

Staff Briefing Papers

Meeting Date April 16, 2026

Agenda Item 4**

Company Enbridge Energy (Southern Lights) LLC

Docket No. PL-9/CN-07-465

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 Southern Lights Project

- Issues**
- Does the applicant's request to increase the annual average diluent capacity on Line 13 in Minnesota require a Certificate of Need (CN) under Minn. Stat. § 216B.243 and/or Minn. R. 7853.0030(D)?
 - Does the applicant's request to increase the annual average capacity on Line 13 require recertification under Minn. R. 7853.0800, subp. 3?
 - If recertification is required, what process should the Commission use to determine whether recertification is appropriate?

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✓ Relevant Documents

Date

Order Granting Certificate of Need for the Alberta Clipper Pipeline Project and Southern Lights Diluent Project	December 29, 2008
Enbridge Pipelines (Southern Lights) LLC Informational Notice of Planned Capacity Increase on the Southern Lights Pipeline (Line 13)	March 10, 2026
Fond du Lac Band of Lake Superior Chippewa Comments	March 20, 2026
Department of Commerce Division of Energy Resources Comments	March 23, 2026
Lac Courte Oreilles Band of Lake Superior Chippewa	March 24, 2026
Enbridge Pipelines (Southern Lights) LLC Reply Comments	March 27, 2026

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

ISSUES

- Does the applicant's request to increase the annual average diluent capacity on line 13 in Minnesota require a certificate of need (CN) under Minn. Stat. § 216b.243 and/or Minn. R. 7853.0030(d)?
- Does the applicant's request to increase the annual average capacity on line 13 require recertification under Minn. R. 7853.0800, subp. 3?
- If recertification is required, what process should the commission use to determine whether recertification is appropriate?

PROJECT BACKGROUND

The Southern Lights Diluent Pipeline (Line 13) is a 16- to 20-inch pipeline running from Chicago, Illinois to Clearbrook, Minnesota. At Clearbrook it is connected to an existing 18-inch pipeline whose flow direction has been reversed. The Minnesota portion of the project is approximately 182 miles from the Minnesota/Wisconsin border in Carlton County to the Enbridge facility in Clearbrook, Minnesota. The Southern Lights Diluent project carries light hydrocarbon liquids from refineries in the Chicago area to northern Alberta where it is used to dilute heavy crude oil for transport in the other pipelines. As permitted, the pipeline has an annual average throughput of 180,000 barrels per day (bpd), and a design capacity of 200,000 with an expansion potential to 330,000 bpd with additional pumping facilities or additional horsepower.

In Minnesota, Line 13 is routed along the Enbridge Mainline Corridor. Enbridge originally received a certificate of need (CN) from the Commission to build a 20-inch pipeline to transport crude oil from the North Dakota/Minnesota border to the Clearbrook Terminal on April 20, 1994. Following approval, the new 20-inch outside diameter pipeline was placed in service on the existing Line 1 pipeline system, and the existing Line 1 18-inch pipe segment west of Clearbrook became the new Line 13.

RULES AND STATUTES

CERTIFICATE REQUIRED.¹

No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission pursuant to sections 216C.05 to 216C.30 and this section and consistent with the criteria for assessment of need.

SCOPE OF RULES.²

Each petroleum supplier applying for a certificate of need for one of the following types of large energy facilities shall provide all information required by this chapter:

- A. a new large LPG storage facility;
- B. a new large petroleum pipeline facility;
- C. any project that, within a period of one year, would expand the LPG storage capacity of an existing LPG storage facility in excess of either 20 percent of capacity of 100,000 gallons, whichever is greater; and
- D. any project that, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater.

Exception: any person who as of the effective date of this chapter has begun or has completed construction of a large energy facility is not subject to this chapter for that facility.

CERTIFICATE OF NEED MODIFICATIONS.³

Subpart 1. Authority of commission. Issuance of a certificate may be made contingent upon modifications required by the commission

Subp. 2. Changes not requiring recertification. The following changes in a facility previously certified by the commission shall not require recertification:

- A. capacity additions or subtractions of less than ten percent of the capacity approved by the commission;
- B. pipeline length additions or subtractions of less than ten percent of the length approved by the commission; and
- C. changes of less than two years in the in-service date.

