

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
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Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

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

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

**ANSWER OF HONOR THE EARTH AND THE SIERRA CLUB  
IN SUPPORT OF RED LAKE BAND OF CHIPPEWA INDIANS AND  
WHITE EARTH BAND OF OJIBWE PETITION FOR RECONSIDERATION OF  
ORDER DENYING MOTION FOR STAY PENDING APPEAL**

Pursuant to Minn. R. 7829.3000, subp. 4, and the December 17, 2020, Notice of Timing Variances and Establishing Deadline for Answers to Petition and of Special Commission Meeting on Petition for Reconsideration of December 9, 2020 Order Denying Motion for Stay Pending Appeal (“Notice”), which establishes a deadline for answers of December 22, 2020, at 12:00 p.m., Honor the Earth and The Sierra Club (“HTE/SC”) hereby file this Answer to the Petition for Reconsideration of Order Denying Motion for Stay Pending Appeal filed on December 17, 2020, by the Red Lake Band of Chippewa Indians and the White Earth Band of Ojibwe (“Tribes”) related to the approval of a Certificate of Need, Route Permit, and Environmental Impact Statement for the Line 3 Replacement Project (“L3RP”), a proposed 36-inch diameter, 338 mile long crude oil pipeline that would cut through northern Minnesota.

HTE/SC support the Tribes’ Petition for Reconsideration and in particular seek to emphasize the irreparable harm that would result to the environment and indigenous peoples.

First, it must be emphasized that Enbridge Energy, Limited Partnership (“Enbridge”) is proposing an entirely new pipeline corridor for approximately 47 percent of the L3RP route<sup>1</sup> and seeking a new crude oil pipeline corridor through the state.<sup>2</sup> It would typically require a permanent right-of-way of 50 feet<sup>3</sup> and an additional temporary construction easement of 70 feet in upland areas and 45 feet in wetland areas, even where it parallels existing utilities.<sup>4</sup> These right-of-way requirements are described in the Second Revised Environmental Impact Statement (“2RFEIS”), Section 2.4, at page 2-14, and plan views of the right-of-way widths are provided in the 2RFEIS on pages 2-15 through 2-17. Moreover, Enbridge would also need additional temporary workspace for open-cut road crossings, bored roads, foreign pipeline crossings, utility crossings, railroad crossings, water body crossings, horizontal directionally drilled waterbody crossings, and wetlands.<sup>5</sup> The additional temporary workspace easements requested are between 100 and 200 feet in addition to the temporary construction easement.<sup>6</sup> Thus, the L3RP is a major construction project that will directly impact a very large amount of land and water in northern Minnesota.

With regard to the scope of these impacts, Enbridge would clear and grade the land within its permanent and temporary rights-of-way, dig a minimum seven foot trench in the permanent right-of-way, stockpile the removed earth in its temporary right-of-way, fabricate the pipeline and lower it into the trench, then refile the trench.<sup>7</sup> All shrubs, trees and rocks in this

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<sup>1</sup> Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge in Dockets PL-9/CN-14-916 and PL-9/PPL-15-137 (April 24, 2018) (“ALJ Report”) at 21 and n. 87.

<sup>2</sup> *Id.* at 23, para. 48.

<sup>3</sup> *Id.* at 127, para. 390-91. Along the North Dakota border-to-Clearbrook segment of the preferred route, Enbridge asserts that it can utilize 25 feet of existing Enbridge-owned right-of-way.

<sup>4</sup> 2RFEIS at 2-14.

<sup>5</sup> *Id.* at 133, para. 409.

<sup>6</sup> *Id.*

<sup>7</sup> See graphics at 2RFEIS page 2-21 (Figure 2.7-1), 2-23 (Figure 2.7-2), and discussion at page 2-22 to 2-32.

right-of-way would be removed and disposed of.<sup>8</sup> Thus, construction would severely damage or destroy all of the natural habitat located within the 95 to 120 foot total right-of-way. Although Enbridge would fill in the trench and attempt restoration, after construction natural habitat in the construction right-of-way will no longer exist due to the intense disturbance caused by construction as well as ongoing clearing of the right-of-way to allow inspection during operation.<sup>9</sup> Due to ongoing clearing for the life of the L3RP, the right-of-way will no longer be natural habitat because it will be a continuous linear strip of disturbed cleared land.

