

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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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

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

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

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

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**EXCEPTIONS OF FRIENDS OF THE HEADWATERS  
TO REPORT OF ADMINISTRATIVE LAW JUDGE ON ADEQUACY OF  
ENVIRONMENTAL IMPACT STATEMENT**

**I. INTRODUCTION**

Intervenor Friends of the Headwaters (FOH)<sup>1</sup> submits these exceptions to Administrative Law Judge Eric Lipman’s (ALJ) November 1, 2017 report and recommendations on the “adequacy” of the Final Environmental Impact Statement (FEIS) prepared by the Minnesota Department of Commerce Energy and Environmental Review and Analysis unit (DOC-EERA) for the Line 3 project proposed by Enbridge Energy Partners LP (Enbridge). The Minnesota

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<sup>1</sup> FOH is a volunteer, grassroots organization composed of people who live, work, and recreate in the unique and fragile Minnesota geography that is threatened by this proposed crude oil pipeline.

Environmental Policy Act (MEPA), Minn. Stat. § 116D.04, subd. 2b, prohibits the Public Utilities Commission (PUC) from granting a certificate of need for a new pipeline project, unless and until it finds that an adequate EIS has been prepared. *See generally In re N.D. Pipeline Co.* 869 N.W.2d 693 (Minn. Ct. App. 2015).

FOH's exceptions to Judge Lipman's report are as follows<sup>2</sup>:

- *Exception 1:* The ALJ (and the PUC) improperly concluded that, under MEPA, an EIS adequacy finding could wait until *after* all public hearings and evidentiary hearings on Enbridge's certificate of need application were already completed.
- *Exception 2:* The ALJ improperly concluded that, under MEPA, it was proper to deny public access to comments and views of the state agencies with expertise on natural resources and the environment – specifically the Department of Natural Resources (DNR) and the Pollution Control Agency (MPCA).
- *Exception 3:* The ALJ improperly concluded that a pipeline project EIS could be “adequate” without assessing potential site-specific impacts from an oil spill at particularly fragile route locations.
- *Exception 4:* The ALJ improperly concluded that an EIS for a new pipeline project could be adequate without any evaluation of non-pipe alternatives, in-place pipe replacement, or retirement of the old Line 3 without constructing any new pipeline.
- *Exception 5:* The ALJ improperly concluded that the EIS did not need to assess cumulative impacts of Line 3 and reasonably foreseeable future pipeline projects such as a new Sandpiper or a new Line 66 in Wisconsin.
- *Exception 6:* The ALJ improperly concluded that the EIS's evaluation of System Alternative 4 (SA-04) was fair and complete.
- *Exception 7:* The ALJ improperly concluded that the EIS met its legal obligation to respond to substantive comments from the public.
- *Exception 8:* The ALJ improperly concluded that the EIS's assessment of environmental mitigation options was adequate, even though the EIS contained no analysis of how to assure that the financial resources would be available to mitigate potential environmental harms.

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<sup>2</sup> FOH again protests the scheduling orders from the PUC in this case. ALJ Lipman's report became available on November 1, the first day of the evidentiary hearing, which just concluded yesterday, November 20. As a result, the only time available to prepare exceptions to ALJ Lipman's report was during the trial-type proceedings conducted by ALJ O'Neill. This is of course a non-issue for the applicant, but it certainly prejudices the intervenors.

## **II. ARGUMENT**

### **A. THE ALJ AND THE PUC IMPROPERLY CONCLUDED THAT THE PUBLIC AND EVIDENTIARY HEARINGS ON ENBRIDGE'S APPLICATIONS COULD PRECEDE THE AVAILABILITY OF AN ENVIRONMENTAL IMPACT STATEMENT THAT MEETS MEPA'S STANDARD FOR ADEQUACY.**

This issue has been previously briefed and decided by the Commission, but Friends of the Headwaters wants to be certain that this issue is preserved for possible future proceedings. The parties just yesterday concluded the evidentiary hearing on Enbridge's applications for a certificate of need and a route permit. They did so without an environmental impact statement that any of the environmental or tribal intervenors believe is "adequate" under MEPA. The hearing proceeded without either the DNR or the MPCA able to make their views on the project part of the administrative record, without an evaluation of several reasonable alternatives the parties had proposed, without an analysis of many potential cumulative impacts, and, in many cases, without a response to substantive concerns intervenors had raised in the EIS comment process.

The sequence ordered by the Commission only made sense if the Commission had already predetermined that the FEIS would be ruled adequate. The better course would have been to follow the DNR's example in the PolyMet case, where the full environmental review process – including the adequacy determination – was completed before permitting proceedings commenced. FOH's arguments are contained in its previous briefing, and FOH hereby incorporates those arguments here.

**B. THE ALJ IMPROPERLY ENDORSED THE FAILURE TO SECURE AND MAKE PUBLIC SUBSTANTIVE COMMENTS FROM THE STATE RESOURCE AGENCIES (DNR AND MPCA) AS PART OF THE EIS PROCESS.**

One of the inherent weaknesses or vulnerabilities of the environmental review process is that the agency responsible for preparing an EIS often has a stake in seeing that the project be completed. The Department of Transportation wants to get a highway or a bridge built, a local government wants new development to increase its property tax base, but MEPA and the EQB rules designate the proponent agencies as the “responsible government unit” (RGU) responsible for completing an unbiased environmental review of the same project.

One of the ways that MEPA addresses this inherent conflict is to insist on the involvement of agencies whose central missions are to preserve and protect natural resources and to make their comments and views public throughout the process. MEPA expressly requires that:

Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. *Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public.* The final detailed environmental impact statement and the comments received therein shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

Minn. Stat. § 116D.04, subd. 6a (emphasis added). This closely tracks language in the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(C) (“Prior to making any detailed statement, the [lead agency] shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement *and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards*

shall be made available to the President, the Council on Environmental Quality, and to the public . . . and shall accompany the proposal through the existing agency review process.”) (emphasis added).