Subp. 3. Procedure in case of other changes. If an applicant determines that a change greater or other than those specified in subpart 2 is necessary or desirable, it shall inform the commission of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The commission shall evaluate these reasons and within 45 days of receipt of the application notify the applicant whether the proposed change is acceptable without recertification.

¹ [Minn. Stat. § 216B.243 Subd. 2.](#)

² [Minn. R. 7853.0030](#)

³ [Minn. R. 7853.0800](#)

PROCEDURAL BACKGROUND

On December 29, 2008, the Commission issued an *Order Granting Certificate of Need* for the Alberta Clipper Pipeline Project and Southern Lights Diluent Project

On March 10, 2026, Enbridge Pipelines (Southern Lights) LLC filed a Notice of Capacity Expansion.

On March 13, the Commission issued a Notice of Comment Period.

On March 20, 2026, the Fond du Lac Band of Lake Superior Chippewa submitted comments. On March 23, 2026, the Department of Commerce Division of Energy Resources filed comments.

On March 24, 2026, Lac Courte Oreilles of Lake Superior Chippewa filed comments.

On March 27, 2026, Enbridge Pipelines (Southern Lights) LLC filed reply comments

COMMENTS

Enbridge Petition

On March 10, 2026, Enbridge Pipelines (Southern Lights) LLC (Enbridge) filed a Notice of Planned Annual Average Capacity Increase with the Commission. The Notice indicated that Enbridge intends to increase the annual average capacity of Line 13 from 180,000 bpd to 215,000 bpd. Because the increase in throughput will be achieved using a drag reducing agent (DRA) and will not require the installation or enlargement of any facility in Minnesota, Enbridge argued that the increase does not require approval or recertification because the language in Minn. Stat. § 216B.243 addresses construction.

Similarly, Enbridge stated that the Commission's rules requiring a CN for "certain" pipeline expansions are not triggered because there is no physical expansion of the pipeline or construction occurring in Minnesota. Minn. R. 7853.0030(D) requires a CN for any project that, within a two-year period, would "expand an existing large petroleum pipeline in excess of either 20 percent of [the pipeline's] rated capacity or 10,000 barrels per day, whichever is greater." In addition, the proposed increase to an annual average capacity of 215,000 bpd is not "in excess" of a 20 percent increase from the 180,000 bpd annual average capacity approved in 2008.

Tribal Engagement

Enbridge indicated that it has engaged with tribal governments on its system regarding this proposal and its potential effects. Attached to Enbridge's filing are letters from the Fond du Lac Band of Lake Superior Chippewa and Lac Courte Oreilles of Lake Superior Chippewa indicating they have no objection to the proposed change in capacity.

Department of Commerce Comments

A. CN Requirement

On March 23, 2026, the Department of Commerce Division of Energy Resources (DOC-DER) filed comments. The Department agreed with Enbridge that the use of additional DRA to increase pipeline capacity does not fall under the requirements of Minn. Stat. § 216B.243, because adding more DRA within existing facilities is not considered “construction” as defined in Minn. R. 7853.0010, subp. 7. As a result, the proposal to increase capacity does not require a CN.

With respect to Minn. R. 7853.0030(D) DOC DER took exception to Enbridge’s claim that the Commission’s rules requiring a CN for “certain” pipeline expansions are not triggered because there are no physical expansions of the pipeline and no construction activity in Minnesota, noting that the rule does not qualify its standard to only physical expansion; it is any expansion that hits the 20 percent or 10,000 bpd threshold. However, the DOC DER stated that the proposed expansion is not more than a 20 percent increase from the 180,000 bpd originally approved by the Commission and therefore Enbridge’s proposal does not require a certificate of need under this rule. “any project that, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater.”

B. Recertification Requirement

Minn. R. 7853.0800, subp. 3 states:

If an applicant determines that a change greater or other than those specified in subpart 2 is necessary or desirable, it shall inform the commission of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The commission shall evaluate these reasons and within 45 days of receipt of the application notify the applicant whether the proposed change is acceptable without recertification.

