

November 13, 2013

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. PL9/CN-14-916

Dear Dr. Haar:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition to the Minnesota Public Utilities Commission (Commission) for Approval of Certain Pre-Application Filings by Enbridge Energy, Limited Partnership regarding a Certificate of Need Application for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border.

The *Petition* was submitted on October 24, 2014 by:

Christina K. Brusven
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

The Department recommends that the Commission:

- **accept** Enbridge's proposed Notice Plan, subject to the provision of certain information in Enbridge's Reply Comments;
- **grant** Enbridge's request for variance of Minnesota Rules 7829.2560, subp. 1;
- **approve** Enbridge's request for exemption from parts of Minnesota Rules 7853.0250(B) and 7853.0130(A)(3);
- **deny**, pending submission of additional, adequate supplemental information, the exemption requests for Minnesota Rules 7853.0510, subp. 1(B), 7853.0510, subp. 1(C), 7853.0520(B), and 7853.0530, subp. 3(D)
- **deny** the requests for issuance of the proposed orders submitted as Exhibits C, D, and E; and
- **require** the Applicant to serve all documents currently listed in eDockets for this filing on the service lists for Docket Nos. PL-6668/CN-13-473 and PL-9/CN-13-153.

The Department is available to answer any questions that the Commission may have.

Sincerely,

/s/ LAURA B. OTIS
Rates Analyst
(651)539-1828

LBO/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. PL9/CN-14-916

I. INTRODUCTION

On October 24, 2014, Enbridge Energy, Limited Partnership (Enbridge or Applicant), filed its Certificate of Need (CN) Notice Plan (Notice Plan) with the Minnesota Public Utilities Commission (Commission) for its Line 3 Replacement Project in Minnesota from the North Dakota border to the Wisconsin border (L3R or Project). While the project also seeks to expand the size of the Line 3 pipeline from 34 to 36 inches, Enbridge stated that the Project is “an integrity and maintenance driven replacement of the existing Line 3 in Minnesota.”

Existing Line 3 originates in Canada and crosses Minnesota from the North Dakota border to the Wisconsin border, co-located with several other Enbridge pipelines. Line 3 was installed between 1962 and 1967, prior to state regulation of crude oil pipelines under the Commission’s CN process. Thus, no CN was required or issued for Line 3.

In 2013, inspection of the pipeline under the Applicant’s Integrity Management program indicated that numerous sections of Line 3 were in need of repair or replacement. Enbridge stated that the most efficient approach to mitigating current and projected future integrity issues would be total replacement of Line 3.

The Project proposes to replace approximately 285 miles of existing 34-inch diameter Line 3 pipeline with 338 miles of 36-inch diameter pipeline, along with associated facilities, between the North Dakota-Minnesota and Minnesota-Wisconsin borders. The proposed Project would include eight pumping stations in Minnesota, although Enbridge stated that this number may change depending on the route ultimately approved, in addition to operational considerations. The replacement pipes would not be located in or near the existing Line 3 right of way because the existing line is too close to other Enbridge pipelines to be safely excavated. Instead, Enbridge proposes to deactivate the old line, leaving that line in place while a new line is constructed in a new right of way, co-located with Enbridge’s

proposed Sandpiper Pipeline Project (Sandpiper pipeline), MPUC Docket No. PL-6668/CN-13-473.¹

The Applicant's planned in-service date is the second half of 2017 or sooner. In Minnesota, the Project as proposed would traverse Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties. In addition to the proposed Notice Plan, Enbridge included the following requests:

- Request for Exemption from Certain Application Content Requirements;
- Protective Order;
- Order Establishing a Separate Docket for Highly Sensitive Nonpublic Data; and
- Protective Order for Highly Sensitive Nonpublic Data.

Several of these requests mirror actions that were acceptable to parties in the current Sandpiper CN Docket. The Department includes its analysis below.

II. DEPARTMENT ANALYSIS

The Commission's rules governing notice plans for crude oil pipelines are contained in Minnesota Rules 7829.2560.

A. *FILINGS REQUIRED AND SERVICE REQUIREMENTS*

Minnesota Rules 7829.2560, subp. 1 requires that the Applicant file a proposed Notice Plan at least three months before filing a Certificate of Need application for any pipeline. This rule also requires that the proposed Notice Plan be served on the Office of Energy Security² of the Department of Commerce, the Residential and Small Business Utilities Division³ of the Office of the Attorney General, and the Army Corps of Engineers.

