

March 9, 2021

VIA E-MAIL AND ELECTRONIC FILING

Mr. Scott Ek
Energy Facility Planner
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147
scott.ek@state.mn.us

**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. Ek:

Enclosed please find:

1. Enbridge Energy, Limited Partnership's Response to Minnesota Public Utilities Commission's Information Request No. 1;
2. Attachment A to Enbridge Energy, Limited Partnership's Response to Minnesota Public Utilities Commission's Information Request No. 1; and
3. Certificate of Service.

The documents referenced above have been e-filed today through 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

Christina K. Brusven

Attorney at Law

Direct Dial: 612.492.7412

Email: cbrusven@fredlaw.com

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Enbridge Energy, Limited Partnership
Response to
Minnesota Public Utilities Commission
Information Request

MPUC Docket No.: PL9/C-20-801 ☐ Nonpublic ☒ Public

Requested From: Enbridge Energy, Limited Partnership
Christina K. Brusven
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

Requested by:	Scott Ek	Date of Request: 3/02/2021
Party:	Minnesota Public Utilities Commission	Response Due: 3/09/2021
Email Address:	scott.ek@state.mn.us	
Phone Number:	651-201-2255	

Request Number: 1

Topic: General

References:

REQUEST:

Please provide the below information for the Enbridge Mainline System between Gretna, Manitoba and Superior, Wisconsin.

- The design capacity in barrels per day (bpd) of the Mainline System as a whole for the years 2012 to present.
- The annual average capacity in bpd of the Mainline System as a whole for the years 2012 to present.
- The actual or effective capacity in bpd of the Mainline System as a whole for the years 2012 to present.
- The individual design capacity of lines 1, 2b, 3, 4, 65, and 67 in bpd for the years 2012 to present.
- The individual annual average capacity of lines 1, 2b, 3, 4, 65, and 67 in bpd for the years 2012 to present.
- The individual actual or effective capacity of lines 1, 2b, 3, 4, 65, and 67 in bpd for the years 2012 to present.

Please provide the permit(s) or regulatory document(s) or reference to the permit(s) or regulatory document(s) that substantiate the capacity data requested above.

RESPONSE:

In this response, Enbridge is providing two sets of tables (A and B) in response to requests for the design capacity, annual average capacity and effective capacity of the Mainline as a whole and individual pipelines between Gretna, Manitoba and Superior, Wisconsin. The “A” tables (Tables 1A, 2A, 3A and 4A) include Refined Products and NGL on Line 1. All refined products are delivered upstream of the Canada/US border, i.e., they do not pass Gretna into Minnesota. To assist with reviewing this information, the “B” tables (Tables 1B, 2B, 3B and 4B) provide the same information, excluding Refined Products and NGL on Line 1.

Table 1A: Design and Annual Average Capacity in bpd of the Mainline system as a whole¹[illegible]

1. Table 1A includes Refined Products and NGL on Line 1.

2. Stated capacities are as of January 1 of the respective year.

3. The design and annual average capacities of Line 67 and Line 3 changed mid-year in 2014, 2015 and 2019 as follows:

2014 - Annual Capacity of Line 67 increased from 450 kbpd to 570 kbpd in September 2014 as part of Alberta Clipper Expansion Phase I

2015 - Annual Capacity of Line 67 increased from 570 kbpd to 800 kbpd in July 2015 as part of Alberta Clipper Expansion Phase II.

2019 - Annual Capacity of Line 3 increased from 390 kbpd to 430 kbpd in December 2019 with in-service of the Canadian portion of Line 3 Replacement.

Table 1B: Design and Annual Average Capacity in bpd of the Mainline system as a whole¹									
Capacity (bpd)²	2012	2013	2014³	2015³	2016	2017	2018	2019³	2020
Design Capacity of the Mainline system as a whole	2,526,000	2,526,000	2,526,000	2,659,000	2,915,000	2,915,000	2,915,000	2,915,000	2,960,000
Annual Average Capacity of the Mainline System as a whole	2,277,000	2,277,000	2,277,000	2,397,000	2,627,000	2,627,000	2,627,000	2,627,000	2,667,000
Notes:									
1. Table 1B excludes Refined Products and NGL on Line 1. 2. Stated capacities are as of January 1 of the respective year. 3. The design and annual average capacities of Line 67 and Line 3 changed mid-year in 2014, 2015 and 2019 as follows: 2014 - Annual Capacity of Line 67 increased from 450 kbpd to 570 kbpd in September 2014 as part of Alberta Clipper Expansion Phase I 2015 - Annual Capacity of Line 67 increased from 570 kbpd to 800 kbpd in July 2015 as part of Alberta Clipper Expansion Phase II 2019 - Annual Capacity of Line 3 increased from 390 kbpd to 430 kbpd in December 2019 with in-service of the Canadian portion of Line 3 Replacement									

Table 2A: Actual or Effective Capacity in bpd of the Mainline system as a whole¹									
Capacity (bpd)	2012	2013	2014	2015	2016	2017	2018	2019	2020
Actual or Effective Capacity of the Mainline system as a whole²	See note 3 below		2,226,000	2,333,000	2,580,000	2,623,000	2,718,000	2,775,000	2,862,000
Notes:									
<p>1. The effective capacity in Table 2A includes Line 1 NGL and refined product volumes.</p> <p>2. Effective capacities are calculated based on a 3-year average of operational data of apportioned lines where such information is available. For periods where apportionment was inconsistent, 1 or 2 years of operational data was used to calculate effective capacity.</p> <p>3. Effective Capacity has not been included for 2012 and 2013 since the Mainline System was not yet in consistent apportionment.</p>									

Table 2B: Actual or Effective Capacity in bpd of the Mainline system as a whole¹									
Capacity (bpd)	2012	2013	2014	2015	2016	2017	2018	2019	2020
Actual or Effective Capacity of the Mainline system as a whole²	See note 3 below		2,028,000	2,135,000	2,379,000	2,418,000	2,505,000	2,557,000	2,640,000
Notes:									
1. The effective capacity in Table 2B excludes Line 1 NGL and refined product volumes. 2. Effective capacities are calculated based on a 3-year average of operational data of apportioned lines where such information is available. For periods where apportionment was inconsistent, 1 or 2 years of operational data was used to calculate effective capacity. 3. Effective Capacity has not been included for 2012 and 2013 since the Mainline System was not yet in consistent apportionment.									

Table 3A: Individual Design and Annual Average Capacity of Lines 1, 2B, 3, 4, 65, and 67 in bpd¹									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
	Design Capacity (bpd)								
Line 1	264,000	264,000	264,000	264,000	264,000	264,000	264,000	264,000	264,000
Line 2B	491,000	491,000	491,000	491,000	491,000	491,000	491,000	491,000	491,000
Line 3	433,000	433,000	433,000	433,000	433,000	433,000	433,000	433,000	478,000
Line 4	883,000	883,000	883,000	883,000	883,000	883,000	883,000	883,000	883,000
Line 65	206,000	206,000	206,000	206,000	206,000	206,000	206,000	206,000	206,000
Line 67	500,000	500,000	500,000	633,000	889,000	889,000	889,000	889,000	889,000
	Annual Average Capacity (bpd)								
Line 1	237,000	237,000	237,000	237,000	237,000	237,000	237,000	237,000	237,000
Line 2B	442,000	442,000	442,000	442,000	442,000	442,000	442,000	442,000	442,000
Line 3	390,000	390,000	390,000	390,000	390,000	390,000	390,000	390,000	430,000
Line 4	796,000	796,000	796,000	796,000	796,000	796,000	796,000	796,000	796,000
Line 65	186,000	186,000	186,000	186,000	186,000	186,000	186,000	186,000	186,000
Line 67	450,000	450,000	450,000	570,000	800,000	800,000	800,000	800,000	800,000
Notes:									
1. For simplicity, if a pipeline expansion occurs in a given year, the increase in Capacity is shown in Table 3A above in the following year. For example, Line 67 expanded from 570 kbpd to 800 kbpd in July 2015. This increase in capacity is shown in 2016 in Table 3A.									

Table 3B: Individual Design and Annual Average Capacity of Lines 1, 2B, 3, 4, 65, and 67 in bpd¹									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
	Design Capacity (bpd)								
Line 1²	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000
Line 2B	491,000	491,000	491,000	491,000	491,000	491,000	491,000	491,000	491,000
Line 3	433,000	433,000	433,000	433,000	433,000	433,000	433,000	433,000	478,000
Line 4	883,000	883,000	883,000	883,000	883,000	883,000	883,000	883,000	883,000
Line 65	206,000	206,000	206,000	206,000	206,000	206,000	206,000	206,000	206,000
Line 67	500,000	500,000	500,000	633,000	889,000	889,000	889,000	889,000	889,000
	Annual Average Capacity (bpd)								
Line 1²	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000	13,000
Line 2B	442,000	442,000	442,000	442,000	442,000	442,000	442,000	442,000	442,000
Line 3	390,000	390,000	390,000	390,000	390,000	390,000	390,000	390,000	430,000
Line 4	796,000	796,000	796,000	796,000	796,000	796,000	796,000	796,000	796,000
Line 65	186,000	186,000	186,000	186,000	186,000	186,000	186,000	186,000	186,000
Line 67	450,000	450,000	450,000	570,000	800,000	800,000	800,000	800,000	800,000
Notes:									
<p>1. For simplicity, if a pipeline expansion occurs in a given year, the increase in Capacity is shown in Table 3B above in the following year. For example, Line 67 expanded from 570 kbpd to 800 kbpd in July 2015. This increase in capacity is shown in 2016 in Table 3.</p> <p>2. NGL and Refined Products have been removed from the Line 1 Capacities in Table 3B, hence the annual average and design capacity for Line 1 is lower in Table 3B relative to Table 3A above. Lights on Line 1 vary on a monthly basis. For simplicity, volumes for 2017 (based on 2016 Line 1 lights) have been assumed for all years. Note that the values for Line 1 are volumes, and not capacities.</p>									

Table 4A: Average Annual Percent Utilization per line^{1,2,3}									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
Line 1	68%	65%	70%	64%	66%	68%	72%	74%	66%
Line 2B	62%	60%	72%	74%	91%	90%	90%	94%	80%
Line 3	75%	82%	87%	83%	79%	80%	86%	89%	86%
Line 4	73%	73%	85%	92%	93%	96%	101%	102%	103%
Line 65	75%	62%	68%	81%	87%	84%	100%	103%	100%
Line 67	77%	90%	95%	94%	97%	104%	106%	108%	103%
Notes:									
<p>1. Effective capacity cannot be calculated on a per line basis. Effective capacity applies to the overall Mainline System as a whole.</p> <p>2. Enbridge defines Actual Capacity based on pipeline percent utilization. Percent utilization is calculated based on actual volumes that move on the line through the bottleneck location (i.e., the point of maximum flow) compared to the Annual Average Capacity of the line. The percent utilization provides insight into the extent that each of the lines are utilized relative to the Annual Average Capacity.</p> <p>3. The annual average percent utilization per line in Table 4A is based on Actuals ex. bottleneck location. The bottleneck location for the lines comprising of the Mainline System are typically upstream of Gretna which means that the percent utilization downstream of Gretna will typically be lower than the bottleneck location. A lower percent utilization downstream of Gretna means that the total volumes moving past Gretna into MN are lower.</p>									

Table 4B: Average Annual Percent Utilization per line^{1,2,3}									
	2012	2013	2014	2015	2016	2017	2018	2019	2020
Line 1⁴	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Line 2B	62%	60%	72%	74%	91%	90%	90%	94%	80%
Line 3	75%	82%	87%	83%	79%	80%	86%	89%	86%
Line 4	73%	73%	85%	92%	93%	96%	101%	102%	103%
Line 65	75%	62%	68%	81%	87%	84%	100%	103%	100%
Line 67	77%	90%	95%	94%	97%	104%	106%	108%	103%
Notes:									
<p>1. Effective capacity cannot be calculated on a per line basis. Effective capacity applies to the overall Mainline System as a whole.</p> <p>2. Enbridge defines Actual Capacity based on pipeline percent utilization. Percent utilization is calculated based on actual volumes that move on the line through the bottleneck location (i.e., the point of maximum flow) compared to the Annual Average Capacity of the line. The percent utilization provides insight into the extent that each of the lines are utilized relative to the Annual Average Capacity.</p> <p>3. The annual average percent utilization per line in Table 4B above is based on Actuals ex. bottleneck location. The bottleneck location for the lines comprising of the Mainline System are typically upstream of Gretna which means that the percent utilization downstream of Gretna will typically be lower than at the bottleneck location. A lower percent utilization downstream of Gretna means that the total volumes moving past Gretna into MN are lower.</p> <p>4. Percent utilization is not applicable for Line 1 without NGL and Refined Product because only a subpart of the line's actual service capability is considered in this case. For Line 1 utilization see Table 4A.</p>									

Attachment A includes regulatory approvals authorizing Lines 1, 2b, 3, 4, 65 and 67. These include:

Line 1

- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Construct, Connect, Operate and Maintain a Pipeline at the International Boundary Line between the United States and Canada (June 16, 1994) (authorizing the transport of crude oil and natural gas liquids on a 20-inch diameter pipeline).

Line 2

- Presidential Permit Authorizing Lakehead Pipe Line Company to Connect, Construct, Operate and Maintain a Pipeline at the International Boundary Line Between the United States and Canada (January 22, 1968) (authorizing an existing 26-in pipeline)
- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Operate and Maintain Four Pipelines at the International Boundary Line between the United States and Canada (December 12, 1991) (authoring an existing 26-in pipeline).

Line 3

- Presidential Permit Authorizing Lakehead Pipe Line Company to Connect, Construct, Operate and Maintain a Pipeline at the International Boundary Line Between the United States and Canada (January 22, 1968) (authorizing construction of a 34-in pipeline)
- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Operate and Maintain Four Pipelines at the International Boundary Line between the United States and Canada (December 12, 1991) (authoring an existing 34-in pipeline).
- Letter to Mr. David H. Coburn on behalf of Enbridge Energy, L.P. from Michael Brennan, U.S. Department of State (April 24, 2014) (confirming replacement of Line 3 at approximately 760,000 bpd to be consistent with the authorization in the existing 1991 Presidential Permit).
- *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=showP>)

[oup&documentId={C0B1D171-0000-C511-9FC0-0F91750A9C30}&documentTitle=20205-162795-01.](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={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) (authoring replacement of existing Line 3 with a 36-in pipeline with an average annual capacity of 760,000 bpd).

Line 4

- *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>) (authorizing construction of approximately 68.6 miles of 36-in pipe to Enbridge's existing pipelines in four separate segments to be referred to as Line 4 with an annual average capacity of 646,600.)
- *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>) (authorizing expansion to increase capacity on the Mainline System by 147,800 bpd).

Line 65

- Presidential Permit Authorizing Enbridge Pipelines (Southern Lights) L.L.C. ("EPSL") to Construct, Connect, Operate and Maintain Pipeline Facilities at the International Boundary between the United States and Canada (June 2008) (authorizing construction of a 20" diameter pipeline extending south from the United-States Canada border at Neche, Pembina county, North Dakota up to and including the first mainline shut-off valve or pumping station in the United States).
- *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 Line Project*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-464 (June 19, 2008) (authorizing construction of a 20-in pipeline with an annual average capacity of 186,000 bpd (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8757A2A4-2D0A-4859-A6D6-3D1D37F015AC}&documentTitle=5297314>))

Line 67

- *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-465 (December 29, 2008). (The Line 67 project was initially approved under the name the Alberta Clipper project as a 36-in pipeline with an annual average capacity of 450,000 bpd.) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={ADE73302-ECA0-4576-BCD7-A5BB853D8DEA}&documentTitle=5674505}>)
- *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}>). (authorizing an expansion from an annual average capacity of 450,000 bpd to 570,000 bpd).
- *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-13-153 (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-}>) (authorizing an expansion from an annual average capacity of 570,000 bpd to 800,000 bpd).

**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, Breann L. Jurek, 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 Response to Minnesota Public Utilities Commission's Information Request No. 1;
2. Attachment A to Enbridge Energy, Limited Partnership's Response to Minnesota Public Utilities Commission's Information Request No. 1; and
3. Certificate of Service

Dated this 9th day of March 2021.

/s/ Breann L. Jurek

[illegible]

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ellen	Boardman	eboardman@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	5301 Wisconsin Ave NW Ste 800 Washington, DC 20015	Electronic Service	No	OFF_SL_20-801_C-20-801
Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St Ste 4000 Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_20-801_C-20-801
Dan	Chapman	Daniel.Chapman@xcelenergy.com		N/A	Electronic Service	No	OFF_SL_20-801_C-20-801
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-801_C-20-801
Rebecca	Cramer	rebacramer@gmail.com		3148 29th Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_20-801_C-20-801
Brendan	Cummins	brendan@cummins-law.com	Cummins & Cummins, LLP	1245 International Centre 920 Second Avenue South Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-801_C-20-801
Richard	Dornfeld	Richard.Dornfeld@ag.state.mn.us	Office of the Attorney General-DOC	Minnesota Attorney General's Office 445 Minnesota Street, Suite 1800 Saint Paul, Minnesota 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Kate	Fairman	kate.frantz@state.mn.us	Department of Natural Resources	Box 32 500 Lafayette Rd St. Paul, MN 551554032	Electronic Service	No	OFF_SL_20-801_C-20-801
Leili	Fatehi	leili@advocatepllc.com	Sierra Club	4849 12th Ave S Minneapolis, MN 55417	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Annie	Felix Gerth	annie.felix-gerth@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	No	OFF_SL_20-801_C-20-801
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_20-801_C-20-801
Rachel	Freeman	rachel.freeman@scotiabank.com	Global Equity Research / Scotia Capital Inc.	40 King St. W. 65th Floor Toronto, ON, CANADA M5W 2X6	Electronic Service	No	OFF_SL_20-801_C-20-801
Anna	Friedlander	afriedlander@odonoghuelaw.com	O'Donoghue & O'Donoghue LLP	5301 Wisconsin Ave NW Suite 800 Washington, DC 20016	Electronic Service	No	OFF_SL_20-801_C-20-801
John R.	Gasele	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 W Superior St Ste 700 Duluth, MN 55802	Electronic Service	No	OFF_SL_20-801_C-20-801
Doug	Hayes	doug.hayes@sierraclub.org	Sierra Club	85 2nd St., 2nd Fl San Francisco, CA 94105	Electronic Service	No	OFF_SL_20-801_C-20-801
Gary	Hill	hillx001@umn.edu		50569 218th Pl McGregor, MN 55760	Electronic Service	No	OFF_SL_20-801_C-20-801
Janet	Hill	janethillnew@gmail.com		50569 218th Pl Mcgregor, MN 55760-5592	Electronic Service	No	OFF_SL_20-801_C-20-801
Thomas	Hingsberger	thomas.j.hingsberger@usace.army.mil	Corps of Engineers, St. Paul District	180 5th St E Ste 700 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Terry	Hokenson	terryhokn@gmail.com		3352 Prospect Ter SE Minneapolis, MN 55414	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kathleen	Hollander	kath77holl77@gmail.com		3824 Edmund Blvd Minneapolis, MN 55406	Electronic Service	No	OFF_SL_20-801_C-20-801
John	Hottinger	jchnorthstar@gmail.com	Hottinger Consulting LLC	14 Irvine Park Unit 14A St. Paul, MN 55102	Electronic Service	No	OFF_SL_20-801_C-20-801
Kari	Howe	kari.howe@state.mn.us	DEED	332 Minnesota St, #E200 1ST National Bank Bldg St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Samuel	Jackson	sam@cummins-law.com		1245 International Centre 920 Second Ave South Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-801_C-20-801
Arshia	Javaherian	arshia.javaherian@enbridge.com	Enbridge Energy	26 East Superior Street Suite 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_20-801_C-20-801
Susu	Jeffrey	susujeffrey@msn.com	Friends of Coldwater	1063 Antoinette Ave Minneapolis, MN 55405	Electronic Service	No	OFF_SL_20-801_C-20-801
Ray	Kirsch	Raymond.Kirsch@state.mn.us	Department of Commerce	85 7th Place E Ste 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Anthony	Kit	a.kit@kghl.net		2828 N Harwood St Suite 1240 Dallas, TX 75202	Electronic Service	No	OFF_SL_20-801_C-20-801
Rachel	Kitze Collins	rakitzecollins@locklaw.com	Lockridge Grindeal Nauen PLLP	100 Washington Ave S Suite 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_20-801_C-20-801
Winona	LaDuke	winonaladuke1@gmail.com	Honor the Earth	607 Main Avenue Callaway, MN 56521	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michelle	Lommel	mlommel@GREnergy.com	Great River Energy	12300 Elm Creek Blvd Maple Grove, MN 55369	Electronic Service	No	OFF_SL_20-801_C-20-801
Otto Edwin	Lueck	N/A		18719 US Hwy 2 Warba, MN 55793	Paper Service	No	OFF_SL_20-801_C-20-801
Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-801_C-20-801
Philip	Mahowald	pmahowald@thejacobsonlawgroup.com	Jacobson Law Group	180 East Fifth Street Suite 940 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Joseph	Martoglio	Joseph.R.Martoglio@jpmchase.com		N/A	Electronic Service	No	OFF_SL_20-801_C-20-801
Willis	Mattison	mattison@arvig.net	Self	42516 State Hwy 34 Osage, MN 56570	Electronic Service	No	OFF_SL_20-801_C-20-801
Hayk	Minasian	hminasian@trlm.com		N/A	Electronic Service	No	OFF_SL_20-801_C-20-801
John	Munter	mumooatthefarm@yahoo.com		14860 Bruce Crk Rd Warba, MN 55793	Electronic Service	No	OFF_SL_20-801_C-20-801
Michael	Murphy	mmurphy@thejacobsonlawgroup.com		180 East Fifth Street Suite 940 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Charles	Nauen	cnnauen@locklaw.com	Lockridge Grindal Nauen	Suite 2200 100 Washington Avenue South Minneapolis, MN 55401	Electronic Service	No	OFF_SL_20-801_C-20-801
Ann	O'Reilly	ann.oreilly@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Marsha	Parlow	mparlow@greenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 553694718	Electronic Service	No	OFF_SL_20-801_C-20-801
Andrew	Pearson	stopthewar24@gmail.com		2629 18th Ave S Apt 2 Minneapolis, MN 55407	Electronic Service	No	OFF_SL_20-801_C-20-801
Alice	Peterson	N/A		24153 300th St NW Argyle, MN 56713	Paper Service	No	OFF_SL_20-801_C-20-801
Abbie	Plouff	abbie.plouff@gmail.com		308 E Prince St Apt 522 St. Paul, MN 55101	Electronic Service	No	OFF_SL_20-801_C-20-801
Joseph	Plumer	joep@whiteearth.com	Red Lake Band of Chippewa Indians	P.O. Box 567 Red Lake, Minnesota 56671	Electronic Service	No	OFF_SL_20-801_C-20-801
Craig	Poorker	cpoorker@greenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 55369	Electronic Service	No	OFF_SL_20-801_C-20-801
Kevin	Pranis	kpranis@liunagroc.com	Laborers' District Council of MN and ND	81 E Little Canada Road St. Paul, Minnesota 55117	Electronic Service	No	OFF_SL_20-801_C-20-801
James W.	Reents	jwreents@gmail.com		4561 Alder Ln NW Hackensack, MN 56452	Electronic Service	No	OFF_SL_20-801_C-20-801
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Steve	Roe	roetreat@crosslake.net		11663 Whitefish Ave Crosslake, MN 56442	Electronic Service	No	OFF_SL_20-801_C-20-801
Stephan	Roos	stephan.roos@state.mn.us	MN Department of Agriculture	625 Robert St N Saint Paul, MN 55155-2538	Electronic Service	No	OFF_SL_20-801_C-20-801
Jean	Ross	jfross@umn.edu		3624 Bryant Ave S Minneapolis, MN 55409	Electronic Service	No	OFF_SL_20-801_C-20-801
Akilah	Sanders Reed	akilah.project350@gmail.com		2514 Emerson Ave S Apt 7 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_20-801_C-20-801
Stan	Sattinger	sattinss@aol.com		3933 Twelfth Ave S Minneapolis, MN 55407	Electronic Service	No	OFF_SL_20-801_C-20-801
Claudia	Schrull	CLAUDIA.SCHRULL@EN BRIDGE.COM	Enbridge Pipelines (North Dakota) LLC	Suite 3300 1100 Louisiana Houston, TX 77002	Electronic Service	No	OFF_SL_20-801_C-20-801
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-801_C-20-801
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	No	OFF_SL_20-801_C-20-801
Eileen	Shore	eileenshore@outlook.com	Friends of the Headwaters	3137 42nd Ave So Minneapolis, MN 55406	Electronic Service	No	OFF_SL_20-801_C-20-801
Richard	Smith	grizrs615@gmail.com	Friends of the Headwaters	P.O. Box 583 Park Rapids, MN 56470	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Mollie	Smith	msmith@fredlaw.com	Fredrikson Byron PA	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_20-801_C-20-801
Scott	Strand	SStrand@elpc.org	Environmental Law & Policy Center	60 S 6th Street Suite 2800 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-801_C-20-801
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_20-801_C-20-801
Christine	Tezak	tezak@cvenergy.com		209 Constitution Avenue, NE Washington, DC 20002	Electronic Service	No	OFF_SL_20-801_C-20-801
Jeremy	Tonet	jeremy.b.tonet@jpmorgan.com		N/A	Electronic Service	No	OFF_SL_20-801_C-20-801
Sara	Van Norman	sara@svn.legal	Van Norman Law, PLLC	Van Norman Law, PLLC 310 4th Ave. S., Ste. 5010 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_20-801_C-20-801
Ken	Vraa	N/A		6623 Peony Lane N Maple Grove, MN 55311	Paper Service	No	OFF_SL_20-801_C-20-801
Haley	Waller Pitts	hwallerpitts@fredlaw.com	Fredrikson & Byron, P.A.	200 S 6th St Ste 4000 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-801_C-20-801
Tom	Watson	twatson@iphouse.com	Whitefish Area Property Owners Association	39195 Swanburg Court Pine River, MN 56474	Electronic Service	No	OFF_SL_20-801_C-20-801
James	Watts	james.watts@enbridge.com	Enbridge Pipelines (North Dakota) LLC	26 E Superior St Ste 309 Duluth, MN 55802	Electronic Service	No	OFF_SL_20-801_C-20-801

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jonathan	Wolfgram	Jonathan.Wolfgram@state.mn.us	Office of Pipeline Safety	Minnesota Department of Public Safety 445 Minnesota Street Suite 147 St. Paul, MN 55101-1547	Electronic Service	No	OFF_SL_20-801_C-20-801
David	Zoll	djzoll@locklaw.com	Lockridge Grindal Nauen PLLP	100 Washington Ave S Ste 2200 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_20-801_C-20-801

ATTACHMENT A

Regulatory Approval Authorizing Lines 1, 2b, 3, 4, 65 and 67

Line 1

- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Construct, Connect, Operate and Maintain a Pipeline at the International Boundary Line between the United States and Canada (June 16, 1994) (authorizing the transport of crude oil and natural gas liquids on a 20-inch diameter pipeline).

Line 2

- Presidential Permit Authorizing Lakehead Pipe Line Company to Connect, Construct, Operate and Maintain a Pipeline at the International Boundary Line Between the United States and Canada (January 22, 1968) (authorizing an existing 26-in pipeline)
- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Operate and Maintain Four Pipelines at the International Boundary Line between the United States and Canada (December 12, 1991) (authoring an existing 26-in pipeline).

Line 3

- Presidential Permit Authorizing Lakehead Pipe Line Company to Connect, Construct, Operate and Maintain a Pipeline at the International Boundary Line Between the United States and Canada (January 22, 1968) (authorizing construction of a 34-in pipeline)
- Presidential Permit Authorizing Lakehead Pipeline Company, Limited Partnership to Operate and Maintain Four Pipelines at the International Boundary Line between the United States and Canada (December 12, 1991) (authoring an existing 34-in pipeline).
- Letter to Mr. David H. Coburn on behalf of Enbridge Energy, L.P. from Michael Brennan, U.S. Department of State (April 24, 2014) (confirming replacement of Line 3 at approximately 760,000 bpd to be consistent with the authorization in the existing 1991 Presidential Permit).
- *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&documentId={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) (authoring replacement of existing Line 3 with a 36-in pipeline with an average annual capacity of 760,000 bpd).

Line 4

- *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>) (authorizing construction of approximately 68.6 miles of 36-in pipe to Enbridge's existing pipelines in four separate segments to be referred to as Line 4 with an annual average capacity of 646,600.)
- *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>) (authorizing expansion to increase capacity on the Mainline System by 147,800 bpd).

Line 65

- Presidential Permit Authorizing Enbridge Pipelines (Southern Lights) L.L.C. ("EPSL") to Construct, Connect, Operate and Maintain Pipeline Facilities at the International Boundary between the United States and Canada (June 2008) (authorizing construction of a 20" diameter pipeline extending south from the United-States Canada border at Neche, Pembina county, North Dakota up to and including the first mainline shut-off valve or pumping station in the United States).
- *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 Line Project*, Order Granting Certificate of Need (June 19, 2008) (authorizing construction of a 20-in pipeline with an annual average capacity of 186,000 bpd (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8757A2A4-2D0A-4859-A6D6-3D1D37F015AC}&documentTitle=5297314>)

Line 67

- *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-465 (December 29, 2008). (The Line 67 project was initially approved under the name the Alberta Clipper project as a 36-in pipeline with an annual average capacity of 450,000 bpd.) (Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={ADE73302-ECA0-4576-BCD7-A5BB853D8DEA}&documentTitle=5674505}>)
- *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}>). (authorizing an expansion from an annual average capacity of 450,000 bpd to 570,000 bpd).
- *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-13-153 (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-}>) (authorizing an expansion from an annual average capacity of 570,000 bpd to 800,000 bpd).

PERMIT

AUTHORIZING LAKEHEAD PIPELINE COMPANY, LIMITED PARTNERSHIP
TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN
A PIPELINE AT THE INTERNATIONAL BOUNDARY LINE BETWEEN THE
UNITED STATES AND CANADA

By the authority vested in me as Under Secretary of State for Economic and Agricultural Affairs of the United States (pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, and Department of State Delegation of Authority No. 118-1 of April 11, 1973) and subject to the conditions, provisions, and requirements hereinafter set forth, permission is hereby granted to Lakehead Pipe Line Company, Limited Partnership, a Delaware limited partnership with its principal office located in Duluth, Minnesota, (hereinafter referred to as "permittee") to construct, connect, operate, and maintain a pipeline on the borders of the United States in Pembina County, North Dakota near Neche, North Dakota for the transport of crude oil and natural gas liquids between the United States and Canada.

The term "facilities" as used in this permit means the pipeline and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

As stated in permittee's application of January 6, 1994 for a permit pursuant to Executive Order 11423, as amended by Executive Order 12847, the United States facilities of the pipeline project will consist of the following major components:

A 20 inch diameter carbon steel pipeline for crude oil and natural gas liquids extending approximately 135 miles from Neche, North Dakota to Clearbrook, Minnesota.

The permittee shall maintain such metering facilities as are required by the Commissioner of Customs, provided with an adequate proving system, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device; the installation and operation of said meter, proving system, and sampling device to be subject to the approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

This permit is subject to the following conditions:

Article 1. The United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit or any amendment thereof, further that this permit may be terminated at the will of the Secretary of State of the United States or his delegate or may be amended by the Secretary of State of the United States or his delegate at will or upon proper application therefor, further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State of the United States or his delegate.

Article 2. The operation and maintenance of the facilities shall be in all material respects as described in permittee's application of January 6, 1994 for a permit pursuant to Executive Order 11423, as amended by Executive Order 12847.

Article 3. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. Permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities.

Article 5. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the Secretary of State of the United States or his delegate may specify, and upon the failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State of the United States or his delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 6. This permit is subject to the limitations, terms, and conditions contained in any orders issued by any competent agency of the United States government or of the States of North Dakota or Minnesota with respect to the United States facilities. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 7. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State of the United States or his delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good conditions as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified to the Department of State in writing. This permit shall remain in force, subject to all the conditions, provisions, and requirements of this permit or any amendments thereof.

Article 9. (1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

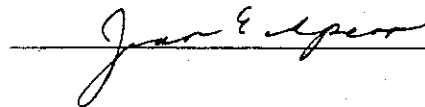
(2) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

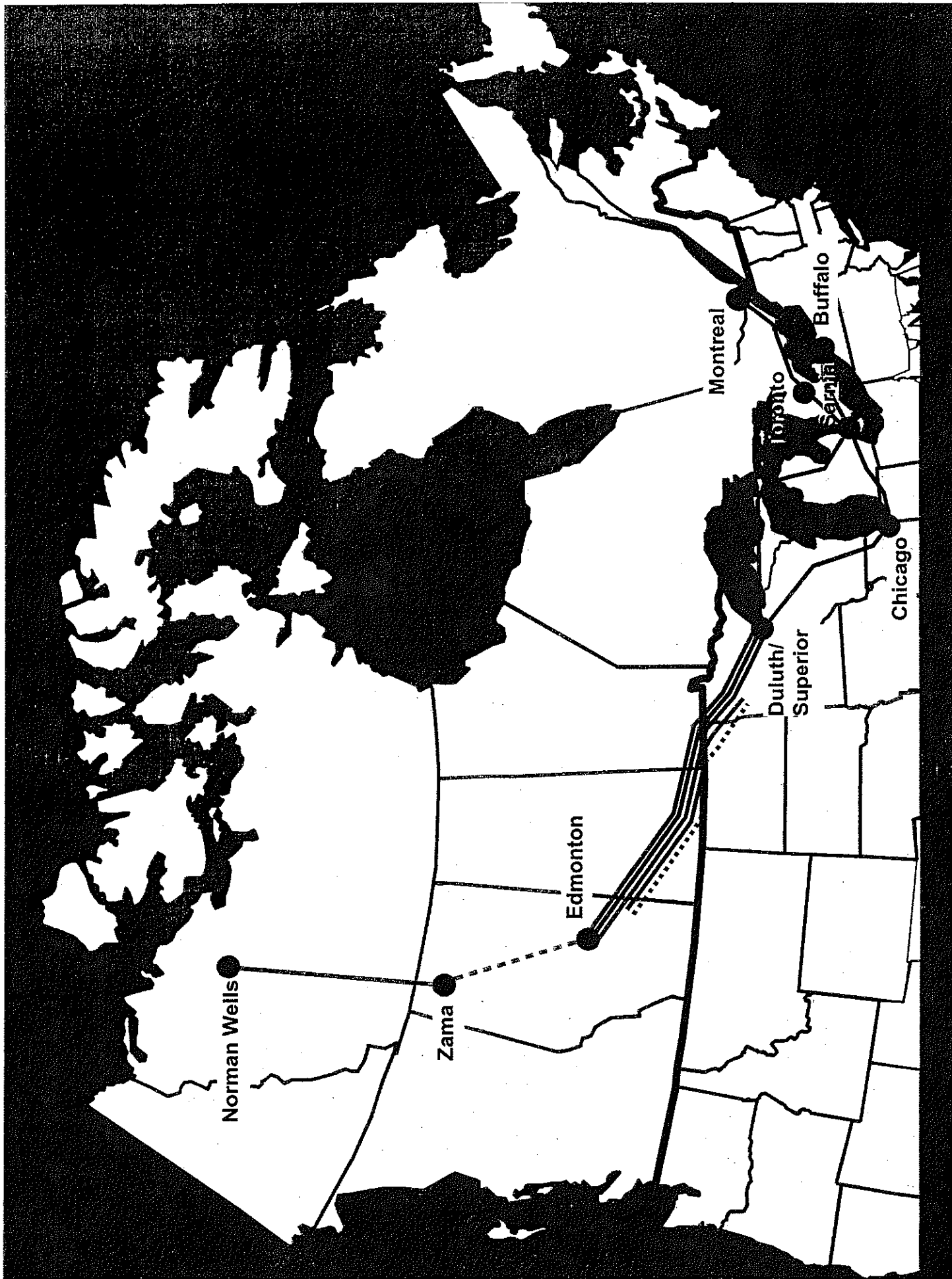
Article 10. The permittee shall acquire such right-of-way grants, easements, permits, and other authorizations as may become necessary and appropriate.

Article 11. The permittee agrees to file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 12. The permittee shall send notice to the Department of State of the United States at such time as the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, Joan E. Spero, Under Secretary of State for Economic and Agricultural Affairs of the United States, have hereunto set my hand this 16 day of June, 1994, in the City of Washington, District of Columbia.





PRESIDENTIAL PERMIT

AUTHORIZING LAKEHEAD PIPE LINE COMPANY
TO CONNECT, CONSTRUCT, OPERATE AND MAINTAIN A
PIPELINE AT THE INTERNATIONAL BOUNDARY LINE
BETWEEN THE UNITED STATES AND CANADA

By virtue of the authority vested in me as President of the United States of America, and subject to the acceptance of the conditions, provisions and requirements hereinafter set forth, permission is hereby granted to Lakehead Pipe Line Company, Incorporated, a Delaware corporation having its main office at 3025 Tower Avenue, Superior, Wisconsin (hereinafter referred to as "permittee"), to construct, operate, and maintain a pipeline system for crude oil and other liquid hydrocarbons at the international boundary line between the United States and Canada in Pembina County, North Dakota, and to connect such facilities with like facilities in the Province of Manitoba, Canada.

The term "facilities" as used in this permit means the pipeline system and all land, structures, installations, and equipment appurtenant thereto.

The term "United States facilities" as used herein means that part of the facilities in the United States.

The facilities, of which the United States facilities covered by and subject to this permit are a part, are described as follows:

a. A 34-inch pipeline for crude oil and other liquid hydrocarbons manufactured and installed substantially as described in the attached application dated August 31, 1967, which application together with the exhibits attached thereto is made a part of this permit. Said pipeline shall connect at the international boundary line with a liquid hydrocarbon pipeline system to be constructed in the Province of Manitoba, Canada.

The permittee shall furnish, install, and maintain or cause to be furnished, installed, and maintained, such metering facilities as are required by the Commissioner of Customs, provided with an adequate proving system or systems, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device or devices; the installation and operation of said facilities to be subject to the approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

The above-described facilities shall be situated at such location or locations as will be acceptable to the Commissioner of Customs and to permittee.

b. An existing pipeline for crude oil and other liquid hydrocarbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

c. An existing pipeline for crude oil and other liquid hydrocarbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 26 inches, a wall thickness of .281 inches, minimum yield strength of 52,000 pounds per square inch, a coating of coal tar enamel, tested to 1,010 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

The effectiveness of this permit to authorize connection of the United States facilities at the international boundary line with the facilities located in Canada is subject to the issuance by the appropriate authorities in Canada to a company or companies, operating in Canada, of the necessary authorization for the construction, operation, and maintenance of the facilities located in Canada and for their connection with the United States facilities at the international boundary line.

This permit is subject to such conditions as the President of the United States may see fit, expedient or necessary hereafter to impose; is subject to the acquisition by the permittee of a servitude of passage or right-of-way, valid under the laws of the State of North Dakota from any and all persons owning or asserting an interest of any nature or kind whatsoever in and to the land in the United States in the vicinity of the point of connection between the United States facilities and the facilities located in Canada; and is subject to the following further conditions:

Article 1. It is expressly agreed by the permittee that the United States facilities and operations herein described shall be subject to all the conditions, provisions and requirements of this permit or any amendment thereof, further that this permit may be terminated at the will of the President of the United States or may be amended by the President of the United States at will or upon proper application therefor, further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the President of the United States.

Article 2. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the President of the United States may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the President of the United States may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 4. The transportation of crude oil and other liquid hydrocarbons through the United States facilities shall be in all respects subject to the power of Congress under its authority to regulate commerce as applied to the business of this permittee.

Article 5. This permit is subject to the limitations, terms and conditions contained in any orders issued by any competent agency of the United States Government with respect to the United States facilities or the crude oil and other liquid hydrocarbons transported thereby, and shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 6. The permittee agrees that when, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof and to take such measures as it deems necessary with respect to all contracts of the permittee covering the transportation or sale of crude oil and other liquid hydrocarbons by means of said United States facilities; to retain possession, management and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities

upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Neither this permit nor the United States facilities nor any part thereof covered by this permit shall be voluntarily transferred in any manner. In the event of an involuntary transfer of the United States facilities or any part thereof by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) the permit shall continue in effect temporarily for a reasonable time pending the making of an application by the transferee for a permanent permit and decision thereon, provided that notice of such involuntary transfer is given promptly in writing to the Department of State of the United States accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the involuntary transfer. Notwithstanding the foregoing, the United States facilities or any part thereof covered by this permit may be transferred to the Chase Manhattan Bank, as Trustee under the Mortgage and Deed of Trust dated as of October 1, 1949. In this case this permit shall continue in effect subject to all the limitations, terms and conditions herein stated.

Article 8.

(1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation in the transportation of crude oil and other liquid hydrocarbons.

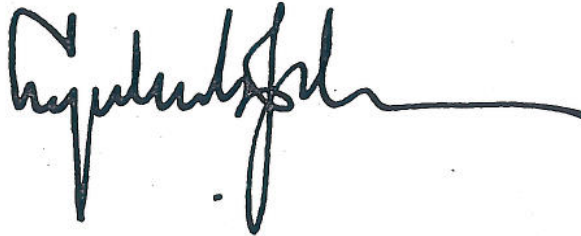
(2) The permittee shall take reasonable precautions to prevent and suppress fires, explosions or leakage and to avert any conditions on the land traversed or waters affected by the United States facilities which might endanger the safety of these facilities.

(3) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 9. The permittee agrees to file with the appropriate agencies of the Government of the United States such statement or reports under oath with respect to the United States facilities, the crude oil and other liquid hydrocarbons transported thereby, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 10. The permittee shall send notice to the Department of State of the United States at such time as the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, LYNDON B. JOHNSON, President of the United States of America, have hereunto set my hand this 22nd day of January, 1968, in the City of Washington, District of Columbia.

A handwritten signature in dark ink, appearing to be "Lyndon B. Johnson", with a long horizontal flourish extending to the right.

SIGNATURE

AUTHORIZING LAKEHEAD PIPELINE COMPANY, LIMITED PARTNERSHIP
TO OPERATE AND MAINTAIN
FOUR PIPELINES AT THE
INTERNATIONAL BOUNDARY LINE BETWEEN THE
UNITED STATES AND CANADA

By virtue of the authority vested in me as Under Secretary of State for Economic Affairs of the United States (pursuant to Executive Order 11423 of August 16, 1968 and Department of State Delegation of Authority No. 118-1 of April 11, 1973) and subject to the acceptance of the conditions, provisions, and requirements hereinafter set forth, permission is hereby granted to Lakehead Pipe Line Company, Limited Partnership, a Delaware corporation having its principal office at Ontario, Canada, (hereinafter referred to as "permittee") to operate and maintain a pipeline on the borders of the United States in Pembina County, North Dakota for the transport of liquid hydrocarbons between the United States and Canada and to connect this pipeline with like facilities in Canada.

The term "facilities" as used in this permit means the pipelines and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

As stated in permittee's application of October 23, 1991 for a permit pursuant to Executive Order 11423, the United States facilities of the pipeline project will consist of the following major components:

a. an existing 34-inch pipeline for crude oil and other liquid hydro-carbons.

The permittee shall maintain such metering facilities as are required by the Commissioner of Customs, provided with an adequate proving system, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device; the installation and operation of said meter, proving system, and sampling device to be subject to the approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

b. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

c. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specifications 5LX, with an outside diameter of 26 inches, a wall thickness of .281 inches, minimum yield strength of 52,000 pounds per square inch after installation, tar enamel, tested to 1,010 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of three feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

d. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specifications 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch after installation, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

This permit is subject to the following conditions:

Article 1. It is expressly agreed by the permittee that the United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit or any amendment thereof, further that this permit may be terminated at the will of the Secretary of State of the United States or his delegate or may be amended by the Secretary of State of the United States or his delegate at will or upon proper application therefor, further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the Secretary of State of the United States or his delegate.

Article 2. The operation and maintenance of the facilities shall be in all material respects as described in permittee's application of October 23, 1991 for a permit pursuant to Executive Order 11423.

Article 3. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. Permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities.

Article 5. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the Secretary of State of the United States or his delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State of the United States or his delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 6. This permit is subject to the limitations, terms, and conditions contained in any orders issued by any competent agency of the United States Government or of the State of Michigan with respect to the United States facilities. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 7. The permittee agrees that when, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State of the United States or his delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event

that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good conditions as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. In the event of transfer of the United States facilities or any part thereof, this permit may remain in force thereafter if the transferee agrees, and notifies the Department of State in writing, that it will comply with all the conditions, provisions, and requirements of this permit or any amendment thereof.

Article 9. (1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

(2) The permittee shall take reasonable precautions to prevent and suppress fires, explosions, or leakage and to avert any conditions on the land traversed or waters affected by the United States facilities which might endanger the safety of these facilities.

(3) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 10. The permittee shall acquire such right-of-way grants, easements, permits, and other authorizations as may become necessary and appropriate.

Article 11. The permittee agrees to file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 12. The permittee shall send notice to the Department of State of the United States at such time as the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, Robert B. Zoellick, Under Secretary of State for Economic Affairs of the United States, have hereunto set my hand this 12TH day of DECEMBER, 1991, in the City of Washington, District of Columbia.

Robert B. Zoellick
C

PRESIDENTIAL PERMIT

AUTHORIZING LAKEHEAD PIPE LINE COMPANY
TO CONNECT, CONSTRUCT, OPERATE AND MAINTAIN A
PIPELINE AT THE INTERNATIONAL BOUNDARY LINE
BETWEEN THE UNITED STATES AND CANADA

By virtue of the authority vested in me as President of the United States of America, and subject to the acceptance of the conditions, provisions and requirements hereinafter set forth, permission is hereby granted to Lakehead Pipe Line Company, Incorporated, a Delaware corporation having its main office at 3025 Tower Avenue, Superior, Wisconsin (hereinafter referred to as "permittee"), to construct, operate, and maintain a pipeline system for crude oil and other liquid hydrocarbons at the international boundary line between the United States and Canada in Pembina County, North Dakota, and to connect such facilities with like facilities in the Province of Manitoba, Canada.

The term "facilities" as used in this permit means the pipeline system and all land, structures, installations, and equipment appurtenant thereto.

The term "United States facilities" as used herein means that part of the facilities in the United States.

The facilities, of which the United States facilities covered by and subject to this permit are a part, are described as follows:

a. A 34-inch pipeline for crude oil and other liquid hydrocarbons manufactured and installed substantially as described in the attached application dated August 31, 1967, which application together with the exhibits attached thereto is made a part of this permit. Said pipeline shall connect at the international boundary line with a liquid hydrocarbon pipeline system to be constructed in the Province of Manitoba, Canada.

The permittee shall furnish, install, and maintain or cause to be furnished, installed, and maintained, such metering facilities as are required by the Commissioner of Customs, provided with an adequate proving system or systems, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device or devices; the installation and operation of said facilities to be subject to the approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

The above-described facilities shall be situated at such location or locations as will be acceptable to the Commissioner of Customs and to permittee.

b. An existing pipeline for crude oil and other liquid hydrocarbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

c. An existing pipeline for crude oil and other liquid hydrocarbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 26 inches, a wall thickness of .281 inches, minimum yield strength of 52,000 pounds per square inch, a coating of coal tar enamel, tested to 1,010 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

The effectiveness of this permit to authorize connection of the United States facilities at the international boundary line with the facilities located in Canada is subject to the issuance by the appropriate authorities in Canada to a company or companies, operating in Canada, of the necessary authorization for the construction, operation, and maintenance of the facilities located in Canada and for their connection with the United States facilities at the international boundary line.

