the proposed protective order the following week. Enbridge suggested that parties defer detailed comments until this revision was available. Since Environmental Interveners expected a revised proposed protective order within approximately the same timeframe as would be required to provide comments on the December 18 Proposed Order, Environmental Interveners deferred preparation of detailed comments pending receipt of a revised proposed order.
29. On Thursday, January 9, 2014, counsel for Enbridge provided a revised proposed protective order. This revised version made modest changes but did not address Environmental Interveners' objections.
30. Honor the Earth filed a Petition to Intervene on January 9, 2014.³⁵
31. Enbridge filed the direct testimony of witnesses Mark Curwin,³⁶ Jeff Jurgens,³⁷ and Paul Turner³⁸ on January 10, 2014. This testimony was very limited in its scope and depth. It provided no detailed information about Enbridge's forecast information, but primarily served to introduce the witnesses, describe their general areas of responsibility, and make very broad claims related to the Application.
32. Enbridge also filed an additional update regarding public hearing venues on January 10, 2014.³⁹
33. MN350/Sierra Club filed a Request to Reconvene the Prehearing Conference on January 21, 2014 to resolve issues related to the issuance of a protective order in this matter.⁴⁰
34. Enbridge replied to the MN350/Sierra Club Request to Reconvene the Prehearing Conference on January 24, 2014.⁴¹
35. A telephonic prehearing conference was held by the ALJ on January 24, 2014.

³⁴ Ex. 7.

³⁵ Honor the Earth Petition to Intervene, January 9, 2014 ([E-Dockets Document No. 20141-95294-01](#)).

³⁶ Ex. 8.

³⁷ Ex. 9.

³⁸ Ex. 10.

³⁹ Update Regarding Venues, January 10, 2014 ([E-Dockets Document No. 20141-95348-02](#)).

⁴⁰ Request to Reconvene the Prehearing Conference, January 21, 2-14 ([E-Dockets Document No. 20141-95674-01](#)).

⁴¹ Enbridge Reply to MN350 Request to Reconvene the Prehearing Conference, January 24, 2013 ([E-Dockets Document No. 20141-95754-02](#)).

36. On January 28, 2014, just three weeks before the deadline for Intervener initial testimony, the ALJ issued his Forth Prehearing Order (Protective Order) in which he rejected the language proposed by Enbridge to which Environmental Interveners objected.⁴² Exhibit A to the Protective Order was executed by counsel for MN350/Sierra Club, MN350/Sierra Club witness Mary Ellen Denomy, and counsel for the Dyrdals.
37. Honor the Earth was granted party status in the Fifth Prehearing Order, issued on January 29, 2014.⁴³
38. The Commission issued a Notice of Public Hearings on February 3, 2014,⁴⁴ and a Revised Notice of Public Hearings on February 5, 2014.⁴⁵
39. On February 18, 2014, the DOC filed the Direct Testimony of Laura B. Otis, as well as her Direct Testimony Attachments.⁴⁶ Due the limited information provided by Enbridge at that time, the DOC took the unusual step of recommending that the Commission deny Enbridge's Revised Application.⁴⁷ Ms. Otis testified: "The Applicant has not provided adequate information to definitively, quantitatively show that denial of the Certificate of Need would negatively impact supply and demand in Minnesota or regional petroleum and petroleum product markets."⁴⁸
40. On February 20, 2014, Enbridge mailed the Revised Notice of Public Hearings to all landowners along the route of Line 67 and those abutting the proposed facilities to be constructed as part of the Project.⁴⁹ Enbridge later identified twelve additional landowners. The Revised Notice of Public Hearings was provided to these landowners.⁵⁰
41. Enbridge mailed the Revised Notice of Public Hearings to local governments on February 18, 2014.⁵¹
42. Enbridge mailed the Revised Notice of Public Hearings to additional parties interested in the Project on February 20, 2014.⁵²
43. Enbridge published the Revised Notice of Public Hearings in areas reasonably likely to be affected by the Project between February 25 and March 4, 2014.⁵³

⁴² Fourth Prehearing Order (Protective Order), January 28, 2014 ([E-Dockets Document No. 20141-95864-01](#)).

⁴³ Fifth Prehearing Order, January 29, 2014 ([E-Dockets Document No. 20141-95898-01](#)).

⁴⁴ Notice of Public Hearings, February 3, 2014 ([E-Dockets Document No. 20142-96129-01](#)).

⁴⁵ Revised Notice of Public Hearings, February 5, 2014 ([E-Dockets Document No. 20142-96201-01](#)).

⁴⁶ Ex. Nos. 35, 36, Otis Direct Testimony and Direct Attachments.

⁴⁷ Ex. No. 35, Otis Direct Testimony at 52.

⁴⁸ *Id.*

⁴⁹ Public Hearing Notice Compliance Filing, Public Version, Exhibits 1a, 2a, 2c ([E-Dockets Document No. 20144-97993-02](#)); Public Hearing Notice Compliance Filing, Trade Secret Version, Exhibits 2b, 2d (e-filed April 4, 2014).

⁵⁰ Public Hearing Notice Compliance Filing, Public Version, Exhibit 2e ([E-Dockets Document No. 20144-97993-02](#)); Public Hearing Notice Compliance Filing, Trade Secret Version, Exhibit 2f (e-filed April 4, 2014).

⁵¹ Public Hearing Notice Compliance Filing, Public Version, Exhibits 5a, 5a ([E-Dockets Document No. 20144-97993-02](#)).

⁵² Public Hearing Notice Compliance Filing, Public Version, Exhibits 1a, 4a ([E-Dockets Document No. 20144-97993-02](#)).

44. MN350/Sierra Club filed direct testimony of witnesses Mary Ellen Denomy⁵⁴ and John P. Abraham⁵⁵ on February 18, 2014.
45. The Department filed direct testimony of witness Laura B. Otis on February 18, 2014.⁵⁶
46. No direct testimony was filed by Honor the Earth or the Dyrdals.
47. Enbridge filed rebuttal testimony of Dr. Charles Cicchetti,⁵⁷ Mark Curwin,⁵⁸ Neil Earnest,⁵⁹ William Rennie,⁶⁰ and Paul Turner⁶¹ on March 13, 2014. This testimony contained far more information than Enbridge's initial testimony, totaling 126 pages of testimony and 481 pages of attachments.
48. MN350/Sierra Club filed rebuttal testimony of Mary Ellen Denomy on March 13, 2014.⁶²
49. Honor the Earth filed a letter from counsel on March 13, 2014 but did not present rebuttal testimony from a witness.⁶³
50. The Dyrdals did not file rebuttal testimony.
51. The Dyrdals filed a Motion to Contest Claims of Confidentiality and Trade Secret Privilege⁶⁴ with a Memorandum of Law in Support of the motion⁶⁵ on March 17, 2014.
52. Public hearings were held on March 18-20, 2014, as follows:
 - Hallock, Minnesota: March 18, 2014, 6:30 PM
 - Thief River Falls, Minnesota: March 19, 2014, 10:00 AM
 - Cass Lake, Minnesota: March 19, 2014, 6:30 PM
 - Floodwood, Minnesota: March 20, 2014, 10:00 AM
 - Duluth, Minnesota: March 20, 2014, 6:30 PM

⁵³ Public Hearing Notice Compliance Filing, Public Version, Exhibits 6a, 6b, 6c ([E-Dockets Document No. 20144-97993-02](#)).

⁵⁴ Ex. 52, 55.

⁵⁵ Ex. 50.

⁵⁶ Ex. 35, 36.

⁵⁷ Ex. 19, 26, 27, 28.

⁵⁸ Ex. 11, 12, 13, 14, 15.

⁵⁹ Ex. 15, 16, 17.

⁶⁰ Ex. 20.

⁶¹ Ex. 18.

⁶² Ex. 53.

⁶³ Honor the Earth, Rebuttal Support of Sierra MN350 and Chippewa Treaty Rights ([E-Dockets Document No. 20143-97320-01](#)).

⁶⁴ Dyrdal Motion to Contest Claims of Confidentiality and Trade Secret Privilege ([E-Dockets Document No. 20143-97402-01](#)).

⁶⁵ Memorandum of Law in Support of Dyrdal Motion to Contest Claims of Confidentiality and Trade Secret Privilege ([E-Dockets Document No. 20143-97402-02](#)).

53. The Department filed a motion on March 20, 2014 requesting the opportunity to file surrebuttal testimony.⁶⁶ The DOC filed this motion because Enbridge provided substantial additional facts in its rebuttal testimony and the DOC sought to respond.
54. The Dyrdals filed a Motion to Compel Responses to Discovery⁶⁷ and Memorandum in Support⁶⁸ on March 21, 2014.
55. On March 21, 2014, Environmental Interveners likewise moved for leave to file Surrebuttal Testimony, but also sought to reschedule the evidentiary hearing, which was originally scheduled to begin on April 1, 2014, in order to allow time to prepare surrebuttal testimony. Environmental Interveners' motion showed "Enbridge has structured its testimony of March 13, 2014, as "rebuttal" testimony. In fact, Enbridge has provided almost all of the substantive data and arguments related to the economic impacts and need for the Project in the last scheduled opportunity for submission of evidence prior to the evidentiary hearing."⁶⁹
56. Honor the Earth filed a letter on March 21, 2014 supporting the Dyrdal Motion to Contest Claims of Confidentiality and Trade Secret Privilege, the Dyrdal Motion to Compel Responses to Discovery, and the MN350/Sierra Club Request to Reconvene the Prehearing Conference and Motion to Reschedule the Evidentiary Hearing.⁷⁰
57. On March 25, 2014, Enbridge filed a Memorandum of Law Opposing the MN350/Sierra Club Motion to Reconvene and Reschedule.⁷¹
58. On March 25, 2014, Enbridge also filed a Memorandum of Law Opposing the Dyrdal Motion to Contest Claims of Confidentiality and Trade Secret Privilege.⁷²
59. The ALJ issued the Sixth Prehearing Order on March 25, 2014, setting a prehearing conference for March 26, 2014, as discussed and agreed upon by the parties.⁷³
60. A prehearing conference was held on March 26, 2014.
61. The ALJ issued the Seventh Prehearing Order on March 27, 2014. In the Seventh Prehearing Order, deadlines were established for filing of written surrebuttal testimony by all parties, objections to the admissibility of prefiled direct and rebuttal testimony, submission of exhibit lists, and objections to admissibility of prefiled surrebuttal testimony. The Seventh

⁶⁶ Motion for Surrebuttal ([E-Dockets Document No. 20143-97460-01](#)).

⁶⁷ Motion to Compel Discovery ([E-Dockets Document No. 20143-97509-01](#)).

⁶⁸ Memorandum in Support of Dyrdal Motion to Compel ([E-Dockets Document No. 20143-97496-01](#)).

⁶⁹ Request to Reconvene the Prehearing Conference and Motion to Reschedule the Evidentiary Hearing ([E-Dockets Document No. 20143-97496-01](#)).

⁷⁰ Honor the Earth Letter ([E-Dockets Document No. 20143-97513-01](#)).

⁷¹ Memorandum of Law Opposing the MN350/Sierra Club Motion to Reconvene and Reschedule ([E-Dockets Document No. 20143-97605-03](#)).

⁷² Memorandum of Law Opposing the Dyrdal Motion to Contest Claims of Confidentiality and Trade Secret Privilege ([E-Dockets Document No. 20143-97605-02](#)).

⁷³ Sixth Prehearing Order ([E-Dockets Document No. 20143-97626-01](#)).

Prehearing Order also rescheduled the evidentiary hearing to April 8-10, 2014. New deadlines for submission of initial and reply briefs were also established.⁷⁴

62. Enbridge filed errata to Dr. Charles Cicchetti's rebuttal testimony on March 27, 2014.⁷⁵
63. The Commission issued a press release informing the public of the rescheduled evidentiary hearing dates on March 27, 2014.⁷⁶
64. Enbridge filed a Memorandum of Law Opposing the Dyrdal Motion to Compel Discovery⁷⁷ on March 31, 2014, together with Revised Attachments to the Memorandum of Law.⁷⁸
65. The ALJ issued the Eighth Prehearing Order on April 1, 2014 to establish procedures for the public hearing to be held in St. Paul, Minnesota on April 3, 2014.⁷⁹
66. Enbridge filed surrebuttal testimony of Neil K. Earnest,⁸⁰ Jeff Jurgens,⁸¹ and Dr. Charles Cicchetti⁸² on April 3, 2014.
67. The Department filed surrebuttal testimony of Laura B. Otis on April 3, 2014.⁸³
68. MN350/Sierra Club filed surrebuttal testimony of Mary Ellen Denomy⁸⁴ and John Abraham on April 3, 2014.⁸⁵
69. Honor the Earth and the Dyrdals did not file surrebuttal testimony.
70. On April 3, 2014, the PUC held a public hearing in St. Paul, Minnesota, in its large hearing room. Prior to this hearing, Andy Pearson of MN350 notified Tracy Smetana of the PUC that MN350 expected several hundred individuals to attend to speak against the Project. When told the capacity of the hearing room by Ms. Smetana (140 persons), Mr. Pearson expressed concern that this room would not be able to accommodate the expected public commenters and other participants. Accordingly, he inquired about the possibility of moving the public hearing to a larger venue or providing overflow capacity. Ms. Smetana said that there was no possibility of moving the public hearing into a larger venue and stated that the PUC would deal with overflow crowds on the day of the hearing. Ultimately, the PUC used only its

⁷⁴ Seventh Prehearing Order ([E-Dockets Document No. 20143-97672-01](#)).