The Applicant served the proposed Notice Plan on the three parties required by Minnesota Rules on June 7, 2013 as listed on the service list attached to the proposed Notice Plan. In its Notice Plan Petition, the Applicant requested that the Commission expedite review of the Notice Plan and provide a variance to the requirement that the Notice Plan be filed three months prior to the CN application being filed. Specifically, Enbridge requests that it be allowed to file the CN application immediately upon completion of Notice Plan implementation. The Department provides its analysis of this request in section E, Variance Request, below.

¹ In its October 7, 2014, *ORDER SEPARATING CERTIFICATE OF NEED AND ROUTE PERMIT PROCEEDINGS AND REQUIRING ENVIRONMENTAL REVIEW OF SYSTEM ALTERNATIVES*, the Commission postponed action on the route permit application, MPUC Docket No. PL-6668/PPL-13-474, until a Commission decision has been made on the CN.

² Now known as the Division of Energy Resources.

³ Now known as the Antitrust and Utilities Division.

Additionally, the Applicant filed a request for exemptions from certain data requirements for its CN application as well as several proposed Orders regarding the protection of sensitive data. These requests are discussed in sections F and G below.

B. PROCEDURAL SCHEDULE

Minnesota Rules 7829.2560, subp. 2 requires that initial Comments on the proposed Notice Plan be filed within 20 days of the date of filing and that Reply Comments be filed within 20 days of the end of the initial Comment period. While this petition includes more than a Notice Plan, the Department is providing its comments in the 20-day period. The Applicant is required to include a clear and conspicuous notice of these comment periods in its proposed Notice Plan. The Applicant satisfies this requirement with the following statement, featured in boldface type on page 1 of the proposed Notice Plan:

Comments on this Notice Plan proposal can be Submitted to the Minnesota Public Utilities Commission until 4:30 PM (November 13, 2014)

Replies to Comments can be submitted to the Minnesota Public Utilities Commission until 4:30 PM (December 3, 2014).

C. TYPES OF NOTICE

Minnesota Rules 7829.2560, subp. 3, requires the following types of notice:

- Direct mail notice based on county tax assessment rolls to landowners reasonably likely to be affected by the proposed pipeline;
- Direct mail notice to all mailing addresses within the area reasonably likely to be affected by the proposed pipeline;
- Direct mail notice to tribal governments and to the government of towns, statutory cities, home rule charter cities, and counties whose jurisdictions are reasonably likely to be affected by the proposed pipeline; and
- Newspaper notice to members of the public in areas reasonably likely to be affected by the proposed pipeline.

The Applicant's proposed Notice Plan includes notice to all landowners with property traversed by or within 350 feet of the centerline of the proposed L3R pipeline and to all landowners with property traversed by or within 150 feet of the centerline of existing Line 3. Enbridge also proposes to provide notice to all mailing addresses within 350 feet of the centerline of the proposed L3R pipeline or within 150 feet of the centerline of existing Line 3. Additionally, the Applicant has proposed expanding the notice area in the areas noted in Table 4 in the Notice Plan Proposal (see below). The Applicant stated that it makes this proposal in an effort to maintain consistent environmental review between this Project and the proposed Sandpiper pipeline CN proceeding. The areas included in the table are those that were identified for further review in the Sandpiper CN proceeding (Docket No. PL6668/CN-13-473).

Identified Locations	Expanded Notice Area (centered over replacement pipeline)	Related Notice Area Maps in Attachment 1b
Carlton County 1	2,500 ft. to 6,500 ft.	See Maps 36 - 38
Carlton County 2	1,500 ft. to 3,300 ft.	See Maps 36 - 38
Aitkin County	1,500 ft. to 4,700 ft.	See Maps 32 - 38
Spire Aquatic Management Area (Cass County)	3,000 ft.	See Map 18
Big LaSalle Lake & LaSalle Creek (Clearwater County)	7,000 to 14,000 ft.	See Map 28

The Applicant notes that the size of the notice area was designed to be large enough to ensure sufficient flexibility for Enbridge to refine route options while ensuring that all landowners and members of the public likely to be affected are given sufficient notice. As noted by the Applicant, some landowners and members of the public who may not be affected by the Project will also receive notice. The Department agrees that this approach is correct and appropriate, as more notice is generally preferable to less.

