

July 7, 2017

See Attached Service List

**Re: In the Matter of the Application of Enbridge Energy, Limited
Partnership for a Certificate of Need for the Line 3 Replacement
Project-PL-9/CN-14-916**

**OAH 65-2500-32764
MPUC PL-9/CN-14-916**

**OAH 65-2500-33377
MPUC PL-9/PPL-15-137**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **AMENDED ORDER ON PETITIONERS TO INTERVENE FILED BY RED LAKE BAND, MUNTER, BABINEAU, ROSS, OTTO, YOUTH CLIMATE INTERVENORS, CARLTON COUNTY LAND STEWARDS, REENTS, AND MATTISON** in the above-entitled matter.

If you have any questions, please contact my legal assistant Cari Snaza at (651) 361-7906 or cari.snaza@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



ANN C. O'REILLY
Administrative Law Judge

ACO:cjs
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project-PL-9/CN-14-916	OAH 65-2500-32764 MPUC PL-9/CN-14-916 OAH 65-2500-33377 MPUC PL-9/PPL-15-137
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Cari Snaza, certifies that on July 7, 2017 she served the true and correct
**AMENDED ORDER ON PETITIONERS TO INTERVENE FILED BY RED LAKE
BAND, MUNTER, BABINEAU, ROSS, OTTO, YOUTH CLIMATE INTERVENORS,
CARLTON COUNTY LAND STEWARDS, REENTS, AND MATTISON** by eService,
and U.S. Mail, (in the manner indicated below) to the following individuals:

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OAH 65-2500-32764
MPUC PL-9/CN-14-916

OAH 65-2500-33377
MPUC PL-9/PPL-15-137

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

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

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

**AMENDED
ORDER ON PETITIONS
TO INTERVENE FILED BY
RED LAKE BAND, MUNTER,
BABINEAU, ROSS, OTTO,
YOUTH CLIMATE INTERVENORS,
CARLTON COUNTY LAND STEWARDS,
REENTS, AND MATTISON**

TO: All Persons on the Attached Service List:

This matter comes before Administrative Law Judge Ann C. O'Reilly on the Petitions to Intervene filed by John Munter, Mysti Babineau, Jean Ross, Youth Climate Intervenors, Wichahpi Otto, and the Red Lake Band of Chippewa Indians.

Christina Brusven, Fredrikson & Byron, P.A., and Eric Swenson, Winthrop & Weinstine, P.A., appear on behalf of Applicant Enbridge Energy, LP (Applicant or Enbridge).

Linda Jensen, Assistant Attorney General, appears on behalf of the Minnesota Department of Commerce (DOC) Energy Environmental Review and Analysis (DOC-EERA).

Julia Anderson, Assistant Attorney General, appears on behalf of the Department of Commerce Division of Energy Resources (DOC-DER).

Brian Meloy, Stinson, Leonard Street, appears on behalf of Intervenor Kennecott Exploration Company (Kennecott).

Kevin Pranis, appears on behalf of Intervenor Laborers' District Council of Minnesota and North Dakota (Laborers' Council).

David Zoll, Lockridge, Grindal, Nauen, PLLP, appears on behalf of the Mille Lacs Band of Ojibwe (Mille Lacs Band).

Leili Fatehi, Advocate, PLLC, appears on behalf of the Sierra Club (Sierra Club).

Joseph Plumer, Plumber Law Office, appears on behalf of the White Earth Band of Ojibwe (White Earth Band) and petitioning intervenor Red Lake Band of Chippewa Indians (Red Lake Band).

Richard Smith appears on behalf of Friends of the Headwaters (FOH).

Anna Friedlander appears on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association).

Frank Bibeau and Paul Blackburn appear on behalf of Honor the Earth.

Michael Ahern, Dorsey & Whitney, LLP, appears on behalf of petitioning intervenor Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers).

Sara Van Norman, Davis Law Office, and Philip Mahowald, Jacobson, Magnuson, Anderson & Halloran, P.C., appear on behalf of the Fond Du Lac Band of Lake Superior Chippewa (Fond Du Lac Band).

John Munter, petitioning intervenor, appears on his own behalf and without legal counsel.

James Reents, petitioning intervenor, appears on his own behalf and without legal counsel.

Willis Mattison, petitioning intervenor, appears on his own behalf and without legal counsel.

Mysti Babineau, petitioning intervenor, appears on her own behalf and without legal counsel.

Wichahpi Otto, petitioning intervenor, appears on her own behalf and without legal counsel.

Mark Herwig, petitioning intervenor, appears on his own behalf and without legal counsel.

Akilah Sanders-Reed, appears on behalf of petitioning intervenor Youth Climate Intervenors (Youth Climate).

Anna Finstrom, Rinke Noonan, appears on behalf of petitioning intervenor Carlton County Land Stewards (Carlton County).

Jean Ross, petitioning intervenor, appears on her own behalf and without legal counsel.

Bret Eknes and Scott Ek appear as representatives of the Minnesota Public Utilities Commission (Commission).

Based upon the submission of the parties and the hearing record and for the reasons set forth in the Memorandum below,

IT IS HEREBY ORDERED THAT:

1. The Petition to Intervene filed by the Red Lake Band is **GRANTED**. The Red Lake Band shall proceed as a full party to these proceedings.
2. The Petition to Intervene filed by John Munter is **DENIED**.
3. The Petition to Intervene filed by Mysti Babineau is **DENIED**.
4. The Petition to Intervene filed by Jean Ross is **DENIED**.
5. The Petition to Intervene filed by Wichahpi Otto is **DENIED**.
6. The Petition to Intervene filed by the Youth Climate Intervenors is **GRANTED**. Youth Climate Intervenors shall proceed as a full party to these proceedings.
7. Enbridge's Motions to Strike the Responses of John Munter, Mysti Babineau, and Youth Climate Intervenors are **DENIED**.
8. The Petition to Intervene filed by Carlton County Land Stewards is **DISMISSED**.
9. The Petition to Intervene filed by James Reents is **DISMISSED**.
10. The Petition to Intervene filed by Willis Mattison is **PENDING** decision based upon the reinstatement of his Petition and the time allowed for objection.

