

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 POST-HEARING 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

This Order comes as a result of the Commission's Order Requesting ALJ Decision by April 23, 2018, which was issued on January 10, 2018.

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 Attorneys 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, and Sam Jackson, Cummins & Cummins, 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 and Brian Bell, 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 and Brent Murcia appeared on behalf of Youth Climate Intervenors (Youth Climate).

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

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

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

Joseph Plumer, appeared on behalf of the White Earth Band of Ojibwe (White Earth) and Red Lake Band of Chippewa Indians (Red Lake).

Chris Allery appeared on behalf of the Leech Lake Band of Ojibwe (Leech Lake).

James Reents appeared on behalf of the Northern Water Alliance of Minnesota (NWAM).

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

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

BACKGROUND

An evidentiary hearing in this matter was held on November 1, 2, 3, 6, 8, 9, 13, 14, 15, 16, 17, and 20, 2017. At the close of the hearing, the Administrative Law Judge established a briefing schedule for the parties. That briefing schedule was articulated in a First Post-Hearing Order issued on November 22, 2017.¹ The Order set forth the following deadlines:

Enbridge's Proposed Procedural Findings	Nov. 20, 2017
Redlined Proposed Procedural Findings (all other parties):	Nov. 30, 2017
Motions and arguments related to procedural defects	Nov. 30, 2017
Reponses to procedural motions or arguments	Dec. 7, 2017
Post-hearing Briefs (substantive issues, all parties)	Dec. 31, 2017
Enbridge's Proposed Findings of Fact (substantive)	Dec. 31, 2017
DOC-EERA Proposed Findings re FEIS	Dec. 31, 2017
Reply Briefs (substantive issues, all parties)	Jan. 26, 2018
Proposed Findings (all other parties)	Jan. 26, 2018
ALJ Report Due	March 30, 2017

On December 7, 2017, the Commission met to consider the adequacy of the Final Environmental Impact Statement (FEIS).² The Commission issued a Notice of Final Environmental Impact Statement Adequacy Determination on December 13, 2017.³ On December 14, 2017, the Commission issued an Order Finding the Environmental Impact Statement Inadequate.⁴ The Commission found the FEIS inadequate on four grounds and gave the DOC-EERA 60 days from the date of the Notice (December 13, 2017) to revise the EIS.⁵

On December 14, 2017, Sierra Club, FOH, HTE, Fond Du Lac, White Earth, Leech Lake, Mille Lacs, NWAM, and Youth Climate filed a Motion for Adjustment of the Briefing Schedule.⁶ The Dyrdals filed a response in support of the Motion.⁷ The Motion requested that, in light of the Commission's Order finding the FEIS inadequate and requiring revision, the post-hearing briefing schedule should be either stayed or adjusted. The moving parties request that the briefing schedule be suspended pending a Commission determination that the FEIS is adequate.

¹ First Post- Hearing Order (Nov. 22, 2017) (eDocket Nos. 201711-137610-01 (CN); 201711-137609 (R)).

² Order Finding Environmental Impact Statement Inadequate (Dec. 14, 2017) (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01(R)).

³ Notice of Final Environmental Impact Statement Adequacy Determination (Dec. 13, 2017) (eDocket Nos. 201712-138116-01 (CN); 201712-138116-02(R)).

⁴ Order Finding Environmental Impact Statement Inadequate (Dec. 14, 2017) (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01(R)).

⁵ *Id.*

⁶ Joint Motion for Adjustment of Briefing Schedule (Dec. 14, 2017) (eDocket Nos. 201712-138191-01(CN); 201712-138191-01(R)).

⁷ Dyrdal Memorandum in Support of Joint Motion for Adjustment of the Briefing Schedule (eDocket No. 201712-138262-01 (R)).

Enbridge, Shippers, Laborer's Council, and United Association filed timely responses in opposition to the Motion.⁸ Fond du Lac, Mille Lacs, FOH, HTE, Youth Climate, and Sierra Club each filed individual reply briefs in support of the Motion.⁹

On December 22, 2017, the Administrative Law Judge issued an Order Granting Motion to Extend the Briefing Schedule in this matter.¹⁰

On December 28, 2017, Enbridge, the United Association, Laborers' Council and Shippers filed a Joint Motion to Certify the issue of the post-hearing briefing schedule to the Commission (Joint Motion).¹¹ The next day, the Commission issued a Notice of Request for Immediate Certification of the Joint Motion and a Notice of Special Commission Meeting to address the issue.¹² In its Notice of Request for Immediate Certification, the Commission directed that the Judge immediately certify the Joint Motion to the Commission so that the issues raised may be promptly addressed at a special Commission meeting scheduled on January 9, 2018.¹³

As directed, the Administrative Law Judge issued an Order Granting the Commission's Request for Certification on January 2, 2018.¹⁴ The Commission convened a special meeting on January 9, 2018, to discuss the extended briefing schedule.

