

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101**

**In the Matter of the Application of Enbridge
Energy, Limited Partnership for a Certificate
of Need and Routing Permit for the
Line 3 Replacement Project in
Minnesota from the North Dakota Border to
the Wisconsin Border**

**LEECH LAKE BAND OF
OJIBWE EXCEPTIONS TO ALJ
REPORT**

**OAH 65-2500-32764/MPUC PL-9/CN-14-916
OAH 65-2500-33377/MPUC PL-9/PPL-15-137**

I. INTRODUCTION.

Leech Lake Band of Ojibwe (“Leech Lake Band” or the “Band”) respectfully submits these exceptions to the Findings of Fact, Conclusions of Law, and Recommendation (“Report”) submitted by the Administrative Law Judge (“ALJ”). In the Report, the ALJ discounts the position of the Leech Lake Band that it will not allow the Line 3 Replacement Project (“Project”) across the Leech Lake Reservation. The alternative recommended by the ALJ is actually the *worst* of all route alternatives because it completely disregards both the Band’s sovereignty and the real safety and environmental issues posed by in-trench replacement along the Mainline Corridor. The Minnesota Public Utilities Commission (“Commission”) should not ignore the evidence.

II. EXCEPTIONS & DISCUSSION.

A. The Report Does Not Respect The Band’s Sovereignty.

The Report flatly ignores the Band’s status as a sovereign government. The idea apparently held by the ALJ and the Department of Commerce that the Band has not yet entirely ruled out approving the Project across the Reservation is wrong. Paragraph 1396 is particularly egregious:

Unless and until necessary tribal permits and BIA easements are actually denied, RA-07 continues to be a reasonable and viable route option for a true replacement of Line 3.

The Band has consistently, and for multiple years, stated that it will not approve the Line 3 Replacement pipeline across its reservation. The record could not be clearer on these points. The Band has explicitly declared that it is not interested in negotiations that would result in continuing operation of pipelines within its reservation. Any suggestion of negotiation on in-trench

replacement of Line 3 is offensive to the Band, whose sovereign government has legislatively passed an ordinance/resolution stating its official position against in-trench replacement.

For example, Mr. Brown testified:

The Leech Lake Band of Ojibwe will not allow any replacement of Line 3, whether in-trench of alongside the current Line 3. . . . If it is the goal to disregard tribal sovereignty and basic human rights by bringing a project like Line 3 to Leech Lake Indian reservation, then we'll have no choice but to defend ourselves by any means necessary from this unjust process.¹

Enbridge will not get a permit from Leech Lake to access our property. And that's our own tribal government. That's our authority to say that. And correct me if I'm wrong, Chris, but there will be thousands of tribal members there, if they try to replace in trench. And that's why I said is you have to be careful when you tread on tribal sovereignty and our ability to make a choice. So if the Utility Commission goes against what the tribe wants, this will be way worse than Standing Rock, because this is on the reservation. Meaning this isn't on the fringe. We have our own law enforcement, who are, like I said, they're there. Their job is to project tribal members. And we're trying to be as cordial as we can with the State in these proceedings, and we're trying to be respectful. But it is a no, even in place.²

The ALJ, however, disregarded the Band's statements and made a recommendation that would force the Band into easement negotiations with Enbridge not only for the replacement pipeline, but for all of the other pipelines in the Enbridge Mainline Corridor. LLBO objects to the Report's assertion that Enbridge's claims regarding the uncertainty of its negotiations with the Tribes should be viewed with skepticism. It is unreasonable for the ALJ to disregard the tribal government's clear statements regarding its interest in this matter.

B. RA-07 Does Not Best Balance Natural Resource Impacts.

1. RA-07 Has the Greatest Environmental Justice Concerns.

¹ Evid. Hrg. Tr. 10A at 84:25 – 85:16 (Brown) (emphasis added).

² Evid. Hrg. Tr. 10A at 151:19 – 152:13 (Brown).

