

Staff Briefing Papers

Meeting Date: March 15, 2018

Agenda Item **1

Company: Enbridge Energy, Limited Partnership

Docket No. 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 Route Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

- Issues:
1. Should the Commission adopt the administrative law judge's Findings of Fact, Conclusions of Law, and Recommendation?
 2. Should the Commission find that the revised Final Environmental Impact Statement is adequate?

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651-201-2255



Relevant Documents

Date

Environmental Impact Statement Scoping Decision Document

December 5, 2016

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 Relevant Documents	Date
Draft Environmental Impact Statement	May 15, 2017
Final Environmental Impact Statement	August 17, 2017
Report of the Administrative Law Judge (ALJ) [on Final EIS Adequacy]	November 1, 2017
Exceptions of Department of Commerce Energy Environmental Review and Analysis to Report of the ALJ	November 21, 2017
Commission Staff’s Briefing Papers for the December 12, 2018 Agenda Meeting	December 5, 2017
Commission Order Finding Environmental Impact Statement Inadequate	December 14, 2017
Revised Final Environmental Impact Statement	February 12, 2018
Enbridge Comments on the Revised Final EIS	February 27, 2018
Fond du Lac Band Comments on the Revised Final EIS	February 27, 2018
Friends of the Headwaters Comments on the Revised Final EIS	February 27, 2018
Honor the Earth Comments on the Revised Final EIS	February 27, 2018
Mille Lacs Band Comments on the Revised Final EIS	February 27, 2018
Sierra Club Comments on the Revised Final EIS	February 27, 2018
Public Comments on Revised Final EIS ^{††}	---

†† Due to the numerous comments received, staff has provided links to public comments filed to eDockets by staff or by a commenter independently, rather than having them included in Granicus. Document IDs: [20183-140647-01](#), [20183-140648-02](#), [20183-140650-02](#), [20183-140650-04](#), [20183-140651-02](#), [20182-140265-01](#), [20182-140509-01](#), [20182-140460-01](#), [20182-140547-01](#), [20182-140542-02](#), and [20182-140526-02](#).

Attachments

Table 1 - Department of Commerce Energy and Environmental Review Exceptions to Administrative Law Judge’s Report (November 21, 2017)

I. STATEMENT OF THE ISSUES

1. Should the Commission adopt the administrative law judge’s Findings of Fact, Conclusions of Law, and Recommendation?

2. Should the Commission find that the revised Final Environmental Impact Statement is adequate?

II. PROJECT DESCRIPTION

Enbridge Energy, Limited Partnership (Enbridge) has filed a certificate of need application and a pipeline route permit application for its proposed Line 3 Replacement Project. As described in the applications, the Line 3 Replacement Project would be a new 337-mile long 36-inch diameter pipeline that would replace 282 miles of the existing 34-inch Line 3 pipeline in Minnesota.¹ The pipeline route proposed by Enbridge would parallel the route of the existing Line 3 pipeline from the North Dakota-Minnesota border to Clearbrook, Minnesota, but would require a new right-of-way from Clearbrook to Superior, Wisconsin. The existing Line 3 pipeline is proposed to be permanently deactivated and left in-place after the new pipeline is installed, tested, and operational. Associated facilities would include eight pumping stations, valves, metering and monitoring equipment, and related electrical facilities. Enbridge's proposed pipeline route would cross portions of Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

As indicated in the applications, the purpose of the Line 3 Replacement Project is to replace the Minnesota portion of the existing Line 3 pipeline to: 1) address known integrity risks, 2) reduce apportionment due to decreased transport capacity related to integrity issues, and 3) restore flexibility to the Enbridge Mainline System for more efficient operation. The new Line 3 pipeline would have an annual average capacity of 760,000 barrels per day (bpd) and would serve the same markets and transport the same products as the existing Line 3 pipeline.² Operationally, the new Line 3 pipeline would continue to transport crude from Canada to the Enbridge terminal facility in Clearbrook for subsequent delivery to Minnesota refineries via interconnected pipeline facilities operated by Minnesota Pipeline Company,³ and delivery of crude oil to the Superior Wisconsin terminal for subsequent delivery on the Enbridge Mainline System to refineries in the Midwest, Eastern Canada, and the Gulf Coast.

¹ The existing Line 3 pipeline was originally installed between 1962 and 1969 and is part of the Enbridge Mainline System. The existing Line 3 pipeline originates in Canada and crosses the United States-Canada border near Neche, North Dakota. It continues through North Dakota to Clearbrook, Minnesota, heads east from Clearbrook and terminates at the Enbridge Superior Station and Terminal Facility near Superior, Wisconsin. The Enbridge Mainline System delivers crude oil to: 1) Minnesota Pipe Line Company's interconnecting facilities at Clearbrook for ultimate redelivery to Minnesota refineries, and 2) the Superior Terminal for ultimate delivery to other refineries in the United States and Canada.

² The existing Line 3 transports a mixture of heavy and light crudes and its average annual capacity has been restricted to 390,000 bpd due to safety-related pressure restrictions.

³ Enbridge currently transfers approximately 400,000 bpd to the Minnesota Pipeline Company pipeline system (See Final EIS, Section 1.2 at 1-4).

III. STATUTES AND RULES

Written Comments. Under Minn. R. 4410.2800, subp. 2, interested persons may submit written comments on the adequacy of the final EIS for a period of not less than ten days following publication in the EQB Monitor of the notice of availability of the final EIS.

Determination of Adequacy. The criteria the Commission, as the Responsible Government Unit (RGU), must consider when determining whether the final EIS is adequate can be found in Minn. R. 4410.2800, subp. 4. This part provides:

The final EIS shall be determined adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G (comparing potentially significant impacts of the proposed project with those of other reasonable alternatives to the proposed project) and H (presenting a thorough but succinct discussion of potentially significant direct, indirect, or cumulative adverse and beneficial environmental, economic, employment, and sociological effects of the proposed project and major alternatives);
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.

Inadequacy. If the Commission determines that the final EIS is inadequate, Minn. R. 4410.2800, subp. 5, provides 60 days in which to prepare an adequate final EIS. The revised EIS must be circulated in accordance with Minn. R. 4410.2700, subp. 3.

Notice of Determination. The Commission must provide notice of its adequacy decision within five days of the decision. The notice of the Commission's decision must be circulated in accordance with Minn. R. 4410.2700, subp. 3, and published in the EQB Monitor.

Supplement to an EIS. Under Minn. R. 4410.3000, subp. 3, an RGU shall prepare a supplement to an EIS under any of the following circumstances:

- A. whenever after a final EIS has been determined adequate the RGU determines that either:
 - (1) substantial changes have been made in the proposed project that affect the potential significant adverse environmental effects of the project; or
 - (2) there is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed project that have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects;
- B. whenever an EIS has been prepared for an ongoing governmental action and the RGU determines that the conditions of item A, subitem (1) or (2), are met with respect to the action; or
- C. whenever an EIS has been prepared for one or more phases of a phased action or one or more components of a connected action and a later phase or another component is proposed for approval or implementation that was not evaluated in the initial EIS.

EIS Addendum. Under Minn. R. 4410.3000, subp. 2, an RGU may make minor revisions to a final EIS by use of an EIS addendum. An EIS addendum may not be used to make revisions required under Subpart 3 (Supplement to an EIS).⁴

IV. PROCEDURAL HISTORY

On April 24, 2015, Enbridge filed an application for a certificate of need and an application for a pipeline route permit for its proposed Line 3 Replacement Project.