Consistent with those statutory requirements, federal environmental review processes for major pipelines, transmission lines, or other infrastructure projects often include formal comments from agencies like the U.S. Fish and Wildlife Service, the Army Corps of Engineers’ regulatory branch, and the Environmental Protection Agency (EPA).<sup>3</sup> Likewise, under MEPA, it is typically the case for a major project, such as a light rail transit line where the builder is the RGU, to have extensive written comments from agencies like the DNR and the MPCA available to the public throughout the environmental review process.

Even when, as in this case, there is no inherent conflict of interest, it is still the case that neither the Department of Commerce nor the PUC have protection of the environment at the core of their mission or expertise. That is, however, the core of the mission and expertise of the DNR and the MPCA, and it is their duty to the public that those resource protection values are preserved.

In the normal environmental review process, comments from the “resource agencies” become part of the official record, they are used by members of the public to formulate, direct and support their advocacy efforts, and they often play a central role in judicial review of the adequacy of environmental impact statements. *E.g. Western Watershed Project v. Kraalyenbrink*, 632 F.3d 472, 492 (9<sup>th</sup> Cir. 2010) (Bureau of Land Management EIS held inadequate because no reasoned response to adverse comments from the U.S. Fish and Wildlife Service, EPA, and state agencies); *National Audubon Soc’y v. Dept. of Navy*, 422 F.3d 174 (4<sup>th</sup> Cir. 2005) (Navy EIS inadequate, focus on comments from fish and wildlife agencies); *Center*

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<sup>3</sup> The EPA has an explicit statutory duty to submit comments. 42 U.S.C. § 7609(a)

*for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1169 (9<sup>th</sup> Cir. 2003) (Forest Service EIS inadequate because of insufficient response to responsible opposing views from resource agencies); *see generally* Michael C. Blumm and Maria Nelson, “Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation,” 37 *Vt. L. Rev.* 5(2012) (review of impact of resource agency comments in NEPA cases).

Here, that process has been short-circuited. The relevant resource agencies—the Minnesota DNR and the MPCA—entered into an agreement that they would *not* submit written comments that the public could review and incorporate into their own advocacy efforts. There have apparently been meetings and correspondence between DOC-EERA and the resource agencies, but the public has no idea whether the staff at the agencies with special expertise on environmental impacts genuinely believe DOC-EERA has properly identified, analyzed, and otherwise addressed the environmental issues posed by this project. Anecdotal evidence suggests that they may not.

When many of these same issues came up in the Sandpiper proceedings in 2014 and 2015, the MPCA and the DNR were highly and openly critical of this proposed pipeline route. The MPCA and DNR proposed an alternative route that would avoid most of the sensitive areas that Enbridge’s proposed Sandpiper (and Line 3) would run through and still deliver crude oil to Enbridge’s Superior terminal. *See generally* Stine/Landwehr letter to Scott Ek (April 28, 2015), attached as Exhibit 1; MPCA comment letter (October 29, 2014), attached as Exhibit 2; DNR comment letter (January 23, 2015), attached as Exhibit 3. The MPCA also agreed that a route like the proposed SA-04, which would run much more directly from the tar sands region in Albert to the refineries and terminals in the Chicago area, mostly through flat farmland where there would be access if a spill occurred, would pose even less of an environmental threat, and

deserved a thorough analysis. *See generally* MPCA comment letter (August 21, 2014), attached as Exhibit 4.

It is reasonable to infer that, absent the Memorandum of Agreement, the DNR and MPCA would have provided similar analysis and comment again in this case. The only major difference is that now Enbridge wants to run “diluted bitumen” on Line 3, instead of the light Bakken crude that was supposed to run through Sandpiper, with all the extra clean-up challenges a “dilbit” spill entails.

Because of the MOU among the agencies, however, that information is not and has not been available to the public, the parties, the ALJ, or the PUC through the public hearings or the evidentiary hearing that just concluded yesterday. That directly violates the requirements of Minn. Stat. § 116D.04, subd. 6a, and is sufficient reason alone to find the FEIS inadequate.

ALJ Lipman offered three responses. First, he characterized NEPA as “more restrictive” than MEPA, and he found NEPA regulations and precedent largely irrelevant. ALJ Report, Finding 288, at 46. FOH of course acknowledges that NEPA case law and CEQ guidance are not “binding” on the state under MEPA, but the Minnesota Supreme Court has expressly endorsed using NEPA precedent to interpret MEPA, because the purpose and language of the two statutes are so similar. *Minnesota Ctr. for Env'tl. Advocacy v. Minnesota Pollution Control Agency*, 644 N.W.2d 457, 468 (Minn. 2002). The case the ALJ relies on for the proposition that NEPA case law is “inapposite”—*Minnesota Ctr. for Env'tl. Advocacy v. City of St. Paul Park*, 711 N.W.2d 526 (Minn. Ct. App. 2006)—says exactly the opposite.<sup>4</sup> That case expressly approved reliance on the federal CEQ’s guidance on cumulative impacts. *Id.* at 532. Even more to the point, that case illustrates the critical role that independent resource agency comments are supposed to play in the process. The DNR had extensive critical comments on the environmental

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<sup>4</sup> ALJ Report, finding 36 n. 36, at 8.

review at issue in that case, and the DNR's decision to withdraw its comments after the RGU made significant changes seemed to make the difference in the outcome. *Id.* at 537.

Second, the ALJ made much of the fact that, under the applicable CEQ regulation, 40 C.F.R. § 1503.2, lead federal agencies must “obtain” comments from federal resource agencies, but only “request” comments from state and local agencies. By analogy, however, just as federal agencies are required to obtain comments from resource agencies at the federal level, the equivalent requirement at the state level would be for state agencies to get independent input from their sister state resource agencies. Again, the CEQ rules do not “bind” Minnesota, but they do provide useful guidance that should help drive state policy.

