STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

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

THE RED LAKE BAND OF CHIPPEWA,
WHITE EARTH BAND OF OJIBWE,
HONOR THE EARTH, AND THE SIERRA CLUB

PETITION FOR RECONSIDERATION AND REHEARING OF ORDER FINDING ENVIRONMENTAL IMPACT STATEMENT ADEQUATE, GRANTING CERTIFICATE OF NEED AS MODIFIED, AND GRANTING ROUTING PERMIT AS MODIFIED

May 21, 2020
CONTENTS

I. INTRODUCTION .......................................................................................................................... 1

II. THE MAY 1 ORDER’S FINDING THAT THE EIS IS ADEQUATE IS UNLAWFUL AND UNREASONABLE .................................................................................................................. 3

III. THE ORDER GRANTING A CERTIFICATE OF NEED IS UNLAWFUL AND UNREASONABLE AND THE CN DOCKET SHOULD BE REOPEND TO ALLOW THE PARTIES TO INVESTIGATE CURRENT OIL MARKET CONDITIONS AND INTRODUCE ADDITIONAL EVIDENCE INTO THE RECORD .......................................................................................................................... 8

A. Changed Oil Market Circumstances ......................................................................................... 8

B. Market Data Subsequent to the Evidentiary Hearing Shows That the Canadian Crude Oil Production Industry Was in Decline Even Before COVID-19, Such that Future Expansion of Western Canadian Crude oil Production Is Unlikely ........................................................................... 10

C. The Crude Oil Market Crisis Has Dramatically Reduced Demand for Transportation Services on the Enbridge Mainline System ..................................................................................... 20

D. The Commission Should Consider the Impact of Enbridge’s Proposed Change to Mainline System Contracting From a Month-Ahead Nomination Process to Long-Term Firm Capacity Contracts on the Need for the Project ........................................................................................................ 20

E. Subsequent Evidence Proves that the Railroad and Trucking Alternatives Evaluated by the Commission Are Unreasonable, and that Enbridge Has in Fact Substantially Increased the Maximum Effective Capacity of the Mainline System ........................................................................ 21

F. The Commission Should Order a Rehearing to Consider Additional Evidence Related to the Increasing Threat of Climate Change on Minnesota Environment and People ........................................................................ 27

IV. THE ORDER GRANTING A ROUTE PERMIT IS UNLAWFUL AND UNREASONABLE ................................................................................................................................. 29

A. THE RP ORDER FAILS TO CONSIDER THE POTENTIAL HEALTH IMPACTS OF CONSTRUCTING THE PROJECT DURING A GLOBAL PANDEMIC ON THE ANISHINAABE PEOPLE AND OTHER RESIDENTS OF NORTHERN MINNESOTA .... 29

CONCLUSION .................................................................................................................................. 33
I. INTRODUCTION

For the reasons below, the Red Lake Band of Chippewa, the White Earth Band of Ojibwe, Honor the Earth, and The Sierra Club (together, “Joint Petitioners”) hereby respectfully petition the Minnesota Public Utilities Commission (“Commission”) to reconsider its May 1, 2020, Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (“May 1 Order”); and to reconsider its prior orders in the above-captioned dockets that were “reissued” by the May 1 Order including the following:

- Order Granting Certificate of Need as Modified and Requiring Filings, dated September 5, 2018 (September 2018 CN Order);
- Order Approving Compliance Filings as Modified and Denying Motion, dated January 23, 2019 (January 2019 CN Order);
- Order Approving Pipeline Routing Permit with Conditions, dated October 26, 2018 (October 2018 RP Order); and

Hereinafter, the May 1, 2020, order as it regards the Certificate of Need, together with the Commission’s September 5, 2018, and January 23, 2019, orders are referred to as the “CN Orders.” Similarly hereinafter the May 1, 2020, order, as it regards the Route Permit, together with the Commission’s October 26, 2018, and January 18, 2019, orders are referred to as the “RP Orders.” Together, these orders:

- approved a Certificate of Need (“CN”) for the Project under Minn. Stat. § 216B.243 and Minn. R. Ch. 7853; and
- approved a Route Permit (“RP”) for the Project under Minn. Stat. Ch. 216G and Minn. R. Ch. 7852.

Pursuant to Minn. Stat. § 216B.27, subd. 1, a party to a proceeding “may apply to the commission for a rehearing in respect to any matters determined in the decision” within 20 days after service of any decision constituting an order or determination. Pursuant to Minn. R. 7829.3000, subp. 1, “[a] party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or re-argument within 20 days of the date the decision or order is served . . . .” A petition for rehearing or reconsideration must set forth specifically the grounds on which the petitioner contends the decision is unlawful or unreasonable. Minn. Stat. § 216B.27, subd. 2; Minn. R.
7829.3000, subp. 2. Likewise, a request for an amendment must set forth the particular amendments desired and the reasons for the amendments. *Id.* To be effective, “[a] petition must be served on the parties and participants in the proceeding, Minn. R. 7829.3000, subp. 3, after which other parties may file answers within 10 days of service of the petition. Minn. R. 7829.3000, subp. 4.

With regard to the effect of an order pending a decision on rehearing, Minn. Stat. § 216B.27, subd. 3, directs that “[n]o order of the commission shall become effective while an application for a rehearing or a rehearing is pending and until ten days after the application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing.” Although Minn. R. 7829, subp. 2, states that “[t]he commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition,” any discretion granted by this regulation with regard to staying an order is limited by the clear language of Minn. Stat. § 216B.27, subd. 3. Thus, the May 1 Order will not go into effect until the Commission acts on this petition.

Should the Commission grant a rehearing, it may reverse, change, modify, or suspend its original decision if, after rehearing, it finds the original decision to be “unlawful or unreasonable.” Minn. Stat. § 216B.27, subd. 3.

This Petition seeks reconsideration and rehearing for the reasons contained in Joint Petitioners’ previously filed petitions for reconsideration, including:

- Joint Petitioners February 12, 2019, Petition for Reconsideration of the CN Orders;
- Honor the Earth’s November, 2018, Petition for Reconsideration of the Routing Permit; and
- The Sierra Club’s November 15, 2018, Petition for Reconsideration of Order Approving Pipeline Routing Permit With Conditions.

Herein, Joint Intervenors provide the following additional grounds for reconsideration and rehearing of the CN and RP Orders. Joint Petitions request that the Commission:

1. find the 2RFEIS inadequate because it still fails to analyze the environmental effects of an oil spill into the St. Louis River Estuary, the Duluth-Superior Harbor and Lake Superior;

2. reconsider the need for and accept new evidence related to the need for the Project under Minn. Stat. § 216B.243 and Minn. R. 7853, including:
   a. evidence of a lack of need for new pipeline capacity given the decline of the tar sands industry before the start of the global response to the COVID-19 pandemic, and the further reduction in short and long-term need for additional pipeline capacity caused by the global reaction to the COVID-19 pandemic;
   b. evidence of the effect of Enbridge’s proposed change in contractual structure for shipments on the Mainline System including a new Line 3 Pipeline on the
need for additional pipeline capacity, given that this proposed contractual change impacts the utility of Enbridge’s apportionment evidence and could increase Mainline System utilization efficiency;

c. evidence of the unreasonableness and non-viability of the rail and trucking alternatives considered by the Commission under Minn. R. 7853.0130(B), and evaluation by the Commission of a viable alternative that combines rail transport from Alberta to U.S. refineries together with expansions of existing pipelines, including but not limited to Enbridge’s completed Mainline System expansions of approximately 355,000 bpd over the period 2018 to the first quarter of 2020, as well as the recent expansion of its Express Pipeline by 50,000 bpd, which evidence the Commission must investigate pursuant to Minn. Stat. § 216B.243, subd. 3(6) and Minn. R. 7853.0130, subp. A(4); and

d. evidence related to recent developments in climate change science showing the urgency of the growing threat of climate change to the wellbeing of Minnesota’s residents, environment, and the global ecosystem, which evidence impacts the consequences to society that the Commission must consider under Minn. R. 7853.0130(C);

(3) to reconsider the RP given changed circumstances related to the risk to indigenous and other communities along Enbridge’s preferred route that would result from importing workers to construct the Project during the COVID-19 pandemic.