10. ALL PARTIES IN THESE PROCEEDINGS, INCLUDING INTERVENING PARTIES, ARE ADVISED THAT FAILING TO APPEAR AT THE EVIDENTIARY HEARING IN THIS MATTER (INCLUDING EACH FULL DAY) WILL RESULT IN A PARTY BEING DISMISSED FROM THE ACTION AT THE CLOSE OF THE EVIDENTIARY HEARING. ANY PARTY WHO FAILS TO APPEAR AT THE EVIDENTIARY HEARING (OR ANY DAY THEREOF) WILL NOT BE ALLOWED TO SUBMIT POST-HEARING BRIEFS AND ANY PRE-FILED TESTIMONY FILED BY THAT PARTY WILL BE EXCLUDED FROM THE HEARING RECORD.

Date: July 7, 2017



ANN C. O'REILLY
Administrative Law Judge

MEMORANDUM

Factual and Procedural Background

This matter involves applications for a Certificate of Need and a Route Permit filed by Enbridge. Enbridge seeks to build an oil pipeline and related facilities extending from the North Dakota-Minnesota border in Kittson County to the Minnesota-Wisconsin border near Superior, Wisconsin (the New Line 3).¹ The New Line 3 would replace Enbridge's existing Line 3 pipeline (Existing Line 3), but would be two inches greater in diameter (36-inches) and provide an increased pumping capacity of up to 760,000 barrels of crude oil per day.²

Applicant's proposed route for the New Line 3 extends approximately 337 miles through Minnesota.³ It would parallel the route of the Existing Line 3 pipeline from the North Dakota-Minnesota border to the Clearbrook Terminal in Clearbrook, Minnesota, but would require a new right of way from the Clearbrook Terminal to Superior, Wisconsin.⁴ As proposed, the New Line 3 would travel through the following Minnesota counties: Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton.⁵

¹ NOTICE OF HEARING at 3 (Feb. 1, 2016) (eDocket No. 20162-117889-01 (R)). ["R" denotes Route Permit docket. "CN" denotes Certificate of Need docket.]

² NOTICE OF HEARING at 3 (Feb. 1, 2016) (eDocket No. 20162-117889-01 (R)).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Prior to May 5, 2017, the following entities were parties or participants to this proceeding: Enbridge, DOC-EERA, DOC-DER, Kennecott, Laborers' Council, Mille Lacs Band, Sierra Club, Friends of the Headwaters, White Earth Band, United Association, and Honor the Earth.

Between May 5, 2017 and May 15, 2017, eleven (11) petitions to intervene were filed. Petitions to Intervene were filed by the Fond Du Lac Band of Lake Superior Chippewa; Shippers for Secure, Reliable and Economical Petroleum Transportation; Carlton County Land Stewards; John Munter; James Reents; Willis Mattison; Mysti Babineau; Wichahpi Otto; Jean Ross; Mark Herwig; and Youth Climate Intervenors.

Mr. Munter filed his Petition to Intervene on May 5, 2017.⁶ Mr. Reents filed his Petition to Intervene on May 10, 2017.⁷ Ms. Babineau filed her Petition to Intervene on May 11, 2017.⁸ The Fond du Lac Band, Youth Climate, Carlton County, Mr. Herwig, and Ms. Ross filed their Petitions to Intervene on May 12, 2017.⁹ Mr. Mattison filed his Petition to Intervene on May 14, 2017.¹⁰ Ms. Otto and Shippers filed their Petitions to Intervene on May 15, 2017.¹¹

Mr. Munter, Ms. Babineau, Ms. Otto, and Youth Climate seek to intervene in both the Certificate of Need and Route Permit dockets.¹² Ms. Ross seeks to intervene only in the Certificate of Need docket.¹³

On May 11, 2017, Enbridge timely filed a Response in Opposition to Mr. Munter's Petition to Intervene and a Motion to Strike portions of Mr. Munter's Petition.¹⁴

⁶ Munter Petition to Intervene (May 5, 2017) (eDocket Nos. 20175-131592-02 (CN); 20175-131592-01 (R)).

⁷ Reents Petition to Intervene (May 10, 2017) (eDocket Nos. 20175-131729-01 (CN); 20175-131730-01 (R)).

⁸ Babineau Petition to Intervene (May 11, 2017) (eDocket Nos. 20175-13178-01 (CN); 20175-13178-02 (R)).

⁹ Ross Petition to Intervene (May 12, 2017) (eDocket No. 20175-131839-01 (CN)); Youth Climate Intervenors Petition to Intervene (May 12, 2017) (eDocket Nos. 20175-131806-02 (CN); 20175-131806-01 (R)); Petition to Intervene by Fond du Lac Band of Lake Superior Chippewa (May 12, 2017) (eDocket Nos. 20175-131803-02 (CN); 20175-131803-01); Herwig Petition to Intervene (May 12, 2017) (eDocket Nos. 20175-131804-02 (CN); 20175-131804-01 (R)); Petition to Intervene by Carlton County Land Stewards (May 12, 2017) (eDocket Nos. 20175-131822-01 (CN); 20175-131823-01 (R)).

¹⁰ Mattison Petition to Intervene (May 14, 2017) (eDocket Nos. 20175-131848-02 (CN); 20175-131848-01 (R)).

¹¹ Petition to Intervene of Shippers for Secure, Reliable and Economical Petroleum Transportation (May 15, 2017) (eDocket No. 20175-131886-01 (CN)); Wachahpi Otto Petition to Intervene (May 15, 2017) (eDocket Nos. 20175-31853-01 (CN); 20175-131844-01 (R)).

