

**State of Minnesota
Before the
Minnesota Public Utilities Commission**

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

IN THE MATTER OF THE APPLICATION FOR A CERTIFICATE OF NEED FOR THE LINE 67 STATION UPGRADE PROJECT – PHASE 2	DOCKET No. PL9/CN-13-153 REPLY COMMENTS REGARDING COMPLETENESS AND REQUEST FOR VARIANCE
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INTRODUCTION

Enbridge Energy, Limited Partnership, a Delaware limited liability partnership (“Enbridge”), respectfully submits these Reply Comments regarding completeness of its Certificate of Need (“CN”) application (the “Application”) for its Line 67 Station Upgrade Project – Phase 2 (the “Project”). Comments regarding completeness were submitted to the Minnesota Public Utilities Commission (the “MPUC”) by the Minnesota Department of Commerce, Division of Energy Resources (the “Department”) and by MN350, a Minnesota non-profit corporation (“MN350”). Enbridge also requests a variance from a page limit set by the Minnesota Rules, as discussed below.

THE PROJECT

It is important to clarify the scope of the Project. The Project is the second phase of Enbridge’s program to upgrade the capacity of its Line 67 pipeline, which was installed in Minnesota in 2010, following receipt of a CN and a Pipeline Routing Permit (“PRP”) from the MPUC on December 29, 2008.

Line 67 was designed and installed with future upgrades in mind to reduce the need to install additional pipelines necessary to meet growing demand and capacity of North American crude oil production. The CN issued in 2008 allowed operation at its initial annual capacity of 450,000 barrels per day (“bpd”), but anticipating future need, Enbridge designed, installed, and pressure tested Line 67 to be capable of safe operation at an annual capacity of 800,000 bpd of heavy crude oil after adding pump horsepower. Upgrades to reach that capacity require Enbridge to obtain a CN from the MPUC, as requested in the Application.

The Project is the second phase of Enbridge's planned upgrades to Line 67. The MPUC approved the first phase, an upgrade from 450,000 bpd to 570,000 bpd, in an order issued on August 12, 2013.¹ The initial phase involved modifying Enbridge's Viking, Clearbrook, and Deer River pump stations. Phase 2, this Project, involves constructing new pump stations at or near Enbridge's Donaldson, Plummer, Cass Lake, and Floodwood station sites, as well as very minor changes to the pump stations upgraded as part of the first phase.

Environmental review of Line 67's route across Minnesota was completed in 2008 when the MPUC issued the PRP. The Project is quite limited in scope. No physical changes will be made to the route. No construction work will take place outside of the station sites detailed in the Application. The route, in other words, is not at issue.

The Project is a continuation of Phase 1. The only differences between Phase 1 and Phase 2 are the in-service dates, the volumes, and the sites to be upgraded. The issues presented to the MPUC are identical to those presented in Phase 1. The Project reflects the demand by shippers and refiners in the United States to change the source of their supply of crude oil. Domestic refiners are turning to Canada and domestic sources to meet their crude petroleum needs instead of importing barrels of oil from overseas sources, which are often less reliable and less friendly to the interests of the United States. The Project is a low-cost, low-impact avenue to meet that demand, providing a safe and economic method to transport additional North American crude oil to United States refineries.

REPLY COMMENTS

The following sections respond to the comments regarding completeness of the Application filed by the Department and MN350.

I. Response to the Comments of the Department of Commerce and Request for Variance.

A. Request for Variance

Many of the Department's comments focused on the need for the Project, and the consequences of denying the Application for Phase 2 as opposed to the earlier Phase 1 expansion of Line 67. This information is largely addressed in Section 7853.0240 of the Application, which provides the need summary. Enbridge's original Application included a need summary that was 15 pages long, which is the limit for that section set by Minn. R. 7853.0240. Responding to the Department's data request required Enbridge to add information to that section, resulting in a Revised Section 7853.0240 that is 16 pages long. Enbridge therefore requests a variance from the 15 page limit, as allowed by Minn. R. 7829.3200. To grant this variance, the MPUC must find the following:

¹ MPUC Docket No. PL9/CN-12-590.

