

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
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In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project - Phase 2 - in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties

ISSUE DATE: November 7, 2014

DOCKET NO. PL-9/CN-13-153

ORDER GRANTING CERTIFICATE OF NEED

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PROCEDURAL HISTORY

On February 28, 2013, Enbridge Energy, Limited Partnership (Enbridge) filed a plan for notifying the public of its proposal to install pumps and related facilities to increase the capacity of the Line 67 (also known as the Alberta Clipper) from 570,000 barrels per day (bpd) to 800,000 bpd of heavy crude oil. Enbridge proposed to give notice to landowners along and adjacent to the pipeline route -- in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, St. Louis, and Carlton Counties -- and to local libraries, newspapers, and units of government. This would be the second phase of a two-phase process to increase the pipeline's capacity.

On May 29, 2013, Enbridge began implementing its notice plan as revised and approved by the Commission.

On June 28, 2013, Enbridge petitioned the Commission to grant the required Certificate of Need for its proposal. Because Minn. R. 7853.0200, subp. 7, requires an application to be substantially complete to be accepted, the Commission solicited comments on the completeness of Enbridge's petition. The Minnesota Department of Commerce (the Department), the Minnesota Historical Society, the Minnesota Department of Natural Resources, MN350,¹ and six members of the public commented. In particular, MN350 recommended finding the application incomplete, whereas the Department recommended finding the application substantially complete pending Enbridge submitting certain additional information.

On August 16, 2013, Enbridge filed comments in reply, and revised its Certificate of Need application to incorporate the information requested by the Department.

¹ MN350 described itself as a Minnesota organization of concerned citizens committed to growing the climate change movement in Minnesota.

On September 17, 2013, the Commission issued an order accepting Enbridge's application as "substantially complete" as of August 16 – meaning that "the application provide[d] sufficient detail to proceed to a contested case proceeding...."² The Commission referred the matter to the Office of Administrative Hearings to develop the record via a contested case proceeding before an administrative law judge (ALJ).³

The following parties intervened:

- The Department
- Donovan D. and Anna M. Dyrdal (the Dyrdals)
- Honor the Earth
- MN350 and the Sierra Club, jointly

On February 3, 2014, the Commission issued a notice of public hearings; the Commission issued a revised notice on February 5. Enbridge mailed the notice to all landowners along the pipeline route, including 12 that it had originally omitted, as well as to parties and local units of government. In addition, Enbridge published the notice in local newspapers.

Enbridge, the Department, MN350 and the Sierra Club variously filed direct and rebuttal testimony; the Drydals and Honor the Earth did not. In its rebuttal testimony, Enbridge provided substantially more information on the accuracy of its forecast, including information on current pipeline capacity shortages, how apportionments (curtailed shipments) affect Minnesota refineries, and demand for heavy crude on Enbridge's pipeline system.

From March 18 – 20, 2014, ALJ Eric L. Lipman convened public hearings in Hallock, Thief River Falls, Cass Lake, Floodwood, and Duluth.

On March 20, 2014, the Department filed a motion to allow surrebuttal testimony. MN350 and the Sierra Club then filed a motion to allow surrebuttal testimony and to postpone the evidentiary hearings originally scheduled for April 1. Honor the Earth filed a letter supporting postponing the hearings. Enbridge opposed rescheduling the evidentiary hearing, but did not oppose surrebuttal testimony. The ALJ authorized the parties to file surrebuttal testimony, and delayed the evidentiary hearings by a week.

On April 1, 2014, the ALJ issued his 8th Prehearing Order setting out the procedures to be followed at the April 3 public hearing in Saint Paul.

On April 3, 2014, the Department, Enbridge, and MN350 and the Sierra Club filed surrebuttal testimony.

Also on April 3, the ALJ convened a public hearing in the Commission's Large Hearing Room in Saint Paul. Public speakers were scheduled such that the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.⁴

² Notice and Order for Hearing (September 17, 2013) at 4, 9.

³ *Id.*

⁴ April 3, 2014 Transcript at 3-6 and 223-24.

From April 8 – 10, 2014, the ALJ convened evidentiary hearings at the Commission offices in Saint Paul.

On April 14, 2014, the public comment period closed.

By May 16, 2014, the Department, Enbridge, MN350 and the Sierra Club had filed briefs, reply briefs, and proposed findings.

On June 12, 2014, the ALJ issued his Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (ALJ's Report).

On June 27, 2014, MN350 and the Sierra Club filed their exceptions to the ALJ's Report.

On July 28, 2014, MN350 and the Sierra Club filed a motion for the Commission, when meeting to deliberate and decide whether to grant a Certificate of Need for the Phase 2 Upgrade, to convene the meeting in a room large enough to accommodate all the members of the public who might wish to attend.

On August 15, 2014, the Commission gave notice of the opportunity for members of the public to comment on this docket at the Commission's August 28 hearing.

On August 28, 2014, the Commission met in its Large Hearing Room to consider the matter. Over the span of seven hours the Commission heard oral argument from the parties present, as well as from 27 members of the public. Public speakers were scheduled such that the presentations during the public hearing were nearly equally divided between proponents of the project and opponents of the project.⁵

FINDINGS AND CONCLUSIONS

I. Summary

Finding that Enbridge has demonstrated the need for increasing the capacity of its Line 67 pipeline, the Commission grants Enbridge's petition subject to conditions. In reaching this conclusion, the Commission evaluates a range of contested issues, including –

- the adequacy of the Commission's public meetings;
- forecasts of supply and demand;
- apportionments (curtailed shipments) that arise from the mismatch of supply and demand;
- cost recovery; and
- environmental review.

II. The Legal Standard for a Certificate of Need

Before increasing the rated capacity of a large petroleum pipeline by more than 20 percent (or more than 10,000 bpd) within a two-year period, a person must apply for a Certificate of Need

⁵ August 28, 2014 Transcript at 7-8 and 102-192.

demonstrating that the capacity increase (upgrade) is needed.⁶ Because Enbridge proposes to increase the average annual capacity of Line 67 by 40 percent (230,000 bpd), Enbridge filed an application for a Certificate of Need.

Minn. Stat. § 216B.243, subd. 4, provides for the Commission to arrange for at least one public hearing as part of the Commission's process of evaluating requests for a Certificate of Need.

Minn. Stat. § 216B.243 and Minn. R. 7853.0130 set forth the requirements for making an application for a Certificate of Need, as well as the ultimate criteria for demonstrating need. The rule directs the Commission to issue a Certificate of Need when the applicant demonstrates four things:

- A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.
- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
- C. The consequences to society of granting the Certificate of Need are more favorable than the consequences of denying the certificate.
- D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

III. Background

Enbridge is a common carrier engaged in interstate commerce, and its rates for shipping oil are regulated by the Federal Energy Regulatory Commission (FERC). It does not extract, own, or control the uses of the oil it ships.

Enbridge owns and operates the 999-mile Line 67 Pipeline. This pipeline transports heavy crude oil from Hardisty, Alberta, crosses the U.S. border into North Dakota, and travels diagonally across upper Minnesota to Superior, Wisconsin.⁷ Heavy crude is used for making gasoline, diesel fuel, aviation fuel, heating oil, asphalt, medicine, health products, and food stocks, among other things.⁸

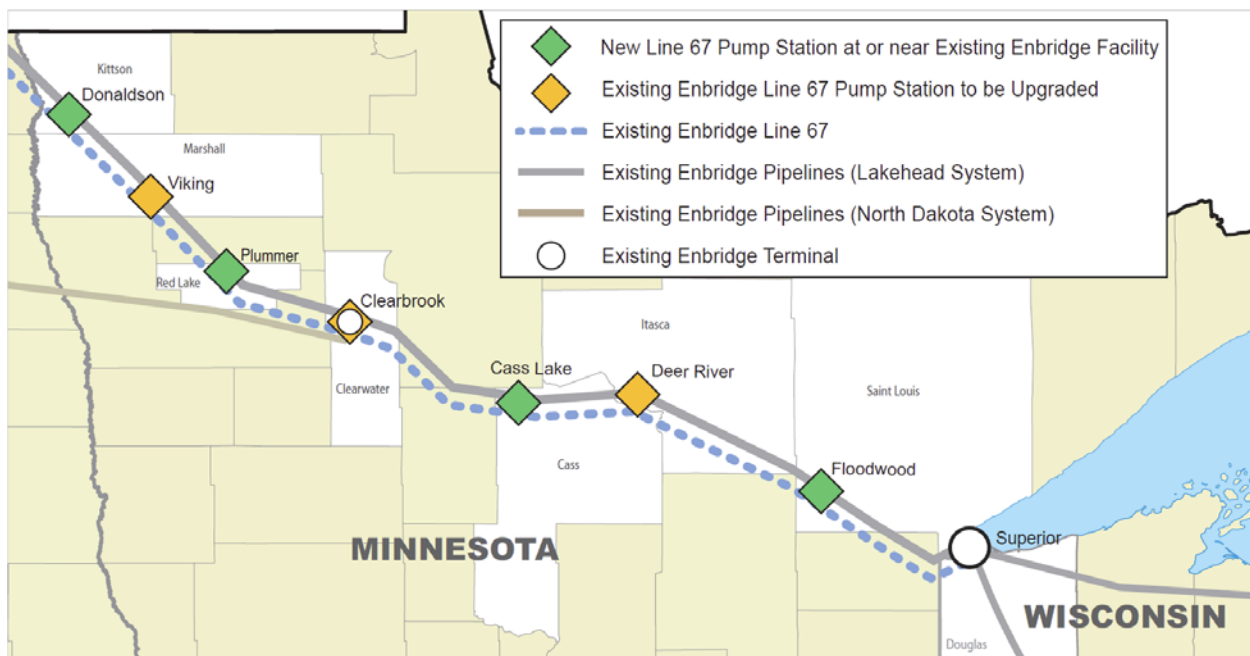
Line 67 Station Upgrade Project – Phase 2 Overview Map⁹

⁶ Minn. R. 7853.0030.D. "Large energy pipeline" is defined at Minn. R. 7853.0010, subp. 14.

⁷ Ex. 1 (petition) at § 7853.0230 at 2.

⁸ *Id.*, § 7853.0250 at 4; Ex. 35 at 47 (Otis direct).

⁹ See Enbridge Initial Filing Exhibit 1-B (June 28, 2013); public notice compliance filing, attachment 1A (April 4, 2014).