This permit is subject to such conditions as the President of the United States may see fit, expedient or necessary hereafter to impose; is subject to the acquisition by the permittee of a servitude of passage or right-of-way, valid under the laws of the State of North Dakota from any and all persons owning or asserting an interest of any nature or kind whatsoever in and to the land in the United States in the vicinity of the point of connection between the United States facilities and the facilities located in Canada; and is subject to the following further conditions:

Article 1. It is expressly agreed by the permittee that the United States facilities and operations herein described shall be subject to all the conditions, provisions and requirements of this permit or any amendment thereof, further that this permit may be terminated at the will of the President of the United States or may be amended by the President of the United States at will or upon proper application therefor, further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the President of the United States.

Article 2. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the President of the United States may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the President of the United States may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 4. The transportation of crude oil and other liquid hydrocarbons through the United States facilities shall be in all respects subject to the power of Congress under its authority to regulate commerce as applied to the business of this permittee.

Article 5. This permit is subject to the limitations, terms and conditions contained in any orders issued by any competent agency of the United States Government with respect to the United States facilities or the crude oil and other liquid hydrocarbons transported thereby, and shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms and conditions.

Article 6. The permittee agrees that when, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof and to take such measures as it deems necessary with respect to all contracts of the permittee covering the transportation or sale of crude oil and other liquid hydrocarbons by means of said United States facilities; to retain possession, management and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities

upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Neither this permit nor the United States facilities nor any part thereof covered by this permit shall be voluntarily transferred in any manner. In the event of an involuntary transfer of the United States facilities or any part thereof by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) the permit shall continue in effect temporarily for a reasonable time pending the making of an application by the transferee for a permanent permit and decision thereon, provided that notice of such involuntary transfer is given promptly in writing to the Department of State of the United States accompanied by a statement by the transferee under oath that the United States facilities and the operation and maintenance thereof authorized by this permit will remain substantially the same as before the involuntary transfer. Notwithstanding the foregoing, the United States facilities or any part thereof covered by this permit may be transferred to the Chase Manhattan Bank, as Trustee under the Mortgage and Deed of Trust dated as of October 1, 1949. In this case this permit shall continue in effect subject to all the limitations, terms and conditions herein stated.

Article 8.

(1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation in the transportation of crude oil and other liquid hydrocarbons.

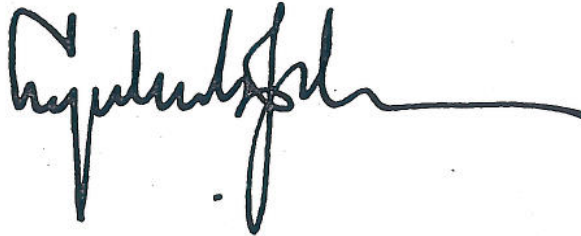
(2) The permittee shall take reasonable precautions to prevent and suppress fires, explosions or leakage and to avert any conditions on the land traversed or waters affected by the United States facilities which might endanger the safety of these facilities.

(3) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 9. The permittee agrees to file with the appropriate agencies of the Government of the United States such statement or reports under oath with respect to the United States facilities, the crude oil and other liquid hydrocarbons transported thereby, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 10. The permittee shall send notice to the Department of State of the United States at such time as the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, LYNDON B. JOHNSON, President of the United States of America, have hereunto set my hand this 22nd day of January, 1968, in the City of Washington, District of Columbia.

A handwritten signature in dark ink, appearing to be "Lyndon B. Johnson", with a long horizontal flourish extending to the right.

SIGNATURE

AUTHORIZING LAKEHEAD PIPELINE COMPANY, LIMITED PARTNERSHIP
TO OPERATE AND MAINTAIN
FOUR PIPELINES AT THE
INTERNATIONAL BOUNDARY LINE BETWEEN THE
UNITED STATES AND CANADA

By virtue of the authority vested in me as Under Secretary of State for Economic Affairs of the United States (pursuant to Executive Order 11423 of August 16, 1968 and Department of State Delegation of Authority No. 118-1 of April 11, 1973) and subject to the acceptance of the conditions, provisions, and requirements hereinafter set forth, permission is hereby granted to Lakehead Pipe Line Company, Limited Partnership, a Delaware corporation having its principal office at Ontario, Canada, (hereinafter referred to as "permittee") to operate and maintain a pipeline on the borders of the United States in Pembina County, North Dakota for the transport of liquid hydrocarbons between the United States and Canada and to connect this pipeline with like facilities in Canada.

The term "facilities" as used in this permit means the pipelines and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means that part of the facilities in the United States.

As stated in permittee's application of October 23, 1991 for a permit pursuant to Executive Order 11423, the United States facilities of the pipeline project will consist of the following major components:

a. an existing 34-inch pipeline for crude oil and other liquid hydro-carbons.

The permittee shall maintain such metering facilities as are required by the Commissioner of Customs, provided with an adequate proving system, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device; the installation and operation of said meter, proving system, and sampling device to be subject to the approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

b. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specification 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

c. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specifications 5LX, with an outside diameter of 26 inches, a wall thickness of .281 inches, minimum yield strength of 52,000 pounds per square inch after installation, tar enamel, tested to 1,010 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of three feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

d. an existing pipeline for crude oil and other liquid hydro-carbons, located in Pembina County, North Dakota, manufactured to American Petroleum Institute specifications 5LX, with an outside diameter of 18 inches, a wall thickness of .281 inches, minimum yield strength of 46,000 pounds per square inch after installation, a coating of coal tar enamel, tested to 1,000 pounds per square inch after installation, the said pipeline continuing for at least forty feet on each side of the international boundary and buried to a depth of 3 feet below ground level, said pipeline connected at the international boundary line with like facilities in the Province of Manitoba, Canada.

This permit is subject to the following conditions:

Article 1. It is expressly agreed by the permittee that the United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit or any amendment thereof, further that this permit may be terminated at the will of the Secretary of State of the United States or his delegate or may be amended by the Secretary of State of the United States or his delegate at will or upon proper application therefor, further that the permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes shall have been approved by the Secretary of State of the United States or his delegate.

Article 2. The operation and maintenance of the facilities shall be in all material respects as described in permittee's application of October 23, 1991 for a permit pursuant to Executive Order 11423.

Article 3. The construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. Permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities.

Article 5. Upon the termination, revocation, or surrender of this permit, the United States facilities in the immediate vicinity of the international boundary line shall be removed by and at the expense of the permittee within such time as the Secretary of State of the United States or his delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State of the United States or his delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 6. This permit is subject to the limitations, terms, and conditions contained in any orders issued by any competent agency of the United States Government or of the State of Michigan with respect to the United States facilities. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 7. The permittee agrees that when, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State of the United States or his delegate, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event

that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good conditions as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 8. In the event of transfer of the United States facilities or any part thereof, this permit may remain in force thereafter if the transferee agrees, and notifies the Department of State in writing, that it will comply with all the conditions, provisions, and requirements of this permit or any amendment thereof.

Article 9. (1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

(2) The permittee shall take reasonable precautions to prevent and suppress fires, explosions, or leakage and to avert any conditions on the land traversed or waters affected by the United States facilities which might endanger the safety of these facilities.

(3) The permittee shall save harmless the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

Article 10. The permittee shall acquire such right-of-way grants, easements, permits, and other authorizations as may become necessary and appropriate.

Article 11. The permittee agrees to file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

Article 12. The permittee shall send notice to the Department of State of the United States at such time as the connection authorized by this permit is made at the international boundary line between the United States facilities and the facilities located in Canada.

IN WITNESS WHEREOF, I, Robert B. Zoellick, Under Secretary of State for Economic Affairs of the United States, have hereunto set my hand this 12TH day of DECEMBER, 1991, in the City of Washington, District of Columbia.

Robert B. Zoellick
C



United States Department of State

Washington, D.C. 20520

VIA EMAIL

David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington DC 20036

April 24, 2014

Dear Mr. Coburn,

We are writing to address two questions you have raised on behalf of your clients at Enbridge Energy, LP ("Enbridge") related to the pending replacement of the border segment of Enbridge's Line 3 crude oil pipeline, as well as Enbridge's further plans to replace the rest of Line 3. We thank for your letters of February 5 and March 17 and also appreciate the helpful and informative presentation you and your clients made at the meeting on January 30, and in your teleconference updates on February 26 and March 10. It is important that we understand Enbridge's plans in order to answer the questions you have raised, and so we have carefully considered the information you provided.

We understand that Enbridge is seeking confirmation from the Department of State with regard to two points: first that the replacement of the segment of the Line 3 pipeline from the border to the mainline valve at approximately mile 16 would be considered by the Department to be consistent with the authorizations in the existing 1991 Presidential Permit for the line; and, second, that the 34-inch pipe diameter descriptor in the Permit only applies to that same 16-mile segment. In these particular circumstances, as described further below, we can offer both assurances.

First, we find the replacement of the border segment of Line 3 to be consistent with the authorization in the existing Presidential Permit in part because Line 3 is an old pipeline, and you have stated that it can no longer sustain the operations (e.g., volume and pressure) that it was originally designed and authorized to handle. You have stated further that it has reached a condition where industry practice suggests that replacement of the pipe is the better option to maintain its safety and commercial value, rather than continued attempts at repairs. (And indeed, as your February 5 letter states, Article 9 of the Line 3 Presidential Permit mandates Enbridge to maintain the pipeline "in a condition of good repair for [its] safe operation".) You have also indicated that your deactivation

and maintenance of the old pipe will be conducted in accordance with U.S. Department of Transportation Pipeline and Hazardous Material Safety Administration (PHMSA) regulations.

Further, you have stated that the new border segment will be built within the existing right-of-way that the Line 3 border segment currently inhabits, and that the new segment will be fully consistent with all the terms of the existing Presidential Permit, including that it will be built with 34-inch diameter pipe, and that it will carry crude oil and other liquid hydro-carbons. Your March 17 letter confirmed that even after a full replacement of Line 3, the line's barrels-per-day volume will be in the same range (roughly 760,000 bpd) as the volume that Line 3 transported in 1991 when the existing Presidential Permit was issued. You also stated that Line 3 currently is equipped to carry the full range of products allowed by the Permit, including heavy crude oil. Based upon these representations, the Department accepts that the replacement of the border segment of Line 3 is authorized by the existing 1991 Presidential Permit.

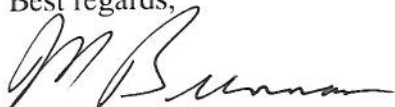
Second, when evaluating whether the pipeline facilities are consistent with the terms of the existing Permit, the Department of State would focus only on the pipe used from the Canadian border to the first mainline valve in the United States, which is located in Pembina County, North Dakota, approximately 16 miles from the border. The Permit provides authorization "to operate and maintain a pipeline on the borders of the United States in Pembina County, North Dakota" and to "connect this pipeline with like facilities in Canada." The only geographic reference in the definition of the U.S. facilities also is to Pembina County. Therefore, for these purposes, we are comfortable interpreting the Permit description of the covered U.S. facilities as applying to the segment of the pipe extending from the border to the valve at mile 16.

The Department also notes that Article 4 of the existing Permit for Line 3 states that "Permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, operation, and maintenance of the United States facilities." Therefore we were pleased to note, as indicated in your February 5 letter, that Enbridge intends to work with the U.S. Army Corps of Engineers, PMHSA, the International Boundary Commission, and other appropriate state and federal agencies to address environmental and cultural resource issues that may arise during the Line 3 replacement. We encourage you to continue close cooperation with all such relevant agencies.

The interpretations provided above apply only to the particular circumstances of Line 3 discussed here, and reflect our current understanding based on the information provided by Enbridge. Should any of the provided information prove to be materially incorrect or incomplete, we would need to revisit our conclusions. Further, the analysis in this letter

should not be extrapolated to other circumstances (on Line 3 or another line) without confirmation that the Department concurs.

Best regards,

A handwritten signature in black ink, appearing to read "MB Brennan", written in a cursive style.

Michael Brennan

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: May 1, 2020

DOCKET NO. PL-9/CN-14-916

DOCKET NO. PL-9/PPL-15-137

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
ROUTING PERMIT AS MODIFIED

PROCEDURAL HISTORY

I. Initial Filings

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge, or the Applicant) filed separate applications for a certificate of need¹ and a routing permit² for an approximately 338-mile pipeline, along with associated facilities, extending from the North Dakota–Minnesota border to the Minnesota–Wisconsin border (Line 3 Project, or the Project) to replace its existing Line 3 pipeline (Existing Line 3) in Minnesota.³

The Commission subsequently joined the need and routing dockets and authorized the Department of Commerce, Energy Environmental Review and Analysis Unit (EERA) to prepare a combined environmental impact statement (EIS).⁴ The Commission referred the need and

¹ *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 need docket).

² *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*, Docket No. PL-9/PPL-15-137 (the routing docket).

³ Commissioner Joseph K. Sullivan joined the Commission in April 2020, and therefore did not participate in the decisions contained in this order.

⁴ A more detailed procedural history can be found in the Commission’s previous orders in the need and routing dockets.

routing dockets to the Office of Administrative Hearings for contested-case proceedings and separately referred the question of EIS adequacy for contested-case proceedings.

II. Environmental Impact Statement

Following contested-case proceedings on the adequacy of the final EIS (FEIS), the Commission found the FEIS to be inadequate in four specific respects in December 2017.⁵ This triggered a requirement that EERA submit a revised EIS to address the issues identified by the Commission within 60 days of the decision.⁶

On February 12, 2018, EERA filed a Revised FEIS. After receiving exceptions of the parties and holding an Agenda Meeting on March 15, the Commission issued its Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman's November 2017 Report as Modified on May 1, 2018 (May 2018 FEIS Order), which determined that the Revised FEIS was adequate.

III. Certificate of Need Orders

On September 5, 2018, the Commission issued its Order Granting Certificate of Need as Modified and Requiring Filings (September 2018 CN Order), which granted Enbridge a certificate of need contingent upon the following modifications to the Line 3 Project: (1) a Parental Guaranty for environmental damages; (2) a Landowner Choice Program allowing for removal of Existing Line 3; (3) a Decommissioning Trust Fund for eventual decommissioning of the Project; (4) a Neutral Footprint Program requiring renewable energy credits to offset increased nonrenewable energy use by the Project and a tree-for-tree replacement program; and (5) requirements regarding General Liability and Environmental-Impairment Liability insurance. The September 2018 CN Order required Enbridge to submit a compliance filing containing further details about these modifications.

On January 23, 2019, the Commission issued its Order Approving Compliance Filings as Modified and Denying Motion (January 2019 CN Order). The January 2019 CN Order approved and modified Enbridge's compliance filings to develop the certificate-of-need modifications from the September 2018 CN Order.⁷ For example, the Commission approved a revised version of Enbridge's proposed Parental Guaranty and imposed additional requirements for Enbridge's proposed Landowner Choice Program.

IV. Routing Permit Orders

On October 26, 2018, the Commission issued its Order Approving Pipeline Routing Permit with Conditions (October 2018 RP Order), which granted a routing permit for a modified version of Enbridge's preferred route for the Project subject to a number of conditions.

⁵ Need and Routing Dockets, Order Finding Environmental Impact Statement Inadequate (December 14, 2017).

⁶ Minn. R. 4410.2800, subp. 5.

⁷ The January 2019 CN Order also denied Honor the Earth's Motion to Disclose Insurance Exclusion Clauses.

These conditions required the following: (1) removal of exposed segments of Existing Line 3; (2) a Field Emergency Response Plan; (3) periodic updates on the adequacy of Enbridge's cyber-security systems; (4) a Public Safety Liaison to ensure appropriate safety and security measures during construction and operation of the Project; (5) a Human Trafficking Prevention Plan; (6) a Public Safety Escrow Trust Account; (7) annual reports regarding construction workers and Enbridge's county property tax liability; and (8) a Tribal Economic Opportunity and Labor Education Plan and tribal liaison to oversee implementation of this Plan.

On January 18, 2019, the Commission issued its Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration (January 2019 RP Order). The January 2019 RP Order made two clarifying changes to the Project routing permit regarding permit attachments and temporary workspaces during construction.⁸

V. Appeal and Remand

On June 3, 2019, the Minnesota Court of Appeals reversed the May 2018 FEIS Order upon the court's determination that the Revised FEIS was inadequate due to its "failure to specifically address the potential impacts to the Lake Superior watershed."⁹ The court remanded to the Commission for further proceedings consistent with its decision.

On September 17, 2019, the Supreme Court of Minnesota denied petitions for review of the Court of Appeals decision from several parties.

On October 8, 2019, the Commission issued its Order Finding Environmental Impact Statement Inadequate on Remand (October 2019 FEIS Order) in the need and routing dockets, which requested that EERA "revise the final EIS to include an analysis of the potential impact of an oil spill into the Lake Superior watershed consistent with the Court of Appeals's decision, and to submit a revised final EIS to the Commission within 60 days."¹⁰

VI. Second Revised Final Environmental Impact Statement

On December 9, 2019, EERA submitted the Second Revised FEIS in accordance with the October 2019 FEIS Order.

Also on December 9, the following notices were issued:

- The Commission issued a Notice of Availability, Public Comment Opportunity, and Written Comment Period for the Revised FEIS on the Line 3 Replacement Project (PUC Notice). The PUC Notice requested written comment on the adequacy of the Second Revised FEIS and what action the Commission should take on the certificate of need and

⁸ The January 2019 RP Order also excluded Honor the Earth's untimely filed amended petition for reconsideration, declined to grant Enbridge's motion to strike Friends of the Headwaters' petition for reconsideration and rehearing, and denied reconsideration of the October 2018 RP Order.

⁹ *In re Applications 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*, 930 N.W.2d 12, 28 (Minn. Ct. App. 2019), *cert. denied*, (Minn. 2019).

¹⁰ October 2019 FEIS Order, at 3.

routing permit in light of the Second Revised FEIS. The PUC Notice also announced a public commenting forum to allow the public to make comments in front of an ALJ.

- EERA issued a Notice of Availability and Comment Period for the Line 3 Replacement Project Second Revised FEIS (EERA Notice), which announced the comment period for the Second Revised FEIS.

On December 19, 2019, the Commission held two public commenting forums at the Radisson Hotel in Duluth, Minnesota, where nearly 100 people gave oral comments.

By January 6, 2020, Enbridge and Friends of the Headwaters submitted comments in response to the PUC Notice.

By January 16, 2020, the following parties submitted reply comments:

- Enbridge
- Friends of the Headwaters
- Northern Water Alliance of Minnesota (Northern Water Alliance)
- Honor the Earth
- Honor the Earth and Sierra Club (Joint Commenters)
- Shippers for Secure, Reliable, and Economical Petroleum Transportation (Shippers)
- Laborers' International Union of North America (LIUNA)
- United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association)

By January 16, 2020, the Commission had received approximately 360 comment letters from individual citizens, interest groups/associations, businesses, tribal governments, international governments, and state legislators, as well as several different types of form letters or letters with signees.

On January 31, 2020, Commissioners provided an additional opportunity for oral comments directly in front of the Commission and heard over 150 public comments regarding the Project in addition to those provided in Duluth in December 2019.

On February 3, 2020, the Commission heard oral argument and deliberated on the issues outlined in the PUC Notice.

FINDINGS AND CONCLUSIONS

VII. Summary of Commission Action

In this order, the Commission will take the following actions:

- Find that the Second Revised FEIS is adequate under Minn. R. 4410.2800, subp. 4;
- Grant the certificate of need for the Project by reissuing the September 2018 CN Order and the January 2019 CN Order;

- Modify certain dates contained in the January 2019 CN Order;
- Grant the routing permit for the Project by reissuing the October 2018 RP Order and the January 2019 RP Order; and
- Clarify and modify certain conditions of the routing permit contained in the October 2018 RP Order.

VIII. Adequacy of Second Revised FEIS

A. Background

The Commission is tasked with determining whether the Second Revised FEIS is adequate under Minn. R. 4410.2800. An FEIS is adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the [Minnesota Environmental Policy Act] and parts 4410.0200 to 4410.6500.¹¹

The Court of Appeals concluded that the Revised FEIS was inadequate because it failed to address the following potentially significant issue raised during the scoping process: “the potential impacts to the Lake Superior Watershed including potential impacts of oil spills along the proposed Project.”¹² The court considered a number of other alleged inadequacies in the FEIS, and concluded that

[t]he FEIS properly defined the purpose of the project, sufficiently identified alternatives, including a “no action” alternative, and utilized an appropriate methodology to analyze potential impacts from oil spills. The FEIS adequately analyzed potential impacts to GHG emissions, potential impacts on historic and cultural resources, the relative impacts of alternative routes, and cumulative potential effects.¹³

¹¹ Minn. R. 4410.2800, subp. 4.

¹² *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 27 and n.8 (quoting Revised FEIS); *see also* Minn. R. 4410.2800, subp.4(A).

¹³ *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 36.

The Second Revised FEIS describes EERA's process for choosing the hypothetical spill location, or "representative site," in the Lake Superior watershed.¹⁴ Approximately 150 watercourses within the Lake Superior watershed were considered as representative sites, and that list was reduced to nine after removing small crossings that presented a limited potential for oil to reach Lake Superior within 24 hours.¹⁵ Those nine sites were then assessed based on a variety of factors including proximity to Lake Superior, size, types of uses, and hydrologic features such as the presence of rapids versus flat water.¹⁶ The Second Revised FEIS explains why water crossings were chosen as representative sites rather than land crossings: "Unmitigated releases of oil into water would have a larger spatial distribution and a greater potential to cause adverse effects to larger numbers of ecological and human receptors. Therefore, this analysis focused on scenarios that result in the release of crude oil to watercourses as a conservative assumption."¹⁷

According to the Second Revised FEIS, the intent of the representative-sites approach "was to infer a range of potential effects that may occur at this and other locations in Minnesota with similar biophysical and human use characteristics."¹⁸ In other words, representative sites were chosen to model how a hypothetical spill of different oil types would interact with the environment downstream of that site under several different seasonal conditions; this analysis of representative sites could then be used to understand the possible outcomes of a hypothetical spill at other sites along the route that are similar to the representative site. The Court of Appeals affirmed the representative-sites approach in its decision, noting that this method analyzes the impacts of an oil spill at all locations along the Project route.¹⁹

B. Comments

1. Opponents of the Project

Friends of the Headwaters, Joint Commenters, and Northern Water Alliance argued that the Second Revised FEIS remains inadequate for several reasons. They argued that EERA should have chosen sites closer to Lake Superior, such as the Pokegama River, Little Pokegama River, or Nemadji River sites. They claimed that EERA did not choose these sites because they are located in Wisconsin, which they argued is inconsistent with the Court of Appeals's decision in *In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package*.²⁰

¹⁴ Second Revised FEIS, at Appendix V-2, Section 1.6. Appendix V-2 of the Second Revised FEIS is the *Addendum to Assessment of Accidental Releases: Technical Report*, which assesses the potential effects of an oil spill into the Lake Superior watershed.

¹⁵ Second Revised FEIS, at Appendix V-2, page 1.7. See Figure 1-2 of Appendix V-2 for a map showing the potential representative sites as well as the Lake Superior watershed boundary.

¹⁶ Second Revised FEIS, at Appendix V-2, pages 1.9–1.10 and Table 1.3.

¹⁷ Second Revised FEIS, at Appendix V-2, page 1.4.

¹⁸ Second Revised FEIS at Chapter 10, page 10-58.

¹⁹ *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 28.

²⁰ 938 N.W.2d 843 (Minn. Ct. App. 2019).

These parties also argued that the spill analysis for Little Otter Creek failed to capture the full range of impacts to the Lake Superior watershed, and that EERA should have used different models and modeling assumptions in its analysis. Friends of the Headwaters objected to the comment process, arguing that parties should have had more time to comment and that the scope of the PUC Notice and EERA Notice were unclear. Friends of the Headwaters also argued that changed circumstances regarding oil prices and production, the viability of alternative pipelines, and changes in Enbridge's corporate structure and shippers' contracts required a supplement to the FEIS.

Honor the Earth argued that the FEIS is inadequate because it did not adequately accommodate indigenous analysis. Honor the Earth submitted a copy of a traditional scroll of the landscape and explained indigenous beliefs and traditional ecological knowledge. They recommended that if the Project is built, "[a]ll phases of site preparation, pipe installation and any future maintenance activities should be monitored by Tribal Monitors."²¹

2. Supporters of the Project

Supporters of the Project argued that the Commission should find the Second Revised FEIS adequate. Enbridge and United Association argued that Little Otter Creek was the proper representative site for analysis of a spill in the Lake Superior watershed. Enbridge, LIUNA, and United Association argued that the new information offered by other parties was not credible and did not rise to the level of requiring a supplement to the FEIS. Shippers disputed claims that oil production in Western Canada had decreased and maintained that apportionment remains a problem on Enbridge's system. Enbridge and Shippers argued that other parties had offered no viable alternatives to the Project. Lastly, Enbridge argued that the Commission had exceeded the public-comment requirements for the Second Revised FEIS.

3. Public Comments

The Commission received approximately 360 comment letters in response to the PUC Notice and EERA Notice from individual citizens, interest groups/associations, businesses, tribal governments, international governments, and state legislators, as well as several different types of form letters or letters with signees. In addition, over 250 people gave oral comments before an administrative law judge or in front of the Commission.

Commenters discussed a wide range of issues including the adequacy of the Second Revised FEIS, potential benefits of the Project for employment and economic development, the need to replace Existing Line 3, potential impacts from oil spills, climate change, and indigenous rights. Some of the commenters requested that the Commission find the Second Revised FEIS adequate, and some requested that the Commission find it inadequate.

C. Commission Action

The Commission concludes that the additional information and analysis contained in the Second Revised FEIS has fulfilled the directive from the Court of Appeals to address the potential impacts of an oil spill from the Project in Lake Superior's watershed. By modeling a hypothetical oil spill at the site where the Project crosses Little Otter Creek, the Second Revised FEIS

²¹ Honor the Earth comments, at 5.

describes how an oil spill could impact the watershed as the oil flows downstream. Thus, the Commission determines that the Second Revised FEIS is adequate under Minn. R. 4410.2800.

Modeling a hypothetical worst-case scenario oil spill at representative sites along the Project route is one of several ways that the Second Revised FEIS addresses the potential impacts of an oil spill. The purpose of the spill modeling was to analyze how oil would behave in the environment under a range of conditions so that the analysis could then be used to understand how oil could impact similar sites along the Project route.²² For example, a person wanting to know how oil might interact with the environment of a particular area could choose a representative site with similar characteristics to learn how oil behaves under those conditions.

The Second Revised FEIS indicates a number of reasons why the Little Otter Creek site was chosen as the representative site for the Lake Superior watershed. The area downstream of the Little Otter Creek crossing includes “rapids and waterfalls with the potential for sinking oil,” which is a major factor affecting the potential water-quality impacts of a spill.²³ Only two other representative sites besides Little Otter Creek have rapids or falls downstream, making this site an important addition to the analysis.²⁴ The downstream area also contains “large regions of environmentally susceptible receptors” such as Jay Cooke State Park and sturgeon habitat.²⁵ As EERA’s letter accompanying the Second Revised FEIS explained, “the Little Otter Creek site has a range of physical characteristics that add depth to the suite of seven representative sites previously modeled in the EIS.”²⁶

By contrast, the Pokegama River, Little Pokegama River, and Nemadji River sites are less compelling and informative representative sites for the spill analysis. These rivers are “slow moving” with “low potential for entrainment and sinking oil,”²⁷ so modeling a spill at these sites would tell us less about how oil can negatively affect water quality. Seven of the eight previously modeled representative sites have flat water that characterizes the Pokegama River, Little Pokegama River, and Nemadji River, and those previously modeled sites can be used to understand how oil would impact these waterways.²⁸ Furthermore, the area downstream of these sites is industrialized, featuring docks and manmade banks;²⁹ this means oil is less likely to collect on streambanks and impact flora and fauna, as opposed to undeveloped streambanks

²² See Second Revised FEIS, at Chapter 10, page 10-54.

²³ Second Revised FEIS at Appendix V-2, page 1.9. Rapids, waterfalls, and dams, which are all present downstream of the Little Otter Creek site, increase the turbulence of the water and cause the oil to mix vertically in the water column, a process called “entrainment.” Second Revised FEIS at Appendix V-2, page 3.47. When entrainment occurs, oil dissolves in the water, which lowers water quality and negatively affects aquatic biota. Second Revised FEIS at Chapter 10, page 10-32. For a description of how oil would interact with the rapids and dam downstream of the Little Otter Creek site, see Appendix V-2 at page 4.111.

²⁴ Second Revised FEIS at Appendix V-2, Table 1-4, page 1.16.

²⁵ Second Revised FEIS at Appendix V-2, Table 1-2, page 1.9.

²⁶ EERA filing letter, at 2 (December 9, 2019).

²⁷ Second Revised FEIS at Appendix V-2, pages 1.9–1.10.

²⁸ See Second Revised FEIS at Appendix V-2, Table 1-4, page 1.16.

²⁹ *Id.* at Table 1-2, page 1.9.

where oil collects in and is retained by the vegetation lining the stream.³⁰ The Second Revised FEIS presents several substantive reasons why the Pokegama River, Little Pokegama River, and Nemadji River sites were rejected based on the characteristics of those water bodies, not because they are located in Wisconsin. Further, it is clear that EERA did not reject Wisconsin sites for legal reasons, because three of the nine final sites were located in Wisconsin.

In arguing that the Second Revised FEIS fails to fully capture the impacts of a spill in the Lake Superior watershed, Friends of the Headwaters and Joint Commenters appear to be repeating arguments that were already considered by the Court of Appeals. The Court of Appeals rejected the claim that the FEIS should have analyzed “the specific impacts that would result from an oil spill originating from any particular location,” and instead affirmed the representative-sites approach taken in the FEIS:

[T]he impact of any particular spill will depend on multiple variables, many of which are subject to chance. Rather than attempting to predict the consequences of an oil spill from a particular location, the FEIS focuses on analyzing the potential resource impacts of a spill at all locations along the APR and alternatives.³¹

Friends of the Headwaters also argued that EERA used “overly optimistic” assumptions for how long it would take to detect and control an oil spill. The Commission disagrees with this characterization of the modeling assumptions used to analyze a potential oil spill from the Project. The Second Revised FEIS assumed a “worst-case potential outcome” of a full-bore rupture of the pipeline that would spill unmitigated for 24 hours. This scenario is a “highly conservative” modeling assumption due to the low probability of such an event.³² EERA’s modeling methods were also upheld by the Court of Appeals and are consistent with guidance from the U.S. Environmental Protection Agency.³³ Furthermore, using the same models and modeling assumptions for all representative sites ensures consistent analysis and comparable results. The Commission concludes that the Second Revised FEIS used the appropriate modeling assumptions to analyze the potential impacts of an oil spill from the Project.

Minnesota rules require a supplement to an EIS if “substantial new information or new circumstances” come to light that “significantly affect the potential environmental effects from the proposed project” or the availability of alternatives.³⁴ Friends of the Headwaters argued that new information pertaining to the global oversupply of oil, low crude oil prices, oil production in Canada and the United States, the viability of alternative pipelines, changes in Enbridge’s corporate structure and shipper contracts, and oil leaks on other pipelines constitute substantial new information requiring a supplement to the Second Revised FEIS. However, this information is not relevant to the environmental effects from the Project, and the alternatives proposed by

³⁰ Second Revised FEIS at Chapter 10, page 10-38 to 10-39.

³¹ *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 28.

³² Second Revised FEIS at Appendix V-2, page 3.31.

³³ Second Revised FEIS at Appendix V-2, page 3.32.

³⁴ Minn. R. 4410.3000, subp. 3(2).

Friends of the Headwaters were already rejected by the Court of Appeals because they do not fulfill the purpose of the Project.³⁵ Therefore, a supplement to the FEIS is not warranted.

Lastly, Friends of the Headwaters objected to the comment process but did not allege any inconsistencies with statutes or rules. The Commission accepted comments on the Second Revised FEIS for over 30 days, exceeding the 10 days required by Minn. R. 4410.2800, subp. 2. The Commission also held two oral public comment sessions in Duluth in front of an administrative law judge and a full day of public comments in front of the Commission itself. The PUC Notice contains more topics for comment than the EERA Notice, but that does not render either notice improper nor require changes to the process. Further, given the volume of comments received, it does not appear that the public's ability to provide comments was impacted by the issues Friends of the Headwaters alleges. The Commission concludes it has provided sufficient opportunity for the public to comment on the topics included in the PUC Notice and has considered those comments in its decision here.

IX. Certificate of Need Orders

When the Court of Appeals reversed and remanded the May 2018 FEIS Order because it deemed the Revised FEIS inadequate, this effectively nullified the Commission's orders granting the certificate of need and routing permit. Now that the Commission has determined the Second Revised FEIS adequate, the Commission will decide whether to grant the certificate of need by reissuing those orders.

A. Background

1. Certificate of Need Criteria

The factors the Commission must consider in evaluating the need for a proposed large petroleum pipeline such as the Project are set forth by statute and rule.³⁶ In particular, Minn. R. 7853.0130 directs the Commission to issue a certificate of need when the applicant satisfies the following factors:

- 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:
 - (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;
 - (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

³⁵ See *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 23–26. While this information is not relevant to the environmental analysis, it is potentially relevant to the need for the Project and will be considered for that purpose.

³⁶ Minn. Stat. § 216B.243, subd. 3; Minn. Rules, Chapter 7853. Applicants seeking a certificate of need to build a pipeline need not address legal requirements that pertain exclusively to electric service.

- (3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;
 - (4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and
 - (5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:
 - (1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;
 - (2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;
 - (3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and
 - (4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:
 - (1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;
 - (2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments, compared to the effect of not building the facility;
 - (3) the effects of the proposed facility, or a suitable modification of it, in inducing future development; and
 - (4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

2. Commission's Rationale for Previously Granting Certificate of Need

In the September 2018 CN Order, the Commission analyzed each criteria and sub-factor listed above and determined that the record supported granting the certificate of need with modifications. While that order was invalidated when the Court of Appeals found the Revised FEIS inadequate, the information that the Commission relied upon to make its decision in the September 2018 CN Order is still in the record.

For its consideration of Part A of Minn. R. 7853.0130, the Commission found that denying the certificate of need for the Project would have the probable result of adversely affecting the future adequacy, reliability, and efficiency of energy supply to Enbridge's customers and to the people of Minnesota and neighboring states. In making this finding, the Commission relied on the several forecasts in the record showing that oil supply would continue to increase throughout the forecast period, as well as evidence that oil supply would continue to be equal to or less than demand during the forecast period. The Commission also found that apportionment regularly occurs when the volume of oil that shippers request to transport over Existing Line 3 exceeds the capacity of the pipeline.³⁷ Based on this evidence, the Commission concluded that the Project is needed to ensure an adequate, reliable, and efficient supply of crude oil to Enbridge's customers, Minnesota, and the region.

For Part B, the Commission considered whether transporting oil by truck and rail or alternate pipelines were reasonable and prudent alternatives to the Project. The Commission found that no alternative in the record was more reasonable or prudent than the Project.

For Part C, the Commission found that the consequences to society of granting the modified certificate of need are more favorable than the consequences of denying the certificate. The Commission found that granting the certificate of need would generally have a positive effect on the socioeconomic environment by meeting overall state energy needs, generating thousands of construction jobs and inducing further employment, and providing tax benefits to local communities. The Commission found a crucial benefit of the Project is that it would significantly reduce the risk of an accidental oil spill by replacing the rapidly deteriorating Existing Line 3 with a state-of-the-art pipeline built with stronger materials, new technology, and more effective inspection and testing.

The Commission acknowledged that construction of the Project would impact the natural environment by causing habitat loss and fragmentation, but noted that denying the certificate of need would require continued maintenance on Existing Line 3 with ongoing impacts similar to new pipeline construction. These maintenance impacts were a major concern highlighted repeatedly by the Leech Lake Tribal Government throughout the proceeding. To mitigate environmental impacts of the Project, the Commission modified the certificate of need to require a Neutral Footprint Program to offset the incremental increase in nonrenewable energy consumed by the Project and replace each tree removed during construction with a new tree on public land, a Landowner Choice Program to facilitate the removal of Existing Line 3 where requested, a Parental Guaranty for environmental damages, a Decommissioning Trust Fund, and general liability and environmental impairment liability insurance policies.

³⁷ The Commission also found that current and planned facilities are insufficient to meet future demand and that the Project would make efficient use of resources. September 2018 CN Order, at 16–18.

The Commission also acknowledged the significant lifecycle-greenhouse-gas emissions from the Project and the cost to society arising from those emissions. However, the Commission found that most of those emissions would not result directly from the Project but rather from ultimate consumption of the oil transported by the Project. The Commission recognized the potential impacts of global climate change, but after carefully reviewing the record concluded that denying the certificate of need would not significantly reduce the demand for crude oil and would therefore not significantly reduce climate change impacts. Instead, the record demonstrated that the most likely consequence of denial would be increased transport of crude oil via more dangerous means such as truck, rail, and Existing Line 3.

The Commission expressed serious concern with the Project's impacts to indigenous populations, acknowledging that the Project would traverse ceded territories where Minnesota's Ojibwe and Chippewa tribes hold usufructuary hunting, fishing, and gathering rights. But the Commission concluded that denying the certificate of need would have disproportionate and serious effects on the Leech Lake reservation—as the Leech Lake Tribal Government clearly asserted to the Commission on multiple occasions through the process—because it would require continued disruptive maintenance of Existing Line 3 and increase the risk of an accidental oil spill on those lands.

Lastly, the Commission found that granting the certificate of need was consistent with all applicable laws and policies, including Minnesota's energy policy.

B. Parties' Comments

1. Opponents of the Project

Project opponents, particularly Friends of the Headwaters, raised several pieces of new information that it asserts should lead the Commission to reach a different result. Friends of the Headwaters suggested that other pipelines and new, more efficient methods of transporting oil by rail are viable alternatives to the Project. Friends of the Headwaters also claimed that oil prices and demand for oil from Western Canada have dropped, obviating the need for the Project. Friends of the Headwaters noted that Enbridge intends to shift its monthly allocation system to a take-or-pay contract system, which Friends of the Headwaters claims will eliminate apportionment on its system. Friends of the Headwaters argued that Enbridge's corporate reorganization calls into question its financial assurance. Finally, Friends of the Headwaters claimed that there is new information available suggesting that the risk of leaks from a new pipeline such as the Project is higher than previously reported.

2. Supporters of the Project

In response, Shippers provided information that Western Canadian oil production is projected to increase significantly in the next decade. Shippers also explained that its members expected apportionment to worsen for many years into the future. Shippers argued that Friends of the Headwaters had not provided any reasonable or prudent alternatives to the Project.

Enbridge argued that Friends of the Headwaters' proposed alternatives did not meet the purpose for the Project, which the Court of Appeals affirmed in its decision.

C. Commission Action

The Commission has thoroughly considered all of the information in the record and concludes that the information offered by Friends of the Headwaters does not materially impact the need for the Project that was determined in the September 2018 CN Order. For that reason, the Commission will grant a certificate of need for the Project by reissuing its prior orders—including the important modifications to the certificate of need that are necessary to protect the public interest.

The Commission incorporates by reference the September 2018 CN Order and the January 2019 CN Order, which contain the complete rationale for the Commission’s decision to grant the certificate of need. In the following section, the Commission addresses the new information raised by the parties as it relates to the criteria for considering a certificate of need.

1. The Probable Result of Denial Would Adversely Affect the Future Adequacy, Reliability, or Efficiency of Energy Supply to Enbridge, Enbridge’s Customers, and the People of Minnesota.

After evaluating the record, the weight of the evidence continues to show that there has historically been, and likely will continue to be over the long-range forecast period, an increasing supply of the oil that will be transported through Enbridge’s system.³⁸ While Friends of the Headwaters point to changes in oil prices and regulatory structures in Canada, opponents did not produce any evidence that this information would have a material impact on oil supply during the long-range forecast period. The Commission relies on long-range forecasts in its certificate-of-need analysis because evidence of short-term fluctuations in oil markets are not particularly useful in determining the need for a petroleum pipeline.

The record also shows that there has been and likely will continue to be apportionment on Enbridge’s system, indicating that the current capacity of the system is not sufficient and the Project is needed to alleviate that apportionment.³⁹ The Commission is satisfied that the record demonstrates that the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to Enbridge, Enbridge’s customers and to the people of Minnesota and neighboring states.

2. A More Reasonable and Prudent Alternative Has Not Been Demonstrated by a Preponderance of Evidence.

Friends of the Headwaters advanced several pieces of information to support its contention that there are reasonable and prudent alternatives to the Project, including new information about truck and rail transport alternatives. As described in the ALJ’s Report and in the Commission’s September 2018 CN Order, however, transport by truck or rail is much more expensive and comes with greater environmental risk.⁴⁰ To the extent that Friends of the Headwaters has identified new and relevant information, it does not materially affect the Commission’s conclusion that transport by truck or rail are not reasonable and prudent alternatives to the Project.

³⁸ September 2018 CN Order, at 13–14.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 19–20.

Friends of the Headwaters also pointed to new information about different pipelines located in other areas of the country. The certificate of need criteria, however, require the Commission to consider alternatives that fulfill the purpose of the Project, which would transport crude oil from the North Dakota-Minnesota border to the Minnesota-Wisconsin border in order to “reallocate transport capacity on Enbridge’s Mainline System to make the system itself more efficient and economical for Applicant’s customers.”⁴¹ The ALJ considered alternative pipelines in her Report and concluded that they did not provide reasonable and prudent alternatives to the Project.⁴² The new information pointed to by Friends of the Headwaters does not materially affect the prior conclusions of the ALJ and the Commission. Having reviewed the new information in combination with the existing record, the Commission concludes that a more reasonable and prudent alternative has not been identified.

3. The Consequences to Society of Granting the Certificate of Need Are More Favorable Than the Consequences of Denial.

The Commission also continues to conclude that the consequences to society of granting the modified certificate of need are more favorable than the consequences of denial. The record demonstrates that there are real, immediate, and potentially catastrophic risks associated with continuing to use Existing Line 3. The U.S. Department of Justice recognized these risks when it executed a Consent Decree in which Enbridge agreed to replace Existing Line 3 in Minnesota if it can obtain the necessary regulatory approvals to do so.⁴³ And these risks were further amplified by the additional information provided in the Second Revised FEIS regarding the potential impacts to the Lake Superior watershed.

Existing Line 3 is deteriorating at an alarming rate, increasing the public safety and environmental risks to Minnesota and requiring constant and disruptive maintenance impacting hundreds of thousands of acres of land.⁴⁴ The Leech Lake Tribal Government has continued to urge the Commission to grant the certificate of need and remove the risks to its reservation lands posed by Existing Line 3.⁴⁵ The environmental, sociological, cultural, and economic cost of a serious leak on Existing Line 3 would be severe, and leaks become more likely as the pipeline continues to age.⁴⁶

⁴¹ *Id.* at 19 (quoting ALJ Report at finding 806).

⁴² *Id.* at 20–22.

⁴³ See September 2018 CN Order, at 6. Once Enbridge obtains regulatory approval to replace Existing Line 3, the Consent Decree requires Enbridge to decommission the Existing Line 3 by cleaning out the pipeline and ceasing its operation. If Enbridge does not receive all necessary approvals for the replacement, it must carry out an extensive maintenance program involving 6,250 “integrity digs” over the next 15 years to repair and replace many segments of the line. *Id.*

⁴⁴ *Id.* at 27–28.

⁴⁵ See, e.g., Transcript of February 3, 2020 Agenda Meeting, at 11–13, 119–121.

⁴⁶ September 2018 CN Order, at 28 (“[T]here is no feasible technology or operational changes that can arrest or reverse the external corrosion on Line 3 and/or remove the defects that were inherent in the way the pipe was originally manufactured.”).

In its prior decision, the Commission carefully considered these facts along with the Project's potential impact on climate change. The Commission recognized that most of the emissions attributed to the Project would result from ultimate consumption of the oil, not the construction or operation of the Project. The Commission previously found that denial of the certificate of need would not significantly reduce demand for crude oil, and would instead lead to "increased transport of crude oil via more dangerous means such as rail, and continued use of the deteriorating Existing Line 3."⁴⁷ In weighing this record evidence, the Commission continues to conclude that the consequences to society of denying the certificate of need are more potentially dangerous and detrimental than the consequences of granting the certificate of need. The Commission also modified the certificate of need to mitigate the impact of the Project's emissions, and will ensure that these modifications are reissued.

The new information raised by Project opponents does not materially impact the environmental risks posed by continuing to operate Existing Line 3 nor the other societal impacts that the Commission considered. The entire record, including the new information advanced by opponents, continues to demonstrate that denying the certificate of need is not likely to reduce the transport of crude oil and, as a result, not likely to reduce the overall consumption of oil or the emissions that result. Further, the record continues to demonstrate that the risks to Minnesota from continued operation of Existing Line 3 are significant. Granting the certificate of need is likely to stop the flow of oil through old and corroded infrastructure that crosses the Leech Lake reservation. The Commission concludes that the consequences to society of granting the certificate of need are more favorable than those for denial.

4. It Has Not Been Demonstrated That the Design, Construction, Or Operation of the Project Will Fail to Comply with the Relevant Policies, Rules, and Regulations.

Finally, the Commission concludes that the applicant has demonstrated that the design, construction, and operation of the proposed facility can comply with policies, rules, and regulations of other state and federal agencies and local governments.

The record demonstrates that the Applicant has satisfied each of the criteria for granting a certificate of need. The Commission will therefore grant the certificate of need for the Project by reissuing the September 2018 CN Order and the January 2019 CN Order, both of which are filed concurrently with this order. If there is a conflict between the September 2018 CN Order and January 2019 CN Order, the January 2019 CN Order will control, as the January 2019 CN Order contains further refinement of the certificate of need modifications.

X. Modifications to Certificate of Need

The Commission has determined that certain dates contained in the January 2019 CN Order should be updated to reflect the passage of time. In particular, the Commission finds that deadlines in the Landowner Choice Program should be extended by one year in order to allow enough time for landowners and Enbridge to accomplish the Program's goals. The Commission will therefore modify Section I.B.2 and ordering paragraph 2 of the January 2019 CN Order as described below.

⁴⁷ *Id.* at 29.

XI. Routing Permit Orders

The Commission must also decide whether to reissue the routing permit for the Project. In response to the PUC Notice, no party proposed modifications to the route or routing permit previously approved by the Commission. Further, the additional information provided in the Second Revised FEIS does not change the Commission's conclusions regarding the appropriateness of the route.

The Commission continues to find that this route and the conditions contained in the routing permit "best optimizes the considerations set forth" in the applicable rule.⁴⁸ The Commission will therefore grant a routing permit for the Project by reissuing the October 2018 RP Order and the January 2019 RP Order, both of which are filed concurrently with this order.

XII. Modifications to Routing Permit

After the October 2018 RP Order was issued, the Commission began taking steps to implement that order. Through these actions, the Commission has identified several ways to improve and clarify the details of certain routing-permit conditions.

For example, the Commission has determined that state agencies may have a role in combating drug and human trafficking and ensuring public safety related to the Project, and should therefore have access to funding through the Public Safety Escrow Trust Account for incremental costs of activities directly related to the Project. The Commission has also determined that a preliminary deposit in the Public Safety Escrow Trust Account will help facilitate development of the protections included in the routing permit.

The Commission will therefore modify and clarify ordering paragraphs 6, 7, 8, and 9 of the October 2018 RP Order as described below.