Finally, the ALJ argued that, even if DOC-EERA was required to get input from DNR and MPCA, no explicit rule requires DNR and MPCA to provide comments. No federal rule requires agencies like the U.S. Fish and Wildlife Service to provide comments either, but the CEQ determined that the duty to obtain comments properly implied a duty to provide comments. Federal resource agencies have the option of telling a lead agency that they have no comments or that an environmental review document is fully satisfactory to them, but they do not have the option of opting out of the process at the front end, as DNR and MPCA and DOC-EERA have done with the MOU here.

The PUC needs an honest, unfiltered analysis from the DNR and the MPCA to exercise its duties fairly. For example, one of the issues relevant to the adequacy determination here is whether the DOC-EERA decision to focus its analysis on seven “representative” sites and not on the most vulnerable areas along the route was appropriate. Enbridge witnesses have testified that DNR and MPCA were “involved” in selecting the particular sites the EIS analyzed, but we have



no idea of the give-and-take or the positions of the agencies on whether DOC-EERA's approach meets the objectives of NEPA.<sup>5</sup>

Of course, the public is entitled to that honest, unfiltered analysis as well. The public does not have the resources and expertise of agencies like the DNR and MPCA, and those agencies have an obligation to make sure those resources and that expertise serve the interests of Minnesota's water, its environment, and the public interest. Those agencies cannot discharge their statutory obligations to the public by "waiving" their full participation in this EIS process.

In order to comply with MEPA's express requirements at Minn. Stat. § 116D.04, subd. 6a, the PUC should request, receive, and make public formal comments from the MPCA and the DNR as part of a supplemental EIS process.

**C. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS COULD BE ADEQUATE WITHOUT ASSESSING SITE-SPECIFIC IMPACTS AT PARTICULARLY FRAGILE LOCATIONS ALONG THE ROUTE OR EVEN AT THE LOCATIONS THEY CHOSE TO STUDY**

Federal courts construing NEPA established long ago the principle that "[i]f it is reasonably possible to analyze the environmental consequences in an EIS . . . , the agency is required to perform that analysis." *Pacific Rivers Council v. U.S. Forest Service*, 689 F.3d 1012, 1026-27 (9<sup>th</sup> Cir. 2012) (rejecting forest plan EIS that did not analyze site-specific impacts on fish) (citations omitted). The "reasonably possible" test has been a bedrock principle in environmental review law for decades. *E.g. California v. Block*, 690 F.2d 753 (9<sup>th</sup> Cir. 1982).

DOC-EERA has, however, from the beginning, refused to assess site-specific impacts from an oil spill along Line 3's route. Their argument is one that has been rejected in cases like

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<sup>5</sup> The ALJ's finding that "[t]he FEIS does not identify any major difference of opinion or points of view among the agencies involved in the preparation of the EIS (DOC-EERA, DNR, and MPCA)," ALJ Report, Finding 286 at 46, is little consolation. There were major differences of opinion over Sandpiper, but in this case those differences have been suppressed by what is essentially an agreement among the agencies not to disagree in public, no doubt the primary goal of the Administration.

*Pacific River Council*, that “[t]he specific impacts of large oil releases are highly dependent on incident-specific factors that are impossible to predict with certainty.” Instead, DOC-EERA has provided only the following:

1. Projections of how far oil would travel in the first 24 hours after a spill at seven selected locations under several sets of circumstances; and
2. Generic discussions of the literature on the environmental impacts oil spills can have.<sup>6</sup>

That gives neither the public nor the PUC the information it needs. Before approving or rejecting this pipeline proposal, the public and the PUC reasonably want to know what would happen if a Kalamazoo-type spill<sup>7</sup> occurred near the Mississippi Headwaters, in the wetland complexes and wild rice stands north of Itasca State Park, into the Straight River, a nationally recognized trout stream, and in other sensitive areas along the route. How far would the oil travel? What could it do to wetlands, rivers, lakes, or groundwater in those locations? What could be the impact on drinking water supplies in areas with shallow aquifers and porous soils? What would be the fish, wildlife, and plant life impacts? Could a spill be cleaned up without doing additional damage? What might a clean-up cost? What would it take to compensate for possible natural resource losses? Would those financial resources always be available? None of this is in the FEIS.

With adequate time, DOC-EERA, ideally with the DNR, MPCA, and tribal resource managers, could have focused on the locations of greatest concern to natural resource managers

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<sup>6</sup> FOH’s comments on the FEIS also objected to the blanks in the FEIS where numbers ought to be, redacted because of Enbridge’s claim that data on how much oil could spill is nonpublic. The Commission properly rejected that data practices argument, but, of course, the numbers are still not readily available to the FEIS the public can access.

<sup>7</sup> Or, to be current, another Marshall County, South Dakota spill. “Keystone pipeline leaks 210,000 gallons of oil in South Dakota,” *Argus Leader* (November 16, 2017), <http://www.argusleader.com/story/news/2017/11/16/keystone-pipeline-south-dakota-shut-down-after-leak-detected/872009001/>. The FEIS and the ALJ Report do reassure us that spills of that size constitute less than 1 percent of the oil spills that occur.

and the public. They could have analyzed where the oil from a large spill could go in those locations, used the catalog of natural resources in those specific areas, used the literature on oil spills (especially “dilbit” spills), and projected potential damages to drinking water, fish, wildlife, plants, and cultural/historic resources at those places. They then could have followed up with assessments of likely or possible clean-up costs (both financially and in terms of potential further harm to the environment), natural resource damages, and public and private property damages. That would have given the PUC and the public a much clearer picture of the potential environmental impacts along the proposed route.

