

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

EIGHTH 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

The above-entitled matter came on for a Prehearing Conference on October 30, 2017, at the offices of the Public Utilities Commission in St. Paul, Minnesota.

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

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

Peter Madsen and 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 Kennecott Exploration Company (Kennecott).

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

Anna Friedlander, O'Donoghue & O'Donoghue, LLP, appeared on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association).

Andrew Brown, Dorsey & Whitney, LLP, appeared on behalf of Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers).

Leili Fatehi and Hudson Kingston, Advocate, PLLC, appeared on behalf of the Sierra Club (Sierra Club).

Scott Strand, Environmental Law and Policy Center, appeared on behalf of Friends of the Headwaters (FOH).

Akilah Sanders-Reed appeared on behalf of Youth Climate Intervenors (Youth Climate).

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

David Zoll and Rachel Kitze Collins, Lockridge, Grindal, Nauen, PLLP, appeared on behalf of the Mille Lacs Band of Ojibwe (Mille Lacs Band).

Sara Van Norman, Davis Law Firm and Philip Mahowald, the Jacobson Law Firm, appeared on behalf of the Fond Du Lac Band of Lake Superior Chippewa (Fond Du Lac Band).

Stuart Alger, Malkerson, Gunn, Martin, LLP, appeared on behalf of Donovan and Anna Dyrdal (Dyrdals).

Bret Eknes appeared as a representative of the Minnesota Public Utilities Commission (Commission).

There were no appearances by White Earth Band of Ojibwe (White Earth Band), Red Lake Band of Chippewa Indians (Red Lake Band), or the Leech Lake Band of Ojibwe (Leech Lake Band).

MOTION

On October 25, 2017, Enbridge filed an Objection to the Admissibility of Certain Pre-Filed Testimony (Motion or Motion to Exclude). Enbridge's Motion seeks to exclude Attachment AS-6 to the Direct Testimony of Adam Scott and Exhibit A to the Surrebuttal Testimony of Nancy Schuldt. Mr. Scott is a witness presented by Youth Climate and Ms. Schuldt is a witness presented by the Fond Du Lac Band.

Both Youth Intervenors and the Fond Du Lac Band filed responses to the Motion on October 30, 2017. Enbridge's Motion was argued at the October 30, 2017 Prehearing Conference.

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

ORDER

1. Enbridge's Motion to Exclude Attachment AS-6 to the Direct Testimony of Adam Scott and Exhibit A to the Surrebuttal of Nancy Schuldt is **DENIED**. While the challenged documents may come into the hearing record, the Administrative Law Judge will give the appropriate weight to the evidence based upon reliability and relevance.

2. Enbridge circulated a list of all parties' witnesses and requested that each party identify which witnesses they seek to cross examine. There are 60 total witnesses who have filed pre-filed testimony. Of the 60 witnesses who have filed pre-filed testimony, cross examination has been requested for 44 witnesses. There was no cross examination requested for 16 witnesses. The 16 witnesses for whom no cross examination was requested include:

Eric Best (Kennecott)
Dwight Engen (Laborers' Council)
Kenneth Kornheiser (Sierra Club)
Terry Kemper (Mille Lacs Band)
Dawn Goodwin (White Earth Band)
David Barnett (United Association)
Wayne Dupuis (Fond Du Lac Band)
John Abraham (Youth Climate)
Paul Douglas (Youth Climate)
Christie Manning (Youth Climate)
Wichahpi Otto (Youth Climate)
William Paulson (Youth Climate)
Peter Reich (Youth Climate)
Bruce Snyder (Youth Climate)
Kade Ferris (Red Lake Band)
Donovan Dyrdal (the Dyrdals)

3. Each party shall prepare a one-page written summary of each of their witness's testimony. Enbridge shall present its written witness summaries prior to each witness's testimony. The DOC-EERA need not prepare witness summaries as no pre-filed testimony has been submitted by the DOC-EERA witnesses.

4. All other parties shall prepare and present their one-page written witness summaries on **November 6, 2016**, at the start of the hearing.

5. **Witness summaries shall not be eFiled on the eDockets system.** Rather, the witness summaries will be circulated for review and objection by the parties and, if no objections are received, entered into the hearing record as exhibits. Accordingly, parties must bring a sufficient number of copies of the witness summaries for each party, the Judge, and the Court Reporter.

