

OAH 65-2500-32764
MPUC PL-9/CN-14-916

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

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 North Dakota Border to the Wisconsin Border

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

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

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This matter came before Administrative Law Judge Eric L. Lipman upon the receipt of comments from the parties and interested persons.

Christina K. Brusven and Patrick D. J. Mahlberg, Fredrikson & Byron, P.A., and Eric F. Swanson, Winthrop & Weinstine, P.A., appeared on behalf of the Applicant, Enbridge Energy, LP (Applicant or Enbridge).

Brian M. Meloy, Stinson, Leonard Street, appeared on behalf of Kennecott Exploration Company (Kennecott).

Kevin Pranis, Organizing Director, appeared on behalf of Laborers' District Council of Minnesota and North Dakota (Laborers' Council).

Brendan D. Cummins and Samuel N. Jackson, Cummins & Cummins, P.A., and Ellen O. Boardman and Aima Friedlander, O'Donoghue & O'Donoghue LLP, appeared on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association).

Michael J. Ahern and Brian B. Bell, Dorsey & Whitney, LLP, appeared on behalf of Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers).

Leili Fatehi, Advocate, PLLC, appeared on behalf of the Sierra Club (Sierra Club).

Scott R. Strand, Environmental Law & Policy Center, appeared on behalf of Friends of the Headwaters (FOH).

Frank W. Bibeau and Paul C. Blackburn, Attorneys at Law, appeared on behalf of Honor the Earth.

Charles N. Nauen and Rachel A. Kitze Collins, Lockridge, Grindal, Nauen, PLLP, appeared on behalf of the Mille Lacs Band of Ojibwe (Mille Lacs Band).

Philip R. Mahowald, Jacobson Law Group, Sara K. Van Norman, Davis Law Office, and Seth J. Bichler, Staff Attorney to the Band, appeared on behalf of the Fond du Lac Band of Lake Superior Chippewa (Fond Du Lac Band).

James W. Reents, Pipeline Work Group Coordinator, appeared on behalf of Northern Water Alliance of Minnesota (NWAM).

Joseph Plumer, White Earth Band of Ojibwe (White Earth Band) and the Red Lake Band of Chippewa Indians (Red Lake Band).

Christopher A. Allery, Legal Director, appeared on behalf of the Leech Lake Band of Ojibwe (Leech Lake Band).

Donovan and Anna Dyrdal (Dyrdals), appeared on their own behalf and without counsel.

Akilah Sanders-Reed appeared on behalf of Youth Climate Intervenors (YCI).

Linda S. Jensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce, Energy Environmental Review and Analysis (DOC-EERA).

Julia E. Anderson and Peter E. Madsen, Assistant Attorneys General, appeared on behalf of the Department of Commerce, Division of Energy Resources (DOC-DER).

Bret A. Eknes and Scott E. Ek appeared as representatives for the Minnesota Public Utilities Commission (Commission).

Based upon the submissions of interested persons and the contents of the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Introduction

1. On April 24, 2015, Enbridge applied for a Certificate of Need and a Routing Permit. Enbridge seeks to install 337 miles of 36-inch diameter pipe, along with

associated facilities, from the North Dakota–Minnesota border to the Minnesota–Wisconsin border (Project).¹

2. The Commission formally accepted those applications as substantially complete on August 12, 2015.²

3. Because approval of Enbridge’s proposal has the potential for significant environmental effects, the Commission cannot act upon its applications before an “adequate” Final Environmental Impact Statement (FEIS) has been prepared and reviewed. The Minnesota Environmental Policy Act (MEPA), provides for (1) publication of a notice that a final EIS will be prepared for a given project and (2) a determination of the EIS’s adequacy within particular timeframes.³

4. The adequacy of the FEIS that was prepared in this matter is vigorously disputed.⁴

5. In order to ensure a prompt and complete review of the FEIS’s adequacy, the Commission appointed the undersigned Administrative Law Judge to oversee the development of the record on that issue. As the Commission summarized in its appointment order, such a process “will ensure that the Commission will have decided the EIS adequacy issue by the time the parties file their briefs in the contested case proceedings before Administrative Law Judge O’Reilly addressing the ultimate question of the need for, and appropriate route for, the Line 3 Project.”⁵

II. Description of the Project

6. Enbridge proposes construction of a new 36-inch diameter pipeline and associated facilities to replace its existing 34-inch diameter Line 3 pipeline. The new pipeline, like its predecessor, would be part of the Enbridge’s broader network of pipelines known as the “Mainline System.”⁶

7. According to Enbridge, the Mainline System is the single largest conduit of liquid petroleum into the United States. It delivers, on-average, 2.4 million barrels of crude oil across northern Minnesota each day. This quantity of oil accounts for approximately one-quarter of the imports of crude oil into the United States.⁷

8. The Mainline System network includes 4,100 miles of pipelines. Line 3 is one of six crude oil pipelines in this network that carries crude oil from western Canada,

¹ See Order Extending Deadline and Setting Procedural Schedule at 1 (Aug. 14, 2017) (eDocket No. 20178-134670-01) (Appointment Order); Certificate of Need Application (April 24, 2015) (eDocket Nos. 20154-109653-03, 20154-109653-01).

² See Order Finding Application Substantially Complete and Varying Timelines – Notice of and Order for Hearing (Aug. 12, 2015) (eDocket No. 20158-113180-01).

³ Minn. Stat. § 116D.04, subd. 2a (2016).

⁴ See, e.g., Mem. of Intervenor FOH in Support of Pet. for Reconsideration and Amendment of Commission’s August 14, 2017 Order at 11-12 (August 23, 2017) (eDocket No. 20178-134941-02).

⁵ Appointment Order at 3.

⁶ See FEIS at § 2.1.

⁷ *Id.*; Rebuttal of Paul Eberth, Schedule 1 at 4 (Consent Decree) (eDocket No. 201710-136391-06).

through a corridor across northwestern Minnesota to Clearbrook, Minnesota, and then further east to Superior, Wisconsin.⁸

9. At the Clearbrook terminal, Enbridge transfers approximately 400,000 barrels per day (bpd) to the Minnesota Pipe Line Company, which in turn, transports this oil to the two petroleum refineries in the Twin Cities. Nearly all of the heavy crude oil refineries in the Upper Midwest receive a portion of their oil, either directly or indirectly, from the Enbridge Mainline system.⁹

10. The existing Line 3 has a “rated capacity” to transport an annual average of 760,000 (bpd) of crude oil.¹⁰

11. More recently, because of operational and safety issues, Enbridge has not been operating the Line 3 pipeline at this rated capacity. To avoid stress on the pipeline, or mishaps, Enbridge has been shipping on average 360,000 bpd from Neche, North Dakota, to Superior, Wisconsin, through Line 3.¹¹

12. In May 2017, Enbridge and the United States Environmental Protection Agency entered into a Consent Decree that, among other items, set both the maximum operating pressure for segments of Line 3 and a methodology for later adjusting these pressure limits.¹²

13. Enbridge proposes a new pipeline, as a replacement for the existing Line 3, as part of an effort to reclaim a 760,000 bpd throughput capacity from oil terminals in North Dakota, to Superior, Wisconsin.¹³

14. As detailed below, an issue in these proceedings is that notwithstanding the application materials for a pipeline that that would transport, on average, 760,000 bpd, Enbridge has proposed a new pipeline that has (what it characterizes) as a “theoretical maximum ... hydraulic design” capacity of 915,000 bpd.¹⁴

15. Enbridge’s preferred routing for the new pipeline (known as the Applicant’s Preferred Route or APR) would begin at the Joliette Valve near Neche, North Dakota, and extend across Minnesota to the Superior terminal in Superior, Wisconsin. Approximately 340 miles of the Project will be located in Minnesota.¹⁵

16. The APR follows the Enbridge Mainline System corridor from North Dakota to the oil terminal in Clearbrook, Minnesota. At Clearbrook, the APR diverges

⁸ See FEIS, ES-1 at § 1.2.

⁹ *Id.*

¹⁰ See Certificate of Need Application at 1-6, 2-5 (eDocket Nos. 20154-109653-03, 20154-109653-01).

¹¹ See *id.* at 3-1, 3-17; FEIS at 4-6.

¹² See Rebuttal of Paul Eberth, Schedule 1 at 4 (Consent Decree) (eDocket No. 201710-136391-06).

¹³ See Certificate of Need Application at 1-1, 1-6, 2-5 (eDocket Nos. 20154-109653-03, 20154-109653-01).

¹⁴ See Summary of Certificate of Need Filing at 1 (April 24, 2015) (eDocket No. 20154-109653-02); Enbridge’s Supplemental Response to the Staff Briefing Papers at 1-2 (June 29, 2015) (eDocket No. 20156-111819-01); FEIS Comments of Honor the Earth at 11 (October 2, 2017) (eDocket No. 201710-136026-02).

¹⁵ See FEIS at § 2.1.

from the Mainline Corridor and turns south and then east until rejoining the Enbridge Mainline corridor near Carlton, Minnesota. From this point, the APR extends for approximately 10 miles to the Minnesota-Wisconsin border.¹⁶

17. East of Clearbrook, Minnesota, the APR primarily follows the route of third party pipelines (including those owned by the Minnesota Pipe Line Company), utility corridors and roadways.¹⁷

18. In Minnesota, the Project requires a number of associated facilities; including: the expansion of four existing pump stations; construction of four new pump stations; installing cathodic protection systems; and development of remotely controlled mainline valves, permanent and temporary access roads, temporary contractor and material storage yards and additional staging areas.¹⁸

19. Enbridge maintains that if its new Line 3 is placed into service, it will permanently remove the existing Line 3 pipeline from service.¹⁹

III. Regulatory Framework for the Development of an EIS

A. Minimums for an EIS

20. An EIS is prepared if a project meets or exceeds the thresholds listed in Minn. R. 4410.4400 (2017), including Minn. R. 4410.4400, subp. 24 relating to the routing of petroleum pipelines.²⁰

21. When preparing an EIS, the Responsible Governmental Unit (RGU) must use an interdisciplinary approach to integrate assessment data from the natural, environmental and social sciences.²¹

22. The RGU may request that other governmental agencies assist the RGU with the development of the EIS.²²

23. The EIS must include a: cover sheet; summary; table of contents; list of preparers; project description; governmental approvals; alternatives; environmental, economic, employment, and sociological impacts; and mitigation measures.²³

24. If an RGU prepares an appendix to the EIS, the appendix must include, as applicable, material prepared in connection with the EIS as distinct from material incorporated by reference; material which substantiates any material fundamental to the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See FEIS at § 2.9; Certificate of Need Application at 1-1, 11-1 (eDocket Nos. 20154-109653-03, 20154-109653-01).

²⁰ Minn. R. 4410.2000, subp. 2 (2017).

²¹ Minn. R. 4410.2200 (2017).

²² *Id.*; see also Minn. R. 4410.2100, subp. 10 (2017).

²³ Minn. R. 4410.2300(A)-(I) (2017).

EIS; and permit information that was developed and gathered concurrently with preparation of the EIS.²⁴

25. The EIS prepared by the RGU must include, among other things, a comparison of the potentially significant impacts of the proposal with those of other reasonable alternatives to the proposed project; an evaluation of the potentially significant adverse or beneficial environmental, economic, employment, and sociological impacts for the proposed project and each type of reasonable alternative to the project; and identification of mitigation measures that could reasonably eliminate or minimize any adverse effects of the proposed project.²⁵

26. Additionally, the EIS must address one or more alternatives of each of the following types or provide a concise explanation of why no alternative of a particular type is included in the EIS: alternative sites; alternative technologies; modified designs or layouts; modified scale or magnitude; and alternatives incorporating reasonable mitigation measures identified through comments received during the comment periods for EIS scoping or for the Draft EIS (DEIS).²⁶

27. The EIS must include a discussion of direct impacts, indirect impacts and cumulative effects of the proposed project.²⁷

28. In the context of an EIS, the regulations define “cumulative impact” as “the impact on the environment that results from incremental effects of the [proposed] project in addition to other past, present, and reasonably foreseeable future projects regardless of what person undertakes the other projects.”²⁸

29. When an RGU considers mitigation measures as offsetting the potential for significant environmental effects under Minn. R. 4410.1700 (2017), it may do so only if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects. The RGU must have some concrete idea of what problems may arise and how they may specifically be addressed by ongoing regulatory authority.²⁹

30. The data and analyses of the EIS must be “commensurate with the importance of the impact and the relevance of the information to a reasoned choice among alternatives and to the consideration of the need for mitigation measures.”³⁰

²⁴ Minn. R. 4410.2300(J) (2017).

²⁵ Minn. R. 4410.2300(G), (H), (I).

²⁶ Minn. R. 4410.2300(G).

²⁷ Minn. R. 4410.2300(H).

²⁸ Minn. R. 4410.0200, subp. 11 (2017).

²⁹ *Citizens Advocating Responsible Development v. Kandiyohi County Bd. of Com'rs*, 713 N.W.2d 817, 827, 835 (Minn. 2006); *Pope Cnty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 237-38 (Minn. Ct. App. 1999) (deferring an issue “to later permitting and monitoring was an abandonment of the agency's duty to require an EIS where a potential for significant environmental effects exist”).

³⁰ Minn. R. 4410.2300(H).

31. The RGU is entitled to “consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail of information to be prepared for the EIS.”³¹

32. Provided that the EIS identifies and discusses “any major differences of opinion concerning significant impacts of the proposed project or the environment,” the regulations permit the RGU to summarize, consolidate or simply reference “less important material”³²

33. The FEIS must also respond to the timely-submitted substantive comments on the DEIS.³³

34. The agency's role in the preparation of an FEIS is not to serve “as an arbiter between two opposing parties, as a judge is expected to do in the adversary process.” Instead, “it is expected to be a source of independent expertise whose scientific investigation can uncover the data necessary to make an informed environmental decision.”³⁴

35. While agencies of the federal government frequently develop EISs for projects that are overseen or funded by federal agencies, the regulations in 40 C.F.R. §§ 1500–1508 (2017) disclaim an intention to make the federal regulatory standards and processes binding upon the states.³⁵

36. The regulations in 40 C.F.R. §§ 1500–1508 are not requirements that state agencies must adhere to under the Supremacy Clause of the U.S. Constitution.³⁶

³¹ *Id.*

³² *Id.*

³³ Minn. R. 4410.2700 (2017).

³⁴ *No Power Line, Inc. v. Minn. Env'tl. Quality Council*, 262 N.W.2d 312, 327 (Minn. 1977).

³⁵ 40 C.F.R. § 1500.1 (“The regulations that follow implement section 102(2) [of the National Environmental Policy Act]. *Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act.*”) (emphasis added); 40 C.F.R. § 1502.1 (“The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the *ongoing programs and actions of the Federal Government*”) (emphasis added); 40 C.F.R. § 1502.4(b) (“Environmental impact statements may be prepared, and are sometimes required, *for broad Federal actions* such as the adoption of new agency programs or regulations”); 40 C.F.R. § 1502.18 (“Major Federal action includes actions with effects that may be major and which *are potentially subject to Federal control and responsibility*”) (emphasis added).