Line 67 is part of Enbridge’s Mainline System, which encompasses its pipelines extending throughout the United States and Canada, and forms the largest pipeline system in the world. This system includes several pipelines that parallel Line 67, including Lines 3 and 4. Line 3 has an approximate capacity of 350,000 bpd, but is currently undergoing maintenance that will increase its capacity.¹⁰ Line 4 has a permitted capacity of 796,000 bpd. Enbridge has employed Lines 3 and 4 to ship light crude rather than heavy crude.¹¹

In 2013, the Commission granted a Certificate of Need for Enbridge to increase the accredited capacity of Line 67 from 450,000 bpd to 570,000 bpd.¹² Parties and participants refer to this as Enbridge’s Phase 1 Upgrade.

Enbridge now proposes to implement Phase 2.

IV. Enbridge’s Petition

For Phase 2, Enbridge proposes to increase Line 67’s capacity from 570,000 to 800,000 bpd.¹³ Phase 2 would not involve building any new pipelines. Rather, it would entail installing new pump stations near existing Enbridge facilities at Donaldson, Plummer, Cass Lake, and Floodwood Station sites, located in Kittson, Red Lake, Cass, and St. Louis Counties, respectively. Phase 2 would also require modifying Enbridge’s Viking, Clearbrook, and Deer River Station sites, located in Marshall, Clearwater, and Itasca Counties, respectively. And it would involve

¹⁰ See Enbridge Response to Department Information Request 33 (August 26, 2014).

¹¹ *Id.*; Ex. 15 at 6 (Earnest Rebuttal).

¹² See *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project in Marshall, Clearwater, and Itasca Counties*, Docket No. PL-9/CN-12-590 (*Phase 1 Docket*), Order Granting Certificate of Need (August 12, 2013).

¹³ Enbridge designed Line 67 to be able to transport 880,000 bpd but anticipates operating the line at 90 percent of capacity, consistent with industry practice. Ex. 1, § 7853.0230, at 11-12 (Revised Application).

modifying existing pipes and installing new instrumentation.¹⁴ All work would occur on land owned by Enbridge.

According to Enbridge, Phase 2 would provide increased access to expanding volumes of Canadian heavy crude for refineries in the United States -- specifically, in Minnesota, Wisconsin, Detroit, Toledo, eastern Canada, and the United States Gulf Coast region.¹⁵ This access would be secure and reliable, insulated from disruptive events overseas.

Enbridge seeks to relieve the bottleneck of pipeline capacity that shippers are currently experiencing on the Enbridge system, and to meet the near-term capacity that shippers have requested by 2015. Enbridge predicted that Line 67 would soon reach its current permitted capacity, and that shippers would request ever larger shipping volumes thereafter.¹⁶

The application evaluates a variety of alternatives to approving the Phase 2 Upgrade, including shipping more oil via a new pipeline, relying on the proposed Keystone XL Pipeline,¹⁷ relying on trucking, relying on rail, implementing a different pipeline route, or taking no action. Enbridge argues that none of these alternatives would prove a viable substitute strategy for meeting the need that could be served by the Phase 2 Upgrade.

Enbridge emphasizes its efforts to minimize the environmental consequences of its proposal. Enbridge states that the upgrade project would impose much less harm to the environment, landowners, and the public than would building a separate pipeline to transport the additional 230,000 bpd.

Enbridge notes its efforts to increase energy efficiency through the use of a computerized control center and variable speed drives. In addition, Enbridge has adopted a voluntary “neutral footprint” goal of offsetting any environmental costs associated with its new projects. Enbridge intends to conserve an acre for every acre of natural habitat affected, plant a tree for every tree removed to build new facilities, and generate a kilowatt-hour (kWh) of electricity from renewable sources for every kWh its new operations consume.¹⁸

In Table 7853.0230-2, Enbridge lists the various rules and policies it must comply with in the design, construction, and operation of the Phase 2 Upgrade. Enbridge pledges to fulfill these requirements in the process of implementing the project.

¹⁴ *Id.* at 6-10.

¹⁵ *Id.*, § 7853.0250, at 5.

¹⁶ Ex. 4 at 3 (Revised § 7853.0520, December 4, 2013, Public Version).

¹⁷ The Keystone XL Pipeline refers to a proposed 1179-mile pipeline with the capacity to transport 830,000 bpd from Hardisty, Alberta, to Steele City, Nebraska. See Ex. 1, § 7853.0540 (Revised Application).

¹⁸ Ex. 1, § 7853.0260 at 2 (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

V. ALJ's Report

A. In General

The ALJ recommends granting a Certificate of Need for the Phase 2 Upgrade.

The ALJ found that denying the Certificate of Need would likely harm the future adequacy, reliability and efficiency of the energy supply for Enbridge, its customers, and the people of Minnesota and the region – where the region is understood to be the 15-state Petroleum Area Defense District No. Two (PADD 2) defined by the U.S. Energy Information Administration.¹⁹

B. Supply and Demand

The ALJ addressed both supply and demand. Regarding supply, the ALJ found credible the forecast that western Canada could generate an additional 1.4 million bpd by 2020, and that most of this would be available for export.

Regarding demand, the ALJ found that pipelines and refineries are expanding in various parts of the local 15-state region.²⁰ In addition, expansion of the pipeline network downstream of Line 67 is likely to increase demand for crude oil shipments over Enbridge's Mainline System. For example, Enbridge proposes to build its Flanagan South project, a pipeline extending from near Chicago, Illinois, to Cushing, Oklahoma, with an initial capacity of 430,000 bpd, potentially expanding to 600,000 bpd. This would connect with an expanding collection of pipelines to Houston, Texas, and the Gulf Coast. From there, the refined petroleum products could go to meet demand throughout the world. Even if Gulf Coast refiners give preference to crude imported from Mexico and Venezuela, they still have the capacity to process an additional million barrels per day -- or more.²¹

The ALJ concluded that Minnesota conservation programs would be unlikely to offset local, regional, and global demand for heavy crude oil sufficiently to render the Phase 2 Upgrade superfluous, or to avoid apportionments (curtailed shipments) on Line 67, discussed below.

The ALJ found no evidence that Enbridge had taken action to increase the demand for crude oil or refined petroleum products. To the contrary, Enbridge has advised its shippers that the pipeline upgrades will likely result in higher toll charges, yet shippers support the upgrade project nonetheless.

C. Alternative Plans

The ALJ concluded that Line 67, with its current 570,000 bpd limit, would not be able to provide all the oil sought to be shipped during periods of peak demand. In particular, the ALJ found Enbridge's shippers to be knowledgeable and sophisticated.²² The fact that these shippers would

¹⁹ ALJ's Report, Finding 91, citing Ex. 6, Appendix C (Earnest Direct).

²⁰ *Id.*, Findings 92-96.

²¹ Ex. 37 at LBO-S-7 (Otis Surrebuttal).

²² ALJ's Report, Finding 117, citing Ex. 53, at 3 (Denomy Rebuttal); APRIL 8, 2014 Transcript at 26 and 137-138.

endorse Enbridge's Phase 2 proposal, even though it will result in increased shipping tolls, provides evidence that these entities are persuaded that existing facilities are not adequate to meet their needs.²³

The ALJ evaluated a variety of alternatives to authorizing the Phase 2 Upgrade.

First, he considered the option of using the spare capacity on Line 4 to ship batches of heavy crude, alternating with batches of light crude, over that pipeline. But the ALJ found this proposal less practical than the Phase 2 Upgrade for a variety of reasons.

- The practice of shipping alternating loads of light and heavy crude oil creates certain costs and operational challenges. In particular, heavy crude will tend to contaminate the more valuable light crude, which affects how the oil can be used thereafter.²⁴
- **Shipping heavy crude via Line 4 would likely require new pumping stations, which would require Enbridge to initiate a new Certificate of Need proceeding.**
- While Line 4 currently has some available capacity, it has less than may appear. A pipeline requires more capacity to ship a barrel of heavy crude than to ship a barrel of light crude.

Second, the ALJ considered relying on the capacity of the proposed Keystone XL Pipeline. The ALJ found, however, that it remains unclear if or when the Keystone XL Pipeline will be built. Moreover, this strategy would do nothing to meet the growing demand for heavy crude in areas along and downstream of Line 67.

Third, the ALJ considered shipping more oil by means other than pipelines. The ALJ considered both railroad tank cars and over-the-road trucks, but found each strategy to be impractical.

Fourth, the ALJ considered substituting reliance on renewable sources of energy in lieu of expanding access to heavy crude oil. But the ALJ found that there are not widely available substitutes for liquid petroleum.

D. Efficiency and Reliability

In contrast to the inefficiencies of shipping alternating loads of heavy and light crude, the ALJ found that upgrading Line 67 to 800,000 bpd would provide the most efficient means of transportation. The upgrade would make optimal use of an existing pipeline that was designed with this contingency in mind.²⁵ Moreover, the upgrade would permit more oil to flow into the larger network of pipelines that are also designed for this purpose, rather than relying on general-purpose modes of transportation such as rail and truck.

²³ *Id.*; Ex. 11 at 10 (Curwin Rebuttal).

²⁴ Changing the types of oil shipped in a pipeline poses a variety of challenges; see Ex. 15 at 33-34 (Earnest Rebuttal); Ex. 21 (Earnest Surrebuttal); Ex 24 (Jurgens Surrebuttal).

²⁵ *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Docket No. PL-9/PPL-07-361 (*Route Permit Docket*), Application for a Routing Permit for a Crude Oil Pipeline (June 22, 2007), Section 4415.0130 at 1.

In addition, Enbridge has adopted a variety of practices to minimize the energy required to run the pipeline safely and effectively, to minimize the adverse side-effects of the installation, and to offset many of the harms that cannot be avoided. In contrast, shipping oil by rail or truck would generate a variety of ongoing adverse side-effects – through emissions, noise, and traffic congestion.

Finally, the ALJ found that the Phase 2 Upgrade would provide increased access to a supply of heavy crude that is more reliable than oil shipped from overseas, which faces risks arising from ocean travel and from geopolitical factors. And a pipeline would provide a lower risk of accident than would shipping oil by rail or truck.

