

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Enbridge Energy, Limited Partnership,
and Enbridge Pipelines (Southern
Lights) LLC for a Certificate of Need for
the Alberta Clipper Pipeline Project and
the Southern Lights Diluent Project

ISSUE DATE: December 29, 2008

DOCKET NO. PL-9/CN-07-465

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On June 22, 2007, Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) LLC (collectively, Enbridge)¹ applied for a Pipeline Routing Permit pursuant to Minnesota Rules Chapter 7852 for two projects:

- The Alberta Clipper Pipeline project would transport petroleum from the Western Canadian Sedimentary Basin in Hardisty, Alberta, to Superior, Wisconsin. Starting on Minnesota's western border at Kittson County, the pipeline would continue through the counties of Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton, to the Wisconsin border.
- The Southern Lights Diluent project would transport light liquid hydrocarbons (diluent) from refineries near Chicago, Illinois, to Clearbrook, Minnesota, where they would flow into an existing pipeline to Edmonton, Alberta. Starting on Minnesota's eastern border at Carlton County, the pipeline would continue through the counties of St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.

On July 27, 2007, the Minnesota Department of Commerce (the Department) issued a notice explaining Enbridge's proposed pipeline projects, the proposed routes, how the public could participate in the routing process, and the schedule of public informational meetings. On July 30 the Minnesota *Environmental Quality Board Monitor* published the notice. In addition, between August 1 and August 10, 34 newspapers of general circulation along the proposed route published notices and maps of the proposed route.

¹ Enbridge Energy Partners, L.P. – a Delaware Master Limited Partnership with headquarters in Houston, Texas – organized Enbridge Energy, Limited Partnership, as a subsidiary. Enbridge, Inc., organized subsidiary Enbridge Energy Company, Inc., which in turn organized subsidiary Enbridge Pipelines (Southern Lights) L.L.C. All of these entities are organized under the laws of Delaware except for Enbridge, Inc., which is a Canadian corporation.

Starting July 30, 2007, Enbridge issued notice of its proposals by certified mail, and included the Department's notice and the U.S. Department of State's Notice of Intent to Prepare Environmental Assessments.² Enbridge sent these notices to all landowners, tribal governments, towns, statutory cities, home rule charter cities and counties it deemed reasonably likely to be affected. Enbridge also sent copies of all these documents, along with Enbridge's applications for a Certificate of Need and Route Permit, to 23 public libraries along the route, and 126 local public officials.

On August 1, 2007, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS AND ISSUING NOTICE AND ORDER FOR HEARING. The Office of Administrative Hearings assigned Administrative Law Judge (ALJ) Eric L. Lipman to preside over this matter.

Between August 13 and 23, the Department convened 12 public informational meetings in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton counties. Before each meeting, Enbridge held an open house to answer questions and provide maps of the preferred route, copies of its proposed Environmental Mitigation Plan and other project information.

By October 5, 2007, the Commission had received direct testimony from Enbridge and the Department.

On November 1, 2007, the Commission accepted Enbridge's revision to its preferred pipeline route for all points northwest of Clearbrook, Minnesota, and granted Enbridge's request to extend the timelines in these dockets to address issues raised in the informational meetings.³ In particular, the Commission agreed to extend the schedule for Enbridge's proposals that extend southwest of Clearbrook, Minnesota, where the terrain is more populated, and has a greater concentration of wetlands and forests.

On November 2, 2007, the Department gave notice of the schedule of public hearings in this matter, and of how the public could participate. Newspapers of general circulation in Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater Counties, as well as the Minneapolis *Star Tribune* and the Minnesota *Environmental Quality Board Monitor*, published the notice.

² Construction of the proposed projects will require a Presidential Permit for Border Crossing Facilities (Canada), which requires an environmental assessment. Executive Order 11423, August 16, 1968 (33 Fed. Reg. 11741), as amended.

³ See *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*, Docket Nos. PL-9/PPL-07-360 *et al.*, ORDER ACCEPTING ITEMS FOR CONSIDERATION IN THE CONTESTED CASE HEARING AND EXTENDING DEADLINES (November 30, 2007).