Instead, the PUC and the public are asked to extrapolate from so-called “representative” water crossing samples, make estimates about “worst case” spill amounts, pull up information about resources in any particular area, and then project possible water and resource damages from the resource inventory and the literature review contained in the FEIS. Maybe that was the best they could do in the available time, but one can read all of the volumes and pages of this FEIS and still not have a reasonable idea of what would happen to natural resources and people if a big spill happened in, say, the La Salle valley near Itasca. Nor is there any analysis of where a spill might most likely occur, given differences in elevation and hydraulic pressure at various locations along the route.<sup>8</sup>

ALJ Lipman responds by citing question 1b of CEQ’s “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” 46 Fed. Reg. 18026 (Mar. 23, 1981), which advises that agencies need not consider an unlimited number of alternatives, just a reasonable range of alternatives. ALJ Report, finding 214, at 35. The judge appears to be confusing “alternatives,” with “environmental consequences,” the discussion of the specific

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<sup>8</sup> FOH offered a methodology developed by the Oak Ridge National Laboratory for estimating the economic cost of natural resources damages at oil spill sites in its comments on the DEIS, but that was ignored in the FEIS, and by the ALJ.

environmental impacts of the proposed action. “Forty Questions,” 46 Fed. Reg. 18026, question 7. Contrary to the ALJ’s characterization, FOH’s concern is not just that the wrong sites were picked, but that, even at the sites studied, the FEIS does not assess the environmental consequences. It models how far and what direction oil would travel if there is a spill, but then forces us to make our own assessment of the direct environmental impacts of the spills they model. The discussion of the general effects of oil spills in the FEIS might be appropriate for a generic EIS, but it does not meet the standard when reviewing a specific project along a specific route with specific natural resources at stake.

**D. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS DID NOT NEED TO CONSIDER PRIMARY ALTERNATIVES TO THE PIPELINE, OR OTHER REASONABLE SECONDARY ALTERNATIVES TO THE PROPOSED PROJECT.**

The Environmental Quality Board’s (EQB) environmental review rules require that EISs “compare the potentially significant impacts of the proposal with those of reasonable alternatives to the proposed project.” Minn. R. 4410.2300, subp. G. That rule requires that:

The EIS must address one or more alternatives of each of the following types of alternatives or provide a concise explanation of why no alternative of a particular type is included in the EIS: alternative sites, alternative technologies, modified designs or layouts, modified scale or magnitude, and alternatives incorporating reasonable mitigation measures identified through comments received during the comments periods for EIS scoping or for the draft EIS.

*Id.* The CEQ describes the alternatives requirement as the “heart” of environmental review. 40 C.F.R. § 1502.14. According to an early landmark NEPA case, the purpose of the alternatives requirement is:

To ensure that each agency decision maker has before him [sic] and takes into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit analysis. Only in that fashion if

it likely that the most intelligent, optimally beneficial decision will ultimately be made.

*Calvert Cliffs Coordinating Committee v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

Contrary to ALJ Lipman's report, the FEIS in this case does not contain an adequate consideration of alternatives. The major deficiencies are that:

1. The FEIS makes no attempt to evaluate "non-pipe" alternatives. Under Minnesota law, the PUC's mission is certainly to protect Minnesota consumers ("adaptability, reliability, efficiency"), but it is also part of the PUC's mission to reduce greenhouse gas emissions and promote renewable energy. Therefore, just as it is incumbent on the PUC to evaluate "non-wires" alternatives when considering an application to build new high voltage transmission lines, the PUC should evaluate renewable energy alternatives that do not involve the movement of crude oil when considering a pipeline application. The FEIS should consider those alternatives, but it does not.
2. The FEIS simply accepts as a given Enbridge's assertion that the purpose and need for this project can only be to move crude oil to Clearbrook, Minnesota and then on to Superior, Wisconsin.<sup>9</sup> Of course, very little oil is going to stop in Superior. As Enbridge acknowledges, virtually all of the diluted bitumen getting to Superior will turn south and run through Enbridge's Wisconsin pipelines to refineries in the Chicago area, eastern Canada, the Gulf Coast, or possibly overseas.<sup>10</sup>
3. The FEIS does not evaluate the alternatives of retiring the old Line 3 with additional available capacity generated from existing pipelines (what should be considered the "no action" alternative<sup>11</sup>), of replacing the old Line 3 with a new Line 3 in its existing corridor instead of along Enbridge's proposed route, of a route like the one proposed by the MPCA for the Sandpiper pipeline (turning

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<sup>9</sup> Enbridge also asserts that the purpose and need for the project is safety, to get the old Line 3 out of service. If that were the purpose, however, there would be an analysis in the FEIS of closing down old Line 3 without authorizing a new pipeline.

<sup>10</sup> To the extent a new Line 3 might carry light crude in its early years, some of that may be diverted into Enbridge's beleaguered Line 5, the pipelines that travel on the lake bottom at the Straits of Mackinac and eventually to the refineries in Sarnia, Ontario. If Line 5 is decommissioned, a plan which currently has bipartisan support in Michigan, then virtually all oil of whatever grade that gets to Superior will go south through Wisconsin to the Chicago area.

<sup>11</sup> The "no action" alternative refers to the *agency* action, not that the project proponent will do nothing if its proposal is rejected. The discussion of a "no action" alternative must include a discussion of reasonably foreseeable actions that would result from an agency not to allow the proposed project. CEQ, "Forty Questions," 46 Fed. Reg. 18026 (1981). With the costs of keeping the old line 3 going apparently high, according to Enbridge, it is reasonably foreseeable that Enbridge would retire old line 3 and take steps to fill or expand their light crude pipelines, which have no apportionment issues. That alternative should have been evaluated in the FEIS.

south at Crookston before reaching Clearbrook, going south of Minnesota's lake country, and then proceeding back north to Superior), or of a different mix of pipeline and rail capacity expansions instead of the straw man alternatives of "all trains" or "all trucks."

4. The FEIS does not include an analysis of possible non-Enbridge pipeline alternatives, like TransCanada's KeystoneXL pipeline, approved yesterday by the Nebraska Public Service Commission, or the already-approved Kinder-Morgan Trans Mountain pipeline.

