

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Katie J. Sieben | Chair |
| Valerie Means | Commissioner |
| Matthew Schuerger | Commissioner |
| Joseph K. Sullivan | Commissioner |
| John A. Tuma | Commissioner |

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

ISSUE DATE: July 20, 2020

DOCKET NO. PL-9/CN-14-916

DOCKET NO. PL-9/PPL-15-137

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

ORDER DENYING
RECONSIDERATION

PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge, or the Applicant) filed separate applications for a certificate of need¹ and a routing permit² for an approximately 338-mile pipeline, along with associated facilities, extending from the North Dakota–Minnesota border to the Minnesota–Wisconsin border (the Project) to replace its existing Line 3 pipeline (Existing Line 3) in Minnesota.

On May 1, 2020, the Commission issued its Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (May 2020 Order). In the May 2020 Order, the Commission found that the Second Revised Final Environmental Impact Statement (Second Revised FEIS) is adequate under the applicable rules, approved a certificate of need for the Project by reissuing several prior orders with modifications, and reissued the routing permit for the Project by reissuing several prior orders with modifications.³

¹ *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, Docket No. PL-9/CN-14-916 (the need docket).

² *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, Docket No. PL-9/PPL-15-137 (the routing docket).

³ The Commission’s Order Accepting Tribal Economic Opportunity and Labor Education Plan as Modified was reissued through an Erratum Notice dated May 13, 2020.

On May 21, 2020, the following parties filed petitions for reconsideration of the May 2020 Order:⁴

- Friends of the Headwaters
- Mille Lacs Band of Ojibwe (Mille Lacs Band)
- Minnesota Department of Commerce – Division of Energy Resources (DOC-DER)
- Red Lake Band of Chippewa, White Earth Band of Ojibwe, Honor the Earth, and Sierra Club (Joint Petitioners)
- Youth Climate Intervenors

By June 2, 2020, the following parties filed answers to the petitions for reconsideration:

- Consulate General of Canada
- Enbridge
- Flint Hills Resources
- Government of Alberta, Canada
- Laborers’ International Union of North America (LIUNA)
- Shippers for Secure, Reliable, and Economical Petroleum Transportation (Shippers)
- United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association)

On June 25, 2020, the Commission met to consider the petitions for reconsideration.

FINDINGS AND CONCLUSIONS

I. Legal Standard

A. Standard for Reconsideration

Petitions for reconsideration of Commission orders are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. The Commission generally reviews a petition for reconsideration to determine whether it (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.

⁴ The Commission also received a letter from Jami Gaither, a member of the public and a non-intervening party, requesting that the Commission reconsider the May 2020 Order.

B. Request for Contested Case

Several parties requested that the Commission refer this matter for contested-case proceedings. The Commission's rules require referral for contested-case proceedings if (1) "a proceeding involves contested material facts and there is a right to a hearing under statute or rule," or (2) "the commission finds that all significant issues have not been resolved to its satisfaction."⁵

II. Parties' Positions

The petitions for reconsideration ask the Commission to reconsider three separate decisions from the May 2020 Order: (1) the finding that the Second Revised FEIS is adequate under the applicable rule; (2) the decision to grant the certificate of need as modified; and (3) the decision to grant the routing permit as modified. These parties requested that the Commission vacate its previously issued orders, and several parties urged the Commission to order a rehearing or refer the matter for contested-case proceedings for further record development.

A. Petitions for Reconsideration

1. Second Revised FEIS

Joint Petitioners, Friends of the Headwaters, Mille Lacs Band, and Youth Climate Intervenors argued that the Second Revised FEIS is inadequate because it should have analyzed potential spill impacts at a site closer to Lake Superior in order to fully understand the potential impacts on that resource. Mille Lacs Band argued that the Second Revised FEIS must be updated to include the most recent research on oil spill impacts and environmental health. Friends of the Headwaters also argued that the analysis used incorrect assumptions to model a potential oil spill and inadequately considered the potential damages from an oil spill.

2. Certificate of Need

Joint Petitioners, Friends of the Headwaters, DOC-DER, and Youth Climate Intervenors argued that the Commission should reconsider its decision granting the certificate of need for various reasons, including issues with Enbridge's demand forecast, potential alternatives to the Project, further evidence of climate change impacts, adoption of electric vehicles, and decreased demand for oil caused by the COVID-19 pandemic. Joint Petitioners, Friends of the Headwaters, and Youth Climate Intervenors recommended that the Commission order a rehearing or refer the matter for contested-case proceedings for further record development on the impact of the COVID-19 pandemic on global oil demand. Friends of the Headwaters maintained that the Commission must interpret its rules in light of the Minnesota Environmental Policy Act and the public trust doctrine.

3. Routing Permit

Lastly, Joint Petitioners, Friends of the Headwaters, Mille Lacs Band, and Youth Climate Intervenors recommended that the Commission reconsider its decision to grant a routing permit for the Project. Joint Petitioners argued that the routing permit fails to consider the potential public health impacts of constructing a pipeline during the COVID-19 pandemic. Mille Lacs Band argued that the Commission should have chosen the in-trench replacement route for the

⁵ Minn. R. 7829.1000.

Project, and Friends of the Headwaters argued that the existence of reasonable alternatives to the Project makes the routing permit unlawful. Youth Climate Intervenors argued that Enbridge's Human Trafficking Prevention Plan, required by the routing permit, is inadequate.

