

**BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION  
COMMENTS AND RECOMMENDATIONS OF THE  
ENERGY FACILITY PERMITTING STAFF  
OFFICE OF ENERGY SECURITY  
MINNESOTA DEPARTMENT OF COMMERCE**

**DOCKET No. PL-9/PPL-07-361**

Meeting Date: November 25, 2008.....Agenda Item # \_\_\_\_\_

**Company:** Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C.

**Docket No.** **PUC Docket Number: PL-9/PPL-07-361**  
Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., for a Pipeline Routing Permit for the Alberta Clipper and Southern Lights Diluent Project

**Issue(s):** Should the Commission issue a pipeline routing permit to Enbridge Pipelines for: 1) the Alberta Clipper Project, a 290 mile long (approximate) 36-inch outside diameter crude oil pipeline and associated facilities extending from the North Dakota/Minnesota border in Kittson County to the Minnesota/Wisconsin border in Carlton County; and 2) the Southern Lights Diluent Project, a 182 mile long (approximate) 20-inch outside diameter diluent pipeline and associated facilities extending from the Wisconsin/Minnesota border in Carlton County to Clearbrook in Clearwater County, Minnesota? If so, what route should the designated and how should the route be defined and what conditions should be placed in the permit?

**OES Staff:** Larry B. Hartman (larry.hartman@state.mn.us).....651-296-5089

<b>Relevant Documents</b>	<b>Date Received</b>
1. Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendation of the Administrative Law Judge.....	July 17, 2008
2. Public Hearing Transcripts.....	November 27 and 28, 2007; January 17, 22; March 25, 26; April 8, 9 and May 13, 2008
3. Pipeline Routing Permit Application and Environmental Assessment Supplement.....	June, 2007

**--Continued on Next Page--**

4. Enbridge Pipelines, Exceptions to the Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations of the Administrative Law Judge ..... August 1, 2008
5. Fond du Lac Band of Lake Superior Chippewa’s Exceptions to the Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations.....August 1, 2008
6. MCEA’S Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations of the Administrative Judge.....August 1, 2008
7. Fond du Lac Band of Lake Superior Chippewa’s Petition for Intervention.....April 8, 2008
8. Comparative Environmental Analysis.....March 11, 2008
9. Enbridge Pipelines Response to Landowner and Public Official Questions Raised at Public Hearings.....April 21, 2008
10. Order Accepting Route Alternatives for Consideration at Public Hearings.....March 5, 2008
11. Order Granting Pipeline Routing Permit for LSr Project.....June 19, 2008

**--END OF RELEVANT DOCUMENTS--**

The enclosed materials are work papers of the Department of Commerce, Office of Energy Security, Energy Facility Permitting Staff. They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

This document can be made available in alternative formats; i.e. large print or audio tape by calling (651) 201-2202 (Voice) or 1-800-627-3529 (TTY relay service).

## Documents Attached

1. Pipeline Routing Permit Schematic-Minnesota Rules Chapter 7852
2. Overview Map of Enbridge Pipeline Projects
3. Alberta Clipper/LSr and Alberta Clipper/Southern Lights ROW and Workspace Configurations
4. Enbridge Alberta Clipper and Southern Lights Master Permit List
5. Enbridge Alberta Clipper and Southern Lights Diluent Project Master List of Plans
6. Letter to Judge Lipman from Matt Langan, Minnesota .Department of Natural Resources, April 21, 2008.

Public Comments Filed With OAH Outside of Time (Chippewa National Forest and Murphy Oil). Exhibit M, received on 11/18/2008 from Enbridge, updating Landowner and Public Agency requests.

7. Fond du Lac Route Alternative
8. Proposed Pipeline Routing Permit
9. Appendix A: Agricultural Mitigation Plan and Appendix: Mitigative Actions for Organic Agricultural Land, November 9, 2008
10. Appendix B: Environmental Mitigation Plan, October 20, 2008
11. Appendix C: Aerial Photos Depicting Alberta Clipper and Southern Lights Diluent Route (November 17, 2008)

(Note: Relevant documents and additional information can be found on eDockets (07-361) or Energy Facilities at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=19203>)

## Table of Contents

	<b>Page</b>
<b>I. STATEMENT OF THE ISSUES</b>	1
<b>II. INTRODUCTION</b>	2
A. Description of Alberta Clipper and Southern Lights Project and Associated Facilities	3
B. Right-of-Way and Workspace Requirements	4
1. Right-of-Way	
2. Temporary Workspace Requirements	
3. Extra Temporary Workspace Requirements	
<b>III. REGULATORY PROCESS AND PROCEDURES</b>	7
A. Procedural Background	7
B. Environmental Review	8
C. Agricultural Mitigation Plan Requirements	8
D. Other Permit Requirements	9
<b>IV. OES STAFF ANALYSIS AND RECOMMENDATIONS</b>	11
Enbridge's Exceptions to ALJ Findings of Fact and Conclusions	12
The Fond du Lac Band Exceptions	20
EFP Staff's Recommended Modifications and Supplements	24
Minor Modifications and Clarifications	24
Criteria for Pipeline Route Selection Process	28
Fond du Lac Alternatives	53
Department of Natural Resources Concerns	59
Proposed Pipeline Routing Permit	61
<b>V. COMMISSION DECISION OPTIONS</b>	62
Enbridge Exceptions	62
The Fond du Lac Band's Exceptions	66
Minor Modifications and Clarifications	69
Criteria for Pipeline Route Selection Process	71
The Fond du Lac Alternative	89
The Department of Natural Resources	90
Adoption of ALJ Recommendations	92
Permit Issuance	92

## I. STATEMENT OF THE ISSUES

Should the Commission issue a pipeline routing permit to Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.C.C., hereinafter “Enbridge Pipeline” or “Enbridge” for: 1) The Alberta Clipper Project a 290 mile long (approximate) 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) crude oil pipeline and associated facilities, extending from the North Dakota /Minnesota border in Kittson County to the Minnesota/Wisconsin border in Carlton County); and 2) The Southern Lights Diluent Project a 182 mile long (approximate) 20-inch outside diameter, high pressure (1,334 psig) diluent or condensate pipeline and associated facilities, extending from the Wisconsin/Minnesota border in Carlton County to the Clearbrook Terminal in Clearwater County?

Associated facilities in Minnesota include pump station modifications, meter stations, mainline valves, cathodic protection, supervisory control and data acquisition (SCADA) system and pipeline markers.

If the Commission issues a pipeline routing permit for the Project, what route should be designated and how should the designated route be defined in terms of width in which the proposed pipelines and associated facilities may be located and what conditions should be placed in the pipeline routing permit for right-of-way preparation, construction, cleanup and restoration?

If the PUC grants a Certificate of Need for the Enbridge Pipelines (Alberta Clipper and Southern Lights Diluent) Project (PUC Docket No. PL-9/CN-07-465), it must also consider the application of Enbridge Pipelines for a pipeline routing permit for the proposed Project.

Before the Commission addresses the pipeline routing permit, OESC EFP staff would like to provide the Commission with an overview of A) the Alberta Clipper/Southern Lights Diluent Project; B) OES EFP activities in this proceeding since Commission acceptance of the Pipeline Routing Permit application in August 2007; and C), and other project related activities and issues associated with this proceeding that the Commission should be aware of prior to making a decision in this proceeding.

First, staff provides for ease of reference certain definitions used in the pipeline routing rules in Minn. Rules 7852.0100:

**Subd. 7. Associated facilities.** “Associated facilities” means all parts of those physical facilities through which hazardous liquids or gas moves in transportation, including but not limited to pipe, valves, and other appurtenances connected or attached to pipe, pumping and compressor units, fabricated assemblies associated with pumping and compressor units, metering and delivery stations, regulation stations, holders, breakout tanks, fabricated assemblies, cathodic protection equipment, telemetering equipment, and communication instrumentation located on the right-of-way.

**Subd. 11. Construction.** “Construction” means any clearing of land, excavation, or other action for the purpose of constructing new pipeline that would adversely affect the natural

environment of a pipeline route. Construction does not include changes needed for temporary use of a route for purposes of maintenance, repair, or replacement of an existing pipeline and associated facilities within existing rights-of-way, or for the minor relocation of less than three-quarters of a mile of an existing pipeline or for securing survey or geological data, including necessary borings to ascertain soil conditions.

Subp. 30. **Right-of-way.** “Right-of-way” means the interest in real property used or proposed to be used within a route to accommodate a pipeline and associated facilities.

Subp. 31. **Route.** “Route” means the proposed location of a pipeline between two end points. A route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles.

Subp. 32. **Route segment.** “Route segment” means a portion of a route.

In addition to these definitions, other significant terms used in this proceeding include the following:

Milepost (MP): The maps provided by Enbridge indicate the proposed pipeline route referenced by milepost numbers chronologically beginning at the northernmost point in Kittson County.

## **II. INTRODUCTION AND BACKGROUND**

Enbridge Pipelines is proposing to bring Western Canadian crude oil to upper Midwest refineries by adding new pipelines to its existing pipeline system in Manitoba, North Dakota, Minnesota, Wisconsin and Illinois. As part of this effort, Enbridge proposes to build three petroleum pipelines in Minnesota: two of the three pipelines, the 36-inch outside diameter ( “OD”) Alberta Clipper and the 20-inch OD Southern Lights Diluent Project are the subject of this proceeding (PUC Docket No. PL-9/PPL-07-361). The other pipeline, the LSr Project, a 108 mile long 20-inch OD crude pipeline, extending from the North Dakota/Minnesota border to Clearbrook in Clearwater County, was addressed by the Commission on May 22, 2008 and Order issued on June 19, 2008. Construction on the LSr pipeline was completed October, 2008. Right-of-way restoration is on-going and full operation of the LSr pipeline is expected to begin in February 2009 after the completion of the Canadian portion of the pipeline work.

In order to build a large pipeline and associated facilities in Minnesota, Enbridge must obtain two state authorizations from the Minnesota Public Utilities Commission. To obtain the first of these authorizations, a Certificate of Need, Enbridge must establish that there is a need for the proposed project. Second, Enbridge must obtain a pipeline routing permit, which authorizes construction of the pipeline in a specific route, with conditions in the permit to minimize human and environmental impacts.

Office of Energy Security review of the need and routing proceedings were undertaken separately within the framework established by the Administrative Law Judge (ALJ). Review of the pipeline routing permit application took place pursuant to the requirements of Minnesota Statutes Chapter 216G and the Pipeline Route Selection Procedures in Minn. Rules 7852.0800 to 7852.1900.

Attachment 1, in the Commissioner's packet, illustrates the procedural steps required by rule for the pipeline routing permit review process. All of these steps have been completed, except for the last one, which is a Commission decision to designate a route and issue a pipeline routing permit, if the Certificate of Need is granted.

## ***A. Description of Alberta Clipper and Southern Lights Project and Associated Facilities***

### **1. Alberta Clipper and Associated Facilities**

The proposed Alberta Project is a proposed 1,000 mile long, 36-inch outside diameter pipeline that would transport crude oil from Enbridge's existing facilities in Hardisty, Alberta, Canada to its existing terminal in Superior, Wisconsin. From Superior, the liquid hydrocarbons would be transported into Midwestern markets via Enbridge's existing pipeline system. Initially, the Alberta Clipper pipeline would be designed to transport an average crude oil volume of approximately 450,000 barrels per day (bpd). With additional pump capacity the Alberta Clipper pipeline will be capable of transporting approximately 800,000 bpd.

The proposed Alberta Clipper Project consists of new pipe and associate facilities in Canada and the United States (North Dakota, Minnesota and Wisconsin). The primary components of the Project in Minnesota would be new pipe, mainline valves, block valves, a pig sending and receiving trap, instrumentation and metering equipment, pipeline markers, cathodic protection , and the installation of three new above-ground pump stations at Enbridge's existing Viking, Clearbrook and Deer River stations.

The pipe for the Project will be American Petroleum Institute (API) 5L Grade X70, double submerged-arc steel pipe with a 36-inch outside diameter. Pipe wall thickness will range from 0.375 to 0.625-inches, with the wall thickness dependent on the location of the pipe.

The maximum allowable operating pressure is 1,313 pounds per square inch gauge (psig). The normal operating pressure is 900 psig (at station discharge). The temperature of the oil in the pipeline will range from about 40 to 50 degrees Fahrenheit (F) in winter and from about 60 to 75 degrees F in summer. The pipeline will be protected from corrosion by a cathodic protection system.

Mainline valves will also be installed along the pipeline to limit the volume of a spill if one were to occur. Valve locations will be determined by Enbridge's valve analysis to determine the optimal locations for mainline valves in accordance with the requirements of 49 CFR Part 195. It is expected that the Minnesota portion of the Alberta Clipper will have 27 mainline valves.

In Minnesota the Alberta Clipper Project will cross 13 counties. Going from west to east they are: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton. The Minnesota portion of the Alberta Clipper, dependent on final route location is approximately 290 mile in length. See attachment 2 in the Commissioner's packet.

## **2. Southern Lights Diluent Project and Associated Facilities**

The oil extracted in Alberta has a tar-like consistency and must be diluted (thinned) before it can be moved through a pipeline. To allow for the transport of heavy crude oil in the Alberta Clipper Pipeline, lighter hydrocarbons (“diluent”) will need to be blended into the crude oil prior to introducing it into the Alberta Clipper pipeline.