³⁶ See U.S. Const. Art. IV, § 2 (“This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding”); see also *Coalition On Sensible Transp. Inc. v. Dole*, 642 F. Supp. 573, 585 (D.D.C. 1986) (“The Council on Environmental Quality regulations for implementing [the National Environmental Policy Act], 40 C.F.R. §§ 1500–1508 ... are *binding on federal agencies*”); *Minn. Ctr. for Env'tl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526, 532-33 (Minn. Ct. App. 2006) (case law construing “the national Environmental Protection Act and its regulations” were inapposite when construing an RGU's obligations under Minnesota law).

37. For this reason, the regulatory guidance from the Council on Environmental Quality did not impose additional duties on DOC-EERA when it developed the EIS in this proceeding.³⁷

38. With that said, however, the federal experience is still useful. The approaches that DOC-EERA's sister agencies regularly use point to the kind of expectations that Minnesotans should have about state EIS processes. For example, if a federal agency would find a particular inquiry unreasonably demanding or impractical, it is a fair inference that this same assessment is not required before a Minnesota EIS would be adequate.³⁸

B. Requirements for the Scoping Process

39. The RGU conducts a scoping process prior to preparing an EIS in order to “reduce the scope and bulk of the EIS, identify those potentially significant issues relevant to the proposed project, define the form, level of detail, content, alternatives, time table for the EIS preparation, and preparers of the EIS and to determine whether information for any permits will be developed concurrently with the EIS.”³⁹

40. For all projects requiring an EIS, the RGU must prepare an Environmental Assessment Worksheet (Scoping EAW). The Scoping EAW serves as the “basis for the scoping process.”⁴⁰

41. In conjunction with the Scoping EAW, the RGU prepares and circulates a Draft Scoping Decision Document (DSDD) that addresses the contents for a scoping decision. The purpose of the DSDD is to “facilitate the delineation of issues and analyses to be contained in the EIS.”⁴¹

42. The information in the DSDD is a preliminary draft and “subject to revision based on the entire record of the scoping process.”⁴²

43. The scoping period begins when the notice of availability of the Scoping EAW and DSDD is published. The notice and press release announcing the availability of the Scoping EAW must include the time, place, and date of the scoping meetings.⁴³

44. The RGU must hold at least one scoping meeting during the scoping period. The meeting may not be convened earlier than 15 days after publication of the notice of availability of the Scoping EAW.⁴⁴

³⁷ *Id.*

³⁸ *See id.*

³⁹ Minn. R. 4410.2100, subp. 1 (2017).

⁴⁰ Minn. R. 4410.2100, subp. 2 (2017).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Minn. R. 4410.2100, subp. 3(A) (2017).

⁴⁴ Minn. R. 4410.2100, subp. 3(B) (2017).

45. Written comments “suggesting issues for scoping or commenting on the Scoping EAW” may be filed with the RGU during the scoping period.⁴⁵

46. The Final Scoping Decision Document (FSDD) must be issued within 15 days after the close of a 30-day scoping period.⁴⁶

47. In this particular proceeding, the Commission, acting as the RGU, set a scoping period that was 45 calendar days. Enbridge did not object to an extension of the ordinary deadline for the issuance of the FSDD.⁴⁷

48. An EIS preparation notice must be published within 45 days after the scoping decision is issued.⁴⁸

49. The scoping decision shall identify “necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.”⁴⁹

C. Requirements for Development of the DEIS

50. A DEIS must meet the requirements of Minn. R. 4410.0200 to 4410.6500 (2017) and the FSDD.⁵⁰

51. RGUs are responsible for verifying the accuracy of environmental documents that are relied upon by the RGU.⁵¹

52. When the DEIS is completed, the RGU must make it available for public review and comment. It likewise must hold an informational meeting in each of the counties where “the project is proposed.”⁵²

53. A copy of the DEIS must be furnished to certain public agencies, listed in Minn. R. 4100.2600, subp. 3 (2017), and particular members of the public.⁵³

54. The Environmental Quality Board (EQB) is one of the agencies that must receive a copy of the DEIS. Receipt of the DEIS by EQB staff operates as notification that they should publish a Notice of Availability about the DEIS in the *EQB Monitor*.⁵⁴

⁴⁵ Minn. R. 4410.2100, subp. 5 (2017).

⁴⁶ Minn. R. 4410.2100, subp. 3(C) (2017).

⁴⁷ See Enbridge Scoping Comments, at 7, n.13 (May 25, 2016) (eDocket No. 20165-121692-01).

⁴⁸ Minn. R. 4410.2100, subp. 9 (2017).

⁴⁹ Minn. R. 4410.2100, subp. 6(G) (2017).

⁵⁰ Minn. R. 4410.2600, subp. 1.

⁵¹ Minn. R. 4410.0400, subp. 2.

⁵² *Id.*

⁵³ Minn. R. 4410.2600, subp. 3(A)-(H).

⁵⁴ Minn. R. 4410.2600, subp. 5.

55. The RGU must supply a press release to at least one newspaper of general circulation within the area where the project is proposed, noting the availability of the DEIS.⁵⁵

56. The notice of availability for the *EQB Monitor* and the press release must contain “notice of the date, time, and place of the informational meeting, notice of the location of the copy of the DEIS available for public review, and notice of the date of termination of the comment period.”⁵⁶

57. A typewritten or audio-recorded transcript of the informational meeting must be made.⁵⁷

58. The record must remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the DEIS may be submitted any time during the comment period.⁵⁸

D. Requirements for Development of the FEIS

59. The RGU must respond to the timely substantive comments received as to the DEIS when preparing the FEIS.⁵⁹

60. If more than minor changes are required, the DEIS must be “rewritten so that necessary changes in the text are incorporated in the appropriate places.”⁶⁰

61. The RGU must provide copies of the FEIS to all persons receiving copies of the entire DEIS. Copies are provided to any person who submitted substantive comments on the DEIS and, to the extent possible, to any person requesting the FEIS.⁶¹

62. The RGU must provide EQB staff with a copy of the FEIS, and this constitutes notice to the EQB to publish notice of availability of the FEIS in the *EQB Monitor*.⁶²

63. The notice of availability in the *EQB Monitor* and the press release must contain notice of the location of the copy of the FEIS available for public review and notice of the opportunity for public comment on the adequacy of the FEIS.⁶³

64. Interested persons are entitled to submit written comments on the adequacy of the FEIS to the RGU or the EQB, if applicable, for a period of not less than ten days following the publication in the *EQB Monitor* of the notice of availability of the

⁵⁵ Minn. R. 4410.2600, subp. 6.

⁵⁶ Minn. R. 4410.2600, subp. 7 (2017).

⁵⁷ Minn. R. 4410.2600, subp. 8 (2017).

⁵⁸ Minn. R. 4410.2600, subp. 9 (2017).

⁵⁹ Minn. R. 4410.2600, subp. 10 (2017); Minn. R. 4410.2700, subp. 1 (2017).

⁶⁰ Minn. R. 4410.2700, subp. 2 (2017).

⁶¹ Minn. R. 4410.2700, subp. 3 (2017).

⁶² Minn. R. 4410.2700, subp. 4 (2017).

⁶³ Minn. R. 4410.2700, subp. 6 (2017).

FEIS. The notice of availability of the FEIS must indicate when the comment period expires.⁶⁴

65. The determination of adequacy of the FEIS must be made within 280 days after the preparation notice was published in the *EQB Monitor* unless the time is extended by consent of the project proposer and the RGU, or by the governor for good cause.⁶⁵

E. Regulatory Standards for Determining Whether an FEIS is Adequate

66. The purpose of an FEIS is to provide information “to evaluate proposed actions that have the potential for significant environmental effects, to consider alternatives to the proposed actions, and to explore methods for reducing adverse environmental effects.”⁶⁶

67. In making a determination as to whether a particular FEIS is adequate, the RGU applies the criteria found in Minn. R. 4410.2800, subp. 4 (2017). This regulation provides:

The final EIS shall be determined adequate if it:

- A. 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 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.⁶⁷

68. The RGU must notify all persons receiving copies of the FEIS pursuant to Minn. R. 4410.2700, subp. 3, of its adequacy decision. This notice must occur within five days of an adequacy determination. Public notice of the decision must be published in the *EQB Monitor*.⁶⁸

IV. Procedural History for the Application, Scoping Process and DEIS

A. Enbridge’s Applications for a Certificate of Need and Routing Permit

⁶⁴ Minn. R. 4410.2800, subp. 2 (2017).

⁶⁵ Minn. R. 4410.2800, subp. 3 (2017).

⁶⁶ Minn. R. 4410.2100, subp. 1 (2017); *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 462 (Minn. 2002).

⁶⁷ Minn. R. 4410.2800, subp. 6 (2017).

⁶⁸ Minn. R. 4410.2800, subp. 4 (2017).

69. As noted above, Enbridge filed Certificate of Need and Routing Permit applications for the Project on April 24, 2015. On July 20, 2015, the Commission issued a notice of public information and scoping meetings for the Project.⁶⁹

70. The 2015 scoping period, conducted under Minn. R. ch. 7852 (2015), occurred between July 20 and September 30, 2015. DOC-EERA and Commission staff held 15 public meetings between August 11 and 27, 2017.⁷⁰

71. On February 1, 2016, the Commission issued an order authorizing joint proceedings for the Certificate of Need and Routing Permit dockets.⁷¹

72. In this same Order, the Commission also authorized DOC-EERA to act as its agent in preparing a combined EIS for both dockets. The Commission sought DOC-EERA's assistance so as to fulfill its duties "in accordance with Minn. Stat. ch. 116D (2016) and Minn. R. ch. 4410 (2015)."⁷²

73. To obtain additional expertise when preparing the EIS, DOC-EERA in turn sought the assistance of the Minnesota Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA).⁷³

74. On March 2, 2016, these agencies entered into a Memorandum of Understanding (MOU) reflecting their joint efforts to assemble an EIS that "fulfills applicable MEPA requirements. . ."⁷⁴

75. The MOU noted that the Commission was the RGU in this matter. The MOU declared: "In that capacity, the Commission will make all final decisions regarding the scope and adequacy of the EISs [the proposed project]."⁷⁵

76. The MOU identified the Minnesota Department of Commerce as the "Lead Agency" and DNR and MPCA as "Assisting Agencies." As Assisting Agencies, the DNR and MPCA would aid DOC-EERA in:

identifying issues, alternatives, routes and alternative route proposals, data and analysis to address environmental review topics and requirements and help [DOC-EERA] ensure the EIS meets applicable MEPA requirements; to review, assess and comment on data and analysis

⁶⁹ Notice of Application Acceptance and Public Information and Environmental Analysis Scoping Meetings (July 20, 2015).

⁷⁰ FSDD at 3 (December 5, 2016) (eDocket No. 201612-127062-04).

⁷¹ Order Joining Need and Routing Dockets in MPUC 14-916 at 3 (Feb. 1, 2016) (eDocket No. 20162-117877-02).

⁷² *Id.*; see also *In re Application of N. Dakota Pipeline Co. L.L.C.*, 869 N.W.2d 693, 694 (Minn. Ct. App. 2015) ("Because the decision to grant a certificate of need for a large oil pipeline constitutes a major governmental action that has the potential to cause significant environmental effects, we conclude that MEPA requires an environmental impact statement to be completed before a final decision is made to grant or deny a certificate of need"), *review denied* (Minn. Dec. 15, 2015).

⁷³ DOC-EERA Letter – Memorandum of Understanding in MPUC 14-916 at 1 (Mar. 7, 2016) (eDocket No. 20163-118961-01).

⁷⁴ *Id.*

⁷⁵ *Id.*

in environmental documents prepared during the EIS process; to address any potential deficiencies in environmental review documents in a timely manner; to review and provide comments on environmental review documents prepared for the proposed Project; and to provide such other assistance as the Lead Agency and the Assisting Agencies mutually agree is necessary for MEPA compliance.⁷⁶

77. On March 10, 2016, the EQB received a request for the EQB to designate a different RGU for environmental review of the Project. Specifically, EQB was asked to replace the Commission with DNR and MPCA as joint RGUs for the Project. The EQB accepted comments from applicable agencies, Enbridge, and other commenters regarding this request.⁷⁷

78. On March 24, 2016, the Commission denied a motion from White Earth Band of Ojibwe requesting that the Commission remove itself as the RGU for the Project.⁷⁸

79. On or about March 25, 2016, the EQB received a second request to remove the Commission as the RGU.⁷⁹

80. The EQB considered the requests at its May 18, 2016 meeting. At this meeting, the EQB denied the requests.⁸⁰

B. Scoping Process

81. The Commission conducted public scoping for the EIS in April and May 2016.⁸¹

82. The Commission prepared a Scoping EAW and DSDD.⁸²

83. The Commission accepted Enbridge's completed data portions of the Scoping EAW for use in EIS scoping, and determined Enbridge's Scoping EAW data submittal to be complete for scoping purposes.⁸³

84. A Scoping EAW and DSDD were issued on April 12, 2016.⁸⁴

⁷⁶ *Id.*

⁷⁷ See EQB RGU Decision Letter, Enclosures A1, C1, C2, C3 (June 3, 2016) (eDockets No. 20166-121973-08, 20166-121973-28, 20166-121973-32, 20166-121973-36).

⁷⁸ See PUC Minutes of March 24, 2016 Meeting (eDocket No. 20165-121493-12).

⁷⁹ See EQB RGU Decision Letter, Enclosure B2 (June 3, 2016) (eDocket No. 20166-121973-24).

⁸⁰ *Id.*

⁸¹ Scoping Summary Report at 2 (September 22, 2016) (eDocket No. 20169-125058-17).

⁸² Minn. R. 4410.2100 (2015).

⁸³ Minn. R. 4410.1400 (2015).

⁸⁴ *Id.*; Minn. R. 4410.2100, subps. 1, 2; see Scoping EAW (April 12, 2016) (eDocket No. 20164-119956-02); see also DSDD (April 8, 2016) (eDocket No. 20166-121973-24).

85. Scoping EAW Item Number 7 listed a series of permits and public approvals, by agency, which would be required before the Project could proceed.⁸⁵

86. The DSDD included: the issues to be addressed in the EIS; alternatives to be addressed in the EIS; identification of potential impact areas resulting from the Project and any related actions to be addressed in the EIS; and, identification of any necessary studies or development of new data.⁸⁶

87. Alternatives proposed in the DSDD for discussion included: alternative sites; alternative technologies (rail and truck); modified design and layouts (system alternatives and route alternatives); modified scale or magnitude; alternatives incorporating reasonable mitigation measures; and the “no action” alternative.⁸⁷

88. Potentially significant EIS issues proposed for detailed treatment included: human settlement, transportation and public services, economics, cultural resources, natural environment, rare and unique natural resources, high consequence areas (HCAs) and natural disaster areas, impacts of routine construction and operation, assessing impacts of crude oil releases, and cumulative effects.⁸⁸

89. The EQB published a notice of the availability of the DSDD and Scoping EAW for the Project in the *EQB Monitor* on April 11, 2016. The 45-day public comment period on the DSDD ended May 26, 2016.⁸⁹

90. DOC-EERA issued a press release including the Notice of Availability of the DSDD and Scoping EAW to newspapers of general circulation in the areas that would be affected by the Project. The Notice of Availability of the DSDD and Scoping EAW was published, depending upon the publication dates of the periodical, on various dates between April 12 and April 19, 2016.⁹⁰

91. On April 12, 2016, copies of the Scoping EAW, DSDD and Notice of Availability of the DSDD and Scoping EAW were mailed to the persons and agencies listed in Minn. R. 4410.1500 (A) (2015). These items were also made available to the public as postings to a dedicated webpage on the Line 3 Project that was hosted by the Department of Commerce.⁹¹

92. Between April 25 and May 11, 2016, DOC-EERA held 12 scoping meetings in 7 of the 10 counties crossed by the Project. DOC-EERA conducted each meeting for a minimum of three hours, including a one-hour “open house” with agency

⁸⁵ Scoping EAW, *supra*, at 52-53.

