

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
RESERVATION BUSINESS COMMITTEE
LEGAL AFFAIRS OFFICE**



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February 27, 2018

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Minnesota Public Utilities Commission

121 7th Place East, Suite 350

St. Paul, MN 55101

RE:

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

OAH 65-2500-32764

MPUC PL-9/CN-14-916

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

OAH 65-2500-33377

MPUC PL-9/PPL-15-137

Dear Mr. Ek:

Enclosed please find the comments on the Revised Final EIS of the Fond du Lac
Band. An Affidavit of Service and Proof of Service are also enclosed.

If you have any questions, please contact me at 218-878-7393.

Respectfully,

Seth Bichler (MN # 0398068)

Staff Attorney

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**State of Minnesota
Office of Administrative Hearings
For the Public Utilities Commission**

**In the Matter of the Application of Enbridge Energy,
Limited Partnership for a Certificate of Need for the
Line 3 Replacement Project in Minnesota from the
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**OAH 65-2500-32764
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**In the Matter of the Application of Enbridge Energy,
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Line 3 Replacement Project in Minnesota From the
North Dakota Border to the Wisconsin Border**

**OAH 65-2500-33377
MPUC PL-9/PPL-15-137**

**Fond du Lac Band of Lake Superior Chippewa Line 3 Revised Final EIS
Comments**

To: The Fond du Lac Band of Lake Superior Chippewa respectfully submits these comments to the Minnesota Public Utilities Commission (the “Commission”) and to all parties.

Introduction: The Fond du Lac Band of Lake Superior Chippewa (the “Band”) hereby submits the following comments on the revised Final EIS, pursuant to the Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project (“Notice”) issued by the Commission on February 12, 2018.

Notice Bullet Point 3: The Notice, in its third bullet point, asks the following: “Does the revised Final EIS identify the extent to which resource impacts of route alternatives are or are not additive, *i.e.*, to what extent does a route alternative introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor?” The Band, having reviewed the revised Final EIS, comments that no, the revised Final EIS does not “identify the extent to which resource impacts of route alternatives are or are not additive” and provides the following examples.

Wild Rice: A table in the revised Final EIS highlights that the APR would have greater impact on wild rice waters than would continued use of existing Line 3.¹ However, the table fails to clarify which impacts would be additive versus those impacts that have already been inflicted on the diminished wild rice stands of Minnesota.² Another table in Chapter 6 identifies the

¹ Line 3 Revised Final EIS, Chapter 5, page 5-103

² *Id.*

numerous impacts to wild rice waters posed by the APR and various alternatives but entirely fails to identify which of these impacts would be additive.³

Calcareous Fens: Page 5-139 of the revised Final EIS states that: “Only the Applicant’s proposed project has the potential to affect a calcareous fen during construction.” However, it does not clarify whether this impact will be additive or not, leaving parties and the general public to try to puzzle out whether this is a new impact or not. On the same page, the Final EIS states that “[c]ontinued use of the existing Line 3 has the greatest potential to affect calcareous fens because the existing Line 3 crosses three fens, followed by the Applicant’s proposed project which crosses one fen.” Left unsaid and presumably unanalyzed is the question of whether the construction impact to one fen to be crossed by the APR is a new, additive impact. Further, the revised Final EIS fails to analyze whether the three fens would face continued impact from the other pipelines in the current Enbridge Mainline, which contains Line 3. The other pipelines in the Enbridge Mainline are to remain operational regardless of what occurs with Line 3, so the impact to the three fens crossed by “existing Line 3” will likely continue even if the Commission approves the new Line 3. The final Revised EIS is incorrect when it states that “existing Line 3 has the greatest potential to affect Calcareous fens” because it entirely fails to acknowledge that the impacts to fens from the old Line 3 already exist and will likely continue for decades into the future, even if a new Line 3 is constructed. With regard to calcareous fens, the final Revised EIS gives the false impression that continued use of existing Line 3 would somehow be more harmful the three fens in question than the APR, even though the only additive impact appears to come from the APR. This section fails to correctly identify the additive impacts of the project in a way that can inform the Commission, the Parties, or the general public.

Archaeological and Cultural Resources: The revised Final EIS further fails to identify the additive nature of construction and operations impacts to known archaeological and cultural resources posed by the APR as opposed to the already existing impacts of continuing to operate existing Line 3. A table included in the Revised Final EIS reveals that there would be more impacts from construction to previously recorded archaeological site from the APR than any of the other Route Alternatives other than RA-08.⁴ However, the table does nothing to explain to the reader which sites have been previously impacted and thus fails completely to identify which impacts would be additive as required by the Commission.⁵ Similarly the table on page 5-649 and 5-650 correctly points out that there would be no construction impacts on previously recorded archaeological resources from continued use of existing line 3 as opposed to the APR,

³ Line 3 Revised Final EIS Chapter 6, Page 6-293.