Both the ALJ Report and 2RFEIS found that the L3RP would have significant impacts, including the following<sup>10</sup>:

- the loss of 2,202 acres of forests;
- permanent impacts to 46 acres of rare native plant communities;
- long-term/major impacts to 440 acres of forested and scrub/shrub wetlands;
- the potential to disrupt 23,198 acres of wildlife conservation lands and 17 wild rice lakes, 17 trout streams, 8 lakes of high and outstanding biological significance, and 4 tullibee lakes, that are all located within 0.5 miles of the L3RP, in the event of oil spills;
- damage to a large number of streams, lakes, wetlands, and accompanying resources, which are generally of high quality, including physically crossing of 227 waterbodies, including 174 streams, six of them trout streams, most of which would be crossed using invasive and destructive open trenches;

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<sup>8</sup> *Id.* at 2-24.

<sup>9</sup> *Id.* at 2-40 to 2-41 (2RFEIS Section 2.8.2).

<sup>10</sup> ALJ Report at 215-17, 239, para. 763, 769, 855 (impacts compiled by Minnesota Department of Natural Resources (“MDNR”).

- crossing of 25,765 acres of high vulnerability water table aquifers, 26,382 acres of land with high groundwater contamination susceptibility, and 87 acres of wellhead protection areas, that could be impacted by oil leaks and spills;
- impacts to 16,299 acres of lands with high pollution sensitivity;
- 38 miles of habitat fragmentation;
- Crossing of 12,318 acres of unusually sensitive ecological areas;
- crossing of 2,443 acres of drinking water sources;
- crossing of 102,426 acres of biological areas of interest; and
- crossing of 3,704 acres of recreational/tourism areas of interest.

The L3RP is a major construction project that will permanently change and damage the natural environment, including the soils, vegetation, and related natural communities, through which it passes. Should the L3RP be constructed, all of these natural resources will be permanently changed and put at future risk, and the physical harm done to them cannot be undone and as such is irreparable.

In addition, construction of the L3RP would make significant contributions to climate change due to its use of a tremendous amount of energy to operate its pumps that would result in direct greenhouse gas (“GHG”) emissions of nearly 376 tons of CO<sub>2</sub> equivalent (“CO<sub>2</sub>E”) per year and indirect GHG emissions of nearly 453,000 tons of CO<sub>2</sub>E per year, with a resulting 30-year social cost of carbon from those emissions is estimated to be \$673,365,150.<sup>11</sup> In addition, the incremental life-cycle GHG emissions from the Project are estimated at nearly 200 million metric tons of CO<sub>2</sub>E per year, and the 30-year social cost of carbon for the incremental life-cycle

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<sup>11</sup> ALJ Report at 240, para 858.

GHG emissions is estimated at \$287 billion.<sup>12</sup> The L3RP is intended by Enbridge and the Tar Sands industry to facilitate development in the Tar Sands by lowering the cost of transportation of the extracted crude oil,<sup>13</sup> such that the L3RP would accelerate GHG emissions and climate change and contribute to massive destruction in the boreal forests of Canada. Climate change amplifies temperature extremes and drought/flood cycles; impacts the migration of living species; affects agriculture; rises the sea level; increases the frequency of wildfires, windstorms, and insect infestations; diminishes forest growth and health; increases the severity and frequency of storms and flooding, and has human health impacts, among other things.<sup>14</sup> In particular, climate change negatively impacts lands and resources that are particularly important to preserving traditional ways of life. Climate change induced impacts on Minnesota's land and natural resources would affect indigenous people's hunting, fishing, wild rice farming, maple sugar gathering, and the collection of plants for medicines, spiritual and ceremonial purposes, shelter, and other needs – all critically important to the Anishinaabe peoples.<sup>15</sup> Due to the long term persistence of greenhouse gases in the atmosphere, climate change impacts are irreparable.

The ALJ Report also attempts to summarize the impacts of the L3RP on indigenous peoples and their culture, beliefs, and way of being, though this writing cannot do the impacts justice.<sup>16</sup> The 2RFEIS identifies the following impacts to tribal resources:

- Water – the disruption of water bodies and the potential degradation of water quality impacts the Native Americans' spiritual connectedness to water, a sacred element to Native culture.
- Hunting – the loss of natural resources and destruction of habitat caused by forest fragmentation associated with a new pipeline corridor; and the potential for contamination caused by

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 240, para. 859.

<sup>14</sup> *Id.* at 240-41, para. 861.

<sup>15</sup> *Id.* at 241, para. 862.

<sup>16</sup> *Id.* at 241-247, para. 863.

release, all have the potential to impact hunting rights and activities of tribal members.