II. THE MAY 1 ORDER’S FINDING THAT THE EIS IS ADEQUATE IS UNLAWFUL AND UNREASONABLE

The argument for why the Line 3 EIS must include an analysis of the potential impacts of an oil spill on the St. Louis River Estuary (“Estuary”), Duluth-Superior Harbor (“Harbor”), and Lake Superior (“Lake”) is simple. The evidence undeniably shows that a spill from a new Line 3 Pipeline could impact the Estuary, Harbor, and Lake, which are critical and unique resources that are unlike any upstream resources, such as the Little Otter Creek site modeled in the 2RFEIS. As a result, the 2RFEIS completely fails to analyze the potential impacts of an oil spill from a new Line 3 Pipeline on the Estuary, Harbor, and Lake. It is common sense that an EIS for a major crude oil pipeline that passes close to unique and critical water resources should analyze the potential impacts of an oil spill on these particular resources.

The Commission avoids analyzing the potential impacts to the Estuary, Harbor, and Lake by using a “representative” spill site methodology that analyzes only one additional potential spill site, the Little Otter Creek site, but this site is too far upstream in the 192 mile-long St. Louis River for a spill at this site to have a major impact on the Estuary, Harbor, or Lake. The Commission’s judgment to require modeling at only one additional upstream site prioritizes use of its “representative” analytical methodology over accomplishing the core purpose of MEPA, to investigate potential adverse impacts to particular resources. Honor the Earth previously argued the factual issues in detail in its January 16, 2020, Comments on the 2RFEIS, and incorporates these comments by reference herein.
The Commission’s May 1 Order states that “[b]y modeling a hypothetical oil spill at the site where the Project crosses Little Otter Creek, the Second Revised FEIS describes how an oil spill could impact the watershed as the oil flows downstream.”¹ While this statement is somewhat true, it fails to recognize that crude oil spills from a specific site do not necessarily impact all downstream locations. The effects of a crude oil spill lessen the further downstream oil flows; the closer to the spill site, the more damage that is done. Depending on how long a river is, a spill from an upstream site might have no measurable impact on the lower reaches of the river. The Commission’s statement implies that a spill from the Little Otter Creek site would impact all downstream resources equally, when in fact the record shows that an oil spill’s impacts vary by distance from a spill location. It is logically and scientifically irrational to think that a spill from a location more than 30 miles from Lake Superior would have the same impacts as a spill 3 miles from Lake Superior.

The May 1 Order acknowledges that potential spill sites exist that are much closer to the Estuary, Harbor and Lake, but claims that the Commission thought it more important to model the “rapids and waterfalls” immediately downstream from the Little Otter Creek site than it was to model the potential impacts of a spill from potential downstream spills sites (into the Pokegama, Little Pokegama, and Namadji Rivers) on the Estuary, Harbor, and the Lake.² Joint Petitioners do not disagree that modeling a spill at the Little Otter Creek site has some utility, but assert that this utility does not include providing an assessment of the potential impacts of an oil spill from potential spill site much closer to the Estuary, Harbor, and Lake, because the Little Otter Creek sites is too far upstream from the very different environment of the Estuary, Harbor, and Lake. Analysis on Google Earth Pro indicates the “river” distance from the modeled Little Otter Creek site to the beginning of the Estuary is approximately 13.6 miles, to the start of the commercial portions of the Harbor is approximately 25 miles, and to the lift bridge at the entrance to Lake Superior is approximately 32 miles. As such, the Little Otter Creek site does not provide a representative assessment of a spill the impacts of a spill from potential spills sites that are much closer to the Estuary, Harbor, and Lake. The environments modeled at and immediately downstream from the Little Otter Creek site are environmentally significantly unlike the at-risk environments in the Estuary, Harbor, and Lake, such that the information from the Little Otter Creek site is no more “representative” of a spill into the Estuary, Harbor, and Lake than any of the other upstream spill modeling sites.

The May 1 Order re-explains the methodology of the “representative” spill site approach by stating:

The purpose of the spill modeling was to analyze how oil would behave in the environment under a range of conditions so that the analysis could then be used to understand how oil could impact similar sites along the Project route. For example, a person wanting to know how oil might interact with the environment of a particular area could choose a representative site with similar characteristics to learn how oil behaves under those conditions.³

¹ May 1 Order at 7-8.
² May 1 Order at 8.
³ Id. at 8 (footnote omitted).
The logical fallacy in the first sentence is that the 2RFEIS still has not modeled any sites that have habitats immediately downstream that are “similar” to the Estuary, Harbor or Lake. The habitats immediately downstream of the Little Otter Creek site contain rapids and waterfalls and do not contain estuarine habitat, a commercial harbor, or Lake Superior. Although a spill from this site would have some impacts on the upper Estuary, these impacts would be significant attenuated because most of the oil spilled from the Little Otter Creek site would remain upstream, so most of the damage would be upstream of the Estuary. Therefore, it continues to be impossible to use the modeled spill site information in the 2RFEIS to “understand how oil could impact” the Estuary, Harbor, or Lake. A person could not use the modeled impacts of the Little Otter site and areas immediately downstream of it to develop any understanding of how a spill from a downstream location would impact, for example, shipping and harbor activities, the beach at Sandy Point, the water needs of the Great Lakes Aquarium, or the drinking water intakes in Lake Superior. None of these unique resources exist at or immediately downstream of the Little Otter site.

The May 1 Order than dismisses analysis of potential downstream spill locations because:

These rivers are “slow moving” with “low potential for entrainment and sinking oil,” so modeling a spill at these sites would tell us less about how oil can negatively affect water quality. Seven of the eight previously modeled representative sites have flat water that characterizes the Pokegama River, Little Pokegama River, and Nemadji River, and those previously modeled sites can be used to understand how oil would impact these waterways. Furthermore, the area downstream of these sites is industrialized, featuring docks and manmade banks; this means oil is less likely to collect on streambanks and impact flora and fauna, as opposed to undeveloped streambanks where oil collects in and is retained by the vegetation lining the stream.  

This argument fails for a number of reasons. First, the speed of water flow at a particular modeled site says nothing by itself about impacts to the resources at risk. Many critically important waters, including all of the Great Lakes, many inland lakes, national seashores, and waters in State and National parks have slow or even non-moving water, but this doesn’t mean that a spill into these critical waters would not be devastating to them. The mere existence of slow moving water is not justification to exclude analysis of the impacts of a spill on the resources in and around them. Likewise, the fact that some inland and upstream waters are slow moving does not mean that the resources impacted at such sites bear any resemblance to the resources that would be impacted in the Harbor or Lake Superior habitats.

Second, the ultimate purpose of an EIS oil spill analysis is to analyze the impacts of a spill on the State’s environmental resources. An EIS is not an academic exercise to elucidate how oil “behaves” at different locations. While understanding how oil behaves in different spill

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4 Id. at 8 (footnotes omitted).
locations is a single necessary analytical step toward analyzing environmental impacts, it is just one step needed to accomplish the ultimate goal of MEPA: assessing environmental impacts.

Third, although some of the previously modeled sites have hydrologic flows similar to the Pokegama River, Little Pokegama River, and Nemadji River, the Commission ignores the fact that oil flows downstream, so it is not just hydrological conditions at the exact point of discharge that need to be analyzed, it is also downstream impacts. But, none of the modeled sites have proximate downstream locations that are anything like the Estuary, Harbo, and Lake.

Fourth, the May 1 Order claims to have prioritized assessing impacts to flora and fauna along undeveloped streambanks, but under MEPA an EIS must assess significant environmental effects of all types, including impacts to unique resources such as Lake Superior drinking water intakes, the Park Point Recreation Area, tourist attractions in the Harbor such as the Great Lakes Aquarium and marinas, and even waters and contaminated sediments in the industrial harbor. The EIS improperly prioritizes analysis of upstream habitat types to the exclusion of critically important downstream environments.

