

November 25, 2020

**VIA ELECTRONIC FILING**

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
Saint Paul, MN 55101-2147

**Re: In the Matter of Honor the Earth's October 27, 2020 Petition for Investigation and Complaint Concerning the Capacity of the Enbridge Mainline System  
MPUC Docket No. PL9/C-20-801**

Dear Mr. Seuffert:

Enclosed please find:

1. Enbridge Energy, Limited Partnership's Answer to Honor the Earth's Complaint;  
and
2. Affidavit of Maury Porter.

The documents referenced above have been e-filed today through [www.edockets.state.mn.us](http://www.edockets.state.mn.us). A copy of this filing is also being served upon the persons on the Official Service List of record. Please let me know if you have any questions regarding this filing.

Thank you.

Sincerely,

*/s/ Christina K. Brusven*

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71567463

**In the Matter of Honor the Earth's  
October 27, 2020 Petition for Investigation  
and Complaint Concerning the Capacity of  
the Enbridge Mainline System**

**MPUC Docket No. PL9/C-20-801**

**CERTIFICATE OF SERVICE**

I, Alicia P. Jones, hereby certify that I have this day, served a true and correct copy of the following documents for the above captioned matter to all persons at the addresses on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States Mail at Minneapolis, Minnesota:

1. Enbridge Energy, Limited Partnership's Answer to Honor the Earth's Complaint; and
2. Affidavit of Maury Porter.

Dated this 25th day of November 2020

          /s/ Alicia P. Jones

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**STATE OF MINNESOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

**In the Matter of Honor the Earth’s  
October 27, 2020 Petition for  
Investigation and Complaint Concerning  
the Capacity of the Enbridge Mainline  
System**

Docket No. PL9/C-20-801

**ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP’S ANSWER TO HONOR  
THE EARTH’S COMPLAINT**

**I. INTRODUCTION**

Enbridge Energy, Limited Partnership (“Enbridge”) submits this Answer to Honor the Earth’s (“HTE”) Petition for Investigation and Complaint (the “HTE Complaint”) filed on October 27, 2020.

The HTE Complaint’s “primary purpose” is to submit a formal complaint to the Minnesota Public Utilities Commission (the “Commission”) concerning Enbridge’s alleged “plan to increase the capacities of its Lines 4 and 67 by 10 percent or more, which triggers the recertification requirement in Minn. R. 7853.0800, subp. 2.”<sup>1</sup> HTE also seeks a broader inquiry into Enbridge’s Mainline System’s capacity.

As set forth below, the Commission does not have jurisdiction over HTE’s Complaint. In addition, because HTE’s allegations are not grounded in fact, further investigation is not warranted. Specifically, Enbridge has not increased the capacity of Line 4 or Line 67. Therefore, the Commission should deny and dismiss the HTE Complaint.

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<sup>1</sup> HTE Complaint at 1.

## II. BACKGROUND

### A. Procedural Background.

On October 27, 2020, HTE filed a complaint asserting that Enbridge is planning “imminent capacity additions to Lines 4 and 67.”<sup>2</sup> The basis for this allegation is that in January 2020, Enbridge submitted certain air emissions permit applications to the Wisconsin Department of Natural Resources (“WIDNR”), which, HTE claims, demonstrate that Enbridge is adding more than 10 percent capacity to each of these Lines.

HTE also makes allegations about Enbridge’s Mainline System capacities, focusing on capacity-related matters considered by the Commission in *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* (Docket No. PL-9/CN-14-916). The Commission issued its Order granting Enbridge a Certificate of Need as modified, a Route Permit, and finding the related Environmental Impact Statement adequate on May 1, 2020.<sup>3</sup> The Commission’s Line 3 Replacement Pipeline Projects Orders were appealed by writ of certiorari and are pending before the Minnesota Court of Appeals.<sup>4</sup>

The Commission issued a Notice of Comment Period, directing Enbridge to answer the HTE Complaint by November 25, 2020.<sup>5</sup> The Notice sought comments on the following topics:

1. Does the Commission have jurisdiction over the issues raised in Honor the Earth’s filing?;

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<sup>2</sup> HTE Complaint at 2.

<sup>3</sup> *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* and *in the Matter of the Application of Enbridge Energy, Limited Partnership, for a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Route Permit as Modified, Docket Nos. PL-9/CN-14-916 and PL-9/PPL-15-137 (May 1, 2020) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&d>)

2. Are there reasonable grounds to investigate the allegations related to Enbridge’s Line 3, Line 4, and Line 67 pipelines?; and
3. If there are reasonable grounds to investigate, what procedures should be applied to conduct the investigation or investigations?

**B. Factual Background.**

Enbridge operates six crude oil pipelines (Lines 1, 2, 3, 4, 65 and 67) through Minnesota that are part of the Enbridge Mainline System.<sup>6</sup> The majority of these pipelines have operated in Minnesota for decades. Both Lines 4 and 67 have been the subject of numerous Commission proceedings. A brief background for Lines 4 and 67 follows.

Line 4 is a 36-to-48-inch outside diameter, approximately 1,100-mile-long pipeline that extends from Edmonton, Alberta, Canada to Superior, Wisconsin. Construction of Line 4 began in the 1970s as 48-inch parallel loops to the existing Line 3 pipeline. In the 1990s, 36-inch diameter pipe was installed to connect the 48-inch loops until a continuous line was completed. The Commission issued a series of orders in the 1990s and 2000s approving new pipeline segments

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[ocumentId={C0B1D171-0000-C511-9FC0-0F91750A9C30}&documentTitle=20205-162795-01.](#)) As part of this Order, the Commission reissued its prior order granting a Certificate of Need as Modified and Requiring Filings (Sep. 5, 2018), the Order Approving Compliance Filings as Modified and Denying Motion (Jan. 23, 2019), the Order Approving Pipeline Routing Permit with Conditions (Oct. 26, 2018), and the Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration (Jan. 18, 2019). These orders are referred to collectively hereinafter as the “Line 3 Replacement Project Orders.”

