

**STATE OF MINNESOTA  
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**

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

MPUC Docket Nos. PL-9/CN-14-916  
PL-9/PPL-15-137  
OAH Docket Nos. 65-2500-32764 and  
62-2500-33377;  
Sub-Docket No. 8-2500-34602

---

**MILLE LACS BAND OF OJIBWE'S COMMENTS ON  
REVISED FINAL ENVIRONMENTAL IMPACT STATEMENT**

---

The Mille Lacs Band of Ojibwe (the “Band”) submits the following comments regarding the adequacy of the Revised Final Environmental Impact Statement (“FEIS”) for the Line 3 Replacement Project (“Project”).

In its December 14, 2018 Order, the Public Utilities Commission determined that the FEIS for the Project was inadequate with respect to four specific issues and directed the Department of Commerce to prepare a Revised FEIS to address the deficiencies.<sup>1</sup> The Department published the Revised FEIS on February 12, 2018.<sup>2</sup> It remains deficient in at least three respects.<sup>3</sup>

First, the Revised FEIS fails to provide useful information regarding the distinctions between the quantitative representations of resources along the route and system alternatives and the actual qualitative impacts that may occur along those alternatives. Second, the Revised FEIS provides no new information regarding the extent to which the route alternatives would introduce new or additional impacts beyond the impacts of existing pipelines along the proposed route. Finally, although the Revised FEIS now includes language clarifying that the traditional cultural properties survey must be completed before the start of construction, it still fails to include information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or system alternatives.

---

<sup>1</sup> Order Finding Environmental Impact Statement Inadequate (December 14, 2017) (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01 (RP)).

<sup>2</sup> Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project (February 12, 2018) (eDocket Nos. 20182-139959-02 (CN); 20182-139959-02 (RP)).

<sup>3</sup> The Mille Lacs Band does not offer an opinion regarding whether the Revised FEIS adequately addressed the changes to SA-04 in order to avoid the Karst Typology it would otherwise traverse.

**I. The Revised FEIS does not distinguish between the quantitative representations of resources and the potential qualitative impacts to those resources nor does it identify the extent to which an alternative would introduce new or additional impacts beyond the impacts of existing pipelines.**

The Revised FEIS provides no new analysis of the potential impacts of the Project and the alternatives. It does not, as the Commission’s Order suggested, explain that “the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.”<sup>4</sup> Nor does it provide any information regarding, for example, the number of water bodies crossed by each of the route alternatives which already are crossed by existing pipelines. Instead, the Revised FEIS repeats boilerplate language stating that the Revised FEIS provides a description of the incremental impact that the project and the alternatives would have on the existing environment.<sup>5</sup> In short, the Revised FEIS completes the first step of a meaningful environmental analysis—it identifies the resources that could be impacted by the Project and its alternatives—and stops there; it does not provide the information necessary for a meaningful comparison of the alternatives.

The Minnesota Department of Natural Resources (“DNR”) and Minnesota Pollution Control Agency (“MPCA”) raised similar concerns regarding the sufficiency of the revisions when they were asked for their comments regarding the draft Revised FEIS. In its February 6, 2018, email to the Department of Commerce, MPCA stated:

Commerce’s approach to add “cautionary notes” about not relying on a single data set, and adding to the summary tables some language that data sets must be read together, is a helpful start. However, since the summary tables themselves are not changed, and they still make little to no distinction of quantitative v. qualitative in comparing alternatives, we aren’t sure how helpful this will actually be for the Commissioner to digest information. For example, our November comment letter points out that many SA4 waters are impaired or compromised, while the APR is impacting pristine waters. This type of distinction is not reflected in the summary tables despite the cautionary footnotes.<sup>6</sup>

The MPCA continued, with respect to the need to distinguish between impacts that are, or are not, additive in nature:

Commerce’s additional notes clarifying where the impacts described for alternatives already reflect the current impacts, and where there are incremental impacts, are a reasonable step. However, the summary tables were not changed and do not seem to

---

<sup>4</sup> Order Finding Environmental Impact Statement Inadequate (December 14, 2017) at 3 (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01 (RP)).