On December 5, 2016, the Department of Commerce (Department or DOC-EERA) issued the Environmental Impact Statement (EIS) Scoping Decision and published the EIS Preparation Notice for the Line 3 Replacement Project in the EQB Monitor. Publication of the notice triggered the start of a 280-day timeline under Minn. Stat. § 116D.04, subd. 2a(h), thereby making September 11, 2017, the deadline for an adequacy decision.

⁴ See also *Guide to Minnesota Environmental Review Rules* at 31 (May 2010), “The rules also provide for an “EIS Addendum” to correct a completed EIS text in situations that do not rise to the level where an EIS Supplement is required.”

On May 15, 2017, the Department issued the Draft EIS. The Department identified August 10, 2017, as the anticipated issue date for the Final EIS.

On August 14, 2017, the Commission issued an order that: 1) extended the 280-day statutory deadline for EIS preparation under Minn. Stat. § 116D.04, subd. 2a(j) by consent of the parties, 2) referred the matter of Final EIS adequacy to the OAH for the appointment of a second ALJ (ALJ Eric Lipman) for the purpose of developing the record and issuing a report and recommendation on the adequacy of the Final EIS, and 3) established a procedural schedule for a Commission determination on the adequacy of the Final EIS. The Commission indicated that it would decide on Final EIS adequacy sometime between November 30 and December 11, 2017.

On August 17, 2017, the Department issued the Final EIS.⁵

On November 1, 2017, Administrative Law Judge (ALJ) Eric Lipman filed his findings of fact, conclusions of law, and recommendation concerning the adequacy of the Final EIS. ALJ Lipman recommended that the Commission find the Final EIS to be adequate.

On December 7, 2017, the Commission met to consider the adequacy of the FEIS. At that meeting the Commission, in a verbal decision, identified four deficiencies in the FEIS that need to be remedied before the FEIS can be considered adequate under Minn. R. 4410.2800. The Commission requested that the Department submit the supplemental information within 60 days, as required under Minn. R. 4410.2800, subp. 5.

On December 13, 2017, the Commission issued a Notice of Final Environmental Impact Statement Adequacy Determination.

On December 14, 2017, the Commission issued its Order Finding Environmental Impact Statement Inadequate. The order identified the four deficiencies that must be remedied before the FEIS can be considered adequate:

1. The Final EIS needs to include additional information to: (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse, and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.

⁵ On August 9, 2017, the Governor directed the Commissioner of Commerce to extend the deadline for issuing the Final EIS from August 10, 2017 to August 17, 2017.

2. The Final EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of High Consequence Areas (HCA) drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.
3. The Final EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.
4. The Final EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.

On February 12, 2018, the Department issued the revised Final EIS.

On February 12, 2018, the Commission issued a Notice of Availability and Comment Period for the revised Final EIS. Comments on the revised Final EIS were accepted from February 12 to February 27, 2018.

V. REPORT OF THE ADMINISTRATIVE LAW JUDGE

Staff notes that the Commission previously reviewed and considered the ALJ Report at its December 7, 2017 Agenda Meeting. The Commission identified deficiencies in the Final EIS, however, it declined to decide on whether to adopt, not adopt, or modify the ALJ Report. The information below is from staff's December 7, 2017 Briefing Papers.

On November 1, 2017, the ALJ filed his report in this matter. The ALJ's report provided findings, conclusions, and a recommendation related to the adequacy of the Final EIS. Specifically, the ALJ's report included: 293 findings of fact, 20 conclusions of law, and a recommendation. The ALJ recommended that the Commission find the Final EIS adequate under Minn. R. 4410.2800, subp. 4.

The ALJ made his recommendation based on the following conclusions:

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

2. The FSDD [Final Scoping Decision Document] specified those potentially significant issues and impacts that were to be developed during the scoping process. Each of these issues and impacts were explored in the DEIS [Draft EIS] and FEIS [Final EIS].
3. Each alternative that was identified in the FSDD was developed during scoping and later analyzed in the DEIS and FEIS.
4. The DEIS met the requirements of Minn. R. 4410.2300(G), in that the DEIS compared potentially significant impacts of the Project with those of the other alternatives that were specified in the FSDD.
5. The DEIS addressed the potentially significant adverse or beneficial environmental, economic, employment, and sociological impacts generated by the project and alternatives. It addressed direct, indirect, or cumulative impacts commensurate with their importance.
6. Notwithstanding the procedural error with respect to the scheduling of the public meeting in Hinckley, Minnesota, the Commission did meet the public meeting requirements of Minn. R. 4410.2100, subp. 3(B).
7. The public was afforded opportunities to shape the scope of the EIS, contribute to the DEIS and FEIS, and assess the adequacy of the FEIS, in accordance with the requirements of MEPA and Minn. R. Ch. 4410.
8. The information presented in the FEIS adequately addresses the issues that were identified in the FSDD.
9. The FEIS was prepared in compliance with the procedures of Minn. Stat. § 116D.04 (2016) and Minn. R. 4410.0200 to 4410.6500 (2015).
10. The proposed action is described in sufficient detail.
11. The FEIS meets the content requirements of Minn. R. 4410.2300.
12. The FEIS adequately analyzes significant environmental impacts.
13. The FEIS adequately presents alternatives to the proposed action and their impacts.

14. The FEIS adequately presents methods by which adverse environmental impacts can be mitigated.
15. The FEIS addresses direct, indirect, and cumulative potentially significant impacts that could result from the Project.
16. The FEIS adequately presents the economic, employment and sociological effects that cannot be avoided if the proposed action, or an alternative, is implemented.
17. The FEIS addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been thoroughly analyzed.
18. The FEIS provides responses to the substantive comments received during the DEIS review as to issues that were raised during the scoping process.
19. The FEIS addresses the potentially significant issues and alternatives that were raised during the scoping process.
20. The FEIS was prepared in compliance with the procedures of MEPA and Minn. R. 4410.0200 to 4410.6500.

The ALJ addressed arguments that the Final EIS was inadequate. The ALJ provided factual and legal explanations as to why he disagreed with each claim and cited to the appropriate location in the record or other legal citations in support of his determination. The claimed inadequacies are set forth below with citations to the ALJ Findings that address them:

- a. The FEIS improperly used the Applicant's stated need and purpose for the proposed project as the need and purpose in the FEIS. The ALJ did not find it inappropriate for the DOC-EERA to focus on alternatives that deliver crude to the Applicant's identified endpoints of Clearbrook, Minnesota and Superior, Wisconsin. (See ALJ Findings 170 to 175, and 178 to 183).
- b. The FEIS only evaluates alternatives that deliver crude oil and excludes alternative technologies, such as electric cars, that could avoid the need for crude oil to meet Minnesota's transportation needs. The ALJ did not agree with this argument and indicated that the crude oil to be delivered by the pipeline will be used for a wide range of products in addition to transportation uses. (See ALJ Findings 176 to 179).