<sup>4</sup> Several parties filed certiorari appeals challenging the Line 3 Replacement Pipeline Project Orders. Those appeals have been consolidated. *See In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, Order consolidating appeal numbers A20-1071, A20-1072, A20-1074, A20-1075, and A20-1077 (Minn. Ct. App. Aug. 26, 2020).

<sup>5</sup> Amended Notice of Comment Period, p. 1 (Nov. 10, 2020) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B0C3B275-0000-C629-A2B7-857B5B087D86}&documentTitle=202011-168183-07>).

<sup>6</sup> Enbridge and its affiliates operate additional pipelines in Minnesota that are not a part of the Enbridge Mainline System are not the subject of HTE’s Complaint.

and pump station facilities constructed as a part of the completion of Line 4.<sup>7</sup> The Commission has considered Line 4's capacity to be at approximately its current annual average capacity of around 796,000 barrels per day as part of several proceedings over the last dozen plus years. For example, Line 4 was identified at 793,000 barrel per day capacity in Enbridge's 2007 Certificate of Need Applications for the Southern Lights Crude Oil Pipeline and the Alberta Clipper and Southern Lights Diluent Projects.<sup>8</sup> Each Application was the subject of a contested case hearing and each resulted in the Commission determining that the Mainline System (including Line 4 at 793,000 barrels per day) was "operating at or near its oil transportation capacity" and that the Mainline System was not sufficient to transport the volumes forecasted as future demand.<sup>9</sup> Most

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<sup>7</sup> See, e.g., *In the Matter of the Application by Lakehead Pipe Line Company, Limited Partnership, for a Certificate of Need for a Large Petroleum Facility*, Order Granting Certificate of Need, Docket No. PL-9/CN-98-327 (Aug. 5, 1998) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={1AED0C13-0733-4C10-A413-5FCC3E52609A}&documentTitle=323259>); *In the Matter of the Lakehead Pipeline Company, Limited Partnership for a Certificate of Need for a Large Petroleum Pipeline Facility*, Order Granting Certificate of Need and Varying Fee Payment Rule, Docket No. PL-9/CN-01-1092 (Dec. 18, 2001) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B20EF0EA-D4E5-44AF-9690-6AFD6B85BAE5}&documentTitle=241051>).

<sup>8</sup> See *In the Matter of the Application of Enbridge Pipeline (Southern Lights) L.L.C. for a Certificate of Need for a Crude Oil Pipeline for the Southern Lights Crude Oil Project*, Application for a Certificate of Need for a Crude Oil Pipeline, § 7853.0230, p. 4 Docket No. PL-9/CN-07-464 (April 2007) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={AF4F8DD1-2A3C-416B-8E79-F58B6C80678F}&documentTitle=4045203>); *In the Matter of the Application of Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., a limited liability company, for a Certificate of Need for a Large Energy Facility within the State of Minnesota*, Application for a Certificate of Need for a Crude Oil Pipeline, § 7853.0230, p. 10 Docket No. PL-9/CN-07-465 (June 2007) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={AC9FF2F6-1772-4CC1-A254-61DD52C15B7E}&documentTitle=4407921>.)

<sup>9</sup> *In the Matter of the Application of Enbridge Pipeline (Southern Lights) L.L.C. for a Certificate of Need for a Crude Oil Pipeline for the Southern Lights Crude Oil Project*, Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations, Finding No. 68, Conclusion Nos. 8-9 Docket No. PL-9/CN-07-464 (March 24, 2008) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&>

recently, the Commission recognized that Line 4’s design capacity<sup>10</sup> is 884,000 barrels per day (“bpd”) and its annual average capacity<sup>11</sup> is 796,000 bpd.<sup>12</sup>

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[documentId={F3B7B2CF-5B19-4283-9BF2-E75A93ED3A84}&documentTitle=5029784](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={F3B7B2CF-5B19-4283-9BF2-E75A93ED3A84}&documentTitle=5029784)); *In the Matter of the Application of Enbridge Pipeline (Southern Lights) L.L.C. for a Certificate of Need for a Crude Oil Pipeline for the Southern Lights Crude Oil Project*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-464 (June 19, 2008) (adopting relevant findings and conclusions) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8757A2A4-2D0A-4859-A6D6-3D1D37F015AC}&documentTitle=5297314>); *In the Matter of the Application of Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., a limited liability company, for a Certificate of Need for a Large Energy Facility within the State of Minnesota*, Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations, p. 42, Finding Nos. 130-31 Docket No. PL-9/CN-07-465/PL-9/PPL-07-361 (July 17, 2008) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={737E3D4B-494B-470A-8F92-B42F70EDEC8A}&documentTitle=5361433>.)

<sup>9</sup> *In the Matter of the Application of Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., a limited liability company, for a Certificate of Need for a Large Energy Facility within the State of Minnesota*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-465 (Dec. 29, 2008) (adopting relevant findings and conclusions) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={ADE73302-ECA0-4576-BCD7-A5BB853D8DEA}&documentTitle=5674505>.)

<sup>10</sup> Design capacity is the average capacity of the pipeline and pumping facilities, at its current or proposed design state, for given types of liquids and their batch sequence. Design capacity is calculated assuming ideal operating conditions.

