

**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 for the Line 3 Replacement Project in Minnesota From the North Dakota Border to the Wisconsin Border	OAH 65-2500-32764 MPUC PL-9/CN-14-916
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	OAH 65-2500-33377 MPUC PL-9/PPL-15-137

**HONOR THE EARTH
PETITION FOR RECONSIDERATION
OF ORDER FINDING ENVIRONMENTAL IMPACT STATEMENT ADEQUATE**

May 21, 2018

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INTRODUCTION

For the reasons below, Honor the Earth hereby respectfully petitions the Minnesota Public Utilities Commission (“Commission”) to reconsider its May 1, 2018, Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman’s November 2017 Report as Modified, which order found adequate the Environmental Impact Statement (“EIS”) for the Line 3 Replacement Project (“Project”), which was prepared by the Commission pursuant to the Minnesota Environmental Policy Act, Minn. Stat. Ch. 116D (“MEPA”).

Pursuant to Minn. Stat. § 216B.27, Subd. 1, a party to a proceeding, within 20 days of service of any decision constituting an order or determination, may apply to the Commission for a rehearing “in respect to any matters determined by the decision.” Pursuant to Minn. R. 7852.3000, 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 reargument 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 applicant 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 Scoping 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 “unlawful or unreasonable.” Minn. Stat. § 216B.27, Subd. 3.

Honor the Earth herein provides its reasons that reconsideration is warranted, both due to Commission procedural violations and due to the substantive inadequacies of the EIS.

The procedural violations related to development of the EIS include:

- A failure to schedule the EIS process so that the EIS was available for use by citizens;
- A failure to provide responses to a substantial number of substantive comments of citizens on the Draft Environmental Impact Statement (“DEIS”).

The substantive inadequacies of the EIS include:

- A failure to provide the Commission with an adequate description of the environmental and socioeconomic impacts of the Project;
- A failure to consider reasonable alternatives and instead considers specious alternatives;
- A failure to provide an adequate analysis that compares the impacts of the proposed Project to the impacts of reasonable alternatives;

- A failure to provide an adequate assessment of impacts to tribal cultural properties and cultural resources; and
- A failure to provide any discussion of the impact of petroleum conservation on the selection of reasonable alternatives, its impact on the potential future impacts of the Project or alternatives to it, or its use as a mitigation measure for Project impacts, should it be approved.

I. VIOLATIONS OF MEPA PROCEDURAL REQUIREMENTS

MEPA and its implementing regulations state clearly that an EIS is not intended to benefit only agency decision makers, but rather is also intended to benefit “individuals,” “citizens,” “the public,” “other persons,” and “institutions.” Moreover, MEPA and its implementing regulations provide clear requirements for the timing of precursor documents leading to an EIS, including DEISs and FEISs, as well as the timing requirements for the EIS itself that is produced by this process. Also, MEPA requires that agencies take public comment seriously, and provide meaningful responses to all public comments.

A. The Commission’s MEPA Process Failed to Comply with Statutory and Regulatory Language Related to its Timing

In order to understand the meaning of the MEPA statutory and regulatory provisions related to the timing of the MEPA process, it is necessary to understand the following defined terms contained in Minn. R. 4410.0200:

Subp. 25. Environmental document. "Environmental document" means EAW, draft EIS, final EIS, substitute review document, and other environmental analysis documents.

Subp. 26. Environmental impact statement. "Environmental impact statement" means a detailed written statement as required by Minnesota Statutes, section 116D.04, subdivision 2a.

The terms “environmental document” and “environmental impact statement” are distinct. An “environmental document” is an analytical document that leads up to the EIS. An EIS is not an “environmental document” as this term is defined by law, because an EIS is only the document produced at the end of a complete MEPA process performed in accordance with the requirements of Minn. Stat. § 116D.04, Subd. 2a. In contrast, an FEIS is a name given to one or more precursor documents that have not yet been found adequate. In this regard, both a DEIS and an FEIS are “environmental documents” and are not the EIS. Before an FEIS is found adequate, it has not completed the full process required by Minn. Stat. § 116D.04, Subd. 2, such that the FEIS is not the same thing as an EIS. Under the plain language of MEPA and its regulations, an FEIS and EIS are two distinct documents.