⁷⁵ Cicchetti Errata filing ([E-Documents Document No. 20143-97685-01](#)).

⁷⁶ Press Release ([E-Dockets Document No. 20143-97690-01](#)).

⁷⁷ Memorandum of Law Opposing Dyrdal Motion to Compel Discovery ([E-Dockets Document No.20143-97796-02](#)).

⁷⁸ Revised Attachments to the Memorandum of Law Opposing Dyrdal Motion to Compel ([E-Dockets Document No.20143-97812-01](#)).

⁷⁹ Eighth Prehearing Order ([E-Dockets Document No. 20144-97878-01](#)).

⁸⁰ Ex. 21.

⁸¹ Ex. 23.

⁸² Ex. 22.

⁸³ Ex. 37.

⁸⁴ Ex. 54, 56.

⁸⁵ Ex. 51.

existing large hearing room and it also established an overflow room with a capacity of 70 persons.

71. On the day of the hearing, it became clear that PUC staff were overwhelmed by and poorly prepared to accommodate the number of citizens at the public hearing. Those who arrived an hour ahead of time gained entrance to the hearing room, but those who arrived later encountered only a large group of individuals on the third floor of the PUC building. No PUC staff were visible to explain the process; there were no signs explaining how to sign up to testify; there were no ropes or other guides to help citizens form queues. Unbeknownst to citizens, PUC staff had set up a table outside of the hearing room that allowed citizens to sign up to testify pro, con, or neutral. Apparently, queues were established for each group. However, none of this structure was communicated to those waiting to testify. One citizen called out that there were separate lines for pro and con but this served only to increase confusion. Once citizens determined that sign-in sheets existed, they began jostling their way toward them.
72. Those who were able to enter the hearing room found that over half of the seats were taken by those who arrived before the queues were established, most of whom were supporters of the Project. Even though empty seats remained, Ms. Smetana began refusing entry to additional citizens, saying that there were no empty seats, and initially directed citizens to the overflow room. Once this room filled, she directed citizens to the downstairs lunchroom. Therefore, when the hearing commenced, most of the citizens in the room supported the pipeline while a much larger group of citizens was relegated to the first floor without access to an audio or video broadcast of the hearing.
73. Those who left the room were not allowed to return, including a mother who left to feed her parking meter only to find that she could not reenter the hearing room to sit with her child. Her child, who subsequently testified, sat alone for approximately one hour.
74. A police officer on duty told Mr. Pearson that they estimated the total number of citizens in attendance to be approximately 1,000. Therefore, the number of persons in attendance exceeded the capacity of the PUC's hearing room and overflow room by approximately 800 seats.
75. In an attempt to accommodate citizens, the PUC established a dial-in line so that citizen could at least listen to the proceedings via cell phones, but this resource was quickly turned off because the conference line was set up so that listeners were not muted and could not be muted, with the result that the line generated substantial noise in the hearing room.
76. As a result, most of those who attended the hearing were shunted into a basement cafeteria with no access, audio or video, to the hearing. For nearly an hour, there was no way for people in the cafeteria to sign up to speak, and the escalator and elevators to the upper level rooms were blocked by police on the first floor who were not informed by the PUC of how citizens might sign up to speak. Thus, many citizens who came to the hearing after work initially encountered only police officers who informed them that they could not proceed to the third floor, much less enter the hearing room.

77. Eventually, PUC staff established a “ticket” system, whereby those who left would relinquish their tickets to those waiting to attend. However, not everyone who left the hearing room acquired a ticket and many attendees with tickets simply left without relinquishing them. This resulted in a “scalpers” line on the first floor where citizens waiting to attend asked those leaving if they had a ticket. PUC staff set up a signup sheet on the first floor, but by then it was so late that many citizens concluded that the chances of them seeing or hearing the public hearing, much less providing comments, were slim to none.
78. By 7:00 PM, attrition had reduced those waiting to enter the hearing room to the point that PUC staff directed the police to allow access to upper floors. Thus, those who remained were allowed to watch the hearing, but they had no opportunity to speak.
79. The hearing ended at approximately 8:20 PM. Of those who attended the hearing, the sign-in sheets for the hearing indicate that approximately 140 signed up to speak but only about 75 were allowed to provide oral comment. However, due to the PUC’s lack of planning and its decision to restrict access to the third floor without providing any direction to citizens on the first floor, an unknown number of citizens did not gain access to a sign-in sheet and left the hearing without the PUC having any record of their attendance, much less hearing their comments.
80. Enbridge filed its exhibit list on April 4, 2014,⁸⁶ along with additional exhibits.⁸⁷
81. The Dyrdals filed an exhibit list on April 4, 2014,⁸⁸ but did not file or circulate copies of the proposed exhibits.
82. The Department and MN350/Sierra Club provided exhibit lists to the parties by email.
83. Transcripts of the Public Hearings were mailed to public libraries on April 7, 2014.⁸⁹
84. On April 7, 2014, Enbridge objected to the exhibits proposed by the Dyrdals.⁹⁰
85. The Dyrdal Motion to Compel Discovery and Motion to Contest Claims of Confidentiality and Trade Secret Privilege were denied in the Ninth Prehearing Order issued on April 7, 2014. The Ninth Prehearing Order also required Enbridge to submit a redacted, public version of its responses to the Department’s Information Request 21 as a hearing exhibit.⁹¹ Enbridge did so.⁹²
86. An evidentiary hearing was held on April 8, 9, and 10, 2014 in St. Paul, Minnesota.

⁸⁶ Enbridge Exhibit List ([E-Dockets Document No.20144-98004-02](#)).

⁸⁷ Ex. 24.

⁸⁸ Dyrdal Exhibit List ([E-Dockets Document No. 20144-97999-01](#)).

⁸⁹ Shaddix & Associates Letter, April 7, 2014 ([E-Dockets Document No.20144-98067-01](#)).

⁹⁰ Objection to the Dyrdal Exhibits ([E-Dockets Document No. 20144-98060-02](#)).

⁹¹ Ninth Prehearing Order ([E-Dockets Document No. 20144-98063-01](#)).

⁹² Ex. 25.

87. Transcripts of the Evidentiary Hearing were mailed to libraries on April 22, 2014.⁹³

88. Public comments related to the Project were submitted by the deadline of 4:30 PM on April 14, 2014.

SUMMARY OF WRITTEN PUBLIC COMMENTS OPPOSED TO THE PROJECT

Introduction

The following is a summary of a sampling of written submittals opposing the granting of a Certificate of Need for the Phase 2 upgrade of Line 67. These constituted the vast majority of a total of more than 13,000 public comments submitted. The comment summary is presented below in a total of 12 categories.

Need for the Upgrade

1. George Boody is Executive Director of the Land Stewardship Project, a farm and rural membership organization with offices in three Minnesota cities. He cites a June 2013 Minnesota House Information Brief stating that Minnesota's refineries cannot absorb additional crude supplies at this time, and that Enbridge is bypassing shipping bottlenecks at Clearbrook and Cushing, Oklahoma and transporting oil to areas with excess refining capacity. In his view, the project proponents have not sufficiently demonstrated that this project is in the interest of the Minnesota public. 20144-98619-01, Ltr 5
2. Sandy Sterle of Barnum, Minnesota, wonders how Enbridge is justifying market need and cites a statement in the Floodwood, MN proceeding, in which they indicated that a refinery in Illinois will be upgrading in order to refine tar sands. She asks, "Could Enbridge utilize future capacity for tar sands as justification in the Alberta Clipper upgrade CON and also utilize the current capacity of the same refinery as justification of the proposed Sandpiper pipeline CON, too?" 20144-98111-02, Ltr. 1
3. Rachael Collyer of Cleveland Heights, Ohio, cites Energy Information Agency data showing that sales of refined petroleum products in Minnesota are down 20% relative to their peak in 2004. She feels that the expansion of the Alberta Clipper pipeline would put our climate, our water, and our natural resources at risk with no long-term economic benefit. 20144-98620-01, Ltr.7
4. Rodney Johnson of Minneapolis, Minnesota, does not believe that the proposed Line 67 expansion is justified or that it is in the public's interest. He projects that after Enbridge replaces its damaged Line 3 in Minnesota there will be about 870,000 barrels per day excess capacity. Furthermore, according to Enbridge's own data, the use of crude oil refined products has dropped in the U.S., in the region, and in Minnesota by 5%, 4%, and 7%, respectively. 20144-98625-01, Ltr. 18

⁹³ Shaddix & Associates Letter, April 22, 2014 ([E-Dockets Document No. 20144-98586-01](#)).

5. David Rulifson (no city identified) writes, "We should have plenty of crude coming from ND [so] that we don't have to risk the eco-system of the BWCA." 20144-97944-03

Export Pass-Through

6. Susan Hessel (no city identified) asserts that, while we suffer the health risks, Enbridge plans to enrich itself by exporting this oil to foreign markets. She believes that we have already put too much carbon into the atmosphere and have more carbon in current reserves than we can burn if we intend to have a planet we can survive on. She states, "We should use the public funds we'd spend cleaning up Enbridge messes to train and employ people to expand our renewable energy resources." 20144-98626-01, Ltr. 11
7. Elizabeth Ward, Conservation Programs Coordinator for the Sierra Club-John Muir Chapter in Madison, Wisconsin, cites a recent Reuters article exposing Enbridge's plan to export tar sands oil, and she claims that Enbridge had hundreds of wetland and stormwater permit violations during construction of Line 61 in 2006. She claims that a tar sands spill on the Great Lakes would threaten hundreds of thousands of jobs, where commercial fishing and tourism collectively contribute over \$28 billion per year to Minnesota and Wisconsin economies. 20144-98620-01, Ltr. 17
8. Steve Spieckerman of Waukesha, Wisconsin, states that the Line 67 expansion would not be in the public interest for three reasons. First, the oil would be for foreign, not domestic consumption. Second, the project would intensify global warming. Third, spillage of tar sands poses a serious threat to Midwest water supplies. He cites references for all three issues, including an EPA report on human health risks from warming. 20144-98620-01, Ltr. 3

Economic Impacts

9. Ron Moore of St. Paul, Minnesota, points out that the Department of Defense has acknowledged climate change and greenhouse gas emissions as a security threat to the country in its "Quadrennial Defense Review 2014" report. He quotes excerpts from this report, including: "As greenhouse gas emissions increase, sea levels are rising, average global temperatures are increasing, and severe weather patterns are accelerating. These changes, coupled with other global dynamics, including growing, urbanizing, more affluent populations, and substantial economic growth in India, China, Brazil, and other nations, will devastate homes, land, and infrastructure." 20144-98626-01, Ltr. 3
10. Ellen Schousboe of Edina, Minnesota, views the proposed upgrade as bringing harm to Minnesota with little or no benefit. She foresees few jobs being created by the proposed project because pipelines and power plants require very few people to run. She also fears that the resultant worsening of climate change will cause us tremendous economic losses and damage in the United States, but especially in poorer and lower-lying countries. 20144-98620-01, Ltr. 9

11. Don Ferber of Madison, Wisconsin, feels that the risks to our communities and the environment of the Line 67 expansion outweigh any benefits. He writes, "With what we know now about the effects of extracting and using tar sands, we never should have begun using them." He adds, now that we have clean energy sources that are rapidly becoming cost-competitive, how can we not make responsible choices for future generations? 20144-98621-01, Ltr. 1
12. Daniel R. Cruikshank, co-founder, Granite Gear, Two Harbors, Minnesota, is of the opinion that the proposed Alberta Clipper expansion is not good for Minnesota, nor for the country as a whole. He believes that if there is a "level playing field", the market (fossil fuels vs. renewables) will work itself out. He also asserts that currently we are not paying the true cost of our fuel. 20144-98376-01, Ltr. 13
13. Greta Gaard of Minneapolis, Minnesota, states: "We are meeting and meeting and meeting to determine whether and how an ecologically unsustainable and democratically unsupported decision can be forced upon the people of Minnesota by another country's corporate powers for their profit at our cost." 20144-98108-02, Ltr. 1
14. J. Sanford Dugan, PhD, a retired university professor living near the pipeline in Carlton County, Minnesota, sees adverse economic impact as a consequence of approving the Line 67 upgrade. He states that "Increasing the Alberta Clipper capacity may benefit the producers in Alberta, the shippers across the Great Lakes, and the buyers in countries abroad, but Minnesotans will not pay less for gas at the pump, will not see more job offers, and will not pay lower property taxes." 20144-97944-01, Ltr. 123
15. Clyde Cutting, a system architect living in Minneapolis, Minnesota, notes that "It would be a terrible miscarriage of democracy and justice to pursue foreign corporate profits and dirty oil international exports by inflicting the many great risks and damage on local communities." He observes that Enbridge has a proven record of ignoring safety regulations and warnings and is unable or unwilling to repair the existing damages of their many spills totaling millions of gallons of oil and sludge. 20144-98626-01, Ltr. 4