<sup>11</sup> Annual average capacity is the average sustainable pipeline throughput over a year. Annual capacity is calculated assuming historic average annual operating conditions. These operating conditions include scheduled and unscheduled maintenance, normal operating issues, and crude supply availability. Annual capacity of a pipeline is typically 90 percent of design capacity,

<sup>12</sup> See, e.g., Enbridge’s Application for a Route Permit and Partial Exemption, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Route Permit and Partial Exemption for the Fond du Lac Line 4 Project in St. Louis and Carlton Counties*, at § 3.0, 3-6, Docket No. PL-9/PPL-18-752 (Feb. 25, 2019) (“Design capacity for the entire existing Line 4 pipeline is 884 thousand barrels per day.”) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={801D2669-0000-C839-BE3D-908382056C08}&documentTitle=20192-150595-02>); *id.* at 3-7 (“Annual capacity of a pipeline is typically 90 percent of design capacity, and represents the capacity requested in this Application. Annual Average Capacity for the Line 4 pipeline is 796 kbpd.”); *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project - Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need, Docket No. PL-9/CN-13-53, at 5 (Nov. 17, 2014) (“Line 4 has a permitted



Line 67 is an 1,100-mile crude oil pipeline that transports heavy crude oil from Edmonton, Alberta, Canada to Superior, Wisconsin. In 2013, the Commission granted a Certificate of Need for Enbridge to increase the annual average capacity of Line 67 from 450,000 bpd to 570,000 bpd as part of the Line 67 Phase 1 Upgrade.<sup>13</sup> In 2014, the Commission granted a Certificate of Need for Enbridge’s Phase 2 Upgrade. With these approvals, the design capacity of Line 67 is 880,000 bpd and an annual average capacity of 800,000 bpd.<sup>14</sup>

On January 17, 2020, Enbridge submitted a Prevention of Significant Deterioration Permit Application to the WIDNR for the Superior Terminal Enhancements 2020 Project (“PSD Application”). The application was made consistent with Wisconsin law and rules regarding emissions limits for sources of air pollution and related compliance matters.<sup>15</sup> As it relates to the throughputs from Line 4 or Line 67 from Minnesota into the Superior Terminal, Enbridge’s prior air permits addressed emissions using 90 percent of each Line’s design capacity (i.e., the average annual capacity) as the baseline. As efficiencies have increased and line usage was optimized

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capacity of 796,000 bpd.”) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B0D841D2-FA9D-411E-BB54-427F4CF68E6B}&documentTitle=201411-104527-01}>).

<sup>13</sup> *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project in Marshall, Clearwater, and Itasca Counties*, Order Granting Certificate of Need, Docket No. PL-9/CN-12-590 (Aug. 12, 2013) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={7226AF15-6672-4440-893E-91EA37A868CC}&documentTitle=20138-90205-01}>).

<sup>14</sup> *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project - Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need, Docket No. PL-9/CN-13-53 (Nov. 17, 2014) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B0D841D2-FA9D-411E-BB54-427F4CF68E6B}&documentTitle=201411-104527-01}>).

<sup>15</sup> See Wis. Stat. Ch. 285, and Wis. Adm. Code Chs. NR 400 to 499.

(e.g., less downtime), Enbridge determined that increasing the throughput representations to better account for the fact that, in any given month and over an annual period, actual throughputs on Line 4 or Line 67 could exceed the annual average capacity (90 percent of design capacity on an annual average) was appropriate. To be clear: Enbridge is *not* making physical changes to Lines 4 and 67 to add capacity to those Lines. Enbridge explained this in its application to the WIDNR:

### **1.3.1 Terminal Throughput Capacity Increase**

The Project proposes to increase the potential inbound terminal throughput capacity from 3,035,000 to 3,213,400 bpd as a result of a change in the methodology used to represent the potential throughput capacities of existing Line 4 and Line 67. The Project also proposes to increase the terminal outbound throughput capacity from 2,880,000 to 3,013,333 bpd. The increase will not

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#### **1.3.1.1 Line 4 Throughput Capacity**

The throughput for Line 4 is currently represented at an annual average pipeline capacity of 796,000 bpd. Enbridge has identified optimizations and efficiencies on Line 4 such that it is potentially capable of operating above the current annual average pipeline capacity. The current permitted annual average pipeline capacity is 90% of the maximum constructed design capacity. Through this Project, Enbridge proposes to increase the throughput representation for Line 4 at the as-constructed maximum designed capacity of 884,500 bpd to account for this operational optimization. The proposed throughput capacity increase is simply a change in the maximum potential throughput capacity for Line 4, the increase will not require physical changes such as piping or other equipment modifications at the Superior Terminal and will not require modifications to Line 4 outside of the Superior Terminal.

#### **1.3.1.2 Line 67 Throughput Capacity**

The throughput for Line 67 is currently represented at an annual average pipeline capacity of 800,000 bpd. Enbridge has identified optimizations and efficiencies on Line 67 such that it is potentially capable of operating above the current annual average pipeline capacity. Through this Project, Enbridge proposes to increase the throughput representation for Line 67 at the as-constructed maximum designed capacity of 889,900 bpd to account for this operational optimization. The

proposed throughout capacity increase is simply a change in the maximum potential throughput capacity for Line 67, the increase will not require physical changes such as piping or other equipment modifications at the Superior Terminal and will not require modifications to Line 67 outside of the Superior Terminal.

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The information Enbridge provided in its WIDNR PSD Application is consistent with the Commission's permitting of Line 4 and Line 67. Specifically, the Commission previously permitted Line 4, which has a design capacity of 884,000 barrels per day and an annual average capacity of 90 percent of design capacity, or 796,000 barrels per day.<sup>17</sup> Likewise, the Commission permitted Line 67 with a design capacity of 880,000 barrels per day<sup>18</sup> and an annual average capacity of 90 percent of design capacity, or 800,000 barrels per day.<sup>19</sup>

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<sup>16</sup> See Enbridge's PSD Application at 2-3 (HTE Complaint, Attachment F.)