¹² Munter Petition to Intervene (May 5, 2017) (eDocket Nos. 20175-131592-02 (CN); 20175-131592-01 (R)); Babineau Petition to Intervene (May 11, 2017) (eDocket Nos. 20175-13178-01 (CN); 20175-13178-02 (R)); Youth Climate Intervenors Petition to Intervene (May 12, 2017) (eDocket Nos. 20175-131806-02 (CN); 20175-131806-01 (R)).

¹³ Ross Petition to Intervene (May 12, 2017) (eDocket No. 20175-131839-01 (CN)).

¹⁴ Enbridge Response in Opposition to Petition to Intervene of John Munter and Motion to Strike (May 22, 2017) (eDocket Nos. 20175-131799-03 (CN); 20175-131799-04 (R)).

A Prehearing Conference was held on May 15, 2017.¹⁵ At the Prehearing Conference, the Administrative Law Judge extended the deadline to intervene to June 30, 2017.¹⁶ In addition, the Judge offered all petitioning intervenors the option to stay their petitions to intervene until June 30, 2017, to give the petitioning intervenors the option to review the Draft Environmental Impact Statement (DEIS) and decide whether they still wanted to pursue intervention.¹⁷ The Judge advised that any stayed petition must be affirmatively reinstated by June 30, 2017.¹⁸ The Judge further warned that failing to reinstate a petition, in writing, by June 30, 2017, would be deemed a withdrawal of the stayed petition to intervene.¹⁹

Mr. Reents, Ms. Otto, Carlton County, and Mr. Mattison opted to suspend their petitions.²⁰ Mr. Munter, Ms. Babineau, Mr. Ross, and Youth Climate declined the offer to stay their Petitions for Intervention and asked to proceed with their Petitions.

On May 18, 2017, Enbridge timely filed a Response in Opposition to the Petitions to Intervene filed by Ms. Babineau, Ms. Ross, Mr. Herwig, and Youth Climate.²¹

On May 22, 2017, Mr. Munter filed a reply to Enbridge's objection to his intervention.²² In addition, Mr. Munter filed a letter requesting that his reference to a particular landowner in his reply be stricken from the record.²³

Ms. Babineau and Youth Climate also filed replies to Enbridge's Response in Opposition to their Petitions. Babineau filed her reply on May 24, 2017.²⁴ Youth Climate Intervenors filed its reply on May 25, 2017.²⁵

On May 26, 2017, Enbridge filed a Motion to Strike the replies of Petitioners Mr. Munter, Ms. Babineau, and Youth Climate.²⁶

¹⁵ See FOURTH PREHEARING ORDER (May 31, 2017) (eDocket No. 20175-132405-01 (CN); 20175-132405-02 (R)).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Prehearing Transcript (Tr.) at 44, 56, 75, 76, 84-85, 86 (May 15, 2017).

¹⁹ *Id.*

²⁰ FOURTH PREHEARING ORDER (May 31, 2017) (eDocket No. 20175-132405-01 (CN); 20175-132405-02 (R)).

²¹ Enbridge Response in Opposition to Certain Interventions (May 18, 2017) (eDocket Nos. 20175-132016-02 (CN); 201758-132016-01(R)).

²² Munter Response to Reply Comments (May 22, 2017) (eDocket Nos. 20175-132073-02 (CN); 20175-132073-01 (R)).

²³ Intervenor Status Letter (May 30, 2017) (eDocket Nos. 20175-132261-01 (CN); 20175-132261-02 (R)).

²⁴ Reply to Response from Enbridge by Mysti Babineau (May 24, 2017) (eDocket Nos. 20175-132175-01 (CN); 20075-132175-02 (R)).

²⁵ Response to Enbridge Opposition of Youth Climate Intervenors (May 25, 2017) (eDocket Nos. 20175-132207-02 (CN); 20175-132207-01 (R)).

²⁶ Enbridge's Motion to Strike Unauthorized Filings (May 26, 2017) (eDocket Nos. 20175-132274-03 (CN); 20175-132274-04 (R)).

Mr. Herwig withdrew his Petition to Intervene on May 30, 2017.²⁷ That same day, the Sierra Club filed a letter stating that it does not represent the specific interests asserted by Babineau and Youth Climate Intervenors.²⁸

No party asserted objections to the intervention petitions filed by the Fond Du Lac Band and Shippers for Secure, Reliable and Economical Petroleum Transportation. Thus, in the Fourth Prehearing Order, the Administrative Law Judge granted these petitions, giving both Fond Du Lac and Shippers permission to participate as full parties to these proceedings.²⁹

On June 19, 2017, Wichahpi Otto filed a letter renewing her Petition to Intervene.³⁰ Enbridge filed a Response in Opposition to Ms. Otto's Petition on June 26, 2017.³¹ Otto replied to Enbridge's objection on June 29, 2017.³²

On June 26, 2017, the Red Lake Band filed a Petition to Intervene.³³ No party filed objections to the Red Lake Band's Petition and the time for objection has now expired.

Carlton County withdrew its Petition to Intervene and Mr. Mattison reinstated his Petition to Intervene on June 30, 2017.³⁴

As of July 3, 2017, Mr. Reents had not reinstated his Petition to Intervene. The time to reinstate the Petition has now expired.

Standard of Review for Petitions to Intervene

Petitions to intervene are permitted under both the administrative rules of the Office of Administrative Hearings (OAH) and the Public Utilities Commission (PUC). Under the OAH contested case hearing rules, Minn. R. 1400.6200 (2015), a party not named in a contested case proceeding may petition to intervene as a party.³⁵ To do so, the petitioner must establish the following:

²⁷ Letter to Administrative Law Judge Ann O'Reilly from Mark Herwig (May 30, 2017) (eDocket Nos. 20175-132323-01 (R)).

²⁸ Letter to Administrative Law Judge Ann O'Reilly from the Sierra Club (May 30, 2017) (eDocket Nos. 20175-132297-02 (CN); 20175-132297-01 (R)).

