

**STATE OF MINNESOTA  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph Sullivan	Commissioner
John 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**

MPUC Docket Nos. PL-9/CN-14-916 and  
PL-9/PPL-15-137

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

**ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S  
ANSWER TO PETITIONS FOR RECONSIDERATION**

**INTRODUCTION**

Enbridge Energy, Limited Partnership (“Enbridge”) submits this reply to the petitions requesting reconsideration or rehearing (“Petitions”)<sup>1</sup> filed May 21, 2020 regarding the Minnesota Public Utilities Commission’s (“Commission”) May 1 Order Finding Environmental Impact

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<sup>1</sup> Petitions were filed on May 21, 2020, by the Department of Commerce – Division of Energy Resources (“DOC-DER”), Friends of the Headwaters (“FOH”), Mille Lacs Band of Ojibwe (“Mille Lacs Band”), Youth Climate Intervenors (“YCI”) and Red Lake Band of Chippewa, White Earth Band of Ojibwe, Honor the Earth and Sierra Club (“Joint Petitioners”). On May 22, 2020, after the deadline to file a petition for reconsideration, YCI also filed Exhibits A1, A2, B1, and B2. These exhibits were late-filed and include hundreds of pages of documents not previously in the record. As such, YCI’s Exhibits A1, A2, B1, and B2 should be stricken as untimely. *See* Minn. R. 7829.3000; Minn. R. 7829.0400, subp. 5a.

Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (the “May 1 Order”), which also reissued the Commission’s prior Certificate of Need (“CN”) and Route Permit (“RP”) Orders<sup>2</sup> (collectively with the May 1 Order, the “Orders”).

The May 1 Order memorializes the Commission decision reached at its February 3, 2020 hearing. Since that time, the COVID-19 pandemic has taken hold in Minnesota and across the globe and some of the Petitions focus on its impacts, suggesting that those impacts warrant reconsideration. As discussed below, the COVID-19 pandemic has undeniably impacted Minnesota, the nation, and the world. However, those impacts, while significant, do not change the fact that the May 1 Order is consistent with Minnesota law and the record of this proceeding. The Petitions provide no “new information” impacting the Commission’s analysis of the long-term need to replace Line 3 or the Commission’s analysis of the economic and other benefits the Project will bring to the State and region – benefits desperately needed at this time.

Beyond COVID-19, the Orders thoroughly addressed the issues raised by the Petitions. As the Orders recognize:

- Enbridge’s existing Line 3 pipeline (“Existing Line 3”) has served Minnesota and neighboring states as part of the Enbridge Mainline System for more than 40 years, providing critical energy resources to Minnesota and the Midwest;<sup>3</sup>

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<sup>2</sup> The reissued Orders are: Order Granting Certificate of Need as Modified and Requiring Filings, September 5, 2018 (“September 2018 CN Order”); Order Approving Pipeline Routing Permit With Conditions, October 26, 2018 (“October 2018 RP Order”); Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration, January 18, 2019 (“January 2019 RP Order”); Order Approving Compliance Filings as Modified and Denying Motion, January 23, 2019 (“January 2019 CN Order”) and Order Accepting Tribal Economic Opportunity and Labor Education Plan as Modified (“May 2019 RP Order”).

<sup>3</sup> See September 2018 CN Order at 5; *see also, e.g.*, Ex. EN-24 at 6 (Eberth Direct); Ex. EN-19 at 4, 6 (Glanzer Direct); Ex. EN-38 at 4 (Glanzer Rebuttal).

- Existing Line 3 has a unique combination of characteristics that has made the pipeline particularly susceptible to integrity threats;<sup>4</sup>
- Although Enbridge has managed these threats through its integrity management program, absent replacement, Enbridge would be required to perform thousands of integrity digs across northern Minnesota, including on the Leech Lake and Fond du Lac Reservations and in the Chippewa National Forest, which are crossed by the Existing Line 3, and impacting the environment, local communities and landowners;<sup>5</sup>
- Enbridge and the United States Department of Justice agree that the integrity issues of the Existing Line 3 are best addressed by replacing then retiring and decommissioning the Existing Line 3, and executed a Consent Decree to that effect;<sup>6</sup>
- The Enbridge Mainline System has not fully met Enbridge's customers' demand for crude oil transportation, in part due to the Existing Line 3 operating at less than its original design capacity due to these integrity issues;<sup>7</sup>
- Multiple analyses, including a reduced refined product demand analysis, demonstrated that denial of the CN would adversely impact the adequacy, reliability and efficiency of energy supply to Minnesota and neighboring states.<sup>8</sup>
- Replacement of Existing Line 3 brings numerous benefits to Minnesota, including helping to meet state energy needs, more safely transporting crude oil than the

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<sup>4</sup> See September 2018 CN Order at 5; May 1 Order at 15; *see also, e.g.*, Ex. EN-12 at 4-5, 20-21 (Kennett Direct).

<sup>5</sup> See September 2018 CN Order at 5, 26; May 1 Order at 15; *see also, e.g.*, Ex. EN-12 at 4-5, 20-21 (Kennett Direct); Ex. EN 68 at 2-3 (Kennett Summary); Ex. EN-9 at 7 (Bergland Direct).

<sup>6</sup> See September 2018 CN Order at 5, 6; *see also* Ex. EN-30 at 15-18 (Eberth Rebuttal); Ex. EN-30, Sched. 1 at 28 (Eberth Rebuttal).

<sup>7</sup> See September 2018 CN Order at 15; May 1 Order at 14; *see also, e.g.*, Ex. EN-19 at 12 (Glanzer Direct); Ex. EN-38 at 8 (Glanzer Rebuttal); Ex. EN-56, Sched. 1 at 1 (Earnest Surrebuttal); Ex. SH-1 at 4 (Shippers Direct).

<sup>8</sup> See September 2018 CN at 13-14; May 1 Order at 14; *see also, e.g.*, Exs. EN-15, Sched. 2 at 42-47, 65 (Earnest Direct); EN-37, Sched. 1 at 18-19, 29, 31-36, 41-43 and Sched. 4 at 9-10 (Earnest Rebuttal).

existing line or rail and truck alternatives, creating thousands of construction jobs and bringing the associated economic stimulus to northern Minnesota;<sup>9</sup>

- Replacement of Existing Line 3 is consistent with Minnesota environmental, energy and climate policy;<sup>10</sup> and
- Granting the CN and using the Commission-approved route respects the sovereignty of the Leech Lake Band of Ojibwe and Fond du Lac Band of Lake Superior Chippewa.<sup>11</sup>

No new information undermines or refutes these findings. Accordingly, and because the Orders comply with Minnesota law and are supported by the record of this proceeding, Enbridge respectfully requests that the Petitions be denied so that the critical safety and integrity-driven Line 3 Replacement Project (“Project”) can move forward.