Support for Renewables

16. John Munter of Warba, Minnesota, believes that the refinery industry is doomed to go the way of the coal miner and the garment industry, since we are moving into a renewables century. The Enbridge application should be denied, as oil price increases "...would help enable the implementation of the strategic planning mandated in the 2007 Next Generation Renewable Energy Act to make Minnesota meet the requirement to be 25% renewable fueled by 2025 and attain the 80% renewable fueled target of 2050." He references a "Renewable Minnesota" study that estimates that the renewable economy will generate fifty thousand jobs a year, more than compensating for any lost revenue from tar sands pipelines. 20144-98626-01, Ltr. 16
17. Peggy Leppik of Golden Valley, Minnesota, sees that additional oil from the Alberta tar sands may be unnecessary after the pipeline would be expanded. She writes: "Today the

U.S. Dept. of Energy's "2014 Vehicle Buyer's Guide" lists 58 all-electric, plug-in hybrid and hybrid vehicle models. This skyrocketing demand for fuel-efficient vehicles brings into question the need for a huge increase in tar sand oil when electricity, not petroleum, is clearly the wave of the future for the auto industry." 20144-97944-01, Ltr. 130

18. Mike Gude of St. Paul, Minnesota, writes, "Increasing tar sands production is a major step back from the progress we are making in generating energy and jobs in Minnesota through cleaner sources of power like wind and solar." He opposes the Alberta Clipper upgrade because it will result in much greater release of greenhouse gases than light crude oil. Also, the increase in pressure on the existing pipeline will make spills and leaks of tar sands oil more likely. 20144-98623-01, Ltr. 22
19. Amelia Kroeger of Bloomington, Minnesota, feels that it would be far better for Minnesota to say "yes" to clean renewables like solar, geothermal, and wind rather than to allow ever more carbon into our atmosphere. She recognizes that pipelines are promoted as the safest transport of crude oil, yet "...tar sands oil is without a doubt hazardous to water, land, people, and critters, and is far more challenging to clean up when a rupture does occur." 20143-97171-01, Ltr. 8
20. Beth Tamminen of Duluth, Minnesota, is concerned about the carbon-intensive nature of tar sands oil. She states: "In Minnesota we have committed to lowering our carbon footprint by mandating renewable energy goals. Being party to the transport of this carbon-heavy oil would be a direct contradiction to these commitments..." 20144-98615-01, Ltr. 30
21. Marcy Leussler of Minneapolis, Minnesota, notes that there are many individuals, government officials, and utility company employees who are looking ahead to a goal of getting up to 95% of our energy from renewable sources. She writes, "I and many others believe that renewables are our future. In this view, an expansion of this pipeline is short-sighted and a step backwards from where most Minnesotans want to be. We should be looking at decommissioning pipelines, not expanding them." 20144-98378-01, Ltr. 3
22. Anne C. Jones of Minneapolis, Minnesota, writes: "MN is taking important steps forward in expanding production of renewable sources of energy that do not add to our emission of greenhouse gases. Allowing greater transmission of tar sands oil will negate the progress we are making in increased use of solar, wind, and other less-polluting sources of power." 20144-98384-01, Ltr. 12
23. Analiese Miller of St. Paul, Minnesota, urges Commission denial of the Enbridge request for the additional risk it poses to our water and our climate. She asks that the Commission continue its work to support renewable and sustainable energy solutions that will truly benefit our communities. 20144-98620-01, Ltr. 20

Renewables Jobs vs Fossil Jobs

24. Patricia Renner of St. Louis Park, Minnesota, finds Enbridge's projection of 183 new jobs each year beyond the initial year of operation to be a stretch of the imagination. She goes on

to cite U.S. Department of Labor data revealing that \$1 million dollars worth of oil and natural gas output directly creates 0.8 jobs, and \$1 million of coal produces 1.9 jobs, versus an average of 5.8 jobs in wind, solar, and biomass renewable power generation for the same outlay. 20144-98622-01, Ltr. 16

25. Craig Bowron, a physician and scientist in Saint Paul, Minnesota, believes that ratcheting up tar sands consumption would deepen and perpetuate our dependence on the most carbon-intensive energy source available and thus would not serve the needs of Minnesotans. Using the dedication and skills of tradesmen attending the April 3 hearing to build low-carbon energy capture systems instead would be a win-win scenario. 20144-98623-01, Ltr. 23
26. Terry Hokenson of Minneapolis, Minnesota, observes that "Renewable energy sources and aggressive conservation, including expanded mass transit, offer proven means to meet our energy needs while also creating many more new jobs and a sustainable environment." He opposes the expansion of Line 67, "...which will carry toxic tar sands oil to foreign markets, polluting state lands and waters along the way, with no economic gain for Minnesota." 20144-98624-01, Ltr. 20
27. Mary Scott of St. Paul, Minnesota, feels that it is imperative that we spend the time and energy now to quickly pivot to clean energy. She feels that we should put our builders' talents to work - "But let's do that on projects that are life-giving, not life-destroying. Tar sands oil should stay in the ground....It's time to switch gears." 20144-98615-01, Ltr. 58
28. Paula Fischer of Minneapolis, Minnesota, writes, "We do not have to accept a dirty energy source when we know there are clean alternatives. We have a choice here on how we get our power and which industries are invested in to create jobs." 20144-98615-01, Ltr. 61
29. Kathryn Meyer (no city identified), a former nurse, psychotherapist, and holistic health provider, states: "It saddens me to think about what kind of a world my grandchildren are inheriting because of companies choosing profits instead of using money to increase jobs in wind, solar and geothermal technologies to create a healthier planet." 20144-98615-01, Ltr. 63
30. Jason Holtz of St. Paul, Minnesota, doesn't think a welder really cares if he's working on a pipeline or a train station or a wind turbine tower. He writes: "We need to put people to work on energy efficiency first and foremost. Our buildings are woefully inefficient. We can start remedying that today. Our electrical grid is a dinosaur. Our power plants are aging and polluting." 20144-98615-01, Ltr. 68

Exacerbation of Climate Change

31. Mikaela Robertson of Minneapolis, Minnesota, observed at the April 3 hearing on the Line 67 expansion that supporters tended to downplay the reality, severity and urgency of climate change. They also failed to see the connection between a Line 67 expansion and climate change. Because countless scientific studies and reports point to the importance of taking immediate steps to curb carbon emissions, she believes that we must reduce our supply of

fossil fuels and increase their cost to create a market-based incentive to support the use of renewable energy sources. 20144-98622-01, Ltr. 5

32. Mike Arney of Wauwatosa, Wisconsin, states that it is much harder to cut fossil fuel use if the delivery of fossil fuels is constantly becoming cheaper. He writes, "I have worked hard to cut carbon emissions in my house"....."We managed to cut our emissions by 17 metric tons per year CO₂." But the expansion of the Clipper would add 80 million metric tons. "How can we stand up against that?" 20144-98622-01, Ltr. 15
33. Chuck Prentice of Edina, Minnesota, points out that we have already emitted about 25% of the world's 565-gigaton carbon dioxide budget since the 2009 analysis of how we can limit warming to 2deg C. He writes: "...adding pipeline capacity is step in the wrong direction when what we need to do is reduce fossil fuel emissions." He adds: "The negative impacts of climate change won't be just 'environmental'- rather, they will impact the economy, human health, food and water adequacy, sea-level rise, and peace and security." 20144-98619-01, Ltr. 15
34. Tom McSteen of Minneapolis, Minnesota, postulates that "The same demand that fuels our consumption and growth is ultimately going to be what causes the way we live to change beyond our wildest imagination." He points out that every month, for the last 348 consecutive months, the average global temperature has been above the level prior to 1950, when the atmospheric carbon dioxide concentration hit 350 parts per million. 20144-98626-01, Ltr. 7
35. Gerald R. Striegel of St. Paul, Minnesota, likens our atmosphere to a bathtub with a spigot and a really small drain such that fluid entering the tub takes 100 years to drain out. Today our "bathtub" is about 57% full of carbon dioxide, and at our current emissions rate, we will reach our threshold 2 deg C temperature rise by 2041. He writes, "There is great a deal of work to do requiring a significant labor force, and we are still in a 'business as usual' mode. Our choices are mitigation, adaptation, and suffering. Let's mitigate while we can. Please deny the certificate of need." 20144-98623-01, Ltr. 21
36. Leslie MacKenzie, a Minnesota resident, considers it "Disingenuous to say that the Enbridge pipeline will 'emit air pollutants as would any other machine.' The entire purpose of the pipeline is to transport one of the most polluting substances on the planet – a substance that, when used as it is intended, will have catastrophic impacts on our shared atmospheric life support system." 20144-98621-01, Ltr. 3
37. Peter Anderson, Executive Director, Center for a Competitive Waste Industry, Madison, Wisconsin, is concerned that we don't understand the potency of positive feedback loops such as from methane tenuously locked up in the Arctic tundra and shallow seas. He states that at the moment when all energies must be exerted to reduce our dependence on fossil fuels, "...oil companies are feverishly seeking to open up a new source of oil whose production emits 3 to 4 times more greenhouse gases..." 20144-98615-01, Ltr. 33

38. Ranae Hanson of St. Paul, Minnesota, in addition to being alarmed by the threats to Minnesota, is concerned about the effect of an expanded pipeline on the rest of the earth. She writes: "At Minneapolis Community and Technical College I work with students from Somalia and Kenya and Nigeria and Southeast Asia who know that wars have been caused by climate stress and have had to leave their homelands as famines have increased and water shortages have gotten worse." 20144-97944-03

Food Supply and Other Natural Ecosystems

39. Ken Dickerson is Executive Director of the Soquel, California-based Ecological Farming Association, which works toward healthy, just food systems and communities by convening educational conferences and events. He writes, "Tar sands mining threatens agriculture, the environment, and public health and safety. Pipeline construction disturbs vast areas of forest and farm land with little or no chance of true reclamation . Oil sands mining contributes greatly to greenhouse gas emissions and air pollution, uses enormous amounts of water, and puts water supplies at severe risk of contamination." 20144-98624-01, Ltr. 4
40. Lisa Gundlach of Monona, Wisconsin, states: "As an advocate for food security issues I know that climate change is a risk to ensuring enough food for our current population and the growing future population. Any increase to the risk of our climate, like this expanded project, is a risk to providing enough food." 20144-98615-01, Ltr. 23
41. Sandra Ahlstrom of Shorewood, Minnesota, is against the expansion of tar sands pipelines for the part they have played in destroying the Alberta boreal forest, which acts as a sponge for carbon emissions. She urges that the Commission "...refuse to expand the capacity of these fuels as it will force the companies to cut back, to let the boreal forest remain and leave the fossil fuels in the ground. Only then, will we develop sustainable energy from the sun, water and wind with no pollution and killing of our planet." 20144-98622-01, Ltr. 8
42. Steven Mosborg, Chair, Camp UniStar Management Committee, asserts that the cleanliness of Cass Lake is vital to the future of the 51-year-old camp. A tar sands oil spill would risk its continued existence. "The Camp Unistar Foundation Board of Directors and Management Committee are very concerned about the risks of an oil spill associated with the increased volume and pressure on the pipeline. This concern is heightened by the poor record of spills and response by Enbridge." 20144-98619-01, Ltr. 13
43. Craig Bowers is 24 years old and moved to Minneapolis from Cincinnati, Ohio, last year. He cautions that "When dealing with entire ecosystems and communities, we cannot afford any errors. Enbridge has proven they cannot meet this necessity." He continues, "One of the things that led me to move here was my friend saying, 'Craig, there are lakes that are so clean you can LITERALLY drink out of them!' Please do the right thing to keep these priceless qualities here." 20144-98624-01, Ltr. 5
44. Lisa M. Erickson of Brooklyn Center, Minnesota, sees that "The effects of ecosystem decline are affecting people in all nations, from fish kills and water shortages, to severe hurricanes and tsunamis, to soil erosion, fires, landslides and resultant deforestation." She also feels that

we must act now for the benefit of all and asks that the application for the Line 67 upgrade Certificate of Need be denied. 20144-98380-01, Ltr. 1

Safety: Spills, Contamination of Water Resources

45. Jake Schlachter of Madison, Wisconsin, is concerned that Enbridge leaked 160,000 barrels of crude oil in 804 spills between 1999 and 2010. As to where that oil went, he states: "This land is our farmland. These lands are our wetlands. This river is the water we drink. There is no amount of money that Enbridge can make to justify poisoning our food, our land, and our families." 20144-98620-01, Ltr. 19
46. Amy Sies of Jackson, Wisconsin, forecasts: "If the MN PUC approves phase 2 of the Alberta Clipper, it will allow Enbridge to increase the amount of tar sand oil through WI pipelines to 1.2 million barrels per day. I don't want this coming to Wisconsin and the Great Lakes region." She also advises that the next spill could very likely be worse than the Kalamazoo River spill because Phase 2 would operate at higher capacity. 20144-98622-01, Ltr. 4
47. Bill Albright of Cottage Grove, Wisconsin, believes that allowing Enbridge to increase the capacity of their Alberta Clipper line to deliver more tar sands bitumen will prolong our dependence on dirty fuels and will continue the damage our environment suffers globally and locally. We should reduce our consumption of fossil fuels, by promoting conservation and the transition to cleaner, renewable forms of energy. 20144-98622-01, Ltr. 14
48. Catherine Parker of Marquette, Michigan, considers that continuing expansion of tar sands pipelines is not in the best interest of the public of Minnesota, Michigan, or the United States. Permits should be issued to Enbridge only to increase safety and reliability of existing lines--not carrying capacity. 20144-98622-01, Ltr. 17
49. Richard Libbey of Grand Rapids, Minnesota, witnessed an Enbridge pipeline blowout at Itasca Community College. Tar sands oil would have entered the Prairie River a quarter of a mile away except that the river was frozen over below the spill site. The cleanup was expensive and a burden on the community. He feels that shipping tar sands on the Great Lakes "is a recipe for disaster." 20144-98619-01, Ltr. 19
50. Patricia and John Telfer (no city identified) state that "It has been shown that no oil developer has yet designed a pipeline that doesn't leak. It is our understanding that Enbridge already has a poor safety record in this regard. We object to the production of greenhouse gases and poisoned water that would be produced. Tar sands oil is the transportation source most damaging to the environment and upsetting to the climate." 20144-98623-01, Ltr. 25
51. Mary Jean Port of Minneapolis, Minnesota, has been researching the history of oil pipelines in northern Minnesota. She writes, "...pipelines have failed again and again in northern MN. And again and again we have looked the other way. For decades we have been in a fog, we have been suffering from collective amnesia"..... "We shouldn't participate in this kind of communal ignorance. It isn't good for us, or for the northern Minnesota water and land." 20144-98621-01, Ltr. 15

