

Staff Briefing Papers

Meeting Date: June 26, 2018

Agenda Item **1

Company: Enbridge Energy, Limited Partnership

Docket No. PL-9/CN-14-916

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

PL-9/PPL-15-137

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

Issues: Should the Commission reconsider its May 1, 2018 Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman's November 2017 Report as Modified?

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Relevant Documents

Date

Commission Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman's November 2017 Report as Modified

May 1, 2018

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 Relevant Documents	Date
Mille Lacs Band and Fond Du Lac Band Joint Petition for Reconsideration of May 1, 2018 Order	May 21, 2018
Friends of the Headwaters Petition for Reconsideration of May 1, 2018 Order and Appendix	May 21, 2018
Honor the Earth Petition for Reconsideration of May 1, 2018 Order	May 21, 2018
Youth Climate Intervenors Petition for Reconsideration of May 1, 2018 Order	May 21, 2018
Enbridge Energy, Limited Partnership Answer to Petitions for Reconsideration	May 29, 2018

I. Statement of the Issues

Should the Commission reconsider its May 1, 2018 Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman’s November 2017 Report as Modified?

II. Project Description

Enbridge Energy, Limited Partnership (Enbridge) has filed a certificate of need application and a pipeline route permit application for its proposed Line 3 Replacement Project. As described in the applications, the Line 3 Replacement Project would be a new 337-mile long 36-inch diameter pipeline that would replace 282 miles of the existing 34-inch Line 3 pipeline in Minnesota. The pipeline route proposed by Enbridge would parallel the route of the existing Line 3 pipeline from the North Dakota-Minnesota border in Kittson County to the Clearbrook Terminal in Clearbrook, Minnesota, but would require a new pipeline right-of-way from the Clearbrook Terminal to the Minnesota-Wisconsin border in Carlton County. The existing Line 3 pipeline is proposed to be permanently deactivated and left in-place after the new pipeline is installed, tested, and operational. Associated facilities would include eight pumping stations, valves, metering and monitoring equipment, and related electrical facilities. Enbridge’s proposed pipeline route would cross portions of Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

As indicated in the applications, the purpose of the Line 3 Replacement Project is to replace the Minnesota portion of the existing Line 3 pipeline to: 1) address known integrity risks, 2) reduce apportionment due to decreased transport capacity related to integrity issues, and 3) restore

flexibility to the Enbridge Mainline System for more efficient operation. The new Line 3 pipeline would have an annual average capacity of 760,000 barrels per day (bpd) and would serve the same markets and transport the same products as the existing Line 3 pipeline. Operationally, the new Line 3 pipeline would continue to transport crude from Canada to the Enbridge terminal facility in Clearbrook for subsequent delivery to Minnesota refineries via interconnected pipeline facilities operated by Minnesota Pipeline Company; and delivery of crude oil to the Superior Wisconsin terminal for subsequent delivery on the Enbridge Mainline System to refineries in the Midwest, Eastern Canada, and the Gulf Coast.

III. Statutes and Rules

Under Minn. Stat. § 216B.27 and Minn. R. 7829.3000:

- A party or a person aggrieved and directly affected by a Commission decision or order may file a petition for reconsideration within 20 days of the date the decision or order is issued. Other parties to the proceeding may file answers to the petition within 10 days of filing the petition. Replies to answers are not permitted unless specifically authorized by the Commission.
- A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed on which the Commission's decision is unlawful or unreasonable.
- The Commission has the authority to decide a petition for reconsideration with or without a hearing or oral argument. The Commission may reverse, change, modify, or suspend its original decision if it finds its decision unlawful or unreasonable.
- Any application for rehearing or reconsideration not granted within 60 days from the date of filing shall be deemed denied.
- A second petition for rehearing of a Commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied will not be entertained.

Minn. Stat. § 216B.25 provides that:

The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any

order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

IV. Procedural History

On April 24, 2015, Enbridge filed an application for a certificate of need and an application for a pipeline route permit for its proposed Line 3 Replacement Project.