<sup>17</sup> See *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project - Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need PL-9/CN-13-53, p. 5 (Nov. 17, 2014) (“Line 4 has a permitted capacity of 796,000 bpd.”) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B0D841D2-FA9D-411E-BB54-427F4CF68E6B}&documentTitle=201411-104527-01>); see, e.g., *In re Enbridge Energy, Limited Partnership Pipeline Routing Permit and Partial Exemption Application*, § 3.0, 3-6 (“Design capacity for the entire existing Line 4 pipeline is 884 thousand barrels per day. . . .”) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={801D2669-0000-C839-BE3D-908382056C08}&documentTitle=20192-150595-02>); *id.* at § 3.0, 3-7 (“Annual capacity of a pipeline is typically 90 percent of design capacity, and represents the capacity requested in this Application. Annual Average Capacity for the Line 4 pipeline is 796 kbpd.”).

<sup>18</sup> Note that there is a slight difference between the design capacity representation in the WIDNR Application (889,900 barrels per day) and the Commission-permitted capacity of Line 67 (880,000 barrels per day). The difference is a function of whether annual average capacity is calculated as a function of the design capacity (889,900 bpd x 0.9 = 800,910 bpd) or if, instead, the design capacity is calculated as a function of the average annual capacity (800,000 bpd x 1.1 = 880,000 bpd). In this case, the difference in methodology is not material.

<sup>19</sup> *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project - Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Order Granting Certificate of Need PL-9/CN-13-53, p. 5 n.13 (Nov. 17, 2014) (“Enbridge designed Line 67 to be able to transport 880,000 bpd but anticipated operating the line at 90 percent of capacity, consistent with

While Enbridge has not added any piping or horsepower to either Line, Enbridge has identified efficiencies that more consistently allow these Lines to operate nearer to their annual average capacities on a more regular basis and at times nearer to their design capacities as volumes warrant. As shown in the tables<sup>20</sup> below, however, Enbridge’s actual throughputs for Line 4 and Line 67 *ex* Gretna (i.e., the United States and Canada border) have not exceeded the capacities approved by the Commission by more than 10 percent:

<b>Line 4 Throughput (kbpd) <i>ex</i> Gretna</b>													
<b>Year</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>Annual Average</b>
2014	599	566	680	662	583	709	711	690	694	651	628	670	654
2015	703	676	685	733	704	700	711	677	675	669	696	692	693
2016	692	716	710	748	708	711	712	671	681	595	705	725	698
2017	725	724	736	767	744	684	741	775	785	759	800	797	753
2018	803	781	753	822	820	749	781	753	746	765	775	783	778
2019	768	787	783	820	773	833	781	783	720	772	825	831	790
2020	850	855	856	772	737	808	839	795	755				808

<b>Line 67 Throughput (kbpd) <i>ex</i> Gretna</b>													
<b>Year</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>Annual Average</b>
2014	396	463	424	434	473	471	467	455	479	466	506	528	463
2015	575	553	546	565	556	511	676	747	715	670	694	810	636
2016	799	835	801	816	636	702	799	801	724	772	818	853	779
2017	858	815	861	850	807	827	838	788	787	799	833	883	829
2018	871	870	875	838	795	836	844	833	822	858	882	850	848
2019	865	869	883	866	824	882	868	850	852	860	882	870	864
2020	888	886	870	749	665	743	859	771	792				802

industry practice.”) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B0D841D2-FA9D-411E-BB54-427F4CF68E6B}&documentTitle=201411-104527-01>).

<sup>20</sup> Affidavit of Maury Porter (filed herewith), ¶¶ 2-3. The throughput figures are represented in kilobarrels per day (kbpd).

Given these facts, as well as the Commission’s lack of jurisdiction (as explained below), Enbridge respectfully requests that the Commission decline to initiate further investigation into HTE’s Complaint.

### **III. ARGUMENT**

#### **A. Applicable Standards.**

HTE relies on Minn. Stat. § 216.13, Minn. Stat. § 216B.14, Minn. R. 7829.1700, and Minn. R. 7853.0800 to assert that the Commission has jurisdiction over its Complaint. For the reasons set forth below, HTE is not correct. Neither the statutes nor the rules grant the Commission jurisdiction to consider the Complaint or the authority to assume a wide-ranging, supervisory role over Enbridge’s operations, as HTE seeks to have the Commission undertake.

Administrative agencies such as the Commission have only those powers given to them by the Legislature.<sup>21</sup> The Commission’s regulatory authority may be either expressly stated in the legislation or implied from its express powers.<sup>22</sup> As it relates to crude oil pipelines, the Legislature has only given the Commission authority over construction and routing of a pipeline.<sup>23</sup> Specifically, Minn. Stat. § 216B.243, subd. 2 states that “[n]o large energy facility shall be *sited or constructed* in Minnesota without the issuance of a certificate of need by the commission. . . .”<sup>24</sup> Likewise, Minn. Stat. § 216G.02, subd. 2 also states that “a person may not *construct* a pipeline without a pipeline routing permit issued by the Public Utilities Commission. . . .”<sup>25</sup>

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<sup>21</sup> *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010); *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm’n*, 369 N.W.2d 530, 534 (Minn. 1985) (“The legislature states what the agency is to do and how it is to do it.”).

<sup>22</sup> *Peoples Nat. Gas Co.*, 369 N.W.2d at 534.

<sup>23</sup> Minn. Stat. § 216GA.05, subd. 2(4); Minn. Stat. § 216B.243, subd. 2 and 3; and Minn. Stat. § 216G.

<sup>24</sup> (Emphasis added.)

<sup>25</sup> (Emphasis added.)

