

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

Nancy Lange  
Dan Lipschultz  
Matthew Schuerger  
John Tuma  
Katie Sieben

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

**In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement – Phase 3 Project in Minnesota from the North Dakota Border to the Wisconsin Border**

MPUC Docket No. PL-9/CN-14-916;  
OAH Docket No. 65-2500-32764 and  
MPUC Docket No. PL-9/PPL-15-137;  
OAH Docket No. 65-2500-33377

**In the Matter of the Application of Enbridge Energy, Limited Partnership for a Pipeline Route Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border**

**ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP’S RESPONSE IN  
OPPOSITION TO  
PETITIONS TO INTERVENE OF MYSTI  
BABINEAU, JEAN ROSS, YOUTH  
CLIMATE INTERVENORS, & MARK  
HERWIG**

**I. INTRODUCTION**

Multiple members of the public have filed petitions seeking to intervene as a full party (the “Petitions”) in the Line 3 Replacement Project (“Project”) proceedings. Enbridge Energy, Limited Partnership (“Enbridge”) notes that the processes set forth in statutes and rules for these proceedings are specifically designed to facilitate broad and meaningful participation by interested members of the public, and Enbridge supports active and constructive public engagement. This public participation can and does routinely occur in siting and routing proceedings without the necessity of formal intervention. Moreover, intervention requires specific showings and comes with heightened rights and responsibilities not borne by other participants. Enbridge supports public participation throughout these processes; however,

because the Petitions do not meet the applicable criteria for intervention, Enbridge respectfully requests that the Petitions be denied.

## **II. BACKGROUND.**

Since April 26, 2017, the following individuals have submitted petitions to intervene:

- John Munter;<sup>1</sup>
- James Reents;
- Mysti Babineau;
- Jean Ross;
- Youth Climate Intervenors;
- Mark Herwig;
- Willis Mattison; and,
- Wichahpi Otto a/k/a Bonnie Otto.

At the May 15, 2017, prehearing conference, Mr. Reents, Mr. Mattison, and Ms. Otto chose to suspend their petitions pending further review of the draft environmental impact statement. Accordingly, this response addresses only those petitions of Ms. Babineau, Ms. Ross, the Youth Climate Intervenors, and Mr. Herwig.<sup>2</sup>

## **III. LEGAL STANDARD.**

The Petitions are governed by Minn. R. 1400.6200 and Minn. R. 1405.0900, which require that a petition to intervene “shall show” that the petitioner’s legal rights will be directly affected by the proceeding. Specifically, a petition to intervene “shall show”:

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<sup>1</sup> Enbridge previously timely submitted an objection to Mr. Munter’s petition and renews that objection herein. *See* Section V herein and Response in Opposition to Petition to Intervene of John Munter and Motion to Strike, Document ID 20175-131799-03 (May 11, 2017).

<sup>2</sup> Enbridge reserves the right to object to the petitions of Mr. Reents, Mr. Mattison, and Ms. Otto if they choose to proceed with their petitions before the amended intervention deadline of June 30, 2017.

1. How the petitioner’s *legal rights, duties, or privileges may be determined or affected* by the outcome of the contested case;
2. How those rights, duties, and privileges *are not otherwise represented*;
3. How the petitioner may be *directly affected* by the outcome or that petitioner’s participation is authorized by statute, rule, or court decision;
4. The grounds and purposes for which intervention is sought; and
5. The petitioner’s statutory right to intervene if one should exist.

Even if a potential intervenor meets all other criteria, a petition to intervene will be denied if “the petitioner’s interest is *adequately represented* by one or more parties participating in the case.”<sup>3</sup>

Similarly, if the Administrative Law Judge (“ALJ”) “finds that one or more petitions are similar, the [ALJ] may order the petitions to be consolidated as one, allowing all such petitioners intervention but only as one party.”<sup>4</sup>

ALJs deny petitions to intervene that do not meet the requirements of Minn. R. 1400.6200. For example, ALJs have denied petitions to intervene because:

- The proceeding “does not implicate the interests of [the petitioner] in any way that is different than any other corporate citizen or ratepayer” and the asserted interest “is an interest that is common to the public.” The ALJ further noted that the petitioner’s particular interest was already “well cared for” by the existing parties.”<sup>5</sup>
- The petition failed to explain the petitioner’s “distinctive interest” in the case.<sup>6</sup>

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<sup>3</sup> Minn. R. 1400.6200, subp. 3 and Minn. R. 1405.0900, subp. 3 (emphasis added).

<sup>4</sup> Minn. R. 1405.0900, subp. 3.

<sup>5</sup> Third Pre-Hearing Order, *In the Matter of N. St. Power Co. to Initiate a Competitive Resource Acquisition Process*, MPUC Docket No. E-002/CN-12-1240 (Aug. 21, 2013) (also citing Minn. R. 7829.0800, subp. 2).

<sup>6</sup> Order Denying Intervention to Carol A. Overland and No CapX 2020, *In the Matter of the App. of N. St. Power Co. for Authority to Increase Rates for Elec. Serv. in the St. of Minn.*, MPUC Docket No. E-003/GR/15-826 (Jan. 22, 2016).