On November 8, 2007, the Department authorized the release of Enbridge's Comparative Environmental Analysis (CEA) for the Route Alternatives Northwest of Clearbrook, Minnesota (Northwest CEA). Enbridge filed this document the following day in a companion docket.⁴

On November 9, 2007, Enbridge sent the Department's notice by certified mail to the landowners Enbridge had identified along this proposed route, and explained that proceedings regarding the route southeast of Clearbrook would be delayed.

On November 12, 2007, Enbridge mailed to public libraries along the preferred route a copy of its revised preferred route and route alternatives for the areas northwest of Clearbrook, Minnesota, along with the Northwest CEA, Enbridge's direct testimony, the Department's official notice, and excerpts of relevant statutes and rules. Enbridge also mailed notice of the public hearings to elected officials and local governmental entities, including the Minnesota Historical Society and each regional development commission, soil and water conservation district, watershed management district, and county government or township government with jurisdiction over land within the proposed pipeline route.

On November 26 and 27, 2007, the ALJ convened public hearings in Kittson, Marshall, Pennington and Red Lake counties. Meetings scheduled for November 29 in Clearwater and Polk counties were postponed and later convened on January 17, 2008. The Department issued a new notice, which was sent to local elected officials, governmental entities, local newspapers of general circulation and landowners along the proposed route in Clearwater and Polk counties.

On December 20, 2007, and January 7, 2008, Enbridge filed in the companion docket revised preferred routes for the pipelines. On January 14, Enbridge gave notice to 70 landowners along the new preferred routes. The notice included a cover letter, overview map of the proposed route, the Department's notice of application acceptance, the State Department's Notice of Intent to Prepare Environmental Assessments, and a property-specific map.

On February 11, 2008, the ALJ granted in part the request of the Minnesota Center for Environmental Advocacy (MCEA) to intervene. MCEA is a Minnesota-based, nonprofit environmental organization with a stated mission to protect "Minnesota's wildlife, natural resources and the health of its people."

On February 15, 2008, the Commission gave notice that it intended to select the list of possible pipeline routes southeast of Clearbrook, Minnesota, to be analyzed in this docket.

Also on February 15, 2008, Enbridge filed two additional route alternatives. On February 29, Enbridge gave notice to 16 landowners along the two new route alternatives. The notice included a cover letter, overview map of the proposed route, the Department's notice of application acceptance, the State Department's Notice of Intent to Prepare Environmental Assessments, and a property-specific map.

⁴ Docket No. PL-9/PPL-07-361, *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project.*

On March 5, 2008, the Department's Office of Energy Security (OES) issued a notice of public hearings for Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton counties. Enbridge mailed copies of the Department's notice to all landowners in these counties that Enbridge deemed likely to be affected by the proposed projects, and to elected officials. Finally, 21 newspapers of general circulation in these counties, as well as the Minneapolis *Star Tribune*, published notices of the hearings.

On March 7, 2008, OES authorized release of Enbridge's Comparative Environmental Analysis of the Route Alternatives Southeast of Clearbrook, Minnesota (Southeast CEA). Enbridge filed the Southeast CEA on March 11 in the companion docket.

By March 10, 2008, Enbridge sent the Department's March 5 notice, along with maps showing the revised preferred route and route alternatives southeast of Clearbrook, Minnesota, the Southeast CEA, and the testimony of all witnesses to 23 public libraries along the proposed route. By March 12, Enbridge had sent a copy of the notice along with maps of the preferred route and route alternatives southeast of Clearbrook, and the Southeast CEA, to applicable local governmental entities along the route.

On March 17-18, 2008, MCEA filed direct testimony.

On March 25 - 26, 2008, the ALJ convened public hearings in Clearwater, Beltrami and Cass counties. On April 8 - 9, the ALJ convened public hearings in St. Louis and Carlton counties.

On April 25, 2008, OES and Enbridge filed rebuttal testimony.

On May 5, 2008, the ALJ denied intervention to Jon Erik Kingstad, an attorney in private practice, but authorized him to file initial and reply *amicus* ("friend of the court") briefs in this matter.

