January 23, 2018

Via Electronic Filing

The Honorable Ann C. O’Reilly
Minnesota Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

Re:  In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Routing Permit for the Line 3 Pipeline 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

Dear Judge O’Reilly:

Pursuant to Your Honor’s Fourth Post-Hearing Order, Kennecott Exploration Company respectfully files its Initial Brief in the above-referenced docket. A courtesy copy will also be sent to you directly via electronic mail at ann.oreilly@state.mn.us.

Thank you for your attention to this filing. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Brian M. Meloy

Brian M. Meloy
STATE OF MINNESOTA
BEFORE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Enbridge Energy, Limited Partnership for a
Pipeline Routing Permit for the Line 3
Pipeline Replacement Project in Minnesota
from the North Dakota Border to the
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INITIAL BRIEF OF
KENNECOTT EXPLORATION COMPANY

By:

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Dated: January 23, 2018
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I. INTRODUCTION

Kennecott Exploration Company’s (“Kennecott”) long-standing participation in this proceeding is a result of the potential impact Enbridge Energy, LP’s (“Enbridge”) proposed Line 3 Pipeline and certain proposed route segment alternatives (“RSA”) could have on certain property Kennecott owns in Aitkin County, Minnesota.¹ In particular, since 2000, Kennecott has been exploring and evaluating potential non-ferrous metallic mineral resources in Minnesota as part of its “Tamarack Project” located on the border of Carlton and Aitkin Counties, Minnesota.² As part of the Project, the Minnesota Department of Natural Resources (“DNR”) Division of Lands and Minerals, awarded Kennecott a number of 50-year mineral leases.³

The DNR mineral leases specifically grant Kennecott the exclusive right to explore, mine and remove metallic minerals from state-owned mineral deposits subject to the leases. Since obtaining the leases, Kennecott has expended tens of millions of dollars on the Tamarack Project, drilled over 200 exploratory borings and conducted geophysical and other exploration activities, targeted and evaluated mineral deposits, undertaken environmental baseline studies, and acquired additional public and private property interests and mineral tenure, all in preparation for potential development of a copper nickel mine.⁴

When Enbridge proposed its Alternative Preferred Route (“APR”) for Line 3, Enbridge avoided bisecting the majority of Kennecott’s DNR Mineral Leases by moving the route for Line 3 farther south. However, west of the DNR Mineral Leases, Enbridge’s APR (as well as

² Ex. KN-1 at 3 (Best Direct).
³ Id.
⁴ Id. at 3-4
RSA-31, RSA-34 and RSA-35) continues to bisect Kennecott property in Aitkin County, which consists of approximately 974 acres located near the town of McGregor in Sections 17 and 19, T48N, R23W (“Kennecott Property”).

As explained below and in the Direct Testimony of Mr. Erik Best, the Kennecott Property is environmentally sensitive property that was specifically acquired for preservation and mitigation of the Tamarack Project impacts. Routing Line 3 through this Property has the potential to undermine Kennecott’s planned use of the land and impact the nature environment and culturally sensitive resources. While Kennecott and Enbridge have made progress on developing a solution to address Line 3’s potential impact on the Kennecott Property, a final resolution has not yet been reached. Unless and until an agreement between Enbridge and Kennecott is reached, Kennecott believes that any route approved for Line 3 should avoid bisecting this Property.

II. DISCUSSION

Minn. R. 7852.1900 sets forth the criteria pursuant to which the Minnesota Public Utilities Commission (“Commission”) determines the appropriate “route of a pipeline.” Subpart 2 of this Rule provides that in determining a pipeline route the Commission shall “select a route that minimizes human and environmental impacts.” In relevant part, Subpart 3 directs the Commission to fully consider of impacts of a route on:

A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;

B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands; [and]

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5 Ex. KN-1 at 4 (Best Direct).

6 Ex. KN-1 at 4-5 (Best Direct).
C. lands of historical, archaeological, and *cultural significance*; . . .

Application of these criteria should result in avoiding routing Line 3 through the Kennecott Property.

First, the record in this case demonstrates that Enbridge’s Line 3 pipeline route would impact Kennecott’s “planned future land use.” As Mr. Erik Best testified:

Kennecott purchased the Kennecott Fee Property in connection with the Tamarack Project as potential wetlands mitigation, and to unify two state wildlife management areas. In particular, adjacent to the Kennecott Fee Property are two sensitive environmental areas: the Savanna State Forest and the McGregor Wildlife Management Area. Furthermore, the Kennecott Fee Property has the potential to connect the Savanna State Forest and the McGregor Wildlife Management Area, making it an ideal property for future mitigation.[7]

The use of the Kennecott Property to connect the Savanna State Forest and the McGregor Wildlife Management Area in support of the Tamarack Project may be limited or precluded by Line 3.

Second, the record shows that the Kennecott Property at issue is environmentally sensitive. As Mr. Best Testified, “[p]ortions of the Kennecott Property are wetland areas that contain cultivated and fallow stands of wild rice, a sensitive native plant species with cultural significance. In addition to wild rice, there are a number of other environmentally sensitive species present on the property.”[8] The routing of Line 3 through this area could have a significant impact on this environment.

Finally, as noted, the wild rice stands within the Kennecott Property are culturally significant. As Mr. Terry Kemper testified on behalf of the Mille Lacs Band of Ojibwe, “wild rice (manoomin) is an integral part of our culture, our ceremonies, and our everyday life. It is at

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7 Ex. KN-1 at 4-5 (Best Direct).

8 Id. at 4.
the core of the identity of the Anishinaabe people.”\(^9\) Routing Line 3 through the Kennecott Property could negatively impact this culturally significant resource.

Importantly, Enbridge did not refute these attributes of the Kennecott Property or the potential impact Line 3 could have on the Property. In response to Mr. Best’s Testimony, Enbridge witness Mr. Barry Simonson stated only that:

> Enbridge and Kennecott were able to work together to address concerns Kennecott and the MDNR raised regarding potential impacts of the Project on parcels Kennecott has leases on for mining exploration in Aitkin County and western Carlton County. Enbridge and Kennecott have similar begun discussions on ways to minimize impacts to the fee-owned land that Kennecott identified in its Direct Testimony.\(^{10}\)

While Kennecott shares Mr. Simonson’s expectation that the impacts to the Kennecott Property can be mitigated, at this time the record in this case shows that Line 3 impacts on Kennecott’s property have not been adequately considered or fully addressed.

**III. CONCLUSION**

Based on the foregoing, Kennecott respectfully requests that Your Honor recommend to the Commission that, absent an agreement between Kennecott and Enbridge to mitigate potential impacts, any route approved for Line 3 should avoid bisecting the Kennecott Property.

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\(^9\) Ex. ML-1 at 3 (Kemper Direct). The Final Environmental Impact Statement (“Final EIS”) issued for the Line 3 Project also identified the significance of wild rice as a resource of cultural importance. See Ex. EERA-29 at 9-23 (Final EIS) (stating that “[t]ribal resources reinforce traditional practices, beliefs, and tribal values. Such resources are interconnected with and inseparable from the health and well-being of the tribal communities. For example, Manoomin (wild rice) is the very identity of the Ojibwe nations—it is the reason for migration from the east ‘to find and settle where food grows on water’ (Erlinder 2011).”).

\(^{10}\) Ex. EN-45 at 24 (Simonson Rebuttal).
Dated: January 23, 2018  

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Initial Brief of Kennecott Exploration Company has been served today by e-mail to the following:

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Dated this 23rd day of January 2018

/s/ Susan A. Hartinger
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