E. Social Consequences

Given the anticipated demand for heavy crude, the ALJ concluded that a failure to approve the Phase 2 Upgrade would likely result in additional apportionments. Enbridge's tariff with FERC requires Enbridge to accept orders from shippers without discrimination. If collectively the shippers seek to ship (nominate) a larger quantity of oil than the pipeline can accommodate, Enbridge must reduce each shipper's order.²⁶

Enbridge's system recently experienced intermittent apportionment, and this is likely to continue.²⁷ The eventual addition of capacity from the Phase I Upgrade will mitigate, but not entirely solve, these problems.²⁸

Apportionments trigger price shocks, frustrate shippers, and compel manufacturers to curtail production or ship oil by more expensive and problematic means, such as by rail.

Accordingly, the ALJ found that implementing the Phase 2 Upgrade would make oil supplies more reliable, and therefore cheaper. The ALJ cites evidence that the annual net present value of the Phase 2 Upgrade is estimated to be \$1 billion for Minnesota petroleum consumers, and \$788 million for Minnesota gasoline consumers.²⁹ The net present value of the project throughout the 15-state region is estimated to be \$18.4 billion.³⁰

The ALJ found that the environmental consequences of implementing the Phase 2 Upgrade would be modest.

The ALJ found that because heavy crude is used in a variety of useful products, expanding access to crude would be socially beneficial. In addition, he found that approval of the Phase 2 Upgrade would trigger a temporary increase in economic activity and employment along the pipeline route, and an ongoing increase in property tax revenues. By providing cost-effective access to additional

²⁶ Ex. 29 (FERC No. 41.6.0 , p. 8, § 14(a)); Ex. 11 at 5 (Earnest Rebuttal); Ex. 37 at 4 (Otis Surrebuttal); April 8, 2014 Transcript at 185-86, 201-05. For purposes of determining when to apportion shipments of heavy crude oil on the Enbridge Mainline system, Lines 67 and 4 are considered to be one single service. April 8, 2014 Transcript at 201-205. Mr. Curwin indicated that shipments of heavy crude oil on Line 67 are increasing, but that Line 4 is subject to capacity restrictions. *Id.* at 201.

²⁷ April 8, 2014 Transcript at 206; Ex. 37 at 4-5, 23 (Otis Surrebuttal).

²⁸ *Id.*

²⁹ ALJ's Report, Finding 168, citing Ex. 19 at 41-42 (Cicchetti Rebuttal).

³⁰ *Id.*

heavy crude oil, the Phase 2 Upgrade is expected to benefit refiners in eastern Canada, Illinois, Michigan, Minnesota, Illinois, Ohio, and along the Gulf Coast, and benefit consumers of petroleum products worldwide. The economic effects of providing long-term access to cheaper petroleum could be broader.

F. Legal Requirements

Finally, while Enbridge's proposal faces a variety of legal requirements beyond the current proceeding, the ALJ found insufficient evidence to demonstrate that Enbridge would be unable to fulfill them. Acknowledging that Enbridge had experienced some operational failures, including a 2010 pipeline spill in Michigan, the ALJ found that Enbridge had subsequently implemented a more rigorous environmental compliance program. The ALJ concluded that concerns over Enbridge's compliance could be best addressed through ongoing regulatory oversight.³¹

VI. Positions of the Parties, and Public Comments

The Department and Enbridge support granting the Certificate of Need, generally for the reasons articulated in the ALJ's Report. The Department concluded that Enbridge has met its burden to demonstrate that the proposed project is needed.³²

MN350 and the Sierra Club oppose granting the Certificate of Need for reasons discussed below.

Honor the Earth filed a letter supporting the rebuttal testimony of a witness for MN350 and the Sierra Club. Honor the Earth stated that the Chippewa's treaty rights to fish, hunt, and gather were jeopardized and deserve greater protection, but did not allege that the Phase 2 Upgrade would necessarily violate any treaty.

The Dyrdals allege that Enbridge has failed to remediate the damage done to their property arising from the installation of Line 67. On this basis, they challenge the credibility of statements in Enbridge's application that Enbridge will remediate any harms arising from the Phase 2 Upgrade.³³

Various members of the public stated that the proposed project would support local business, increase the local tax base, and provide employment.³⁴

Other members of the public cited a variety of reasons to oppose granting the Certificate of Need. Among their many concerns, several commentators object to the environmental consequences of extracting or burning oil, and to the risk of an oil spill. Some argue that United States energy demands are declining, and hence demand for heavy crude will decline as well. Some argue that it would be better to rely on sources of renewable energy and conservation programs. Still others object that the environmental burdens of the pipeline are borne by Minnesotans, whereas much of the benefit would flow to people outside the state – and perhaps outside the nation.

³¹ ALJ's Report, Finding 217, citing Ex. 1, §§ 7853.0250 and 7853.0270 (Revised Application).

³² See, for example, August 28, 2014 Transcript at 82, 86, 93.

³³ ALJ's Report, Findings 79-81.

³⁴ See, for example, ALJ's Report; August 28, 2014 Transcript at 102-192.

VII. Contested Issues

A. Procedural Matters

1. Concerns of MN350 and the Sierra Club

As an initial matter, MN350 and the Sierra Club allege that confusion and frustration resulted when an estimated 1000 people sought to attend the Saint Paul public meeting on this matter, and that members of the public were deprived of their opportunity to participate in this docket as a result.

Consequently MN350 and the Sierra Club filed a motion for the Commission, when meeting to deliberate and decide whether to grant a Certificate of Need for the Phase 2 Upgrade, to convene the meeting in a room sufficiently large as to accommodate all the members of the public who wished to attend. According to these parties, convening public meetings in “undersized venues” such as the Commission’s Large Hearing Room may violate Minn. Stat. § 216B.243, subd. 4, Minn. R. 7829.2500, subp. 9, and Minnesota’s Open Meeting Law, Minn. Stat. Chap. 13D. They argue that the Open Meeting Law “must be interpreted to require that agencies allow all citizens who wish to attend a meeting and provide comment to do so.”³⁵

2. Factual Background

At each of the six public hearings, the ALJ informed attendees that he would review written comments received by 4:30 p.m. on April 14, 2014. The ALJ described how people could submit comments, and encouraged participants to share this news with all interested people.

In addition, on April 1, 2014, the ALJ issued his Eighth Prehearing Order, establishing the procedures for the April 3, 2014, public hearing to be held in Saint Paul as follows:

- Witnesses would be drawn from two rosters of interested persons: a roster of people who oppose granting the Certificate of Need, and a roster of people who support it.
- Starting at 2:00 p.m., people could begin signing either roster outside the Commission’s Large Hearing Room.
- Witnesses would be recognized in the order they signed the rosters, with the ALJ alternating between the two rosters.
- The hearing would occur in three segments: (1) from 3:00 p.m. to 4:30 p.m.; (2) from 4:45 p.m. to 6:15 p.m., and (3) from 7:00 p.m. to 8:00 p.m.
- Members of the public would have the opportunity to offer written remarks in addition to or in lieu of oral comments.

The order encouraged all parties to share the hearing procedures with interested stakeholders.

On April 3, 2014, more people sought to attend the public hearing than the room could accommodate; MN350 and the Sierra Club quote an estimate of 1000.³⁶ Consequently some people were left to wait in various spill-over rooms, not all of which had audio or video connection

³⁵ MN350/Sierra Club Motion for Larger Hearing Room at 10 (July 28, 2014).

³⁶ *Id.* at 3.

to the main hearing room. While space eventually opened in the main hearing room, MN350 and the Sierra Club state that many members of the public had left. Only 58 people had the opportunity to speak on the record on that occasion.

3. Relevant Law

As previously noted, Minn. Stat. § 216B.243, subd. 4, provides for public hearings as part of the Commission's process of evaluating requests for a Certificate of Need:

In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need....

Similarly, Minn. R. 7829.2500, subp. 9, directs the Commission to arrange for at least one public hearing.

In addition, Minnesota's Open Meeting Law states that "... meetings ... must be open to the public..."³⁷ However, the Open Meeting Law does not compel a public body to conduct business in the place most advantageously suited for in-person viewing.³⁸

4. Commission Analysis

The Commission regrets the confusion associated with the April 3 public meeting. Partially in response to this situation, the Commission took the unusual step of hearing and transcribing hours of public comment during its August 28, 2014, meeting. And even before MN350 and the Sierra Club had filed their motion for a larger hearing room for the August meeting, the Commission had taken the initiative to install video and audio equipment in the lower level of its office building, permitting people in the lower level to follow events in the Large Hearing Room virtually.

Nevertheless, the Commission has fulfilled the requirements for soliciting public participation in this process. Minn. Stat. § 216B.243, subd. 4, directs the Commission to hold at least one public hearing to obtain public opinion on the necessity of granting the Certificate of Need. Instead, public comments were received at six public hearings, convened at various locations near the pipeline route and in Saint Paul, as well as during the Commission's meeting of August 28. Nearly 200 members of the public took the opportunity to speak at these meetings. And while the number of people seeking to speak during the St. Paul meetings exceeded the opportunities to speak, the Department could attest that the comments received were reflective of the comments received at earlier public hearings.³⁹

As a practical matter, the limit on any given person's opportunity to speak does not result from the size of the hall in which a meeting is held, but from the number of other people also seeking to speak. Opportunities to speak at any given meeting are necessarily finite. The ALJ and the Commission

³⁷ Minn. Stat. § 13D.01.

³⁸ *Lindahl v. Independent School District No. 306*, 133 N.W.2d 23, 26 (Minn. 1965).

³⁹ August 28, 2014 Hearing Transcript at 199.

have sought to allocate these opportunities equitably, giving roughly equal opportunities to the project's proponents and opponents. But no matter how well the Saint Paul meeting was run, most of those in attendance would not receive the opportunity to speak on the record.

But these limitations need not deprive anyone of the opportunity to participate. The public had unlimited opportunities to observe and to communicate with the Commission in other ways. For example, virtually unlimited numbers of people may watch the Commission's meetings live on the internet.

Moreover, the public had an unlimited opportunity to communicate their thoughts in writing. The comment period in this docket ran until April 14, 2014 – or 11 days past the Saint Paul public meeting. Thousands of members of the public took advantage of the opportunity to submit written comments. The ALJ reviewed the comments in preparing his report. And these comments are part of the electronic record available to all – the parties, other members of the public, and the Commission as it considered this matter.

The Commission finds that the six public hearings held in this matter, including the April 3 public meeting, achieved the objective of Minn. Stat. § 216B.243, subd. 4, to facilitate public participation and to obtain the public's opinion on the need for the proposed facilities. Given the various opportunities for the public to provide comment, and to observe the Commission's deliberations and decisions, the Commission finds no support for the argument that the public has been deprived of the opportunity to participate in this proceeding. Finally, given the installation of new technology to better link the Commission's Large Hearing Room with the overflow room in the building's lower level, the Commission declined to take further action on the motion for a larger hearing room.