On May 13, 2008, the ALJ convened evidentiary hearings.

By May 29, 2008, OES, Enbridge, Mr. Kingstad and MCEA had filed briefs.

By June 5, 2008, OES, Enbridge, Mr. Kingstad and MCEA had filed reply briefs.

On July 17, 2008, the ALJ issued his SUMMARY OF PUBLIC TESTIMONY AT THE PUBLIC HEARINGS, FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS (ALJ's Report). The ALJ recommended, among other things, granting the requested Certificate of Need.

On August 1, 2008, Enbridge and MCEA filed exceptions to the ALJ's Report, and OES sought clarification.

On October 27-28, 2008, MCEA filed copies of documents that it had cited in its exception.

On November 14, 2008, the Commission gave notice of its intention to take up this matter at its November 25 meeting.

On November 21 and 24, 2008, MCEA filed supplemental exhibits. On November 24, Enbridge objected to these late-filed exhibits.

Also on November 24, 2008, MCEA asked the Commission to postpone consideration of this matter pending publication of notice of the matter in the *State Register* pursuant to Minnesota Rules part 7829.2500, subpart 4.

This matter, in conjunction with Enbridge's petition for a pipeline route permit,⁵ came before the Commission on November 25, 2008. Parties revised and clarified their recommendations, MCEA filed another supplemental exhibit, and the record closed on that date.⁶

FINDINGS AND CONCLUSIONS

I. Legal Standard

Before building a large energy facility – including any crude oil pipeline exceeding six inches in diameter and extending more than 50 miles into Minnesota⁷ – a person must receive a “Certificate of Need” demonstrating that the facility is needed.⁸ Because Enbridge's proposed pipeline qualifies as a large energy facility, Enbridge must obtain a Certificate of Need before proceeding.

Statutes and rules set forth the factors the Commission must consider in evaluating the need for a proposed large energy facility.⁹ In particular, Minnesota Rules, part 7853.0130, directs the Commission to issue a Certificate of Need when the applicant demonstrates four things:

- A. the probable result of denial 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 ...;
- B. 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 ...;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate ...; and

⁵ *Id.*

⁶ Minn. Stat. § 14.61, subd. 2.

⁷ Minn. Stat. § 216B.2421, subd. 2(4).

⁸ Minn. Stat. § 216B.243, subd. 2.

⁹ Minn. Stat. § 216B.243, subd. 3; Minn. Rules chap. 7849. Applicants seeking a Certificate of Need to build a pipeline need not address legal requirements that pertain exclusively to electric service.

- D. it has not been demonstrated on the record that 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.

Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding.¹⁰

II. Procedural Matters

A. Positions of the Parties

Minnesota Rules, part 7829.2500, subpart 4, provides for the Commission to publish notice of a Certificate of Need application in the *State Register* and to solicit public comment. Through inadvertence, this did not occur. MCEA asks the Commission to delay ruling on the application until the Commission publishes notice of the matter in the *State Register* soliciting public comments. MCEA argues that the failure to do so would violate Commission rules and deprive the public of adequate notice and opportunity to be heard.

Enbridge and OES oppose this request, arguing that the public has received ample notice and opportunity to be heard in these proceedings.

B. Commission Action

As a public agency, the Commission is mindful of its duties to permit members of the public to learn of proceedings before it. For example, the Commission requires anyone filing a document with the Commission to serve a copy (or sometimes a summary) on people on the appropriate service list on the same day.¹¹ People can place their names on official service lists upon written request.¹² Additionally, a potential intervener who wishes to receive notice of a particular kind of filing can ask to be placed on the utility's general service list. The list would also include people who intervened in the utility's last filing of the same type, or in its last general rate case.¹³

The Commission also gives regular notice of its own meetings by, among other means, publication on its site on the World Wide Web, <http://www.puc.state.mn.us>.¹⁴ And when a large energy facility is proposed, a number of statutes and rules ensure that the public will receive adequate notice and the opportunity to participate.¹⁵

¹⁰ Minn. Rules, part 7829.1000.

¹¹ Minn. Rules, part 7829.0400, subp. 5.