In considering the scope of the Commission’s authority, the Minnesota Supreme Court has stated that:

While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature. “Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency’s powers beyond that which was contemplated by the legislative body.”<sup>26</sup>

The Court has further stated that “[a]s a general rule, we resolve any doubt about the existence of an agency’s authority *against* the exercise of such authority.”<sup>27</sup>

**B. The Commission Does Not Have Authority Over The HTE Complaint.**

**1. The Commission does not have jurisdiction over matters that would affect the Line 3 Replacement Pipeline Project Orders on appeal.**

The Commission’s Line 3 Replacement Pipeline Project Orders have been appealed by HTE and others.<sup>28</sup> As a result, the Commission does not have jurisdiction to issue an order that could affect the order on appeal.<sup>29</sup> HTE’s Complaint is an attempt to attack the Commission’s

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<sup>26</sup> *Peoples Nat. Gas Co.*, 369 N.W.2d at 534 (quoting *Waller v. Powers Dep’t Store*, 343 N.W.2d 655, 657 (Minn.1984)).

<sup>27</sup> *In re Qwest’s Wholesale Serv. Quality Standards*, 702 N.W.2d 246, 259 (Minn. 2005) (citing *In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)) (emphasis added).

<sup>28</sup> See *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, Order consolidating appeal numbers A20-1071, A20-1072, A20-1074, A20-1075, and A20-1077 (Minn. Ct. App.).

<sup>29</sup> “The filing of a writ of certiorari suspends the authority of an administrative body to issue an order affecting the original order or judgment.” Magnuson and Herr, 3 Minn. Prac. App. R. Ann. R. 108, § 108.3 (June 2020 Update) (citing *Little v. Arrowhead Reg’l Corrs.*, 773 N.W.2d 344, 345-46 (Minn. Ct. App. 2009) (additional citations omitted)); see Minn. Stat. § 216.27 (“When an appeal is taken, the . . . Court of Appeals shall have full jurisdiction to hear and determine the matter appealed. The proceeding shall be governed by the Rules of Civil Appellate Procedure. . . .”) (emphasis added); see also *In re N. Metro Harness, Inc.*, 711 N.W.2d 129, 135–36 (Minn. Ct. App. 2006) (although administrative agencies have the power to reopen a matter after a decision has been made, “this power lasts until jurisdiction is lost by appeal or certiorari”).

Line 3 Replacement Pipeline Project Orders. The HTE Complaint devotes a substantial amount of focus on the Line 3 Replacement Pipeline Project proceedings, testimony therein, and ultimately argues, as it did throughout the proceeding, that Enbridge “does not need the capacity that would be provided by the L3R [Project.]”<sup>30</sup> Such a collateral attack, seeking to affect matters on appeal, is outside the Commission’s jurisdiction under black letter law. Thus, the Commission does not have jurisdiction to entertain the wide-ranging inquiry that HTE seeks in its Complaint.<sup>31</sup>

**2. The Commission does not have authority to open an investigation under Minn. Stat. § 216B.14, because Enbridge is not a “Public Utility” for the purposes of that statute.**

HTE asserts the Commission has authority to open an investigation under Minn. Stat. § 216B.14 into all capacity-related projects on Enbridge’s Mainline System, as well as projects (or potential projects) that are not part of the Mainline System (and apparently including pipelines that do not travel through Minnesota at all).<sup>32</sup> Section 216B.14 provides that the Commission “may investigate and examine the condition and operation of any *public utility or any part thereof*. . . .” (Emphasis added.) For purposes of Minn. Stat. Ch. 216B, “public utility” is defined as follows:

persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel

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<sup>30</sup> HTE Complaint at 37.

<sup>31</sup> Notably, nearly all of the information HTE relies upon in these sections was available to it at the time it filed comments in January 2020 and when it filed a reconsideration petition in May 2020 in the Line 3 Replacement Pipeline Project proceeding.

<sup>32</sup> HTE Complaint at 38 (Relief Requested); *id.* at 29 (describing a potential Line 13 reversal project that has been identified (but has not gone forward) “for years” and a capacity increase on a pipeline that terminates in the state of Wyoming).

which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section 169.011, subdivision 26a, and that is not otherwise a public utility under this chapter. . . .<sup>33</sup>

Enbridge is not a “public utility” for the purposes of this statute. It does not “operate, maintain, or control equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof. . . .”

Therefore, the Commission does not have jurisdiction to open an investigation under Minn. Stat. § 216B.14.

**3. The Commission does not have jurisdiction under Minn. Stat. § 216.13.**

HTE asserts that Minn. Stat. § 216.13 gives the Commission jurisdiction over the HTE Complaint. As set forth below, Minn. Stat. § 216.13 is not applicable in this matter.

Section 216.13 provides as follows:

Proceedings before the commission against *any such carrier or public warehouse operator* shall be instituted by complaint, verified as a pleading in a civil action, stating in ordinary language the facts constituting the alleged omission or offense. The parties to such proceedings shall be termed, respectively, “complainant” and “respondent.”

(Emphasis added.) In this case, whether jurisdiction exists or not depends on whether Enbridge is within the scope of the phrase “any such carrier,” which is not defined in Minn. Stat. § 216.13 or elsewhere.<sup>34</sup> Thus, to determine what “any such carrier” means, and whether Enbridge can be one

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<sup>33</sup> Minn. Stat. § 216B.02, subd. 4.