⁸⁶ See DSDD, *supra*; see also Minn. R. 4410.2100, .2300 (2015).

⁸⁷ DSDD, *supra*, at 4.

⁸⁸ *Id.* at 15-27.

⁸⁹ FEIS at § 3.3.1.

⁹⁰ Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects (Apr. 11, 2016).

⁹¹ *Id.* at 3 – 4.

staff. The informal “open house” was followed by a formal presentation and a segment to receive public comments.⁹²

93. Written public comments on the scope of the EIS were accepted through May 26, 2016.⁹³

94. Members of the public and agencies submitted 322 scoping comment letters and 1,118 comment cards during the 2016 comment period. Oral comments received during the scoping meetings were transcribed.⁹⁴

95. The Commission received nearly 1,500 written comments during the scoping comment period.⁹⁵

96. As the Commission explained in a recent Order:

A system alternative is a pipeline proposal with an origin, destination, or intermediate point of delivery that differs from the applicant’s preferred route. A *route alternative* is a proposal for a long alternative pipeline segment that differs from the applicant’s preferred route, even though it shares the same origin, destination, and intermediate points of delivery as the applicant’s preferred route. Finally, a *route segment alternative* is a proposal for a small change to the applicant’s preferred route to address some local problem with the applicant’s preferred route.⁹⁶

97. As part of developing the EIS, DOC-EERA also reviewed the scoping comments that had been received earlier on the Project, in 2015, including the proposed route alternatives and system alternatives. Additionally, earlier-developed system alternatives were reviewed for inclusion in the DSDD.⁹⁷

98. As noted above, under Minn. R. 4410.2100, subp. 3(B), the Commission was obliged to convene “at least one scoping meeting during the scoping period,” and this “meeting shall be held not less than 15 days after publication of the notice of availability of the EAW.”⁹⁸

99. While the Commission hosted eleven public meetings on dates that were more than 15 days after the publication of the Notice of Availability in the *EQB Monitor*, the public meeting in Hinckley, Minnesota occurred before the expiration of the 15-day waiting period. The meeting in Hinckley, on April 25, 2016, occurred on the fourteenth day after publication in the *EQB Monitor*.⁹⁹

⁹² FSDD, *supra*, at 4.

⁹³ *Id.* at 4.

⁹⁴ *Id.* at § 3.3.1; Scoping Summary, *supra*, at 2.

⁹⁵ Scoping Summary, *supra*, at 2.

⁹⁶ Order Denying Motion, Approving Scoping Decision as Modified, and Requiring Expanded Notice at 10 (Nov. 30, 2016) (eDocket No. 201611-126917-01) (emphasis in original).

⁹⁷ FSDD, *supra*, at 5.

⁹⁸ Minn. R. 4410.2100, subp. 3(B).

⁹⁹ Minn. R. 4410.2100, subp. 3(B); FSDD, *supra*, at § 2.1.1.

100. Notwithstanding the procedural error with respect to the scheduling of the public meeting in Hinckley, Minnesota, the Administrative Law Judge concludes that the Commission, through its agent DOC-EERA, met the public meeting requirements of Minn. R. 4410.2100, subp. 3(B).¹⁰⁰

101. DOC-EERA considered the timely-submitted comments on the Scoping EAW and DSDD.¹⁰¹

102. On September 22, 2016, DOC-EERA submitted its Comments and Recommendation on the Scope of the Line 3 EIS, Proposed FSDD, Scoping Summary Report, and Alternatives Screening Report.¹⁰²

103. The Proposed FSDD, Scoping Summary Report, and Alternatives Screening Report provided relevant detail regarding the appropriate scope of the EIS and suitable pipeline alternatives for further review.¹⁰³

104. The DOC-EERA's analysis of alternatives was based upon three criteria: (1) environmental benefits and impacts; (2) socioeconomic benefits and impacts; and (3) regulatory and economic feasibility.¹⁰⁴

105. Applying these criteria, DOC-EERA identified four route alternatives and one system alternative for consideration in the EIS. DOC-EERA concluded that one system alternative (SA-03) and one route alternative (RA-03) did not require further analysis. DOC-EERA reasoned that there were other alternatives recommended for analysis in the EIS that would likely have similar environmental benefits but substantially less adverse economic and socioeconomic impacts.¹⁰⁵

106. While Minn. R. 4410.2300 (G) permits an RGU to exclude particular alternatives from further analysis in the EIS if the alternative "would not meet the underlying need for or purpose of the project," the DOC-EERA declined to exclude alternatives on this ground. The DOC-EERA concluded that any decisions as to the "need" for the project, if any, were properly made by its principal, the Commission.¹⁰⁶

107. In the Alternatives Screening Report and Proposed FSDD, DOC-EERA concluded that the SA-03 alternative was not appropriate for further study. It determined that there are other alternatives analyzed in the EIS that would likely have similar environmental benefits, but substantially less adverse economic and socioeconomic impacts.¹⁰⁷

¹⁰⁰ *Id.*

¹⁰¹ FSDD, *supra*, at 5.

¹⁰² See DOC-EERA Comments and Recommendations on the Scope of the Line 3 EIS (Sept. 22, 2016) (eDocket No. 20169-125058-03).

¹⁰³ Alternatives Screening Report, §§ 1.1, 1.2. (September 22, 2016) (eDocket No. 20169-125058-07).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*; Alternatives Screening Report, *supra*, at §§ 5.1.1.1, 5.1.2.

¹⁰⁶ See Alternatives Screening Report, *supra*, at § 4.1.

¹⁰⁷ *Id.*, at § 5.1.1.1; see also, Minn. R. 4410.2300(G).

108. In the Alternatives Screening Report and Proposed FSDD, DOC-EERA concluded that RA-03 was not appropriate for further study. It determined that there are other route corridors analyzed in the EIS that would likely have similar environmental benefits, but substantially less adverse economic and socioeconomic impacts.¹⁰⁸

109. On November 30, 2016, the Commission issued an Order that, among other items, approved the EIS Scoping Decision.¹⁰⁹

110. On December 5, 2016, DOC-ERRA issued the FSDD and Notice of EIS Preparation for the Line 3 Project.¹¹⁰

111. The Notice of EIS Preparation was published in the *EQB Monitor* on December 5, 2016. On the same day, a press release containing the Notice of EIS Preparation was delivered to newspapers of general circulation in the areas affected by the Project.¹¹¹

112. Copies of the FSDD were provided to those parties who were designated on the Scoping EAW distribution list, submitted comments on the DSDD, and to those who requested notice of this publication.¹¹²

113. The FSDD was also made available by posting on DOC-EERA's Line 3 website and by filing this item in the 14-916 and the 15-137 dockets.¹¹³

114. The FSDD included: (1) issues to be addressed in the EIS; (2) time limits for preparation of the EIS, if they would be shorter than those allowed by Minn. R. 4410.0200 – 4410.6500 (2015); (3) a list of the permits for which information would be gathered concurrently during EIS preparation; (4) permits for which a record of decision would be required; (5) alternatives that would be addressed in the EIS; (6) potential impact areas resulting from the Project itself and from related actions to be addressed in the EIS; and (7) identification of studies to be completed for the EIS, including those requiring compilation of existing information or development of new data.¹¹⁴

1. The FSDD and Alternatives under Minn. R. 4410.2300 (G)

115. With respect to alternative sites and other pipelines, the FSDD stated: “No other existing, newly constructed, or proposed oil pipeline has been identified that could be used to deliver Canadian crude oil to the Enbridge system in the U.S. to replace the existing Line 3 pipeline. If one is identified during the EIS process, the environmental

¹⁰⁸ Alternatives Screening Report at § 5.1.2; see also Minn. R. 4410.2300(G).

¹⁰⁹ See FSDD, *supra*.

¹¹⁰ DOC-EERA EIS Preparation Notice (Dec. 5, 2016) (eDocket No. 201612-127062-02).

¹¹¹ See DOC-EERA News Release, Notice of EIS Preparation for Line 3 Replacement Pipeline (Dec. 5, 2016) (eDocket No. 20179-135853-02); see also Minn. R. 4410.2100, subp. 9.

¹¹² See Notice of Filing (September 6, 2017) (eDocket No. 20179-135298-04).

¹¹³ See eDocket No. 201612-127062-04.

¹¹⁴ FSDD, *supra*, at 6 - 13, 19 - 38, 41; see also Minn. R. 4410.2100, subp. 6 (2015).

impacts will be evaluated as a potential alternative to the Line 3 Replacement Project.”¹¹⁵

116. With respect to alternative sites and other pipelines, the FSDD pledged that the EIS would include an evaluation of: (1) transport of oil by rail; and (2) transport of oil by truck.¹¹⁶

117. With respect to modified designs and layouts, the FSDD pledged that the EIS would include an evaluation of: (1) system alternative number 4 (SA-04); (2) four route alternatives (RA-03AM, RA-06, RA-07, RA-08); (3) twenty-four route segment alternatives; and (4) three scenarios for deactivating the existing Line 3 pipeline (abandonment in place, removal following construction of the Project, and removal of existing Line 3 and construction of the Project in the same trench and right-of-way).¹¹⁷

118. With respect to modifications to the project’s scale, the FSDD pledged that the EIS would evaluate the volume of oil to be transported by the proposed Project, the risk of accidental spills and potential cumulative effects.¹¹⁸

119. The DOC-EERA disclaimed that there would be a separate evaluation of appropriate pipeline thickness in the EIS, on the grounds that such matters are determined by the U.S. Department of Transportation and the pipeline’s diameter “will not substantially influence environmental impacts of Project construction, operation, and maintenance.”¹¹⁹

120. With respect to mitigation measures, the FSDD pledged that the EIS would evaluate methods for reducing the likely impacts of the APR and the various alternatives.¹²⁰

121. With respect to a No Action Alternative, the FSDD pledged that the EIS would evaluate options for an integrity monitoring and repair program for the Existing Line 3, as well as the potential that additional volumes of oil would be transported using alternative methods and technologies.¹²¹

2. The FSDD and Impacts under Minn. R. 4410.2300 (H)

122. With respect to the impacts of a later deactivation of the Existing Line 3, the FSDD pledged that the EIS would evaluate several options, including: (1) abandonment of the pipeline in place; (2) removal of Existing Line 3 following

¹¹⁵ FSDD, *supra*, at 6.

¹¹⁶ *Id.* at 6 - 7.

¹¹⁷ *Id.* at 8 - 9, 11 - 14, 15 - 17.

¹¹⁸ *Id.* at 15.

¹¹⁹ *Id.*; see also 49 C.F.R. § 195.106 (2017); Testimony of Barry Simonson at 7 (eDocket No. 20171-128679-01).

¹²⁰ FSDD, *supra*, at 15.

¹²¹ *Id.*

construction of the Project; and (3) removal of the Existing Line 3 and construction of the replacement pipeline in the same trench and right-of-way.¹²²

123. With respect to the impacts of the project on human settlements, population and Environmental Justice between communities, the FSDD identified a series of impacts for review: housing; property values; population; environmental justice; income; planning and zoning; aesthetics; noise; existing contaminated sites; intrusions into forested lands; and hunting, fishing, and gathering.¹²³

124. With respect to the impacts of the project on public amenities and services, the FSDD identified example data sets to assess the potential impacts to roadways, public utilities and emergency services.¹²⁴

125. With respect to possible economic impacts of the project, the FSDD identified key data sources and specific categories for further analysis: agriculture and livestock, forestry, mining, recreation and tourism, employment, and tax revenue.¹²⁵

126. With respect to possible impacts to cultural resources from the project, the FSDD identified key data sources that it would use (including consultation with tribal staff with potentially affected tribes “concerning sacred places and treaty areas”) and specific categories for further inquiries: archaeological and historic resources, sacred places, and treaty areas; wild rice and other tribal resources.¹²⁶

127. With respect to potential impacts to the natural environment and appropriate mitigation measures, the FSDD identified key data sources regarding local flora and fauna and specific categories for further inquiries: water resources (quality, watersheds, wetlands, and floodplains); geology and soils; and natural communities and habitat.¹²⁷

128. With respect to potential impacts to rare and unique natural resources, the FSDD identified particular data sources (including materials from the U.S. Fish and Wildlife Service and the National Gap Analysis Program) that it would use, as well particular features of its investigation: state and federally listed threatened and endangered species; species of conservation concern; state Natural Heritage Sites; and state Scientific and Natural Areas.¹²⁸

129. With respect to potential impacts to air quality from the project, the FSDD pledged to review “the emission inventory assessment for all criteria pollutants, greenhouse gases (GHGs), and hazardous air pollutant emissions related to construction and operation of the proposed Project.” Additionally, the EIS would include

¹²² *Id.* at 19.

¹²³ *Id.* at 22 - 24.

¹²⁴ *Id.* at 24 - 25.

¹²⁵ *Id.* at 25 - 27.

¹²⁶ *Id.* at 27 - 28.

¹²⁷ *Id.* at 28 - 30.

¹²⁸ *Id.* at 30 - 31.

a review of the “air quality impacts in light of federal, state, and local air pollution standards”¹²⁹

130. With respect to potential impacts on the climate, the FSDD pledged to assess both construction impacts (from emissions and changes to land) and impacts from operating the proposed pipeline. DOC-EERA noted that the EIS will “identify the types of impacts that climate change may have on the environment, especially in Minnesota.”¹³⁰

131. The FSDD stated that the EIS would also describe direct, indirect, and cumulative potential effects of GHG emissions associated with the Project and their relationship to Minnesota’s efforts to reduce GHG emissions.¹³¹

132. With respect to potential impacts to HCAs and Natural Disaster Hazard Areas, the FSDD pledged to assess the impacts of an inadvertent crude oil release on HCAs, which include populated areas, drinking water sources, and unusually sensitive ecological areas.¹³²

133. With respect to assessing the impacts of unplanned and unintended releases of crude oil, the FSDD pledges to undertake a literature review case studies involving small and large releases and their impacts to groundwater as well as “site specific modeling . . . to make general comparisons to other locations.” As to the plans for spill modeling studies, the FSDD states further:

Spill modeling for the Line 3 Replacement Project EIS is being conducted by RPS ASA, a global science and technology consulting firm specializing in environmental modeling, using OILMAPLAND and SIMAP modeling software. OILMAPLAND is a (two-dimensional) land and surface water spill model system that simulates oil and chemical releases from pipelines and storage facilities, providing a modeling tool for oil spills that occur on land and then migrate to streams and lakes. SIMAP provides detailed predictions of the three-dimensional trajectory, fate, biological effects, and other impacts of spilled oil and fuels in aquatic environments. Both modeling programs meet PHMSA regulatory requirements.¹³³

134. With respect to the cumulative potential effects of other infrastructure in the same corridor as the proposed Line 3, the FSDD took a middle approach: The EIS would not assess the potential impacts of the Sandpiper project (on the grounds that this project proposal had been withdrawn by Enbridge and “there are no pending applications for it in front of any government agency”), but would assess “the potential for other future pipelines to be proposed in the same corridor as the Applicant’s Preferred Route for the Line 3 Replacement Project.” Such projects would be considered “reasonably foreseeable” if they were reflected in “local land use plans,

¹²⁹ *Id.* at 31.

