

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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DOCKET NO. PL-9/CN-14-916

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

DOCKET NO. PL-9/PPL-15-137

ORDER FINDING ENVIRONMENTAL
IMPACT STATEMENT INADEQUATE
ON REMAND

PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, LP (Enbridge) filed separate applications for a certificate of need and a route permit for a 338-mile crude oil pipeline, along with associated facilities, extending from Neche, North Dakota to Superior, Wisconsin (the Line 3 Project or Project) to replace the existing Line 3 pipeline.

On August 12, 2015, the Commission ordered the certificate of need and route permit applications to be addressed in separate proceedings, and proceeded to conduct environmental review of the Project.

Between July 20 and September 30, 2015, the scoping process for the comparative environmental assessment required for the Project under the Commission's pipeline route permit rules, Minn. R. ch. 7852, was conducted. The Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) and Commission staff conducted 15 public meetings between August 11 and 27, 2015, to discuss methods for assessing the potential human and environmental impacts and alternative routes for the Project.

On February 1, 2016, the Commission issued an order joining the need and routing matters for the Line 3 Project into one contested-case proceeding and authorizing EERA to prepare a combined environmental impact statement (EIS).

On April 11, 2016, EERA issued a scoping environmental assessment worksheet (EAW) and draft scoping decision document (DSDD) to identify the potential issues with the Project and define the scope of the EIS. The second scoping process occurred under the Environmental

Quality Board (EQB) rules for an EIS, Minn. R. ch. 4410, between April 11 and May 26, 2016. After conducting 12 public scoping meetings and considering nearly 1,500 written comments, EERA submitted comments and recommendations regarding the scope of the EIS, a proposed final scoping decision document (FSDD), a scoping summary report, and an alternatives screening report on September 22, 2016.

On November 30, 2016, the Commission issued an order approving the scope of the EIS as modified and authorizing issuance of the final scoping decision document.

On December 5, 2016, EERA issued the FSDD, and the Notice of EIS Preparation for the Line 3 Project was published in the EQB Monitor.

On May 15, 2017, EERA issued a draft EIS (DEIS), a press release regarding the availability of the DEIS, and a Notice of the Availability of the DEIS was published in the EQB Monitor, along with information regarding the public meetings and comment period.¹

On August 14, 2017, the Commission issued an order accepting Enbridge's consent to extend the statutory deadline for the Commission to make its determination on the adequacy of the final EIS for the Project. The Commission also referred the adequacy of the final EIS (FEIS) to the Office of Administrative Hearings, requesting that an administrative law judge (ALJ) be briefed by the parties and make a report and recommendation to the Commission on the issue.

On August 17, 2017, The EERA issued the final EIS. A Notice of the Availability of the final EIS was published in the EQB Monitor on August 28, 2017.

On November 1, 2017, Administrative Law Judge Eric L. Lipman filed a report recommending that the Commission find the final EIS adequate under Minn. R. 4410.2800, subp 4.

On December 13, 2017, the Commission issued a Notice of FEIS Adequacy Decision pursuant to Minn. R. 4410.2800, subp. 6, which was published in the EQB Monitor on December 18, 2017.

On December 14, 2017, the Commission issued an order finding that four deficiencies in the final EIS needed to be remedied before the final EIS could be considered adequate under Minn. R. 4410.2800.

On February 12, 2018, EERA issued the revised final EIS.

On May 1, 2018, the Commission issued its order finding the EIS adequate and adopting the ALJ's report with modifications.

On June 3, 2019, the Minnesota Court of Appeals reversed the Commission's May 1 Order upon the court's determination that the "failure to specifically address the potential impacts to the

¹ EERA issued a Revised Notice of Availability of DEIS and Public Information Meetings for the Proposed Line 3 Pipeline Project on May 16, 2017.

Lake Superior watershed” constituted an inadequacy in the FEIS.² The court considered a number of other alleged inadequacies, and concluded that

[t]he FEIS properly defined the purpose of the project, sufficiently identified alternatives, including a “no action” alternative, and utilized an appropriate methodology to analyze potential impacts from oil spills. The FEIS adequately analyzed potential 39 impacts to GHG emissions, potential impacts on historic and cultural resources, the relative impacts of alternative routes, and cumulative potential effects.³

The court remanded the proceeding to the Commission for further proceedings consistent with its decision.

On September 17, 2019, the Supreme Court of Minnesota denied petitions for review of the Court of Appeals decision from several parties.

On October 1, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

In light of the Court of Appeals’s decision, the Commission finds the FEIS inadequate because it does not sufficiently address the potential impact of an oil spill into the Lake Superior watershed.

The Commission will request the EERA to revise the FEIS to include an analysis of the potential impact of an oil spill into the Lake Superior watershed consistent with the Court of Appeals’s June 3 decision, and to submit a revised final EIS to the Commission within 60 days.

ORDER

1. The Commission requests the Minnesota Department of Commerce Division of Energy Environmental Review and Analysis to revise the final EIS to include an analysis of the potential impact of an oil spill into the Lake Superior watershed consistent with the Court of Appeals’s decision, and to submit a revised final EIS to the Commission within 60 days.

² *In re Applications of Enbridge Energy, Limited Partnership, for a Certificate of Need and a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, ___ N.W.2d ___ (Minn. Ct. App. 2019) (Appellate court dockets A18-1283, A18-1291, and A18-1292), *cert. denied*, (Minn. 2019).

³ *Id.*, at 37 – 38.

2. The Commission delegates to the Executive Secretary authority to issue a notice requesting comments after the revised final EIS is submitted and to set appropriate comment time frames consistent with Minnesota rules.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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