



Ecological and Water Resources
500 Lafayette Road, St. Paul MN 55155

May 9, 2018

Mr. Scott Ek
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul MN 55101

RE: Proposed Line 3 Replacement Project in Minnesota
PUC Docket Numbers: PL-9/CN-14-916 and PL-9/PPL-15-137

Mr. Ek,

The Minnesota Department of Natural Resources (DNR) has reviewed the Office of Administrative Hearings' Findings of Fact, Conclusions of Law and Recommendation (Report) for the Certificate of Need and Routing permit for Enbridge's Line 3 Project and is providing these comments for the Minnesota Public Utilities Commission's (PUC's) consideration. Overall, DNR finds that the Report provides a neutral and comprehensive assessment of a large and complex record. DNR takes no position on the certificate of need question, as that question does not fall within our areas of expertise. DNR does, however, believe that the Report includes important findings regarding the natural resource impacts of establishing a pipeline corridor, particularly on the Applicant's Preferred Route (APR), and issues of non-proliferation, pipeline abandonment, and the need for financial assurance. The DNR also supports the recommended permit conditions in Conclusions of Law 43.

The remainder of DNR's comments are organized into two broad categories: 1) important issues of fact that DNR believes need correction or clarification and 2) more minor corrections or clarifications to findings of fact.

Important Issues of Fact that Need Correction or Clarification

The Report does not provide a recommendation on Route Segment Alternatives (RSAs), presumably based on the limited number of parties or agencies that submitted evidence for the record. It is important to note that the Final Environmental Impact Statement (EIS) does provide additional RSAs for the record. As noted in the Report, the DNR comment letter dated November 22, 2017 provides some additional analysis of RSAs that would be important to consider if they become relevant to issuance of a route permit.

Portions of the Report reference the EIS's comparisons of potential impacts between the Applicant's Preferred Route (APR) and other system and route alternatives. In some cases, the EIS comparisons included important caveats or clarifications associated with the quantitative values presented, but these EIS caveats or clarifications were not reflected or acknowledged in the Report's treatment of the comparisons. The bulleted list below

provides clarifications/corrections to several comparisons from the Report with which DNR is especially concerned:

- Finding of Fact (FOF) 769 – The Report indicates that the APR would impact fewer areas of habitat than SA-04. This finding is misleading as the acreage values in the Report were presumably derived from adding the different habitat types that would be impacted. The habitat types included in the EIS were forests, wetlands, rare native plant communities and cropland/pasture. Failing to distinguish cropland/pasture from these other habitat types is inappropriate due to the relative lack of habitat value that cropland/pasture provides. Taking out cropland/pasture leaves a very different comparison of habitat impact, with APR at 2866 acres vs SA-04 at 451 acres.
- FOF 1155 – Clarification on EIS evaluation of impact from risk of oil leak. The EIS minor and temporary impacts to groundwater identified in Chapters 5 and 6 were from construction and operation. These chapters purposely excluded impacts from oil leaks because that risk and impact was addressed in a separate EIS chapter (Chapter 10).
- FOF 1167 – ALJ states “with one exception, the impacts to surface waters from pipeline construction are projected to be temporary and minor for all routes.” This is not what was reported in Chapter 6 of the EIS. Specifically, Chapter 6 of the EIS identifies:
 - Temporary to permanent and negligible to major impacts from disruption of flow paths or local hydrologic connectivity.
 - Short-term to long-term and minor to major impacts from disturbance of wild rice waterbodies.
 - Long-term and major impacts from degradation to water quality and habitat from uncontained releases of Horizontal Directional Drilling (HDD) drilling mud
 - Short-term surface water impacts, which is longer than temporary.
- FOF 1185 – Reflects EIS information that the smallest area of clearing of forested and scrub/shrub wetlands would occur for APR. It is important understand the fact that the APR impact area in the EIS benefitted from Applicant refinements, which included a narrower construction corridor in wetland areas. None of the other routes benefitted from similar refinements to reduce the impact area within wetlands. As a result, the wetland impacts from all non-APR routes are overestimated, relative to the APR, due to inconsistent approaches to impact avoidance across the routes.

The Report (FOFs 765, 768, and 1402 and footnote 1649) references the DNR perspective from its November 22, 2017 comment letter that RA-07 has the least potential impact on state natural resources. However, the Report does this while discussing the Certificate of Need aspect of the matter. As clarification for the PUC, DNR did not submit a comparison between system alternatives, including SA-04, and route alternatives. The EIS was organized in such a manner that this comparison was not intended or easily completed. The DNR’s comment regarding RA-07’s relatively lower natural resource impacts was made strictly in comparison to other route alternatives, and also explicitly acknowledged that the PUC must ultimately consider a range of impact categories, not solely natural resource impacts. The DNR believes the record is undeniably clear that, when comparing the APR and SA-04, SA-04 has the least potential impact to natural resources in Minnesota. When comparing the APR to RA-07, RA-07 has the least potential impact to natural resources in Minnesota.

