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VIA EFILING

November 5, 2020

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

Re: In the Matter of Honor the Earth's October 27, 2020 Petition for Investigation and Complaint Concerning the Capacity of the Enbridge Mainline System, Docket PL/C-20-801

Dear Mr. Seuffert:

The purpose of this letter is to seek clarity from the Minnesota Public Utilities Commission about the Notice of Comment Period ("Notice") issued today in the above captioned docket. The Notice does not comport with applicable regulations and thereby creates unnecessary and significant uncertainty about public participation rights.

The language of Minn. R. 7829.1800 and 1900 is quite clear. Upon receiving a complaint, the Commission is required to take the following steps.

- 1) The Commission makes an "initial" decision on jurisdiction and whether reasonable grounds exist. No comment period is required for this determination.
- 2) If the Commission finds that it does not have jurisdiction, then it must issue an order dismissing the Complaint.
- 3) If the Commission finds it does have jurisdiction and the Complaint states reasonable grounds, then the Commission must serve the Complaint and an order requiring an answer on the respondent within 20 days. Once an answer is filed, the complainant may reply to this answer within 20 days.
- 4) At the same time that it serves the Complaint and order on the respondent, the Commission must give notice of a 30-day initial public comment period on the procedures that should be followed, *i.e.*, whether via a contested case proceeding, informal proceeding, or expedited proceeding, as well as give notice of a 10-day reply public comment period for responses to the initial procedural comments. The 30-day public comment period allows commenters to see Enbridge's answer before filing their

initial comments. In such notice, the Commission should also provide public notice of the right to file a petition to intervene in the complaint proceeding.

- 5) After receiving and reviewing Enbridge's answer, any reply filed by Honor the Earth to the answer, and all public comments filed during the initial and reply public comment periods, the Commission would then determine the procedure to be used to resolve the complaint, order such procedure, and rule on all petitions to intervene.

The foregoing process is not complex and it clearly identifies the rights of the parties and the public to participate in this "initial" complaint process.

In contrast, the Notice states that a 20-day comment period will address the following topics:

- Does the Commission have jurisdiction over the issues raised in Honor the Earth's filing?
- Are there reasonable grounds to investigate the allegations related to Enbridge's Line 3, Line 4, and Line 67 pipelines?
- If there are reasonable grounds to investigate, what procedures should be applied to conduct the investigation or investigations?

With regard to the first two bullet points, Minn. R. 7829.1800, subp. 1, states in relevant part:

The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation.

This subpart does not require any comment period.¹ Next, Minn. R. 7829.1800, subp. 2, states in relevant part:

On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint.

(Emphasis added.) The language of this regulation clearly states that the Commission must decide these preliminary findings before serving "the complaint on the respondent, together with an order requiring the respondent to file an answer." (Emphasis added.) It makes no logical

¹ While the Commission is of course free to conduct a comment period on its initial decision under Minn. R. 7829.1800, subp. 2, it should conduct such comment period and make a decision on jurisdiction and reasonable grounds before it "orders" Enbridge to file an answer and before it initiates a separate public comment period pursuant to Minn. R. 7829.1900, subs. 2, 3, and 5.

sense to request comments on jurisdiction and reasonable grounds at the same time that Enbridge is directed to file an answer, because the Commission must make this determination before requiring an answer. Under the regulations, it is not appropriate for the Commission to seek comment on jurisdiction and whether reasonable grounds exist at the same time that it has apparently (albeit without a formal order) required an answer within 20 days from Enbridge.

Service of a complaint and order is not the same thing as issuing a notice for a “comment” period. The Notice, therefore, appears to conflate the reply period to the answer required by Minn. R. 7829.1800, subp. 3, with the reply period to initial comments period provided by Minn. R. 7829.1900, subp. 3.

To further confuse matters, the Notice purports to establish the “comment” deadline as November 25 (20 days after the Notice) and December 15 (20 days after the answer). Under Minn. R. 7829.1800, these are the deadlines for the answer and a possible reply to the answer by Honor the Earth as he complainant. These are not public comment deadlines. The purpose of the answer is to “either stat[e] that it has granted the relief the complainant requests, or respond[] to the allegations of the complaint.” Nothing in the description of the answer says that its purpose is to provide comments on procedure. The purpose of Honor the Earth’s reply is to “admit[] or deny[] that relief has been granted.” There is no right for other parties to reply to the answer, as stated by the Notice. And, Minn. R. 7829.1800, subp. 3, says nothing about providing comments on procedure.