²⁹ FOURTH PREHEARING ORDER (May 31, 2017) (eDocket No. 20175-132405-01 (CN); 20175-132405-02 (R)).

³⁰ Letter to Administrative Law Judge Ann O'Reilly from Wichahpi Otto (June 19, 2017) (eDocket Nos. 20176-132904-2 (CN); 20176-132904-01 (R)).

³¹ Enbridge Response in Opposition to Petition to Intervene by Wichahpi Otto (June 26, 2017) (eDocket Nos. 20176-133112-01 (CN); 20176-133112-02 (R)).

³² Wichahpi Otto's Response to Enbridge's Opposition to the Petition to Intervene (June 29, 2017) (eDocket Nos. 20176-133281-02 (CN); 20176-133281-01 (R)).

³³ Petition to Intervene by Red Lake Band of Lake Superior Chippewa (June 26, 2017) (eDocket Nos. 20176-133091-01 (CN); 20176-133092-01 (R)).

³⁴ Letter to Administrative Law Judge Ann O'Reilly from Anna Finstrom (Carlton County Land Stewards) (June 30, 2017) (eDocket Nos. 20176-133388-01 (CN); 20176-133390-1 (R)); Petition to Intervene by Willis Mattison (June 30, 2017) (eDocket No. 20176-133442-02 (R)).

³⁵ Minn. R. 1400.6200, subp. 1.

(1) how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case;

(2) how the petitioner may be *directly affected* by the outcome of the case or that petitioner's participation is authorized by statute, rule, or court decision;

(3) the grounds and purposes for which intervention is sought; and

(4) petitioner's statutory right to intervene if one should exist.³⁶

Under the OAH rules, a party may object to a petition within seven days of service of the petition.³⁷ The rules further provide that the Administrative Law Judge shall allow intervention if the petitioner establishes the four elements set forth above unless the Judge finds that petitioner's interest is adequately represented by one or more parties already participating in the case.³⁸

The Judge's order on intervention must set forth whether the petitioner is allowed to: (1) file a written brief without acquiring the status of a party; (2) intervene as a party with all the rights of a party; or (3) intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.³⁹

The Commission's administrative rules of procedure also allow for the intervention of parties not originally named in the proceeding. The Commission's rules for intervention are more restrictive than the OAH intervention rules. Under the PUC rules, a petition to intervene must be granted upon a showing by the petitioner that:

(1) the petitioner is specifically considered by statute to be interested in the particular type of matter at issue;

(2) the petitioner is specifically declared by statute to be an interested party;
or

(3) the outcome of the proceeding will bind or affect the person *with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general* or the person's interests are not adequately represented by one or more other parties participating in the case.⁴⁰

³⁶ *Id.* (emphasis added).

³⁷ *Id.* at subp. 2.

³⁸ *Id.* at subp. 3.

³⁹ *Id.*

⁴⁰ Minn. R. 7829.0800, subp. 2 (2015) (emphasis added).

Thus, unlike the general contested case rules, the PUC rules require that a petitioner have a “peculiar interest” in the case which is different from interests common to the public or ratepayers in general.

Legal Analysis

The issues in this proceeding are two-fold: (1) whether the PUC should grant Enbridge’s Application for a Certificate of Need; and (2) whether the PUC should issue a Route Permit for the Proposed Line 3. Thus, the outcome of this proceeding will determine whether the Proposed Line 3 is necessary and, if needed, where the pipeline should be located.

No petitioner has identified a statutory right to intervene or a statute declaring any particular petitioner an “interested party” in this action. Therefore, any petition to intervene must detail how the petitioner’s legal rights, duties, or privileges will be determined or affected by the case; how the petitioner is directly affected by the outcome of the case; and how the proceeding will bind or affect an interest peculiar to the petitioner, as distinguished from an interest common to the public as a whole.

Petition of Red Lake Band

On June 26, 2017, the Red Lake Band filed a Petition to Intervene.⁴¹ In its Petition, the Red Lake Band asserts that the proposed route and alternative routes for the Line 3 Project run through or near the Red Lake Reservation, and would impact territory and rights ceded to the tribe in the 1863 and 1889 Treaties with the United States.⁴²

Enbridge filed a timely response to the Petition, asserting that the arguments made by the Red Lake Band “go beyond the legal standard for intervention.”⁴³ However, Enbridge states that it is not opposing the Petition.⁴⁴ Enbridge, nonetheless, reserves its right to later contest the legal and factual arguments set forth in the Petition.⁴⁵

No other responses and no objections were filed to the Petition. Time to object has now expired.

Without reaching the merits of the Band’s arguments related to treaty rights, the Red Lake Band’s Petition has met all of the criteria for intervention set forth in Minn. R. 1400.6200 and 7829.0800. Accordingly, its Petition to Intervene is **GRANTED** and the Red Lake Band shall proceed as a full party to these proceedings.

⁴¹ Petition to Intervene by Red Lake Band of Chippewa Indians (June 26, 2017) (eDocket Nos. 20176-133091-01 (CN); 20176-133092-01 (R)).

⁴² *Id.*

⁴³ Enbridge’s Response to the Petition to Intervene of the Red Lake Band of Chippewa Indians (June 29, 2017) (eDocket Nos. 20176-133327-01 (CN); 20176-133327-02 (R)).

⁴⁴ *Id.*

⁴⁵ *Id.*

Petition of John Munter

John Munter filed a Petition to Intervene on May 5, 2017. Enbridge timely objected to his Petition.