¹² Minn. Rules part, 7829.0700, subp. 1.

¹³ Minn. Rules, parts 7829.0600; see also Minn. Rules, part 7829.2500, subp. 3.

¹⁴ Minn. Stat. § 13D.04.

¹⁵ See, for example, Minn. Stat. § 216B.243, subd. 4.

A review of this case's procedural history demonstrates the lengths that have been taken to provide the public with notice and opportunity to participate.¹⁶ Notice was mailed to landowners, local governments, local elected officials, local libraries, and was published in multiple newspapers. Notice was issued when the application was filed, when alternative routes were proposed, when informational meetings were held, and when public hearings were convened, among other occasions.

Moreover, many of these landowners, local governments, local elected officials, local libraries, and newspaper readers had recently received similar notice with respect to a prior pipeline project paralleling the projects being proposed in the current docket.¹⁷

The Commission is persuaded that the public has received adequate notice and opportunity to participate in the Commission's review of Enbridge's application. The Commission notes that in addition to the people who attended the informational meetings in counties all along the pipeline route, 98 members of the public spoke at the public hearings and 36 filed written remarks, as summarized in the ALJ's Report.¹⁸

Minnesota Rules, part 7829.3200, provides for the Commission to vary its rules when enforcing the rule would impose an excessive burden upon the applicant or others, granting the variance would not adversely affect the public interest, and granting the variance would not conflict with other standards imposed by law. At this stage of the current docket, it makes little sense to withhold consideration of the Certificate of Need application only to provide yet one more round of notice and comment. Given the many examples of public notice and the many forums for public participation already demonstrated in the record, the Commission finds that the benefit of providing one more notice would be more than outweighed by the burden of delay. And given that Enbridge has demonstrated that its proposed pipelines are needed to serve the public interest (discussed below), needless delay would burden that interest. Finally, the Commission's specific duty to publish notice of Certificate of Need applications arises solely from the Commission's own rules.

Because the burden of enforcing Minnesota Rules part 7829.2500, subpart 4, would greatly exceed its benefit, and because varying the rule would not conflict with either the public interest nor any other provision of law, the Commission will grant the variance; MCEA's request will be denied.

¹⁶ See also ALJ's Report, pp. 12 - 36.

¹⁷ See Docket No. PL-9/PPL-07-360, *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*; Docket No. PL-9/CN-07-464, *In the Matter of the Application of Enbridge Pipeline (Southern Lights) L.L.C. for a Certificate of Need for a Crude Oil Pipeline for the Southern Lights Crude Line Project* (collectively, the Southern Lights Crude Pipeline project).

¹⁸ See ALJ's Report, pp. 2 - 12.

III. Positions on the Merits

A. Enbridge

Enbridge proposes to bring Western Canadian crude oil to upper Midwest refineries by adding new pipelines to its existing pipeline system in Canada, North Dakota, Minnesota, Wisconsin and Illinois. As part of this effort, Enbridge proposes to build three petroleum pipelines in Minnesota. One of these pipelines, the Southern Lights Crude pipeline, has been approved in other dockets.¹⁹

The current docket addresses the two remaining projects. The Alberta Clipper project – a 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) buried pipeline and associated facilities – would provide the capacity to transport an average of 450,000 barrels of crude oil per day from Hardisty, Alberta, to Enbridge's tank farm and terminal in Superior, Wisconsin. Approximately 290 miles of the Alberta Clipper Pipeline would cross Minnesota, buried primarily within and adjacent to Enbridge's existing rights-of-way in the counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton.

The Southern Lights Diluent project – a 20-inch outside diameter, high pressure (1,334 psig) buried pipeline and associated facilities – would provide the capacity to transmit 180,000 barrels per day of diluent from refineries near Chicago, Illinois, to Enbridge's facilities at Clearbrook, Minnesota, where they would flow into an existing pipeline to Alberta. Diluents are used to thin heavy crude oil, making the oil flow more easily. Approximately 182 miles of the Southern Lights Diluent pipeline would cross Minnesota, buried primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.