On February 1, 2016, the Commission issued an order that joined the certificate of need and routing dockets and authorized the Department of Commerce (Department) to prepare an environmental impact statement (EIS), in accordance with Minnesota Statutes Chapter 116D and Minnesota Rules Chapter 4410, to address issues related to the certificate of need and route permit applications.

On November 30, 2016, the Commission issued an order that, among other procedural items, approved the EIS Scoping Decision.

On December 5, 2016, the Department issued the EIS Scoping Decision and published the EIS Preparation Notice for the Line 3 Replacement Project in accordance with Minn. R. 4410.2100. Publication of the notice triggered the start of a 280-day timeline under Minn. Stat. § 116D.04, subd. 2a(h), thereby making September 11, 2017, the deadline for an adequacy decision.

On May 15, 2017, the Department issued the Draft EIS. The Department identified August 10, 2017, as the anticipated issue date for the Final EIS.

On August 14, 2017, the Commission issued an order that: 1) extended the 280-day statutory deadline for EIS preparation under Minn. Stat. § 116D.04, subd. 2a(j) by consent of the parties, 2) referred the matter of Final EIS adequacy to the Office of Administrative Hearings (OAH) for the appointment of an administrative law judge (ALJ Eric Lipman) for the purpose of developing a record and issuing a report and recommendation on the adequacy of the Final EIS, and 3) established a procedural schedule for a Commission determination on the adequacy of the Final EIS. The Commission indicated that it would decide on Final EIS adequacy sometime between November 30 and December 11, 2017.

On August 17, 2017, the Department of Commerce issued the Final EIS.¹

On November 1, 2017, ALJ Lipman filed his findings of fact, conclusions of law, and recommendation concerning the adequacy of the Final EIS. ALJ Lipman recommended that the Commission find the Final EIS to be adequate.

On December 14, 2017, the Commission issued an order that determined the Final EIS to be inadequate and identified four deficiencies that need to be remedied before the Final EIS can be considered adequate. The December 14 Order also provided that, pursuant to Minn. R. 4410.2800, subp. 5, the Department should submit the requested additional information by February 12, 2018. The Commission would then reconvene to evaluate the adequacy of the information submitted. An order setting forth the specific grounds for the Commission's adequacy determination would follow that meeting.

On February 12, 2018, the Department filed a Revised Final Environmental Impact Statement (revised Final EIS) in response to the Commission's finding of inadequacy.

On February 27, 2018, the Friends of the Headwaters, Sierra Club, the Fond Du Lac Band, the Mille Lacs Band and Enbridge filed comments on the revised Final EIS.

On February 28, 2018, Honor the Earth filed comments on the revised Final EIS.

On March 1, 2018, in response to petitions for reconsideration filed by Enbridge; Sierra Club; and a joint petition by the Fond du Lac Band, Mille Lacs Band, Leech Lake Band, White Earth Band, and Red Lake Band, the Commission issued an order denying reconsideration of its December 14, 2018 Order.

On March 14, 2018, the Friends of the Headwaters provided an additional submission on the revised Final EIS.

On March 15, 2018, the Commission met to consider the adequacy of the revised Final EIS, and on May 1, 2018 issued its *Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman's November 2017 Report as Modified* (May 1 Order).

¹ On August 9, 2017, the Governor directed the Commissioner of Commerce to extend the deadline for issuing the Final EIS from August 10, 2017 to August 17, 2017.

On May 21, 2018, the Mille Lacs Band and Fond du Lac Band jointly, and the Friends of the Headwaters, Honor the Earth and the Youth Climate Intervenors individually, filed petitions for reconsideration of the May 1 Order.

On May 31, 2018 Enbridge filed an answer to the petitions for reconsideration.

V. Petitions Requesting Reconsideration of the May 1 Order

A. Joint Petition

The Mille Lacs Band and the Fond du Lac Band (Joint Petitioners), filed a Joint Petition requesting the Commission reconsider its May 1 Order for two reasons. First, the Joint Petitioners asserted that the revised Final EIS contained no new analysis regarding the quantitative and qualitative impacts of the alternatives, nor did it identify the extent to which resource impacts of route alternatives are or are not additive. Second, the Joint Petitioners reiterated that the Final EIS remains inadequate because it did not include information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or system alternatives.