The Commission’s arguments are fallacious because even with addition of the spill modeling at the Little Otter Creek site it is still impossible to assess the potential impacts of an oil spill on the unique natural resources of the Estuary, Harbor, or Lake, because the Little Otter site is too far upstream. As a result, the 2RFEIS does not comply with MEPA’s requirement that an EIS must analyze all significant environmental effects of a project. MEPA states:

The environmental impact statement shall . . . analyze[s] [a project’s] significant environmental impacts . . . and explore[] methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented.5

“MEPA's procedures require governmental bodies to consider the significant environmental consequences of a project ‘to the fullest extent practicable.’” Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 880 (Minn. App. 1995), quoting Minn.Stat. § 116D.03, subd. 1 (2020). This statutory language requires consideration of “significant environmental impacts” and nowhere allows an agency to avoid analyzing potentially significant impacts via mere preference for an analytical methodology. It requires analysis of impacts in part to allow identification of mitigation that could reduce the severity of the impacts. This focus on the impacts and effects of a project on specific resources has been recognized by the Court of Appeals. Dead Lake Ass'n, Inc. v. Otter Tail County, 2005 WL 221773, *7 (Minn. App. 2005) (unreported) (“But if judicial review is to mean anything, the judiciary must require RGUs to adequately analyze the potential for significant environmental effects . . . and ensure that such effects can be properly mitigated by the ongoing regulatory authority of other governmental agencies . . . .”)6 The Dead Lake decision also expressly

5 Minn. Stat. § 116D.04, subd. 2a; see also Minn. R. 4410.2000, subp.; Minn. R. 4410.2300(H).
6 Although the Dead Lake decision considered the failure of an environmental assessment worksheet (“EAW”) to analyze potentially significant impacts to a lake, the reasoning in this decision is even more
recognized that a “heightened public-water classification” is a factor in determining the scope of environmental review.  Id. Although an agency may determine that an impact is not significant based on the ability of mitigation to keep impacts below significant level, the impact analysis must be sufficient to identify the specific impacts that require mitigation and select appropriate mitigation for those impacts.  Iron Rangers at 881; Dead Lake at *7. Absent identification and analysis of potential impacts, it is impossible to adequately mitigate them.

Here, the record shows that an oil spill from Line 3 into the Estuary, Harbor, and Lake is a potential impact of the Project. Yet, the 2RFEIS fails to analyze the potential impacts of a spill into these particular, unique, and economically vital waters. Instead, it analyzes the impacts of a spill into an upstream portion of the St. Louis River that is too far upstream to allow assessment of the possible impacts of an oil spill into the lower reaches of the St. Louis River, Nemadji River, and Lake Superior. While all waters of the State are important, the potential impacts of an oil spill on the upper reaches of the St. Louis River pale in comparison to the potential impacts of an oil spill into the Estuary, Harbor, and Lake, particularly with regard to socioeconomic impacts. The Supreme Court has made clear that MEPA requires site-specific assessment of impacts, including socioeconomic impacts. Reserve Min. Co. v. Herbst, 256 N.W.2d 808, 841, 845 (Minn. 1977) (“We have previously indicated that state agencies and courts are required by statute to consider both the economic impact and the environmental impact in rendering decisions dealing with environmental matters.”) (citations omitted). By selecting an upstream spill location, the 2RFEIS failed to assess the environmental and socioeconomic effects of a spill into either the Estuary, Harbor, or Lake Superior, all of which effects differ substantially in kind and degree from spills in upstream locations.

Due to the 2RFEIS’s lack of impact analysis for the Estuary, Harbor, and Lake Superior, the 2RFEIS also fails to analyze any mitigation measures applicable to these specific waters, including but not limited to oil spill response measures appropriate for: (a) contaminated sediments in the Estuary and Harbor, (b) a large working harbor with substantial commercial and recreational use; and (c) a very deep, very large, storm-swept pristine lake that is highly valued culturally, recreationally, commercially, and as a source of drinking water. Absent an analysis of the potential impacts of a spill into the Estuary, Harbor, and Lake, it is impossible to know if the oil spill prevention, containment, and cleanup measures proposed by Enbridge are likely to be effective. As such, the 2RFEIS provides no basis to the Commission for identification of mitigation measures applicable to the Estuary, Harbor, and Lake, as required by MEPA.

Ultimately, the Commission’s decision to analyze the impacts of an oil spill to an upstream location to the exclusion of analyzing a spill into waters near the Estuary, Harbor, Lake, shows that it has not taken a “hard look” at potential impacts to these unique, iconic, and applicable to an EIS, as EIS’s must include a more thorough analysis of potential impacts than a preliminary EAW. Cf. Minn. Stat. § 116D.04, subd. 1a(c) with § 116D.04, subd. 2a, and Minn. R. 4410.1200 with Minn. R. 4410.2300; Iron Rangers, 531 N.W.2d at 880 (“Whereas the EAW is not intended to be a detailed analysis of potential environmental impacts of a proposed project, the EIS is a much more detailed study of all factors contributing to a significant impact on the environment.”).

Although the Reserve Mining decision evaluated site difference with regard to alternatives, it indicates that MEPA requires analysis of site-specific impacts, because without understanding site-specific impacts it is not possible to select from among possible alternatives.

7

III. THE ORDER GRANTING A CERTIFICATE OF NEED IS UNLAWFUL AND UNREASONABLE AND THE CN DOCKET SHOULD BE REOPENED TO ALLOW THE PARTIES TO INVESTIGATE CURRENT OIL MARKET CONDITIONS AND INTRODUCE ADDITIONAL EVIDENCE INTO THE RECORD

Rather than repeat all of the claims contained in their February 12, 2019, Joint Petition for Reconsideration of Orders Granting Certificate of Need, Joint Petitioners hereby reassert all of the claims contained therein by reference. In addition to these prior claims, Joint Petitioners provide the following evidence and arguments in support of reconsideration of the May 1 Order’s the grant of a CN, and also in support of Joint Petitioners’ request for a rehearing of the CN to allow the investigation of significant new circumstances and introduction of relevant new evidence.

A. Changed Oil Market Circumstances

In late December 2019, Chinese health authorities investigated a cluster of atypical pneumonia cases occurring primarily in individuals who had visited a seafood market in Wuhan, Hubei Province, China. As the Commission is well aware, this disease became known as COVID-19 and spread across the globe. As of May 19, 2020, the World Health Organization reported that 4,731,458 cases of COVID-19 across the globe, resulting in 316,169 confirmed deaths. To slow the spread of the illness, authorities in many countries have imposed restrictions on travel, business, and social interaction.

The Commission’s own daily activities have been impacted as a result of COVID-19 related restrictions, and it has encouraged proactive utility action to protect energy consumers through this unprecedented time, including though extension of cold weather rule protections, late fee waivers, suspension of customer shut-offs, customer reconnections, arranged payment plans, and other measures that in combination demonstrate an extraordinary and rapid response to this crisis. In addition, a number of utilities have sought relief from the Commission to allow recovery of additional costs incurred as a result of their responses to COVID-19, and Minnesota Power has filed an Emergency Petition, stating, “[w]hile it is still too early to tell what the ultimate consequences of COVID-19 will be, now is the time for creative approaches to

8 Document ID 20192-150219-02 available at: https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={50C6E368-0000-CB1E-9C87-EA0ABAABE0DD}&documentTitle=20192-150219-02
11 E.g., Docket Nos. CI-20-375 (telecommunications) and CI-20-375 (energy).
12 Docket No. M-20-427 (Petition of regulated electric and natural gas service providers).
the challenges that face us all.” Joint Petitioners appreciate the Commission’s proactive
response to this crisis and agree that this situation requires creative approaches to the
dramatically changed circumstances that we face individually and as a community.