- c. The FEIS did not evaluate impacts in relation to the ultimate annual average rated capacity (915,000 bpd) of the proposed project. Rather, the FEIS only evaluated the impacts associated with transporting 760,000 bpd, as requested by the Applicant in its Certificate of Need Application. The ALJ disagreed indicating that the Applicant could not transport more than 760,000 bpd, should that be approved, without seeking additional approval from the Commission. (See ALJ Findings 184 to 187).
- d. The FEIS did not evaluate a theoretical pipeline (Line 66) in Wisconsin as a cumulative impact. The ALJ disagreed by referencing Minn. R. 4410.2000, subp. 4, and indicated that “declining to evaluate a yet-to-be proposed project, wholly within a neighboring state, was not error.” (See ALJ Findings 188 to 191).
- e. The FEIS comparative analysis between the Applicant’s Proposed Route and System Alternative SA-04 was skewed because DOC-EERA failed to make adjustments to the SA-04 route so as to avoid karst features in southeastern Minnesota. The ALJ disagreed, indicating there is nothing in the record to support a finding “that DOC-EERA, or its sister agencies the DNR and the MPCA, aimed the digital centerline of SA-04 at sensitive resources so as to tilt later comparisons in favor of Enbridge’s proposal.” In addition, under Minn. R. 4410.2300(l), DOC-EERA did not have a duty to make improvements to competing alternatives. (See ALJ Findings 196 to 207).
- f. The spill analysis performed and included as part of the FEIS did not assess a hypothetical discharge of oil into the headwaters of the Mississippi River, Itasca State Park, and the Straight River. The ALJ disagreed, indicating that the DOC-EERA analyzed a broad representation of potential spill scenarios along the pipeline route that provided adequate information to inform the Commission of the potential impacts from an accidental discharge of crude oil. (See ALJ Findings 208 to 215).
- g. The FEIS did not include a complete tribal cultural survey to evaluate the presence of Traditional Cultural Properties (TCPs) along the Applicant's Proposed Route and the alternative routes. The ALJ disagreed, indicating in Finding 255 that, “Completion of the Tribal Cultural Properties survey is not required in order for the FEIS to meet the adequacy standards of Minn. R. 4410.2800, subp 4. With this FEIS, the Commission has the “information [that] can be reasonably obtained” and this data has been “analyzed in conformance with part 4410.2300, items G and H.” (See ALJ Findings 243 to 255).
- h. The FEIS did not provide assurance that the Applicant will be a viable company throughout the expected life of the proposed pipeline, nor will it have the financial

means to remediate future oil spills in that scenario. The ALJ disagreed, indicating that the information was provided in Section 10.6.3 of the FEIS. The ALJ also cited to Minn. R. 4410.2800, subp. 4(A), which provides that a FEIS is not inadequate because it does not include an analysis of matters that cannot be “reasonably obtained.” (See ALJ Findings 273 to 275).

- i. The DNR and MPCA, who assisted DOC EERA in the preparation of the FEIS, failed to submit written comments as independent reviewers of the preliminary EIS drafts, in violation of their legal duty. The ALJ disagreed, stating that there is no legal requirement that state agencies submit public comments on draft environmental impact statements. (See ALJ Findings 286 to 288).

VI. DEPARTMENT RECOMMENDED MODIFICATIONS TO ALJ REPORT

In connection with the Commission’s December 7, 2017 Agenda Meeting, the Department filed exceptions to the ALJ Report for purposes of: 1) clarifying or correcting certain findings of fact in the ALJ Report, and 2) revising certain findings to substitute different facts and/or analysis than the ALJ included in the findings.⁶ As with the ALJ Report, the Commission considered the Department’s modified findings, but declined to decide on the modifications at that time. Staff has summarized the Department’s modifications in Table 1 attached to these briefing papers.

The Department did not provide any additional comments or findings with regard to the revised Final EIS.

VII. REVISED FINAL ENVIRONMENTAL IMPACT STATEMENT

As previously noted, the Commission considered the parties arguments on all the issues identified above, but did not make any decisions with respect to them. Instead, the Commission found that there were four deficiencies that must be addressed before the Final EIS could be found adequate, which by implication indicates that but for the four deficiencies the FEIS is otherwise adequate.

On February 22, 2018, the Department issued the revised Final EIS. The Department provided a summary of the revisions that were made to the Final EIS to address the four deficiencies identified in the Commission’s December 14 Order, as follows:⁷

⁶ See DOC-EERA Exceptions to ALJ Report, November 21, 2016, Document ID [201711-137576-01](#).

⁷ See Cover Letter to Revised Final EIS, February 12, 2017, Document ID [20182-139959-06](#).

Concerning Ordering Point 1.a.

In consultation with the Minnesota Department of Natural Resources (MNDNR) and the Minnesota Pollution Control Agency (MPCA), EERA has prepared a new appendix to address this item (Appendix U). No viable routes were identified that entirely avoid karst; however, Appendix U contains an analysis of two reroute options that minimize crossing through areas where karst features are nearest to the ground surface. Appendix U contains tables that compare each option to the segment of SA-04 that it would replace using the full suite of environmental parameters evaluated in Chapters 5, 10 and 11 of the EIS.

Concerning Ordering Point 1.b.

In consultation with MNDNR and MPCA, EERA determined that this item could be addressed by explaining in the FEIS that an individual dataset should be used in context with other related data in order to reduce the chance of over-reliance on a single data set.

As a result, in each resource section in Chapters 5 and 6 of the FEIS, EERA has added red bold text to the methodology section explaining that considered in isolation, each dataset has limitations, and that the reader should consider the datasets together as a suite. In addition, the EIS now includes footnotes in the impact summary table that explain this, and a specific example of why this is the case.

The FEIS now also includes a similar explanation in red bold in the overall introductory section in Chapters 5 and 6 and in Section 10.4 of the FEIS.

Concerning Order Point 1.c.

In consultation with MNDNR and MPCA, EERA determined that this item could be addressed by clarifying that the impacts reported in the FEIS, even along existing corridors, are the incremental impacts that the project will have, over and above impacts from any past projects. For, example, where corridor sharing results in fewer incremental impacts, the EIS already reflects this, so new quantitative analysis would not be suitable. Instead, adding additional footnotes to the summary tables at the end of each resource section, which point the reader to

pages containing qualitative discussions describing the nature of the incremental impact, was identified as the best approach to address this item.

As a result, in each resource section in Chapters 5 and 6 of the FEIS, in red bold text, EERA has added:

- Text in the methodology discussion explaining that the quantitative data in the tables should be reviewed with the qualitative discussion in the text.
- Text in the existing environment and environmental impact discussions noting the type and extent of corridor sharing, and highlighting that these sections take the implications of corridor sharing into account.
- Footnotes in the impact summary table noting the type and extent of corridor sharing of each alternative and pointing the reader to the qualitative discussion of impacts in the chapter that explains the nature of the incremental impact.

Similar explanations have been added to the introductory sections in Chapters 5 and 6 and in Section 10.4.

Concerning Order Point 1.d.

“The requested language is in red bold text in Section 5.4.1 and 6.4.1.”

The Department also pointed out that there were several other minor revisions to the revised Final EIS not related to the Commission’s December 14 Order, that included updates to the abstract page and corrections to spill volume data in Table 10.3-7 and Table 26 of Appendix S.

VIII. COMMENTS ON REVISED FINAL EIS

On February 12, 2018, the Commission issued a Notice of Availability and Comment Period for the revised Final EIS. Comments were accepted through February 27, 2018. The Commission received hundreds of timely comments from interested stakeholders during the comment period on the revised Final EIS. The comments fall into three categories: 1) public comments (which include comments from members of the public, public officials, and business and special interest organizations); 2) Minnesota state agency comments; and 3) Line 3 party comments. A summary of the comments is provided below.