Moreover, given Enbridge’s preference to co-locate the L3R pipeline with the proposed Sandpiper pipeline, the proposed Notice Plan includes notice to landowners on the route that follows the proposed Sandpiper route that was originally proposed by Enbridge in the Sandpiper route docket:

To the extent practicable, Enbridge is working to co-locate the Project’s route within existing Enbridge pipeline rights-of-way and other Minnesota utility corridors. The Project will generally follow Enbridge’s existing Line 3 route from the North Dakota/Minnesota border in Kittson County to the existing Enbridge Clearbrook terminal in Clearwater County, Minnesota. From Clearbrook to the Wisconsin border in Carlton County, the Project will depart from the existing Line 3 pipeline route to generally follow the proposed Sandpiper Pipeline preferred route, which extends south from Clearbrook to Hubbard, Minnesota, and then east, following portions of existing electrical transmission and railroad lines, before terminating in Superior, Wisconsin.⁴

However, the Commission has required consideration of system alternatives in the Sandpiper CN proceeding (Docket No. PL6668/CN-13-473) and has thus decided that the routing docket (Docket No. PL6668/PPL-13-474) should not proceed until the basic configuration in the proposed Sandpiper CN is decided. Because the Applicant prefers to co-locate this Project with the ultimate Sandpiper pipeline route, the Commission’s selection of system alternatives in the Sandpiper CN (if approved), as well as the ultimate Sandpiper route selected, may all affect the location of the Project at issue in this docket:

⁴ Petition, page 4

Stated another way, it may be necessary in this docket to provide notice to landowners and entities located along the final Sandpiper route (if approved) such that the hundreds of landowners that receive notice initially in this docket may end up not being affected by this L3R Project.

The Department does not recommend at this time requiring the Applicant to provide additional notice to parties along alternate routes identified in the proposed Sandpiper routing docket. However, the Applicant must be prepared to provide timely notice to affected parties in the event that an alternate system configuration is selected in either the Sandpiper CN proceeding or the route proceeding. Given the current status of the Sandpiper proceeding, in the event that the Commission selects an alternate Sandpiper system configuration, the Department recommends that the Commission require Enbridge to file in this proceeding:

- a proposal to supplement the Notice Plan; along with updates to Attachments 1-4a of the original Notice Plan Proposal, within 60 days of the Sandpiper decision; and
- a compliance filing indicating implementation of the supplemental Notice Plan, within 90 days of the Sandpiper decision.

1. Direct Mail Notice to Landowners

Enbridge proposed in its proposed Notice Plan to obtain names and addresses of landowners and residents in the notice area from county tax records and mailing lists available from the United States Post Office. This approach has been used in other CN Notice Plans and the Department concludes that it is appropriated for this Notice Plan.

2. Notice to Governmental Units

The Applicant proposed in its Notice Plan to provide written notice, via direct mail, to all tribal, town, statutory city, home rule charter city, and county governments that are reasonably likely to be affected by the proposed project. Enbridge also proposes to send direct mail notices to government officials from the Minnesota Historical Society, the office of each regional development commission of a development region, soil and water conservation district, watershed district, watershed management district, the auditor of each county, and the clerk of each township and city whose jurisdiction contains any portion of the notice area. In addition, state and federal House and Senate Representatives with constituents in the public notice area would also receive notice. Finally, Enbridge proposes to send notices to State and Federal officials from:

- the Minnesota Pollution Control Agency;
- the Minnesota Department of Labor and Industry;
- the Minnesota Department of Natural Resources;
- the Minnesota Department of Employment and Economic Development;
- the Minnesota Department of Commerce;
- the Office of the Governor;

- the Bureau of Indian Affairs;
- County/Regional Farm Service Agencies;
- Soil and Water Conservation Districts;
- Regional Development Commissions;
- Wetland Conservation Act Local Governmental Units;
- Watershed Districts;
- the Minnesota State Historic Preservation Office;
- the Mississippi Headwaters Board;
- the Minnesota Board of Soil and Water Resources;
- the National Park Service;
- the Natural Conservation Service;
- the U.S. Army Corps of Engineers;
- the U.S. Department of Agriculture;
- the U.S. Department of the Interior Bureau of Land Management;
- the U.S. Environmental Protection Agency;
- the U.S. Fish and Wildlife Service;
- the U.S. Forest Service; and
- the Wrenshall Drinking Water Supply Management Area.

This list includes several agencies and boards for which notice is not required by Minnesota statutes or rules, but who are likely to be interested in and/or affected by the proposed project. The Department concludes that it is appropriate to include these additional agencies in the notice list.

