STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE 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

FOURTH POST-HEARING ORDER

This Order comes as a result of the Commission’s Order Requesting ALJ Decision by April 23, 2018, which was issued on January 10, 2018.


Linda Jensen, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (DOC) - Energy Environmental Review and Analysis (DOC-EERA).

Peter Madsen and Julia Anderson, Assistant Attorneys General, appeared on behalf of the Department of Commerce - Division of Energy Resources (DOC-DER).

Brian Meloy, Stinson, Leonard Street, appeared on behalf of Kennecott Exploration Company (Kennecott).

Kevin Pranis appeared on behalf of Laborers’ District Council of Minnesota and North Dakota (Laborers’ Council).
Anna Friedlander, O'Donoghue & O'Donoghue, LLP, and Sam Jackson, Cummins & Cummins, appeared on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association).

Andrew Brown and Brian Bell, Dorsey & Whitney, LLP, appeared on behalf of Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers).

Leili Fatehi and Hudson Kingston, Advocate, PLLC, appeared on behalf of the Sierra Club (Sierra Club).

Scott Strand, Environmental Law and Policy Center, appeared on behalf of Friends of the Headwaters (FOH).

Akilah Sanders-Reed and Brent Murcia appeared on behalf of Youth Climate Intervenors (Youth Climate).

Frank Bibeau and Paul Blackburn appeared on behalf of Honor the Earth (HTE).

David Zoll, Rachel Kitze Collins, and Arielle Wagner, Lockridge, Grindal, Nauen, PLLP, appeared on behalf of the Mille Lacs Band of Ojibwe (Mille Lacs).

Sara Van Norman, Davis Law Firm, Philip Mahowald, the Jacobson Law Firm, and Seth Bichler, appeared on behalf of the Fond Du Lac Band of Lake Superior Chippewa (Fond Du Lac).

Joseph Plumer, appeared on behalf of the White Earth Band of Ojibwe (White Earth) and Red Lake Band of Chippewa Indians (Red Lake).

Chris Allery appeared on behalf of the Leech Lake Band of Ojibwe (Leech Lake).

James Reents appeared on behalf of the Northern Water Alliance of Minnesota (NWAM).

Stuart Alger, Malkerson, Gunn, Martin, LLP, appeared on behalf of Donovan and Anna Dyrdal (Dyrdals).

Bret Eknes and Scott Ek appeared as representatives of the Minnesota Public Utilities Commission (Commission).
BACKGROUND

An evidentiary hearing in this matter was held on November 1, 2, 3, 6, 8, 9, 13, 14, 15, 16, 17, and 20, 2017. At the close of the hearing, the Administrative Law Judge established a briefing schedule for the parties. That briefing schedule was articulated in a First Post-Hearing Order issued on November 22, 2017.\(^1\) The Order set forth the following deadlines:

- Enbridge’s Proposed Procedural Findings: Nov. 20, 2017
- Redlined Proposed Procedural Findings (all other parties): Nov. 30, 2017
- Motions and arguments related to procedural defects: Nov. 30, 2017
- Responses to procedural motions or arguments: Dec. 7, 2017
- Post-hearing Briefs (substantive issues, all parties): Dec. 31, 2017
- Enbridge’s Proposed Findings of Fact (substantive): Dec. 31, 2017
- DOC-EERA Proposed Findings re FEIS: Dec. 31, 2017
- Reply Briefs (substantive issues, all parties): Jan. 26, 2018
- Proposed Findings (all other parties): Jan. 26, 2018
- ALJ Report Due: March 30, 2017

On December 7, 2017, the Commission met to consider the adequacy of the Final Environmental Impact Statement (FEIS).\(^2\) The Commission issued a Notice of Final Environmental Impact Statement Adequacy Determination on December 13, 2017.\(^3\) On December 14, 2017, the Commission issued an Order Finding the Environmental Impact Statement Inadequate.\(^4\) The Commission found the FEIS inadequate on four grounds and gave the DOC-EERA 60 days from the date of the Notice (December 13, 2017) to revise the EIS.\(^5\)

On December 14, 2017, Sierra Club, FOH, HTE, Fond Du Lac, White Earth, Leech Lake, Mille Lacs, NWAM, and Youth Climate filed a Motion for Adjustment of the Briefing Schedule.\(^6\) The Dyrdals filed a response in support of the Motion.\(^7\) The Motion requested that, in light of the Commission’s Order finding the FEIS inadequate and requiring revision, the post-hearing briefing schedule should be either stayed or adjusted. The moving parties request that the briefing schedule be suspended pending a Commission determination that the FEIS is adequate.

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\(^1\) First Post-Hearing Order (Nov. 22, 2017) (eDocket Nos. 201711-137610-01 (CN); 201711-137609 (R)).

\(^2\) Order Finding Environmental Impact Statement Inadequate (Dec. 14, 2017) (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01(R)).

\(^3\) Notice of Final Environmental Impact Statement Adequacy Determination (Dec. 13, 2017) (eDocket Nos. 201712-138116-01 (CN); 201712-138116-02(R)).

\(^4\) Order Finding Environmental Impact Statement Inadequate (Dec. 14, 2017) (eDocket Nos. 201712-138168-02 (CN); 201712-138168-01(R)).