In his Petition and reply brief, Mr. Munter makes six general arguments as to why his Petition to Intervene should be granted. First, Mr. Munter asserts an obligation to oppose “the international war crime of cultural genocide against the First Nations” people living near the Alberta, Canada, tar sands where crude oil is being produced. Second, Mr. Munter asserts a general opposition to the production and processing of oil from the Alberta tar sands, claiming that such processes are “21 percent more carbon intensive” than Saudi Arabian oil production and, thus, contribute more substantially to climate change (i.e., global warming). Third, Mr. Munter asserts that, as a subsistence hobby farmer, he will be personally impacted by the climate change caused by the world’s use and reliance upon oil, including the more carbon-intensive crude from the tar sands in Alberta. Fourth, Mr. Munter argues that there is a danger that the existing Line 3 may be leaking and a potential for significant ecological harm if the Proposed Line 3 should leak. Fifth, Mr. Munter asserts that he represents the interests of various, unnamed landowners on or near the proposed route and/or alternative routes. Finally, Mr. Munter argues that he has a First Amendment right to “petition the government for redress of grievances,” as asserted above.

Enbridge opposes Mr. Munter’s Petition and moves to strike the Petition from the hearing record. Enbridge argues that Mr. Munter has failed to establish the criteria for intervention set forth in Minn. R. 1400.6200 and 7829.0800. In addition, Enbridge contends that Mr. Munter’s Petition and Reply consist of “unsupported accusations that do not further the development of the record for the Commission’s consideration.”⁴⁶ Therefore, Enbridge requests that the Judge deny the Petition and strike it from the record.

The Administrative Law Judge concludes that, while Mr. Munter’s concerns are no doubt sincere and significant, Mr. Munter has failed to identify how he will be directly affected by the outcome of this proceeding. In addition, Mr. Munter has failed to identify an interest peculiar to him (as distinguished from interests common to the public), which are not adequately represented by existing parties in this action. Therefore, Mr. Munter’s Petition for Intervention is **DENIED**.

First, Mr. Munter does not assert that he is a member of, or is authorized to represent the interests of, the First Nations people.⁴⁷ Because Mr. Munter is not a member of First Nations and is not authorized to represent that large group of people, he has not identified an interest peculiar to him and lacks standing to assert such claims.

⁴⁶ Enbridge Response in Opposition to Petition to Intervene of John Munter and Motion to Strike at 3 (May 11, 2017) (eDocket Nos. 20175-131799-03 (CN); 20175-131799-04 (R)).

⁴⁷ The First Nations is the term used to describe the indigenous people or native Indian tribes of Canada. The First Nations people are organized into hundreds of bands or governments throughout Canada.

Similarly, Mr. Munter's concern about the increase in carbon production resulting from tar sand oil processing does not assert an interest specific to Mr. Munter. Mr. Munter's concern is a general one – it does not establish a direct impact on Mr. Munter as distinguished from the public at large. Unlike the Sierra Club, which intervened to address various environmental concerns directly related to the Proposed Line 3, Mr. Munter has not asserted any impacts specific to the Proposed Line 3 or to himself. He merely asserts a general interest in curtailing climate change caused by oil production and consumption. Such a general interest is not specific to the Proposed Line 3 and does not establish an interest peculiar to Mr. Munter.

Third, while it may be true that global climate change could impact Mr. Munter's hobby farming operations in the future, Mr. Munter has failed to establish a direct nexus between the Proposed Line 3 and his hobby farm. Specifically, Mr. Munter has not articulated how his farming operation would or could be directly impacted by the Proposed Line 3. Mr. Munter has not alleged that his farm is located along the proposed route or any alternative route, or that climate change will result directly from the Line 3 Project. A general concern that oil use and production may cause or contribute to climate change that could someday affect his farming operations does not establish a sufficiently direct nexus between the Proposed Line 3 and Mr. Munter's farm.

Fourth, Mr. Munter asserts a generalized concern about the potential harm that could result from leaks in the existing or Proposed Line 3. Unexpected releases will undoubtedly be addressed by the environmental review of the Proposed Line 3 in this proceeding. This issue, however, is not specific to Mr. Munter and does not present an interest peculiar to Mr. Munter. Several parties, including the Sierra Club, Friends of the Headwaters, and Honor the Earth have cited this issue as an area of concern and interest. Therefore, Mr. Munter's concerns related to unexpected releases are adequately represented by existing parties to this action.

Fifth, Mr. Munter vaguely asserts that he represents the interests of unidentified landowners who have properties on or near the proposed route or alternatives. However, Mr. Munter has failed to establish who he represents, where the subject properties are located, whether he has been authorized to represent these landowners, or how those landowners will be directly impacted by the outcome of this proceeding. In addition, the only landowner explicitly named by Mr. Munter has disavowed her association with him.⁴⁸ Accordingly, a mere statement that Mr. Munter represents the interests of various landowners who may be impacted by the Project is insufficient to warrant intervention.

Finally, Mr. Munter argues that the First Amendment to the United States Constitution entitles him to "petition the government for redress of grievances." Mr. Munter's reliance on the First Amendment is misplaced. The First Amendment prohibits Congress from passing a law that prohibits a citizen from petitioning the government for a redress of grievances. It does not entitle a person to intervene as a party in this or any other proceeding before a government agency, court, or other tribunal.

⁴⁸ See Intervenor Status Letter (May 26, 2017) (eDocket Nos. 20175-1322614-01 (CN); 20175-132261-02 (R)).

To intervene as a party in this action, Mr. Munter must establish the criteria set forth in Rules 1400.6200 and 7829.0800. Mr. Munter has failed to establish how he will be directly affected by the Proposed Line 3, or how his peculiar interest in the First Nations peoples, Canadian tar sands oil production, global oil consumption, carbon emissions, pipeline leaks, and climate change are distinguished from the public in general. Accordingly, Mr. Munter's Petition to Intervene is **DENIED**. Mr. Munter is encouraged to submit written and oral comments in these proceedings to address his various concerns.

Petition of Jean Ross

Jean Ross filed her Petition to Intervene on May 12, 2017. Enbridge timely objected to the Petition.

