

**Public Comments of the Sierra Club on the
Revised Final Environmental Impact Statement
for the Proposed Line 3 Pipeline**

**Submitted to the Minnesota Department of Commerce
Energy Environmental Review and Analysis**

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MPUC PL-9/CN-14-916

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Via electronic and U.S. mail to:
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Sierra Club submits these comments on the Revised Final Environmental Impact Statement (“Revised FEIS”)¹ prepared by the Minnesota Department of Commerce’s Energy Environmental Review and Analysis unit (“DOC-EERA” or “the Department”) for the proposed Line 3 Pipeline Project (“the Project”). The Notice of Availability and Comment Period for the RFEIS was published on February 12, 2018 and indicated that the public comment period closes on February 27, 2018.

Sierra Club’s July 10, 2017 public comments on the Draft Environmental Impact Statement (“DEIS”)² in this matter set forth that the Department had failed to satisfy the statutory requirements for an environmental impact statement (“EIS”) under the Minnesota Environmental Policy Act (“MEPA”) and, in doing so, also violated the Public Utilities Commission’s (“Commission”) EIS Order and the Department’s Commission-approved Final Scoping Decision Document (“FSDD”). Sierra Club’s October 2, 2017 public comments on the on the Final Environmental Statement (“FEIS”) for the Project³ and November 31, 2017 Exceptions to the Report of Administrative Law Judge (“Exceptions to ALJ”) on the adequacy of the FEIS both set forth that the Department had failed address the fatal flaws of the DEIS and that, furthermore, the preparation of the FEIS had violated the procedural requirements of MEPA and its corresponding rules codified in Minnesota

¹ DOC-EERA, Final Environmental Impact State Line 3 Project, Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Feb. 12, 2018) [hereinafter “Revised FEIS”].

² Public Comments of the Sierra Club on the Draft Environmental Impact Statement for the Proposed Line 3 Pipeline Project, Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Jul. 10, 2017) [hereinafter “DEIS Comments”].

³ Public Comments of the Sierra Club on the Final Environmental Impact Statement for the Proposed Line 3 Pipeline Project, Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Oct. 2, 2017) [hereinafter “FEIS Comments”].

Rules Chapter 4410. On December 14, 2017, the Commission issued an Order finding the FEIS inadequate based on four identified informational defects and required the Department to remedy these defects and publish a revised FEIS within 60 days.⁴ As Sierra Club's January 28, 2018 Petition for Reconsideration or Rehearing and Request for Supplement to the EIS⁵ set forth, the Commission's limited finding of inadequacy failed to acknowledge several of the fatal defects in the FEIS that would not be cured by the Department's additional work on the four issues identified in the Commission's Inadequacy Order but that, rather, require a broader finding of inadequacy and the preparation of a Supplemental EIS with re-scoping and public participation pursuant to MEPA and its implementing Rules.⁶

As anticipated, the Revised FEIS still contains the fatal flaws that were carried over from the improperly done EIS scoping to the DEIS and then from the DEIS to the FEIS. These fatal flaws in the Revised FEIS include, but are not limited to:

- Failing to correctly identify the purpose and need for the project and, as a result, missing the mark for MEPA-compliant alternatives analysis
- Failing to provide correct analysis for a no-action alternative that serves as an effective surrogate for the evaluation of energy alternatives

⁴ Order Finding Final Environmental Impact Statement Inadequate, Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Dec. 14, 2017) [hereinafter "Inadequacy Order"].

⁵ Sierra Club, Petition for Reconsideration or Rehearing and Request for Supplement to the Environmental Impact Statement, Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Jan. 2, 2018) [hereinafter "Sierra Club Motion for Reconsideration"].

⁶ Minn. R. Ch. 4410.3000, Subp. (3)-(6).

- Failing to consider alternatives for different pipeline infrastructure owned by Enbridge or other companies for meeting the purpose and need for the project
- Failing to adequately address cumulative effects as required under MEPA
- Failing to respond to substantive comments received about issues raised in scoping during review of the draft EIS

Sierra Club incorporates by reference to prior filings cited in this document more detailed analysis about these fundamental flaws and defers to the comments of other parties and members of the public as to the substantive ways in which the Revised FEIS fails to resolve the four limited defects that were the basis for the Commission’s finding of inadequacy. Rather, Sierra Club wishes to take this opportunity to comment on the fact that the substantive additions to the Revised FEIS are a demonstration of how far the Commission has run afoul of the requirements of MEPA and its implementing rules.

To address the Commission’s Order 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,” the Department added a 48-page appendix to the Revised FEIS.⁷ In that Appendix, the Department states:

⁷ DOC-EERA, Final Environmental Impact State Line 3 Project, “Appendix U—System Alternative 04 Karst Reroute,” Docket Nos. MPUC PL-9/CN-14-916 and PL-9/PPL-15-137 (Feb. 12, 2018) [hereinafter “Appendix U”]

As a first step, the technical staff reviewed potential route options that would completely avoid karst features . . . Completely avoiding karst would require a major new route option”⁸

The Department then states:

Since a logical reroute of SA-04 to avoid karst was not feasible, technical staff considered options to minimize crossing shallow karst as a next-best approach.⁹

These statements demonstrate two fundamental reasons why the Revised FEIS is inadequate. First, the Department failed to do what it was explicitly required to do by the Commission in order make the FEIS adequate—provide analysis for a route that “avoids karst topography”—and, consequently, the Commission must find the Revised FEIS inadequate again on those grounds. Second, the reason why the Department was unable to do what the Commission asked of it is that, as articulated by the Department in the above statements, doing so would require the Department to do more than tweak SA-04 but, rather, to evaluate entirely new systems alternatives. While the Commission’s Inadequacy Order tries to regard the omission of karst analysis from the environmental review process as a minor tweak to the existing dataset in the FEIS, it is in actuality a major failure that has resulted from the improper scoping of the EIS to begin with and that can only be rectified through re-scoping and preparation of a supplement EIS subject to Minnesota Rules 4410.3000, Subparts (5) & (6). The Commission cannot put its desire or that of the applicant Enbridge to speed up the approval process ahead of the mandates of MEPA and its attendant Rules that an EIS be prepared subject to procedural requirements for scoping and

⁸ Appendix U at U-3.

⁹ *Id.*

substantive requirements for the consideration of significant environmental impacts of the Project and its reasonable alternatives.

Furthermore, as the “next-best approach” to an entirely new systems alternative that avoids karst, the Department considers in the Revised FEIS two “modified” routes to “minimize crossing shallow karst.” One of these “alternatives” cannot even colorably be considered a minor change to SA-04 as it includes an additional 100 miles of pipeline. This is a new system alternative, and its breadth requires the Commission to take it seriously enough to follow MEPA’s requirements for such material supplemental analysis as articulated in Minnesota Rules 4410.3000, Subparts (5) & (6). Failure to follow the procedure articulated in these rules will rob the public and parties’ the streamlined and efficient review that MEPA demands when the Commission has identified missing analysis that must be added to an FEIS. Following the law will give all parties added certainty about their ability to participate and have some say in the scoping and analysis of this new alternative the Commission has ordered without significant input from the parties on how to proceed in curing the deficiency.

The Commission should find the Revised FEIS broadly inadequate and order it redone in compliance with MEPA. To be adequate, a Revised FEIS will have to re-assess the purpose and need statement in order to better identify reasonable alternatives, re-cast the no action alternative, fix the cumulative effects analysis to include meaningful assessment of the full climate and spill impacts from the project and phased actions, address substantive comments with improvements to the FEIS, and comply with requirements for re-scoping and public participation.

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