B. Forecast

1. Positions of the Parties

MN350 and the Sierra Club argue that the forecast provided in Enbridge's application provides an insufficient basis for establishing the need for the Phase 2 Upgrade – and that the other record evidence on future demand cannot be considered for purposes of evaluating whether need has been established.

The Department agrees with MN350 and the Sierra Club that the demand forecast included in Enbridge's application provided an insufficient basis for establishing the need for the Phase 2 Upgrade. But then Enbridge filed rebuttal and surrebuttal testimony, and the Department conducted its own investigation of demand for crude oil.⁴⁰ On the basis of evidence provided by Enbridge and evidence discovered through its own efforts, the Department was led to the conclusion that sufficient demand exists to justify the Phase 2 Upgrade. The ALJ reached the same conclusion.

Enbridge argues that its revised application provided forecasts demonstrating need for the Phase 2 Upgrade. Moreover, Enbridge argues that the Commission is not constrained from considering

⁴⁰ This is consistent with Department practice. August 28, 2014 Transcript at 79-80, 93-94.

forecast information from other sources; to the contrary, Enbridge notes that historically the Certificate of Need process relied on forecasts generated by government.⁴¹

Enbridge further observes that the Commission, in granting certificates of need, has regularly considered forecasts from a variety of sources. The Commission granted a certificate to Lakehead Pipe Line Company, L.P., based in part on “shipper forecasts supplied to Lakehead.”⁴² The Commission granted a certificate to Minnesota Pipe Line Company based on forecasts from the applicant, refineries, the U.S. Department of Energy, CAPP, and NEB.⁴³ The Commission granted a certificate to Enbridge for Line 67 based on forecasts from the NEB, CAPP, Enbridge, the Energy Information Administration, and analysis from the Minnesota Department of Commerce (then identified as the Office of Energy Security).⁴⁴ And the Commission granted a certificate for the Phase 1 Upgrade based on forecast data from NEB, the refining industry, and the U.S. Department of Energy.⁴⁵

2. Commission Analysis

The Commission will consider all record evidence regarding demand in determining whether the Phase 2 Upgrade proposal is needed. And the record contains a variety of data, studies, and analysis demonstrating three propositions: 1) Western Canada is increasing its production of heavy crude oil. 2) Demand for crude oil is growing in the areas served by Line 67 and points downstream. 3) Pipeline capacity apportionments on Line 67 occur, will continue, and will likely increase – but the Phase 2 Upgrade could mitigate this problem.

A) Supply of Oil

1) Supply in General

Regarding oil production, Enbridge witness Neil Earnest cited forecasts from four entities: the EIA, NEB, the Canadian Association of Petroleum Producers (CAPP), and the Energy Resources Conservation Board (ERCB), a quasi-judicial branch of the Government of Alberta. Earnest

⁴¹ See 1974 Minn. Laws. c 307 s 1, pp. 1673-1680, codified at Minn. Stat. §§ 116H.01-116H.15. Section 116H.11 required the director of the Minnesota Energy Agency to generate a periodic report identifying emerging trends related to energy supply and demand, and provided that certain of the “forecasts established by the director shall serve as the basis for certification of large energy facilities in section 116H.13.”

⁴² *In the Matter of the Application by Lakehead Pipe Line Company, Limited Partnership, for a Certificate of Need for a Large Petroleum Pipeline Facility*, Docket No. PL-9/CN- 98-327, Order Granting Certificate of Need (August 5, 1998) at 3.

⁴³ *In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline*, Docket No. PL-5/CN-06-2, Findings of Fact, Conclusions and Recommendation (November 17, 2006) at ¶¶ 61-62, 65-69, adopted in Order Granting Certificate of Need (April 13, 2007) at 10.

⁴⁴ *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Docket No. PL-9/CN-07-465, Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations (July 17, 2008) at ¶ 111-122, adopted in Order Granting Certificate of Need, (December 29, 2008) at 14.

⁴⁵ *Phase 1 Docket*, Order Granting Certificate of Need (August 12, 2013) at 4-5.

testified that these forecasts “differ in the details, but more broadly communicate the same message – the forward outlook for western Canada is one of massive increases in heavy crude oil supply.”⁴⁶ And the Department cites with approval the NEB forecast that Canadian heavy crude oil available for export will increase to 4.2 million bpd by 2035.⁴⁷

2) Supply Available for Line 67

MN350 and the Sierra Club acknowledge that western Canada is increasing its production of crude oil, but emphasize that not all of this oil will be available for shipment on Line 67. While this statement is surely accurate, it ultimately does little to undermine the record support for the proposition that western Canada will have a growing supply of oil to ship.

MN350 and the Sierra Club argue that the supply of crude oil available to Enbridge will be diminished by the growing demand for oil in western Canada. They argue that western Canada’s own demand for crude oil increased by 100,000 bpd between May 2012 and March 2013.⁴⁸ But this statement conflicts with CAPP’s estimate that western Canada’s demand will grow by only 86,000 bpd – by 2020.⁴⁹

In addition, MN350 and the Sierra Club argue that the Phase 2 Upgrade is not needed because other pipelines or even rail lines will be available to transport the surplus crude. This argument has

three weaknesses. First, the CAPP forecast shows increasing supply available for shipment even after accounting for current *and anticipated* pipeline and rail capacity.⁵⁰ And the NEB forecasts that western Canada will produce more than enough new crude to fill both the proposed Phase 2 Upgrade and the proposed Keystone XL Pipeline.⁵¹

Second, many existing rival pipelines face capacity constraints, or lack growing demand, which will limit the amount of additional Western Canadian heavy crude they will transport.⁵² For example, the CAPP forecast includes consideration of how growing quantities of crude extracted from North Dakota’s Bakken formation could fill some of the existing pipeline capacity in western Canada.⁵³ Rail lines are similarly congested.

Third, some of these rival pipelines relied upon by MN350 and the Sierra Club do not yet exist, and may never exist. For example, these parties ask the Commission to rely on the anticipated capacity of the Keystone XL Pipeline -- even as they seek to stop construction of that pipeline.⁵⁴ This

⁴⁶ Ex. 7 at 35 (Muse Stancil Benefits Analysis).

⁴⁷ Ex. 37 at 16-17 (Otis Surrebuttal).

⁴⁸ Compare Ex. 53 at 5 (Denomy Rebuttal) and Ex. 17, Attachment F at 11 and Figure 3.3 (Earnest Rebuttal).

⁴⁹ Ex. 17, Attachment F at 10 (Earnest Rebuttal).

⁵⁰ Ex. 1, § 7853.0240, p. 9; Ex. 17, Attachment F at 11 (Earnest Rebuttal).

⁵¹ Ex. 35 at 39, lines 8-14 (Otis Direct); Ex. 37 at 17, lines 5-13 (Otis Surrebuttal).

⁵² Ex. 15 at 34-35, lines 702-730 (Earnest Rebuttal); Ex. 52 at 6, lines 180-184 (Denomy Direct).

⁵³ Ex. 17, Attachment F at 31 (Earnest Rebuttal).

⁵⁴ April 10, 2014 Transcript at 35, lines 5-12.

illustrates the challenge of their argument: It is not reasonable for the Commission to reject a *specific* proposal whenever there is a *hypothetical* proposal that might otherwise be built.

3) Line 3

MN350 and the Sierra Club allege that Enbridge wrongfully withheld information about its plans for an existing rival pipeline, Enbridge's Line 3, which currently transports light crude oil.⁵⁵ According to these parties, on June 16, 2014 – four days after the ALJ issued his ALJ's Report -- Enbridge filed a proposal with the U.S. Department of State to begin shipping heavy crude oil on Line 3.⁵⁶ On August 20, Enbridge disclosed this proposal in a letter filed in the Phase 1 Upgrade docket.⁵⁷ On August 22, the Department asked Enbridge to disclose and clarify this proposal as part of the current docket.⁵⁸ Enbridge did so on August 26.⁵⁹

Enbridge explains that Presidential Permits issued by the U.S. Department of State govern the operation of a roughly three-mile segment on both Line 3 and Line 67 from where they cross the U.S./Canadian border to the first mainline valve in the United States. In granting the Line 3 permit in 1991, the State Department imposed no limits on throughput. But in granting the Line 67 permit in 2009, the State Department relied on an environmental impact statement that assumed the line would not transport more than 500,000 bpd. Thus, before Enbridge may increase the flow of Line 67 across this border area above 500,000 bpd, it must await approval from the State Department.

In the meantime, the throughput limit on Line 67 has created a bottleneck for that line, triggering more frequent apportionments. At the same time, Enbridge is in the process of replacing the border segment of Line 3 as part of a maintenance program. This new pipe will be able to support a higher throughput than the existing pipe.

Consequently, Enbridge proposes to remedy the bottleneck by having the two pipelines swap loads as they cross the border area. Just north of the border, Enbridge would build facilities to transfer Line 3's load of light crude, flowing at less than 500,000 bpd, to Line 67. And Enbridge would build facilities to transfer Line 67's load of heavy crude to the newly-replaced segment of Line 3, which has no official throughput limit. (Enbridge voluntarily limits throughput based on pressure restrictions.) And just south of the border, Enbridge would build reciprocal facilities to transfer the light crude back to Line 4 and the heavy crude back to Line 67. The State Department has concluded that this arrangement would comply with the existing permit requirements.⁶⁰

⁵⁵ August 28, 2014 Transcript at 43-44, 50, 69-72, 77.

⁵⁶ *Id.* at 69 (remarks of MN350/Sierra Club).

⁵⁷ See *Phase 1 Docket*.

⁵⁸ See Department Information Request 33.

⁵⁹ See Enbridge Response to Department Information Request 33 (August 26, 2014).

⁶⁰ *Id.*

Enbridge argues that its plans for Line 3 have little bearing on the need for the Phase 2 Upgrade. The Commission concurs. The little evidence available in the record about Line 3 reveals no inappropriate conduct on the part of Enbridge, nor any evidence relevant to the need for the Phase 2 Upgrade. Disclosure of these plans did not cause the Department to alter its opinion about the need for the upgrade. These plans will not cause the Commission to reject Enbridge's petition, either.