FOF 1183 – ALJ states “all wetland changes would be reviewed and approved by the appropriate authorizing agency prior to the start of pipeline construction.” The Applicant intends to use the Wetland Conservation Act (WCA) utility line exemption that exempts the project from WCA regulation as long as the project gets a 404

permit from the U.S. Army Corps of Engineers. Presumably the Corps will only address wetlands that are waters of the United States, thus potentially leaving WCA wetlands that are not determined to be waters of the US unregulated.

FOFs 1213 to 1215 – These findings of fact reference the Environmental Protection Plan (EPP) and consultation with appropriate agencies to avoid, minimize and mitigate impacts to vegetation. The DNR has reviewed the EPP and determined that it is too general to be relied upon for this purpose. DNR's most recent review of Commerce's "Sample Route permit" identified that the sample does not address avoidance and minimization of impacts to vegetation and does not require the company to consult with DNR on invasive species and revegetation plans. There is also mention of an agency-approved site-specific crossing plan. It is not clear what agency or what site-specific crossing plan is being referred to here. For impacts on state land, it is true that DNR-approved site-specific crossing plans would be required. However, this is not the case for the majority of the route. Given the scale of vegetation impacts, many of which won't be subject to DNR regulatory authority, it is very important to address avoidance, minimization and mitigation in any potential route permit.

Minor Corrections or Clarifications

Findings related to environmental impact comparisons between the APR and SA-04 should recognize that the APR has been developed over many years by the Applicant, allowing for refinements in location and construction corridor widths to address problematic or environmentally sensitive features. In comparison, SA-04 was developed as part of the EIS scoping process and has not benefitted from the additional refinements that would have occurred if this alignment had been subject to the same degree of evaluation and refinement as the APR.

FOF 848 states that "Applicant's analysis regarding the proposed Project's potential impact to lakes, groundwater, and wild rice waters does not consider factors such as site-specific typical conditions, seasonality, crude oil type and volume, or oil spill response times." In fact, the Applicant's analysis described under separate cover from the EIS (Assessment of Accidental Releases: Technical Report, referenced in Chapter 10 of the EIS) does describe a series of model results that depict the effect of a spill at seven different sites and site conditions, different seasons, different crude oil types, and assumed volumes and response times. The content in the Technical Report was developed to depict what a spill near different types of surface waters might look like, specifically because it was determined to be impractical to compute the effect of potential spills along every reach of each potential alignment. There are simply so many variables in space and over time that attempting to assign a numerical value to the impact of a spill along each alignment is computationally impractical. If such an analysis were attempted, the outcome of such a calculation would necessarily be fraught with assumptions and value judgements. Therefore, the EIS was developed using a strategy of simply counting water features within a given distance of each potential alignment and assuming that a higher count equated to a higher risk to those water features. Because of the complex factors described above, it is important to understand and take into considerations the limitations of the approach used in the EIS.

FOF 1174 states that "the number of water crossings along a route exacerbates the impact of an accidental release." This may or may not be true, as there are many factors that would determine the impact of an accidental release, including the nature and quality of the waters affected. It would be more accurate to state that "the number of water crossings along a route increases the number of waterbodies that could be impacted by an accidental release."

FOF 1207 states that “the need for bedrock removal from blasting is likely similar across all routes.” The Report goes beyond what is currently known in drawing this conclusion. Blasting needs are not known for portions of some routes. A general idea of the need to blast can be determined from the depth to bedrock maps. Generally bedrock depths less than 50 feet would require additional studies to determine the need for blasting, but bedrock depth greater than 50 feet would not. Geologic maps showing the depth to bedrock across the state indicate RA-03AM, RA-06, and APR have areas that require additional investigation to determine blasting needs.

FOF 1219 – This statement does not recognize the long term effects of permanent removal of trees along the corridor. There would be adverse impacts to both habitat and timber production.

FOF 1225 – This statement indicates that potential impacts from the spread of invasive species are roughly the same for all options. This conclusion is not reasonable. Routes that propose new corridors through areas of intact vegetative cover would likely result in a larger adverse impact associated with invasive species.

FOF 1226 – This statement fails to address the permanent loss of habitat and loss of economic value from decreased forest production.

FOF 1255 – This finding should recognize that permanent rights-of-way (ROWs) can also be travel corridors for predators, thereby increasing predation on prey species, some of which are rare species.

FOF 1319 – This statement does not recognize the permanent loss of forest production along the ROW. Although there will be some merchantable timber available to harvest prior to construction, the long term permanent loss of timber production is greater than the value of what would be harvested prior to construction.

The Report does not identify the potential impact to fish and wildlife from oil spills. As stated above, the EIS addressed potential impacts from oil spills in a separate chapter (Chapter 10). By referencing only the construction and operation EIS chapters (Chapters 5 and 6), the Report has missed these potential spill-related impacts.

DNR extends its appreciation in advance to the PUC considering these comments.

Sincerely,



Randall Doneen
Environmental Review Unit Supervisor

Equal Opportunity Employer