- that enforcement of the 15-page limit would impose an excessive burden on Enbridge;
- that granting the variance would not adversely affect the public's interest; and
- that granting the variance would not conflict with standards imposed by law.²

All three requirements are met in this instance. Enforcement of the 15-page limit will impose an excessive burden on Enbridge by restricting its ability to respond to the Department's comments and support the Application. Granting the variance would actually support the public's interest because it would allow relevant issues to be explored in greater detail. Finally, the page limitation on Section 7853.0240 of the Application is only imposed by Minn. R. 7853.0240. Granting the variance would not conflict with any other standard imposed by law.

B. Responses to the Department's Comments

Enbridge has prepared and filed the following revised sections of the Application to provide the information requested by the Department:

- REVISED § 7853.0240
- REVISED § 7853.0270
- REVISED § 7853.0510
- REVISED § 7853.0520 (TRADE SECRET)
- REVISED § 7853.0530
- REVISED § 7853.0540
- REVISED § 7853.0600

These revised sections have been incorporated into the versions of the Application filed with the MPUC on August 16, 2013. Additional information responding to the Department's comments is provided in the following paragraphs,

1. Minn. R. 7853.0240

The Department requested that Enbridge provide "a discussion addressing why the proposal is needed to meet adequacy, reliability, or efficiency of energy supply to the people of Minnesota and neighboring states." Additionally the Department requested that Enbridge provide "information on the effect of the loss of supplies, if volumes associated with this project are exported, for the United States on the price and reliability of oil supplies in the United States and, in particular, for Minnesota and the surrounding region. [Enbridge] should also include in this discussion a detailed explanation of how Minnesota customers,

² Minn. R. 7829.3200, Subp. 1.

and customers in neighboring states, will benefit from the proposed upgrade if volumes are not used in Minnesota or surrounding states.”³

Revised Section 7853.0240 includes updates in Subparts D.2 and D.5 providing this information.

2. Minn. R. 7853.0270

The Department requested that Enbridge “provide, regarding the Lakehead System over the last five years, a detailed description of each spill that has occurred. For each such spill, the Department requests that [Enbridge] include, in its discussion: the size, location, investigation status, cost of clean-up and reclamation, amount of fines paid or that remains unpaid together with the identity of the authority that levied the fine, the amount of compensatory damages together with the identity of the recipient of each damage award, each violation of law as to each spill together with identification of the authority that determined each violation, a summary of each resolved complaint, and identification of each outstanding complaint filed against [Enbridge] by a governmental agency as well as a member of the public.”⁴

Revised Section 7853.0270 includes a table providing the majority of this information. Enbridge has not, however, included details of private litigation, such as compensatory damages, damage award recipients, and related information.

Enbridge was unable to identify a requirement to provide data on private litigation in the Minnesota Rules. In addition, disclosure of this information could violate confidentiality clauses in settlement agreements, prejudice ongoing litigation or settlement efforts, and have other adverse impacts on Enbridge.

3. Minn. R. 7853.0510

The Department requested that Enbridge provide “a breakdown of in-state delivery, on an annual percentage basis, by crude type (e.g., heavy crude, light crude).”

Enbridge provides the requested breakdown in Table 7853.0510-1-D.1 in Revised Section 7853.0510.

4. Minn. R. 7853.0520

The Department requested that Enbridge provide “independent data from a non-aligned agency, such as the Energy Information Agency and Canadian Energy Board, to confirm the forecasting data provided in response to Minnesota Rule 7853.0520. Since Minnesota Rule 7853.0520 requires that the forecast data pertain to the “geographical area

³ Department Comment, p. 7-8.

⁴ Department Comments, p. 4.

to be served by the proposed facility” the data should be consistent with the geographical area to be served under the Petition, whether in the United States or elsewhere.”⁵

Revised Section 7853.0520 was updated to include forecast information from the National Energy Board (“NEB”) of Canada. However, the NEB forecast addresses overall WCSB production and as such is not directly comparable to the Enbridge forecast which addresses only the portion of the supply accruing to Enbridge. Enbridge was not able to obtain a comprehensive Canadian oil sands production forecast from the Energy Information Agency (“EIA”).