<sup>5</sup> See e.g., FEIS at 6-24, 6-32, 6-40, 6-46, and 6-47.

<sup>6</sup> See Attachment A to these Comments.

reflect that the existing Line 3 corridor already has impacts that will continue whether or not the new project happens, while the other alternatives are creating new impacts in new corridors.<sup>7</sup>

DNR had raised similar concerns in its February 5, 2018 email to the Department:

The revised text does a good job of describing how much (mileage) of each route is shared with other utility corridors but it lacks the mileage of new utility corridor. Identification of this new greenfield corridor will help compare the impacts of each route.

The standard language that indicates that all impacts are incremental in nature and the full increment is described in EIS may not fully achieve the intent of this EIS revision. There are some type of resource impacts that will have greater incremental impacts on a new corridor as opposed to an existing corridor. For these types of resources, it would be helpful if the Methodology section included example of when the new corridor had greater impacts. Habitat fragmentation and water crossings are good examples of cases when a corridor increment impact is greater than an existing corridor incremental impact.<sup>8</sup>

In sum, the Revised FEIS does not include any substantive changes to address the deficiencies which lead to the Commission's December 14, 2017 Order finding the FEIS inadequate with respect to the distinction between the quantitative and qualitative analysis or the differences between the incremental impacts along existing corridors or the new impacts along greenfield corridors. Accordingly, the Commission must find that the Revised FEIS remains inadequate and direct the Department of Commerce to perform the analysis necessary to convey a complete and accurate evaluation of the potential impacts of the Applicant's Preferred Route and the various alternatives—not merely provide disclaimers indicating that these distinctions should be taken into consideration.

**II. The Revised FEIS fails to include information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or system alternatives.**

The January 2, 2018 Joint Tribal Petition for Reconsideration explains, in detail, why the FEIS must incorporate the results of a Traditional Cultural Properties ("TCP") Survey along both the Applicant's Preferred Route and each of the route or system alternatives.<sup>9</sup> Ultimately, the issue boils down to this: the Commission cannot compare the potential impacts of the proposed project and the various alternatives on TCPs when the Survey is evaluating only a portion of the

---

<sup>7</sup> *Id.*

<sup>8</sup> See Attachment B to these comments.

<sup>9</sup> Joint Tribal Petition for Reconsideration (January 2, 2018) (eDocket Nos. 20181-138561-01 (CN); 20181-138561-02 (R)).

Applicant's Preferred Route and will not be completed until after the Commission has made its decision on the applications for a certificate of need and route permit.

To be "adequate" the Commission must find that the Revised FEIS "addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4420.2300, items G and H."<sup>10</sup> The Revised FEIS fails this test because it fails to address the potentially significant impacts on TCPs which would result from the proposed project and the alternatives.

MEPA does not recognize an exception for information which will be made available at a later date. And even if it did, the forthcoming TCP Survey will not provide any information regarding the comparative potential impacts to TCPs along the route and system alternatives. Moreover the failure to incorporate a full TCP Survey is not excused by MEPA's requirement that an environmental impact statement must analyze "all significant issues for which information can be reasonably obtained." The problem here is not that the information which will be included in the TCP Survey cannot be reasonably obtained—it is being gathered—but rather that the process of obtaining the information was initiated too late. The failure to seek the information in a timely manner does not excuse the Commission from its obligation to include a full evaluation of the potential impacts on TCPs in the FEIS.

### **III. Conclusion**

The Revised FEIS: (1) fails to distinguish between the quantitative representations of resources along the route and system alternatives and the actual qualitative impacts that may occur along those alternatives; (2) provides no new information regarding the extent to which route alternatives would introduce new or additional impacts beyond the impacts of existing pipelines along the proposed route; and (3) fails to include the information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or system alternatives. Accordingly, the Band respectfully requests that the Revised FEIS be deemed inadequate and direct the Department of Commerce to correct these deficiencies.

