

May 9, 2018

Mr. Scott Ek  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101

RE: 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 Docket No. PL-9/CN-14-916; OAH Docket No. 65-2500-32764

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Route Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border  
MPUC Docket No. PL-9/PPL-15-137; OAH Docket No. 65-2500-33377

**Comments on behalf of the Minnesota Pollution Control Agency to the Minnesota Public Utilities Commission on Administrative Law Judge Report of April 23, 2018.**

Dear Mr. Ek:

The Minnesota Pollution Control Agency (MPCA) files these comments to the Minnesota Public Utilities Commission (Commission) on the Administrative Law Judge's April 23, 2018, report (ALJ Report) in these dockets. The MPCA commends the ALJ for preparing a comprehensive analysis of a very challenging and complex record. The MPCA's comments address issues that lie within our agency's authority and expertise, and we acknowledge that there are many other criteria discussed in the ALJ Report that the Commission will consider in making its need and route determinations. Our intent is to provide the MPCA's perspective in the areas addressed below to assist the Commission as it makes its final need and route decisions in these proceedings.

- 1. Environmental Justice Impacts Will Occur With Any Route Alternative; SA-04 Would Have the Lowest Environmental Justice Impact.** The MPCA supports the ALJ Report Findings based on the MPCA comments on environmental justice in our November 22, 2017, comment letter. See Findings of Fact (FOF) 308, 309, and 766. We emphasize that if the Commission finds a need for this project, SA-04 has a significantly lower environmental justice impact than the Applicant's Preferred Route (APR). If the Commission determines that SA-04 is not a more reasonable and prudent alternative than the APR, and proceeds to the Route phase, the MPCA emphasizes that all routes - Applicant's Route and other alternatives - will have disproportionate and adverse impacts on environmental justice communities, including low-income and minority populations. The Final Environmental Impact Statement (EIS) identifies some actions that may help mitigate these impacts. See Revised Final EIS 11.4.

As the MPCA states in our November 22, 2017 letter, our analysis indicated that SA-04 would have the lowest impact on tribal lands, people of color, and low-income residents, with only 8 miles, or 3% of the route, crossing through areas of concern for environmental justice, affecting 19,312 low-income people. The Applicant's Route and other route alternatives would impact significantly more miles of areas of concern for environmental justice. Applicant's route crosses

155 miles of areas of concern for environmental justice, or 46% of the route, affecting 24,909 low-income people; RA-07 has 112 miles, or 39% of the route, affecting 26,612 low-income people; RA-06 has 146 miles, or 46% of the route, affecting 19,449 low-income people. See Table 1 in Nov. 22, 2017 letter.

- 2. The MPCA Supports Project Conditions Identified in ALJ Report and Urges the Commission to Assure Continuing Viability of Conditions Beyond Expiration of the Route Permit.** If the Commission finds a need for this project, the MPCA strongly supports the conditions identified in ALJ Report FOF 949 and Conclusion of Law 43. Many of these conditions enhance environmental and human health protection but may not be addressed comprehensively through the individual project permits required from other agencies. Recommendations addressing the corporate (parental) guaranty and indemnification/hold harmless agreement; general liability and environmental impairment liability insurance; continuing evidence of insurance coverage; minimum amounts of coverage; a decommissioning fund; and including the state of Minnesota as an additional insured are very important to protect Minnesota residents and natural resources.

The MPCA has reviewed a recent version of the Sample Route Permit prepared by the Department of Commerce (DOC) in this proceeding. We note that the Route Permit, if issued, would expire when the Commission accepts the Permittee's Pipeline Construction Completion Certificate. Many of the project conditions cited in the ALJ Report FOF 949 and Conclusions of Law 43 are intended to apply through the life of the project. To assure their continuing viability beyond completion of construction, the MPCA urges the Commission, if it finds a need for the project, to include them as conditions of the need certificate, as noted in Conclusions of Law 41 and 43.