Enbridge’s Southern Lights Diluent Project, combined with the Southern Lights Reversal Project will transport diluent from refineries in the Chicago area to Canada for use in blending with the heavy crude oil prior to transportation in the Alberta Clipper Pipeline. The Southern Lights Diluent Project is comprised of approximately 675 miles of new pipeline and associated facilities extending from Manhattan, Illinois to the existing Enbridge terminal in Clearbrook, Minnesota. At Enbridge’s Clearbrook Terminal, the Southern Lights Diluent Project would be connected to the proposed Southern Lights Reversal Project. Between the Clearbrook terminal and Hardisty, Alberta, Canada, Enbridge proposes to reverse the flow of its existing 18-inch diameter pipeline (Enbridge Line 13) and transport diluent in that pipeline. The LSr pipeline project, permitted earlier this year by the Commission, will carry oil displaced by the Line 13 reversal.

The Minnesota portion of the Southern Lights Project will consist of approximately 182 miles of new 20-inch outside diameter steel pipe with a nominal wall thickness of 0.250-inches to transport diluent at an operating pressure of 1,334 psig in Minnesota. As part of this proposed project, Enbridge also plans to modify pumping units at its existing station in Clearbrook. No other surface facilities will be installed other than mainline and block valves (approximately 14) and small enclosures to house power and electronic systems, if the valves are capable of remote operation. Those locations will be near major rivers, other environmentally sensitive areas, population centers, and pumping stations.

The proposed pipeline and associated facilities with modifications at the Clearbrook terminal will have a design capacity of 2000,000 bpd. Annual capacity will be approximately 180,000 bpd. Annual capacity is defined as the daily rate over the course of one year, and equates to 90 percent of design capacity. The pipeline project is more specifically described in Enbridge’s Application and Environmental Assessment Supplement for a Routing Permit for a Crude Oil pipeline dated June, 2007.

The portion of the Southern Lights Diluent Project new pipeline construction in Minnesota will cross eight counties. Going from east to west they are Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater. The Minnesota portion of the Southern Lights Diluent Project, dependent on final route location is approximately 182 miles in length. See Attachment 2 in Commissioner’s packet.

### ***B. Right-Of-Way and Workspace Requirements***

#### **1. Right-Of-Way**

Enbridge’s existing right-of-way is held through undefined (“blanket”) easements that do not limit the width of the right-of-way; new easements will not be required to install the pipelines. Enbridge

will negotiate compensation with the landowner for exercising the multiple pipeline rights. Where the right-of-way is held through defined easements that limit the width of the right-of-way, Enbridge will require new easements to install the pipelines and they will be negotiated on a parcel-by-parcel basis with each landowner.

West of Clearbrook, Enbridge’s existing 125-foot wide right-of-way is occupied by five existing pipelines with diameters of 26, 18, 34, 36/48 and 20-inches. East of Clearbrook, Enbridge’s existing ROW is also 125-feet in width and is occupied by four pipelines with diameters of 26, 18, 34, and 36/48-inches. See Attachment 3 in the Commissioner’s packet.

Collectively, the three Enbridge proposed pipeline projects (Alberta Clipper, Southern Lights and LSr will generally require a new permanent easement with a nominal width of 75 feet.

<b>Table 1</b> <b>Locations with 40' Pipeline Separation and 140'</b> <b>Construction ROW</b> <b>(105-foot Wide Permanent Easement)</b>		
<b>MP Start</b>	<b>MP End</b>	<b>Season</b>
926.9	927.3	Non-Frozen
952.0	952.5	Non-Frozen
961.9	965.1	Non-Frozen
965.8	966.7	Non-Frozen
971.2	973.5	Non-Frozen
974.2	985.2	Non-Frozen
994.7	995.6	Non-Frozen
996.9	998.7	Winter
999.5	1001.2	Winter
1004.2	1005.2	Non-Frozen
1006.4	1007.3	Non-Frozen
1014.7	1015.2	Non-Frozen
1018.1	1018.3	Non-Frozen
1018.9	1021.0	Non-Frozen
1022.5	1024.2	Non-Frozen
1026.0	1028.0	Non-Frozen
1028.0	1029.7	Winter
1030.6	1043.5	Winter
1046.0	1050.1	Non-Frozen
1053.9	1055.6	Non-Frozen
FDL 1.7	FDL 15.4	Non-Frozen
1073.9	1074.4	Non-Frozen

**a. Alberta Clipper West of Clearbrook**

The Alberta Clipper Project and the LSr Project will be constructed within the same construction footprint. Between the North Dakota/Minnesota border and Clearbrook terminal, Enbridge is proposing to place the Alberta Clipper pipeline approximately 25 feet from the LSr pipeline (currently under construction) which is generally located within or alongside of and contiguous to Enbridge ROW. Construction of the Alberta Clipper pipeline will use much of the new ROW and temporary workspace acquired for the LSr pipeline. See Attachment 3 in the Commissioner's packet. Enbridge has identified locations where the pipelines will not be co-located within its existing ROW in order to avoid conflicts with existing land uses or environmental features. In those instances new ROW and temporary workspace will be required.

**b. Alberta Clipper and Southern Lights East of Clearbrook**

Between Clearbrook and the Minnesota/Wisconsin border Enbridge is proposing to place the Alberta Clipper pipeline approximately 25 feet from the Southern Lights Diluent Pipeline, except where a new 105 foot wide right-of-way is necessary in extra saturated wetlands to facilitate construction of the pipelines. These pipelines will be placed within or along side of and contiguous to Enbridge's existing right-of-way. See Attachment 3 in Commissioner's packet. Enbridge has identified locations where the pipelines will not be co-located within its existing ROW in order to avoid conflicts with existing and proposed land uses or environmental features.

**2. Temporary Workspace Requirements**

In addition to new permanent easement 75 to 105 feet in width (50 feet west of Clearbrook for LSr pipeline and 25 feet west of Clearbrook for Alberta Clipper), temporary work space is required to store excavated soil, store pipe sections as they are added to the line, move equipment and vehicles and to provide a safe work area to install the pipelines. Temporary work space requirements will vary in width, but are expected to be about 65 feet.

**3. Extra Temporary Workspace Requirements**

In addition to the permanent nominal 75 foot wide easement or right-of-way and up to 65 feet of temporary construction space, extra temporary workspace is also needed at locations where the project will cross features such as waterbodies, roads, railroads, side slopes, and other special circumstances.

Extra temporary workspace will be necessary for construction activities including, but not limited to, staging equipment and stockpiling spoil material to facilitate construction of the pipeline. The table below provides the typical dimensions of the extra temporary workspace that will be used for construction of the project. These dimensions will vary depending on site-specific conditions. The dimensions provide width first, followed by length.

<b>Table 2</b>	
<b>Typical Dimensions of Extra Temporary Workspaces for the Proposed Pipeline(s)</b>	
<b>Feature</b>	<b>Dimensions On Each Side of Feature <sup>a/</sup></b>
<b>Open-cut Road Crossings</b>	<b>100' X 175' and 50' X 175'</b>
<b>Bored Road and Railroad Crossings</b>	<b>100' X 175' and 50' X 175'</b>
<b>Foreign Pipeline and Utility Crossings</b>	<b>50' X 100' and 50' X 100'</b>
<b>Pipeline Crossovers</b>	<b>~100' X 100'</b>
<b>Waterbody Crossings &gt;50' wide</b>	<b>100' X 300' and 50' X 300'</b>
<b>Waterbody Crossings &lt;50' wide</b>	<b>75' X 200' and 50' X 200'</b>
<b>Horizontal Directionally Drilled Waterbody Crossings</b>	<b>50' X 200'</b>
<b>Hydrostatic Testing</b>	<b>40' X 300'</b>
<b>Horizontal Directional Drill Pipe String</b>	<b>50' by the length of the drill</b>
<b>Truck Turn-Around</b>	<b>100' X 200'</b>
<sup>a/</sup> Areas are in addition to the 140-foot-wide construction right-of-way, unless necked down to avoid features	

### **III. REGULATORY PROCESS AND PROCEDURES**

Minn. Stat. Chapter 216G requires a pipeline routing permit from the Commission to construct certain intrastate natural gas and petroleum pipelines in Minnesota, including pipelines with a diameter of six inches or more that are designed to transport hazardous liquids like crude petroleum. The statute was passed in 1987. The rules implementing the pipeline routing requirements were adopted in 1989 (Minn. Rules Chapter 7852). Approximately 37 pipeline routing permits have been issued over the years.

When the Commission issues a pipeline routing permit for the construction of a pipeline and associated facilities, it must designate a route for the pipeline type and maximum size specified in the application, conditions for right-of-way preparation, construction, cleanup, and restoration contained in Minn. Rules 7852.3600, and any other appropriate conditions relevant to minimizing environmental and human impact. See Minn. Rules 7852.3200. The PUC decision must be made in accordance with Minn. Rules 7852.1900.

Enbridge is pursuing review of the Alberta Clipper and Southern Lights Diluent project in accordance with the full pipeline route selection procedures. The requirements of this process are in Minnesota Rules 7852.0800 through 7852.1900.

#### ***A. Procedural Background***

Commission acceptance of the Alberta Clipper and the Southern Lights pipeline routing permit application on July 27, 2007, allowed the Department of Commerce, Office of Energy Security (OES), Energy Facility Permitting (EFP) Staff to implement the procedural requirements of Minnesota Rules 7852.0800 through 7852.1900 and also referred the matter to the Office of Administrative Hearings (OAH) for a contested case hearing under Minnesota Rules Chapter 1405.

The Certificate of Need application for the project was accepted on the same date and also referred to the OAH for a contested proceeding.

EFP staff held public information meetings in 11 counties between August 13 and 23, 2007, to explain the pipeline routing process, including the process for identifying additional routes. In conjunction with the meetings, Enbridge held an open house prior to each meeting to provide interested persons with an opportunity to find out more about the project and respond to questions. Enbridge also provided county maps showing its preferred route, copies of the proposed Environmental Mitigation Plan and other project-related information available to interested persons.

Subsequently, the LSr pipeline project and the Alberta Clipper and Southern Lights Diluent project proceeded on separate schedules as established by the Administrative Law Judge, in consultation with Enbridge, Commission and OES staff and parties to the proceedings.

Other activities involved opportunities for additional route proposals, Commission acceptance of route alternative, preparation of comparative environmental analysis for route alternatives, public hearings in all of the counties crossed by the route proposals, except Hubbard and Aitkin.

EFP staff in consultation with the PUC staff and the Administrative Law Judge (ALJ) assigned to this proceeding, scheduled and noticed the public hearings for the Certificate of Need and Pipeline Routing Permit proceedings.

Over the course of the fourteen public hearings, this includes those public hearings held jointly with the LSr project, 98 members of the public offered testimony. The ALJ received 36 sets of written comments before the close of the post-hearing comment period on April 21, 2008.

On July 17, 2008, the ALJ report was filed with the Commission and interested persons had an opportunity to file exceptions by August 1, 2008. Exceptions to the routing portion of the Alberta Clipper and Southern Lights Diluent Project were filed by Enbridge, the Fond du Lac Band of Lake Superior Chippewa's and the Minnesota Center for Environmental Advocacy. The exhibits in this proceeding have been transferred to the PUC.

### ***B. Environmental Review***

In 1989 the EQB approved the pipeline routing rules (Minn. Rules Chapter 4415, now Chapter 7852) as a substitute form of environmental review (Minnesota Rules 4410.3600) for pipelines. It determined that the Chapter 7852 requirements, including the detailed Environmental Assessment Supplement submitted with the pipeline application and the comparative environmental analysis of alternative routes, fulfill the intent and requirements of the Minnesota Environmental Policy Act. Consequently, a separate EAW or EIS is not prepared for pipeline projects in Minnesota.

### ***C. Agricultural Mitigation Plan Requirements***

Minn. Stat. 216E.10 requires an applicant for a permit for a transmission line, power plant and pipeline to address agricultural concerns:

**Minn. Stat. 216E.10** (b) An applicant for a permit under this section or under chapter 216G shall notify the commissioner of agriculture if the proposed project will impact cultivated agricultural land, as that term is defined in section 216G.01, subdivision 4. The commissioner may participate and advise the commission as to whether to grant a permit for the project and the best options for mitigating adverse impacts to agricultural lands if the permit is granted. The Department of Agriculture shall be the lead agency on the development of any agricultural mitigation plan required for the project.

An Agricultural Mitigation Plan (AMP) was developed by Enbridge in consultation with the Minnesota Department of Agriculture (MDA), and an April 2007 draft was submitted as part of the application. The MDA has made some recommended changes to the AMP and they are incorporated into the November 9, 2008 version of the AMP filed by Enbridge.

A final AMP and Appendix to Agricultural Mitigation Plan: Mitigative Actions for Organic Agricultural Land is proposed to be included as one of the conditions in a pipeline route permit issued by the Commission. See Attachment 9 in the Commissioner's packet.

#### ***D. Other Permit Requirements***

Construction of the Alberta Clipper and Southern Lights Project will require extensive consultation with federal, tribal, state, and local governmental agencies. Enbridge has filed a list of permits, licenses or plans that must be obtained, approved and filed prior to proceeding with project construction. See Attachments 4 and 5 in the Commissioner's packet.