52. Paul Hoffinger of Eagan, Minnesota, believes that "...the added chemicals and the pressure in the pipeline, are a disaster waiting to happen.....In case of a spill, which is apparently very likely, the potential for contamination of groundwater below is much higher than without those two factors." He holds that we must increase the pace of change to alternative methods of energy if we hope to reduce the growth of carbon in our atmosphere. 20144-98624-01, Ltr. 6
53. Larry D. Hanke of Maple Plain, Minnesota, is a professional engineer specializing in materials behavior and structure failure. He writes: "The current requirements for maintenance and inspection of these pipelines are woefully inadequate to provide protection against failures. There will be ruptures and leaks if this pipeline expansion is built." 20144-98384-01, Ltr. 8
54. Stan Sattinger of Minneapolis, Minnesota, predicted benzene concentrations for a worst-case spill of tar sands oil from the upgraded Line 67 at its crossing of the Mississippi River near Grand Rapids, Minnesota. The results showed that at the spill location, the concentration would reach 32 times the Safe Drinking Water Act Maximum Contaminant Level for benzene. It would also stay above this level over a distance of 280 miles downstream of the spill. 20144-98108-04, Ltr. 1
55. Don Arnosti of St. Paul, Minnesota, believes that the proposed expansion of Line 67 poses a serious risk to rivers and wetlands across its route, including the Mississippi River, which is the source of drinking water for millions of Minnesotans and other citizens downstream. This project will not be in the interest of Minnesotans, whose local environment will be at risk. 20144-98620-01, Ltr. 22
56. Gabriel Reichler of Oconomowoc, Wisconsin, reports: "According to the Energy Information Agency, sales of refined petroleum products in Minnesota are down 20% since their peak in 2004. We should not risk the sanctity and health of where we live for the sale of tar sands oil to other areas." 20144-98615-01, Ltr. 39
57. Susanne Engstrom of Alexandria, Minnesota, a retired school teacher, writes that the waters of Minnesota have been placed in a dangerous situation. It's been little noted that the lines would operate under increased pressure, raising the chances that a leak might happen and be "larger than anything we've feared before." 20144-98378-01, Ltr. 13
58. Rev. Don Portwood, Pastor, Lyndale United Church of Christ in Minneapolis, Minnesota, believes that no matter how much Enbridge may guarantee their pipelines, one spill in the Mississippi or another river could contaminate the drinking water downstream for months. 20144-98375-01, Ltr. 4

Impact on the Great Lakes

59. Lyman Welch is Water Quality Program Director for the Chicago-based Alliance for the Great Lakes. Regarding the flow bottleneck of crude oil at the Superior terminal, he states:

"It is unclear how Enbridge will manage this excess supply, and more importantly, that it has the capability of managing and transporting the excess supply to the Great Lakes region in a safe manner." Mr. Welch advises that before issuing a Certificate of Need, Minnesota should ask the United States to provide required notice to Canada under Article 6 of the Great Lakes Water Quality Agreement. 20144-98620-01, Ltr. 14

60. Jean Verber, Executive Director, Justice Office, Racine Dominicans, has worked diligently to get the Great Lakes Compact passed because of the significant value of these fresh waters to the survival of all surrounding communities. She states, "We are aware of the Enbridge pipeline oil spill in the Kalamazoo River a couple of years ago, a major visible, destructive reason to stop!" 20144-98621-01, Ltr. 19
61. Eric Hansen, a conservation essayist and public radio commentator in Milwaukee, Wisconsin, cautions that "Earth's finest collection of fresh water -- Lake Superior and the Upper Great Lakes -- is not a reasonable location for a major transportation corridor designed to carry tar sands crude oil to the overseas market. If these proposals move forward, our region will be locked into a future of oil-impacted water, air quality and public health." 20144-98621-01, Ltr. 21
62. Emma Lui is National Water Campaigner of the Ottawa-based Council of Canadians, a progressive advocacy organization. She states that Canada's National Energy Board has warned that the Line 67 expansion would result in permanent loss of wetlands along the route, and it threatens three species named under the Species at Risk Act. It would also pave the way for tar sands shipments through the Great Lakes and the transport of bitumen through Line 5, which cuts through the Straits of Mackinac and the heart of the Great Lakes - - source of drinking water to 42 million people in surrounding areas. 20144-98624-01, Ltr. 9
63. Dorie Reisenweber of Duluth, Minnesota, is concerned about the safety of fresh water supplies and states that "...should in the future tar sands oil tankers be allowed on the Great Lakes and one rupture while crossing the Great Lakes, tar sands pose a certain threat to the water supply of some 40 million people." 20144-98615-01, Ltr. 74
64. Don Wescher of South Milwaukee, Wisconsin, is "horrified" that this tar sands crude transportation line is headed through the heart of the Great Lakes region, the largest fresh water resource in the world, where it will only be a matter of time before it is contaminated. 20144-98615-01, Ltr. 66
65. Sarah K. Poznanovic of Grand Marais, Minnesota, is concerned about the negative contribution of tar sands oil extraction to global climate change and the potential for oil spills to occur while the tar sands are being transported across Lake Superior. She feels that the short term economic gain of this project is not worth the taxpayer burden to clean up spills nor to deal with the damaging effects of accelerated climate change. 20144-98622-01, Ltr. 12

Jobs vs Survival

66. Mary G. Jenny of Madison, Wisconsin, feels that in its decision on the upgrade application, the Commission should adopt a much broader perspective than just likely jobs. She is concerned over the impacts that exacerbated climate change will have on the earth she is leaving to her grandsons. Related impacts of increased tar sands extraction include loss of forest land and increased likelihood of spills. 20144-98620-01, Ltr. 5
67. Dorothy Scholtz, a university professor living in Minneapolis, Minnesota, considers that increased exploitation of the tar sands would not bode well for the future. There would be disastrous and long-lasting damage done to our earth, including the air, water, and forest systems. She states: "It seems to be an incredibly short-sighted and self-serving project when we all know that there are alternative, non-threatening ways to produce energy for our planet." 20144-98620-01, Ltr. 16
68. Kaja Rebane of Madison, Wisconsin, heard many self-identified union members testify in favor of the expansion, but "I believe all of them had a direct financial stake in it because they were hoping for a job.... please understand not all union members support this project. Far from it, in fact - many of us strongly oppose it, along with other projects that would expand tar sands development." 20144-98615-01, Ltr. 41
69. Judith Stadler of Fitchburg, Wisconsin, is focused on the futures of three granddaughters and has observed the fossil fuel industry extracting "ever-more polluting and toxic substances." She claims that the fossil fuel industry has "...hoodwinked many Americans into thinking that the filthiest fossil fuels on the planet are somehow better for us because they don't get shipped to the United States from Saudi Arabia or Iran." 20144-98615-01, Ltr. 69
70. Hannah Johlas is an 18-year-old physics major at a Twin-Cities-area college, feels that "...expanding the Alberta Clipper pipeline is such a gross failure in logic and morality that I must speak up." He asserts that increasing the Alberta Clipper pipeline's capacity will result in the burning of more tar sands oil, reinforcing its long-term environmental effects. 20144-98622-01, Ltr. 3

Viability of Life for Future Generations

71. Akilah Sanders-Reed, a St. Paul, Minnesota, college student, asserts that economic need cannot be the only need considered. "Our system seems willing to define need in terms of executive pocket change. I am a young person who adopted Minnesota as my home because it is a visionary, pragmatic state. I want to live in a world where the lives of people are more important than the lives of corporate names." 20144-98383-01, Ltrs. 1-3
72. Kurt Kimber of Minneapolis, Minnesota, quotes Dr. Jonas Salk as follows: "Our greatest responsibility is to be good ancestors." If you include externality costs, any benefits of the Line 67 expansion will be dwarfed by externality costs and civilization-crushing risks associated with runaway climate change. Continued fossil fuel infrastructure development is reckless. 20144-98622-01, Ltr. 21

73. Andy Pearson of Minneapolis, Minnesota, believes that the notion of all tar sands being extracted is akin to condemning the planet to a future of crisis, missed opportunity, and economic and environmental ruin. "I wish I didn't have to go up against Enbridge on this -- I really do!" "There's really only one side -- the side of humanity." 20144-98619-01, Ltr. 3
74. Dave Spitzer of Madison, Wisconsin, is a retired elementary school teacher concerned for the future. He states, "I am concerned enough already with the dubious futures granted to our current 4th graders on this planet. I do not want them to deal first-hand with any type of fossil fuel contamination and land poisoning." 20144-98621-01, Ltr. 13
75. Frank Stillson of Minnetonka, Minnesota, feels that we are more than smart enough and have adequate means to deal with the problems confronting us, but "what we lack is the collective will to do so.....we have no choice but to leave 80% of the currently known, various forms of fossil fuel reserves unused and untapped. What is required is rapid and widespread movement away from our addiction to fossil fuels." 20144-98620-01, Ltr. 2
76. Stephen Cushing of Duluth, Minnesota, states, "I paraphrase a quote that has stayed with me for many years, 'we don't own the earth but borrow it from our children'. Please help us to leave something they may find worthwhile enough to pass on to their children." 20144-97944-03
77. Karen McCall of Minneapolis, Minnesota, states, "Yes, we need jobs, but let's put that money and energy into creating long-term jobs in the renewable resources industry--not this! Everything about the tar sands, from the waste and destruction of mining it, the dangers of moving and processing it, just doesn't add up." 20144-98620-01, Ltr. 1

Moral Responsibilities of the Commission

78. Karen Schaub, a Minnesota resident, asks, "Shouldn't our government agencies such as MN Public Utilities Commission work with MN Pollution Control Agency in protecting our waters?" She points out that Enbridge also had to shut down the Alberta Clipper Line because of a spill at Rowatt pumping station, which polluted nearby farm land. She asks, "Doesn't this violate the MN Clean Water Land & Legacy Act, which voters of MN approved, and the Federal Safe Drinking Water Act?" 20144-98626-01, Ltr. 8
79. Marybeth Lorbiecki, of Hudson, Wisconsin, is Director, Interfaith Ocean Ethics Campaign, an interreligious group dedicated to alerting people of faith of the present destruction of the ocean systems, species, and island peoples. She maintains that the Commissioners "are doing Enbridge an economic favor by directing them through a refusal of their plea of need to shift their company into other energy sources that fit Minnesota and the Midwest -- solar combined with wind and geothermal, algae oils and other options." 20144-98621-01, Ltr. 2
80. Judy Chucker of St. Louis Park, Minnesota, believes that, as Minnesota cannot be divested from the rest of the world with respect to climate change, the impact of the proposed upgrade must be considered in that context. She holds that "...this is not a simple case of some will

win, some will lose. We all lose if the tar sands are given the green light. What will happen with that loss is an unspeakable absurdity." 20144-98621-01, Ltr. 4

