

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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<p>IN THE MATTER OF THE APPLICATION OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP FOR A CERTIFICATE OF NEED AND PIPELINE ROUTE PERMIT FOR THE LINE 3 REPLACEMENT PROJECT IN MINNESOTA FROM THE NORTH DAKOTA BORDER TO THE WISCONSIN BORDER</p>	<p>OAH 11-2500-32764 DOCKET NO. PL-9/CN-14-916 OAH 11-2500-33377 DOCKET NO. PL-9/CN-15-137</p>
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**PETITION FOR RECONSIDERATION OF THE COMMISSION’S ‘ORDER FINDING
ENVIRONMENTAL IMPACT STATEMENT ADEQUATE AND ADOPTING ALJ
LIPMAN’S NOVEMBER 2017 REPORT AS MODIFIED’**

May 21, 2018

I. INTRODUCTION

The Youth Climate Intervenors believe that the Environmental Impact Statement (“EIS”) for the proposed new Line 3 pipeline (“Project”) remains deeply flawed and therefore inadequate. While the record, as developed through testimony as well as the EIS, clearly shows that the costs of the Project far outweigh any benefits, this particular document leaves much to be desired. By ordering revisions, the Commission could ensure that they truly have sufficient information to fully understand all of the immense costs of Line 3. We therefore ask the Commission to reconsider their recent Order and to instead request that DOC-EERA conduct further revisions of this document. In this Petition, we review and restate the arguments that we have made regarding the FEIS up until this point, highlighting its lack of complete climate analysis, detailed responses to comments, and a proper cultural survey.

II. THE YOUTH CLIMATE INTERVENORS' MAINTAIN OUR EXCEPTIONS TO THE REPORT OF ALJ LIPMAN AS FILED ON NOVEMBER 21, 2017.

On November 21, 2017, the Youth Climate Intervenor filed “Exceptions to the Report of Administrative Law Judge Lipman on Adequacy of the Line 3 Replacement FEIS.”¹ In this filing, we highlighted two initial concerns with the ALJ’s findings of fact, conclusions of law, and recommendations, while stating our intention to raise further concerns during oral argument. The Youth Climate Intervenor remain concerned about these issues with ALJ Lipman’s report, and thus with the Commission’s order adopting the report’s findings. These Exceptions were:

1. The time between the end of the DEIS comment deadline and completion of the FEIS was insufficient, and many substantive comments were not addressed. Therefore, the ALJ’s conclusions #18, that “the FEIS provides responses to the substantive comments received during the DEIS review as to issues that were raised during the scoping process,” and #19, that “the FEIS addresses the potentially significant issues and alternatives that were raised during the scoping process” are incorrect.²
2. Like the DEIS, the FEIS does not adequately quantify the impacts of climate change, because it only examines 30 years of the social cost of carbon despite the fact that the FEIS names 30 years as the “minimum economic life of the project.”³ Therefore, the ALJ’s finding #282, that “the FEIS considered the cumulative potential effects of the Project on climate change,” and conclusion #15, that the FEIS addresses “cumulative potentially significant impacts,” are incorrect.⁴

The FEIS Response to Comments states that “for purposes of comparison across alternatives, the EIS targets a consistent time window that is long enough to understand annual operating impacts/tradeoffs of the alternatives. Extending the timeframe and

¹ Exception of the Youth Climate Intervenor to the Report of Administrative Law Judge Lipman on Adequacy of the Line 3 Replacement FEIS (Nov. 21, 2017) (eDocket Nos. 201711-137596-02 (CN), 201711-137596-01 (R)).

² Report of the Administrative Law Judge (Nov. 1, 2017) at 48-49 (eDocket Nos. 201711-137079-01 (CN), 201711-137080-01 (R)).

³ Exception of the Youth Climate Intervenor to the Report of Administrative Law Judge Lipman on Adequacy of the Line 3 Replacement FEIS at 2 (Nov. 21, 2017) (eDocket Nos. 201711-137596-02 (CN), 201711-137596-01 (R)).

⁴ Report of the Administrative Law Judge (Nov. 1, 2017) at 48 (eDocket Nos. 201711-137079-01 (CN), 201711-137080-01 (R)).

redoing the analysis doesn't appear to add any value in this comparison.”⁵ This explanation is fully unsatisfying. Under MEPA and other Minnesota rules, an EIS is supposed to analyze all significant environmental impacts of the Project – direct, indirect, and cumulative.⁶ Choosing an arbitrary end-date for climate analysis is an abdication of DOC-EERA's responsibility to analyze the cumulative impacts of Line 3. Not only does a full assessment of the social cost of carbon add value – it's also explicitly required by MEPA.

III. THE YOUTH CLIMATE INTERVENORS MAINTAIN OUR EXCEPTIONS TO THE REPORT OF ALJ LIPMAN AS ARGUED BEFORE THE COMMISSION ON DECEMBER 7, 2017.

At the Commission's meeting on December 7th, 2017, the Youth Climate Intervenors reiterated our concerns regarding DOC-EERA's limited revisions and incomplete analysis of the social cost of carbon. We also expressed support for the written and oral comments of other intervening parties, regarding important items missing from the FEIS. In particular, we agreed with Friends of the Headwaters and other parties that the FEIS is in need of deeper analysis of site-specific spill impacts; and with the intervening Tribes that the FEIS requires a complete Traditional Cultural Properties Survey in order to be considered adequate.