A. Public Comments

Staff reviewed all the public comments received during the comment period on the revised Final EIS and did not find that any of them raised new issues not already considered in this matter. The comments can generally be organized as falling into one or more of the following categories:

- General statements that the Final EIS is either adequate or inadequate with no information or examples to support the assertion.
- General statements that the supplemental information provided in the revised Final EIS either or did or did not satisfy one or more of the four deficiencies identified by the Commission, with no information or examples provided to support the assertion.
- Statements indicating that a TCP Survey should be completed either before a Final EIS adequacy decision or before a decision on the certificate of need and route permit.
- General critiques of the revised Final EIS that point to issues already raised by comments submitted on the Draft EIS and in the exceptions to the ALJ Report on the adequacy of the Final EIS.
- General discussions on the merits of the proposed project or alternatives that are not relevant to an EIS adequacy decision.
- Opinions and preferences on whether a certificate of need and route permit should be issued for the project or a discussion of high-level policy considerations regarding this issue.

B. Minnesota Agency Comments

1. Minnesota State Historical Preservation Office

Concerning the Commission's Ordering Point 1.d., the State Historical Preservation Office (SHPO) stated, "While our office agrees with the direction given by the Commission that a traditional cultural properties survey should be completed prior to construction of a permitted Project, we recommend that the traditional cultural properties survey . . . is undertaken and completed through consultation [with] Native American tribes, our office, and others, as appropriate under state statute." However, SHPO claimed that it could not find the required

statement about TCP survey being completed before line construction anywhere in the Revised Final EIS.⁸

SHPO also objected that certain language in the Final EIS is possibly misleading. It focused on the language in the Final EIS stating that the existing datasets of known historic/architectural and archaeological properties that have been identified in the project area provide a “reasonably comprehensive indication of the potential impacts” at issue, and also “hint as to the types of [unknown] resources that may be present.” SHPO stated that its current inventory of recorded archaeological properties “would not necessarily provide a “hint” as to the presence or absence of properties significant to Native American tribes.”

2. Minnesota Department of Human Rights

The Minnesota Department of Human Rights (MDHR) stated its belief that the traditional cultural properties survey should be completed before approval of the Final EIS.

C. Line 3 Party Comments

1. Enbridge

Enbridge indicated that it believed the four specific issues identified in the Commission’s December 14 Order are addressed in the revised Final EIS and recommended that the Commission determine the Final EIS adequate under Minn. R. 4410.2800. Enbridge also included additional findings related to the revised Final EIS. In support of its position, Enbridge identified those areas of the Final EIS that were revised and provided a summary on how the modifications addressed the four deficiencies.

In addition, Enbridge recommended that the Commission adopt the ALJ Report modified by: 1) the exceptions submitted by DOC-EERA on November 21, 2017; and 2) the additional findings Enbridge provided with its February 27, 2018 comment letter.

⁸ It is not apparent why SHPO makes this claim. The revised Final EIS distributed by the Department clearly includes in Sections 5.4.1 and 6.4.1 the required statement about the TCP survey needing to be completed before line construction begins. SHPO is the only commenter to make the claim that this statement is missing from the revised Final EIS.

2. Fond du Lac Band

The Fond du Lac Band argued that the Final EIS still does not identify the extent to which resource impacts of route alternatives are or are not additive, and points out the wild rice, calcareous fen, and archaeological sections in chapters 5 and 6 as examples. The Fond du Lac Band also maintained that the Final EIS continues to be inadequate because it does not include a TCP survey.

3. Friends of the Headwaters

Friends of the Headwaters (FOH) argued that the Final EIS continues to be inadequate because it now believes the document should analyze the potential impacts associated with the certificate of need alternative SA-04 in the states of Wisconsin and the Upper Peninsula of Michigan (existing Line 5 pipeline). FOH maintained that the Final EIS should not be deemed adequate until it includes an impact analysis of the existing pipelines, in their entirety, that extend beyond the Superior, Wisconsin terminal south to Illinois and east to Michigan and Ontario, Canada. These arguments appear to be new issues not previously raised in these proceedings.

FOH also contended that the Department did not move SA-04 far enough west to avoid the karst areas of southern Minnesota and Northern Iowa. FOH suggested that SA-04 should have been shifted so that it runs south along the inside eastern boundaries of North and South Dakota south, and then runs east across Iowa and Illinois, thereby avoiding Minnesota completely. FOH provided sample maps illustrating this new alternative. FOH argued that this new proposal is supported by the Minnesota Department of Natural Resources (DNR), and cited to a February 5, 2018 email from Barb Naramore, Assistant Commissioner for the DNR.

Lastly, FOH did not agree with how the supplemental data was presented in the Final EIS with respect to potential drinking water and oil spill analysis. FOH requested that the Commission, “find the revised FEIS to be inadequate, remand it back to DOC-EERA and Minnesota’s natural resources agencies to complete the work, and suspend proceedings on Enbridge’s application for a certificate of need and a route permit until that additional work is completed.”

4. Honor the Earth

Honor the Earth argued that the Final EIS is inadequate under Minn. R. 4410.2800, because it does not include a TCP Survey. However, Honor the Earth did not point to which criteria under Minn. R. 4410.2800 are implicated. Honor the Earth requested that the Commission find the

Final EIS inadequate and: 1) require completion of a full TCP Survey to be included as part of a revised Final EIS; 2) authorize a comment period on the revised Final EIS; 3) reopen the public comment period on the merits of the project; and 4) provide a supplemental briefing period for parties to incorporate the results of the TCP Survey.

5. Mille Lacs Band

The Mille Lacs Band stated that it does not believe the revised Final EIS includes the changes necessary to address the Commission's December 14 Order. The Mille Lacs Band requested that the Commission find the revised Final EIS inadequate for the following reasons: "(1) fails to distinguish between the quantitative representations of resources along the route and system alternatives and the actual qualitative impacts that may occur along those alternatives; (2) provides no new information regarding the extent to which route alternatives would introduce new or additional impacts beyond the impacts of existing pipelines along the proposed route; and (3) fails to include the information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or system alternatives."

6. Sierra Club

The Sierra Club argued that the Commission should find the Final EIS inadequate because: 1) the Department did not provide an alternative that avoids karst topography; 2) the scoping of the EIS was improper; 3) the no action alternative is flawed; 4) the purposes and need statement is incorrect; 5) the cumulative effects analysis does not include full climate and spill impact assessment; and 6) substantive comments on the Final EIS were not addressed properly. The Sierra Club requested that the Commission remedy these issues by requiring a supplemental EIS under Minn. R. 4410.3000, subps. 5 and 6.

IX. STAFF ANALYSIS

Staff has reviewed all the comments submitted on the revised Final EIS prepared by the Department. As described in Section VIII.A. of these briefing papers, with one exception the comments received during the comment period do not raise new issues nor provide new evidence indicating that the additional information in the revised Final EIS does not satisfy the Commission's December 14 Order or that the revised Final EIS is otherwise not adequate.

The comments from SHPO, MDHR, Fond du Lac Band, FOH, Honor the Earth, Mille Lacs Band, and Sierra Club do not raise any new issues or point to new substantive evidence, with the

exception of FOH's comments, which assert that an entirely new System Alternative SA-04 located in North Dakota, South Dakota, Iowa, and Illinois—and thus avoiding Minnesota in its entirety— must now be evaluated in the EIS. FOH argued that the Department should have considered such an alternative to avoid the karst topography in south and southeast Minnesota. Staff disagrees. The Department examined a re-route of SA-04 that FOH itself proposed to address that issue.⁹ Contrary to FOH's assertion, the Department also analyzed a larger re-route of SA-04, as well as a smaller segment alternative to SA-04, than what was proposed by FOH in an effort to illustrate how best to route SA-04 to avoid karst topography.