The ALJ largely ignores environmental justice in the Report, with findings generally limited to SA-04's environmental justice impacts. The Report noted that SA-04 does not cross tribal land and, therefore, would have the lowest impacts on tribal lands.³ The ALJ, however, fails to extrapolate this conclusion to her consideration of route alternatives. Applying the same analysis to RA-07, RA-07 would have greater environmental justice impacts than a route that does not cross the Leech Lake Reservation.

Finding 892 discusses the interconnectedness of cultural and natural resources in the Tribal context, noting that any projected natural resource impacts extend to socioeconomic impacts to tribal communities. It then states that “[t]hese impacts are most prevalent for the creation of new pipeline corridors because at least two tribes (Leech Lake and Fond du Lac) have six pipelines currently crossing their Reservations, five lines of which will continue to exist regardless of the outcome of this proceeding.” The Report’s analysis is improperly skewed if the impacts of requiring the route to cross tribal lands are ignored simply because the pipeline is currently located in that corridor.

The Existing Line 3 route across LLBO reservation lands is not guaranteed in perpetuity, therefore an analysis of the socioeconomic impacts of in-trench replacement of Line 3 must consider the impacts created by extending the existence of the pipeline corridor through tribal lands beyond 2029. The Band does not accept the Report’s assumption that the Project’s impacts on off-reservation natural resources would have a greater negative socioeconomic impact on the tribal community than in-trench replacement of the pipelines across reservation lands. The Band has clearly expressed its intent to not renew its pipeline agreement in 2029 because it wants the pipelines removed as soon as possible.

2. RA-07 Has the Greatest Potential to Impact Water & Wild Rice.

The Leech Lake Reservation has the best and most plentiful wild rice in the State. As Mr. Brown stated, ten percent of Minnesota’s fresh water lies within the Leech Lake Reservation boundaries, and Leech Lake has the most abundant wild rice resources. The existing Line 3 pipeline runs through the very heart of wild rice country where it crosses through the Leech Lake Reservation.⁴ The Report ignores these facts, instead quoting sections of the FEIS while failing to engage in any analysis of the statements in the FEIS, even where those statements do show a disproportionate impact on the Band. The ALJ’s recommendation of RA-07 is not supported by the facts in this record. Rather, those facts show that the ALJ’s recommendation has the *greatest* impacts on wild rice of any alternative. The Commission should recognize these facts.

3. RA-07 Has the Greatest Potential to Impact Other Resources Important to the Band.

RA-07 would involve two major construction projects across the Leech Lake Reservation. As such, there should be no dispute that it has the greatest potential to impact other resources

³ Report ¶ 766.

⁴ Public Hrg. Tr. Vol. 6B (October 17, 2017) at 137 (Levi Brown) and DEIS Meeting Tr. (Cass Lake, 6 p.m.) (June 7, 2017) at 49-51 (Brown).

important to the Band. As with other issues, the ALJ failed to address the facts in this record demonstrating as much. Perhaps most telling is the Report's almost total failure to acknowledge any impacts to the Chippewa National Forest ("CNF"). The ALJ recommends two major construction projects through CNF; however, the Report references CNF only three times, and each time only in reference to the location of RA-07 and/or RA-08. The Band has co-management authority over CNF with the U.S. Forest Service, and any impacts to CNF would have corresponding impacts on the Band. The record shows that RA-07 would cross 157 acres of CNF.⁵ The Band has a memorandum of understanding with the U.S. Forest Service that was signed "to recognize treaty rights of tribes to hunt, fish, and gather wild plants on national forest lands."⁶ Thus, to the extent the ALJ was concerned about impacts on treaty rights, the record is clear that RA-07 would have real and concrete impacts. The Commission should not ignore these facts.

C. Overall, By Choosing Full-Scale Pipeline Removal and In-Trench Replacement, the ALJ Chose the Most Impactful Alternative.