- The petitioner’s personal concern about the matter was not evidence that her interests would not be adequately represented by other parties.<sup>7</sup>
- Petitioners’ interests were already adequately represented by other parties and “[a]llowing additional parties to intervene when their interests are already adequately represented will only make the proceeding more difficult to manage fairly and efficiently.”<sup>8</sup>
- “[T]he interests of and advocacy by some of the existing parties is nearly identical to the people, interests, and advocacy proposed by [the petitioner].” Notably, this petition was denied even though none of the other parties objected to the intervention.<sup>9</sup>
- The proceeding at issue was not a proper forum for the resolution of issues raised in the petition.<sup>10</sup>
- A “generalized concern” was not sufficient for intervention.<sup>11</sup>
- The proposed input would be duplicative.<sup>12</sup>

Similarly, Minn. R. 7829.0800 requires that a potential intervenor establish a specific interest in the outcome of the proceeding unique from the general public:

The petition must allege the grounds for intervention and must be granted upon a showing that: the person is specifically considered

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<sup>7</sup> Order Denying Intervention to Carol A. Overland and No CapX 2020, *In the Matter of the App. of N. St. Power Co. for Authority to Increase Rates for Elec. Serv. in the St. of Minn.*, MPUC Docket No. E-003/GR/15-826 (Feb. 9, 2016).

<sup>8</sup> Order Denying Intervention to SunShare, LLC, and the Institute for Local Self-Reliance, *In the Matter of the App. of N. St. Power Co. for Authority to Increase Rates for Elec. Serv. in the St. of Minn.*, MPUC Docket No. E-003/GR/15-826 (May 3, 2016).

<sup>9</sup> Order Denying Petition to Intervene by AARP, *In the Matter of the App. of Minn. Power for Authority to Increase Rates for Elec. Serv. in the St. of Minn.*, MPUC Docket No. E-015/GR-16-664 (Apr. 13, 2017).

<sup>10</sup> Order on MidContinent’s Petition to Intervene, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Op. Cos. to CenturyLink*, MPUC Docket No. P-421 (Aug. 13, 2010).

<sup>11</sup> Order Regarding Petition to Intervene of Minnesota Power, *In the Matter of the App. of N. St. Power Co. for Authority to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-002/GR-13-868 (Mar. 14, 2014).

<sup>12</sup> Order Denying Petition to Intervene by Citizens Utility Board of Minnesota, *In the Matter of the App. of Minn. Power for Authority to Increase Rates for Elec. Serv. in the St. of Minn.*, MPUC Docket No. E-015/GR-16-664 (Mar. 6, 2017).

by statute to be interested in the particular type of matter at issue; the person is specifically declared by statute to be an interested party; or the outcome of the proceeding will bind or affect the person with respect to *an interest peculiar to that person, as distinguished from an interest common to the public* or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case.<sup>13</sup>

If a petition to intervene is granted, the petitioner has the full rights and responsibilities of a party.<sup>14</sup> This may include:

- Serving and responding to discovery;
- Making and responding to motions;
- Attending prehearing conferences;
- Submitting pre-filed direct, rebuttal and surrebuttal testimony;
- Attending the public hearings (which in this case will take place in various locations throughout Minnesota);
- Attending the evidentiary hearing;
- Having its witnesses available for cross-examination;
- Cross-examining live witnesses;
- Complying with the applicable rules of evidence and procedure for proceedings before the ALJ;
- Conforming to the standards of professional conduct required of attorneys before the courts of Minnesota;
- Submitting written briefs, proposed findings, and exceptions; and,
- Attending Minnesota Public Utilities Commission meetings.

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<sup>13</sup> Emphasis added. See also Order Extending Project In-Service Date, Denying Petition to Intervene, and Denying Petition for a Contested Case, *In the Matter of the App. of Black Oak Wind, LLC and Getty Wind Co., LLC for a Cert. of Need for an up to 82 MW Large Energy Facility in Stearns Cnty.*, MPUC Docket No. IP-6853/CN-11-471 (Jan. 16, 2015).

<sup>14</sup> E.g., Minn. R. 1405.0900, subp. 4.

#### **IV. THE PETITIONS SHOULD BE DENIED.**

The petitioners do not need party status to participate in these proceedings. There are ample opportunity for petitioners to submit comments and attend public meetings and hearings related to the Project. Granting party status to each proposed citizen intervenor would lengthen and complicate this contested case proceeding (especially the public and evidentiary hearings)<sup>15</sup> without adding non-duplicative and relevant information into these records.

As explained in additional detail below, the Petitions should be denied because they do not meet the applicable criteria for intervention. With respect to the petitions of Ms. Babineau, Ms. Ross, and the Youth Climate Intervenors, the Petitions identify only generalized issues that are already being adequately addressed by the current parties. With respect to Mr. Herwig's petition, Mr. Herwig specifically states that he does not intend to participate in the public hearings.