\(^5\) Id.

\(^6\) Joint Motion for Adjustment of Briefing Schedule (Dec. 14, 2017) (eDocket Nos. 201712-138191-01(CN); 201712-138191-01(R)).

\(^7\) Dyrdal Memorandum in Support of Joint Motion for Adjustment of the Briefing Schedule (eDocket No. 201712-138262-01 (R)).


On December 22, 2017, the Administrative Law Judge issued an Order Granting Motion to Extend the Briefing Schedule in this matter.

On December 28, 2017, Enbridge, the United Association, Laborers’ Council and Shippers filed a Joint Motion to Certify the issue of the post-hearing briefing schedule to the Commission (Joint Motion). The next day, the Commission issued a Notice of Request for Immediate Certification of the Joint Motion and a Notice of Special Commission Meeting to address the issue. In its Notice of Request for Immediate Certification, the Commission directed that the Judge immediately certify the Joint Motion to the Commission so that the issues raised may be promptly addressed at a special Commission meeting scheduled on January 9, 2018.

As directed, the Administrative Law Judge issued an Order Granting the Commission’s Request for Certification on January 2, 2018. The Commission convened a special meeting on January 9, 2018, to discuss the extended briefing schedule.

On January 10, 2018, the Commission issued an Order requesting that the Administrative Law Judge provide her report no later than April 23, 2018, and adjust the briefing schedule accordingly. While setting a date for receipt of the Judge’s final report, the Commission left to the Administrative Law Judge the establishment of a new briefing schedule.

Based upon the Order of the Commission and the hearing record, the Administrative Law Judge makes the following:
ORDER

1. Enbridge shall serve and file its Proposed Findings of Fact (excluding procedural findings) by 4:30 p.m. on Tuesday, January 16, 2018.

2. The DOC-EERA shall serve and file proposed Findings of Fact (or redline changes to the Enbridge Proposed Findings) by 4:30 p.m. on January 23, 2018. If possible, the DOC-EERA shall provide a red-lined version of Enbridge’s proposed Findings of Fact or submit its own proposed Findings of Fact.

3. All parties shall file their Initial Legal Briefs by January 23, 2018. These briefs shall address the substantive legal issues of the case, paying close attention to the criteria for certificates of need and route selection set forth in rule and law. All factual assertions in the briefs shall have footnoted citations to documents, exhibits, or testimony the hearing record. The Administrative Law Judge requests courtesy copies of all briefs by electronic mail at ann.oreilly@state.mn.us.

4. In its initial brief, Enbridge shall address the issue of whether the federal Consent Decree requires Enbridge to replace existing Line 3 if the Commission grants a Certificate of Need and Route Permit but includes conditions with which Enbridge does not agree. In other words, if the Commission grants a Certificate of Need and Route Permit contains conditions that Enbridge finds disagreeable, is Enbridge nonetheless required to replace the existing Line 3 under the terms of the Consent Decree or is Enbridge entitled to continue operating existing Line 3 without replacement?

5. Reply briefs shall be served and filed by February 16, 2018. The Administrative Law Judge requests courtesy copies of all reply briefs by electronic mail at ann.oreilly@state.mn.us.

6. All parties, other than Enbridge and the DOC-EERA, shall file their proposed Findings of Fact by February 16, 2018. If they so choose, parties may provide redlined changes to Enbridge’s proposed Findings of Fact. Enbridge and the DOC-EERA may file red-lined amended proposed Findings of Fact as of this date to reflect changes to the Environmental Impact Statement due to be completed by February 12, 2018, in response to the Commission’s Order Finding the Environmental Impact Statement Inadequate.

7. All proposed Findings of Fact shall be e-filed by the parties in the eDocket system, e-mailed to the Administrative Law Judge in an editable Microsoft Word format, and circulated to all parties by electronic mail.

8. Proposed findings shall be set forth in separately numbered paragraphs and contain footnotes after each sentence, providing the exact location in the hearing record where such fact is established. Findings of Fact shall not be argument. They shall be concise and accurate recitals of established facts.
9. In all briefs and proposed Findings of Fact, all parties shall utilize the citation format as set forth in the OAH Style Guide: Enbridge, attached to the First Post-Hearing Order.

Date: January 11, 2018

ANN C. O’REILLY
Administrative Law Judge
January 11, 2018

See Attached Service List

Re: In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota

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

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

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge’s FOURTH POST-HEARING ORDER in the above-entitled matter.

If you have any questions, please contact my legal assistant Cari Snaza at (651) 361-7906 or cari.snaza@state.mn.us, or facsimile at (651) 539-0310.

Sincerely,

ANN C. O’REILLY
Administrative Law Judge

ACO:cjs
Enclosure
cc: Docket Coordinator
STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
PO BOX 64620  
600 NORTH ROBERT STREET  
ST. PAUL, MINNESOTA 55164  

CERTIFICATE OF SERVICE  

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project-PL-9/CN-14-916  

OAH Docket No.: 65-2500-32764  

Cari Snaza, certifies that on January 11, 2018 she served the true and correct FOURTH POST-HEARING ORDER by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:  

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<th>Party</th>
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<th>Last Name</th>
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