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

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

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The Northern Water Alliance of Minnesota has participated in the Evidentiary Hearing Process before Administrative Law Judge O’Reilly on behalf of its membership representing well over 10,000 lake homeowners who directly or indirectly could be adversely affected by the decision before the ALJ and the MN PUC. A majority of these members are not represented by the elected officials within the proposed Line 3 Replacement Project although they pay taxes within these affected counties. Their concern is that of maintaining the water quality of Northern Minnesota’s lakes, rivers and streams, wetlands, and groundwater and to protect their investment for future generations.

The summary of the procedural history of this proposal has been documented by the applicant and supplemented by DOC DOEER, so we will refrain from repeating it here. Also, here, we apologize for any deviation from standard legal format as we are an all-volunteer organization with limited resources and no legal representation.
STATEMENT OF ISSUES

1. Has Enbridge satisfied the requirements of Minn. Stat. § 216B.243, the criteria set forth in Minn. R. 7853.0130, and other applicable legal requirements for a Certificate of Need for the Line 3 Replacement Project (Project)?
2. Should Enbridge’s Route Permit Application for the Line 3 Replacement Project be granted?
   a) If so, which of the proposed route alternatives or route segment alternatives best meet the route selection criteria set forth in Minn. R. 7852.1900?
   b) If so, what conditions or provisions should be included in the Route Permit?

SUMMARY OF CONCLUSIONS

1. The Administrative Law Judge concludes that Enbridge has not satisfied the criteria set forth under Minnesota law for a Certificate of Need for the Line 3 Replacement Project. Therefore, the Administrative Law Judge respectfully recommends the Commission deny Enbridge’s Application for a Certificate of Need. Without the CON, there can be no route approved.

About the Certificate of Need (CON), the Northern Water Alliance of Minnesota (NWAM) concurs with the DOC DER opinion that “the applicant has not established a need for the proposed project, its primary benefit is to areas outside of Minnesota and serious environmental risks and effects outweigh limited benefits” (September 11, 2017 Commerce Department press release).

This case is about contrasting the private interests of one Canadian based company with the public interest of the State of Minnesota. The Minnesota Public Utilities Commission (the “Commission”) is a state agency tasked with protecting the public interest through its oversight of the construction of facilities such as the large petroleum pipeline at issue in this case.

NWAM opposes the pipeline in this case because it is proposed to be built in an environmentally destructive location that would put Minnesota’s treasured and unique state resources at risk for the limited and purely economic benefit of one company. The applicant’s proposed route transects the 40% of the state identified by the MN DNR as the remaining pristine waters of Minnesota, the Land of 10,000 Lakes (Public AOH hearing presentations by Friends of the Headwaters).

NWAM supports the findings that the proposal does not in fact protect the public interest and further would require any pipeline that crosses Minnesota to be built in an environmentally appropriate location. The analysis in the MN PCA Final Comment Letter, November 22, 2017 supports this position. It should also be the existing Enbridge Mainline System was constructed prior to existing state and federal environmental law and regulation, and while “grandfathered”, is not a justification for colocation.

When the evidence in this case is viewed along with the Environmental Impact Statement prepared for this proposal in a light most favorable to the public interest, it becomes immediately clear that Enbridge has not established their limited private economic interests outweigh the public interest of the State of Minnesota. Rather, the evidence clearly establishes that there is no need.

2. If the Administrative Law Judge concludes that Enbridge has satisfied the criteria set forth in Minnesota law and rule for the issuance of a Certificate of Need, The ALJ has to further rule on law and rule for the issuance of a Route Permit. The Administrative Law Judge further concludes that the system alternative, SA-04 best meets the needs and interests of the State in this
proceeding. Accordingly, the Administrative Law Judge recommends that the Commission direct Enbridge to resubmit their application based upon SA-04 as review in the FEIS and considered and discussed in the Evidentiary Hearings, the Environmental Impact Statement (“EIS”) prepared by DOC-EERA, information presented during the public hearings, testimony and evidence presented at the evidentiary hearing, written comments received, exhibits received during this proceeding, and other evidence in the record.

**Supplemental conditions associated with the routing permit:**
Shall include third party inspection with the authority to review all construction standards, safety plans, and to stop construction for issues of compliance with the afore mentioned standards plans, permit violation or unacceptable construction methods. It should be noted, by Enbridge’s own admission, all work will be done by third party contractors.

Bonding or insurance shall be provided by the applicant at a level set by the PUC to indemnify the State and the public from both direct and indirect damages to the environment and the public waters of the state.

**Routing Permit:**

While the EIS is unclear in its analysis of the various alternatives, the supplemental comments by the MN DNR and the MN PCA both recommend that SA-04 is a system alternative which has the least impact on the Public water and natural resources of the State. NWAM supports these comments, most specifically those of the MPCA regarding SA-04 as a preferred system alternative with the least risk to the State’s resources (final comment by the MN DNR and PCA dated 11/22/2017 to the PUC).

Respectfully submitted:

James W. Reents  
Northern Water Alliance of Minnesota  
January 23, 2018