ORDER

1. The Commission finds that the Second Revised Final Environmental Impact Statement filed on December 9, 2019, is adequate under Minn. R. 4410.2800, subp. 4.
2. The Commission approves the certificate of need for the Line 3 Replacement Project (the Project) by reissuing the following orders:
 - Order Granting Certificate of Need as Modified and Requiring Filings, dated September 5, 2018 (September 2018 CN Order); and
 - Order Approving Compliance Filings as Modified and Denying Motion, dated January 23, 2019 (January 2019 CN Order).

If there is a conflict between the September 2018 CN Order and January 2019 CN Order, the January 2019 CN Order will control.

⁴⁸ See 7852.1900, subp. 3.

3. The Commission makes the following modifications to Section I.B.2 and ordering paragraph 2 of the January 2019 CN Order:
 - a. Landowners must indicate their decision regarding their participation in the Program by July 1, ~~2024~~ 2025.
 - b. Enbridge will file a plan by July 1, ~~2022~~ 2023, outlining steps to be taken to contact landowners who have not responded with their decision regarding their participation in the Program.
 - c. Any landowner whose request for removal cannot be honored for any reason, even after July 1, ~~2024~~ 2025, shall be offered compensation for allowing the pipe to be decommissioned in-place on the same terms as all other landowners who choose decommissioning in-place.
4. The Commission grants a routing permit to Enbridge Energy, Limited Partnership for the Project by reissuing the following orders:
 - Order Approving Pipeline Routing Permit with Conditions, dated October 26, 2018 (October 2018 RP Order); and
 - Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration (January 2019 RP Order).
5. The Commission makes the following modifications and clarifications to ordering paragraphs 6, 7, 8, and 9 of the October 2018 RP Order:
 - a. Within 10 days of this order, Enbridge shall open the Public Safety Escrow Trust Account as described in ordering paragraphs 6, 7, 8, and 9 of the October 2018 RP Order to provide for deposit of a limited preliminary funding;
 - b. Prior to the Executive Secretary determining the “initial amount” to be deposited in the Public Safety Escrow Trust Account, Enbridge shall make a limited preliminary public safety funding deposit in the amount of \$250,000 that may be accessed prior to the Executive Secretary’s determination of the “initial amount” in paragraph 9.B of the October 2018 RP Order;
 - c. The Commission clarifies that funding under these ordering paragraphs is available to state agencies with expertise in specific functions directly related to combating drug and human trafficking and public safety;
 - d. State agencies may only seek this funding if they can show that the activities are incrementally additional activities beyond their present funding and they are specifically related to the Project;
 - e. The Commission clarifies that pipeline project activities covered by these ordering paragraphs include removal of Existing Line 3;

- f. The Commission modifies ordering paragraph 9.E of the October 2018 RP Order as follows:

Local units of government may also seek reimbursement for the added costs for law enforcement, public safety, public health, planning, and other services arising from activities in and around the construction site during the term of the routing permit as a direct result of the pipeline construction. After having sought reimbursement from state or federal funding programs as appropriate, local units of government may submit to the Public Safety Liaison a written request for reimbursement. The request should contain an itemized list of expenses and sufficient detail to permit the ~~Commission~~ Executive Secretary to determine whether the services rendered were reasonable and appropriate additional municipal services uniquely provided as a result of the construction of the pipeline during the term of this permit.

6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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Commissioner Matthew Schuerger, dissenting

I respectfully dissent from the Commission's decision to grant Enbridge Energy a certificate of need to construct a new Line 3 pipeline. After considering the requirements of Minn. Stat. § 216B.243, subd. 3, and the factors established in Minn. R. 7853.0130, as applied to the record evidence, I find that the project does not meet the criteria to grant a certificate of need and the application should be denied.

The applicant has not, in my view, met its burden of proof. The applicant failed to provide an accurate forecast of demand for the type of energy that would be supplied by the proposed facility, and did not establish that the consequence of denial would adversely affect adequacy, reliability, or efficiency of energy supply. And at a minimum, the law requires the Commission to refer this matter for further contested case proceedings.

This decision is immensely important and intensely consequential. The record is significantly enhanced by extensive public participation, through public hearings that were held around the state and through written comments. But, while there is a robust record of evidence—tens of thousands of pages—considerable time has passed since the record was developed. Significant new and relevant information is available including:

- new information on climate change and its impact on demand for oil and its refined products;
- new information on electrification of transportation and its impact on demand for oil and its refined products;
- new information on the applicant's actions to fundamentally change the way capacity on the Mainline system is contracted and will likely materially affect apportionment, upon which the Commission relied in the prior and current decisions.

The Commission should be fully informed about the extent and consequences of these developments before rendering a decision on the certificate of need. For these reasons, which are explained in greater detail below, the Commission should either deny the Certificate of Need or refer the matter to the Office of Administrative Hearings for supplemental record development and analysis.

I. Introduction

This decision, like all cases that come before the Commission, is entirely about the law and the evidence. Do the law and the record evidence support the project, or, a suitable modification of the proposed project? Has the applicant met its burden of proof?

There are four criteria that must be met to establish need under Minnesota law.¹ As I examine and match the criteria with the record evidence, clear shortfalls emerge regarding rule criteria A and C—particularly items A(1), C(1) and (2).

¹ Minn. R. 7853.0130 A – D.

A(1) concerns the accuracy of the applicant’s demand forecast, which is a foundational question for the need determination, and C(1) and (2) concern the consequences to society.

As I did when we first deliberated this case two years ago, I will address key areas of the certificate of need decision—particularly, the demand forecast, the consequences to society, and Minnesota energy policy.

II. The applicant has not provided an accurate forecast of demand for the type of energy that would be supplied by the proposed facility

Minn. R. 7853.0130, item A(1), requires us to consider the accuracy of the applicant’s forecast of demand for the type of energy that would be supplied by the proposed facility.

During oral arguments at the Commission’s June 18, 2018, meeting, commissioners discussed the legal standard, and there was agreement that where the rule states “applicant’s forecast of demand for the type of energy that would be supplied by the proposed facility” that means demand for crude oil and that includes demand for energy products from crude oil. There was further discussion of the significance of crude oil supply to Enbridge’s refinery customers and to refined product customers in Minnesota or in the five state area.

As was clarified during oral arguments on June 26, 2018, the evidence in this record, provided by the applicant, demonstrates the Minnesota refiners are, over multiple recent years, getting the oil they need. Prior Commission orders² relied heavily on the assumption that demand for refined product was expanding and would continue to do so. However, we do not have clear, cross-examined evidence in this record of refinery expansion. A forecast that assumes a future of infinite global demand for Western Canadian crude oil is not reasonable.³

As I emphasized during deliberations in June 2018—and former Commissioner Lipschultz, explicitly agreed and reinforced—the absence of a clear, transparent, independent forecast of demand for Canadian crude oil and for its refined product, which is the type of energy that would be supplied by the proposed facility, was a significant shortcoming in the record.⁴

Now, when considered together with the significant new and relevant information, the absence of an accurate, reliable demand forecast is a fatal flaw.

² See, e.g., *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*, Docket No. PL-9/CN-13-153, Order Granting Certificate of Need, at 7 (November 7, 2014).

³ In fact, significant global events have taken place in the months and years since the 2018 decision that can reasonably be forecast to reduce global energy consumption over the long term. The Commission cannot reasonably make a need determination without fully considering the new evidence of demand for oil under these new circumstances.

⁴ Former Commissioner Lipschultz: “...I agree with Commissioner Schuerger completely that there are significant flaws in the forecast presented here. Lack of transparency and a lack of focus directly on the demand for oil flowing from the demand for refined products worldwide. That’s a problem.” See Transcript of June 28, 2018 Commission Meeting, at 36.

III. Significant new material information is available and, at a minimum, requires a focused contested case to develop the record.

There is no dispute that new information is available and that relevant facts have changed.⁵ The significant changed circumstances and new information call into question the accuracy of the applicant's demand forecast. The changed circumstances include:

a. There is significant new information on climate change, and on related public policy, and their impact on demand for oil and its refined products

The science of climate change and the urgency of action is now clear and undeniable. Internationally, nationally, and particularly in Minnesota, individuals, businesses large and small, states, and cities are taking action to reduce greenhouse gas emissions. The applicant's forecast fails to account for the significant impact these developments will have reducing the demand for the type of energy supplied by the proposed project.

Among the significant developments since September 2018: the UN's Intergovernmental Panel on Climate Change (IPCC) issued its report on the impacts of global warming above 1.5°C;⁶ 13 federal U.S. agencies issued the Fourth National Climate Assessment of the consequences of climate change for the United States,⁷ the governor issued Executive Order 19-37 establishing a climate change subcabinet and Governor's Advisory Council on Climate Change;⁸ and Minnesota's Pollution Control Agency and Department of Commerce issued a report recognizing that "transportation is now the largest source of [greenhouse gas] emissions generated within the borders of Minnesota."⁹

In the October 2018 IPCC Report, the world's leading scientists found that: limiting warming to 1.5°C requires major and immediate transformation; the scale of the required low-carbon transition is unprecedented; and, everyone—countries, cities, the private sector, individuals—will need to strengthen their action, without delay.

The 2018 National Climate Assessment, a major scientific report issued by 13 federal agencies, found that without substantial and sustained global efforts to reduce greenhouse gas emissions

⁵ It is also likely that changed circumstances to further undermine the Applicant's evidence of demand will continue to occur, and at an accelerating rate. This record lacks a reliable analysis of the likely direction and the rate of change in forecasted demand.

⁶ UN Intergovernmental Panel on Climate Change (IPCC), "Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty" (2018), *available at* <https://www.ipcc.ch/sr15/download/>.

⁷ U.S. Global Change Research Program, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II, *available at* <https://nca2018.globalchange.gov/>.

⁸ Executive Order 19-37, Establishing the Climate Change Subcabinet and the Governor's Advisory Council on Climate Change to Promote Coordinated Climate Change Mitigation and Resilience Strategies in the State of Minnesota. December 2, 2019, *available at* https://mn.gov/governor/assets/2019_12_2_EO_19-37_Climate_tcm1055-412094.pdf.

⁹ "Greenhouse Gas Emissions in Minnesota: 1990–2016" at 7 (2019), *available at* <https://www.pca.state.mn.us/sites/default/files/lraq-2sy19.pdf>.

and regional initiatives to prepare for anticipated changes, climate change is expected to cause growing losses to American infrastructure and property and impede the rate of economic growth over this century.

In establishing, through Executive Order 19-37 a climate change subcabinet and the Governor's Advisory Council on Climate Change, Governor Walz stated that "Climate change threatens the very things that make Minnesota a great place to live – from our wonderful lakes to farmable land and clean air." The subcabinet will be tasked with identifying policies and strategies that will put Minnesota back on track to meet or exceed the state's greenhouse gas emissions goals and identifying the challenges and opportunities to mitigate climate change.

A sea change is underway in how we procure and use energy. As countries, states, cities, businesses, and individuals act to reduce greenhouse emissions, demand for oil will fall. Local, national, and global actions to mitigate climate change are driving an increasingly swift transformation in the energy industry resulting in the increased likelihood of devaluing and stranding existing or future infrastructure assets including oil pipelines.

These local, national, and global changes in information availability, understanding, and public policy actions, taken together, represent a substantial change in circumstances directly relevant to the accuracy of the applicant's forecast of demand, and to the consequences to society and therefore to a reasoned decision on criteria set out in Minn. R. 7853.0130, items A and C.

b. There is significant new information on transportation electrification and its impact on demand for oil and its refined products

Since the Commission made its initial certificate of need decision, but prior to the order being issued in September 2018, the Minnesota Department of Transportation issued a report and has undertaken a project to "decarbonize transportation."¹⁰ The Department of Transportation recommended the adoption of clean car vehicle standards, funding of electric vehicle infrastructure, and providing incentives for electric vehicle adoption. And since September 2018, several of those recommendations have been implemented—Minnesota has adopted policies to promote electric vehicle adoption and has concrete plans to pursue more.¹¹

These policies, policy recommendations, and public processes are specifically intended to accelerate electric vehicle adoption, which will reduce demand for crude oil and its products. And similar changes to promote and eliminate barriers to electric vehicle adoption have taken place elsewhere in the country and the world. Moreover, jurisdictions are learning which policies

¹⁰ "Pathways to Decarbonizing Transportation in Minnesota", available at <http://www.dot.state.mn.us/sustainability/docs/pathways-report-2019.pdf>.

¹¹ See, e.g., *In the Matter of a Commission Inquiry into Electric Vehicle Charging and Infrastructure*, Docket No. E-999/CI-17-879, Order Making Findings and Requiring Filings (February 1, 2019); *In the Matter of Xcel Energy's Petition for Approval of Electric Vehicle Programs*, Docket No. E-002/M-18-643, Order Approving Pilots with Modifications, Authorizing Deferred Accounting, and Setting Reporting Requirements (July 17, 2019), *appeal filed* November 6, 2019; *In the Matter of Minnesota Power's Petition for Approval of its Electric Vehicle Commercial Charging Rate Pilot*, Docket No. E-015/M-19-337, Order Approving Pilot with Modifications, and Setting Reporting Requirements (December 12, 2019); "Governor Tim Walz Announces Clean Car Standards in Minnesota", available at <https://mn.gov/governor/news/?id=1055-403887>. See also "Electric Vehicles", available at <https://mn.gov/puc/energy/electric-vehicles/>.

are most effective at achieving the goal of increased EV adoption, meaning the effectiveness of policy change is also increasing. The landscape is changing rapidly, and at an accelerating rate. Because these facts have not been made part of the record,¹² none of these developments have been incorporated into the Commission’s analysis of the reliability of the applicant’s demand forecast, or of the effects of state conservation programs, and therefore the Commission’s evaluation of Minn. R. 7853.0130, item A.

c. Changes to, and continuing efforts to change, the pipeline reservation system materially affect the reliability of evidence that the Commission relies upon

In the Commission’s September 2, 2018 Order Granting Certificate of Need as Modified and Requiring Filings,¹³ the Commission wrote that:

The Commission has granted previous certificates of need to Enbridge pipeline projects based on evidence similar to the evidence that Enbridge submitted in this docket. In previous pipeline proceedings it was considered reasonable to rely on supply forecasts to establish that demand for refined product, and therefore demand for crude oil, would continue to increase, or at least not decrease, for the foreseeable future. However, governmental initiatives to reduce fossil fuel consumption to address climate change, and expanded adoption of electric vehicles could, in the future, influence whether the type of supply forecast evidence submitted in this case will be sufficient to support conclusions about demand.

This reasoning reflected the Commission’s recognition, then, that the applicant’s demand-forecast evidence was lacking¹⁴—the evidence requires an inference that the Commission was uncomfortable making without additional supporting evidence—and that evidence of that nature could be undermined by changed circumstances, such as changes in public policy and oil consumption. The Commission was skeptical in 2018 of the sort of evidence it had relied on in the past to support certificate of need decisions, and indicated that such evidence may not be adequate to support a certificate of need decision in the future.

The future that the Commission contemplated in 2018 is here, now. The Commission is deciding anew whether this certificate of need should be granted, and is not bound by its prior decision to

¹² The applicant provided a forecast that incorporated some level of electric vehicle adoption, but the assumptions of that forecast were unreasonably limited to the US market and not indicative of the magnitude of change in EV adoption that is likely. *See* Transcript of June 19, 2018 Commission Meeting, at 96–100 (filed April 10, 2019) (colloquy between Commissioner Lipschultz and Ms. Anderson of the Department of Commerce discussing the shortcomings of the applicant’s EV adoption modeling and analysis).

¹³ This docket, *rev’d and remanded by* In re Enbridge Energy, Ltd. P’ship, 930 N.W.2d 12 (Minn. Ct. App., June 3, 2019), *and cert. denied* (Minn., 2019).

¹⁴ The Applicants offered a forecast of supply, not of demand for the type of energy that would be supplied by the proposed facility. *See also* ALJ Findings of Fact, Conclusions of Law and Recommendation (ALJ Report) (April 23, 2018) at Findings ¶¶ 658–662 (“Applicant’s ‘forecast of demand’ looks only to supply of Western crude oil, not the demand for such oil.”). The forecast of supply is influenced predominantly by global demand, and not demand of the people of Minnesota and neighboring states.

grant it. The Commission is also not bound to make a certificate-of-need decision today based on a record that closed nearly two years ago.¹⁵ The reliability of the evidence of demand has been reasonably called into question.¹⁶ The Commission should not rely again on a tenuous inference drawn from an aging forecast of supply, given the Commission’s own earlier recognition of the evidence’s weakness as evidence to support a finding of need, and in light of the new evidence available.

And the evidence that the Commission relied on to justify drawing the inference of demand from the supply forecast data—the evidence of apportionment—has also been called into question. Enbridge is pursuing a change to the terms by which it supplies oil over its mainline pipeline system, to allocation of capacity mostly by long-term contracts.¹⁷ But as the ALJ found, a finding the Commission adopted and relied upon, only “if shipper nominations remain consistent or increase (as Applicant contends), without any changes to the Mainline System”¹⁸ did the evidence establish that the existing facilities would be unable to meet future demand.

This action by Enbridge to change the Mainline System materially affects the factors of Minn. R. 7853.0130, item A—particularly the usefulness of the record’s evidence of demand required by item A(1), which the Commission credited only premised on “substantial and persistent” apportionment.¹⁹ Will significant and persistent apportionment exist under these new circumstances? We don’t know. There is no substantial evidence in the record to support a conclusion that it will.

¹⁵ “In all contested cases where officials of the agency render the final decision, the contested case record must close upon the filing of any exceptions to the report and presentation of argument under subdivision 1 or upon expiration of the deadline for doing so.” Minn. Stat. § 14.61, subd. 2. The Court of Appeals’s decision to reverse the Commission’s EIS adequacy determination nullified the Commission’s October 26, 2018, Certificate of Need decision; the Commission is effectively determining anew today that the Certificate should be granted, on an aging and incomplete record. The Commission has the authority to, and should as a matter of administrative efficiency, consider material new evidence, and make new findings on that evidence. *See* Minn. Stat. §§ 14.67, 216B.25; *see also 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*, Docket No. PL-9/PPL-15-137 Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration, at 2 (January 18, 2019) (“The Commission may, at any time, for any reason, upon its own motion or the motion of any interested party, rescind, alter, or amend any Commission order or reopen the case, provided the Commission gives notice to the affected public utility and provides an opportunity to be heard.”).

¹⁶ This is the standard the Commission has applied when determining whether to refer a matter for contested case proceedings in light of claims of new evidence. *See In the Matter of the Investigation into Environmental and Socioeconomic Costs Under Minn. Stat. § 216B.2422, Subd. 3*, Docket No. E-999/CI-00-1636, Order Reopening Investigation and Convening Stakeholder Group to Provide Recommendations for Contested Case Proceeding, at 5 (February 10, 2014) (finding that “[t]he scientific evidentiary support for the existing [environmental externality] values has been reasonably called into question” and referring the matter for contested case proceedings). Instead, in today’s order, the Commission finds more record development unwarranted. It does so prematurely, without a contested case or any appreciable investigation into or analysis of the relevant new facts.

¹⁷ Enbridge Presses on with Controversial Plan to Overhaul Mainline Contracts, National Post (December 19, 2019), available at <https://business.financialpost.com/commodities/enbridge-presses-on-with-controversial-plan-to-overhaul-mainline-contracts>.

¹⁸ ALJ Report at Finding ¶ 698; *see also* Order Granting Certificate of Need as Modified and Requiring Filings, at 15 (relying on the ALJ’s finding).

¹⁹ Order Granting Certificate of Need as Modified and Requiring Filings, at 15.

IV. Not minimizing the cost to consumers of one particular form of energy is not a cognizable adverse effect under Minn. R. 7853.0130, Item A

The Commission, in its reissued order granting the certificate of need, repeatedly cites potentially lowered cost for refined products as a basis in support of granting a certificate of need. However, the ultimate cost of the particular type of energy supplied is not one of the considerations in Minn. R. 7853.0130, Item A—and even if it were, the Commission only credited that granting the certificate of need “could” “potentially” lower the cost.²⁰ The presumed interest in depressing the cost of oil and oil products for consumers contradicts state environmental and energy policy.²¹

The Commission incorrectly interprets its responsibility under the rule as one to maintain the lowest possible price of the particular type of energy being accommodated, rather than to ensure adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states.²² If the consequence of denial is marginally more expensive crude oil, but an energy supply that is nevertheless adequate, reliable, and efficient, the factor does not weigh in favor of granting the requested certificate. It is not consistent with the interests of the state or its residents to reduce the cost of a disfavored form of energy supply if adequate, reliable, and efficient energy would continue to be available.

V. The consequences to society are significant and severe

We are required, by Minn. R. 7853.0130, item C, to apply a balancing test: to weigh the consequences to society of granting the certificate of need against the consequences of denying it.

The proposed project is not a “replacement” project; a replacement would use the same diameter pipe to transport the same product at the same volume and in the same trench. Instead, the proposed project is a larger diameter pipe that transports heavy Western Canadian crude oil²³ at an expanded volume along a new route in a new corridor. The consequence is that the project has a greater negative effect on the natural and socioeconomic environments than a simple replacement.²⁴ Since 2018, a fuller and clearer understanding of the likely consequences to

²⁰ Order Granting Certificate of Need as Modified and Requiring Filings, at 24 and 26.

²¹ See Section V, below.

²² Only the first factor in Item A concerns “the type of energy that would be supplied.” Item A as a whole is concerned with energy supply, regardless of type. An increase in the cost of one type does not necessarily entail, or imply, without something more, an adverse effect on adequacy, reliability, or efficiency of energy supply when market substitutes exist—particularly when those substitutes are preferred by state environmental and energy policy.

²³ The Second Revised Final Environmental Impact Statement (FEIS), at 5-464 and 5-465, notes that: “oil extracted from the Western Canadian Sedimentary Basin (WCSB) like the heavy crudes that would be carried by the proposed Line 3 pipeline, require greater energy input for extraction and upgrading than U.S. light crudes, and therefore create more greenhouse gas emissions at each stage during production.” The Second Revised FEIS Table 5.2.7-11 shows that, on a per-barrel basis, Heavy WCSB crude oil has the highest Life-Cycle greenhouse gas emissions of any crude oil on the planet.

²⁴ See ALJ Report at Findings ¶¶ 1082–89, and Conclusions of Law ¶¶ 27–28 (finding that “other than temporary construction impacts of removal and construction, in-trench replacement would involve no new impacts to the environment, like a new corridor would impose,” and recommending that the Commission only grant the certificate of need contingent on in-trench replacement).

society has developed, such that the balance of the factors of item C should be considered in light of the facts available today.

a. Impact to Indigenous Populations

The record reflects, and we heard repeatedly in oral arguments that the proposed project, which would traverse ceded territories where Minnesota's Ojibwe and Chippewa tribes hold usufructuary hunting, fishing, and gathering rights, "will directly, materially, and adversely impact" many indigenous populations. The Mille Lacs Band and the Fond du Lacs Band, highlighted, among other issues, significant risks to wild rice beds²⁵ and to Big Sandy Lake.

The ALJ found that the effects of the project upon Minnesota's natural resources and Native American people (particularly the Anishinaabe), weigh heavily against granting a certificate of need to a project that would establish a new pipeline corridor through Minnesota.²⁶ I agree that this finding is clearly and extensively supported by the record evidence.

b. Climate Change

That the oil transported and delivered by the proposed project will ultimately be consumed and will release greenhouse gases is not in dispute.

The record reflects a possible range of greenhouse gas emissions resulting from the project, depending on the level of displacement, but all of the possibilities in the range are substantial. The ALJ found that the project would cause a significant incremental increase in life-cycle emissions, and that that increase would have significant negative consequences for society.²⁷ I agree that these findings are supported by the evidence. These substantial life-cycle emissions are not inevitable, and it is state environmental and energy policy to act to avoid them.

c. The project is not consistent with Minnesota policy as established by the Legislature

This project, which makes the transportation and consumption of fossil fuels easier and more economical, is incompatible with the energy policies of Minnesota and should weigh heavily against granting a certificate of need for this Project. The ALJ found that the carbon-intensive nature of tar sands oil extraction, and the increased use and production of non-renewable fossil fuels does not further Minnesota's renewable energy and reduction of GHG emission goals set forth in Minn. Stat. § 216C.05, subd. 2 and 216H.02, subd. 1.²⁸ The likely effect of this project is

²⁵ See ALJ Report at Findings ¶ 876, and testimony of Nancy Schuldt.

²⁶ See ALJ Report at Findings ¶ 889:

²⁷ See ALJ Report at Findings ¶¶ 675–76, 858, and 861 (accepting the EIS life-cycle greenhouse gas emissions for the project, finding that incremental emissions will be 193 million tons of carbon dioxide emissions (CO₂), totaling \$287 billion in social cost, that the emissions contribute to climate change, and that climate change has significant negative consequences for society).

²⁸ See ALJ Report at Findings ¶¶ 939–948 (finding the project inconsistent with state and other public policy objectives).

that, by promoting consumption of oil, it will thwart the aims and responsibilities of the state established in many Minnesota energy and environmental policies.²⁹

VI. Minnesota and its citizens have legal alternatives, if needed, to address the dangers of the existing line.

As I noted in deliberations in June 2018, the evidence in the record demonstrates the deteriorating condition of existing Line 3. But the deteriorating condition of the existing Line 3 does not lead to a conclusion that the need criteria for the proposed project has been satisfied. Minnesota clearly has legal means, and statutory authority to address the risks posed by the existing pipeline to protect the environment and the public.

a. Minn. Stat. § 115E.02: Duty to Prevent Discharges

Minnesota law already places on Enbridge the responsibility for taking reasonable steps to prevent a spill from Line 3. Under this law the continued operation of a failing pipeline, which poses an unreasonable risk of a harmful spill that puts the public at risk, is not a reasonable assumption. Rather, it should be assumed that Enbridge will take the steps it has a duty to take, up to and including discontinuing use of the pipeline.

b. The Minnesota Environmental Rights Act

The state's environmental rights act provides that

each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof.³⁰

The statute gives citizens a right of action to “for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state”³¹ This provides a means for both the state and its citizens to vindicate the right to protect land from pollution, impairment, or destruction.³²

²⁹ See, e.g., Minn. Stat. § 116D.02, subs. 3, 9 and 16 (providing that to carry out the environmental policy of the state, the state has the responsibility to discourage ecologically unsound practices, to minimize the environmental impact of energy production and use, and to “reduce the deleterious impact on air and water quality from all sources, including the deleterious environmental impact due to operation of vehicles with internal combustion engines in urbanized areas”); and Minn. Stat. § 216B.03 (providing that the Commission shall set rates “to encourage energy conservation and renewable energy use” to the maximum reasonable extent.).

³⁰ Minn. Stat. § 116B.01.

³¹ Minn. Stat. § 116B.03, subd. 1.

³² *Id.*

c. Public Trust Doctrine

Another possible vehicle for ensuring that the public is not harmed by the deteriorating Enbridge pipeline is a common law doctrine: the public trust doctrine. The public trust doctrine recognizes a citizen's right to compel the government to protect the environment, for the benefit of the public. The Minnesota Supreme Court has recognized at least the basis for such a doctrine to exist in Minnesota.³³ The public trust doctrine may give the public still another mechanism to ensure that the deteriorating Line 3 does not continue to pose risks to the public.

Given these legal mechanisms to protect the environment from continued operation of Line 3, it is clear that the Commission need not accept that Enbridge's commitment to continue using the existing pipeline as a threat of certain public harm. The Commission has given an excess of weight to this threat in its balancing of the factors in Rule 7853.0130, by failing to credit that the state and its citizens are not powerless to prevent Enbridge from risking harm to the environment with its failing pipeline.

VII. Conclusion

This case is entirely about the law and the record evidence. The applicant has not, in my view, met its burden of proof. Therefore, I believe that the evidence and the law do not support granting the certificate of need.

The applicant has not provided a forecast of demand for Western Canadian crude oil and its refined products as required by Minnesota law and rule. The forecast of supply that the applicant relies upon in its models is not a forecast of demand. Overall the Applicant has not established that the consequence of denial of a certificate of need would adversely affect adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states.

Significant new information is available including:

- new information on climate and the urgent actions that will be taken to reduce the consumption of fossil fuels, including reduced demand for oil and its refined products;
- new information on electrification of transportation and its impact on demand for oil and its refined products; and
- new information on the applicant's actions to fundamentally change the way capacity on the Mainline system is contracted and will likely materially affect apportionment, upon which the Commission relied in the prior and current decisions.

This information of dramatically changed circumstances has not been accounted for in the applicant's forecasts.

³³ See *State v. Kuluvar*, 123 N.W.2d 699, 706 (Minn. 1963) (recognizing that the state holds natural resources in trust).

These changed circumstances constitute new, contested, material facts relevant to the Commission's certificate of need decision. The new information is clearly relevant to the pivotal factor of "the accuracy of applicant's forecast of demand for the type of energy that would be supplied by the facility," and to the energy supply question posed by Item A. Minnesota Rule 7829.1000 requires that in these circumstances the Commission "shall refer the matter to the OAH for contested case proceedings . . ." I therefore respectfully disagree with my colleagues' conclusion that the Commission can reasonably grant a certificate of need, and certainly not without, at a minimum, further contested case proceedings.

The Minnesota Court of Appeals recently held that the Minnesota Department of Natural Resources erred by not holding contested case hearings in the face of new evidence.³⁴ I believe the Commission is making a similar error. The law, reinforced by the Minnesota Court of Appeals in *In re NorthMet*, requires us to order a contested case. At a minimum, a new contested case is required to develop the record regarding the substantial, material new information.

The scope of the contested case could be focused on the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility. In addressing the accuracy of the forecast, record development should include, at a minimum: (1) the potential impact of new information on climate change and its impact on demand for oil and its refined products; (2) the potential impact of new information on electrification of transportation and its impact on the demand for oil and its refined products; (3) the potential impact of changes to the applicant's business plans, marketing, or contract structures; and (4) the potential impact of the passage of time.

The Commission should be fully informed about the extent and consequences of these developments before rendering a decision on the certificate of need. The Commission should either deny the Certificate of Need or refer the matter to the Office of Administrative Hearings for supplemental record development and analysis.

For these reasons, I respectfully dissent.

³⁴ *In re NorthMet Project Permit to Mine Application Dated December 2017*, 2020 WL 130728, at *9–10 (Minn. Ct. App. 2020), *petition for further review filed February 12, 2020* (holding that the DNR's decision to deny a contested-case hearing was based on errors of law and unsupported by substantial evidence, and reversing and remanding a permit decision to DNR to hold a contested case hearing in light of new evidence).

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendraye
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application by Lakehead
Pipe Line Company, Limited Partnership, for
a Certificate of Need for a Large Petroleum
Pipeline Facility

ISSUE DATE: August 5, 1998

DOCKET NO. PL-9/CN-98-327

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

I. Initial Proceedings

On March 9, 1998, Lakehead Pipe Line Company, Limited Partnership (Lakehead), filed a certificate of need application for approval to construct a large petroleum pipeline facility in northwest Minnesota. This project fits the definition of "large energy facility" pursuant to Minn. Stat. § 216B.2421, subd. 2(c). Under Minn. Stat. § 216B.243, Lakehead is required to obtain a certificate of need prior to siting or construction of a large energy facility.

On March 11, 1998, Lakehead filed a supplemental explanatory letter concerning maintenance of confidential information and an affidavit of mailing for the application.

On March 25, 1998, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, accepting the Lakehead application.

On March 25, 1998, the Commission also issued its NOTICE AND ORDER FOR HEARING. The Commission referred the matter to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Allan W. Klein to conduct contested case proceedings.

II. Parties and Representatives

Lakehead was represented in these proceedings by Paul W. Norgren, Lakehead Pipe Line Company, 400 Lake Superior Place, 21 West Superior St., Duluth, MN 55802, and Leo G. Stern, Fredrikson & Byron, P.A., 1100 International Centre, 900 Second Ave. South, Minneapolis, MN 55402.

The Department of Public Service (the Department) was represented by Julia E. Anderson, Assistant Attorney General, Suite 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55101.

III. The Stipulation of Facts

The parties stipulated to proposed Findings and Conclusions. The ALJ issued his own Findings of Fact, Conclusions and Recommendation in the same general format and substance as the stipulation.

IV. Public and Evidentiary Hearings

Public and evidentiary hearings were held on June 10 and 11, 1998, in Thief River Falls, Minnesota. One member of the public attended and participated in the hearings. No party expressed opposition to the construction of the proposed facility.

On June 15, 1998, Lakehead filed a letter committing to pay appropriate fees assessed pursuant to Minnesota Rules, part 7853.0210.

The ALJ issued his Findings of Fact, Conclusions and Recommendations on June 23, 1998.

V. Proceedings Before The Commission

The matter came before the Commission for consideration on July 23, 1998.

FINDINGS AND CONCLUSIONS

I. Factual Background

Lakehead owns and operates an interstate common carrier crude petroleum and natural gas liquids pipeline system in the Great Lakes region of the United States. Lakehead has connected its system to the Interprovincial Pipe Line Inc. (IPL) pipeline system. The combined systems cover approximately 3200 miles, connecting the Canadian coasts to the Great Lakes region. Nearly all of the crude petroleum and natural gas liquids transported by Lakehead are delivered to markets in the United States and eastern Canada.

Lakehead proposes to add approximately 68.6 miles of 36-inch outside diameter pipe parallel to its existing pipelines in Minnesota in four separate segments. The addition would stretch from where IPL's new pipeline meets the North Dakota border to a point near Gully, in Polk County, Minnesota. The new pipeline would permit the transport of crude petroleum and other liquid hydrocarbons to Minnesota Pipe Line at Clearbrook, Minnesota, and points east. In Minnesota, the new pipeline would cross Kittson, Marshall, Pennington, Red Lake and Polk Counties, mostly within Lakehead's existing right-of-way.

Lakehead proposes to begin construction on the new pipeline in September, 1998, and to place the new pipeline in service in January, 1999.

II. Certificate of Need Criteria; ALJ's Findings

The criteria for granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, parts 7853.0010-.0800.

Minn. Rules, part 7853.0130 states four criteria which must be met in order to establish need for the proposed pipeline expansion.

- 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.**

The ALJ noted that the demand for Lakehead's transmission capacity exceeded its supply in 29 out of 36 months. Based on shipper forecasts supplied to Lakehead, the capacity shortfall is expected to continue beyond the year 2010.

The ALJ found that the proposed expansion would bring advantages to the refining sector, the general public and Lakehead. Advantages would arise from a broader and more stable supply of crude oil at more predictable prices. The expansion would bring lower operating costs for Lakehead, an increased tax base, more economic development and greater employment opportunities for Minnesotans.

The ALJ found that Lakehead has not engaged in any promotional activities to increase the demand for crude oil to be shipped through its pipeline system. To the contrary, the ALJ found that Lakehead is engaging in substantial efficiency and conservation efforts. Despite these efforts, Lakehead's capacity shortfall would not be alleviated without a pipeline expansion.

The ALJ also found that the proposed expansion would make efficient use of resources by allowing the continuing demand for crude petroleum and natural gas liquids from western Canada to be met by commodities transported by the safest and most efficient method.

- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.**

Lakehead identified four possible alternatives to its proposal: optimization of Lakehead's existing pipelines without adding new pipelines; construction of lines other than those proposed along existing routes; construction of an entirely new line to markets in Minneapolis and Chicago; and use of truck transportation. Lakehead asserted that none of the four alternatives was superior to the proposed expansion.

At the Department's request, Lakehead analyzed four additional alternatives: identifying unused capacity in other pipelines; expansion of Lakehead's pipeline along a different route; use of rail transportation; and use of water transportation. Lakehead asserted that none of these four alternatives was superior to the proposed expansion either.

The ALJ looked at the size, type and timing of the proposed facility, comparative costs, effects on the environment, and expected reliability of the proposed facility compared to alternatives. The ALJ concluded that none of the proposed alternatives is a viable alternative to Lakehead's proposed pipeline expansion.

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

The ALJ found that Lakehead's proposed facility is consistent with overall state energy needs. The ALJ found that the pipeline expansion would improve the reliability of Minnesota's crude oil sources by increasing the efficient transport of oil from western Canada.

The ALJ found that the proposed facility would have a limited, temporary impact on the natural and socioeconomic environments of Minnesota. The ALJ noted that the pipeline expansion would be constructed adjacent to Lakehead's existing pipeline corridor and generally within Lakehead's existing right-of-way.

The ALJ stated that there was no evidence to suggest that the proposed expansion would have any direct adverse impact on future development in the State of Minnesota.

Finally, the ALJ noted specific social benefits of the expansion, such as greater reliability of supply, further employment opportunities, and an increased tax base for the affected counties.

D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

The ALJ found that Lakehead has complied with or is in the process of complying with the relevant policies, rules, and regulations of the various state agencies, federal agencies and local governments which have jurisdiction over the proposed project. The ALJ noted that the project is extensively regulated by the U.S. Department of Transportation, the Office of Pipeline Safety, and the Federal Energy Regulatory Commission.

Based on the foregoing facts, the ALJ recommended that the Commission grant Lakehead's application.

III. Commission Analysis

A. The Certificate of Need

The certificate of need proceeding was conducted in compliance with relevant Minnesota statutes and rules. The public was granted the opportunity to participate in a public hearing conducted by the ALJ. No party expressed opposition to the proposed pipeline expansion.

The Department investigated the proposal. In that investigation the Department analyzed both Lakehead's proposed alternatives to the expansion and the Department's own alternatives. After analysis, the Department stated that no alternative was more cost-effective or beneficial than the proposal. The Department concluded that the proposed pipeline was reasonable and necessary.

In order to demonstrate agreement on all material facts, the Department and Lakehead submitted proposed findings of fact and conclusions of law to the ALJ. The ALJ accepted the stipulated findings and conclusions but also conducted a full evidentiary hearing. After taking testimony, receiving exhibits, and conducting full proceedings, the ALJ adopted findings and conclusions which were like in form and substance to the parties' proposed version. The ALJ's Findings of Fact, Conclusions and Recommendation presented a thorough analysis of the proposal under relevant statute and rule criteria.

Having examined the full record and provided an opportunity for all parties to address the Commission, the Commission now agrees with the ALJ that granting a certificate of need for Lakehead's proposed expansion is reasonable and necessary. The Commission adopts the ALJ's findings of fact and conclusions of law. The Commission will grant Lakehead's petition.

B. Payment of Fees

Minn. Rule, part 7853.0210, subpart 3 states that no certificate shall be issued until all fees owed by the applicant are paid in full. At this time, it is impossible to calculate the applicant's fees because further information must be obtained from the ALJ, the Department, the Office of Attorney General and the Commission. Lakehead has stated that a delay in granting the certificate would significantly delay construction of the facility. Lakehead has expressed its full commitment to payment of the fees when their assessment is complete.

Minn. Rules, part 7830.4400 states that the Commission may grant a variance if the following criteria are fulfilled:

1. Enforcement of the rule would impose an excessive burden upon the applicant or other affected by the rule;
2. Granting of the variance would not adversely affect the public interest; and
3. Granting of the variance would not conflict with standards imposed by law.

The Commission finds that the criteria of Minn. Rules, part 7830.4400 have been fulfilled and a variance to Minn. Rules, part 7853.0210 should be granted. Enforcement of the rule would impose an excessive burden on Lakehead by delaying pipeline construction before the onset of winter. Since Lakehead has assured the Commission of full payment the public interest should not be adversely affected. Granting the variance would not conflict with standards imposed by

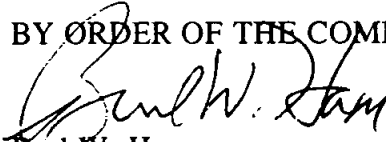
law. To the contrary, the Commission has previously granted a variance to this rule under similar circumstances.¹

Therefore, the Commission will grant Lakehead a variance to the fee payment provision of Minn. Rules, part 7853.0210, subpart 3. Lakehead will be required to pay all applicant's fees when they have been fully assessed.

ORDER

1. The Commission grants Lakehead a certificate of need for its proposed pipeline expansion.
2. Lakehead is granted a variance to Minn. Rules, part 7853.0210, subpart 3 to allow the granting of the certificate of need prior to full payment of applicant's fees. Lakehead shall pay all applicant's fees when they are fully assessed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION


Burl W. Haar
Executive Secretary

(S E A L)

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¹See, for example, In the Matter of the Application by Lakehead Pipe Line Company, Limited Partnership, for a Certificate of Need for a Large Petroleum Pipeline Facility, Docket No. PL-9/CN-93-1244, ORDER GRANTING CERTIFICATE OF NEED (April 20, 1994); In the Matter of the Application of Minnegasco, a Division of NorAm Energy Corp., for a Certification of Need for a Large Liquefied Gas Storage Facility, Docket No. G-008/CN-95-514, ORDER GRANTING CERTIFICATE OF NEED (September 12, 1996).

In the Matter of the Application by
Lakehead Pipe Line Company, Inc. for a
Certificate of Need for a Large
1 Service List

Burl W. Haar (15)
Executive Secretary
MN Public Utilities Commission
Suite 350
121 East Seventh Place
St. Paul, MN 55101-2147

Kathy Brengman (4)
Docket Coordinator
MN Department Of Public Service
Suite 200
121 East Seventh Place
St. Paul, MN 55101-2145


J. Jeffery Oxley
Special Assistant Attorney General
Suite 1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Julia Anderson
Special Assistant Attorney General
MN Office Of The Attorney General
Suite 1200 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Allan Klein
Administrative Law Judge
Office Of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

Paul Norgren
General Counsel
Lakehead Pipe Line Company Inc
Lake Superior Place
21 West Superior Street
Duluth, MN 55802

Leo Stern
Fredriksen And Byron
1100 International Center
900 Second Avenue S
Minneapolis, MN 55402

 **MARY E. REID**
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2000

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application by Lakehead
Pipe Line Company, Limited Partnership for a
Certificate of Need for a Large Petroleum
Pipeline Facility

ISSUE DATE: December 18, 2001

DOCKET NO. PL-9/CN-01-1092

ORDER GRANTING CERTIFICATE OF
NEED AND VARYING FEE PAYMENT
RULE

PROCEDURAL HISTORY

I. Initial Proceedings

On July 17, 2001, Lakehead Pipe Line Company, Limited Partnership (Lakehead or the Company) filed an application for a certificate of need to construct a large petroleum pipeline facility in northern Minnesota. On August 7, 2001, the Commission issued an Order finding the application substantially complete and referring the case to the Office of Administrative Hearings (OAH) for contested case proceedings. That office assigned Administrative Law Judge Beverly Jones Heydinger to conduct contested case proceedings.

On September 19, 2001, the Commission issued an Order extending a rule deadline for beginning public hearings in the case. The Commission concurred with the Administrative Law Judge and the parties that the process would be better served by delaying public hearings until the Environmental Quality Board had completed a planned series of informational meetings in the affected counties.

On November 19, 2001, the Administrative Law Judge filed her report and recommendations in the case.

On November 21, 2001, Lakehead filed a letter giving its unconditional commitment to paying all regulatory fees it incurred during the proceeding.

II. The Parties and their Representatives

There were two parties to this proceeding, the Company and the Minnesota Department of Commerce. The Company was represented by Kevin Walli, Fryberger, Buchanan, Smith & Frederick, P.A., 386 North Wabasha Street, Suite 1190, St. Paul, Minnesota 55102. The Department of Commerce was represented by Peter R. Marker, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103.

III. Public and Evidentiary Hearings

The Administrative Law Judge (ALJ) conducted combined public and evidentiary hearings in Bemidji on October 24, 2001 and in Grand Rapids on October 25, 2001. Two members of the public attended the hearing in Bemidji and four members of the public attended the hearing in Grand Rapids. No member of the public at either hearing opposed granting the certificate of need.

IV. The Parties' Stipulation and the ALJ's Report

The Department of Commerce (the Department) supported granting the proposed certificate of need. The Department and the Company stipulated to proposed findings and conclusions, which the ALJ found were the same in substance and general format as her own findings and conclusions.

On November 19, 2001, the ALJ filed her Findings of Fact, Conclusions and Recommendation. She found that the Company had demonstrated need for the facility under the criteria set forth in statute and rule, and she recommended granting the requested certificate of need.

No person or party filed exceptions to the ALJ's Findings of Fact, Conclusions and Recommendation.

V. Proceedings Before the Commission

On December 13, 2001, the case came before the Commission.

FINDINGS AND CONCLUSIONS

VI. Factual Background

Lakehead owns and operates an interstate common carrier crude petroleum and natural gas liquids pipeline system in the States of North Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana, and New York. This system delivers approximately 75% of the crude petroleum refined in Minnesota and 100% of the crude petroleum refined in Wisconsin.

The Company regularly prepares forecasts of future demand for its services. Its most recent forecast projects that its system will have a capacity deficit for each year from 2003 through 2010. Such capacity deficits, which also occurred during portions of 1997, 1998, and 1999, would require it to apportion its capacity among shippers tendering petroleum and natural gas liquids for transportation and delivery. To avoid having to apportion its capacity, the Company proposes to expand its facilities in Minnesota.

It proposes to construct approximately 97 miles of new 36-inch, underground pipeline, in five segments, running through the counties of Clearwater, Beltrami, Cass, Itasca, St. Louis, and Carlton. The new pipeline would run parallel to the existing pipeline and would lie within the existing right-of-way, except at a few points at which the existing right-of-way would have to be widened. The proposed expansion would increase the system's capacity by an annual average of approximately 147,800 barrels per day.

The Company proposed to begin pre-build construction in December 2001 and to have the new pipeline in service by June 2003.

VII. ALJ's Findings on Certificate of Need Criteria

The criteria for granting a certificate of need are set forth in Minn. Stat. § 216B.243 and Minn. Rules, chapter 7853. Minn. Rules, part 7849.0120 provides four criteria which must be met to establish need for the proposed facility.

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.

The ALJ found that the new facilities proposed by the Company would increase the adequacy and reliability of Minnesota's supplies of crude oil and natural gas liquids. She found that the new facilities would help protect against future interruptions of supply. She found that they would contribute to ensuring the efficient pricing of refined products and competing energy sources.

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.

The Company identified three alternatives to the proposed pipeline expansion – optimizing the efficiency and capacity of its existing system, constructing a new pipeline instead of expanding the existing pipeline, and using alternative modes of transportation, such as truck or water transport. The Department also asked the Company to analyze three other alternatives – using other companies' pipelines, expanding its own pipeline system via a different route, and using rail transportation.

The ALJ found that none of the alternatives were as prudent or as reasonable as the Company's proposal. She found that

- the existing system was already operating at essentially its maximum capacity;
- truck transport was more expensive and less safe than pipeline transport;
- water transport was not feasible due to the location of some delivery points;
- the location of other companies' pipelines did not meet Minnesota's needs;
- using a new route would involve more expense, delay, and environmental impact than using the existing route;
- rail transport was not feasible due to infrastructure deficits.

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

The ALJ found that the proposed system expansion was the least expensive way to meet reasonably foreseeable future need. She found that this proposal, using existing rights-of-way and laying new pipeline parallel and adjacent to existing pipeline, would minimize environmental impacts. She found that all feasible alternatives to the proposed system expansion would be more intrusive and costly in their environmental and socioeconomic effects.

She found that the Company's proposal was safer and promised greater reliability than any of the alternatives. She found that the proposal was consistent with and in the best interests of Minnesota's overall, statewide energy needs.

D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

The ALJ found no evidence that Lakehead would fail to comply with applicable regulatory requirements in any jurisdiction. She noted that the pipeline system is extensively regulated by the United States Department of Transportation and its Office of Pipeline Safety, as well as by the Federal Energy Regulatory Commission.

VIII. Commission Action

A. Certificate of Need Granted

The Commission has examined the full record in this case, and its reading of the evidence leads to the same findings and conclusions reached by the Administrative Law Judge. The Commission concurs in and adopts the Administrative Law Judge's findings and conclusions, which are attached and incorporated herein. The Commission will grant the requested certificate of need based on those findings and conclusions.