Due to efforts to impede the spread of COVID-19, economic activity around the globe
has slowed and resulted in the largest drop in global petroleum product demand in history. As
put by the International Energy Agency’s Executive Director, Fatih Birol, this year “may well be
the worst year in the history of oil industry, and April will remain the Black April.” S&P
Global noted that: “Integrated oil and gas majors, including Exxon Mobil and Royal Dutch Shell,
suffered greatly in the first quarter, with the former reporting its first loss in 30 years and the
latter cutting its dividend for the first time since World War II.” Analysts at McKinsey &
Company, a global consulting group, in a May 15, 2020, report on the effects of the COVID-19
crisis on the oil industry, described the situation as follows:

The oil and gas industry is experiencing its third price collapse in 12 years. After the first two shocks, the industry rebounded, and
business as usual continued. This time is different. The current
context combines a supply shock with an unprecedented demand
drop and a global humanitarian crisis. Additionally, the sector’s
financial and structural health is worse than in previous crises. The
advent of shale, excessive supply, and generous financial markets
that overlooked the limited capital discipline have all contributed
to poor returns. Today, with prices touching 30-year lows, and
accelerating societal pressure, executives sense that change is
inevitable. The COVID-19 crisis accelerates what was already
shaping up to be one of the industry’s most transformative
moments.

While the depth and duration of this crisis are uncertain, our
research suggests that without fundamental change, it will be
difficult to return to the attractive industry performance that has
historically prevailed. On its current course and speed, the industry
could now be entering an era defined by intense competition,
technology-led rapid supply response, flat to declining demand,
investor skepticism, and increasing public and government
pressure regarding impact on climate and the environment.

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13 Docket No. M-20-429, initial filing at
https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={101CA871-0000-CF18-8AB8-34C647F3F6EA}&documentTitle=20204-162388-01
With regard to what happens next, the McKinsey report found:¹⁷

Under most best-case scenarios, oil prices could recover in 2021 or 2022 to precrisis levels of $50/bbl to $60/bbl. Crude price differentials in this period are also likely to present both challenges and opportunities. The industry might even benefit from a modest temporary price spike, as today’s massive decline in investment results in tomorrow’s spot shortages. In two other scenarios we modeled, those price levels might not be reached until 2024. In a downside case, oil prices might not return to levels of the past. In any case, oil is in for some challenging times in the next few years.

Joint Petitioners agree that there substantial challenges and significant uncertainty facing the oil industry as a whole, and that these challenges threaten its economic viability. While the future of this industry is not yet clear, Joint Petitioners believe that the Commission should at a minimum take account of how the unprecedented events that are reshaping the oil industry impact the need for the Project by requiring a supplemental evidentiary hearing in the L3RP CN Docket to allow introduction of evidence on these impacts.

B. Market Data Subsequent to the Evidentiary Hearing Shows That the Canadian Crude Oil Production Industry Was in Decline Even Before COVID-19, Such that Future Expansion of Western Canadian Crude Oil Production Is Unlikely

The two and one half years since the end of the Commission’s evidentiary process have been difficult for the tar sands industry. Oil prices stagnated, profits fell, investors fled from tar sands investments, company stock valuations fell dramatically – and then the global response to the COVID-19 pandemic pulled the rug out from under the whole shebang. These changed circumstances indicate that the Commission should reopen the evidentiary hearing for the Project to take additional evidence on the current need for it. The following provides updated information supporting the need for a supplemental hearing.

Since the end of the evidentiary hearing, global oil prices first increased slightly but then in end of 2018 began a ragged fall until December 2019. During this time global crude oil prices averaged approximately $60 per barrel – essentially the average oil price since 1974. Rather than return to the higher prices of the 2010 to 2014 tar sands boom period, crude oil prices stagnated. In January 2020, crude oil prices reacted to the impacts of the COVID-19 epidemic and began a historic decline, by April averaging $16.35 per barrel for imported crude oil, the second lowest price in the USEIA database (after December 1998).

This being said, the average valuation of western Canadian heavy crude oil is always lower than international oil prices, due the low value and high transportation costs for this crude oil, averaging less than $40 per barrel during this same pre-COVID-19 period. When COVID-19 fully impacted oil markets, the price for Western Canadian Select (“WCS” the benchmark heavy tar sands crude oil) dropped first to less than $10 per barrel and then briefly crashed to nearly -$50 (negative $50) per barrel (see chart from Oil Sands Magazine, below). Since then, the price of WCS has recovered somewhat, but its future remains uncertain. In any case this price range remains far below that needed to financially justify any new development in the tar sands region.

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Low oil prices hit tar sands expansion plans particularly hard, because development in the tar sands continues to have the highest breakeven costs in the world. According to Rystad Energy, last year the average oil price needed to breakeven financial on new tar sands developments was estimated to be $83 per barrel, which indicates that new expansions of tar sands operations beyond those sanctioned before 2014 are unlikely to be supported by the market. In contrast, the breakeven price to develop U.S. tight oil averaged $42 per barrel – almost half that of the tar sands breakeven price.
Even if the tar sands industry were able to cut the cost of development in half, which is unlikely, at current oil prices it still would be unable to economically build any substantial new developments. Moreover, long before new oil projects could be developed in the tar sands, modestly higher oil prices would spur oil developments in many other fields across the globe, including US shale oil, and these developments would meet market demand before tar sands developers could bring new capacity online.\textsuperscript{19}

As a result of low oil prices, oil production growth in Alberta stagnated between mid-2018 and early 2020.\textsuperscript{20}

Then, the global reaction to the COVID-19 pandemic reduced global oil demand by almost 30 million bpd, a 27% drop.\textsuperscript{21} Rystad Energy estimates that crude oil demand will remain suppressed for the remainder of 2020 and possibly into 2021, resulting in an average 10.9% decrease in oil demand for the year 2020 relative to 2019.\textsuperscript{22} This drop in demand is unprecedented in history.

\textsuperscript{19} https://www.mckinsey.com/industries/oil-and-gas/our-insights/oil-and-gas-after-covid-19-the-day-of-reckoning-or-a-new-age-of-opportunity# (moderate-cost shale oil has displaced much higher-cost production such as tar sands production).

\textsuperscript{20} https://www.oilsandsmagazine.com/energy-statistics/alberta


\textsuperscript{22} \textit{Id.}
The reduced global petroleum demand caused by the global reaction to COVID-19 will likely force closure of at least 1.2 million bpd of western Canadian crude oil production capacity due to a combination of low oil prices and the impact of COVID-19 on the tar sands workforce. How much of this capacity will survive the crisis is unknown. Due to its high costs of extraction, low quality, and high transportation costs, tar sands production has been hit the fastest and hardest of all crude oil extraction facilities in the world, with the tar sands being described as the “prime victim” of COVID-19. By April, the tar sands extraction industry had been forced by economics to shut-in 1.14 million bpd of crude oil production because the price received for tar sands crude oils did not cover operating costs, much less total corporate costs including debt service and investor return. The tar sands industry was losing money on every barrel sold at market prices.

25 Id.
26 Although not all tar sands oil is sold at market prices, as some is transferred within vertically integrated companies or protected by hedges, tar sands operators would not have shut-in such a large volume of capacity if it could have generated any free cash flow from selling its oil.
Rystad Energy estimates that total Canadian oil industry spending will drop 41% in 2020 to lows not seen since the early 2000s. Such low spending means that new tar sands extraction projects are unlikely to be approved for the foreseeable future, and as a result demand for additional crude oil pipeline takeaway capacity also will also not be needed.

Low oil prices also resulted in low revenue and profits, that in turn caused western Canadian oil company stock valuations to fall. The following table identifies the largest Canadian publicly...
traded tar sands extraction companies,\textsuperscript{27} including their total extraction capacity, all-time stock high price and date, current stock price, and percent decline. Below the table are stock charts\textsuperscript{28} for these companies showing that these stock price declines started long before the beginning of the pandemic. The best of these companies steadily lost stock value, and the worst crashed years before COVID-19 hit.