5. Minn. R. 7853.0530, Subp. 1, B.

The Department requested that Enbridge provide “proposed or estimated-to-be-proposed Federal Energy Regulatory Commission (“FERC”) tariffs and annual operating and maintenance costs for the proposed project. If the FERC tariffs are not available, Enbridge should provide a discussion of when these tariffs will be available and, when the tariffs are available, the Applicant should provide these tariffs in this record.”⁶

Revised Section 7853.0530, Subpart 1.B was updated to provide more detailed information regarding Enbridge’s FERC Tariffs and explain how the cost-of-service tariff mechanism sets the rates for shipper requested projects through a true-up each year to actual costs and throughput. All issues related to the Tariff are adjudicated by the FERC and are thus under the FERC’s exclusive jurisdiction. As discussed more in-depth in the revised section, Enbridge plans to file with FERC approximately 60 days prior to the pipeline going into service.

6. Minn. R. 7853.0540

The Department requested that Enbridge provide “for each alternative, a comparison of estimated total costs, both on a total basis and on an annual operating basis, and estimated annual operating costs to the Company’s total costs and operating costs associated with its proposed project. As part of the operating analysis, Enbridge should estimate these costs both at current levels and expected levels during the economic life of the alternative and the proposed project.” The Department also requested that Enbridge “provide a detailed analysis of current, and forecasted, cost per barrel to ship crude oil for each alternative and Enbridge’s proposed project to Minnesota and also to the other markets discussed in the Petition.”⁷

⁵ Department Comments, p. 8.

⁶ Department Comments, p. 8.

⁷ Department Comments, p. 8.

Revised Section 7853.0540 includes updates to the “No Action”, “Rail” and “Trucking” alternative analysis. Enbridge was able to estimate the costs of these alternatives using available public information.

7. Minn. R. 7853.0600

The Department requested that Enbridge provide “An estimate of pump station electric consumption, based on the pipeline alternative specifications provided in section 7853.0600, B2”.⁸

Revised Section 7853.0600 includes updates on the number of pump stations required for the entire project and in Minnesota and the estimated electric consumption.

8. Minn. Stat. 216B.243.

The Department also requested that Enbridge provide “all available information regarding the policies, rules, and regulations of other state and federal agencies and local governments.”⁹ The Project is limited to discrete upgrades at specific station sites in Minnesota. The only policies, rules, and regulations of other state agencies are those of state agencies in Minnesota. The Application details the permits required from other state agencies in Section 7853.0230, in Table 7853.0230-2. Permits required of federal agencies are also included in that table.

Enbridge filed an application for a Presidential Permit to Operate and Maintain Pipeline Facilities on the Border of the United States and Canada with the U.S. Department of State on November 20, 2012. Enbridge filed environmental reports on December 17, 2012. The Department of State published notice of the application in the Federal Register on January 2, 2013.¹⁰ The Department of State then published its Notice of Intent to Prepare a Supplemental Environmental Impact Statement (EIS) in the Federal Register on March 15, 2013.¹¹ That notice established public scoping period from March 14, 2013 to April 29, 2013. The Department of State also sent out a Request for Proposal in December, 2012 for a third party contractor to prepare the Supplemental EIS. An official third-party contractor has not been selected; therefore Enbridge does not know when the Supplemental EIS process will be completed.

⁸ Department Comments, p. 8.

⁹ Department Comments, p. 6-7

¹⁰ 78 Fed. Reg. 144, available online at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31557.pdf>.

¹¹ 78 Fed. Reg. 16565, available online at <http://www.gpo.gov/fdsys/pkg/FR-2013-03-15/pdf/2013-06039.pdf>.

C. Conclusion Regarding the Department's Comments

The revised sections of the Application included with this filing provide the relevant information requested by the Department.

II. Comments filed by MN350

MN350's comments attempt to expand the scope of the MPUC's review of the Application to something that is both far beyond the Project presented by Enbridge, and well outside the scope of the MPUC's jurisdiction. At the same time, MN350 ignores information in the Application, provides little to no support for its claims, and generally fails to relate its comments to the actual requirements of Chapter 7853 of the Minnesota Rules.