### **LEGAL STANDARD**

A petition for reconsideration or rehearing must be timely filed and must specifically set forth the grounds for rehearing.<sup>12</sup> The Commission may decide such a petition with or without a hearing and oral argument.<sup>13</sup> The Commission “may reverse, change, [or] modify” its original decision only if “the original decision, order, or determination is in any respect unlawful or

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<sup>9</sup> See September 2018 CN at 26-32; May 1 Order at 15-16; *see also, e.g.*, Exs. LC-1 (Whiteford Direct); UA-1(Barnett Direct); EN-11 (Lichty Direct); EN-41 (Lichty Rebuttal).

<sup>10</sup> See September 2018 CN Order at 32-33.

<sup>11</sup> See September 2018 CN Order at 28-29; October 2018 RP Order at 43.

<sup>12</sup> Minn. Stat. § 216B.27, subd. 2. Despite this clear direction, FOH, YCI and Joint Petitioners all attempt to incorporate by reference arguments made in multiple prior petitions. *See, e.g.*, Joint Petitioners Petition at 2. It is not other parties’ or the Commission’s job to hunt down any and every prior argument made by a party in responding to a new petition for reconsideration. In any event, to the extent those parties’ prior petitions differ in any meaningful way from their current petitions, Enbridge previously replied to those arguments in its October 5, 2018 and February 22, 2019 Answers to Petitions for Reconsideration, and the Commission properly rejected them.

<sup>13</sup> Minn. R. 7829.3000, subp. 6.

unreasonable.”<sup>14</sup> Consistent with the appellate standard that agency decisions are entitled to a “presumption of correctness,”<sup>15</sup> in proceedings before the Commission “in which the modification or vacation of any order of the Commission is sought, the burden of proof shall be on the person seeking such modification or vacation.”<sup>16</sup>

## DISCUSSION

### **I. THE COMMISSION DETERMINATION THAT THE SECOND REVISED FINAL ENVIRONMENTAL IMPACT STATEMENT (“SECOND REVISED FEIS”) WAS ADEQUATE IS CONSISTENT WITH MINNESOTA LAW AND THE COURT OF APPEALS DECISION AND SUPPORTED BY THE RECORD.**

Minnesota Rule 4410.2800 provides the legal standard the Commission must apply in determining that the Second Revised FEIS is adequate. The Court of Appeals previously directed the Commission to revise the Final Environmental Impact Statement (“FEIS”) to address the following potentially significant issue raised during the scoping process: “the potential impacts to the Lake Superior watershed including potential impacts of oil spills along the proposed Project.”<sup>17</sup> The Court of Appeals found that the FEIS was adequate in all other respects.<sup>18</sup> Accordingly, the May 1 Order focused on determining whether the Second Revised FEIS properly addressed potential impacts of an oil spill to the Lake Superior watershed.

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<sup>14</sup> Minn. Stat. § 216B.27, subp. 3.

<sup>15</sup> See, e.g., *Reserve Min. Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

<sup>16</sup> Minn. Stat. § 216B.56.

<sup>17</sup> *In re Applications of Enbridge Energy*, 930 N.W.2d 12 (Minn. Ct. App. 2019) review denied (Minn. Sept. 17, 2019).

<sup>18</sup> *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 36.

**A. The Second Revised FEIS analyzes the impact of an oil spill on the Lake Superior watershed, in compliance with the Court of Appeals decision.**

It is undisputable that Appendix V-2 of the Second Revised FEIS, the *Addendum to Assessment of Accidental Releases: Technical Report*, assesses the potential effects of an oil spill into the Lake Superior watershed. It does so using similar assumptions and modeling techniques used to model the previous seven representative sites, assuring that the analysis and results of the *Addendum* and original report are comparable.<sup>19</sup> FOH and Joint Petitioners concede that the representative spill modeling analysis at Little Otter Creek provides a useful analysis of the potential impacts of an oil spill within the Lake Superior watershed.<sup>20</sup> FOH, Joint Petitioners, and Mille Lacs Band do not argue that the Commission has not analyzed the potential impacts of an oil spill in the Lake Superior watershed, but instead argue that the Commission should have modeled more or different sites or should have done the modeling differently *this* time, despite the Commission's and Court of Appeals' earlier review of this methodology. None of these arguments point to a legal inadequacy under Minn. R. 4410.2800 or otherwise provide a valid reason for the Commission to reconsider its adequacy finding.

These parties argue that the Commission should have selected a site closer to Lake Superior to conduct spill modeling. The May 1 Order thoroughly addresses the Commission's reasoned analysis underlying selection of the Little Otter Creek location from among the approximately 150 potential sites evaluated, including the three sites that FOH, Joint Petitioners and Mille Lacs Band advance.<sup>21</sup> Contrary to the repeated arguments of these parties, the May 1 Order expressly rejects

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<sup>19</sup> May 2020 Order at 9.

<sup>20</sup> FOH Petition at 25 and Joint Petitioners Petition at 4.

<sup>21</sup> May 1 Order at 8-9.

the argument that Pokegama River, Little Pokegama River, and Nemadji River sites were not selected simply because they were in Wisconsin, but rather provides factual analysis as to why Little Otter Creek is a more representative site that further enriched the Commission's analysis and record.<sup>22</sup> Importantly, the May 1 Order provides citations to the Second Revised FEIS pointing to analysis already contained in the record that provides relevant information pertaining to potential impacts of a spill into slow-moving waterways like those suggested by FOH, Joint Petitioners and Mille Lacs Band.<sup>23</sup> The Commission's use of the representative-site approach was affirmed by the Court of Appeals,<sup>24</sup> and the Commission's continued use of this approach within the Lake Superior watershed is both reasonable and lawful.

**B. The Court of Appeals already rejected the other challenges to the adequacy of the Second Revised FEIS raised in some of the Petitions.**

FOH argues that the Second Revised FEIS is inadequate in other ways because it does not address "the fundamental flaws in the earlier versions" of the FEIS.<sup>25</sup> YCI similarly argues that the FEIS is inadequate because it does not "adequately account for GHG emissions, oil spill risks, and operational impacts."<sup>26</sup> These arguments ignore the fact that the Court of Appeals has already reviewed the entirety of the FEIS and found it adequate except for the narrow issue of oil spill modeling impacts within the Lake Superior watershed. The Commission, too, has previously

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<sup>22</sup> May 1 Order at 9.

