

The Commission met on **Thursday, June 28, 2018**, with Chair Lange and Commissioners Lipschultz, Schuerger, Sieben, 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 Route Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

Commissioner Sieben moved that the Commission condition the granting of a Certificate of Need on the following:

1. Parental Guaranty for Environmental Damages

Approve a CN for Enbridge's Line 3 Replacement Project contingent upon receipt of a parental guaranty from Enbridge, Inc. to pay for environmental damages arising from the construction or operation of the Line 3 Replacement Project.

The parental guarantee shall conform to the structure and terms laid out in Attachment A to Enbridge's June 22, 2018 Commitment Letter, with the following modifications:

- Adding to the "occurrences" to be covered by the guarantee nonperformance of permit conditions and other Certificate of Need modifications that were necessary to receive approval from the Commission of the Certificate of Need. This would include, but not limited to, nonperformance of obligations for removal of the old Line 3 and decommissioning of new Line 3,
- Establishment of ongoing reporting and spill modeling requirements so that the State can determine ongoing ability of the applicant and the guarantor's at the ready financial resources and insurance coverage to respond to a full-bore pipeline rupture at maximum design capacity and with maximum drain down affect within a range of high consequence areas in Minnesota similar to that presently modeled for the Canadian National Energy Board, and
- A provision that at any time it is determined by the State that applicant and guarantor's at the ready financial resources and insurance coverage fall short of the resources necessary to take care of such a full-bore spill modeled under this agreement the State shall have the ability to require a financial assurance account or mechanism in addition to the guarantee to cover any identified deficit.

Direct Enbridge to make a compliance filing by July 16, 2018 of the terms and conditions of the Enbridge, Inc. parental guaranty based on the Commission-approved parental guaranty in the Sandpiper docket, included as Attachment A to Enbridge's June 22, 2018 Commitment Letter, specifying how the proposed parental guaranty addresses the concerns raised by the DOC-DER regarding:

- the liability of successors and assigns of Enbridge, Inc.,
- the role of Enbridge, Inc. in the claims process,
- the ability of the guaranty to be enforced against Enbridge, Inc. in Minnesota courts,
- the ability of tribal governments to avail themselves of the guarantee,
- whether damages include legal liability from an occurrence pursuant to terms of a written settlement agreement or final non-appealable order or judgment in favor of a tribal government within the borders of the State of Minnesota,
- the enforceability of the guarantee in the Canadian judicial system,
- an updated cost model for a full-bore pipeline rupture at maximum design capacity and with maximum drain down affect within a range of high consequence areas in Minnesota similar to that presently modeled for the Canadian National Energy Board,
- the implications of Enbridge's recent restructuring following the FERC order on master limited partnerships as it relates to the availability of ready resources to respond to the obligations in this guarantee for both the applicant and the guarantor, and
- at the time of the compliance filing a discussion of the guarantor's at the ready financial resources and insurance coverage available to the applicant and the guarantor to respond to a catastrophic full-bore spill

DOC-DER shall file its recommendation for Commission approval or modification of the compliance filing by July 30, 2018.

2. Landowner Choice Program

Approve a CN for Enbridge's Line 3 Replacement Project contingent upon implementation of Enbridge's Landowner Choice Program for the existing Line 3. Direct Enbridge to make a compliance filing of the terms and conditions of the Landowner Choice Program by July 16, 2018 based on Attachment C to Enbridge's June 22, 2018 Commitment Letter, but the program must include or provide:

- an independent liaison,
- longer and more flexible time for landowners to decide the course of action after decommissioning pursuant to the consent decree, and
- a process for landowners to obtain independent consultation, at Enbridge's expense, from engineering firms competent in the area of oil pollution remediation or pipeline removal prior to the landowner's decision to remove.

DOC-DER shall file its recommendation for Commission approval or modification of the compliance filing by July 30, 2018.

3. Decommissioning Trust Fund

Approve a CN for Enbridge's Line 3 Replacement Project contingent upon creation and funding of a trust fund for decommissioning of its Line 3 Replacement Project, including the costs of removal of the Project. Direct Enbridge to make a compliance filing by July 16, 2018 of the terms and conditions of the decommissioning trust fund based on the decommissioning trust that the Canadian National Energy Board directed Enbridge, Inc. to fund for the decommissioning of its pipelines in Canada. DOC-DER shall file its recommendation for Commission approval or modification of the compliance filing by July 30, 2018.

