

OAH 65-2500-32764
MPUC PL-9/CN-14-916

OAH 65-2500-33377
MPUC PL-9/PPL-15-137

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

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

**FOURTH
PREHEARING ORDER**

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

TO: All Persons on the Attached Service List:

These matters came before Administrative Law Judge Ann C. O'Reilly for a Fourth Prehearing Conference on May 15, 2017, at the offices of the Public Utilities Commission in St. Paul, Minnesota.

Christina Brusven, Fredrikson & Byron, P.A., and Eric Swenson, Winthrop & Weinstine, P.A., appeared on behalf of Applicant Enbridge Energy, LP (Applicant or Enbridge).

Linda Jensen, Assistant Attorney General, and Bill Grant, Deputy Commissioner, appeared on behalf of the Minnesota Department of Commerce (DOC) Energy Environmental Review and Analysis (DOC-EERA).

Julia Anderson, Assistant Attorney General, appeared on behalf of the Department of Commerce Division of Energy Resources (DOC-DER).

Brian Meloy, Stinson, Leonard Street, appeared on behalf of Intervenor Kennecott Exploration Company (Kennecott).

Kevin Pranis, appeared on behalf of Intervenor Laborers' District Council of Minnesota and North Dakota (Laborers' Council).

David Zoll, Lockridge, Grindal, Nauen, PLLP, appeared on behalf of the Intervenor Mille Lacs Band of Ojibwe (Mille Lacs Band).

Leili Fatehi, Advocate, PLLC, appeared on behalf of Intervenor Sierra Club (Sierra Club).

Joseph Plumer appeared on behalf of Intervenor White Earth Band of Ojibwe (White Earth Band).

Richard Smith appeared on behalf of Intervenor Friends of the Headwaters (FOH).

Anna Friedlander appeared on behalf of Intervenor United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (UA).

Frank Bibeau and Paul Blackburn appeared on behalf of Intervenor Honor the Earth.

Bret Eknes and Scott Ek appeared as representatives of the Minnesota Public Utilities Commission (Commission).

Michael Ahern, Dorsey & Whitney, LLP, appeared on behalf of Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers), a petitioning intervenor.

John Munter, petitioning intervenor, appeared on his own behalf and without legal counsel.

James Reents, petitioning intervenor, appeared on his own behalf and without legal counsel.

Willis Mattison, petitioning intervenor, appeared on his own behalf and without legal counsel.

Mysti Babineau, petitioning intervenor, appeared on her own behalf and without legal counsel.

Sara Van Norman, Davis Law Office, and Philip Mahowald, Jacobson, Magnuson, Anderson & Halloran, P.C., appeared on behalf of petitioning intervenor Fond Du Lac Band of Lake Superior Chippewa (Fond Du Lac).

Wichahpi Otto (a/k/a Bonnie Otto), petitioning intervenor, appeared on her own behalf and without legal counsel.

Mark Herwig, petitioning intervenor, appeared on his own behalf and without legal counsel.

Akilah Sanders-Reed, appeared on behalf of petitioning intervenor Youth Climate Intervenors.

Anna Finstrom, Rinke Noonan, appeared on behalf of petitioning intervenor Carlton County Land Stewards (Carlton).

Jean Ross, petitioning intervenor, appeared on her own behalf and without legal counsel.

The purpose of the Fourth Prehearing Conference was to discuss the scheduling of the public hearing and prehearing deadlines in the above-entitled matters, as well as to allow proposed intervenors to be heard in support of their petitions.

Commission Directives Related to Scheduling

On February 1, 2016, the Commission issued an Order Joining the Need and Routing Dockets in this matter.¹ In that Order, the Commission directed that the Administrative Law Judge require the completion of the Final Environmental Impact Statement (FEIS) prior to the filing of Intervenor direct testimony. At the same time, the Commission directed the Administrative Law Judge to “emphasize the statutory time frame for the Commission to make final decisions on the application, and strongly encourage the parties and participants to adhere to a schedule that conforms to this time frame.”²

In its March 31, 2016 Order Denying Petitions for Reconsideration and Motion to Amend Memorandum, and Referring Petitions for Intervention to OAH, the Commission affirmed its February 1, 2016 Orders. The Commission did not amend its directive that Intervenor direct testimony be filed after the issuance of the FEIS.³ In footnote 3 of the March 31, 2016 Order, the Commission noted Applicant’s objection to the directive requiring the issuance of the FEIS before the filing of Intervenor direct testimony.⁴ However, the Commission did not reverse its February 1, 2016 Order.⁵

Based upon the Commission’s directive in its February 1, 2016 Order Joining Need and Routing Dockets, the Administrative Law Judge orders a prehearing and hearing schedule that requires the issuance of the FEIS prior to the filing of Intervenors’ direct testimony.

