



# Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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September 29, 2016

## **Via Electronic Filing**

The Honorable Ann C. O'Reilly  
Minnesota Office of Administrative Hearings  
600 North Robert Street  
P.O. Box 64620  
St. Paul, MN 55164-0620

**RE: Objection and Request for Clarification for Upcoming Prehearing Order**

**In the Matter of the Applications of Enbridge Energy, Limited Partnership  
for a Certificate of Need and Pipeline Routing Permit for the Line 3  
Replacement – Phase 3 Project in Minnesota from the North Dakota Border  
to the Wisconsin Border**

**MPUC Docket Nos. PL-9/CN-14-916, PPL-15-137  
OAH Docket Nos. 65-2500-32764 and 65-2500-33377**

Dear Judge O'Reilly,

Friends of the Headwaters and Minnesota Center for Environmental Advocacy ("FOH/MCEA") have received the electronic filing by Enbridge Energy, Limited Partnership, containing the proposed schedules discussed at yesterday's prehearing conference. FOH and MCEA write to note that along with the Department of Commerce ("the Department"), who orally noted its objection at the conference, we also object to the Applicant's use of the phrase "MEPA Compliant" in connection with its proposed schedule, and request that your order reflect that FOH/MCEA believe that the phrase is inaccurate and more prejudicial than informative. FOH/MCEA would not object to a revised filing that characterized the proposed schedule as an "alternative" or similar. In the alternative, we request that your order reflect that numerous parties objected to the characterization of the schedule as "MEPA Compliant."

Whether *any* of these schedules conform with MEPA depends most directly on three factors: (1) whether the Draft and Final Environmental Impact Statements are issued according to the tentative schedule, (2) whether OAH and the Commission are able to prepare the ALJ Report and issue final decisions on the permit applications within relevant time windows, and (3) whether the Applicant consents to an extension of

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statutory deadlines or the deadlines are extended for good cause by the governor. The Applicant's so-called "MEPA Compliant" schedule, in other words, would *still* not conform with the 280-day deadline of Minn. Stat. § 116D.04, subd. 2a(h) if the Department is unable to adhere to its tentative EIS preparation schedule. EIS preparation is a complex, difficult task, and given the two-month delay between the scheduled and actual release of the Final Scoping Documents, it seems very possible that the EIS preparation schedule may be delayed past the tentative schedule.

The Applicant's "MEPA Compliant" schedule would also not conform to the 30-day deadline of Minn. Stat. § 116D.04, subd. 3a if the PUC is not able to schedule a meeting to consider its final decision on the permits within 30 days of its determination that the EIS was adequate. In short, compliance with the statutory deadlines of MEPA depends on a multitude of factors, not all of them within the control of the Applicant or OAH.

FOH and MCEA therefore request that OAH submits a revised document removing the phrase "MEPA Compliant," or in the alternative, that the upcoming Prehearing Order discussed at yesterday's prehearing conference reflect the fact that multiple parties objected to the use of the phrase in connection with the schedules submitted by the Applicant.

Sincerely,

/s/ Kevin P. Lee

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