B. Fee Payment Rule Varied

Under Minn. Rules, part 7853.0210, subp. 3, certificates of need are not to be issued until all regulatory fees owed by the applicant are paid in full. At this time, it is impossible to calculate Lakehead's final fees, because final time records are not yet available from the Office of Administrative Hearings, the Department of Commerce, the Office of the Attorney General, and Commission staff.

Lakehead wishes to begin pre-build construction immediately, asks that the certificate be issued immediately, and has filed an unconditional commitment to paying all regulatory fees it has incurred during this proceeding.

Under Minn. Rules 7829.3200 the Commission may vary any of its rules upon making the following findings:

- (1) enforcing 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.

The Commission will vary Minn. Rules 7853.0210, subp. 3 and issue the certificate of need today, based on the following findings:

- (1) enforcing the prepayment requirement would impose an excessive burden on the Company and others who will benefit from the system expansion by delaying construction, thereby delaying the in-service date of the system expansion;
- (2) varying the prepayment requirement would not adversely affect the public interest, which is adequately protected by the company's unconditional commitment to pay all regulatory fees incurred in the course of this proceeding;
- (3) varying the prepayment requirement would not conflict with any statutory or other legal requirement.

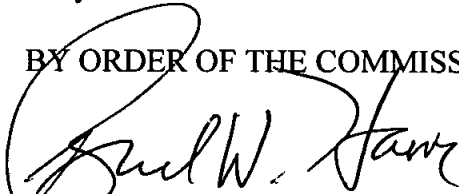
The Commission will so order.

ORDER

1. The Commission accepts and adopts the findings and conclusions of the Administrative Law Judge, which are attached and incorporated herein.

2. The Commission grants the certificate of need requested by Lakehead Pipe Line Company, Limited Partnership.
3. The Commission varies Minn. Rules, part 7853.0210, subpart 3 and accepts Lakehead's unconditional commitment to pay all regulatory fees incurred in the course of this proceeding.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Burl W. Haar", is written over the typed name.

Burl W. Haar
Executive Secretary

(S E A L)

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~~MN~~ PUBLIC UTILITIES COMMISSION

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of
Lakehead Pipe Line Company,
Limited Partnership for a Certificate
of Need for a Large Energy Facility
Within the State of Minnesota

MNPUC Docket No. PL9/CN-01-1092
OAH Docket No. 15-2500-14441-2

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Beverly Jones Heydinger, Administrative Law Judge, on October 24, 2001, in Bemidji, Minnesota, and October 25, 2001, in Grand Rapids, Minnesota. Paul W. Norgren, Supervisor, Right-of-Way and Project Specialist for Lakehead Pipe Line Company, Limited Partnership (now known as Enbridge Energy, Limited Partnership), 400 Lake Superior Place, 21 West Superior Street, Duluth, MN 55802 and Kevin T. Walli, Fryberger, Buchanan, Smith & Frederick, P.A., 386 No. Wabasha Street, Suite 1190, St. Paul, MN 55102, appeared on behalf of the Applicant Lakehead Pipe Line Company, Limited Partnership ("Lakehead" or "the Company"). Peter R. Marker, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, MN 55103, appeared on behalf of Intervenor, the Department of Commerce. James Alexander, Assistant Attorney General, NCL Tower, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Public Utilities Commission.

Two members of the public attended the hearing at Bemidji and four members of the public attended the hearing at Grand Rapids. The record closed on October 25, 2001.

NOTICE IS HEREBY GIVEN that pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions, if any, by any party adversely affected must be filed within 15 days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, MN 55101-2154. Exceptions must be specific, stated separately, and numbered. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within 10 days after the service of the exceptions to which the reply is made. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 15 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and held.

FURTHER NOTICE IS HEREBY GIVEN that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that the recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUE

Has the Company satisfied the statutory and rule requirements to justify the issuance of a Certificate of Need for its proposed pipeline expansion?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History and Parties

1. On March 26, 2001, Lakehead Pipe Line Company, Limited Partnership ("Lakehead" or the "Company") indicated its intent to seek a certificate of need application for approval to construct a large petroleum pipeline facility in northern Minnesota. In anticipation of that filing, Lakehead sought an exemption from certain application requirements pursuant to Minn. Rules part 7853.0200, subp. 8. The Commission granted the exemption.¹

2. On July 17, 2001, Lakehead submitted its certificate of need application.² The commission determined that this project fit the definition of "large energy facility" pursuant to Minn. Stat. § 216B.2421, subd. 2(3). The Commission required Lakehead to obtain a certificate of need before siting or building a large energy facility, under Minn. Stat. § 216B.243.³

3. On July 18, 2001, the Commission issued its NOTICE OF COMMENT PERIOD ON THE COMPLETENESS OF LAKEHEAD'S CERTIFICATE OF NEED APPLICATION, which provided a July 24, 2001 deadline for filing written comments on the completeness of Lakehead's application.⁴

4. On July 24, 2001, the Minnesota Department of Commerce (the "Department") filed comments stating that based on its review, and consistent with the

¹ In the Matter of a Request by Lakehead Pipe Line Company for an Exemption from Filing Trade Secret Data, Docket No. PL-9/CN-01-398 ORDER (April 20, 2001).

² Exhibit 3 is a copy of the Application.

³ Order Accepting Application As Substantially Complete, and Notice and Order for Hearing, PL-9/CN-01-1092, August 7, 2001.

⁴ Id.

Commission-authorized exemption, Lakehead had met the filing requirements for completeness.⁵

5. On August 7, 2001, the Commission issued an order accepting the application as substantially complete in accordance with Minn. Rules part 7829.0220 and order for hearing, referring the matter to the Office of Administrative Hearings for a contested case proceedings. The matter was assigned to Administrative Law Judge Allan W. Klein for hearing. The Department of Commerce was designated to investigate the reasonableness of granting a certificate of need to the company.

6. The Administrative Law Judge held a pre-hearing conference on August 29, 2001. The pre-hearing conference was held before Allan W. Klein, Administrative Law Judge and Beverly Jones Heydinger, Administrative Law Judge. The matter was re-assigned to Administrative Law Judge Beverly Jones Heydinger for hearing.⁶

7. On September 4, 2001, the Administrative Law Judge issued a pre-hearing order.⁷

8. The Department was granted permission to intervene in this matter as a party. The Department has investigated the reasonableness of granting a certificate of need to the company.⁸

9. The pre-hearing order set public and evidentiary hearings on October 24, 2001 at 7:00 p.m. in Bemidji, Minnesota and on October 25, 2001 at 10:00 a.m. in Grand Rapids, Minnesota.⁹

10. On August 13, 2001, the Commission's Order Accepting Application as Substantially Complete, and Notice and Order for Hearing were published in the Minnesota State Register.¹⁰

11. On October 1, 2001, the EQB's Notice of Hearings was published in the EQB Monitor.¹¹ On September 21, 2001, the Company distributed copies of a notice of public informational meetings to owners of property over and through which the pipeline would pass. In addition, on October 1, 2001, the notice of public meetings was sent to the chairman of the county boards for each of the six counties over and through which the proposed pipeline would pass.¹²

12. The Company represents that public informational meetings were held by the Minnesota Environmental Quality Board (EQB) in each of the six counties to address the Company's application for partial exemption from pipeline route selection

⁵ Id.

⁶ First Prehearing Order, September 4, 2001.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ 26 S.R.186-189.

¹¹ Vol 25, No. 20, at 2.

¹² Affidavit of Paul W. Norgren.

procedures pursuant to rules promulgated under Minn. Stat. § 116I.015. The EQB meetings were held according to the following schedule:

Clearwater County	October 16, 2001
Beltrami County	October 16, 2001
Cass County	October 17, 2001
Itasca County	October 17, 2001
St. Louis County	October 18, 2001
Carlton County	October 18, 2001

A total of 37 members of the public attended these EQB meetings.

13. Display advertisements giving notice of the public hearing were published in the following newspapers on the following dates:¹³

Newspaper	Publication Date
Bagley Farmers Independent, Bagley, MN	9/26/01
Bemidji Pioneer, Bemidji, MN	9/26/01
Cass Lake Times, Cass Lake, MN	9/27/01
Cloquet Journal, Cloquet, MN	9/28/01
Duluth News-Tribune, Duluth, MN	9/26/01
Gonvick Leader Record, Gonvick, MN	9/25/01
Grand Rapids Herald Review, Grand Rapids, MN	9/26/01
McIntosh Times, Gonvick, MN	9/26/01
Minneapolis Star Tribune, Minneapolis, MN	9/26/01
St. Paul Pioneer Press, St. Paul, MN	9/26/01

14. The parties have stipulated to Findings and Conclusions in the same general format and substance as these Findings and Conclusions.

The Applicant and the Project

15. Lakehead Pipe Line Company, Limited Partnership ("Lakehead") owns and operates an interstate common carrier crude petroleum and natural gas liquids pipeline system in the States of North Dakota, Minnesota, Wisconsin, Michigan, Illinois, Indiana and New York. This pipeline system offers interstate transportation services to any shipper of crude petroleum and natural gas liquids who request such services, provided that the commodities tendered for transportation satisfy the conditions and specifications contained in the applicable tariff filed with the Federal Energy Regulatory Commission.¹⁴

16. The Lakehead System is connected to the Enbridge Pipelines, Inc. pipeline system. Together, these systems constitute the world's longest liquids pipeline

¹³ Affidavits of Publication are included in the Record.

¹⁴ Application § 7853.0230 at 1.

covering approximately 3,200 miles from western Canada through the Upper and Lower Great Lakes region of the United States to Sarnia, Ontario in eastern Canada with lateral lines to Nanticoke, Ontario and Buffalo, New York.¹⁵

17. The pipeline system consists of approximately 3,200 miles of pipe with diameters ranging from 12 inches to 48 inches, 63 pump station locations, with a total of 667,000 installed horse power and 56 tanks with the capacity of approximately 10 million barrels.¹⁶

18. The Company proposes five separate route segments of approximately 97 miles of 36-inch outside diameter pipe primarily within Lakehead's existing right-of-way and parallel to existing pipelines on Lakehead's multi-line right easements in the counties of Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton. The five separate route segments begin at Clearbrook, Minnesota (Mile Post 908) and continue to the Wisconsin border with Carlton County. The new pipeline will become part of the existing pipeline facility and will be used to transport crude petroleum and other liquid hydrocarbons to delivery points east of Clearbrook, Minnesota. The estimated cost of the proposed new pipeline segments and two associated pump stations for line 4 is approximately \$126 million.¹⁷

19. Pending regulatory approval, the Company plans to commence pre-build winter construction in December, 2001 and have the pipeline in service by June, 2003. Integration of the new pipeline segments into Lakehead's system will increase the system's capacity by approximately 147,800 barrels per day on an annual average.¹⁸

20. The new pipeline will cross the Minnesota counties of Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton. It will be constructed adjacent to the Company's existing pipeline corridor. No additional right-of-way will be needed, except that the Company will need wider easements on a few parcels.¹⁹

21. Minn. Stat. § 216B.243 and Minnesota Rules part 7853.0130 set forth the criteria which must be met to establish need for the proposed pipeline expansion.

22. Through the interconnection with Lakehead's facilities at Clearbrook, Minnesota, approximately 75% of the crude petroleum for refining in the State of Minnesota is provided.²⁰ Specifically, the Lakehead system makes deliveries at Clearbrook, Minnesota to Minnesota Pipeline Company's system. That system serves the refineries located in the Twin Cities area. Thus, Minnesota is largely dependent on the reliable supply of crude oil through Lakehead's system.²¹

Long-range energy demand

¹⁵ Id. at. 2.

¹⁶ Id.

¹⁷ Application § 7853.0230 at 3.

¹⁸ Id.

¹⁹ Id.

²⁰ Application § 7853.0240 at 1.

²¹ Application § 7853.0250 at 1.

23. The current annual capacity of the Company's system is approximately 1.84 million barrels per day. Pipeline capacity was apportioned for portions of 1997, 1998 and 1999. Although current facilities have proven adequate to meet demand for transportation service in 2000 and 2001, the Company forecasts a capacity shortfall and the resumption of apportionment between 2003 and 2010.²²

24. The Department has carefully reviewed the Company's forecasts of demand for capacity on its system and has determined that the forecasts are reasonable.²³

25. The advantages to the producing sector of the proposed expansion include higher cash flow, additional cash reserves and corresponding expansion of production from existing reserves and investment in new technologies which could curb future production declines.²⁴

26. The advantages to the refining sector of the proposed expansion of the system's capacity include a broader choice of supply of crude oil and the availability of a stable source of supply at a predictable price.²⁵

27. The advantages to the general public of the proposed expansion of the system's capacity are expected to include continued access to economical and reliable supplies of western Canadian crude oil, which reduces the risk of supply interruptions in the future from other, less stable, sources of supply. The expansion will also contribute to the state and local tax base, will create temporary and permanent employment opportunities and foster stable employment for Minnesota residents, and will provide associated economic benefits to communities near the pipeline system and to the state as a whole.²⁶

28. Even if the forecast throughput were to decline, which is unlikely given the reasonableness of the forecast, the expansion facilities would enable the system to increase the viscosity limit of heavy crude oil blends transported on the system and to reduce costs associated with power requirements.²⁷

Conservation Programs

29. The Company has engaged in substantial activities to meet energy efficiency and conservation goals, including the installation of variable frequency induction motor drives to minimize energy consumption at pumping stations, utilization of larger diameter pipe, purchase of high efficiency pumps and motors at a premium initial cost in order to conserve on energy requirements over the long-term, negotiation of electrical service agreements which maximizes the use of off-peak (lower cost)

²² Application Schedule 7853.0240-A; Rakow testimony at 10-11.

²³ Rakow testimony at 11-12.

²⁴ Application § 7853.0240 at 3.

²⁵ Id.

²⁶ Application §§ 7853.0240 at 4, 7853.0270 at 2-3; Gross testimony at 6-7.

²⁷ Application § 7853.0240 at 5.

power and the use of DRA to reduce flow turbulence and pressure loss between stations.²⁸

Effects of Company Promotional Practices

30. The Company has not engaged in any promotional activities to increase the demand for crude oil to be shipped through its pipeline system.²⁹

Effect of Proposed Facility on Efficient Use of Resources

31. The proposed expansion of the Company's pipeline system will allow the continuing demand for crude petroleum and natural gas liquids to be supplied from western Canada and transported in the safest and most efficient way to the Upper Midwest.³⁰ In addition, the denial of a certificate of need would adversely affect the economic efficiency of future crude oil supplies in the region. This could increase the consumer's costs of refined products and the cost of competing energy sources.³¹

32. Approval of the certificate of need will help ensure that Minnesota and neighboring states have adequate supply and efficiently priced oil supplies and refined products.³²

Alternatives to Applicant's Proposal³³

33. The Company has identified several possible alternatives to its proposal.³⁴

34. The first alternative is to optimize existing pipelines without addition of new lines. The Company has done this by such activities as adding Drag Racing Agent (DRA) and using line pressures approaching their actual maximum pressure limit.³⁵

35. A second alternative is to construct a different, new pipeline. The Company's evaluation of this alternative took into account the many factors that led to its decision to expand on the existing route. These included the ability to use existing 48-inch sections of pipe, existing pump stations and electrical infrastructure, and use of existing right-of-way.³⁶

36. The third alternative is to use alternative modes of transportation, such as truck transport. The use of crude oil tanker trucks involves significant capacity

²⁸ Application § 7853.0260 at 1-5.

²⁹ Application § 7853.0250 at 3.

³⁰ See Application § 7853.0240 at 2-5.

³¹ Rakow testimony at 9-10.

³² Rakow testimony at 9.

³³ Minn. Rules 7853.0130(B); Minn. Stat. § 216B.243, subd. 3(7).

³⁴ Application §§ 7853.0600 at 2; 7853.0540 at 2-5; Addendum to Gross testimony – response to Department of Commerce Request for Information MDG-2.

³⁵ Application § 7853.0540 at 2.

³⁶ Application § 7853.0540 at 2-4.

limitations and imposes significant costs for transportation, fuel consumption and impact on transportation (highway) infrastructure.³⁷

37. In addition to the alternatives identified by the Company, the Department of Commerce requested that the Company analyze additional alternatives. First, the applicant was asked to investigate the availability of existing alternative pipelines. The applicant demonstrated that no other pipeline system exists geographically that can provide the economic benefits of delivering western Canadian crude to the market that Lakehead's system serves. Second, the applicant was asked to investigate the viability of expanding of the Lakehead system along a different route than the one proposed. The applicant demonstrated that the time, expense, and environmental impact of a different route would be greater than the applicant's proposal. The applicant's proposal uses existing facilities more fully. Third, the applicant investigated using rail transportation. Rail transportation faces many of the limitations of truck transportation. In addition, the large terminal and transfer facilities which would be required at each end of the line do not exist and there are insufficient leased tanker cars to meet demand. Two major railroads were contacted to determine shipping rates for crude oil and both declined to provide rates. The applicant also considered the option of water transportation. There are no navigable waterways linking the supply area (western Canada) and the primary demand areas (Great Lakes region refining and eastern Canada).³⁸

Ability of Other Facilities to Meet Future Demand

38. No evidence in the record suggests that an alternative, not requiring certificates of need, could meet the anticipated future demand.

39. None of the identified alternatives to the proposed expansion is superior to the applicant's proposed expansion. The proposed expansion is the best choice.³⁹

Cost of Proposed Facility Compared to Costs of Alternatives

40. The proposed facility is less expensive than any of the alternatives except maximizing use of existing pipelines. That alternative has already been implemented and cannot satisfy the increased demand.

Effect of Proposed Facility on Environments Compared to Alternatives

41. The external benefits of the proposed facility outweigh the external costs of the proposed facility to the natural and socioeconomic environments. By laying an additional pipeline within the Company's existing right-of-way, parallel and adjacent to other existing pipelines, the Company will minimize the impact of its expansion. The Company has developed its construction practices to minimize any negative effects on the land, persons, and communities in the vicinity of the expansion. The alternatives that involve substantial construction would be at least as intrusive as the proposed

³⁷ Application § 7853.0540 at 4-5.

³⁸ Gross testimony Exhibit MDG-2:

³⁹ Gross testimony at 5.

facility. The alternatives that do not involve construction produce a substantial, ongoing impact on the natural and socioeconomic environments by introducing heavy and continual tanker truck or railroad traffic through the communities along the routes to the major refinery facilities.⁴⁰

Expected Reliability of Proposed Facility Compared to Alternatives

42. The proposed facility would be at least as reliable as any of the alternatives that involve transportation of petroleum through a pipeline system. Those alternatives that do not use pipelines are likely to be substantially less reliable. Tanker trucks would be subject to breakdowns and inability to meet schedules for any number of reasons, would substantially increase the wear and tear upon the roads upon which they would travel, and would be vulnerable to adverse weather conditions, road conditions, and other problems. Use of rail has many of the same drawbacks. In contrast, the proposed 36-inch pipeline loops represent a safer, more stable and efficient form of transportation for crude petroleum from western Canada.⁴¹

43. None of the proposed alternatives is a viable alternative to the Company's proposed pipeline expansion.

Comparison of the Consequences of Granting the Certificate of Need with the Consequences of denying the Certificate of Need.⁴²

State Energy Needs

44. The Company's proposed facility is consistent with overall state energy needs. The Company's existing facility cannot meet the demands of its shippers, and the Company's proposal is the most efficient way to meet the shippers' excess demand. The overall energy needs of the state are best served by meeting its current and future energy needs using the most efficient alternative. The pipeline would improve the reliability of Minnesota's crude oil sources by increasing the amounts of crude oil that could efficiently be transported in to the state from western Canadian supplies. Reliability would also be improved because the refineries in this geographic area would be assured of a more stable supply from the shippers in western Canada.⁴³

Impact on Natural and Socioeconomic Environments

45. The Company's proposed expansion will have a limited, temporary impact on the natural and socioeconomic environments in Minnesota. The pipeline expansion will be constructed adjacent to the existing pipeline corridor and within the existing right-of-way, except in a few circumstances where greater right-of-way width is needed. The addition of another pipeline in an existing right-of-way parallel to other existing lines will have little permanent effect on the property values of affected landowners. If there is an impact, it will occur during the construction process. The Company has developed

⁴⁰ Application § 7853.0600 at 1-3.

⁴¹ Application § 7853.0540 at 1-5.

⁴² Minn. Rules § 7853.0130(C); Minn. Stat. § 216B.243(3), (5), and (6).

⁴³ Application § 7853.0240 at 1-2; Rakow testimony at 13.

construction practices to minimize such impact. The Company has agreed to compensate the landowners for any damages resulting from construction. No residents will be required to relocate during pipeline construction.⁴⁴

46. The Company has applied to the Minnesota EQB for a pipeline routing permit. (EQB Document #01-24-PRP-LAKEHEAD). The Company's proposal shows that the Company intends to undertake all reasonable efforts to minimize any temporary negative effect on natural and socioeconomic environments caused by the construction process.⁴⁵

Effects on Future Development

47. There is no evidence to suggest that the proposed facility will have any substantial direct impact on future development in the state of Minnesota.⁴⁶ The proposed facility will meet current and future demands for crude oil in the state in an efficient manner. This may improve the opportunities for future development by enhancing the reliability and cost-effectiveness of western Canadian crude oil as a source of energy in Minnesota. However, there is no evidence that the proposed facility will directly induce any specific development.

Socially Beneficial Uses of the Output of the Proposed Facility

48. The proposed pipeline expansion will be socially beneficial because it will improve the reliability of crude oil supplies from a North American source.⁴⁷ As discussed in paragraph 27 above, expansion may create additional temporary and permanent employment opportunities for Minnesota residents, an increased tax base for the affected counties, and associated economic benefits to those counties and to the state as a whole.

Compliance with Other Governmental Policies, Rules and Regulations⁴⁸

49. There is no evidence that the Company will fail to comply with the relevant policies, rules, and regulations of the various state agencies, federal agencies and local governments that have jurisdiction over the proposed project.⁴⁹ In particular, the pipeline system is extensively regulated by the United States Department of Transportation and its Office of Pipeline Safety under the provisions of the Hazardous Liquids Pipeline Safety Act and its related statutes and regulations. The filing, adjustment and application of the Company's tariff are governed by the Federal Energy Regulatory Commission.

⁴⁴ Application §§ 7853.0620 at 1-3; 7853.0630 at 1-7; 7853.0640, at 3; Gross testimony at 7-8.

⁴⁵ Application §§ 7853.0270 at 5; 7853.0600 at 1.

⁴⁶ Application § 7853.0640 at 1-3.

⁴⁷ Rakow testimony at 13.

⁴⁸ Minn. Rules § 7853.0130(D); Minn. Stat. § 216B.243(8).

⁴⁹ Gross testimony at 11.

50. The Department of Commerce, has thoroughly studied the applicant's request for a certificate of need and supports it.⁵⁰

51. On October 24, 2001, two members of the public attended the public hearing in Bemidji, Minnesota. Neither person offered any comments.

52. On October 25, 2001, four members of the public attended the hearing. One person asked for clarification of the pipeline route; there were no other public comments.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Any of the Findings that more properly should be designated as Conclusions are adopted as such. Similarly, any of the Conclusions that more properly should be designated as Findings are adopted as such.

2. The Commission duly acquired and has jurisdiction over this matter.

3. The Company and the Commission have fulfilled all relevant substantive and procedural statutory and regulatory requirements.

4. The application constitutes the applicant's direct testimony and substantially conforms to the requirements of all applicable statutes and rules, as modified by orders of the Commission.

5. The Company has established the need for construction of the proposed expansion to the Company's pipeline system from Clearbrook, Minnesota to the Wisconsin border at Carlton County. There is an anticipated future demand for increased capacity on the Company's pipeline system. The Company's proposed facility is the most economically efficient and reliable means to satisfy this additional need for capacity.

6. Failure to complete the proposed expansion could adversely affect the future adequacy, reliability, efficiency, and cost-effectiveness of the petroleum supplied to refineries in Minnesota and other states and to the people of Minnesota.

7. There is no reasonable and prudent alternative to the proposed expansion of the Company's pipeline system.

⁵⁰ Rakow testimony at 14.

8. Both the immediate and the long-term consequences of granting a certificate of need to the Company are more favorable than the consequences of denying the certificate.

9. It has not been demonstrated that the design, construction or operation of the proposed pipeline will fail to comply with any relevant policies, rules or regulations of other state agencies, federal agencies or local governments that have jurisdiction over the pipeline.

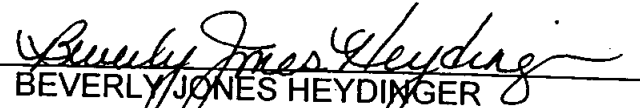
10. The requirements for a certificate of need set forth in Minn. Stat. § 216B.243 and Minn. Rules, part 7853 have been satisfied.

Based on the foregoing Findings of Fact and Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

That the application of Lakehead Pipe Line Company for a certificate of need for a new large energy facility be granted.

Dated this 19th day of November, 2001.


BEVERLY JONES HEYDINGER
Administrative Law Judge

Recorded:Taped (Two tapes)

AFFIDAVIT OF SERVICE

MNPUC Docket Number: PL-9/CN-01-1092

XX

By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX

By personal service

XX

By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Ann Pollack
Eric Witte
Clark Kaml
AG
Bret Eknes
David Jacobson
Janet Gonzalez
Mary Swoboda
Mark Levinger - AG
Jessie Schmoker
Jean Dawson
Legislative Reference Library
Kathy Aslakson - DOC
Julia Anderson - OAG
Curt Nelson - OAG

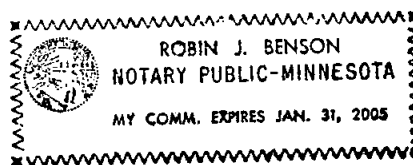
Margie DeLakunt

Subscribed and sworn to before me,

a notary public, this ~~15~~ day of

December, 2001.

Notary Public



In the Matter of Lakehead Pipe Line
Company, Limited Partnership for a
Certificate of Need for a Large Energy
1 Service List

Beverly Heydinger
Office Of Administrativw Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

Burl W. Haar
Executive Secretary
MN Public Utilities Commission
Suite 350
121 East Seventh Place
St. Paul, MN 55101-2147

Kathy Aslakson (4)
Docket Coordinator
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul, MN 55101-2198

Julia Anderson
Special Assistant Attorney General
MN Office Of The Attorney General
525 Park Street
Suite 200
St. Paul, MN 55103-2106

Curt Nelson
OAG-RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Peter R. Marker
Telecommunications & Energy Division
Minnesota Attorney General's Office
Capitof Office Building - Suite 200
525 Park Street
St. Paul, MN 55103-2106

Larry Hartman
Environmental Quality Board
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Paul Norgren
General Counsel
Lakehead Pipe Line Company Inc
Lake Superior Place
21 West Superior Street
Duluth, MN 55802

In the Matter of Lakehead Pipe Line
Company, Limited Partnership for a
Certificate of Need for a Large Energy
1 Service List

Stephen Rakow
MN Department Of Commerce
Suite 500
85 Seventh Place East
St. Paul, MN 55101-2198

Kevin Walli
Fryberger, Buchanan, Smith And
Frederick
386 North Wabasha, 1190 Cap. Sq. Bldg.
St. Paul, MN 55102

In the Matter of Lakehead Pipe Line
Company, Limited Partnership for a
Certificate of Need for a Large Energy
2 Interested Parties

Burl W. Haar
Executive Secretary
MN Public Utilities Commission
Suite 350
121 East Seventh Place
St. Paul, MN 55101-2147

Kathy Aslakson (4)
Docket Coordinator
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul, MN 55101-2198

Julia Anderson
Special Assistant Attorney General
MN Office Of The Attorney General
525 Park Street
Suite 200
St. Paul, MN 55103-2106

Charles Kenow
Administrator
Office Of Pipeline Safety
444 Cedar Street
Suite 100-N
St. Paul, MN 55101-2156

Thomas R. Brace
Minnesota Office Of Pipeline Safety
100 N
444 Cedar Street
St. Paul, MN 55101

Kim Gunderson
MN Legislative Reference Library
645 State Office Building
St. Paul, MN 55155

Gene Hugoson
Commissioner
Department Of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

Curt Nelson
OAG-RUD
900 NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2130

Allen Garber
Commissioner
Minnesota Dept. Of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4037

Larry Hartman
Environmental Quality Board
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Allan Klein
Administrative Law Judge
Office Of Administrative Hearings
Suite 1700
100 Washington Square
Minneapolis, MN 55401-2138

In the Matter of Lakehead Pipe Line
Company, Limited Partnership for a
Certificate of Need for a Large Energy
2 Interested Parties

Paul Norgren
General Counsel
Lakehead Pipe Line Company Inc
Lake Superior Place
21 West Superior Street
Duluth, MN 55802

Michael Sullivan
Executive Director
Environmental Quality Board
300 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Karen Studders
Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Elwyn Tinklenberg
Department Of Transportation
423 DOT Building
395 John Ireland Blvd.
St. Paul, MN 55155



MINNESOTA
DEPARTMENT OF
COMMERCE

DIRECT TESTIMONY AND EXHIBIT OF
MARCUS D. GROSS

BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF LAKEHEAD PIPE LINE COMPANY,
LIMITED PARTNERSHIP FOR A CERTIFICATE OF NEED
FOR A LARGE ENERGY FACILITY
WITHIN THE STATE OF MINNESOTA

DOCKET No. PL9/CN-01-1092

SEPTEMBER 28, 2001

DIRECT TESTIMONY OF MARCUS D. GROSS
LAKEHEAD PIPE LINE COMPANY

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1 ***I. INTRODUCTION***

2 Q. Please state your name, occupation, and business address.

3 A. My name is Marcus D. Gross. I am employed by the Minnesota Department of
4 Commerce (Department) as a Public Utilities Rates Analyst. My business
5 address is: Suite 500, 85 7th Place East, St. Paul, Minnesota 55101-2198.
6

7 ***II. QUALIFICATIONS***

8 Q. What is your educational and professional background?

9 A. My educational and professional background is summarized in DOC Exhibit No.
10 ____ (MDG-1).
11

12 ***III. PURPOSE AND SCOPE***

13 Q. What are your responsibilities in this proceeding?

14 A. I am submitting testimony that presents the Department's position on three of
15 the four criteria established by Minnesota Rules 7853.0130 that were examined in
16 Lakehead Pipe Line Company, Limited Partnership's (Lakehead or the
17 Company) Certificate of Need filing. Department witness Dr. Steve Rakow
18 addresses (A) the probable effects of denial of the Certificate of Need on future
19 adequacy, reliability, or efficiency of energy supply. My testimony details: (B) a
20 more reasonable and prudent alternative to the proposed facility has not been
21 demonstrated; (C) the consequences to society of granting the Certificate of Need
22 are more favorable than the consequences of denying the Certificate of Need; and
23 (D) it has not been demonstrated that the design, construction, or operation will
24 fail to comply with local, state, and federal governmental regulations. Lastly, I
25 summarize my overall recommendations for the Commission.
26

1 **IV. ALTERNATIVES TO THE PROPOSED FACILITY**

2 Q. How did you analyze whether a more reasonable and prudent alternative to the
3 proposed facility was demonstrated?

4 A. I reviewed the Company's filed testimony on alternatives and also requested that
5 the Company investigate several other options. These several other options are
6 discussed further below. Pursuant to Minnesota Rules part 7853.0130, I analyzed
7 whether a more reasonable and prudent alternative to the proposed facility had
8 been demonstrated by a preponderance of the evidence, considering:

- 9 (1) the appropriateness of the size, the type, and the timing of the
10 proposed facility compared to those of reasonable alternatives;
11 (2) the cost of the proposed facility and the cost of energy to be supplied
12 by the proposed facility compared to the cost of reasonable
13 alternatives and the cost of energy that would be supplied by
14 reasonable alternatives;
15 (3) the effects of the proposed facility upon the natural and
16 socioeconomic environments compared to the effects of reasonable
17 alternatives; and
18 (4) the expected reliability of the proposed facility compared to the
19 expected reliability of reasonable alternatives.

20 Q. Did Lakehead present testimony on alternatives to its proposed pipeline
21 expansion project?

22 A. Yes. Lakehead presented testimony on the following alternatives:

- 23 • optimizing existing pipelines without adding new pipelines,
24 • constructing a new pipeline in conjunction with existing pipelines
25 through the Company's existing routes,
26 • constructing an entirely new pipeline, and
27 • using alternative modes of transportation other than pipelines.

1 Q. Do you conclude that Lakehead's analysis of these alternatives is reasonable?

2 A. Yes. My analysis of the Company's above alternatives indicates that they are
3 complete and reasonable. Lakehead presents sufficient evidence to show that
4 these alternatives are less acceptable than the Company's proposal.

5 Q. Does Lakehead's Certificate of Need petition include a complete analysis of all
6 the available alternatives to the proposed expansion?

7 A. No.

8 Q. What alternatives to the proposed pipeline expansion did you request Lakehead
9 to investigate?

10 A. As shown in DOC Exhibit No. ____ (MDG-2), I requested that Lakehead
11 investigate using:

- 12 • existing alternative pipelines,
- 13 • an expansion along a different route,
- 14 • railroad transportation, and
- 15 • water transportation.

16 Q. Do Lakehead's analyses of these alternatives demonstrate that any of them are
17 reasonable alternatives to the proposed expansion?

18 A. No. Only one existing alternative pipeline, the Express Pipeline, could deliver
19 crude oil from western Canada to the Petroleum Administration for Defense
20 District (PADD) II area. PADD II covers 15 states ranging from North Dakota
21 and Oklahoma in the west to Ohio and Tennessee in the east. The Express
22 Pipeline does not have direct access to the Minneapolis/St. Paul refineries or the
23 Murphy Refinery in Superior, Wisconsin. In addition, the Company states that it
24 believes that the Express Pipeline is currently shipping at or very near its total
25 capacity (170,000 barrels per day (bpd)). Further, the Company states that its
26 understanding is that the Express Pipeline's ability to expand capacity is rather
27 limited (total capacity up to 220,000 bpd) for the portion of its pipeline into the

1 United States. The Company states that this expansion would be inadequate and
2 that only an expansion of the magnitude of Terrace Phase III (additional heavy
3 crude oil capacity of 280,000 bpd) would be sufficient to accommodate the
4 incremental production expected from the Western Canadian Sedimentary Basin.

5 Lakehead concluded that the advantages of the proposed project over
6 expansion along other routes include:

- 7 • the ability to use existing 48-inch sections of pipe within the existing
8 route;
- 9 • the ability to use existing pump stations and electrical infrastructure
10 within the existing route;
- 11 • access to existing environmental assessments from previous projects
12 on existing route would streamline environmental impact assessment
13 and regulatory permitting requirements;
- 14 • avoidance of new land disturbance that would be required under a
15 new route, along with new tree clearing along a new corridor, and
16 separate aerial surveillance, which is now generally performed for all
17 lines simultaneously along the existing route;
- 18 • allowing new maintenance, cathodic protection and monitoring
19 activities to be performed with the existing system's activities along a
20 contiguous route; and
- 21 • a reduced need for right-of-way acquisitions, reduced costs, and
22 reduced time commitment.

23 Lakehead states that rail transportation of crude oil, for the volumes
24 provided by this expansion project, is not a feasible alternative to pipeline
25 transportation. Lakehead contacted two major railroads to determine the
26 shipping rates for crude oil and both declined to provide rates because these
27 rates are not competitive with pipeline transportation rates. Further, Lakehead is

1 aware of a pipeline company that is currently using railroad transportation, but
2 only as an interim transportation method while the company is planning, siting,
3 and pursuing right of way acquisitions for a new pipeline route.

4 Finally, Lakehead deemed water transport unfeasible because there are no
5 navigable waterways linking western Canada and the PADD II area. Using
6 seaborne shipping would require constructing a pipeline of similar length to the
7 coast, using seaborne transportation to the Gulf Coast, and using existing
8 pipelines to the PADD II area. Such a system would be significantly more costly.

9 Q. Please summarize your conclusions regarding the alternatives.

10 A. Lakehead concluded that all of the alternatives were less desirable than the
11 proposed pipeline expansion. Based on my analysis, I conclude that none of the
12 alternatives to the proposed expansion are superior to the proposed expansion.
13 The record indicates that the proposed expansion is the best choice.

14
15 **V. CONSEQUENCES TO SOCIETY**

16 Q. Did you analyze the consequences to society of granting the Certificate of Need?

17 A. Yes. I reviewed both the positive (benefits) and the negative (costs)
18 consequences of this facility to society. These are the external benefits and
19 external costs of the proposed facility. Pursuant to Minnesota Rules part
20 7853.0130, I analyzed whether the consequences to society of granting the
21 Certificate of Need are more favorable than the consequences of denying the
22 certificate, considering:

- 23 (1) the relationship of the proposed facility, or a suitable modification of
24 it, to overall state energy needs;
25 (2) the effect of the proposed facility, or a suitable modification of it,
26 upon the natural and socioeconomic environments compared to the
27 effect of not building the facility;

- 1 (3) the effects of the proposed facility, or a suitable modification of it, in
2 inducing future development; and
3 (4) socially beneficial uses of the output of the proposed facility, or a
4 suitable modification of it, including its uses to protect or enhance
5 environmental quality.

6 Q. Please present the Department's analysis of the external benefits that would
7 result from the proposed facility.

8 A. My analysis of the external benefits includes consideration that the pipeline will
9 result in the following:

- 10 • a reliable and cost-effective energy supply for Minnesota,
11 • increased investment of \$200 million for the national economy,
12 • increased employment opportunities in Minnesota,
13 • an increased tax base for local and state governments, and
14 • economic benefits to the refining and producing sectors.

15 The proposed pipeline expansion would be economically beneficial to the Great
16 Lakes region, Minnesota, and the northwest and north central Minnesota
17 counties in which it would be located.

18 First, as discussed by Dr. Rakow, the project would provide a reliable and
19 cost-effective source of energy for the residents of Minnesota.

20 Second, the cost of the expansion project is estimated to be about \$200
21 million in the United States including \$126 million in Minnesota. The project is
22 also estimated to be about CDN \$135 in Canada. Substantial portions of the
23 amount to be spent in Minnesota would be spent in the rural counties where the
24 pipeline would be located.

25 Third, the pipeline expansion project would result in over 300 jobs for
26 construction workers, contractors, environmental consultants, and inspectors.

1 While few of these jobs would be permanent, there would be a substantial short-
2 term increase in employment.

3 Fourth, there would be substantial tax implications from this project.
4 Lakehead estimates that the Minnesota sales-and-use tax would generate about
5 \$3.5 million from the expansion project. In addition, once finished the property
6 tax base in the rural counties hosting the pipeline would increase. Lakehead
7 estimates that the expansion would increase property taxes by about \$3.5 million.
8 Finally, Lakehead envisions that the project would ensure that the Lakehead
9 system will be the route of choice for western Canadian crude oil, resulting in
10 creating both income for the partners and additional income-tax revenues for the
11 partners' states of residence, some of whom are Minnesota residents.

12 Fifth, the proposed expansion would produce benefits for producers and
13 their customers in the refining industry, in general. Given that all western
14 Canadian export pipelines are at or near capacity, failure to construct the
15 proposed system expansion would lead to a curtailment of supply growth.
16 Therefore, producers accessing the expanded facilities would benefit from
17 increases in total producer revenue resulting from added volumes of crude oil
18 reaching the market. Additionally, the Terrace Phase III facilities would provide
19 refiners with additional crude supplies. Increased crude supplies would
20 improve the security of supply as well as increase choice and some pricing
21 flexibility. Increased choice in a competitive market would benefit PADD II
22 refiners and, ultimately, consumers.

23 Q. Please present the Department's analysis of the external costs that would result
24 from the proposed facility.

25 A. My analysis of the external costs includes consideration that the pipeline would
26 result in the following:

- 27 • pollution and damage to natural resources during construction,

- potential damage to crop land during construction,
- potential noise pollution caused by the installation of two new pumps;
and
- potential environmental damage during pipeline operations.

First, the Company's Certificate of Need filing describes the airborne emissions, water discharge, and noise pollution that would occur during construction. Conversely, Lakehead also describes the monitoring and preventive measures that they would take during construction. It appears from Lakehead's filing that the damage and related external costs from these activities would be minimal. Additionally, various local, state, and federal governmental agencies have regulatory authority over pipeline construction in order to assure that standards are met during construction, including the United States Environmental Protection Agency, the Minnesota Environmental Quality Board, and the Minnesota Department of Natural Resources, among others. (See DOC Exhibit No. ____ (MDG-3) for a list of governmental bodies reviewing the project and permits that Lakehead must obtain). The investigations and requirements of these agencies would help ensure that the external costs are minimized.

Second, damage to crop land during construction is likely to be minimal for two reasons. First, as described in Lakehead's filing, the Company would take various preventive measures, such as separately storing topsoil and not allowing the topsoil to mix with other subsoil removed from the trench. Second, Lakehead takes a proactive role in handling on-going claims from year-to-year. For example, in the 1998 Terrace Phase I project, wet weather in 1998 and 1999 caused restoration activities on twelve parcels of land to be incomplete, which led to claims of crop loss or loss of productivity. Since that time there have been no claims for loss of productivity or other crop loss claims due to the Terrace Phase I project. However, in cases of such claims, the details pertinent to that

1 loss are calculated in a mutually acceptable manner. All settlements are agreed
2 to in writing and are signed by the landowner, thus eliminating the externality.

3 Third, the two new pumps that are proposed to be installed at Clearbrook,
4 Minnesota and Deer River, Minnesota are basically the same dimensional size as
5 the pumps located at existing pump installations along the pipeline. The pump
6 drivers are purchased with a noise level not to exceed 83 decibels and the pumps
7 and drivers are enclosed in a four-sided building, which further reduces the
8 noise level. The noise level immediately outside the building has been
9 demonstrated to be between 48 and 54 decibels average (dBA), comparable to a
10 typical suburban area background. At one hundred feet away from the building
11 the noise level drops between 40 and 45 dBA, comparable to a quiet suburban
12 area at night.

13 Fourth, environmental damage could occur during pipeline operations.
14 Specifically, oil spills could damage some land and reduce crop production.
15 However, since the Company is following the existing route, no new lands will
16 be subject to the possibility of an oil spill. Existing land will be subject to a small
17 increase in the possibility of an oil spill due to the new pipeline segments.
18 During the past 10 years (1991-2000) the company has had eleven spills of 50
19 barrels or greater in Minnesota. Four spills were 50 barrels, three were between
20 150 and 400 barrels, and four spills were over 900 barrels. The Company
21 retrieved, on average, 95 percent of the barrels of crude spilled from these eleven
22 spills. Although this history gives some indication of the future risk of oil spills
23 and the likely size of such a spill, it does not accurately predict the future.
24 Technological changes and design improvements should decrease the probability
25 of a spill and increase the potential for recovering spilled oil. When spills do
26 occur, Lakehead reports directly to the Minnesota Pollution Control Agency
27 (MPCA), which monitors the situation. Lakehead's remediation and monitoring

1 activities after a spill are under MPCA review. Finally, as with construction,
2 Lakehead assumes responsibility for any damage that may occur during pipeline
3 operation and has agreed to compensate landowners accordingly. The MPCA
4 oversight and compensation should minimize the external cost of spills.

5 Q. What is your conclusion regarding the external costs and external benefits from
6 the proposed facility?

7 A. My overall analysis of the consequences of construction of the proposed facility
8 is that the external costs from the pipeline expansion are expected to be relatively
9 minimal and outweighed by the external benefits. Thus, when considering the
10 external costs and external benefits, I determined that the consequences of
11 granting the Certificate of Need are more favorable than the consequences of
12 denying it. Of course, my analysis assumes that other agencies charged with
13 regulatory responsibility over the construction and operation of the pipeline will
14 be able to ensure that external costs are minimized and that any necessary
15 remediation activities are undertaken. If this assumption is valid, external costs
16 should be minimal.

17 The proposed facility will be built on existing easements and on some
18 widened easements. It is unlikely that most property owners will experience
19 significantly lower property values because their current property values already
20 reflect the existence of the present pipeline. Some new damage to crop land and
21 the environment may occur during construction and operation of the pipeline,
22 but Lakehead has agreed to compensate affected landowners.

23 I conclude that the external benefits of the proposed expansion outweigh
24 the external costs of the project.

1 **VI. COMPLIANCE WITH OTHER GOVERNMENTAL REGULATIONS**

2 Q. Have you reviewed the Company's list of permits required by local, state, or
3 federal governmental agencies?

4 A. Yes, I reviewed the list of agencies submitted with the Certificate of Need, as
5 shown in DOC Exhibit No. ____ (MDG-3).

6 Q. Have you investigated whether those permits will be granted?

7 A. No. My testimony in this case has been prepared prior to the projected dates for
8 the decisions of the various agencies. As shown in DOC Exhibit No. ____ (MDG-
9 3), with the exception of the United States Fish and Wildlife Service's Federal
10 Endangered Resources Consultation, the various agencies will make decisions
11 between December 2001 and March 2003.

12 Q. Do you know of any reason why those permits would not be granted?

13 A. No, I do not. The record of this proceeding does not demonstrate that the
14 design, construction, or operation of the proposed facility would fail to comply
15 with relevant policies, rules, and regulations of other local, state, and federal
16 governments. Of course, should any of these permits be denied, the proposed
17 expansion will not take place, regardless of the Commission's decision on the
18 Certificate of Need.

19
20 **VII. SUMMARY AND RECOMMENDATIONS**

21 Q. Please summarize the conclusions of your investigation in this case.

22 A. My conclusions are summarized as follows:

- 23 • A more reasonable and prudent alternative to the proposed expansion
24 has not been demonstrated by a preponderance of the evidence in this
25 proceeding.
26 • The consequences to society of granting the Certificate of Need are
27 more favorable than the consequences of denying the certificate.

- It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other local, state, and federal governments.

Q. Based on your conclusions, please summarize your recommendations to the Commission.

A. I recommend that the Commission grant the Certificate of Need to Lakehead for the proposed pipeline expansion in northwest and north central Minnesota.

Q. Does this conclude your testimony?

A. Yes.

Qualifications for Marcus Don Gross

Educational Background

- Bachelor of Science, Business Administration, University of Nebraska-Lincoln, August 1993
- Master of Arts, Economics, University of Nebraska-Lincoln, May 1995

Professional Background

I have worked in the Gas Planning and Advocacy Unit of the Department of Commerce (formerly the Department of Public Service) since June 1998. As a Rates Analyst for the Department, my duties have included evaluating the use of financial instruments in the procurement of gas supplies, investigating and filing testimony for rate design in a recent rate case, and filing expert witness testimony on several issues, including Northern States Power Company-Electric's recent Certificate of Need filing and Northern States Power Company's recent merger with New Century Energies, Inc. The following is a sample of some of the dockets I have worked on in my time with the Department:

- G008/M-01-540 Reliant Energy Minnegasco's Request for Use of Options
- G007,011/GR-00-951 UtiliCorp United Inc.'s Request for an Increase in Rates
- E002/CN-99-1815 Northern States Power Company-Electric Certificate of Need filing
- E,G002/PA-99-1031 Merger of Northern States Power Company Merger with New Century Energies, Inc.

Seminars

Wisconsin Public Utility Institute's Antitrust in Energy Markets, University of Wisconsin – Madison, 2000.

Wisconsin Public Utility Institute's Incentive Ratemaking for Energy Utilities, University of Wisconsin – Madison, 1999.