¹³⁰ *Id.*

¹³¹ *Id.* at 32.

¹³² *Id.*

¹³³ *Id.* at 32 - 34.

current permit applications, and approved, but not built, projects in the vicinity of the alternatives.”¹³⁴

C. Preparation of the DEIS

135. The DOC-EERA, on behalf of the Commission prepared a DEIS, which included each of the component parts required by Minn. R. ch. 4410 (2015), a: cover sheet; summary; table of contents; list of preparers; project description; list of governmental approvals; discussion of alternatives, including detail as to why particular alternatives were eliminated from further review; potentially significant environmental and economic impacts identified in scoping; mitigation measures; and appendices of supporting analyses.¹³⁵

136. On March 17, 2017, the Commission issued a press release announcing the locations of public meetings on the DEIS.¹³⁶

137. On May 15, 2017, the Department issued the DEIS.¹³⁷

138. On the same date, DOC-EERA issued a press release providing notice of the availability of the DEIS to newspapers of general circulation in the areas that would be affected by the Project.¹³⁸

139. Additionally, the DEIS published notice of the availability of the DEIS in the May 15, 2017 issue of the *EQB Monitor*. The notice included the dates, times, and locations of the public meetings; notices of where the DEIS was available for public review; and indicated that the comment period would close on July 10, 2017.¹³⁹

140. On May 16, 2017, DOC-EERA filed a Revised Notice of Availability of DEIS and Public Information Meetings for the Proposed Line 3 Pipeline Project.¹⁴⁰

141. Electronic copies of the DEIS were made available at this same time on the DOC’s Line 3 website, the Commission’s website and through the eDockets system.¹⁴¹

142. On May 25, 2017, DOC-EERA provided copies of the DEIS to parties to this proceeding.¹⁴²

¹³⁴ *Id.* at 34.

¹³⁵ Minn. R. 4410.2300; see generally DEIS (May 15, 2017).

¹³⁶ See Press Release, Minnesota Public Utilities Commission Determines Public Meeting Locations for Proposed Line 3 Project (Mar. 17, 2017) (eDocket No. 20173-129997-02).

¹³⁷ See *EQB Monitor*, Vol. 41, No. 20 (May 15, 2017) (eDocket No. 20175-131921-01).

¹³⁸ See DEIS Availability Press Release (May 15, 2017) (eDocket No. 20175-131959-01); see also Minn. R. 4410.2600, subp. 6 (2015).

¹³⁹ See Notice of Availability of Draft Environmental Impact Statement and Public Information Meetings for the Proposed Line 3 Pipeline Project, *EQB Monitor* (May 15, 2017).

¹⁴⁰ See Revised Notice of Availability of Draft Environmental Impact Statement and Public Information Meetings for the Proposed Line 3 Pipeline Project (May 15, 2017) (eDocket No. 20175-131959-01).

¹⁴¹ See Notice of Filing (September 6, 2017) (eDocket No. 20179-135298-04).

¹⁴² Notice of Filing, *supra*, at Appendix (Appx.) A2-5.

143. On May 26, 2017, DOC-EERA provided copies of the DEIS to public libraries and regional development commissions.¹⁴³

144. Compact discs containing copies of the DEIS were available upon request from DOC staff.¹⁴⁴

145. Between June 2 and June 5, 2017, DOC-EERA provided copies of the DEIS to federal, state, and tribal agencies and to tribal libraries.¹⁴⁵

146. On June 6, 2017, DOC-EERA provided copies of the DEIS to local government units, additional public libraries, and the EQB distribution list. Public libraries in the following communities received electronic copies of the DEIS: Minneapolis, Crookston, Bemidji, Duluth, Pine River, St. Cloud, Cambridge, Fergus Falls, Montevideo, Wilmar, Mankato, Rochester, Hallock, Warren, Thief River Falls, Red Lake Falls, McIntosh, Bagley, Park Rapids, Wadena, Crosslake, McGregor, Carlton, Cass Lake, Grand Rapids, Staples, Little Falls, Foley, Milaca, Mora, Hinckley, Wheaton, Morris, Benson, Olivia, Gaylord, St. Peter, Le Sueur, Waseca, Albert Lea, and Austin.¹⁴⁶

147. On the same day, DOC-EERA provided copies of the DEIS summary to commenters.¹⁴⁷

148. On June 8, 2017, DOC-EERA provided copies of the DEIS summary to commenters who had submitted comments by way of electronic mail.¹⁴⁸

149. The DEIS did not identify any major differences of opinion or points of view among the agencies that contributed to the preparation of the EIS – DOC-EERA, DNR and MPCA.¹⁴⁹

150. Public information meetings were held June 6, 2017 through June 22, 2017. Twenty-two public meetings were held in locations along the Route Alternatives under consideration in the DEIS, in locations in the counties that would be affected by the proposed Project.¹⁵⁰

151. The comment period on the DEIS ran from May 15, 2017 to July 10, 2017. Approximately 2,860 comments were received.¹⁵¹

¹⁴³ *Id.* at Appx. A2-4.

¹⁴⁴ *Id.* at 2.

¹⁴⁵ *Id.* at Appx. A2-2.

¹⁴⁶ *Id.* at Appx. A2-1.

¹⁴⁷ *Id.* at Appx. A2-6.

¹⁴⁸ *Id.* at Appx. A2-7.

¹⁴⁹ See generally eDocket Nos. 20175-131859-01, 20175-131859-02, 20175-131859-03, 20175-131859-04, 20175-131859-05.

¹⁵⁰ See FEIS Abstract (Aug. 17, 2017) (eDocket No. 20178-134773-01); see also Minn. R. 4410.2600, subp. 2 (2015).

¹⁵¹ Governor Mark Dayton - Statement on Proposed Enbridge Line 3 Pipeline (Aug. 9, 2017) (eDocket 20178-134861-02).

V. The FEIS

A. Procedural History for the FEIS

152. On August 3, 2017, the Commission voted to establish a procedural schedule for ruling on the adequacy of the FEIS under Minn. R. 4410.2800, subp. 4 (2017).¹⁵²

153. On August 9, 2017, Minnesota Governor Dayton issued a statement announcing that DOC-EERA would release the FEIS on August 17, 2017.¹⁵³

154. On August 14, 2017, the Commission issued an order memorializing its decisions from its meeting on August 3, 2017. The Order extended the period of time between the notice of FEIS preparation and the determination of adequacy of the FEIS beyond the 280 days that is provided under Minn. Stat. § 116D.04. The extension was made with the consent of the parties.¹⁵⁴

155. The Order also appointed the undersigned Administrative Law Judge to review public comments on the adequacy of the FEIS and to provide a report and recommendation to the Commission as to an appropriate finding.¹⁵⁵

156. The Commission also issued a notice of a special meeting that would be held on August 22, 2017. This meeting would consider whether to revise the procedural schedule based upon changed circumstances.¹⁵⁶

157. The FEIS was issued on August 17, 2017.¹⁵⁷

158. Electronic copies were available at the DOC's Line 3 website and the MPUC's website on the eDockets system. Electronic copies of the FEIS were available at public libraries in Minneapolis, Crookston, Bemidji, Duluth, Pine River, St. Cloud, Cambridge, Fergus Falls, Montevideo, Wilmar, Mankato, Rochester, Hallock, Warren, Thief River Falls, Red Lake Falls, McIntosh, Bagley, Park Rapids, Wadena, Crosslake, McGregor, Carlton, Cass Lake, Grand Rapids, Staples, Little Falls, Foley, Milaca, Mora, Hinckley, Wheaton, Morris, Benson, Olivia, Gaylord, St. Peter, Le Sueur, Waseca, Albert Lea, Austin, Cloquet, Mahnomen, and Red Lake.¹⁵⁸

¹⁵² See Order Extending Deadline and Setting Procedural Schedule (Aug. 14, 2017) (eDocket 20178-134670-01).

¹⁵³ See Governor Mark Dayton - Statement on Proposed Enbridge Line 3 Pipeline (Aug. 9, 2017) (eDocket 20178-134861-02).

¹⁵⁴ See Order Extending Deadline and Setting Procedural Schedule (Aug. 14, 2017) (eDocket 20178-134670-01).

¹⁵⁵ *Id.*

¹⁵⁶ See Notice of Special Commission Meeting (Aug. 14, 2017) (eDocket No. 20178-134673-01).

¹⁵⁷ See FEIS, Executive Summary (eDocket No. 20178-134773-03).

¹⁵⁸ Notice of Availability (August 30, 2017) (eDocket No. 20178-135120-02).

159. On August 17, 2017, DOC-EERA issued a press release regarding the availability of the FEIS to newspapers of general circulation in the areas that would be affected by the Project.¹⁵⁹

160. On August 23, 2017, the Commission issued this same Notice through the eDocket system. The Notice advised that a comment period on the adequacy of the FEIS would extend through October 2, 2017. The Notice also provided detail on how to access the FEIS and submit timely comments.¹⁶⁰

161. On August 25, 2017, the Commission issued its Order Modifying Procedural Schedule to reflect the delayed issuance of the FEIS.¹⁶¹

162. A Notice of Availability of the FEIS was published in the *EQB Monitor* on August 28, 2017.¹⁶²

163. On the same date, the Administrative Law Judge held a Status and Scheduling Conference. The conference addressed the methods of further developing the record as to the adequacy of the FEIS.¹⁶³

164. The hearing record on that particular issue closed on October 2, 2017.¹⁶⁴

165. The Commission received hundreds of timely comments from interested stakeholders in this matter.¹⁶⁵

166. Because of the sheer volume of stakeholder comments, this Report does not necessarily separately recount or address each critique. Instead, the findings and analysis that follows below focuses on those matters which prompted a genuine issue as to the adequacy of the FEIS.¹⁶⁶

B. Features of the FEIS

167. In response to substantive comments from stakeholders, the FEIS included a series of changes, revisions and additions from the earlier draft. The FEIS includes:

¹⁵⁹ See News Release – Final environmental impact statement is issued for proposed Line 3 pipeline project (Aug. 17, 2017) (eDocket 201710-136775-04); see also Minn. R. 4410.2700, subp. 5 (2015).

¹⁶⁰ Enbridge did not object to the extension of this timeframe.

¹⁶¹ Order Modifying Procedural Schedule (Aug. 25, 2017) (eDocket 20178-135021-01).

¹⁶² See Notice of Comment Period on Adequacy of Final EIS for the Proposed Line 3 Replacement Project, *EQB Monitor* Vol. 41, No. 35 (Aug. 28, 2017) (eDocket No. 20179-135846-11); see also Minn. R. 4410.2700, subp. 4 (2017).

¹⁶³ See Second FEIS Scheduling Order, OAH Docket No. 8-2500-34602 (Aug. 31, 2017).

¹⁶⁴ See Order Modifying Procedural Schedule (Aug. 25, 2017) (eDocket 20178-135021-01).

¹⁶⁵ See, e.g., eDocket Nos. 20179-135779-01, 20179-135778-01, 20179-135626-01, 201710-136028-01, 201710-136026-02, 201710-136025-02, 201710-136024-02, 201710-136020-02, 201710-136019-04.

¹⁶⁶ See Minn. R. 4410.2800, subp. 4(A) (“The final EIS shall be determined adequate if it ... addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained”).

- (a) Additional discussion, in Chapters 5 and 6, of the socioeconomic impacts associated with the proposed Project;
- (b) A more detailed review, in Chapter 8, of distances between existing pipelines along the Applicant's Preferred Route;
- (c) Additional detail, in Chapter 9, as to potential impacts to tribal resources;
- (d) Additional analysis, in Chapter 10, of modeling potential accidental oil releases;
- (e) Additional analysis, in Chapter 10, of the risks and potential hazards associated transporting crude oil;
- (f) Additional analysis, in Chapter 11, of potential impacts on environmental justice from different system and route alternatives;
- (g) A broader cumulative potential effects analysis in Chapter 12; and,
- (h) Updated appendices and topical references.¹⁶⁷

168. The FEIS also includes additional appendices, including Appendix R (Enbridge Pipeline Construction Economic Study) Appendix S (Baseline Crude Oil Spill Analysis).¹⁶⁸

169. The FEIS includes each of the component parts required by Minn. R. 4410.2300 (2017).¹⁶⁹

C. Analysis of Alternatives Minn. R. 4410.2300 (G)

170. When searching for "reasonable alternatives to the proposed project," the DOC-EERA reviewed pipeline alternatives that interconnected with "the crude oil supply region near Edmonton, Alberta" and "served the same Clearbrook and Superior destinations."¹⁷⁰

171. None of the other non-Enbridge pipelines that are now (or will be) capable of bringing crude oil from Canada connect to Superior, Wisconsin. The Keystone XL pipeline, TransCanada Energy East pipeline, or the Minnesota pipeline are not capable of bringing crude oil to a refinery in Superior, Wisconsin.¹⁷¹

172. Friends of the Headwaters, Honor the Earth and other stakeholders maintain that DOC-EERA improperly credited Enbridge's stated purpose for the project

¹⁶⁷ See FEIS at ES-11.

¹⁶⁸ FEIS at Appxs. S, R.

¹⁶⁹ Minn. R. 4410.2300.

¹⁷⁰ FEIS at 4-7.

¹⁷¹ *Id.* at 4-7 – 4-8.

(namely, to link crude oil supplies coming from Alberta, Canada to pipeline terminals in Clearbrook, Minnesota and Superior, Wisconsin). These stakeholders maintain that DOC-EERA undertook the wrong inquiries because the true purpose of the project is to “get crude oil to refineries in the Chicago area, the Gulf Coast, and conceivably overseas.”¹⁷²

173. The Administrative Law Judge disagrees. Because of the nature of Minnesota’s market for crude oil, it was not irrational or inappropriate for the DOC-EERA to focus upon proposals that could deliver crude oil to terminals in Clearbrook, Minnesota and Superior, Wisconsin. In this context it is important to emphasize that Minnesota refineries have not imported crude oil from a country other than Canada since 2008. Moreover, the only pipeline by which “non-Canadian” crude oil imports could be delivered to Minnesota refineries, was taken out of service in 2013.¹⁷³ Thus, while not all of the crude oil that is shipped on Enbridge’s Mainline system remains in Minnesota (or Superior, Wisconsin), the oil that is needed by Minnesota companies travels on this interstate network.

174. Further, because crude oil supplies for refineries in Minnesota and Wisconsin travel alongside supplies that are destined for other parts of the country, a rise in demand from these other locations that is not matched by increases in pipeline capacity results in “apportionment” on the pipeline and delays of oil shipments to Midwestern companies.¹⁷⁴

¹⁷² FOH Comments at 16-17 (Oct. 3, 2017) (eDocket No. 201710-136024-02); see also HTE Comments, at 8 (eDocket No. 201710-136026-02); Comment of Andrew Dvorak (July 9, 2017) (eDocket No. 20178-134810-02).

