

Judges question need for Line 3



Clint Austin / Forum News Service Enbridge's Line 3 oil pipeline under construction near the intersection of Hohensee and West Moorhead roads in Carlton County in January.

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By Jimmy Lovrien Forum News Service DULUTH — Construction on Enbridge's Line 3 oil pipeline across northern Minnesota may be near the halfway point, but the question of whether the pipeline is actually needed continues to play out in court.

During oral arguments Tuesday, March 23, a three-judge Minnesota Court of Appeals panel questioned Enbridge and the Minnesota Public Utilities Commission on whether there will be long-term demand for oil brought in by the pipeline, with two judges expressing doubt the company and PUC properly considered it.

Opponents of the pipeline and Gov. Tim Walz's Minnesota Department of Commerce maintain the PUC erred in granting the proposed pipeline's certificate of need in February because Enbridge did not demonstrate a longrange demand for oil.

Katherine Hinderlie, an attorney for the Department of Commerce, said Enbridge relied on demand to move crude oil and not actual demand for crude oil. By doing so, “Enbridge shifts the focus of the analysis from the refiners who will consume the crude oil and produce refined products for us all to use.

They shift that analysis to the desire of crude oil producers to sell and ship as much oil as they can,”

Hinderlie said.

PUC attorney Jason Marisam defended the PUC’s approval of Line 3’s certificate of need, arguing the PUC and Department of Commerce have differing definitions of the demand forecast.

“That definition refers to how much oil is going to come through the applicant’s facilities,”

Marisam said.

But both Judge Lucinda E. Jesson and Judge Peter M. Reyes Jr. challenged Marisam on why it seemed to rely on available supply rather than on demand from refineries through 2035.

“You’re talking past history,” Reyes said. “So if I hear what you’re saying by omission is that there is no forecast demand data with respect to refineries.”

Enbridge attorney Christina Brusven said the shippers on Line 3 are often the refineries themselves, as well as producers and marketers.

She added that the report also held refinery capacity “steady” into the future. She also said the PUC relied on the correct definition.

Jesson said she had trouble determining demand was properly forecast through 2035.

“I just did not see any forecast of that demand from willing and able purchasers, the same way I saw ‘Oh, here’s the supply we have’ or ‘Here’s the pipeline capacity we have,’” Jesson said, adding that the “big issue” in this case is whether supply can be a proxy for demand over the next 15 years.

Reyes said he shared Jesson’s concern.

“It seems to take the approach of ‘If we build it, they will come,’ but that’s not what’s required,” Reyes said.

Potential spill effect also considered

While the oral arguments largely focused on the demand question, the court is also considering whether a 2019 addition to the project’s environmental impact statement from the Department of Commerce erred in saying a spill would likely not affect Lake Superior.

Mille Lacs Band of Ojibwe attorney David Zoll said the analysis considered a pipeline break too far away from the lake and said it should instead consider a pipeline break at a water crossing nearest the lake, namely the Pokegama and Little Pokegama rivers in Wisconsin.

But Brusven, of Enbridge, said any oil spilled at the Pokegama crossings would be unlikely to reach Lake Superior as well.

Construction near halfway point, even amid legal challenges

Once complete, the pipeline will replace the existing, aging Line 3 and ferry 760,000 barrels of oil (31.92 million gallons) per day from Alberta, Canada, to Enbridge's terminal in Superior, following a partially new 334-mile route through much of northern Minnesota.

The pipeline will replace an existing, aging Line 3, but follow a new route through the state.

Construction on Line 3 began Dec. 1 after the project received its final permits. Attempts by opponents to stop construction while legal challenges remained in court were rejected by two courts, including the Minnesota Court of Appeals.

Earlier this month, Enbridge said it was nearing 50% completion of construction and anticipated pausing pipeline construction April 1, during the spring thaw, to focus on building the pipeline's pump stations during that time. It will return to pipeline work June 1.

The Court of Appeals has 90 days to issue an opinion, meaning a decision could be made June 21 at the latest. Enbridge anticipates it can begin moving oil on the new Line 3 this year.