81. Lois Norrgard of Bloomington, Minnesota, cites a Department of Defense report acknowledging among other things that climate change is likely to produce water scarcity and lead to sharp increases in food costs. She argues that all decisions today should be supported by a 3-legged stool of accountability: biocentric soundness; economic viability; and social justice. 20144-98621-01, Ltr. 7
82. For Susan Lenfestey of Minneapolis, Minnesota, the issue with allowing more tar sands oil to cross Minnesota is about the lethality of the substance itself. She asserts, it seems almost criminally negligent to play any part in transporting this carbon-rich tar sands oil to market. She pictures grandchildren asking, "What were you all thinking when you allowed this to happen?" 20144-98621-01
83. Phyllis Hasbrouck of Madison, Wisconsin, thinks that the whole natural environment is in grave danger wherever tar sands oil is mined, trucked, piped, or burned. She considers that the Commissioners "...need to stand up to the powerful interests that are profiting from destruction of our climate," and should deny the application for Certificate of Need. 20144-98615-01, Ltr. 14
84. Kathy Hollander of Minneapolis, Minnesota, wonders whether anyone can justify additional profit at the expense of a stable climate. "We in the Baby boom generation have benefitted mightily from fossil fuels and it is a moral responsibility of ours to now stop the damage that we know is happening." 20144-98619-01, Ltr. 4
85. Loni Coppin of Duluth, Minnesota, Minnesota, maintains that "a delivery company is responsible for the product they are delivering and they are culpable if damage to the public or environment occurs." In her view, Enbridge has a poor track record with respect to safety and responsibility to the public and the environment. 20144-98615-01, Ltr. 44
86. Janet Hill of McGregor, Minnesota, suggests that the Commission deny the Certificate of Need and, instead, allow Enbridge to ship Bakken oil in the Alberta Clipper. Enbridge would gain an extra pipeline for Bakken and save the cost of building the Sandpiper pipeline. We could use domestic oil -- but not tar sands -- while we transition toward cleaner energy. 20144-98619-01, Ltr. 18
87. Brett T. Kadrmas of Plymouth, Minnesota, writes, "As human beings, we have done some lousy things to this planet, oil consumption among the worst".... "I write to you not only as a born and bred Minnesotan, not only as a voter, nor only as an activist. I write to you because our environment doesn't have the ability to pick up a pen and do so, nor can it raise its voice in protest of the things we do to it." 20144-98381-01, Ltr. 60
88. John Schmid of Minneapolis, Minnesota, points out that "...the mission statement of the Minnesota Public Utilities Commission reads '...in creating and maintaining the proper regulatory environment, the Commission emphasizes the production and consumption of

energy resources that will minimize damage to the environment.' This is a statement that I urge the Commission to take seriously." 20144-98035-01, Ltr. 4

APPLICABLE LAW

1. Minnesota Statutes § 216B.2421 defines “large energy facility” as: “any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives”
2. Minnesota Statutes, Section 216B.243 governs certificates of need for large energy facilities, including crude oil pipelines like the Project. Subdivision 3 of this statute identifies specific showings that an applicant must make and that the Commission must evaluate before it may approve a CN. Since some of these showings relate only to electric power facilities, it is necessary to identify the showings applicable to large crude oil pipelines. The provisions of Minn. Stat. § 216B.243 applicable here include:

No proposed large energy facility shall be certified for construction . . . unless the applicant has otherwise justified its need. In assessing need, the commission shall evaluate:

- (1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;
- (2) the effect of existing or possible energy conservation programs under . . . other federal or state legislation on long-term energy demand;
- (3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18 . . . ;
- (4) promotional activities that may have given rise to the demand for this facility;
- (5) benefits of this facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region;
- (6) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy . . . transmission facilities . . . ;
- (7) the policies, rules, and regulations of other state and federal agencies and local governments

3. Minnesota Rules Ch. 7853 implements Minn. Stat. § 216B.243. It clarifies that large energy facilities include projects that will expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 bpd, whichever is greater.⁹⁴ The Project will increase the permitted capacity of Line 67 from 570,000 bpd to 800,000 bpd, and therefore requires issuance of a CN.

⁹⁴ Minn. R. 7853.0030(D).

4. Minn. R. 7853.0130 contains specific showings that must be made by an applicant before the Commission may issue a CN to a project. It also provides the criteria that must be used by the Commission in evaluating a CN.
5. Minn. R. Ch. 7853 contains a number of specific requirements for the contents of applications for CNs for large petroleum pipelines, including Minn. R. 7853.0500 through 7853.0640. These requirements are not evaluation criteria but they do define the scope, type, and reliability of information that an applicant must provide the Commission in order for the Commission to fully evaluate the criteria in Minn. R. 7853.0130.
6. Minn. R. 7853.0510 describes the historical data that an applicant for a petroleum pipeline CN must provide in an application as follows:

Subpart 1. **Products, usage, and suppliers.** For the geographical area to be served by the proposed facility, the applicant shall provide the following:

A. a list of the petroleum products by major categories (such as crude oil, gasoline, fuel oil, and so forth) transported or distributed by the applicant in that geographical area during the five most recent calendar years;

B. for each category listed in response to item A and for each of the five most recent calendar years, a list of the annual and peak day quantities transported or distributed in the appropriate units of measure;

C. a list of sources of supply of petroleum products for transportation or distribution during the five most recent calendar years, designated as either in-state or as out-of-state, the dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities involved, and for sources of crude oil, the geographical areas of origin of the crude oil; and

D. for each of the five most recent calendar years and for each category of petroleum product, the percentage of in-state delivery of the annual amounts given in response to item B.

Subp. 2. **Facilities; maps.** List each large oil or LPG storage facility location, gas plant, large pipeline facility, and oil refinery associated with the transportation or distribution of the categories of petroleum products named in response to subpart 1, item A. Provide maps that represent the locations and interconnections of these facilities.

Subp. 3. **Use of design capacity.** For each large energy facility or location listed in response to subpart 2, located in Minnesota and owned or operated by the applicant, provide the average percentage of use of its full design capacity during the summer season and during the winter season.

The rule requires this information so that the Commission understands an applicant's overall crude oil transportation infrastructure, the historical use of this infrastructure by in-state and out-of-state customers, as well as the utilization rate of an applicant's crude oil pipelines. It also requires disclosure of contracts with shippers and the historical sources of crude oil.

7. Minn. R. 7853.0520 describes the forecast data that an applicant for a CN for a petroleum pipeline must provide in an application as follows:

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

- A. a list of the categories of petroleum products the applicant expects to transport or distribute in that geographical area during the first six forecast years, the 11th forecast year (the tenth year after the year of the application), and the 16th forecast year;
- B. for each category of petroleum product listed in response to item A and for each of the first six forecast years, the 11th forecast year, and the 16th forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;
- C. a discussion of the methods, assumptions, and factors employed for purposes of estimation in response to items A and B;
- D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in item C; and
- E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.

The rule includes this information requirement so that the Commission may assess the accuracy of an applicant's forecast, as required by Minn. Stat. § 216B.243, Subd. 3(1) and Minn. R. 7853.0130(A)(1). It requires that an applicant provide quantified data about its forecast of the quantity of crude oil that a project is expected to transport during particular forecast years, as well as the methods, assumptions and factors used by an applicant in the creation of its forecast. The applicant must also discuss changes in possible key assumptions and factors so that the Commission may understand the reasonableness of such assumptions and factors. Finally, an applicant must describe other planned facilities that could supply the forecasted demand, so that the Commission can determine if an applicant is planning redundant facilities.

8. Minn. R. 7853.0530 requires disclosure of a variety of commercial, design, construction, and operational data, including disclosure of estimated tariffs.
9. Minn. R. 7853.0540 requires information related to the design, availability, operation, cost, economic life and reliability of alternatives.
10. Minn. R. 7853.0130 implements the statutory requirements in Minn. Stat. § 216B.243, Subd. 3. It further defines and expands the criteria that the Commission must use to evaluate the need for the Project by establishing four broad criteria further defined by a number of

specific analytical requirements. A number of the specific requirements implement express statutory requirements.

11. Minn. R. 7853.0130(A) relates to an applicant's evidence of need for a project. If a project is needed, then the Commission must find that a probable result of denial of it would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. This language broadens the scope of the Commission's inquiry to consider adverse impacts in terms of quantity, reliability, and pipeline system efficiency. Further, the Commission should consider impacts to a pipeline's shippers and end users of fuel in Minnesota and neighboring states. In its determination of whether denial of an application for a CN would create adverse impacts and the probability of such impacts happening, the Commission must consider the following specific analytical requirements:

- (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
- (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;
- (3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;
- (4) the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand; and
- (5) the effect of the proposed facility, or a suitable modification of it, in making efficient use of resources;

The first three analytical requirements are mandated by Minn. Stat. § 216B.243, Subd. 3 (1), (2), and (4), respectively. Requirements (4) and (5) relate more generally to Minn. Stat. § 216B.243, Subd. 3(6).

12. Minn. R. 7853.0010, Subp. 8, defines the word "demand" as it is used in Minn. R. 7853.0130(A) to mean, in relevant part, "that quantity of a petroleum product from the applicant's facilities for which there are willing and able purchasers"
13. Minn. R. 7853.0010, Subp. 9, defines the word "forecast" as it is used in Minn. R. 7853.0130(A) to mean "a prediction of future demand for some specified time period."
14. Minn. R. 7853.0010, Subp. 10, defines the words "forecast years" to mean "the 16-year period consisting of the year in which an application is filed plus the next 15 years."
15. When read together and in light of the Minn. Stat. § 216B.243 requirement that the Commission consider the "accuracy" of a project's forecast, the foregoing provisions require that an applicant provide and the Commission evaluate a quantified forecast of the volume of product expected to be transported by a proposed project over a 16-year time period, together

with disclosure of the data, methodologies, and assumptions used to create the forecast sufficient to allow the Commission to determine the accuracy of the forecast.

16. Minn. R. 7853.0130(A)(4) requires that the Commission consider the degree to which an applicant's existing facilities can meet future demand.
17. Minn. R. 7853.0130(B) requires the Commission to evaluate alternatives to a proposed project with regard to a number of factors. The Commission may deny a project if 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. This provision encompasses only affirmative alternatives to a project and not a "no action" alternative.
18. The Minnesota Court of Appeals has addressed how Minn. R. 7853.0130(B) is to be applied, stating that:

[u]nder the certificate-of-need process established by statute and rule, an applicant bears the burden of proving the need for a proposed facility. An applicant fails to meet this burden when another party demonstrates that there is a more reasonable and prudent alternative to the facility proposed by the applicant. Minn. Stat. § 216B.243, subd. 3; Minn. R. 7851.0120, subp. 8. This regulatory scheme is simply a practical way to prevent the issuance of a certificate of need when there is a more reasonable and prudent alternative to the proposed facility without requiring an applicant to face the extraordinary difficulty of proving that there is not a more reasonable and prudent alternative.⁹⁵
19. Minn. R. 7853.0130(C) requires the Commission to evaluate whether the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.
20. Minn. R. 7853.0130(D) requires to the Commission to evaluate whether the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments. Thus, the Commission may consider evidence showing a failure by an applicant to comply with applicable law and deny a CN based on such failure. This being said, the Commission cannot order an applicant to comply with matters regulated by other governmental entities, other states, or foreign governments.
21. Under Minn. R. 7853.0130, the Commission may deny a CN under any one of the four broad criteria. For example, the Commission may deny a project if an applicant fails to carry its burden to prove a need for a project; OR when a need for transportation services is proven but another party proves by a preponderance of the evidence that a superior alternative exists; OR the Commission finds that consequences to society of granting a CN are unfavorable; OR if an applicant fails to comply with applicable state and federal laws.

⁹⁵ *In re Application of the City of Hutchinson (Hutchinson Utilities Commission) for a Certificate of Need to Construct a Large Natural Gas Pipeline*, Minn. App. A03-99, September 23, 2003, p.11.

FINDINGS OF FACT

I. The Applicant

1. Enbridge Energy, Limited Partnership (“EELP”) is a limited liability partnership organized under the laws of the State of Delaware. EELP’s primary U.S. Business Address is 1100 Louisiana, Suite 3300, Houston Texas 77002.⁹⁶ EELP is a wholly owned subsidiary of Enbridge Energy Partners L.P. a Delaware Master Limited Partnership (“Enbridge Partners”). EELP owns and operates the U.S. portion of the Enbridge Mainline System, which is commonly referred to as the “Lakehead System.”⁹⁷ Collectively, EELP, Enbridge Partners, and their Canadian affiliate Enbridge, Inc. are referred to hereinafter as “Enbridge.”
2. Enbridge owns and operates the 999-mile Line 67 Pipeline, which is the subject of the Application.⁹⁸ Line 67 is one of two pipelines in Enbridge’s pipeline system that is dedicated to transportation of heavy crude oil from Enbridge’s facilities in Hardisty, Alberta Canada to Enbridge’s terminal and tank farm facility located in Superior, Wisconsin.⁹⁹

II. The Project

3. If Approved, the Project would increase the annual average capacity of Line 67 from the current permitted capacity of 570,000 bpd to 800,000 bpd, providing Enbridge with the ability to deliver an incremental 230,000 bpd of secure and reliable heavy crude oil supplies to refineries and numerous marketing hubs throughout the Midwest and beyond.¹⁰⁰ Those refineries, in turn, supply transportation fuels, heating oil, asphalt, jet fuel, petrochemicals and petrochemical feed stocks.¹⁰¹
4. The Project involves the installation of new pump facilities, including all valves and appurtenances, adjacent to or near existing Enbridge owned facilities at Donaldson, Plummer, Cass Lake, and Floodwood Station sites, which are located in Kittson, Red Lake, Cass, and St. Louis Counties, Minnesota, respectively.¹⁰² The Project will also require additional station modifications at the Viking, Clearbrook, and Deer River Station sites, which are located in Marshall, Clearwater, and Itasca Counties, Minnesota, respectively.¹⁰³ All station upgrades will be constructed on land which Enbridge owns. No new pipeline construction will be required for the Project.¹⁰⁴

⁹⁶ Ex. 1, § 7853.0230, p. 1.

⁹⁷ Ex. 1, § 7853.0230, p. 2.

⁹⁸ Ex. 1, § 7853.0230, p. 1.

⁹⁹ Ex 1, § 7853.0230, p. 2.

¹⁰⁰ Ex. 1, § 7853.0240, p. 1-2.

¹⁰¹ Ex 1, § 7853.0240, p. 14.