The distinction between “environmental documents” (including FEISs) and “environmental impact statements” is important because MEPA and its regulations provide different timing requirements for each. The following MEPA statutory and regulatory provisions bear on the timing of the production, intended use, and intended beneficiaries of FEISs and EISs.

Minn. Stat. § 116D.03, Subd. 2(6):

All departments and agencies of the state government shall: . . . make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, chapter 412.

Minn. Stat. § 116D.04, Subd. 2:

The environmental impact statement shall also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.

Minn. R. 4410.0300, Subp. 3:

Environmental documents shall contain information that addresses the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

Minn. R. 4410.0300, Subp. 4:

The process created by parts 4410.0200 to 4410.6500 [comprises all of the MEPA regulations] is designed to: A. provide usable information to the project proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed project.

Minn. R. 4410.2000, Subp. 1:

The purpose of an EIS is to provide information for governmental units, the proposer of the project, and other persons to evaluate proposed projects which have the potential for significant environmental effects, to consider alternatives to the proposed projects, and to explore methods for reducing adverse environmental effects.

(Emphasis added.) The foregoing provisions demonstrate that MEPA contains clear requirements with regard to the scope of the entities benefitted by the MEPA process, their right to use both an FEIS and EIS, and the timing of the production of an FEIS and the EIS to allow such use.

Here, the Commission has not yet approved the EIS, and is unlikely to do so until after all public participation opportunities are closed. In fact, the only process that likely remains after completion of the EIS are the oral arguments allowed for parties and possible petitions for reconsideration of the Commission's final decision on the Certificate of Need and Routing Permit Applications. Since this timing is too late to allow citizens to benefit from the adequate EIS, it violates MEPA. Essentially, the Commission degrades the statutory mandate that "the environmental impact statement shall be prepared as early as practical in the formulation of an

action,” Minn. Stat. § 116D.04, Subd. 2, into allowing determination of the adequacy of an EIS until as late as possible in the formulation of an action. The Commission’s actions are simply not in accordance with the plain language of MEPA.

B. The Commission’s MEPA Process Failed to Provide Individuals and Parties with an Opportunity to Use all “Environmental Documents” and the “Environmental Impact Statement,” as These Are Defined by Regulation

With regard to the entities that the law intends the MEPA process to benefit, Minn. Stat. § 116D.03, Subd. 2(6), Minn. R. 4410.0300, Subp. 3, Minn. R. 4410.0300, Subp. 4, and Minn. R. 4410.2000, Subp. 1, state that the purpose of an EIS and its precursor documents is to benefit not just the Responsible Governmental Unit (“RGU”), but also “individuals,” “citizens,” “the public,” and “other persons,” as well as “other governmental bodies” and “institutions.” MEPA is intended to provide useable information to an RGU and the individuals and parties participating in an agency decision making process. The purpose of MEPA is to improve agency decision making in part through allowing and aiding public participation in their decisions. A failure to allow public use of the EIS in the administrative process would, therefore, violate MEPA.

MEPA requires that the Commission must provide the parties and individual citizens with an opportunity to make practical use of the information provided in a supplemented FEIS and in the EIS ultimately produced by this proceeding. Yet, due to the timing of the Commission’s approval of the EIS, the Commission has not provided citizens to use all of the information in the EIS. Therefore, the Commission should not approve of the adequacy of the EIS, because its development did not comply with MEPA’s requirements to allow public use of all “environmental documents” and the “environmental impact statement,” as these terms are defined by Minn. R. 4410.0200, subps. 25 and 26.

Therefore, the Commission should reconsider its approval of the EIS and provide additional opportunity for public comment, because its process did not result in full use of the EIS by citizens as required by law.

C. The Commission Failed to Provide Meaningful Responses to Comments on the DEIS and FEIS

EIS Appendix T parts 2 provides responses to party and citizen comments on the DEIS. These responses are cursory to the point of being meaningless. For example, Honor the Earth provided over 100 pages of comments, and also filed another 50 pages of technical comments by two experts on impacts to water resources and the risks and impacts of pinhole leaks. Yet, the Commission identified just 13 comments out of all of this material that merited response. It appears that the Commission entirely ignored the comments of Honor the Earth's technical experts.