The Applicant includes, as Attachment 3a to its Notice Plan, lists of the elected and agency government officials that would receive notice. The Department concludes that, in general, the list included in Attachment 3a appears to include the appropriate jurisdictions.

However, since the Petition was filed, U.S., state, and local elections have been held. Enbridge stated in the Petition that it intends to update the list once the election results are in. The Department will review the updated list and provide comments once it is submitted.

Based on the information available at this time, the Department concludes that, with one exception, Enbridge's proposed list of offices and officials to receive notice is comprehensive and appropriate. The exception pertains to Minnesota Statutes 216B.243, subd.7, which states:

An applicant for a certificate of need shall notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land, as that term is defined in section 216G.01, subdivision 4

The Minnesota Commissioner of Agriculture is not included on the Applicant's list of agency government officials provided in Attachment 4b to the proposed Notice Plan. The Department requests that the Applicant add the Commissioner of Agriculture to its revised Notice Plan in Reply Comments.

3. Newspaper Notice

The Department reviewed the Applicant's proposed Notice Plan and concludes that the Applicant included several regional and local newspapers that serve the landowners within the notice area as well as two statewide newspapers. The list of publications is included as Attachment 4b to the Applicant's Notice Plan. The Department concludes that Enbridge's proposal regarding newspapers is appropriate.

D. CONTENT OF NOTICE

Minnesota Rules 7829.2560, subp. 4 requires a proposed notice plan to provide notice recipients with the following information:

- A map showing the end points of the pipeline and existing related pipelines and related facilities in the area;
- A description of general right-of-way requirements for a pipeline of the size and type proposed and a statement that the applicant intends to acquire property rights for the right-of-way that the proposed pipeline will require;
- A notice that the pipeline cannot be constructed unless the Commission certifies that it is needed;
- The Commission's mailing address, telephone, and Web site;
- A brief explanation of how to get on the mailing list for the Commission's proceeding; and
- A statement that requests for certification of pipelines are governed by Minnesota law, including specifically Minnesota Rules, chapters 7851, 7853, and 7855 and Minnesota Statutes, section 216B.243.

The Department reviewed the Applicant's proposed notice and maps and concludes that the Applicant's proposed Notice Plan generally complies with the content requirements. The Applicant did not mention specifically chapters 7851 and 7855 in its discussion of the Minnesota Rules and Laws governing pipeline certification requests. The Department notes that these rules appear to relate to gas and coal liquids pipelines and are not applicable to the proposed Project. The Department concludes that the omission of reference to Minnesota Rules Chapters 7851 and 7855 is acceptable.

Thus, the Department concludes that the content of the proposed notices adequately complies with Minnesota Rules and Statutes.

E. VARIANCE REQUEST

In its Petition, the Applicant requested that the Commission expedite review of the Notice Plan and provide a variance to the requirement that the Notice Plan be filed three months prior to filing of the CN application. Specifically, Enbridge requests that it be allowed to file the CN application immediately upon completion of Notice Plan implementation.

Minn. Rules, Part 7829.3200 states that the Commission shall grant a variance to its rules when it determines that 1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; 2) granting the variance would not adversely affect the public interest; and 3) granting the variance would not conflict with standards imposed by law.

Under the first rule criterion for evaluating a request for a variance, Enbridge provided the following information to help demonstrate the “excessive burden” that enforcement of the rule would impose:

Until the Project is completed, integrity and maintenance work will continue on the existing Line 3. Therefore, in order to minimize human and environmental impacts, it is critical that Enbridge complete the Project as soon as possible.⁵

Additionally, Enbridge stated in the Notice Plan proposal that continued operation of Line 3 may require as many as 900 integrity digs and repairs over the next 6 years, a rate of 150 digs and repairs a year. The Applicant points out that integrity digs and repairs, in addition to the cost to the Applicant, would be burdensome to the surrounding environment and nearby residents and landowners. Specifically, Enbridge stated that:

After evaluating the data, Enbridge conducts responsive maintenance and integrity work, which may include integrity digs to either sleeve or replace a pipe segment where data has indicated such measures are necessary. An integrity dig requires Enbridge to enter landowners’ properties and excavate around and under the pipeline to gain access to the pipe. Installing a sleeve involves welding two fitted pieces of pipe together around an existing segment of pipeline. Replacement involves removal of a segment of existing pipe and replacement of that segment with new pipe. Once the maintenance and integrity work is complete, Enbridge backfills the area excavated and restores the land.⁶

This information indicates that unnecessary delay may place a burden on the Applicant, the environment, and landowners or residents impacted by Line 3 repair and integrity management work.