The FEIS and the ALJ both conclude that they are bound by Enbridge's definition of its proposal's purpose and need, which requires a crude oil pipeline that runs through Enbridge's current Clearbrook and Superior terminals. ALJ Report, at 173-74 at 26. The ALJ finds the current diversion of crude oil into the MinnCan pipeline at Clearwater for Minnesota refineries precludes the need for any consideration of alternative ways to deliver that oil. That narrow conception of course limits the range of alternatives that get serious consideration. And the result is that the ALJ's conclusion on the range of alternatives is inconsistent with the case law on the subject.

The basic principle was articulated in *Van Abbema v. Fornell*, 807 F.3d 633 (7<sup>th</sup> Cir. 1986), where the court declared that "the evaluation of 'alternatives' . . . is to be an evaluation of alternative means to accomplish the *general* goal of an action, it is not an evaluation of the alternative means by which a particular applicant can reach its goals." *Id.* at 638. As that same court recognized a decade later:

The "purpose" of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role.

*Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7<sup>th</sup> Cir. 1997); accord *National Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058 (9<sup>th</sup> Cir. 2010).

Obviously, if the purpose and need is defined as assuring Minnesota energy needs, then the FEIS needs to consider non-pipe, non-crude oil alternatives, and it does not do so. But even if the purpose and need was defined more narrowly as movement of crude oil from where it is extracted in western Canada (or perhaps North Dakota) to where it is refined in Minnesota, eastern Canada, in the Chicago area, along the Gulf Coast, or overseas, there are other reasonable alternatives like the route the MPCA proposed in the Sandpiper proceedings that are not evaluated in the FEIS.

The ALJ report also rejects the notion that the FEIS should have evaluated non-Enbridge pipelines like TransCanada's KeystoneXL or Kinder-Morgan's Trans Mountain as reasonable alternatives on the grounds that they "are not capable of bringing crude oil to a refinery in Superior, Wisconsin." ALJ report, finding 171, at 25. There is a very small refinery in Superior, but of course Enbridge freely acknowledges that very little of the oil coming to Superior from any of the alternatives is going to that refinery. Almost all of it is destined for Chicago-area refineries and terminals, and much of it will continue on to refineries in eastern Canada, the Gulf Coast, and overseas. And none of that oil in Superior ever goes to Minnesota refineries. Rejecting alternatives just because they do not support Enbridge's Superior terminal, even though those alternatives would serve the same crude oil customers as Enbridge's proposed project, makes no sense.

**E. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS'S ANALYSIS OF SYSTEM ALTERNATIVE 4 (SA-04) WAS ADEQUATE.**

The only alternative not tied to the continued reliance on Enbridge's existing Clearwater and Superior terminals is SA-04, which this Commission directed DOC-EERA to evaluate. The FEIS's analysis of SA-04 was seriously misleading for several reasons:

First, the FEIS continues to insist that SA-04 is "longer" than Enbridge's proposal, and therefore, since shorter is better than longer when it comes to oil pipelines, the FEIS concludes that SA-04 is more risky than Enbridge's proposal. This is a classic apples-to-oranges problem. SA-04 is, of course, "shorter" than Enbridge's proposal because it follows a more direct route from the tar sands in Alberta to the refineries and terminals in the Chicago area where the oil will actually go. Enbridge's proposal, in contrast, follows a more convoluted route from the tar sands region to Superior, where none or virtually none of the oil will be used, and then makes a sharp right turn to travel through Wisconsin, again through environmentally sensitive landscapes and hundreds of additional watercourses, to arrive at its Chicago-area destinations. If the FEIS had compared apples-to-apples, then its "shorter is better than longer" maxim redounds in favor of SA-04.

Second, the FEIS refuses to draw the qualitative distinction between irreplaceable wetlands, lakes, rivers, and shallow aquifers that are difficult to access and flat farmland with easy access if a spill were to occur. The FEIS asserts that it is "not its role" to make that distinction, and so it relies to a considerable extent on simplistic acreage impacts from its oil spill models. That is also misleading. No one seriously disputes that building and maintaining a pipeline on easy-access flat farmland poses fewer environmental risks, because clean-up is easier and the natural resources at stake are more easily recoverable. Rather than simply cataloging natural resource features in the different corridors, the FEIS should have drawn qualitative



distinctions that recognize that polluting irreplaceable wetlands, lakes, streams, shallow aquifers, and wild rice stands imposes greater costs than a spill in flat farmland, with plenty of roads, and few irreplaceable natural resources.

Third, the FEIS contends that, because SA-04, which follows an existing natural gas pipeline co-owned by Enbridge, would travel nearer to population centers like St. Peter, SA-04 would pose a greater threat to drinking water supplies. Cities like St. Peter do not, however, rely on the Minnesota River or shallow aquifers for their drinking water supplies, but instead on deep wells that an oil spill would not likely pollute. The FEIS makes a simplistic assumption based solely on proximity, and creates a drinking water threat that does not exist.

Finally, the FEIS makes much of potential impacts of SA-04 in Karst topography in southeast Minnesota, northwestern Iowa, and western Wisconsin, the so-called “driftless area.” The FEIS does not, however, evaluate minor re-routings of SA-04 onto other existing pipeline corridors that would bypass any karst terrain by significant distances, the same kind of minor re-routings it considers when evaluating Enbridge’s proposed route.

The ALJ report responds in several ways. First, contrary to this Commission’s explicit direction, the ALJ found that SA-04 was not entitled to serious consideration because it has “a different endpoint” than Enbridge’s proposed route. That presumably means that the FEIS did not need to evaluate SA-04 because it does not “end” in Superior. ALJ Report, Finding 198, at 31-32. Second, the ALJ mischaracterizes FOH’s argument as an accusation of “agency bias,” ALJ Report, Finding 202, at 32-33. FOH simply argues that the SA-04 analysis is misleading and that there are differences in how it was evaluated in comparison with Enbridge’s proposal. FOH ascribes no improper motive to DOC-EERA.