B) Demand for Oil

1) Demand in General

Regarding demand for crude oil, the record shows pipelines and refineries are expanding in various parts of the local 15-state region, including the following:

- In Whiting, Indiana, the BP Whiting refinery is increasing its capacity to refine heavy crude oil by 268,000 bpd.⁶¹
- In Rosemount, Minnesota, the Flint Hills Resources refinery is also upgrading its heavy crude oil refinery.⁶²
- In Detroit, Michigan, Marathon Petroleum completed a \$2.2 billion expansion of its refinery in 2012.⁶³
- In Toledo, Ohio, BP-Husky Refining LLC completed a \$400 million expansion of its refinery in 2013.⁶⁴

Additionally, expansion of the pipeline network downstream of Line 67 will increase demand for crude oil shipments over Enbridge's Mainline System.⁶⁵ In particular, the Mainline System is expected to be the sole supplier to the start of the Flanagan South pipeline, designed to carry up to 600,000 bpd.⁶⁶ Because shippers have committed to pay for shipping capacity on Flanagan South, they have a strong incentive to actually ship oil on the line.⁶⁷

⁶¹ ALJ's Report, Finding 93, citing Ex. 12 at Attachment D (Curwin Rebuttal); Ex. 15 at 10–13 (Earnest Rebuttal); Ex. 37 at 11-12 and 23 (Otis Surrebuttal).

⁶² ALJ's Report, Finding 92, citing Ex. 12, at Attachment C (Curwin Rebuttal); Ex. 37 at 22, LBO-S-5 and LBO-S-6 (Otis Surrebuttal); Ex. 52, at 13 (Denomy Direct). The refinery has a capacity of 320,000 bpd. Ex. 15 at 10 (Earnest Rebuttal). Attachment LBO-S-6 states that the refinery is currently running at 82-90% of its capacity, and the upgrade is designed to permit Flint Hills to process more crude each day. This indicates a potential to increase output by 32,000-57,600 bpd. The Department sets the increase at 36,000 bpd. Ex. 37 at 22 (Otis Surrebuttal).

⁶³ ALJ's Report, Finding 95, citing Ex. 1, § 7853.0250, at 5 (Revised Application).

⁶⁴ *Id.*

⁶⁵ *Id.*, Findings 97 – 101, citing Ex. 15 at 15-17 (Earnest Rebuttal).

⁶⁶ *Id.*

⁶⁷ *Id.*

Enbridge also cites letters of support from the United Refining Company, BP Products North America, Inc., and Flint Hills Resources, as well as CAPP.⁶⁸

2) Credibility of Evidence

MN350 and the Sierra Club argue that Enbridge's statements about customer support have not proven reliable in the past.⁶⁹ In support of this claim, Enbridge cites a complaint filed with FERC by one of Enbridge's shippers arguing that it had withdrawn its support for building the initial Line 67 Pipeline on the grounds that the pipeline was unneeded. These parties further observe that Enbridge ultimately entered into a settlement agreement with producers and shippers governing shipping rates. The agreement would grant a representative group of producers and shippers the right to refuse to pay for proposed capital projects if they stated their objections sufficiently early. Moreover, the parties to the settlement agreed to renegotiate terms in the event that shipping volumes on Line 67 proved to be lower than anticipated; according to MN350 and the Sierra Club, this indicates that the parties fully anticipated that there would be insufficient demand for this pipeline.

Enbridge disputes the arguments of MN350 and the Sierra Club, both on grounds of fact and relevance.

Factually, Enbridge acknowledges that two years after the Commission issued its order approving a Certificate of Need for Line 67, one of the hundreds of shippers using Line 67 filed objections with FERC arguing that FERC should not permit Enbridge to recover the cost of the new line because the line was built prematurely. But FERC found the allegation to be unsupported.⁷⁰

Enbridge acknowledges that it entered into a settlement wherein CAPP and a group of representative shippers could, by notice, bar Enbridge from increasing their rates to recover the cost of specified proposed capital projects.⁷¹ Yet members of CAPP and shippers support the Phase 2 Upgrade.⁷² This fact bolsters the argument that the pipeline is needed and cost-effective, because sophisticated parties that will bear the cost of the project, directly or indirectly, have elected to let the project proceed.⁷³

Enbridge explains that its settlement provides for Enbridge, CAPP, and the shippers to renegotiate terms in the event of circumstances causing unexpectedly low *or high* levels of throughput on Line 67. That is, the settlement is designed to address a variety of contingencies; this fact provides no evidence that the parties expected Line 67 to be under-utilized.

The Commission finds that the record demonstrates demand for additional supplies of heavy crude oil along and downstream of Line 67. Allegations regarding a lack of shipper support during Line 67's initial permitting and construction phase do not undermine the credibility of the evidence in

⁶⁸ Ex. 8, MC-A (Curwin Direct).

⁶⁹ MN350/Sierra Club brief at 2-16 (April 29, 2014).

⁷⁰ *Enbridge Energy, Limited Partnership*, 130 FERC ¶ 61,270 (2010).

⁷¹ Ex. 106 at § 16 (Excerpt from July 1, 2011 Competitive Toll Settlement).

⁷² Ex. 8, Exhibit A, Schedules 1 and 2 (Curwin Direct).

⁷³ Ex. 11 at 10 (Curwin Rebuttal); April 8, 2014 Transcript at 26, 137-138 (testimony of Otis and Cicchetti); ALJ's Report, Finding 117, citing Ex. 53, at 3 (Denomy Rebuttal).

this record. Moreover, the statements of support from shippers are bolstered by the fact that Line 67 has experienced ever more apportionments in recent years.

3) Conservation Programs under Minn. R. 7853.0130

MN350 and the Sierra Club claim that the record fails to address the effect of conservation programs on the anticipated demand for heavy crude oil, in violation of Minn. R. 7853.0130, which states in relevant part:

A Certificate of Need shall be granted to the applicant if it is determined that:

A. the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering ... (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs....

MN350 and the Sierra Club acknowledge that Enbridge does not implement petroleum conservation programs, but argue that the Commission must still consider both federal and state programs that seek to conserve petroleum.⁷⁴

Enbridge and the Department argue that conservation programs are adequately addressed in the record. The ALJ agreed. And the Commission concurs.

The EIA's Annual Energy Outlook Early Release (AEO 2014 Early Release) forecasts energy consumption through 2040 after accounting for all known national conservation programs, including programs addressing greenhouse gas emission regulations and fuel economy standards.⁷⁵ For example, this report assumes that the Corporate Average Fuel Economy standard for cars will increase from today's 21.5 miles per gallon to 37.2 miles per gallon in 2040. The analysis of the AEO 2014 Early Release also accounts for alternate vehicle fuels systems, including plug-in hybrid or gasoline electric hybrid vehicles, Ethanol flex-fuel vehicles, and electric vehicles.

Yet the AEO 2014 Early Release still predicts that gasoline will power 78% of new light-duty vehicles in 2040. It predicts that heavy duty vehicle miles traveled and energy used will increase by an average of 1.9% per year from 2012 to 2040.⁷⁶ According to the report, "[t]otal U.S. consumption of petroleum and other liquids, which was 35.9 quadrillion Btu (18.5 MMbbl/d (million barrels per day)) in 2012, increases to 36.9 quadrillion Btu (19.5 MMbbl/d) in 2018, then declines to 35.4 quadrillion Btu (18.7 MMbbl/d) in 2034 and remains at that level through 2040."⁷⁷ In short, the AEO 2014 Early Release accounts for improvements in vehicle efficiency and

⁷⁴ MN350/Sierra Club Brief at 26-27.

⁷⁵ Ex. 13, Exhibit F at 8 (Attached to the Enbridge Response to Department of Commerce Information Request No. 9).

⁷⁶ *Id.* at 9.

⁷⁷ *Id.* at 11.

increasing domestic production of petroleum, yet still forecasts the need for additional petroleum imports from 2016 through the end of the 2040 planning horizon.⁷⁸

Consistent with this analysis, Charles Cicchetti, Ph.D, testified that, despite state and federal efforts to promote conservation, there will remain a global demand for crude; while renewable sources of energy can readily displace coal and natural gas, Dr. Cicchetti found that liquid fuels have proven harder to replace.⁷⁹

4) **Conservation Programs under Minn. Stat. § 216B.243**

MN350 and the Sierra Club emphasize the Commission's duty to comply with Minn. Stat. § 216B.243, subd. 3.⁸⁰ This statute directs the Commission to assess the need for a proposed facility based on "the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18...." This statute refers to the Department's 2012 Quadrennial Report.⁸¹ That report addresses overall state needs for oil at pp. 31-39.

The report discusses alternative fuels and technologies – ethanol, biodiesel, compressed and liquefied propane/natural gas, electric vehicles, hydraulic hybrid vehicles – and the Governor's Executive Order to reduce the petroleum consumed by state vehicles.⁸² But the report does not indicate the extent to which these developments would influence overall state energy needs for heavy crude oil.

Conservation programs notwithstanding, the report states that uses of petroleum for transportation – which consumes nearly 75 percent of petroleum – is increasing. The report notes that the United States might obtain more oil from the oil sands in Alberta, Canada, which is estimated to have 170 billion barrels. As of 2012, the United States imported 49 percent of the oil it consumed, including 25 percent from Canada.

The report states that the price of oil is influenced by international demand; infrastructure, including pipeline capacity; actual or perceived supply disruptions and shortages; and refiners adopting just-in-time production methods -- which means they rely on timely pipeline deliveries in lieu of having storage. According to the report, limitations on production and supply infrastructure will continue to be a challenge for the industry throughout the country, but a focus on diversifying transportation fuel supplies may decrease Minnesota's dependence on factors outside the state's control.

Having found sufficient demand to justify the Phase 2 Upgrade, the Commission finds that conservation programs will not be sufficient to meet that demand or displace the need for the project.

⁷⁸ *Id.* at 13.

⁷⁹ April 9, 2014 Transcript at 241.

⁸⁰ MN350/Sierra Club brief (April 29, 2014) at 27, 47.

⁸¹ See the Department's *Energy Policy and Conservation Quadrennial Report 2012*, <http://mn.gov/commerce/energy/images/Energy-Quad-Report2012.pdf>

⁸² *Id.* at 35-39.