¹⁷³ Direct Testimony of Neil Earnest at 13 (eDocket No. 20171-128683-02); see also FEIS at ES-1 (“Nearly all of the heavy crude oil refineries in the Upper Midwest receive a portion of their oil, either directly or indirectly, from the Enbridge Mainline system”).

¹⁷⁴ See FEIS at 2-5 (“As a common carrier, Enbridge is required to treat all similarly situated crude oil customers on the Enbridge Mainline system without discrimination. Thus, when demand from refineries is greater than the capacity of the pipeline system, Enbridge must apportion the pipeline capacity as regulated by the Federal Energy Regulatory Commission, typically resulting in all refineries receiving less capacity to transport crude oil nominations than requested.”); Comment of Flint Hills Resources (August 16, 2017) (eDocket No. 20179-135394-01) (“In the last 10 years, more than one million barrels per day of pipeline capacity have been added downstream of Clearbrook while upstream pipeline capacity has not kept pace. This has led to greater apportionment or ‘rationing’ of shipments because the upstream portion of the system cannot accommodate all the volumes for which it has received nominations. This imbalance creates inefficiencies that hinder a refinery’s ability to access its most preferred or economic crude slate. Apportionment also can make it more difficult for refineries to respond to spikes in demand, make up for supply outages or unplanned events, and it can create operational inefficiencies, including underutilization of equipment. These inefficiencies and supply constraints ultimately harm consumers.”); Comment of Todd Borgmann, Calumet Specialty Products Partners, L.P., (July 8, 2017) (eDocket No. 20179-135394-01) (“Currently the logistics out of Western Canada, including the Enbridge Pipeline System, are constrained in that demand exceeds transportation capacity out of the basin. If additional capacity on Enbridge Line 3 is not made available, we may be faced with undue and unnecessary risks tied to capacity apportionment and/or operational/supply disruptions, both of which would have a negative impact on our operations.”); Comment of C. Mike Palmer, Marathon Petroleum Company, L.P. (July 7, 2017) (eDocket No. 20179-135394-01) (“MPC has been a shipper on the Enbridge Mainline System for many years. MPC is concerned with the ongoing, consistent apportionment that has been occurring on the Enbridge Mainline System, which has been as high as 36% in February of

175. For these reasons, connectivity to terminals in Clearbrook and Superior were key features to be assessed in the FEIS, albeit not the only features that were evaluated.¹⁷⁵

176. The Sierra Club, Mr. Willis Mattison and others argue that the real need to be assessed in this matter is improved access to “energy,” and not merely increases in the supplies of crude oil. This error in focus, their argument continues, inappropriately excludes alternative technologies, such as electric cars, which could meet the transportation needs of Minnesotans. Because the FEIS evaluates alternatives that deliver crude oil, they maintain that it is inadequate.¹⁷⁶

177. The Administrative Law Judge disagrees. To the extent that some of the crude oil supplies sought by area refiners is intended to be fashioned into pharmaceuticals, plastics or asphalt, it was not error for the DOC-EERA to focus on methodologies that were capable of delivering supplies of oil from one point to another. Technologies like electric-powered automobiles or electricity from wind turbines are arguably substitutes for gasoline or diesel fuel, but they are not genuine alternatives to the other, wider range of products that are manufactured from petroleum.¹⁷⁷

178. As the U.S. Council on Environmental Quality observed in a similar context “[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”¹⁷⁸

179. In this case, the ability of the proposed project to transport crude oil is more than a feature that is “desirable from the standpoint of the applicant;” it is a key

2015. MPC believes that without the full replacement of Line 3 apportionment will continue and in fact increase for US refiners in Minnesota and PADD II, such as MPC.”).

¹⁷⁵ See, e.g., FEIS at 4-8 (System Alternative 04 “is a conceptual pipeline alternative to a different endpoint that is analyzed for comparative purposes. SA-04 and other CN Alternatives could not actually be permitted under this process”); FEIS at Table 4.23 (Certificate of Need Alternative Pipelines).

¹⁷⁶ See, e.g., Comments of the Sierra Club at 6 (Oct. 2, 2017) (eDocket No. 201710-136028-01) (“The FEIS, however, because it is based on Enbridge’s need, only considers different methods for delivering oil to Enbridge’s shippers and not different energy facilities that could meet the need for energy as the law requires”); see also Comments of Willis Mattison, at 6 (Oct. 3, 2017) (eDocket No. 201710-136031-02); Comment of John Munter (Oct. 2, 2017) (eDocket No. 201710-136065-01); Comment of Greg Chester (Oct. 4, 2017) (eDocket No. 201710-136290-02).

¹⁷⁷ See, e.g., Comment of Flint Hills (eDocket No. 20177-134089-01) (Flint Hills Resources’ Pine Bend refinery in Rosemount, Minnesota “produces a significant percentage of the asphalt used in Minnesota and across the country as well as heating fuels and the chemical building blocks for numerous other essential products, including plastics, fertilizers, medicines and synthetic materials”); Comment of Todd Borgmann (eDocket No. 20177-134089-01) (the Calumet refinery in Superior, Wisconsin produces “500 thousand gallons per day of Asphalt and Fuel Oil”); Comment of the Duluth Seaway Port Authority (July 10, 2017) (eDocket No. 20177-134089-01) (“The crude oil that moves through Line 3 is refined for use as fuel and as a feedstock for a wide variety of products that all of us use every day, including medical supplies, eye- and sun-glasses, bike parts, auto- and jet components, asphalt for roads and roofs, and poly-fiber fabrics used to make clothing, outdoor gear and tents”); Bemidji Public Hearing Transcript, at 94 (Suave).

¹⁷⁸ 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981).

expectation among Enbridge's customers who use petroleum to manufacture a wide-range of products.¹⁷⁹

180. The Mille Lacs Band suggests that operating the other Enbridge-owned pipelines in Minnesota closer to full capacity would be sufficient to meet any need for transporting crude oil to Superior, Wisconsin; and could do so without the impacts of a new pipeline. Because this option is not squarely addressed in the FEIS, the Band maintains that the FEIS is inadequate.¹⁸⁰

181. It does not appear that the Mille Lacs Band raised this suggestion during either the scoping process or in its comments to the DEIS, giving DOC-EERA (or others) a reasonable opportunity to respond.¹⁸¹ Still, the hearing record includes valuable detail on this important question.

182. The Enbridge Mainline system consists of Line 3 and other pipelines, including Line 1 (237,000 bpd), Line 2A (442,000 bpd), Line 2B (442,000 bpd), Line 4 (796,000 bpd), and Line 67 (890,000 bpd).¹⁸²

183. The record suggests only a fraction of the oil that Enbridge proposes to ship along a refurbished Line 3 could be transported by other nearby pipelines.¹⁸³ For

¹⁷⁹ See, e.g., Direct Testimony of Paul Kahler, at 6-7 (eDocket No. 20179-135394-01).

¹⁸⁰ Comments of the Mille Lacs Band of Ojibwe on the Final Environmental Impact Statements (Oct. 2, 2017) (eDocket No. 201710-136025-02) ("On September 11, 2017, the Department of Commerce submitted direct testimony from Kate O'Connell in the administrative proceedings for the Line 3 Replacement Project. The information in this testimony strongly suggests that existing pipelines are capable of fulfilling the alleged need for the increased capacity that would be provided by the new Line 3 and is directly relevant to the alternatives analysis in the FEIS. However, the FEIS fails to analyze the impacts or feasibility of using existing pipelines . . .").

¹⁸¹ Compare Comments of the Mille Lacs Band of Ojibwe on the DEIS (July 10, 2017) (eDocket No. 20177-133701-02) and Comments of the Mille Lacs Band of Ojibwe, at 2 (May 26, 2016) (eDocket No. 20165-121697-03) ("the EIS should incorporate new alternatives developed through the course of the environmental review which may avoid unanticipated or particularly serious adverse impacts including detailed analysis of all potential mitigation measures") with Minn. R. 4410.2800, subp. 4(A), (B) ("The final EIS shall be determined adequate if it . . . addresses the potentially significant issues and alternatives raised in scoping . . . [and] provides responses to the substantive comments received during the draft EIS review.").

¹⁸² FEIS at 4-7.

¹⁸³ See FEIS at 4-7 – 4-8; Honor the Earth Information Request No. 2 (Sept. 7, 2017) (eDocket No. 201710-136749-01) ("The projects . . . are not alternatives to a Line 3 Replacement for a variety of reasons. The capacity recovery projects listed ('Line 2A Capacity Recovery', 'Line 2B Capacity Recovery', 'Line 4 Capacity Recovery') are projects designed to restore those respective lines back to their annual quoted capacities. Lines 2A and 2B do not provide heavy capacity out of Western Canada that historical and forecast apportionment indicates is required, hence are not alternatives to Line 3 Replacement. Capacity recovery of Line 4 provides some incremental heavy capacity out of Western Canada; however, it does not eliminate historical and forecasted heavy apportionment."); Surrebuttal Testimony of Lorne Stockman at 12 (Oct. 23, 2017) (eDocket No. 201710-136739-02) ("If future Canadian crude oil supply that is available for export is as high as forecast by the industry in the CAPP 2017 Report, then it is likely that apportionment on the Enbridge Mainline System will increase. If future Canadian supply is significantly less than the CAPP 2017 supply forecast and the Project is not built, then apportionment would depend on how much oil is available for export and whether shippers have access to other transportation options."); Surrebuttal Testimony of Chris Joseph at 10 (Oct. 23, 2017) (eDocket No. 201710-136730-03) ("Minnesota refineries have the ability to obtain oil via other means such as rail to make up shortfalls resulting from any apportionment that might occur"); Rebuttal Testimony of Paul

this reason, the DOC-EERA did not commit error by not detailing this particular suggestion as an alternative to the proposed project.

184. Honor the Earth maintains that the DOC-EERA committed error by not assessing the impacts of the proposed project according to the rated capacity of the proposed pipeline – 915,000 barrels per day – and only evaluated the potential impacts of transporting an annual average of 760,000 barrels per day. 760,000 bpd is the rated capacity of the existing Line 3 and the amount of oil that Enbridge requested authorization to transport in its Certificate of Need application for this project.¹⁸⁴

185. Honor the Earth argues that the higher rated capacity of the proposed line must be evaluated as part of the FEIS, because the potential to transport an added 155,000 bpd “creates an expectation of a future expansion of the Project.” This expectation, continues Honor the Earth, amounts to a “future project,” that is “actually planned or for which a basis of expectation has been laid,” as those terms are used in Minn. R. 4410.0200, subp. 11a.¹⁸⁵

186. The Administrative Law Judge disagrees. Even if one assumes that the Commission will approve the Line 3 replacement project, and authorizes operation of the new line at an annual average of 760,000 bpd, in order for Enbridge to transport a sizeable increase beyond that initial authorization it would be required to seek a revised Certificate of Need. Enbridge could not move significantly beyond 760,000 bpd, without first receiving the Commission’s approval.¹⁸⁶

187. Because the record does not include any permits, requests or filings relating to shipment of this extra quantity of oil, operation of a pipeline at 915,000 bpd is not matter that has moved beyond the realm of mathematical possibility. Operating at this higher rate is not “actually planned,” a matter as to which a reasonable “expectation has been laid” among Enbridge’s customers or a “probable outcome” of approving Enbridge’s application for a Certificate of Need.¹⁸⁷ For these reasons, DOC-EERA was not required to assess a pipeline that operates at 915,000 bpd in order for the FEIS to be adequate.

188. Friends of the Headwaters make a similar claim, maintaining that the FEIS must include assessments of a potential pipeline project in Wisconsin – future construction of “Line 66.” As to this pipeline project, Friends of the Headwaters

Kahler, John Van Heyst and Edward Shahady at 5 (Sept. 11, 2017) (eDocket No. 201710-136412-02) (“Data used by the State Department indicates that verified monthly nominations of Western Canadian heavy crude oil exceeded accepted nominations by an average of almost 195,000 barrels per day for the first 12 months *after* the Line 67 expansion. This represented an average of 11-percent apportionment for this period. The report also noted that Line 67 was subject to apportionment 10 out of the 12 months indicating the demand exceeded the design capacity.”) (emphasis in original).

¹⁸⁴ HTE Comments, *supra*, at 11; FEIS at ES-1; Certificate of Need Application at 1-1 (Apr. 24, 2015) (eDocket No. 20154-109653-03) (“Upon replacement, the annual average capacity of Line 3 will be 760,000 barrels per day (bpd)”).

¹⁸⁵ HTE Comments, *supra*, at 11.

¹⁸⁶ Minn. R. 7853.0800, subp. 2(D) (2017).

¹⁸⁷ *Compare* Minn. R. 4410.0200, subp. 11a, *with* 46 Fed. Reg. at 18031 (“the agency not required to engage in speculation” regarding future development plans and should limit its assessments to ascertainable trends and “probable effects of its decisions”).

maintains Enbridge has undertaken field surveys and therefore must be “included in the necessary cumulative impacts analysis for this environmental impact statement.”¹⁸⁸

189. The Administrative Law Judge disagrees. Even if survey work could qualify as an “actual plan” for a pipeline, or one for which a reasonable “expectation has been laid,” Minnesota’s administrative rule on “phased actions” describes the appropriate practice when assessing a networked resource, such as a pipeline. Minn. R. 4410.2000, subp. 4 (2017) states:

For proposed projects such as highways, streets, *pipelines*, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. *These selections must be logical in relation to the design of the total system or network and must not be made merely to divide a large system into exempted segments.*¹⁸⁹

190. In this instance, DOC-EERA acted reasonably when selecting to review the project as it lies between Neche, North Dakota and Superior, Wisconsin. This portion of the larger Mainline System is the subject of Enbridge’s filings to the Commission and, for the most part, it lies within the borders of the State of Minnesota. DOC-EERA’s selection was certainly “logical in relation to the design of the total system or network” and was not made “merely to divide a large system into exempted segments.”¹⁹⁰ Declining to evaluate a yet-to-be proposed project, wholly within a neighboring state, was not error.

191. Friends of the Headwaters citation of the decision in *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304 (D.C. Cir. 2014) does not point to a different conclusion. In that case, the agency had segmented the environmental review of a set of proposed, interconnecting pipelines that were under review at the same time. Moreover, the agency’s own segmentation of the related projects was not according to either “logical termini” of the pipelines or rational end points.¹⁹¹ Those are not the facts of this case.

192. The FEIS evaluated transporting 760,000 bpd of oil to Enbridge’s Clearbrook, Minnesota, and Superior, Wisconsin, terminals by rail. With respect to a rail alternative, the FEIS detailed the oil storage and loading facilities and rail access that would be required to implement the alternative; the number of specialized tank car loaded unit trains required per day to transport such volumes from Gretna, North Dakota to Clearbrook and from Gretna to Superior; and the cost of new tank cars.¹⁹²

¹⁸⁸ FOH Comments, *supra*, at 14.

¹⁸⁹ Minn. R. 4410.2000, subp. 4 (emphasis added).

¹⁹⁰ *See id.*

¹⁹¹ *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d at 1315-18.

¹⁹² FEIS at 4-9 – 4-13.