Third, the ALJ seems to dismiss SA-04 or justify the unwillingness of the FEIS to consider minor route modifications because SA-04 has not yet gone through “field surveys, landowner and agency coordination, and site-specific engineering” like Enbridge’s proposal has. ALJ Report, Finding 203, at 33. Of course, no alternate route proposal would ever have gone through the same process as the proponent’s proposed route has; one could just as well add that SA-04 has not yet secured financing or attracted a rival pipeline company. That cannot be the burden on those proposing a route alternative. If route alternatives have to be developed to that level, then *every* routing challenge must automatically fail. FOH does not believe that was the PUC’s intention when it adopted this rule.

Finally, the ALJ points to Minn. R. 4410.2300(1), which obliges an RGU to “identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment, or sociological effects of the proposed project.” That is the familiar requirement that EISs (and environmental assessment worksheets, for that matter) evaluate mitigation measures. Contrary to the ALJ’s conclusion, however, RGUs are required to evaluate mitigation measures for alternatives as well as the proposed project so that the comparisons are fair. There is no indication that the PUC intended to eliminate that standard requirement in the way that it worded that particular section of the rules.

None of the ALJ’s arguments justify the lesser treatment of SA-04 in the FEIS, and they certainly do not justify the FEIS drawing flatly incorrect or misleading conclusions.

**F. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS’S ANALYSIS OF “CUMULATIVE IMPACTS” DID NOT NEED TO INCLUDE REASONABLY FORESEEABLE FUTURE PIPELINE PROJECTS THAT MIGHT RESULT FROM APPROVAL OF THIS PROJECT.**

The Environmental Quality Board’s (EQB) rules require that environmental impact statements contain “for the proposed project and each major alternative, . . . a thorough but

succinct discussion of potentially significant adverse or beneficial [environmental, economic, employment, and sociological] effects generated, be they direct, indirect, *or cumulative*.” Minn. R. 4410.2300, subp. H (emphasis added).<sup>12</sup> A “cumulative impact” is defined in CEQ’s rules as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. . . . Cumulative impacts can result from individually minor but collectively significant actions.” 40 C.F.R. § 1508.7.

The “cumulative impact” discussion in the FEIS is insufficient because it does not analyze at least two reasonably foreseeable additional projects whose effects should be assessed in tandem with the Line 3 project:

1. It does not include an analysis of a new Sandpiper—the pipeline Enbridge already proposed along the same corridor to carry light crude from the Bakken shale formation in North Dakota.
2. It does not include an analysis of the proposed new Line 66 through Enbridge’s existing pipeline corridor through Wisconsin, which is even more likely with the retirement of Enbridge Line 5 under the Straits of Mackinac a strong possibility.

In addition, the “cumulative impact” analysis does not analyze the combined impact of running multiple pipelines in the same corridors in Minnesota, a key element of Minnesota pipeline policy to date.

First, the FEIS should have considered the cumulative impact of the proposed Line 3 with a revived Sandpiper project along the same corridor. Enbridge of course withdrew its application for Sandpiper, but currently describes the project as “on hold,” not as “abandoned.”

U.S. State Dept., Supplemental EIS for the Line 67 Project,

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<sup>12</sup> In *Citizens Advocating for Responsible Dev. (CARD) v. Kandiyohi County Bd. of Comm’rs*, 713 N.W.2d 817 (Minn. 2006), the Minnesota Supreme Court found a distinction in the EQB rules between “cumulative impacts,” to be considered in deciding whether a generic EIS should be prepared under Minn. R. 4410.3800, and “cumulative potential effects,” to be considered in deciding whether a project-specific EIS is needed under Minn. R. 4410.1700, subp. 7. The relevant rule provision in this case—Minn. R. 4410.2300, subp. H—adds a third phrase—“cumulative effects”—to which the Court has not decided whether a third definition should apply.

[https://www.state.gov/e/enr/applicant/applicants/environmental\\_review/](https://www.state.gov/e/enr/applicant/applicants/environmental_review/). Enbridge of course denies that it has any plans for Sandpiper, but that is a classic “segmentation” strategy, designed to forestall the evaluation of the environmental impacts of all the likely projects in a defined geographic area. *See generally Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1314-15 (D.C. Cir. 2014).<sup>13</sup>

Similarly, a new Line 66 along Enbridge’s Wisconsin corridor, twinning the existing Line 61, also easily meets the “reasonable foreseeability” test. It is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.” *Northwest Bypass Group v. U.S. Army Corps of Eng’rs*, 552 F.Supp.2d 97 (D.N.H. 2008) (collecting cases). Enbridge is proposing to add 760,000 barrels per day of heavy “diluted bitumen” transportation capacity to its Mainline system through Minnesota to Superior.<sup>14</sup> That oil will not be taken up by the Calumet refinery, and it cannot be diverted to Line 5, so it will have to go south through Wisconsin. Enbridge claims the entire Mainline is currently “full,” so there will have to be extra capacity added along the Wisconsin corridor if Enbridge’s new Line 3 goes forward.

Moreover, Enbridge has already at least once proposed “twinning” Line 61 through Wisconsin with a new Line 66, and has done extensive planning. The route is clear, the likely desired transport capacity of the 42-inch pipeline Enbridge once proposed is highly predictable, and the environmental impacts would be the same. The FEIS did add some general discussion about possible future projects in the FEIS, but the FEIS clearly does not contain any analysis of

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<sup>13</sup> The ALJ Report attempts to distinguish *Delaware Riverkeeper*, where FERC, confronted with a proposed set of interconnected pipelines, improperly reviewed each one separately, on the grounds that FERC’s divisions were not based on “logical termini” or rational end points. ALJ Report, Finding 191, at 30. What the D.C. Circuit found unacceptable was that the various pipelines were interconnected but were analyzed separately, precisely what is happening here. The court’s problem was not with *how* the interconnected pipelines were divided.

<sup>14</sup> The new Line 3, which will be used primarily for heavy crude, does not “replace” the old Line 3, which carries almost only light crude. If the old Line 3 is retired, it is not clear if new light crude capacity will be required, since there is no “apportionment” indicating a capacity/demand imbalance in light crude shipments.

the cumulative impacts of a new Line 3 with new Enbridge pipeline capacity that will necessarily follow it.