<sup>23</sup> May 1 Order at 8, fn 28.

<sup>24</sup> *In re Enbridge Energy, Limited Partnership*, 930 N.W.2d at 24.

<sup>25</sup> FOH Petition at 23.

<sup>26</sup> YCI Petition at 2 and 24.

rejected these arguments,<sup>27</sup> and there is no reason for the Commission to reconsider its decision on these bases.

## **II. THE COMMISSION’S GRANT OF A CN IS CONSISTENT WITH MINNESOTA LAW AND SUPPORTED BY THE RECORD.**

### **A. The Commission properly determined that denial of a CN would adversely affect the adequacy, reliability and efficiency of energy supply.**

DOC-DER and others continue to claim that Enbridge failed to provide, and the Commission failed to evaluate, a demand forecast as required by Minnesota statutes and rules.<sup>28</sup> It remains unclear exactly *what kind* of “demand forecast” these parties contend is “required” – a “global crude oil demand forecast,” a “United States crude oil demand forecast,” a “regional crude oil demand forecast,” a “global refined products demand forecast,” a “United States refined products demand forecast,” or something else. Nevertheless, the Commission has considered and rejected the core claim of “lack of a forecast” multiple times before and should do so again.<sup>29</sup>

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<sup>27</sup> May 1 Order at 9.

<sup>28</sup> *See, e.g.*, DOC-DER Petition at 4-6. In fact, DOC-DER now appears to turn its idea of “the requisite demand forecast” into a threshold requirement for any crude oil pipeline CN filing and FOH expressly does so. *See* DOC-DER Petition at 6 (“The statute and rule require that Enbridge provide a long-range demand forecast and that the Commission review that forecast for accuracy. . . Enbridge has not provided the requisite long-range energy demand forecast.”); FOH Petition at 3. This marks a notable departure from DOC-DER’s post-hearing briefing position, where it spent considerable time ineffectively challenging the accuracy of Enbridge’s forecasts but not once disputing the *existence* of those forecasts. *See* DOC-DER Initial Brief at 8-65. It also runs directly counter to the DOC-DER’s position from day one that Enbridge filed a substantially complete CN Application. *See* DOC-DER Comments, May 12, 2015 (recommending the Commission find Enbridge’s CN Application substantially complete).

<sup>29</sup> September 2018 CN Order at 13-15; November 21, 2018 Order Denying Reconsideration, Excluding Filings, and Granting Variance; March 27, 2019 Order Denying Reconsideration.

Enbridge provided, and the Commission evaluated, *exactly* the forecast data required by Commission rules for large petroleum pipelines,<sup>30</sup> and that data shows the need for the Project.

Moreover, the record is replete with other evidence demonstrating the demand and need for the Project. For example, Enbridge’s shippers – the “willing and able purchasers” of Enbridge’s transportation services discussed in the Commission’s rules – intervened for the first time ever in a pipeline certificate of need proceeding before this Commission to express their support for the Project, and the two Minnesota refineries filed multiple letters of support for the Project, attesting to the Project’s critical role in assuring adequate, reliable and efficient energy supply in the years ahead.<sup>31</sup> All of this evidence more fully demonstrated in the voluminous record of this proceeding supports the Orders’ findings that denial of the CN would adversely impact the adequacy, reliability, and efficiency of energy supply to Minnesota and neighboring states, and the Petitions provide no basis for reversing that decision.

1. Enbridge provided forecasts consistent with Minnesota statutes, rules and Commission practice.

Minnesota’s certificate of need statute, Minnesota Statutes Section 216B.243 (“CN Statute”), requires a CN for any “large energy facility,” including crude oil pipelines. However, the language in the CN Statute principally speaks to large electric generation and transmission facilities.<sup>32</sup> Therefore, the CN Statute also requires the Commission to adopt specific rules

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<sup>30</sup> Minn. R. 7853.0520.

<sup>31</sup> *See, e.g.*, Ex. SH-1 at 8-10, 17 (Shippers Direct); Ex. SH-1, Scheds. A, E (Shippers Direct); Ex. SH-2 at 8 (Shippers Rebuttal); Evid. Hrg. Tr. Vol. 9A (Nov. 15, 2017) at 56-95 (Van Heyst); Ex. EN-56, Sched. 1 at 1-2 (Earnest Surrebuttal); Ex. EN-56, Sched. 1 at 4-5 (Earnest Surrebuttal); Comment by Flint Hills Resources (Nov. 21, 2017) (eDocket No. [201711-137585-01](#)).

<sup>32</sup> For example, the section of the CN Statute relied upon by DOC-DER and others to criticize the Commission’s evaluation of the need for the Project states: “No proposed large energy

applicable to the various types of “large energy facilities” it reviews.<sup>33</sup> The Commission has done so, establishing different rule requirements for electric power plants or power lines (Minnesota Rules Chapter 7849), gas storage facilities and gas pipelines (Minnesota Rules Chapter 7851), petroleum facilities and pipelines (Minnesota Rules Chapter 7853), and other “large energy facilities” not covered by those three chapters (Minnesota Rules Chapter 7855). These rules set forth the various analyses required of CN applicants and list the factors the Commission will consider in granting or denying a CN.

Contrary to the claims now made by DOC-DER and others, Enbridge provided (and the Commission evaluated) *precisely* the forecast information required by Chapter 7853, the rules governing crude oil pipeline CN proceedings. In Section 7.0 of the CN Application, Enbridge provided the following “Forecast Data” information required by Minn. R. 7853.0520:

For the geographical area to be served by the proposed facility, the applicant shall provide the following:

- A. a list of the categories of petroleum products the applicant *expects to transport* or distribute in that geographical area during *the first six forecast years, the 11th forecast year (the tenth year after the year of the application), and the 16th forecast year*;
- B. for each category of petroleum product listed in response to item A and for each of the first six forecast years, the 11th forecast year, and the 16th forecast year, a list of the annual and peak day quantities expected, using the appropriate units of measure;

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facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.” Minn. Stat. § 216B.243, subd. 3. Moreover, the specific items the commission is to “evaluate” under this subdivision include electric energy only provisions, with no applicability to natural gas pipelines, gas storage facilities or crude oil pipelines.

<sup>33</sup> Minn. Stat. § 216B.243, subd. 1.

