

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

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

MPUC Docket Nos. PL-9/CN-14-916
PL-9/PPL-15-137

OAH Docket Nos. 65-2500-32764 and
62-2500-3337

**MILLE LACS BAND OF OJIBWE AND FOND DU LAC BAND OF LAKE SUPERIOR
CHIPPEWA JOINT PETITION FOR RECONSIDERATION OF ORDER FINDING
ENVIRONMENTAL IMPACT STATEMENT ADEQUATE.**

INTRODUCTION

The Mille Lacs Band of Ojibwe (“Mille Lacs”) and the Fond du Lac Band of Lake Superior Chippewa (“Fond du Lac”) (collectively, the “Bands”), submit this joint petition for reconsideration of the Minnesota Public Utilities Commission’s (the “Commission”) May 1, 2018, Order Finding Environmental Impact Statement Adequate (“Order”). The Commission should reconsider its Order on the adequacy of the Final Environmental Impact Statement (“FEIS”) for two reasons. First, the revised FEIS contains *no* new analysis regarding the quantitative versus qualitative impacts of the alternatives, nor does it “clearly identify” the extent to which resource impacts of route alternatives are or are not additive. Second, the Bands reiterate that the FEIS remains inadequate because it fails to include the information necessary to make a meaningful comparison of the potential impacts to traditional cultural properties along the various route or

system alternatives. The Commission should therefore reconsider the Order and find that the EIS remains inadequate.

A. The Revised FEIS Fails to Remedy the Deficiencies Identified by the Commission in its Inadequacy Order.

The Commission's December 14, 2017 Order Finding Environmental Statement Inadequate ("Inadequacy Order") stated:

The EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.

The EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.

The revised FEIS, however, contains *no new analysis* with regard to either of these deficiencies identified by the Commission in its Inadequacy Order. Rather, the revised FEIS simply repeats boilerplate language throughout Chapters Five and Six that essentially serves as cautionary language regarding the limits of the analysis in the FEIS. This language does nothing to help the Commission compare the quantitative *and* qualitative impacts of the various route alternatives; it simply advises that the various data sets have not been analyzed and synthesized and leaves this crucial, technical work for the reader. The revisions do not correct the first deficiency found by the Commission.

With regard to the second deficiency, the Commission's Inadequacy Order states that the EIS needs to "clearly identify" the new versus additive impacts of the route alternatives. The revised EIS, however, contains no new data showing whether any particular impact is new or incremental. Again, the boilerplate language reciting the percentage of each route that is in a

shared corridor or a greenfield does not address this deficiency, because the new versus incremental impacts will differ based on the route, the resource, and the type of corridor sharing at issue. For example, corridor sharing with a road or transmission line means that trees have already been cleared in that corridor, so any additional clearing would be an *incremental* but not a *new* impact. On the other hand, risks associated with an oil spill in a road or transmission corridor would constitute new impacts. The Commission's Inadequacy Order clearly contemplated that this type of analysis would be performed and the results clearly stated in the revised FEIS for each type of resource along each route. The Commission's decision to accept the revised FEIS as adequate even though it fails to remedy the deficiencies that the Commission *itself* identified is arbitrary and capricious. The Commission should reconsider its Order and find that the FEIS remains inadequate until such analysis is completed.

B. The EIS Cannot be Deemed Adequate until a Traditional Cultural Properties Survey is Completed along Each Route Alternative.

The Tribal Intervenors have explained repeatedly that the EIS cannot be deemed complete or adequate until a Traditional Cultural Properties Survey is completed along each route alternative.¹ As the Administrative Law Judge noted in the Report and Recommendation on the Certificate of Need and Route Permit, without a Traditional Cultural Properties survey along each route, the ALJ cannot compare the impacts of the various routes on traditional cultural resources.² Likewise, the Commission will be unable to make an informed decision with regard to the relative impact of the routes on these resources. No party meaningfully disputes that each route alternative

¹ See, e.g., Joint Tribal Petition for Reconsideration (January 2, 2018) (eDocket Nos. 20181-138561-01 (CN); 20181-138561-02 (R)). All arguments made by the Tribal Intervenors in their earlier Joint Tribal Petition for Reconsideration of the December 2017 FEIS Inadequacy Order are hereby incorporated by reference, as they apply equally to the Commission's final order deeming the revised FEIS adequate.

² See ALJ Report at ¶¶ 1298, 1309.

has the potential to significantly impact traditional cultural resources. Accordingly, these impacts must be analyzed in the Environmental Impact Statement.³ The Bands request that the Commission reconsider its Order and require the completion of a traditional cultural properties survey along each route alternative prior to deeming the FEIS adequate.

CONCLUSION

Because the Revised FEIS failed to correct the deficiencies identified by the Commission and because the FEIS remains incomplete as a matter of law until a traditional cultural properties survey is completed for each route, the Bands respectfully request that the Commission reconsider its Order finding the FEIS adequate.

³ Minn. R. 4410.2300.

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Respectfully submitted,

s/David J. Zoll

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