¹⁰² Ex. 1, § 7853.0230, p. 3.

¹⁰³ Ex. 1, § 7853.0230, p. 3.

¹⁰⁴ Ex. 1, § 7853.0230, p. 3.

5. The Line 67 Pipeline, the subject of the Application, is operationally integrated with the Enbridge Mainline System.¹⁰⁵ In particular, it is used to transport heavy crude oil from the Western Canadian Sedimentary Basin (“WCSB”) into Minnesota and beyond.¹⁰⁶
6. Enbridge also owns and operates Line 4, which likewise is dedicated to transportation of heavy crude oil from Hardisty to Clearbrook, Minnesota. From Clearbrook to Superior, Line 4 transports both heavy and light sweet crude oil.¹⁰⁷
7. Lines 4 and 67 are considered a single facility for the purposes of serving customer heavy crude oil transportation needs, tariffs, and apportionment.¹⁰⁸
8. At Clearbrook, Minnesota, Lines 4 and 67 connect to a third-party pipeline to supply crude oil to the Flint Hills, Pine Bend and Northern Tier St. Paul refineries in Minnesota.¹⁰⁹ At Superior, Wisconsin, Enbridge delivers crude oil to the Calumet Specialty Products Partners, L.P. refinery which serves Northern Wisconsin and Northern Minnesota.¹¹⁰
9. Although Lines 4 and 67 end at Superior, Wisconsin, crude oil can be transported further on the Enbridge Mainline System.¹¹¹ The Enbridge pipeline network continues on from Superior, Wisconsin, traveling east across the Upper Peninsula of Michigan, or southeast across Wisconsin to various points near the wider Chicago refinery and pipeline hub, then on to Cushing, Oklahoma, and eventually reaching the largest heavy refinery center in the world, which is located along the Gulf Coast.¹¹²
10. The United States portion of Enbridge’s Line 67 Pipeline is an interstate common-carrier liquids pipeline subject to regulation by the Federal Energy Regulatory Commission (“FERC”) under the Interstate Commerce Act (“ICA”).¹¹³ Common-carrier pipelines in interstate commerce provide non-discriminatory service to any shipper who requests transportation services, provided that products tendered for transportation satisfy the conditions and specifications contained in the applicable tariff.¹¹⁴
11. As a common-carrier, Enbridge does not own the crude oil transported on Line 67 and only transports the crude oil to destinations specified by the shippers.¹¹⁵

¹⁰⁵ Enbridge Inc.’s subsidiary, Enbridge Pipelines Inc., owns and operates the Canadian pipeline system that interconnects and delivers into Enbridge Energy, Limited Partnership’s “Lakehead System” at the International Border near Neche, North Dakota. These operationally integrated pipeline systems together form the longest liquid petroleum pipeline in the world. Together, these two systems are referred to as the Enbridge Mainline System. Ex. 1, § 7853.0230, p. 1, note 1.

¹⁰⁶ Ex. 1, § 7853.0230, p. 2.

¹⁰⁷ Hearing Transcript, April 8, 2014, Testimony of Mr. Curwin at 186 lines 11-15, and 201 line 22 to 202 line 3.

¹⁰⁸ Hearing Transcript, April 8, 2014, Testimony of Mr. Curwin at 186 lines 11-15, and 201 line 22 to 202 line 3.

¹⁰⁹ Ex. 1, § 7853.0230, p. 2.

¹¹⁰ Ex. 1, § 7853.0230, p. 2.

¹¹¹ Ex. 1, § 7853.0230, p. 2.

¹¹² Ex. 1, § 7853.0230, p. 2.

¹¹³ Ex. 1, § 7853.0230, p. 2.

¹¹⁴ Ex. 1, § 7853.0230, p. 2.

¹¹⁵ Ex. 1, § 7853.0230, p. 2.

12. The ICA requires Enbridge to maintain tariffs on file with the FERC that set forth the rates charged for providing transportation services on its interstate common-carrier pipelines, as well as Enbridge's rules and regulations governing these services.¹¹⁶
13. As part of Enbridge's mainline system, the rates charged for the transportation of crude oil from Western Canada are set pursuant to the Competitive Toll Settlement ("CTS"), an agreement that will be in effect until July 2021.¹¹⁷ The CTS sets a fixed international joint toll ("IJT").¹¹⁸ The IJT tariffs are described in CTS sections 8 to 18,¹¹⁹ but the actual IJT tariff amounts are in Schedule D to the CTS, which has not been made part of the record even though disclosure of "estimated tariffs" is required by Minn. R. 7853.0530.¹²⁰ The CTS toll is charged for transportation of crude oil, including the transportation of heavy crude oil on Line 67, from Canada to the markets in the United States.¹²¹
14. The IJT is subject to adjustment for inflation and pursuant to agreement between Enbridge and the shippers who would seek to have oil transported on the Enbridge system.¹²² In particular, the parties to the CTS may negotiate adjustments to pay for capital expenditures, including the Project,¹²³ and in the event of certain contingencies including but not limited to non-approval of a Presidential Permit for the Keystone XL Pipeline¹²⁴ or utilization of the Enbridge Mainline System below a specified quantity of crude oil.¹²⁵
15. Pending regulatory approval by the Commission and other regulatory agencies, Enbridge seeks to have the Project in service by July 1, 2015.

III. The Record Fails to Contain Sufficient Facts to Permit the Commission to Determine the Accuracy of Enbridge's Forecast of Demand

Minnesota Statutes, Section 216B.243 governs certificates of need for large energy facilities, including crude oil pipelines. More specifically, Minnesota Rules Ch. 7853 governs the application process and sets out the showing that must be made for the Certificate of Need to be issued. The specific criteria for the issuance of a Certificate of Need are supplied by Minn. R. 7853.0130, which incorporates express statutory requirements and also establishes additional regulatory requirements. The following sections provide an overview of the facts in the record.

A. The Forecast Evidence Included in the Record

¹¹⁶ Ex. 1, § 7853.0230, p. 2.

¹¹⁷ See Ex. 106.

¹¹⁸ Ex. 106

¹¹⁹ Ex. 106 at Table of Contents.

¹²⁰ Enbridge did not offer the CTS into evidence even though it establishes by contract the actual tariff rates for use of Line 67 through 2021.

¹²¹ See Ex. 106.

¹²² See Ex. 106.

¹²³ Ex. 106 at 21.

¹²⁴ Ex. 106 at 28 (Section 21.1).

¹²⁵ Ex. 106 at 28 (Section 21.3).

12. The record contains a number of forecasts including: (1) a forecast of “supply available to Enbridge” contained in Table 7853.0520-B.1 included to comply with Minn. R. 7853.0520(B);¹²⁶ (2) forecasts of total heavy crude oil supply available for transportation from western Canada by the Canadian National Energy Board (“NEB”), the Canadian Association of Petroleum Producers (“CAPP”), and the Energy Resources Conservation Board (“ERCB”);¹²⁷ (3) forecasts of total U.S. demand for all grades of crude oil for U.S. consumption prepared by the U.S. Energy Information Agency (“EIA”);¹²⁸ and forecasts of apportionment, including both an excess supply forecast and an apportionment forecast.¹²⁹

1. Heavy Crude Oil Supply Forecasts

i. Forecast of Supply Available to Enbridge

13. Enbridge includes a forecast of “Supply Available to Enbridge” in Revised Application Section 7853.0520 in Table 7853.0520-B.1 (“Enbridge Supply Forecast”).¹³⁰ This forecast is comprised of separate forecasts for light and heavy crude oil volumes that Enbridge expects to transport on the Mainline System for the years 2013 to 2018 and 2023 and 2028.¹³¹ Footnote 6 to Revised Application Section 7853.0520 describes this forecast as follows:

EPI Long Range Plan (LRP) data for 2012. All volumes shown are assumed to be WCSB crude volumes accruing solely to Enbridge. Only deliveries of crude oil to destinations downstream of Edmonton and Hardisty are considered. Supply forecast beyond 2023 has been based on extrapolated CAPP growth rates of light & heavy supplies (2023-2028) applied to the 2023 EPI forecast basis.¹³²

Thus, the Enbridge Supply Forecast was prepared by Enbridge’s Canadian corporate parent in 2012, shows “volumes accruing solely to Enbridge,” and between 2023 and 2028 the forecast is based on extrapolated CAPP growth rates.

14. It is not clear from the record whether the Enbridge Supply Forecast is initially prepared by CAPP or by Enbridge, because Application Section 7853.0520(B) states: “The CAPP prepares a forecast of supply available to Enbridge in its evaluation of necessary pipeline capacity.”¹³³

15. Revised Application Section 7853.0520 states that the Enbridge Supply Forecast “is calculated by taking all supply available to the market then subtracting non-Enbridge

¹²⁶ Ex. 5, at 3.

¹²⁷ Ex. 7 at 30.

¹²⁸ Ex. 7 at 30.

¹²⁹ Ex. 14, Enbridge’s Revised Response to DOC Information Request 21A (trade secret version) (and presumably the public version of document in Exhibit No. 13).

¹³⁰ Ex. 5, p. 3.

¹³¹ Ex. 5, p. 3.

¹³² Ex. 5, p. 3.

¹³³ Ex. 5, p. 1.

demand. The calculation includes western Canadian refineries and volumes that would flow to U.S. markets via other pipelines that export oil from western Canada. Table 7853.0520-B.1 shows the volumes that would be available to Enbridge.”¹³⁴ Thus, the calculation used to generate this forecast starts with a forecast of total western Canadian heavy crude oil supply and then subtracts a forecast of western Canadian demand and a forecast of “volumes that would flow to U.S. markets via other pipelines” to produce the final numbers in Table 7853.0520-B.1. This forecast determines Enbridge’s share of the western Canadian heavy crude oil transportation market.

16. Enbridge has not provided any of the data used to calculate the Enbridge Supply Forecast.¹³⁵ It also has not stated which forecast of total western Canadian heavy crude oil supply it used as the basis for this forecast, except that the total supply available after 2023 is based on an extrapolation of CAPP growth rates, which extrapolation process has not been described.¹³⁶ It has not provided the forecast of demand by western Canadian refineries used to calculate the Enbridge Supply Forecast.¹³⁷ It has not provided the forecast of “volumes that would flow to U.S. markets via other pipelines.”¹³⁸
17. The record contains no evidence that the Enbridge Supply Forecast accounts for crude oil transported by rail to the U.S. or eastern Canada.¹³⁹
18. Enbridge has not discussed any of the assumptions it makes about western Canadian demand for heavy crude oil or which other competing pipelines it assumes will transport oil from western Canada in the future or about the amount of oil that would be transported by such pipelines. It has also not discussed how the Enbridge Supply Forecast would be impacted by changes in these assumptions.
19. The Enbridge Supply Forecast is based on the fact that crude oil supply available for transportation from western Canada is limited and increases at a limited rate. It also is based on the fact that the Enbridge Mainline System is not the only option to transport heavy crude oil to customers, because some of this total supply is consumed by refineries in western Canada and some of this supply is transported by other pipeline companies. Although the Enbridge Supply Forecast does not account for transportation of heavy crude oil by rail, transportation of heavy crude oil by rail also reduces the volume of heavy crude oil that is available for transportation on Lines 4 and 67.¹⁴⁰
20. The limiting factor for need for the Project is the supply of heavy crude oil available for transportation on Lines 4 and 67. U.S. demand for heavy crude oil by Enbridge’s customers cannot result in imports greater than supply that is physically available for transportation on the Enbridge Mainline System, considering Canadian domestic demand for heavy crude oil

¹³⁴ Ex. 5, p. 1.

¹³⁵ Ex. 5. The data used to calculate the Enbridge Supply Forecast were not included in Enbridge’s testimony or the attachments thereto or in any other exhibit in the proceeding.

¹³⁶ Ex. 5, p. 1-3.

¹³⁷ Ex. 5, p. 1-3.

¹³⁸ Ex. 5, p. 1-3.

¹³⁹ Ex. 5, p. 1-3.

¹⁴⁰ Ex. 53, p. 16-17 and MED-25.

and the volumes of heavy crude oil transported by competing transportation service providers. Thus, evidence of Enbridge customer heavy crude oil demand shows only that increased use of Lines 4 and 67 is commercially possible, but such evidence does not determine if and when western Canadian supply will be available to fulfill this customer demand.

21. It is not possible to verify the accuracy of the Enbridge Supply Forecast, because Enbridge has not included in the record any of the numerical data used to calculate this forecast or information about its underlying assumptions related to western Canadian demand growth rates, the identities of competing pipelines and the volumes of heavy crude oil they would transport, or the volumes of heavy crude oil that would be transported by rail.

ii. Forecasts of Total Supply Available in Western Canada

22. Three forecasts of total heavy crude oil supply available in western Canada have been included in the record. The Muse Report examined the Canadian Association of Petroleum Producers (“CAPP”) supply forecast, the Canadian National Energy Board (“NEB”) supply outlook, and the Energy Resources Conservation Board (“ERCB”) oil production outlook.¹⁴¹
23. The CAPP, NEB and ERCB forecasts contain no project-specific forecasting, but rather provide only national and regional forecasts of total supply available to all markets. Mr. Earnest characterized these forecasts as follows: “I would say these forecasts [CAPP, NEB, ERCB] are forecasts of western Canadian crude oil supply. They don't speak to how that crude oil supply will be transported to market, whether it's by pipeline, rail, or truck.”¹⁴² These forecasts do not relate to how crude oil is shipped to market in general; therefore, they do not contain a project-specific forecast of demand for transportation of heavy crude oil on Line 67 or the Mainline System.
24. The CAPP, NEB and ERCB forecasts could serve as one of the sources of data for a project-specific forecast of demand for the transportation services that would be provided by the Project, but in and of themselves, these general forecasts do not accurately predict a need for the Project. While these forecasts all show substantial future increases in heavy crude oil supply in western Canada, they do not show how much of these increases would be consumed in western Canada or transported by other large existing and proposed import pipelines or by rail transportation.