C) Apportionment

The record shows that Lines 4 and 67 have been apportioned in recent months,⁸³ and that apportionment is forecast to worsen in the near term without the Phase 2 Upgrade.⁸⁴ Indeed, the Phase 2 Upgrade is too small to eliminate the risk of apportionment – but it would mitigate it.⁸⁵

Avoiding apportionment is important. Apportionments force refiners to either reduce production of refined products or to import heavy crude oil through other means. Both of these alternatives are unreasonably inferior substitutes for implementing the Phase 2 Upgrade.⁸⁶

MN350 and the Sierra Club argue that the record fails to distinguish between apportionments triggered by excessive demand and apportionments triggered by reduced capacity that might occur, for example, if maintenance work on a pump reduced the flow rate.

But the Department argues that this may be a distinction without a difference. Maintenance is not a discretionary activity. And expanding the capacity of Line 67 would be expected to reduce the frequency and severity of apportionments regardless of cause.⁸⁷ The Commission concurs.

Consequently the Commission finds that the record demonstrates a forecasted need for the additional shipping capacity that could be provided by the Phase 2 Upgrade.

C. Cost recovery

MN350 and the Sierra Club argue that Enbridge's assessments are biased because Enbridge faces little financial risk from over-building Line 67; Enbridge can simply raise its rates to recover its costs.

But Enbridge argues persuasively that it, not the shippers, bears the risk of loss if volumes transported on the Mainline System are less than Enbridge forecasts. As MN350 and the Sierra Club acknowledge, Enbridge has entered into a settlement agreement setting its shipping rates. While this agreement identifies circumstances under which Enbridge could seek to renegotiate terms, Enbridge would still need to secure the agreement of its producers and shippers before it could raise their rates.⁸⁸

The Commission finds no basis to conclude that Enbridge is shielded from the adverse financial consequences of overbuilding its system.

⁸³ Ex. 15 at 4 (Earnest Rebuttal); see also Ex. 13, Exhibit F, Enbridge Response to Department Information Request 21B, Attachment 21B, Schedule 1 (Curwin Rebuttal).

⁸⁴ Ex. 14 (Enbridge Revised Response to Department of Commerce Information Request 21A, TRADE SECRET VERSION); Ex. 15 at 4-5 (Earnest Rebuttal).

⁸⁵ *Id.*; Ex. 15 at 5-7 (diagram showing apportionments with and without added capacity) (Earnest Rebuttal).

⁸⁶ Ex. 37 at 6 (Otis Surrebuttal).

⁸⁷ August 28, 2014 Transcript at 75.

⁸⁸ Ex. 22 at 3-4 (Cicchetti Surrebuttal).

D. Environmental Review

1. Positions of the Parties

MN350 and the Sierra Club argue that the Minnesota Environmental Protection Act (MEPA) requires the preparation of an environmental impact statement wherever there is the potential for significant environmental impacts from a major governmental action.⁸⁹ They cite Minn. R. 4410.4300, subp. 7, for the proposition that an environmental assessment worksheet is required for any pipeline project.

No other party supported this legal interpretation. The Department analyzed potential impacts on the natural environment that the proposed project may cause as part of its analysis of the Revised Application under Minnesota Rule 7853.0130(C).⁹⁰ The Department recommends granting a Certificate of Need for the Phase 2 Upgrade subject to Enbridge obtaining all permits and approvals required by the relevant local, state, and federal government agencies, including permits and approvals pertaining to environmental protection.⁹¹

Enbridge went further: To the extent that Minnesota law is intended to address the environmental consequences of events occurring outside Minnesota's borders, Enbridge argues that the law exceeds the Commission's jurisdiction.

2. Commission Analysis

In determining the extent of environmental review to require for analyzing a certificate of need application, the Commission considers MEPA and the rules implementing that statute, as well as the Commission's own statutes and rules.

As an initial matter, neither MEPA nor its rules require the Commission to evaluate a formal environmental review document for purposes of granting a *certificate of need*. Rather, Minn. R. 4410.4300, subp. 7.A, provides for the preparation of a comprehensive environmental assessment worksheet when evaluating a request for a *routing permit*.⁹² The Commission thoroughly reviewed the environmental analysis prepared for Line 67 in its routing permit docket.⁹³ Because Enbridge is not routing any new pipelines as part of this docket,⁹⁴ the Commission need not repeat that analysis here.

⁸⁹ MN350/Sierra Club brief at 43–44, citing Minn. Stat. § 116D.04, subd. 2a.

⁹⁰ Ex. 35 at 41–43 (Otis Direct); Department brief at 34–36.

⁹¹ Ex. 37 at 25 (Otis Surrebuttal).

⁹² See, for example, *Route Permit Docket*, Order Granting Pipeline Routing Permit (December 29, 2008) at 9, *aff'd*, *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pub. Utils. Comm'n*, No. A10-812 (Minn. Ct. App. Dec. 14, 2010) (unpublished).

⁹³ *Id.*, Order Granting Pipeline Routing Permit.

⁹⁴ Ex. 1, § 7853.0230 at 3 (Revised Application).

But while MEPA does not require a formal environmental review document, it nevertheless directs all departments and agencies to compare a project's environmental consequences to the consequences of alternative proposals.⁹⁵ And Minnesota Rules requires consideration of the "natural and socioeconomic environments compared to the effects of reasonable alternatives"⁹⁶ and "the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility."⁹⁷

Consequently the parties and the ALJ evaluated the environmental consequences of the Phase 2 Upgrade relative to other alternatives. These alternatives included shipping more oil via a new pipeline, relying on the proposed Keystone XL Pipeline, relying on trucking, relying on rail, implementing a different pipeline route, or taking no action.

Phase 2 involves installing and operating new pumps along Line 67, which would have a variety of environmental consequences. It would disrupt some of Enbridge's land, and the increased traffic and human activity may disturb plant and animals in the vicinity. Construction equipment and commuting personnel would generate some additional emissions. Some water would be used for testing the pumps, and this water would later be discharged. And the ongoing operation of the new pumps would consume some electricity and release some gasses.⁹⁸ However, Enbridge proposes to partially offset these environmental harms via its "neutral footprint" program.⁹⁹

Additionally, increasing the operating pressure in Line 67 may foreseeably increase the amount of oil that might escape in the event of a spill.¹⁰⁰ But this risk is mitigated by the fact that Line 67 is relatively new,¹⁰¹ and by Enbridge's new procedures to prevent, contain, and control spills.¹⁰² For example, Enbridge has now stationed emergency response trailers throughout Minnesota,¹⁰³ and if any anomaly interrupts service, a single operator at the control center can shut down the pipeline.¹⁰⁴

⁹⁵ Minn. Stat. § 116D.03.

⁹⁶ Minn. R. 7853.0130, subp. B (3).

⁹⁷ Minn. R. 7853/0130, subp. C (2).

⁹⁸ See Ex. 1 at 7853.0620 (Revised Application), Ex. 35 at 40-41 (Otis Direct).

⁹⁹ Ex. 1, § 7853.0260 at 2, § 7853.0270, and § 7853.0630, Exhibit E (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

¹⁰⁰ *Id.* at 42 (Otis Direct).

¹⁰¹ *Id.* at 32 (Otis Direct) (citing, among other reasons, the effects of the federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. Law 112-90).

¹⁰² Ex. 1, § 7853.0260 at 2, § 7853.0270, and § 7853.0630, Exhibit E (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

¹⁰³ *Id.*; April 8, 2014 Transcript at 300-301.

¹⁰⁴ *Id.*

In contrast, each of the alternative projects considered would generate worse environmental consequences than would the Phase 2 Upgrade. For example, building a new pipeline or re-routing Line 67 would result in the same types of environmental costs as the Phase 2 Upgrade, plus the environmental harms associated with laying roughly 999 miles of new pipe.¹⁰⁵

Taking no action or relying on the Keystone XL Pipeline to ship the oil would enable Enbridge to avoid the environmental harms associated with the Phase 2 Upgrade. But these strategies would do nothing to ameliorate the apportionments along Line 67 – a problem that will foreseeably grow worse as refiners along and downstream of Line 67 increase their processing capacities.¹⁰⁶ These customers, confronted with growing apportionments, would likely turn to shipping more oil by means other than pipelines.

This leads to the final two alternatives: shipping more oil by rail or truck. A fleet of 8,280 tank trucks, or 13,824 railway cars, would be required to replace the capacity of the Phase 2 Upgrade.¹⁰⁷ Either fleet would generate more emissions and noise than would the Phase 2 Upgrade.¹⁰⁸ Building the attendant loading and unloading facilities, as well as expanded road and rail lines, would consume land and potentially disrupt wildlife; operating the fleets would be still more disruptive.¹⁰⁹ Finally, for each mile that a barrel is transported, the odds that the barrel will be spilled is higher if the barrel is transported by truck or rail than by pipeline.¹¹⁰

While MN350 and the Sierra Club correctly observe that conservation could play a role in reducing the demand for liquid petroleum, as previously noted, the Commission finds that conservation programs will not suffice to eliminate the need for the Phase 2 Upgrade.¹¹¹

In summary, the Commission analyzed the formal environmental review of Line 67 in the context of Enbridge's routing permit docket; no such review is required in this docket because Enbridge is not proposing to route new pipes. Rather, Enbridge merely proposes to install new pumps on its own land. Finally, Enbridge and the Department conducted the required level of review in analyzing the environmental consequences of Enbridge's proposal relative to alternatives. This review demonstrated that the Phase 2 Upgrade provides a way to meet the demand for additional heavy crude along and downstream of Line 67 while minimizing environmental harms.

¹⁰⁵ Ex. 1, § 7853.0540, § 7853.0600 and Table 7853.0600-1 (Revised Application).

¹⁰⁶ *Id.* at § 7853.0540 (Revised Application); Ex. 35 at 30-35 (Otis Direct).

¹⁰⁷ *Id.* at § 7853.0540; April 8, 2014 Transcript at 143-147.

¹⁰⁸ Ex. 35 at 36-37 (Otis Direct).

¹⁰⁹ *Id.*

¹¹⁰ Ex. 1, § 7853.0250, Table 7853.0250-A-3 (reviewing incidents data from the U.S. Department of Transportation, Pipeline, and Hazardous Materials Safety Administration) (Revised Application).

¹¹¹ See, for example, Ex. 13, Exhibit F at 8 (Attached to the Enbridge Response to Department of Commerce Information Request No. 9).