4. Neutral Footprint Program

Approve a CN for Enbridge's Line 3 Replacement Project contingent upon implementation of a neutral footprint program that (i) acquires renewable energy credits to offset the incremental increase in nonrenewable energy consumed by the Line 3 Replacement Project as set forth on pages 4-5 of Enbridge's June 22, 2018 Commitment Letter; and (ii) carries out a tree replacement program that plants a new tree on public land in Minnesota for each tree removed in the construction of the Project. DOC-DER shall file its recommendation for Commission approval or modification of the compliance filing by July 30, 2018.

5. General Liability and Environmental Impairment Liability Insurance

Approve a CN for Enbridge's Line 3 Replacement Project contingent upon Enbridge acquiring and maintaining General Liability and Environmental Impairment Liability insurance policies as proposed by the DOC-DER. Direct Enbridge to make a compliance filing by July 16, 2018 of all the insurance requirements it will meet based on DOC-DER's recommendations in their initial post-hearing brief. Enbridge's annual compliance filings shall include copies of their insurance policies. DOC-DER shall file its recommendation for Commission approval or modification of the compliance filing by July 30, 2018.

Commissioner Tuma moved to delete item number 3 from Commissioner Sieben's motion and replace it with an acknowledgement of Enbridge's commitment to establish a working group to decommission all pipelines in the State of Minnesota.

The motion to amend Commissioner Sieben's motion was defeated 1-4 (Commissioners Lange, Lipschultz, Schuerger, and Sieben voted no).

Commissioner Tuma moved to delete item number 5 from Commissioner Sieben's motion and replace it with a requirement to include the state of Minnesota as an additional insured on GL

& EIL insurance policies (consistent with the ALJ recommendation, at 365), and for Enbridge to annually report its ready available cash and relevant insurance coverage.

The motion to amend Commissioner Sieben's motion was defeated 1–4 (Commissioners Lange, Lipschultz, Schuerger, and Sieben voted no).

Commissioner Sieben's motion was adopted 5–0.

Commissioner Lipschultz moved that the Commission:

- subject to the conditions adopted by the Commission (above), grant a Certificate of Need to Enbridge Energy, Limited Partnership, for the Line 3 Replacement Project consisting of a pipeline from the North Dakota border in Kittson County to the Clearbrook Terminal in Clearbrook, and from the Clearbrook Terminal to the Wisconsin border in Carlton County, and authorizing transport of an average annual capacity of 760,000 bpd of crude oil,
- adopt the ALJ Report to the extent it is consistent with and necessary for the Commission's decision, and
- direct staff to modify the Certificate of Need so that it is consistent with the Commission's decision and with recently issued certificates of need.

The motion was adopted 5–0.

Commissioner Tuma moved that the Commission issue a route permit to Enbridge Energy, Limited Partnership, for its Line 3 Replacement Project along the Applicant's Preferred Route, as modified by RSA-05 and RSA-22, contingent upon approval of the Fond du Lac band within 60 days of an offer by Enbridge; and, absent such approval, a route permit along the Applicant's Preferred Route as modified by RSA-05 and RSA-21.

The motion was adopted 3–2 (Commissioners Lipschultz and Sieben voted no).

Commissioner Sieben moved to adopt the draft Route Permit dated June 27, subject to the following modifications:

- The Route Permit will reflect the modifications proposed by the Fond du Lac band in its Exceptions to Department of Commerce—Energy Environmental Review and Analysis Division Sample Permit, filed in Docket No. PL-9/PPL-15-137 on May 18, 2018.
- Maintain two pipeline maintenance shops between Clearbrook, Minnesota and Superior, Wisconsin.
- Remove all exposed segments of the current Line 3 in Minnesota in consultation with the landowner and the appropriate permitting authorities.