¹ ORDER JOINING THE NEED AND ROUTING DOCKETS (Feb. 1, 2016) (eDocket Nos. 20162-117877-02 (Certification of Need Docket “CN”); 20162-117877-01 (Route Permit Docket “R”)).

² NOTICE OF HEARING (Feb. 1, 2016) (eDocket No. 20162-117889-01 (R)).

³ ORDER DENYING PETITIONS FOR RECONSIDERATION AND MOTION TO AMEND MEMORANDUM, AND REFERRING PETITIONS FOR INTERVENTION TO OAH (March 31, 2016) (eDocket Nos. 20163-119626-02 (CN); 20163-119626-01 (R)).

⁴ *Id.*

⁵ *Id.*

Motions to Extend Intervenor Deadline and Other Deadlines

The Amended Third Prehearing Order set forth a schedule for prehearing, hearing, and post-hearing deadlines.⁶ Under that schedule, the anticipated date for the release of the Draft Environmental Impact Statement (DEIS) was April 3, 2017, and DEIS Informational Meetings would be scheduled in April and May 2017.⁷ The deadline to file petitions to intervene was May 15, 2017.⁸

On April 3, 2017, the DOC-EERA advised the Administrative Law Judge and all interested parties that the Draft Environmental Statement (DEIS) would not be released on April 3, 2017, as anticipated in the Amended Third Prehearing Order.⁹ Instead, the DOC-EERA stated that it would issue the DEIS on May 15, 2017, approximately six weeks after the original anticipated deadline and on the same date as the intervention deadline (May 15, 2017).¹⁰

On April 19, 2017, John Munter, a petitioning intervenor, filed a letter to the Administrative Law Judge requesting that the deadline for intervention be extended from May 15, 2017, to June 15, 2017, due to the delay in the filing of the DEIS.¹¹ Friends of the Headwaters filed a response supporting Mr. Munter's request.¹² Enbridge opposed Mr. Munter's request.¹³

On May 7, 2017, Honor the Earth filed a motion to extend the intervenor deadline and "subsequent due process milestones" set forth in the Amended Third Prehearing Order.¹⁴ Enbridge opposed Honor the Earth's motions.¹⁵

On May 5, 2017, the DOC-EERA filed a letter stating that it supported an extension of the deadlines for the DEIS informational meetings and the date for intervention.¹⁶ The DOC-EERA clarified its position in a letter dated May 8, 2017, which stated that the DOC-EERA supported the extension of the intervention deadline, but that

⁶ SECOND AMENDED THIRD PREHEARING ORDER (Oct. 28, 2016) (eDocket Nos. 201610-126100-01 (CN); 201610-126100-02 (R)).

⁷ *Id.*

⁸ *Id.*

⁹ Letter to Administrative Law Judge Ann O'Reilly from the DOC-EERA (April 3, 2017) (eDocket Nos. 20174-130453-01 (CN); 20174-130454-01 (R)).

¹⁰ *Id.*

¹¹ Letter to Administrative Law Judge Ann O'Reilly from John Munter (April 19, 2017) (eDocket Nos. 20174-130931-01 (CN); 20174-130931-02 (R)).

¹² Response to Enbridge Energy's Response to John Munter Request to Extend Deadline for Citizen Intervention (May 10, 2017) (eDocket Nos. 20175-131737-01 (CN); 20175-131737-02 (R)).

¹³ Enbridge Energy's Response to John Munter's Request to Extend Deadline for Citizen Intervenor (May 3, 2017) (eDocket Nos. 20175-131563-03 (CN); 20178-131563-04 (R)).