For example, in response to over five pages of comments on the purpose and need for the Project, the Commission responded in total as follows:

The EIS approach on the Purpose and Need is explained in Chapter 1 of the EIS. Chapter 2 describes the Applicant's proposal, including an explanation of the Applicant's rationale for pursuing the project. Chapter 2 does not represent the Department's assessment of need.

Thus, in response the Commission merely pointed out the contents of two chapters and said that the Department did not assess the purpose and need for the Project. This response contains nothing of substance. Honor the Earth also provided ten pages of detailed information about Enbridge's Mainline System and Express System expansion plans, but the Commission responded by saying only:

The Department's treatment of the purpose and need is described in Chapter 1 of the EIS. It is not clear whether existing and other proposed pipelines meet the need for this proposed project;

however, further information on the economic need or viability of other regional pipelines to transport the volume of additional oil proposed by the Applicant's project will be developed in the Certificate of Need hearing process.

The environmental implications of a Commission determination that existing and/or other proposed pipelines meet the need for the proposed project is addressed in the review of continued operation of existing line 3 at 390,000 barrels per day. This analysis (i.e., the environmental impacts associated with the Certificate of Need alternatives) is provided in Chapter 5 of the EIS.

None of the foregoing response specifically discusses the potential for Mainline System or Express System expansions, and instead just says that nothing is clear about "whether existing and other proposed pipelines meet the need for this proposed project," which is an issue that the EIS must discuss.

Honor also provided over three pages of detailed comments on the viability of the DEIS rail and truck alternatives, to which the Commission responded as follows:

The EIS evaluates the environmental impacts of a range of alternatives, providing for an assessment of the impacts of options for transport that may be considered by the Commission. The economics of the CN alternatives will be evaluated by the Department of Commerce Division of Energy Resources Energy Planning and Advocacy and other parties as part of the contested case hearing.

Again, the Commission responded by mere stating generally what all EIS's do, and then stating that the economics (but not the environmental impacts) of alternatives would be evaluated in the contested case hearing, neither of which responded to Honor the Earth's actual comments on the non-viability of the rail and truck alternatives contained in the DEIS.

Also, the Commission ignored and provided no responses to Honor the Earth's comments on :

- DEIS Sections 2.7.1.1, 2.7.2.3, 2.7.2.4, 2.7.2.6, 2.7.2.9, 5.2.1.1.3, 5.2.4.3, 5.3.4.1.2, 5.3.4.3.1, 5.4.1.2, and 5.4.2.1;

- DEIS Chapter 8 related to abandonment and removal;
- the unreasonable nature of the trucking and rail alternatives;
- DEIS Section 4.2.10 related to smaller diameter pipe; and
- impacts to indigenous peoples and environmental justice.

Thus, the Commission has not complied with its obligation to provide substantive responses to comments, and instead at best provided extremely broad and meaningless responses or at worst completely ignored substantive comments. Such lack of meaningful response significantly undermines the credibility of the Commission and indicates a lack of respect for citizen comments.

Accordingly, the Commission should re-evaluate its responses to the substantive comments it received during the MEPA process, provide complete responses to all comments, and then incorporate such responses where appropriate into the EIS.

II. EIS SUBSTANTIVE INADEQUACIES

A. The EIS Failed to Adequately Investigate and Define the Purpose and Need for the Project, Including Consideration of a Range of Forecasts of Commercial Need

The FEIS's analysis of purpose and need merely parrots Enbridge's purpose and need and does not explore the underlying commercial purpose for the Project. In particular, the EIS simply assumes that Enbridge's forecasts of Canadian crude oil supply and market demand for petroleum products are reasonable, and therefore fails to consider a range of forecasts in its selection of alternatives and in its assessment of impacts. This means that the EIS's assessment of a number of impacts, including but not limited to climate change impacts, socioeconomic

benefits and costs, and the comparative impacts of alternatives, are for practical purposes deeply flawed.

