

The Commission met on **Thursday, June 25, 2020**, with Chair Sieben and Commissioners Means, Schuerger, Sullivan, and Tuma present.

The following matters were taken up by the Commission:

**PL-9/CN-14-916**

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

**PL-9/PPL-15-137**

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

Chair Sieben moved that the Commission deny the petitions to reconsider the Commission's Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (May 1, 2020).

The motion passed 4–1; Commissioner Schuerger voted no.

**PL-9/PPL-15-137**

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

Commissioner Tuma moved that the Commission do the following:

1. Grant all 12 amendments to the Pipeline Routing Permit<sup>1</sup> requested in the May 5, 2020 Permit Amendment Application of Enbridge Energy, Limited Partnership (Enbridge).
2. Amend the routing permit by replacing routing maps with the corresponding updated maps included in Enbridge's May 5, 2020 Permit Amendment.
3. Include the following additional conditions in the routing permit:

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<sup>1</sup> See Order Approving Pipeline Routing Permit with Conditions (October 26, 2018); *revised in* Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration (January 18, 2019).

- a. Lighting Pollution Reduction. All permanent outdoor lighting installed at newly constructed pumping stations and pipeline maintenance shops must meet or exceed lighting standards for state-funded outdoor lighting pursuant to Minnesota Statute §16B.328 by using the minimum illumination adequate for the intended purpose giving consideration to nationally recognized standards, maximizing energy conservation, light pole maximum heights, minimizing upward lighting, reducing glare, and preserving the natural night environment.
- b. Pipeline Facilities Landscaping Plan. In addition to preserving the natural landscape, minimizing tree removal and preventing any unnecessary destruction of the natural surroundings in the vicinity of the project during construction and operation, Enbridge shall consult the Suonvieri family to determine whether there is a potential for visual impacts. Enbridge shall prepare a pipeline facilities landscaping plan outlining the landowner consultation process and the best management practices for installing landscape buffering that reasonably mitigates the visual impacts to residences. The plan must be filed with the Commission and approved as a compliance filing prior to construction.

#### 4. Public Safety Liaison

- a. Accept the changes set forth in Attachment A except the provisions therein having the Commissioner of the Department of Public Safety as the Public Safety Liaison make the final determination on reimbursements. The Executive Secretary is authorized to retain a public safety expert with expertise in law enforcement costs and reimbursements to make decisions on reimbursements in accordance with the permit. Authorize Commission staff to make further refinements to the permit conditions as necessary to ensure consistency with the record, the language of recently issued permits, and the Commission's decision in this matter.
- b. Modify the Order Approving Pipeline Routing Permit With Conditions (October 26, 2018), Ordering Paragraph 9, by adding 9.G. as follows:

The Public Safety Escrow account may not be used to reimburse expenses for equipment, except for personal protective gear for public safety personnel.

Direct Commission staff to make the modifications necessary to the existing route permit to incorporate this change.

5. Vary the 45 day requirement under Minn. R. 7852.3400 in order to prepare the final order.

The motion passed 5–0.

There being no further business, the meeting was adjourned.

**APPROVED BY THE COMMISSION: December 16, 2020**

A handwritten signature in black ink, appearing to read "Will Seuffert", with a long horizontal flourish extending to the right.

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Will Seuffert, Executive Secretary

**PL-9/PPL-15-137**

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

ATTACHMENT A

## Attachment A – Proposed Language Changes to Order and Routing Permit

### Reissued October 26, 2018 Order Text at Pages 31-33

Safety measures. While Enbridge selected its APR to mitigate the extent to which the proposed pipeline's construction and operation will impinge upon the public, the Project will inevitably create some new risks and burdens. The revised sample Pipeline Routing Permit addressed steps to mitigate risks and burdens related to its Project. These considerations do not favor any pipeline route over the others.

But in addition to the conditions set forth in the sample permit, the Commission will direct Enbridge to take the following measures.

First, the Commission will designate ~~a~~ the Commissioner of the Minnesota Department of Public Safety (DPS Commissioner) as the Public Safety Liaison, and direct Enbridge to work with the Liaison to ensure proper execution of the Pipeline Routing Permit's public safety and private security provisions. The Liaison will be the point of contact for the Commission, the parties, and local governmental units on safety and security issues. The Liaison may retain staff and professional services, but this permit will provide no additional ~~have no~~ authority to oversee or direct law enforcement authorities.