¹⁴ Honor the Earth's Motion for Extension of Intervenor Deadline and Subsequent Due Process Milestones for Contested Case Calendar (May 8, 2017) (eDocket Nos. 20175-131631-01 (CN); 20175-131631-02 (R)).

¹⁵ Enbridge Energy's Response in Opposition to Honor the Earth's Motion for Extension of Intervenor Deadline and Subsequent Due process Milestones for Contested Case Calendar (May 12, 2017) (eDocket Nos. 20175-131833-03 (CN); 20175-131833-04 (R)).

¹⁶ Letter to Administrative Law Judge Ann O'Reilly from the DOC-EERA (May 5, 2017) (eDocket Nos. 20175-131626-01 (CN); 20175-131627-01 (R)).

all other deadlines (including the public and evidentiary hearing dates) would not need to be extended because the DOC-EERA still anticipates releasing the Final Environmental Impact Statement (FEIS) on August 10, 2017, as scheduled in the Amended Third Prehearing Order.¹⁷

Between May 5, 2017, and May 15, 2017, eleven (11) petitions to intervene were filed by the petitioning intervenors named above. Timely objections were filed by Enbridge with respect to the petitions of John Munter, Mysti Babineau, Mark Herwig, Youth Climate Intervenors, and Jean Ross.¹⁸

At the Prehearing Conference on May 15, 2017, the Administrative Law Judge ruled that the Intervention deadline would be extended to June 30, 2017. Because the deadline to intervene was being extended, the Judge offered all petitioning intervenors the option to suspend their petitions to intervene until June 30, 2017, to allow them an opportunity to review the DEIS and determine whether they still wished to pursue intervention. James Reents, Wichahpi (Bonnie) Otto, Carlton County Land Stewards, and Willis Mattison opted to suspend their petitions until June 30, 2017. All other petitioners wished to have their petitions decided prior to the intervention deadline.

Enbridge Energy expressed that it was not opposing the intervention petitions of Fond Du Lac Band of Lake Superior Chippewa, Carlton County Land Stewards, or Shippers for Secure, Reliable, and Economical Petroleum Transportation. The deadline to object to the intervention petitions of Fond Du Lac and the Shippers has now expired.¹⁹ To date, no objections have been filed by any party or participant to this action.

On May 30, 2017, Mr. Herwig filed a letter requesting to withdraw his Petition to Intervene.²⁰

Based upon the submission of the parties and the hearing record,

IT IS HEREBY ORDERED THAT:

Parties to the Contested Proceedings and Intervention

1. The Petitions to Intervene filed by Fond Du Lac and Shippers are hereby **GRANTED**. Fond Du Lac and Shippers shall be permitted to participate in this proceeding with all rights of a party.

¹⁷ Letter to Administrative Law Judge Ann O'Reilly from the DOC-EERA (May 8, 2017) (eDocket Nos. 20175-131691-01 (CN); 20175-131690-01 (R)).

¹⁸ Enbridge Energy's Response in Opposition to Petition to Intervene of John Munter and Motion to Strike (May 11, 2017) (eDocket Nos. 20175-131799-03 (CN); 20175-131799-04 (R)); Enbridge Energy's Response in Opposition to Petitions to Intervene of Mysti Babineau, Jean Ross, Youth Climate Intervenors, and Mark Herwig (May 18, 2017) (eDocket Nos. 20175-132016-02 (CN); 20175-132016-04 (R)).

¹⁹ The Fond Du Lac Petition to Intervene was filed on May 11, 2017. The Shippers' Petition to Intervene was filed on May 15, 2017. Under Minn. R. 1400.6200, subp. 2, a party has seven days in which to object to a petition for intervention. Therefore, the date to object to the Fond Du Lac Petition expired on May 19, 2017. The date to object to the Shippers' Petitions expired on May 22, 2017.

²⁰ Letter to Administrative Law Judge Ann O'Reilly from Mark Herwig (May 30, 2017) (Edocket No. 20175-132323-01 (R)).