Ms. Ross petitions to intervene in the Certificate of Need docket only. Ms. Ross bases her Petition on her status as a Minnesota taxpayer. Ms. Ross argues that, as a taxpayer, she will be affected by the cost of cleanup and removal of Enbridge's existing Line 3 pipeline if the Proposed Line 3 is approved. Enbridge counters that Ms. Ross's asserted interest in the Line 3 pipeline is not particular to her and is common to all taxpayers. The Administrative Law Judge agrees.

The PUC Rule 7829.0800, subp. 2, expressly provides that an intervenor's interest in a proceeding must be "peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general." Ms. Ross's asserted interest is shared by all other taxpayers in Minnesota. Accordingly, Ms. Ross does not qualify as an intervenor under the rule. Ms. Ross's Petition is, therefore, **DENIED**. Ms. Ross is encouraged to submit oral and written comments in these proceedings to address her concerns, but is not granted party status.

Petition of Mysti Babineau

Mysti Babineau filed a Petition to Intervene on May 11, 2017. Enbridge timely objected to her Petition. In her Petition, Ms. Babineau asserts six bases for intervention.

First, Ms. Babineau states that she is a member of the Red Lake Nation. Ms. Babineau argues that the Proposed Line 3 or route alternatives would cross territory ceded to the Red Lake tribe under the 1863 and 1889 Treaties. As a result, Ms. Babineau claims that an oil leak would affect her ability to harvest, hunt, and enjoy property to which she has an interest.

Second, Ms. Babineau asserts that she consumes wild rice harvested exclusively in Minnesota and that the supply of wild rice would be impacted by the construction and operation of a pipeline in the area in which wild rice is grown. Third, Ms. Babineau asserts that she is allergic to chlorinated water and cannot swim in pools. Therefore, any impact that the Proposed Line 3 would have on bodies of water in Minnesota would affect her ability to swim, enjoy nature, and spend time with her family on lakes. Fourth,

Ms. Babineau expresses concern about the impact that the Proposed Line 3 would have on drinking water, wildlife, and other natural resources in the area, which she values both as a resident of Minnesota and as a member of the Red Lake Nation.

Enbridge opposes Ms. Babineau's Petition, arguing that Ms. Babineau did not identify how she would be directly affected by the outcome of this proceeding. In addition, Enbridge argues that Ms. Babineau's interests will be represented by the two federally-recognized Indian tribes (the Mille Lacs Band and White Earth Band), as well as three environmental groups (the Sierra Club, Friends of the Headwaters, and Honor the Earth), that are already parties to this action. Ms. Babineau counters that she is not a member of any of these organizations and that the organizations do not adequately represent her interests. Ms. Babineau notes that, because "Red Lake has failed to intervene on a governmental level, it is my responsibility to...intervene."⁴⁹

On May 30, 2017, the Sierra Club filed a letter stating that it does not represent the specific interests asserted by Ms. Babineau.⁵⁰ Specifically, the Sierra Club states that it does not represent Ms. Babineau's interest in wild rice or swimming in lakes, or Ms. Babineau's asserted potential injuries related to "depression" if she is no longer able to enjoy her natural environment.⁵¹ Therefore, the Sierra Club contends that it does not adequately represent the interests of Ms. Babineau.⁵²

On June 26, 2017, the Red Lake Band filed a Petition to Intervene.⁵³ No objections were filed and the Petition has been granted, as set forth above.

Ms. Babineau is a member of the Red Lake Nation and sought to intervene in the matter because the Red Lake Band had not yet intervened to protect tribal interests.⁵⁴ The Red Lake Band Petition cites the same interests as Ms. Babineau, including the 1863 and 1889 Treaties; the hunting and harvesting rights of Red Lake members; and the potential impacts to wildlife, fish, wild rice, wetlands, and water resources along the proposed route and route alternatives.⁵⁵

Rule 1400.6200, subd. 3, provides that the Administrative Law Judge shall allow intervention if the petitioner establishes the criteria for intervention under the rules, *unless the judges finds that the petitioner's interest in the proceeding is adequately represented*

⁴⁹ Reply to Response from Enbridge by Mysti Babineau (May 24, 2017) at 1 (eDocket Nos. 20175-132175-01 (CN); 20175-132175-02 (R)).

⁵⁰ Letter to Administrative Law Judge Ann O'Reilly from the Sierra Club (May 30, 2017) (EDocket Nos. 20175-132297-02 (CN); 20175-132297-01 (R)).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Petition to Intervene of the Red Lake Band of Chippewa Indians (June 26, 2017) (eDocket Nos. 20176-133091-01 (CN); 20176-133092-01 (R)).

⁵⁴ Reply to Response from Enbridge by Mysti Babineau (May 24, 2017) at 1 (eDocket Nos. 20175-132175-01 (CN); 20175-132175-02 (R)).

⁵⁵ Petition to Intervene of the Red Lake Band of Chippewa Indians (June 26, 2017) (eDocket Nos. 20176-133091-01 (CN); 20176-133092-01 (R)).

by one or more parties already participating in the case.⁵⁶ The interests asserted by Ms. Babineau are nearly identical to those asserted by the Red Lake Band.

The Red Lake Band consists of approximately 12,000 members.⁵⁷ Rather than allowing individual members of the Band to intervene separately, it is more efficient that the tribe, as one party, represent its members' interests in these proceedings. Given the commonality between Ms. Babineau's asserted interests and those interests asserted by the Red Lake Band, the Administrative Law Judge finds that Ms. Babineau's interests will be adequately represented by the Red Lake Band. Ms. Babineau's Petition is, thus, **DENIED**. Any additional interests that Ms. Babineau has in this proceeding, which are not fully articulated by the tribe, may be asserted through the public comment process. Ms. Babineau is encouraged to submit oral and written comments in these proceedings, even though she is not granted party status.

Petition of Youth Climate Intervenors

Youth Climate Intervenors filed a Petition to Intervene on May 12, 2017. Enbridge timely objected to the Petition.