As noted previously, the Project involves upgrades at a series of pump stations in Minnesota. It does not involve permitting oil extraction in Canada, altering the route of Line 67, new pipeline installation in the right-of-way, or downstream refining and consumption of petroleum by entities other than Enbridge. All of those issues are beyond the scope of the Project. Enbridge is a common carrier; it moves a product, in this case heavy crude oil, on behalf of shippers. As disclosed in the Application and the prior certificates of need issued for Line 67, the oil transported in Line 67 originates in the Western Canadian Sedimentary Basin, typically in Northern Alberta, Canada. From there, following an upgrading process undertaken by the producers, it is shipped on Line 67 by a shipper, which may not be the ultimate refiner, to a refinery directly or indirectly connected to the Enbridge system. That could be any one of the refineries listed in Table 7853.0240-C.1.

Enbridge does not extract, process, own, refine, or sell the oil. None of those activities are within the scope of the Application or the MPUC's review. The route followed by Line 67 was permitted in 2008, and the line has been installed and operating for multiple years. No changes will be made to the pipeline along the route, and no new segments of pipe will be installed outside of the station sites.

A. MN350's claims regarding contested facts.

A significant portion of MN350's comments present MN350's position on the merits of the Application under the guise of contesting the information presented in the Application. A contested case hearing, however, is not necessary. MN350's allegations of contested fact ignore the contents of the Application and attempt to convince the MPUC to review matters outside the scope of the Project.

MN350's first allegation is that the Project will not relieve any mainline system constraints, presumably to argue that the Project is not needed.¹² MN350 ignores the section of the Application that details a number of other projects either in process or being

¹² MN350 Comments, p. 2.

planned by Enbridge in other states.¹³ These projects are part of Enbridge's overall efforts to optimize the efficiency of its network and satisfy U.S. demand for a secure source of crude oil.

MN350 also claims that the heavy oil production forecasts presented in the Application are inaccurate, but it does not say how those forecasts are inaccurate, or even claim that there will not be oil to transport on Line 67 at its full capacity. The Department found during Enbridge's Phase 1 application process that Canadian production is expected to grow and that refineries in the United States are investing in significant modifications or expansions to take advantage of that growth.¹⁴ There is no contested fact here.

MN350's claims regarding competition from other sources of transportation are also in error.¹⁵ Line 67 serves Minnesota and the Upper Midwest, as well as providing access to the rest of the Enbridge mainline system. Those areas will not be served by the proposed Keystone XL pipeline.¹⁶ As detailed in the Application, competing transportation methods, including rail and truck transportation, are more expensive, have greater environmental impacts, and would be less safe than the Project.¹⁷ A contested case hearing is not required to evaluate these issues, as the proposed Keystone XL pipeline will not serve Minnesota or the surrounding region, and Enbridge has provided significant data on the alternatives to the Project. Any remaining questions regarding these issues can be addressed through an informal comment and reply process.

MN350's next argument is that the Project "will not benefit Minnesota refineries or refineries in neighboring states, because current heavy crude oil import capacity is sufficient and competition by Bakken Formation oils has slowed demand for increased heavy oil refining..."¹⁸ MN350 is mistaken, and the MPUC's findings in its order dated August 12, 2013 directly contradict many assertions made by MN350.¹⁹ Any open questions on this issue can also be addressed through an informal comment and reply process.

¹³ Application, § 7853.0240.

¹⁴ MPUC Order Granting Certificate of Need, MPUC Docket No. PL-9/CN-12-590, August 12, 2013, p. 4-5 (available online at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={7226AF15-6672-4440-893E-91EA37A868CC}&documentTitle=20138-90205-01}>).

¹⁵ Enbridge also notes that MN350's promotion of the Keystone XL pipeline as an alternative to the expansion of Line 67 is somewhat curious, as Paul Blackburn, the attorney that filed and served MN350's comments, is actively engaged in opposing the Keystone XL pipeline as well as apparently representing MN350 in this application. See Mr. Blackburn's comments at <http://www.youtube.com/watch?v=ISasCBHcfvk>.