Second, the Commission will direct Enbridge to develop public safety and security plans for this project. Before beginning construction in any county, Enbridge should obtain approval for these plans from the county sheriff or, if unable to do so, from the Commission.

Third, during construction, the Commission expects Enbridge to work with local authorities to prohibit public access to the right-of-way, if required for public safety and security. But in taking such actions, the Commission also expects Enbridge, its contractors, and its assigns to respect the rights of the public to legally exercise their constitutional rights without interference. Specifically, the Commission expects ~~these~~ Enbridge's agents to avoid engaging in counterinsurgency tactics or misinformation campaigns designed to interfere with the public's legal exercise of constitutional rights. Moreover, the Commission expects that these agents will comply with Minnesota's Private Detective and Protective Agent Services statutes and rules at all times. As a condition of the routing permit, the Commission will direct Enbridge to act accordingly.

Fourth, to address parties' concerns about problems that have arisen in other construction projects, the Commission will direct Enbridge to develop a Human Trafficking Prevention Plan to educate, equip, and encourage people associated with pipeline construction and operation, and members of the public generally, to prevent and report Project-related human trafficking. As part of this plan, Enbridge would maintain a toll-free hotline throughout the Project's construction for receiving reports of human trafficking. Enbridge must file the plan with the Commission 60 days before beginning construction, and incorporate the plan into its employee training and education as discussed in Section 4.7 of the Pipeline Routing Permit.

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Moreover, Enbridge should develop this plan in coordination with the EERA, the Minnesota Human Trafficking Taskforce, and the Minnesota Indian Affairs Council (MIAC), and all Minnesota Tribes that wish to participate. EERA has agreed to formally extend invitations to the Minnesota Human Trafficking Taskforce, MIAC, and the governments of all Tribes in Minnesota or in MIAC for this purpose. Enbridge will be responsible for coordinating, completing, and delivering the plan—so Enbridge should document its efforts to engage these entities.

Safety expenses. Finally, parties noted that pipeline projects in other parts of the country have sometimes resulted in added burdens to law enforcement and social service agencies. Given the possibilities that the Project could cause similar effects, the Commission will direct Enbridge to help defray these added costs by creating, funding, and administering a Public Safety Escrow Trust as follows:

- A. The Public Safety Liaison must confer with law enforcement/social service agencies of affected local units of government, including tribal governments, about the appropriate sums required to meet the enhanced law enforcement and social service needs arising from the Project.
- B. The ~~Executive Secretary, after consulting with the~~ Public Safety Liaison, will determine the appropriate initial amount to be deposited into the Public Safety Escrow Trust Account, and any subsequent amounts.
- C. Before beginning construction, Enbridge must establish the Public Safety Escrow Trust Account in an independent US financial institution, designate the financial institution as trustee, and make deposits as specified.
- D. The ~~Executive Secretary~~ DPS Commissioner will establish a plan for distributing funds to enhance existing law enforcement agencies and social services task along the route.

The fund would have two parts. First, the ~~Executive Secretary~~ DPS Commissioner would arrange for providing funds, before construction begins, to help existing law enforcement and social service agencies along the route in combatting drug and human trafficking during pipeline construction. The Public Safety Liaison will coordinate these drug and human trafficking grants after consulting with local and tribal governments near the route, Minnesota Human Trafficking Taskforce, and MIAC.

Second, the fund would permit local units of government to seek reimbursement for the added costs for law enforcement, public safety, public health, planning, and other services arising from activities in and around the construction site during the term of the routing permit as a direct result of the pipeline construction. After having sought reimbursement from state or federal funding programs as appropriate, local units of government and tribal governments could submit to the Public Safety Liaison a written request for reimbursement. The request should contain an itemized list of expenses and sufficient detail to permit the ~~Commission~~ Public Safety Liaison to determine whether the services rendered were reasonable and

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appropriate additional ~~municipal~~ services uniquely provided due to the construction of the pipeline during the term of this permit.