According to Enbridge, these projects are needed to serve the increasing demand for crude oil throughout the Midwest and beyond.

B. Office of Energy Security

Based on an analysis of Enbridge's filings, as well as OES's own analysis of the supply of and demand for oil – including considerations of population growth, vehicle miles driven, and disposable income – OES reached the following conclusions:

First, withholding the Certificate of Need would probably harm the future adequacy, reliability, and efficiency of the energy supply to Enbridge, its customers, and the people of Minnesota and neighboring states. OES found that demand for refined oil products had increased between 2003 and 2006, and OES anticipates that this demand will continue to grow.

Second, a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record. OES considered a variety of alternative means of dealing with the increasing demand for oil. For example, OES considered building a larger or smaller pipeline, or a pipeline in a different location, building no new pipeline and relying on semi-truck tankers, railroad tankers, alternative pipeline providers, or conservation.

¹⁹ See the Southern Lights Crude Pipeline project, *supra*.

Following this analysis, OES concluded that Enbridge's proposal was preferable to all of these alternatives.

Third, the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate. OES concluded that the proposed pipeline would provide a reliable and cost-effective source of petroleum for residents of Minnesota and the region. While OES acknowledged that building the facility would cause some environmental harm, OES found that Enbridge has developed appropriate plans for minimizing and mitigating these consequences. OES also concluded that the project would have economic benefits, including increased employment, increased income, increased local tax revenues, increased refinery production, and perhaps increased capital investments.

Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facilities would violate any governmental policies, rules, and regulations at the federal, state or local level. OES reached this conclusion after reviewing the extensive list of governmental permits required for the project.

Ultimately OES concludes that Enbridge has met the statutory and rule criteria to receive a Certificate of Need, and that the record of this proceeding substantiates Enbridge's claims.

C. Jon Kingstad and the Minnesota Center for Environmental Advocacy

Mr. Kingstad and MCEA oppose granting the Certificate of Need.

Mr. Kingstad argues that Enbridge has not demonstrated that its proposed pipelines are needed, and further argues that Enbridge's plans for mitigating and remedying environmental damage are undermined by Enbridge's alleged record of pollution. Mr. Kingstad alleges that Enbridge's proposals are really part of a larger plan to ship Alberta tar sands oil to the Gulf Coast; Enbridge denied this allegation.

Generally, MCEA argues that the Commission may not issue a Certificate of Need until the applicant demonstrates need, and that mere compliance with regulatory standards cannot obviate this statutory requirement. MCEA argues that Enbridge fails to bear its burden of showing that the growth in Minnesota's demand for oil will justify the proposed capacity expansion. In particular, Enbridge's analysis fails to consider mitigating factors such as other regulatory activities that could affect demand or conservation and efficiency efforts.

Also, MCEA argues that Enbridge failed to show that the proposed pipeline would protect Minnesota and regional customers from oil price and supply volatility. MCEA argues that Enbridge's and OES's analyses of the proposal's environmental consequences have been too narrow given the growing concern with greenhouse gasses. And MCEA argues that the Minnesota Environmental Protection Act²⁰ requires the Commission to develop an environmental impact statement before ruling on the need for the proposed projects.

Both Mr. Kingstad and MCEA argue that the most reasonable course of action is to refrain from building the pipelines, and instead to focus efforts on reducing society's consumption of oil.

²⁰ Minn. Stat. Chap. 116D.

IV. The ALJ’s Report

In his Report, the ALJ concludes that Enbridge has satisfied the criteria set forth in Minnesota Statutes § 216B.243 as interpreted by Minnesota Rules, part 7853.0130. Citations to findings and conclusions relevant to each section of part 7853.0130 are set forth below:

<p align="center">Minnesota Rules, Part 7853.0130</p> <p>“A certificate of need shall be granted to the applicant if it is determined that:</p>	<p align="center">ALJ’s Findings and Conclusions</p>
<p>A. the probable result of denial 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...;</p>	<p>Findings 111 - 137, Conclusions 5 - 11</p>
<p>B. 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...;</p>	<p>Findings 138 - 164, Conclusions 12 - 20</p>
<p>C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate...; and</p>	<p>Findings 165 - 233, Conclusions 21 - 27</p>
<p>D. it has not been demonstrated on the record that 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.”</p>	<p>Findings of Fact 234, Conclusion 28</p>

The ALJ did not find the arguments of Mr. Kingstad or MCEA persuasive.