- C. a discussion of the methods, assumptions, and factors employed for purposes of estimation in response to items A and B;
- D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in item C; and
- E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.<sup>34</sup>

As this rule recognizes, a pipeline company such as Enbridge does not produce, supply or distribute energy. Rather, it provides transportation from and to specific points on its pipeline system. For that reason, the rule requires an applicant such as Enbridge to forecast the amount of product it “*expects to transport*” on its facilities over the next 16 years and to explain the methods, assumptions, and factors used in forecasting that facility utilization.

In this proceeding as in past proceedings, Enbridge provided forecasts of the amount of crude oil it expects to transport on the Mainline System, including the Project, over the 16-year forecast period utilizing a crude oil market optimization model. As explained by Enbridge expert witness Mr. Earnest, this model attempts to mirror the crude oil distribution pattern that would arise from an efficiently operating crude oil marketplace and does not seek to either minimize or maximize the use of the Enbridge Mainline System.<sup>35</sup> Rather, it determines whether in an efficient marketplace, the Enbridge Mainline System, including the Project, will be sufficiently utilized by shippers to justify its construction. This is the kind of forecast information provided by applicants and relied upon by the Commission in multiple prior pipeline CN proceedings.<sup>36</sup> By the close of

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<sup>34</sup> Minn. R. 7853.0520 (emphasis added).

<sup>35</sup> Ex. EN-15, Sched. 2 at 60 (Earnest Direct).

<sup>36</sup> See Ex. EN-37 at 6 (Earnest Rebuttal); *In the Matter of the Application of Enbridge for a Certificate of Need for the Line 67 Phase 2*, MPUC Docket No. PL-9/CN-13-153, Order Granting Certificate of Need at 14 (Nov. 7, 2014) (discussing forecasts used in prior proceedings).

the evidentiary record, Enbridge provided 13 different sets of these forecasts, demonstrating utilization of the Enbridge Mainline System, including the Project, under a variety of demand, supply, and alternative pipeline assumptions.<sup>37</sup> These analyses fully comport with Minnesota law and Commission practice, and support the Orders' conclusion that denial of the CN would adversely impact the adequacy, reliability, and efficiency of energy supply to Minnesota and neighboring states.

In addition to specifying the forecast data required from a CN applicant, the rules discuss the criteria used by the Commission to make a CN determination. There, the rules speak generally of the Commission "considering" a number of factors, including "the accuracy of the applicant's *forecast of demand* for the type of energy that would be supplied by the proposed facility."<sup>38</sup> The rules further provide that "forecast" means "a prediction of future demand for some specified time period,"<sup>39</sup> and in the case of crude oil pipelines, 16 years. Finally, the rules define "demand" as "the quantity of a petroleum product from the applicant's facilities for which there are willing and able purchasers."

For a pipeline company such as Enbridge, the "willing and able purchasers" are its shippers – refiners, producers, integrated companies or marketers.<sup>40</sup> As the Commission properly found,

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<sup>37</sup> See Exs. EN-15, Sched. 2 at 42-47, 65 (Earnest Direct); EN-37, Sched. 1 at 18-19, 29, 31-36, 41-43 and Sched. 4 at 9-10 (Earnest Rebuttal).

<sup>38</sup> Minn. R. 7853.0130, A, (1) (emphasis added). The rules also provide that "the factors listed under each of the criteria set forth in part 7853.0130 *shall be evaluated to the extent that the commission deems them applicable and pertinent to each facility* proposed pursuant to this chapter." Minn. R. 7853.0100 (emphasis added).

<sup>39</sup> Minn. R. 7853.0010, subp. 9.

<sup>40</sup> See Ex. EN-19 at 4 (Glanzer Direct). FOH appears to deliberately ignore many of these shippers, focusing exclusively on "Canadian oil producers" who it believes stand to profit from the Project. See FOH Petition at 4-5. Of course, to achieve those increased profits, there would

these willing and able purchasers of Enbridge’s transportation service have consistently demanded significantly greater capacity on the Enbridge Mainline System than Enbridge can provide.<sup>41</sup> Moreover, these willing and able purchasers – highly sophisticated commercial parties – have not only intervened and participated in this proceeding in support of the Project, they negotiated with Enbridge to sign, and then to reaffirm, the Issue Resolution Sheet (“IRS”) by which they have *agreed to pay* for the Project over the first 15 years of the Project being placed in service.<sup>42</sup> As the Shippers succinctly captured it, “[d]emand from Shippers is essential before a pipeline moves forward.”<sup>43</sup> In this record, the willing and able purchasers of Enbridge’s transportation service have spoken time and again – the Project is critical to maintaining adequate, reliable, and efficient energy supply going forward.

Finally, additional evidence in the record supports the Orders’ conclusion that the Project is needed to support adequate, efficient, and reliable energy supply. For example, global oil demand has steadily increased since the early 1980s, and global refining capacity has steadily increased since the early 1990s.<sup>44</sup> The record also shows that the past growth trend for crude oil

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have to be deliveries of additional crude oil over the Enbridge Mainline System, which contradicts FOH’s simultaneous argument that the Project is not needed because there is no underlying need for the oil to be transported.

<sup>41</sup> September 2018 CN Order at 15; May 1 Order at 14; *see also* Exs. EN-19 at 12 (Table 3.5.3-2), 14-15 (Glanzer Direct); EN-38, Sched. 2 and 3 (Glanzer Rebuttal); EN-56, Sched. 1 at 1-2, 4-5, SH-1 at 4-5 and Sched. E (Shippers Direct); SH-2 at 5 (Shippers Rebuttal); Evid. Hrg. Tr. Vol. 9A (Nov. 15, 2017) at 26 (Kahler); Comment by Flint Hills Resources at 1-2 (Nov. 21, 2017) (eDocket No. [201711-137585-01](#)).

<sup>42</sup> *See* Exs. SH-1 at 9-10 (Shippers Direct); SH-2 at 15 (Shippers Rebuttal); EN-39 at 9 (Fleeton Rebuttal); EN-71 at 2 (Fleeton Summary); EN-1, Appendix D (IRS).

<sup>43</sup> SH-2 at 9 (Shipper Rebuttal).

<sup>44</sup> *Id.*

use is expected to continue, as the International Energy Agency forecasts global oil consumption growing by 11 million barrels per day from 2015 through 2040.<sup>45</sup> Nonetheless, Enbridge's analyses did not assume *any* increase in United States or Canadian refinery capacity beyond known capacity expansions, despite the fact that these refiners are highly competitive relative to other global refining centers.<sup>46</sup> As such, Enbridge's utilization forecasts provide a conservative view of refinery need for crude oil over the forecast period.