Examples of reimbursable expenses will include incremental expenses related to—

- coordination of public safety and emergency responders;
- public safety-related costs for maintaining the peace in and around the construction site;
- review and oversight of any private security services;
- public emergency management services;
- transportation management, parking, and traffic control services; and
- any other emergency first responder, public safety, public works, and public health-related services provided in and about the construction site as a direct result of the construction of the pipeline.

These measures should help Enbridge mitigate the Project's effects on human settlements generally.

### Reissued October 26, 2018 Ordering Paragraphs 6-9 at Pages 31-33

6. The ~~Executive Secretary shall~~ Commission will designate ~~a~~ the Commissioner of the Minnesota Department of Public Safety (DPS Commissioner) as the Public Safety Liaison to work with Enbridge to ensure all the public safety and private security provisions of the Pipeline Routing Permit are executed appropriately. The Public Safety Liaison will be the point of contact for the Commission, the parties, and local governmental units on safety and security issues and may, with the Executive Secretary's approval, hire or contract for clerical and auditing services to fulfill the obligations under the permit. ~~The This permit will not provide the~~ Public Safety Liaison with any additional authority is not to oversee or direct law enforcement authorities exercise any oversight or in any way direct law enforcement activities of authorities for local, state and federal agencies.
7. Enbridge shall work with local authorities to prohibit public access to the right-of-way during construction to promote public safety and security, as needed.
  - A. Enbridge and its contractors and assigns shall –
    - 1) respect the rights of the public to legally exercise their constitutional rights without interference,
    - 2) refrain from participating in counterinsurgency tactics or misinformation campaigns designed to interfere with the public's legal exercise of constitutional rights, and
    - 3) comply with Minnesota's Private Detective and Protective Agent Services statutes and rules.

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- B. Before beginning construction in any county, Enbridge shall obtain approval for its public safety and security plans from the county sheriff or, if unable to do so, from the Commission.
8. Enbridge shall develop a Human Trafficking Prevention Plan.
    - A. Enbridge shall design the plan to educate, equip, and encourage the public and those associated with pipeline construction and operation to prevent and report Project-related human trafficking. Enbridge shall establish a toll-free hotline for reporting human trafficking during the Project’s construction. Enbridge shall incorporate the plan into the employee training and education required by Section 4.7 of the Pipeline Routing Permit.
    - B. Enbridge shall develop the plan in coordination with the EERA, the Minnesota Human Trafficking Taskforce, and the Minnesota Indian Affairs Council, and all Minnesota Tribes that wish to participate. EERA will issue a written invitation to assist in the development of the plan to the Minnesota Human Trafficking Taskforce, MIAC, and the governments of all Tribes within the state MIAC and the governments of all Tribes within the state. Enbridge shall retain all other responsibilities for coordinating, completing, and implementing the plan, and shall document all efforts to engage the above entities. Enbridge shall file the plan with the Commission 60 days before beginning construction.
  9. Enbridge shall create and fund a Public Safety Escrow Trust Account to help defray the costs of the added burdens to law enforcement and social service agencies along the pipeline route arising from the Project.
    - A. The Public Safety Liaison shall confer with law enforcement/social service agencies of affected local units of government, including tribal governments, about the appropriate sums required to meet the enhanced law enforcement and social service needs arising from the Project.
    - B. The ~~Executive Secretary, after consulting with the~~ Public Safety Liaison and the Tribal Liaison, shall determine the appropriate initial amount to be deposited into the Public Safety Escrow Trust Account, and any subsequent amounts.
    - C. Before beginning construction, Enbridge shall establish the Public Safety Escrow Trust Account in an independent US financial institution, designate the financial institution as trustee, and make deposits as specified. The financial institution shall manage the trust according to the terms of the Pipeline Routing Permit.
    - D. The ~~Executive Secretary~~ Public Safety Liaison shall establish a plan for distributing funds before construction begins to enhance existing law enforcement and social service agencies along the route in combatting drug and human trafficking during the Project’s construction. The Public Safety Liaison shall coordinate these drug and human



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trafficking grants after consulting with local and tribal governments near the route, the Minnesota Human Trafficking Taskforce, and MIAC.