National Association of Regulatory Utility Commissioners' Practical Skills for a Changing Utility Environment: The Basics, Center for Public Utilities, New Mexico State University, 1998

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Suite 350
121 7th Place East
St. Paul, Minnesota 55101-2147
August 17, 2001

Utility Information Request

In the Matter of the Application)	MPUC Docket No.
of Lakehead Pipe Line Company,)	PL9/CN-01-1092
Limited Partnership for a Certificate)	
of Need for a large Energy Facility)	Filing Date:
Within the State of Minnesota)	July 17, 2001

Question 1:

Please provide a discussion of alternatives to the proposed pipeline expansion, and an explanation of why the expansion, as proposed, is a better alternative to each alternative. Your discussion should include (but not necessarily be limited to):

A) The availability of existing alternative pipelines.

The Enbridge and Lakehead Pipe Line systems now deliver approximately 60% of crude oil produced in Western Canada to Midwest and Eastern Canadian refinery markets. As explained in Lakehead's Application, the two refineries in the Minneapolis area now rely on Lakehead for receiving over 75% of their raw feed stock; Murphy Refinery in Superior, Wisconsin receives 100% of its feedstock off the Lakehead system and the four large refineries in the greater Chicago area now receive over 45% of their crude oil from Lakehead. These main markets for Western Canadian crude delivered in the U.S. are in PADD II. A map is provided as Map K (in the original Application) depicting the PADDs.

The highest netback for Western Canadian crude oil production is the PADD II market. The PADD II markets for Western Canadian crude can be grouped in to smaller regions: Minnesota and Wisconsin, Illinois and Indiana, South of Chicago, and Michigan and Ohio (the "Great Lakes" region of PADD II). The Enbridge/Lakehead system also delivers crude oil to one refinery in PADD I that is located in Pennsylvania via Kiantone Pipeline at Buffalo, New York.

Because of the higher netbacks, there is a strong economic incentive for producers in Western Canada to target PADD II refinery markets. Conversely, refineries in the Upper Midwest are dependent on the supplies of crude oil from Western Canada to meet their needs for an economical source. Lakehead also provides short delivery times, ability to segregate batches and a low cost of transportation and reduce the refiners need for on-site storage.

The only other pipeline system that accesses PADD II markets for the Western Canadian producer is Express Pipeline. The Express pipeline system delivers crude oil south from Hardisty, Alberta to Casper, Wyoming, where it connects to pipelines serving Southern PADD IV and the Platte pipeline system, which delivers crude oil to Wood River, Illinois located in PADD II. From Wood River, crude oil can be delivered to local refineries or transferred to other pipelines serving other Midwest PADD II markets. The Enbridge/Lakehead system, through its interconnection with Mustang pipeline, serves these same PADD II markets. The Express Pipe Line System does not have direct access to the Minneapolis/St. Paul refineries and does not have any access via current pipeline systems to the Murphy Refinery in Superior, Wisconsin.

The Express pipeline has a capacity of approximately 170,000 bpd (27,000 m³/d) and is believed to be currently shipping at or very near that capacity. It is the Company's understanding that Express can expand capacity to 220,000 bpd (35,000 m³/d) for the Hardisty, Alberta to Casper, Wyoming segment. This expansion is insufficient to accommodate all of the increment production expected from the Western Canadian Sedimentary Basin. Furthermore, the Company understands that the Express system bottleneck occurs downstream of Casper, Wyoming (on the Platte pipeline), further limiting the ability of an Express expansion to meet the incremental PADD II demand for Western Canadian crude oil. The Terrace Phase III expansion provides approximately 280,000 b/d (44,800 m³/d) of additional heavy crude oil capability on the Enbridge/Lakehead system. Only an expansion of the magnitude of Terrace Phase III can adequately accommodate the incremental transportation needs into the consuming region of PADD II.

Refineries in the Great Lakes also receive some portions of their crude oil supplies from pipelines bringing crude oil from the midcontinent or the Gulf Coast area (either domestic crude from the Gulf Coast or off-shore supplies arriving in the Gulf Coast from the Middle East or South America). At certain times in the year, the existing pipelines arriving from the Gulf Coast area are also capacity constrained. As stated in the original Application, domestic supplies from the midcontinent are decreasing and supplies of crude from the Gulf result in longer delivery times, less ability to segregate batches, higher transportation tolls and reduce the economic benefit of access to lower cost heavy crude oil from Western Canada. While refineries maintain flexibility and security in their supply sources, the economic benefits of access to Western Canadian crude oil via the Lakehead Pipe Line system emphasize the advantages of the Lakehead system over alternatives.

B) Expansion of the Lakehead system along a different route than proposed here.

Lakehead did not investigate the alternative of building a pipeline along a different route because expansion on the existing route was deemed as preferential for the following reasons:

- the ability to use existing 48-inch sections of pipe within the existing route
- the ability to use existing pump stations and electrical infrastructure within the existing route

- access to existing environmental assessments from prior projects on existing route will streamline environmental impact assessment and regulatory permitting requirements
- avoidance of a new route that would necessitate new land disturbance, new tree clearing along a new corridor and need for separate aerial surveillance, now generally performed for all lines simultaneously along the existing route
- allowing new maintenance, cathodic protection and monitoring activities to be performed with the existing system's activities along a contiguous route
- reduced acquisition of right-of-way (R.O.W.) through the use of existing R.O.W. on the existing route
- reduced cost and time required as a result of all of the preceding points.

C) Rail transportation.

Rail transportation of crude oil, for the volumes provided by this expansion project, is not a feasible alternative to pipeline transportation. Two major railroads were contacted to determine shipping rates for crude oil and both declined to provide rates because they are simply not competitive with pipeline transportation rates. Other logistical drawbacks to rail transportation include:

- the requirement of large terminal and transfer facilities at each end of the line
- lack of availability of leased tanker cars
- development and implementation of new scheduling and tracking systems

Lakehead is aware of a pipeline company that is currently using railroad transportation only as a interim transportation method while planning, siting and right-of-way acquisition for a new pipeline route is underway. However, this pipeline is transporting less than 20% of the volumes proposed in Lakehead's expansion, and expects this to be a short term operation and believes this alternative less economical given their continued plans to construct the new pipeline.

D) Water transportation.

There are no navigable waterways linking the supply area (Western Canada) and the primary demand areas (Great Lakes region refining and Eastern Canada).

A marine transportation alternative would also require the use of new or expanded pipeline systems from the supply region to the Pacific coast, along with a the use of a new or existing terminal facility equipped with tank to ship transfer capability. From there, shipping would proceed to the U.S. Gulf of Mexico coast, for transfer into existing or expanded pipeline systems for delivery to the PADD II and Eastern Canadian markets. The pipeline length (assuming Edmonton, Alberta is the receipt location and Chicago, Illinois is the delivery location) in this alternative is very similar to the direct route followed by Enbridge/Lakehead. However, the thousands of miles of transportation by ship make this alternative too costly. Transportation by ship would also increase delivery time significantly and would not allow for the level of crude segregation currently available on the Enbridge/Lakehead system. Inland transfer of

crude supplies to meet the Great Lakes refinery needs via underground pipelines is the only viable option.

E) Any other means of transportation.

Lakehead does not believe that there are any other effective means for the transportation of petroleum products from the Western Canadian supply source to the markets in PADD II and Eastern Canada. To illustrate, a U.S. Government publication entitled "The U.S. Petroleum Industry – Past as a Prologue – 1970-1992", printed in September 1993 indicates that of all possible transportation methods, less than 0.1% of the crude deliveries to PADD II from other PADDs in 1992 were delivered by means other than pipelines and that the transportation of crude through pipelines has historically increased. It can be concluded that transportation by pipeline is the most cost effective and efficient means of transporting crude petroleum and is the only viable option that the petroleum market has to meet its need for crude oil in PADD II.

LIST OF GOVERNMENT AUTHORITIES AND TITLES OF PERMITS/APPROVALS .
(Minnesota Portion of Project Only)

Name of Agency	Title of Permit/Approval	Date of Application ^a	Date of Decision ^b	Status
Federal				
United States Army Corps of Engineers	Section 10 Permit (navigable waters)	April 2001	December 2001	On-going
	Section 404 Permit (waters of the U.S., including wetlands)	April 2001	December 2001	On-going
United States Fish and Wildlife Service	Section 7 Consultation for Federal endangered species within Wisconsin	April 2000	May 2000	Completed
	Section 7 Consultation for Federal endangered species within Minnesota	April 2000	October 2000	Completed
United States Environmental Protection Agency	Section 401 Water Quality Certification (within the Leech Lake and Fond Du Lac Reservations)	July 2001	November 2001	To be submitted
United States Forest Service	Special Use Permit (Chippewa National Forest)	May 2000	December 2001	On-going
State – Minnesota				
Minnesota Environmental Quality Board	Partial Exemption and Routing Permit ^c	July 2001	December 2001	To be submitted
Minnesota Public Utilities Commission	Certificate of Need	July 2001	December 2001	To be submitted
Minnesota Department of Natural Resources	License to Cross Public Waters	July 2001	December 2001	To be submitted
	License to Cross Public Lands	August 2001	December 2001	To be submitted
	Water Appropriation Permit (hydrostatic test water)	October 2001	January 2002	To be submitted
	Water Appropriation Permit (trench dewatering)	October 2001	January 2002	To be submitted
	State Endangered Species Consultation	June 2000	December 2001	On-going
Minnesota Pollution Control Agency	NPDES Discharge Permit (hydrostatic test water)	September 2002	March 2003	To be submitted
	NPDES Discharge Permit (construction stormwater)	October 2001	December 2001	To be submitted
	Section 401 Water Quality Certification	June 2001	October 2001	On-going
Minnesota Historical Society	Section 106 Consultation	July 2000	November 2001	On-going

Name of Agency	Title of Permit/Approval	Date of Application ^a	Date of Decision ^b	Status
Minnesota Department of Transportation	Road Crossing Permit	August 2001	December 2001	To be submitted
Local – Minnesota				
Clearwater, Beltrami, Cass, Itasca, St. Louis, and Carlton Counties	Road Crossing Permit	August 2001	December 2001	To be submitted
	Conditional Use/Zoning Permits	August 2001	December 2001	To be submitted
	Minnesota Wetland Conservation Act Exemption (Board of Water and Soil Resources)	August 2001	December 2001	To be submitted
Red Lake Watershed District	Watershed District Permit	August 2001	December 2001	To be submitted
Bemidji & Other Cities	Land managing consultation	August 2001	December 2001	To be submitted
Mississippi River Headwaters Board	Land managing consultation	August 2001	December 2001	To be submitted
Other – Minnesota				
Leech Lake Reservation	Land managing consultation	March 1999	December 2001	On-going
Fond Du Lac Reservation	Land managing consultation	March 1999	December 2001	On-going
	Section 401 Water Quality Certification	Winter 2001	Fall 2001	To be submitted

^a Anticipated dates for submission.

^b Projected dates of action.

^c The following governmental agencies will be provided notice and/or have an opportunity to take part in proceedings before the Minnesota Environmental Quality Board for the pipeline routing permit:

Governor's Representative	Office of Waste Management
Department of Agriculture	Pollution Control Agency
Department of Health	Citizen Members
Department of Natural Resources	Minnesota Historical Society
Department of Public Service	Regional Development Commissions
Department of Transportation	Soil and Water Conservation Districts
United States Fish and Wildlife Service	Watershed Districts
Minnesota State Archaeologist	Auditor of Each County
Minnesota Planning Office	Clerk of Each Township and Incorporated Town



MINNESOTA
DEPARTMENT OF
COMMERCE

DIRECT TESTIMONY AND EXHIBIT OF
STEVE RAKOW

BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF LAKEHEAD PIPE LINE COMPANY,
LIMITED PARTNERSHIP FOR A CERTIFICATE OF NEED
FOR A LARGE ENERGY FACILITY
WITHIN THE STATE OF MINNESOTA

DOCKET No. PL9/CN-01-1092

SEPTEMBER 28, 2001

DIRECT TESTIMONY OF STEVE RAKOW
LAKEHEAD PIPE LINE COMPANY

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1 **I. INTRODUCTION**

2 Q. Please state your name, occupation and business address.

3 A. My name is Steve Rakow. I am a Rates Analyst with the Minnesota Department
4 of Commerce (the Department). My business address is 85 7th Place East, Suite
5 500, St. Paul, Minnesota 55101-2198.

6
7 **II. QUALIFICATIONS**

8 Q. What is your educational and professional background?

9 A. A summary of my education and qualifications is included as DOC Exhibit No.
10 ___ (SRR-1).

11
12 **III. PURPOSE AND SCOPE**

13 Q. What are your responsibilities in this proceeding?

14 A. I am submitting testimony on behalf of the Department that:

- 15 • summarizes Lakehead Pipe Line Company, Limited Partnership's
16 (Lakehead or the Company) Certificate of Need filing for the new large
17 energy facility proposed in this proceeding;
- 18 • presents the four criteria established by Minnesota Rules that the
19 Department has examined and for the Minnesota Public Utilities
20 Commission to use to decide whether to grant a Certificate of Need for
21 the pipeline expansion proposed by Lakehead;
- 22 • presents the Department's position on one of the four criteria that we
23 examined in this case, i.e., the criteria described in detail below
24 regarding the adequacy, reliability and efficiency of energy supply;
- 25 • introduces the other witness sponsored by the Department in this
26 proceeding who will address the remaining criteria, alternatives,
27 consequences to society, and government regulations; and

- summarizes the Department's overall findings and recommendations to the Commission.

IV. SUMMARY OF LAKEHEAD AND PROPOSED PROJECT

Q. Please provide some background on Lakehead.

A. Lakehead is an interstate common carrier of crude petroleum and natural-gas liquids. The Company owns an existing pipeline system in Minnesota and would be the owner of the proposed new pipeline segments. Lakehead receives crude petroleum and natural-gas liquids from oil fields in western and central Canada at the international border near Neche, North Dakota, via an interconnection with Enbridge Pipelines Inc.'s (Enbridge) system. Lakehead's system covers approximately 1,750 miles from the international border near Neche, North Dakota to the international border near Marysville, Michigan.

The Lakehead pipeline system offers interstate transportation services to any shipper of crude petroleum and natural-gas liquids who requests such services. However, the commodities tendered for transportation must satisfy the conditions and specifications in the applicable tariff filed with the Federal Energy Regulatory Commission.

Shipments of crude petroleum and natural-gas liquids originate in production fields in Canada (Alberta, Saskatchewan, Manitoba, the Northwest Territories), and the U. S. (North Dakota, Montana, and Michigan). Lesser amounts originate in the U.S. Gulf region. The pipeline system also receives crude oil from the Portal Pipe Line system near Clearbrook, Minnesota and other connecting carriers in the Chicago area. The crude petroleum and natural-gas liquids transported by Lakehead are shipped to markets in the U.S. and eastern Canada. The Lakehead system serves all of the major refinery centers in the Great Lakes region of the U.S., as well as the Province of Ontario, Canada.

1 The pipeline system consists of about 3,300 miles of pipe, with diameters
2 ranging from 12 to 48 inches. The system has 63 pumping stations with a total of
3 667,000 installed horsepower. There also are 56 storage tanks with a capacity of
4 about 10.4 million barrels. The tank terminal facilities are located at Clearbrook,
5 Minnesota; Superior, Wisconsin; and Griffith and Schererville, Indiana. The
6 Lakehead system delivered about 1.34 million barrels of crude petroleum and
7 natural-gas liquids per day. Lakehead transports about 60 percent of all crude
8 petroleum and natural-gas liquids (NGL) produced in western Canada.

9 Q. Please provide a summary of Lakehead's request in this proceeding.

10 A. Lakehead requests a Certificate of Need for a new large energy pipeline facility.
11 The Minnesota portion of the proposed new large energy pipeline facility would
12 consist of five separate segments of approximately 97 miles of 36-inch outside
13 diameter pipe. The new pipeline will interconnect 83 miles of existing 48-inch
14 outside diameter pipe. The pipeline would be constructed primarily within
15 Lakehead's existing right-of-way and parallel to existing pipelines on Lakehead's
16 multiple line-rights easements in Clearwater, Beltrami, Cass, Itasca, St. Louis,
17 and Carlton counties. However, easements on a few parcels will need to be
18 widened or renewed.

19 The pipeline will be buried underground. The pipeline segments will
20 begin near Lakehead's terminal in Clearbrook, Minnesota (Clearwater County)
21 and end at Lakehead's terminal in Superior, Wisconsin (Douglas County). These
22 segments, together with construction of two new pump stations on line 4, and
23 five new pump stations on line 3, will constitute the U.S. portion of the pipeline
24 expansion project.

25 Q. How will this new proposed pipeline affect Lakehead's existing pipeline
26 facilities?

1 A. Once the new pipeline is integrated into Lakehead's existing pipeline facilities,
2 total annual capacity on the pipeline system will increase by about 147,800
3 barrels per day (bpd). This can be broken down into a gain of about 300,000 bpd
4 for heavy crude oil and a loss of about 150,000 bpd for other commodities.

5 Q. Who are Lakehead's customers and how are its products used?

6 A. According to Lakehead, the Great Lakes region is largely dependent on the
7 reliable supply of crude petroleum and natural gas liquids supplied through the
8 Company's pipeline. On average, Lakehead delivered about 1.45 million bpd of
9 crude petroleum and other liquid hydrocarbons during 1996-2000. About 18
10 percent of that total (261,600 bpd) is delivered at Clearbrook, Minnesota.
11 Lakehead supplies about 75 percent of the crude oil deliveries into the
12 Minneapolis-St. Paul refineries (Ashland and Koch Refineries) and 100 percent of
13 the supply to the Murphy Refinery facility in Superior, Wisconsin. Thus, a
14 significant percentage of the demand for petroleum in North Dakota, Minnesota,
15 and Wisconsin relies on delivery of crude oil through Lakehead's system.

16 The products Lakehead transports are used in a variety of industries.
17 Crude oil is refined to yield more than 2,000 different products ranging from
18 asphalt and plastic to fabrics. However, transportation fuels such as gasoline
19 account for about 85 percent of crude oil derivatives.

20 Q. How does Lakehead justify the need for the proposed pipeline expansion?

21 A. Lakehead states it needs the proposed expansion because the demand for
22 transportation of its commodities will exceed the system's capacity. The result is
23 that the Company will be forced to apportion its pipeline capacity among its
24 shippers. The Company has resorted to apportionment for crude shipments in
25 only 1 of the previous 24 months. However, Lakehead estimates that the system
26 will experience apportionment for heavy crude each year of the forecast period
27 (2003 to 2010).

1 Q. What is the cost of the proposed new facility?

2 A. Lakehead estimates the cost of the Minnesota portion of the proposed 36-inch
3 outside diameter pipeline and two pump stations for line 4 at about \$126 million.
4 The five new pump stations on line 3 will cost about \$35 million.

5 Q. What are the proposed dates for building and operating this pipeline?

6 A. Lakehead proposes to begin pre-build winter construction in January, 2002, and
7 have the pipeline in-service by June, 2003.
8

9 V. *THE DEPARTMENT'S INVESTIGATION*

10 Q. Please summarize the Department's investigation of this case.

11 A. Minnesota Rules part 7853.0130 states that the Commission shall grant a
12 certificate of need if it determines that the applicant meets four criteria.
13 Therefore, the Department's investigation focused on these four criteria. The
14 four criteria are as follows:

- 15 • The probable result of denial would adversely affect the future
16 adequacy, reliability, or efficiency of energy supply to the applicant, to
17 the applicant's customers, or to the people of Minnesota and
18 neighboring states.
- 19 • A more reasonable and prudent alternative to the proposed facility has
20 not been demonstrated by a preponderance of the evidence on the
21 record by parties or persons other than the applicant.
- 22 • The consequences to society of granting the Certificate of Need are
23 more favorable than the consequences of denying the certificate.
- 24 • It has not been demonstrated on the record that the design,
25 construction, or operation of the proposed facility will fail to comply
26 with those relevant policies, rules, and regulations of other state and
27 federal agencies and local governments.

1 Q. Please introduce the other witness sponsored by the Department in this
2 proceeding and summarize the issues this witness will address.

3 A. Department witness Marcus Gross will present testimony on the last three
4 criteria. I will present testimony on the first criterion.

5 Q. Please summarize the Department's investigation of this case.

6 A. Our major findings and conclusions are summarized as follows:

- 7 • Denial of the proposed expansion would adversely affect the future
8 adequacy, reliability, and efficiency of energy supply to Lakehead's
9 customers and to the people of Minnesota and neighboring states.
- 10 • A more reasonable and prudent alternative to the proposed expansion
11 has not been demonstrated by a preponderance of the evidence in this
12 proceeding.
- 13 • The consequences to society of granting the Certificate of Need are
14 more favorable than the consequences of denying the Certificate of
15 Need.
- 16 • It has not been demonstrated on the record that the design,
17 construction, or operation of the proposed facility will fail to comply
18 with those relevant policies, rules, and regulations of other local, state,
19 and federal governments.

20
21 **VI. FUTURE EFFICIENCY, ADEQUACY, AND RELIABILITY OF SUPPLY**

22 **A. EFFICIENCY**

23 Q. Please describe your testimony on the efficiency of future crude oil supplies.

24 A. In this section, I define economic efficiency, explain how efficiency is achieved,
25 and argue that denial of the Certificate of Need would adversely affect the future
26 efficiency of crude oil supplies. I describe anticipated incremental costs and
27 incremental benefits of the proposed facility and their effect on efficiency. I also

1 point out that, due to competition in the crude oil market, the majority of the risk
2 involved with the expansion falls not on the consumer but on the producers and
3 the Company.

4 Q. Please define the term "efficiency" as you refer to it in your testimony.

5 A. I use the economic definition of efficiency that is sometimes referred to as
6 "allocative efficiency." Allocative efficiency is achieved when producers choose
7 the combination of inputs and outputs that maximize net societal benefit. I will
8 address only the private benefits and private costs; Marcus Gross addresses
9 socio-economic and environmental issues related to the proposed facility
10 separately; in economics these are called "externalities." Since Marcus Gross
11 concludes that the external benefits outweigh the external costs and I conclude
12 that the private benefits outweigh private costs, our combined analysis supports
13 expansion of the pipeline.

14 Q. How is the proper combination of inputs and outputs chosen to increase
15 allocative efficiency?

16 A. I will start by assuming that, for all products, the benefits of producing the first
17 unit outweigh the costs. With subsequent units, incremental benefits decrease
18 and incremental costs generally increase. Allocative efficiency is reached at the
19 point where the incremental benefit of producing a particular unit is equal to its
20 incremental cost. Economic theory shows that competitive markets result in
21 allocative efficiency.

22 There are four basic assumptions for creating a competitive market:

- 23 • many buyers and sellers,
- 24 • homogenous product,
- 25 • sufficient knowledge, and
- 26 • free entry and exit.

1 Economic theory shows that, when these four assumptions are met, a
2 competitive market can be created. Therefore, if the proposed project aids in
3 meeting the four assumptions given above, it should improve efficiency. A
4 crucial component of a competitive market, and thus of allocative efficiency, is
5 adequate access of buyers and sellers. This is because increased access drives the
6 number of buyers and sellers towards levels sufficient for competition.

7 Q. Will denial of the certificate adversely affect the efficiency of future crude oil
8 supplies?

9 A. Yes. The Company plays an important role in the world oil market. It transports
10 an important source of crude oil to an area that faces declining supplies of
11 domestic crude oil. Schedule 7853.0240-A of the Company's filing shows that the
12 Company has not been apportioned, i.e. it was able to transport all nominated
13 volumes, in the past 23 months. However, without the expansion, the Company
14 forecasts sizable apportionment for 2003 to 2010. Department Information
15 Request No. 9 (see DOC Exhibit No. ____ (SRR-2)) asked the Company to explain
16 this forecasted change. Lakehead explained that new projects and expansions of
17 existing projects in the Canadian oilsands have created demand for the pipeline
18 expansion. The output from these projects is expected to be shipped via the
19 Company's pipeline. This information indicates that denial of the certificate
20 would force refiners to use less desirable crude oil supplies or to produce less
21 product. In either case, allocative efficiency is diminished because it would
22 decrease the options and ability of Lakehead to produce at an optimal level and
23 of its customers to purchase more desirable supplies.

24 Q. You have described how more access to western Canadian oil increases private
25 benefits for Lakehead and its customers. Please discuss the increases in private
26 costs associated with access to western Canadian oil.

1 A. The primary private cost of the expansion is the incremental transportation cost
2 used to pay for the expansion. The Company's response to Department
3 Information Request No. 12 (see DOC Exhibit No. ____ (SRR-2)) explains that the
4 costs of the expansion are recovered through a surcharge of five cents (Canadian)
5 per barrel of light crude shipped from Edmonton, Alberta to Griffith, Indiana.
6 This surcharge is adjusted based on actual distance and the commodity shipped.

7 Q. Would this amount to an equivalent price increase to Minnesota's refiners?

8 A. The market will determine whether producers must absorb the incremental
9 transportation costs charged by the pipeline. To the extent that other supplies are
10 not available or are too expensive, the producer is justified in passing on the
11 incremental costs of transportation. However, the Company's customers
12 purchase crude oil from a variety of sources under short-term contracts. There
13 are some alternatives to western Canadian crude, which will help drive down
14 the cost of western Canadian crude oil. In addition, increased deliveries along
15 the pipeline will increase price competition among western Canadian producers.

16 Q. Are there other costs besides the incremental transportation costs associated with
17 the proposed expansion?

18 A. Yes. As I indicated before, there are external costs not directly linked to the
19 private costs of the proposed expansion. Marcus Gross addresses the external
20 costs in his testimony.

21 Q. Please summarize your testimony concerning the efficiency of future supplies of
22 crude oil.

23 A. I conclude that, if the Company and the western Canadian producers who
24 support the pipeline are making an informed decision, i.e. the forecast of
25 demand for western Canadian crude is reasonable, then the economic efficiency
26 of future crude oil supplies would be adversely affected by denial of the

1 Certificate of Need. It remains for the Department to verify that the Company is
2 making an informed decision. I address this issue in the following section.

3
4 *B. FUTURE ADEQUACY OF SUPPLY*

5 Q. Please describe your testimony on the adequacy of future crude oil supplies.

6 A. First, I define the term "adequacy." Then I describe the Company's forecast of
7 demand for crude oil and the ability of current and proposed facilities to meet
8 this demand. Finally, I address the reasonableness of the Company's forecast.

9 Q. Please define the term "adequacy" as you will use it in your testimony.

10 A. "Adequacy" refers to the ability of the Company to transport sufficient
11 petroleum products to satisfy the demand of its producing, shipping, and
12 refining customers.

13 Q. Please summarize the Company's current demand for transportation of
14 petroleum products.

15 A. The Company's current average annual capacity is approximately 1.84 million
16 bpd per day. Actual daily capacity varies for a variety of reasons. The
17 Company's most recent expansion was completed in 1999. The 1999 expansion
18 appears to have been successful in terms of addressing the apportionment
19 problem. For example, the pipeline was apportioned 8 months in 1997 and 9
20 months in 1998, but only 3 months in 1999 and no months in 2000 or the first 7
21 months of 2001. Thus, after the 1999 expansion, current facilities have proven
22 adequate to meet current demand for transportation services.

23 Q. Then why is the Company proposing to expand its transportation capacity?

24 A. The Company forecasts that its annual throughput will rise significantly from an
25 average of 1,354,500 bpd in 1999 and 2000. However, since the annual capacity
26 of the pipeline is 1,839,700 bpd, immediate expansion is not necessary to increase
27 the overall capacity of the pipeline. Instead, it is needed to increase the heavy

1 crude capacity of the pipeline. The Company projects apportionment for heavy
2 crude oil between 100,000 and 200,000 bpd between 2003 and 2010 without the
3 expansion. The proposed expansion will add about 300,000 bpd of heavy crude
4 capacity, which is enough to avoid apportionment of heavy crude oil through
5 2010.

6 Q. How does the Company forecast its demand for transportation of crude oil and
7 NGL?

8 A. The Company relies on survey data supplied by producers in western Canada
9 and refiners to produce annual forecasts of the supply and demand for western
10 Canadian crude oil and NGL. The Company relies on survey data from
11 producers to determine aggregate flows and uses survey data from refiners to
12 determine the disposition of supplies.

13 Q. How did you review the Company's forecast of western Canadian crude oil
14 production?

15 A. I compared the Company's forecasting technique in this proceeding to the
16 techniques used in the Company's most recent Certificate of Need proceeding
17 (Docket No. PL9/CN-98-327). I also compared the Company's forecasting
18 output with other, public assessments of Canadian petroleum production. The
19 result of this analysis is that the forecasts produced by the Company use the
20 same general techniques that have been approved in previous filings in
21 Minnesota, in particular the Company's most recent Certificate of Need
22 proceeding (Docket No. PL9/CN-98-327). I also reviewed articles that support
23 the Company's projections of western Canadian production.

24 Q. You mentioned the Company's previous Certificate of Need filing. Were there
25 any hints in that filing that further expansion would be necessary in 2003?

26 A. Yes. Department Witness Michael Alexander's Testimony stated that:
27 "according to the Company's filing (7853.0520 page 3), customers are suggesting

1 that forecasts of demand for the future may increase enough to consider another
2 expansion in 2002 or 2003. Such an increase is still speculative..." However, I
3 found no hints at further expansion the Company's filing in this docket.

4 Q. Did you review and analyze other elements of the Company's forecast?

5 A. Yes. I conducted the following activities:

- 6 • I reviewed Company documents supporting its assumptions, methods,
7 and conclusions. These documents were supplied by the Company in
8 its original filing and in response to information requests.
- 9 • I compared the Company's assumptions and conclusions regarding
10 crude oil prices, supplies of United States and Canadian crude oil,
11 inland United States transportation capacity constraints, and markets
12 for crude oil with the information obtained from sources such as the
13 United States Department of Energy and the Canadian National
14 Energy Board.

15 Q. Did you conclude that the Company's forecasts of supply and demand for
16 western Canadian crude oil are reasonable?

17 A. Yes.

18 Q. Did you consider the possibility that there might be a bias to the survey data?

19 A. Yes. The Company's forecast, which relies on survey data, could be affected by
20 respondents who misrepresent their intentions. The Company relies on data
21 from producers, who bear the risk of either over- or under- expansion, to
22 determine the forecasts of aggregate shipments. I am satisfied that, given the
23 risks to producers of an incorrect forecast, they are motivated to answer the
24 surveys as accurately as possible.

25 Q. How do the produces bear this risk of over- or under-expansion?

26 A. If the pipeline is under-expanded producers will not be able to ship the volumes
27 they nominate. This actually happened in most months from 1994 through 1997.

1 If the pipeline is over-expanded producers will be paying for transportation
2 capacity they do not need.

3 Q. Please summarize your testimony regarding the Company's projection of supply
4 and demand.

5 A. Under the Company's forecast, the current facilities are not adequate to transport
6 forecasted shipments of western Canadian heavy crude oil, but the expanded
7 facilities would be adequate. I have reviewed the Company's forecast and
8 forecasting methods and conclude that they are generally reasonable. I also
9 conclude that the Company is reasonably informed with regard to the adequacy
10 of its facilities to meet current and future demand.

11
12 C. *RELIABILITY OF FUTURE ENERGY SUPPLIES*

13 Q. Please define "reliability."

14 A. "Reliability" is the ability of the Company to fully supply the demands of its
15 customers despite changes in the economy and other factors that influence
16 supply and operating climate.

17 Q. Are the Company's current facilities reliable?

18 A. In terms of the recent past, the facilities appear to have been reliable. The
19 Company's historically apportioned volumes, shown in Schedule 7853.0240-A of
20 the Company's filing, clearly show that facilities have been in the recent past,
21 and are currently adequate to deliver nominated volumes. However, on a going-
22 forward basis, since it is forecasted that the facilities will not be adequate to meet
23 forecasted heavy crude oil shipments, the Company's facilities cannot be deemed
24 reliable in the future.

25 Q. Does the Department conclude that the proposed expansion would increase the
26 reliability of the Company's transportation system for heavy crude oil?

27 A. Yes.

1
2 **VII. SUMMARY AND RECOMMENDATIONS**

3 Q. Please summarize the conclusions of the Department's investigation in this case.

4 A. Combining the results of my analysis with that of Marcus Gross, the
5 Department's conclusions are summarized as follows:

- 6 • Denial of the proposed expansion would adversely affect the future
7 adequacy, reliability, and efficiency of energy supply to Lakehead's
8 customers and to the people of Minnesota and neighboring states.
9 • A more reasonable and prudent alternative to the proposed expansion
10 has not been demonstrated by a preponderance of the evidence in this
11 proceeding.
12 • The consequences to society of granting the Certificate of Need are more
13 favorable than the consequences of denying the certificate.
14 • It has not been demonstrated on the record that the design, construction,
15 or operation of the proposed facility will fail to comply with those
16 relevant policies, rules, and regulations of other local, state, and federal
17 governments.

18 Q. Based on the Department's conclusions, please summarize the Department's
19 recommendations to the Commission.

20 A. The Department recommends that the Commission grant the Certificate of Need
21 to Lakehead for the proposed pipeline expansion in Minnesota.

22 Q. Does this conclude your testimony?

23 A. Yes.

Steve Rakow
Minnesota Department of Commerce
Suite 500
85 7th Place East
St. Paul, MN 55101-2145

Professional Background

- 1999 to present Board of Governors • MinforMed, L.L.C. Wrote portions of and advised on the economic and business sections of several grant proposals. Named to Board of Directors, March 2000.
- 1996 to present Public Utilities Rates Analyst • Minnesota Department of Commerce. Analyze conservation projects, resource plans and miscellaneous public policy issues. Testify before the Minnesota Public Utilities Commission in contested-case proceedings. A list of related filings analyzed and testimony presented is included below.
- 1995 Instructor • University of Nebraska-Omaha. Taught Principles of Macroeconomics.
- 1993 to 1994 Instructor and Academic Assistant to the Rector • Concordia International University-Estonia. Taught Introduction to Economics. Wrote Student Handbook and Faculty Introduction to Tallinn Handbook.
- 1993 Instructor • Concordia University-Nebraska. Taught Principles of Microeconomics.
- 1989 to 1993 Graduate Teaching Assistant • University of Nebraska. Taught Introduction to Economics, Principles of Microeconomics, Principles of Macroeconomics, Current Economic Issues and Intermediate Macroeconomics. Specialized in public policy, economic history and comparative economics.

Testimony in Contested-Case Proceedings

<u>Docket No.</u>	<u>Company</u>	<u>Type</u>	<u>Subjects</u>
E002/CN-99-1815	Northern States Power	Electric Generator	Available Alternatives, Forecasting, Case Coordinator

ET2/CN-99-976	Great River Energy	Electric Generator	Consequences to Society, Forecasting, Environmental Report, Case Coordinator
IP3/CN-98-1453	Lakefield Junction	Electric Generator	Available Alternatives, Consequences to Society, Environmental Report, Case Coordinator
PL9/CN-98-327	Lakehead Pipe Line	Petroleum Pipeline	Available Alternatives, Consequences to Society, Case Coordinator

Other Major Filings Analyzed for the Department of Commerce

<u>Docket No.</u>	<u>Company</u>	<u>Type</u>	<u>Subject</u>
ET1/RP-01-160	Great River	Resource Plan	DSM
E,G002/CIP-00-1457	Xcel Energy	Conservation	Biennial CIP
E015/RP-99-1543	Minnesota Power	Resource Plan	Case Coordinator
E002/M-99-1438	NSP	Accounting	Nuclear Decommissioning
E015/CIP-99-1106	Minnesota Power	Conservation	Biennial CIP
E,G999/CI-98-1753	All Utilities	Investigation	DSM Incentives
U999/DI-98-0430	All Utilities	Investigation	Year 2000 Problem
E002/RP-98-0032	NSP	Resource Plan	Supply, Nuclear Issues
E015/RP-97-1545	Minnesota Power	Resource Plan	DSM, Case Coordinator
E015/CIP-97-1189	Minnesota Power	Conservation	Biennial CIP
E002/M-96-1201	NSP	Accounting	Nuclear Decommissioning

Miscellaneous Written Work

"A Prairie Island Primer: A Briefing for the Governor's Office." As by Minnesota Department of Commerce. August 2001.

"Cost-Benefit Model for Analyzing Manure Digesters." A model for use of the Minnesota Department of Public Service. May 25, 1999.

"Year 2000 Status of Energy and Telecommunications Providers in Minnesota." As by Minnesota Department of Public Service. Submitted to Minnesota Public Utilities Commission, November 13, 1998.

"Teaching 'Foreigners' in Eastern Europe: Expectations and Realities for Americans and Their Hosts" Tamara Rakow and Steve Rakow. Presented at the Central Slavic Association Annual Conference, Lincoln, Nebraska, October 1994.

"Female Representation in U.S. Centralized Private Sector Planning: The Case of Overlapping Directorships" Kurt Stephenson and Steve Rakow. *Journal of Economic Issues* Vol. 27, No. 2. June 1993.

"Female Representation in U.S. Centralized Private Sector Planning: The Case of Overlapping Directorships" Kurt Stephenson and Steve Rakow. Presented at the Annual Meeting of the Association for Evolutionary Economics, Anaheim, California January 1993.

"Private Sector Planning and State Government: An Empirical Investigation into the Extent of Corporate Power in Nebraska" Steve Rakow Presented at the Annual Meeting of the Association for Institutional Thought, Denver Colorado, April 1992.

Seminars Attended

Department of Commerce • Workshop on Natural Gas Prices; August 2000

Reliant Energy-Minnegasco • Micro Turbine and Fuel Cell Technology Update; February 1999

Professional Training Systems • Electric Utility System Operation; July 1997

Center for Public Utilities • The Basics of Regulation: Practical Skills for a Changing Environment; May 1997

Education

Doctor of Philosophy, Economics, University of Nebraska, December 1994

Master of Arts, Economics, Mankato State University, March 1989

Bachelor of Arts, Economics, Moorhead State University, May 1987

Bachelor of Science, Accounting, Moorhead State University, May 1987

Question 9:

Schedule 7853.0240-A indicates that no apportionment has taken place on the Lakehead system in the past 23 months (September 1999 through July 2001). However, schedule 7853.0240-B indicates that, without the proposed expansion, significant apportionment will occur in 2003 without the expansion. Please list and explain the factors, which are expected to change in the year and a half between Schedule 7853.0240-A and Schedule 7853.0240-B that cause the return to apportionment.

Numerous new projects and expansions to existing projects have been announced in the Canadian oilsands. The majority of this supply growth is expected to reach PADD II through the Enbridge/Lakehead system. The incremental volumes associated with those projects that Enbridge expects to materialize are included below:

Supply growth versus forecasted 2001
thousand b/d 2002 2003 2004

Synthetic

Albian Sands	9	138	178
Syncrude	8	11	55
Suncor	65	77	90

Synthetic subtotal 82 226 323

Blended Bitumen*

PetroCanada	3	30	30
Pan Canadian	2	13	30

Bitumen subtotal 5 43 60

Total WCSB 87 269 383

* Numerous other smaller new projects and project expansions were also included in the Enbridge Long Range Forecast

The growing supply of production seeking PADD II markets is what necessitates system expansion in order to avoid renewed apportionment.

Question 12:

Please explain whether the other types of petroleum products transported by Lakehead's pipeline will incur a surcharge similar to the SEP II surcharge for light crude (see page 1, section 7853.0530). If so, please estimate the surcharge for these other types of petroleum products.

The Terrace Toll Agreement between Lakehead and the Canadian Association of Petroleum Producers (CAPP) dated October 21, 1998 provides that the costs of all phases of the Terrace expansion project will be recovered by Enbridge and Lakehead collectively through an incremental surcharge of five cents Canadian (Cdn) per barrel. The five cents (Cdn) applies to transportation of one barrel of light crude oil from Edmonton, Alberta, to Griffith, Indiana. The agreement provides that the base surcharge shall be adjusted on a distance basis and for commodity credits or surcharges, consistent with Enbridge and Lakehead's existing rate design. This means that the Terrace surcharge of \$.026/bbl for light crude transported between the International Border, near Neche, North Dakota and Griffith, Indiana will increase by 22% to \$.032/bbl for heavy crude moved the same distance.

PERMIT

AUTHORIZING ENBRIDGE PIPELINES (SOUTHERN LIGHTS) L.L.C. ("EPSL") TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN PIPELINE FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA

By virtue of the authority vested in me as Under Secretary of State for Economic, Energy, and Agricultural Affairs under Executive Order 13337, 69 Fed. Reg. 25299 (2004), as amended, and Department of State Delegation of Authority No. 118-2 of January 26, 2006; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 – 4370f), Section 7 of the Endangered Species Act (16 U.S.C. 1536), and other statutes related to environmental concerns; having considered the proposed action in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470f); and having requested and received views of members of the public, various federal and state agencies and various Indian tribes; I hereby grant permission, subject to the conditions herein set forth, to Enbridge Pipelines (Southern Lights) L.L.C. (hereinafter referred to as the "permittee" or "EPSL"), a limited liability company, organized under the laws of the State of Delaware, and a wholly owned subsidiary of Enbridge Energy Company, Inc., a Delaware corporation, and an indirectly owned subsidiary of Enbridge Inc., a corporation organized under the laws of Canada, to construct, connect, operate, and maintain pipeline facilities at the border of the United States at Neche, Pembina County, North Dakota, for the transport of crude oil and other hydrocarbons between the United States and Canada.

The term "facilities" as used in this permit means the relevant portion of the pipeline and any land, structures, installations or equipment appurtenant thereto.

The term "United States facilities" as used in this permit means those parts of the facilities located in the United States.

As stated in permittee's application of April 19, 2007, as amended, the United States facilities will consist of the following major components:

A 20 inch diameter pipeline extending south from the United States – Canada border at Neche, Pembina County, North Dakota, up to and including the first mainline shut-off valve or pumping station in the United States.

The permittee shall maintain such metering facilities as are required by the Commission of Customs, provided with an adequate proving system, to be installed and operated in accordance with American Petroleum Institute Code No. 1101, and a suitable sampling device; the installation and operation of said meter, proving system, and sampling device shall be subject to approval of the Commissioner of Customs. The conditions and times of meter reading, meter proving, and sampling shall be as directed by the Commissioner of Customs.

This permit is subject to the following conditions:

Article 1. The United States facilities and operations herein described shall be subject to all the conditions, provisions, and requirements of this permit and of the National Interest Determination dated June 9, 2008 and any amendment thereof; further, that this permit may be terminated at the will of the Secretary of State of the United States or the Secretary's designee or may be amended by the Secretary of State of the United States or the Secretary's designee at will or upon proper application therefore; further, that the permittee shall make no substantial change in the location of the United States facilities in the immediate vicinity of the international boundary line or in the operations authorized by this permit until such changes have been approved by the Secretary of State of the United States or the Secretary's designee.

Article 2. The construction, operation, and maintenance of the facilities shall be in all material respects as described in permittee's application for a Presidential permit under Executive Order 13337, filed on April 19, 2007, (the "Application"), as amended, and in accordance with the construction, mitigation, and reclamation measures agreed to by EPSL in the Environmental Mitigation Plan found in Appendix D and the Construction Environmental Control Plan found in Appendix J of the Final Environmental Assessment (FEA), both of which are appended to and made part of this permit.

Article 3. The standards for, and the manner of, construction, connection, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of any Federal or State agency concerned. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 4. The permittee shall comply with all applicable Federal and State laws and regulations regarding the construction, connection, operation, and maintenance of the United States facilities and with all applicable industrial

codes. The permittee shall obtain requisite permits from Canadian authorities, as well as from the relevant state and local governmental entities, and relevant federal agencies.

Article 5. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary's designee, the United States facilities in the immediate vicinity of the international boundary line shall be removed by, and at the expense of, the permittee within such time as the Secretary of State of the United States or the Secretary's designee may specify, and upon failure of the permittee to remove, or to take such other appropriate action with respect to this portion of the United States facilities as ordered, the Secretary of State or the Secretary's designee may direct that possession of such facilities be taken and that they be removed or other appropriate action taken, at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession, removal, or other action.

Article 6. If, in the future, it should appear to the Secretaries of Defense or Homeland Security (or either Secretary's designee) or the United States Coast Guard that any facilities or operations permitted hereunder cause unreasonable obstructions to the free navigation of any of the navigable waters of the United States, the permittee may be required, upon notice from the Secretary of Defense or the Secretary of Homeland Security (or either Secretary's designee) or the United States Coast Guard, to remove or alter such of the facilities as are owned by it so as to render navigation through such waters free and unobstructed.

Article 7. This permit is subject to the limitations, terms, and conditions contained in any orders or regulations issued by any competent agency of the United States Government with respect to the United States facilities. This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in accordance with such limitations, terms, and conditions.

Article 8. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given to the permittee by the Secretary of State of the United States or the Secretary's designee, the United States shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such

United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 9. In the event of transfer of ownership or control of the United States facilities or any part thereof, this permit shall continue in effect temporarily for a reasonable time, pending submission of a proper application by the transferee for a new and permanent permit, provided that notice of such transfer is given promptly in writing to the Department of State accompanied by a statement by the transferee under oath that the United States facilities and the operations and maintenance thereof authorized by this permit will remain substantially the same as before the transfer, pending issuance to the transferee of a new and permanent permit.

Article 10. (1) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation, and in compliance with prevailing environmental standards and regulations.

(2) The permittee shall save harmless and indemnify the United States from any and all claims or adjudged liability arising out of the construction, connection, operation, or maintenance of the facilities, including but not limited to environmental contamination from the release or threatened release or discharge of hazardous substances and hazardous waste.

Article 11. The permittee shall acquire such right-of-way grants, easements, permits, and other authorizations as may become necessary and appropriate.

Article 12. The permittee shall file with the appropriate agencies of the Government of the United States such statements or reports under oath with respect to the United States facilities, and/or permittee's activities and operations in connection therewith, as are now or as may hereafter be required under any laws or regulations of the Government of the United States or its agencies.

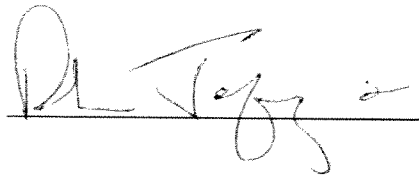
Article 13. The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of historic properties in connection with the construction, operation, and maintenance of the United States facilities. Such measures will include the construction, mitigation, and reclamation measures agreed to by EPSL in the Environmental Mitigation Plan found in Appendix D and the Construction Environmental Control Plan found in Appendix J of the Final Environmental Assessment (FEA), both of which are appended to and made part of this permit.

Article 14 The permittee shall comply with all agreed actions and obligations undertaken to be performed in its Application for a Presidential permit dated April 19, 2007, as amended, and in the Final Environmental Assessment dated May 16, 2008, both of which are appended to and made a part of this permit.

Article 15 EPSL shall provide written notice to the Department at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted or discontinued.

Article 16 This permit shall issue fifteen days after the date of the determination by the Under Secretary for Economic, Energy and Agricultural Affairs that issuance of this permit would serve the national interest, provided that the Department of State does not otherwise notify EPSL that the permit shall not be issued.

IN WITNESS WHEREOF, I, Reuben Jeffery III, Under Secretary of State for Economic, Energy and Agricultural Affairs, have hereunto set my hand this 10th day of June, 2008, in Washington, District of Columbia.

A handwritten signature in dark ink, appearing to read "Reuben Jeffery III", is written over a horizontal line.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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 Line Project

ISSUE DATE: June 19, 2008

DOCKET NO. PL-9/CN-07-464

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On April 24, 2007, Enbridge Pipelines (Southern Lights) L.L.C. (Enbridge) applied for a Certificate of Need to build a 20" diameter underground high-pressure steel pipeline and associated above-ground facilities for transporting light sour crude oil (LSr)¹ from Cromer, Manitoba, through North Dakota to Enbridge's terminal near Clearbrook, Minnesota. The proposed pipeline would extend roughly 108 miles across Minnesota's northwestern corner, passing through Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater counties.