##### **1. Federal Permits**

Enbridge will also need permits and authorization from several federal agencies for the Alberta Clipper Project. Enbridge's application to these agencies has triggered the federal environmental review threshold and the following summary provided by Enbridge addresses review of the Alberta Clipper Project at the federal level.

Enbridge Energy, Limited Partnership (Enbridge) has applied to the U.S. Department of State (DoS) under Executive Order 13337 for a Presidential Permit for the construction, operation and maintenance of facilities at the US/Canadian border for a proposed pipeline for importation of crude oil from Canada, the so-called Alberta Clipper Project. DoS has determined that the issuance of the Permit would constitute a major federal action under the National Environmental Policy Act (NEPA). In addition, DoS has determined that issuance of the Permit for the Alberta Clipper Project triggers review under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and its implementing regulations, "Protection of Historic Properties," (36 CFR Part 800).

Pursuant to its obligations under NEPA, DoS will evaluate the environmental impacts of the Alberta Clipper Project, including alternatives to the proposed

Project. In evaluating these alternatives, DoS will consider whether the alternatives will meet the purpose and need of the project. DoS review of the alternatives and their impacts will be presented in a Draft Environmental Impact Statement (DEIS). The DEIS will consider a variety of impacts of the Project, including impacts to geology, soils, water resources, wetlands, terrestrial vegetation, wildlife, fisheries, threatened and endangered species, land use, socioeconomics, cultural resources, air quality, and noise. Cumulative impacts of the Project and other projects in the area also will be assessed. These impacts are considered for the complete pipeline route and for connected actions, including the planned expansion of the terminal for the pipeline in Superior, Wisconsin. The DEIS will be issued for public review and comment. DoS will then consider the comments from federal and state agencies, tribes, the public and other interested parties and issue a Final Environmental Impact Statement, which will address any required mitigation.

Other federal agencies which will be asked by Enbridge to issue permits or other approvals related to the Project are participating with DoS as cooperating agencies, as are certain Tribes and other interested agencies. The following federal agencies and tribes have elected to participate as cooperating agencies in the NEPA process: U.S. Environmental Protection Agency; U.S. Army Corps of Engineers; U.S. Fish and Wildlife Service; U.S. Forest Service; National Resources Conservation Service; Farm Service Agency; Bureau of Indian Affairs; Fond du Lac Band of Lake Superior Chippewa; and Leech Lake Band of Ojibwa.

Section 106 of the National Historic Preservation Act requires federal agencies to consider the effect of their undertakings, including permitting, on archeological and architectural resources. The process involves consultation among agencies and other parties with an interest in the effects of the pipeline project on these resources. The goal of the 106 process is to identify historic properties potentially affected by the pipeline project, assess its effects, if any, on the properties and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. DoS will include a discussion of cultural resource issues in the Draft and Final EIS documents. In addition, DoS will consult with interested parties and the Advisory Council on Historic Preservation on these issues. This consultation includes a Programmatic Agreement currently under preparation to address certain cultural resources issues.

Following the issuance of the Final EIS, DoS will make a decision on whether or not to issue a Presidential Permit. The issuance of any such Permit will be preceded by a period of consultation with other federal agencies as per the requirements of the Executive Order and by the issuance of a Record of Decision.

## **2. Canadian Permits**

Enbridge received approval from the National Energy Board (NEB) of Canada in February 2008, for the construction of the Alberta Clipper, and Southern Lights Diluent Pipeline Projects in Canada. These decisions were affirmed by Government in Council. The NEB decisions are online at:

**a. Alberta Clipper Project:**

<https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=465178&objAction=browse&sort=-name>

**b. Southern Lights Diluent Project:**

<https://www.neb-one.gc.ca/ll-eng/livelink.exe?func=ll&objId=456607&objAction=browse&sort=name>

**3. Other State Permits**

**a. North Dakota**

The North Dakota Public Service Commission issued an Order on December 31, 2007, issuing a Certificate for Corridor Compatibility and Route Permit for the Alberta Clipper Project and the LSr Project.

**b. Wisconsin**

Enbridge must obtain multiple permits and certifications from the Wisconsin DNR to construct the portion of the Alberta Clipper and Southern Lights Diluent project between the Superior terminal and the Minnesota/Wisconsin border. Enbridge is currently completing the pre-application consultation process with the Wisconsin DNR, and the appropriate applications will be filed on November 26, 2008.

**IV. STAFF ANALYSIS AND RECOMMENDATIONS**

The following EFP staff analysis covers several areas as follows. First, Parts A and B provide an analysis of the exceptions to the ALJ Report filed by Enbridge and the Fond du Lac Band. Second, in Part C, EFP staff presents recommended modifications and supplemental findings to the ALJ's Report. These supplemental findings incorporate CON findings into the route permit docket; provide corrections to clarify the record and errors. The supplemental findings also incorporate comments from members of the public, public officials and agencies under the criteria analysis. The public comments and supplemental findings are addressed under the appropriate decision criteria the Commission must consider in designating a route. The staff analysis also evaluates the Fond du Lac Route Alternative, followed by EFP recommended supplemental findings and conclusion regarding the Fond du Lac alternative. The staff analysis closes with a discussion of DNR concerns.

The ALJ Report in PUC Dockets PL-9/CN-07-465 (Certificate of Need) and PL-9/CN-07-361 addresses both need and siting as it relates to the CON Proceeding and the Pipeline Routing Permit for Enbridge's proposed Alberta Clipper and Southern Lights Diluent ("AC/SLD") Project. The ALJ's report consists of 310 findings of fact, 55 conclusions and two recommendations:

- (1) Enbridge's Application for a Certificate of Need for a Crude Oil Pipeline known as the Alberta Clipper Project, and a pipeline known as the Southern Lights Project, should be GRANTED.
- (2) Subject to the conditions set forth in the Conclusions, Enbridge's Application for a Routing Permit for a crude oil pipeline known as the Alberta Clipper Project, and a pipeline known as the Southern Lights Diluent Project, including the most-recent Revised Preferred Route and Alignment and Route Alternatives, should be GRANTED.

The report documents that the procedural requirements of Minn. Stat. Chapter 216G and Minn. Rules Chapter 7852 were followed, and presents findings of each of the decision criteria under Minn. Rules 7852.1900.

The Commission may accept or reject the Administrative Law Judge's recommendations and the recommendations have no legal effect unless expressly adopted by the Commission in its final Order. If the Commission wishes to adopt findings that are not consistent with the ALJ's findings, it must explain its reasons for so doing.

The findings and conclusions included in the following discussion retain the same numbering used in the ALJ's report. Amendments, changes, deletions and additions to the ALJ findings are shown by strikethrough and underlining. Please note that the ALJ footnotes have been omitted for formatting reasons. Letter designations in this section match those in Section V, Commission Decision Options.

### ***Enbridge's Exceptions to ALJ Findings of Fact and Conclusions***

Enbridge filed 16 exceptions to the routing portion of the ALJ's report, eight related to findings and eight related to conclusions.

#### **A. ALJ Finding 102: Exception concerning route location description.**

**102.** If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way.

**Exception:** Enbridge commented as follows: This finding is accurate with the exception of Southeast Route Alternative 13, known as the Fond du Lac Alternative. Judge Lipman recommended approval of this alternative in Conclusion 51 of the Report. Although the length of the Fond du Lac is short compared to the overall length of the Project, this finding should be amended to make it consistent with Conclusion 51.

**EFP Staff Analysis:** It should be pointed out that between MP 1056 and MP 1073 on the existing route, there are two distinct route alternatives. One is the route that follows Enbridge's existing

pipelines through the Fond du Lac reservation (the initially proposed route and the Revised Preferred Route Alignment) and the second is the Fond du Lac Route Alternative that goes around the Fond du Lac Band Reservation and would add 21.4 miles of “greenfield” route, most of which would be constructed on public lands--either county or state. OES staff concurs that the findings would be more accurate, if modified as follows:

**102.** If both projects are approved as requested by Enbridge, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way with the exception of the 21.4 miles comprising the Fond du Lac Route Alternative.

**B. ALJ Finding 225: Pump Station noise.**

**225.** Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measure at a distance of 50 feet from the pumping station structure) or to any other minimum set by state law.

**Exception:** Enbridge commented that it believes that a simple transcription error occurred in the drafting of the ALJ Report. Enbridge noted that the CON application states “Enbridge standards restrict noise levels (due to Company equipment) around neighboring dwellings and industrial facilities to 40 decibels, measured at a distance of 50 feet from the affected structure, unless state regulations allow higher noise levels.” Enbridge requests that Finding 225 be amend to correct the transcription error.

**EFP Staff Analysis:** Staff concurs with Enbridge’s observation that a transcription error occurred and recommends modifying Finding 225 as follows:

**225.** Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measure at a distance of 50 feet from the ~~pumping station structure~~ affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures) or to any other minimum set by state law.

**C. ALJ Finding 237: Route Width.**

**237.** Enbridge filed its Revised Preferred Route and Alignment Maps on October 10 and December 20, 2007. Together, these two sets of maps establish a 500 foot-

wide route, centered on the proposed 20-inch LSr pipeline, Northwest of Clearbrook, Minnesota. (Internal footnote omitted)

**Exception:** Enbridge commented that the maps filed on October 10, 2007 show a base route width of 500 feet, but the route width varies in environmentally sensitive area where increased flexibility is required to place the pipeline and associated temporary and extra temporary workspace in a manner that produces the least adverse impacts to the environment and human settlement. The route southeast of Clearbrook, Minnesota varies for the same reasons, as noted in Finding 238. Enbridge is requesting that Finding 237 be modified to match Finding 238.

**EFP Staff Analysis:** EFP staff concurs with Enbridge exception regarding route width and recommends that Finding 237 be modified as follows:

**237.** Enbridge filed its Revised Preferred Route and Alignment Maps on October 10 and December 20, 2007. Together, these two sets of maps establish a ~~500-foot-wide~~ route that varies in width, centered on the proposed 20-inch LSr pipeline, Northwest of Clearbrook, Minnesota.

**D. ALJ Finding 284: Clarification of positions between Enbridge and the Fond du Lac Band.**

**284.** Enbridge and the Band have not reached an accord on the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines. The Band and Enbridge could not reach an accord because of a dispute over the amount that the Band should be paid “for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance.”

**Exception:** Enbridge commented that this finding correctly notes disagreement regarding compensation for the right-of-way for the Projects contributed to Enbridge and the Fond du Lac Band of Lake Superior Chippewa (the “Band”) reaching impasse in negotiations. This finding, however, should be reworded to clarify the positions of Enbridge and the Band. Enbridge’s exception commented that: “The Band’s negotiating position also included demands for past alleged damages, alleged need for environmental mitigation and alleged issues of tribal regulatory compliance. Enbridge disputes the Band’s position on these matters. These statements were made in the Post-Hearing Brief filed by the band, but evidence of these issues was not introduced beyond arguments of Counsel and the acknowledgement of the Band’s position by Enbridge witness Mark Sitek. Enbridge therefore requests that the Commission reword Finding to 261 to read as follows:

**284.** Enbridge and the Band have not reached an accord of the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines. The Band and Enbridge could not reach an accord because of a dispute over the amount that the Band should be paid for the right-of-way for the Projects, and over the Band’s position that compensation must also be

paid “for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance:” as alleged by Counsel for the Band.

**EFP Staff Analysis:** Enbridge provided updates on the status of its negotiations with the Fond du Lac Band as requested during the contested case hearings on the route permit in March and April 2008. During the April 9, 2008 hearing in Carlton, which was the very last evidentiary hearing in the routing process, Enbridge witness Mark Sitek stated that Enbridge and the Fond du Lac Band had not reached an agreement for the two new lines to be constructed next to the existing pipelines. He further stated that the two parties had “basically reached impasse” in their negotiations, and while he believed that following the existing pipelines is preferable, the Company now preferred the Fond du Lac Alternative because of the absence of agreement with the Fond du Lac Band.

From the statements made during this and other hearings by Enbridge witnesses and counsel, and testimony and arguments made to the ALJ, it is quite clear that the parties do not agree as to whether there is an impasse or even what is meant by that term, that the Fond du Lac Band claims a desire to continue to negotiate for an easement that would expand the existing right of way across the Fond du Lac reservation, and that there is disagreement on whether either party has been negotiating in bad faith. The Fond du Lac Band asserted further that Enbridge had refused to continue negotiations, but the Band hoped to continue with them. Of the total 13.2 miles of proposed route that passes through the Fond du Lac Reservation, only approximately 1.5 miles is tribal land that applies to the parties’ negotiations.

Further, it is noteworthy that further information was provided on this issue during the evidentiary hearing on May 13, 2008. This hearing was scheduled and noticed as only taking up certificate of need issues, yet quite extensive testimony was allowed by Enbridge’s witness Mark Sitek on the status of the negotiations between Enbridge and the Fond du Lac Band. In addition, the overruled objections by OES counsel for the CON docket and the Fond du Lac Band’s counsel to further evidence related to the routing docket, and invited the Fond du Lac Band to question Mr. Sitek, who was part of the negotiating team for Enbridge. Questioning of Mr. Sitek concerned the amount the Band asked for in exchange for the easement, and resulted in adding information to the record as to the incremental percentages asked by the Band over Enbridge’s own appraisal of its worth. The testimony given appears to be quite speculative, and none of this information was in sufficient detail to be stated in monetary amounts that might be comparable.

