



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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August 4, 2016

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

VIA ELECTRONIC SERVICE

Re: In the Matters of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need and Routing Permit for the Line 3 Replacement Project

*MPUC Docket Nos. PL-9/CN-14-916
PL-9/PPL-15-137*

Dear Mr. Wolf:

We write to express our concern about Enbridge's apparent effort to use a recent proposed consent decree to leverage the Commission into rushing the Line 3 proposed replacement. In this letter, MCEA and FOH provide the history of the Consent Decree and the reasons why this proposed consent decree is irrelevant to the Commission's schedule for, and final decision on, Line 3.

On July 26, 2010, Enbridge's Line 6B, a 30-inch pipeline carrying crude oil, burst near Marshall, Michigan and spilled over a million gallons of crude oil into the Kalamazoo River. Heavy rains carried the oil at least 35 miles downstream.¹ After the rupture occurred, three shifts of Enbridge employees ignored the alarms and continued to pump oil through the pipeline for 17 hours.² The delay resulted in the release of over 1,000,000 gallons of crude oil. The National Transportation Safety Board compared the Enbridge employees' response to the warning signs of the

¹ Details about the spill and spill response as provided by the U.S. Environmental Protection Agency may be found at <https://www.epa.gov/enbridge-spill-michigan>.

² "Enbridge Employees Compared to 'Keystone Cops' in 2010 Kalamazoo River Oil Spill," Michigan Radio, July 10, 2012, available at <http://michiganradio.org/post/enbridge-employees-compared-keystone-cops-2010-kalamazoo-river-oil-spill>.

rupture to the “Keystone Kops.”³ Enbridge employees twice tried to restart the line, pumping additional oil into the river. The oil saturated surrounding wetlands, and hundreds of local residents were sickened from exposure to toxic components of crude oil.⁴ Cleanup costs are estimated at \$1.21 billion.⁵ Five years after the spill, more than 1 million gallons of oil have been recovered, but some areas will never be cleaned up.

In the wake of this spill, Enbridge has agreed to pay \$61 million in civil penalties in a proposed consent decree.⁶ However, the proposed consent decree also includes language obligating Enbridge to replace Line 3. It states that “Enbridge shall replace the segment of the Lake head System Line 3 oil transmission pipeline that spans approximately 292 miles from Neche, North Dakota, to Superior, Wisconsin (“Original US Line 3”).” It also states that Enbridge “shall complete the replacement of Original US Line 3 and take Original US Line 3 out of service, including depressurization of Original Line 3, as expeditiously as practicable after receiving required regulatory approvals and permits for new Line 3,” and that Enbridge “shall seek all approvals necessary for the replacement of Original US Line 3...as expeditiously as practicable.”⁷

Enbridge is already using this language to attempt to rush the process, telling media that Enbridge is “hopeful that the settlement will instill a new sense of urgency at all relevant levels of Minnesota government, from the Governor’s office to the agencies to the PUC.”⁸

The irony of Enbridge attempting to take a consent decree in which it pays millions in civil settlement penalties for damages caused by one of the largest inland oil spills in US history, and using it to leverage the state of Minnesota into hurrying along a new pipeline should not be lost on the Commission, the Department of Commerce, or the Governor’s office. The lesson of the Kalamazoo spill and spills across the country is that caution must not be sacrificed in the name of speed. If Line 3 is currently so degraded that it is dangerous to operate, the appropriate action would be to decommission the pipeline to prevent oil spills, not to continue to operate a dangerous pipeline while trying to rush the permitting process for its replacement.

³ “Pipeline Rupture and Oil Spill Accident Caused by Organizational Failures and Weak Regulations,” National Transportation Safety Board Office of Public Affairs, July 10, 2012, available at <http://www.nts.gov/news/press-releases/Pages/PR20120710.aspx>.

⁴ *Id.*

⁵ “New Price Tag for Kalamazoo River Oil Spill Cleanup: Enbridge Says \$1.21 Billion,” MLive, November 5, 2014, found at http://www.mlive.com/news/grand-rapids/index.ssf/2014/11/2010_oil_spill_cost_enbridge_1.html.

⁶ The proposed consent decree also includes \$1 million in fines for a spill in Illinois, and \$110 million in other fines. <https://www.epa.gov/enforcement/enbridge-clean-water-act-settlement>

⁷ Proposed Consent Decree, p. 25, available at <https://www.epa.gov/sites/production/files/2016-07/documents/enbridge-cd.pdf>.

⁸ “Enbridge Agrees to \$177M Settlement for 2010 Oil Pipeline Spills,” MPRNews, July 20, 2016, available at <https://www.mprnews.org/story/2016/07/20/enbridge-oil-spill-settlement>.

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We write to provide our own reading of the proposed consent decree. We submit that Enbridge's alleged "urgency" as a result of this proposed consent decree is a self-serving attempt to control a permitting process that is exclusively delegated to state authorities, and should not prompt the state to change its current course on the EIS for Line 3 or the permitting procedures.

First, this is merely a proposed consent decree, not a final one. It is still subject to a comment period and approval by the Department of Justice as well as a federal judge. It is premature at best for Enbridge to use this document for any purpose, except negotiations with the Department of Justice.