<sup>34</sup> HTE also asserts in a footnote that the Commission’s January 18, 2019 *Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration*, which established a complaint procedure for the Line 3 Replacement Project Route Permit, somehow confirms the Commission’s jurisdiction to hear complaints generally “related to crude oil pipeline matters within its jurisdiction.” HTE Complaint at 3, n.1. On its face, the Commission’s Complaint Handling procedure incorporated into the Line 3 Replacement Project’s Route Permit does not “confirm” the Commission’s jurisdiction over HTE’s allegations about throughputs on Lines 4 and 67.



of them, the Commission must consider the context in which it is used. Specifically, “any such” modifies “carrier,” and rules of grammar dictate that one must look at preceding sections of Chapter 216 to construe the phrase. This task is complicated somewhat by the fact that all of the substantive, preceding sections of Chapter 216 have been repealed and/or replaced, as the Commission now holds duties previously held by the Railroad and Warehouse Commission. *See* MN Laws 1967, chapter 864.<sup>35</sup>

The Railroad and Warehouse Commission was charged with “[t]he general supervision of railroads and express companies doing business as common carriers, and of public warehouses. . . .”<sup>36</sup> Section 216.12, which was repealed in 1957, provided as follows:

216.12 DUTIES. The commission shall inquire into the management of the business of *all carriers and warehousemen subject to its supervision*, keep itself informed as to the manner in which the same is conducted, and obtain from such carriers and warehousemen all information necessary for the performance of its duties. One of their number or an employee designated by the commission shall visit the stations on the lines of each railroad as often as practicable, and personally inquire into the management of such railroad business, and at least once each year visit every county having a railroad station and inquire into the management of such railroad business. For this purpose all common carriers and their officers and employees are required to furnish such commissioners or employees with reasonable and proper facilities. Each commissioner, or designated employee, in his official capacity shall pass free on all railroad trains and at all suitable times may enter and remain in the cars, offices, or depots of any railroad company; and when in the judgment of the commission any common carrier fails in any respect to comply with the law, or any repairs are necessary upon its railroad or any reasonable addition to or change of its stations, station houses, or transfer facilities, or change in the mode of operating its road or conducting its business, will promote the security or convenience of the public, or when in the judgment of

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<sup>35</sup> The Commission was vested with “all of the rights and powers,” and is to “perform” all of the duties vested in it by Minn. Stat. Ch. 216A and those formerly vested by law in the Railroad and Warehouse Commission. Minn. Stat. § 216A.01.

<sup>36</sup> *See* Minn. Stat. § 216.01 (1965). The Railroad and Warehouse Commission was also given jurisdiction over telephone companies. *See* Minn. Stat. § 237.02.

the commission the operation by any common carrier of one passenger train each way on each and every day, including Sundays, through each county-seat station on the line of such carrier will promote the security or convenience of the public, the commission by a written order, to be served as a summons in civil actions, shall require compliance with such law or the making of such repairs, additions, or change. In case of disobedience of the order, the commission may cause an action to be commenced for the enforcement thereof.

In light of the scope of the Railroad and Warehouse Commission's general supervisory powers, and the more discrete provisions regarding orders to be issued against common carrier railroads in section 216.12, the broadest possible reading of "any such carrier" includes those entities over which the Railroad and Warehouse Commission had supervisory duties and powers. Those entities included public warehouses, telephone companies, and "railroads and express companies doing business as common carriers," but they did not include interstate pipeline companies.

HTE also asserts in a footnote that Enbridge's "common carrier" status puts it within the scope of Minn. Stat. § 216.13.<sup>37</sup> HTE ignores the fact that "common carrier" is not synonymous with "express company" under Minnesota law.<sup>38</sup> Moreover, transportation by pipelines was separately addressed at that time, although those provisions expressly did not apply to transportation by pipeline of "petroleum products."<sup>39</sup>

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<sup>37</sup> HTE Complaint at 3 n.1.

<sup>38</sup> See, e.g., *Bloom v. Am. Exp. Co.*, 23 N.W.2d 570, 574 (Minn. 1946) ("such association is not a common carrier or an express company (as to both of which other appropriate means for acquiring jurisdiction are provided by our laws). . . ."); Minn. Stat. § 219.88, subd. 2 (1965) (differentiating between "express" companies and "other common carrier[s]"); Minn. Stat. § 272.01, subd. 3(b) (1965) (differentiating between "express" companies and pipelines); Minn. Stat. § 295.01, subd. 4 (1965) (defining "express companies" for taxation purposes as those in the business of moving articles "by express"); Minn. Stat. § 617.26 (1965) ("express company or other common carrier").

<sup>39</sup> Minn. Stat. §§ 221.54 and .55 (1965).

Enbridge is not within the scope of “carriers” that are subject to an action before the Commission under Minn. Stat. § 216.13. Therefore, Minn. Stat. § 216.13 does not provide the Commission with jurisdiction over HTE’s Complaint.

**4. The Commission does not have jurisdiction under Minn. R. 7829.1700.**

HTE cites to Minn. R. 7829.1700 as a source of jurisdiction over its Complaint. Rule 7829.1700, however, is a process provision; it does not create jurisdiction.

**5. The Commission does not have jurisdiction under Minn. R. 7853.0800.**

The Legislature gave the Commission express authority to approve certificates of need and pipeline routing permits for large energy facilities.<sup>40</sup> That authority is further limited only to those large energy facilities constructed after the Rules went into effect in the 1970s.<sup>41</sup>

The Legislature determined the showing necessary for construction of a large energy facility,<sup>42</sup> and empowered the Commission to adopt assessment of need criteria “to be used in the determination of need for large energy facilities pursuant to [Minn. Stat. § 216B.243].”<sup>43</sup> The Legislature did not vest the Commission with an ongoing, supervisory role after pipelines meeting the definition of a “large energy facility” were permitted, constructed, and in operation. Nor did the Legislature vest the Commission with an overseer role over all of the Mainline System. The Commission’s rules must be interpreted in light of the scope of its statutory jurisdiction.

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<sup>40</sup> Minn. Stat. § 216.243, subd. 2; Minn. Stat. § 216G.02.

<sup>41</sup> Minn. R. 7853.0030. The scope of the Commission’s authority regarding certificates of need is further limited by Rule only to those large energy facilities constructed after the Rules went into effect in 1976. 1 S.R. 705-706 (Nov. 8, 1976).

<sup>42</sup> Minn. Stat. § 216B.243, subd. 3 (“No proposed large energy facility shall be certified for construction unless. . .”).

<sup>43</sup> Minn. Stat. § 216B.243, subd. 1.