Youth Climate is "an unaffiliated group" of 12⁵⁸ "concerned citizens, each under the age of 25," who reside in Minnesota. Youth Climate asserts that members of the group will be severely impacted by the outcome of these proceedings "due to the significant emission of greenhouse gases that it would enable, and the resulting contribution to climate change" that will negatively impact Minnesota.⁵⁹ Youth Climate asserts that its interests are not represented by Sierra Club, Honor the Earth, or any other organization already a party to this action, as these groups do not bring "adequate attention and focus to the climate impacts that would result from the expansion of Enbridge's Line 3 pipeline."⁶⁰

Enbridge opposes Youth Climate's Petition, arguing that the group would "lengthen and complicate" the proceedings; that its interests are general in scope and not related specifically to the Line 3 Project; and that its interests are adequately represented by other parties to this action, specifically, the Sierra Club.

In its letter of May 30, 2017, the Sierra Club stated that it does not represent the specific interests asserted by Youth Climate.⁶¹ The Sierra Club explains that its interests

⁵⁶ Emphasis added.

⁵⁷ Petition to Intervene of the Red Lake Band of Chippewa Indians (June 26, 2017) at 2 (eDocket Nos. 20176-133091-01 (CN); 20176-133092-01 (R)).

⁵⁸ The groups was originally comprised of 13 members, but on June 10, 2017, one member withdrew due to a change in residence. See Letter to Administrative Law Judge Ann O'Reilly from Zoe Nicholie (June 10, 2017) (eDocket Nos. 20176-132979-01 (CN); 20176-132980-01 (R)).

⁵⁹ Petition to Intervene of Youth Climate Intervenors (May 12, 2017) at 2 (eDocket Nos. 20175-131806-02 (CN); 20175-131806-01 (R)).

⁶⁰ *Id.* at 7.

⁶¹ Letter to Administrative Law Judge Ann O'Reilly from the Sierra Club (May 30, 2017) (eDocket Nos. 20175-132297-02 (CN); 20175-132297-01 (R)).

in this action are not limited to climate change or the effects of climate change on persons 25 years or younger, as asserted by Youth Climate.⁶² Therefore, the Sierra Club contends that it does not adequately represent the interests of Youth Climate members.⁶³

At the Prehearing Conference on May 15, 2017, eight members of Youth Climate testified as to the direct impact the Proposed Line 3 proceedings could have on them individually.⁶⁴ The members spoke about their individualized use of land and bodies of water in the Line 3 Project area for hunting, fishing, recreation, spiritual enlightenment, and enjoyment. Thus, unlike Youth Climate's written Petition, which identifies a mere general interest in the topic of climate change, the members of the group identified specific, individualized interests directly related to the Proposed Line 3. While not all members identified a direct, peculiar interest in the outcome of these proceedings, a sufficient number of its members did, thus meeting the criteria for intervention under Rules 1400.6200 and 7829.0800.

It does not appear that any other party to this action represents the specific interests asserted by the members of Youth Climate. Accordingly, Youth Climate's Petition for Intervention is **GRANTED** and it shall proceed as a full party in these proceedings.

It should be noted, however, that Youth Climate shall be treated as one party to this proceeding, not 12 separate intervenors. Therefore, the group must identify one individual to accept service of process on behalf of the group, and Youth Climate shall file a Notice of Appearance designating that individual as soon as possible. In addition, only one member will be allowed to examine and cross-examine each witness, and only one designated member will be permitted to present oral argument and sit at counsel table. The group's designated individual is required to be present during all days of evidentiary hearing in this matter. As a single party, Youth Climate, is permitted to submit only one legal brief, as opposed to 12 separate written submissions. Unlike at the Prehearing Conference where each member of the group was permitted to identify his/her direct, individualized interest in the outcome of these proceedings, at future prehearing conferences, the evidentiary hearing, and all motion hearings, only one designated member of the group will be allowed to represent Youth Climate.

Finally, Youth Climate and all intervening parties are advised that they will be required to fully comply with all procedural and evidentiary rules and laws applicable to these proceedings, including the pre-filing of testimony and the examination of witnesses. While the retention of legal counsel is not required, a working understanding of the laws and rules applicable to these proceedings will be expected of all parties, whether or not represented by legal counsel.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Prehearing Conference Tr. 67-73 (May 15, 2017).

Wichahpi Otto

Wichahpi Otto filed a Petition to Intervene on May 15, 2017.⁶⁵ At the Prehearing Conference on May 15, 2017, Ms. Otto requested that her Petition be stayed to allow her an opportunity to review the DEIS.⁶⁶ On June 19, 2017, Ms. Otto renewed her Petition to Intervene.⁶⁷ Enbridge timely objected to Ms. Otto's Petition on June 26, 2017.⁶⁸

In her Petition, Ms. Otto asserts that the Proposed Line 3 pipeline will carry "toxic chemicals" known to destroy the environment, poison people, and cause cancer. In addition, Ms. Otto argues that the oil to be transported through the Proposed Line 3 pipeline is unnecessary, increases carbon in the atmosphere, contributes to climate change, and is contrary to the state's renewable energy policies. Ms. Otto notes that Asian populations in Minnesota rely on fishing and hunting, which could be impacted by the Proposed Line 3 Pipelines; and that Native populations have treaty rights that may be affected by the Project. Ms. Otto states that she has a duty to protect the land and people from the potential of oil leaks and spills.

Finally, in her letter renewing her Petition, Ms. Otto provides comment about the adequacy of the DEIS. Ms. Otto asserts that the DEIS does not address certain concerns related to small business owners, the construction industry, the psychological impacts of the Project, and minorities; and reflects bias in scientific research.

In opposing her Petition, Enbridge argues that Ms. Otto's comments related to the DEIS are irrelevant to her Petition to Intervene. Enbridge further contends that Ms. Otto's concerns are better suited for public comment than intervention; that her asserted interests are duplicative; and that her participation as an intervenor would lengthen and complicate the proceedings.