Regarding the criterion that granting the variance would not adversely affect the public interest, the Applicant stated that:

Enbridge’s request for a variance to the three month time period will not interfere with the public’s opportunity to comment on or receive the notice outlined in the Notice Plan,

⁵ Initial Filing—Petition, page 5.

⁶ Initial Petition – page 3.

as the Notice Plan will be approved and implemented prior to a CN application being filed.⁷

The Department notes the potential negative impacts to the public interest would be decreased time for concerned citizens, agencies, or groups to organize a response. However, the Department expects that the Commission is likely to analyze this Project through the contested case process which typically provides for significant opportunities for interested members of the public to provide input. With this assumption, the Department concludes that the requested variance should not inconvenience the public in any material manner.

Finally, as the requirement for filing the Notice Plan at least three months before the Application is only required by the Commission's own rules and not by statute, it appears that granting the variance would not conflict with any statutory requirements.

Therefore, the Department recommends that the Commission grant the Applicant's requested variance to Minnesota Rule Part 7829.2560, subpart 1.

F. REQUEST FOR EXEMPTION FROM CERTAIN APPLICATION CONTENT REQUIREMENTS

The Applicant included in its submission a Request for Exemption from Certain Application Requirements (Exemption Request). The Applicant requested full or partial exemption from the following data requirements:

⁷ Initial Petition, Notice Plan, Part 1, page 7.

Minnesota Rule	Scope of Exemption Request
Rule 7853.0250(B) and 7853.0130(A)(3) – Promotional Practices	Request full exemption.
Rule 7853.0510, subp. 1(B) – Historical Energy Data	Request full exemption from requirements to provide “peak day quantities” because such data is not tracked by Enbridge.
Rule 7853.0510, subp. 1(C) – Historical Energy Data	Request to submit alternative data regarding historic shipper nominations on Line 3 and evidence of shipper support for the future utilization of the proposed capacity in lieu of historical contract data.
Rule 7853.0520 (B) – Forecast Data	Request full exemption from requirements to provide “peak day quantities” because such data is not tracked by Enbridge.
Rule 7853.0530, subp. 3(D) – Expected Sources of Supply or Shippers	Request to submit alternative data regarding historic shipper nominations on Line 3 and shipper support for the future utilization of the proposed capacity in lieu of contract data for 25 largest shippers.
Rule 7853.0530, subp. 3(E) – Expected Recipients	Request to submit alternative data regarding refineries directly or indirectly connected to Line 3 in lieu of contract information related to recipients of crude shipments on Line 3.

Exemption requests for petroleum facility CNs are governed by Minnesota Rule 7853.0200, Subpart 8:

Exemptions. Prior to the submission of an application, a person shall be exempted from any data requirement of this chapter upon a written request to the commission for exemption from specified rules and a showing by that person in the request that the data requirement is unnecessary to determine the need for the proposed facility, or may be satisfied by submission of another document.

The Department analyzed how each of the Applicant’s requests responded to the two conditions in Minnesota Rules:

- Is the data requirement is necessary for determination of need for the proposed facility?
- Could the requirement be satisfied by submission of another document?

The Department’s analysis and recommendations are as follows.

1. Minnesota Rules 7853.0250(B) and 7853.0130(A)(3) – Promotional Practices.

Minnesota Rule 7853.0250 (B) requires the following:

Each application shall contain a section that discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

...

B. promotional activities that may have given rise to the demand for the facility; and

Similarly, Minnesota Rule 7853.0130(A)(3) requires the following:

A certificate of need shall be granted to the applicant if it is determined that:

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

...

(3) the effects of the applicant's promotional practices that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974.

The Applicant requests exemption from this requirement given its statement that “Enbridge cannot create demand for crude oil, and has not undertaken activities to promote increased demand for crude oil or refined petroleum products. As a result, Enbridge does not possess data that is responsive to this rule.”⁸ Enbridge noted that the Commission has granted such exemptions to other applicants that do not serve retail customers. Enbridge cites two circumstances in which similar exemption requests were approved by the Commission in CNs for wind farms.

The Applicant has submitted CN Applications for several other petroleum facilities in the past two years⁹, but this is the first time it has requested exemption from this Application requirement. However, the information provided in response to this requirement has not been necessary for evaluation of need in previous dockets and the Department does not foresee that it will be necessary in this docket. **The Department recommends that the Commission approve the Exemption Request for Minnesota Rules 7853.0250(B) and 7853.0130(A)(3).**

⁸ Exhibit B, page 3.