2. "Supply forecasts" are an essential component of a proper analysis of need, as the Commission has always recognized.

The Petitions again state that Enbridge provided "supply forecasts," not "demand forecasts," implying that the use of supply forecasts is somehow misplaced in a crude oil pipeline CN proceeding.<sup>47</sup> To the contrary, and as the Commission has always recognized, supply forecasts are critical to the evaluation of need for a crude oil pipeline. By definition, crude oil pipelines transport crude oil from a given starting point to one or several endpoints. If insufficient supply exists at the starting point, all of the downstream analysis in the world is pointless. Therefore, the Commission properly considered supply forecasts in its Orders.

As far as *which* supply forecast to use in determining whether the Project is needed, Enbridge initially used the Canadian Association of Petroleum Producers ("CAPP") June 2016 forecast of Western Canadian crude oil supply and Energy Information Administration ("EIA"), and North Dakota Pipeline Authority supply forecasts for United States crude oil production.<sup>48</sup>

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<sup>45</sup> See Ex. HTE-2 at LS-5, p. 22 (Stockman Direct).

<sup>46</sup> See Ex. EN-15, Sched. 2 at 56-57, 69-70 (Earnest Direct)

<sup>47</sup> See, e.g., FOH Petition at 5.

<sup>48</sup> Ex. EN-15, Sched. 2 at 61 (Earnest Direct).

Enbridge reviewed a number of other Western Canadian supply forecasts, but used the CAPP forecast because it was lower than all but one of these other forecasts, and because regulatory agencies in both Canada and the United States, including the Commission, have relied on CAPP forecasts in past pipeline regulatory proceedings.<sup>49</sup> Responding to DOC-DER and other criticisms of its alleged reliance on a single forecast, Enbridge provided the Enbridge Mainline System utilization forecasts assuming five other supply forecasts, reflecting various crude oil pricing assumptions, and one of which assumed that crude oil production would come solely from Canadian oil sands facilities operating and in construction in 2016.<sup>50</sup> These analyses demonstrated that “the [Project] will be utilized under a wide range of crude oil supply scenarios,”<sup>51</sup> as recognized by both the Administrative Law Judge (“ALJ”) and the Commission.<sup>52</sup>

3. The Commission properly held Enbridge to its burden of proof.

DOC-DER asserts that the Commission’s Orders “improperly shifted” the burden of proof in this proceeding off of Enbridge and on to other parties.<sup>53</sup> The Orders did no such thing. In fact, the September 2018 CN Order specifically addressed this issue and properly found that Enbridge provided substantial information supporting the need for the Project to maintain adequate, reliable,

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<sup>49</sup> Exs. EN-15, Sched. 2 at 42-47 (Earnest Direct); EN-37, Sched. 1 at 18 (Earnest Rebuttal).

<sup>50</sup> Ex. EN-37, Sched. 1 at 18-25 (Earnest Rebuttal). The record also demonstrates that the Alberta Energy Regulator and Rystad Energy’s “base case” showed higher levels of Western Canadian supply than those relied on by Enbridge. *See* Ex. EN-37, Sched. 2 at 61-63 and Figure 15 (Earnest Rebuttal).

<sup>51</sup> *Id.* at 25.

<sup>52</sup> ALJ Findings Fact, Conclusions of Law and Recommendation, April 23, 2018 at Findings 573-575; September 2018 CN Order at 13-14.

<sup>53</sup> DOC-DER Petition at 10-11.

and efficient energy supplies, and that DOC-DER and others failed to sufficiently rebut that evidence.<sup>54</sup> DOC-DER and others may disagree with the Commission’s weighing of the evidence, but it cannot be said that the Commission has shifted the burden of proof to others. The Commission properly discharged its duties and held Enbridge to its burden.

4. No “new information” warrants further proceedings to re-determine the impact of denial of a CN on the adequacy, efficiency or reliability of energy supply.

FOH, Joint Petitioners, and YCI each argue that alleged “new information” requires the Commission to either reverse its Orders or require further proceedings. For example, FOH and Joint Petitioners argue that the COVID-19 pandemic, and its impact on the energy markets, demands a re-opening of the record. Certainly, the pandemic has disrupted lives and economies across the globe. However, the “new information” provided by these long-time Project opponents as to energy demand or consumption fails to support any claim that the Project is not now needed. Neither does this “new information” call for continued delay of the Project and further proceedings. Rather, the “new information” provided demonstrates the short-term nature of the market disruption caused by the pandemic and shows that, as the national and world economies recover, demand for oil will recover as well. For example, the Rystad Energy information provided by Joint Petitioners shows virtually full recovery of global demand by the end of 2021, with that bounce back starting this month, well before the Project will be placed in service.<sup>55</sup> The Commission’s crude oil pipeline CN rules focus on the long-term (16 years) precisely to avoid

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<sup>54</sup> September 2018 CN Order at 12-14.

<sup>55</sup> Joint Petitioners Petition at 14, (Global oil demand impact of Covid-19, total demand (up), losses (down)).

being unduly swayed by temporary short-term impacts – even those as severe as COVID-19. The Orders appropriately take that long-term view.

The other “new information” offered in the Petitions similarly fails to provide any basis for re-opening the record or reconsidering the Orders. Much of this information was thoroughly and thoughtfully considered by the Commission in its February 3, 2020 hearing and found to not materially impact the Commission’s analysis and determination of need.<sup>56</sup> For example, opponents argue once again that Enbridge’s proposed change to its Mainline System commercial structure, to a mix of long-term contracts and spot service, requires reopening the record.<sup>57</sup> The irony, of course, is that Project opponents previously argued that the *lack* of long-term contracts was a significant shortcoming in Enbridge’s case for need.<sup>58</sup> Neither argument is supported by the record. As the Commission’s Orders correctly found, the record overwhelmingly demonstrates long-term, chronic apportionment on the Enbridge Mainline System, meaning shippers do not have access to the full pipeline capacity they need. While Enbridge is seeking a change to its commercial structure to incorporate up to 90 percent contract service, that change must still undergo regulatory review by the Canada Energy Regulator. Presently, the competitive toll settlement agreement and the IRS continue to apply. The Commission thoroughly explored this issue in its February 3, 2020 hearing and properly found that speculation as to future regulatory constructs for the Enbridge Mainline System did not impact the underlying need for the Project to

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<sup>56</sup> May 1 Order at 13-16.

<sup>57</sup> See Joint Petitioners Petition at 20-21.