---

<sup>10</sup> Minn. R. 4410.2800, subp. 4(A).

Dated: February 27, 2018

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/David J. Zoll

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Rachel A. Kitze Collins (#0396555)

Arielle S. Wagner (#0398332)

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

Tel: (612) 339-6900

Fax: (612) 339-0981

[cnauen@locklaw.com](mailto:cnauen@locklaw.com)

[djzoll@locklaw.com](mailto:djzoll@locklaw.com)

[rakitzeollins@locklaw.com](mailto:rakitzeollins@locklaw.com)

[aswagner@locklaw.com](mailto:aswagner@locklaw.com)

**COUNSEL FOR  
MILLE LACS BAND OF OJIBWE**

## ATTACHMENT A

---

**From:** Beeman, Michelle (MPCA) <michelle.beeman@state.mn.us>  
**Sent:** Tuesday, February 6, 2018 9:22 AM  
**To:** Grant, Bill (COMM); Wachtler, John (COMM)  
**Cc:** Naramore, Barb (DNR); Doneen, Randall (DNR); Sierks, Bill (MPCA)  
**Subject:** MPCA Comments on Line 3 FEIS revisions

Bill and John,

Below are the comments from MPCA summarized from our staff review. In similar fashion to DNR's comments, the following should be understood in the context of our limited role in developing and reviewing the proposed revisions. Specifically, MPCA's involvement in these revisions included one project management meeting to discuss potential approaches, one technical meeting to discuss the SA-04 re-route to avoid Karst, and 2 business days to review the re-route appendix and changes to FEIS Chapters 5 and 6. Your request was for feedback only on the specific language Commerce chose to add or change in the document. From that limited perspective, we provide the following for your consideration.

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

1. In Appendix U, Fig. 2, Why not also show a Green arrow/line from SA-04 to the WI mainline; why only extend from the APR/RA-03? Since the Commission asked how SA4 should be modified to avoid karst, it would seem that drawing another "conceptual route" green line from SA-04, not just from RA-3, would be helpful.
2. Appendix U – We recommend connecting to the IL refinery that can actually refine this oil, since that change also avoids karst. That realignment is responsive to the Commission's question, while not relying on a technical distinction about moving the end point that the Commission didn't specifically address.
3. Beyond that, MPCA concurs with DNR comments and did not have any specific additional observations on Appendix U.

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

4. Commerce's approach to add "cautionary notes" about not relying on a single data set, and adding to the summary tables some language that data sets must be read together, is a helpful start. However, since the summary tables themselves aren't changed, and they still make little to no distinction of quantitative v. qualitative in comparing alternatives, we aren't sure how helpful this will actually be for the Commissioner to digest the information. For example, our November comment letter points out that many SA4 waters are impaired or compromised, while the APR is impacting pristine waters. This type of distinction is not reflected in the summary tables despite the cautionary footnotes.

Commission order item (c): *The EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.*

5. We have a similar observation, as with item (b). Commerce's additional notes clarifying where the impacts described for alternatives already reflect the current impacts, and where there are incremental impacts, are a

reasonable step. However, the summary tables were not changed and do not seem to reflect that the existing Line 3 corridor already has impacts that will continue whether or not the new project happens, while the other alternatives are creating new impacts in new corridors.

Our staff did review Chapter 10 in its entirety, and had gone ahead and compiled some suggested comments and edits throughout, since they had not seen the chapter in final status before you submitted it to the Commission. However, these comments go beyond what was newly added language by Commerce in response to the Commission's inquiry, so I do not believe they are likely useful for you at this point in time. If you would like me to share them, please let me know.