EFP staff’s view, with regard to the negotiations between the Band and Enbridge, is that the record is scant with regard to this issue, even considering the testimony at the May 13, 2008 hearing (which may be considered improperly admitted because the public and parties had been notified that the record would close for public comment on April 21, 2008 and the evidentiary hearing on May 13, 2008, was limited to CON issues only). Minnesota Rules 7852.1900, subp. 1 states that the Commission may not consider in its decision-making the fact that an easement has been obtained. Applicants for routing permits obtain them at their own risk. Implicitly, the fact that an easement has *not* been obtained is also not to be considered by the Commission unless the easement acquisition is not possible. The only applicable conclusion regarding the status of the parties’ easement negotiations is that the Fond du Lac Band will consent to the easement across reservation property. The EFP staff recommends the following modification to Finding 284:

**284.** Enbridge and the Band have not reached an accord on the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines. ~~The Band and Enbridge could not reach an accord because of a dispute over the amount “for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance.”~~ The Band will consent to the easement and is willing to continue negotiations with Enbridge for an additional easement that parallels the existing easement granted to Enbridge for existing pipelines.

**E. ALJ Finding 291: Clarification of route width.**

**291.** The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a 500 foot wide route that will accommodate both the LSr and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.

**Exception:** Enbridge commented that the maps filed on October 10, 2007 show a base route width of 500 feet, but the route width varies in environmentally sensitive area where increased flexibility is required to place the pipeline and associated temporary and extra temporary workspace in a manner that produces the least adverse impacts to the environment and human settlement. The route southeast of Clearbrook, Minnesota varies for the same reasons, as noted in Finding 237.

**EFP Staff Analysis:** EFP staff concurs with Enbridge exception regarding route width and recommends that Finding 291 be modified for the same reason as Finding 297, as follows:

**291.** The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a ~~500 foot~~ variable route width that will accommodate both the LSr and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.

**F. ALJ Finding 295: Pipeline location within the route.**

**295.** The Alberta Clipper pipeline will be generally constructed and installed adjacent to the existing Lakehead system right-of-way. The Alberta Clipper pipeline northwest of Clearbrook, Minnesota will be installed 25 feet from the earlier approved LSr pipeline. Up to 75 feet of permanent easement will be required for both project (LSr and Alberta Clipper).

**Exception:** The REVISED Preferred Route and Alignment does depict installation of the Alberta Clipper pipeline 25 feet from the LSr pipeline. However, Enbridge notes that in some areas it may be necessary to install the Alberta Clipper pipeline on the opposite side of the existing Enbridge pipelines from the LSr Pipeline. This may be due to other state or federal permits or unforeseen difficulties during detailed design process, or even at the request of a landowner. Whatever the

cause, the Alberta Clipper would be further than 25 feet away from the LSr pipeline. In no event would Enbridge install any pipeline outside of whatever route width the Commission may designate.

**EFP Staff Analysis:** EFP staff concurs with Enbridge's exception and would also note that that the pipeline may be located outside of the Commission designated route, if authorized by the Commission and in accordance with the conditions of the route permit or in accordance with Minn. R. 7852. EFP Staff recommends that Finding 295 be modified as follows:

**295.** The Alberta Clipper pipeline will be generally constructed and installed adjacent to the existing Lakehead system right-of-way. The Alberta Clipper pipeline northwest of Clearbrook, Minnesota will typically be installed 25 feet from the earlier approved LSr pipeline. Up to 75 feet of permanent easement will be required for both projects (LSr and Alberta Clipper).

**G. ALJ Finding 302: Regarding the Kezar property at milepost 859.5.**

**302.** Kezar Property, Mile Post 895.5. Particular issues were raised by Mr. Joe Kezar regarding his property located at Mile Post 899.5 on the proposed Alberta Clipper project route. Mr. Kezar's comments were also documented in a letter submitted for the record as Exhibit A. Subsequent to the November, 2007 public hearings, Enbridge and the Kezar's were able to agree on a change to the Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota. This change reduces the impacts on human settlement, any Pipeline Routing Permit issued for the Alberta Clipper and Southern Lights Diluent projects should make this agreement a required condition.

**Exception:** Enbridge learned after the conclusion of the hearings that the U.S Army Corps of Engineers may object to the route agreed to by Enbridge and the Kezar's after the November 2007 hearing. U.S. Army Corps of Engineers approval is required to construct the Alberta Clipper due to the Corps' authority under the Clean Water Act. Enbridge therefore respectfully requests that Finding 302 be modified to allow the Alberta Clipper to be constructed in the event of a conflict between its agreement with the Kezar's and the requirements placed on the project by the Corps.

**EFP Staff Analysis:** EFP staff believes this request is reasonable and supported by the Corps authority. EFP Staff supports a modification to Finding 302 as follows:

**302.** Kezar Property, Mile Post 895.5. Particular issues were raised by Mr. Joe Kezar regarding his property located at Mile Post 899.5 on the proposed Alberta Clipper project route. Mr. Kezar's comments were also documented in a letter submitted for the record as Exhibit A. Subsequent to the November, 2007 public hearings, Enbridge and the Kezar's were able to agree on a change to the Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota. This change reduces the impacts on human settlement, any Pipeline Routing Permit issued for

the Alberta Clipper and Southern Lights Diluent projects should ~~make this agreement~~ a required ~~condition~~ construction according to this agreement, unless requirements of other state or federal agencies make construction on this alignment impossible.

**H. ALJ Finding 304: Cory Carlson Property Tract 748.**

**304.** The proximity of the proposed pipelines was presented as a concern by a Polk County landowner, Mr. Cory Carlson of Trail, Minnesota. The particular parcel in question is Tract No. 748. Enbridge indicated a willingness to narrow the distance between proposed pipelines and to reduce workspace immediately adjacent to this home and business location. A drawing of the proposed narrowing of workspace for the Carlson property was introduced as Exhibit 13. A permit condition should direct Enbridge to follow this construction proposal, subject to agreements from the landowners.

**Exception:** Enbridge commented that, Enbridge and the Carlson's recently reached an alternative agreement to locate the proposed pipeline to the south side of the existing lines, within the route width displayed on the Revised Preferred Route and Alignment. Enbridge therefore requests that Finding 304 be modified to allow subsequent changes to the agreement with the landowners by adding the following language.

**EFP Staff Analysis:** EFP staff concurs with Enbridge's exception and recommendation to modify Finding 304 as follows:

**304.** The proximity of the proposed pipelines was presented as a concern by a Polk County landowner, Mr. Cory Carlson of Trail, Minnesota. The particular parcel in question is Tract No. 748. Enbridge indicated a willingness to narrow the distance between proposed pipelines and to reduce workspace immediately adjacent to this home and business location. A drawing of the proposed narrowing of workspace for the Carlson property was introduced as Exhibit 13. A permit condition should direct Enbridge to follow this construction proposal, ~~subject to or according to any other agreement made with~~ from the landowners that keeps the proposed pipelines within the REVISED Preferred Route and Alignment.

**I. and J. Enbridge's exceptions the ALJ's conclusions.**

Enbridge suggested clarification of eight conclusions. The majority of the clarifications are to change a singular reference to a plural reference and do not alter the substance of the conclusions reached by the Administrative Law Judge.

**a. Conclusions 34-40: Changing pipeline to the plural pipelines.**

**34.** Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to human settlements, densely-populated areas and both existing and planned future land uses. The Commission should grant a Pipeline Routing Permit for the LSr Project.

**Exception:** Enbridge noted that the CON and PRP Applications included both the Alberta Clipper and Southern Lights pipelines, and both were evaluated jointly during the hearing process. The fact is reflected in the use of the word “pipelines” throughout the Report.

**EFP Staff Analysis:** EFP agrees that the record reflects that the plural “pipelines” is appropriate. However, as explained in the EFP staff’s recommended supplemental findings, EFP staff cannot conclude that Findings 34-40 provide adequate support for the criteria in Minn. R. 7852.1900, subp. 3. To that end, EFP staff has provided supplemental findings, set out in detail below, to demonstrate the extent to which Enbridge has satisfied the required criteria. EFP recommends that Conclusions 34-40 not be adopted. However, if the Commission adopts Conclusions 34-40 as requested by Enbridge, EFP staff does not object to the following modifications to Conclusions be modified:

**34.** Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to human settlements, densely-populated areas and both existing and planned future land uses.

**35.** Enbridge has carefully its proposed pipelines, so as to minimize the impacts to the natural environment, public lands and designated lands – including natural areas, wildlife habitat, water and recreational lands.

**36.** Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to lands of historical, archaeological and cultural significance.

**37.** Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to agricultural, commercial, industrial, forestry, recreational or mining operations.

**38.** Enbridge has carefully planned its proposed pipelines, so as to minimize costs, consistent with an accessible and safely-operated pipelines.

**39.** Enbridge has carefully planned its proposed pipelines, so as to maximize the use of existing right-of-way and right-of-way sharing or paralleling.

**40.** Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to natural resources and naturally-occurring features.

**b. Conclusion 54: Kezar property.**

**54.** The Pipeline Routing Permit issued to Enbridge should require construction according to the agreement reached between Enbridge and Joes and Marsha Kezar.

**Exception:** Enbridge suggests that this conclusion be modified in the same manner and for the same reasons as stated for Finding 302.

**EFP Staff Analysis:** EFP staff concurs with Enbridge’s proposed exception and proposes to modify Conclusion 54 as follows:

**54.** The Pipeline Routing Permit issued to Enbridge should require construction according to the agreement reached between Enbridge and Joes and Marsha Kezar, or as required by other federal or state agencies.

### ***The Fond du Lac Band Exceptions***

The Fond du Lac Band filed six exceptions to the routing portion of the ALJ's report, three related to findings and two related to conclusions and one to ALJ Recommendation 2.

#### **K. ALJ Finding 8: Exception concerning Fond du Lac Band’s identity.**

**8.** The Fond du Lac Band of Lake Superior Chippewa (“the Band”) has authority over the land upon which the Applicant’s “Fond Du Lac Option 1” would traverse and it claims usufructuary rights (including the rights to hunt, fish and gather) on the parcels through which the Applicant’s “Fond Du Lac Alternative” would run. Accordingly, the Administrative Law Judge granted the Band’s request to joint the routing proceeding as a party.

**Exception:** The Band respectively asks that this Finding add language at the end in order to accurately identify the Band’s identity in regards to this project, as the Band previously described in its Motion to Intervene and Post Hearing Brief.

**EFP Staff Analysis:** EFP staff takes no position on this exception, but has no reason not to consider the addition of language suggested by representatives of the Fond du Lac Band and offer the following modification to Finding 8. as follows:

**8.** The Fond du Lac Band of Lake Superior Chippewa (“the Band”) has authority over the land upon which the Applicant’s “Fond Du Lac Option 1” would traverse and it claims usufructuary rights (including the rights to hunt, fish and gather) on the parcels through which the Applicant’s “Fond Du Lac Alternative” would run. Accordingly, the Administrative Law Judge granted the Band’s request to joint the routing proceeding as a party.

The Band has federally-delegated regulatory authority for both on-reservation activities, and for off-reservation activities that can affect air and water inside the Reservation. This includes:

a. Treatment-As-a-State status under the Clean Water Act, giving the Band regulatory authority over water quality and Section 401 certification, Section 404 dredge and fill permit, and NPDES permits. See generally, 33 U.S.C. § 518e; see also 40 e-CFR §§ 123, 131, and 233; and

b. Treatment-AS-a State status under the Clean Air Act, giving the Band regulatory authority over even temporary impacts on air quality, including through the course of construction, See 42 U.S.C § 7401 et seq.; see also Tribal Clean Air Act Authority, 40 C.F.R. § 49.

In addition to the surface waters, wetlands, and ground water fully inside the Reservation (totaling over 3000 acres of lakes, 96 miles of streams, and 44,000 acres of wetlands), the Band has additional authority over those bodies of water that cross the Reservation boundaries or the flow into the Reservation. Additionally, the Band will be a participating agency in connection with Enbridge's federal Presidential Border Crossing Permit process.

**L. ALJ Finding 228: Exception concerning consultation regarding lands of historical archaeological and cultural significance.**

**228.** Enbridge is working with the Leech Lake Heritage Site Program to survey for sites of cultural significance in the Leach Lake Area. Enbridge is also working with the U.S. State Department to address matters that have been raised in cultural resources consultation that the Department of State is conducting with the Fond du Lac Band under Section 106 of the National Historic Preservation Act.

**Exception:** The Band respectively asks that this Finding add language at the end in order to accurately identify the Band's identity in regards to this project, as the Band previously described in its Motion to Intervene and Post Hearing Brief.

**EFP Staff Analysis:** EFP staff agrees that the Fond du Lac Band's proposed addition accurately states the record, but takes no position on this exception, but has no reason not to consider the addition of language suggested by representatives of the Fond du Lac Band and offer the following modification to Finding 228. as follows:

**228.** Enbridge is working with the Leech Lake Heritage Site Program to survey for sites of cultural significance in the Leach Lake Area. Enbridge is also working with the U.S. State Department to address matters that have been raised in cultural resources consultation that the Department of State is conducting with the Fond du Lac Band under Section 106 of the National Historic Preservation Act.