VIII. Commission Analysis

A. ALJ's Report

In preparing his recommendations for the Commission regarding Enbridge's Certificate of Need, ALJ Lipman presided over an evidentiary hearing and six public hearings. He reviewed the testimony of nine witnesses and thousands of exhibits. He observed the demeanor of the witnesses and evaluated the parties' initial and reply briefs. His report is thoughtful, comprehensive, and thorough, including 217 findings of fact and 15 conclusions, ultimately supporting two recommendations: Grant the Certificate of Need, and condition the grant on Enbridge obtaining the list of permits set forth in its revised application. The Commission finds that the contested case process presided over by ALJ Lipman was fair and impartial, provided the parties and the public an opportunity for meaningful participation, and resulted in a substantial record supporting the ALJ's recommendations.

However, MN350 and the Sierra Club allege a variety of errors in the ALJ's Report, and propose revisions. Upon review, the Commission is persuaded to adopt many of these recommendations, at least in part.

Consequently the Commission will adopt and incorporate the findings of fact and conclusions of law set forth in the ALJ's Report except as modified below and in the ordering paragraphs. In all other respects, the proposed changes to the ALJ's Report are denied.

1. Finding 25

Finding 25 states in part, "Currently, the total permitted capacity of Lines 4 and 67 is 1,596,000 bpd.¹¹²" MN350 and the Sierra Club argue that the 1,596,000 bpd figure does not reflect the current permitted capacity of these lines, but rather the combined permitted capacity of both lines *if the Phase 2 Upgrade is implemented*.

The Commission agrees, and will adopt Finding 25 amended to correct this misstatement.

2. Findings 77 and 78

MN350 and the Sierra Club object that Findings 77 and 78's description of the April 3 public meeting provides an incomplete account of the problems that arose that night. However, these parties do not specify anything in the paragraphs that is inaccurate or misleading.

That said, Finding 77 states that "the presentations during the public hearing were equally divided between proponents of the project and opponents of the project." In adopting this finding, the Commission will clarify that public speakers were *scheduled* such that the presentations were equally divided between proponents and opponents.

3. Finding 87

MN350 and the Sierra Club do not deny the accuracy of Finding 87 where it states, "Enbridge predicts that Line 67 will reach its current permitted capacity of 570,000 bpd on an annual basis by

¹¹² Ex. 15 at 6 (Earnest Rebuttal).

mid-2014.” But they argue that this statement is misleading, in that subsequent events demonstrated that the growth of the annualized throughput on Line 67 would not reach the 570,000 bpd threshold by mid-2014.

The Commission will adopt Finding 87 modified to clarify that the remark refers to a statement in Enbridge’s application, not necessarily Enbridge’s view by the end of the current proceeding.

4. Finding 95

MN350 and the Sierra Club do not contest the ALJ’s finding that “[i]n 2012, Marathon Petroleum completed a \$2.2 billion upgrade and expansion project at its Detroit refinery,” but argue that this language is misleading because it fails to provide appropriate context.

The Commission finds that the language is well-documented, and so will adopt this finding intact – albeit with the addition of appropriate citations to the record.

5. Finding 96

MN350 and the Sierra Club do not contest the ALJ’s finding that “ [i]n February 2013, a \$400 million upgrade to the BP-Husky Refining LLC Toledo refinery was complete,” but argue that this language is misleading.

The Commission finds that the language of Finding 96 reflects well-supported language from Enbridge’s application. Consequently the Commission will adopt Finding 96, but will modify the language to reflect the language from the application.

6. Findings 104, 105, and 107

MN350 and the Sierra Club object that the ALJ’s findings about the amount Canadian crude oil “available for transport” falsely implies that these stocks are available solely to Enbridge.

The Commission will adopt these findings as modified to dispel any such implication.

7. Findings 109 and 110

In Findings 109 and 110 the ALJ finds that increasing oil supplies will prompt shippers to request more transportation, triggering apportionments, and that increased pipeline capacity would mitigate this problem. MN350 and the Sierra Club argue that the ALJ provided insufficient support for these findings.

The Commission concludes that Findings 109 and 110 are well supported in the record. Consequently the Commission will adopt these findings as written, but will supplement the citations to the record.

8. Finding 179

MN350 and the Sierra Club propose modifying this finding to, among other things, state that the amount of greenhouse gases produced by the extraction, production, transportation and consumption of Canadian oil sands is higher than for any other source of oil.

The Commission will adopt this finding while generally incorporating the changes proposed by MN350 and the Sierra Club – but finding that Canadian oil sands have *among* the highest rates of emissions.

9. Finding 182

In Finding 182, the ALJ expresses doubt that denying a Certificate of Need for the Phase 2 Upgrade would reduce the production of oil from the Canadian oil sands; he also concludes that the denial would trigger quantifiable harm, such as causing oil prices to rise \$11 per barrel. MN350 and the Sierra Club argue that these quantified conclusions are unfounded.

The Commission will adopt the language of Finding 182 modified to exclude quantified estimates about how denial of a Certificate of Need would affect oil prices.

B. Legal Requirements

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria, set out in Minnesota Stat. § 216B.243, subd. 3, and incorporated into Minn. R. 7853.0130, subparts A-D.

- **Minn. R. 7853.0130.A: The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states**

The Commission concurs with Enbridge, the Department, and the ALJ that denying the Certificate of Need would likely harm the future adequacy, reliability, and efficiency of energy supply to Enbridge's customers, and to the people of Minnesota and neighboring states. The record demonstrates that the supply of heavy crude oil coming from western Canada will grow more quickly than the currently anticipated vehicles for distributing it; that the demand for heavy crude in Minnesota, the neighboring states, and points downstream is growing; and that apportionment has grown as well.

MN350 and the Sierra Club argue that Enbridge's application provided insufficient information for the Commission to make the required evaluation, and note that the Department initially shared this perspective.

But the Department has subsequently changed its perspective. The Department sought, and found, alternative sources of information on the supply of, and demand for, crude oil. In addition, the Department learned more about how all shippers on Line 67 vulnerable to apportionments, in accordance with the terms of Enbridge's federal tariffs. This information led the Department to conclude that the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of the energy supply. And this work has led the Commission to reach the same conclusion.

Given the entirety of the record, including the provisions in FERC tariffs that apply to Line 67, the Commission finds that Enbridge has provided evidence sufficient to meet its burden under Minn. R. 7853.0130.A. The record shows that the proposed Phase 2 Upgrade is needed in Minnesota, neighboring states, and the region and that denial of the requested project would have a negative effect on the adequacy, reliability, and efficiency of existing heavy crude oil supplies.

- **Minn. R. 7853.0130.B: A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant**

The Commission also finds that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.

The Phase 2 Upgrade would have a variety of effects on the socioeconomic environment. Among the projects obvious benefits is the delivery of heavy crude oil, which is used to make asphalt, gasoline, medicine, health and safety products, and agricultural products. Also, implementation of the Phase 2 Upgrade would generate additional property tax revenue and create “a fairly significant amount” of temporary jobs in Minnesota.¹¹³

The Phase 2 Upgrade would have few direct environmental consequences. Construction would cause some increase in noise and traffic, consume water for testing the new pumps, and consume a small amount of natural habitat and farmland. While shipping oil by pipeline creates some risk of an oil spill, as occurred in Michigan in 2010, the risk is lower on newer pipelines such as Line 67 than on older pipelines.¹¹⁴ Moreover, Enbridge has adopted policies and systems to prevent, contain, and control accidents on Line 67. For example, Enbridge has now stationed emergency response trailers throughout Minnesota, and if any anomaly interrupts service, a single operator at the control center can shut down the pipeline. In any event, shipping by pipeline leads to vastly fewer incidents of spills than does shipping by truck or rail when measured in terms of tons of materials shipped each mile.¹¹⁵

The Commission has considered a variety of alternative means of dealing with the increased production of Canadian crude oil and the resulting demand for shipping capacity from Enbridge’s customers for transporting much-needed crude oil to Minnesota and other Midwestern refineries.

With respect to the “no action” alternative, the Commission agrees with Enbridge, the Department, and the ALJ that the reliability of the supply of petroleum products to any given customer in Minnesota and the Midwest would be diminished if no action were taken, given the growing incidence of apporportionments. The Commission has evaluated alternatives such as building a new pipeline, using the proposed Keystone XL pipeline, relying on semi-truck tankers, and relying on railroad tankers. But the Commission finds that each alternative considered in the record posed higher safety, cost, reliability, environmental, and logistical concerns than the proposed Phase 2 Upgrade.

- **Minn. R. 7853.0130.C: The consequences to society of granting the Certificate of Need are more favorable than the consequences of denying the certificate**

¹¹³ April 8, 2014 Transcript at 180.

¹¹⁴ Ex. 35 at 32 (Otis Direct) (citing, among other reasons, the effects of the federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. Law 112-90).

¹¹⁵ Ex. 1 at 7853.0250 (Revised Application), citing U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration data.

The Commission also agrees with Enbridge, the Department, and the ALJ that the benefits to society arising from granting the Certificate of Need for the project outweigh the costs.

The Phase 2 Upgrade would provide greater access to a reliable source of heavy crude oil from a developing supply region. It would help ensure that the people and industries of Minnesota and the surrounding region have a reliable, cost-effective supply of petroleum products many years into the future. And it would accomplish these goals with little if any disruption to the natural or socioeconomic environments of the state.

MN350 and the Sierra Club argue that the Commission is precluded from issuing a Certificate of Need without first weighing the environmental consequences arising from the combustion of the oil, and from spills. The Department and Enbridge disagree to varying extents.

The Commission is mindful of the public comments and concerns raised throughout this docket. While some commenters favored granting the Certificate of Need – mainly because of the pipeline’s economic benefits to local communities – many were opposed, citing safety concerns, environmental concerns specific to oil production in the Canadian oil sands region, and the public interest in reducing dependence on fossil fuels. Some of these issues were addressed in the original Certificate of Need and route permit proceeding and have not undergone significant change. And some of these issues will be subject to ongoing review by other state and federal agencies, should new facts emerge.

Nevertheless, Minn. R. 7853.0130.C. directs the Commission to compare the consequences arising from granting a certificate to the consequences of denying it – not compared to some idealized outcome.

The Commission concurs with MN350 and the Sierra Club that if the Commission grants the Certificate of Need, then the production, transportation, and consumption of the Canadian oil sands crude oil will have environmental consequences. But as the ALJ found, it seems likely that the same result would occur even if the Commission were to deny the certificate. Indeed, MN350 and the Sierra Club argue that if the Commission were to deny the Certificate of Need, the oil would merely be consumed in western Canada or transported by other pipelines to be consumed in other places.