<table>
<thead>
<tr>
<th>Tar Sands Extraction Companies</th>
<th>Total Extraction Capacity (bpd)</th>
<th>All Time High Stock Price</th>
<th>Current Stock Price</th>
<th>Percent Decrease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Athabasca Oil Corp</td>
<td>32,000</td>
<td>$17.75 May 2011</td>
<td>$0.14</td>
<td>-99%</td>
</tr>
<tr>
<td>Canadian Natural Resources</td>
<td>901,500</td>
<td>$50.13 Feb 2011</td>
<td>$18.74</td>
<td>-63%</td>
</tr>
<tr>
<td>Cenovus Energy</td>
<td>440,000</td>
<td>$39.38 Mar 2011</td>
<td>$4.44</td>
<td>-89%</td>
</tr>
<tr>
<td>Husky Energy</td>
<td>90,000</td>
<td>$49.86 May 2008</td>
<td>$3.66</td>
<td>-93%</td>
</tr>
<tr>
<td>Imperial Oil</td>
<td>490,000</td>
<td>$59.42 Apr 2008</td>
<td>$20.09</td>
<td>-66%</td>
</tr>
<tr>
<td>Meg Energy</td>
<td>100,000</td>
<td>$51.46 Jul 2011</td>
<td>$2.92</td>
<td>-94%</td>
</tr>
<tr>
<td>Suncor Energy</td>
<td>845,000</td>
<td>$68.35 Mar 2008</td>
<td>$17.23</td>
<td>-75%</td>
</tr>
</tbody>
</table>

\textsuperscript{27} A number of other major companies operate in the tar sands, including the Chinese National Oil Company, ConocoPhillips, and Shell Canada, but these are subsidiaries of much larger entities. In addition, a number of small privately held companies also extract tar sands bitumen, but since these are not publicly traded, their valuation is not public.

\textsuperscript{28} Stock chart available at: https://finance.yahoo.com/lookup/
The companies with the worst stock performance have a substantial portion, if not all of their assets invested in the tar sands, whereas the less badly performing companies are vertically integrated oil companies and/or more diversified companies. McKinsey provides the following charts comparing oil industry shareholders returns to the returns provided by companies that
matched S&P 500 growth. They show that total annual returns to shareholders from the oil and gas industries amounted to just 2% annually, compared to 9% for the S&P 500.²⁹

**The oil and gas industry underperformed against the S&P 500 over the past 15 years.**

All of the tar sands companies stock prices performed worse than the industry-wide oil and gas company data provided in the chart above. The tar sands company stock values provide an indication of the headwinds faced by the tar sands extraction industry – even before the COVID-19 reaction crashed global oil markets. Although there is uncertainty about the long-term consequences to the oil industry (and to all commercial activity) of the COVID-19 crisis, uncertainty is not a valid reason for not considering how this crisis will impact the need for

additional pipeline capacity. The oil industry itself is taking substantial measures to mitigate the harm caused by this crisis even though it is also uncertain about the future. The Commission should do no less. It should order a rehearing in the CN docket to allow the introduction of evidence about the ongoing economic decline of the tar sands industry and the effects of the COVID-19 crisis on the need for the Project.

C. The Crude Oil Market Crisis Has Dramatically Reduced Demand for Transportation Services on the Enbridge Mainline System

Due to production curtailments in Canada, Enbridge reported that throughput on its Mainline System of pipelines through Minnesota dropped 400,000 bpd in April.\(^{30}\) Enbridge’s Chief Executive stated that he expected throughput to fall to by as much as 600,000 bpd in the second quarter of 2020.\(^{31}\) In addition, Enbridge has deferred $1 billion in capital spending and cut costs by $300 million.\(^{32}\) Due to the crisis’ impacts to global crude oil demand, it is likely that demand for Mainline System capacity will remain well below its maximum capacity at least through the end of 2020, and perhaps longer, particularly if the damage caused by the COVID-19 crisis to tar sands companies results a long-term production disruption, tar sands company bankruptcies, and further investor reticence to commit substantial capital to restart existing production facilities and build new facilities. Since the tar sands industry was not expanding before the COVID-19 crisis, it is unreasonable to think that it will grow afterwards.

Given the lack of current need for expansion of the Mainline System, the additional time required for a supplemental hearing process would not limit shipper access to pipeline capacity. Therefore, the Commission should open a rehearing of the L3RP CN docket to allow parties to investigate and provide information on the impact of the COVID-19 crisis on near and long-term demand for Mainline System transportation services.

D. The Commission Should Consider the Impact of Enbridge’s Proposed Change to Mainline System Contracting From a Month-Ahead Nomination Process to Long-Term Firm Capacity Contracts on the Need for the Project

As described by Commissioner Scheurger in his dissent, on December 19, 2019, Enbridge initiated a regulatory proceeding in Canada to allow its shippers to buy capacity on the Mainline System via long-term firm contracts.\(^{33}\) The application for this proceeding is entitled, Enbridge Pipelines Inc. Canadian Mainline Contracting Application (December 19, 2019) (“Contracting Application”).\(^{34}\) The Canada Energy Regulator summarized the scope of this filing as follows:

\(^{30}\) [External link]

\(^{31}\) [Footnote]

\(^{32}\) [Footnote]

\(^{33}\) Canada Energy Regulator docket for this matter is available at [External link].

\(^{34}\) The Contracting Application is available at [External link].
If approved, the new framework will allow shippers to sign long-term contracts for priority access to 90% of the capacity on the pipeline system. Currently, Enbridge allocates capacity on the Mainline on an uncommitted basis, using a monthly nomination system. Enbridge intends to reserve 10% of the available capacity of the Mainline for shipments of spot or uncommitted volumes. Any contracted capacity that is not used for contract shipments would be available for spot shipments. The applied-for service offering, which also includes requests for various other related approvals, would replace the current service and tolling settlement, which is due to expire on 30 June 2021. In its application, Enbridge indicated that the new contracts would go into effect only once the Line 3 Replacement Program and its additional 370,000 barrels per day of capacity comes into service.35

Pursuant to this proposed change, the nomination process for the Mainline System would apply to only the 10% of capacity not committed to contract shippers.36 Thus, Enbridge is seeking a fundamental change in its method of allocating capacity to shippers. Moreover, Enbridge claims this change would be economically more efficient.37 The adoption of this new contracting structure is specifically tied to the start of commercial operation of a new Line 3 Pipeline, because Enbridge would allocate 90% of the Mainline System’s capacity, including the amount that would be provide by the Project, via long-term take-or-pay contracts. Under take-or-pay contracts, shippers pay for capacity regardless of whether or not they use it.38

This new contracting process would eliminate the utility of the nomination forecast that Enbridge relied on to justify replacement of Line 3 to the Commission. Although the outcome of Enbridge’s Canadian application is not clear, it represents a fundamental change in the commercial foundation of the Project that should be evaluated by the Commission to update its record.

### E. Subsequent Evidence Proves that the Railroad and Trucking Alternatives Evaluated by the Commission Are Unreasonable, and that Enbridge Has in Fact Substantially Increased the Maximum Effective Capacity of the Mainline System

The May 1 Order states:

For [Minn. R. 7853.0130(B)], the Commission considered whether transporting oil by truck and rail or alternate pipelines were reasonable and prudent alternatives to the Project. The Commission found that no alternative in the record was more reasonable or prudent than the Project.

36 Contracting Application at 22.
37 *Id.*
38 *Id.* at 8.
The alternatives considered by the Commission include railroad and truck “bridges” to transport oil from an Enbridge oil terminal at Gretna, Manitoba, to Enbridge oil terminals at Clearbrook, Minnesota, and Superior, Wisconsin, thereby using rail or trucks to bridge the gap left by non-approval of the Project. In terms of crude oil volume moved by the rail and truck alternatives, the Commission evaluated moving the entire capacity of a new Line 3 Pipeline (760,000 bpd) and moving the net increase in capacity that would be provided by the Project (370,000 bpd).

Honor the Earth has consistently pointed out that these alternatives are not based in reality, because such simplistic bridging is not how Enbridge or the oil industry would respond to a rejection of the Project by the Commission, and it is not practical or feasible in term of economics and logistics.  

The trucking alternative requires far too many vehicles to be practical. Transporting 760,000 bpd would require a fleet of 12,200 semi-trucks moving 4,000 loads per day. Transporting 370,000 bpd would require a fleet of 6,000 truck moving 1,889 loads per day. The former would require that a truck leave Gretna every 22 seconds all day every day for years, and the later that a truck leave every 45 seconds all day every day for years. The cost of such trucking would be astronomical, Minnesota roadways could not support such high use (a single traffic light would result in a massive truck traffic jam), and there is no evidence that such massive trucking operation has ever existing in history.