On July 27, 2007, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS AND ISSUING NOTICE AND ORDER FOR HEARING. The Office of Administrative Hearings assigned Administrative Law Judge (ALJ) Eric L. Lipman to preside over this matter.

On September 14, 2007, Enbridge filed direct testimony.

On October 5, 2007, the Energy Facilities Permitting staff of the Minnesota Department of Commerce's Office of Energy Security (OES) filed direct testimony.

November 27 and 28, 2007, the ALJ convened public hearings on this matter in Kittson, Marshall, Pennington and Red Lake counties.

¹ The term "light" denotes crude oil with relatively low viscosity. The term "sour" denotes oil with more than 0.5% sulfur.

On December 21, 2007, Enbridge submitted rebuttal testimony.

On January 9, 2008, OES filed surrebuttal testimony. In addition, the Minnesota Center for Environmental Advocacy (MCEA) petitioned to intervene.

On January 17, 2008, the ALJ convened public hearings on this matter in Polk and Clearwater counties.

On January 22, 2008, the ALJ convened evidentiary hearings. The ALJ denied MCEA's petition to intervene in the current Certificate of Need proceeding, but did allow MCEA to participate in the proceeding as a member of the public, to ask questions at the evidentiary hearings and to file *amicus curiae* briefs.²

On February 1, 2008, Enbridge, MCEA and OES filed post-hearing comments briefs.

On February 8, 2008, Enbridge and OES filed post-hearing reply briefs and MCEA filed post-hearing comments.

On March 24, 2008, the ALJ submitted his Order Summarizing Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations (ALJ's Report).

On April 8, 2008, Enbridge filed exceptions to the ALJ's Report.

This matter, in conjunction with Enbridge's petition for a pipeline route permit,³ came before the Commission on May 22, 2008. OES offered revisions to its recommendations, and the record closed on that date.⁴

FINDINGS AND CONCLUSIONS

I. Jurisdiction

Before building a large energy facility – including any crude oil pipeline exceeding six inches in diameter and extending more than 50 miles into Minnesota⁵ – a person must apply for a

² See ALJ's Fourth Prehearing Order (February 11, 2008).

³ See Docket No. PL-9/PPL-07-360, *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*.

⁴ Minn. Stat. § 14.61, subd. 2.

⁵ Minn. Stat. § 216B.2421, subd. 2(4).

“Certificate of Need” demonstrating that the facility is needed.⁶ Because Enbridge’s proposed pipeline qualifies as a large energy facility, Enbridge must obtain a Certificate of Need before proceeding.

Statute and rules set forth the factors the Commission must consider in evaluating the need for a proposed large energy facility.⁷ In particular, Minnesota Rules, part 7853.0130, directs the Commission to issue a Certificate of Need when the applicant demonstrates four things:

- 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 ...;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant ...;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate ...; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding. Minn. Rules, part 7829.1000.

II. Positions

A. Enbridge

Enbridge proposes to bring Western Canadian crude oil to upper Midwest refineries by adding new pipelines to its existing pipeline system in Manitoba, North Dakota, Minnesota, Wisconsin and Illinois. As part of this effort, Enbridge proposes to build three petroleum pipelines in

⁶ Minn. Stat. § 216B.243, subd. 2.

⁷ Minn. Stat. § 216B.243, subd. 3; Minn. Rules chap. 7849. Applicants seeking a Certificate of Need to build a pipeline need not address legal requirements that pertain exclusively to electric service. *In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline*, Docket No. PL-5/CN-06-2, ORDER GRANTING A CERTIFICATE OF NEED (April 13, 2007) at 4.

Minnesota. Two of these pipelines, the Alberta Clipper and the Southern Lights Diluent, are being evaluated in other dockets.⁸

In the current docket, Enbridge seeks to add capacity to transport an additional 186,000 barrels of LSr oil per day from the Western Canadian Sedimentary Basin near Cromer, Manitoba, to Enbridge's tank farm and terminal near Clearbrook, Minnesota. According to Enbridge, the LSr project is needed to serve the increasing demand for crude oil throughout the Midwest and beyond. In addition, a new pipeline would permit Enbridge to optimize the use it makes of its existing pipeline. Currently Enbridge transmits various types of oil down its pipeline in separate batches. Having one pipeline dedicated to shipping only LSr oil would eliminate the waste and delay associated with this type of switching on that pipeline.

B. Office of Energy Security

Based on an analysis of Enbridge's filings, as well as OES's own analysis of the supply of and demand for oil – including considerations of population growth, vehicle miles driven, and disposable income – OES reached the following conclusions:

First, withholding the Certificate of Need would probably harm the future adequacy, reliability, and efficiency of the energy supply to Enbridge, its customers, or the people of Minnesota and neighboring states. OES found that demand for refined oil products had increased between 2003 and 2006, and OES anticipates that this demand will continue to grow.

Second, a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record. OES considered a variety of alternative means of dealing with the increasing demand for oil – including building a pipeline of a different size, or building no new pipeline and relying on semi-truck tankers, railroad tankers, and alternative pipeline providers – and concluded that Enbridge's proposal was preferable to all of these alternatives.

Third, the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate. OES concluded that the proposed pipeline would provide a reliable and cost-effective source of petroleum for residents of Minnesota and the region. While OES acknowledged that building the facility would cause some environmental harm, OES found that Enbridge has developed appropriate plans for minimizing and mitigating these consequences. OES also concluded that the project would have economic benefits, including increased employment, increased income, increased local tax revenues, increased refinery production, and perhaps increased capital investments.

⁸ Docket No. PL-9/PPL-07-361, *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*; Docket No. PL-9/CN-07-465, *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*.

Fourth, the record does not demonstrate how the design, construction, or operation of the proposed facility would violate any governmental policies, rules, and regulations at the federal, state or local level. OES reached this conclusion after reviewing the extensive list of governmental permits required for the project.

Ultimately OES concludes that Enbridge had met the statutory and rule criteria to receive a Certificate of Need, and that the record of this proceeding substantiates Enbridge's claims.

C. Minnesota Center for Environmental Advocacy

MCEA opposes granting the Certificate of Need. MCEA makes four arguments: First, the evidence is insufficient to demonstrate that the proposed pipeline would protect Minnesota and regional customers from oil price and supply volatility. Second, the evidence is insufficient to demonstrate that Minnesota's demand for oil is increasing. In particular, Enbridge's analysis fails to consider mitigating factors such as other regulatory activities that could affect demand or conservation and efficiency efforts. Third, the evidence submitted by Enbridge and OES fails to adequately consider conservation and efficiency measures as they relate to other agency or government policy goals and initiatives. Finally, the consideration of the proposal's environmental consequences was too narrow to fulfill the requirements of Minnesota Statutes Chapter 116H (governing greenhouse gas emissions) as well as § 216B.243 and Minnesota Rules Chapter 7853 (both governing the Certificate of Need process).

IV. The ALJ's Report

In his Report, the ALJ concludes that Enbridge has satisfied the criteria set forth in Minnesota Statutes § 216B.243 as interpreted by Minnesota Rules, Part 7853.0130. Citations to findings and conclusions relevant to each section of Part 7853.0130 are set forth below:

Minn. Rules, Part 7853.0130 "A certificate of need shall be granted to the applicant if it is determined that:	ALJ's Finding and Conclusion
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...;	Findings 44 - 49, 52 - 70, 91 - 120 Conclusions 5-11
B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant...;	Findings 4, 50, 71 - 90, 96 - 120 Conclusions 12 - 20
C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate...; and	Findings 43 - 49, 96 - 123 Conclusions 21-27
D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments."	Findings of Fact 62, 123 - 124, Conclusion 28

According to the ALJ, MCEA's argument – that granting a certificate of need would run contrary to legislative direction on recent green house gas reductions – is premature. The ALJ states that the greenhouse gas reductions established by the Legislature are goals, not limits, and the methods for achieving the goals have yet to be determined. In the meantime, the ALJ concludes, the Commission is obligated to apply the law governing Certificates of Need as it exists today.

On the basis of this analysis, the ALJ recommends that the Commission grant a Certificate of Need to Enbridge for the construction of the proposed pipeline.

V. Exceptions to the ALJ's Report Regarding Certificate of Need

Enbridge and OES both recommend that the Commission adopt the ALJ's Report, but with modifications as follows:

Finding 29. The ALJ's Report misstates the date of one public hearing; Enbridge proposes correcting it.

Finding 47. The ALJ's Report states:

Under Enbridge's LSr proposal, transportation of these (now segregated) batches of light and medium density crude oil will occur along their own dedicated pipeline. Further, from the vantage point of other expansion projects that it envisions over the course of the next decade, Enbridge asserts that the LSr Project will help to relieve "bottlenecks" in capacity that it projects for this expanded system.

Enbridge expresses concern that this language implies that its current system does not experience bottlenecks, and that the current system will come to experience bottlenecks only after Enbridge builds "other expansion projects" for which Enbridge has not yet demonstrated need. This reading would be inconsistent with Enbridge's arguments and testimony and with the ALJ's Conclusion 10 ("This additional capacity would relieve bottlenecks in the current system.") To clarify that the proposed pipeline is needed to alleviate bottlenecks whether or not Enbridge pursues other projects, Enbridge asks to modify the ALJ's language as follows:

Under Enbridge's LSr proposal, transportation of these (now segregated) batches of light and medium density crude oil will occur along their own dedicated pipeline. Further, ~~from the vantage point of other expansion projects that it envisions over the course of the next decade, Enbridge asserts that the LSr Project will help to relieve "bottlenecks" in capacity that it projects for this expanded system.~~ Elimination of the current system bottleneck is an integral element in maximizing Enbridge's ability to transport crude oil into the Midwest.

Findings 71, 77 and 81. Enbridge proposes to eliminate these findings as being redundant of Finding 70.

Finding 97. Before putting the new pipeline into service, Enbridge proposes to look for leaks by subjecting the pipeline to hydrostatic testing – that is, pumping water through the pipeline at high pressure. Following the hydrostatic tests, Enbridge proposes to check this water for any contamination and, if the water is sufficiently clean, to discharge the water to a lake or stream.⁹ Referring to these plans, the ALJ's Report states at Finding 97:

For example, the Environmental Mitigation Plan proposed by the Applicant includes a series of testing and inspection regimes - including hydrostatic testing of discharge water for the presence of contaminants.....

Because Enbridge proposes to subject the *pipeline* – not the *water* – to hydrostatic testing, Enbridge asks the Commission to adopt somewhat modified language to clarify this point as follows:

For example, the Environmental Mitigation Plan proposed by the Applicant includes a series of testing and inspection regimes - including testing Hydrostatic testing of discharge water for the presence of contaminants....

VI. Analysis

In preparing his recommendations for the Commission regarding both Enbridge's Certificate of Need and Pipeline Routing Permit, ALJ Lipman presided over an evidentiary hearing and six public hearings. He reviewed the testimony of ten witnesses and dozens of exhibits. He observed the demeanor of the witnesses and evaluated the parties' initial and reply briefs. His Report is thoughtful, comprehensive, and thorough, including 177 findings of fact, 59 conclusions of law, and two recommendations.

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria. As noted above, the statutory criteria for pipeline Certificates of Need are stated in Minnesota Statutes § 216B.243, subdivision 3, and are incorporated into Minnesota Rules, Part 7853.0130, subparts A-D. Specifically and based on consideration of the factors identified in the applicable rule, the Commission finds as follows:

1. 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.
2. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
3. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

⁹ See Ex. 200.

4. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Having examined the record itself and having carefully considered the ALJ's Report, the Commission concurs in his findings of fact and conclusions of law. Consequently the Commission will accept, adopt and incorporate the relevant findings and conclusions with the minor clarifying amendments specified herein. These amendments do not affect the basis for the ALJ's ultimate recommendation to grant a Certificate of Need for the proposed pipeline.

VII. Commission Action

Based on its review of the record and the analysis and findings stated above, the Commission concludes that Enbridge is entitled to a Certificate of Need for its proposed petroleum pipeline. Consequently the Commission will accept the relevant ALJ findings and conclusions as clarified herein, grant Enbridge's request and issue the Certificate.

ORDER

1. The Commission accepts, adopts, and incorporates herein Findings 1 - 124 and Conclusions 1 - 29 of the Administrative Law Judge's Summary of Testimony and the Public Hearings, Findings of Fact, Conclusions of Law and Recommendation (March 24, 2008) with the following clarifications:
 - A. Finding 29: Public hearings were held on November ~~26 and 27~~ and 28, 2007, in Kittson, Marshall, Pennington and Red Lake counties.
 - B. Finding 47: Under Enbridge's LSr [light sour crude oil] proposal, transportation of these (now segregated) batches of light and medium density crude oil will occur along their own dedicated pipeline. ~~Further, from the vantage point of other expansion projects that it envisions over the course of the next decade, Enbridge asserts that the LSr Project will help to relieve "bottlenecks" in capacity that it projects for this expanded system.~~ Elimination of the current system bottleneck is an integral element in maximizing Enbridge's ability to transport crude oil into the Midwest.
 - C. Finding 71: ~~Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System, and employs a variety of measures to reduce the amount of energy that its own facilities consume.~~
 - D. Finding 77: ~~Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System, and employs a~~

~~variety of measures to reduce the amount of energy that its own facilities consume.~~

E. ~~Finding 81: Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System, and employs a variety of measures to reduce the amount of energy that its own facilities consume.~~

F. Finding 97: For example, the Environmental Mitigation Plan proposed by the Applicant includes a series of testing and inspection regimes - including testing Hydrostatic testing of discharge water for the presence of contaminants, and filtering techniques so as to limit discharge of solids into local streams, rivers and lakes.

2. The Commission hereby issues to Enbridge a Certificate of Need for its proposed 108-mile, 20-inch diameter pipeline project at an estimated capacity of 186,000 barrels of light sour crude oil per day.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



(SEAL)

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AFFIDAVIT OF SERVICE

I, Robin Rice being first duly sworn, deposes and says:

That on the 19th day of June, 2008 she served the
attached:

ORDER GRANTING CERTIFICATE OF NEED

MNPUC Docket Number: PL-9/CN-07-464

XX By depositing in the United States Mail at the City of St. Paul, a true and correct
copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
Mary Swoboda
Jessie Schmoker
Bob Cupit
Bret Eknes
DOC Docketing
DOC AG
RUD AG
PUC AG

Robin Rice

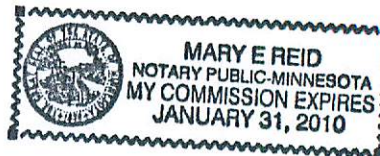
person preparing the mailing

Subscribed and sworn to before me,

a notary public, this 19 day of

June, 2008

Mary E. Reid
Notary Public



10:
MN PUC

Joel W. Kanvik
Enbridge Energy Company, Inc.
Suite 3300
1100 Louisiana Street
Houston TX 77002-5217

Burl W. Haar
MN Public Utilities Commission
Suite 350
121 East Seventh Place
St. Paul MN 55101-2147

John C. Reinhardt
Laura A. Reinhardt
3552 26Th Avenue South
Minneapolis MN 55406

20:
Dept. of Commerce

Kevin Walli
Fryberger, Buchanan, Smith & Frederick
1st National Bank Building
332 Minnesota Street, Suite W1260
St. Paul MN 55101

Sharon Ferguson
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul MN 55101-2198

30:
Inter-Office Mail

Julia Anderson
MN Office Of The Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2131

John Lindell
OAG-RUD
900 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2130

Valerie M. Means
Office of the Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101

40:
Regular Postal Mail

Janette K. Brimmer
Minnesota Center For Environmental
Advocacy
26 East Exchange Street, Suite 206
St. Paul MN 55101-1667

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd
J. Dennis O'Brien
Thomas Pugh
Phyllis A. Reha
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
Enbridge Energy, Limited Partnership,
and Enbridge Pipelines (Southern
Lights) LLC for a Certificate of Need for
the Alberta Clipper Pipeline Project and
the Southern Lights Diluent Project

ISSUE DATE: December 29, 2008

DOCKET NO. PL-9/CN-07-465

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On June 22, 2007, Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) LLC (collectively, Enbridge)¹ applied for a Pipeline Routing Permit pursuant to Minnesota Rules Chapter 7852 for two projects:

- The Alberta Clipper Pipeline project would transport petroleum from the Western Canadian Sedimentary Basin in Hardisty, Alberta, to Superior, Wisconsin. Starting on Minnesota's western border at Kittson County, the pipeline would continue through the counties of Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton, to the Wisconsin border.
- The Southern Lights Diluent project would transport light liquid hydrocarbons (diluent) from refineries near Chicago, Illinois, to Clearbrook, Minnesota, where they would flow into an existing pipeline to Edmonton, Alberta. Starting on Minnesota's eastern border at Carlton County, the pipeline would continue through the counties of St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.

On July 27, 2007, the Minnesota Department of Commerce (the Department) issued a notice explaining Enbridge's proposed pipeline projects, the proposed routes, how the public could participate in the routing process, and the schedule of public informational meetings. On July 30 the Minnesota *Environmental Quality Board Monitor* published the notice. In addition, between August 1 and August 10, 34 newspapers of general circulation along the proposed route published notices and maps of the proposed route.

¹ Enbridge Energy Partners, L.P. – a Delaware Master Limited Partnership with headquarters in Houston, Texas – organized Enbridge Energy, Limited Partnership, as a subsidiary. Enbridge, Inc., organized subsidiary Enbridge Energy Company, Inc., which in turn organized subsidiary Enbridge Pipelines (Southern Lights) L.L.C. All of these entities are organized under the laws of Delaware except for Enbridge, Inc., which is a Canadian corporation.

Starting July 30, 2007, Enbridge issued notice of its proposals by certified mail, and included the Department's notice and the U.S. Department of State's Notice of Intent to Prepare Environmental Assessments.² Enbridge sent these notices to all landowners, tribal governments, towns, statutory cities, home rule charter cities and counties it deemed reasonably likely to be affected. Enbridge also sent copies of all these documents, along with Enbridge's applications for a Certificate of Need and Route Permit, to 23 public libraries along the route, and 126 local public officials.

On August 1, 2007, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE, REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS AND ISSUING NOTICE AND ORDER FOR HEARING. The Office of Administrative Hearings assigned Administrative Law Judge (ALJ) Eric L. Lipman to preside over this matter.

Between August 13 and 23, the Department convened 12 public informational meetings in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton counties. Before each meeting, Enbridge held an open house to answer questions and provide maps of the preferred route, copies of its proposed Environmental Mitigation Plan and other project information.

By October 5, 2007, the Commission had received direct testimony from Enbridge and the Department.

On November 1, 2007, the Commission accepted Enbridge's revision to its preferred pipeline route for all points northwest of Clearbrook, Minnesota, and granted Enbridge's request to extend the timelines in these dockets to address issues raised in the informational meetings.³ In particular, the Commission agreed to extend the schedule for Enbridge's proposals that extend southwest of Clearbrook, Minnesota, where the terrain is more populated, and has a greater concentration of wetlands and forests.

On November 2, 2007, the Department gave notice of the schedule of public hearings in this matter, and of how the public could participate. Newspapers of general circulation in Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater Counties, as well as the Minneapolis *Star Tribune* and the Minnesota *Environmental Quality Board Monitor*, published the notice.

² Construction of the proposed projects will require a Presidential Permit for Border Crossing Facilities (Canada), which requires an environmental assessment. Executive Order 11423, August 16, 1968 (33 Fed. Reg. 11741), as amended.

³ See *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*, Docket Nos. PL-9/PPL-07-360 *et al.*, ORDER ACCEPTING ITEMS FOR CONSIDERATION IN THE CONTESTED CASE HEARING AND EXTENDING DEADLINES (November 30, 2007).

On November 8, 2007, the Department authorized the release of Enbridge's Comparative Environmental Analysis (CEA) for the Route Alternatives Northwest of Clearbrook, Minnesota (Northwest CEA). Enbridge filed this document the following day in a companion docket.⁴

On November 9, 2007, Enbridge sent the Department's notice by certified mail to the landowners Enbridge had identified along this proposed route, and explained that proceedings regarding the route southeast of Clearbrook would be delayed.

On November 12, 2007, Enbridge mailed to public libraries along the preferred route a copy of its revised preferred route and route alternatives for the areas northwest of Clearbrook, Minnesota, along with the Northwest CEA, Enbridge's direct testimony, the Department's official notice, and excerpts of relevant statutes and rules. Enbridge also mailed notice of the public hearings to elected officials and local governmental entities, including the Minnesota Historical Society and each regional development commission, soil and water conservation district, watershed management district, and county government or township government with jurisdiction over land within the proposed pipeline route.

On November 26 and 27, 2007, the ALJ convened public hearings in Kittson, Marshall, Pennington and Red Lake counties. Meetings scheduled for November 29 in Clearwater and Polk counties were postponed and later convened on January 17, 2008. The Department issued a new notice, which was sent to local elected officials, governmental entities, local newspapers of general circulation and landowners along the proposed route in Clearwater and Polk counties.

On December 20, 2007, and January 7, 2008, Enbridge filed in the companion docket revised preferred routes for the pipelines. On January 14, Enbridge gave notice to 70 landowners along the new preferred routes. The notice included a cover letter, overview map of the proposed route, the Department's notice of application acceptance, the State Department's Notice of Intent to Prepare Environmental Assessments, and a property-specific map.

On February 11, 2008, the ALJ granted in part the request of the Minnesota Center for Environmental Advocacy (MCEA) to intervene. MCEA is a Minnesota-based, nonprofit environmental organization with a stated mission to protect "Minnesota's wildlife, natural resources and the health of its people."

On February 15, 2008, the Commission gave notice that it intended to select the list of possible pipeline routes southeast of Clearbrook, Minnesota, to be analyzed in this docket.

Also on February 15, 2008, Enbridge filed two additional route alternatives. On February 29, Enbridge gave notice to 16 landowners along the two new route alternatives. The notice included a cover letter, overview map of the proposed route, the Department's notice of application acceptance, the State Department's Notice of Intent to Prepare Environmental Assessments, and a property-specific map.

⁴ Docket No. PL-9/PPL-07-361, *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*.

On March 5, 2008, the Department's Office of Energy Security (OES) issued a notice of public hearings for Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton counties. Enbridge mailed copies of the Department's notice to all landowners in these counties that Enbridge deemed likely to be affected by the proposed projects, and to elected officials. Finally, 21 newspapers of general circulation in these counties, as well as the Minneapolis *Star Tribune*, published notices of the hearings.

On March 7, 2008, OES authorized release of Enbridge's Comparative Environmental Analysis of the Route Alternatives Southeast of Clearbrook, Minnesota (Southeast CEA). Enbridge filed the Southeast CEA on March 11 in the companion docket.

By March 10, 2008, Enbridge sent the Department's March 5 notice, along with maps showing the revised preferred route and route alternatives southeast of Clearbrook, Minnesota, the Southeast CEA, and the testimony of all witnesses to 23 public libraries along the proposed route. By March 12, Enbridge had sent a copy of the notice along with maps of the preferred route and route alternatives southeast of Clearbrook, and the Southeast CEA, to applicable local governmental entities along the route.

On March 17-18, 2008, MCEA filed direct testimony.

On March 25 - 26, 2008, the ALJ convened public hearings in Clearwater, Beltrami and Cass counties. On April 8 - 9, the ALJ convened public hearings in St. Louis and Carlton counties.

On April 25, 2008, OES and Enbridge filed rebuttal testimony.

On May 5, 2008, the ALJ denied intervention to Jon Erik Kingstad, an attorney in private practice, but authorized him to file initial and reply *amicus* ("friend of the court") briefs in this matter.

On May 13, 2008, the ALJ convened evidentiary hearings.

By May 29, 2008, OES, Enbridge, Mr. Kingstad and MCEA had filed briefs.

By June 5, 2008, OES, Enbridge, Mr. Kingstad and MCEA had filed reply briefs.

On July 17, 2008, the ALJ issued his SUMMARY OF PUBLIC TESTIMONY AT THE PUBLIC HEARINGS, FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS (ALJ's Report). The ALJ recommended, among other things, granting the requested Certificate of Need.

On August 1, 2008, Enbridge and MCEA filed exceptions to the ALJ's Report, and OES sought clarification.

On October 27-28, 2008, MCEA filed copies of documents that it had cited in its exception.

On November 14, 2008, the Commission gave notice of its intention to take up this matter at its November 25 meeting.

On November 21 and 24, 2008, MCEA filed supplemental exhibits. On November 24, Enbridge objected to these late-filed exhibits.

Also on November 24, 2008, MCEA asked the Commission to postpone consideration of this matter pending publication of notice of the matter in the *State Register* pursuant to Minnesota Rules part 7829.2500, subpart 4.

This matter, in conjunction with Enbridge's petition for a pipeline route permit,⁵ came before the Commission on November 25, 2008. Parties revised and clarified their recommendations, MCEA filed another supplemental exhibit, and the record closed on that date.⁶

FINDINGS AND CONCLUSIONS

I. Legal Standard

Before building a large energy facility – including any crude oil pipeline exceeding six inches in diameter and extending more than 50 miles into Minnesota⁷ – a person must receive a “Certificate of Need” demonstrating that the facility is needed.⁸ Because Enbridge's proposed pipeline qualifies as a large energy facility, Enbridge must obtain a Certificate of Need before proceeding.

Statutes and rules set forth the factors the Commission must consider in evaluating the need for a proposed large energy facility.⁹ In particular, Minnesota Rules, part 7853.0130, directs the Commission to issue a Certificate of Need when the applicant demonstrates four things:

- 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 ...;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant ...;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate ...; and

⁵ *Id.*

⁶ Minn. Stat. § 14.61, subd. 2.

⁷ Minn. Stat. § 216B.2421, subd. 2(4).

⁸ Minn. Stat. § 216B.243, subd. 2.

⁹ Minn. Stat. § 216B.243, subd. 3; Minn. Rules chap. 7849. Applicants seeking a Certificate of Need to build a pipeline need not address legal requirements that pertain exclusively to electric service.

- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Where material facts are in dispute, the Commission refers cases to the Office of Administrative Hearings for a contested case proceeding.¹⁰

II. Procedural Matters

A. Positions of the Parties

Minnesota Rules, part 7829.2500, subpart 4, provides for the Commission to publish notice of a Certificate of Need application in the *State Register* and to solicit public comment. Through inadvertence, this did not occur. MCEA asks the Commission to delay ruling on the application until the Commission publishes notice of the matter in the *State Register* soliciting public comments. MCEA argues that the failure to do so would violate Commission rules and deprive the public of adequate notice and opportunity to be heard.

Enbridge and OES oppose this request, arguing that the public has received ample notice and opportunity to be heard in these proceedings.

B. Commission Action

As a public agency, the Commission is mindful of its duties to permit members of the public to learn of proceedings before it. For example, the Commission requires anyone filing a document with the Commission to serve a copy (or sometimes a summary) on people on the appropriate service list on the same day.¹¹ People can place their names on official service lists upon written request.¹² Additionally, a potential intervener who wishes to receive notice of a particular kind of filing can ask to be placed on the utility's general service list. The list would also include people who intervened in the utility's last filing of the same type, or in its last general rate case.¹³

The Commission also gives regular notice of its own meetings by, among other means, publication on its site on the World Wide Web, <http://www.puc.state.mn.us>.¹⁴ And when a large energy facility is proposed, a number of statutes and rules ensure that the public will receive adequate notice and the opportunity to participate.¹⁵

¹⁰ Minn. Rules, part 7829.1000.

¹¹ Minn. Rules, part 7829.0400, subp. 5.

¹² Minn. Rules part, 7829.0700, subp. 1.

¹³ Minn. Rules, parts 7829.0600; see also Minn. Rules, part 7829.2500, subp. 3.

¹⁴ Minn. Stat. § 13D.04.

¹⁵ See, for example, Minn. Stat. § 216B.243, subd. 4.

A review of this case's procedural history demonstrates the lengths that have been taken to provide the public with notice and opportunity to participate.¹⁶ Notice was mailed to landowners, local governments, local elected officials, local libraries, and was published in multiple newspapers. Notice was issued when the application was filed, when alternative routes were proposed, when informational meetings were held, and when public hearings were convened, among other occasions.

Moreover, many of these landowners, local governments, local elected officials, local libraries, and newspaper readers had recently received similar notice with respect to a prior pipeline project paralleling the projects being proposed in the current docket.¹⁷

The Commission is persuaded that the public has received adequate notice and opportunity to participate in the Commission's review of Enbridge's application. The Commission notes that in addition to the people who attended the informational meetings in counties all along the pipeline route, 98 members of the public spoke at the public hearings and 36 filed written remarks, as summarized in the ALJ's Report.¹⁸

Minnesota Rules, part 7829.3200, provides for the Commission to vary its rules when enforcing the rule would impose an excessive burden upon the applicant or others, granting the variance would not adversely affect the public interest, and granting the variance would not conflict with other standards imposed by law. At this stage of the current docket, it makes little sense to withhold consideration of the Certificate of Need application only to provide yet one more round of notice and comment. Given the many examples of public notice and the many forums for public participation already demonstrated in the record, the Commission finds that the benefit of providing one more notice would be more than outweighed by the burden of delay. And given that Enbridge has demonstrated that its proposed pipelines are needed to serve the public interest (discussed below), needless delay would burden that interest. Finally, the Commission's specific duty to publish notice of Certificate of Need applications arises solely from the Commission's own rules.

Because the burden of enforcing Minnesota Rules part 7829.2500, subpart 4, would greatly exceed its benefit, and because varying the rule would not conflict with either the public interest nor any other provision of law, the Commission will grant the variance; MCEA's request will be denied.

¹⁶ See also ALJ's Report, pp. 12 - 36.

¹⁷ See Docket No. PL-9/PPL-07-360, *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*; Docket No. PL-9/CN-07-464, *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 Line Project* (collectively, the Southern Lights Crude Pipeline project).

¹⁸ See ALJ's Report, pp. 2 - 12.

III. Positions on the Merits

A. Enbridge

Enbridge proposes to bring Western Canadian crude oil to upper Midwest refineries by adding new pipelines to its existing pipeline system in Canada, North Dakota, Minnesota, Wisconsin and Illinois. As part of this effort, Enbridge proposes to build three petroleum pipelines in Minnesota. One of these pipelines, the Southern Lights Crude pipeline, has been approved in other dockets.¹⁹

The current docket addresses the two remaining projects. The Alberta Clipper project – a 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) buried pipeline and associated facilities – would provide the capacity to transport an average of 450,000 barrels of crude oil per day from Hardisty, Alberta, to Enbridge's tank farm and terminal in Superior, Wisconsin. Approximately 290 miles of the Alberta Clipper Pipeline would cross Minnesota, buried primarily within and adjacent to Enbridge's existing rights-of-way in the counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton.

The Southern Lights Diluent project – a 20-inch outside diameter, high pressure (1,334 psig) buried pipeline and associated facilities – would provide the capacity to transmit 180,000 barrels per day of diluent from refineries near Chicago, Illinois, to Enbridge's facilities at Clearbrook, Minnesota, where they would flow into an existing pipeline to Alberta. Diluents are used to thin heavy crude oil, making the oil flow more easily. Approximately 182 miles of the Southern Lights Diluent pipeline would cross Minnesota, buried primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.

According to Enbridge, these projects are needed to serve the increasing demand for crude oil throughout the Midwest and beyond.

B. Office of Energy Security

Based on an analysis of Enbridge's filings, as well as OES's own analysis of the supply of and demand for oil – including considerations of population growth, vehicle miles driven, and disposable income – OES reached the following conclusions:

First, withholding the Certificate of Need would probably harm the future adequacy, reliability, and efficiency of the energy supply to Enbridge, its customers, and the people of Minnesota and neighboring states. OES found that demand for refined oil products had increased between 2003 and 2006, and OES anticipates that this demand will continue to grow.

Second, a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record. OES considered a variety of alternative means of dealing with the increasing demand for oil. For example, OES considered building a larger or smaller pipeline, or a pipeline in a different location, building no new pipeline and relying on semi-truck tankers, railroad tankers, alternative pipeline providers, or conservation.

¹⁹ See the Southern Lights Crude Pipeline project, *supra*.

Following this analysis, OES concluded that Enbridge's proposal was preferable to all of these alternatives.

Third, the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate. OES concluded that the proposed pipeline would provide a reliable and cost-effective source of petroleum for residents of Minnesota and the region. While OES acknowledged that building the facility would cause some environmental harm, OES found that Enbridge has developed appropriate plans for minimizing and mitigating these consequences. OES also concluded that the project would have economic benefits, including increased employment, increased income, increased local tax revenues, increased refinery production, and perhaps increased capital investments.

Fourth, the record does not demonstrate that the design, construction, or operation of the proposed facilities would violate any governmental policies, rules, and regulations at the federal, state or local level. OES reached this conclusion after reviewing the extensive list of governmental permits required for the project.

Ultimately OES concludes that Enbridge has met the statutory and rule criteria to receive a Certificate of Need, and that the record of this proceeding substantiates Enbridge's claims.

C. Jon Kingstad and the Minnesota Center for Environmental Advocacy

Mr. Kingstad and MCEA oppose granting the Certificate of Need.

Mr. Kingstad argues that Enbridge has not demonstrated that its proposed pipelines are needed, and further argues that Enbridge's plans for mitigating and remedying environmental damage are undermined by Enbridge's alleged record of pollution. Mr. Kingstad alleges that Enbridge's proposals are really part of a larger plan to ship Alberta tar sands oil to the Gulf Coast; Enbridge denied this allegation.

Generally, MCEA argues that the Commission may not issue a Certificate of Need until the applicant demonstrates need, and that mere compliance with regulatory standards cannot obviate this statutory requirement. MCEA argues that Enbridge fails to bear its burden of showing that the growth in Minnesota's demand for oil will justify the proposed capacity expansion. In particular, Enbridge's analysis fails to consider mitigating factors such as other regulatory activities that could affect demand or conservation and efficiency efforts.

Also, MCEA argues that Enbridge failed to show that the proposed pipeline would protect Minnesota and regional customers from oil price and supply volatility. MCEA argues that Enbridge's and OES's analyses of the proposal's environmental consequences have been too narrow given the growing concern with greenhouse gasses. And MCEA argues that the Minnesota Environmental Protection Act²⁰ requires the Commission to develop an environmental impact statement before ruling on the need for the proposed projects.

Both Mr. Kingstad and MCEA argue that the most reasonable course of action is to refrain from building the pipelines, and instead to focus efforts on reducing society's consumption of oil.

²⁰ Minn. Stat. Chap. 116D.

IV. The ALJ's Report

In his Report, the ALJ concludes that Enbridge has satisfied the criteria set forth in Minnesota Statutes § 216B.243 as interpreted by Minnesota Rules, part 7853.0130. Citations to findings and conclusions relevant to each section of part 7853.0130 are set forth below:

Minnesota Rules, Part 7853.0130 "A certificate of need shall be granted to the applicant if it is determined that:	ALJ's Findings and Conclusions
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...;	Findings 111 - 137, Conclusions 5 - 11
B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant...;	Findings 138 - 164, Conclusions 12 - 20
C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate...; and	Findings 165 - 233, Conclusions 21 - 27
D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments."	Findings of Fact 234, Conclusion 28

The ALJ did not find the arguments of Mr. Kingstad or MCEA persuasive.

Without denying that forecasts may be subject to dispute, the ALJ found that the record shows that the quantity of oil demanded in the Midwest will grow relative to the quantity supplied. According to the ALJ the record supports the conclusion that the proposed pipelines, by expanding the Midwest's access to Canadian oil, would tend to mitigate the consequences of disruptions to the supply of oil from other regions. Without addressing the suggestion that the pipeline is designed to ship oil to the Gulf Coast, the ALJ reasoned that Minnesota benefits from increasing the quantity and reliability of energy in the region, even if some of the oil is consumed beyond the local region.

The ALJ does not regard the state's new objectives regarding greenhouse gas emissions to warrant withholding a Certificate of Need from a petroleum pipeline project, noting that the Commission has declined to adopt such arguments in prior cases. Finally, the ALJ concluded that Enbridge has fulfilled the requirements of the Alternative Review Process, thereby satisfying the requirements of the Minnesota Environmental Protection Act.

On the basis of this analysis, the ALJ recommends that the Commission grant Enbridge's petition for a Certificate of Need for the proposed pipeline projects.

V. Exceptions to the ALJ's Report Regarding Certificate of Need

A. Exceptions to specific language

Enbridge and OES both recommend that the Commission adopt the ALJ's findings and conclusions pertaining to Enbridge's Certificate of Need application, but with three uncontested modifications as follows:

Finding 102. The ALJ's Report states:

If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way.

For reasons discussed in the companion docket, the Commission has not yet ruled on an appropriate route for the pipelines where they come in proximity to lands of the Fond du Lac Band of Lake Superior Chippewa (the Band). While Enbridge and OES recommend that the Commission adopt this finding, they also recommend clarifying that this finding does not imply that the Commission has selected among the alternative routes in this area (the "Fond du Lac Route Alternatives").

Finding 125. The ALJ cites OES Rates Analyst Adam J. Heinen for the proposition that "raising fuel efficiency standards will not reduce demand for the petroleum products...." The OES asks to clarify that Heinen testified that raising efficiency standards would not reduce demand *below current levels*. In addition, OES asked to clarify that support for this proposition can be found in Exhibit 316 at 28-29, not Exhibit 308.

Finding 225. The ALJ's Report states:

Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measure at a distance of 50 feet *from the pumping station structure*) or to any other minimum set by state law.

(Emphasis added.) Enbridge and OES speculate that this language arose from Enbridge's Certificate of Need application but incorporates a transcription error. The application states

Enbridge standards restrict noise levels (due to Company equipment) around neighboring dwellings and industrial facilities to 40 decibels, measured at a distance of 50 feet *from the affected structure*, unless state regulations allow higher noise levels."

(Emphasis added.) Enbridge and OES ask to correct this error by specifying that Enbridge pledges to keep the noise level below 40 decibels when measured at a distance of fifty feet *from the affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures*, or to any other minimum set by state law.

B. Exceptions to environmental findings and conclusions in general

MCEA finds fault with the ALJ's environmental findings and conclusions. As an initial matter, MCEA argues that Enbridge has failed to fulfill its statutory duty to demonstrate that the proposed pipelines are needed, reasonable and prudent. And MCEA argues that Minnesota Rules, part 4410.4300, requires that a governmental entity perform the initial environmental review any pipeline project, not Enbridge.

More substantively, MCEA disputes the forecasts of supply and demand offered by Enbridge and OES. According to Enbridge, the latest demand data cast doubt on the strength of the forecasts that Enbridge and OES rely upon, and suggest that new regulations are succeeding in promoting conservation to a greater extent than the parties acknowledge. At the same time, the supply of imported oil has increased due to new pipeline projects such as Enbridge's Southern Lights Crude pipeline, with a capacity of 300,000 barrels per day.

VI. Analysis

A. Environmental findings and conclusions

The Commission finds the ALJ's analysis of the environmental record in the matter to be persuasive, and will therefore decline to grant the relief sought by MCEA.

MCEA correctly observes that Minnesota Rules, part 4410.4300, requires that a responsible governmental unit complete an environmental assessment worksheet for any pipeline project. But Minnesota Rules, part 4410.3600, subpart 2, exempts from this process any project for which an alternative environmental review has been approved. The Minnesota Environmental Quality Board approved such an alternative environmental review when it adopted the Pipeline Routing Permit rules now codified at Minnesota Rules, chapter 7852. Enbridge's compliance with those rules are addressed in the companion docket.

Regarding substitute sources of delivery, the record does not support the conclusion that other pipelines coming on-line eliminate the need for Enbridge's proposed pipelines to contribute to the nation's energy supply. The ALJ specifically analyzed whether Enbridge could meet its objectives via some substitute means – including relying on other pipelines – and rejected this option. Some of the pipelines MCEA mentions as possible substitutes for Enbridge's proposed pipelines are entirely domestic and therefore have no bearing on the nation's net supply of oil. And while MCEA correctly notes that Enbridge's new Southern Lights Crude pipeline will import Canadian oil, that pipeline is certified to transport only 186,000 barrels per day, not the 300,000 barrels MCEA reported. Moreover, that pipeline was designed in part to replace a different pipeline which will no longer be used to import oil to the US. The Commission concurs in the ALJ's analysis of this question.

More generally, MCEA argues that Enbridge has failed to demonstrate that conservation would not be the more reasonable and prudent alternative. But the forecasted disparities between crude oil supply and demand led Enbridge, OES and ultimately the ALJ to conclude that Enbridge's proposal is the more reasonable and prudent alternative. The Commission concurs.

At hearing MCEA challenged these disparities, arguing that the U.S. Energy Information Administration has reduced its estimate of US oil consumption in its latest Annual Energy Outlook (AEO); under some circumstances, the AEO projects almost no growth in demand at all. This information was filed too late to permit any other party to comment on it, was not sponsored by any witness and was not subject to cross-examination. In any event, the AEO continues to forecast increasing US oil consumption and declining US supply through 2030, albeit the increases and declines have moderated from earlier forecasts. MCEA correctly observes that scenarios assuming low economic growth show low growth in the demand for oil; of course, scenarios assuming high economic growth project higher demand.

Such forecasts change annually. In contrast, Enbridge anticipates operating the proposed pipelines for decades. In the interest of reasonableness and prudence, the Commission must provide for the possibility that demand may be both lower than the base-case scenario, as well as the possibility that it may be higher. The Commission is not persuaded that the most reasonable and prudent course of action is to deny the permit on the basis of this newly-filed information.

B. Certificate of Need standards in general

In preparing his recommendations for the Commission regarding both Enbridge's Certificate of Need and Pipeline Routing Permit, ALJ Lipman presided over an evidentiary hearing and 14 public hearings. He reviewed the testimony of ten witnesses and dozens of exhibits. He observed the demeanor of the witnesses and evaluated the parties' initial and reply briefs. His Report is thoughtful, comprehensive, and thorough, including 310 findings of fact and 55 conclusions, ultimately supporting two recommendations.

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria. As noted above, the statutory criteria for a Certificates of Need are stated in Minnesota Statutes § 216B.243, subdivision 3, and are incorporated into Minnesota Rules, part 7853.0130, subparts A-D. Specifically and based on consideration of the factors identified in the applicable rule, the Commission finds as follows:

1. 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.
2. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
3. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.
4. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Having examined the record itself and having carefully considered the ALJ's Report, the Commission concurs in the ALJ's findings and conclusions except as otherwise specified. Consequently the Commission will accept, adopt and incorporate the relevant findings and

conclusions with the modification noted herein. These modifications do not affect the basis for the ALJ's ultimate recommendation to grant a Certificate of Need for the proposed pipelines.

VII. Commission Action

Based on its review of the record and the analysis and findings stated above, the Commission concludes that granting a Certificate of Need for the proposed petroleum pipelines will serve the public interest. Consequently the Commission will accept the relevant ALJ findings and conclusions as modified herein, grant Enbridge's request and issue the Certificate.

ORDER

1. Minnesota Rules, part 7829.2500, subpart 4, is varied to waive the requirement to publish notice of a Certificate of Need filing in the *State Register* and solicit additional public comment on the application.
2. The Commission accepts, adopts, and incorporates herein Findings 1 - 136 and Conclusions 1 - 29 of the Administrative Law Judge's SUMMARY OF PUBLIC TESTIMONY AT THE PUBLIC HEARINGS, FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS (July 17, 2008) with the following modifications:
 - A. Finding 102. If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way with the limited exception of the Fond du Lac Route Alternatives.
 - B. Finding 125. OES Rates Analyst Adam J. Heinen expressed the view that even in the event of an increase in Corporate Average Fuel Economy ("CAFE") standards for automobiles, any reductions in consumption that follow from increased fuel efficiency will be outpaced by an increase in overall miles traveled by Minnesotans. Mr. Heinen opined that raising fuel efficiency standards will not reduce demand for the petroleum products below current levels, or reduce the need for the proposed projects. [Footnote 255: See, ~~Ex 308 at 30-31~~ Ex. 316 at 28-29.]
 - C. Finding 225. Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measured at a distance of fifty feet from the pumping station structure affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures) or to any other minimum set by state law.
3. The Commission hereby issues to Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., a Certificate of Need for the following projects:

- A. The Alberta Clipper project, a 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) crude oil pipeline and associated facilities, that will begin at the North Dakota/Minnesota border in Kittson County and terminate at the Minnesota/Wisconsin border in Carlton County. The Alberta Clipper Pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton.
- B. The Southern Lights Diluent project, a 20-inch outside diameter, high pressure (1,334 psig) diluent pipeline and associated facilities that will begin at the Wisconsin/Minnesota border and terminate at the Enbridge Terminal located in Clearbrook, Minnesota, located in Clearwater County. The Southern Lights Diluent pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Janet L. Gonzalez, for:
Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e. large print or audio tape) by calling 651.201.2202 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1.800.627.3529 or by dialing 711.

STATE OF MINNESOTA)
COUNTY OF RAMSEY)SS

AFFIDAVIT OF SERVICE

I, Margie DeLaHunt, being first duly sworn, deposes and says:

That on the 29th day of December, 2008 she served the attached

ORDER GRANTING CERTIFICATE OF NEED.

MNPUC Docket Number: PL-9/CN-07-465

XX By depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid

XX By personal service

XX By inter-office mail

to all persons at the addresses indicated below or on the attached list:

Commissioners
Carol Casebolt
Peter Brown
Eric Witte
Marcia Johnson
Kate Kahlert
Bob Cupit
Tricia Debleeckere
Bret Eknes
Mary Swoboda
DOC Docketing
AG - PUC
Julia Anderson - OAG
John Lindell - OAG

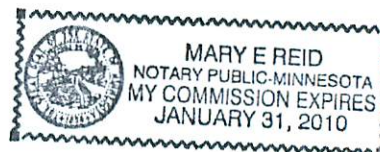
Margie DeLaHunt

Subscribed and sworn to before me,

a notary public, this 29 day of

December, 2008

Mary E. Reid
Notary Public



10:
MN PUC

40:
Regular Postal Mail

Burl W. Haar
MN Public Utilities Commission
Suite 350
121 7th Place East
St. Paul MN 55101-2147

Janette K. Brimmer
Minnesota Center For Environmental
Advocacy
26 East Exchange Street, Suite 206
St. Paul MN 55101-1667

20:
Dept. of Commerce

John R. Gasele
Fryberger Buchanan Smith & Frederick PA
700 Lonsdale Building
302 West Superior Street
Duluth MN 55802

Sharon Ferguson
MN Department Of Commerce
Suite 500
85 7th Place East
St. Paul MN 55101-2198

Joel W. Kanvik
Enbridge Energy Company, Inc.
Suite 3300
1100 Louisiana Street
Houston TX 77002-5217

30:
Inter-Office Mail

Jon Erik Kingstad
Lake Elmo Bank Bldg. Suite 260
600 Inwood Ave. N.
Oakdale MN 55128

Julia Anderson
MN Office Of The Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2131

David Olson
Minnesota Chamber Of Commerce
Suite 1500
400 Robert Street North
St. Paul MN 55101

Karen Finstad Hammel
MN Office Of The Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2131

John C. Reinhardt
Laura A. Reinhardt
3552 26Th Avenue South
Minneapolis MN 55406

John Lindell
OAG-RUD
900 BRM Tower
445 Minnesota Street
St. Paul MN 55101-2130

Kevin Reuther
MN Center for Environmental Advocacy
Suite 206
26 East Exchange Street
St. Paul MN 55101-1667

Eric L. Lipman
Office of Administrative Hearings
PO Box 64620
St. Paul MN 55164-0620

Sara Van Norman
Jacobson, Buffalo, Magnuson, Anderson
& Hogen, P.C.
1360 Energy Park Drive, Suite 210
St. Paul MN 55119

Valerie M. Means
Office of the Attorney General
1400 BRM Tower
445 Minnesota Street
St. Paul MN 55101

Kevin Walli
Fryberger, Buchanan, Smith & Frederick
1st National Bank Building
332 Minnesota Street, Suite W1260
St. Paul MN 55101

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
J. Dennis O'Brien
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: August 12, 2013

DOCKET NO. PL-9/CN-12-590

ORDER GRANTING CERTIFICATE OF
NEED

PROCEDURAL HISTORY

On October 8, 2012, Enbridge Energy, Limited Partnership (Enbridge) filed a certificate of need application for its Line 67 Station Upgrade Project (the Project) in Marshall, Clearwater, and Itasca counties. The Project would expand the capacity of Line 67 from 450,000 barrels per day (bpd) of crude oil to 570,000 bpd through the installation of new pumping units, resulting in an increase in the amount of crude oil supplies delivered by Enbridge to refineries and marketing hubs located throughout the Midwest and other regions. Enbridge filed its application under Minn. R. Chapter 7853.