The EQB definition of “cumulative potential effects” is consistent with the conclusion that those projects should have been included in the FEIS’s analysis. As the EQB rule explains:

“Cumulative potential effects” (CPE) means the effect on the environment that results from the incremental effect of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or which a basis of expectation has been laid.

Minn. R. 4410.0200, subp. 11a. The rule goes on to list the factors a responsible government unit (RGU) should evaluate to determine if “a basis of expectation has been laid,” “whether a project is reasonably likely to occur,” or “whether sufficiently detailed information is available about the project to contribute to the understanding of cumulative potential effects.”

[W]hether any applications for permits have been filed with any units of government; whether detailed plans and specifications have been prepared for the project; whether future development is indicated by adopted comprehensive plans of zoning or other ordinances; whether future development is indicated by historic or forecasted trends; and any other factors determined to be relevant by the RGU.

*Id.* For a revived Sandpiper project, those criteria have clearly been met. For a new Line 66, Enbridge once announced plans but did not formally file for permits. Yet, that project or something similar is certainly reasonably foreseeable just because the extra oil coming through Minnesota has to go somewhere. That likely scenario needed to be included in the FEIS’s cumulative impact analysis.

The FEIS also does not address the cumulative environmental impact of continuing the policy of routing pipelines in existing pipeline corridors, many of which were established before modern environmental laws were enacted. Understanding the cumulative potential effects of past, present, and future pipelines in old corridors like the Mainline, and possible future pipelines

in the new Sandpiper/Line 3 corridor, is crucial to a complete environmental assessment. Grouping pipelines together creates greater risks—working on one pipeline can damage another, a breach of one pipeline can trigger problems in others, and environmental damages can multiply. At the same time, opening a new corridor can be an invitation to more pipelines and more “linear facilities.” Understanding those considerations is crucial to a full understanding of the environmental consequences.

The ALJ Report found it proper that the projects the FEIS considered for its cumulative impacts analysis were all “expected to be either under construction or operational during 2018.” ALJ Report, Finding 278, at 45. FOH respectfully submits that the range of relevant “reasonably foreseeable” projects that ought to have been included has to be broader than that.

**G. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS ADEQUATELY RESPONDED TO SUBSTANTIVE COMMENTS FROM THE PUBLIC.**

The Environmental Quality Board (EQB) rules governing environmental review require the responsible government unit (RGU) to “respond to the timely substantive comments received on the draft EIS” in the final EIS. Minn. R. 4410.2600, subp. 10. The CEQ regulations on responses to comments requires that:

An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action;
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency;
- (3) Supplement, improve, or modify its analysis;
- (4) Make factual corrections; and

- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

40 C.F.R. § 1503.4(a). The CEQ's "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Regulations," its general guidance for NEPA liaisons, states that:

Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document. But, in addition, the agency must state what its response was, and if the agency decides that no substantive response to a comment is necessary, it must explain why.

<https://energy.gov/sites/prod/files/G-CEQQ-40Questions.pdf> (Question #29). The leading court decision on responses to comments under NEPA emphasizes how critical public comments and agency responses to comments are to the process:

NEPA's public comment procedures are at the heart of the NEPA review process. NEPA requires responsible opposing viewpoints to be included in the final EIS. This reflects the paramount Congressional desire to internalize opposing viewpoints into the decision-making process to ensure that any agency is cognizant of all the environmental trade-offs that are implicit in a decision. To effectuate this aim, NEPA requires not merely public notice, but public participation in the evaluation of the environmental consequences of a major federal action.

*California v. Block*, 690 F.2d 753, 770-71 (9<sup>th</sup> Cir. 1982). Based on those principles, the court found that, under NEPA:

Agencies are . . . obliged to provide a "meaningful reference" to all responsible opposing viewpoints concerning the agency's proposed decision. The standard requires the agency to identify opposing views found in the comments such that "differences in opinion are readily apparent." Moreover, "there must be good faith, reasoned analysis in response."

*Id.* at 773 (citations omitted).

The FEIS does not meet that standard. Several of FOH's substantive concerns with the DEIS were ignored in the FEIS (and not mentioned by the ALJ). First, the project footprint was

greatly underestimated. FOH explained that the size of this project was likely underestimated by 40% or more, because of the need for extra space for both construction and to address unusual topographical features. This was based on Federal Energy Regulatory Commission (FERC) guidelines for pipelines and a Montana Interagency Pipeline Task Force report, but was not mentioned in either the FEIS or the ALJ's report.

Second, the project life was understated. The FEIS simply accepted Enbridge's assertion that the project life would be 20 years, when the indisputable fact is that crude oil pipelines are often in use for 50 years or more, with at least some of the risks becoming greater with age. This was also ignored in both the FEIS and the ALJ report.

Third, the descriptions of the proposed project and the alternatives were inadequate to do a sufficient analysis. As FOH pointed out, based on the observations of its own pipeline safety consultant, the FEIS does not contain pipeline elevation profiles, maximum operating pressure at different mileposts, hydraulic profiles at the design rate case for the control crude oil case on the elevation profile, the location of mainline valves and their type of operation, the general location and type of leak detection devices, and milepost-level identification of high consequence areas. Some of that information was developed in the CN/RP proceedings, but it was not in the FEIS and its analysis of the likelihood and consequences of possible spills could not be adequate without it.<sup>15</sup>

Fourth, the FEIS refused to use available methodologies to estimate the economic costs of natural resource and other damages from a major oil spill, specifically an authoritative report

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<sup>15</sup> The FEIS response was "Thank you for your comments on the Draft EIS. Available design details are provided in chapter 4 of the FEIS." FEIS, appendix T-1, at 96. Chapter 4 contains none of that required information.



from the Oak Ridge National Laboratory (ORNL).<sup>16</sup> As explained earlier, the FEIS models how far and in what direction oil would travel from a major spill at certain locations, but then does not take the necessary next step of assessing the environmental consequences of those modeled spills. Instead, the FEIS punts, and offers only generic summaries of the literature on what oil spills can do, when FOH offered a much more robust methodology. The FEIS acknowledges this as a substantive comment, but does not address it, and it was ignored in the ALJ report.