B. Friends of the Headwaters

The petition filed by Friends of the Headwaters requested that the Commission reconsider its May 1, 2018 Order and require a supplemental EIS document pursuant to Minn. R. 4410.3000, subp. 4. Friends of the Headwaters argued that the May 1 Order finding the revised Final EIS adequate puts the Commission in a position of making a final determination on a certificate of need and route permit:

- without adequate site-specific environmental impacts of pipeline construction or possible leaks or spills at key locations along the proposed route;
- without a cumulative impacts analysis of opening up a new pipeline corridor for all Enbridge pipeline and other pipeline expansions needed to transport oil to Superior, Wisconsin;
- without analysis of reasonable alternatives (and misleading and incomplete evaluations of the alternatives that were considered); and

- without a thorough description of mitigation measures needed to reduce the potential environmental and human impact of operation of this proposed pipeline, including financial assurance.

Friends of the Headwaters provided an appendix to its petition which included comments and exhibits it had previously submitted into the record related to the environmental review documents, e.g., Draft EIS, Final EIS and revised Final EIS.

C. Honor the Earth

In its petition for reconsideration, Honor the Earth provided discussion on the procedural failures it believes occurred during the environmental review process, and discussion on what it considers to be the more substantive information deficiencies of the Final EIS, both of which it asserted are sufficient to render the revised Final EIS inadequate. Specifically, Honor the Earth identified the following process concerns and information deficiencies:

Process Concerns

- The Minnesota Environmental Policy Act (MEPA) process failed to comply with statutory and regulatory language related to its timing;
- The MEPA process failed to provide individuals and parties with an opportunity to use all “Environmental Documents” including the “Environmental Impact Statement” during the contested case proceedings; and
- The Commission failed to provide meaningful responses to comments on the Draft EIS and Final EIS.

Information Deficiencies

- The EIS failed to adequately investigate and define the purpose and need for the Project, including consideration of a range of forecasts of commercial need;
- The EIS considered specious alternatives to the Project;
- The EIS failed to consider future cumulative impacts related to expansion of the capacity of the project from 760,000 barrels per day (bpd) to 915,000 bpd;
- The EIS failed to adequately study the Project’s impacts on cultural resources;

- The EIS failed to adequately assess the impacts of an oil spill into the St. Louis River Estuary, Duluth Superior Harbor, and Lake Superior;
- The EIS failed to consider the effects of energy conservation programs on the impacts of the Project.

D. Youth Climate Intervenors

The Youth Climate Intervenors asserted that the revised Final EIS remains deeply flawed and therefore inadequate. The Youth Climate Intervenors reviewed and restated the arguments it previously made regarding the Final EIS, including:

- The lack of a complete climate impact analysis of the project;
- The failure to provide detailed responses to all of the substantive comments received during the development of the Final EIS; and
- The lack of a final and proper Tribal Cultural Survey on all of the potential route alternatives.

VI. Responses to Petitions

A. Enbridge

In its response to the petitions, Enbridge requested that the Commission deny the petitions to reconsider the May 1, 2018 Order. Enbridge argued that the Petitions raise no new issues of law or fact and identify no errors that warrant reconsideration. Enbridge argued that the petitioners generally restate arguments that the Commission has previously considered and rejected, or that have no bearing on an EIS adequacy decision.

VII. Staff Analysis

Staff has reviewed the record and the arguments of all parties and does not believe that any of the petitions for reconsideration (Joint Tribal Petition, Friends of the Headwaters, Honor the Earth, and Youth Climate Intervenors) raise new issues, point to new and relevant evidence, or expose errors in the Commission's May 1 Order. Staff recommends that the Commission deny the petitions for reconsideration.

VIII. Commission Decision Alternatives

- A. Grant One or More of the Petitions for reconsideration.
- B. Deny the Joint Tribal Petition.
- C. Deny the Friends of the Headwater Petition.
- D. Deny the Honor the Earth Petition.
- E. Deny the Youth Climate Intervenors Petition.
- F. Take some other action deemed appropriate.

Staff Recommendation: B-E