<sup>58</sup> See FOH Initial Brief, January 23, 2018 at 15-17.

assure the future adequacy, efficiency, and reliability of energy supply to Enbridge's customers or to the people of Minnesota and surrounding states.<sup>59</sup>

Other "new information" fails to add anything fundamentally new or different to the record. YCI touts Minnesota's and others' recent efforts to encourage electric vehicle adoption and argue that those efforts will lead to dramatic reductions in the need for crude oil, stating that "the electric vehicle market looks dramatically different than it did three (sic) years ago."<sup>60</sup> YCI specifically points to a Bloomberg report on the electric vehicle outlook that postulates electric vehicles accounting for 57 percent of all passenger vehicle sales by 2040.<sup>61</sup> However, the record already includes analysis demonstrating the need for the Project, even assuming that electric vehicles account for a 75 percent share of new vehicle sales by 2035.<sup>62</sup>

Finally, Project opponents argue that "new information" on climate change has fundamentally impacted the likely production of crude oil and consumption of refined products. Enbridge addresses this issue further in Section II(C) below. However nothing "new" provided by Project opponents calls into question the record evidence supporting the Orders' conclusions that replacing Existing Line 3 with a state-of-the-art pipeline will reduce rail traffic (thereby *avoiding* greater greenhouse gas emissions) and better assure the adequacy, reliability, and efficiency of energy supply compared to leaving the Existing Line 3 in place, and requiring thousands of integrity digs across Minnesota, including across the Leech Lake and Fond du Lac Reservations and the Chippewa National Forest.

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<sup>59</sup> See Hearing Transcript, February 3, 2020 at 197-205.

<sup>60</sup> YCI Petition at 14-17.

<sup>61</sup> *Id.* at 15-16.

<sup>62</sup> Ex. EN-37, Sched. 1 at 41-43, Sched. 4 at 9-10 (Earnest Rebuttal).

**B. The Commission properly determined that the record does not demonstrate a more reasonable and prudent alternative to the Project.**

Under Minn. R. 7853.0130(B), the Commission was required to analyze whether “a more reasonable and prudent alternative to the proposed facility [was] demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.” In that analysis, the Commission had to consider the following issues concerning the Project: the appropriateness of the size, type, and timing; costs; effects on the natural and socioeconomic environments; and reliability of each alternative.<sup>63</sup> FOH and Joint Petitioners variously assert that the Commission should consider rail, capacity expansions on the existing Enbridge Mainline System, and/or the construction or expansion of other pipelines as alternatives to the Project.<sup>64</sup> The record does not support these arguments, nor does any party provide new information warranting reconsideration of this factor.

With respect to rail, the Commission already concluded that “transport by truck or rail is much more expensive and comes with greater environmental risk,” and noted that none of the information provided by parties since the September 2018 CN Order alters that analysis.<sup>65</sup> Intervenors nonetheless assert that rail should be further considered as an alternative because, for example, “[w]e have not seen several hundred oil train cars per day being transported through Minnesota in lieu of Line 3.”<sup>66</sup> This argument should be rejected for multiple reasons. First, the

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<sup>63</sup> Minn. R. 7853.0130(B)(1)-(5).

<sup>64</sup> *E.g.*, FOH Petition at 14-15 and Joint Petitioners Petition at 21-27.

<sup>65</sup> Order at 14. Notably, the Joint Petitioners agree that the rail alternatives considered by the Commission are not reasonable or practical. *See* Joint Petitioners Petition at 21-22.

<sup>66</sup> YCI Petition at 17.

Commission already determined that the record of this proceeding demonstrates that crude-by-rail is more dangerous than transportation via pipeline, and that the Project is a more reliable and efficient way to supply crude oil, even if rail is available.<sup>67</sup> The continued transportation of crude oil by rail while permitting of the Project continues does not alter these conclusions. Second, this argument misrepresents the record. Specifically, the record evidence regarding crude-by-rail shows that when insufficient pipeline capacity is available to meet shipper needs, rail traffic increases.<sup>68</sup> The record also estimated that, without the Project, an increase in crude-by-rail “would range from a low of four additional trains per day in 2021 and 2022 to a high of 16 additional trains per day in 2031.”<sup>69</sup> Neither YCI nor any other party presented information inconsistent with this evidence, and this argument does not warrant reconsideration.

With respect to expansion of capacity on the existing Enbridge Mainline System, Joint Petitioners raise the same arguments they have raised multiple times before. For example, Joint Petitioners acknowledge that they have “raised the likelihood of expansion of existing pipelines multiple times.”<sup>70</sup> The Commission has already considered and rejected these arguments. As Enbridge has also explained multiple times before, Enbridge continually evaluates the Enbridge Mainline System for opportunities to optimize its system for efficiency and to meet customer demands.<sup>71</sup> After careful evaluation, Enbridge proposed the Project because other existing or

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<sup>67</sup> *E.g.*, September 2018 CN Order at 15; May 1 Order at 16.

<sup>68</sup> Ex. SH-2 at 8-9 (Shipper Rebuttal).

<sup>69</sup> Ex. EN-10, Sched. 2 at 12 (Rennicke Direct).

<sup>70</sup> Joint Petitioners Petition at 26.

<sup>71</sup> *See* Ex. EN-19 at 14-15 (Glanzer Direct).

planned projects do not meet those customers' needs, nor do those projects meet the need of replacing the Existing Line 3.

With respect to the new construction or expansion of other pipelines, the Commission already considered information related to "different pipelines located in other areas of the country," but determined that these pipelines would not fulfill the Project's purpose: "transport crude oil from the North Dakota-Minnesota border to the Minnesota-Wisconsin border in order to 'reallocate transport capacity in Enbridge's Mainline System to make the system itself more efficient and economical for [Enbridge's] customers.'"<sup>72</sup> Intervenors still do not identify any pipelines that may be constructed or expanded that will fulfill this purpose.<sup>73</sup> Moreover, the record demonstrates that even if these other pipelines were placed in service, they would not materially impact the utilization of the Project.<sup>74</sup>

The record regarding alternatives was fully developed. The Commission carefully considered the record and determined that there is not a more reasonable and prudent alternative to meet the Project's purpose of both replacing the Existing Line 3 and continuing to meet customer demand. None of the arguments raised in the Petitions alter that conclusion, and Enbridge respectfully requests that the Petitions be denied.

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<sup>72</sup> May 1 Order at 15.

<sup>73</sup> FOH also briefly mentions SA-04 as a potential alternative to the Project. The record is already replete with evidence that SA-04 is not a reasonable and prudent alternative to the Project, and FOH's Petition raises no new facts or arguments in support of SA-04. As such, there is no basis for reconsideration on this issue.