Fifth, the FEIS did not analyze the cumulative impact of routing multiple pipelines along the same pipeline corridors. Minnesota policy favors following existing linear facilities (pipelines, transmission lines, highways) with new linear facilities, and the FEIS should have analyzed the advantages and disadvantages of that policy, since it drives many of the most likely cumulative impacts. FOH offered specific methods for doing this analysis, and the FEIS did classify the comment as substantive. Yet, this issue was not addressed in the FEIS, and it was ignored in the ALJ report.

Finally, the FEIS relies too heavily on Enbridge analysis and information. The FEIS classified this as a substantive comment, but the ALJ report was again silent. Indeed, the ALJ report exacerbated the problem by repeatedly and improperly going beyond the FEIS and its record to cite Enbridge testimony in the certificate of need/route permit proceedings to support its conclusions.

As the ALJ Report acknowledges, the DEIS received 2,860 comments. Out of that set, the ALJ Report discusses and dismisses ten issues raised, six of them from FOH's comments. Yet, most of FOH's comments were ignored in both the FEIS and the ALJ Report, and FOH suspects several other parties can make the same case. The refusal or inability of the FEIS

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<sup>16</sup> ORNL, "Studies for the Requirements of Automatic and Remotely Controlled Shutoff Valves on Hazardous Liquids and Natural Gas Pipelines with Respect to Public and Environmental Safety," ORNL/TM-2012/411, <https://www.osti.gov/scitech/servlets/purl/1373899>.

authors to incorporate comments weakens the substance of the EIS, of course, but it also contributes to the general public impression that its concerns are not being heard in this process. The opportunity for public engagement is a core value of the environmental review process, at least as important as the substantive analysis, and that value has not been served by the failure to respond to substantive comments.

**H. THE ALJ IMPROPERLY CONCLUDED THAT THE FEIS'S DISCUSSION OF POSSIBLE MITIGATION OPTIONS WAS ADEQUATE, DESPITE THE ABSENCE OF ANY DISCUSSION OF HOW TO SECURE THE FINANCIAL RESOURCES TO PAY FOR ANY OF THEM.**

The FEIS contains hundreds of pages describing how Enbridge might manage an oil spill. What is missing, however, is any analysis of how Enbridge would pay for any of those mitigation measures. Without that, there is no way to assess whether they might be effective, which is a required part of any EIS mitigation discussion.

Enbridge's spill in Marshall, Michigan has so far cost more than \$1.2 billion to remediate. A major spill along the proposed route in Minnesota could potentially have even greater impacts, and cost even more to clean up and compensate for damages. Those amounts could easily exceed the limits of Enbridge's general liability (GL) insurance, if a claim could get past the pollution exclusions in those policies, and they could put serious pressure on the Oil Spill Liability Trust Fund. In addition, Enbridge is not willing to put Enbridge, Inc., the parent corporation of the dozens of Enbridge entities including the applicant, on the hook for any potential liability, even though it effectively controls how much cash stays with subsidiaries and how much gets transferred to the mothership in Canada.

If there was a spill, and Enbridge defaulted on its obligations, the government would have to step in. And, of course, it would cost the government much more to deal with a spill, because it would have to hire the necessary expertise and response capability from outside, and do so in

compliance with government procurement regulations. The likely effectiveness of any of the mitigation options in the FEIS can only be assessed if there is assurance that the financial resources will be available to cover the cost of the government doing a clean-up and remediation of a major spill.<sup>17</sup>

The ALJ Report characterizes FOH's position as concern whether "Enbridge will be a viable company over the expected life of the proposed pipeline." ALJ Report, Finding 273, at 44. That may be part of FOH's concern, as the transportation sector that consumes nearly three quarters of the crude oil produced goes electric,<sup>18</sup> but the more immediate concern is that Enbridge can simply deprive its subsidiaries of the cash needed to address a spill and use the bankruptcy process, if necessary, for any "responsible" subsidiary to avoid claims. Even if the State were able to sue successfully for fraudulent transfer (a difficult task) and recover some of the money, it would take years and likely only provide pennies on the dollar. FEIS section 10.6.3 lists possible resources for spill remediation, but there is no assessment of their likely availability in a spill situation. Ultimately, if this Commission were to grant a certificate of need it would need to insist on financial assurance conditions adequate to ensure that Minnesota taxpayers will not be left holding the bag.

### **III. CONCLUSION**

For the reasons stated above, intervenor FOH respectfully requests that the PUC not accept the ALJ's recommendation, that it find the FEIS does not yet meet MEPA's adequacy

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<sup>17</sup> Or spills. Enbridge's 2010 Marshall, Michigan spill was followed just a couple of months later by another major spill from an Enbridge pipeline near Romeoville, Illinois.

<sup>18</sup> The ALJ Report opines that the nature of crude oil markets 50 years from now is not knowable, and cannot be "reasonably obtained." ALJ Report, Finding 275, at 44. The future is of course in the future, but the forecasted prospects for crude oil to 2030 and 2040 at least are a central issue in this case. Those forecasts cover a considerable range—from the extremely bullish forecasts offered by Enbridge and Canadian oil producers to the extremely bearish forecasts of energy groups and consultants who believe we are at an inflection point for oil like the inflection point we reached with coal-fired electrical power a couple of years ago, where the markets (and regulatory policy) are about to take a decisive negative turn. To protect Minnesota's taxpayers, this Commission and the FEIS need to evaluate that range of possibilities.

standard, and remand this to DOC-EERA to complete a supplemental EIS to address the concerns raised here. In the meantime, FOH respectfully requests that, unless and until a supplementary EIS process produces an “adequate” EIS, the certificate of need and route permit proceedings be suspended.

Respectfully Submitted,

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