The EIS's selection of reasonable alternatives was biased by the EIS's assumption of Enbridge's definition of the purpose and need for the Project. Rather than investigate a range of forecasts in the EIS, the Commission assumed that the need for the Project would be fully investigated in Docket 14-916, the Certificate of Need docket for the Project. In fact, the evidence in the evidentiary hearing highlighted the weakness of Enbridge's forecast of need, because it did not consider a range of forecasts based on key economic and policy factors. This failing by Enbridge violated Minn. R. 7853.0520, which requires that the Commission consider "the effect on the forecast of possible changes in the key assumptions and key factors" Further, the assumption that the evidentiary hearing would fully investigate the need for the Project does not mean that the EIS itself did not need to investigate the environmental impacts of the Project in light of a range of forecasts.

The Department's technical witness criticized Enbridge's forecast of need expressly because Enbridge failed to provide forecasts that varied based on future assumptions about crude oil price, which is a key assumption or factor under Minn. R. 7853.0520. Honor the Earth criticized Enbridge's forecast in part by presenting a western Canadian crude oil supply forecast that assumed an average future oil price of \$50 per barrel, which is the long-term average price of oil. This forecast showed that in such scenario the volume of crude oil that would flow through Minnesota would peak in the near term and drop over the long term. Thus, the record contains evidence about the critical importance of analysis of a range of commercial need for the Project, and the extent of the range of need that the Commission must consider. Given this evidence, under Minn. Stat. § 216B.243 and Minn. R. Ch. 7853 it is improper and illegal for the

Commission to ignore a range of forecasts of need and simply assume that Enbridge's forecast of need is correct.

More to the point here, the Commission violated MEPA because the EIS is based on a fundamental assumption that Enbridge's single-forecast view of the future need for the Project is correct, such that the EIS simply did not analyze: (a) the Project's environmental and socioeconomic impacts that would result from a lower need; and (b) the reasonableness of alternatives that could redress a lower forecasted need, as well as the impacts of such alternatives in a lower need scenario. Thus, the Commission compounded its error of not requiring that Enbridge provide a range of forecasts of need in accordance with Minn. R. 7853.0520 by also not analyzing a range of forecasts of need in the EIS. A MEPA analysis of a range of forecasts is uniquely necessary when an EIS is intended to support a decision on the need for a project, because different forecasts of need can have a significant effect on the reasonableness of alternatives, as well as a significant effect on the impacts of the various alternatives investigated by an EIS.

For example, a lower forecast of need would make lower capacity and lower impact alternatives, such as the no action alternative, use of other pipelines, and repair of existing Line 3, more reasonable. Enbridge has repeatedly argued against the reasonableness of alternatives because they would not move as much crude oil as the Project. But, the Commission's responsibility under Minn. Stat. § 216b.243 is not to evaluate just Enbridge's assumption of need. Instead the law requires that the Commission question this very assumption. Since the purpose of the EIS is to support the Commission's analysis of a range of forecasts of need, it follows that the EIS also must consider the impact of a range of forecasts of need on the selection of and the relative impacts of alternatives. The failure of the EIS to do so meant that the EIS

dismissed reasonable lower-capacity alternatives from its analysis, and failed to consider the relative environmental and socioeconomic impacts of alternatives in the event that commercial need is lower than forecast by Enbridge.

A lower forecast of need would also reduce the direct and indirect environmental impacts of the Project itself, because less oil would flow through it. Such lower flow would reduce the risk of oil spills, reduce climate change impacts, reduce cumulative impacts related to downstream pipeline expansions, and reduce the socioeconomic benefits of the Project relative to its adverse impacts.

The Commission argues that the EIS cannot determine need, but this argument is specious. Consideration of a range of possible future crude oil supply scenarios in the FEIS would NOT determine need. Instead, such consideration by the FEIS would have allowed the Commission to: (a) evaluate the potential impacts of the Project given different crude oil supply scenarios; (b) select reasonable alternatives to the Project based on a range of need; and (c) compare the impacts of the Project to those of its alternatives in the event that commercial demand is substantially less than forecast by Enbridge. As stands, the EIS assumed a single forecast of need, which assumption supports the Project as designed by Enbridge. If anything, by refusing to include a range of forecasts of need in the EIS, the EIS makes approval of the Project more likely, because the Commission does not have a full analysis of the positive and negative environmental impacts of the Project in a low crude oil demand environment.