2. Mark Herwig's Petition to Intervene is **DISMISSED**.

3. The Petitions to Intervene filed by James Reents, Wichahpi (Bonnie) Otto, Carlton County Land Stewards, and Willis Mattison are hereby **SUSPENDED** until **June 30, 2017**. These petitioning intervenors shall advise all parties and the Administrative Law Judge in writing by 4:30 p.m. on **June 30, 2017**, if they wish to proceed with their Petitions for Intervention. **If these parties fail to advise the Judge of their interest in proceeding with their Petitions by June 30, 2017, their Petitions will be considered withdrawn and their Petitions will be dismissed with prejudice.**

4. The Administrative Law Judge has taken under advisement the Petitions to Intervene filed by Mr. Munter, Ms. Babineau, Youth Climate Intervenors, and Ms. Ross. An order on these Petitions will be filed under separate cover.

5. The deadline to intervene in this action is hereby **EXTENDED** to **June 30, 2017**. All other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minnesota Rules Parts 1400.6200 and 7829.2500 (2015) no later than 4:30 p.m. on **June 30, 2017**. Copies of the Petition to Intervene must be served upon the Administrative Law Judge, all existing parties and participants, and the Commission. A Notice of Appearance must be filed with the Petition. The Petition and Notice of Appearance must be filed in the Commission's eDocket's electronic system. Petitioners shall provide an electronic mail address on the Petition or Notice of Appearance. **All Intervenors will be held to the schedule set forth below. Unless extraordinary circumstances exist, the schedule will not be modified to accommodate late intervention. Therefore, parties intending to intervene should do so as early in the process as possible.**

6. Any objection to a Petition for Intervention shall be filed within seven (7) days of the filing of the Petition. See Minn. R. 1400.6200, subp. 2. The objection shall state the party's reasons for objection and shall be served upon the Administrative Law Judge, all existing parties and participants, the party petitioning to intervene, and the Commission.

7. The service list has already been established for this matter and shall only be amended upon the granting of a Petition for Intervention by the Administrative Law Judge and the filing of a Notice of Appearance. Interested members of the public who are not on the service list are invited to receive notifications through the "Subscribe to Dockets" feature of the eDocket system. Intervenors and other parties will only be added to the official service list upon the filing of a Notice of Appearance. Only parties and Intervenors shall file Notices of Appearance. All others (i.e., interested individuals) shall subscribe to the dockets on the eDocket system.

8. Consistent with the Order Regarding Notices of Appearance filed on May 31, 2016, the Administrative Law Judge advises that **filing a Notice of Appearance does not make a person or group a party to this action and does not place a person or group on the official service list of these actions**. Only parties and statutory

participants (i.e., the DOC-EERA and DOC-DER) will be included on the official service list. Intervenorors who have been granted full party status by the Administrative Law Judge are included on the service list. The Administrative Law Judge will finalize the official service list at the next prehearing conference on **July 12, 2017**. **All persons and groups that have not been accepted as a party, intervenor, or participant as of July 12, 2017, will be removed from the official service list.**

9. **It is not necessary to be an intervenor or party to participate in these proceedings.** Members of the public are welcome (and, in fact, encouraged) to submit written comments during the various comment periods, appear at all hearings and forums, and participate in the public hearings. The public hearings will be open to all members of the public, and will provide opportunities for individuals and groups to present evidence and argument on the issues in each case.

10. Members of the public may still receive notices of filings and access to public documents filed in the case by subscribing to the dockets on the Commission's eDockets system: <https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin>. To subscribe, enter the docket numbers of these actions (14-916 and 15-137). Individuals must subscribe separately to each docket. Upon subscribing to the dockets, you will be provided with electronic notice of all filings, as well as access to the public documents filed in the case.

Schedule

11. Below is the **REVISED** prehearing and hearing schedule for the combined dockets. The dates set forth below may be further modified by the Administrative Law Judge upon motion requesting modification and explaining the reasons that a modification is necessary and appropriate; or, with regard to environmental review, upon request from the DOC-EERA, for good cause shown. Except in extraordinary circumstances where good cause is shown, the dates will not be modified to accommodate late intervention.