With regard to the third bullet point related to comment on procedures, this appears to be intended to comply with Minn. R. 7829.1900, subp. 5, but such comment request is not appropriate until after the Commission makes an initial jurisdictional and reasonable-grounds determination and serves the Complaint and an order on Enbridge. The third bullet point’s inclusion as a comment topic and the fact that the Commission has issued a “Notice of Comment Period” rather than serve an order on Enbridge implies that the Notice is intended to initiate a public comment period under Minn. R. 7829.1900, subp. 2, 3, and 5. But, the Commission’s intent is not clear.

If the Commission intends for the Notice to establish a public comment period, then it fails in this attempt because the Notice fails to state that it establishes a public comment period. The word “public” does not appear in the notice and instead it states that the first deadline applies only to “Enbridge Answer to Honor the Earth.” That comments on procedure must be open to public comment is shown by the language in Minn. R. 7829.1900, subps. 2 and 3, stating that any “person” may comment on the procedures to be used.

If the Commission intends for this to be a public comment period, then the Notice also sets the wrong public comment period length. Minn. R. 7829.1900, subp. 2, states that “[a] person wishing to comment on a formal complaint shall do so within 30 days of the date of a commission order requiring an answer to the complaint.” (Emphasis added.) This is ten days longer than the 20-day answer period provided by Minn. R. 7829.1800, subp. 2. Then, reply comments are due ten days after the close of the initial public comment deadline. Minn. R. 7829.1900, subp. 3. The purpose of having a public comment period longer than the answer period would seem to be to allow commenters time to review a respondent’s answer before filing their procedural comments. Thus, if the Notice was a proper way to order an answer, which it is

not, then the initial public comment deadline would be 30 days after November 5, or December 7 (given the weekend), and the reply comments would be due ten days after that, or December 17.

If the notice is intended to start a public comment period, then the Notice incorrectly states that reply comments are limited to replies to just Enbridge's answer; whereas Minn. R. 7829.1900, subp. 3, states that public reply comments "must be limited in scope to the issues raised in the initial comments" (emphasis added).

Finally, if the Notice is intended to trigger a public comment period under Minn. R. 7829.1900, then it also fails to provide notice that any "person" may file a petition to intervene pursuant to Minn. R. 7829.1900, subp. 4. The lack of clarity in the notice and its failure to comply with the clear language of Minn. R. 7829.1800 and 1900, creates ambiguity about whether the notice initiates the intervention period or not.

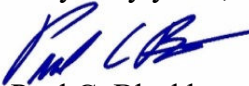
Honor the Earth seeks clarification because it really has no idea how to advise the public and possible intervenors about participation in the complaint process. If the Commission intends for the notice to trigger the public comment period required by Minn. R. 7829.1900, then it would provide too little time, would prejudice commenters because they would not have access to Enbridge's answer before filing their comments, improperly limit the scope of reply comments to answers to Enbridge's complaint, and fail to provide notice of the right to intervene.

Honor the Earth suggests that this is another example of how the Commission stumbles in its public participation, which was investigated by the legislature just last year. The regulatory process is quite clear, but by not following its own procedural rules the Commission has created great uncertainty with regard to public participation rights.

Therefore, Honor the Earth requests that the Commission withdraw the Notice and instead follow the process contained in the regulations by: (a) making its preliminary jurisdictional and reasonable-grounds decision; (b) issuing an Order finding the Complaint within its jurisdiction and that the Complaint states reasonable grounds; (c) serving this order and the Complaint on Enbridge and informing it of its right to file an answer within 20 days; (d) providing public notice of a 30-day initial public comment period and a 10-day public comment reply period on the appropriate procedures to be followed; (e) providing public notice of the intervention period; and (f) issuing an order identifying the appropriate hearing procedure for the Complaint. The public has a right to expect that the Commission will follow its own procedural rules and be clear about public participation rights.

Thank you for your time and attention.

Very truly yours,


Paul C. Blackburn
Staff Attorney
Honor the Earth

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**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

In the Matter of Honor the Earth's October 27, 2020 Petition for Investigation and Complaint Concerning the Capacity of the Enbridge Mainline System	Docket PL/C-20-801
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CERTIFICATE OF SERVICE

I, Paul Blackburn, 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.

**LETTER OF HONOR THE EARTH TO COMMISSION
REQUESTING CLARIFICATION OF INITIAL COMPLAINT PROCEDURES**

Dated this 5th Day of November, 2020.

/s Paul Blackburn
Paul Blackburn

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