

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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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

**MEMORANDUM OF INTERVENOR FRIENDS OF THE HEADWATERS IN SUPPORT
OF MOTION FOR CLARIFICATION OF SEPTEMBER 5, 2018 ORDER**

ARGUMENT

TO PREVENT MULTIPLE WAVES OF PETITIONS FOR RECONSIDERATION AND APPEALS FROM A SINGLE CERTIFICATE OF NEED DECISION, THE COMMISSION SHOULD CLARIFY ITS SEPTEMBER 5, 2018 ORDER. IN THE INTERESTS OF ALL PARTIES AND THE COMMISSION, RECONSIDERATION PETITIONS SHOULD WAIT UNTIL AFTER THE COMMISSION MAKES ITS DECISION ON MODIFICATIONS.

The Commission’s September 5 Order Granting Certificate of Need as Modified and Required Filings has created confusion and concern about when petitions for reconsideration are due. At the end of the Commission’s September 5 Order, it states that the order is “contingent” and not yet effective. Specifically, it says “[t]his order shall become effective on the day the Commission issues its order approving the modifications required herein.” (September 5 Order, at 39). Further, on page 34, the Commission states that:

The Commission will grant the certificate of need contingent on modifications consistent with Enbridge's proposals in its June 22 filing as explained and further refined below. The modifications required by the Commission are essential to its determination that the project meets the criteria for a certificate of need.

Accordingly, the Commission will require Enbridge to submit a compliance filing that provides further details about these modifications as required in the ordering paragraphs below, and to which intervenors will have the opportunity to respond.

The Commission has taken written submissions on the proposed modifications, and then held a hearing on the proposed modifications on September 11, 2018. That hearing was recessed, and the PUC announced that it would notice an additional hearing date.

No order approving modifications of the CN has been served. Consequently, the CN remains "contingent" and it is not yet effective.

From these statements and circumstances, intervenor FOH believes that Commission intended that any further review of its certificate of need decision wait until after its effective date, which means after its order approving modifications is issued. At that time, parties could petition for reconsideration of the entire certificate of need, not just the issues addressed in the contingent September 5, 2018 order.

Minn. Stat. § 216B.27, however, starts the reconsideration clock on the date of *service* of an order, not on its effective date. As a result, as matter currently stand, the parties will have to file one set of reconsideration petitions on the contingent September 5 order by September 25, wait for the order addressing modifications on some future date, and then file a second set of reconsideration petitions. That would trigger overlapping 60-day periods for consideration of those petitions, with the possibility of different parts of the CN becoming reviewable on different dates. That in turn would likely trigger multiple appeals, litigation over which issues are included in what order, and which orders constitute final agency orders and which do not.

FOH submits that this set of outcomes does not serve the interests of the Commission, the parties, or the public.

The Commission, however, can fix this problem and effectuate what we believe is the Commission's original intent with an order clarifying that the September 5, 2018 was not an order that would start the time limit for petitions for reconsideration, and that the time for reconsideration petitions will commence when the order on modifications is served on the parties and the certificate of need becomes effective.

CONCLUSION

For the reasons stated above, intervenor Friends of the Headwaters respectfully requests that the PUC modify its September 5 order relating to the certificate of need so that the time for filing petitions for reconsideration does not begin to run until the Commission has ruled on the proposed modifications, and made the CN "effective."

DATED: September 18, 2018

Respectfully Submitted,

/s/ Scott Strand
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