With respect to the rest of the Final EIS, the Commission had a very robust discussion of the parties' exceptions to the Final EIS at its December 7, 2017 agenda meeting. Following that discussion, the Commission identified four items that it believed needed to be addressed before the Final EIS could be considered adequate. Other than those four items, the Commission did not identify anything else about the Final EIS that would fail to meet the adequacy criteria of Minn. R. 4410.2800, subp. 4.

With the submission of the revised Final EIS, the Commission must determine whether the additional information it now contains addresses the four narrowly defined deficiencies it identified in its December 14 Order. Staff recommends that the Commissioners review the comments that have been submitted on the revised Final EIS to determine if there are indeed any new issues, information, or argument that staff has not identified.

The Commission will need to decide whether the revised Final EIS is adequate under Minn. R. 44190.2800, subp. 4:

- If the Commission finds the revised Final EIS adequate, staff would, upon issuance of the Commission's order on its adequacy, issue a notice of the determination pursuant to Minn. R. 4410.2800, subp. 6.
- If the Commission finds that the additional information provided in the revised Final EIS does not adequately address the deficiencies previously identified, the Commission can choose to:
 - Find that the Final EIS is still inadequate and request the Department to correct the identified deficiencies. The Department would have 60 days to submit a second revision of the Final EIS under Minn. R. 4410, subp. 5; or

⁹ Revised Final EIS at Appendix U, U-3.

- If the Commission finds the Final EIS is adequate but would still benefit from having minor revisions made, find that the Final EIS is adequate and direct that an EIS addendum be prepared and filed in a timeframe determined by the Commission. A decision on the adequacy of the addendum is not required by Minn. R. 4410.3000, subp. 2. The Commission could address that issue, however, if the Commission deems that appropriate.

Should the Commission determine that the revised Final EIS is adequate, it must also decide whether to adopt the ALJ Report as is or with modifications. The Commission considered the modifications recommended by the Department at the previous Commission meeting on adequacy, but did not make a decision. Staff recalls that the Commission's discussions at the meeting generally indicated that all of the modifications recommended by the Department were appropriate; therefore, staff recommends the Commission adopt all Department recommended modifications to the ALJ Report (See attached Table 1 and the Departments November 27, 2017 Comments).

However, the ALJ Report does not include findings related to the factual and procedural steps associated with the Commission finding the Final EIS deficient and directing the Department to prepare a revised Final EIS to address the deficiencies, nor does it include findings that address whether the additional information in the revised Final EIS satisfies the Commission's December 14 Order. Staff notes that Enbridge included additional findings to address these issues, which it recommended the Commission adopt. While staff appreciates Enbridge taking the initiative to fill in the gap, staff has provided its own proposed findings that address these issues. Following are staff's recommended additional findings:

294. On December 7, 2017, the Commission met to consider the adequacy of the Final EIS. At that meeting the Commission identified four deficiencies in the Final EIS that need to be remedied before the Final EIS can be considered adequate under Minn. R. 4410.2800. The Commission requested that the Department submit the supplemental information within 60 days, as required under Minn. R. 4410.2800, subp. 5.
295. On December 13, 2017, the Commission issued a Notice of Final Environmental Impact Statement Adequacy Determination. The notice was distributed in accordance with Minn. R. 4410.2800, subp. 6.¹⁰

¹⁰ Notice of Final Environmental Impact Statement Adequacy Determination Line 3 Replacement Project, December 13, 2017, Document ID [201712-138116-01](#) and [201712-138116-03](#).

296. On December 14, 2017, the Commission issued its Order Finding Environmental Impact Statement Inadequate.¹¹ The Order identified the four deficiencies that must be remedied before the FEIS can be considered adequate:
- a. The Final EIS needs to include additional information to: (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse, and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.
 - b. The Final EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of High Consequence Areas (HCA) drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.
 - c. The Final EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.
 - d. The Final EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.
297. On December 18, 2017, the EQB published Notice of Final Environmental Impact Statement Adequacy Determination.¹²
298. On February 12, 2018, the Department issued the revised Final EIS.¹³ The Department distributed copies of the revised Final EIS in accordance with Minn. R. 4410.2700, subp.

¹¹ Order Finding Environmental Impact Statement Inadequate, December 14, 2017, Document ID [201712-138168-02](#).

¹² EQB Monitor, December 18, 2017, Vol. 41, No. 51 (<https://www.eqb.state.mn.us/sites/default/files/documents/EQB%20Monitor%2C%20December%2018%2C%202017.pdf>).

¹³ Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project, February 12, 2018, Document ID [20182-139959-02](#) and [20182-139959-04](#).

3. In addition, the Department provided electronic copies of the revised Final EIS to 48 public libraries throughout Minnesota.
299. On February 12, 2018, the Commission issued a Notice of Availability and Comment Period for the Revised Final EIS. Comments on the revised Final EIS were accepted from February 12, 2018 to February 27, 2018. The notice was circulated in accordance with Minn. R. 4410.2700, subp. 3.¹⁴ The notice was published in the February 12, 2018 EQB Monitor.¹⁵ The Commission also issued a press release on February 12, 2018, that announced the availability of the revised Final EIS and that identified the associated public comment period.¹⁶
300. The Commission received and reviewed hundreds of timely comments from interested stakeholders during the comment period on the revised FEIS. Due to the volume and general nature of the comments, these Findings do not separately recount or address each comment received.
301. Relative to Ordering Point 1.a. of the December 14 Order, the Department, in consultation with the Minnesota Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA) prepared a new appendix to address this item (revised Final EIS Appendix U). No viable routes were identified that entirely avoid karst; however, Appendix U contains an analysis of two reroute options that minimize crossing through areas where karst features are nearest to the ground surface. Appendix U contains tables that compare each new SA-04 option to the segment of SA-04 that it would replace using the full suite of environmental parameters evaluated in Chapters 5, 10 and 11 of the EIS.¹⁷
302. Relative to Ordering Point 1.b. of the December 14 Order, the Department, in consultation with DNR and MPCA, addressed this item by explaining in the Final EIS that an individual dataset should be used in context with other related data in order to reduce the chance of over-reliance on a single data set. As a result, in each resource section in Chapters 5 and 6 of the revised Final EIS, red bold text was added to the

¹⁴ Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project February 12, 2018, Document ID [20182-139993-02](#) and [20182-139993-04](#).

¹⁵ EQB Monitor, February 12, 2018, Vol. 42, No. 7

(<https://www.eqb.state.mn.us/sites/default/files/documents/EQB%20Monitor%2C%20February%2012%2C%2018%20-%20UPDATED.pdf>).

¹⁶ Minnesota Public Utilities Commission Issues Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Proposed Line 3 Replacement Project, February 12, 2018, Document ID [20182-139991-03](#).

¹⁷ Revised Final EIS at Appendix U.

methodology section which explained that datasets should be considered together and in context, not in isolation, as each dataset has limitations. The revised Final EIS included footnotes to the impact summary table that explain this, and provide a specific example of why this is the case. The revised Final EIS included a similar explanation in red bold in the overall introductory section in chapters 5 and 6 and in Section 10.4 of the Final EIS.¹⁸

303. Relative to Ordering Point 1.c. of the December 14 Order, the Department, in consultation with DNR and MPCA, clarified that the impacts reported in the Final EIS, even along existing corridors, are the incremental impacts that the project will have, over and above impacts from any past projects.¹⁹ For example, where corridor sharing resulted in fewer incremental impacts, the Final EIS already reflected this, so new quantitative analysis would not be suitable. Instead, additional footnotes were added to the summary tables at the end of each resource section, which point the reader to pages containing qualitative discussions describing the nature of the incremental impact. As a result, in each resource section in chapters 5 and 6 of the Final EIS, the following was added in red bold font:

- Text in the methodology discussion explaining that the quantitative data in the tables should be reviewed with the qualitative discussion in the text.
- Text in the existing environment and environmental impact discussions noting the type and extent of corridor sharing, and highlighting that these sections take the implications of corridor sharing into account.
- Footnotes in the impact summary table noting the type and extent of corridor sharing of each alternative and pointing the reader to the qualitative discussion of impacts in the chapter that explains the nature of the incremental impact.