Without denying that forecasts may be subject to dispute, the ALJ found that the record shows that the quantity of oil demanded in the Midwest will grow relative to the quantity supplied. According to the ALJ the record supports the conclusion that the proposed pipelines, by expanding the Midwest’s access to Canadian oil, would tend to mitigate the consequences of disruptions to the supply of oil from other regions. Without addressing the suggestion that the pipeline is designed to ship oil to the Gulf Coast, the ALJ reasoned that Minnesota benefits from increasing the quantity and reliability of energy in the region, even if some of the oil is consumed beyond the local region.

The ALJ does not regard the state’s new objectives regarding greenhouse gas emissions to warrant withholding a Certificate of Need from a petroleum pipeline project, noting that the Commission has declined to adopt such arguments in prior cases. Finally, the ALJ concluded that Enbridge has fulfilled the requirements of the Alternative Review Process, thereby satisfying the requirements of the Minnesota Environmental Protection Act.

On the basis of this analysis, the ALJ recommends that the Commission grant Enbridge’s petition for a Certificate of Need for the proposed pipeline projects.

V. Exceptions to the ALJ's Report Regarding Certificate of Need

A. Exceptions to specific language

Enbridge and OES both recommend that the Commission adopt the ALJ's findings and conclusions pertaining to Enbridge's Certificate of Need application, but with three uncontested modifications as follows:

Finding 102. The ALJ's Report states:

If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way.

For reasons discussed in the companion docket, the Commission has not yet ruled on an appropriate route for the pipelines where they come in proximity to lands of the Fond du Lac Band of Lake Superior Chippewa (the Band). While Enbridge and OES recommend that the Commission adopt this finding, they also recommend clarifying that this finding does not imply that the Commission has selected among the alternative routes in this area (the "Fond du Lac Route Alternatives").

Finding 125. The ALJ cites OES Rates Analyst Adam J. Heinen for the proposition that "raising fuel efficiency standards will not reduce demand for the petroleum products...." The OES asks to clarify that Heinen testified that raising efficiency standards would not reduce demand *below current levels*. In addition, OES asked to clarify that support for this proposition can be found in Exhibit 316 at 28-29, not Exhibit 308.

Finding 225. The ALJ's Report states:

Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measure at a distance of 50 feet *from the pumping station structure*) or to any other minimum set by state law.

(Emphasis added.) Enbridge and OES speculate that this language arose from Enbridge's Certificate of Need application but incorporates a transcription error. The application states

Enbridge standards restrict noise levels (due to Company equipment) around neighboring dwellings and industrial facilities to 40 decibels, measured at a distance of 50 feet *from the affected structure*, unless state regulations allow higher noise levels."

(Emphasis added.) Enbridge and OES ask to correct this error by specifying that Enbridge pledges to keep the noise level below 40 decibels when measured at a distance of fifty feet *from the affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures*, or to any other minimum set by state law.

B. Exceptions to environmental findings and conclusions in general

MCEA finds fault with the ALJ's environmental findings and conclusions. As an initial matter, MCEA argues that Enbridge has failed to fulfill its statutory duty to demonstrate that the proposed pipelines are needed, reasonable and prudent. And MCEA argues that Minnesota Rules, part 4410.4300, requires that a governmental entity perform the initial environmental review any pipeline project, not Enbridge.

More substantively, MCEA disputes the forecasts of supply and demand offered by Enbridge and OES. According to Enbridge, the latest demand data cast doubt on the strength of the forecasts that Enbridge and OES rely upon, and suggest that new regulations are succeeding in promoting conservation to a greater extent than the parties acknowledge. At the same time, the supply of imported oil has increased due to new pipeline projects such as Enbridge's Southern Lights Crude pipeline, with a capacity of 300,000 barrels per day.