- Annually report any exposed pipeline segments on existing Line 3 that are not yet removed and identify how and when Enbridge will meet federal requirements as to exposed pipeline.
- Provide periodic updates to the Commission on the adequacy of Applicant's cyber security systems
- Provide an updated final Field Emergency Response Plan for the Superior Region prior to commencing construction of the Project.
- Have and continually maintain road access, or access that does not require the use of equipment or machinery, to reach all shutoff valves in Minnesota.
- Annually report on the activities and spending of Enbridge's Tribal Economic Spending Program.
- Annually report on the number of construction workers employed by the Project, identifying the number of total workers who are from Minnesota and who are members of Minnesota tribes.
- Annually report on the changes in Enbridge's county property tax liability for each county in which the Line 3 Replacement Project is being constructed.
- **Security Conditions.** At all times during the term of this permit the permittee, its contractors and assigns, shall respect the rights of the public to legally exercise their constitutional rights without interference by the permittee. The permittee, its 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.
The construction permit shall have conditions requiring the permittee to comply with Minnesota's Private Detective and Protective Agent Services laws and rules at all times while the permit is in effect. Prior to commencing construction in any county, the permit will have conditions to require approval of the permittee's security plan by the Sheriff of that county.
- **Human Trafficking and Drug Enforcement.** In addition to the Human Trafficking provisions in 6.2 of the Sample Route Permit, there shall be an added permit condition that requires the permittee to deposit in a Public Safety Escrow Account in an independent US financial institution an amount determined to be appropriate to enhance existing human trafficking and drug enforcement law enforcement and social services task forces to be distributed prior to construction along the route to address the anticipated impacts of a large influx of workers. The Executive Secretary shall make the determination of the overall amount and distribution plan upon consultation with Public Safety Liaison and the Tribal Liaison, who shall have conferred with law enforcement agencies and social services of affected LUGs and Tribal Governments.
- **Local Government Public Safety Mitigations.**
Covered additional municipal services. Covered additional municipal services include those incrementally additional services provided by a LUG for all public safety, public health regulation services, 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.

- These services will 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.
- **Additional LUG Services Escrow Trust and Reimbursement.** Prior to the commencement of construction, the permittee must establish an escrow trust account in an independent financial institution to be managed by that institution as the trustee according to the terms of the permit. The amount of initial and additional deposit shall be determined by the Executive Secretary after consultation with the Public Safety Liaison. LUGs shall submit in writing an itemized request to the public safety liaison sufficient to recommend to the Commission whether the services rendered were additional municipal services uniquely provided as a result of the construction of the pipeline during the term of this permit in addition to being reasonable and appropriate. Prior to payment from the trust account, the LUG must seek reimbursement from any existing state or federal funding programs that may exist for reimbursement of such expenses and restitution when appropriate.
- **Public Safety Liaison.** The Executive Secretary shall select an individual to be the Public Safety Liaison between the Commission, the permittee, parties and LUGs to ensure all the 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 Executive Secretary. The Public Safety Liaison is not to exercise any oversight or in any way direct law enforcement activities of authorities for local, state and federal agencies.
- **Tribal Economic Opportunity and Labor Education Plan.** The permit is contingent upon final approval of a Tribal Economic Opportunity and Labor Education Plan by the Commission and execution by the applicant of a final Plan that at a minimum shall conform to the structure and terms laid out in attachment D of the applicant's June 22, 2018 letter to the Commission, with the following modifications:
 - Develop a specific regional Native American Training Program in cooperation with local labor councils regularly engaged in the applicant's construction and integrity projects, regional Native American tribes and educational institutions capable of providing programs to train workers. The program should be committed to recruiting and training Native Americans in the region to qualify for a broad spectrum of employment opportunities within the pipeline industry.
 - Identify specifically how Minnesota-based tribal members and businesses will be given preference under the committed target.


- Identify that there will be a selected Commission-appointed tribal liaison, what the role of the liaison will be with regards to this plan, and the description of the liaison's auditing authority to confirm compliance with the plan.

By August 30, the applicant shall produce a draft of the plan in a compliance filing to the Commission. After submission of the proposed draft, the Executive Secretary will set a schedule for information requests, party comments, and applicant's reply comments. As soon as practicable after reply comments are submitted the Executive Secretary shall set the matter for final approval by the Commission.

The motion was adopted 5-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: December 19, 2018

A handwritten signature in black ink that reads "Daniel P. Wolf". The signature is written in a cursive, flowing style.

Daniel P. Wolf, Executive Secretary