Similar explanations have been added to the introductory sections in Chapters 5 and 6 and in Section 10.4.

304. Relative to Ordering Point 1.d. of the December 14 Order, sections 5.4.1 and 6.4.1 of the revised Final EIS include the following language, “In its December 14, 2017, order finding the Line 3 Project EIS inadequate, the Commission specified that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in the Line 3 Project proceeding.”²⁰

¹⁸ Revised Final EIS at Chapters 5, 6, and 10.

¹⁹ Revised Final EIS at Chapters 5, 6, and 10.

²⁰ Revised Final EIS at Sections 5.4.1 and 6.4.1.

X. COMMISSION DECISION OPTIONS

1. Adopt the Report of the Administrative Law Judge with no modifications and find that the revised Final EIS for the Line 3 Replacement Project is adequate pursuant to Minn. R. 4410.2800.
2. Adopt the Report of the Administrative Law Judge as modified by one or more of decision subpoints a., b., c. or d. below and find that the revised Final EIS for the Line 3 Replacement Project is adequate pursuant to Minn. R. 4410.2800.
 - a. Adopt the Department's modified findings as presented in its November 21, 2017 Comments and as summarized in Table 1 attached to these briefing papers.
 - b. Adopt Commission staff's additional findings 294 to 304 as presented in Section IX of these briefing papers.
 - c. Adopt Enbridge's additional findings as presented in its February 27, 2018 Comments.
 - d. Take some other action deemed appropriate by the Commission.
3. Upon finding the revised Final EIS adequate, direct the Department to prepare an EIS addendum for any minor revisions to be made to the Final EIS pursuant to Minn. R. 4410.3000, subp. 2.
4. Find the revised Final EIS for the Line 3 Replacement Project is not adequate pursuant to Minn. R. 4410.2800, and request that the Department prepare a revised Final EIS pursuant to Minn. R. 4410.2800, subp. 5.
5. Take some other action deemed appropriate.

Table 1
Department of Commerce Energy and Environmental Review Exceptions to
Administrative Law Judge’s Report (November 21, 2017)

Finding	DOC-EERA Recommended Modification
11	More recently, because of operational and safety issues, Enbridge has not been operating the Line 3 pipeline at this rated capacity. To avoid stress on the pipeline, or mishaps, Enbridge has been shipping on average 360,000 <u>390,000</u> bpd from Neche, North Dakota, to Superior, Wisconsin, through Line 3. ¹¹
13	Enbridge proposes a new pipeline, as a replacement for the existing Line 3, as part of an effort to reclaim a 760,000 bpd throughput capacity from oil terminals in North Dakota <u>Edmonton, Alberta</u> to Superior, Wisconsin. ¹³ [Footnote] ¹³ See Certificate of Need Application at 1-1, 1-6, 2-5 (eDocket Nos. 20154-109653-03, 20154-109653- 01) <u>and Route Permit Application, Section 1 at 1-1, (eDocket Nos. 20154-109661-07, 20154-109661-08, 20154-109661-09)</u>
69	As noted above, Enbridge filed Certificate of Need and Routing Permit applications for the Project on April 24, 2015. On July 20, 2015, the Commission and <u>DOC-EERA</u> issued a notice of public information and scoping meetings for the Project. ⁶⁹
<u>69a</u>	<u>On August 12, 2015, the Commission issued an order finding the Route and Certificate of Need Applications substantially complete and among other things varied Minn. R. 7852.1300, subp. 1, to authorize public information meetings in areas near the proposed pipeline route in lieu of meetings within every county along the route.</u> ^{69a} [Footnote] ^{69a} <u>Commission Order Finding Application Substantially Complete and Varying Timelines, August 12, 2015 (eDocket No. 20158-113179-01).</u>
70	The 2015 scoping period, conducted under Minn. R. ch. 7852 (2015), occurred between July 20 and September 30, 2015. DOC-EERA and Commission staff held 15 public meetings between August 11 and 27, 2017 <u>2015</u> . ⁷⁰
<u>70a</u>	<u>DOC-EERA issued a revised public meeting notice on August 17, 2015, to accommodate a request from the Mille Lacs Band of Ojibwe to hold a meeting</u>

Finding	DOC-EERA Recommended Modification
	<p><u>at the East Lake Community Center.</u>^{70a}</p> <p>[Footnote] <u>^{70a} Revised Public Meeting Notice filed on August 19, 2015 (eDocket No. 20158-113372-01).</u></p>
81	<p>The Commission conducted public scoping for the EIS in April and May 2016.⁸¹</p> <p>[Footnote] ⁸¹ Scoping Summary Report at 2 (September 22, 2016) (eDocket No. 20169-125058-17).</p>
82	<p>The Commission <u>DOC-EERA</u> prepared a Scoping EAW and DSDD.⁸²</p>
83	<p>The Commission accepted Enbridge's completed data portions of the Scoping EAW for use in EIS scoping, and determined Enbridge's Scoping EAW data submittal to be complete for scoping purposes.⁸³</p> <p>[Footnote] ⁸³ Minn. R. 4410.1400 (2015).</p>
84	<p><u>DOC-EERA published the A Scoping EAW and DSDD</u> were issued on April 11 <u>11</u>, 2016.⁸⁴</p>
121	<p>With respect to a No Action Alternative, the FSDD pledged that the EIS would evaluate <u>the expected condition if the certificate of need is not granted and the existing Line 3 is not replaced as proposed.</u> The FSDD pledged that <u>this analysis would include</u> options for an integrity monitoring and repair program for the Existing Line 3, as well as the potential that additional volumes of oil would be transported using alternative methods and technologies.¹²¹</p>
139	<p>Additionally, the DEIS <u>EQB</u> published notice of the availability of the DEIS in the May 15, 2017 issue of the EQB Monitor. The notice included the dates, times, and locations of the public meetings; notices of where the DEIS was available for public review; and indicated that the comment period would close on July 10, 2017.¹³⁹</p>
208	<p>Enbridge commissioned a modeling analysis of hypothetical crude oil releases on behalf of, and with input from <u>state and federal agency staff, including DOC-EERA, Minnesota Department of Health, and the DNR and MPCA.</u> Staff from the U.S. Army Corps of Engineers were also involved. The analysis</p>