The record does not show that Enbridge, as part of the state permitting process, consulted with the Fond du Lac Band regarding possible lands of historical, archaeological, and cultural significance along the Revised Preferred Route at the

Fond du Lac Alternative, which wraps south and east around the edge of the Fond du Lac Reservation and runs through areas of traditional cultural and historical importance to the Fond du Lac Band.

**M. ALJ Finding 287: Exception concerning consultation regarding lands of historical, archaeological and cultural significance.**

**Exception:** The Band respectively asks that this Finding add language at the end in order to accurately identify the Band's identity in regards to this project, as the Band previously described in its Motion to Intervene and Post Hearing Brief.

**EFP Staff Analysis:** EFP staff agrees that the Fond du Lac Band's proposed addition accurately states the record, but takes no position on this exception, but has no reason not to consider the addition of language suggested by representatives of the Fond du Lac Band and offer the following modification to Finding 287 as follows:

**287.** There are no archaeological sites or architectural resource sites listed in the Natural Heritage Inventory along this route alternative. The Band has indicated that two historic trails may be located in the area of this alternative – matters that Enbridge argues should be addressed “through the Section 106 consultations as part of the federal environmental review process.

The record does not show that Enbridge, as part of the state permitting process, consulted with the Fond du Lac Band regarding possible lands of historical, archaeological, and cultural significance along the Revised Preferred Route at the Fond du Lac Alternative, which wraps south and east around the edge of the Fond du Lac Reservation and runs through areas of traditional cultural and historical importance to the Fond du Lac Band.

**N. ALJ Conclusion 33(J): Application of Route Selection Criteria.**

**33. (J)** The relevant applicable policies, rules and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05 relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

**Exception:** The Fond du Lac Band commented Minn. R. 7852.1900, subp. 3.J is a required assessment factor the PUC must consider. However, the Band noted that the ALJ summary does not include any Conclusion that actually states this factor has been met here. The Band asks for a Conclusion demonstrating how and whether this required factor has been met be included in order to clarify the record.

**EFP Staff Analysis:** EFP Staff agrees that the ALJ Report does not include a conclusion stating this factor has been met in this docket. The EFP Staff addresses this omission along with its discussion of the other criteria in Minn. R. 7852.1900, subd. 3.A-3.I.

**O. ALJ Conclusion 48: Rights on Tribal lands.**

**48.** Under federal law, right-of-way may be granted through lands on Indian reservation that had been earlier allotted to Individual Indians without the “full power of alienation,” only by leave of the Secretary of the Interior. Further, right of way on lands belonging to certain federal-organized tribes may not be had over the objection of tribal officials.

**Exception:** The Band wishes to clarify the Summary’s statement of law herein. It is not accurate to state that “[f]urther, rights of way on lands belonging to certain federally-organized tribes may not be had over the objection of tribal officials.” Instead, affirmative tribal *consent* to a right of way is required under the United States Code for tribal lands, as the Summary accurately states in a footnote (See ALJ Report, footnote #556). Therefore, the Band asks that the quoted sentence be deleted from the end of Conclusion 48.

**EFP Staff Analysis:** EFP staff has takes no position on this the exception to this conclusion and has incorporated the language modification requested by the tribe which reads as follows:

**48.** Under federal law, right-of-way may be granted through lands on Indian reservation that had been earlier allotted to Individual Indians without the “full power of alienation,” only by leave of the Secretary of the Interior. Further, right of way on lands belonging to certain federal-organized tribes may not be had ~~over the objection of tribal officials~~ without the consent of the proper tribal officials.

**P. ALJ Recommendation 2: The Band opposes granting a route permit including the Fond du LAC Alternative.**

**2.** Subject to the conditions set forth in the Conclusions, Enbridge’s Application for a Routing Permit for a crude oil pipeline known as the Alberta Clipper Project, and a pipeline known as the Southern Lights Diluent Project, including the most recent Revised Preferred Route and Alignment and Route Alternatives, should be GRANTED.

**Exception:** The Band objects to this recommendation to the extent it recommends approval of at least the portion of the “Revised Preferred Route” around the Fond du Lac Reservation (the Fond du Lac Alternative) without full consideration of the Band’s exceptions above and the legal issues raised by the Band in its filings with the OAH.

**EFP Staff Analysis:** EFP Staff agrees with this exception to the extent that it recommends the Fond du Lac Alternative not be adopted for the reasons explained in EFP Staff’s recommended supplemental findings and conclusions, relating to the criteria for granting a permit in Minn. R.

7852.1900, subp. 3. The Fond du Lac Band, in its post-hearing brief, recommended that the Commission designate the originally preferred route through the Fond du Lac Reservation.

### ***OES EFP Recommended Modifications and Supplemental Findings and Conclusions***

The EFP Staff was not a party in the route application proceeding, and thus did not file exceptions to the ALJ Report. Instead, the EFP Staff offers here its recommendations regarding adopting of the findings and conclusion and recommendation in the ALJ Report. The ALJ's report accurately summarizes most of the comments made at the public hearings and the written comments that are a part of the record. However, EFP staff believes that to effectuate some of the public and agency comments as findings, conclusions and permit conditions, that supporting findings and conclusions are necessary, in order to have a record that supports inclusion as permit conditions in the EFP Staff proposed pipeline routing permit. In some instances, the public comments offered addressed concerns that are standard conditions in pipeline routing permits or mitigation plans that are prepared for a pipeline project. Others do not.

EFP Staff also believes that two comments received by the OAH after the deadline on April 21, 2008, should be considered by the Commission. One of these is a comment in support of Enbridge's projects by Murphy Oil Company; the other was filed by the Supervisor of the Chippewa National Forest, a federal agency that will be issuing a permit for the route in a portion of the Chippewa National Forest. EFP Staff believes that both comments should be considered because of the ALJ's unusual decision to accept additional evidence into the record for the routing case during the hearing that was to be limited to Certificate of Need issues only. This hearing was noticed by the Commission and set forth in four of the ALJ's prehearing orders.<sup>1</sup> Furthermore, in each of the evidentiary hearings on the route permit, the ALJ expressly stated that the record would close as of April 21, 2008.

The following captures, what EFP staff believes are the most significant issues raised, with supporting findings and conclusions.

#### **Q. Minor modification and clarifications specific to Route Application**

##### **1. Incorporation of CON findings in Route Permit docket.**

**EFP Staff Analysis:** Although Enbridge and OES representatives had requested the ALJ submit two separate reports -- one for the CON and the other for Routing -- only one report was filed by the ALJ. EFP Staff review of the ALJ Report noted that the ALJ offered numerous findings regarding the CON proceeding at part III.H.2. (Relationship of the Project to Socioeconomic, Natural and Cultural Resources) at Findings 176 through 230, which would also, and in some instances *only* be appropriate and applicable to the standard and decision criteria of Minn. R.

---

<sup>1</sup>First Prehearing Order (August 23, 2007); Order Certifying Motion to Commission and Second Prehearing Order (October 25, 2007); Third Prehearing Order (February 8, 2008); and Sixth Prehearing Order (May 5, 2008).

7852.1900, subd. 3, which is to be used for Commission decision-making on route designation and permit issuance. Staff believes that ALJ Findings 176 through 230 should also be reflected in the portion of the ALJ's Report (Part IV.) that addresses route designation and permit issuance. Therefore, EFP Staff is recommending the inclusion of a Supplemental Finding that incorporates ALJ Findings 176 through 230 into part IV of the ALJ's report. EFP staff is also proposing below additional supplemental findings that expand upon and supplement the ALJ's Findings specific to the criteria that guide the Commission's decision in this matter.

**Recommendation:** EFP Staff recommends the Commission adopt the following new Supplemental Finding 1:

1. Findings 176 through 230 in part III.H.2 in the ALJ Report are incorporated into part IV. of the ALJ's report to support the standard and criteria of Minn. R. 7852.1900 that guide the Commission in its decision on route designation and permit issuance.

**2. ALJ Finding 6: Clarification of Route Application process.**

**EFP Staff Analysis:** The ALJ's Report makes no distinction between the OES as a party in the Certificate of Need docket (PL9/CN-07-465) and its role the Route Application docket (PL9/PPL-07-361), which is to process the route application to assist the Commission. Finding 6 refers to the OES' as a party in the Certificate of Need docket. The majority of references to the Department of Commerce or OES in findings relating to routing, including the Findings 176 through 230 referenced in the preceding paragraph, refer to the role and actions of the Energy Facility Permitting (EFP) Staff in processing the route application. The Report also does not identify the EFP Staff involved in this process.

**Recommendation:** The EFP Staff recommends the following addition to ALJ Finding 6:

6. The Minnesota Department of Commerce, Office of Energy Security ("OES") is charged by statute to review Certificate of Need applications for compliance with requirements of Minnesota Statutes, Rules and Commission Orders. The OES includes a separate unit, the Energy Facility Permitting ("EFP") Staff, which processes applications for route and site permits for energy facilities. Larry Hartman and Deborah Pile of the EFP Staff are the Project Manager and Public Advisor, respectively, for the route permit docket.

**3. ALJ Finding 20: Clarification of Route Application process.**

**EFP Staff Analysis:** The ALJ Report itemizes in Findings 20 and 21 the ordering paragraphs of the Commission's Orders dated August 1, 2007, finding the applications complete and referring the CON and Route Permit dockets to the OAH for contested case proceedings. These bullet

points accurately summarize the CON Order, but omit two significant points in the Route Application Order.

**Recommendation:** The EFP Staff recommends the following bullet points be added to Finding 20 to clarify that the Commission was initiating the full process for reviewing the route application and varied the rule requiring public information meetings in every county:

**20.** On August 1, 2007 the Commission issued an Order Accepting Application, Initiating Full Review, Referring to the Office of Administrative Hearings and Order and Notice of Hearing for the AC/SLD Routing Permit Application under Docket No. PL9/PPL-07-361. Among other items, the Commission:

- authorized the Department's Energy Facility Permitting Staff to initiate the full review process under Minn. Rules, Chapter 4415;
- varied Minn. Rules, Part 4415.0070, subpart 1 to eliminate the requirement to hold a public information meeting/hearing in Hubbard and Aitkin Counties;

**4. ALJ Findings 35, 89, 90, 101, 110, 178, 181, 214 and 287: Clarification of Route Application process and minor changes.**

**EFP Staff Analysis and Recommendations:** The EFP Staff recommends several corrections to clarify the record and/or correct minor errors. Finding 35 should be amended to delete the Certificate of Need language which does not apply; Finding 89 should be amended to reflect that the stipulation of counsel referred to the CON only; Finding 90 should be amended to reflect that the May 13, 2008 contested case hearing on the CON application also includes additions to the record of the route permit proceeding; Findings 101, 110, and 181 to note that the record contains no evidence that the cost of the SLD project is different for the originally proposed route and the revised requested route including the Fond du Lac Alternative; Finding 178 to clarify the extent of timber affected by the construction of the projects; Finding 214 to clarify that Enbridge will make permanent repairs; and Finding 287 to state that the Band has stated it has usufructory rights on the land that would be used for construction of the Fond du Lac Alternative.

**35.** On October 30, 2007, the Commission accepted Enbridge's Revised Preferred Route and Alignment and Northwest Route Alternatives and varied the requirements of Minn. Stat. 216G.02, subd. 3(b)(5) for the AC/SLD ~~Certificate of Need and Pipeline Routing Permit Application~~

**89.** On May 8, 2008, pursuant to the Sixth Prehearing Order, Enbridge filed a written summary of the April 8, 2008 oral stipulation of counsel as to the filing of post-hearing briefs on the AC/SLD Certificate of Need Application and Pipeline Routing Permit Application.

**90.** The contested case hearing on the AC/SLD Certificate of Need Application was held at the Offices of the Commission on May 13, 2008. Additional evidence regarding the Route Application was also received at this hearing.

**101.** EELP estimates that the cost of constructing the Alberta Clipper project within Minnesota to be \$991 million. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative.

**110.** EPSL estimates that the construction cost of the Minnesota portion of the proposed Southern Lights Diluent project to be \$306 million. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative. If approved by the Commission, Enbridge anticipates beginning construction of this project in December of 2008, with a planned in-service date of July 1, 2010.

**181.** Enbridge estimates that the cost of constructing the Minnesota portion of the Alberta Clipper and Southern Lights Diluent, in 2006 dollars, is \$1,297,000,000. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative.

**178.** Approximately 1,343 acres of timber will be affected by construction of the Alberta Clipper and Southern Lights Diluent projects. Although the Fond du Lac route alternative maps illustrate that a significant amount of timber could be affected if that route is chosen, the additional number of acres of timber affected by the Fond du Lac Alternative was not quantified for the record..

**214.** Enbridge states that in the event that fences are destroyed or damaged during the construction process, it will install temporary gates or fencing so as to restrict access or contain livestock until construction is complete and permanent repairs can be made by Enbridge, or as otherwise agreed by Enbridge and the landowner..

**287.** There are no archeological sites or architectural resource sites listed in the Natural Heritage Inventory along this route alternative. The Band has indicated that two historic trails may be located in the area of this alternative – matters that Enbridge argues should be addressed “through the Section 106 consultations as part of the federal environmental review process.” The Band also provided information concerning the Band’s usufructory rights (hunting, fishing, and gathering wild rice) on ceded land, over which the Fond du Lac Alternative would traverse.