The Commission’s rules regarding the determination of need are found in Minn. R. Ch. 7853. The stated purpose of Chapter 7853 “is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for . . . large petroleum pipelines . . . pursuant to Minnesota Statutes, section 216B.243.”<sup>44</sup>

The Rule at issue here is Minn. R. 7853.0800. That rule, to Enbridge’s knowledge, has not previously been applied to any analogous circumstances—specifically where no new large energy facilities are proposed and instead operational changes have been made to an already-permitted, constructed, and -in-service interstate crude oil pipeline.

Rule 7853.0800 only fits within the purpose of Chapter 7853—and the scope of the Commission’s statutory and rule-making authority, if it is read to apply to changes made *after* the Commission issues a Certificate of Need but *before* a pipeline is constructed or placed in-service.<sup>45</sup> Minnesota Statutes § 216B.243, subd. 3, sets for the criteria to be shown in order for the Commission to “certif[y] for construction” a large energy facility. If Minn. R. 7853.0800 is now interpreted to apply to a pipeline that has already been constructed or placed in-service, where “construction” of a new large energy facility is not involved, which is what the Commission would have to determine in order to proceed further, then the Commission is assuming an ongoing, supervisory role over *any* change in a pipeline other than those listed in subp. 2 throughout the life of the pipeline.<sup>46</sup> This goes well beyond the Commission’s authority for determining the need for,

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<sup>44</sup> Minn. R. 7853.0020.

<sup>45</sup> The electric transmission line siting rules more clearly articulate this reading. *Compare* Minn. R. 7849.0400 *with* Minn. R. 7853.0800. There is little reason, however, to read the two sets of analogous rules to create vastly different post-construction supervisory roles for the Commission.

<sup>46</sup> *See* Minn. R. 7853.0800 (“If an applicant determines that a change greater *or other than those specified in subpart 2 is necessary or desirable*, it shall inform the commission of the desired change. . . .[.]” and describing the Commission’s obligations) (Emphasis added).

and authorizing the construction of, a new large energy facility. Because such ongoing authority has not been conferred on the Commission by the Legislature, the Commission should interpret Rule 7853.0800 as inapplicable to already-constructed and in-service interstate crude oil pipelines.

Second, the Commission has already established a pipeline does not need a certificate of need for projects that “expand an existing large petroleum pipeline” unless the expansion is “in excess of either 20 percent of [the pipeline’s] rated capacity or 10,000 barrels per day, whichever is greater.”<sup>47</sup>

Third, the language of Rule 7853.0800, subp. 2 demonstrates the fallacy of HTE’s position. For example, under subpart 2.A, a pipeline operator deciding, or required by federal regulations, to reduce capacity by more than 10 percent for maintenance, pressure restrictions, reduced demand, or otherwise, would be subject to the Commission’s “recertification” approval. To apply the rule as HTE asserts, one would have to assume Commission jurisdiction over this scenario even if there were no physical changes to the related large energy facility. There is no express authority for such control by the Commission, nor can it be fairly implied. Indeed, considering that pipeline operations are the province of the federal government, reading Minn. R. 7853.0800 to apply in this circumstance would implicate both preemption and constitutional concerns.

Applying subpart 2.B or subpart 2.C to an in-service pipeline is also problematic. Why would an already-constructed pipeline be shortened or lengthened by more than 10 percent of a length approved by the Commission? How would the in-service date of a pipeline change, and be subject to recertification by the Commission, *after* the pipeline is in-service? These are questions to which there are no good answers. In the absence of good answers, the Commission’s authority

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<sup>47</sup> Minn. R. 7853.0030(D).

is, at best, doubtful, and the law compels that the Commission should not attempt to exceed its authority by exercising jurisdiction in this case.

**IV. EVEN IF THE COMMISSION HAD JURISDICTION, THERE ARE NO REASONABLE GROUNDS TO INVESTIGATE HTE'S UNFOUNDED ALLEGATIONS THAT ENBRIDGE IS PLANNING TO "IMMINENTLY" INCREASE THE CAPACITY OF LINE 4 OR LINE 67.**

Because the Commission has no jurisdiction to determine matters that could affect the Line 3 Replacement Project Orders on appeal, no further discussion of those matters is made below. As discussed above, the Commission also does not have jurisdiction regarding HTE's assertions related to Lines 4 and 67. Even if the Commission did have jurisdiction, however, there is no basis to undertake the investigation suggested by HTE.

**A. There is No Basis to Investigate Further and Doing so is Tantamount to Requiring Enbridge to Recertify Line 4 or Line 67 Where Enbridge is Not Adding Capacity.**

HTE asserts that the Commission should order Enbridge to seek recertification for Line 4 and Line 67 pursuant to Minn. R. 7853.0800, subp. 2.A and subp. 3, because Enbridge has imminent plans to increase each Line's capacity by more than 10 percent of their respective permitted capacity.<sup>48</sup> HTE's assertion is baseless for multiple reasons.

By its plain language, Minn. R. 7853.0800 is not triggered unless Enbridge determines it is necessary or desirable to add capacity more than 10 percent higher than what the Commission has approved. Thus, the question is: has Enbridge determined that it is necessary or desirable to add capacity in an amount more than 10 percent higher than capacities previously approved by the Commission for Line 4 or Line 67? As set forth in the description of Enbridge's WIDNR application, discussed above, Enbridge does not have "imminent" plans to increase the capacity

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<sup>48</sup> HTE Complaint at 2.

on either Line 4 or Line 67 beyond the capacity that those lines already have. The following table bears this out:

	Annual Average Capacity	Maximum Annual Average Allowed Without Recertification (assuming annual average capacity is the measure and that Minn. R. 7853.0800, subp. 2 applies) <sup>49</sup>	Highest Actual Annual Average Throughput (through 2019)
Line 4	796,000	875,600	790,000
Line 67	800,000	880,000	864,000

Accordingly, if the Commission interpreted Minn. R. 7853.0800 as giving it long-lasting, supervisory authority over interstate crude oil pipeline operations, there is no factual basis for further investigating this issue.