Finding	DOC-EERA Recommended Modification
	modeled the impacts following seven different hypothetical crude oil releases. The computer modeling involved “simulating the chemical and physical behavior of hypothetical oil spills in the selected environments under specified conditions, including weathering processes.” ²⁰⁸
215	The FEIS also analyzed the potential effects of reducing the pipeline diameter from 34 <u>36</u> inches, as proposed by Enbridge, to 24 <u>34</u> inches. DOC-EERA noted that while the “probability of an incident leading to a crude oil release would . . . be similar for a smaller diameter pipeline,” because the construction and operation impacts “are generally the same, a smaller diameter pipeline configuration was not evaluated as a Project configuration alternative.” ²¹⁵
<u>241a</u>	<p><u>Regarding upstream and downstream life-cycle greenhouse gas emission estimates, the FEIS did not include a detailed market analysis of whether the proposed project would induce new oil demand. The FEIS did review the extensive analyses of the issue of whether the approval of a particular oil pipeline could affect upstream production or downstream oil consumption in two recent State Department EIS’s on Canadian crude oil pipelines, one for Keystone XL and one for the Line 67 upgrade. The FEIS found those analyses to be inconclusive. Therefore, the FEIS includes calculations of potential life-cycle carbon emissions using several scenarios that would bracket the possible outcomes.</u>^{241a}</p> <p>[Footnote] ^{241a} FEIS at 5-452</p>
<u>277a</u>	<p><u>The FEIS finds that the project and other alternatives would have a disproportionate and adverse impact to both low-income and minority populations along the proposed route, as well as those populations residing or using lands near the Project, in particular, American Indian populations. RA-06, RA-07, and RA-08 would have direct impacts on reservation lands (Leech Lake and Fond du Lac Reservations). Based on the discussion of tribal resources in Chapter 9, any of the routes, route segments, and system alternatives would cross treaty lands and also would have a long-term detrimental effect on tribal members.</u>^{277a}</p> <p>[Footnote] ^{277a} FEIS at 11-22</p>

Finding	DOC-EERA Recommended Modification
277b	<p><u>The FEIS includes a list of potential mitigation measures that could reduce the impacts of these impacts.</u>^{277b}</p> <p>[Footnote] ^{277b}. <i>Id.</i></p>
170	<p>When searching for “reasonable alternatives to the proposed project,” the DOC-EERA reviewed pipeline alternatives that interconnected with “the crude oil supply region near Edmonton, Alberta” and “served the same Clearbrook and Superior destinations.”¹⁷⁰ <u>Since the primary purpose of the Commission’s Certificate of Need decision is to determine the need for the project, the FEIS does not separately assess the proposed project’s underlying “need.” Instead, the FEIS focuses on providing the information required for the Commission to make informed decisions regarding the environmental impacts of its Certificate of Need and route permit decisions.</u>¹⁷⁰</p> <p>[Footnote] ¹⁷⁰ FEIS at 4-7. <u>FEIS at 1-7.</u></p>
170a	<p><u>Therefore, when searching for “reasonable alternatives to the proposed project,” the FEIS did not use “need” to screen out potential alternatives because “need” is the primary issue the Commission must assess in its Certificate of Need decision.</u>^{170a}</p> <p>[Footnote] ^{170a} <u>Alternatives Screening Report, supra, at Section 4.1; FEIS at 1-7. See also Sierra Club Scoping Comment Letter, May 26, 2016 at 5 (eDocket No. 20165-121701-02).</u></p>
170b	<p><u>Similarly, the FEIS does not include a separate, redundant market analysis of the economic feasibility of other pipeline endpoints or competing pipeline systems. The cost of a detailed, redundant oil demand market study in the FEIS, which in addition to similar analyses completed in the Certificate of Need process, would exceed its relevance and importance in making an informed decision among alternatives.</u>^{170b}</p> <p>[Footnote] ^{170b} <u>FSDD at 36.</u></p>
171	<p>None of the other non-Enbridge pipelines that are now (or will be) capable of bringing crude oil from Canada connect to Superior, Wisconsin. The Keystone XL</p>

Finding	DOC-EERA Recommended Modification
	<p>pipeline, TransCanada Energy East pipeline, or the Minnesota pipeline are not capable of bringing crude oil to a refinery in Superior, Wisconsin. The FEIS considered other non-Enbridge pipelines including the Keystone XL and TransCanada Energy East pipeline that could be contemplated by the commission as alternatives to meet a need that may be identified in the Certificate of Need process. The FEIS concluded that the relevant environmental impacts of these projects either have been or will be addressed in other jurisdictions and EERA determined that the cost and effort of further analysis in the EIS would exceed its relevance and importance in making an informed decision among alternatives.¹⁷¹</p> <p>[Footnote] ¹⁷¹ <i>Id.</i> at 4-7 – 4-8.</p>
173	<p>The Administrative Law Judge disagrees. Because of the nature of Minnesota’s market for crude oil, it was not irrational or inappropriate for the DOC EERA to focus upon proposals that could deliver crude oil to terminals in Clearbrook, Minnesota and Superior, Wisconsin. In this context it is important to emphasize that Minnesota refineries have not imported crude oil from a country other than Canada since 2008. Moreover, the only pipeline by which “non-Canadian” crude oil imports could be delivered to Minnesota refineries, was taken out of service in 2013.¹⁷³ Thus, while not all of the crude oil that is shipped on Enbridge’s Mainline system remains in Minnesota (or Superior, Wisconsin), the oil that is needed by Minnesota companies travels on this interstate network. <u>The FEIS did appropriately include a description of the applicant’s stated purpose in the chapter that describes the applicant’s proposed project.</u>^{173a} <u>A description of the proposed project is a standard part of any EIS.</u>^{173b}</p> <p>[Footnote] ¹⁷³ Direct Testimony of Neil Earnest at 13 (eDocket No. 20171-128683-02); see also FEIS at ES-1 (“Nearly all of the heavy crude oil refineries in the Upper Midwest receive a portion of their oil, either directly or indirectly, from the Enbridge Mainline system”).^{173a} FEIS Chapter 2 at 2-4. ^{174b} Minn. R. 4410.2300 (E).</p>
174	<p>Further, because crude oil supplies for refineries in Minnesota and Wisconsin travel alongside supplies that are destined for other parts of the country, a rise in demand from these other locations that is not matched by increases in</p>

Finding	DOC-EERA Recommended Modification
	<p>pipeline capacity results in “apportionment” on the pipeline and delays of oil shipments to Midwestern companies.¹⁷⁴</p> <p>[Footnote] ¹⁷⁴ See FEIS at 2-5 (“As a common carrier, Enbridge is required to treat all similarly situated crude oil customers on the Enbridge Mainline system without discrimination. Thus, when demand from refineries is greater than the capacity of the pipeline system, Enbridge must apportion the pipeline capacity as regulated by the Federal Energy Regulatory Commission, typically resulting in all refineries receiving less capacity to transport crude oil nominations than requested.”); Comment of Flint Hills Resources (August 16, 2017) (eDocket No. 20179-135394-01) (“In the last 10 years, more than one million barrels per day of pipeline capacity have been added downstream of Clearbrook while upstream pipeline capacity has not kept pace. This has led to greater apportionment or ‘rationing’ of shipments because the upstream portion of the system cannot accommodate all the volumes for which it has received nominations. This imbalance creates inefficiencies that hinder a refinery’s ability to access its most preferred or economic crude slate. Apportionment also can make it more difficult for refineries to respond to spikes in demand, make up for supply outages or unplanned events, and it can create operational inefficiencies, including underutilization of equipment. These inefficiencies and supply constraints ultimately harm consumers.”); Comment of Todd Borgmann, Calumet Specialty Products Partners, L.P., (July 8, 2017) (eDocket No. 20179-135394-01) (“Currently the logistics out of Western Canada, including the Enbridge Pipeline System, are constrained in that demand exceeds transportation capacity out of the basin. If additional capacity on Enbridge Line 3 is not made available, we may be faced with undue and unnecessary risks tied to capacity apportionment and/or operational/supply disruptions, both of which would have a negative impact on our operations.”); Comment of C. Mike Palmer, Marathon Petroleum Company, L.P. (July 7, 2017) (eDocket No. 20179-135394-01) (“MPC has been a shipper on the Enbridge Mainline System for many years. MPC is concerned with the ongoing, consistent apportionment that has been occurring on the Enbridge Mainline System, which has been as high as 36% in February of 2015. MPC believes that without the full replacement of Line 3 apportionment will continue and in fact increase for US refiners in Minnesota and PADD II, such as MPC.”).</p>