Transporting 760,000 bpd by rail would require 66 engine sets and 7,244 rail cars so that 10 unit trains of oil per day would leave Gretna. Since there are no rail terminals at Enbridge’s Gretna, Clearbrook, and Superior Terminals, new rail track would need to be laid. There is no evidence that such point-to-point short haul railroad has ever existed in history or could ever be financially viable. Both Mr. Rennicke, Enbridge’s railroad expert, and Lorne Stockman, Honor the Earth’s oil markets expert, agreed that unmet need for takeaway capacity from western Canada would be accomplished by shipping oil by rail directly from Alberta to U.S. Refinery customers. There is no evidence in the record that the rail alternative evaluated by the Commission has any basis in reality.

Honor the Earth’s expert witness asserted that the way the oil industry would respond to rejection of the Project is through a combination of more efficient use of existing import pipelines and using rail to ship crude oil directly from Alberta to refinery customers. The following is an excerpt from his surrebuttal testimony:

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39 E.g., Honor the Earth Petition for Reconsideration of May 1, 2018 Order Finding EIS Adequate (May 21, 2018) at 13-14; Honor the Earth Exceptions to the Report of the Administrative Law Judge on the Adequacy of the Final Environmental Impact Statement (Nov. 21, 2017) at 3; Honor the Earth Comments on DEIS (July 10, 2017) at 36-37, 48-52.
40 2RFEIS Section 4.2.7, at 4-16, Table 4.2.6.
41 2RFEIS Section 4.2.7 at 4-16.
42 2RFEIS at Table 4.12.
43 Rennicke Direct Testimony at 41-48; Stockman Surrebuttal Testimony at 24-25.
44 Lorne Stockman Surrebuttal Testimony at 23-25.
14Q. Could you please explain how alternatives to the Line 3 Project could accommodate short-term growth in Western Canadian oil production until its decline, and how that relates to your criticism of the Earnest Rebuttal Testimony?

A. The treatment in the Muse Rebuttal Report of alternatives to the Line 3 project is incomplete, in my opinion, because it does not sufficiently address the full range of alternatives to constructing Line 3 that are within Enbridge’s reach or may be otherwise available for accommodating any short-term growth in Western Canadian oil production. Nor does the Muse Rebuttal Report consider the most realistic alternative – namely, a combination of various technical measures, pipeline expansion projects, and short-term, low-volume supplementation by rail. It is my opinion that if the Certificate of Need for the Line 3 project was denied, the oil industry’s strategy for adapting to a “no-action” scenario would likely include a combination of various technical and system alternatives. Thus, I will discuss the potential impact of each of these alternative options below. It is incumbent upon Enbridge to demonstrate and upon the Commission to ensure that alternative options to the proposed project have been thoroughly and seriously discussed. Such an analysis, properly done, includes consideration of possible combinations of alternatives.

One option is the use of drag reducing agents as a means of helping to ease capacity constraints. Enbridge has in fact employed drag reducing agents for this very purpose, in pipelines such as Line 9 and Line 7.

Yet another alternative, or more accurately put, a set of alternatives, concern various Enbridge reversal and expansion options to increase capacity on its existing pipelines. I described these in my Direct Testimony and will not repeat those details here. Mr. Earnest’s dismissiveness of these proposals seems unhelpful and even disingenuous in light of the fact that Enbridge has stated an intention to its investors to implement these expansions and reversal.

Finally, rail transport of crude oil sourced from Western Canada must be considered as a reasonable option for filling the gap left after other alternatives are implemented. The crude oil to be transported will mainly be railbit, and some may be in the form of “neatbit”, which is bitumen transported with no or little diluent, in heated rail cars.\textsuperscript{45}

\textsuperscript{45} Id.
(Emphasis added, footnote excluded.) Mr. Stockman than provides more detail about then current rail terminal expansions and the likely future use of rail shipments from Alberta to U.S. customers, based in part on the substantial rail terminal infrastructure that exists in Alberta and in the U.S.

The Commission dismissed this alternative and there is no evidence that it analyzed it under Minn. R. 7853.0130(B), except to dismiss future pipeline expansions as speculative.

During the two years since the evidentiary hearing, crude oil supply in Canada has increased modestly (see total Alberta crude oil production chart above), resulting in insufficient pipeline capacity from Canada (a bottleneck). This bottleneck has resulted in the Government of Alberta ordering a curtailment of production and substantial commercial and political pressure for alternatives to import crude oil from Canada to the U.S. 46

Honor the Earth’s expert forecast a 2020 peak demand for import capacity before long-term production in western Canada starts a terminal decline. 47 The following charts from Mr. Stockman’s Surrebuttal Testimony show how a near-term peak in crude oil production in Western Canada could be met by expansion of existing pipeline capacity, and Mr. Stockman asserted that a shortfall in pipeline capacity could be met using rail. 48

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46 E.g., Reuters, Explainer: Why is Canada’s Alberta forcing oil production cuts? (Dec. 5, 2018) https://www.reuters.com/article/us-canada-crude-alberta-explainer/explainer-why-is-canadas-alberta-forcing-oil-production-cuts-idUSKBN1O41Z4 (“The Western Canadian province of Alberta this week announced mandated temporary oil production cuts, a rare move aimed at bolstering sagging crude prices caused by rising production that has outstripped pipeline capacity and led to a glut in storage.”); see also Transportation Topics, Railcar Loads for Canadian Oil Hit Record Amid Pipeline Bottleneck (Jan. 24, 2019); Oil & Gas 360, Oil Trains Make Comeback as Pipeline Bottlenecks Worsen (January 31, 2019); Reuters, Canada oil producers exhaust options as pipelines, railroads fill (December 18, 2017).
47 Stockman Surrebuttal Testimony at 36.
48 Id.
Thus, Mr. Stockman stated that the oil industry response to not building the Project would be (a) for Enbridge to expand the capacity of its existing pipelines; and (b) for the oil industry to transport more crude oil by rail primarily in the form of “neatbit” (undiluted bitumen), railbit
(bitumen with limited diluent), and possible in solid form as new technology comes online to convert bitumen into “hockey pucks” or balls of solid bitumen.\(^{49}\) He also correctly predicted that two proposed tar sands projects that would expand Cenovus’s Foster Creek facility, Foster Creek H and Narrows Lake A, would not come online.

Now, more than two years after the evidentiary hearing there is zero evidence in the record supporting the development or use of a railroad or truck “bridge” from Gretna to Clearbrook and Superior. There is no evidence of new major rail or truck terminals being built at Gretna, Clearbrook, or Superior, and there is certainly no evidence that northern Minnesota highways are clogged with endless miles of crude-laden semis, nor is there evidence of 10 unit trains passing through northern Minnesota every day.

The evidence of use of direct rail shipments from Canada to U.S. refineries in combination with a complete lack of evidence of use of either a rail or truck bridge demonstrates that the rail and truck alternatives considered by the Commission are and have always been economically and practically infeasible and patently unreasonable and should never have been treated as reasonable alternatives by the Commission. Therefore, the Commission must order a rehearing of the CN Orders to allow evidence of reasonable rail alternatives to the Project, and specifically the potential use of rail to ship crude oil directly from Alberta to U.S. refineries.

Enbridge has in fact sought to address demand for greater takeaway capacity from Canada by expanding throughput on its existing pipelines, including both the Mainline System and its Express Pipeline System. Specifically, an Enbridge representative stated in an August 1, 2019, Bloomberg article entitled Pipelines Add Room on ‘Unrelenting’ Demand for Canada’s Oil, stated that Enbridge “has optimized its pipeline system to create about 220,000 barrels a day of new capacity over the past “couple of years,” meaning 2017 to 2019, and that Enbridge planned to add another 135,000 bpd of capacity to its Mainline System in early 2020.\(^{50}\) These expansions are not to the nominal capacity of existing pipelines, but result from more efficient use of existing pipelines. In addition, other existing pipelines are proposed for substantial expansion, including an increase of 50,000 bpd on the Keystone Pipeline,\(^{51}\) 50,000 bpd on Enbridge’s Express Pipeline in the first quarter of 2020,\(^{52}\) and up to 80,000 bpd on the Rangeland Pipeline.\(^{53}\) Joint Intervenors raised the likelihood of expansion of existing pipelines multiple times starting with MEPA scoping comments and continuing through all of its various EIS comments, but the Commission chose to disregard these comments. Altogether, the identified expansions of existing pipelines likely already are transporting more crude oil than the net increase provided by the Project.