¹⁶ Application, REVISED § 7853.0540.

¹⁷ Application, REVISED §§ 7853.0540.

¹⁸ MN350 Comments, p. 5.

¹⁹ MPUC Order Granting Certificate of Need, MPUC Docket No. PL-9/CN-12-590, August 12, 2013, p. 4-5 (available online at <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={7226AF15-6672-4440-893E-91EA37A868CC}&documentTitle=20138-90205-01}>).

MN350 argues that the Application must address climate change and greenhouse gas emissions for Canadian oil production, refining, and alleged “increased” combustion of petroleum.²⁰ MN350 cites no authority for this proposition, and cannot do so. The Application discloses the estimated emissions created by ongoing operation of Line 67 at the increased capacity requested by Enbridge, as required by Minn. R. 7853.0620.²¹ The issues raised by MN350 are all outside the scope of the Project and the Minnesota Rules. Enbridge notes that these issues were not analyzed by the MPUC, despite requests similar to MN350’s, during the MPUC’s review of the original Line 67 CN application in 2008, review of Enbridge’s CN application for its LSr Project in 2008, or even in the just-completed review of Enbridge’s nearly identical Line 67, Phase 1 application. There is no need for a contested case hearing to conduct an analysis that is outside the scope of the Project and the Minnesota Rules.

MN350’s final alleged factual dispute is regarding Enbridge’s response to NTSB reports following the 2010 Line 6B incident in Michigan. MN350’s comments ignore the extensive treatment given to this issue in Section 7853.0270 of the Application.

B. MN350’s claims regarding the completeness of the Application are inaccurate.

Responses to the comments of MN350 that address the completeness of the Application are below.

1. General Information

MN350 claims that Enbridge must disclose the nationality of the companies that ship products on Line 67.²² MN350 cites no support for this claim because the Minnesota Rules do not require this disclosure. And in any event, Enbridge is prohibited from disclosing this information. Transportation Service Agreements between Enbridge and the individual shippers have confidentiality clauses that prohibit the disclosure of the details of the contracts by shippers. Enbridge is also barred from releasing that data by Section 15(3) of the Interstate Commerce Act, which prohibits the disclosure of shipper-specific information of the kind sought by MN350.²³

MN350 also claims that Enbridge has not disclosed whether Line 67 is used to deliver crude oil to the Pine Bend and Northern Tier refineries in Minnesota.²⁴ Line 67 does indeed serve Minnesota refineries through the connection to the MinnCan pipeline at

²⁰ MN350 Comments, p. 7 to 9.

²¹ Application, § 7853.0620.

²² MN350 Comments, p. 11.

²³ The Interstate Commerce Act continues to govern transportation by pipelines. See United States Code, 1988 Edition, Volume 19, Title 49, available online at <http://www.ferc.gov/legal/maj-ord-reg/ica.pdf>.

²⁴ MN350 Comments, p. 11.

Clearbrook, Minnesota.²⁵ Table 7853.0510-1-D.1 in the Application discloses the average delivery of heavy crude oil in Minnesota. The Application is complete on this issue.

2. Description of the Area to be Served

MN350 next claims that the Application does not disclose the markets to be served by the additional capacity to be transported by Enbridge after completion of the Project.²⁶ That is untrue. The Application makes it clear that the expansion proposed in the Application will serve all markets that can be reached by Enbridge's network, including Minnesota.²⁷ In fact, the Application provides a complete list of connected refineries.²⁸ And as noted above, shipper information cannot be disclosed to MN350. Enbridge, as a common carrier, cannot discriminate between shippers and cannot dictate the final destination of oil transported through its pipelines. The Application is complete on this point.

3. Information Regarding Need

MN350 makes a number of claims regarding need. It first claims that the purpose of additional storage tanks should be clarified.²⁹ The Application, however, explains that the storage tanks will be used for breakout capacity and batching management.³⁰ The storage tanks planned by Enbridge will be located in Superior, Wisconsin, and are not part of the portion of the Project regulated by the MPUC.