## **R. Criteria for Pipeline Route Selection.**

### **EFP Staff Analysis and Recommendations:**

The pipeline route being considered by the Commission is comprised of Enbridge's original route as modified with a nominal width of 500 feet approximately. Subsequent to the original filing, Enbridge filed nine route alternatives northwest of Clearbrook for both the LSr and Alberta Clipper Pipeline projects. These route alternatives were accepted by the Commission for consideration at public hearing. The Commission Order in the LSr proceeding designated a route for the LSr Pipeline that included those nine route proposals. Those nine route proposals are also a part of the Alberta Clipper proceeding.

For the Alberta Clipper and Southern Lights Diluent Project southeast of Clearbrook, Minnesota, Enbridge proposed an additional 15 route alternative, which includes the Fond du Lac Route Alternative. With the exception of the Fond du Lac Route Alternative, the 14 route alternative proposals merely widen out the width in those specific areas to avoid or mitigate potential problems. The Fond du Lac Route Alternative is discussed separately with respect to the criteria.

Aside from the Fond du Lac Route Alternative, which is a distinct route alternative, the only route before the Commission is Enbridge's original proposal and the 23 route alternatives that merely widen out the route in specific areas in order to avoid or mitigate potential problems.

In determining the route of a proposed pipeline, the Commission shall consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact. In selecting a route for designation and issuance of a pipeline routing permit, the commission shall consider the impact of the pipeline and associated facilities on each criterion. Each of the criteria is addressed separately, by supporting findings.

Each of the Criteria in Minn. R. 7852.1900, subd. 3 is addressed separately below. EFP Staff continued to address resolution of landowner-specific issues raised in public comments either at hearings or in written comments to the ALJ, which impact the analysis of criterion A. To support the additional information, the EFP Staff recommends that the Commission accept in the record the documents received by EFP Staff from Enbridge on November 18, 2008, after the close of the evidentiary record.

### **Criterion A: Consideration of human settlement, existence and density of populated areas, existing and planned future land use, and management plans.**<sup>2</sup>

[Supplemental Finding] **2.** The Alberta Clipper/Southern Lights Diluent (AC/SLD) Pipeline Routing Permit (PRP) Application includes an Environment Assessment Supplement which describes human settlement and population density along the originally proposed route. Municipalities located within one mile of the route are

---

<sup>2</sup> Minn. R. 7852.1900, subp. 3.A.

identified in Table 3.1-2.<sup>3</sup> Enbridge has identified 198 structures (residences and commercial buildings) located within 500 feet of the construction work area: in Table 4.3.5-1.<sup>4</sup> Construction impacts are noted and Enbridge outlines steps to control dust near residences, including by spraying water at these construction sites.<sup>5</sup> Further, Enbridge states that construction activity will generally be limited to daylight hours to reduce noise level impacts.<sup>6</sup>

**3.** The intersections of the Alberta Clipper and Southern Lights Diluent Projects with 314 public roads are identified by jurisdiction<sup>7</sup> and by milepost.<sup>8</sup> Construction methods for road crossings are addressed in the Environmental Mitigation Plan (“EMP”).<sup>9</sup> The number and location of rail crossings have also been identified.<sup>10</sup> All necessary permits required to conduct these crossings will be obtained from the appropriate regulatory body.

**4.** The extent of the project’s impact on human settlement is also considered in the context of land uses affected by the construction of the Alberta Clipper and Southern Lights Diluent projects. Specifically, the amount of “developed” land affected by construction is presented as a percentage of total land affected (2.0%) in Table 4.2-1 of the Application.<sup>11</sup>

**5.** Current land use along the originally proposed route is identified and classified as open land, forestlands, agricultural lands, developed lands, and wetlands/open water.<sup>12</sup> The specific proportion which each of these land use classifications represents is presented in the Application and in Table 4.2-1 of the Environmental Assessment Supplement (EAS).<sup>13</sup>

**6.** Enbridge has identified three Watershed Districts, ten Counties and one Township where comprehensive land use plans have been established.<sup>14</sup> It is expected that the Alberta Clipper and Southern Lights Diluent projects will must be constructed and operated in a manner consistent with these plans.<sup>15</sup>

**7.** Enbridge has also sought to identify domestic wells along the proposed route.<sup>16</sup> Review of the Minnesota Geological Survey and Minnesota Department of Health water well information database revealed only twenty-seven domestic wells within

---

<sup>3</sup> Ex. 100, Tab C, p. 3-3.

<sup>4</sup> Ex. 100, Tab C, Sec. 4.3.5, p. 4-7, Table 4.3.5-1.

<sup>5</sup> Id. pp. 4-7.

<sup>6</sup> Id. pp.4-8.

<sup>7</sup> Ex. 100, Tab C, Table 4.3.6-1, pp. 4-8.

<sup>8</sup> Ex. 101, Tab D, Appendix D.

<sup>9</sup> Ex. 101, Tab D, Appendix B, Section 4.0.

<sup>10</sup> Ex. 100, Tab C, Table 4.3.6-2.

<sup>11</sup> Ex. 100, Tab C, p. 4-2.

<sup>12</sup> Ex. 100, Sec. 4415.0140, p. 2.

<sup>13</sup> Id.

<sup>14</sup> Ex. 100, Tab. C, Section 4.2.2, pp. 4-5.

<sup>15</sup> Id.

<sup>16</sup> Ex. 100, Tab C, Sec. 8.3.3, p. 8-3. (See Table 8.3.3-1).

200 feet of the originally proposed pipeline route.<sup>17</sup> Enbridge states that it has and will ask landowners to help identify the location of additional, non-registered wells.<sup>18</sup>

**8.** During public hearings conducted in counties along the proposed Alberta Clipper and Southern Lights Diluent Project route, the OES EFP Staff inquired regarding planned setbacks from wells.<sup>19</sup> Enbridge indicated that the ground survey process will identify characteristics such as wells. If cased wells are closer than the required setback distance, Enbridge stated that it will work with the landowner to address the issue, possibly by adjusting the location of the pipeline within the approved route, or by abandoning and sealing the cased well and relocating the well to a different part of the property.<sup>20</sup> Enbridge confirmed that any such well relocation would be accomplished at Enbridge's expense.<sup>21</sup>

**9.** The setback distance for wells is currently 150 feet. A rulemaking process is currently underway which would propose to reduce the setback standard to 100 feet.<sup>22</sup> Enbridge stated that it is not participating in of this rulemaking process.<sup>23</sup>

**10.** Enbridge will provide landowners with a checklist to identify features or characteristics of their property, including wells, which are noteworthy in terms of their location relative to the placement of the proposed pipeline and associated work space.<sup>24</sup>

**11. Berry Property, Mile Post 886.5.** Enbridge has sought to mitigate impacts on particular properties. At the hearing in Oklee, Minnesota on November 28, there was considerable discussion regarding the Berry property at Mile Post 886.5.<sup>25</sup> Enbridge indicated its intention to reduce or "neck down" the line separation of the pipes to approximately 15 feet between pipes.<sup>26</sup> Enbridge also indicated that its construction space would be reduced from approximately 140 feet to approximately 80 feet.<sup>27</sup> Enbridge also noted its intention to install exclusion fencing during

---

<sup>17</sup> Id.

<sup>18</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p.40.

<sup>19</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p. 39 (question of Ms. Karen Hammel).

<sup>20</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p. 40 (Testimony of Michael Harris).

<sup>21</sup> Id. at p. 40.

<sup>22</sup> Transcript, Pennington County Public Hearing, November 28, 2007, pp. 40-41 (Testimony of Paul Meneghini).

<sup>23</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, p. 28 (Testimony of Paul Eberth).

<sup>24</sup> See Ex. 124 (Checklist). (See Transcript, Itasca County Public Hearing, April 8, 2008, p 21).

<sup>25</sup> Transcript, Red Lake County Public Hearing, November 28, 2007, pp. 27-36.

<sup>26</sup> Transcript, Red Lake County Public Hearing, November 28, 2007, pp. 28-29 (Testimony of Michael Harris).

<sup>27</sup> Transcript, Red Lake County Public Hearing, November 28, 2007 at p.30 (Testimony of Jerrid Anderson).

construction to provide a barrier which will ensure that the construction area on the property is limited and kept within that which is in the easement agreement.<sup>28</sup>

In a later discussion regarding the Berry property, Enbridge again articulated its intention to reduce the area of disturbance by placing pipes as close together as possible (“necking down”) and to limit the construction workspace as much as possible.<sup>29</sup> A permit condition should require Enbridge to reduce line separation and temporary workspace, to the extent safely feasible, as outlined in the public hearings.

**12. Gunvalson Property, Mile Post 902.** John Gunvalson indicated that the current location of the culvert on his property does not line up with the creek on his property.<sup>30</sup> The result is that significant rainfalls run directly across his field and wash away topsoil.<sup>31</sup> Relocating the culvert to the north side of the pipeline would eliminate this problem.<sup>32</sup> Enbridge representatives indicated at the public hearing that relocating this culvert could be accomplished, if the necessary permits could be obtained from authorities with jurisdiction over the ditch.<sup>33</sup> Enbridge indicated it has subsequently learned that permits will be required from Pine Lake Township and the Red Lake Watershed District. Enbridge applied for these permits and moved the culvert to resolve Mr. Gunvalson’s concerns.<sup>34</sup>

**13. Peggy Hanson Property, Tract 600D, Map AC-076:** Ms. Hanson inquired about the impact to her property.<sup>35</sup> Enbridge officials indicated that a detailed map will be provided and surveyors can mark the temporary work space on the property.<sup>36</sup>

**14. Richard Holter, Tracts T-579E and T-572:** Mr. Holter inquired about what the setback requirements are from pipelines.<sup>37</sup> Enbridge stated it is unaware of any federal, state or local setback laws or ordinances that apply to the area outside of the permanent easement.<sup>38</sup>

**15. Bill Schroeder, Tract 621A:** Mr. Schroeder did not make a particular request, but Enbridge indicated that the proposed alignment would go directly through Mr.

---

<sup>28</sup> Transcript, Red Lake County Public Hearing, November 28, 2007 at p. 35 (Testimony of Jerrid Anderson).

<sup>29</sup> Transcript, Pennington County Public Hearing, Minnesota, November 28, 2007, p. 59 (Testimony of Jerrid Anderson).

<sup>30</sup> Transcript, Polk County Public Hearing, 44-45.

<sup>31</sup> Transcript, Polk County Public Hearing at 45.

<sup>32</sup> Transcript, Polk County Public Hearing at 47.

<sup>33</sup> Transcript, Polk County Public Hearing at 46, 48.

<sup>34</sup> [Need citation]

<sup>35</sup> Transcript, Beltrami County Public Hearing, March 25, 2008, p. 30.

<sup>36</sup> Transcript, Beltrami County Public Hearing, March 25, 2008, p. 30.

<sup>37</sup> Transcript, Beltrami County Public Hearing, March 26, 2008, pp. 40-41.

<sup>38</sup> Landowner Request Follow-Up, p. 2, filed April 21, 2008, available online at <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129314>

Schroeder's 40-acre parcel.<sup>39</sup> Enbridge stated that its Right-of-Way Agents will contact Mr. Schroeder to discuss the proposed placement of the pipes through the Schroeder property.<sup>40</sup>

**16. Mike Schmid, Tract 541-A on Map AC-081:** Mr. Schmid requested that the proposed pipelines be located on the north side of the current pipelines, between the existing lines and the railroad tracks.<sup>41</sup> This would require moving a crossing point further back, near Highway 101.<sup>42</sup> Enbridge stated that its contract Right-of-Way Agent will be contacting Mr. Schmid to discuss the location of the proposed pipelines across his property. Subsequent review found that Mr. Schmid does not own the land on the north side where he is asking Enbridge to move the pipeline.<sup>43</sup> Enbridge indicated that, if necessary, Enbridge can construct the new pipelines in the existing easement on the south side of existing pipelines. Enbridge stated that Mr. Schmid will not negotiate for the use of temporary workspace, and Enbridge plans to secure the temporary workspace needed at this location through other measures. However, on November 18, 2008, Enbridge stated that it hopes to meet again with Mr. Schroeder during the week of November 17, 2008.<sup>44</sup>

**17. Kevin and Julie Braith, T-250B, Map AC-110.** Kevin and Julie Braith are concerned about the distance from their home to the new lines.<sup>45</sup> Enbridge indicated that they would provide the Braiths with a detailed map, and if necessary, send a surveyor to review their property with them.<sup>46</sup> Enbridge's contract Right-of-Way Agent met with Kevin and Julie Braith on May 10, 2008 to address their concerns regarding the location of the proposed pipelines relative to their residence and the affect construction may have on their water well. After further review and discussion, it was discovered that they had confused the "blue" line, which is the boundary of the requested route width, with the actual location of the proposed pipelines. Enbridge and the Braiths have reached an agreement that addresses the Braiths' concerns, which is claimed to be trade secret.<sup>47</sup>

**18. Terri Wittwer, T-169, Map AC-120:** At the St. Louis County Public Hearing, the Enbridge panel told Mrs. Wittwer that the pipe would be moved as close as possible to the existing gas pipeline in order to locate it as far as possible from the home site.<sup>48</sup> Enbridge stated it would provide detailed information regarding

---

<sup>39</sup> Transcript, Beltrami County Public Hearing, March 26, 2008, pp. 44-49 (Testimony of Bill Schroeder).