- E. Local units of government may also seek reimbursement for the added costs for law enforcement, public safety, public health, planning, and other services arising from activities in and around the construction site during the term of the routing permit as a direct result of the pipeline construction. After having sought reimbursement from state or federal funding programs as appropriate, local units of government may submit to the Public Safety Liaison a written request for reimbursement. The request should contain an itemized list of expenses and sufficient detail to permit the ~~Executive Secretary~~ Public Safety Liaison to determine whether the services rendered were reasonable and appropriate additional ~~municipal~~ services uniquely provided as a result of the construction of the pipeline during the term of this permit.
- F. Examples of reimbursable expenses include incremental expenses related to—
- 1) coordination of public safety and emergency responders;
  - 2) public safety-related costs for maintaining the peace in and around the construction site;
  - 3) review and oversight of any private security services;
  - 4) public emergency management services;
  - 5) transportation management, parking, and traffic control services; and
  - 6) other emergency first responder, public safety, public works, and public health-related services provided in and about the construction site as a direct result of the construction of the pipeline.

### Reissued January 18, 2020 Route Permit Language

#### 5.5 Public Safety and Security

Prior to construction, the Permittee will submit for approval a security plan to the Sheriff's Office in each county where construction is to take place. The security plan and Sheriff's Office approval of the plan shall also be filed with the Commission. The Permittee will work with local authorities to prohibit public access to the right-of-way during construction to promote public safety and, as needed, security.

At all times during the term of this permit the Permittee, the Permittee's contractors and assigns shall respect the rights of the public to legally exercise their Constitutional rights without interference by the Permittee unless determined to be a public safety concern. The Permittee, the Permittee's contractors and assigns will not participate in counterinsurgency tactics or misinformation campaigns to interfere with the rights of the public to legally exercise their Constitutional rights. At all times during the term of this permit the Permittee shall comply with Minnesota's Private Detective and Protective Agent Services laws and rules, and make

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their records evidencing compliance available for inspection to the Public Safety Liaison and the local Sheriff's Office throughout construction.

### 5.5.1 Public Safety Escrow Account

Prior to construction, the Permittee shall establish a Public Safety Escrow Account with an independent United States financial institution. The Public Safety Escrow Account will be managed by the selected financial institution as the trustee and in accordance with the terms of this permit. The amount of initial and additional deposit shall be determined by the ~~Commission's Executive Secretary after consultation with the~~ Public Safety Liaison. To receive payment from the Public Safety Escrow Account, Local Government Units (LGU) shall submit in writing an itemized request to the Public Safety Liaison sufficient to ~~recommend to the Commission's Executive Secretary~~ determine whether services rendered were additional ~~municipal~~ services uniquely provided as a result of construction of the pipeline during the term of this permit in addition to being reasonable and appropriate. Prior to payment from the Public Safety Escrow Account, the LGU must seek reimbursement from any existing state or federal funding programs that may exist for reimbursement of such expenses and restitution when appropriate. Any amounts not distributed within 180 days of the completion of construction shall be released back to the Permittee.

Covered additional municipal services include those incrementally additional services provided by a LGU for public safety, public health regulation, planning and other services uniquely provided as a direct result of the pipeline construction during the term of this permit for activities in and around the construction site. Additional municipal services include at a minimum the following:

- Public safety and emergency responder related coordination services;
- Public safety related costs for maintaining the peace in and around the construction site;
- Review and oversight of any private security services;
- Public emergency management services;
- Transportation management parking and traffic control services; and
- Any other emergency first responder, public safety, public works, and public health regulation services provided as a direct result of the construction of the pipeline occurring in and about the construction site.

### 5.5.2 Public Safety Liaison

Prior to construction, ~~the Commission's Executive Secretary shall select an individual to be the Public Safety Liaison between the Commission, the Permittee, and the LGUs to~~ the Public Safety Liaison shall ensure all public safety and private security provisions of this permit are executed appropriately. The Public Safety Liaison may hire or contract for clerical and auditing services to fulfill the obligations under the permit ~~after seeking approval from the Commission's Executive Secretary~~. The Public Safety Liaison is not to exercise any oversight or in any way direct ~~the law~~

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~~enforcement activities of authorities for local, state, and federal agencies~~ law enforcement authorities.