On October 19, 2012, the Commission issued a notice seeking comments on the completeness of the application under applicable statutes and rules.

On December 17, 2012, the Commission issued an order accepting the application as complete and authorizing use of the informal notice and comment procedure in lieu of a contested case.¹

Notice of the written comment period was issued in December 2012 and January 2013. On February 12, 2013, a notice of written comment and public hearings was issued in some 36 newspapers of general circulation, including the Star Tribune.

On March 19 and 20, 2013, public hearings on the application were held in Clearbrook and Deer River.² Some 41 members of the public attended the hearing in Clearbrook and approximately 36 attended in Deer River. The Administrative Law Judge received twenty-seven written comments before the close of the comment period.

¹ Minn. Rules, part 7829.2500, subp. 9.

² An earlier public hearing was scheduled to be held in Viking, but was cancelled due to a snowstorm with whiteout conditions.

On April 5, 2013, the Department of Commerce, Division of Energy Resources (the Department) filed comments on the merits of the application, recommending that the Commission grant the certificate of need.

On May 3, 2013, Enbridge filed reply comments.

On June 3, 2013, the Administrative Law Judge assigned to this matter filed a Summary of Public Testimony, listing the public comments at the two public hearings as well as a summary of the written comments filed before the close of the post-hearing comment period.

The Commission met to consider the matter on July 17, 2013.

FINDINGS AND CONCLUSIONS

I. The Legal Standard for a Certificate of Need

Before increasing the capacity of a large energy facility, including increasing, within a period of two years, an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, a person must apply for a certificate of need demonstrating that the upgrade is needed.³ Because Enbridge's proposed upgrade would increase the capacity of Line 67 by greater than 20 percent of its rated capacity (120,000 bpd or 26 %) and by more than 10,000 bpd, Enbridge filed an application for a certificate of need.

Minnesota Rules, part 7853.0130 sets forth the requirements for making an application for a certificate of need, as well as the ultimate criteria for demonstrating need. The rule directs the Commission to issue a certificate of need when the applicant demonstrates four things:

- 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;
- B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;
- C. the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and
- D. it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

³ Minn. R. Part 7853.0030, subd. D.

In this proceeding, the Commission elected to address matters pertaining to the proposed certificate of need via informal proceedings under Minn. Rules, Part 7829.2500.⁴

II. Enbridge's Petition

Enbridge's Line 67 pipeline transports crude oil from western Canada to serve the Midwestern U.S. markets and beyond. Approximately 285 miles of the Line 67 pipeline cross Minnesota, in the counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton. Enbridge proposes to upgrade the Line 67 project to increase the capacity of the Line 67 pipeline from 450,000 bpd to 570,000 bpd.⁵

The upgrade project would involve the installation of a total of five new pumping units, including all valves and appurtenances, and other minor station modification work at the Viking, Clearbrook, and Deer River Pump Station sites. All station upgrades are to be constructed on lands already owned by Enbridge at the existing station sites. No new land will be required in Minnesota, nor will new pipe be required along the pipeline route outside of the stations.

Enbridge states that the upgrade project is needed to meet the need for reliable transportation of crude oil supplies from growing production regions in western Canada and North Dakota to regions where crude oil is refined in the United States and eastern Canada. These refinery markets desire access to secure and reliable North American produced crude oil supplies to meet their increasing demand, instead of relying on imports from foreign nations beyond North America.

Specifically, Enbridge states that the purpose of the upgrade project is to relieve the bottleneck of pipeline capacity that shippers are currently experiencing on the Enbridge system, and to meet the near-term capacity that shippers have requested by mid-2014. Enbridge's application states that it is a common carrier in interstate commerce. It does not own the oil transported on Line 67, and it does not control the final shipping destination.

Enbridge states that the upgrade project would avoid the impacts to the environment, landowners, and the public if, as an alternative to the upgrade project, construction of another new pipeline were to be required.

III. The Department's Comments

In its April 5, 2013 comments, the Department examined Enbridge's application for a certificate of need with respect to the criteria established in Minn. Rules, part 7853.0130 and explained why it believes the application meets those criteria. The Department noted that the upgrade project does

⁴ The Commission has the discretion to evaluate certificate of need requests using either contested case proceedings or an informal notice and comment process. The informal process is a less formalized method of developing the record.

⁵ *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Order Granting Certificate of Need, Docket No. PL-9/CN-07-465 (December 29, 2008). (The Line 67 project was initially approved under the name the Alberta Clipper project.) By adding the additional pumping capacity, the project could be expanded to achieve a future throughput capacity of 800,000 bpd.

not require a route permit because there is no new right-of-way involved and all construction will occur on property already owned by Enbridge.

The Department found that since the certificate of need project does not contemplate a change in the operation of the existing pipeline, the information and conclusions provided by the environmental review completed in Docket No. PL-9/PPL-07-361 may be used to inform this proceeding. The Department further found that correspondence with the Minnesota Department of Natural Resources and the United States Fish and Wildlife Service indicate that these agencies believe additional environmental analysis of the upgrade project is not required at this time.

Finally, in its analysis, the Department reviewed the economic need for the additional crude oil volumes that would be associated with this certificate of need, and several alternative methods of transporting Canadian oil to Minnesota and other Midwestern refineries.

IV. Commission Action

The Commission has reviewed the Department's April 5 comments and will accept the Department's recommendation to grant a certificate of need. In making its decision in this matter, the Commission notes that the certificate of need requested in this proceeding does not contemplate a change in the operation of the existing pipeline beyond increasing its capacity, a likelihood anticipated in the original proceeding.⁶

As recognized by the Department, the Line 67 upgrade project requires only a certificate of need. No route permit is required because there is no new right-of-way involved and all construction will occur on property already owned by Enbridge.

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria, set out in Minnesota Statutes § 216B.243, subdivision 3, and incorporated into Minnesota Rules, part 7853.0130, subparts A-D.

A. The Legal Requirements

1. **Minn. R. 7853.0130A** - *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*

The Commission concurs with the Department that denying the certificate of need would probably harm the future adequacy, reliability, and efficiency of energy supply to Enbridge's customers, and to the people of Minnesota and neighboring states. Enbridge's demand forecast is based on the need for additional near-term capacity to fulfill shippers' requests for additional supplies of

⁶ See, Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations, Dockets PL-9-CN-07-465 and PL-9/PPL-07-361 at Findings 99 and 100 (July 17, 2008)

Canadian crude oil. As noted by the Department, based on a November 2011 report from the Canadian National Energy Board, heavy crude oil production in Canada will increase by over 1 million bpd by 2020.

The Commission also finds that evidence from the refinery industry, as well as the United States Department of Energy, supports Enbridge's claim that the additional supply facilitated by the proposed pumping station upgrades will be needed. Based on the information reviewed by the Department, the Commission agrees that refinery upgrades, expansions, and conversions in Minnesota and the surrounding region will result in increased demand for heavy crude oils, like those produced in western Canada and shipped via Enbridge's Line 67. Further, as indicated by the Department, it is anticipated that refinery demand for heavy crude oil in the Midwestern region will increase by over 250,000 bpd over the next several years.

Finally, the Commission notes that domestic imports of crude oil from countries outside North America appear to have decreased since 2005, even as imports from Canada have increased. The Commission concurs with the Department, however, that the current demand for crude oil will, at a minimum, remain stable and/or increase over the next 20 years. Accordingly, Enbridge has adequately corroborated its stated need for the upgrade project.

2. **Minn. R. 7853.0130 B** - *A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant*

The Commission also finds that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record. The Commission has considered a variety of alternative means of dealing with the increased production of Canadian crude oil and the resulting demand for shipping capacity from Enbridge's customers for transporting much-needed crude oil to Minnesota and other Midwestern refineries.

With respect to the "no action" alternative, the Commission agrees with Enbridge and the Department that the reliability of the supply of petroleum products in Minnesota and the Midwest would be diminished if no action were taken, given the reasonableness of the expectations of increased oil production from the Western Canadian Sedimentary Basin. The Commission also considered building a new pipeline, using the proposed Keystone XL pipeline, relying on semi-truck tankers, and relying on railroad tankers. The Commission agrees that Enbridge's rejection of the alternative proposals was reasonable. Every alternative considered posed higher safety, cost, reliability, environmental, and logistical concerns.

3. **Minn. R. 7853.0130C** - *The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate*

The Commission also agrees with the Department that the benefits to society arising from granting the certificate of need for the project outweigh the costs.

This project would ensure a continued reliable source of crude oil from a developing supply region. It would help ensure that the people and industry of Minnesota and the surrounding region have a reliable, cost-effective supply of petroleum products many years into the future. And it would accomplish these goals with little if any disruption to the natural or socioeconomic environments of the state.

In fact, as discussed above, all alternatives to this proposed pipeline expansion involved more significant environmental and socioeconomic impacts, and higher environmental and socioeconomic risks, than this proposed project.

Further, the Department noted that its review was based on the general environmental consequences of the proposed project and that its primary focus was on need, since the environmental impacts of the project will be fully vetted by other governmental agencies, as discussed in section A. 4 below.

Finally, the Commission is mindful of the public comments and concerns raised during the comment period regarding this project. While some commenters favored granting the certificate of need – mainly because of the pipeline’s economic benefits to local communities – many were opposed, citing safety concerns, environmental concerns specific to drilling in the Canadian oil sands region, and the public interest in reducing dependence on fossil fuels. As the Department noted, these issues were addressed at length in the original certificate of need and route permit proceeding,⁷ have not undergone significant change, and will be subject to ongoing review by other state and federal agencies, should new facts emerge.

4. **Minn. R. 7853.0130D** - *It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments*

Finally, it has not been demonstrated that the design, construction, or operation of the proposed facilities would violate any governmental policies, rules, or regulations at the federal, state or local level. The Line 67 project and the upgrade under consideration in this proceeding are subject to the jurisdiction of the state and federal agencies that are specifically responsible for ensuring the environmental safety and oversight of oil pipelines in the United States.

Enbridge is in the process of securing the approval of the U.S. Fish and Wildlife Service, the U. S. Army Corps of Engineers, the U.S. Department of Transportation, the Minnesota Department of Natural Resources, the Minnesota Pollution Control Agency and the State Historic Preservation Office, as set forth in section 7853.0230 of Enbridge’s application:

⁷ ALJ’s Report, ¶¶ 186-292.

Name of Agency	Title of Permit/Approval Required
United States Department of State	Presidential Permit
United States Army Corps of Engineers	Section 404 Permit (waters of the U.S. including wetlands) – Regional General Permit
United States Fish and Wildlife Service	Ongoing consultation
Minnesota Department of Natural Resources	Water Appropriation Permit State Endangered Species Consultation
Minnesota Pollution Control Agency	NPDES Construction Stormwater General Permit Section 401 Water Quality Certification
State Historic Preservation Office – Minnesota Historical Society	Section 106 Consultation

The Commission notes that Enbridge has not yet fulfilled all the requirements for all the permits it will require to undertake its proposed upgrade to the Line 67 project. Enbridge's duties to comply with other agencies' permitting requirements are not altered by the Commission's granting of a certificate of need.

Accordingly, no formal environmental review, such as was undertaken in the initial route permit docket for Line 67 (originally called the Alberta Clipper project), is required for this project. Instead, the Commission will rely on the full environmental review completed in Docket No. PL-9/PPL-07-361, as well as the general analysis of the environmental consequences contained in the Department's comments, and the environmental analysis to be conducted by the six state and federal agencies with jurisdiction over the project once it is certified.

V. Conclusion

In conclusion, the Commission finds that the record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria. Specifically and based on consideration of the factors identified in Minnesota Rules, part 7853.0130, subparts A-D, the Commission finds as follows:

1. 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.
2. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
3. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

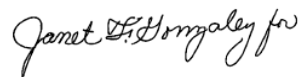
4. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Based on the record in this proceeding, the Commission concludes that granting a certificate of need for the proposed upgrade to the Line 67 petroleum pipeline project will serve the public interest. Accordingly, the Commission will grant Enbridge a certificate of need to upgrade the Line 67 project from 450,000 bpd of crude oil to 570,000 bpd.

ORDER

1. The Commission grants Enbridge Energy, Limited Partnership a certificate of need for the Line 67 upgrade project.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
David C. Boyd
Nancy Lange
Dan Lipschultz
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: November 7, 2014

DOCKET NO. PL-9/CN-13-153

ORDER GRANTING CERTIFICATE OF
NEED

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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
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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

ISSUE DATE: November 7, 2014

DOCKET NO. PL-9/CN-13-153

ORDER GRANTING CERTIFICATE OF NEED

PROCEDURAL HISTORY

On February 28, 2013, Enbridge Energy, Limited Partnership (Enbridge) filed a plan for notifying the public of its proposal to install pumps and related facilities to increase the capacity of the Line 67 (also known as the Alberta Clipper) from 570,000 barrels per day (bpd) to 800,000 bpd of heavy crude oil. Enbridge proposed to give notice to landowners along and adjacent to the pipeline route -- in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, St. Louis, and Carlton Counties -- and to local libraries, newspapers, and units of government. This would be the second phase of a two-phase process to increase the pipeline's capacity.

On May 29, 2013, Enbridge began implementing its notice plan as revised and approved by the Commission.

On June 28, 2013, Enbridge petitioned the Commission to grant the required Certificate of Need for its proposal. Because Minn. R. 7853.0200, subp. 7, requires an application to be substantially complete to be accepted, the Commission solicited comments on the completeness of Enbridge's petition. The Minnesota Department of Commerce (the Department), the Minnesota Historical Society, the Minnesota Department of Natural Resources, MN350,¹ and six members of the public commented. In particular, MN350 recommended finding the application incomplete, whereas the Department recommended finding the application substantially complete pending Enbridge submitting certain additional information.

On August 16, 2013, Enbridge filed comments in reply, and revised its Certificate of Need application to incorporate the information requested by the Department.

¹ MN350 described itself as a Minnesota organization of concerned citizens committed to growing the climate change movement in Minnesota.

On September 17, 2013, the Commission issued an order accepting Enbridge's application as "substantially complete" as of August 16 – meaning that "the application provide[d] sufficient detail to proceed to a contested case proceeding..."² The Commission referred the matter to the Office of Administrative Hearings to develop the record via a contested case proceeding before an administrative law judge (ALJ).³

The following parties intervened:

- The Department
- Donavan D. and Anna M. Dyrdal (the Dyrdals)
- Honor the Earth
- MN350 and the Sierra Club, jointly

On February 3, 2014, the Commission issued a notice of public hearings; the Commission issued a revised notice on February 5. Enbridge mailed the notice to all landowners along the pipeline route, including 12 that it had originally omitted, as well as to parties and local units of government. In addition, Enbridge published the notice in local newspapers.

Enbridge, the Department, MN350 and the Sierra Club variously filed direct and rebuttal testimony; the Drydals and Honor the Earth did not. In its rebuttal testimony, Enbridge provided substantially more information on the accuracy of its forecast, including information on current pipeline capacity shortages, how apportionments (curtailed shipments) affect Minnesota refineries, and demand for heavy crude on Enbridge's pipeline system.

From March 18 – 20, 2014, ALJ Eric L. Lipman convened public hearings in Hallock, Thief River Falls, Cass Lake, Floodwood, and Duluth.

On March 20, 2014, the Department filed a motion to allow surrebuttal testimony. MN350 and the Sierra Club then filed a motion to allow surrebuttal testimony and to postpone the evidentiary hearings originally scheduled for April 1. Honor the Earth filed a letter supporting postponing the hearings. Enbridge opposed rescheduling the evidentiary hearing, but did not oppose surrebuttal testimony. The ALJ authorized the parties to file surrebuttal testimony, and delayed the evidentiary hearings by a week.

On April 1, 2014, the ALJ issued his 8th Prehearing Order setting out the procedures to be followed at the April 3 public hearing in Saint Paul.

On April 3, 2014, the Department, Enbridge, and MN350 and the Sierra Club filed surrebuttal testimony.

Also on April 3, the ALJ convened a public hearing in the Commission's Large Hearing Room in Saint Paul. Public speakers were scheduled such that the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.⁴

² Notice and Order for Hearing (September 17, 2013) at 4, 9.

³ *Id.*

⁴ April 3, 2014 Transcript at 3-6 and 223-24.

From April 8 – 10, 2014, the ALJ convened evidentiary hearings at the Commission offices in Saint Paul.

On April 14, 2014, the public comment period closed.

By May 16, 2014, the Department, Enbridge, MN350 and the Sierra Club had filed briefs, reply briefs, and proposed findings.

On June 12, 2014, the ALJ issued his Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (ALJ's Report).

On June 27, 2014, MN350 and the Sierra Club filed their exceptions to the ALJ's Report.

On July 28, 2014, MN350 and the Sierra Club filed a motion for the Commission, when meeting to deliberate and decide whether to grant a Certificate of Need for the Phase 2 Upgrade, to convene the meeting in a room large enough to accommodate all the members of the public who might wish to attend.

On August 15, 2014, the Commission gave notice of the opportunity for members of the public to comment on this docket at the Commission's August 28 hearing.

On August 28, 2014, the Commission met in its Large Hearing Room to consider the matter. Over the span of seven hours the Commission heard oral argument from the parties present, as well as from 27 members of the public. Public speakers were scheduled such that the presentations during the public hearing were nearly equally divided between proponents of the project and opponents of the project.⁵

FINDINGS AND CONCLUSIONS

I. Summary

Finding that Enbridge has demonstrated the need for increasing the capacity of its Line 67 pipeline, the Commission grants Enbridge's petition subject to conditions. In reaching this conclusion, the Commission evaluates a range of contested issues, including –

- the adequacy of the Commission's public meetings;
- forecasts of supply and demand;
- apportionments (curtailed shipments) that arise from the mismatch of supply and demand;
- cost recovery; and
- environmental review.

II. The Legal Standard for a Certificate of Need

Before increasing the rated capacity of a large petroleum pipeline by more than 20 percent (or more than 10,000 bpd) within a two-year period, a person must apply for a Certificate of Need

⁵ August 28, 2014 Transcript at 7-8 and 102-192.

demonstrating that the capacity increase (upgrade) is needed.⁶ Because Enbridge proposes to increase the average annual capacity of Line 67 by 40 percent (230,000 bpd), Enbridge filed an application for a Certificate of Need.

Minn. Stat. § 216B.243, subd. 4, provides for the Commission to arrange for at least one public hearing as part of the Commission's process of evaluating requests for a Certificate of Need.

Minn. Stat. § 216B.243 and Minn. R. 7853.0130 set forth the requirements for making an application for a Certificate of Need, as well as the ultimate criteria for demonstrating need. The rule directs the Commission to issue a Certificate of Need when the applicant demonstrates four things:

- 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.
- B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
- C. The consequences to society of granting the Certificate of Need are more favorable than the consequences of denying the certificate.
- D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

III. Background

Enbridge is a common carrier engaged in interstate commerce, and its rates for shipping oil are regulated by the Federal Energy Regulatory Commission (FERC). It does not extract, own, or control the uses of the oil it ships.

Enbridge owns and operates the 999-mile Line 67 Pipeline. This pipeline transports heavy crude oil from Hardisty, Alberta, crosses the U.S. border into North Dakota, and travels diagonally across upper Minnesota to Superior, Wisconsin.⁷ Heavy crude is used for making gasoline, diesel fuel, aviation fuel, heating oil, asphalt, medicine, health products, and food stocks, among other things.⁸

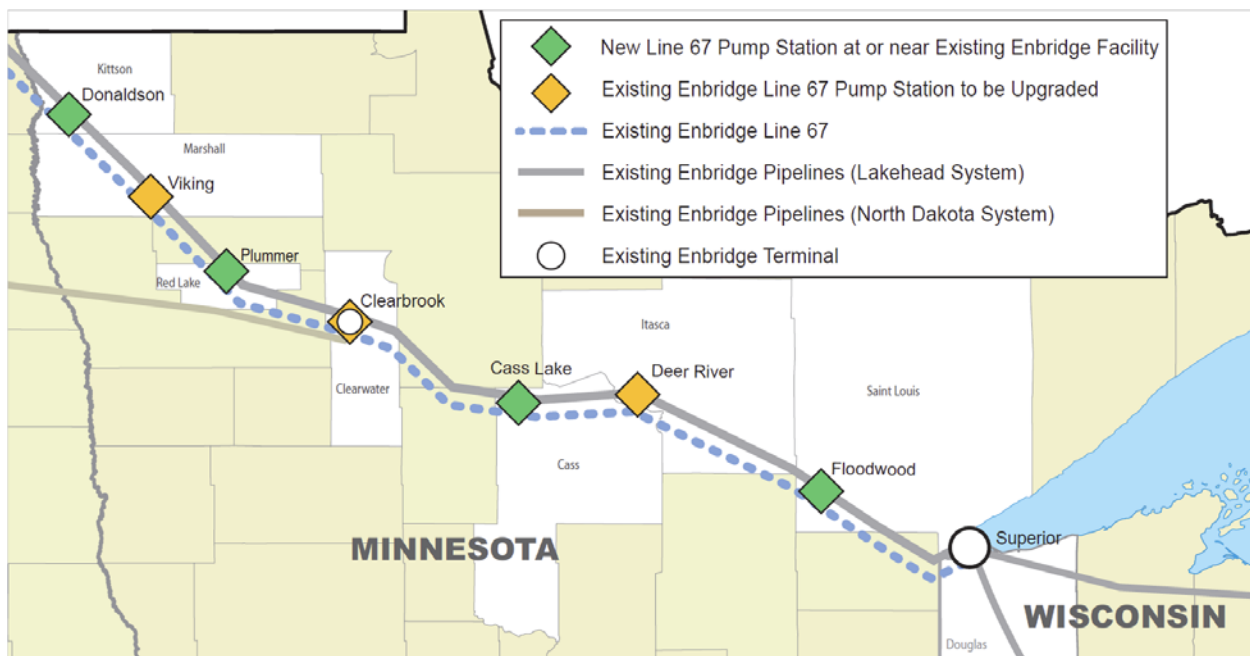
Line 67 Station Upgrade Project – Phase 2 Overview Map⁹

⁶ Minn. R. 7853.0030.D. "Large energy pipeline" is defined at Minn. R. 7853.0010, subp. 14.

⁷ Ex. 1 (petition) at § 7853.0230 at 2.

⁸ *Id.*, § 7853.0250 at 4; Ex. 35 at 47 (Otis direct).

⁹ See Enbridge Initial Filing Exhibit 1-B (June 28, 2013); public notice compliance filing, attachment 1A (April 4, 2014).



Line 67 is part of Enbridge’s Mainline System, which encompasses its pipelines extending throughout the United States and Canada, and forms the largest pipeline system in the world. This system includes several pipelines that parallel Line 67, including Lines 3 and 4. Line 3 has an approximate capacity of 350,000 bpd, but is currently undergoing maintenance that will increase its capacity.¹⁰ Line 4 has a permitted capacity of 796,000 bpd. Enbridge has employed Lines 3 and 4 to ship light crude rather than heavy crude.¹¹

In 2013, the Commission granted a Certificate of Need for Enbridge to increase the accredited capacity of Line 67 from 450,000 bpd to 570,000 bpd.¹² Parties and participants refer to this as Enbridge’s Phase 1 Upgrade.

Enbridge now proposes to implement Phase 2.

IV. Enbridge’s Petition

For Phase 2, Enbridge proposes to increase Line 67’s capacity from 570,000 to 800,000 bpd.¹³ Phase 2 would not involve building any new pipelines. Rather, it would entail installing new pump stations near existing Enbridge facilities at Donaldson, Plummer, Cass Lake, and Floodwood Station sites, located in Kittson, Red Lake, Cass, and St. Louis Counties, respectively. Phase 2 would also require modifying Enbridge’s Viking, Clearbrook, and Deer River Station sites, located in Marshall, Clearwater, and Itasca Counties, respectively. And it would involve

¹⁰ See Enbridge Response to Department Information Request 33 (August 26, 2014).

¹¹ *Id.*; Ex. 15 at 6 (Earnest Rebuttal).

¹² See *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*, Docket No. PL-9/CN-12-590 (*Phase 1 Docket*), Order Granting Certificate of Need (August 12, 2013).

¹³ Enbridge designed Line 67 to be able to transport 880,000 bpd but anticipates operating the line at 90 percent of capacity, consistent with industry practice. Ex. 1, § 7853.0230, at 11-12 (Revised Application).

modifying existing pipes and installing new instrumentation.¹⁴ All work would occur on land owned by Enbridge.

According to Enbridge, Phase 2 would provide increased access to expanding volumes of Canadian heavy crude for refineries in the United States -- specifically, in Minnesota, Wisconsin, Detroit, Toledo, eastern Canada, and the United States Gulf Coast region.¹⁵ This access would be secure and reliable, insulated from disruptive events overseas.

Enbridge seeks to relieve the bottleneck of pipeline capacity that shippers are currently experiencing on the Enbridge system, and to meet the near-term capacity that shippers have requested by 2015. Enbridge predicted that Line 67 would soon reach its current permitted capacity, and that shippers would request ever larger shipping volumes thereafter.¹⁶

The application evaluates a variety of alternatives to approving the Phase 2 Upgrade, including shipping more oil via a new pipeline, relying on the proposed Keystone XL Pipeline,¹⁷ relying on trucking, relying on rail, implementing a different pipeline route, or taking no action. Enbridge argues that none of these alternatives would prove a viable substitute strategy for meeting the need that could be served by the Phase 2 Upgrade.

Enbridge emphasizes its efforts to minimize the environmental consequences of its proposal. Enbridge states that the upgrade project would impose much less harm to the environment, landowners, and the public than would building a separate pipeline to transport the additional 230,000 bpd.

Enbridge notes its efforts to increase energy efficiency through the use of a computerized control center and variable speed drives. In addition, Enbridge has adopted a voluntary “neutral footprint” goal of offsetting any environmental costs associated with its new projects. Enbridge intends to conserve an acre for every acre of natural habitat affected, plant a tree for every tree removed to build new facilities, and generate a kilowatt-hour (kWh) of electricity from renewable sources for every kWh its new operations consume.¹⁸

In Table 7853.0230-2, Enbridge lists the various rules and policies it must comply with in the design, construction, and operation of the Phase 2 Upgrade. Enbridge pledges to fulfill these requirements in the process of implementing the project.

¹⁴ *Id.* at 6-10.

¹⁵ *Id.*, § 7853.0250, at 5.

¹⁶ Ex. 4 at 3 (Revised § 7853.0520, December 4, 2013, Public Version).

¹⁷ The Keystone XL Pipeline refers to a proposed 1179-mile pipeline with the capacity to transport 830,000 bpd from Hardisty, Alberta, to Steele City, Nebraska. See Ex. 1, § 7853.0540 (Revised Application).

¹⁸ Ex. 1, § 7853.0260 at 2 (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

V. ALJ's Report

A. In General

The ALJ recommends granting a Certificate of Need for the Phase 2 Upgrade.

The ALJ found that denying the Certificate of Need would likely harm the future adequacy, reliability and efficiency of the energy supply for Enbridge, its customers, and the people of Minnesota and the region – where the region is understood to be the 15-state Petroleum Area Defense District No. Two (PADD 2) defined by the U.S. Energy Information Administration.¹⁹

B. Supply and Demand

The ALJ addressed both supply and demand. Regarding supply, the ALJ found credible the forecast that western Canada could generate an additional 1.4 million bpd by 2020, and that most of this would be available for export.

Regarding demand, the ALJ found that pipelines and refineries are expanding in various parts of the local 15-state region.²⁰ In addition, expansion of the pipeline network downstream of Line 67 is likely to increase demand for crude oil shipments over Enbridge's Mainline System. For example, Enbridge proposes to build its Flanagan South project, a pipeline extending from near Chicago, Illinois, to Cushing, Oklahoma, with an initial capacity of 430,000 bpd, potentially expanding to 600,000 bpd. This would connect with an expanding collection of pipelines to Houston, Texas, and the Gulf Coast. From there, the refined petroleum products could go to meet demand throughout the world. Even if Gulf Coast refiners give preference to crude imported from Mexico and Venezuela, they still have the capacity to process an additional million barrels per day -- or more.²¹

The ALJ concluded that Minnesota conservation programs would be unlikely to offset local, regional, and global demand for heavy crude oil sufficiently to render the Phase 2 Upgrade superfluous, or to avoid apportionments (curtailed shipments) on Line 67, discussed below.

The ALJ found no evidence that Enbridge had taken action to increase the demand for crude oil or refined petroleum products. To the contrary, Enbridge has advised its shippers that the pipeline upgrades will likely result in higher toll charges, yet shippers support the upgrade project nonetheless.

C. Alternative Plans

The ALJ concluded that Line 67, with its current 570,000 bpd limit, would not be able to provide all the oil sought to be shipped during periods of peak demand. In particular, the ALJ found Enbridge's shippers to be knowledgeable and sophisticated.²² The fact that these shippers would

¹⁹ ALJ's Report, Finding 91, citing Ex. 6, Appendix C (Earnest Direct).

²⁰ *Id.*, Findings 92-96.

²¹ Ex. 37 at LBO-S-7 (Otis Surrebuttal).

²² ALJ's Report, Finding 117, citing Ex. 53, at 3 (Denomy Rebuttal); APRIL 8, 2014 Transcript at 26 and 137-138.

endorse Enbridge's Phase 2 proposal, even though it will result in increased shipping tolls, provides evidence that these entities are persuaded that existing facilities are not adequate to meet their needs.²³

The ALJ evaluated a variety of alternatives to authorizing the Phase 2 Upgrade.

First, he considered the option of using the spare capacity on Line 4 to ship batches of heavy crude, alternating with batches of light crude, over that pipeline. But the ALJ found this proposal less practical than the Phase 2 Upgrade for a variety of reasons.

- The practice of shipping alternating loads of light and heavy crude oil creates certain costs and operational challenges. In particular, heavy crude will tend to contaminate the more valuable light crude, which affects how the oil can be used thereafter.²⁴
- **Shipping heavy crude via Line 4 would likely require new pumping stations, which would require Enbridge to initiate a new Certificate of Need proceeding.**
- While Line 4 currently has some available capacity, it has less than may appear. A pipeline requires more capacity to ship a barrel of heavy crude than to ship a barrel of light crude.

Second, the ALJ considered relying on the capacity of the proposed Keystone XL Pipeline. The ALJ found, however, that it remains unclear if or when the Keystone XL Pipeline will be built. Moreover, this strategy would do nothing to meet the growing demand for heavy crude in areas along and downstream of Line 67.

Third, the ALJ considered shipping more oil by means other than pipelines. The ALJ considered both railroad tank cars and over-the-road trucks, but found each strategy to be impractical.

Fourth, the ALJ considered substituting reliance on renewable sources of energy in lieu of expanding access to heavy crude oil. But the ALJ found that there are not widely available substitutes for liquid petroleum.

D. Efficiency and Reliability

In contrast to the inefficiencies of shipping alternating loads of heavy and light crude, the ALJ found that upgrading Line 67 to 800,000 bpd would provide the most efficient means of transportation. The upgrade would make optimal use of an existing pipeline that was designed with this contingency in mind.²⁵ Moreover, the upgrade would permit more oil to flow into the larger network of pipelines that are also designed for this purpose, rather than relying on general-purpose modes of transportation such as rail and truck.

²³ *Id.*; Ex. 11 at 10 (Curwin Rebuttal).

²⁴ Changing the types of oil shipped in a pipeline poses a variety of challenges; see Ex. 15 at 33-34 (Earnest Rebuttal); Ex. 21 (Earnest Surrebuttal); Ex 24 (Jurgens Surrebuttal).

²⁵ *In the Matter of the Application of Enbridge Energy Limited Partnership and Enbridge Pipeline (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Docket No. PL-9/PPL-07-361 (*Route Permit Docket*), Application for a Routing Permit for a Crude Oil Pipeline (June 22, 2007), Section 4415.0130 at 1.

In addition, Enbridge has adopted a variety of practices to minimize the energy required to run the pipeline safely and effectively, to minimize the adverse side-effects of the installation, and to offset many of the harms than cannot be avoided. In contrast, shipping oil by rail or truck would generate a variety of ongoing adverse side-effects – through emissions, noise, and traffic congestion.

Finally, the ALJ found that the Phase 2 Upgrade would provide increased access to a supply of heavy crude that is more reliable than oil shipped from overseas, which faces risks arising from ocean travel and from geopolitical factors. And a pipeline would provide a lower risk of accident than would shipping oil by rail or truck.

E. Social Consequences

Given the anticipated demand for heavy crude, the ALJ concluded that a failure to approve the Phase 2 Upgrade would likely result in additional apportionments. Enbridge's tariff with FERC requires Enbridge to accept orders from shippers without discrimination. If collectively the shippers seek to ship (nominate) a larger quantity of oil than the pipeline can accommodate, Enbridge must reduce each shipper's order.²⁶

Enbridge's system recently experienced intermittent apportionment, and this is likely to continue.²⁷ The eventual addition of capacity from the Phase I Upgrade will mitigate, but not entirely solve, these problems.²⁸

Apportionments trigger price shocks, frustrate shippers, and compel manufacturers to curtail production or ship oil by more expensive and problematic means, such as by rail.

Accordingly, the ALJ found that implementing the Phase 2 Upgrade would make oil supplies more reliable, and therefore cheaper. The ALJ cites evidence that the annual net present value of the Phase 2 Upgrade is estimated to be \$1 billion for Minnesota petroleum consumers, and \$788 million for Minnesota gasoline consumers.²⁹ The net present value of the project throughout the 15-state region is estimated to be \$18.4 billion.³⁰

The ALJ found that the environmental consequences of implementing the Phase 2 Upgrade would be modest.

The ALJ found that because heavy crude is used in a variety of useful products, expanding access to crude would be socially beneficial. In addition, he found that approval of the Phase 2 Upgrade would trigger a temporary increase in economic activity and employment along the pipeline route, and an ongoing increase in property tax revenues. By providing cost-effective access to additional

²⁶ Ex. 29 (FERC No. 41.6.0 , p. 8, § 14(a)); Ex. 11 at 5 (Earnest Rebuttal); Ex. 37 at 4 (Otis Surrebuttal); April 8, 2014 Transcript at 185-86, 201-05. For purposes of determining when to apportion shipments of heavy crude oil on the Enbridge Mainline system, Lines 67 and 4 are considered to be one single service. April 8, 2014 Transcript at 201–205. Mr. Curwin indicated that shipments of heavy crude oil on Line 67 are increasing, but that Line 4 is subject to capacity restrictions. *Id.* at 201.

²⁷ April 8, 2014 Transcript at 206; Ex. 37 at 4-5, 23 (Otis Surrebuttal).

²⁸ *Id.*

²⁹ ALJ's Report, Finding 168, citing Ex. 19 at 41-42 (Cicchetti Rebuttal).

³⁰ *Id.*

heavy crude oil, the Phase 2 Upgrade is expected to benefit refiners in eastern Canada, Illinois, Michigan, Minnesota, Illinois, Ohio, and along the Gulf Coast, and benefit consumers of petroleum products worldwide. The economic effects of providing long-term access to cheaper petroleum could be broader.

F. Legal Requirements

Finally, while Enbridge's proposal faces a variety of legal requirements beyond the current proceeding, the ALJ found insufficient evidence to demonstrate that Enbridge would be unable to fulfill them. Acknowledging that Enbridge had experienced some operational failures, including a 2010 pipeline spill in Michigan, the ALJ found that Enbridge had subsequently implemented a more rigorous environmental compliance program. The ALJ concluded that concerns over Enbridge's compliance could be best addressed through ongoing regulatory oversight.³¹

VI. Positions of the Parties, and Public Comments

The Department and Enbridge support granting the Certificate of Need, generally for the reasons articulated in the ALJ's Report. The Department concluded that Enbridge has met its burden to demonstrate that the proposed project is needed.³²

MN350 and the Sierra Club oppose granting the Certificate of Need for reasons discussed below.

Honor the Earth filed a letter supporting the rebuttal testimony of a witness for MN350 and the Sierra Club. Honor the Earth stated that the Chippewa's treaty rights to fish, hunt, and gather were jeopardized and deserve greater protection, but did not allege that the Phase 2 Upgrade would necessarily violate any treaty.

The Dyrdals allege that Enbridge has failed to remediate the damage done to their property arising from the installation of Line 67. On this basis, they challenge the credibility of statements in Enbridge's application that Enbridge will remediate any harms arising from the Phase 2 Upgrade.³³

Various members of the public stated that the proposed project would support local business, increase the local tax base, and provide employment.³⁴

Other members of the public cited a variety of reasons to oppose granting the Certificate of Need. Among their many concerns, several commentators object to the environmental consequences of extracting or burning oil, and to the risk of an oil spill. Some argue that United States energy demands are declining, and hence demand for heavy crude will decline as well. Some argue that it would be better to rely on sources of renewable energy and conservation programs. Still others object that the environmental burdens of the pipeline are borne by Minnesotans, whereas much of the benefit would flow to people outside the state – and perhaps outside the nation.

³¹ ALJ's Report, Finding 217, citing Ex. 1, §§ 7853.0250 and 7853.0270 (Revised Application).

³² See, for example, August 28, 2014 Transcript at 82, 86, 93.

³³ ALJ's Report, Findings 79-81.

³⁴ See, for example, ALJ's Report; August 28, 2014 Transcript at 102-192.

VII. Contested Issues

A. Procedural Matters

1. Concerns of MN350 and the Sierra Club

As an initial matter, MN350 and the Sierra Club allege that confusion and frustration resulted when an estimated 1000 people sought to attend the Saint Paul public meeting on this matter, and that members of the public were deprived of their opportunity to participate in this docket as a result.

Consequently MN350 and the Sierra Club filed a motion for the Commission, when meeting to deliberate and decide whether to grant a Certificate of Need for the Phase 2 Upgrade, to convene the meeting in a room sufficiently large as to accommodate all the members of the public who wished to attend. According to these parties, convening public meetings in “undersized venues” such as the Commission’s Large Hearing Room may violate Minn. Stat. § 216B.243, subd. 4, Minn. R. 7829.2500, subp. 9, and Minnesota’s Open Meeting Law, Minn. Stat. Chap. 13D. They argue that the Open Meeting Law “must be interpreted to require that agencies allow all citizens who wish to attend a meeting and provide comment to do so.”³⁵

2. Factual Background

At each of the six public hearings, the ALJ informed attendees that he would review written comments received by 4:30 p.m. on April 14, 2014. The ALJ described how people could submit comments, and encouraged participants to share this news with all interested people.

In addition, on April 1, 2014, the ALJ issued his Eighth Prehearing Order, establishing the procedures for the April 3, 2014, public hearing to be held in Saint Paul as follows:

- Witnesses would be drawn from two rosters of interested persons: a roster of people who oppose granting the Certificate of Need, and a roster of people who support it.
- Starting at 2:00 p.m., people could begin signing either roster outside the Commission’s Large Hearing Room.
- Witnesses would be recognized in the order they signed the rosters, with the ALJ alternating between the two rosters.
- The hearing would occur in three segments: (1) from 3:00 p.m. to 4:30 p.m.; (2) from 4:45 p.m. to 6:15 p.m., and (3) from 7:00 p.m. to 8:00 p.m.
- Members of the public would have the opportunity to offer written remarks in addition to or in lieu of oral comments.

The order encouraged all parties to share the hearing procedures with interested stakeholders.

On April 3, 2014, more people sought to attend the public hearing than the room could accommodate; MN350 and the Sierra Club quote an estimate of 1000.³⁶ Consequently some people were left to wait in various spill-over rooms, not all of which had audio or video connection

³⁵ MN350/Sierra Club Motion for Larger Hearing Room at 10 (July 28, 2014).

³⁶ *Id.* at 3.

to the main hearing room. While space eventually opened in the main hearing room, MN350 and the Sierra Club state that many members of the public had left. Only 58 people had the opportunity to speak on the record on that occasion.

3. Relevant Law

As previously noted, Minn. Stat. § 216B.243, subd. 4, provides for public hearings as part of the Commission's process of evaluating requests for a Certificate of Need:

In reviewing each application the commission shall hold at least one public hearing pursuant to chapter 14. The public hearing shall be held at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a certificate of need....

Similarly, Minn. R. 7829.2500, subp. 9, directs the Commission to arrange for at least one public hearing.

In addition, Minnesota's Open Meeting Law states that "... meetings ... must be open to the public..."³⁷ However, the Open Meeting Law does not compel a public body to conduct business in the place most advantageously suited for in-person viewing.³⁸

4. Commission Analysis

The Commission regrets the confusion associated with the April 3 public meeting. Partially in response to this situation, the Commission took the unusual step of hearing and transcribing hours of public comment during its August 28, 2014, meeting. And even before MN350 and the Sierra Club had filed their motion for a larger hearing room for the August meeting, the Commission had taken the initiative to install video and audio equipment in the lower level of its office building, permitting people in the lower level to follow events in the Large Hearing Room virtually.

Nevertheless, the Commission has fulfilled the requirements for soliciting public participation in this process. Minn. Stat. § 216B.243, subd. 4, directs the Commission to hold at least one public hearing to obtain public opinion on the necessity of granting the Certificate of Need. Instead, public comments were received at six public hearings, convened at various locations near the pipeline route and in Saint Paul, as well as during the Commission's meeting of August 28. Nearly 200 members of the public took the opportunity to speak at these meetings. And while the number of people seeking to speak during the St. Paul meetings exceeded the opportunities to speak, the Department could attest that the comments received were reflective of the comments received at earlier public hearings.³⁹

As a practical matter, the limit on any given person's opportunity to speak does not result from the size of the hall in which a meeting is held, but from the number of other people also seeking to speak. Opportunities to speak at any given meeting are necessarily finite. The ALJ and the Commission

³⁷ Minn. Stat. § 13D.01.

³⁸ *Lindahl v. Independent School District No. 306*, 133 N.W.2d 23, 26 (Minn. 1965).

³⁹ August 28, 2014 Hearing Transcript at 199.

have sought to allocate these opportunities equitably, giving roughly equal opportunities to the project's proponents and opponents. But no matter how well the Saint Paul meeting was run, most of those in attendance would not receive the opportunity to speak on the record.

But these limitations need not deprive anyone of the opportunity to participate. The public had unlimited opportunities to observe and to communicate with the Commission in other ways. For example, virtually unlimited numbers of people may watch the Commission's meetings live on the internet.

Moreover, the public had an unlimited opportunity to communicate their thoughts in writing. The comment period in this docket ran until April 14, 2014 – or 11 days past the Saint Paul public meeting. Thousands of members of the public took advantage of the opportunity to submit written comments. The ALJ reviewed the comments in preparing his report. And these comments are part of the electronic record available to all – the parties, other members of the public, and the Commission as it considered this matter.

The Commission finds that the six public hearings held in this matter, including the April 3 public meeting, achieved the objective of Minn. Stat. § 216B.243, subd. 4, to facilitate public participation and to obtain the public's opinion on the need for the proposed facilities. Given the various opportunities for the public to provide comment, and to observe the Commission's deliberations and decisions, the Commission finds no support for the argument that the public has been deprived of the opportunity to participate in this proceeding. Finally, given the installation of new technology to better link the Commission's Large Hearing Room with the overflow room in the building's lower level, the Commission declined to take further action on the motion for a larger hearing room.

B. Forecast

1. Positions of the Parties

MN350 and the Sierra Club argue that the forecast provided in Enbridge's application provides an insufficient basis for establishing the need for the Phase 2 Upgrade – and that the other record evidence on future demand cannot be considered for purposes of evaluating whether need has been established.

The Department agrees with MN350 and the Sierra Club that the demand forecast included in Enbridge's application provided an insufficient basis for establishing the need for the Phase 2 Upgrade. But then Enbridge filed rebuttal and surrebuttal testimony, and the Department conducted its own investigation of demand for crude oil.⁴⁰ On the basis of evidence provided by Enbridge and evidence discovered through its own efforts, the Department was led to the conclusion that sufficient demand exists to justify the Phase 2 Upgrade. The ALJ reached the same conclusion.

Enbridge argues that its revised application provided forecasts demonstrating need for the Phase 2 Upgrade. Moreover, Enbridge argues that the Commission is not constrained from considering

⁴⁰ This is consistent with Department practice. August 28, 2014 Transcript at 79-80, 93-94.

forecast information from other sources; to the contrary, Enbridge notes that historically the Certificate of Need process relied on forecasts generated by government.⁴¹

Enbridge further observes that the Commission, in granting certificates of need, has regularly considered forecasts from a variety of sources. The Commission granted a certificate to Lakehead Pipe Line Company, L.P., based in part on “shipper forecasts supplied to Lakehead.”⁴² The Commission granted a certificate to Minnesota Pipe Line Company based on forecasts from the applicant, refineries, the U.S. Department of Energy, CAPP, and NEB.⁴³ The Commission granted a certificate to Enbridge for Line 67 based on forecasts from the NEB, CAPP, Enbridge, the Energy Information Administration, and analysis from the Minnesota Department of Commerce (then identified as the Office of Energy Security).⁴⁴ And the Commission granted a certificate for the Phase 1 Upgrade based on forecast data from NEB, the refining industry, and the U.S. Department of Energy.⁴⁵

2. Commission Analysis

The Commission will consider all record evidence regarding demand in determining whether the Phase 2 Upgrade proposal is needed. And the record contains a variety of data, studies, and analysis demonstrating three propositions: 1) Western Canada is increasing its production of heavy crude oil. 2) Demand for crude oil is growing in the areas served by Line 67 and points downstream. 3) Pipeline capacity apportionments on Line 67 occur, will continue, and will likely increase – but the Phase 2 Upgrade could mitigate this problem.

A) Supply of Oil

1) Supply in General

Regarding oil production, Enbridge witness Neil Earnest cited forecasts from four entities: the EIA, NEB, the Canadian Association of Petroleum Producers (CAPP), and the Energy Resources Conservation Board (ERCB), a quasi-judicial branch of the Government of Alberta. Earnest

⁴¹ See 1974 Minn. Laws. c 307 s 1, pp. 1673-1680, codified at Minn. Stat. §§ 116H.01-116H.15. Section 116H.11 required the director of the Minnesota Energy Agency to generate a periodic report identifying emerging trends related to energy supply and demand, and provided that certain of the “forecasts established by the director shall serve as the basis for certification of large energy facilities in section 116H.13.”

⁴² *In the Matter of the Application by Lakehead Pipe Line Company, Limited Partnership, for a Certificate of Need for a Large Petroleum Pipeline Facility*, Docket No. PL-9/CN- 98-327, Order Granting Certificate of Need (August 5, 1998) at 3.

