

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Routing Permit for the Proposed Line 3 Replacement Project in Minnesota From the North Dakota Border to the Wisconsin Border	Court of Appeals Nos. A20-1071, A20- 1072, A20-1074, A20-1075, A20-1077 MPUC Docket Nos. PL-9/CN-14-916; PL- 9/PPL-15-137; and PL-9/CN-15-340
--	--

**MOTION FOR STAY PENDING APPEAL
OF RELATORS
RED LAKE BAND OF CHIPPEWA INDIANS AND
WHITE EARTH BAND OF OJIBWE**

Pursuant to Minn. R. Civ. App. P. 108.02, subd. 6, and R. 127, Relators Red Lake Band of Chippewa Indians and White Earth Band of Ojibwe (together “Tribes”) respectfully move the Minnesota Court of Appeals to review the Minnesota Public Utilities Commission’s (“Commission”) December 9, 2020, Order Denying Motion For Stay Pending Appeal, and its December 23, 2020, Order Denying Petition for Reconsideration, find these orders to be an abuse of discretion, and order a stay of the Commission’s May 1, 2020, Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified.

Unless this motion is granted, the objects of Tribes’ appeal will be defeated, they will be irreparably harmed and suffer serious injury in the case of reversal, and this court will lose jurisdiction over the important questions of law raised herein. Respondent Enbridge Energy, Limited Partnership, the permittee, has started construction of its Line

3 Replacement Project (“L3RP”), a new 338-mile 36-inch diameter crude oil pipeline through Minnesota, and expects to either complete or substantially complete this construction within six to nine months, that is between June and August 2021. The Tribes anticipate that this court would issue a final order in approximately July 2021, at which time construction will likely be complete or nearly complete, such that in the event of reversal Tribes would not obtain the relief they seek. The relief sought by Tribes includes Commission compliance with:

- Minn. Stat. § 216B.243, by finding a need for this pipeline based on an accurate forecast of demand and its supporting underlying data, calculations, and assumptions, and without undue consideration of issues of pipeline safety, which issues are outside of the Commission’s jurisdiction, not factors intended by the legislature, and preempted by the federal law; and
- Minn. Stat. ch. 116D, the Minnesota Environmental Policy Act (“MEPA”) and this court’s order in *In re Applications of Enbridge Energy*, 930 N.W.2d 12 (Minn. Ct. App. 2019), *review denied* (Minn. Sept. 17, 2019), by preparing an adequate Environmental Impact Statement that analyzes the potential environmental effect of the L3RP on the St. Louis River Estuary, the Duluth-Superior Harbor, and Lake Superior, before issuance of a Certificate of Need and Routing Permit for the L3RP.

Should the L3RP be constructed and this Court reverse the Commission, a remand to the Commission to determine need through additional hearings in compliance with Minn.

Stat. § 216B.243 and MEPA would be pointless and moot, because the pipeline would be constructed and the outcome of new hearings to determine the need for the pipeline, or to properly analyze its environmental effects before selection of a route, would have no practical purpose. Without a stay this court would lose jurisdiction over the important questions of law raised by Tribes. Construction of the L3RP would irreparably injure Tribes’:

- treaty-protected interests in the land, waters, plants, animals, and environments that would be destroyed or damaged by construction;
- cultural and religious rights in the lands that would be destroyed or damaged by construction; and
- right under state law to require Commission compliance with law before approval of permits and construction of permitted projects.

This motion is supported by Tribes’ accompanying brief and addendum authorized by Minn. R. Civ. App. 127, which brief includes the reasons, facts, and documents required by Minn. R. Civ. App. 108.02, subd. 6 (a)-(c).

Tribes respectfully request that the Court:

- 1) find the Commission’s December 9, 2020, Order Denying Motion for Stay Pending Appeal, to be an abuse of discretion;

- 2) stay the Commission's Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified; and
- 3) deny any request for a security bond that might be proposed.

Dated: December 29, 2020

Respectfully Submitted,

/s/ Frank Bibeau

Frank Bibeau

51124 County Road 118

Deer River, Minnesota 56636

218-760-1258

frankbibeau@gmail.com

Attorney for White Earth Band of Ojibwe

/s/ Joseph Plumer

Joseph Plumer

P.O. Box 567

Red Lake, MN 56671

218-679-1404

joe.plumer@redlakenation.org

Attorney for Red Lake Band Of Chippewa