⁹ Docket No. PL-9/CN-13-153, Docket No. PL-6668/CN-13-473, Docket No. PL9/CN-12-590

2. Minnesota Rule 7853.0510, subp. 1(B) – Peak Day Quantities Historical Data.

Minnesota Rule 7853.0510 subp. 1(B) states:

Products, usage, and suppliers.

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

...

B. for each category listed in response to item A and for each of the five most recent calendar years, a list of the annual and peak day quantities transported or distributed in the appropriate units of measure;

Enbridge requests exemption from this requirement, stating that it does not collect peak day data on its system, but rather collects monthly data. Enbridge stated that data of this nature is not generally tracked in the pipeline industry.

As in the case of Exemption Request 1 above, this docket marks the first time Enbridge has requested exemption from this requirement. The data required by this rule is essential to determining need, as it provides quantitative data that can be used to evaluate historical levels of demand on the Applicant's system. Moreover, since Enbridge proposes to increase the diameter and size of the pipeline, this information will be essential to evaluate whether Enbridge has met its burden of proof to justify its proposed CN. As such, the Department cannot support this request.

Under the second condition that must be analyzed when determining whether to approve an exemption request, the Commission must consider whether an alternate document could satisfy the requirement. Enbridge states that it does not collect daily throughput data on its system because its system is operated on a monthly cycle. The Department recommends that the Commission require Enbridge to provide, at a minimum, in lieu the daily peak information required by Minnesota Rule 7853.0510, subp. 1(B), the monthly peak information. In addition, Enbridge should provide any other data to support its proposal to increase the size of the pipeline to 36 inches, since the burden of proof will be on Enbridge to support its proposal. Enbridge should still be required to submit the annual quantity information that is also required by Minnesota Rule 7853.0510, subp. 1(B).

3. Minnesota Rule 7853.0510, subp. 1(C) – Contracts with 25 Largest Shippers.

Minnesota Rule 7853.0510, subp 1(C) states:

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

...

C. a list of sources of supply of petroleum products for transportation or distribution during the five most recent calendar years, designated as either in-state or as out-of-state,

the dates and durations of the contracts with the 25 largest suppliers or shippers, the categories of petroleum products and quantities involved, and for sources of crude oil, the geographical areas of origin of the crude oil

Enbridge stated in its request that it cannot provide the contract data required because, as it operates as a common carrier, it does not have long term shipper contracts. Enbridge proposes to provide alternative information to satisfy this requirement, in the form of the historical nomination forms it has on file for the previous 5 years.

This information is critical to evaluation of need. While Enbridge's request may ultimately be shown to be reasonable, the Department cannot support a request for exemption from provision of this essential data until more is known about the nature of the alternative proposed. Enbridge should provide a comprehensive description of the nature of data that is contained in the nomination forms it proposes to substitute for this requirement. The Applicant should also provide a copy of its tariff that indicates its common carrier status and lack of contract capacity on Line 3.

4. Minnesota Rule 7853.0520(B) – Peak Day Quantities Forecast Data.

Minnesota Rule 7853.0520(B) states:

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

...

- B. for each category of petroleum product listed in response to item A and for each of the first six forecast years, the 11th forecast year, and the 16th forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;

Enbridge requests exemption from this requirement, stating that it does not collect or track peak day data on its system, but rather collects monthly data. Thus, it does not produce peak day forecasts. Again, Enbridge notes that forecasts of this nature are not generally used in the pipeline industry.

The data required by this rule is essential to determining need, as it provides a quantitative forecast that can be used to estimate future levels of demand on the Applicant's system. The Department cannot support this request.

Under the second condition that must be analyzed when determining whether to approve an exemption request, the Commission must consider whether an alternate document could satisfy the requirement. As above, the Department recommends that the Commission require Enbridge to provide, at a minimum, in lieu the daily peak forecast required by Minnesota Rule 7853.0520(B), a monthly peak forecast, along with any other data that

Enbridge believes would be helpful. Enbridge should still be required to submit the annual quantities expectation that is also required by Minnesota Rule 7853.0520(B).

5. Minnesota Rule 7853.0530, subp. 3(D) – Expected Sources of Supply or Shippers.

Minnesota Rule 7853.0530, subp. 3(D) states:

Design.

The applicant shall provide the following information pertaining to the design of the proposed construction of a large petroleum pipeline:

...