<sup>74</sup> Ex. EN-37, Sched. 1 at 26-40 (Earnest Rebuttal).

**C. The Commission properly determined that the consequences to society of granting the CN were more favorable than the consequences of denying it.**

Under Minn. R. 7853.0130(C), the Commission compares the consequences to society of granting a CN to those of denying a CN. In this analysis, the Commission considers: (1) the relationship of the Project to overall state energy needs; (2) the effects upon the natural and socioeconomic environments of building the Project or not; (3) how the Project may induce future development; and, (4) societally beneficial uses of the output of the Project, including uses that will protect or enhance environmental quality.<sup>75</sup> FOH, Joint Petitioners, and YCI variously assert the Commission should reconsider its analysis under this factor because of issues related to climate change, spill risks, and treaty rights. Here, too, the Commission made a careful review of the record, and none of the arguments raised in the Petitions support reconsideration under this factor.

First, none of the arguments raised by any party contradict the basic underlying fact that this is a replacement project that is proposed to address ongoing safety and maintenance issues on an operating pipeline, or that it is in response to a directive from the federal government requiring that the Existing Line 3 be replaced. In its weighing of potential consequences of granting a CN for the Project, the Commission specifically determined that the consequences of replacement continue to be more favorable than no action because of the importance of replacing the Existing Line 3:

The record demonstrates that there are real, immediate, and potentially catastrophic risks associated with continuing to use Existing Line 3. The U.S. Department of Justice recognized these risks when it executed a Consent Degree in which Enbridge agreed to replace Existing Line 3 in Minnesota if it can obtain the necessary regulatory approvals to do so. And these risks were further amplified by the additional information provided in the Second Revised FEIS regarding the potential impacts to the Lake Superior watershed. Existing Line 3 is deteriorating at an alarming rate, increasing the

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<sup>75</sup> Minn. R. 7853.0130(C)(1)-(4).

public safety and environmental risks to Minnesota and requiring constant and disruptive maintenance impacting hundreds of thousands of acres of land. The Leech Lake Tribal Government has continued to urge the Commission to grant the certificate of need and remove the risks to its reservation lands posed by Existing Line 3. The environmental, sociological, cultural, and economic cost of a serious leak on Existing Line 3 would be severe, and leaks become more likely as the pipeline continues to age.<sup>76</sup>

Parties present no new information countering these conclusions or offer any other reason justifying reconsideration of the Commission’s analysis.

Joint Petitioners and YCI each argue there is “new information” regarding climate change the Commission should consider.<sup>77</sup> These arguments should be rejected. The Commission already carefully considered the Project’s potential impacts on climate change and concluded:

[M]ost of the emissions attributed to the Project would result from ultimate consumption of the oil, not the construction or operation of the Project. The Commission previously found that denial of the certificate of need would not significantly reduce demand for crude oil, and would instead lead to “increased transport of crude oil via more dangerous means such as rail, and continued use of the deteriorating Existing Line 3.” In weighing this record evidence, the Commission continues to conclude that the consequences to society of denying the certificate of need are more potentially dangerous and detrimental than the consequences of granting the certificate of need. The Commission also modified the certificate of need to mitigate the impact of the Project’s emissions, and will ensure that these modifications are reissued. The new information raised by Project opponents does not materially impact the environmental risks posed by continuing to operate Existing Line 3 nor the other societal impacts that the Commission considered. The entire record, including the new information advanced by opponents, continues to demonstrate that denying the certificate of need is not likely to reduce the transport of crude oil and, as a result, not likely to reduce the overall consumption of oil or the emissions that result.<sup>78</sup>

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<sup>76</sup> May 1 Order at 15.

<sup>77</sup> Joint Petitioners Petition at 37-29 and YCI Petition at 5-14.

<sup>78</sup> May 1 Order at 16.

None of the “new information” identified by YCI or Joint Petitioners counters these previous findings or provides any other reason for the Commission to reconsider its analysis.

Similarly, several parties assert that there is “new information” regarding spill risks that the Commission should consider. However, the parties again fail to acknowledge that the Project would replace the Existing Line 3 and will thus *reduce* the risk of a release. As the Commission previously concluded, “a crucial benefit of the Project is that it would significantly reduce the risk of an accidental oil spill by replacing the rapidly deteriorating Existing Line 3 with a state-of-the-art pipeline built with stronger materials, new technology, and more effective inspection and testing.”<sup>79</sup> None of the parties present information contradicting the Commission’s prior conclusions on this issue, and the Requests should be denied.

**D. The Commission properly found that the design, construction, or operation of the Project will comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.**

Under Minn. R. 7853.0130(D), the Commission considers whether it has been “demonstrated on the record that the design, construction, or operation of [the Project] will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.” FOH asserts that reconsideration is warranted because of various Minnesota statutes and legal doctrines.<sup>80</sup> However, the Commission appropriately considered relevant law and policy, and this argument also fails.

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<sup>79</sup> May 1 Order at 12.

<sup>80</sup> Although FOH includes this discussion in its argument related to Minn. R. 7853.0130(C), these issues appear more appropriately addressed with respect to Criterion D, here. For the same reasons discussed in this section and in Section II(C) above, FOH’s arguments on these issues also do not support reconsideration under Minn. R. 7853.0130(C).

First, FOH refers to the Minnesota Environmental Policy Act (“MEPA”) and the Minnesota Environmental Rights Act (“MERA”), and asserts that those statutes “put a thumb on the scale” with respect to the Commission’s analysis.<sup>81</sup> However, FOH fails to identify any way in which the Commission’s analysis and the CN Order are inconsistent with MEPA or MERA. Neither MEPA nor MERA prohibits the construction of energy infrastructure. Rather, MEPA generally requires that the Commission undertake appropriate environmental review, and MERA requires that the Commission consider whether there is a “feasible and prudent alternative . . . .”<sup>82</sup> The Commission conducted a detailed analysis of potential alternatives to the Project, and determined that there was no more reasonable and prudent alternative.<sup>83</sup> As such, the Commission has met its obligations under both MEPA and MERA.

Next, FOH relies upon the “public trust doctrine” to assert “the Commission has a fiduciary duty to preserve and protect the statute’s waters on behalf of all of its citizens.”<sup>84</sup> The case cited by FOH does not support this statement, nor is it supported by existing Minnesota case law. As recently recognized by the Minnesota Court of Appeals, “[c]aselaw in Minnesota on the scope and application of the public-trust doctrine is sparse.”<sup>85</sup> There is no Minnesota case law applying the public trust doctrine in the expansive way asserted by FOH. Even if there were, however, as

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<sup>81</sup> FOH Petition at 18.