- Fishing – the potential loss of resources from contamination and habitat destruction have the potential to impact the fishing rights and activities of tribal members.
- Wild Rice – the potential impact to wild rice beds caused by contamination and habitat destruction have the potential to impact the health, vitality, and existence of wild rice, a resource of particular significance to the Anishinaabe people.
- Spiritual practices – construction activities and operation of the pipeline, as well as the potential for contamination related to release, have the potential to impact sacred sites, areas of religious or cultural significance, and natural resources used or worshiped in spiritual practices.
- Medicinal and traditional plants and food – a loss of resources that could occur from contamination and habitat destruction have the potential to impact plants used by the Natives for food, medicine, and spiritual practices.
- Community health and mental well-being – the loss of tribal connections to natural resources; the potential for contamination of natural resources; and the use of tribal land for an oil pipeline can cause tribal members to experience “cultural trauma” reminiscent of historical actions that stripped Native Americans of their land, rights, and access to natural resources.<sup>17</sup>

These impacts are more fully detailed in the testimony of the following witnesses:

- Youth Climate Intervenors’ witness Sheila Lamb, who describes the health impacts, loss of medicinal and ceremonial plants and cultural practices, the importance of water for Anishinaabe people, and the disparities suffered by Native Americans due to “historical trauma;”<sup>18</sup>
- Mille Lacs Band of Ojibwe witness Terry Kemper, who describes the importance of water, wild rice, medicinal plants, and wildlife to the language, customs, and beliefs of the Anishinaabe;<sup>19</sup>

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<sup>17</sup> *Id.* at 242-43, para. 867.

<sup>18</sup> Exhibit YC-28.

<sup>19</sup> Exhibit ML-2.

- Red Lake Band of Chippewa Indians witness Kade Ferris, who describes the Project's potential to interfere with and diminish treaty-ceded rights to hunt, fish, and gather;<sup>20</sup> and
- Fond du Lac Band of Lake Superior Chippewa witness Nancy Schuldt, who describes the critical importance of Manoomin to the Anishinaabe people, as well as the fact that restoring wild rice beds to harvestable stands, once impacted, is extremely difficult.<sup>21</sup>

Thus, the L3RP would have significant and irreparable impacts on indigenous peoples who live within the State of Minnesota. Moreover, this impact should be understood within the context of individual and cultural trauma resulting from historical environmental racism and the past destruction of the environment on which indigenous ways of life depend, such that the L3RP would also cause irreparable cumulative impacts to indigenous peoples.

While the Commission has imposed a number of mitigation conditions on the L3RP, these conditions are not intended to eliminate all of the foregoing impacts. Many of the physical impacts cannot be reduced or eliminated by mitigation, and the mitigation has no effect on cultural and spiritual harm, which cannot be lessened or undone.

The L3RP is perhaps the largest and most impactful infrastructure project in Minnesota in decades, surpassing even the impacts of the Alberta Clipper project, due to the fact the L3RP would be constructed for a significant part of its length in a new corridor. Due to the trenching and earth moving required, the impacts of the L3RP are also substantially greater than any of the high voltage transmission line projects approved by the Commission. The administrative record undeniably shows that the L3RP would have substantial and extensive irreparable impacts on the

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<sup>20</sup> Exhibit RL-1.

<sup>21</sup> Exhibit FDL-8B and FDL-2.

land, water, and climate of Minnesota, as well as on indigenous peoples in Minnesota. Once constructed, the earth cannot be restored, the trees and other removed plants cannot be put back, the waterbodies cannot be restored, and indigenous peoples cannot be made whole by money or sympathy.

In contrast, all of the economic harm to nonmoving parties alleged to result from a stay can be compensated with money, and given the construction and operational costs of the project and the wealth of Enbridge Inc., the incremental costs of a stay are not disproportionate or an unreasonable price to pay to ensure that the Commission complies with state law before the L3RP is approved and constructed.

For the reasons above and for those contained in the Tribes' Memorandum in Support of Motion for Stay, and Tribes' Petition for Reconsideration of Order Denying Motion for Stay Pending Appeal, HTE/SC urge the Commission to reconsider its order denying a stay of its orders approving a Certificate of Need and Route Permit for the Line 3 Replacement Project.

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Respectfully submitted,

/s/ Paul C. Blackburn  
Paul C. Blackburn  
MN Bar No. 0391685  
P.O. Box 17234  
Minneapolis, MN 55417  
612-599-5568  
[paul@paulblackburn.net](mailto:paul@paulblackburn.net)

/s/ Frank Bibeau  
Frank Bibeau  
51124 County Road 118  
Deer River, Minnesota 56636  
218-760-1258  
[frankbibeau@gmail.com](mailto:frankbibeau@gmail.com)

*Attorneys for Honor the Earth and  
The Sierra Club*