6. **Witness summaries -- both written and oral -- shall not exceed or vary in any way from the pre-filed testimony of record in this case. To preserve valuable hearing time, the five-minute limit on oral summaries will be strictly enforced.**

7. Each witness shall be permitted **five minutes** to orally summarize his or her pre-filed testimony before cross examination shall begin. Cross examination shall occur in the order of party intervention, as set forth in the Seventh Prehearing Order.

8. The witnesses for whom cross examination was not requested will be allowed to summarize their pre-filed testimony on the final day of hearing, **November 17, 2017**. These 16 witnesses will be called in the order of party intervention. Witnesses for whom no cross examination was requested may waive their opportunity to orally summarize their pre-filed testimony. Witnesses (for whom no cross examination was requested) who are not available on November 17, 2017, to summarize their pre-filed testimony will not be heard orally. Their pre-filed testimony, however, will be carefully considered in the same manner as all other pre-filed testimony. **NOTE THAT THIS PROVISION MODIFIES AND SUPERSEDES THE DECISION EXPRESSED BY THE JUDGE AT THE PREHEARING CONFERENCE ON OCTOBER 30, 2017.**

9. With the exception of November 17, 2017, the parties have agreed on the following testimony schedule for the evidentiary hearing, based upon travel and availability issues of some witnesses and the order of intervention of the parties:

November 1, 2, 3, 4, 6: Enbridge Witnesses in this order:
Laura Kennett
Neil Earnest
John Glanzer
Jack Fleeton
Bill Rennie
Richard Lichty
Barry Simonson
Britta Bergland
Christopher Bergman
Teresa Kinder
John McKay
Stacey Gerard
Benjamin Mittelstadt
Allan Baumgartner
Ray Philipenko
Matt Horn
Ray Wuolo
Art Haskins
Malcolm Stephenson
Jeff Lee
Heidi Tillquist

- Chris Johnston
Selina Lim
Paul Eberth
- Nov. 6 Continuation of Enbridge witnesses
Adam Scott (Youth Climate)*
- Nov. 8 Lorne Stockman (Fond Du Lac Band)*
Evan Whiteford (Laborers' Council)
Andrew Twite (Sierra Club)
Richard Smith (FOH)
Robert Merritt (HTE)
- Nov. 9 Dagmar Schmidt Etkin (DOC-EERA)*¹
David Dybdahl (DOC-DER)*
- Nov. 13 Chris Joseph (FOH)
Richard Kuprewicz (FOH)
Nancy Schuldt (Fond Du Lac Band)*
Sheila Lamb (Youth Climate)
Anthony Swift (Youth Climate)
- Nov. 14 Paul Kahler (Shippers)
John Van Heyst (Shippers)
Edward Shahady (Shippers)
- Nov. 15 Marie Fagan (DOC-DER)
Kate O'Connell (DOC-DER)
- Nov. 16 Louise Miltich (DOC-EERA)
Eric White (DOC-EERA)
- Nov. 17 All witnesses for whom no party has requested
cross examination, in the order of intervention:
- Eric Best (Kennebecott)
Dwight Engen (Laborers' Council)
Kenneth Kornheiser (Sierra Club)
Terry Kemper (Mille Lacs Band)
Dawn Goodwin (White Earth Band)
David Barnett (United Association)
Wayne Dupuis (Fond Du Lac Band)
John Abraham (Youth Climate)
Paul Douglas (Youth Climate)

¹ To be heard first in the morning to accommodate travel requirements.

Christie Manning (Youth Climate)
Wichahpi Otto (Youth Climate)
William Paulson (Youth Climate)
Peter Reich (Youth Climate)
Bruce Snyder (Youth Climate)
Kade Ferris (Red Lake Band)
Donovan Dyrdal (the Dyrdals)

* indicates accommodation of a date-certain request

10. Party witnesses will be allowed to listen to the public hearings by telephone conference. The parties shall contact Scott Ek to obtain the call-in number and conference code for the telephone conference line. Legal counsel and party representatives must appear in person at the public hearings or waive their appearances in writing. Counsel and party representatives will not be allowed to participate by telephone.

11. The Commission will not be webcasting the evidentiary hearings in this matter. Members of the public are, however, welcome to attend the evidentiary hearings in person.

12. Pursuant to Minn. R. 1400.8000, subp. 1 (2017), an administrative law judge has the authority to ban the use of cameras in the hearing room during the course of administrative proceedings. It is the order of Chief Administrative Law Judge Tammy Pust that no cameras be allowed during these proceedings, including cellular phone cameras. Parties and members of the public, including the media, will be ordered to take out their cellular telephones, turn them off, and store them while inside the hearing room. Any unauthorized use of cellular telephones as cameras, or the use of any other cameras, will result in sanctions, including individuals being barred from the proceedings.