##### **A. Mysti Babineau.**

Ms. Babineau cites the following issues as the basis for her intervention: treaty rights; wild rice; water; wildlife; and, other natural resource issues. Ms. Babineau does not identify how she would be directly affected by the outcome of this proceeding. Likewise, she does not explain why her cited issues are not already adequately represented by existing parties. Enbridge respectfully submits that they are. With respect to treaty rights, two federally-recognized tribes are already parties, and another has submitted an unopposed petition; these parties are already adequately addressing the issues of treaty rights, wild rice, and natural resources. Further, other

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<sup>15</sup> For example granting the subject Petitions would result in all live witnesses being subject to cross-examination from **16** additional questioners. *See* 21 Minn. Prac. Admin. Prac. & Proc. § 9.16.4 (2d ed.) (ALJ should consider “[w]hether interventions will cause undue delay, repetition of evidence, or will have other significant adverse results to the original parties”).

existing parties are adequately addressing issues related to natural resources, including Friends of the Headwaters, Sierra Club, and Honor the Earth.

**B. Jean Ross.**

Ms. Ross seeks to intervene on the basis of being a Minnesota taxpayer. This kind of generalized concern is not an adequate basis for intervention.<sup>16</sup> For example, Minn. R. 7829.0800, subp. 2, specifically states that “an interest common to the public” is not a sufficient basis for intervention. Like other members of the public, Ms. Ross has the opportunity to submit written comment and attend public meetings and hearings, and full party status is neither appropriate nor necessary.

**C. Youth Climate Intervenors.**

The Youth Climate Intervenors submitted one intervention petition but apparently seek intervention on behalf of 13 separate individuals and, in fact, multiple individuals sought to and did address the ALJ at the May 15, 2017, prehearing conference. They are a group of 13 Minnesota residents under the age of 25 who cite concerns related to greenhouse gas emissions and climate change. Again, this type of general concern is not an adequate basis for intervention.<sup>17</sup> The Youth Climate Intervenors identify “an interest common to the public” but not “an interest peculiar to that person.”<sup>18</sup> Further, the issues identified by the Youth Climate Intervenors are already being adequately addressed by existing parties, including Sierra Club. Again, like other members of the public, the individuals comprising the Youth Climate

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<sup>16</sup> Minn. R. 1400.6200, subp. 1; Minn. R. 1405.0900, subp. 1; *see also* 21 Minn. Prac. Admin. Prac. & Proc. § 9.16.4 (2d ed.) (“[O]ne who has no greater interest in the proceedings than a member of the public generally is held not to have a right to intervene.”).

<sup>17</sup> Minn. R. 1400.6200, subp. 1; Minn. R. 1405.0900, subp. 1.

<sup>18</sup> Minn. R. 7829.0800, subp. 2.

Intervenors have the opportunity to submit written comment and attend public meetings and hearings. Full party status is neither appropriate nor necessary for their participation.

**D. Mark Herwig.**

Mr. Herwig owns land along the Project's proposed route in Carlton County, Minnesota. Enbridge does not dispute that Mr. Herwig's rights may be directly affected by the outcome of this proceeding. However, Mr. Herwig's petition states that he will intervene "possibly only through written documents because I am unable to attend the hearing in person."<sup>19</sup> Attendance at the public and evidentiary hearings is a necessary component of participating in these dockets.<sup>20</sup> Because Mr. Herwig has stated that he will not be able to do so, Enbridge respectfully submits that it is not necessary to grant him full party status. There will still be ample opportunities for Mr. Herwig to participate and submit appropriate documents without being burdened with all of the duties imposed on a party.

**V. ENBRIDGE RENEWS ITS OBJECTION TO JOHN MUNTER'S INTERVENTION PETITION.**

Enbridge previously submitted its objection to Mr. Munter's intervention petition. At the May 15, 2017, prehearing conference, Mr. Munter repeated the inflammatory statements made in his intervention petition and once again demonstrated that he will not comply with the applicable rules of conduct for these proceedings. In addition, Mr. Munter specifically noted that he is not directly affected by the Project, and he provided no evidence that he is authorized to represent others. Accordingly, Enbridge renews its objection to Mr. Munter's petition and once again respectfully requests that it be denied.

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<sup>19</sup> Herwig Petition, at 4.

<sup>20</sup> See, e.g., Minn. R. 1405.0900, subp. 4 ("Once a petition to intervene has been granted, an intervenor shall have all of the rights and responsibilities of a parties."); see also Minn. R. 1405.2000 (attendance at public hearings).

## VI. CONCLUSION

The Petitions do not comply with applicable intervention criteria. With respect to Ms. Babineau, Ms. Ross, and the Youth Climate Intervenors, the Petitions fail to identify any interest or concern unique to the petitioner, as opposed to the general public. Further, the issues identified are already being adequately represented by the existing parties. With respect to Mr. Herwig, intervention would be inappropriate because Mr. Herwig has indicated that he does not wish to participate in the hearings. The Petitioners incur no harm by participating in these proceedings in a less formal manner, including by submitting written comments and attending public meetings and hearings. Accordingly, Enbridge respectfully requests that the Petitions be denied.

Dated: May 18, 2017

Respectfully submitted,

*/s/ Christina K. Brusven*

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