Minn. R. 7853.0800, subp. 2 states that the following changes in a facility previously certified by the Commission shall not require recertification:

- (A) capacity additions or subtractions of less than ten percent of the capacity approved by the commission;
- (B) pipeline length additions or subtractions of less than ten percent of the length approved by the commission; and
- (C) changes of less than two years in the in-service date.

The capacity approved by the Commission for the pipeline is 180,000 bpd. The proposed increase to capacity is 35,000 bpd (215,000 bpd), an increase of 19.44 percent. As the change is a capacity addition of more than ten percent of the approved capacity, Minn. R. 7853.0800, subp. 3 requires the applicant to inform the Commission of the proposed change and provide the reasoning for the change and on March 10, 2026, Enbridge informed the Commission of its proposal.

In its review of the record and other information necessary to answer the questions in the

Commission's notice, the DOC DER noted a discrepancy in information provided in 10-K filings with the Securities and Exchange Commission (SEC) and in a line expansion application to the Canadian Energy Regulator that a capacity increase occurred in 2024 and 2025 to increase the annual average capacity of Line 13 from 180,000 to 198,000 bpd. The DOC DER recommended that Enbridge explain the discrepancy.

Unlike Minn. R. 7849.0400 (H) for large electric generating facilities and large high voltage transmission lines which provide a scope for when recertification is appropriate as "if and only if it determines that the change, if known at the time of the need decision on the facility, could reasonably have resulted in a different decision," Minn. Rule 7853.0800 does not prescribe a standard for the Commission to determine if recertification is required. Nor does the rule prescribe what must be addressed in a recertification process. Given the absence of a standard for determining a recertification, the DOC DER recommended using the 10 percent threshold in Minn. R. 7853.0800 to evaluate the proposed change and recertify the CN.

The Department suggested the following:

- The Department recommends that the Commission not require Enbridge file a CN for the proposed capacity increase.
- The Department recommends that the Commission require recertification of the CN with the proposed capacity increase.
- The Department recommends narrowing the scope of recertification to only areas that are materially different from the original proposal.
- The Department recommends analyses resulting from recertification be completed by the applicant within 60 days of the Order.
- The Department recommends that if a contested case is not ordered, then the Commission should provide a supplemental comment period of 90 days.

Fond du Lac Band of Lake Superior Chippewa

On March 20, 2026, the Fond du Lac Band of Lake Superior Chippewa (Fond du Lac Band) filed comments to reiterate it has no objection to Enbridge's planned annual capacity increase on Line 13. The Fond du Lac Band indicated that Enbridge met with its staff and with the Reservation Business Committee to discuss the details of the proposed expansion including:

- (1) The planned annual capacity increase will not exceed the 20 percent increase threshold;
- (2) The planned annual capacity increase will not require any new construction or components in the State of Minnesota; and
- (3) The Planned annual capacity increase will not result in an increase to the maximum operating pressure of Line 13.

The Fond du Lac Band stated that it agreed with Enbridge that the capacity increase should not require a certificate of need under Minn. Stat. § 216B.243 or Minn. R. 7853.0030(D), or recertification under Minn. R. 7853.0800, subp. 3.

Lac Courte Oreilles of Lake Superior Chippewa

In a letter dated March 20, 2026, the Lac Courte Oreilles of Lake Superior Chippewa (Lac Courte Oreilles Band) reaffirmed that it has no objection to Enbridge's plan to increase in the annual capacity of the Southern Lights pipeline. The Lac Courte Oreilles Band indicated that the pipeline travels through fee land owned by the Band near their reservation and through their traditional territory and believes its perspective on the planned activity is both warranted and necessary.

The Tribal Council of the Lac Courte Oreilles Band met with Enbridge to review and discuss the details of the planned increase on the pipeline and understand that it will not require construction in the State, does not increase the maximum pressure of the line, and will not result in an increase in throughput beyond the 20 percent threshold under Minn. R. 7853.0030(D).