As discussed above, all alternatives to this proposed pipeline expansion involve more significant environmental and socioeconomic consequences, and higher environmental and socioeconomic risks, than this proposed project. In particular, denying the application would likely result in more petroleum being shipped by rail – an outcome that would generate still more greenhouse gas emissions and other adverse risks and consequences, while providing few offsetting benefits.¹¹⁶

While denial of the petition would not be likely to generate specific environmental benefits, the Commission will accept Enbridge’s proposal to mitigate the environmental costs: The Commission will direct Enbridge to implement its stated “neutral footprint” policy when upgrading Line 67. This involves conserving an acre for every acre of natural habitat affected, planting a tree for every tree removed to build new facilities, and generating a new kWh of

¹¹⁶ Ex. 15 at 12-22 (Earnest Rebuttal); Ex. 20 at 12, 24-36 (Rennicke Report). Also, compare Ex. 1 § 7853.0600 at 19, Table 7853.0600-3 (Emissions from Rail Alternative) (Revised Application) to § 7853.0620 at 2-3, Table 7853.0620-2 (emissions from implementing Phase 2) (Revised Application).

renewable energy for every incremental kWh the Phase 2 Upgrade consumes.¹¹⁷ This renewable energy would be in addition to any renewable energy Enbridge was already obligated to generate.

To ensure compliance with this provision, the Commission will direct Enbridge, within 90 days of when the Phase 2 pumps become operational, to file a report stating how Enbridge intends to implement its neutral footprint policy with respect to the Phase 2 Upgrade, and how it intends to document its compliance with this policy.

In sum, the Commission finds that the consequences to society of granting the Certificate of Need are more beneficial than the consequences of denying the certificate, and Enbridge's neutral footprint policy will further enhance those benefits.

- **Minn. R. 7853.0130.D: It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments**

Finally, it has not been demonstrated that the design, construction, or operation of the proposed facilities would violate any governmental policies, rules, or regulations at the federal, state or local level. As discussed, Minnesota Rules require no formal environmental review for this project, but the pipeline was subject to a full environmental review when Enbridge sought a routing permit for Line 67.¹¹⁸

Enbridge's proposal is subject to the jurisdiction of the state and federal agencies that are specifically responsible for ensuring the environmental safety and oversight of oil pipelines in the United States. Enbridge is in the process of securing the approval of government agencies as set forth in Table 7853.0230-2 of Enbridge's application. This requires obtaining at least the following permits and approvals:

¹¹⁷ Ex. 9 at 7 (Jurgens Direct).

¹¹⁸ *Route Permit Docket*.

<u>Agency</u>	<u>Permit/Approval</u>
United States Department of State	Presidential Permit
United States Army Corps of Engineers	Section 404 Permit (waters of the United States, including wetlands) – Individual Wetland Permit
United States Fish and Wildlife Service	Section 7 Consultation (Federal endangered species)
Minnesota Public Utilities Commission	Certificate of Need
Minnesota Department of Natural Resources	Water Appropriation Permit (trench dewatering)
	State Endangered Species Consultation
Minnesota Pollution Control Agency	NPDES Construction Stormwater General Permit
	§ 401 Water Quality Certification
State Historic Preservation Office – Minnesota Historical Society	Section 106 Consultation
City of Floodwood Wetland Conservation	Wetland Conservation Act Utility Exemption
Red Lake Soil and Water Conservation District	Wetland Conservation Act Utility Exemption

Any grant of a Certificate of Need is made subject to the applicant's duty to comply with these permitting requirements. In addition, the Commission accepts and relies upon Enbridge's pledge to comply with its policies set forth in Table 7853.0230-2, including its commitment to implement its neutral footprint policy.

IX. Conclusion

Having reviewed the filings in the record and considered the oral arguments, and based on the foregoing analysis, the Commission concludes that granting a Certificate of Need for the proposed Phase 2 Upgrade to the Line 67 petroleum pipeline would Minn. Stat. § 216B.243 and Minn. R. 7853.0130. Accordingly, the Commission will grant Enbridge a Certificate of Need to upgrade the capacity of Line 67 from 570,000 bpd of heavy crude oil to 800,000 bpd, subject to conditions.

ORDER

1. The Commission grants Enbridge Energy, Limited Partnership a Certificate of Need for the Line 67 Upgrade Project – Phase 2, subject to the following conditions:
 - A. Enbridge must obtain each of the required permits listed in Table 7853.0230-2 of its revised application.
 - B. Enbridge shall apply its “neutral footprint” objectives to the environmental impacts associated with Phase 2 of Line 67, including conserving an acre for every acre of natural habitat impacted, planting a tree for every tree that must be removed to build new facilities, and generating a kilowatt-hour of renewable energy for every kilowatt-hour the Phase 2 energy operations consume.¹¹⁹ Within 90 days of the Phase 2 pumps becoming operational, Enbridge shall file a report stating –
 - **how Enbridge intends to implement its neutral footprint policy with respect to the Phase 2 project, and**
 - **how it intends to document its compliance with this policy.**
2. The Commission adopts and incorporates the Administrative Law Judge’s Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (June 12, 2014) except as it conflicts with this order, and with the following changes:

25. Enbridge dedicates two pipelines in Minnesota to transportation of heavy crude oil: Lines 4 and 67. With the project, Currently, the total permitted capacity of Lines 4 and 67 is ~~1,596,000~~ approximately 1,336,000 bpd. With the addition of the Phase 2 capacity, this figure is approximately 1,596,000 bpd.¹²⁰

77. A public hearing was held in Saint Paul, Minnesota, on April 3, 2014. Over the course of four hours of public testimony, the Administrative Law Judge heard from 58 witnesses, received 19 exhibits and dozens of handwritten comments. Public speakers were scheduled such that ~~Importantly,~~ the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.¹²¹

87. At the time of its application, Enbridge predicted ~~predicts~~ that Line 67 would ~~will~~ reach its current permitted capacity of 570,000 bpd on an annual basis by mid-2014. It further asserted ~~asserts~~ that the volumes of crude oil that are nominated for shipment after that date would ~~will~~ continue to increase.¹²²

¹¹⁹ Ex. 9 at 7 (Jurgens Direct).

¹²⁰ Ex. 15 at 6 (Earnest Rebuttal).

¹²¹ *Id.*; April 3, 2014 Transcript at 3-6 and 223-24.

¹²² Ex. 4, at 3 (Revised Application Section 7853.0520).

95. In 2012, Marathon Petroleum completed a \$2.2 billion upgrade and expansion project at its Detroit refinery.¹²³

96. In February 2013, a \$400 million upgrade to the BP-Husky Refining LLC Toledo refinery ~~was complete~~ went online.¹²⁴

104. In addition to considerable "downstream demand" for heavy crude oil within PADD 2, and beyond, the hearing record makes clear that there will be significant new stocks of Canadian crude oil available for transport by Enbridge and other potential transportation service providers.¹²⁵

105. Laura Otis, a Rates Analyst with the Minnesota Department of Commerce, testified credibly that an additional 1.4 million bpd of Canadian crude oil will be available for transportation between 2012 and 2020. If one subtracts 120,000 bpd that can be carried as a result of the Phase I capacity upgrades to Line 67, and subtract another 730,000 bpd that could be transported by the Keystone XL pipeline, there remains over 500,000 bpd of heavy crude oil that would potentially be available for transport.¹²⁶

107. The record contains significant and credible forecasts of increased, near-term production of heavy crude oil by Canadian oil producers and that all or some portion of this oil will be available for transport along Enbridge's Mainline System.¹²⁷

109. When Midwestern demand for heavy crude oil increases, alongside increasing supplies of oil in western Canada, the market pressures upon Enbridge's limited transportation services are likely to increase. Increasing the capacity of Line 67 would forestall the rate and frequency of apportioned shipments along Line 67.¹²⁸

110. Given the regional and global demands for heavy crude oil, it is unlikely that conservation programs in Minnesota could reduce the demand for this type of oil by 230,000 bpd.¹²⁹

¹²³ Ex. 1, § 7853.0240 at 2-3; § 7853.0250 at 5 (Revised Application); Ex. 13, Exhibit F at 14-15 (Curwin Rebuttal); Ex. 15 at 13 (E)

¹²⁴ *Id.*

¹²⁵ *See, e.g.*, Ex. 7, at 31 (Muse Stancil Benefits Analysis).

¹²⁶ Ex. 37 at 17 (Otis Surrebuttal).

¹²⁷ Ex. 7 at 30-35 (Muse Stancil Benefits Analysis).

¹²⁸ Ex. 13 at 6 and Attachment A; Ex. 14 (Response to Department of Commerce Information Request 21A - Trade Secret Version); Ex. 15 at ~~19-20~~ 13-23 (Earnest Rebuttal).

¹²⁹ April 9, 2014 Transcript at 239-41 (Cicchetti testimony); Ex. 15 at 13-23 (Earnest Rebuttal).

179. Moreover, Mr. Dr. Abraham's pre-filed testimony suggests that, on average, the transportation of Canadian heavy crude oil to refineries results in the release of far fewer greenhouse gases (GHGs) than oil transportation operations in most other oil producing nations – such as Angola, Ecuador or Saudi Arabia. The GHG Emissions Profiles for the extraction, production and consumption of Canadian oil sands are among the highest of all oil producing countries.¹³⁰

182. While the Commission could decide not to grant a Certificate of Need for this project on the grounds that Minnesota should not permit the transportation of heavy crude oil, there is real doubt that withholding approval for an expanded Line 67 will result in Canadian oil supplies "remaining in the ground." ~~This is because the price impact of denying the Certificate of Need will add approximately \$11 to the cost of a barrel of oil. As Dr. Cicchetti persuasively testified, however, Canadian oil producers will very likely continue to extract oil from Alberta so long as the Gulf Coast price point for a barrel of oil is at least \$50 per barrel — a level that is half the rate at which Canadian oil regularly trades now. Accordingly, while an \$11 price change on a \$100 barrel of oil may be very unwelcome to certain companies in the oil business such a spike is not likely to dissuade oil producers from extracting oil from Alberta or refiners from processing Canadian petroleum.~~¹³¹

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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¹³⁰ See Ex. 51, Attachment 7 at 7.00062 and 7.00063 (Abraham Surrebuttal).

¹³¹ Compare, Ex. 16, Attachment C with Hearing Transcript, Volume 2 at 121 and 245-46 (Cicchetti Testimony).