The Administrative Law Judge finds that Ms. Otto has failed to establish how she will be directly affected by the outcome of this proceeding or how this proceeding will impact an interest peculiar to her. While Ms. Otto asserts that the Proposed Line 3 may have impact on Asian populations' hunting and fishing activities, Ms. Otto does not allege that she would be impacted personally. Similarly, Ms. Otto refers to treaty rights held by native populations but does not indicate that she is personally impacted by such treaties or is a member of any tribal community. As set forth above, there are four federally-recognized tribes that are already parties to this proceeding who will represent that interest.

With respect to Ms. Otto's claims related to "toxic chemicals," increased carbon production, and climate change, Ms. Otto has failed to establish a direct connection

⁶⁵ Petition to Intervene of Wichahpi (a/k/a Bonnie) Otto (May 15, 2017) (eDocket Nos. 20175-131844-02 (CN); 20175-131844-01 (R)).

⁶⁶ Fourth Prehearing Conference Tr. at 56 (May 15, 2017).

⁶⁷ Letter to Administrative Law Judge Ann O'Reilly from Wichahpi Otto (June 19, 2017) (eDocket Nos. 20176-132904-02 (CN); 20176-132904-01 (R)).

⁶⁸ Enbridge's Response in Opposition to Petition to Intervene of Wichahpi Otto (June 26, 2017) (eDocket Nos. 20176-133112-01 (CN); 20176-133112-02 (R)).

between this Project and her general environmental concerns. Ms. Otto has simply expressed a general opposition to the production and transportation of oil, as opposed to a personal interest that would be directly affected by the outcome of this case. Moreover, the general interests expressed by Ms. Otto are already being addressed by other parties to this action, including the Sierra Club, Honor the Earth, and the various Indian tribes.

Because Ms. Otto has failed to establish the criteria for intervention set forth in Minn. R. 1400.6200 and 7829.0800, her Petition for Intervention is **DENIED**. Ms. Otto is encouraged to submit oral and written comments in these proceedings to address her concerns, but is not granted party status.

Reents, Mattison, and Carlton County Petitions to Intervene

Mr. Reents filed a Petition to Intervene on May 10, 2017; Mr. Mattison filed his Petition to Intervene on May 14, 2017; and Carlton County filed its Petition to Intervene on May 15, 2017.

At the Prehearing Conference on May 15, 2017, Mr. Reents, Mr. Mattison, and Carlton County requested that their Petitions be suspended until June 30, 2017. The Administrative Law Judge advised the parties that if they did not renew or reinstate their Petitions by notifying the Judge in writing by June 30, 2017, their Petitions to Intervene would be deemed withdrawn and would be dismissed by the Judge.⁶⁹ This advisory was reiterated in the Fourth Prehearing Order, which states:

3. The Petitions to Intervene filed by James Reents, Wichahpi (Bonnie) Otto, Carlton County Land Stewards, and Willis Mattison are hereby **SUSPENDED** until **June 30, 2017**. These petitioning intervenors shall advise all parties and the Administrative Law Judge in writing by 4:30 p.m. on **June 30, 2017**, if they wish to proceed with their Petitions for Intervention. **If these parties fail to advise the Judge of their interest in proceeding with their Petitions by June 30, 2017, their Petitions will be considered withdrawn and their Petitions will be dismissed with prejudice.**⁷⁰

On June 30, 2017, Carlton County formally withdrew its Petition to Intervene. Accordingly, Carlton County's Petition is **DISMISSED**.

Also on June 30, 2017, Mr. Mattison reinstated his Petition to Intervene.⁷¹ The time to object to that Petition has not yet expired. This Petition is currently under review and an order on the Petition will be filed under separate cover.

⁶⁹ Fourth Prehearing Conference Tr. at 44, 56, 75, 76, 84-85, 86 (May 15, 2017).

⁷⁰ FOURTH PREHEARING ORDER at 6 (May 31, 2017) (eDocket No. 20175-132405-01 (CN); 20175-132405-02 (R)).

⁷¹ Renewed Petition to Intervene by Willis Mattison (June 30, 2017) (eDocket No. 20176-133442-02 (R)).

As of July 3, 2017, Mr. Reents had not filed a written request to renew or reinstate his Petitions to Intervene. Based upon the terms of the Fourth Prehearing Order, the Petition to Intervene filed by Mr. Reents is deemed withdrawn and is hereby **DISMISSED**.

Conclusion

The administrative hearing process set forth in the rules and laws governing certificates of need and route permits not only allows but encourages public participation through oral and written comment at every stage of the proceeding -- from scoping to environmental review and hearing. The PUC has recently held 22 public information meetings and the Administrative Law Judge has scheduled 11 public hearings throughout the Project area.⁷² These informational meetings and public hearings are scheduled to ensure as many members of the public as possible can -- and will -- participate. In addition, written comments will be accepted throughout this process. The Administrative Law Judge listens to, reads, and considers each public comment made; will summarize these comments in her written report to the PUC; and will use these comments to arrive at a decision. The review, consideration, and summary of public comments are some of the most important responsibilities of the Administrative Law Judge in these types of proceedings.

The certificate of need and routing processes were created to ensure public involvement without the need, expense, or burden of becoming a party to the action. The Administrative Law Judge is acutely aware of the importance of public participation and the significant value it brings to the decision-making process. The Judge encourages Mr. Munter, Ms. Ross, Ms. Babineau, and Ms. Otto to utilize the comment and public hearing process to enrich these proceedings with their knowledge, expertise, information, research, viewpoints, and opinions. While not parties to the action, these individuals, along with all public commenters, will serve a critical role in the final determination of the Line 3 Project.

A. C. O.

⁷² Each of the 11 public hearings is scheduled for two sessions (afternoon and evening) to ensure as many people as possible can be heard each day.