As a Tribe with a vested interest in the Southern Lights Pipeline, the Lac Courte Oreilles Band encouraged the Commission to review and consider these facts and conclude that the capacity increase on the pipeline should not require a certificate of need under Minn. Stat. § 216B.243 nor Minn. R. 7853.0030(D) or a recertification of the line under Minn. R. 7853.0800, subp. 3.

Enbridge Energy Reply Comments

Response to the Fond du Lac and Lac Courte Oreilles Bands

Enbridge expressed its appreciation for the engagement and coordination with the Fond du Lac and Lac Courte Oreilles Bands on this matter. Enbridge has met with representatives from both tribes to share updates regarding its plans on Line 13. Enbridge agreed with the Band's recommendations that the planned capacity expansion on Line 13 does not require a certificate of need or recertification.

Response to DOC DER

In its comments on Enbridge's Notification, the DOC DER agreed that Minn. Stat § 216B.243 is conditioned on the existence of "construction" and that the use of DRA should not be considered "construction" under Minn. R 7853.0010, subp. 7. The DOC DER then recommended that the Commission require recertification under Minn. R. 7853.0800, suggesting that the rule may independently authorize the Commission to act even when the enabling statute does not. Enbridge asserted that this argument is incorrect as a matter of law. Enbridge put forth the following legal arguments:

- An Agency Rule cannot confer jurisdiction beyond that authorized by the enabling statute;



- Minn. R. Ch. 7853 itself forecloses the Department's interpretation.
- Minn. R. 7853.0030(D) similarly does not apply.

Recertification

Enbridge argued that even if recertification were permissible, the Department's proposed process would violate the Minnesota Environmental Policy Act (MEPA). Even if the Commission were to conclude that Minn. R. 7853.0800 allows for recertification in the absence of construction within the State, which it does not, it would be unlawful to proceed through the abbreviated process the Department recommends. Enbridge asserted that the DOC DER proposed process is incompatible with the requirements of the MEPA, Minn. Stat. § 116D.04:

In *In re North Dakota Pipeline Co. LLC*, 869 N.W.2d 693, 699 (Minn. Ct. App. 2015), the Court of Appeals held that "when certificate of need proceedings precede routing permit proceedings for a large oil pipeline, Minnesota Environmental Policy Act requires an environmental impact statement [EIS] to be completed before a final decision is made on the certificate of need." Under the court's ruling, recertification, too, must comply with MEPA.

Minn. Stat. § 116D.04, subd. 2a requires a responsible governmental unit to prepare a detailed EIS before engaging in any "major governmental action" that creates the "potential for significant environmental effects." To the extent that the Commission proceeded with recertification, it would appear that a Commission order recertifying Line 13 at 215,000 bpd would equally constitute a "final governmental decision" that, under North Dakota Pipeline, cannot be made without a completed EIS or its approved equivalent.

The Department's recommendation recognizes that some level of environmental review would be needed, recommending that recertification address "[u]pdating changes to environmental effects, including possible cumulative effects and impacts to Minnesota's Greenhouse Gas Emissions Reduction Goals." However, the North Dakota Pipeline court specifically found that even the Commission's own "high level" environmental review during the CN proceedings (completed via an environmental report) was "not meant to serve as a substitute for the more rigorous and detailed review needed to satisfy MEPA, and it cannot take the place of a formal EIS." The Department's proposed abbreviated recertification process, including a 60-day analysis followed by a supplemental 90-day comment period, is far less rigorous than the high-level, rule-based review the court found insufficient.

Enbridge suggested that while the Commission does not have to reach a decision regarding environmental review given its lack of jurisdiction over the proposed capacity expansion, it is important to note that the Department's abbreviated review process is also fraught with legal risk.

Informational Discrepancy

With respect to the discrepancies identified by the DOC DER in the publicly available 10-K filings

to the SEC, as well as the November 2024 application to the Canada Energy Regulator to increase the annual average capacity on Line 3, Enbridge asserted that no notification to the Commission was required for operation at those levels, and none was provided, consistent with the rule. The March 10, 2026 Informational Notice covering the proposed increase to 215,000 bpd (a 19% increase over 180,000 bpd), is what triggered the subpart 3 notification. Enbridge argued that there is no compliance gap.