IV. THE YOUTH CLIMATE INTERVENORS MAINTAIN OUR POSITIONS AS EXPRESSED IN REPLY COMMENTS FILED JANUARY 16, 2018.

In response to the Commission's December 14th Order finding the FEIS inadequate, a number of parties filed Petitions for Reconsideration in early January. On January 16, the Youth Climate Intervenors responded to three of these.⁷ We wrote in support of the Joint Tribal Petition

⁵ Ex. EERA-29, Appendix T-2 at 175 (Final Environmental Impact Statement, Response to Comments).

⁶ Minn. Stat. 116D.04 Subd. 2a; Minn. R. 4410.2300

⁷ Reply of the Youth Climate Intervenors Regarding the Joint Tribal Petition for Reconsideration (Jan. 12, 2018) (eDocket Nos. 20181-138892-01 (CN), 20181-138892-02 (R)); Reply of the Youth Climate Intervenors Regarding Enbridge's Petition for Reconsideration (Jan. 16, 2018) (eDocket Nos. 20181-138999-01 (CN), 20181-138999-02 (R)); and Youth Climate Intervenors Response to Sierra Club's Petition for Reconsideration or Rehearing and Request for Supplement to the Environmental Impact Statement (Jan. 16, 2018) (eDocket Nos. 20181-138893-01 (CN), 20181-138893-02 (R)).

for Reconsideration and the Sierra Club’s Petition for Reconsideration, and in opposition to Enbridge’s Petition for Reconsideration. The former two filings are particularly relevant at this time. We continue to believe that the Commission did not take sufficient action to resolve the failings they found in their December 14th Order (a position that we expressed again in oral argument at the Commission’s meeting in March). And, crucially, we continue to believe that this FEIS cannot be adequate without a complete Traditional Cultural Properties Survey.

As we wrote on January 16th: “To be very clear, requiring only the completion of the TCP survey before construction borders on insulting. This treats the survey of vitally important cultural sites as a box that must be checked, rather than as an essential component of decision-making. It presupposes that the TCP survey will not provide any information that could impact the routing of or need for this pipeline. And the end result is that by the time the survey is complete, the Commission will have no power to influence what happens with the information provided. With this order, the Commission essentially declares ‘this is not our problem’ - when in fact, as the Responsible Government Unit for this project, it absolutely is.”⁸ The revisions to the FEIS did not address this critical shortcoming - the issue here has not changed - and these words remain true today.

V. THE REPORT OF ALJ O’REILLY FURTHER EXPOSES INADEQUACIES IN THE FEIS.

On April 23, 2018, ALJ O’Reilly found that the benefits of the Line 3 pipeline outweigh the costs on one route only - RA-07, or the “in-trench replacement” option.⁹ As voiced in our recently filed Exceptions, the Youth Climate Intervenors strongly disagree with this position.¹⁰ However, the route alternative recommended by the ALJ received far less attention in the FEIS than the Applicant’s Preferred Route (“APR”). The Commission would need far more information about the environmental impacts of RA-07 in order to even justify considering this

⁸ Reply of the Youth Climate Intervenors Regarding the Joint Tribal Petition for Reconsideration at 2 (Jan. 12, 2018) (eDocket Nos. 20181-138892-01 (CN), 20181-138892-02 (R)).

⁹ Findings of Fact, Conclusions of Law, and Recommendation (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN), 20184-142237-01 (R)).

¹⁰ Exceptions of the Youth Climate Intervenors to the Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge Ann C. O’Reilly (May 10, 2018) (eDocket Nos. 20185-142914-01 (CN), 20185-142914-02 (R)).

option. We believe that the FEIS is in need of further revisions to address the specifics of RA-07, so that the Commission can properly and comparably evaluate the costs and impacts of *all* routes.

VI. CONCLUSION

Minnesota Rule 4410.2300 clearly states the requirements for an adequate EIS. While these rules have been discussed at great length throughout these proceedings, they nonetheless bear repeating. Part H states:

H. Environmental, economic, employment, and sociological impacts: for the proposed project and each major alternative there shall be a thorough but succinct discussion of potentially significant adverse or beneficial effects generated, be they direct, indirect, or cumulative. Data and analyses shall be commensurate with the importance of the impact and the relevance of the information to a reasoned choice among alternatives and to the consideration of the need for mitigation measures; the RGU shall consider the relationship between the cost of data and analyses and the relevance and importance of the information in determining the level of detail of information to be prepared for the EIS. Less important material may be summarized, consolidated, or simply referenced. The EIS shall identify and briefly discuss any major differences of opinion concerning significant impacts of the proposed project on the environment.¹¹

Here, we have an EIS that completely fails to meet this bar. The social cost of carbon is only calculated for the minimum life of the pipeline; detailed analysis of impacts to cultural properties is almost completely absent; site-specific spill impacts are not discussed; and the costs to society of route alternatives other than the APR are not fully analyzed. The many detailed comments on the DEIS made by parties and members of the public were responded to in a rushed and incomplete manner, if indeed they were answered at all. The burden has therefore fallen on parties to supplement a woefully incomplete document through extensive expert testimony. Clearly, parties have risen to the task; but this does not excuse the fact that in this instance, the state has failed in its duty to produce a comprehensive and usable environmental review for use by the Commissioners and the public.

Although this process is nearing its conclusion, with deliberations scheduled in less than a month, the Commission still has time to turn this ship around. There is still time for the

¹¹ Minn. R. 4410.2300 Subp. H

Commission to order DOC-EERA to expand their analysis, address the many concerns of parties, and, most crucially, to postpone this critical decision until the cultural impacts of this pipeline are fully understood and documented. If the Commission fails to take these necessary steps, it will cast a shadow over the June proceedings and any permit that might emerge from them. In the name of a process that works for everyone, we urge the Commission to do what it can to fix this deeply flawed review.

Respectfully Submitted,

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