On January 10, 2018, the Commission issued an Order requesting that the Administrative Law Judge provide her report no later than April 23, 2018, and adjust the briefing schedule accordingly.¹⁵ While setting a date for receipt of the Judge's final report, the Commission left to the Administrative Law Judge the establishment of a new briefing schedule.

Based upon the Order of the Commission and the hearing record, the Administrative Law Judge makes the following:

⁸ Enbridge Response in Opposition (Dec. 18, 2017) (eDocket No. 201712-138263-03 (CN)); Shipper's Letter in Opposition (Dec. 18, 2017) (eDocket No. 201712-138266-01 (CN)); Laborer's Council Response in Opposition (Dec. 18, 2017) (eDocket No. 201712-138264-01 (CN)); United Association Response in Opposition (Dec. 18, 2017) (eDocket No. 201712-138267-01 (CN)).

⁹ Fond du Lac Reply Brief (Dec. 19, 2017) (eDocket No. 201712-138298-01 (CN)); Mille Lacs Reply Brief (Dec. 19, 2017) (eDocket No. 201712-138290-01); FOH Reply Brief and Attachments (Dec. 19, 2017) (eDocket Nos. 20172-138295-02, 201712-139286-06); HTE Reply Brief (Dec. 19, 2017) (eDocket No. 201712-138297-01); Youth Climate Reply Brief (Dec. 19, 2017) (eDocket No. 201712-138299-04); Sierra Club Reply Brief (Dec. 19, 2017) (eDocket No. 201712-138294-01).

¹⁰ Order Granting Motion to Extend Briefing Schedule (Dec. 22, 2017) (eDocket No. 201712-138535-01).

¹¹ Joint Motion to Certify (Dec. 29, 2017) (eDocket No. 201712-138480-03).

¹² Notice of Request for Immediate Certification of Joint Motion (Dec. 29, 2017) (eDocket No. 201712-138495-02)

¹³ *Id.*

¹⁴ Notice of Special Commission Meeting (Dec. 29, 2017) (eDocket No. 201712-138496-02).

¹⁵ Order Requesting ALJ Report by April 23, 2018 (Jan. 10, 2018) (eDocket No. 20181-138782-02)

ORDER

1. Enbridge shall serve and file its Proposed Findings of Fact (excluding procedural findings) by **4:30 p.m. on Tuesday, January 16, 2018**.

2. The DOC-EERA shall serve and file proposed Findings of Fact (or redline changes to the Enbridge Proposed Findings) by **4:30 p.m. on January 23, 2018**. If possible, the DOC-EERA shall provide a red-lined version of Enbridge's proposed Findings of Fact or submit its own proposed Findings of Fact.

3. All parties shall file their Initial Legal Briefs by **January 23, 2018**. These briefs shall address the substantive legal issues of the case, paying close attention to the criteria for certificates of need and route selection set forth in rule and law. All factual assertions in the briefs shall have footnoted citations to documents, exhibits, or testimony the hearing record. The Administrative Law Judge requests courtesy copies of all briefs by electronic mail at ann.oreilly@state.mn.us.

4. In its initial brief, Enbridge shall address the issue of whether the federal Consent Decree requires Enbridge to replace existing Line 3 if the Commission grants a Certificate of Need and Route Permit but includes conditions with which Enbridge does not agree. In other words, if the Commission grants a Certificate of Need and Route Permit contains conditions that Enbridge finds disagreeable, is Enbridge nonetheless required to replace the existing Line 3 under the terms of the Consent Decree or is Enbridge entitled to continue operating existing Line 3 without replacement?

5. Reply briefs shall be served and filed by **February 16, 2018**. The Administrative Law Judge requests courtesy copies of all reply briefs by electronic mail at ann.oreilly@state.mn.us.

6. All parties, other than Enbridge and the DOC-EERA, shall file their proposed Findings of Fact by **February 16, 2018**. If they so choose, parties may provide redlined changes to Enbridge's proposed Findings of Fact. Enbridge and the DOC-EERA may file red-lined amended proposed Findings of Fact as of this date to reflect changes to the Environmental Impact Statement due to be completed by February 12, 2018, in response to the Commission's Order Finding the Environmental Impact Statement Inadequate.