Second, the DOJ has carefully crafted the language of this agreement to ensure that it does not infringe on state processes in any way. The proposed consent decree only obligates Enbridge to seek approval for Line 3 replacement, which it has already done, and to replace Line 3 quickly *once it has obtained necessary approvals*. It does not and cannot, by its own terms, influence in any way the ongoing permitting process in our state. It cannot bind the state to act quickly or to approve any permits, for neither the DOJ nor any other federal agency has any authority over crude oil pipeline permitting in Minnesota, and there is no federal judge that can order any changes to the state's ongoing permitting process. The Department of Justice cannot require Minnesota to permit a pipeline, nor does it purport to do so.

Nor could Enbridge agree to such a thing, even if it were proposed. Enbridge cannot agree to a consent decree where performance is out of its control. Enbridge cannot replace Line 3 without the approval of the Public Utilities Commission, regardless of a consent decree.

Perhaps most significantly, this proposed consent decree contemplates something that Enbridge has never disclosed to this Commission—the possibility that Enbridge might decommission the existing Line 3, and then maintain and re-commission it for future use. The proposed consent decree states that Enbridge must provide notice to DOJ if it intends to reuse the existing Line 3 after decommissioning it, and must complete certain testing and repairs before doing so. The consent decree contemplates no such future for Line 6b; it "permanently enjoin[s]" Enbridge from reusing Line 6b for the transport of oil, gas, or other hazardous substance. Enbridge could have agreed to similar language on the old Line 3, but it did not.

The possibility of reuse of the old Line 3 significantly alters the proposed Line 3 project, and how it must be evaluated in an EIS. It raises the possibility that even if Enbridge is able to "replace" Line 3, the new Line 3 will not be a "replacement" at all but an additional pipeline, and Enbridge will continue to use the existing Line 3. If Enbridge does not agree to permanently decommission the old Line 3 as a condition of a "Line 3 replacement," the Commission should

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treat the proposed “Line 3 Replacement” as a new pipeline that will be additional to, and not in replacement of, existing Enbridge pipeline capacity in the state.⁹

Put simply, if the need to replace Line 3 was so urgent, Enbridge should have planned better, and applied for a replacement earlier. Enbridge cannot use this aging pipeline as an excuse to short-circuit required legal processes in which Minnesotans are entitled to participate, including a full and robust EIS and contested case hearings based on all information included in the EIS. FOH and MCEA acknowledge that Line 3 is aging and may encounter increasing safety problems as it ages, as happens with all infrastructure. But this is not new information. Enbridge chose to apply to build Sandpiper first in November 2013, and delayed its applications on Line 3 until April 2015. Nothing has changed since then, except that Line 3 is a little older. Enbridge’s responsibilities toward the existing Line 3 are the same as it would have towards any of its pipelines – to maintain it and ensure its safe operation. The PUC and DOC cannot prevent a recurrence of the Kalamazoo spill by hastening the permitting of the Line 3 replacement; that responsibility lies solely with Enbridge, the pipeline operator. If Line 3 cannot be operated safely, operations on the line must cease.

Every new pipeline in Minnesota poses new risks of a spill, and it is only by sheer luck that Minnesota has not been forced to undergo a cleanup on the same scale as Michigan’s. The July 26, 2010 Enbridge pipeline rupture that is subject of this consent decree occurred about 45 miles from Grand Rapids, Michigan. The media has reported that it was the biggest on land oil spill in U.S. history, with 1.1 million gallons leaking from the line. But in fact, the media are wrong. On March 3, 1991, the Lakehead Pipeline, now owned by Enbridge, ruptured only a mile or two from another city called Grand Rapids. This release was 1.7 million gallons near Grand Rapids, Minnesota. The leak occurred only a short distance from the Mississippi River, but it occurred on land and in winter. The cold slowed the oil, which did reach the ice-covered Prairie River not far upstream of the Mississippi. As in Kalamazoo, a delayed response in shutting down the pipeline increased the volume of the spill.¹⁰ But booms placed on the ice stopped the flow, and coupled with the favorable locations and frozen ground, clean-up was relatively easy. This event is only forgotten due to luck. If it had occurred in summer, and closer to the Prairie River, FOH and MCEA doubt that the State of Minnesota would be struggling to make the proper decisions on these new Enbridge projects. If volumes of oil of that magnitude had reached the fast-moving and large Mississippi, oil might have travelled much farther downstream than the 38 miles of the Kalamazoo River in Michigan in 2010.

⁹ Enbridge’s Certificate of Need Application is in conflict with the proposed consent decree, as both state that “Enbridge is permanently taking the existing Line 3 out of service once the Project goes into Service.” Certificate of Need Application, Line 3 Replacement Project, MPUC Docket No. PL-9/CN-14-916, April 2015 at 11-1. Thus, to be consistent, Enbridge should modify its application or change the proposed consent decree. At a minimum, it owes the Commission an explanation as to why it is seeking to preserve the right to reuse Line 3 in the proposed consent decree, while representing to the Commission that it is planning on permanently abandoning it.

¹⁰ See Lakehead Pipeline Company incident report, available at <https://incidentnews.noaa.gov/incident/6793>

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In sum, nothing in the proposed consent decree should cause Judge O'Reilly, the Department of Commerce or the Public Utilities Commission to rush through the EIS or permitting processes. The hasty construction of a crude oil pipeline only enhances the risk of future spills; it does not reduce it. If Enbridge is permitted to replace Line 3, either in its proposed corridor or elsewhere, Minnesotans will live with this pipeline for 30 to 50 years. A few extra months to ensure that this process is done safely is small in comparison.

Sincerely,

/s/ Kathryn M. Hoffman
Kathryn M. Hoffman
Staff Attorney

KMH/km