<sup>40</sup> Landowner Request Follow-Up, p.3.

<sup>41</sup> Transcript, Cass County Public Hearing, March 26, 2008, pp. 65-70.

<sup>42</sup> *Id.*

<sup>43</sup> The Landowner Request Follow-Up document indicated that Enbridge would further review Mr. Schmit's suggestion. The information presented in this paragraph is the result of that further review.

<sup>44</sup> Exhibit M, pp. 4-5.

<sup>45</sup> Transcript, Itasca County Public Hearing, April 8, 2008, pp. 34-40.

<sup>46</sup> *Id.*; see also Landowner Request Follow-Up, p. 3.

<sup>47</sup> This information only became available following the filing of the Landowner Request Follow-up.

<sup>48</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, pp. 25-34.

the proposed alignment.<sup>49</sup> Subsequently, Enbridge indicates that Enbridge and Mrs. Wittwer were able to resolve Mrs. Wittwer's concerns.<sup>50</sup>

**19. Violet Johnson (appearing on behalf of Kevin Johnson), T-198A, Map AC-117:** A culvert was crushed by a contractor and not repaired during the last project.<sup>51</sup> Violet Johnson was told by Enbridge witness Paul Norgren that Enbridge will meet with her son and make things right.<sup>52</sup> Enbridge stated that its's contract Right-of-Way agent contacted Mr. Kevin Johnson after the date the Landowner Request Follow-up document was filed, and is presently was working with Kevin Johnson to replace the culvert that was crushed during the last project. Enbridge stated that it planned plans to install a 30' x 15" culvert as requested by County officials. Subsequently, Enbridge indicated that Enbridge has resolved the issues raised.<sup>53</sup>

**20. Gerald Lind, T-163A, Map AC-120:** Gerald Lind is a homeowner located at AC-120 T-163A. He voiced a number of safety concerns related to the location of the Gowan pump station. He said that his cabin in within 200 feet of the pumping station, and that he is afraid of leaks and explosions. Mr. Lind submitted an exhibit that was marked as Exhibit AD. He would like an explanation as to the location of the flare pit, and why any changes to the location may have been made. Mr. Lind expressed his concern about the pipeline's effect on his property value.<sup>54</sup> Enbridge will stated that it would review the drawing entered as Exhibit AD to determine its origin (if possible) and what factors contributed to the siting of the flare pit at its actual location (again, if possible). The current (proposed) alignment would have the Alberta Clipper and Southern Lights pipelines cross the southwest corner of Mr. Lind's property (Tract 163-A), south of the existing Enbridge pipelines.<sup>55</sup> Subsequently, Enbridge indicated that it has successfully resolved Mr. Lind's concerns.<sup>56</sup>

**21. Robert Johnston (on behalf of his mother), T-167, Map AC 120:** Mr. Johnston was concerned about the location of the pipeline and easements, and their effect on his mother's property. He said that the location of the easements would limit the use of the property to light cropping and grazing.<sup>57</sup> Enbridge stated that it would visit Mr. Johnston and his mother with detailed drawings to negotiate and

---

<sup>49</sup> Landowner Request Follow-Up, p. 3.

<sup>50</sup> Exhibit M, p. 7.

<sup>51</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, pp. 35-39.

<sup>52</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, pp. 37-39.

<sup>53</sup> Exhibit M, p. 8.

<sup>54</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, pp. 62-74.

<sup>55</sup> Landowner Request Follow-Up, p. 4.

<sup>56</sup> Exhibit M, p. 8-9.

<sup>57</sup> Transcript, St. Louis County Public Hearing, April 9, 2008, pp. 77-81.

discuss land and timber values.<sup>58</sup> Subsequently, Enbridge indicated that Mr. Johnston's concerns have been successfully resolved.<sup>59</sup>

**22. Earl Stewart (on behalf of David and Marcella Stewart):** The Stewarts requested that Enbridge keep construction north of the railroad tracks, maintain ditches and culverts, clean existing culverts and drains, replace topsoil, level and smooth for crops, bury deep enough for logging equipment to cross and leave service roads intact for their use.<sup>60</sup> Enbridge stated that its contract Right-of-Way Agent will contact David and Marcella Stewart upon completion of the detailed construction alignment sheets for their property.<sup>61</sup> Enbridge further indicated that this part of the route also affects railroad property and it will need to resolve any issues with the railroad before it will be able to resume any negotiations with the landowner. On November 18, 2008, Enbridge advised that it is continuing to examine the feasibility of staying on the north side of the railroad tracks.<sup>62</sup>

**23. Carol Anderson, T-45, Map AC-133:** Carol Anderson was upset that trees were not replanted after the last expansion project.<sup>63</sup> Enbridge subsequently indicated that they would contact/contacted the Andersons to follow-up on their concerns, and showed them receipts for payment for trees taken on the last project.<sup>64</sup> This appears to be resolved.<sup>65</sup>

**24. John and Shirley Morgan, and Kevin and Sandy Morgan, T-194-A.** These landowners highlighted significant concerns about the pipelines going through their property, including devaluation due to successive pipeline construction projects. Enbridge indicated it has purchased the properties in fee.<sup>66</sup>

**25. Rich Antilla, T-418, 34929 Church Road, Deer River, MN.** Mr. Antilla opposed the 500 foot route width because it would eliminate 14 acres of his property to use as saleable building sites, and they had purchased the property as an investment of \$187,000. Enbridge indicated on October 9 in a response to an IR that it had clarified that the 500-foot route is not the ultimate width of the right of way or temporary working space. The Company believes that there will be minimal additional impact at this location because it requires 20 feet of additional permanent easement and the additional work space parallel to the existing pipeline on his property.<sup>67</sup>

---

<sup>58</sup> Landowner Request Follow-Up, p. 4.

<sup>59</sup> Exhibit M, p. 9.

<sup>60</sup> Transcript, Carlton County Public Hearing, April 9, 2008, pp. 73-77.

<sup>61</sup> Landowner Request Follow-Up, p. 4.

<sup>62</sup> Exhibit M, p. 9-10.

<sup>63</sup> Transcript, Carlton County Public Hearing, April 9, 2008, pp. 40-43.

<sup>64</sup> *Id.*

<sup>65</sup> Exhibit M, p. 10.

<sup>66</sup> Exhibit M, p. 13-14.

<sup>67</sup> Exhibit M, p. 14.

**26. Larry and Karen Holmquist, T-282 and T-282B.** The Holmqists stated they are concerned about the location of the proposed pipelines relative to their house and the associated safety risks. The Holmqists' concerns have not been resolved. Enbridge stated that the Holmqists and Enbridge have exchanged offers for a permanent easement and temporary workspace, but have not reached a mutually acceptable resolution.<sup>68</sup>

**27. Dave and Lynn Beatty, T-56A, 625 Cemetery Rd., Wrenshall, MN.** Mr. Beatty asked why Enbridge is asking for additional footage on the south side of the existing line (25 feet) and 75 feet to the north side of the existing line. He stated that the original plan was for 75 feet additional footage to allow installation of both lines on one side of the existing line. Mr. Beatty questioned whether Enbridge had ulterior motives to "bank" additional space for future expansion projects. Enbridge first responded that the Beatty's property will involve a boring under a road and additional temporary workspace will be needed for this special construction technique, but it believes impact to the property will be minimal. On November 17, 2008, Enbridge indicated that it was able to eliminate the temporary workspace that Mr. Beatty was concerned about and that negotiations are ongoing with the Beattys over the final terms of their agreement.<sup>69</sup>

**28. Peggy Holter, T-572, Bemidji, MN.** Ms. Holter opposed any plan to route the pipeline across her property, and noted that her neighbor Tim Falk has an issue with a barn being in the way of the pipeline. Enbridge has proposed a re-route to the eastern side of her property. She stated that Bemidji is growing and her property will be quite valuable for future development, and that the pipeline would significantly reduce the value with the loss of acreage and accessibility. On November 17, 2008, Enbridge stated that it is waiting until after the Minnesota hunting season to flag the temporary workspace, and believes Ms. Holter will sign easement and temporary workspace agreements at that time.<sup>70</sup>

**29. Jim and Cindy Ridley, T-307, Grand Rapids.** The Ridleys stated that the pipeline is virtually making their property worthless as the first pipeline option would be right next to their house, and the second would surround their property by pipelines, create a wind tunnel and leave them with no tree protection. The last pipeline decreased the value of their property significantly. Futher they feat for their safety and are experiencing mental anguish and sleepless nights which can affect their health. Enbridge indicated that following refinement of the route through this area, the Ridley's tract is no longer affected by the project.<sup>71</sup>

**30. Michael Karna, T-313, 21205 Bluebird Drive, Grand Rapids.** Enbridge has purchased this property in fee.<sup>72</sup>

---

<sup>68</sup> Exhibit M, p. 15.

<sup>69</sup> Exhibit M, p. 12.

<sup>70</sup> Exhibit M, p. 12.

<sup>71</sup> Exhibit M, p. 14.

<sup>72</sup> Exhibit M, p. 14.

**31. Mike Bohnam (Harold Bohnam family), T-321, 21727 County Rd. 71, Grand Rapids, MN.** Mr. Bohnam is concerned with the width of the easement, and the consistent widening of it with successive pipeline projects. Every time the easement gets larger and trees are removed, the winds get stronger and cause higher heating costs due to wind chills. He is concerned with devaluation of his property and detailed issues with prior pipeline construction projects, including increases in invasive weeds, improper soil replacement, and no reseeding. He also stated his intent to raise certified organic beef, and that Enbridge should be responsible and compensate landowners when they come in and do repairs. Enbridge stated that it had been working with Mr. Bohnam about the impact to his trees during construction, but was unable to resolve the issue. Enbridge further stated that it had been unable to contact Mr. Bohnam since the October 9, 2008 response to EFP Staff's IR was sent.<sup>73</sup>

**32. Alice Peterson, T-923.** Enbridge stated that it must respond to a letter from Ms. Peterson and Randy Peterson (Exhibit AH). Further, Enbridge states that Ms. Peterson and Enbridge have resolved the issues successfully.<sup>74</sup>

**33. Dan Sauve, Clearwater County Engineer:** Mr. Sauve requested a meeting with the construction contractor and the Enbridge inspectors when they come into the county.<sup>75</sup> Enbridge has met with the Clearwater County Engineer officials on Thursday, May 22, 2008. The purpose of this meeting is was to ensure that the traffic routes through the county are clearly communicated and the construction schedules are explained.<sup>76</sup>

**34. Jack Gustafson, Cass Lake:** Mr. Gustafson inquired about impacts to the MiGiZi bike trail and several events held on that trail through the summer.<sup>77</sup> Enbridge indicated that the triathlon held in June will not be impacted, but is was not able to determine whether the other events mentioned by Mr. Gustafson will be impacted by construction.<sup>78</sup> Subsequently, Enbridge stated that it is conducting further consultation sessions with the Chippewa National Forest and the State of Minnesota in an effort to address the timing of its construction work activities as it relates to the seasonal use of the MiGiZi bike trail.<sup>79</sup>

**35. Ervine Blom, Eckles Township Board:** Mr. Blom is on the Eckles Township board. He requested that a performance bond be provided to ensure that township roads are repaired after construction. He also requested that an Enbridge representative discuss this matter with the town board.<sup>80</sup> Enbridge representatives met with the Eckles Township Board (June 11) to discuss the Alberta Clipper

---

<sup>73</sup> Exhibit M, p. 13.

<sup>74</sup> Exhibit M, p. 9.

<sup>75</sup> Transcript, Clearwater County Public Hearing, March 25, 2008, pp. 37-38.

<sup>76</sup> Landowner Request Follow-Up, p. 1; Exhibit M, p. 1.

<sup>77</sup> Transcript, Beltrami County Public Hearing, March 25, 2008, pp. 33-35.

<sup>78</sup> Landowner Request Follow-Up, p. 2.

<sup>79</sup> Exhibit M, p. 1.

<sup>80</sup> Transcript, Beltrami County Public Hearing, March 25, 2008, pp. 110-114.

project, and has had follow-up conversations regarding access roads, crossing Grant Creek and the Mississippi River on June 18, July 28, and August 7, 2008.<sup>81</sup>

**36. Jim Edelman, Lammers Township Board:** Lammers Township asked Mr. Edelman to attend the hearing. Mr. Edelman requested that an Enbridge Representative attend the town board meeting, held on the second Tuesday of the month at 7:00. Although he did not make any other requests, he indicated that his concerns were with road repair and black dirt.<sup>82</sup> Enbridge representatives attended the Lammers Township Board meeting on May 13, 2008 to discuss the Alberta Clipper and Southern Lights Diluent Projects, explain the permit process, discuss road repair and post-construction restoration practices for topsoil, and explain the post-construction final damage release form.<sup>83</sup>

**37. Jack Rajala - Boundary Company.** Mr. Rajala wants to visit with Enbridge prior to the start of construction. Mr. Rajala indicated that access to the workspace should be communicated to and permission obtained from the Boundary Company before work begins.<sup>84</sup> An Enbridge contract Right-of-Way Agent met with Mr. Rajala to discuss his concerns relative to egress/ingress to the Project from his property by heavy logging equipment during logging operations, advised him that Enbridge was working on a proposed route which would avoid the plant operation west of Deer River, and issues during the construction phase.<sup>85</sup> Enbridge advised Mr. Rajala that if he needed to cross the pipeline easement with logging equipment, he should contact the region Right of Way Agent or Pipeline Maintenance Office in Bemidji and they will assist to install a correct pipeline crossing.<sup>86</sup> The ALJ recommended that the Pipeline Routing Permit should require Enbridge to notify and obtain permission from the Boundary Company prior to the commencement of construction or other activities.<sup>87</sup>

**38. Greg Bernu, Carlton County Commissioner:** Commissioner Bernu asked Enbridge to attend a county board meeting on April 28 at 4:00. Carlton County is interested in working with Enbridge on the Fond du Lac Route Alternative.<sup>88</sup> As requested by Mr. Bernu, Enbridge representatives attended the Carlton County Board meeting on April 28, 2008. At this meeting, Enbridge representatives gave a presentation and answered questions about the Alberta Clipper Project.<sup>89</sup>

---

<sup>81</sup> Landowner Request Follow-Up, p. 2; Exhibit M, p. 2.