D. its initial and ultimate design capacities in barrels per day, its diameter, length in Minnesota, maximum number of pumping stations in Minnesota, and nominal station spacing;

The Applicant is requesting a partial exemption from this requirement because it does not have long term capacity contracts with shippers due to its status as a common carrier. Enbridge proposes to provide the historical nomination forms described in request 4 above. Enbridge also proposes to provide evidence of shipper support for future use of the proposed capacity.

The data required by this rule could impact analysis of need. The need analysis is, in part, an economic analysis of the forces of supply and demand that affect the logistics need to transport crude oil. Information on supply sources is crucial to that analysis.

As stated above, the Department cannot support a request for exemption from provision of essential data, such as supply data, until more is known about the nature of the alternative proposed. While Enbridge's proposal may be reasonable, Enbridge should provide a comprehensive description of the nature of data that is contained in the nomination forms it proposes to substitute for this requirement. As noted above, the Applicant should also provide a copy of its tariff that indicates its common carrier status and lack of contract capacity on Line 3.

6. Minnesota Rule 7853.0530, subp. 3(E) – Expected Recipients.

Minnesota Rule 7853-.0530, subp. 3(E) states:

Operation.

The applicant shall provide the following information pertaining to the operation of the proposed facility:

...

E. a list of expected recipients of transported petroleum products during the first five calendar years of operation, designated either as in-state or as out-of-state, the expected dates and durations of the contracts with the

25 largest recipients, and the categories of petroleum products and quantities expected to be involved.

The Applicant is requesting a partial exemption from this requirement because it does not have long term capacity contracts with shippers due to its status as a common carrier. Enbridge proposes to provide the historic nomination forms described in request 4 above. Enbridge will also provide evidence of shipper support for future utilization of the proposed capacity.

The data required by this rule could impact analysis of need; the need analysis is, in part, an economic analysis of the forces of supply and demand that affect the logistics need to transport crude oil. Information on sources of demand is crucial to that analysis.

As stated above, the Department cannot support a request for exemption from provision essential data, such as supply data, until more is known about the nature of the alternative proposed. Thus, Enbridge should provide a comprehensive description of the nature of data that proposes to provide in lieu of the data required by the rule.

G. *OTHER REQUESTS*

Enbridge has requested that, in order to avoid delays in the processing of the CN Application, the Commission approve its proposed, Protective Order, Order Establishing a Separate Docket for Highly Sensitive Nonpublic Data, and Protective Order for Highly Sensitive Nonpublic Data (Order Requests). The proposed orders are attached to the Notice Plan filing as Exhibits C, D, and E.

Requests similar to the Order Requests were submitted and granted by the Administrative Law Judge (ALJ) in the ongoing Sandpiper docket. Much of the information required by Minnesota Rules and Statutes and by intervenors looking to adequately evaluate the Applicant's request is similar to the information claimed by Enbridge as trade secret or highly sensitive trade secret in the Sandpiper docket.

While the Department appreciates Enbridge's desire to expedite the CN process through approval of the Requested Orders prior to the Application being filed and prior to discovery being issued, the Department concludes that it may be premature to grant the requests at this time. The Department does not expect to oppose creation of a separate docket (and did not oppose Enbridge's request in the Sandpiper CN proceeding) assuming similar facts and circumstances, and notes that the ALJ responded promptly to Enbridge's requests in the Sandpiper CN matter. Moreover, there is no CN to review at this time, and no substantive discovery has been issued such that the information central to the Applicant's requests is not yet before the Commission. The Department is confident that, if the Commission refers this matter to the Office of Administrative Hearings for a contested case proceeding, the ALJ assigned to the case will review the CN application, consider the particular information that Applicant seeks to protect, and will act promptly on Applicant's requests.

Finally, the Department will work with the Applicant to avoid unnecessary delay regarding the additional requested actions.

H. SERVICE LIST

Minnesota Rules 7829.2560, Subpart 1 requires an applicant to serve their proposed notice plan for a certificate of need to all persons reasonably likely to be affected by the proposed pipeline. Parties specifically listed in this subpart include the Department, the Antitrust and Utilities Division of the Office of the Attorney General, and the Army Corps of Engineers.

The Applicant served its Notice Plan on the listed parties, in addition to staff at the Commission, the Minnesota Department of Agriculture, Minnesota Pollution Control Agency, Minnesota Department of Health, Minnesota Department of Natural Resources, and Minnesota Department of Transportation. However, there are many other parties that are reasonably likely to be affected by the Petition that have not been included.