Accordingly, the Commission should reverse its finding of adequacy because the EIS is fundamentally biased towards a need for the Project and fails to fully inform the Commission about the environmental impacts of the Project in a lower demand future, and also fails to analyze the environmental merits of lower-volume alternatives to the Project. The Commission

should re-analyze the purpose and need for the Project in accordance with the requirements of MEPA, and then re-work the EIS's alternatives and impact analysis in accordance with a proper analysis of purpose and need.

B. The EIS Considers Specious Alternatives to the Project

The FEIS fails to consider reasonable alternatives to the Project, including expansion and use of existing pipelines and use of rail directly from Alberta to refineries in the US. Instead, the EIS considered alternatives that are completely specious, including trucking and railing crude oil between Neche, ND, and either Clearbrook or Superior Terminals. No evidence was provided in the evidentiary hearing that either the rail or trucking alternatives as defined by the EIS were reasonable to the slightest degree.

Enbridge's rail expert, in his initial testimony filed in January 2017 – long before the DEIS was issued – did not suggest that building a rail bridge between Neche, ND, and the Clearbrook and Superior Terminals was commercially feasible. On cross examination, he also did not support the practicality of such use of rail. Instead, he argued that the railroad industry would not build the infrastructure needed for such bridge, and that the oil industry would use rail as an alternative to the Project by shipping crude oil directly from Alberta to refineries. Honor the Earth's expert also stated that an increase in demand for crude oil transportation services could be addressed by transporting oil directly from Alberta to end-use customers. No party proposed the Neche to Superior rail bridge as an alternative to the Project pursuant to Minn. R. 7853.0130(B). No party supported this alternative as proposed by the EIS. No party could support it, because it was patently non-viable and unreasonable. Moreover, the Commission and Department had reason to know this long before publication of the DEIS.

Likewise, there is zero evidence in the evidentiary hearing supporting a possible use of trucks to transport crude oil from Neche, ND to the Clearbrook or Superior Terminals. The EIS states that transporting 760,000 bpd by truck would require 4,000 trips per day. This means that 167 trucks would need to leave Neche every hour of every day for decades. This is almost three trucks per minute, but due to breakdowns, holidays, and other limitations, the actual frequency of departure would need to be even higher. The logistics of this alternative would be a completely impractical nightmare, and according to the EIS its cost would be astronomical. No party proposed this alternative pursuant to Minn. R. 7853.0130(B). No party supported this alternative as proposed by the EIS. No party could, because it never was a reasonable or viable alternative.

The rail and truck alternatives as proposed were mere strawmen first developed by Enbridge that have never had the slightest chance of being commercially viable. There never was any rational reason to select the rail and truck bridges between Neche and Clearbrook or Superior as reasonable alternatives. Therefore, the railroad and truck alternatives selected for the FEIS by the Commission and Department do not represent a realistic assessment of alternatives that are actually available to the oil industry should the Commission deny Enbridge's applications. As such, the EIS does not provide a useful or reasonable assessment of the no-action alternative.

As such, the EIS also does not contain an analysis of the impacts that would result if the permits were denied (the no-action alternative). The record shows that denial of the permits would likely result in: (a) increased use of rail shipments from Alberta to end-use customers; (b) more efficient use of existing pipelines; and/or (c) an increased likelihood that either the Keystone XL or Trans Mountain Expansion Project would be built. The record shows that rail shipments from Alberta directly to end-use customers would not have the same impacts as the

rail bridge between Neche and Superior. The trains would not necessarily pass through Minnesota at all, and those that did would not take the same route or have the same impacts. Further, the record shows that Enbridge has proposed hundreds of thousands of barrels per day of expansions of existing Mainline System pipelines, as well as expansion of its Express Pipeline from Alberta to Wyoming by up to 100,000 bpd. Enbridge's primary argument against these expansions is that they would transport light crude oil, and that reversal of Line 13 would happen in the mid-2020s. Yet, Enbridge began transporting heavy crude on existing Line 3, even though it too is described as a light crude oil pipeline. Moreover, the record shows that if oil price remains at a long-term average of about \$50 per barrel, that light crude oil supply from Canada would drop in the near-term, such that Enbridge would have unused capacity on its light crude oil pipelines, which unused capacity could be used for heavy crude oil. The record also shows that the Keystone XL pipeline has received all of its permits and that development is proceeding. Accordingly, the EIS fails to provide the Commission with a reasonable assessment of the impact of denial of the permits.