VI. Analysis

A. Environmental findings and conclusions

The Commission finds the ALJ's analysis of the environmental record in the matter to be persuasive, and will therefore decline to grant the relief sought by MCEA.

MCEA correctly observes that Minnesota Rules, part 4410.4300, requires that a responsible governmental unit complete an environmental assessment worksheet for any pipeline project. But Minnesota Rules, part 4410.3600, subpart 2, exempts from this process any project for which an alternative environmental review has been approved. The Minnesota Environmental Quality Board approved such an alternative environmental review when it adopted the Pipeline Routing Permit rules now codified at Minnesota Rules, chapter 7852. Enbridge's compliance with those rules are addressed in the companion docket.

Regarding substitute sources of delivery, the record does not support the conclusion that other pipelines coming on-line eliminate the need for Enbridge's proposed pipelines to contribute to the nation's energy supply. The ALJ specifically analyzed whether Enbridge could meet its objectives via some substitute means – including relying on other pipelines – and rejected this option. Some of the pipelines MCEA mentions as possible substitutes for Enbridge's proposed pipelines are entirely domestic and therefore have no bearing on the nation's net supply of oil. And while MCEA correctly notes that Enbridge's new Southern Lights Crude pipeline will import Canadian oil, that pipeline is certified to transport only 186,000 barrels per day, not the 300,000 barrels MCEA reported. Moreover, that pipeline was designed in part to replace a different pipeline which will no longer be used to import oil to the US. The Commission concurs in the ALJ's analysis of this question.

More generally, MCEA argues that Enbridge has failed to demonstrate that conservation would not be the more reasonable and prudent alternative. But the forecasted disparities between crude oil supply and demand led Enbridge, OES and ultimately the ALJ to conclude that Enbridge's proposal is the more reasonable and prudent alternative. The Commission concurs.

At hearing MCEA challenged these disparities, arguing that the U.S. Energy Information Administration has reduced its estimate of US oil consumption in its latest Annual Energy Outlook (AEO); under some circumstances, the AEO projects almost no growth in demand at all. This information was filed too late to permit any other party to comment on it, was not sponsored by any witness and was not subject to cross-examination. In any event, the AEO continues to forecast increasing US oil consumption and declining US supply through 2030, albeit the increases and declines have moderated from earlier forecasts. MCEA correctly observes that scenarios assuming low economic growth show low growth in the demand for oil; of course, scenarios assuming high economic growth project higher demand.

Such forecasts change annually. In contrast, Enbridge anticipates operating the proposed pipelines for decades. In the interest of reasonableness and prudence, the Commission must provide for the possibility that demand may be both lower than the base-case scenario, as well as the possibility that it may be higher. The Commission is not persuaded that the most reasonable and prudent course of action is to deny the permit on the basis of this newly-filed information.

B. Certificate of Need standards in general

In preparing his recommendations for the Commission regarding both Enbridge's Certificate of Need and Pipeline Routing Permit, ALJ Lipman presided over an evidentiary hearing and 14 public hearings. He reviewed the testimony of ten witnesses and dozens of exhibits. He observed the demeanor of the witnesses and evaluated the parties' initial and reply briefs. His Report is thoughtful, comprehensive, and thorough, including 310 findings of fact and 55 conclusions, ultimately supporting two recommendations.

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria. As noted above, the statutory criteria for a Certificates of Need are stated in Minnesota Statutes § 216B.243, subdivision 3, and are incorporated into Minnesota Rules, part 7853.0130, subparts A-D. Specifically and based on consideration of the factors identified in the applicable rule, the Commission finds as follows:

1. The probable result of denial 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.
2. 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.
3. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.
4. It has not been demonstrated on the record that 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.

Having examined the record itself and having carefully considered the ALJ's Report, the Commission concurs in the ALJ's findings and conclusions except as otherwise specified. Consequently the Commission will accept, adopt and incorporate the relevant findings and

conclusions with the modification noted herein. These modifications do not affect the basis for the ALJ's ultimate recommendation to grant a Certificate of Need for the proposed pipelines.