7. All proposed Findings of Fact shall be e-filed by the parties in the eDocket system, e-mailed to the Administrative Law Judge in an editable Microsoft Word format, and circulated to all parties by electronic mail.

8. Proposed findings shall be set forth in separately numbered paragraphs and contain footnotes after each sentence, providing the exact location in the hearing record where such fact is established. Findings of Fact shall not be argument. They shall be concise and accurate recitals of established facts.

9. In all briefs and proposed Findings of Fact, all parties shall utilize the citation format as set forth in the OAH Style Guide: Enbridge, attached to the First Post-Hearing Order.

Date: January 11, 2018

A handwritten signature in black ink, appearing to read 'A. O'Reilly', written in a cursive style.

ANN C. O'REILLY
Administrative Law Judge

January 11, 2018

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**

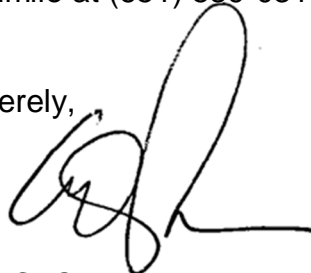
**OAH 65-2500-33377
MPUC PL-9/PPL-15-137**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FOURTH
POST-HEARING 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 January 11, 2018 she served the true and correct **FOURTH POST-HEARING 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
Enbridge Energy	Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstein	225 South Sixth Street, Minneapolis MN 55402	Electronic	14-916 and 15-137
Enbridge Energy	James W.	Watts	james.watts@enbridge.com	Enbridge Energy	26 E. Superior St., Duluth MN 55802	Electronic	14-916 and 15-137
DOC-DER	Julia	Anderson	Julia.Anderson@ag.state.mn.us	DOC-DER	1800 BFM Tower 445 Minnesota Street, St. Paul, MN 55101-2134	Electronic	14-916 and 15-137
DOC-DER	Peter	Madsen	peter.madsen@ag.state.mn.us	DOC-DER	1800 BFM Tower 445 Minnesota Street St. Paul MN 55101-2134	Electronic	14-916 and 15-137
DOC-EERA	Linda	Jensen	linda.s.jensen@ag.state.mn.us	DOC-EERA	1800 BFM Tower 445 Minnesota Street, St. Paul, MN 55101-2134	Electronic	14-916 and 15-137
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Fond Du Lac Band	Seth	Bichler	sethbichler@fdlr.com	Fond Du Lac Band	1720 Big Lake Rd, Cloquet, MN 55720	Electronic	14-916 and 15-137
Fond Du Lac Band	Sara	Van Norman	sara@davismeansbusiness.com	Davis Law Office	400 South 4th Street, Suite 401, Minneapolis MN 55415	Electronic	14-916 and 15-137
Fond Du Lac Band	Philip	Mahowald	pmahowald@thejacobsenlawgroup.com	The Jacobson Law Group	180 East Fifth Street, Suite 940, St. Paul, MN 55101	Electronic	14-916 and 15-137
FOH	Richard	Smith	grizrs15@gmail.com	FOH	PO Box 583, Park Rapids, MN 56470	Electronic	14-916 and 15-137
FOH	Scott	Strand	sstrand@elpc.org	Environmental Law & Policy Center	15 South 5th Street, Suite 500, Minneapolis, MN 55402	Electronic	14-916 and 15-137
Honor the Earth	Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118, Deer River, MN 56636	Electronic	14-916 and 15-137
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Kennecott	Brian	Meloy	brian.meloy@stinson.com	Stinson Leonard Street	150 S. 9th Street, Suite 2300, Minneapolis, MN 55402	Electronic	15-137
Laborers' District Council	Kevin	Pranis	kpranis@liunagroc.com	Laborers' District	91 E Little Canada Road, St. Paul, MN 55117	Electronic	14-916 and 15-137
Leech Lake Band	Chris	Allery	chris.allery@llobibe.org	Leech Lake Band	190 Saitstar DR NW, Cass Lake, MN 56633	Electronic	14-916 and 15-137
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Youth Climate	Akilah	Sanders-Reed	akilah.project350@gmail.com	Youth Climate	2514 Emerson Ave S., Apt 7, Minneapolis MN 55405	Electronic	14-916 and 15-137
OAH	Ann	O'Reilly	ann.oreilly@state.mn.us	OAH	600 North Robert Street, PO Box 64620, St. Paul, MN 55011	Electronic	14-916 and 15-137
Shaddix	Janet	Shaddix	jshaddix@anelshaddix.com	Shaddix and Associates	9100 W Bloomington Frwy, Bloomington, MN 55431	Electronic	14-916 and 15-137