Finding	DOC-EERA Recommended Modification
175	<p>For these reasons, connectivity to terminals in Clearbrook and Superior were key features to be assessed in the FEIS, albeit not the only features that were evaluated.¹⁷⁵</p> <p>[Footnote] ¹⁷⁵ See, e.g., FEIS at 4-8 (System Alternative 04 “is a conceptual pipeline alternative to a different endpoint that is analyzed for comparative purposes. SA 04 and other CN Alternatives could not actually be permitted under this process”); FEIS at Table 4.23 (Certificate of Need Alternative Pipelines).</p>
177	<p>The Administrative Law Judge disagrees. To the extent that some of the crude oil supplies sought by area refiners is intended to be fashioned into pharmaceuticals, plastics or asphalt, it was not error for the DOC-EERA to focus on methodologies that were capable of delivering supplies of oil from one point to another. Technologies like electric powered automobiles or electricity from wind turbines are arguably substitutes for gasoline or diesel fuel, but they are not genuine alternatives to the other, wider range of products that are manufactured from petroleum.¹⁷⁷ The FEIS evaluates the environmental impacts of the potential outcomes of denying the Certificate of Need should there be demand for the amount of crude oil transportation requested by the applicant: continued use of Existing Line 3, use of other pipelines, System Alternative SA-04, rail, trucks, and a combination of these.¹⁷⁷ Substituting wind energy for oil is not a reasonably likely outcome of a commission decision to deny the Certificate of Need for the proposed project. The Commission is of course free to evaluate whether wind energy and other renewable energy technologies may eventually reduce or eliminate the need for 370,000 or 760,000 barrels per day of crude oil in the region and in North America. The Commission, however, cannot order this outcome in this docket.</p> <p>[Footnote] ¹⁷⁷ See, e.g., Comment of Flint Hills (eDocket No. 20177-134089-01) (Flint Hills Resources’ Pine Bend refinery in Rosemount, Minnesota “produces a significant percentage of the asphalt used in Minnesota and across the country as well as heating fuels and the chemical building blocks for numerous other essential products, including plastics, fertilizers, medicines and synthetic materials”); Comment of Todd Borgmann (eDocket No. 20177-134089-01) (the Calumet refinery in Superior, Wisconsin produces “500 thousand gallons per</p>

Finding	DOC-EERA Recommended Modification
	<p>day of Asphalt and Fuel Oil”); Comment of the Duluth Seaway Port Authority (July 10, 2017) (eDocket No. 20177-134089-01) (“The crude oil that moves through Line 3 is refined for use as fuel and as a feedstock for a wide variety of products that all of us use every day, including medical supplies, eye and sun-glasses, bike parts, auto and jet components, asphalt for roads and roofs, and poly-fiber fabrics used to make clothing, outdoor gear and tents”); Bemidji Public Hearing Transcript, at 94 (Suave). FEIS at 4-3.</p>
<p><u>177a</u></p>	<p><u>Therefore, for purposes of the FEIS, the installation of tens of thousands of megawatts of wind-turbine capacity and the associated use of electric vehicles in the region is not evaluated as a reasonable outcome of the denial of the certificate of need for the proposed crude oil pipeline at issue here. The FEIS is not inadequate because it did not evaluate the feasibility and impacts of such renewable energy alternatives.</u></p>
<p>179</p>	<p>In this case, the ability of the proposed project to transport crude oil is more than a feature that is “desirable from the standpoint of the applicant;” it is a key expectation among Enbridge’s customers who use petroleum to manufacture a wide range of products.¹⁷⁹</p> <p>[Footnote] ¹⁷⁹ See, e.g., Direct Testimony of Paul Kahler, at 6-7 (eDocket No. 20179-135394-01).</p>
<p>181</p>	<p>It does not appear that the Mille Lacs Band raised this suggestion during either the scoping process or in its comments to the DEIS, giving DOC-EERA (or others) a reasonable opportunity to respond.¹⁸¹ Still, the hearing record includes valuable detail on this important question.</p>
<p><u>181a</u></p>	<p><u>As with other “need” related issues, the FEIS did not complete a separate, redundant analysis to that in the Certificate of Need process regarding whether existing pipelines in the Enbridge Mainline could meet the project’s stated “need.” Still, the hearing record includes valuable detail on this important question.</u></p>
<p>182</p>	<p>The Enbridge Mainline system consists of Line 3 and other pipelines, including Line 1 (237,000 bpd), Line 2A (442,000 bpd), Line 2B (442,000 bpd), Line 4 (796,000 bpd), and Line 67 (890,000 bpd).¹⁸²</p>

Finding	DOC-EERA Recommended Modification
	<p>[Footnote] ¹⁸² FEIS at 4-7.</p>
<p>183</p>	<p>The record suggests only a fraction of the oil that Enbridge proposes to ship along a refurbished Line 3 could be transported by other nearby pipelines.¹⁸³ For this reason, the DOC EERA did not commit error by not detailing this particular suggestion as an alternative to the proposed project.</p> <p>[Footnote] ¹⁸³ See FEIS at 4-7 – 4-8; Honor the Earth Information Request No. 2 (Sept. 7, 2017) (eDocket No. 201710-136749-01) (“The projects . . . are not alternatives to a Line 3 Replacement for a variety of reasons. The capacity recovery projects listed (‘Line 2A Capacity Recovery’, ‘Line 2B Capacity Recovery’, ‘Line 4 Capacity Recovery’) are projects designed to restore those respective lines back to their annual quoted capacities. Lines 2A and 2B do not provide heavy capacity out of Western Canada that historical and forecast apportionment indicates is required, hence are not alternatives to Line 3 Replacement. Capacity recovery of Line 4 provides some incremental heavy capacity out of Western Canada; however, it does not eliminate historical and forecasted heavy apportionment.”); Surrebuttal Testimony of Lorne Stockman at 12 (Oct. 23, 2017) (eDocket No. 201710-136739-02) (“If future Canadian crude oil supply that is available for export is as high as forecast by the industry in the CAPP 2017 Report, then it is likely that apportionment on the Enbridge Mainline System will increase. If future Canadian supply is significantly less than the CAPP 2017 supply forecast and the Project is not built, then apportionment would depend on how much oil is available for export and whether shippers have access to other transportation options.”); Surrebuttal Testimony of Chris Joseph at 10 (Oct. 23, 2017) (eDocket No. 201710-136730-03) (“Minnesota refineries have the ability to obtain oil via other means such as rail to make up shortfalls resulting from any apportionment that might occur”); Rebuttal Testimony of Paul Kahler, John Van Heyst and Edward Shahady at 5 (Sept. 11, 2017) (eDocket No. 201710-136412-02) (“Data used by the State Department indicates that verified monthly nominations of Western Canadian heavy crude oil exceeded accepted nominations by an average of almost 195,000 barrels per day for the first 12 months after the Line 67 expansion. This represented an average of 11 percent apportionment for this period. The report also noted that</p>

Finding	DOC-EERA Recommended Modification
	Line 67 was subject to apportionment 10 out of the 12 months indicating the demand exceeded the design capacity.”) (emphasis in original).