VII. Commission Action

Based on its review of the record and the analysis and findings stated above, the Commission concludes that granting a Certificate of Need for the proposed petroleum pipelines will serve the public interest. Consequently the Commission will accept the relevant ALJ findings and conclusions as modified herein, grant Enbridge's request and issue the Certificate.

ORDER

1. Minnesota Rules, part 7829.2500, subpart 4, is varied to waive the requirement to publish notice of a Certificate of Need filing in the *State Register* and solicit additional public comment on the application.
2. The Commission accepts, adopts, and incorporates herein Findings 1 - 136 and Conclusions 1 - 29 of the Administrative Law Judge's SUMMARY OF PUBLIC TESTIMONY AT THE PUBLIC HEARINGS, FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS (July 17, 2008) with the following modifications:
 - A. Finding 102. If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way with the limited exception of the Fond du Lac Route Alternatives.
 - B. Finding 125. OES Rates Analyst Adam J. Heinen expressed the view that even in the event of an increase in Corporate Average Fuel Economy ("CAFE") standards for automobiles, any reductions in consumption that follow from increased fuel efficiency will be outpaced by an increase in overall miles traveled by Minnesotans. Mr. Heinen opined that raising fuel efficiency standards will not reduce demand for the petroleum products below current levels, or reduce the need for the proposed projects. [Footnote 255: See, ~~Ex 308 at 30-31~~ Ex. 316 at 28-29.]
 - C. Finding 225. Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measured at a distance of fifty feet from the pumping station structure affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures) or to any other minimum set by state law.
3. The Commission hereby issues to Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., a Certificate of Need for the following projects:

- A. The Alberta Clipper project, a 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) crude oil pipeline and associated facilities, that will begin at the North Dakota/Minnesota border in Kittson County and terminate at the Minnesota/Wisconsin border in Carlton County. The Alberta Clipper Pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton.
 - B. The Southern Lights Diluent project, a 20-inch outside diameter, high pressure (1,334 psig) diluent pipeline and associated facilities that will begin at the Wisconsin/Minnesota border and terminate at the Enbridge Terminal located in Clearbrook, Minnesota, located in Clearwater County. The Southern Lights Diluent pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Janet L. Gompaley, for:
Burl W. Haar
Executive Secretary

(SEAL)

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10:
MN PUC

40:
Regular Postal Mail

Burl W. Haar
MN Public Utilities Commission
Suite 350
121 7th Place East
St. Paul MN 55101-2147

Janette K. Brimmer
Minnesota Center For Environmental
Advocacy
26 East Exchange Street, Suite 206
St. Paul MN 55101-1667

20:
Dept. of Commerce

John R. Gasele
Fryberger Buchanan Smith & Frederick PA
700 Lonsdale Building
302 West Superior Street
Duluth MN 55802

Sharon Ferguson
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul MN 55101-2198

Joel W. Karvik
Enbridge Energy Company, Inc.
Suite 3300
1100 Louisiana Street
Houston TX 77002-5217

30:
Inter-Office Mail

Jon Erik Kingstad
Lake Elmo Bank Bldg. Suite 260
600 Inwood Ave. N.
Oakdale MN 55128

Julia Anderson
MN Office Of The Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2131

David Olson
Minnesota Chamber Of Commerce
Suite 1500
400 Robert Street North
St. Paul MN 55101

Karen Finstad Hammel
MN Office Of The Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2131

John C. Reinhardt
Laura A. Reinhardt
3552 26Th Avenue South
Minneapolis MN 55406

John Lindell
OAG-RUD
900 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2130

Kevin Reuther
MN Center for Environmental Advocacy
Suite 206
26 East Exchange Street
St. Paul MN 55101-1667

Eric L. Lipman
Office of Administrative Hearings
PO Box 64620
St. Paul MN 55164-0620

Sara Van Norman
Jacobson, Buffalo, Magnuson, Anderson
& Hogen, P.C.
1360 Energy Park Drive, Suite 210
St. Paul MN 55119

Valerie M. Means
Office of the Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101

Kevin Walli
Fryberger, Buchanan, Smith & Frederick
1st National Bank Building
332 Minnesota Street, Suite W1260
St. Paul MN 55101