Rather than take a realistic look at how the oil industry would respond to a denial of the permits, the EIS instead proposed the unreasonable and unsupported rail and truck bridges between Neche, ND, and the Clearbrook and Superior Terminals, despite clear evidence that these bridges were utterly non-viable and unreasonable. Therefore, the EIS is deficient because it failed to consider reasonable alternatives and it failed to adequately consider the impacts of the no-action alternative. According, the Commission should reconsider its approval of the EIS, and reconsider its selection of alternatives so that it does not review specious alternatives and instead analyzes rail and pipeline alternatives that the record indicates are reasonable.

C. The EIS Failed to Consider Future Cumulative Impacts Related to Expansion of the Capacity of the Project from 760,000 bpd to 915,000 bpd

The FEIS fails to adequately consider the impacts of the Project once it is expanded from a capacity of 760,000 bpd to 915,000 bpd. The ALJ Report on the adequacy of the FEIS stated that such expansion is speculative, yet, as demonstrated by the clockwork expansions of the Alberta Clipper, Line 61, and Keystone Pipeline, among others, expansion of a pipeline to its full physical capacity is nearly inevitable assuming that future demand for crude oil transportation services increases beyond the initial capacity of a new pipeline. Here, Enbridge's own forecast of need assumes a massive growth in western Canadian crude oil supply available for export, and it uses this assumption to argue that the Project would be needed even if either the Keystone XL Pipeline or the Trans Mountain Expansion Project are built. Since expansion of the Project to 915,000 bpd would be cheaper and subject to much less regulatory uncertainty, if the Commission agrees with the Enbridge supply forecast, then it should also assume that the Project would be expanded. It would be unreasonable to assume otherwise.

The expansion of the Project to its ultimate capacity is also likely given that the majority of the cost of such capacity expansion is embedded in the cost of the Project's initial construction, due to the use of thicker wall pipe and fittings. It is unreasonable to assert that expansion is speculative given that Enbridge has committed substantial financial resources to procuring higher pressure pipe and other fittings all the way from Alberta to Superior. If such expansion were truly speculative, then spending much more on higher pressure pipe and fittings would be unreasonable and a waste of financial resources.

A failure to recognize the likelihood of expansion of the Project means that the EIS does not adequately assess the risks and impacts that are directly related to construction of the Project so that it is capable of operation at 915,000 bpd, including the risks of larger oil spills and the

risk of higher climate change impacts, both direct and indirect. Therefore, the Commission should modify the EIS to analyze the cumulative impacts of expansion of the proposed pipeline to 915,000 bpd.

D. The EIS Fails to Adequately Study the Project’s Impacts on Cultural Resources

By not including the result of a complete tribal cultural properties survey, the EIS fails to adequately assess the Project’s impacts on such properties or assess the impacts of alternatives to the Project on such properties. Further, the EIS fails to adequately consider the impact of the Project on treaty resources. The ALJ Report’s recommendation that the Commission select the existing corridor pipeline corridor through Minnesota highlights the need for a complete assessment by the EIS of the relative impacts of the building the Project in Enbridge’s preferred route versus building it in the existing corridor. The failings of the EIS are fully described in the Joint Tribal Petition to Reconsider and Amend the PUC’s December 14 Order, which is incorporated by reference. The Commission should reconsider its decision on this petition in light of the ALJ Report, and include a full analysis of impacts to cultural properties and resources in the EIS.

E. The EIS Fails to Adequately Assess the Impacts of an Oil Spill Into the St. Louis River Estuary, Duluth Superior Harbor, or Lake Superior

The EIS fails to adequately assess the impacts of an oil spill into the St. Louis River Estuary, Duluth-Superior Harbor, and Lake Superior, the watersheds for which are crossed by the Project and put at risk by related tanks located at Enbridge’s Superior Terminal, as well as related downstream pipelines that exit the Superior Terminal. None of the “representative” oil spill modelling locations bear any resemblance to a spill into Duluth- Superior Harbor or Lake Superior, which waterbodies are nothing like any of the interior lakes chosen for modelling.