Michelle

*Michelle Beeman*  
Deputy Commissioner  
Minnesota Pollution Control Agency  
651-757-2013

## ATTACHMENT B

---

**From:** Naramore, Barb (DNR) <barb.naramore@state.mn.us>  
**Sent:** Monday, February 5, 2018 10:39 PM  
**To:** Grant, Bill (COMM); Wachtler, John (COMM)  
**Cc:** Doneen, Randall (DNR); Beeman, Michelle (MPCA); Sierks, Bill (MPCA)  
**Subject:** DNR Comments and Line 3 FEIS Revisions  
**Attachments:** 2018-02-05 Line 3 Appendix U DNR.docx; 2018-02-05 Line 3 FEIS CH 5 DNR.docx; 2018-02-05 Line3 FEIS CH 6 DNR.docx

Bill and John:

Please see email below from Randall Doneen and attached files. Together, they constitute DNR's comments on the draft Line 3 FEIS revisions that Commerce provided to us.

Barb

**Barb Naramore**  
Assistant Commissioner

**Minnesota Department of Natural Resources**

500 Lafayette Road  
St. Paul, MN 55155  
Phone: 651-259-5033  
Cell: 651-341-5490  
Email: [barb.naramore@state.mn.us](mailto:barb.naramore@state.mn.us)  
[mndnr.gov](http://mndnr.gov)



John:

The DNR has reviewed the FEIS revisions that Department of Commerce has made to:

1. re-route SA-04 to avoid Karst,
2. clarify that quantitative data in tables needs to be considered with respect to qualitative information to more completely understand the potential environmental effect, and
3. clarify which potential environmental effects take into account corridor sharing of the routes.

DNR's comments should be understood in the context of our limited role in developing and reviewing the proposed revisions. Specifically, DNR's involvement in these revisions included one project management meeting to discuss potential approaches, one technical meeting to discuss the SA-04 re-route to avoid Karst, and 2 business days to review the re-route appendix and changes to FEIS Chapters 5 and 6. DNR's objective, as it has been throughout the EIS process, has been to provide the best support possible as an assisting agency to Commerce.

The attached documents have comments and track changes that were provided from the DNR team. Below are itemized comments that capture some of the larger themes in our comments. In some cases, these itemized comments may be



captured in DNR's comments in that attached files; and in other cases, they are stand alone. Commerce should look at the itemized comments and the detailed comments, and make changes as appropriate throughout the entire document.

- Appendix U needs to clarify what portions of the route actually received a re-route. The text talks about MN, IA, and IL, but then all the data only addresses MN and IA. Presumably this is because the 2 re-routes were fully contained in MN and IA; however, the bridge between the text and data tables is lacking.
- Data table in Appendix U. This table will likely create confusion. It appears to be developed from the previous Chapter 5 and 6 (and Ch. 10) that were focused on construction and operations and apply the data, but this analysis was a little different because the purpose of the re-route was to protect groundwater. Mixing these two purposes will create confusion and may not provide information in a way that is most usable. Here are some specific examples:
  - Table identifies zero Karst for re-routes and comparable segments. This seems odd because several pages of the Appendix were dedicated to explaining that you can't avoid Karst. Presumably this apparent contradiction is because the original construction and operation table only looked at surface karst, while this analysis considers all karst.
  - Many table units are undecipherable, (what is an acre of Watershed Health Assessment?)
  - Large differences in data within the re-route and comparable segments should be QA/QCed to make sure they are real, and then provide some explanation of why the re-route or route segment has such a large discrepancy.
- The revised text does a good job describing how much (mileage) of each route is shared with other utility corridors, but it lacks the mileage of new utility corridor. Identification of this new greenfield corridor will help compare the impacts of each route.
- The standard language that all impacts are incremental in nature and the full increment is described in EIS may not fully achieve the intent of this EIS revision. There are some type resource impacts that will have greater incremental impacts on a new corridor as opposed to an existing corridor. For these types of resources, it would be helpful if the Methodology section included examples of when the new corridor had greater impacts. Habitat fragmentation and water crossings are good examples of cases when a new corridor incremental impact is greater than an existing corridor incremental impact.

I hope this helps.

Randall Doneen  
(651) 259-5156  
Environmental Review Unit Supervisor  
Minnesota Department of Natural Resources