2. Heavy Crude Oil Demand Forecasts

iii. U.S. Energy Information Agency

25. The Muse Report also references the U.S. Department of Energy’s Energy Information Administration (“EIA”) Annual Energy Outlook Report (“AEO Report”), which forecasts the demand outlook for the entire U.S. for all types of crude oil.¹⁴³ This report shows that U.S.

¹⁴¹ Ex. 7 at 30.

¹⁴² Hearing Transcript, April 8, 2014, Testimony of Mr. Earnest, at 134 lines 12-15.

¹⁴³ Ex. 7 at 30.

demand for crude oil is expected to grow slightly during the forecast period and then decline.¹⁴⁴

26. The AEO Report shows that substantial new volumes of crude oil are not needed to meet an increased demand for petroleum products in the U.S.
27. The AEO Report does not include any forecast of the amount of crude oil expected to be transported by Line 67 or the Mainline System, or any other pipeline system. Therefore, this report does not accurately forecast the quantity of heavy crude oil that would be transported on the Project.

3. Apportionment Forecasts

28. Enbridge has provided forecasts of excess capacity and apportionment.¹⁴⁵ The excess supply forecast is in trade secret Table 21.A1, which contains an annualized forecast of Mainline System heavy crude oil excess supply as a percentage. The apportionment forecast is in Table 21.A2, which contains an annualized forecast of Mainline System heavy crude oil apportionment as a percentage.
29. Enbridge did not include in the record the numerical data used to calculate either its excess capacity or apportionment forecasts.
30. Enbridge aggregates the capacities of Lines 4 and 67 for the purposes of apportionment,¹⁴⁶ its forecasts of excess supply and apportionment are based on the combined capacities of these pipelines.
31. Apportionment may result either (1) when demand for transportation services exceeds annual average pipeline capacity,¹⁴⁷ or (2) when pipeline capacity is either permanently or temporarily reduced, for example due to pipeline maintenance or outage or chronic pipeline integrity limitations, such that nominations exceed the remaining pipeline capacity.¹⁴⁸
32. Enbridge's excess supply forecast is based on the formula "Excess Supply beyond Capacity = (Nominations – Capacity)/Capacity."¹⁴⁹
33. Enbridge's apportionment forecast is based on the formula "Apportionment = (Nominations – Capacity)/Nominations."¹⁵⁰
34. Both the excess supply and apportionment formulas contain only two factors: (1) a forecast of nominations; and (2) a forecast of pipeline capacity. If nominations increase then

¹⁴⁴ Ex. 7 at 30.

¹⁴⁵ Ex.14, Enbridge's Revised Response to DOC Information Request 21A (trade secret version).

¹⁴⁶ Hearing Transcript, April 8, 2014, Testimony of Mr. Curwin at 186 lines 11-15, and 201 line 22 to 202 line 3.

¹⁴⁷ Ex 13, Curwin Rebuttal Att. F at 69 (Enbridge response to DOC IR 21A - Public).

¹⁴⁸ *Id.* ("It is possible that a major apportionment event [could be] attributable to a significant loss of pipeline capacity due to a maintenance outage")

¹⁴⁹ Ex.14, Curwin Rebuttal Att. F (Nonpublic) at 2.

¹⁵⁰ *Id.*

apportionment is more likely. If pipeline capacity decreases, then apportionment is also more likely.

35. Nominations are defined as the monthly quantified demand of Enbridge's customers for transportation services provided by Enbridge. Therefore, a forecast of nominations must be similar too or identical with a forecast of supply available to Enbridge.
36. Without knowing Enbridge's forecast of nominations and future pipeline capacity¹⁵¹ and its assumptions related to these factors, it is not possible to assess the accuracy Enbridge's excess supply and nominations forecasts.
37. The DOC determined that Enbridge's demand and apportionment forecasts cannot be independently verified because Enbridge chose not to reveal its proprietary information.¹⁵²

IV. Enbridge Has Failed to Prove that the Forecast Demand for the Project Cannot Be Met by Existing or Proposed Capacity Not Requiring a Certificate of Need

A. Evidence of Demand by Particular Refineries Included in the Record

38. The Muse Report concludes that the primary disposition of the heavy crude oil transported by the Project is expected to be mostly the refineries in the Upper Midwest and the Gulf Coast.¹⁵³
39. Mr. Earnest testified that demand growth for the primary products manufactured by U.S. refineries is essentially flat.¹⁵⁴ He also testified that U.S. refineries have been steadily increasing their crude oil runs to provide products for export out of the U.S.¹⁵⁵
40. Mr. Earnest identifies only three refineries that will or may demand larger quantities of heavy crude oil: (1) the BP Whiting refinery; and (2) the Marathon Detroit Refinery,¹⁵⁶ and (3) the Husky Energy Lima, Ohio, Refinery.¹⁵⁷
41. Mr. Earnest stated that the BP Whiting Refinery's future increase in heavy crude oil demand will average approximately 220,000 bpd during normal operations but could peak at 270,000 bpd.

¹⁵¹ It is possible to assume that future heavy oil pipeline capacity equals existing capacity plus permitted capacity (the Phase 1 expansion) during the entire forecast period, but it is also possible that Enbridge could predict a down-rating of Line 4 at some point during the next 16 years.

¹⁵² DOC Post-Hearing Brief at 17.

¹⁵³ Ex. 7 at 3.

¹⁵⁴ Ex. 15 at 28.

¹⁵⁵ Ex. 15 at 28.

¹⁵⁶ Ex. 15, Earnest Rebuttal Testimony at 10-12. The testimony also discusses the Wood River Refinery, but Mr. Earnest does not claim that it will demand heavy crude oil services from Enbridge, because the data shows that it is operating at capacity and also that it is served directly by the base Keystone Pipeline.

¹⁵⁷ Ex. 15 at 13 line 228-231.

42. Mr. Earnest did not state a specific increase required by the Marathon Detroit Refinery, probably because the chart in his testimony shows that it is currently consuming about 75,000 bpd of heavy crude oil, just under its 80,000 bpd limit, such that any new increased demand appears to be nominal.
43. Mr. Earnest stated that the Husky Energy Lima Refinery project would allow it to process up to 40,000 bpd of heavy crude oil.
44. In total Mr. Earnest identified total new Midwestern crude oil demand of approximately 260,000 bpd to 310,000 bpd, depending on the Whiting's Refinery's peak.
45. The DOC claimed that the Flint Hills Resources Refinery in Rosemount, Minnesota, is planning a 36,000 bpd expansion of heavy crude oil demand,¹⁵⁸ but the documents cited by the DOC (attachments LBO-S-5, LBO-S-6 to Ex. 37) do not contain this figure. Instead, the record indicates that this refinery is planning upgrades that will allow it to operate closer to its maximum capacity, but no estimate of increased demand is available.¹⁵⁹
46. Increased demand for heavy crude oil by Midwestern refineries will not result in increased transportation of heavy crude oil on Lines 4 and 67 beyond the supply that is available to Enbridge.
47. Mr. Earnest also testified that changes and enhancements to the pipeline network downstream of Line 67 will also increase the demand for crude oil shipments on the Enbridge Mainline System, which includes Line 67.¹⁶⁰ For example, the Flanagan South project involves the construction of a 36-inch pipeline from the Enbridge Flanagan terminal to Cushing, Oklahoma.¹⁶¹ The Flanagan South pipeline is currently under construction and will have an initial capacity of 430,000 bpd, ramping up to 600,000 bpd by 2020.¹⁶² The project is expected to be in-service in the third quarter of 2014.¹⁶³
48. At Cushing, the Flanagan South pipeline will connect to the Seaway Pipeline, which extends from Cushing to the Houston, Texas, area.¹⁶⁴ The owners of the Seaway Pipeline are in the process of building a second line between Cushing and the Gulf Coast that will substantially increase the capacity of the Seaway system, and thus enable shipments made on the Flanagan South pipeline to reach the Gulf Coast.¹⁶⁵ Mr Earnest testified that the only origination point for the Flanagan South pipeline is the Enbridge Mainline.¹⁶⁶ Thus, all barrels moving on Flanagan South must first be transported by the Enbridge Mainline.¹⁶⁷

¹⁵⁸ Ex. 37, p. 22.

¹⁵⁹ Ex. 52, p. 13, lines 324-328.

¹⁶⁰ Ex. 15 at 13.

¹⁶¹ Ex. 15 at 15.

¹⁶² Ex. 15 at 15.

¹⁶³ Ex. 15 at 15.

¹⁶⁴ Ex. 15 at 15.

¹⁶⁵ Ex. 15 at 15-16.

¹⁶⁶ Ex. 15 at 17.

¹⁶⁷ Ex. 15 at 17.

49. Increased pipeline capacity downstream is not a forecast of demand and will not result in increased use of Lines 4 and 67 if supply available to Enbridge is constrained.

B. Current Unused Heavy Oil Transportation Capacity on the Enbridge Mainline System Demonstrates that Enbridge Can Meet Future Midwestern Demand with its Existing Heavy Crude Oil Pipeline Capacity

50. The current combined permitted capacities (including the Phase 1 Expansion) of Lines 4 and 67 is 1,366,000 bpd.¹⁶⁸ Thus, current heavy crude oil transportation capacity on the Mainline System less the 120,000 bpd Phase 1 expansion is 1,246,000 bpd.

51. In 2013, average shipments on Line 4 were 579,418 bpd, and on Line 67 they were 404,029 bpd, for a total combined utilization of 983,447.¹⁶⁹

52. In 2013 excess heavy crude oil transportation capacity on the Mainline System as it exists today is equal to 1,246,000 bpd minus 983,447 bpd, or 262,553 bpd. This unused capacity is the equivalent of 58% of Line 67's current capacity.

53. The excess capacity if the Phase 1 permitted capacity is taken into account equals 1,366,000 bpd minus 983,447 bpd, or 382,553 bpd or 85% of Line 67's current capacity. This unused existing and permitted capacity substantially exceeds the forecast for increased demand from all Midwestern refinery upgrades combined.

54. Thus, the record shows that Enbridge currently has substantial unused heavy oil transportation capacity.

C. Enbridge's Historical Apportionment Data Is Unsupported by Nomination and Capacity Data and Does Not Indicate that the Lines 4 and 67 Are at Capacity

55. To use the Enbridge system, shippers nominate volumes for shipment on the Enbridge system.¹⁷⁰ A nomination is a request, from a shipper, to transport a specific volume and type of crude oil.¹⁷¹ Nominations are made near the end of each month for transportation services for the following month. Enbridge takes the total volumes of a specific grade or type of crude oil that is nominated by all shippers and compares it to the available capacity for that grade or type of crude oil on the Mainline System. If the total nominated volume exceeds the available capacity of the system, Enbridge declares apportionment for the applicable month.¹⁷²

56. When Enbridge declares apportionment, every shipper that nominated those volumes for transportation on the Enbridge Mainline System receives reduced deliveries.¹⁷³ The total

¹⁶⁸ Ex., p. 13 lines 102-104

¹⁶⁹ Ex. 53, Denomy Rebuttal Testimony, Att. MED-31 at 2 (data from Enbridge response to MN350 Information Request 3.e.)

¹⁷⁰ Ex. 29, FERC No. 41.6.0, p. 8, ¶ 14(a).

¹⁷¹ Ex. 1, § 7853.0240 D.2, p. 11; Evid. Transcript, Vol. 1., p. 87, lines 21-25; p. 89, lines 8-12.

¹⁷² Ex. 29, FERC No. 41.6.0, p. 8, § 14(a).