⁴ Line 3 Revised Final EIS Chapter 6, page 688.

⁵ Minnesota Public Utilities Commission (December 14, 2017) Order Finding Environmental Impact Statement Inadequate, e-dockets No. 201712-138168-01.

SA-04, or rail or truck alternatives.⁶ However, this table also fails to illuminate which impacts to historic and archaeological resources would be additive.⁷

Notice Bullet Point 4: The revised Final EIS contains the following statement on page 5-619-620 in response to the Notice's fourth bullet point: "In its December 14, 2017, order finding the Line 3 Project EIS inadequate, the Commission specified that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in the Line 3 Project proceeding."⁸

Unfortunately, neither the Minnesota Department of Commerce nor the Commission has provided the Band or the general public of Minnesota with any further clarity on what it considers to be a sufficient and "completed" traditional cultural properties survey. The Band wishes to stress that there is currently no provision in the revised Final EIS, or any other authority known to the Band, that will allow the tribal cultural properties survey to access more than a small portion of the APR and any portion of the alternative routes being evaluated in this proceeding. Further, there is nothing in the revised Final EIS that will provide for the protection of sites that are discovered in the traditional cultural properties survey after they are discovered and documented by the survey.

The final Revised EIS leaves the Band with the mere hope that "[a]voiding known cultural resources may be possible" and that the "need for mitigation for impacts on archaeological and historic resources would be discussed" although "additional survey may also be needed to account for potential changes to the Applicant's project, as well as if a subsequent route permit is issued that accounts for areas not already investigated or surveyed."⁹ The use of permissive language such as "may" when describing a need for avoidance to be "discussed" is hardly reassuring to a people who have watched their cultural patrimony steadily destroyed throughout the relatively short existence of the State of Minnesota. The Band is certain that historic and cultural resources of European Americans would not be treated so cavalierly, as though protection is optional. Once again, as an extreme numerical minority in its own homeland, the Band stands to suffer from the tyranny of the majority.

The Band is not interested in documenting its heritage immediately prior to its destruction; the Band's interest instead lies in defending its historical and cultural resources to the fullest extent of its abilities. To do so first requires the identification of all sites on the APR, property the Band has not had access to for many decades and only Enbridge can facilitate access to. Protection of the Band's resources also requires a plan for avoiding those sites of incomparable

⁶ See Line 3 Revised Final EIS Chapter 5, page 5-640.

⁷ *Id.*

⁸ See also Line 3 Revised Final EIS Chapter 6, page 6-668.

⁹ Line 3 Revised Final EIS, Chapter 5, page 5-647; see also Line 3 Revised Final EIS, Chapter 6, page 6-687

cultural and religious significance. Anything less will merely compound the historic trauma and mistreatment of American Indian communities in this state that continues to the present day.

Unfortunately, absent further language in a future revised Final EIS or permit conditions required by some other part of the Minnesota government, the destruction of cultural properties immediately after their identification by the Band appears to be a distinct possibility. It is worth noting that the outcome most feared by the Band closely mirrors the recent events adjacent to the Standing Rock Reservation which led to major social unrest and the profoundly tragic and permanent loss of traditional cultural properties due to the inadequate review of the Dakota Access Project prior to its construction. The current language of the revised Final Environmental Impact appears inadequate to protect the Band's archaeological and cultural resources as required by state and federal law. The Band now stresses that the revised Final EIS remains inadequate for the aforementioned reasons and because "[w]ithout specific knowledge of the particulars of a TCP, the assessment of potential impacts is difficult to accomplish."¹⁰

This concludes the comments of the Band on the revised Final EIS.

FOND DU LAC BAND OF LAKE SUPERIOR
CHIPPEWA



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¹⁰ Line 3 Revised Final EIS, Chapter 6, page 6-679.

AFFIDAVIT OF SERVICE

**Re: In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement – Phase 3 Project in Minnesota from the North Dakota Border to the Wisconsin Border
MPUC Docket No. PL-9/CN-14-916; OAH Docket No. 65-2500-32764**

**In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Route Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border
MPUC Docket No. PL-9/PPL-15-137; OAH Docket No. 65-2500-3337**


STATE OF MINNESOTA)
) ss.
COUNTY OF CARLTON)

I, Seth Bichler, hereby state that on February 27, 2018, I filed by electronic eDockets the attached comments on the Revised Final EIS of the Fond du Lac Band and eServed on February 27, 2018, and sent by US Mail on February 27, 2018, as noted, to all parties on the attached service list.

See attached service list.


_____ **SETH BICHLER**

Subscribed and sworn to before me on this
27 day of February, 2018.



Notary Public – Minnesota
My Commission Expires January 31, 2020



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