MN350 also asserts that forecasts show flat demand for refined petroleum products in the United States.³¹ MN350 misses the point; the Project will serve to replace supplies imported into the United States from sources that are unstable and less friendly to the interests of the United States. Although the increased capacity can serve future increases in demand, such increases are not required for the Project to be fully utilized. MN350 also makes its claims based on the status of Enbridge's pipelines at this moment in time. The purpose of the Project is to satisfy demand for transportation capacity on Line 67 in the near future, as explained in the Application. Enbridge must plan years in advance due to the time required to apply for and obtain a CN, order components, and complete construction and testing of the Project. MN350's arguments regarding completeness on this point are without basis.

²⁵ Application, REVISED § 7853.0240, p. 11.

²⁶ MN350 Comments, p. 11.

²⁷ Application, § 7853.0240 (original and REVISED).

²⁸ Application, § 7853.0240, Table 7853.0240-C.1 (original and REVISED).

²⁹ MN350 Comments, p. 11.

³⁰ Application, § 7853.0240, p. 1 (original and REVISED).

³¹ MN350 Comments, p. 12.

4. Additional Considerations

Enbridge did receive a Corrective Action Order (“CAO”) from the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) on August 1, 2012. The CAO was issued after a release near Grand Marsh, Wisconsin on July 27, 2012. The CAO required Enbridge to prepare a written plan to review and improve the safety of the Lakehead system. Enbridge submitted the written plan on August 2, 2012. The written plan includes many initiatives that were already underway at Enbridge following the Line 6B release in Marshall, Michigan. Enbridge continues to work directly with PHMSA on these matters, and Enbridge’s initiatives are detailed in Section 7853.0270 of the Application.

MN350 also makes numerous assertions regarding other Enbridge pipelines that are not the subject of this docket.³² MN350’s perceived lack of detail regarding unrelated issues does not render the Application incomplete.

MN350 also mistakes some information filed with the Application.³³ The Spill Prevention, Containment and Control Plan filed with the Application as Exhibit E is not intended to satisfy the requirements of Minn. Stat. 115E.03, Subd. 4 and 115E.04. That plan clearly states in its introductory paragraph that it “describes planning, prevention and control measures to minimize impacts resulting from spills of fuels, petroleum products, or other regulated substances *as a result of construction.*”³⁴ The Application is complete on this point.

Section 7853.0270 of the Application also discusses Enbridge’s safety monitoring and inspection programs in great detail, contrary to the assertions of MN350.³⁵

MN350 next maintains that the Application is incomplete because of a lack of temperature data, because MN350 apparently believes that the Project will operate at temperatures that lead to dangerous conditions within the pipeline.³⁶ MN350 fails to disclose in its argument, however, that the Application does contain information regarding safety and operating temperatures. In fact, the Application contains a discussion of the characteristics of the crude oil to be transported, including the results of a recent National Research Council study that found “Diluted bitumen does not have unique or extreme properties that make it more likely than other crude oils to cause internal damage to transmission pipelines from corrosion or erosion. . . The organic acids in diluted bitumen are not corrosive to steel at pipeline operating temperatures.”³⁷ The application is complete on all these points.

³² MN350 Comments, p. 13.

³³ MN350 Comments, p. 13.

³⁴ Application, Exhibit E, p. 1 (emphasis added).

³⁵ MN350 Comments, p. 13-14.

³⁶ MN350 Comments, p. 14-15.

³⁷ Application, § 7853.0270.

5. Conservation Programs

MN350 also asserts that the Application is incomplete because it does not disclose whether Enbridge has conservation programs in Minnesota, and does not specify whether Enbridge has renewable energy powering its pumps.³⁸ To the contrary, Section 7853.0260 of the Application specifically describes conservation programs that Enbridge undertakes. And while Enbridge describes the renewable generation facilities it owns, there is no requirement in Minnesota law that Enbridge specifically power the pumps to be installed as part of the Project through renewable sources. The Application is complete on these points.