<sup>82</sup> See Minn. Stat. Ch. 116D; Minn. Stat. § 116B.09, subd. 2.

<sup>83</sup> May 1 Order at 15.

<sup>84</sup> FOH Petition at 19.

<sup>85</sup> *White Bear Lake Restoration Ass’n v. Minn. Dep’t of Nat. Res.*, 928 N.W.2d 351, 365 (Minn. Ct. App. 2019) (quoting *Save Mille Lacs Sportfishing, Inc. v. Minn. Dep’t of Nat. Res.*, 859 N.W.2d 845, 851 (Minn. Ct. App. 2015)), *review granted*, (Minn. July 16, 2019).

discussed in Section II(C), the Project *reduces* the risk of a release, thereby reducing the risk of any such impacts on public waters. As such, FOH's request for reconsideration on this basis should be denied.

Finally, FOH relies upon the Next Generation Energy Act ("NGEA"), specifically Minn. Stat. § 216C.05, subd. 2, and Minn. Stat. § 216H.02, subd. 1.<sup>86</sup> FOH does not explain its apparent position that the Project is inconsistent with the NGEA, referring generally to "Minnesota's energy efficiency and renewable energy goals."<sup>87</sup> To the extent FOH asserts that these provisions require denial of the Project, that is not supported by the plain text of the statutes. For example, pipelines are not mentioned in either statute and are excluded from the scope of Minn. Stat. § 216H.03. Further, the Commission ordered modifications to the CN that are consistent with energy efficiency and renewable energy goals.<sup>88</sup> The Commission also recognized that the Project itself is designed to make the Enbridge Mainline System more efficient.<sup>89</sup>

### **III. THE COMMISSION'S GRANT OF THE RP FOR THE PROJECT IS CONSISTENT WITH MINNESOTA LAW AND SUPPORTED BY THE RECORD.**

#### **A. The Commission approved route best balances the factors the Commission must consider in approving a route.**

Mille Lacs Band argues that the Commission should reconsider its RP Order because, in Mille Lacs Band's view, in-trench replacement along the Existing Line 3 corridor (Route

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<sup>86</sup> FOH further asserts: "Unless a project is truly needed to assure energy availability and reliability, and unless the benefits of a project are truly compelling, applications for a [CN] should generally be denied." FOH Petition at 19. This is a novel reading of the applicable statutes and rules, and one that is neither supported nor required by those statutes and rules.

<sup>87</sup> FOH Petition at 19.

<sup>88</sup> September 2018 CN Order at 38.

<sup>89</sup> May 1 Order at 15.

Alternatives -07 and -08) minimizes the potential human and environmental impacts of the proposed line.<sup>90</sup> The Commission has thoroughly considered and rejected RA-07 and RA-08.<sup>91</sup> As discussed in the October 2018 RP Order, there is substantial evidence in the record regarding environmental and safety impacts of in-trench replacement and the advantages of the approved route in minimizing impacts.<sup>92</sup> Moreover, the Commission has already considered and rejected previous reconsideration petitions by other parties urging approval of RA-07 and RA-08.<sup>93</sup> Mille Lacs Band does not advance any new arguments or facts to support its position. Accordingly, the Commission should once again deny this request for reconsideration.

**B. The Project can be safely constructed.**

Joint Petitioners argue that the October 2018 RP Order should be reconsidered because it does not consider the potential health impacts of construction during the current COVID-19 pandemic.<sup>94</sup> Enbridge's top priority is safety, for not only its workforce, but for the public and surrounding communities and resources. Enbridge operates across North America to provide critical energy infrastructure and services that must continue to be available to meet people's basic needs and to fuel the economy. As such, Enbridge has implemented additional measures across its organization, including within its construction workforce, to ensure it is implementing regulatory requirements and best practices related to the COVID-19 pandemic.

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<sup>90</sup> Mille Lacs Band Petition at 4-5.

<sup>91</sup> Order Approving Pipeline Routing Permit with Conditions (Oct. 26, 2018) at 27-28.

<sup>92</sup> *Id.*

<sup>93</sup> January 2019 RP Order.

<sup>94</sup> Joint Petitioners Petition at 29-32.

While the Commission cannot be expected to predict every possible scenario that may evolve, the RP provides a sound framework of oversight and ongoing monitoring to cover a wide range of scenarios, including compliance with evolving practices related to the COVID-19 pandemic. For example, RP Section 5.4 requires that Enbridge comply with “all applicable state statutes and rules.” RP Section 5.4.1 provides additional oversight related to public safety and public health regulation. As it relates to emergency response and public health resources, the Joint Petitioners quote from this record to sections of the Second Revised FEIS that address these resources. RP Section 4.3 also requires Enbridge to file a wide range of plans and procedures related to construction practices.

Under the existing RP framework, on May 5, 2020, Enbridge filed its COVID-19 Execution Plan as part of its Construction Environmental Control Plan to document its commitment to preventing and minimizing public health impacts related to the Project construction workforce.<sup>95</sup> As noted in its compliance filing, Enbridge will continue to monitor developments related to COVID-19 recommendations and requirements and update its practices as necessary. Accordingly, there is no reason to reconsider the RP Order to address this issue.

**C. Enbridge has properly submitted all required Compliance Filings.**

YCI argues that the Commission should reconsider its RP decision because it disagrees with the RP condition addressing human trafficking prevention.<sup>96</sup> YCI asserts that it should have had more time to comment on Enbridge’s Human Trafficking Prevention Plan and that additional entities should have been consulted with in development of the Plan. As YCI notes, it previously

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<sup>95</sup> Enbridge Construction Environmental Control Plan Compliance Filing, Attachment K, Docket No. PL-9/PPL-15-137 (May 5, 2020) (eDockets ID 20205-162903-01).

<sup>96</sup> YCI Petition at 25.

raised these arguments to the Commission,<sup>97</sup> and, while YCI may have preferred a different outcome, Enbridge is in full compliance with the conditions the Commission included in the RP. The Commission's decision is both reasonable and lawful in this regard.

### **CONCLUSION**

Because the Orders comply with Minnesota law and are supported by the record of this proceeding, Enbridge respectfully requests that the Petitions be denied.

Dated: June 1, 2020

Respectfully submitted,

*/s/ Christina K. Brusven*

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<sup>97</sup> YCI Petition at 25.