

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|-------------------|--------------|
| Nancy Lange | Chair |
| Dan Lipschultz | Commissioner |
| Matthew Schuerger | Commissioner |
| Katie J. Sieben | Commissioner |
| John A. Tuma | Commissioner |

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

ISSUE DATE: December 14, 2017

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 Line 3 Replacement
Project in Minnesota from the North Dakota
Border to the Wisconsin Border

ORDER FINDING ENVIRONMENTAL
IMPACT STATEMENT INADEQUATE

PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, LP applied for a certificate of need and a routing permit to construct a new pipeline to replace its existing Line 3 pipeline.

The Commission referred the matter to the Office of Administrative Hearings for contested-case proceedings before an administrative law judge (ALJ) and asked the Minnesota Department of Commerce to prepare an environmental impact statement (EIS).¹

The Department issued a draft EIS in May 2016 and, after taking comments on the draft, issued its final EIS on August 17, 2017.

On November 1, 2017, ALJ Eric Lipman filed a report recommending that the Commission find the EIS adequate under Minnesota Rules part 4410.2800, subpart 4.

¹ Docket No. PL-9/CN-14-916, Order Finding Application Substantially Complete and Varying Timelines; Notice of and Order for Hearing (August 12, 2015) and Docket No. PL-9/PPL-15-137, Notice of Hearing (February 1, 2016).

The following parties filed exceptions to the ALJ's report:

- The Department
- Youth Climate Intervenors
- Honor the Earth
- Mille Lacs Band of Ojibwe
- Friends of the Headwaters
- Sierra Club
- Fond du Lac Band of Lake Superior Chippewa
- Donovan and Anna Dyrdal

On December 7, 2017, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

Minnesota Rules part 4410.2800, subpart 4, provides that the Commission must determine an EIS adequate if the EIS:

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.

Parties argued that the final EIS failed to address all significant issues for which information could be reasonably obtained.

Based on its review of the record and the parties' exceptions, and having heard their oral arguments, the Commission finds that the following four deficiencies in the EIS need to be remedied before it can be considered adequate under rule 4410.2800:

1. The EIS needs to (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.

2. The EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.
3. The EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.
4. The EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.

The Commission's Executive Secretary will serve notice of this determination within five business days of the Commission's December 7 meeting.² The supplemental information identified above must be submitted to the Commission within 60 days of the notice's service date.³ The Commission will then reconvene to determine the adequacy of the Department's submission. An order setting forth the specific grounds for the Commission's adequacy determination will follow.

ORDER

1. The Commission finds the EIS inadequate solely and specifically as follows:
 - a. The EIS needs to (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.
 - b. The EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.
 - c. The EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.

² Minn. R. 4410.2800, subp. 6.

³ *Id.*, subp. 5.

- d. The EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.