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\(^{49}\) Lorne Stockman Surrebuttal Testimony at 24.


\(^{51}\) Id.

\(^{52}\) Id.

\(^{53}\) Id.


\(^{55}\) Oil & Gas 360, Plains Midstream Canada Announces Rangeland Pipeline Expansion (July 8, 2019)
The “other pipeline” alternative was considered and dismissed by the Commission such that it never evaluated these expansions. Instead, it focused exclusively on the construction of entirely new pipelines, including the proposed Keystone Pipeline and the Trans Mountain Expansion Pipeline. Thus, the Commission’s consideration of pipeline alternatives completely ignored what became an actual implemented solution to allow increased imports of crude oil from Canada.

The Commission’s failure to evaluate increased efficiency and upgrades to existing pipelines violates the plain language of Minn. Stat. § 216B.243, subd. 3(6), which requires that the Commission evaluate “possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy . . . transmission facilities . . . .” (Emphasis added.) To remedy this violation of law, the Commission should order a supplemental evidentiary hearing to allow investigation and submission of evidence about the potential for such upgrades to serve as part of a reasonable alternative, specifically an alternative that evaluates using both pipeline expansions and rail from Alberta to U.S. customers.

F. The Commission Should Order a Rehearing to Consider Additional Evidence Related to the Increasing Threat of Climate Change on Minnesota Environment and People

In the two and one half years since completion of the evidentiary hearing, scientists have provided additional significant evidence on the risks to Minnesota from climate change. The Commission should consider this additional evidence in a rehearing. Specific examples include the following.

On November 5, 2019, more than 11,258 scientists from around the world published a letter in *BioScience* (“Bioscience Letter”) declaring “clearly and unequivocally that planet Earth is facing a climate emergency.”\(^54\) The letter highlights the speed at which our climate is changing:

> Despite 40 years of global climate negotiations, with few exceptions, we have generally conducted business as usual and have largely failed to address this predicament...The climate crisis has arrived, and is *accelerating faster than most scientists expected* (figure 2, IPCC 2018). It is *more severe than anticipated*, threatening natural ecosystems and the fate of humanity (IPCC 2019).\(^55\)

(Emphasis added.) This letter encapsulates scientific advances and new information developed over the last two years, including for example the *IPCC Special Report on Global Warming of 1.5°C* (2018), the *IPCC Special Report on Climate Change and Land* (2019), and the *Fourth National Climate Assessment* (2018). The letter summarizes why climate scientists are significantly more certain about the need to limit warming to 1.5°C, and the impacts of not doing


\(^{55}\) *BioScience* Letter.
so, and it provides references to new scientific analysis to support its claims.

In October 2018 the IPCC published a *Special Report on Global Warming of 1.5°C* ("IPCC 2018"). This report warns that unless “global anthropogenic CO\textsubscript{2} emissions decline by about 45% from 2010 levels by 2030 . . . reaching net zero around 2050,” it will become impossible to keep warming below 1.5°C. It also highlights the significant risks and effects of allowing global average temperature to exceed 1.5°C. For example, it states “[l]imiting global warming to 1.5°C compared with 2°C, could reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050.”

It incorporates new information about the non-linearity of risks and impacts of 1.5°C versus 2°C; socio-economic drivers and developments including energy and food demand; the use of bioenergy and the availability and desirability of carbon dioxide removal technologies; flood risks; water quality; changes in species range, abundance, and extinction; regional and ecosystem-specific risks such as fires in the Arctic tundra or rainfall in the Amazon; coastal runoff impacts to coral reefs; sea level rise impacts on human communities; changes to crop yields; and the impact of climate change on poverty.

In November 2018 the IPCC published its *Fourth National Climate Assessment* for the U.S. ("USNCA 2018"). This report identifies important new evidence in our understanding of climate change as it impacts the U.S., including descriptions of scientific advances in detection and attribution of human influence for individual climate and weather events; climate change impacts on atmospheric circulation; the acceleration of ocean acidification and oceanic oxygen loss; the acceleration of ice loss in Antarctica, Greenland, and glaciers around the world; and the unpredictable consequences caused by climate system once tipping points are passed. It includes a substantial amount of information about the impacts of climate change on the U.S., including but not limited to updated scenario modeling, more regionally localized information, greater international context, and a more systematic quantification of climate impacts in economic terms. The USNCA 2018 includes entire new chapters on air quality, climate effects on U.S. international interests, and sector interactions and complex systems.

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57 IPCC 2018 at 12, 66, 95.
58 IPCC 2018 at 9.
59 IPCC 2018, at 70.
60 IPCC 2018 at 99.
61 IPCC 2018 at 99.
62 IPCC 2018 at 214.
63 IPCC 2018 at 215.
64 IPCC 2018 at 218.
65 IPCC 2018 at 219.
66 IPCC 2018 at 223.
67 IPCC 2018 at 231.
68 IPCC 2018 at 236.
69 IPCC 2018 at 244.
71 USNCA 2018 at 65.
72 USNCA 2018 Vol II at 70.
The foregoing analyses are just examples of the significant volume of new and troubling climate science released since the evidentiary hearing. Since the *Bioscience* Letter, IPCC 2018, and USNCA 2018 were published after the close of the evidentiary hearing, as were many of the underlying scientific studies on which they are based, the analysis of climate change impacts included in the existing Project record does not contain any of this new, urgent information about the risks of climate change. As a consequence, these risks are not included in the social cost of carbon estimates, nor are they considered with regard to the potential for enactment of future climate protection policies and private initiatives that reduce greenhouse gas emissions including adoption of electric vehicles, which efforts would lower Minnesota, U.S., and global demand for petroleum products, as well as demand for use of Enbridge’s Mainline System and the proposed Project. Further, the Commission was not able to hear the greater urgency with which climate scientists are speaking.

Given the severe risks that climate change creates and the time that has passed since the evidentiary hearing, the Commission should order a rehearing to allow introduction of new climate change scientific evidence into the record. That way it would be able to consider the best most recent information available about the risks posed by climate change to Minnesota’s people and environment. Doing this would allow the Commission to make informed decisions about Minnesota’s energy and ecological future. Therefore, Joint Petitioners request that the Commission conduct a rehearing to allow new evidence related to climate change to be included in the evidentiary record.

IV. THE ORDER GRANTING A ROUTE PERMIT IS UNLAWFUL AND UNREASONABLE

Rather than repeat all of the claims contained in Honor the Earth’s November 15, 2018, Petition for Reconsideration of Order Approving Routing Permit With Conditions, Joint Petitioners hereby reassert all of the claims therein by reference. In addition to these prior claims, Joint Petitioners provide the following evidence and arguments in support of reconsideration of the grant of a RP by the May 1 Order, and also in support of Joint Petitioners’ request for a rehearing of the RP to allow the investigation of significant new circumstances and introduction of relevant new evidence. In particular, Joint Petitioners are concerned about the potential risks of COVID-19 to indigenous peoples and local residents along the preferred route, which risk would likely be increased by relocating thousands of Project construction workers to northern Minnesota during the course of the pandemic.

A. THE RP ORDER FAILS TO CONSIDER THE POTENTIAL HEALTH IMPACTS OF CONSTRUCTING THE PROJECT DURING A GLOBAL PANDEMIC ON THE ANISHINAABE PEOPLE AND OTHER RESIDENTS OF NORTHERN MINNESOTA

Joint Petitioners are concerned about the possible construction of the Project during the course of the COVID-19 pandemic, and particularly about the potential spread of COVID-19.
within the region’s indigenous population, who have very limited access to healthcare and many of whom suffer from comorbidities, and within the region’s elderly population.