DATE	EVENT	DESCRIPTION
April 11, 2016 (COMPLETED)	Notice of Availability of Environmental Assessment Worksheet (EAW) and Draft Scoping Decision Document	Commission publishes EAW and issues Draft Scoping Decision Document for public review and comment on the scoping process.
April 25, 2016 – May 11, 2016 (COMPLETED)	Scoping Meetings	12 scoping meetings were conducted by the DOC-EERA

DATE	EVENT	DESCRIPTION
May 26, 2016 (COMPLETED)	End of Scoping Comment Period	Deadline to submit comments regarding scope of environmental review and route alternative selection.
September 22, 2016 (COMPLETED)	Environmental Impact Statement (EIS) Scoping Decision due	Identifies all routes and route alternatives to be considered and the issues to be examined in the Environmental Impact Statement (EIS).
December 5, 2016 (COMPLETED)	EIS Preparation Notice served	Advises interested parties as to the preparation of the DEIS.
January 31, 2017 (COMPLETED)	Applicant's Direct Testimony Due	Direct Testimony for Applicant's witnesses shall be served and filed by this date.
May 15, 2017 (COMPLETED)	Issuance of DEIS	DOC-EERA shall prepare and file a Draft Environmental Impact Statement by this date. If additional time is needed to prepare the DEIS, the DOC-EERA shall request additional time from the Administrative Law Judge and such requests shall be freely granted. A hard copy of the draft DEIS shall be mailed to the Administrative Law Judge by the DOC-EERA.
June 6, 7, 8, 9, 12, 13, 14, 15, 16, 20, 21, and 22, 2017	Public Information Meetings Times and locations of meetings were published in the Revised Notice of Availability of Draft Environmental Impact Statement and Public Information Meetings, eFiled on May 16, 2017.	Conducted by DOC-EERA. Describes DEIS and provides opportunity for public comment. Proposed route and route alternatives, as well as system alternatives, will be identified in the DEIS. The informational meetings provide the public an opportunity to learn about the proposed routes, route alternatives, and system alternatives, as well as an opportunity to present comments on the same. Hard copies of the DEIS shall be available for viewing at public libraries in all counties along the proposed route and route

DATE	EVENT	DESCRIPTION
		alternatives. The list of those libraries is set forth on the Notice of Availability of DEIS.
June 30, 2017	Intervention Deadline	All Petitions for Intervention shall be served and filed by this date. Objections to the Petitions shall be served and filed by July 7, 2017 .
July 10, 2017	DEIS Comment Period Ends	All comments on the DEIS shall be file by this date.
July 12, 2017 1:30 p.m. Commission Offices St. Paul, MN	Fifth Prehearing Conference	Prehearing conference to discuss public hearings, comment period deadlines, and all other prehearing and hearing matters.
August 10, 2017 (anticipated)	Issuance of Final Environmental Impact Statement (FEIS)	<p>DOC-EERA shall prepare and file a Final Environmental Impact Statement (FEIS) by this date. If additional time is needed to prepare the FEIS, the DOC-EERA shall request additional time from the Administrative Law Judge and such requests shall be freely granted. A hard (paper) copy of the FEIS shall be mailed to the Administrative Law Judge by the DOC-EERA.</p> <p>Hard copies of the FEIS shall be available for viewing at public libraries in all counties along the proposed route and route alternatives. The list of those libraries is set forth on the Notice of Availability of DEIS.</p>
September 11, 2017	Intervenors' Direct Testimony due	Direct Testimony for Intervenors' witnesses shall be served and filed by this date.
October 11, 2017	Rebuttal Testimony due	All rebuttal Testimony shall be served and filed by this date.
October 23, 2017	Surrebuttal Testimony due	All surrebuttal testimony shall be served and filed by this date.
September 25, 2017 to October 31, 2017	Public Hearings	The purpose of this hearing is to give the public the opportunity to comment, provide