193. Friends of the Headwaters and other stakeholders concur that transporting crude oil by rail is not a viable alternative to the proposed project.¹⁹³

194. The FEIS evaluated transporting 760,000 bpd of oil by truck to Enbridge's Clearbrook, Minnesota, and Superior, Wisconsin terminals. With respect to the truck alternative, the FEIS detailed: the new loading facilities and new or upgraded access to highways that would be required to implement the alternative; the number of tanker trucks required per day to transport equivalent volumes from Gretna to Clearbrook and from Gretna to Superior; and the cost of new trucks.¹⁹⁴

195. Many stakeholders, including Honor the Earth and the Minnesota Coalition of Lake Associations, agree that transporting crude oil by truck is not a viable alternative to the proposed project.¹⁹⁵

196. The FEIS evaluated SA-04 and provided information regarding possible routing; the pump stations and mainline valves that would be required; and the state and local permits needed to place such a pipeline into service.¹⁹⁶

197. Additionally, the DOC-EERA explained:

The location of SA-04 follows the Applicant's Preferred Route from Neche, North Dakota, to the vicinity of U.S. Highway 29 in the northeast corner of North Dakota, where it intersects with the Alliance pipeline corridor. It follows the pipeline corridor until it crosses into Minnesota near Wheaton, in Traverse County. In Minnesota, SA-04 parallels the Alliance pipeline right-of-way and the Minnesota River through Big Stone, Swift, Chippewa, Renville, and Nicollet counties to near Mankato, in Blue Earth County.¹⁹⁷

198. While the DOC-EERA assumed that the SA-04 alternative "would be constructed and operated in the same manner as the Applicant's Preferred Route," it included an important cautionary note: The SA-04 alternative is "a conceptual pipeline

¹⁹³ See, e.g., FOH Comments, *supra*, at 20 ("Rail is a niche market, constituting less than 3% of overall tar sands shipments, and there is no possibility that that can or will be expanded to absorb the amount of oil Enbridge wants to transport through its new Line 3 project. Canada ships almost no oil by rail, and it never has."); Transcript of DEIS Public Meeting in Grand Rapids, at 61 (Maxwell) (eDocket No. 20177-134090-08) ("[T]he rail alternative that is considered involves building a rail terminal at the border of Canada and the United States and bringing the oil from the partial pipeline that Enbridge would build by rail to Superior. Now we all know that Enbridge would never do that, so I don't think that's a reasonable alternative to consider.").

¹⁹⁴ FEIS at 4-13 – 4-17.

¹⁹⁵ Honor The Earth Comments, *supra*, at 10 ("Trucking has never been used in history to transport hundreds of thousands of barrels per day of crude oil in interstate commerce . . . [T]he trucking alternatives are patently unreasonable and specious alternatives that can serve only as illegal 'strawmen' in the FEIS"); Resolution of the Minnesota Coalition of Lake Associations at 3 (July 10, 2017) (eDocket No. 20177-134106-06) ("Whereas, the analysis in the DEIS of alternative means of transport by rail or truck are unrealistic, economically infeasible, and simplistic, serving to eliminate those possibilities, including the possibility of constructing no alternative at all").

¹⁹⁶ FEIS at 4-8 – 4-9.

¹⁹⁷ *Id.* at 4-8.

alternative to a different endpoint that is analyzed for comparative purposes. SA-04 and other CN Alternatives could not actually be permitted under this process.”¹⁹⁸

199. Friends of the Headwaters maintain that this comparative analysis was unfairly skewed in favor of Enbridge’s preferred route. It asserts that the DOC-EERA failed to adjust the SA-04 corridor that was used in the analysis so as to avoid particularly sensitive aquifers in southeastern Minnesota.¹⁹⁹

200. Those features are described in the FEIS in this way:

System alternative SA-04 is the only CN Alternative that crosses vulnerable karst topography. A karst aquifer is a type of bedrock aquifer that usually consists of basic rock types that are prone to chemical weathering and dissolution from the slight acidity of precipitation and groundwater. This can result in the formation of fractures, joints, sinkholes, cavities, caves, and void spaces that allow the movement of large volumes of surface water into and through the aquifer. These characteristics also allow contamination to spread rapidly within the aquifer. Karst aquifers are susceptible to collapse of the aquifer matrix, which can be triggered by construction activities on the land surface. This can lead to the formation of sinkholes in unconsolidated sediments that overlie the bedrock.²⁰⁰

201. Friends of the Headwaters asserts that DOC-EERA’s willingness to consider route segment alternatives that move in the same general path as Enbridge’s preferred route, but involve a “small change to the Applicant’s Preferred Route to address some local problem,” but not adjust the SA-04 alternative so as to avoid karst formations, reveals the agency’s bias. It explains:

No one—least of all FOH—suggests that oil pipelines can be safely routed through Karst topography like that in the Driftless Area in southeastern Minnesota, southwestern Wisconsin, or northeastern Iowa. What the FEIS does not acknowledge, however, is that moving SA-04 approximately 25 miles to the west in Minnesota eliminates those potential problems. The FEIS should evaluate the environmental impact of that route with that modification, or with other mitigation alternatives, in exactly the same way it makes adjustments in Enbridge’s proposed route.²⁰¹

202. The Administrative Law Judge does not agree that comparing the alternatives, without first making adjustments to the “digital centerline” of System Alternative 04, reflects agency bias. First, the pathway for SA-04 follows interstate highways and pipeline corridors between Neche, North Dakota and Joliet, Illinois.²⁰²

¹⁹⁸ *Id.* at 4-8 – 4-9.

¹⁹⁹ FOH Comments, *supra*, at 21.

²⁰⁰ FEIS at ES-17.

²⁰¹ FOH Comments, *supra*, at 21.

²⁰² FEIS at Ch. 5, Table 5 (The SA-04 alternative “would follow APR-L3 from near Neche (Pembina County), ND, approximately to its crossing with U.S. Highway 29. It would then turn south and run parallel

The record does not support a finding that DOC-EERA, or its sister agencies the DNR and the MPCA, aimed the digital centerline of SA-04 at sensitive resources so as to tilt later comparisons in favor of Enbridge's proposal.

203. Additionally, the FEIS makes clear that the description of the potential impacts from SA-04 is more general, because there has not been the kind of "field surveys, landowner and agency coordination, and site-specific engineering" that is commonly associated with a route sponsored by the pipeline company.²⁰³

204. As the FEIS details, a key purpose of the later, more detailed field surveys is to "reduce the impacts on geologic resources and soils" and to address "the potential for localized subsidence from the karst terrain."²⁰⁴

205. Also important, as DOC-EERA points out, greater precision in environmental data does not always favor the Applicant's Preferred Route:

On the one hand, more detailed information was available for the EIS on some impacts (such as the extent of threatened or endangered species to occur) for the Applicant's preferred route. This additional information can sometimes make the magnitude of the impacts from the Applicant's Preferred Route appear greater, simply because detailed information is not available for the other routes.

On the other hand, the predicted impacts of the RAs on some resources (e.g., displacement of homes or tree clearing) can appear to be greater than the impacts from the more optimized Applicant's Preferred Route, but these impacts could be reduced during optimization of the route if an alternative is chosen.²⁰⁵

For these reasons, every reader should approach the FEIS with an understanding of the limits of the various analyses, and realism about what those assessments can, and cannot, tell us about the options before the Commission.

206. With respect to Friends of the Headwaters claim that DOC-EERA had a legal duty to make improvements to competing alternatives, the regulation appears to stop short of such a requirement. Minn. R. 4410.2300(I) obliges the preparing agency to "identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment, or sociological effects *of the proposed project*."²⁰⁶ The regulation does not, however, include a similar directive with respect to system alternatives. For all of these reasons, the DOC-EERA did not act unreasonably

to U.S. Highway 29 to the southern border of ND, where it would intersect and then follow the Alliance pipeline alignment to the vicinity of Joliet, IL.").

²⁰³ See FEIS at 5-5 ("If the proposed Project is not constructed, field surveys, landowner and agency coordination, and site-specific engineering would be conducted to develop routing; develop specialized construction methods; and locate above ground facilities, access roads, and yards along any other pipeline route").

²⁰⁴ FEIS at 5-162.

²⁰⁵ *Id.* at ES-8.

²⁰⁶ Minn. R. 4410.2300(I) (emphasis added).

when it declined to adjust the SA-04 centerline so as to avoid karst formations in southeastern Minnesota.

207. The “thorough but succinct discussion”²⁰⁷ of alternatives does not render the FEIS inadequate or defective.

208. Enbridge commissioned a modeling analysis of hypothetical crude oil releases on behalf of, and with input from, DOC-EERA, DNR and MPCA. The analysis modeled the impacts following seven different hypothetical crude oil releases. The computer modeling involved “simulating the chemical and physical behavior of hypothetical oil spills in the selected environments under specified conditions, including weathering processes.”²⁰⁸

209. The oil spill scenarios were set at different locations along the Applicant’s Preferred Route and route alternatives. This study later informed both agency and independent analyses of the behavior of crude oil after a release and the assessment of likely impacts following a release. All of these items are detailed in the FEIS.²⁰⁹

210. Further, the DOC-EERA commissioned a study from a private consulting firm, Ecology and Environment, Inc., to conduct an analysis of previous oil spills. In an effort to “quantify the incremental risk for the Line 3 Project,” the report provided “an overview of pipeline spill rates and trends in the inland [United States] as a whole, as well as an analysis of historical data for existing crude oil pipelines in Minnesota.”²¹⁰

211. Drawing upon these materials, and other items, the FEIS analyzed the relationship between the volume of oil that would be transported by the project in relation to the risk of later spills and still broader “cumulative potential effects.”²¹¹

212. Among the findings made in the FEIS were:

- (a) The average volume of pipeline spills has decreased significantly since the late 1960s, and particularly in the last dozen years. The average spill volume (all oil types) is now less than 50 percent of the average volume 10 years ago, and 12 percent of the volume in the late 1960s.
- (b) Overall, half of the pipeline spills that do occur would be expected to involve 1 barrel of oil or less. About 90 percent would involve 100

²⁰⁷ See Minn. R. 4410.2300(H) (“for the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant adverse or beneficial effects generated, be they direct, indirect, or cumulative. Data and analyses shall be commensurate with the importance of the impact and the relevance of the information to a reasoned choice among alternatives and to the consideration of the need for mitigation measures”); see *also* Minn. R. 4410.2800, subp. 4(A) (2017) (“The final EIS shall be determined adequate if it . . . 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”).

²⁰⁸ FEIS at 10-48.

²⁰⁹ *Id.*, Appx. S at 36

²¹⁰ *Id.*, Appx. S at 5.

²¹¹ *Id.*, Chs. 10, 12.

barrels or less. Only 5 percent would be expected to be 400 barrels or more, and only 1 percent would be expected to be 2,500 barrels or more.

- (c) The rate of spillage in Minnesota has been lower than that in the U.S. as a whole, accounting for pipeline mileage and amount transmitted.
- (d) DOC-EERA estimated that the volumes of spillage in the seven hypothetical Line 3 spill scenarios — ranging from 8,625 barrels to 16,239 barrels — might be expected once in 26 to 99 years somewhere in the state of Minnesota.²¹²

213. Friends of the Headwaters maintains that the FEIS is inadequate because the spill analyses did not include an assessment of a hypothetical discharge of oil into the headwaters of the Mississippi, or other HCAs in Itasca and Hubbard counties. It argues:

Before approving or rejecting this pipeline proposal, the public and the PUC reasonably want to know what would happen if a Kalamazoo-type spill occurred near the Mississippi headwaters, in the wetlands and wild rice habitat north of Itasca State Park, in the central sands area with its vulnerable aquifers and already-compromised drinking water supplies, into the Straight River, a nationally recognized trout stream, and in other sensitive areas along the route.²¹³

214. The Administrative Law Judge does not agree that the FEIS is inadequate without the specific modeling sought by Friends of the Headwaters. The regulatory guidance in this area suggests that if the agency's assessments are broadly representative of the spill impacts likely to be encountered along the pipeline route, those evaluations are adequate; even if interested persons would have preferred other, particular areas to have been studied by the government.²¹⁴ Measured by this standard, the pyramiding analyses undertaken by the DOC-EERA and its consultants are adequate to inform the Commission of the potential impacts from an accidental discharge of crude oil.

215. The FEIS also analyzed the potential effects of reducing the pipeline diameter from 34 inches, as proposed by Enbridge, to 24 inches. DOC-EERA noted that while the "probability of an incident leading to a crude oil release would . . . be similar for a smaller diameter pipeline," because the construction and operation impacts

²¹² *Id.* at 10-11, 10-15, 10-18, 10-20.

²¹³ FOH Comments, *supra*, at 10.

²¹⁴ See 46 Fed. Reg. at 18027 ("When there are potentially a very large number of alternatives, only a reasonable number of examples, covering a full spectrum of alternatives must be analyzed and compared in the EIS. . . . What constitutes a reasonable range of alternatives depends upon the nature of the proposal and the facts of each case.").

“are generally the same, a smaller diameter pipeline configuration was not evaluated as a Project configuration alternative.”²¹⁵

216. The FEIS evaluated the impacts that would follow if Line 3 was not replaced and decommissioned, but instead continued in service. The FEIS explored the integrity monitoring, maintenance and repairs that would likely be needed to continue the service life of the existing pipeline. DOC-EERA notes that, based upon detail provided by Enbridge, an average of 267 excavation digs would be required each year over the next 15 years. Additionally, Enbridge estimates that the maintenance costs associated with continued service of the existing line are 15 to 20 times the amounts that would be needed for regular maintenance of a new pipeline.²¹⁶

217. The FEIS explored using truck and rail transport as possible supplements to continued service of Line 3.²¹⁷

218. The FEIS evaluated the benefits, potential impacts and possible mitigation methods for three scenarios under which the Line 3 pipeline was deactivated: (1) abandoning the pipeline in place; (2) removing the predecessor line following construction of a replacement line; and (3) removing the existing pipeline and constructing a replacement Line 3 in the same trench and right-of-way.²¹⁸

219. The FEIS analyzed four route alternatives to Enbridge’s preferred route: RA-03-AM, RA-06, RA-07, and RA-08. With respect to each of these alternatives, the FEIS evaluated construction and operation requirements; location, including length, states crossed, and counties crossed; pump stations and mainline valves required; and impacts that would be avoided by the alternative.²¹⁹

220. Additionally, the FEIS evaluated 24 route segment alternatives. With respect to each of these segment alternatives, the FEIS analyzed: the location; length in comparison to Applicant’s Preferred Route; general features in the area; estimated mainline valves required and the purpose of the alternative.²²⁰

221. The FEIS evaluated measures that would be effective in mitigating the operating and construction impacts of a pipeline along the Applicant’s Preferred Route and the various alternatives.²²¹

222. The FEIS included an analysis of potential impacts to human settlement from the Project and various alternatives, including impacts upon: planning and zoning; noise and vibration; aesthetic and visual resources; housing; transportation; and public services.²²²

²¹⁵ FEIS at 4-19.

²¹⁶ *Id.* at 4-3 – 4-7.

²¹⁷ *Id.* at 4-17 – 4-19.

²¹⁸ *Id.* at 8-1 – 8-16.

²¹⁹ *Id.* at 4-19 – 4-28.

²²⁰ *Id.* at 4-29 – 4-40.

²²¹ *Id.* at Chs. 2, 5, 6, 8.

²²² *Id.* at § 6.2.