⁴³ *In the Matter of the Application of Minnesota Pipeline Company for a Certificate of Need for a Large Petroleum Pipeline*, Docket No. PL-5/CN-06-2, Findings of Fact, Conclusions and Recommendation (November 17, 2006) at ¶¶ 61-62, 65-69, adopted in Order Granting Certificate of Need (April 13, 2007) at 10.

⁴⁴ *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Docket No. PL-9/CN-07-465, Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations (July 17, 2008) at ¶ 111-122, adopted in Order Granting Certificate of Need, (December 29, 2008) at 14.

⁴⁵ *Phase 1 Docket*, Order Granting Certificate of Need (August 12, 2013) at 4-5.

testified that these forecasts “differ in the details, but more broadly communicate the same message – the forward outlook for western Canada is one of massive increases in heavy crude oil supply.”⁴⁶ And the Department cites with approval the NEB forecast that Canadian heavy crude oil available for export will increase to 4.2 million bpd by 2035.⁴⁷

2) Supply Available for Line 67

MN350 and the Sierra Club acknowledge that western Canada is increasing its production of crude oil, but emphasize that not all of this oil will be available for shipment on Line 67. While this statement is surely accurate, it ultimately does little to undermine the record support for the proposition that western Canada will have a growing supply of oil to ship.

MN350 and the Sierra Club argue that the supply of crude oil available to Enbridge will be diminished by the growing demand for oil in western Canada. They argue that western Canada’s own demand for crude oil increased by 100,000 bpd between May 2012 and March 2013.⁴⁸ But this statement conflicts with CAPP’s estimate that western Canada’s demand will grow by only 86,000 bpd – by 2020.⁴⁹

In addition, MN350 and the Sierra Club argue that the Phase 2 Upgrade is not needed because other pipelines or even rail lines will be available to transport the surplus crude. This argument has

three weaknesses. First, the CAPP forecast shows increasing supply available for shipment even after accounting for current *and anticipated* pipeline and rail capacity.⁵⁰ And the NEB forecasts that western Canada will produce more than enough new crude to fill both the proposed Phase 2 Upgrade and the proposed Keystone XL Pipeline.⁵¹

Second, many existing rival pipelines face capacity constraints, or lack growing demand, which will limit the amount of additional Western Canadian heavy crude they will transport.⁵² For example, the CAPP forecast includes consideration of how growing quantities of crude extracted from North Dakota’s Bakken formation could fill some of the existing pipeline capacity in western Canada.⁵³ Rail lines are similarly congested.

Third, some of these rival pipelines relied upon by MN350 and the Sierra Club do not yet exist, and may never exist. For example, these parties ask the Commission to rely on the anticipated capacity of the Keystone XL Pipeline -- even as they seek to stop construction of that pipeline.⁵⁴ This

⁴⁶ Ex. 7 at 35 (Muse Stancil Benefits Analysis).

⁴⁷ Ex. 37 at 16-17 (Otis Surrebuttal).

⁴⁸ Compare Ex. 53 at 5 (Denomy Rebuttal) and Ex. 17, Attachment F at 11 and Figure 3.3 (Earnest Rebuttal).

⁴⁹ Ex. 17, Attachment F at 10 (Earnest Rebuttal).

⁵⁰ Ex. 1, § 7853.0240, p. 9; Ex. 17, Attachment F at 11 (Earnest Rebuttal).

⁵¹ Ex. 35 at 39, lines 8-14 (Otis Direct); Ex. 37 at 17, lines 5-13 (Otis Surrebuttal).

⁵² Ex. 15 at 34-35, lines 702-730 (Earnest Rebuttal); Ex. 52 at 6, lines 180-184 (Denomy Direct).

⁵³ Ex. 17, Attachment F at 31 (Earnest Rebuttal).

⁵⁴ April 10, 2014 Transcript at 35, lines 5-12.

illustrates the challenge of their argument: It is not reasonable for the Commission to reject a *specific* proposal whenever there is a *hypothetical* proposal that might otherwise be built.

3) Line 3

MN350 and the Sierra Club allege that Enbridge wrongfully withheld information about its plans for an existing rival pipeline, Enbridge's Line 3, which currently transports light crude oil.⁵⁵ According to these parties, on June 16, 2014 – four days after the ALJ issued his ALJ's Report -- Enbridge filed a proposal with the U.S. Department of State to begin shipping heavy crude oil on Line 3.⁵⁶ On August 20, Enbridge disclosed this proposal in a letter filed in the Phase 1 Upgrade docket.⁵⁷ On August 22, the Department asked Enbridge to disclose and clarify this proposal as part of the current docket.⁵⁸ Enbridge did so on August 26.⁵⁹

Enbridge explains that Presidential Permits issued by the U.S. Department of State govern the operation of a roughly three-mile segment on both Line 3 and Line 67 from where they cross the U.S./Canadian border to the first mainline valve in the United States. In granting the Line 3 permit in 1991, the State Department imposed no limits on throughput. But in granting the Line 67 permit in 2009, the State Department relied on an environmental impact statement that assumed the line would not transport more than 500,000 bpd. Thus, before Enbridge may increase the flow of Line 67 across this border area above 500,000 bpd, it must await approval from the State Department.

In the meantime, the throughput limit on Line 67 has created a bottleneck for that line, triggering more frequent apportionments. At the same time, Enbridge is in the process of replacing the border segment of Line 3 as part of a maintenance program. This new pipe will be able to support a higher throughput than the existing pipe.

Consequently, Enbridge proposes to remedy the bottleneck by having the two pipelines swap loads as they cross the border area. Just north of the border, Enbridge would build facilities to transfer Line 3's load of light crude, flowing at less than 500,000 bpd, to Line 67. And Enbridge would build facilities to transfer Line 67's load of heavy crude to the newly-replaced segment of Line 3, which has no official throughput limit. (Enbridge voluntarily limits throughput based on pressure restrictions.) And just south of the border, Enbridge would build reciprocal facilities to transfer the light crude back to Line 4 and the heavy crude back to Line 67. The State Department has concluded that this arrangement would comply with the existing permit requirements.⁶⁰

⁵⁵ August 28, 2014 Transcript at 43-44, 50, 69-72, 77.

⁵⁶ *Id.* at 69 (remarks of MN350/Sierra Club).

⁵⁷ See *Phase 1 Docket*.

⁵⁸ See Department Information Request 33.

⁵⁹ See Enbridge Response to Department Information Request 33 (August 26, 2014).

⁶⁰ *Id.*

Enbridge argues that its plans for Line 3 have little bearing on the need for the Phase 2 Upgrade. The Commission concurs. The little evidence available in the record about Line 3 reveals no inappropriate conduct on the part of Enbridge, nor any evidence relevant to the need for the Phase 2 Upgrade. Disclosure of these plans did not cause the Department to alter its opinion about the need for the upgrade. These plans will not cause the Commission to reject Enbridge's petition, either.

B) Demand for Oil

1) Demand in General

Regarding demand for crude oil, the record shows pipelines and refineries are expanding in various parts of the local 15-state region, including the following:

- In Whiting, Indiana, the BP Whiting refinery is increasing its capacity to refine heavy crude oil by 268,000 bpd.⁶¹
- In Rosemount, Minnesota, the Flint Hills Resources refinery is also upgrading its heavy crude oil refinery.⁶²
- In Detroit, Michigan, Marathon Petroleum completed a \$2.2 billion expansion of its refinery in 2012.⁶³
- In Toledo, Ohio, BP-Husky Refining LLC completed a \$400 million expansion of its refinery in 2013.⁶⁴

Additionally, expansion of the pipeline network downstream of Line 67 will increase demand for crude oil shipments over Enbridge's Mainline System.⁶⁵ In particular, the Mainline System is expected to be the sole supplier to the start of the Flanagan South pipeline, designed to carry up to 600,000 bpd.⁶⁶ Because shippers have committed to pay for shipping capacity on Flanagan South, they have a strong incentive to actually ship oil on the line.⁶⁷

⁶¹ ALJ's Report, Finding 93, citing Ex. 12 at Attachment D (Curwin Rebuttal); Ex. 15 at 10–13 (Earnest Rebuttal); Ex. 37 at 11-12 and 23 (Otis Surrebuttal).

⁶² ALJ's Report, Finding 92, citing Ex. 12, at Attachment C (Curwin Rebuttal); Ex. 37 at 22, LBO-S-5 and LBO-S-6 (Otis Surrebuttal); Ex. 52, at 13 (Denomy Direct). The refinery has a capacity of 320,000 bpd. Ex. 15 at 10 (Earnest Rebuttal). Attachment LBO-S-6 states that the refinery is currently running at 82-90% of its capacity, and the upgrade is designed to permit Flint Hills to process more crude each day. This indicates a potential to increase output by 32,000-57,600 bpd. The Department sets the increase at 36,000 bpd. Ex. 37 at 22 (Otis Surrebuttal).

⁶³ ALJ's Report, Finding 95, citing Ex. 1, § 7853.0250, at 5 (Revised Application).

⁶⁴ *Id.*

⁶⁵ *Id.*, Findings 97 – 101, citing Ex. 15 at 15-17 (Earnest Rebuttal).

⁶⁶ *Id.*

⁶⁷ *Id.*

Enbridge also cites letters of support from the United Refining Company, BP Products North America, Inc., and Flint Hills Resources, as well as CAPP.⁶⁸

2) Credibility of Evidence

MN350 and the Sierra Club argue that Enbridge's statements about customer support have not proven reliable in the past.⁶⁹ In support of this claim, Enbridge cites a complaint filed with FERC by one of Enbridge's shippers arguing that it had withdrawn its support for building the initial Line 67 Pipeline on the grounds that the pipeline was unneeded. These parties further observe that Enbridge ultimately entered into a settlement agreement with producers and shippers governing shipping rates. The agreement would grant a representative group of producers and shippers the right to refuse to pay for proposed capital projects if they stated their objections sufficiently early. Moreover, the parties to the settlement agreed to renegotiate terms in the event that shipping volumes on Line 67 proved to be lower than anticipated; according to MN350 and the Sierra Club, this indicates that the parties fully anticipated that there would be insufficient demand for this pipeline.

Enbridge disputes the arguments of MN350 and the Sierra Club, both on grounds of fact and relevance.

Factually, Enbridge acknowledges that two years after the Commission issued its order approving a Certificate of Need for Line 67, one of the hundreds of shippers using Line 67 filed objections with FERC arguing that FERC should not permit Enbridge to recover the cost of the new line because the line was built prematurely. But FERC found the allegation to be unsupported.⁷⁰

Enbridge acknowledges that it entered into a settlement wherein CAPP and a group of representative shippers could, by notice, bar Enbridge from increasing their rates to recover the cost of specified proposed capital projects.⁷¹ Yet members of CAPP and shippers support the Phase 2 Upgrade.⁷² This fact bolsters the argument that the pipeline is needed and cost-effective, because sophisticated parties that will bear the cost of the project, directly or indirectly, have elected to let the project proceed.⁷³

Enbridge explains that its settlement provides for Enbridge, CAPP, and the shippers to renegotiate terms in the event of circumstances causing unexpectedly low *or high* levels of throughput on Line 67. That is, the settlement is designed to address a variety of contingencies; this fact provides no evidence that the parties expected Line 67 to be under-utilized.

The Commission finds that the record demonstrates demand for additional supplies of heavy crude oil along and downstream of Line 67. Allegations regarding a lack of shipper support during Line 67's initial permitting and construction phase do not undermine the credibility of the evidence in

⁶⁸ Ex. 8, MC-A (Curwin Direct).

⁶⁹ MN350/Sierra Club brief at 2-16 (April 29, 2014).

⁷⁰ *Enbridge Energy, Limited Partnership*, 130 FERC ¶ 61,270 (2010).

⁷¹ Ex. 106 at § 16 (Excerpt from July 1, 2011 Competitive Toll Settlement).

⁷² Ex. 8, Exhibit A, Schedules 1 and 2 (Curwin Direct).

⁷³ Ex. 11 at 10 (Curwin Rebuttal); April 8, 2014 Transcript at 26, 137-138 (testimony of Otis and Cicchetti); ALJ's Report, Finding 117, citing Ex. 53, at 3 (Denomy Rebuttal).

this record. Moreover, the statements of support from shippers are bolstered by the fact that Line 67 has experienced ever more apportionments in recent years.

3) **Conservation Programs under Minn. R. 7853.0130**

MN350 and the Sierra Club claim that the record fails to address the effect of conservation programs on the anticipated demand for heavy crude oil, in violation of Minn. R. 7853.0130, which states in relevant part:

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 ... (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs....

MN350 and the Sierra Club acknowledge that Enbridge does not implement petroleum conservation programs, but argue that the Commission must still consider both federal and state programs that seek to conserve petroleum.⁷⁴

Enbridge and the Department argue that conservation programs are adequately addressed in the record. The ALJ agreed. And the Commission concurs.

The EIA's Annual Energy Outlook Early Release (AEO 2014 Early Release) forecasts energy consumption through 2040 after accounting for all known national conservation programs, including programs addressing greenhouse gas emission regulations and fuel economy standards.⁷⁵ For example, this report assumes that the Corporate Average Fuel Economy standard for cars will increase from today's 21.5 miles per gallon to 37.2 miles per gallon in 2040. The analysis of the AEO 2014 Early Release also accounts for alternate vehicle fuels systems, including plug-in hybrid or gasoline electric hybrid vehicles, Ethanol flex-fuel vehicles, and electric vehicles.

Yet the AEO 2014 Early Release still predicts that gasoline will power 78% of new light-duty vehicles in 2040. It predicts that heavy duty vehicle miles traveled and energy used will increase by an average of 1.9% per year from 2012 to 2040.⁷⁶ According to the report, "[t]otal U.S. consumption of petroleum and other liquids, which was 35.9 quadrillion Btu (18.5 MMbbl/d (million barrels per day)) in 2012, increases to 36.9 quadrillion Btu (19.5 MMbbl/d) in 2018, then declines to 35.4 quadrillion Btu (18.7 MMbbl/d) in 2034 and remains at that level through 2040."⁷⁷ In short, the AEO 2014 Early Release accounts for improvements in vehicle efficiency and

⁷⁴ MN350/Sierra Club Brief at 26-27.

⁷⁵ Ex. 13, Exhibit F at 8 (Attached to the Enbridge Response to Department of Commerce Information Request No. 9).

⁷⁶ *Id.* at 9.

⁷⁷ *Id.* at 11.

increasing domestic production of petroleum, yet still forecasts the need for additional petroleum imports from 2016 through the end of the 2040 planning horizon.⁷⁸

Consistent with this analysis, Charles Cicchetti, Ph.D, testified that, despite state and federal efforts to promote conservation, there will remain a global demand for crude; while renewable sources of energy can readily displace coal and natural gas, Dr. Cicchetti found that liquid fuels have proven harder to replace.⁷⁹

4) **Conservation Programs under Minn. Stat. § 216B.243**

MN350 and the Sierra Club emphasize the Commission's duty to comply with Minn. Stat. § 216B.243, subd. 3.⁸⁰ This statute directs the Commission to assess the need for a proposed facility based on "the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18...." This statute refers to the Department's 2012 Quadrennial Report.⁸¹ That report addresses overall state needs for oil at pp. 31-39.

The report discusses alternative fuels and technologies – ethanol, biodiesel, compressed and liquefied propane/natural gas, electric vehicles, hydraulic hybrid vehicles – and the Governor's Executive Order to reduce the petroleum consumed by state vehicles.⁸² But the report does not indicate the extent to which these developments would influence overall state energy needs for heavy crude oil.

Conservation programs notwithstanding, the report states that uses of petroleum for transportation – which consumes nearly 75 percent of petroleum – is increasing. The report notes that the United States might obtain more oil from the oil sands in Alberta, Canada, which is estimated to have 170 billion barrels. As of 2012, the United States imported 49 percent of the oil it consumed, including 25 percent from Canada.

The report states that the price of oil is influenced by international demand; infrastructure, including pipeline capacity; actual or perceived supply disruptions and shortages; and refiners adopting just-in-time production methods -- which means they rely on timely pipeline deliveries in lieu of having storage. According to the report, limitations on production and supply infrastructure will continue to be a challenge for the industry throughout the country, but a focus on diversifying transportation fuel supplies may decrease Minnesota's dependence on factors outside the state's control.

Having found sufficient demand to justify the Phase 2 Upgrade, the Commission finds that conservation programs will not be sufficient to meet that demand or displace the need for the project.

⁷⁸ *Id.* at 13.

⁷⁹ April 9, 2014 Transcript at 241.

⁸⁰ MN350/Sierra Club brief (April 29, 2014) at 27, 47.

⁸¹ See the Department's *Energy Policy and Conservation Quadrennial Report 2012*, <http://mn.gov/commerce/energy/images/Energy-Quad-Report2012.pdf>

⁸² *Id.* at 35-39.

C) Apportionment

The record shows that Lines 4 and 67 have been apportioned in recent months,⁸³ and that apportionment is forecast to worsen in the near term without the Phase 2 Upgrade.⁸⁴ Indeed, the Phase 2 Upgrade is too small to eliminate the risk of apportionment – but it would mitigate it.⁸⁵

Avoiding apportionment is important. Apportionments force refiners to either reduce production of refined products or to import heavy crude oil through other means. Both of these alternatives are unreasonably inferior substitutes for implementing the Phase 2 Upgrade.⁸⁶

MN350 and the Sierra Club argue that the record fails to distinguish between apportionments triggered by excessive demand and apportionments triggered by reduced capacity that might occur, for example, if maintenance work on a pump reduced the flow rate.

But the Department argues that this may be a distinction without a difference. Maintenance is not a discretionary activity. And expanding the capacity of Line 67 would be expected to reduce the frequency and severity of apportionments regardless of cause.⁸⁷ The Commission concurs.

Consequently the Commission finds that the record demonstrates a forecasted need for the additional shipping capacity that could be provided by the Phase 2 Upgrade.

C. Cost recovery

MN350 and the Sierra Club argue that Enbridge's assessments are biased because Enbridge faces little financial risk from over-building Line 67; Enbridge can simply raise its rates to recover its costs.

But Enbridge argues persuasively that it, not the shippers, bears the risk of loss if volumes transported on the Mainline System are less than Enbridge forecasts. As MN350 and the Sierra Club acknowledge, Enbridge has entered into a settlement agreement setting its shipping rates. While this agreement identifies circumstances under which Enbridge could seek to renegotiate terms, Enbridge would still need to secure the agreement of its producers and shippers before it could raise their rates.⁸⁸

The Commission finds no basis to conclude that Enbridge is shielded from the adverse financial consequences of overbuilding its system.

⁸³ Ex. 15 at 4 (Earnest Rebuttal); see also Ex. 13, Exhibit F, Enbridge Response to Department Information Request 21B, Attachment 21B, Schedule 1 (Curwin Rebuttal).

⁸⁴ Ex. 14 (Enbridge Revised Response to Department of Commerce Information Request 21A, TRADE SECRET VERSION); Ex. 15 at 4-5 (Earnest Rebuttal).

⁸⁵ *Id.*; Ex. 15 at 5-7 (diagram showing apportionments with and without added capacity) (Earnest Rebuttal).

⁸⁶ Ex. 37 at 6 (Otis Surrebuttal).

⁸⁷ August 28, 2014 Transcript at 75.

⁸⁸ Ex. 22 at 3-4 (Cicchetti Surrebuttal).

D. Environmental Review

1. Positions of the Parties

MN350 and the Sierra Club argue that the Minnesota Environmental Protection Act (MEPA) requires the preparation of an environmental impact statement wherever there is the potential for significant environmental impacts from a major governmental action.⁸⁹ They cite Minn. R. 4410.4300, subp. 7, for the proposition that an environmental assessment worksheet is required for any pipeline project.

No other party supported this legal interpretation. The Department analyzed potential impacts on the natural environment that the proposed project may cause as part of its analysis of the Revised Application under Minnesota Rule 7853.0130(C).⁹⁰ The Department recommends granting a Certificate of Need for the Phase 2 Upgrade subject to Enbridge obtaining all permits and approvals required by the relevant local, state, and federal government agencies, including permits and approvals pertaining to environmental protection.⁹¹

Enbridge went further: To the extent that Minnesota law is intended to address the environmental consequences of events occurring outside Minnesota's borders, Enbridge argues that the law exceeds the Commission's jurisdiction.

2. Commission Analysis

In determining the extent of environmental review to require for analyzing a certificate of need application, the Commission considers MEPA and the rules implementing that statute, as well as the Commission's own statutes and rules.

As an initial matter, neither MEPA nor its rules require the Commission to evaluate a formal environmental review document for purposes of granting a *certificate of need*. Rather, Minn. R. 4410.4300, subp. 7.A, provides for the preparation of a comprehensive environmental assessment worksheet when evaluating a request for a *routing permit*.⁹² The Commission thoroughly reviewed the environmental analysis prepared for Line 67 in its routing permit docket.⁹³ Because Enbridge is not routing any new pipelines as part of this docket,⁹⁴ the Commission need not repeat that analysis here.

⁸⁹ MN350/Sierra Club brief at 43–44, citing Minn. Stat. § 116D.04, subd. 2a.

⁹⁰ Ex. 35 at 41–43 (Otis Direct); Department brief at 34–36.

⁹¹ Ex. 37 at 25 (Otis Surrebuttal).

⁹² See, for example, *Route Permit Docket*, Order Granting Pipeline Routing Permit (December 29, 2008) at 9, *aff'd*, *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pub. Utils. Comm'n*, No. A10-812 (Minn. Ct. App. Dec. 14, 2010) (unpublished).

⁹³ *Id.*, Order Granting Pipeline Routing Permit.

⁹⁴ Ex. 1, § 7853.0230 at 3 (Revised Application).

But while MEPA does not require a formal environmental review document, it nevertheless directs all departments and agencies to compare a project's environmental consequences to the consequences of alternative proposals.⁹⁵ And Minnesota Rules requires consideration of the "natural and socioeconomic environments compared to the effects of reasonable alternatives"⁹⁶ and "the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility."⁹⁷

Consequently the parties and the ALJ evaluated the environmental consequences of the Phase 2 Upgrade relative to other alternatives. These alternatives included shipping more oil via a new pipeline, relying on the proposed Keystone XL Pipeline, relying on trucking, relying on rail, implementing a different pipeline route, or taking no action.

Phase 2 involves installing and operating new pumps along Line 67, which would have a variety of environmental consequences. It would disrupt some of Enbridge's land, and the increased traffic and human activity may disturb plant and animals in the vicinity. Construction equipment and commuting personnel would generate some additional emissions. Some water would be used for testing the pumps, and this water would later be discharged. And the ongoing operation of the new pumps would consume some electricity and release some gasses.⁹⁸ However, Enbridge proposes to partially offset these environmental harms via its "neutral footprint" program.⁹⁹

Additionally, increasing the operating pressure in Line 67 may foreseeably increase the amount of oil that might escape in the event of a spill.¹⁰⁰ But this risk is mitigated by the fact that Line 67 is relatively new,¹⁰¹ and by Enbridge's new procedures to prevent, contain, and control spills.¹⁰² For example, Enbridge has now stationed emergency response trailers throughout Minnesota,¹⁰³ and if any anomaly interrupts service, a single operator at the control center can shut down the pipeline.¹⁰⁴

⁹⁵ Minn. Stat. § 116D.03.

⁹⁶ Minn. R. 7853.0130, subp. B (3).

⁹⁷ Minn. R. 7853/0130, subp. C (2).

⁹⁸ See Ex. 1 at 7853.0620 (Revised Application), Ex. 35 at 40-41 (Otis Direct).

⁹⁹ Ex. 1, § 7853.0260 at 2, § 7853.0270, and § 7853.0630, Exhibit E (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

¹⁰⁰ *Id.* at 42 (Otis Direct).

¹⁰¹ *Id.* at 32 (Otis Direct) (citing, among other reasons, the effects of the federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. Law 112-90).

¹⁰² Ex. 1, § 7853.0260 at 2, § 7853.0270, and § 7853.0630, Exhibit E (Revised Application); Ex. 9 at 6-7 (Jurgens Direct).

¹⁰³ *Id.*; April 8, 2014 Transcript at 300-301.

¹⁰⁴ *Id.*

In contrast, each of the alternative projects considered would generate worse environmental consequences than would the Phase 2 Upgrade. For example, building a new pipeline or re-routing Line 67 would result in the same types of environmental costs as the Phase 2 Upgrade, plus the environmental harms associated with laying roughly 999 miles of new pipe.¹⁰⁵

Taking no action or relying on the Keystone XL Pipeline to ship the oil would enable Enbridge to avoid the environmental harms associated with the Phase 2 Upgrade. But these strategies would do nothing to ameliorate the apportionments along Line 67 – a problem that will foreseeably grow worse as refiners along and downstream of Line 67 increase their processing capacities.¹⁰⁶ These customers, confronted with growing apportionments, would likely turn to shipping more oil by means other than pipelines.

This leads to the final two alternatives: shipping more oil by rail or truck. A fleet of 8,280 tank trucks, or 13,824 railway cars, would be required to replace the capacity of the Phase 2 Upgrade.¹⁰⁷ Either fleet would generate more emissions and noise than would the Phase 2 Upgrade.¹⁰⁸ Building the attendant loading and unloading facilities, as well as expanded road and rail lines, would consume land and potentially disrupt wildlife; operating the fleets would be still more disruptive.¹⁰⁹ Finally, for each mile that a barrel is transported, the odds that the barrel will be spilled is higher if the barrel is transported by truck or rail than by pipeline.¹¹⁰

While MN350 and the Sierra Club correctly observe that conservation could play a role in reducing the demand for liquid petroleum, as previously noted, the Commission finds that conservation programs will not suffice to eliminate the need for the Phase 2 Upgrade.¹¹¹

In summary, the Commission analyzed the formal environmental review of Line 67 in the context of Enbridge's routing permit docket; no such review is required in this docket because Enbridge is not proposing to route new pipes. Rather, Enbridge merely proposes to install new pumps on its own land. Finally, Enbridge and the Department conducted the required level of review in analyzing the environmental consequences of Enbridge's proposal relative to alternatives. This review demonstrated that the Phase 2 Upgrade provides a way to meet the demand for additional heavy crude along and downstream of Line 67 while minimizing environmental harms.

¹⁰⁵ Ex. 1, § 7853.0540, § 7853.0600 and Table 7853.0600-1 (Revised Application).

¹⁰⁶ *Id.* at § 7853.0540 (Revised Application); Ex. 35 at 30-35 (Otis Direct).

¹⁰⁷ *Id.* at § 7853.0540; April 8, 2014 Transcript at 143-147.

¹⁰⁸ Ex. 35 at 36-37 (Otis Direct).

¹⁰⁹ *Id.*

¹¹⁰ Ex. 1, § 7853.0250, Table 7853.0250-A-3 (reviewing incidents data from the U.S. Department of Transportation, Pipeline, and Hazardous Materials Safety Administration) (Revised Application).

¹¹¹ See, for example, Ex. 13, Exhibit F at 8 (Attached to the Enbridge Response to Department of Commerce Information Request No. 9).

VIII. Commission Analysis

A. ALJ's Report

In preparing his recommendations for the Commission regarding Enbridge's Certificate of Need, ALJ Lipman presided over an evidentiary hearing and six public hearings. He reviewed the testimony of nine witnesses and thousands of exhibits. He observed the demeanor of the witnesses and evaluated the parties' initial and reply briefs. His report is thoughtful, comprehensive, and thorough, including 217 findings of fact and 15 conclusions, ultimately supporting two recommendations: Grant the Certificate of Need, and condition the grant on Enbridge obtaining the list of permits set forth in its revised application. The Commission finds that the contested case process presided over by ALJ Lipman was fair and impartial, provided the parties and the public an opportunity for meaningful participation, and resulted in a substantial record supporting the ALJ's recommendations.

However, MN350 and the Sierra Club allege a variety of errors in the ALJ's Report, and propose revisions. Upon review, the Commission is persuaded to adopt many of these recommendations, at least in part.

Consequently the Commission will adopt and incorporate the findings of fact and conclusions of law set forth in the ALJ's Report except as modified below and in the ordering paragraphs. In all other respects, the proposed changes to the ALJ's Report are denied.

1. Finding 25

Finding 25 states in part, "Currently, the total permitted capacity of Lines 4 and 67 is 1,596,000 bpd.¹¹²", MN350 and the Sierra Club argue that the 1,596,000 bpd figure does not reflect the current permitted capacity of these lines, but rather the combined permitted capacity of both lines *if the Phase 2 Upgrade is implemented*.

The Commission agrees, and will adopt Finding 25 amended to correct this misstatement.

2. Findings 77 and 78

MN350 and the Sierra Club object that Findings 77 and 78's description of the April 3 public meeting provides an incomplete account of the problems that arose that night. However, these parties do not specify anything in the paragraphs that is inaccurate or misleading.

That said, Finding 77 states that "the presentations during the public hearing were equally divided between proponents of the project and opponents of the project." In adopting this finding, the Commission will clarify that public speakers were *scheduled* such that the presentations were equally divided between proponents and opponents.

3. Finding 87

MN350 and the Sierra Club do not deny the accuracy of Finding 87 where it states, "Enbridge predicts that Line 67 will reach its current permitted capacity of 570,000 bpd on an annual basis by

¹¹² Ex. 15 at 6 (Earnest Rebuttal).

mid-2014.” But they argue that this statement is misleading, in that subsequent events demonstrated that the growth of the annualized throughput on Line 67 would not reach the 570,000 bpd threshold by mid-2014.

The Commission will adopt Finding 87 modified to clarify that the remark refers to a statement in Enbridge’s application, not necessarily Enbridge’s view by the end of the current proceeding.

4. Finding 95

MN350 and the Sierra Club do not contest the ALJ’s finding that “[i]n 2012, Marathon Petroleum completed a \$2.2 billion upgrade and expansion project at its Detroit refinery,” but argue that this language is misleading because it fails to provide appropriate context.

The Commission finds that the language is well-documented, and so will adopt this finding intact – albeit with the addition of appropriate citations to the record.

5. Finding 96

MN350 and the Sierra Club do not contest the ALJ’s finding that “ [i]n February 2013, a \$400 million upgrade to the BP-Husky Refining LLC Toledo refinery was complete,” but argue that this language is misleading.

The Commission finds that the language of Finding 96 reflects well-supported language from Enbridge’s application. Consequently the Commission will adopt Finding 96, but will modify the language to reflect the language from the application.

6. Findings 104, 105, and 107

MN350 and the Sierra Club object that the ALJ’s findings about the amount Canadian crude oil “available for transport” falsely implies that these stocks are available solely to Enbridge.

The Commission will adopt these findings as modified to dispel any such implication.

7. Findings 109 and 110

In Findings 109 and 110 the ALJ finds that increasing oil supplies will prompt shippers to request more transportation, triggering apportionments, and that increased pipeline capacity would mitigate this problem. MN350 and the Sierra Club argue that the ALJ provided insufficient support for these findings.

The Commission concludes that Findings 109 and 110 are well supported in the record. Consequently the Commission will adopt these findings as written, but will supplement the citations to the record.

8. Finding 179

MN350 and the Sierra Club propose modifying this finding to, among other things, state that the amount of greenhouse gases produced by the extraction, production, transportation and consumption of Canadian oil sands is higher than for any other source of oil.

The Commission will adopt this finding while generally incorporating the changes proposed by MN350 and the Sierra Club – but finding that Canadian oil sands have *among* the highest rates of emissions.

9. Finding 182

In Finding 182, the ALJ expresses doubt that denying a Certificate of Need for the Phase 2 Upgrade would reduce the production of oil from the Canadian oil sands; he also concludes that the denial would trigger quantifiable harm, such as causing oil prices to rise \$11 per barrel. MN350 and the Sierra Club argue that these quantified conclusions are unfounded.

The Commission will adopt the language of Finding 182 modified to exclude quantified estimates about how denial of a Certificate of Need would affect oil prices.

B. Legal Requirements

The record in this matter demonstrates that Enbridge has satisfied the relevant legal criteria, set out in Minnesota Stat. § 216B.243, subd. 3, and incorporated into Minn. R. 7853.0130, subparts A-D.

- **Minn. R. 7853.0130.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**

The Commission concurs with Enbridge, the Department, and the ALJ that denying the Certificate of Need would likely harm the future adequacy, reliability, and efficiency of energy supply to Enbridge's customers, and to the people of Minnesota and neighboring states. The record demonstrates that the supply of heavy crude oil coming from western Canada will grow more quickly than the currently anticipated vehicles for distributing it; that the demand for heavy crude in Minnesota, the neighboring states, and points downstream is growing; and that apportionment has grown as well.

MN350 and the Sierra Club argue that Enbridge's application provided insufficient information for the Commission to make the required evaluation, and note that the Department initially shared this perspective.

But the Department has subsequently changed its perspective. The Department sought, and found, alternative sources of information on the supply of, and demand for, crude oil. In addition, the Department learned more about how all shippers on Line 67 vulnerable to apportionments, in accordance with the terms of Enbridge's federal tariffs. This information led the Department to conclude that the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of the energy supply. And this work has led the Commission to reach the same conclusion.

Given the entirety of the record, including the provisions in FERC tariffs that apply to Line 67, the Commission finds that Enbridge has provided evidence sufficient to meet its burden under Minn. R. 7853.0130.A. The record shows that the proposed Phase 2 Upgrade is needed in Minnesota, neighboring states, and the region and that denial of the requested project would have a negative effect on the adequacy, reliability, and efficiency of existing heavy crude oil supplies.

- **Minn. R. 7853.0130.B: A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant**

The Commission also finds that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.

The Phase 2 Upgrade would have a variety of effects on the socioeconomic environment. Among the projects obvious benefits is the delivery of heavy crude oil, which is used to make asphalt, gasoline, medicine, health and safety products, and agricultural products. Also, implementation of the Phase 2 Upgrade would generate additional property tax revenue and create “a fairly significant amount” of temporary jobs in Minnesota.¹¹³

The Phase 2 Upgrade would have few direct environmental consequences. Construction would cause some increase in noise and traffic, consume water for testing the new pumps, and consume a small amount of natural habitat and farmland. While shipping oil by pipeline creates some risk of an oil spill, as occurred in Michigan in 2010, the risk is lower on newer pipelines such as Line 67 than on older pipelines.¹¹⁴ Moreover, Enbridge has adopted policies and systems to prevent, contain, and control accidents on Line 67. For example, Enbridge has now stationed emergency response trailers throughout Minnesota, and if any anomaly interrupts service, a single operator at the control center can shut down the pipeline. In any event, shipping by pipeline leads to vastly fewer incidents of spills than does shipping by truck or rail when measured in terms of tons of materials shipped each mile.¹¹⁵

The Commission has considered a variety of alternative means of dealing with the increased production of Canadian crude oil and the resulting demand for shipping capacity from Enbridge’s customers for transporting much-needed crude oil to Minnesota and other Midwestern refineries.

With respect to the “no action” alternative, the Commission agrees with Enbridge, the Department, and the ALJ that the reliability of the supply of petroleum products to any given customer in Minnesota and the Midwest would be diminished if no action were taken, given the growing incidence of apportionments. The Commission has evaluated alternatives such as building a new pipeline, using the proposed Keystone XL pipeline, relying on semi-truck tankers, and relying on railroad tankers. But the Commission finds that each alternative considered in the record posed higher safety, cost, reliability, environmental, and logistical concerns than the proposed Phase 2 Upgrade.

- **Minn. R. 7853.0130.C: The consequences to society of granting the Certificate of Need are more favorable than the consequences of denying the certificate**

¹¹³ April 8, 2014 Transcript at 180.

¹¹⁴ Ex. 35 at 32 (Otis Direct) (citing, among other reasons, the effects of the federal Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. Law 112-90).

¹¹⁵ Ex. 1 at 7853.0250 (Revised Application), citing U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration data.

The Commission also agrees with Enbridge, the Department, and the ALJ that the benefits to society arising from granting the Certificate of Need for the project outweigh the costs.

The Phase 2 Upgrade would provide greater access to a reliable source of heavy crude oil from a developing supply region. It would help ensure that the people and industries of Minnesota and the surrounding region have a reliable, cost-effective supply of petroleum products many years into the future. And it would accomplish these goals with little if any disruption to the natural or socioeconomic environments of the state.

MN350 and the Sierra Club argue that the Commission is precluded from issuing a Certificate of Need without first weighing the environmental consequences arising from the combustion of the oil, and from spills. The Department and Enbridge disagree to varying extents.

The Commission is mindful of the public comments and concerns raised throughout this docket. While some commenters favored granting the Certificate of Need – mainly because of the pipeline’s economic benefits to local communities – many were opposed, citing safety concerns, environmental concerns specific to oil production in the Canadian oil sands region, and the public interest in reducing dependence on fossil fuels. Some of these issues were addressed in the original Certificate of Need and route permit proceeding and have not undergone significant change. And some of these issues will be subject to ongoing review by other state and federal agencies, should new facts emerge.

Nevertheless, Minn. R. 7853.0130.C. directs the Commission to compare the consequences arising from granting a certificate to the consequences of denying it – not compared to some idealized outcome.

The Commission concurs with MN350 and the Sierra Club that if the Commission grants the Certificate of Need, then the production, transportation, and consumption of the Canadian oil sands crude oil will have environmental consequences. But as the ALJ found, it seems likely that the same result would occur even if the Commission were to deny the certificate. Indeed, MN350 and the Sierra Club argue that if the Commission were to deny the Certificate of Need, the oil would merely be consumed in western Canada or transported by other pipelines to be consumed in other places.

As discussed above, all alternatives to this proposed pipeline expansion involve more significant environmental and socioeconomic consequences, and higher environmental and socioeconomic risks, than this proposed project. In particular, denying the application would likely result in more petroleum being shipped by rail – an outcome that would generate still more greenhouse gas emissions and other adverse risks and consequences, while providing few offsetting benefits.¹¹⁶

While denial of the petition would not be likely to generate specific environmental benefits, the Commission will accept Enbridge’s proposal to mitigate the environmental costs: The Commission will direct Enbridge to implement its stated “neutral footprint” policy when upgrading Line 67. This involves conserving an acre for every acre of natural habitat affected, planting a tree for every tree removed to build new facilities, and generating a new kWh of

¹¹⁶ Ex. 15 at 12-22 (Earnest Rebuttal); Ex. 20 at 12, 24-36 (Rennicke Report). Also, compare Ex. 1 § 7853.0600 at 19, Table 7853.0600-3 (Emissions from Rail Alternative) (Revised Application) to § 7853.0620 at 2-3, Table 7853.0620-2 (emissions from implementing Phase 2) (Revised Application).

renewable energy for every incremental kWh the Phase 2 Upgrade consumes.¹¹⁷ This renewable energy would be in addition to any renewable energy Enbridge was already obligated to generate.

To ensure compliance with this provision, the Commission will direct Enbridge, within 90 days of when the Phase 2 pumps become operational, to file a report stating how Enbridge intends to implement its neutral footprint policy with respect to the Phase 2 Upgrade, and how it intends to document its compliance with this policy.

In sum, the Commission finds that the consequences to society of granting the Certificate of Need are more beneficial than the consequences of denying the certificate, and Enbridge's neutral footprint policy will further enhance those benefits.

- **Minn. R. 7853.0130.D: It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments**

Finally, it has not been demonstrated that the design, construction, or operation of the proposed facilities would violate any governmental policies, rules, or regulations at the federal, state or local level. As discussed, Minnesota Rules require no formal environmental review for this project, but the pipeline was subject to a full environmental review when Enbridge sought a routing permit for Line 67.¹¹⁸

Enbridge's proposal is subject to the jurisdiction of the state and federal agencies that are specifically responsible for ensuring the environmental safety and oversight of oil pipelines in the United States. Enbridge is in the process of securing the approval of government agencies as set forth in Table 7853.0230-2 of Enbridge's application. This requires obtaining at least the following permits and approvals:

¹¹⁷ Ex. 9 at 7 (Jurgens Direct).

¹¹⁸ *Route Permit Docket*.

<u>Agency</u>	<u>Permit/Approval</u>
United States Department of State	Presidential Permit
United States Army Corps of Engineers	Section 404 Permit (waters of the United States, including wetlands) – Individual Wetland Permit
United States Fish and Wildlife Service	Section 7 Consultation (Federal endangered species)
Minnesota Public Utilities Commission	Certificate of Need
Minnesota Department of Natural Resources	Water Appropriation Permit (trench dewatering) State Endangered Species Consultation
Minnesota Pollution Control Agency	NPDES Construction Stormwater General Permit § 401 Water Quality Certification
State Historic Preservation Office – Minnesota Historical Society	Section 106 Consultation
City of Floodwood Wetland Conservation	Wetland Conservation Act Utility Exemption
Red Lake Soil and Water Conservation District	Wetland Conservation Act Utility Exemption

Any grant of a Certificate of Need is made subject to the applicant's duty to comply with these permitting requirements. In addition, the Commission accepts and relies upon Enbridge's pledge to comply with its policies set forth in Table 7853.0230-2, including its commitment to implement its neutral footprint policy.

IX. Conclusion

Having reviewed the filings in the record and considered the oral arguments, and based on the foregoing analysis, the Commission concludes that granting a Certificate of Need for the proposed Phase 2 Upgrade to the Line 67 petroleum pipeline would Minn. Stat. § 216B.243 and Minn. R. 7853.0130. Accordingly, the Commission will grant Enbridge a Certificate of Need to upgrade the capacity of Line 67 from 570,000 bpd of heavy crude oil to 800,000 bpd, subject to conditions.

ORDER

1. The Commission grants Enbridge Energy, Limited Partnership a Certificate of Need for the Line 67 Upgrade Project – Phase 2, subject to the following conditions:
 - A. Enbridge must obtain each of the required permits listed in Table 7853.0230-2 of its revised application.
 - B. Enbridge shall apply its “neutral footprint” objectives to the environmental impacts associated with Phase 2 of Line 67, including conserving an acre for every acre of natural habitat impacted, planting a tree for every tree that must be removed to build new facilities, and generating a kilowatt-hour of renewable energy for every kilowatt-hour the Phase 2 energy operations consume.¹¹⁹ Within 90 days of the Phase 2 pumps becoming operational, Enbridge shall file a report stating –
 - **how Enbridge intends to implement its neutral footprint policy with respect to the Phase 2 project, and**
 - **how it intends to document its compliance with this policy.**
2. The Commission adopts and incorporates the Administrative Law Judge’s Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (June 12, 2014) except as it conflicts with this order, and with the following changes:

25. Enbridge dedicates two pipelines in Minnesota to transportation of heavy crude oil: Lines 4 and 67. With the project, ~~Currently,~~ the total permitted capacity of Lines 4 and 67 is ~~1,596,000~~ approximately 1,336,000 bpd. With the addition of the Phase 2 capacity, this figure is approximately 1,596,000 bpd.¹²⁰

77. A public hearing was held in Saint Paul, Minnesota, on April 3, 2014. Over the course of four hours of public testimony, the Administrative Law Judge heard from 58 witnesses, received 19 exhibits and dozens of handwritten comments. Public speakers were scheduled such that ~~Importantly,~~ the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.¹²¹

87. At the time of its application, Enbridge ~~predicted~~ predicts that Line 67 would ~~will~~ reach its current permitted capacity of 570,000 bpd on an annual basis by mid-2014. It further asserted ~~asserts~~ that the volumes of crude oil that are nominated for shipment after that date would ~~will~~ continue to increase.¹²²

¹¹⁹ Ex. 9 at 7 (Jurgens Direct).

¹²⁰ Ex. 15 at 6 (Earnest Rebuttal).

¹²¹ *Id.*; April 3, 2014 Transcript at 3-6 and 223-24.

¹²² Ex. 4, at 3 (Revised Application Section 7853.0520).

95. In 2012, Marathon Petroleum completed a \$2.2 billion upgrade and expansion project at its Detroit refinery.¹²³

96. In February 2013, a \$400 million upgrade to the BP-Husky Refining LLC Toledo refinery ~~was complete~~ went online.¹²⁴

104. In addition to considerable "downstream demand" for heavy crude oil within PADD 2, and beyond, the hearing record makes clear that there will be significant new stocks of Canadian crude oil available for transport by Enbridge and other potential transportation service providers.¹²⁵

105. Laura Otis, a Rates Analyst with the Minnesota Department of Commerce, testified credibly that an additional 1.4 million bpd of Canadian crude oil will be available for transportation between 2012 and 2020. If one subtracts 120,000 bpd that can be carried as a result of the Phase I capacity upgrades to Line 67, and subtract another 730,000 bpd that could be transported by the Keystone XL pipeline, there remains over 500,000 bpd of heavy crude oil that would potentially be available for transport.¹²⁶

107. The record contains significant and credible forecasts of increased, near-term production of heavy crude oil by Canadian oil producers and that all or some portion of this oil will be available for transport along Enbridge's Mainline System.¹²⁷

109. When Midwestern demand for heavy crude oil increases, alongside increasing supplies of oil in western Canada, the market pressures upon Enbridge's limited transportation services are likely to increase. Increasing the capacity of Line 67 would forestall the rate and frequency of apportioned shipments along Line 67.¹²⁸

110. Given the regional and global demands for heavy crude oil, it is unlikely that conservation programs in Minnesota could reduce the demand for this type of oil by 230,000 bpd.¹²⁹

¹²³ Ex. 1, § 7853.0240 at 2-3; § 7853.0250 at 5 (Revised Application); Ex. 13, Exhibit F at 14-15 (Curwin Rebuttal); Ex. 15 at 13 (E

¹²⁴ *Id.*

¹²⁵ *See, e.g.*, Ex. 7, at 31 (Muse Stancil Benefits Analysis).

¹²⁶ Ex. 37 at 17 (Otis Surrebuttal).

¹²⁷ Ex. 7 at 30-35 (Muse Stancil Benefits Analysis).

¹²⁸ Ex. 13 at 6 and Attachment A; Ex. 14 (Response to Department of Commerce Information Request 21A - Trade Secret Version); Ex. 15 at ~~19-20~~ 13-23 (Earnest Rebuttal).

¹²⁹ April 9, 2014 Transcript at 239-41 (Cicchetti testimony); Ex. 15 at 13-23 (Earnest Rebuttal).

179. ~~Moreover, Mr. Dr.~~ Abraham's pre-filed testimony suggests that, on average, the transportation of Canadian heavy crude oil to refineries results in the release of ~~far~~ fewer greenhouse gases (GHGs) than oil transportation operations in most other oil producing nations – such as Angola, Ecuador or Saudi Arabia. The GHG Emissions Profiles for the extraction, production and consumption of Canadian oil sands are among the highest of all oil producing countries.¹³⁰

182. While the Commission could decide not to grant a Certificate of Need for this project on the grounds that Minnesota should not permit the transportation of heavy crude oil, there is real doubt that withholding approval for an expanded Line 67 will result in Canadian oil supplies "remaining in the ground." ~~This is because the price impact of denying the Certificate of Need will add approximately \$11 to the cost of a barrel of oil. As Dr. Cicchetti persuasively testified, however, Canadian oil producers will very likely continue to extract oil from Alberta so long as the Gulf Coast price point for a barrel of oil is at least \$50 per barrel — a level that is half the rate at which Canadian oil regularly trades now. Accordingly, while an \$11 price change on a \$100 barrel of oil may be very unwelcome to certain companies in the oil business such a spike is not likely to dissuade oil producers from extracting oil from Alberta or refiners from processing Canadian petroleum.~~¹³¹

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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¹³⁰ See Ex. 51, Attachment 7 at 7.00062 and 7.00063 (Abraham Surrebuttal).

¹³¹ Compare, Ex. 16, Attachment C with Hearing Transcript, Volume 2 at 121 and 245-46 (Cicchetti Testimony).