DATE	EVENT	DESCRIPTION
Notice will be provided pursuant to rule and law prior to the hearings.	<p>Anticipated dates, times and locations (to be finalized at July 10, 2017 Prehearing conference).</p> <p>Sept. 26, 2017: Thief River Falls 1-4 pm and 6-9 pm</p> <p>Sept. 27, 2017: Bemidji 1-4 pm and 6-9 pm</p> <p>Oct. 10, 2017: Grand Rapids 1-4 pm and 6-9 pm</p> <p>Oct. 11, 2017 Cloquet 1-4 pm and 6-9 pm</p> <p>Oct. 12, 2017: Hinkley 1-4 pm and 6-9 pm</p> <p>Oct. 24, 2017: McGregor 1-4 pm and 6-9 pm</p> <p>Oct. 25, 2017: Brainerd 1-4 pm and 6-9 pm</p> <p>Oct. 26, 2017: Little Falls 1-4 pm and 6-9 pm</p>	<p>oral and written testimony, and question witnesses who are present at the hearing.</p> <p>Party/intervenor questioning of witnesses and the presentation of evidence shall occur at the evidentiary hearing in St. Paul.</p> <p>Pre-filed testimony, applications, and the DEIS shall be available at each hearing for review by the public.</p> <p>In addition, the Applicant shall make Public Hearing transcripts available at public libraries located in all counties along the proposed route and route alternatives. (See Notice of Availability of DEIS for locations of public libraries.) Cost of hearing transcript copies to be paid by the Applicant.</p> <p>Please note that hearings will end upon the final speaker. Please arrive promptly to be heard. If the final speaker is heard prior to the scheduled end time, the hearing will adjourn.</p>
November 6-10, 2017	Evidentiary Hearing at Commission Offices in St. Paul, MN	Evidentiary hearing on the Petition for a Certificate of Need and Route Permit Application.

DATE	EVENT	DESCRIPTION
November 22, 2017	Public Comment Period and Administrative Record Closes	Transcript of contested case hearing to be filed and made available to the public. All comments shall be filed with the Commission using the SpeakUp system.
December 11, 2017	Initial Briefs of Parties Due	Initial briefs from the parties are due to be served and filed by this date.
January 15, 2018	Reply Briefs of Parties	Reply briefs shall be served and filed by this date.
February 28, 2018 (Anticipated)	Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommendation to be filed	The Administrative Law Judge shall serve and file her report recommending a route on or around this date.
April 30, 2018 (Anticipated)	MPUC Decision	It is anticipated that the MPUC will issue its final decision on or around this date.

Timeliness

12. The Applicant acknowledges that the schedule set forth above extended the timeline for a Commission decision beyond the timeline set forth in statute. Other timeliness issues may arise depending on the date of issuance for the DEIS and FEIS, as well as the EIS adequacy decision.

Discovery

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail. If expressly requested by another party, the requesting party shall follow the electronic mail message with a copy of the request sent by regular U.S. mail or other delivery service to all parties.

14. Information requests shall **NOT** be eFiled or served on the Administrative Law Judge or the court reporter. Additionally, responses to information requests shall **NOT** be eFiled or served on the Administrative Law Judge or court reporter.

15. Other than a request by a government agency, to the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13 (2016), the providing party may

require that the requesting party comply with the terms of the Protective Orders issued in this matter before providing the information. A request containing such material shall only be between the requesting party and responding party, and the requesting party shall follow the electronic mail message with a public version of the request sent by regular U.S. mail or other delivery service to all parties. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by electronic mail or other means after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday, is considered received on the next business day.

16. The party responding to the request shall provide the requested information to the requesting party within **eight (8) business days** of receipt of the information request. A business day does not include a weekend day or a Minnesota state holiday. In accordance with Minn. R. 1400.6100. subp. 1 (2015), the day that the information request is received is not counted in the eight-day period. If the request is received after 4:30 p.m. on a business day, the following business day is also not counted in the calculation of the eight-day response period.

17. Public and Nonpublic responses to information requests shall be submitted by electronic mail message. If expressly requested by another party, the responding party shall follow the electronic mail message with a copy of the response sent by regular U.S. mail or other delivery service. Any response received after 4:30 p.m. is considered to be received the following business day.

18. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery service so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (flash drives) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

19. If the responsive information cannot be supplied within eight (8) business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

20. A request has been filed by the DOC-EERA to conduct an *in camera* review of whether certain data in the DEIS, consisting, specifically, of the volume of oil that could be released in an accidental, hypothetical release at seven water crossing locations, is public or nonpublic. The Administrative Law Judge is currently reviewing that data *in camera*. Enbridge has requested a formal hearing on the issue. The Judge will issue an

Order for Hearing under separate cover. The date for the hearing shall be **June 12, 2017, at 1:30 p.m. in Courtroom 1 of the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.**

21. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions shall be eFiled through the eDockets system. A courtesy copy of the motion papers shall be submitted to the Administrative Law Judge by electronic mail. Notice of such motions will be made by electronic mail. Motions to address discovery requests and responses will usually be heard by telephone conference.