The ALJ chose the alternative with the most impacts, and failed to acknowledge or conduct any analysis of the facts in the record that show that RA-07 is a terrible choice. Mr. Brown explained, in detail, all of the existing infrastructure and resources in the Mainline Corridor that make removal and replacement in-trench or in adjacent right-of-way a bad idea from both a safety and environmental perspective:

It literally runs under lakes. And that is why we take it so seriously and why we've taken the position we have. And also, at the same time, every corridor is not pinch point but just railroads and power lines and more pipelines. *Its pinch points are lakes, massive lakes.*⁷

[W]e are opposed and will not allow any replacement in place, alongside of it, and that there's no – *there's no more room for pipelines in the corridors that is currently being plugged with everything you can imagine.*⁸

⁵ Revised FEIS at 6-625.

⁶ Revised FEIS at 9-10.

⁷ Evid. Hrg. Tr. 10A at 73:24 – 74:6 (Brown) (emphasis added).

⁸ Evid. Hrg. Tr. 10A at 75:21-15 (Brown) (emphasis added); *see also* Evid. Hrg. Tr. 10A at 76-79 (stating that the Mainline Corridor is congested by Highway 2, a railroad, six pipelines, the CapX transmission line, and Chippewa National Forest).

Meaning that it's hard to visually see what he's (Paul Eberth) talking about with some of the requirements of how tight some of these bottlenecks and pinch points truly are, and I think that was definitely understated. *I cannot stress enough about how much water we are talking about and the sheer volume that are within this corridor and how tight it truly is. It's like trying to do construction on Easter eggs that haven't been hard boiled and then hoping they don't crack. And then let Indian people figure out whether they did or not. Because that's what would basically happen if there was construction over their current corridor.*⁹

It is obvious that full-scale removal would pose safety risks and have enormous environmental impacts, especially across the Reservation. The Band would much prefer to negotiate specific removal locations with Enbridge, as it has negotiated other specific issues in the past. As the Band noted in its Reply Brief, “[t]he consequences to Leech Lake, and its tribal society, under Minn. R. 7853.0130(C) would be more favorable if the Commission approved a route outside the Reservation. . . . It is not an accurate depiction of the Leech Lake Band of Ojibwe’s current situation, by the state agencies, to imply that there are no negative consequences to a ‘no action’ alternative.”

III. CONCLUSION.

Finally, the ALJ’s findings treat all tribal interests the same and repeatedly fails to differentiate between the interests of the Band and all of the other stated interests.¹⁰ The Band’s interests in this Project cannot be understated: the existing Line 3 *crosses the Leech Lake Reservation*, and the ALJ has recommended that it be dug up from the middle of the Mainline Corridor and then be put back in the same place. With respect, the Band’s Reservation is different than ceded territories, and crossing the Reservation is different than crossing private property within a ceded territory, and it is different than crossing in proximity to any other tribal lands.¹¹

⁹ Evid. Hrg. Tr. 10A at 81:19 – 82:8 (Brown) (emphasis added).

¹⁰ For example, in Paragraph 892, the ALJ – without basis – concludes that a route outside the Reservation would have the *most* impacts because there would still be operating pipelines within the Reservation. The presence of those other pipelines is not at issue here, and those pipelines are different than existing Line 3. The ALJ’s analysis misses the point.

¹¹ For example, as Mr. Brown testified:

Q: And I’m wondering, would it be your opinion that the people of Leech Lake also have strong opposition to a pipeline running outside of the reservation but through the 1855 Treaty land?

The Band is different than the White Earth, Red Lake, Mille Lacs, and Fond du Lac Bands.¹² The Report fundamentally fails to understand this. The Band is again trying to make that clear so that the Commission will not miss the point, as well. The Band has unequivocally stated, and legislated, that Line 3 will not be replaced on its Reservation- there will be no negotiating that fact.

Dated: May 9th, 2018

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A: You have to remember I'm a government official, so I can only speak on behalf of my government. I would never speak for other Anishinaabe as an individual.

Evid. Hrg. Tr. 10A at 157:2-9 (Brown).

¹² Evid. Hrg. Tr. 10A at 87 (Brown); Evid. Hrg. Tr. 10A at 146:12-18 (Bichler).