Conclusion

Enbridge requested that the Commission: (1) reject the Department's recommendation that recertification is required; (2) find that no CN or recertification is required for the proposed capacity increase where no construction will occur; and (3) confirm within the 45-day period provided by Minn. R. 7853.0800, subp. 3 that the proposed change is acceptable without recertification.

DISCUSSION

Whether recertification is required is a legal issue and will not be addressed by regulatory Staff in briefing papers.

Staff notes, however, that the Commission previously addressed a petition in MPUC docket PL-9/C-20-801, requesting that the Commission require Enbridge to seek recertification for its capacity additions to Lines 4 and 67.

Although the Commission ultimately found the recertification was not necessary because Enbridge had demonstrated that it had not increased the capacities of Lines 4 and 67 more than 10% above the capacities approved by the Commission, the Commission's Order stated: "If Enbridge exceeds the authorized capacity limits of Lines 4 or 67 by more than 10% in the future, it will be required to comply with the recertification requirements in Minn. R. 7853.0800."⁴ Although dicta, staff notes that the Commission made this statement, despite Enbridge arguing that Minn. R. 7853.0800 does not apply to already-constructed and in-service interstate crude oil pipelines.

Staff further notes that when the Commission issues a pipeline CN, it engages in a complex analysis of the costs and benefits of the project. The magnitude of those costs and benefits is related to the capacity of the pipeline project. As the capacity goes up, the potential environmental impact may increase as well (i.e. the amount of oil at risk for spillage). While an increase in capacity might not require construction, it could conceivably change the factors that must be weighed in evaluating whether to grant a CN.

⁴ [ORDER DISMISSING PETITION AND COMPLAINT](#) (June 18, 2021), DOCKET NO. PL-9/C-20-801, p 7.

DECISION OPTIONS

Certificate of Need

1. Find that the request to increase the annual average capacity on Line 13 does not require a certificate of need under Minn. Stat § 216B.243 and Minn. R. 7853.0030(D). (Enbridge, DOC DER)

Or

2. Find that the request to increase the annual average capacity on Line 13 requires a certificate of need under Minn. Stat 216B.243.

Recertification

3. Find that the request to increase the annual average capacity on Line 13 does not require recertification under Minn. R. 7853.0800, subp. 3. (Enbridge)

Or

4. Find that the request to increase the annual average capacity on Line 13 requires recertification under Minn. R. 7853.0800, subp. 3. (DOC DER)

And

5. Initiate a recertification process as follows (Staff interpretation of DOC DER):
 - A. Within 60 days of the order, Enbridge shall file analyses of the material differences from the original proposal, including:
 - 1) Impacts on pollution, safety requirements, and mitigations needed due to the proposed changes in the quantity and chemical composition of the material being transported in the pipeline.
 - 2) Changes to environmental effects, including possible cumulative effects and impacts to Minnesota's greenhouse gas emissions reduction goals, created by the proposal.
 - 3) Updated annual operating, maintenance, and associated cost changes created by the proposed change.
 - 4) Expected changes to operations, including changes to pipeline operating pressure at peak demand and power demand changes at stations.
 - 5) Any changes to forecasted market conditions created by the proposal or changes to forecasts that created the conditions for the proposal.

- B. Supplemental comments on the above analyses may be filed within 90 days after Enbridge's filing.
- C. Delegate authority to the Executive Secretary to modify these procedures and deadlines. (Staff)

Environmental Review

If the Commission selects Decision Option 2 or 4, it may also select one of the following environmental review processes.

- 6. Require an environmental impact statement on the proposed increase to the annual average capacity. (Enbridge alternative if #1 is not selected)

Or

- 7. Require an environmental assessment worksheet on the proposed increase to the annual average capacity. (Staff alternative)

Or

- 8. Determine that no environmental review document is required pursuant to Minn. R. 4410.4600, subp. 2(D). (Staff alternative)