6. Historical Energy Data and Description of the Facility

MN350's comments regarding historical energy data are found in two sections of its Comments, one titled "Historical Energy Data" and another titled "Description of the Facility."³⁹ Both sections actually address the requirements of Minn. R. 7853.0510. MN350's comments regarding that rule are misplaced.

MN350 claims that Enbridge's data regarding annual capacity is insufficient. Enbridge disagrees. Enbridge has provided the same data for its three most recent CN applications, and the Department did not view the Application as deficient in this area. MN350 next alleges a lack of information regarding the source of the crude oil to be transported, whether those sources are in or out of state, categories of petroleum products and quantities, and the geographical origin of the crude oil. All of that information is provided in Section 7853.0510 of the Application.⁴⁰

MN350 next claims that the Application is incomplete because it does not, in MN350's view, sufficiently predict where the oil transported by Line 67 will be delivered over the next five years. Aside from the fact that Minn. R. 7853.0510 does not call for that information,⁴¹ Enbridge is a common carrier. As such, it cannot specifically predict or dictate the destination of the oil transported on its network. The Application does, however, include a detailed list of connected refining facilities. And as previously discussed, Enbridge cannot identify shippers due to requirements of federal law.

7. Impacted Environment

MN350's final claims regarding completeness relate to Minn. R. 7853.0610, which requires certain environmental information. That rule, however, only applies to applications for new pipelines. The Project does not involve construction of a new pipeline; it is a limited upgrade of an existing pipeline, the route for which was fully reviewed and permitted in

³⁸ MN350 Comments, p. 15.

³⁹ MN350 Comments, p. 15-16.

⁴⁰ Both original and REVISED.

⁴¹ Forecast data is provided by Enbridge in Section 7853.0520, which is included for the Department's review in the Trade Secret version of the Application.

2008. Contrary to MN350's assertions, the increased throughput requested in the Application will not increase the risk of releases. As discussed in the Application, Line 67 was designed, constructed, and tested to operate at the levels requested in the Application.

III. Requests for Contested Case Hearings

Both the Department and MN350 requested that the MPUC refer the Application to the Office of Administrative Hearings for a contested case proceeding. The Department requested additional information, but did not dispute any facts presented by Enbridge in the Application. Instead, the Department made that request based on the level of public interest in Enbridge's Phase 1 application.⁴² Enbridge notes that the majority of the public interest in that application was related to Canadian oil production issues or other Enbridge pipelines. There is no need for a contested case hearing on this Application related to those issues, as they are irrelevant to the Application.

MN350 also requested a contested case hearing. But its request is based on an inaccurate presentation of the Project, general disagreement with the transportation and use of petroleum, and concern over oil production activities that are conducted in a foreign country in connection with the laws of that country. The issues raised by MN350 are all outside the scope of the Project and the Minnesota Rules. There is no need for a contested case hearing to conduct an analysis that is outside the scope of the Project or the MPUC's authority.

The MPUC can order use of an informal comment-and-reply process when contested case proceedings are not required. One example of such a situation is when material facts are not in dispute.⁴³ As discussed above, none of the alleged factual disputes involve matters that are material to the MPUC's analysis under Minn. R. 7853.0130. If any relevant facts are disputed during that process, Enbridge and any other participant would be required to submit factual allegations under oath or by affirmation.⁴⁴ Holding a contested case proceeding merely for the purpose of holding a contested case proceeding is an inefficient allocation of resources for the MPUC, the Department, Enbridge, and other interested parties that will only delay processing of the Application.

CONCLUSION

Enbridge respectfully requests that the MPUC accept the Application as modified by the revised application sections included with this filing. Enbridge also requests that the MPUC vary the page limit set by Minn. R. 7853.0240 to allow Enbridge to fully respond to the Department's data request. Finally, Enbridge respectfully requests that the MPUC review the application under an informal comment and reply process. That process served

⁴² Department Comments, p. 7.

⁴³ Minn. R. 7829.1200, Subp. 1.A.

⁴⁴ Minn. R. 7829.1200, Subp. 2.

the MPUC well during the just-completed review of Enbridge's application for the Phase 1 expansion of Line 67, which presented identical issues to the MPUC.

Respectfully Submitted,

/s/ Arshia Javaherian

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