Pre-filed Testimony

22. Pre-filed testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier. A paper copy of pre-filed testimony shall be provided to the Administrative Law Judge at the time of filing.

23. A paper copy of pre-filed testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing. **All documents entered into evidence at a hearing, including pre-filed testimony but excluding over-sized documents, shall be placed in a three-ring binder for ease of reference and use.**

24. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any supplemental record data will be identified by the Administrative Law Judge as included in the official record.

25. Pre-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Any new affirmative matter that is not offered in reply to another party's rebuttal testimony and exhibits will not be allowed in surrebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any pre-filed testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three (3) days prior to the commencement of the evidentiary hearing. Corrections to any pre-filed testimony shall be identified and marked on the paper copy of the exhibit which is entered into the hearing record.

26. Pre-filed direct testimony of the Applicant and any party proposing a route or route alternative shall be placed for public review 14 days prior to the first hearing date at public libraries in each county where a public hearing is to be held.

27. **Three** copies of pre-filed testimony of each witness shall be made available for the review by the public at each public hearing.

Witnesses

28. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: (1) Applicant; and (2) Intervenor in the order of their intervention. The DOC-EERA and DOC-DER will be available for cross-examination. Questioning of the witnesses shall proceed in the same order: Applicant, Intervenor in the order of Intervention, DOC-DER, DOC-EERA, Commission staff, members of the public, and the Administrative Law Judge.

29. The Applicant and any other party sponsoring witnesses who are proposing a route or route alternative and who have pre-filed testimony shall make the witnesses available at the public and evidentiary hearings in the matter or shall request an exemption. A knowledgeable person must be available at the public and evidentiary hearings to respond to questions where the particular witness is exempted from attending.

30. Witnesses will be allowed to summarize their pre-filed testimony at the evidentiary hearing. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in pre-filed testimony.

31. Parties shall examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through one representative chosen by the party.

32. Except for good cause shown, objections by any party as to the qualifications of a witness or the admissibility of any portion of a witness's pre-filed testimony are waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than **4:30 p.m. on October 31, 2017**.

Filing of Documents (Excluding Information Requests and Responses)

33. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3 (2016), and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

34. An oversized exhibit may be received into the hearing record, with approval of the Administrative Law Judge, provided that a duplicate original of the exhibit conforming to the standards of Minn. R. 1400.5275 (2016), is submitted into the record.

35. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

36. The parties agree that eFiling through the eDockets system shall constitute service in this matter. Anything that cannot be eFiled shall be served by U.S. mail or delivered to the persons indicated on the official service list by the date the document is required to be served. The list will be revised as necessary by the Office of Administrative Hearings. Any party filing voluminous documents or documents containing colored copies shall provide a courtesy copy to the Administrative Law Judge by U.S. Mail.

37. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

38. For material designated Trade Secret or Nonpublic Data filed in this proceeding, a Protective Order has been issued which governs access to such information. Material designated Trade Secret or Nonpublic Data shall be prepared and marked in accordance with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, and the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission's website at: <http://mn.gov/puc/consumers/data-practices/index.html>

39. A courtesy copy of all briefs, motions, memoranda, and proposed findings shall be sent to the Administrative Law Judge and court reporter by electronic mail and to the Administrative Law Judge as paper copies. Proposed findings should also be sent by electronic mail to the Administrative Law Judge in a Microsoft Word format that permits revision, and copied to all parties and participants

40. The Applicant shall provide the Administrative Law Judge with a paper copy (in color) of the Petition for a Certificate of Need and Route Permit Application. The DOC-EERA shall provide the Administrative Law Judge with a paper copy (in color) of the Scoping Summary Report, Scoping Decision, DEIS, and FEIS, when available.

Request for Accommodation

41. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly, in writing, if either an accommodation or interpreter is needed.

Date: May 31, 2017

A handwritten signature in black ink, appearing to read 'A. O'Reilly', with a horizontal line extending from the end of the signature.

ANN C. O'REILLY
Administrative Law Judge