While selection of “representative” spills into stream flows to assess the distance that crude oil could be transported has merit, such analysis by itself says nothing about the potential impacts of spills into different waterbodies. MEPA requires the assessment of impacts on the actual environment, not just an assessment of how far oil would be transported in the event of a spill.

Duluth-Superior Harbor/St. Louis River Estuary and Lake Superior are both much deeper than interior lakes, such that there is significant doubt that Enbridge could clean up heavy tar sands crude should any portion of it sink. Further, Duluth-Superior Harbor and the St. Louis River Estuary are a major commercial shipping port and both suffer from significant existing contamination by hazardous wastes that the state and federal governments have spent hundreds of millions of dollars to mitigate. Further, these waterbodies provide the economic foundation for a wide range of activities including shipping, recreation and tourism that are critical to the economy of this region. Further, the characteristics and uses of these waterbodies would complicate and increase the impacts and costs of spill response, particularly if dilbit from the Project spills and sinks into contaminated sediments and prevents commercial shipping use of Duluth Harbor for an indeterminate length of time, or prevents recreational use of the St. Louis River Estuary or the beach of Lake Superior. The on-the-ground physical and economic impacts of a spill into these waterbodies would be nothing like the impacts of a spill into a relatively small interior stream, river, or lake. Yet, the EIS is utterly silent about the risks and impacts of such spills.

Because the EIS fails to assess the impacts of a spill of crude oil into Duluth-Superior Harbor, the St. Louis River Estuary, and Lake Superior, it does not comply with MEPA. Therefore, the Commission should reconsider the adequacy of the EIS, and supplement the EIS

by providing an analysis of the potential environmental and socioeconomic impacts of an oil spill in these bodies of water.

F. The EIS Improperly Failed to Consider the Effects of Energy Conservation Programs on the Impacts of the Project

The FEIS entirely fails to analyze the adoption of electric and advanced technology vehicles as a mitigation measure for the Project, or to assess the impacts of electric and advanced vehicle technologies on the purpose and need for the Project. The Commission is required by Minn. Stat. § 21B.243, subd. 3(2) and Minn. R. 7853.0130(A)(2) to consider the potential impacts of energy conservation on the need for the Project. This requirement is essentially the same as requiring that the Commission consider the impact of conservation as a mitigation measure for the Project. Moreover, MEPA requires that the State of Minnesota “practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use” Minn. Stat. § 116D.02, Subd. 2(9). Further, the evidentiary hearing showed that the impact of electric and advanced vehicle technology is a key factor with regard to need for the Project, and even if the Project is approved and built would likely have a significant impact on the use of the Project, and therefore also on its impacts.

Yet, the EIS entirely fails to consider the impact of adoption of electric and advanced technology vehicles or other energy conservation and efficiency measures on Project impacts, the viability of alternatives to the Project, or the use of conservation as mitigation for the Project. In fact, the EIS mentions conservation only two times, despite its size: once with regard to a general discussion of the Next Generation Energy Act and once with regard to Enbridge’s energy conservation efforts. It does not include any mention of energy efficiency.

Because it fails to consider energy conservation in any regard, the EIS does not comply with MEPA, such that the Commission should reconsider its adequacy. Therefore, the Commission should amend the EIS so that it considers the impact of petroleum conservation measures, including but not limited to adoption of electric and advance vehicle technology on Project impacts and alternatives.

CONCLUSION

For the foregoing reasons, the Commission should reconsider the adequacy of the EIS and return the EIS to the Department to repair its inadequacies.

Dated: May 21, 2018

Respectfully submitted,

/s Paul C. Blackburn _____

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Attorney for Honor the Earth

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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

**OAH 65-2500-32764
MPUC PL-9/CN-14-916**

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

**OAH 65-2500-33377
MPUC PL-9/PPL-15-137**

CERTIFICATE OF SERVICE

I, Paul Blackburn, hereby certify that I have this day, served a true and correct copy of the following documents for the above captioned matters to all persons at the addresses on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

**HONOR THE EARTH
PETITION FOR RECONSIDERATION
OF ORDER FINDING ENVIRONMENTAL IMPACT STATEMENT ADEQUATE**

Dated this 21st day of May, 2018.

/s Paul Blackburn
Paul Blackburn

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