According to Section 5.5.3.3.1 of the 2RFEIS, Enbridge would build the Project in seven construction spreads with 600 workers each, resulting in a total construction workforce of 4,200 workers. The 2RFEIS states that 50% of this workforce would be local, but since most of the counties through which the Enbridge’s preferred route passes have very low populations, it seems likely that the vast majority of these “local” workers would not be hired from the county in which a construction spread is located, but more likely from greater northern Minnesota, and perhaps all of Minnesota. Thus, in most counties almost all of the Project’s construction workers would likely be relocated from distant parts of Minnesota and other states. While the size of this workforce might seem small relative to that in large urbanized areas, the 2RFEIS estimates that construction would temporarily increase a county’s population by more than 10% in Red Lake, Kittson, Marshall, and Clearwater Counties. While other counties would have lower percentages, the influx of workers in many counties would be substantial.

Section 5.3.3.3.1 of the 2RFEIS assumes that workers would not be self-sustaining but rather would require local lodging, food, and other services. Therefore, Project Construction workers would need to circulate freely among the local populations at motels, restaurants, grocery stores, pharmacies, and if they are open northern Minnesota’s bars, movie theaters, and other entertainment and recreational facilities.

Sections 5.3.3.3.1 and 6.2.5 of the 2RFEIS recognize that the Project’s workforce would require access to local emergency services, including law enforcement, fire departments, and hospitals, and these are counted in Table 6.2.5-3. This table shows that of the 12 counties impacted, one has four hospitals, three have two hospitals, seven have a single hospital, and one (Red Lake) has no hospital at all. The 2RFEIS does not provide data on the number of beds in these local hospitals, but since federal funding for rural hospitals is limited to those with 25 or fewer beds, it is likely that almost all of these hospitals are very small. Further, it seems likely that few if any of these hospitals have intensive care beds, and that few intensive care beds are available in rural northern Minnesota. There is also no estimate of the number of healthcare workers in these counties, nor are there estimates of age, comorbidities, and other risk factors within county residents that could increase the harm resulting from contracting the SARS-COV-2 virus.

Table 6.2.5-3 of the 2RFEIS counts the number of law enforcement agencies and fire departments in each county, but does not consider or quantify the number of police officers, paramedics, emergency medical technicians, emergency medical responders, and other emergency personnel that might be called to respond to medical emergencies. And, there is no count of the number of ambulances in these counties.

The 2RFEIS contains no analysis of the types and numbers of facilities along the proposed route that might be particularly vulnerable to an outbreak of COVID-19, including nursing homes, senior housing and assisted care facilities, and other facilities in which

74 https://www.ruralhealthinfo.org/topics/critical-access-hospitals
substantial numbers of individuals live and work, such as worker housing for agricultural operations and prisons.

The White Earth Band of Ojibwe and the Red Lake Band of Chippewa have taken aggressive actions to protect their people and are particularly concerned about their good efforts being undone by infections spread from Project construction workers.

On Friday, April 3, 2020, the Red Lake Band Tribal Council authorized the Tribal Chairman to declare martial law on the Red Lake Reservation to protect its members from COVID-19. On March 23, 2020, by Resolution No. 79-2020, the Tribal Council authorized the Tribal Chairman to declare a medical state of emergency in the event a resident of the Red Lake Reservation or a person who regularly works at Red Lake tests positive for COVID-19. Also on March 23, 2020, the Tribal Council enacted Resolution No. 78-2020, which ordered all residents to remain in their homes and yards as soon as credible report of a resident of Beltrami or Clearwater County tests positive for COVID-19, authorized tribal staff to develop new regulations to define the duties and responsibilities of residents of the reservation once a quarantine is ordered, and provided for criminal sanctions for violating a quarantine order. Since taking these actions, Beltrami and Clearwater County have identified COVID-19 cases, such that the Red Lake Tribal Council has restricted access to the Reservation.

The White Earth Band of Ojibwe has also enacted a resolution ordering all individuals within the exterior boundaries of the White Earth Reservation to remain in their places of residence, and only leave in limited circumstances. It has also developed a COVID-19 screening process, restricted travel by staff, delivered almost 7,000 student meals, distributed facemasks to all K-12 students, instituted online learning with increased student access to the internet, and developed cultural medicines and practices to respond to the virus.

The following table provides the numbers of confirmed COVID-19 cases in the counties along and near Enbridge’s preferred route. From Johns Hopkins COVID-19 map available at https://coronavirus.jhu.edu/map.html

<table>
<thead>
<tr>
<th>County</th>
<th>Confirmed Cases</th>
<th>Deaths</th>
<th>Case Fatality Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aitkin</td>
<td>4</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
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75 Available at https://www.redlakenation.org/executive-order-medical-martial-law-will-be-in-effect-friday-april-3-2020-at-500-pm/.
The number of cases in northern Minnesota continues to grow. Therefore, Joint Petitioners’ concerns about the risks of COVID-19 to indigenous people and other residents along the preferred corridor are well founded. The Bands are particularly concerned that their efforts to keep their members safe could be harmed by possible Enbridge construction activities during the pandemic.

Constructing the Project during the course of the COVID-19 pandemic would require relocating thousands of workers from other parts of Minnesota and other U.S. states to northern Minnesota for months at a time. Due to the small populations of many of these counties and their limited emergency and healthcare services, they would likely be poorly equipped to respond to an outbreak of the pandemic within the construction workforce and county residents. Joint Petitioners are also concerned that the record contains no evidence of the risks faced by local residents, but fear that indigenous peoples and elderly along the preferred route may be particularly vulnerable in the event of an outbreak in the pandemic during construction. An analysis of the risks posed by construction of the Project during a pandemic and identification of possible mitigation measures is necessary to protect public health and wellbeing.

Accordingly, Joint Petitioners request that the Commission take the following actions:

• initiate a rehearing to investigate the risks posed by COVID-19 to the construction workforce and local county residents;
• delay the start of construction until the risk is lower; and
• develop a new RP condition related to: controlling the introduction and spread of COVID-19 within the Project’s construction workforce, and from construction workers to indigenous peoples and local residents; and providing needed healthcare supplies,
equipment, personnel to both prevent the spread of COVID-19 and treat COVID-19 patients in the event of an outbreak during construction.

CONCLUSION

For the foregoing reasons, Joint Petitioners respectfully request that the Commission:

- reconsider its May 1 Order and its prior “reissued” orders;
- vacate these orders as unlawful and unreasonable;
- find the Second Revised Final EIS (“2RFEIS”) inadequate for failing to analyze the potential impacts of an oil spill into the St. Louis River Estuary, the Duluth-Superior Harbor, and Lake Superior, and order further supplementation of the EIS for the Project;
- order a rehearing in the Certificate of Need Docket, No. PL-9/CN-14-916, to include additional evidence into the record related to the alleged need for the Project, including but not limited to evidence of the continued decline of the Canadian tar sands industry, and evidence related to the impact of the global reaction to the COVID-19 pandemic, as these relate to the need for the Project;
- Order a rehearing in the Certificate of Need Docket, No. PL-9/CN-14-016 to reconsideration the effect of Enbridge’s proposed change to its capacity contracting for the Mainline System on the need for the pipeline;
- order a rehearing in the Certificate of Need Docket, No. PL-9/CN-14-916, to reconsider evidence related to the non-viable and unreasonable rail and truck alternative considered by the Commission, and to accept new evidence related to a viable alternative that incorporates use of rail to ship oil directly from Alberta to U.S. customers and Enbridge’s expansion of imports via more efficient use of its existing pipelines;
- order a rehearing in the Certificate of Need Docket, No. PL-9/CN-14-916, to consider new evidence related to the growing risk of harm caused by climate change; and
- order a rehearing in the Route Permit Docket, No. PL-9/PPL-15-137, to evaluate the potential health impacts to communities along Enbridge’s preferred route of constructing the Project during the COVID-19 pandemic, and to consider mitigation measure to reduce the potential harm of such construction.

Due to the expected dramatic decrease in demand for Mainline System transportation services (a drop of 600,000 bpd in 2020 Q2), Joint Petitioners anticipate that the time required for a supplemental evidentiary hearing would not harm Enbridge’s shippers, because even if the tar sands industry recovers from its years of malaise and the impacts of the COVID-19 crisis, and a need for the Project is proven, there would be no need for additional capacity until the first
quarter of 2021, at the earliest, thereby providing a window in which the Commission can rehear this matter.

Dated: May 21, 2020

Respectfully submitted,

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