

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

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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

PETITION OF INTERVENOR FRIENDS OF THE HEADWATERS

FOR RECONSIDERATION AND REHEARING OF ORDER

GRANTING ROUTE PERMIT WITH CONDITIONS

INTRODUCTION

Intervenor Friends of the Headwaters (“FOH”) petitions for reconsideration and rehearing of the Commission’s Order granting Enbridge a Route Permit for its proposed Line 3 project on the following grounds:¹

1. As FOH has contended since the scoping stage of the environmental review process, the range of route alternatives the Commission has considered has been too narrowly based on an inappropriately constricted view of the purpose and need of the project.

¹ FOH incorporates into this petition all of the arguments it has raised in previous petitions for reconsideration over the adequacy of the environmental impact statement (“EIS”) or the Commission’s initial Certificate of Need Order, which preceded the setting of conditions that the Commission has yet to define.

2. To the extent the “need” for the project is to prompt Enbridge to decommission the existing Line 3, or to take pressure of the existing Enbridge Mainline system, any route equally serves those purposes. Therefore, under the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.04, subd. 6, because of “the state’s paramount concern for the protection of its air, water, land, or other natural resources from pollution, impairment, or destruction,” this Commission is obligated to select the least damaging “feasible and prudent” alternative. A less damaging alternative may not lawfully be rejected on the grounds that it would be more costly for Enbridge.

ARGUMENT

I. THE RANGE OF ROUTE ALTERNATIVES THE COMMISSION CONSIDERED WAS TOO NARROW BASED ON A CONSTRICTED VIEW OF THE PURPOSE AND NEED OF THE PROJECT.

The Commission’s obligation under the criteria for pipeline route selection, Minn. R. 7852.1900, is “to select a route that minimizes human and environmental impact.” *Id.*, subp. 2. And the list of factors to consider in subpart 3 obviously tilts heavily toward limiting the environmental impact as much as possible—the impact on “the natural environment, public and designated land, including but not limited to wildlife habitat, water, and recreational lands (para. B), the impact on “natural resources and features,” (para. G), and the “cumulative potential effects of related or anticipated effects of related or anticipated future pipeline construction (para. I). That requires consideration of the broadest range of possible routes that can meet the purpose and need of the project.

But, from the beginning, the Commission has narrowed the range of alternative routes that might be considered to only those that utilize Enbridge’s current Clearbrook and Superior

terminals. The only basis for that restriction is the Commission's concession from the beginning that the purpose and need of this project is to deliver crude oil to Enbridge's Superior terminal.

That, of course, has never been the genuine purpose and need for the project. As the record makes clear, including the testimony of Enbridge's own experts, the genuine purpose and need of this pipeline project is to deliver crude oil to refinery customers in the lower Midwest, in eastern Canada, and, mostly, to refineries and export terminals along the Gulf Coast. That purpose, obviously, can be met without using those existing terminals, and that restriction has poisoned the consideration of route alternatives from the beginning.

With the "need" for the project now apparently some combination of providing a prompt to Enbridge to decommission the existing Line 3, and perhaps to relieve pressure on the Enbridge Mainline system to reduce apportionment, any route that delivers oil to these refinery markets can meet that need. Even if a route does not deliver oil directly to Minnesota refineries who might have to get oil from sources other than Enbridge if the Mainline system is full, it does not matter so long as the route chosen can free up capacity on the Mainline. Any of the routes that bypass Minnesota lake country—the natural gas pipeline corridor along which most of an SA-04 route would travel, the Dakota Access Pipeline corridor, the Keystone and Keystone XL corridors, maybe even the new Liberty Pipeline proposal—would meet those needs as well as any pipeline route that runs through Clearbrook or Superior.

Under Minn. R 7852.1900, subp. 2, then, the Commission must select the route that minimizes the environmental impact. And that cannot possibly be the Applicant's preferred route, as both the DNR and the MPCA have repeatedly urged, because of the natural resources that would be threatened. When one considers the likely future decisions to move other Enbridge pipelines away from the existing Mainline corridor to this new corridor to avoid the

reservation easement problems, the unsuitability of the applicant's chosen route becomes even more compelling.

II. THE COST TO ENBRIDGE IS NOT A SUFFICIENT REASON TO REJECT LESS ENVIRONMENTALLY THREATENING ROUTE ALTERNATIVES.

Minn. R. 7852.1900, subp. 3 lists "pipeline cost" as a criterion for the Commission to consider. And we can assume, at least for the sake of argument, that it would cost Enbridge more to construct a pipeline along a route that avoids the lake country.

But that economic consideration alone cannot justify an environmentally damaging route selection. Minn. R. 7852.1900, subp. 3 must be read together with the Minnesota Environmental Policy Act ("MEPA"), Minn. Stat. § 116D.04, subd. 6. MEPA requires *all* state agencies with permitting authority to evaluate alternatives to select the alternative that poses the least risk of environmental "pollution, impairment, or destruction" so long as it is "feasible and prudent." And cost alone cannot be the reason for rejecting an alternative as not being "feasible and prudent." MEPA could not be clearer.

Yet, again from the beginning of these proceedings, the PUC has declined to follow, or even acknowledge, its substantive obligation under MEPA to minimize environmental impacts, even if it means the project will cost more. That legal error compromised the environmental review process, and it has compromised the Commission's route permit order as well.

CONCLUSION

For the reasons stated above, and the reasons articulated in the other petitions for reconsideration, Intervenor Friends of the Headwaters respectfully requests that the Commission vacate its Route Permit Order, and complete its consideration of the Certificate of Need. If the Commission concludes finally that a Certificate of Need is an Order and contains proper

conditions, then it should reconsider and rehear the route selection issues and pick a route—in reality, a new pipeline corridor—that minimizes the potential cumulative environmental impacts.

Respectfully Submitted,

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