At this early date, many impacted parties may not be aware of or closely following this docket. Further, Enbridge has already made several requests in this docket that, if approved, will affect the content provided in the CN Application, the timing of the Application evaluation process, and procedures for handling sensitive data. In addition, the Applicant seeks for this Project co-location with the proposed Sandpiper project (if approved). Because of these unusual circumstances, the Department recommends that the Commission require Enbridge to serve electronic copies of all documents currently filed in eDockets for this Project on the service lists for the Sandpiper, Docket No. PL-6668/CN-13-473, and Line 67 Upgrade, Docket No. PL-9/CN-13-153, projects and to do so before the Commission considers Enbridge's variance, exemption and Order requests. This approach would allow provide broad notice to likely affected persons together with opportunity to comment on the Applicant's requests before the Commission makes its decisions.

III. DEPARTMENT RECOMMENDATIONS

Notice Plan

The Department recommends that the Commission accept Enbridge's proposed Notice Plan, subject to the provision of certain information in its Reply Comments for potential inclusion in, revision of, or correction to its Notice Plan. The Department also recommends that the Commission find the Applicant's omission of reference to Minnesota Rules Chapters 7851 and 7855 in the notice letters is acceptable in this case. Additionally, the Department recommends that the Commission require Enbridge to file:

- In the event its preferred route in the Sandpiper docket is not chosen:
 - a proposal to supplement the Notice Plan; along with updates to Attachments 1-4a of the original Notice Plan Proposal within 60 days of the Sandpiper decision; and

- a compliance filing indicating implementation of the supplemental Notice Plan within 90 days of the Sandpiper decision.
- An update to Attachment 3a that:
 - reflects the results of the November 4, 2014 federal, state, and local elections; and
 - includes the MN Commissioner of Agriculture on the notice list.

Variance Request

The Department recommends that the Commission Grant the Applicant's requested variance to Minnesota Rule Part 7829.2560, subpart 1.

Exemption Requests

The Department analyzed each of the parts of Minnesota Rule 7853 from which the Applicant has requested variance and concludes that additional information from the Applicant is need for evaluation of all but one of these requests. Until additional, satisfactory information is provided by the Applicant, the Department recommendations for Commission action are as follows:

- Approve the request for exemption from the data requirement under Minnesota Rules 7853.0250(B) and 7853.0130(A)(3) – Promotional Practices;
- Deny, pending submission of additional, adequate supplemental information, the exemption requests for Minnesota Rules 7853.0510, subp. 1(B), 7853.0510, subp. 1(C), 7853.0520(B), and 7853.0530, subp. 3(D).

The Department cannot recommend approval of the exemptions requested for Minnesota Rules 7853.0510, subp. 1(B), 7853.0510, subp. 1(C), Minnesota Rule 7853.0520(B), and 7853.0530, subp. 3(D) unless Enbridge provides adequate supplemental information. The Department requests that Enbridge provide:

- Monthly peak information in lieu of the daily peak information required by Minnesota Rule 7853.0510, subp. 1(B), along with any other information to support its CN, including the increase in size of the pipeline;
 - Confirmation that it intends to submit the annual quantity information that is also required by Minnesota Rule 7853.0510, subp. 1(B).Minnesota Rule 7853.0510, subp. 1(B).
- A comprehensive description of the nature of data that is contained in the nomination forms it proposes to substitute for the requirement under Minnesota Rule 7853.0510, subp. 1(C);
- A copy of its tariff that indicates its common carrier status and lack of contract capacity on Line 3;
- A monthly peak forecast in lieu the daily peak forecast required by Minnesota Rule 7853.0520(B);

- Confirmation that it intends to provide the annual quantity information that is also required by Minnesota Rule 7853.0520(B);
- A comprehensive description of the nature of data that is contained in the nomination forms it proposes to substitute for the requirement in Minnesota Rule 7853.0530, subp. 3(D);
- A comprehensive description of the nature of data that it proposes to substitute for the requirement under Minnesota Rule 7853.0530, subp. 3(E).

Proposed Orders

The Department recommends that the Commission deny the requests for issuance of the proposed orders submitted as Exhibits C, D, and E.

Service List

The Department recommends that the Commission require Enbridge to serve electronic copies of all documents currently available in eDockets on the service lists on record in the Sandpiper, Docket No. PL-6668/CN-13-473, and Line 67 Upgrade, Docket No. PL-9/CN-13-153, projects.

/lt

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. PL9/CN-14-916

Dated this 13th day of November 2014

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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