**B. HTE’s Complaint Misconstrues the WIDNR Application.**

HTE asserts that Enbridge’s application to the WIDNR regarding certain air emissions permits shows that Enbridge has “imminent” plans to expand each Line’s capacity.<sup>50</sup> HTE uses this assertion to prop up its argument that Enbridge is increasing capacity through these Lines, and thus the Mainline System, by an additional 178,400 barrels per day. HTE then tries to argue that a targeted investigation about this increase should be used as the “context” for a larger investigation into the Mainline System, apparently without regard for the fact that some of the pipelines that make up the system are not subject to the Commission’s jurisdiction at all. HTE’s assertion is based on a fundamental misunderstanding of the facts and applicable permitting regimes.

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<sup>49</sup> These numbers are created by multiplying the Annual Average Capacity figures by 110 percent. They are more conservative (less than) the numbers that would be the product of multiplying the design capacity by 90 percent.

<sup>50</sup> HTE Complaint at 24.

In the WIDNR application, Enbridge proposed to increase the throughput representations, for air emissions purposes, based “on a change in the methodology used to represent the potential throughput capacities of existing Line 4 and Line 67.” Prior to the application, the WIDNR permits were issued based on throughput representation capacities equal to average annual pipeline capacities—796,000 barrels per day for Line 4 and 800,000 barrels per day for Line 67—and not their design capacity bases. Through the change, Enbridge is not proposing to add to the average annual capacity representation, but is instead accounting in its air emissions permitting the fact that, during some periods, the throughput may be higher than those average annual capacities previously cited.

While Enbridge disputes that the overall capacity of the Mainline System is within the Commission’s jurisdiction for the purposes of this proceeding, for the sake of transparency, the following capacities were used in Enbridge’s PSD Application to the WIDNR:

**Table 1-4**  
**Enbridge Energy, Limited Partnership - Superior, WI Terminal**  
**Superior Terminal Enhancements 2020**  
**Permitted Maximum Terminal Throughput Capacity Summary<sup>(1)</sup>**

Inbound Pipeline Number	Maximum Annual Pipeline Design Capacity (m <sup>3</sup> /day)	Maximum Annual Pipeline Design Capacity (bbl/day)	Maximum Annual Pipeline Design Capacity (gal/day)	Comments
1	38,000	237,000	9,954,000	No Change
2b	70,000	442,000	18,564,000	No Change
3	121,000	760,000	31,920,000	No Change
4	140,624	884,500	37,149,000	Proposed increase from 796,000 bbl/day
67	141,483	889,900	37,375,800	Proposed increase from 800,000 bbl/day
Total	511,107	3,213,400	134,962,800	

51

The numbers and explanation set forth in Enbridge’s WIDNR application do not show that Enbridge has raised or plans to raise the capacities of Line 4 or Line 67 to more than 10 percent of either Line’s already-approved capacity. They simply reflect that, at various times, both Lines

<sup>51</sup> See Enbridge’s PSD Application, App’x B, Table 1-4 (HTE Complaint, Attachment F.)



may operate above their annual average capacity. Recently, the throughputs have been higher than they were previously and, accordingly, Enbridge has sought and received approval from the WIDNR related to air emissions at these potential throughput amounts. As such, there are not reasonable grounds for the Commission to consider the HTE Complaint any further.

## V. CONCLUSION

For the reasons set forth above, Enbridge respectfully requests the Commission determine it lacks jurisdiction over the Complaint and moreover that there are not reasonable grounds for a further investigation. Enbridge further reserves all rights and defenses to the allegations set forth in the HTE Complaint.

Dated: November 25, 2020

Respectfully submitted,

*/s/ Christina K. Brusven*

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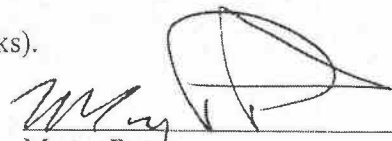
**Attorneys for Enbridge Energy, Limited  
Partnership**




2018	803	781	753	822	820	749	781	753	746	765	775	783	778
2019	768	787	783	820	773	833	781	783	720	772	825	831	790
2020	850	855	856	772	737	808	839	795	755				808

Line 67													
Year	1	2	3	4	5	6	7	8	9	10	11	12	Annual Average
2014	396	463	424	434	473	471	467	455	479	466	506	528	463
2015	575	553	546	565	556	511	676	747	715	670	694	810	636
2016	799	835	801	816	636	702	799	801	724	772	818	853	779
2017	858	815	861	850	807	827	838	788	787	799	833	883	829
2018	871	870	875	838	795	836	844	833	822	858	882	850	848
2019	865	869	883	866	824	882	868	850	852	860	882	870	864
2020	888	886	870	749	665	743	859	771	792				802

3. The annual average amounts listed in the final column of the tables in the foregoing paragraph are weighted averages of the monthly throughputs, with a weighting applied to each monthly average throughput equivalent to the number of days in each month, therefore accounting for the differentials in the numbers of days in different months of the year. Further, I note that the data identified above—throughput data by line—will vary slightly from data filed with the Canadian Energy Regulator (CER). The difference is driven by the fact that data filed with the CER is by commodity type (not broken down by line) and based on deliveries *ex* Gretna (and transit time to delivery is approximately two-to-three weeks).

  
 Maury Porter

Subscribed and sworn to before me  
 this 27<sup>th</sup> day of November 2020

  
 Notary Public  
**JASON T. MARINO**  
 Barrister & Solicitor  
 Notary Public in and  
 for the Province of  
 Alberta