223. The FEIS included an analysis of potential impacts to stream flows, underground aquifers, hydrologic connectivity, groundwater, surface water, wetlands, and floodplains.²²³

224. With respect to groundwater, the FEIS analyzed, among other items, the potential for degradation of: the quality of shallow groundwater from blasting, spills, or contamination; water quality from mud releases during horizontal directional drill crossings; and the availability of groundwater supplies. The potential impacts were further segregated into assessments of construction impacts and operational impacts.²²⁴

225. With respect to surface water, the analysis evaluated potential impacts to: runoff and flows; surface water and aquatic habitat quality; channel morphology and stability; and disturbance of wild rice waterbodies.²²⁵

226. The FEIS likewise identified mitigation measures beyond those suggested by Enbridge, to reduce potential impacts to surface water and groundwater. These methods included engaging third-party water quality monitors and adjusting horizontal drilling practices so as to stabilize nearby soils.²²⁶

227. With respect to wetlands, the FEIS assessed key potential impacts to functions and characteristics of various type of wetland areas, including: forested wetlands, shrub wetlands, emergent wetlands, Minnesota Public Waters Wetlands, Reserve Program wetlands, and calcareous fens.²²⁷

228. The FEIS details the various interventions proposed by Enbridge to minimize impacts to wetland areas.²²⁸

229. The FEIS also reviewed potential impacts to, and mitigation measures for protecting, the characteristics, functions and availability of wetland mitigation bank easements.²²⁹

230. The FEIS included an analysis of potential impacts to floodplains, and facilities within the floodplain, during any later construction and operation of the Project. It conducted similar reviews of the impacts arising out of the alternatives to the Project. The FEIS also identified potential mitigation measures to reduce these impacts.²³⁰

231. The FEIS evaluated construction-related impacts to geology and soils, including: soil erosion; soil compaction; soil mixing; soil contamination; presence of

²²³ *Id.* at § 5.2, § 6.3.

²²⁴ *Id.* at § 5.2.1.1, § 6.3.1.1.

²²⁵ *Id.* at § 5.2.1.2, § 6.3.1.2.

²²⁶ *Id.* at 5-38, 5-104.

²²⁷ *Id.* at § 5.2.1.3, § 6.3.1.3.

²²⁸ *Id.* at 5-114 - 5-115.

²²⁹ *Id.* at 5-110 - 5-115

²³⁰ *Id.* at § 5.1.2.4, § 6.3.1.4.

shallow bedrock that may require blasting; impacts on paleontological resources; changes to topography; and, subsidence and sinkhole hazards.²³¹

232. The FEIS also evaluated operations-related impacts, including: permanent loss of soil cover; soil erosion and compaction; landslide hazards; and subsidence and sinkhole hazards.²³²

233. The FEIS's detailed potential impacts to vegetation from construction and operations of the Project, including: loss or alteration of existing vegetation cover; loss or alteration of native plant communities – including Sites of Biodiversity Significance, old-growth forest complexes and high conservation value forests; and the spread of noxious weeds and invasive plants.²³³

234. The FEIS identified a series of mitigation measures to reduce impacts on vegetation beyond the mitigation and best management practices proposed by Enbridge.²³⁴

235. The FEIS identified fish and wildlife resources that could be impacted by construction or operation of the Project and project alternatives.²³⁵

236. In addition to Enbridge's proposed mitigation methods, the FEIS identified additional measures to reduce impacts on aquatic habitat and wildlife.²³⁶

237. The FEIS described potential effects on animals and plants that are protected under the law, from construction and operation of the Project and its alternatives. Specifically, the FEIS included analyses of: federally listed threatened and endangered species; state listed threatened, endangered, and special concern species; Species of Greatest Conservation Need; Minnesota Biological Survey Sites of Biodiversity Significance; and Scientific and Natural Areas.²³⁷

238. Beyond the mitigation measures identified by Enbridge, the FEIS includes additional measures and best practices identified by the DNR.²³⁸

239. The FEIS included an analysis of potential impacts on public lands, including the Project's compatibility with designated uses of federal, state and county land.²³⁹

240. The FEIS evaluated potential impacts to air quality from the construction of the Project and alternatives. The FEIS assessed air pollutant emissions, including

²³¹ *Id.* at § 5.2.2, § 6.3.2.

²³² *Id.* at § 5.2.2, § 6.3.2.

²³³ *Id.* at § 5.2.3, § 6.3.3.

²³⁴ *Id.* at § 5.2.3, § 6.3.3.

²³⁵ *Id.* at § 5.2.4, § 6.3.4.

²³⁶ *Id.* at § 5.2.4, § 6.3.4.

²³⁷ *Id.* at § 5.2.5, § 6.3.5.

²³⁸ *Id.* at § 5.2.5, § 6.3.5.

²³⁹ *Id.* at § 5.2.6, § 6.3.6.

greenhouse gas emissions, generated by construction, as well as the release of stored carbon during tree clearing of construction work areas.²⁴⁰

241. Similarly, with respect to operations of the Project and its alternatives, the FEIS assessed: air pollutant emissions, including GHG emissions, from pipeline, rail, and truck operations; the social cost of carbon, which provides an estimate of potential climate change damage from GHG emissions; loss of carbon sequestration potential within the pipeline rights-of-way; and possible GHG emissions associated with upstream or downstream GHG emissions.²⁴¹

242. Beyond Enbridge proposed mitigation measures, the FEIS identified both additional measures to reduce air quality impacts as well as compensatory measures.²⁴²

243. The FEIS included an analysis of cultural resources with respect to the Project and its alternatives. The analysis was based, in part, on eleven archeological surveys and site evaluations conducted between May 2013 and August 2016.²⁴³

244. The FEIS addressed direct and indirect impacts on archaeological and historic resources.²⁴⁴

245. The FEIS identified a series of mitigation measures to mitigate and avoid impacts to cultural resources. Among the strategies identified by the DOC-EERA were use of fencing and buffer zones during construction and monitoring regimes to further minimize impacts to these resources.²⁴⁵

246. DOC-EERA noted that “[i]f a Certificate of Need is issued by the PUC, an additional survey also may 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.”²⁴⁶

247. The FEIS also includes an analysis of potential impacts to tribal resources from the Project and its alternatives. This section includes an identification of the historical and legal framework (including treaties between Native American tribes and the federal government); differing types of tribal resources; possible impacts to these resources from pipeline construction, operations and abandonment of the predecessor line; useful mitigation strategies; and unique tribal impacts.²⁴⁷

²⁴⁰ *Id.* at § 5.2.7, § 6.3.7.

²⁴¹ *Id.* at § 5.2.7, § 6.3.7.

²⁴² *Id.* at § 5.2.7, § 6.3.7.

²⁴³ *Id.* at § 5.4, § 6.4.

²⁴⁴ *Id.* at § 5.4, § 6.4.

²⁴⁵ *Id.* at § 5.4.4.2, § 6.4.4.2.

²⁴⁶ *Id.* at 6-649.

²⁴⁷ *Id.* at §§ 9.3, 9.4, 9.5, 9.6, 9.7.

248. With respect to the different types of tribal resources, the DEIS considered cultural properties; cultural corridors; traditional uses of area resources; spiritual connections to the land, hunting, water, fishing and manoomin.²⁴⁸

249. With respect to unique tribal impacts, the DEIS considered climate change and health impacts. The FEIS notes that: “Loss of or diminishment of resources from global climate change would constitute an adverse effect on American Indian tribes. For example, hotter and drier summers could adversely affect water levels and wild rice and fish harvests . . . Climate change could also shift or reduce the habitat ranges of culturally significant plant and animal species, thereby affecting the ability of tribal communities to harvest these species.”²⁴⁹

250. With respect to its information gathering methodology, the FEIS noted that DOC-EERA drew detail about these resources from tribal consultations, community meetings, interviews with tribal elders and historians, and the comments received during the scoping process.²⁵⁰

251. The Fond du Lac Band maintains that the work that is needed to identify important tribal resources has only just started, and not enough of this survey has been completed for the Commission to be able to address the issues that were raised during the scoping process. As the Band recounted in its comments to the FEIS:

The EIS correctly states that ‘cultural resources important to American Indian tribes may not be captured in their entirety.’ However, the EIS fails to mention that a process currently unfolding may allow those cultural resources to come to light. In March of 2017, numerous tribes gathered with officials from the Army Corps of Engineers (ACOE) as part of a consultation on the Line 3 project required by Section 106 of the National Historic Preservation Act. That process has led to the formation of a Tribal Cultural Survey, with the Band as the fiscal agent, with employees from the Fond du Lac Band, the Mille Lacs Band, the Leech Lake Band, Rosebud Sioux, and other federally recognized tribes involved in the consultation. Beginning on October 3, 2017, tribal members from these groups under the supervision of cultural and spiritual leaders and trained archeologists will begin surveying the Applicant's proposed route for the presence of Traditional Cultural Properties (TCPs). The survey is expected to last for 8 weeks of 2017, weather permitting, and should continue into 2018 as more sites are uncovered and further evaluation becomes necessary.²⁵¹

²⁴⁸ *Id.*, at ES-11, Ch. 9, App. P.

²⁴⁹ *Id.* at 9-39.

²⁵⁰ *Id.* at ES-11, Ch. 9, App. P.

²⁵¹ Fond Du Lac Band's Comments at 4-5 (Oct. 2, 2017) (eDocket No. 201710-136023-01).

252. In the Band's view, "[u]ntil a complete tribal cultural survey is allowed to evaluate TCPs along the Applicant's preferred alternative and route alternatives, no EIS created without this information should be considered adequate."²⁵²

253. The Administrative Law Judge disagrees. The case of *Citizens Advocating Responsible Development v. Kandiyohi County Bd. of Com'rs*, 713 N.W.2d 817 (Minn. 2006) points to a different conclusion. In that case, the Minnesota Supreme Court held:

When an RGU considers mitigation measures as offsetting the potential for significant environmental effects under Minn. R. 4410.1700, it may reasonably do so only if those measures are specific, targeted, and are certain to be able to mitigate the environmental effects. The RGU must have some concrete idea of what problems may arise and how they may specifically be addressed by ongoing regulatory authority. There is a definite difference between an RGU review that approves a project with vague promises of future mitigation and an RGU review that has properly examined a project and determined that specific measures can be reasonably expected to deal with the identifiable problems the project may cause.²⁵³

254. In this case, while the Commission may not yet know the particular parcels that were used by the Ojibwe as cemeteries prior to statehood, it does have "some concrete idea of what problems may arise and how they may specifically be addressed by ongoing regulatory authority." Based upon the archaeological surveys and site evaluations conducted between May 2013 and August 2016, and the materials detailed in the FEIS (specifically, sections 5.4.1, 5.4.1.2, 5.4.4.2 and Chapter 9), the Commission has sufficient information to detail "specific measures [that] can be reasonably expected to deal with the identifiable problems the project may cause."²⁵⁴

255. Completion of the Tribal Cultural Properties survey is not required in order for the FEIS to meet the adequacy standards of Minn. R. 4410.2800, subp 4. With this FEIS, the Commission has the "information [that] can be reasonably obtained" and this data has been "analyzed in conformance with part 4410.2300, items G and H."²⁵⁵

256. The FEIS analyzed potential impacts from the Project, and various alternatives, on commodity production. It assessed possible effects from: disturbance and loss of agricultural land; lost commodity yields; restrictions on distribution of commodities by rail; disturbance and loss of forested land and timber resources; and disturbance and loss of land that is used for mining and commodity reserves.²⁵⁶

²⁵² *Id.* at 4-5.

²⁵³ *Citizens Advocating Responsible Devel. v. Kandiyohi County Bd. of Com'rs*, 713 N.W.2d at 830-31.

²⁵⁴ Compare *id.* with FEIS §§ 5.4.1, 5.4.1.2, 5.4.4.2, Chapter 9.

²⁵⁵ Compare Fond Du Lac Band's Comments at 4-5 (Oct. 2, 2017) (eDocket No. 201710-136023-01) with Minn. R. 4410.2800, subp. 4(A).

²⁵⁶ FEIS at § 5.3.1, § 6.5.1.

257. The FEIS also detailed features of the mitigation measures that Enbridge proposed in its Agricultural Protection Plan.²⁵⁷

258. The FEIS evaluated possible limitations on access to recreation, and changes to the recreational economy, as a result of construction and operation of the Project. It likewise reviewed these same risks for each of the alternatives.²⁵⁸

259. The FEIS concluded that impacts on recreational access and recreational economies would be “negligible” to “minor.” Because of the modest impacts, the DOC-EERA did not identify additional mitigation measures to reduce the impacts to these resources.²⁵⁹

260. The FEIS population analysis focused on how populations may be affected by the increase in Project related workers. The FEIS estimates that in some counties, the influx of new workers could prompt increases to county populations “of greater than 10 percent.”²⁶⁰

261. The FEIS assessed the following impacts: increases in local workforces from the influx of workers from communities that are outside the Project area; disruptions to high population areas and other populated areas in proximity to construction work areas; and increased disturbance of population areas along alternatives routes.²⁶¹

262. To mitigate these impacts, the FEIS detailed additional mitigation measures beyond those proposed by Enbridge; specifically, a series of roadway and traffic features that would improve capacity and reduce congestion near construction sites.²⁶²

263. The FEIS included analyses of potential impacts to employment rates, income levels and tax revenues arising out of construction and operation of the proposed pipeline: construction related employment, payroll spending, and expenditures on materials, supplies, and equipment; operations related employment and payroll spending; income tax revenue from workers during construction and operation; and property taxes paid by Enbridge during operation. The FEIS also expanded and refined the evaluation that appeared earlier, in the DEIS, on these same topics.²⁶³

264. The FEIS included detailed cost comparisons between the Project and various route alternatives.²⁶⁴

265. The FEIS included a discussion of both the challenges, and benefits of right-of-way sharing (or “paralleling”) the proposed Project within existing infrastructure

²⁵⁷ *Id.* at § 5.3.1, § 6.5.1.

²⁵⁸ *Id.* at § 5.3.2, § 6.5.2.

²⁵⁹ *Id.* at § 5.3.2, § 6.5.2.

²⁶⁰ *Id.* at § 5.3.3.4.1, Table 6.5.3-6.

²⁶¹ *Id.* at § 5.3.3, § 6.5.3.

²⁶² *Id.* at §§ 5.3.3.4.2, 6.5.3.4.2.

²⁶³ *Id.* at § 5.3.4, § 6.5.4.