B. Answers to Petitions

Enbridge, LIUNA, the Consulate General of Canada, the Government of Alberta, Flint Hills Resources, Shippers, and United Association argued that the Commission should deny the petitions for reconsideration.

Enbridge, United Association, and Shippers argued that the new evidence of decreased oil demand due to the COVID-19 pandemic represented only a short-term fluctuation of oil markets and was not material to the long-term need for the Project. Enbridge explained that it has implemented best practices for safety related to the COVID-19 pandemic and argued that the demand forecast it submitted complies with the applicable rule; LIUNA argued that construction is considered an essential function under the governor's emergency order and there is no evidence of construction operations contributing to the spread of COVID-19.

LIUNA and Flint Hills Resources argued that the Project is the best alternative in the record, especially when compared to options such as transporting oil by rail. Enbridge and LIUNA maintained that the Second Revised FEIS is adequate under the applicable rule.

The Consulate General of Canada and the Government of Alberta submitted that Western Canadian oil production is expected to grow for the next 15 years despite the COVID-19 pandemic and emphasized the importance of Line 3 to the regional energy infrastructure system. These parties also touted the economic benefits of the Project and maintained that Canada has reduced the carbon footprint of tar-sands oil extraction.

III. Commission Action

The Commission has reviewed the petitions for reconsideration to determine whether any of the criteria for reconsideration of the May 2020 Order have been met.

With respect to the Second Revised FEIS, the petitions for reconsideration do not raise any new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the May 2020 Order, and do not otherwise persuade the Commission that it should rethink its finding that the Second Revised FEIS is adequate under Minn. R. 4410.2800, subp. 4.

As concerns the certificate of need and routing permit, the Commission has already considered many of the issues raised in the petitions for reconsideration regarding the certificate of need and routing permit. However, since the Commission met in February, the COVID-19 pandemic has disrupted the global economy and dramatically reduced short-term demand for oil. Parties argued that this new evidence, either on its own or in combination with the other issues raised, should lead the Commission to reconsider its decision to grant a certificate of need and routing permit for the Project or refer the matter for contested-case proceedings. The Commission will therefore determine whether it should reconsider the decisions in the May 2020 Order or refer the matter for contested-case proceedings in light of this new evidence concerning the COVID-19 pandemic.

Although this information concerning the pandemic's current impact on oil markets is new since the Commission voted to grant the certificate of need, the Commission concludes that this information is not material to the long-term need for the Project. "The Commission relies on long-range forecasts in its certificate-of-need analysis because evidence of short-term fluctuations in oil markets are not particularly useful in determining the need for a petroleum pipeline."⁶ The Commission notes that even petitioners' sources predict a likely return to pre-pandemic levels of oil demand over the next several years, suggesting that the impact of the COVID-19 pandemic is likely to be short-term.⁷ The Commission makes its decisions by considering long-term forecasts, and the information included in the record suggests that there will continue to be a demand for the transportation of crude oil over the long-term.

Contrary to assertions by petitioners, the Commission's finding of need for the Project is not predicated on an ever-increasing demand for oil. The Commission previously found that "the demand for heavy crude oil shipments over the Mainline System significantly exceeded the System's capacity and shows that the additional capacity that the Project would provide is needed today."⁸ Further, Shippers reiterated in their answer that they are "willing and able purchasers" for the petroleum that would be transported through the Project, as required by the applicable rules.⁹ The Commission has repeatedly acknowledged that our energy system is moving away from fossil fuels. However, the fact remains that we still need safe, reliable oil transportation infrastructure during this transition, and Existing Line 3 is badly in need of replacement. For these reasons, the Commission concludes that the new information about COVID-19's impact does not materially impact the decision to grant a certificate of need for the Project.

Joint Petitioners argue that the routing permit should be reconsidered because it fails to account for the potential health impacts of constructing the Project during the COVID-19 pandemic. However, the routing permit provides a framework for ensuring the safety of Enbridge's workforce and the public in a wide variety of scenarios, including the COVID-19 pandemic. To that end, Enbridge has filed its COVID-19 Execution Plan that details its efforts to prevent and minimize public health impacts related to the Project.¹⁰ While the Commission has a role to play in permitting the Project, it is outside the agency's authority and expertise to establish specific health protocols regarding COVID-19. The Commission will also review Enbridge's Human Trafficking Prevention Plan in accordance with the process outlined in the routing permit for compliance filings.

In sum, the Commission is not persuaded that any decisions in the May 2020 Order warrant reconsideration or referral to contested-case proceedings.

⁶ May 2020 Order, at 14.

⁷ Joint Petitioner petition for reconsideration, at 10.

⁸ Need Docket, Order Granting Certificate of Need as Modified and Requiring Filings, at 15 (September 5, 2018).

⁹ Minn. R. 7853.0130 requires the Commission to consider a forecast for demand when reviewing an application for a certificate of need. Minn. R. 7853.0010, subp. 8, defines "demand" as "that quantity of a petroleum product from the applicant's facilities for which there are willing and able purchasers."

¹⁰ Routing Docket, Enbridge Construction Environmental Control Plan Compliance Filing, at Attachment K (May 5, 2020).

ORDER

1. The Commission denies the petitions for reconsideration of the May 2020 Order.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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