13. If, during the course of the hearing, Trade Secret or Highly Sensitive Trade Secret information is to be discussed, all persons other than the testifying witness, court reporter, Judge, Commission staff, and counsel or the representative for each party shall be excluded from the hearing room. In addition, the transcript will be marked as Trade Secret or Highly Sensitive Trade Secret pursuant to the protective orders issued in this case.

14. Pursuant to and in accordance with Minn. Stat. § 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing room. In the event of interference, disruption, or threat, the Judge may proceed as deemed appropriate, including ordering the disruptive person to leave or be removed from the hearing.² **This rule will be strictly enforced by the Administrative Law Judge.**

² Minn. R. 1400.8000, subp. 2 (2017).

15. Rescheduling of the St. Cloud public hearings will be determined by the Commission.

16. By the **November 20, 2017**, Enbridge shall provide the Administrative Law Judge and all other parties with Proposed Findings of Fact detailing the procedural history of this case. The Proposed Findings shall be in an editable Microsoft Word format to allow the Judge and the other parties the ability to make changes to the document.

17. By **November 30, 2017**, the DOC-EERA, DOC-DER, and the intervening parties shall provide to each other and the Judge an editable redlined copy of their proposed changes to Enbridge's Proposed Findings. These redlined documents shall be in a Microsoft Word format and shall be editable by the Judge.

18. Any party who has not provided the Judge with a courtesy copy of pre-filed testimony shall do so **immediately**. If they have not done so already, the parties shall provide two hard copies of **ALL EXHIBITS** – one for the Judge and one for the Court Reporter. The **only document** that need **not** be provided in duplicate hard copy shall be the Final Environmental Impact Statement due to its size.

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

20. Parties may waive their appearances on any day of hearing, but must do so in writing on or before the day of hearing in which they are waiving their appearance. A party who waives its appearance on a day of hearing will not be provided with an opportunity to examine the witnesses presented that day or assert objections to any of the testimony or evidence presented that day.

21. The parties are advised that they will be asked to file Proposed Findings with respect to the witnesses and evidence that they are offering. A deadline to file Proposed Findings will be established by the end of the evidentiary hearing.

Date: October 31, 2017

A handwritten signature in black ink, appearing to read 'A.C. O'Reilly', written over a horizontal line.

ANN C. O'REILLY
Administrative Law Judge

October 31, 2017

See Attached Service List

**Re: In the Matter of the Application of Enbridge Energy, Limited
Partnership for a Certificate of Need for the Line 3 Replacement
Project in Minnesota**

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

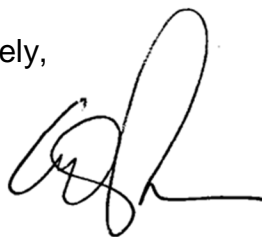
**OAH 65-2500-33377
MPUC PL-9/PPL-15-137**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **EIGHTH
PREHEARING ORDER** in the above-entitled matter.

If you have any questions, please contact my legal assistant Cari Snaza at (651)
361-7906 or cari.snaza@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,



ANN C. O'REILLY
Administrative Law Judge

ACO:cjs
Enclosure
cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project-PL-9/CN-14-916	OAH Docket No.: 65-2500-32764
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Cari Snaza, certifies that on October 31, 2017 she served the true and correct **EIGHTH PREHEARING ORDER** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

MASTER SERVICE LIST							
Party	First	Last	Email	Company	Address	Service	Docket
Enbridge Energy	Christina	Brusven	cbrusven@fredlaw.com	Fredrikson Byron	200 S 6th St, Ste 4000, Minneapolis, MN 55402-1425	Electronic	14-916 and 15-137
Enbridge Energy	Patrick	Mahlberg	pmahlberg@fredlaw.com	Fredrikson Byron	200 Sixth Street South, Suite 4000, Minneapolis MN 55402	Electronic	14-916 and 15-137
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DOC-DER	Julia	Anderson	Julia.Anderson@ag.state.mn.us	DOC-DER	1800 BRM Tower 445 Minnesota Street, St. Paul, MN 55101-2134	Electronic	14-916 and 15-137
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Honor the Earth	Paul	Blackburn	paul@honorearth.org	Honor the Earth	PO Box 63, Callaway, MN 56521	Electronic	14-916 and 15-137
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