²⁶⁴ *Id.* at § 6.6.

corridors. While right-of-way sharing can reduce the amount of disturbances to vegetation, surface soils and wildlife habitats, the process of locating a pipeline adjacent to existing transmission lines or highways can be a very complicated matter. The FEIS thoroughly reviews the competing considerations.²⁶⁵

266. Rounding out this discussion, the FEIS also incorporated additional review of distances between the existing Line 3 and adjacent pipelines.²⁶⁶

267. Depending upon the features of the pipeline project, if any, that is later approved by the Commission, a wide variety of federal, tribal, state and local authorizations would be required for Enbridge to undertake construction. The permits and approvals that would be required for construction, and later operation, of the proposed project, are detailed in the FEIS.²⁶⁷

268. The FEIS analyzed the potential impacts of deactivating the existing Line 3, and either abandoning it in place or removing it from the pipeline trench.²⁶⁸

269. With respect to abandonment, the FEIS included an overview and analysis of Enbridge's decommissioning plan. The FEIS further identifies potential impacts and mitigation measures, including ground disturbance and minimization of risk to other pipelines. Moreover, the FEIS evaluates a series of potential impacts of abandonment of the existing Line 3 on human settlement, natural resources, cultural resources, area economies and environmental justice. It further assesses both potential impacts from soil and water contamination as well as repurposing the pipeline as a water conduit.²⁶⁹

270. With respect to removal, the FEIS notes that the process for removing a pipeline from the ground is similar to the process for installing a pipeline in a particular trench. Accordingly, the FEIS includes a set of familiar evaluations, including a discussion of potential impacts to: human settlements, natural resources, cultural resources, area economies and environmental justice. In addition, the FEIS considered the impacts that other nearby pipelines would present; mitigation measures that would be needed at watercourses; areas where removal of the line might create unacceptable risks; remediation of contaminated soil; and the proper handling of waste materials.²⁷⁰

271. The FEIS analyzes the potential for accidental crude oil releases from the Project and its alternatives. Specifically, the FEIS includes an analysis of: (1) The probability of crude oil release for the Project and alternatives; (2) behavior of crude oil releases; (3) assessment of potential crude oil exposures and impacts; (4) spill prevention, preparedness, and response; (5) cleanup, restoration, and recovery; (6) comparisons of alternatives based on failure probability and potential exposures of resources.²⁷¹

²⁶⁵ *Id.* at § 6.7.

²⁶⁶ *Id.* at ES-11, 8-13.

²⁶⁷ *Id.* at § 6.8.

²⁶⁸ *Id.* at Ch. 8.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at § 8.4.

²⁷¹ *Id.* at § 10.7.

272. Further, beyond the analysis provided in the DEIS, the FEIS included additional discussion of potential crude oil releases and the results of modeling hypothetical oil releases. The FEIS also includes an expanded discussion of the risk of explosion and fire from transporting crude oil.²⁷²

273. Friends of the Headwaters argue that the FEIS is inadequate because it does not provide sufficient assurance that Enbridge will be a viable company over the expected life of the proposed pipeline. It maintains that the FEIS does not assure the public that Enbridge will have the financial wherewithal to remediate later oil spills from the proposed pipeline:

With oil industry dislocations likely coming, as electric vehicles penetrate the market, efficiency gains continue, and oil demand begins to drop, the prospect of a company like Enbridge being unable to meet its statutory obligations at some point in the likely 50-year life span of a new pipeline is quite real. All the descriptions of mitigation in the world are meaningless if the financial issue is not evaluated up front.²⁷³

274. The Administrative Law Judge disagrees that the final analysis in the FEIS is inadequate. FEIS section 10.6.3 details the various resources, both public and private, that might be available to remediate a future oil spill. Moreover, as to Enbridge, the FEIS describes the features, limits and deductibles of the company's general liability insurance program.²⁷⁴

275. Further, it is not clear that the key factor Friends of the Headwaters would have the government assess – the nature of crude oil markets and the demand for oil 50 years from now – is knowable. The FEIS is not inadequate because it does not include an analysis of matters that cannot be “reasonably obtained” or confidently forecasted.²⁷⁵

276. The FEIS evaluated the Project and alternatives with respect to environmental justice, with particular emphasis on potential impacts to minority populations, low-income populations and tribal lands. It also included an analysis of potential impacts from pipeline construction, pipeline operation and accidental releases.²⁷⁶

²⁷² *Id.* at ES-11, Ch. 10, App. E.

²⁷³ FOH Comments, *supra*, at 26.

²⁷⁴ FEIS at 10-138 – 10-141.

²⁷⁵ *Compare* Minn. R. 4410.2800, subp. 4(A) (“The final EIS shall be determined adequate if it ... addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information *can be reasonably obtained* ...”) (emphasis added) *with* 46. Fed. Reg. at 18031 (“the agency not required to engage in speculation” regarding future development plans and should limit its assessments to ascertainable trends and “probable effects of its decisions”).

²⁷⁶ FEIS at § 11.3.

277. The information developed by the DOC-EERA leading up to, and after the DEIS, resulted in expanded discussions in the FEIS of potential impacts on minority and low-income communities.²⁷⁷

278. The FEIS included an analysis of cumulative potential effects with respect to the Project and both Certificate of Need and route alternatives. The analysis focuses upon five projects located within several miles of the Applicant's Preferred Route, each of which is expected to be either under construction or operational during 2018.²⁷⁸

279. The FEIS included assessments of reasonably foreseeable actions, including an evaluation of the cumulative potential effects from:

- (a) the Line 67 Expansion Project;
- (b) Minnesota Pipe Line Company Reliability Project;
- (c) Koch Pipeline Company Clearbrook Tanks Project;
- (d) MPL-Laporte 115 kV Transmission Line Project;
- (e) Menahga Area 115 kV Transmission Line Project;
- (f) Valley Expansion Pipeline Project; and the
- (g) Fargo-Moorhead Metropolitan Area Flood Risk Management Project.²⁷⁹

280. With respect to the rail and truck alternatives, the FEIS considered potential cumulative effects related to noise, water resources, and air quality.²⁸⁰

281. With respect to route alternatives, the FEIS identified and evaluated the cumulative potential effects arising from the following projects:

- (a) the Line 67 Expansion Project;
- (b) Minnesota Pipe Line Company Reliability Project;
- (c) Koch Pipeline Company Clearbrook Tanks Project;
- (d) Menahga Area 115 kV Transmission Line Project;
- (e) MPL-Laporte 115 kV Transmission Line Project;
- (f) the Great Northern Transmission Line Project; and,
- (g) the addition of another pipeline in the proposed Project corridor.²⁸¹

²⁷⁷ *Id.* at ES-11, § 11.2.2.

²⁷⁸ *Id.* at §§ 12.3, 12.4, 12.6.

²⁷⁹ *Id.* at ES-11, § 12.3.

²⁸⁰ *Id.* at §§ 12.3.4, 12.3.5.

282. The FEIS considered the cumulative potential effects of the Project on climate change, including an identification of Midwest climate change trends, potential Project impacts, and the potential impacts of the Project in combination with climate change impacts.²⁸²

283. The FEIS identifies a series of mitigation measures which could eliminate, minimize, or compensate for adverse impacts from the Project and its alternatives.²⁸³

284. The FEIS detailed methods of avoiding impacts to: groundwater; surface water; wetlands; floodplains; vegetation; fish and wildlife; unique natural resources; public lands; air quality; human settlements; cultural resources; aesthetic and visual resources; housing; transportation; public services; and disadvantaged communities.²⁸⁴

285. With respect to Enbridge's proposed mitigation plans, the FEIS analyzed and included the following plans: Line 3 Permanent Deactivation Plan; Environmental Protection Plan; Agricultural Protection Plan; and Cultural Resources Unanticipated Discovery Plan.²⁸⁵

D. Public and Agency Comment

286. The FEIS does not identify any major differences of opinion or points of view among the agencies involved in the preparation of the EIS (DOC-EERA, DNR, and MPCA).²⁸⁶

287. Friends of Headwaters argue that the fact the DNR and MPCA were "assisting agencies" in the compilation of the FEIS, but did not submit comments on preliminary drafts as independent reviewers, is itself illegal. It maintains that under 40 C.F.R. § 1503.2 (2017) there is an "implied duty" for knowledgeable state agencies to submit public comments on Draft Environmental Impact Statements. Friends of the Headwaters contends that that in order to comply with applicable law, the Commission must "send [the FEIS] back to DOC, [and] insist on written public comments from the Minnesota DNR and MPCA . . ." ²⁸⁷

288. The Administrative Law Judge disagrees. As noted above, the specific requirements of the National Environmental Policy Act, and the regulations under the Act, are binding directives for federal agencies and not agencies of state government. Additionally, even under the more restrictive federal law, there is no obligation for state agencies to make comments on draft environmental impact statements – even in those instances when state agencies have subject matter expertise in a relevant field.²⁸⁸

²⁸¹ *Id.* at § 12.4.2.

²⁸² *Id.* at h. 12.

²⁸³ *Id.*, at § 2.8.2.1; *see also* Minn. R. 4410.2300 (I).

²⁸⁴ *See* FEIS at §§ 5.2.1.1, 5.2.1.2, 5.2.1.3, 5.2.1.4, 5.2.3.4, 5.2.4.2, 5.2.5.4, 5.2.6.4, 5.2.7.4, 5.3.3.4, 5.4.4.2, 6.3.1.1, 6.3.1.2., 6.3.1.3, 6.3.1.4, 6.3.3.4, 6.3.5.4, 6.3.6.4, 6.3.7.4, 6.5.3.4, 6.4.4.2, 6.2.2.4, 6.2.3.4, 6.2.4.4, 11.4.

²⁸⁵ *See id.* at Chs. 2, 5, 6; *see also* Apps. B, E, F, O.

²⁸⁶ *See generally* at Chs. 1 - 13.

²⁸⁷ FOH Comments, *supra*, at 4-5, 7.

²⁸⁸ *Nevada v. Dep't of Energy*, 457 F.3d 78, 89 (D.C. Cir. 2006) ("NEPA itself is silent regarding an agency's duty to obtain comments from state and local agencies. The CEQ regulations, however, require

Friends of the Headwaters might prefer that the MPCA and DNR made their comments publicly, but there was no regulatory duty to do so.

289. When preparing the FEIS, DOC-EERA reviewed all public comments that were submitted during the DEIS public comment period, which concluded on July 10, 2017.²⁸⁹

290. When reviewing comments, DOC-EERA categorized comments as substantive or non-substantive.²⁹⁰

291. DOC-EERA categorized a comment as substantive if it contained a specific reference to the EIS and included “[r]ationale for an addition, clarification, correction, discussion of uncertainty, or application of alternative methodology.”²⁹¹

292. As part of the FEIS, DOC-EERA prepared written responses to substantive comments on the DEIS. Its responses were consistent with the requirements of the FSDD and Minn. R. 4410.2700, subp. 1.²⁹²

293. In the FEIS, DOC-EERA, as the Commission’s agent, responded to the substantive comments that were received during the scoping process and the DEIS review, by making appropriate updates and revisions to the FEIS.²⁹³

Based upon the foregoing Findings of Fact, and the record in this proceeding, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commission is charged with determining the adequacy of the FEIS for the Line 3 Replacement Project.

2. The FSDD specified those potentially significant issues and impacts that were to be developed during the scoping process. Each of these issues and impacts were explored in the DEIS and FEIS.

3. Each alternative that was identified in the FSDD was developed during scoping and later analyzed in the DEIS and FEIS.

the proposing agency to “[r]equest the comments of [a]ppropriate State and local agencies which are authorized to develop and enforce environmental standards.” 40 C.F.R. § 1503.1(a)(2)(i)(2017). While under both NEPA and the CEQ regulations, a proposing agency must “obtain” the comments of certain federal agencies, see 42 U.S.C. § 4332(2)(C)(2017); 40 C.F.R. §§ 1503.2, 1503.1(a)(2017), it must only “[r]equest” the comments of “[a]ppropriate State and local agencies,” 40 C.F.R. § 1503.1(a)(2). If the agency makes a request for comments and receives none, it has met its obligation under 40 C.F.R. § 1503.1(a)(2).”.

²⁸⁹ FEIS App. T at T-1.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² See FEIS, at ES-10.

²⁹³ FEIS at ES-10, 1-3, App. T; see also Minn. R. 4410.2800, subp. 4(B) (2017).

4. The DEIS met the requirements of Minn. R. 4410.2300(G), in that the DEIS compared potentially significant impacts of the Project with those of the other alternatives that were specified in the FSDD.

5. The DEIS addressed the potentially significant adverse or beneficial environmental, economic, employment, and sociological impacts generated by the project and alternatives. It addressed direct, indirect, or cumulative impacts commensurate with their importance.

6. Notwithstanding the procedural error with respect to the scheduling of the public meeting in Hinckley, Minnesota, the Commission did meet the public meeting requirements of Minn. R. 4410.2100, subp. 3(B).

7. The public was afforded opportunities to shape the scope of the EIS, contribute to the DEIS and FEIS, and assess the adequacy of the FEIS, in accordance with the requirements of MEPA and Minn. R. Ch. 4410.

8. The information presented in the FEIS adequately addresses the issues that were identified in the FSDD.

9. The FEIS was prepared in compliance with the procedures of Minn. Stat. § 116D.04 (2016) and Minn. R. 4410.0200 to 4410.6500 (2015).

10. The proposed action is described in sufficient detail.

11. The FEIS meets the content requirements of Minn. R. 4410.2300.

12. The FEIS adequately analyzes significant environmental impacts.

13. The FEIS adequately presents alternatives to the proposed action and their impacts.

14. The FEIS adequately presents methods by which adverse environmental impacts can be mitigated.

15. The FEIS addresses direct, indirect, and cumulative potentially significant impacts that could result from the Project.

16. The FEIS adequately presents the economic, employment and sociological effects that cannot be avoided if the proposed action, or an alternative, is implemented.

17. The 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 thoroughly analyzed.

18. The FEIS provides responses to the substantive comments received during the DEIS review as to issues that were raised during the scoping process.

19. The FEIS addresses the potentially significant issues and alternatives that were raised during the scoping process.

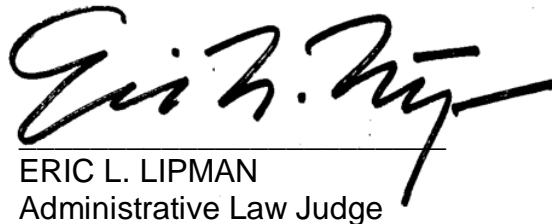
20. The FEIS was prepared in compliance with the procedures of MEPA and Minn. R. 4410.0200 to 4410.6500.

Based upon these Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Minnesota Public Utilities Commission determine that the Final Environmental Impact Statement for the Line 3 Replacement Project is adequate, as those terms are used in Minn. R. 4410.2800, subp. 4.

Dated: November 1, 2017



ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.2700 and 7829.3100 (2017), unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Pursuant to Minn. R. 7829.2700, subp. 3 (2017), the parties will be granted an opportunity for oral argument before the commission prior to its decision. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

E. L. L.

November 1, 2017

See Attached Service List

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

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

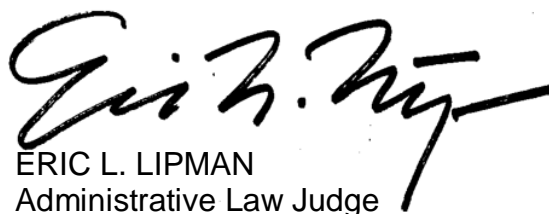
**OAH 8-2500-34602
MPUC PL-9/CN-14-916
MPUC PL-9/PPL-15-137**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **REPORT OF THE ADMINISTRATIVE LAW JUDGE** in the above-entitled matter.

If you have any questions, please contact my legal assistant Sheena Denny at (651) 361-7881 or Sheena.Denny@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,


ERIC L. LIPMAN
Administrative Law Judge

ELL:sd
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

<p>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</p> <p>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</p>	<p>OAH Docket No.: 8-2500-34602</p>
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Sheena Denny, certifies that on November 1, 2017 she served the true and correct **REPORT OF THE ADMINISTRATIVE LAW JUDGE** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

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