¹⁷³ Evid. Transcript, Vol. 1, p. 185 lines 17-25, p. 186 lines 1-4; Ex. 29, FERC No. 41.6.0, p. 8, § 14(a).

nominations are apportioned on a pro rata basis among all shippers that nominated volumes for transportation.¹⁷⁴ That means that less crude oil is delivered to the various delivery points on the Enbridge Mainline System that month. Enbridge cannot give a higher priority to a historical shipper, such as one that supplies the refineries in Minnesota with crude oil.¹⁷⁵

57. Apportionment is declared for any given month around the 20th day of the preceeding month, meaning that shippers find out about apportionment only a short time in advance.¹⁷⁶
58. Enbridge has two pipelines in Minnesota that are currently dedicated to heavy crude oil service. Those are Lines 4 and 67. Enbridge aggregates the capacity of these two pipelines for purposes of nominations and calculating apportionment.¹⁷⁷ Currently, the total permitted capacity of Lines 4 and 67 is 1,596,000 bpd.¹⁷⁸ The formula for calculating the percentage of apportionment is (Nominations – Available Capacity)/Nominations.¹⁷⁹
59. When apportionment is declared, a refinery or shipper sending oil to a refinery must choose to purchase or ship a different grade of crude oil if it can be processed by that refinery, accept a lower than desired amount of crude oil, or supplement its pipeline shipments with crude oil received through another source, such as rail transportation.¹⁸⁰
60. To minimize the need to call apportionment, Enbridge recently introduced a step requiring the receiving facility (refinery, connecting carrier, or tank operator) to certify their capacity and ability to receive crude nominated to them. This is called downstream verification and is set forth in Enbridge’s tariff, FERC No. 41.6. The purpose of both upstream and downstream verification is to ensure, as an initial matter, that the nominations that are submitted are valid. In other words, that there is sufficient supply in the shipper’s name at the receipt point to meet the nominated volume and that there is sufficient capacity at the delivery point to receive the nominated volume.¹⁸¹
61. Enbridge also imposes a non-performance penalty which is charged when apportionment has been imposed, consisting of a penalty applied to the shortfall in volume if the volume tendered is less than 95% of the volume allocated to that shipper. This is intended to encourage the shippers to tender the volumes they were allocated and not leave capacity unused.¹⁸²
62. Enbridge included tables showing historical apportionment events on the Enbridge Mainline System in Attachment 21B to Attachment F to Mr. Curwin’s Rebuttal Testimony.¹⁸³

¹⁷⁴ Ex. 29, p. 8, ¶ 14(a); Transcript, Evidentiary Hearing, April 8, 2014, p. 89, lines 8-12.

¹⁷⁵ Evid. Transcript, Vol. 2, p. 38, lines 5-14.

¹⁷⁶ Ex. 1, § 7853.0240 D.2, p. 11; Transcript, Evidentiary Hearing, April 8, 2014, p. 105, lines 9-11.

¹⁷⁷ Evid. Transcript, Vol. 1., p. 186, lines 5-15.

¹⁷⁸ Ex. 15, p. 6, Lines 102 to 104.

¹⁷⁹ Ex. 15, p. 6.

¹⁸⁰ Ex. 15, lines 442-446.

¹⁸¹ Ex. 29, FERC No. 41.6.0, p. 4, § 6(c).

¹⁸² Ex. 29, FERC No. 41.6.0, p. 8, § 14(c).

¹⁸³ Ex. 13, Curwin Rebuttal Testimony, Ex. F (Public).

63. The formula for calculating the percentage of apportionment is (Nominations – Available Capacity)/Nominations.¹⁸⁴
64. Enbridge did not provide any of the numerical data used to calculate the figures in Attachment 21B, therefore, it is not possible to verify whether the events were caused by an increase in nominations or a decrease in pipeline capacity, or both.
65. The DOC claims that Enbridge’s apportionment data shows that Enbridge’s heavy crude oil transportation capacity is at its limits, based on testimony provided by Mr. Earnest.¹⁸⁵
66. Mr. Earnest himself admitted that he had not discussed the causes of Enbridge’s recent apportionment events with Enbridge staff so had no first-hand knowledge of their causes.¹⁸⁶
67. Mr. Curwin did not claim that the historical apportionment events were caused by increased nominations,¹⁸⁷ but did admit that recent events were caused by pressure restrictions.¹⁸⁸
68. Ms. Otis acknowledged that she did not know the underlying causes for the recent apportionments on the Mainline System, yet acknowledges that apportionment may be caused by increased nominations or decreased pipeline capacity.¹⁸⁹
69. The record shows that in 2013 existing unused heavy crude oil transportation capacity average 262,553 bpd. Therefore, it is unlikely that the historical apportionment events on Lines 4 and 67 were caused by nominations that were greater than the average annual capacities (1,246,000 bpd) of these pipelines.
70. The record indicates that the data presented by Enbridge showing historical apportionment events does not include the data used to calculate the amount of apportionment such that it is not possible to know if these events were caused by increased nominations or decreased pipeline capacity, which could be determined if Enbridge had disclosed this data. Therefore, it is not possible to determine with this data whether nominations for heavy oil transportation exceeded that annual average capacities of Lines 4 and 67, or whether one or both of these pipelines suffered temporary or permanent pressure reductions. Accordingly, the data in Attachment 21B does not show that Lines 4 and 67 are at or near their maximum capacities.
71. Mr. Earnest gave an illustrative apportionment example based on a likely set of circumstances.¹⁹⁰ However, all of these examples assume that the supply of crude oil available to Enbridge will increase to the quantities discussed by Mr. Earnest. Moreover, Mr. Earnest does not provide a forecast of when such apportionment might happen.

¹⁸⁴ Ex. 15, p. 6.

¹⁸⁵ DOC Post-Hearing Brief at 11-14, 18.

¹⁸⁶ Hearing Transcript, April 8, 2014, Testimony of Mr. Ernest at 118 lines 4-8.

¹⁸⁷ Hearing Transcript, April 8, 2014, Testimony of Mr. Curwin at 204 line 6 to 205 line 14

¹⁸⁸ Hearing Transcript, April 8, 2014, Testimony of Mr. Curwin at 201 line 11 to 202 line 3.

¹⁸⁹ Hearing Transcript, April 9, 2014, at 42 line 25 to 44 line 9.

¹⁹⁰ Ex. 15 at 19.

IV. The Record Fails to Discuss State Petroleum Conservation Programs

72. Enbridge does not implement conservation programs directly related to the conservation of petroleum products or crude oil.
73. The only evidence in the record related to federal petroleum conservation programs is limited to a discussion of the AEO 2014 Early Release Report.¹⁹¹
74. The record does not contain evidence related to State of Minnesota Petroleum Conservation Programs. Since such programs are provided for by statute and regulation,¹⁹² the Commission must recognize their existence.

V. No Intervenor Presented an Alternative to the Project

75. Neither the Dyrdals nor the Environmental Intervenors presented an alternative to the Project. Although Environmental Intervenors presented evidence related to the ability of other pipelines and railroads to transport heavy crude oil, it presented this evidence with regard to the supply of heavy crude oil available to Enbridge and not with regard to whether other pipelines or railroad could serve the same customers as Enbridge.

V. The Impacts of Climate Change on Minnesota's Socioeconomic and Natural Environments Resulting from Combustion of the Petroleum to Be Transported by the Project Outweigh the Purported Benefits of the Project

76. CO₂ is a major interceptor of infrared radiation energy that acts to hold that energy down to the earth, creating an escalation of temperatures known as the greenhouse effect.
77. Most of the heavy crude oil transported by the Project would be diluted bitumen or “dilbit.” Bitumen is a heavy petroleum oil that is extracted from the Tar Sands of Western Canada by surface mining or by in situ extraction using wells into which heat is injected. Since bitumen is too viscous to flow through typical crude oil pipelines, to decrease its viscosity bitumen is mixed with a diluent comprised of lighter petroleum oils. The industry uses a variety of substances, such as natural gas condensate and synthetic crude oil, for diluent.
78. Extraction of bitumen from the Tar Sands is an energy intensive process. Most bitumen extracted from the Tar Sands comes from in situ techniques that require drilling of large numbers of pairs of closely spaced wells, one of which is used to pump steam underground to heat the bitumen so that it will flow out of the second well. This process typically burns large amounts of natural gas to turn water into steam, which combustion emits CO₂ into the atmosphere. Further, the raw bitumen must be processed, blended with diluent, and transported long distances to refineries. Finally, refining bitumen requires use of specialized equipment, with the result that refining bitumen requires more energy than refining conventional crude oil energy.

¹⁹¹ Ex. 36, Otis Surrebuttal, Attachment LBO-8.

¹⁹² *E.g.*, Petroleum Replacement Promotion Program, Minn. Stat. § 239.7911 (2014).

79. One of the by-products of bitumen refining is petroleum coke or “petcoke,” a solid petroleum residue. Combustion of petcoke results in additional CO₂ emissions. Combustion of the petcoke results in higher CO₂ emissions. There is 24 percent more CO₂ embedded in a barrel of tar sands bitumen than in a barrel of light oil.
80. Due to its physical properties, the energy required to extract, process, transport, and refine bitumen into refined petroleum products is greater than the energy required for conventional crude oil. As a result, emissions from combustion of refined products made from dilbit results in a much higher CO₂ emission than does combustion of refined products made from conventional crude oil.
81. Canadian Tar sands heavy oils are the most carbon-intensive of all the gasoline fuels, as measured by greenhouse gas emissions. Its extraction, upgrading and use results in more greenhouse gas emissions than Nigerian or Venezuelan heavy crudes.
82. If the incremental capacity of the Project is fully utilized at an annual capacity of 230,000 bpd, and a “well-to-wheels” emission of approximately 575 kg CO₂ per barrel diluted bitumen transported, then emissions from dilbit transported by the Project would be approximately 130,000,000 kg of CO₂ per day or 47,000,000,000 kg of CO₂ annually. If it is assumed that the petcoke produced by refining this bitumen is combusted, then the per barrel emissions increase to approximately 625 kg of CO₂, daily emissions increase to 140,000,000 kg of CO₂, and annual emissions increase to approximately 53,000,000,000 kg of CO₂.
83. If dilbit replaces conventional oil sources, then the net impact of use of dilbit transported by the Project would be approximately 7,200,000,000 kg of CO₂ per year without combustion of petcoke or 8,300,000,000 kg of CO₂ per year with combustion of petcoke. The total amount of CO₂ resulting from the use of the dilbit transported by the project is equivalent to the daily emissions of approximately 10-11 million cars or 14-16 coal plants, assuming emissions of 3.5 million tons of CO₂ per year for a coal plant. The net additional emissions relative to conventional crude are the equivalent of the daily emissions of 1.5 million cars or more than two coal-fired power plants.
84. This greater climate change will also adversely impact Minnesota’s socioeconomic environment by reducing the productivity of key economic sectors, including but not limited to Minnesota’s agricultural, forest products, and tourist economies. This greater climate change will also: increase the likelihood of severe weather and weather-related natural disasters; adversely impact water levels in Lake Superior with resulting adverse impacts on shipping; and reduce drinking water supplies in parts of the state.
85. The Minnesota Department of Health lists impacts of climate change on Minnesotans, including heat stress, particularly in regards to small children and the elderly. Air quality is impacted by elevated-temperature stimulation of pollutant production and increases in pollen and mold production, causing respiratory problems. Water quality is also compromised by increased rainfall intensity and resultant flooding with release of pollutants.

CONCLUSIONS OF LAW

1. Regarding Minn. R. 7853.0130(A):

- a. Revised Application Section 7853.0520 contains a “forecast” within the meaning of Minn. Stat. § 216B.243, Subd. 3, and Minn. R. Ch. 7853, but the numerical data used to calculate this forecast are not in the record such that it is not possible for the Commission to evaluate the accuracy of this forecast. The governmental and private forecasts of western Canadian heavy crude oil supply and overall U.S. demand included in the record are not project-specific forecasts and therefore do not meet the forecast requirements of state law. The forecasts of excess supply and apportionment in the record are also not supported by numerical data, such that it is not possible to determine the accuracy of these forecasts. Since the record does include sufficient information for the Commission to evaluate the accuracy of Enbridge’s forecast as required by Minn. Stat. § 216B.243, Subd. 3(1) and Minn. R. 7853.0130(A)(1), the Commission cannot find that Enbridge has met its burden of proof with regard to showing a need for the Project.
- b. The record shows that Enbridge has substantial existing and permitted heavy crude oil transportation capacity in its Mainline System, and that this capacity exceeds likely increased Midwestern refinery demand for heavy crude oil. Therefore, Enbridge has not proven that “the ability of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access” cannot meet future demand, as required by Minn. R. 7853.0130(A)(4). Therefore, the Commission cannot find that Enbridge has met its burden to show a need for the Project.
- c. The record contains no evidence related to state petroleum conservation programs as required by Minn. Stat. § 216B.243, Subd. 3(2), and Minn. R. 7853.0130(A)(2). Therefore, the Commission does not have before it evidence required by law and cannot find that Enbridge has met its burden to prove a need for the Project.

2. Regarding Minn. R. 7853.0130, C:

- a. The climate change impacts resulting from combustion of the heavy crude oil to be transported by the Project outweigh the purported economic benefits of the Project, such that Enbridge has not proven that “consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate” as required by Minn. R. 78532.0130(C).

RECOMMENDATION

The Minnesota Public Utilities Commission should deny a Certificate of Need to Enbridge for the proposed Project. Enbridge has failed to comply with clear statutory and regulatory requirements regarding the forecast of need for the Project, the capacity of existing and permitted heavy crude oil pipelines to meet forecast need, and the impact of state

conservation programs on the need for the Project. In the absence of required information, approval of the Certificate of Need would be a violation of law.

The balance of the evidence in the record also does not and cannot meet the minimum information requirements of state law. General market information showing increasing supplies of western Canadian heavy crude oil and demand for such crude oil in the U.S. does not prove a need for any particular project. Enbridge and its customers operate in a competitive market to acquire and transport limited supplies of western heavy Canadian crude oil. In particular, Enbridge competes with western Canadian refineries, other existing and proposed pipelines, and railroads. Enbridge has not provided sufficient information to prove that its Project is needed given existing and possible future competition.

Therefore, the evidence in the record is insufficient under law, and the Commission must deny Enbridge's Application for a Certificate of Need for the Line 67, Phase 2 project.