- 3. The MPCA Supports the ALJ Report's Analysis of Greenhouse Gas Impacts and Renewable Energy Recommendation.** The MPCA commends the ALJ Report for accurately summarizing the analysis of the Greenhouse Gas (GHG) impacts this project would have if any alternative were built. FOF 916 is particularly significant in noting that the 30-year social cost of carbon, \$287 billion, is not reflected in either the Applicant's or the Department of Commerce's (DOC-DER) economic analysis. Only the No Build alternative will avoid this very significant cost to society. The No Build also avoids impacts to the environment from construction of a new or in-place replacement pipeline that would at least double the capacity of the existing line. FOF 680 notes the carbon-intensive nature of tar sands oil extraction, and finds that the increased production and use of fossil fuels does not further Minnesota's reduction of GHG emission goals in Minn. Stat. 216C.05, subd. 2 and 216H.02, subd. 1. The agency also supports the recommendations in FOF 683 and 949 to apply the neutral footprint approved in the second upgrade to Line 67 to this Project. The Line 67 conditions include conserving an acre for every acre of natural habitat impacted, planting a tree for every tree that must be removed, and generating a kilowatt-hour (kWh) of renewable energy, as defined in Minn. Stat. 216B.2422, subd. 1(c), for every kWh the Project consumes, as well as requirements for reporting compliance with these conditions.
- 4. Comparison of potential impacts to environmental resources.** The ALJ Report correctly reflects the MPCA's November 22, 2017, comments on the potential effects to surface and groundwater resources in FOF 1397-1401. If the Commission finds a need for the project, as our November 22, 2017, comment letter states, RA-07, which involves construction primarily in an existing

pipeline corridor, offers the greatest potential to minimize potential adverse effects to surface water and groundwater resources. Consistent with our earlier comments, MPCA supports ALJ Report Conclusions of Law 27, 38 and 39 from a surface water and groundwater resource perspective. Among alternatives involving new corridor construction, SA-04 offers lower potential effects to surface and groundwater resources than the APR or RA-03AM.

5. **The Potential Impact of an Oil Spill on Groundwater.** The MPCA would like to comment on how the Final EIS addressed the potential impact of an oil spill on groundwater resources, since both FOF 1155 and 1156 in the ALJ Report address this subject. FOF 1155 states that the EIS apparently does not consider the risk of an oil leak to be a major potential impact to groundwater. The MPCA believes this Finding is based on an incorrect interpretation of the EIS discussion of risk to groundwater from normal construction and operation of a pipeline in Chapters 5 and 6, and the discussion in EIS Chapter 10 of the potential impact to groundwater from an accidental spill. The MPCA agrees with FOF 1156 and FOF 1180, which indicate the primary concern for groundwater is an accidental release. The EIS reference to “minor and temporary impacts” to groundwater in Chapters 5 and 6 refers only to the ordinary construction and operation of a pipeline. EIS chapter 10, in contrast, notes that an accidental spill can cause acute or chronic public health impacts through dermal contact, ingestion, or inhalation; affect public resources and strain the capacity of emergency response resources; harm terrestrial vegetation and habitat; harm wildlife who ingest oil or experience external oiling; create negative short and long term impacts on water supplies; damage wetlands; adversely affect aquatic receptors, including fish and aquatic plants; as well as a myriad of other impacts, as discussed in EIS 10.4.2.1, pp. 10-78 through 10-85.
6. **Risk of Spill with Larger Diameter Pipe.** Related to the above comment on spill risk, the MPCA supports ALJ Report FOF 716-717, which note that a 36-inch pipe would have energy savings benefits but also would heighten environmental risk by enabling more oil to flow through the pipe than the existing 34-inch pipe.
7. **Abandonment.** The MPCA supports the Findings in the ALJ Report discussing the environmental impacts of decommissioning, abandonment, and removal (FOF 1025 – 1089). In particular, FOF 1081 effectively summarizes the short term and long term environmental concerns that may arise if pipelines are permanently abandoned after they are removed from service. There are also limited areas where it may be better from an environmental or safety perspective to leave a decommissioned line in place rather than removing it. The MPCA recognizes that the abandonment question raises significant policy issues for Minnesota that are broader than this project and should be considered in determining whether an existing line should be permanently abandoned.
8. **Quantitative comparisons between the APR and other alternatives should be viewed with the understanding that the APR received more “customizing” than other alternatives.** Findings related to environmental impact comparisons between APR, SA-04, and Route Alternatives need to recognize the fact that the APR has been developed over many years by the Applicant, allowing for refinements in location and construction corridor widths to address problematic or environmentally sensitive features. In comparison, SA-04 and route alternatives were developed as part of the EIS scoping process and have not benefitted from the additional refinements that would have occurred if they had been under consideration for the same length of time as the APR.

Mr. Scott Ek  
Page 4  
May 9, 2018

The MPCA thanks the Public Utilities Commission for the opportunity to comment on the ALJ Report.  
Thank you for consideration of these comments.

Sincerely,



Bill Sierks, Manager  
Certification, Environmental Review, and Rules Section  
Resource Management & Assistance Division

BS:bt