<sup>82</sup> Transcript, Beltrami County Public Hearing, March 26, 2008, p. 35.

<sup>83</sup> Landowner Request Follow-Up, p. 2; Exhibit M, p. 3.

<sup>84</sup> Transcript, Itasca County Public Hearing, April 8, 2008, pp. 108-112.

<sup>85</sup> Landowner Request Follow-Up, p. 3.

<sup>86</sup> Exhibit M, pp. 6-7.

<sup>87</sup> ALJ Report at [REDACTED].

<sup>88</sup> Transcript, Carlton County Public Hearing, April 9, 2008, pp. 71-73.

<sup>89</sup> Exhibit M, p. 11.

**Criterion B: Consideration of the natural environment, public and designated lands, including, but not limited to, natural areas, wildlife habitat, water, and recreational lands.**<sup>90</sup>

[Supplemental Finding] **39.** Enbridge has identified some potential impacts on the natural environment both in body of the AC/SLD PRP Application<sup>91</sup> and in the accompanying EAS,<sup>92</sup> in the Northwest and Southeast Comparative Environmental Analysis (CEA's),<sup>93</sup> and in the Fond du Lac Route Alternative Supplement filed on April 21, 2008.<sup>94</sup>

**40.** The EAS identified four Ecological Classification Systems within which the Alberta Clipper project will be located.<sup>95</sup> From Milepost 801.8 (at the North Dakota border) to Milepost 896.2, much of the area has been converted to agriculture.<sup>96</sup> Typical upland forest cover along the route is aspen-birch forest.<sup>97</sup> A majority of the wetlands present along the REVISED Preferred Requested route and Alignment alignment are the emergent marsh or scrub-scrub swamp variety.<sup>98</sup> Information regarding sensitive plant communities was obtained from the Natural Heritage Program administered by the Minnesota Department of natural Resources and U.S. Fish and Wildlife Service.<sup>99</sup>

**41.** Vegetation cover will be removed from the construction right-of-way and temporary workspace areas. Active re-vegetation measures will be employed to restore vegetative cover<sup>100</sup> as provided in the EMP.<sup>101</sup>

**42.** Representative species of existing wildlife resources<sup>102</sup> and fisheries resources<sup>103</sup> have been identified. Enbridge has also consulted with the Minnesota DNR and the United States Fish and Wildlife Service to determine whether threatened or endangered species might be found in the vicinity (within one mile) of the project.<sup>104</sup> Sixteen known occurrences of rare species or plant communities were indicated in the area searched.<sup>105</sup>

---

<sup>90</sup> Minnesota Rule 7852.1900, subp. 3, B.

<sup>91</sup> Ex. 100, § 4415.0145.

<sup>92</sup> Ex. 100, Tab C.

<sup>93</sup> Ex. 15 and 119, respectively.

<sup>94</sup> Available online at <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129096> (last visited May 19, 2008).

<sup>95</sup> Ex.100, Tab C, Section 7.1.2, p. 7-1.

<sup>96</sup> Id.

<sup>97</sup> Ex, 100, Tab C, Section 7.1.3, p. 7-2.

<sup>98</sup> Id.

<sup>99</sup> Ex. 100, Tab C, Section 7.1.4, p. 7-3.

<sup>100</sup> Ex. 100, Section 4415.0145, p. 4.

<sup>101</sup> Ex. 101, Tab D, Appendix B, Section 7.7, pp. 28-29.

<sup>102</sup> Ex. 100, Tab C, Section 7.2.1, p. 75.

<sup>103</sup> Ex. 100, Tab C, Section 7.3.1, p. 7-7.

<sup>104</sup> Ex. 100, Tab C, Section 7.4, p. 7-8.

<sup>105</sup> Ex. 100, Tab C, Table 7.4.1-1, pp. 7-9.

**43.** The water resources in the area of the Alberta Clipper and Southern Lights Diluent Projects have been identified and described. With respect to groundwater resources, the aquifers crossed by the Alberta Clipper Project pipeline route are named and characterized.<sup>106</sup> Enbridge has noted that ground disturbance during construction will generally be less than 10 feet in depth, which remains above the water table for most of the area affected.<sup>107</sup> Enbridge has also submitted a Spill Prevention, Containment and Control Plan which describes measures to prevent groundwater contamination.<sup>108</sup>

**44.** The surface water resources along the route of the proposed Alberta Clipper and Southern Lights Diluent Projects have also been identified. Water body crossings are categorized and presented by location (milepost), jurisdiction (county), and name and type of water body.<sup>109</sup> Specific construction methods relating to water body crossings are included in the EMP.<sup>110</sup>

**45.** A separate inventory of wetlands crossings has also been prepared and presented by wetland type, county and number of acres affected.<sup>111</sup> Again, specific construction methods for wetland areas have been described.<sup>112</sup>

**46.** Enbridge has determined that the Alberta Clipper and Southern Lights Diluent Projects will cross four rivers listed on the National River Inventory, none of which are designated Wild and Scenic Rivers.<sup>113</sup> The only recreational areas crossed by the route of the proposed Alberta Clipper and Southern Lights Diluent Projects are three state-designated canoe and boating routes<sup>114</sup> and the MiGiZi bike trail.<sup>115</sup> The pipeline does come within .5 mile of three state wildlife management areas.<sup>116</sup>

**47.** The Minnesota DNR submitted numerous extensive comments on October 8, 2007, and April 21, 2008, and letters dated August 1, 2008 and September 21, 2008. DNR also submitted an update to the EFP Staff on November 13, 2008, which summarizes DNR's recommendations. In the letters dated August 1 and November 13, 2008, DNR states that its comments of October 8, 2007 and April 21, 2008 were largely not addressed by the ALJ in his report. Enbridge filed a Response to the April 21 DNR comments. DNR has recommended a number of permit conditions.

**48.** Recommendation for dealing with site-specific issues for waterbodies. Enbridge must acquire a License to Cross Public Waters from the DNR.<sup>117</sup> These

---

<sup>106</sup> Ex. 100, Tab C., pp. 8-1, 8-2.

<sup>107</sup> Ex. 100, Section 4415.0145, p. 5.

<sup>108</sup> Ex. 101, (see Tab D, Appendix C).

<sup>109</sup> Ex. 100, Tab C, Section 9.0 (see Tables 9.1.1-1 and 9.1.1-2).

<sup>110</sup> Ex.101, Appendix B, Section 2.0, pp. 10-16.

<sup>111</sup> Ex. 100, Tab C, Section 9.3 (see Table 9.3.1-2), pp. 9-13, 9-14.

<sup>112</sup> Ex, 101, Appendix B, Section 3.0, pp. 17-20.

<sup>113</sup> Ex. 100, Tab C, Section 11.1.1, p. 11-1.

<sup>114</sup> Ex. 100, Tab C, Section 11.1, p. 11-2.

<sup>115</sup> Transcript, Beltrami County Public Hearing, March 25, 2008 at 32-35 (Testimony of Mr. Jack Gustafson).

<sup>116</sup> Ex.100, Tab C, Section 11.1.2, p. 11-1.

<sup>117</sup> Ex. 100, § 4415.0165.

site-specific issues should and will be thoroughly analyzed and dealt with during that application process.<sup>118</sup> Enbridge will abide by the terms of all permits required by state law.<sup>119</sup>

**49.** The Minnesota DNR also submitted several comments regarding replacement of woody buffers along streams. At the outset, the right-of-way must be kept clear in order to facilitate inspections of the right-of-way, avoid damage from tree roots, allow timely emergency response, and help delineate a the location of the pipelines to reduce the potential of other parties striking the pipeline.<sup>120</sup> Enbridge has proposed a precedent-setting woody vegetation plan to the Minnesota DNR.<sup>121</sup> In general, this plan includes replanting along the banks of riparian corridors to within ten feet of the location of the proposed pipelines.<sup>122</sup>

**50.** Enbridge has also agreed to limit clearing near river crossings by waiting to clear the final 20 feet of any river crossing until 24 hours before construction activity is scheduled to begin.<sup>123</sup> Enbridge has also agreed not to clear woody vegetation over the path of underground horizontal directional drilling (“HDD”) sites under water bodies.<sup>124</sup>

**51.** Several of the DNR’s comments concerned ATV and vehicular damage along the route. Enbridge will work with landowners to prevent trespass.<sup>125</sup> Enbridge, however, does not own the land and therefore lacks authority to limit access and cannot place signs or barriers without the landowner’s consent.<sup>126</sup>

**52.** Topsoil segregation is not a suitable method to prevent the spread of invasive species in upland areas due to the very limited amount of topsoil that is present.<sup>127</sup> The size of the equipment and the presence of tree stumps and roots make this process impractical.<sup>128</sup> The EMP and AMP, however, address the spread of invasive species through early identification of affected locations and cleaning construction equipment.<sup>129</sup>

**53.** Enbridge acknowledges the need to reduce the spread of invasive species.<sup>130</sup> This is a special concern of the Minnesota DNR.<sup>131</sup> Compliance with the

---

<sup>118</sup> Response to Public Comments of the DNR, pp. 3, 4, available online at <https://www.edockets.state.mn.us/Efiling/ShowFile.do?DocNumber=5165533>.

<sup>119</sup> See Minn. R. 7852.3600, A.

<sup>120</sup> Response to Public Comments of the DNR, p. 4.

<sup>121</sup> Response to Public Comments of the DNR, p. 10.

<sup>122</sup> Response to Public Comments of the DNR, p. 10.

<sup>123</sup> Response to Public Comments of the DNR, pp. 10-11.

<sup>124</sup> Response to Public Comments of the DNR, p. 11.

<sup>125</sup> Response to Public Comments of the DNR, p. 11.

<sup>126</sup> Response to Public Comments of the DNR, p. 11.

<sup>127</sup> Response to Public Comments of the DNR, p. 4.

<sup>128</sup> Response to Public Comments of the DNR, p. 4.

<sup>129</sup> Response to Public Comments of the DNR, p. 4.

<sup>130</sup> Response to Public Comments of the DNR, p. 4.

<sup>131</sup> *Id.*

Agricultural and Environmental Mitigation Plans, which is a proposed condition in the Pipeline Routing Permit, will minimize this risk.

**54.** The MCEA submitted public comments at the end of the comment period.<sup>132</sup> These comments focus on the environmental review conducted for the proposed Alberta Clipper and Southern Lights Diluent Projects. Some of the MCEA's comments fail to acknowledge facts that have been established in the record.

**55.** The MCEA's first comment is that Enbridge must apply for a public waters work permit under the Wetlands Conservation Act.<sup>133</sup> Compliance with applicable permits is a required condition of any pipeline routing permit issued by the MPUC.<sup>134</sup> Therefore, if a public waters work permit is necessary under Minnesota law, Enbridge will be required to obtain and abide by that permit.

**56.** Another concern expressed by the MCEA is the lack of a wetland sequencing analysis in the AC/SLD PRP Application and associated environmental assessment supplement.<sup>135</sup> A wetlands replacement plan is distinct and separate from an Environmental Impact Statement ("EIS").<sup>136</sup> Inclusion of a wetlands sequencing analysis is not required by law for the AC/SLD PRP Application or even for a full EIS. Minn. Stat. 103G.222 governs wetland replacement plans, but does not require a sequencing analysis in an EIS. Likewise, the rule governing the content of an EIS does not require inclusion of a wetland sequencing analysis,<sup>137</sup> nor does the rule governing the analysis of an application for a pipeline routing permit.<sup>138</sup>

**57.** Enbridge has considered wetlands in the development of the proposed route of the Alberta Clipper and Southern Lights Diluent projects. Section 2.2.2 of the Environmental Assessment Supplement states that adjustments were made to the proposed route to avoid or minimize impacts to sensitive environmental features.<sup>139</sup> The route development analysis included NWI-mapped and forested wetlands.<sup>140</sup> Several of the route alternatives were specifically developed to avoid or reduce impacts to wetlands.<sup>141</sup>

---

<sup>132</sup> MCEA Comments, available online in six parts, beginning with <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129315> (last visited May 20, 2008).

<sup>133</sup> MCEA Comments at 2.

<sup>134</sup> Minn. R. 7852.3600, A.

<sup>135</sup> MCEA Comments at 3, 8.

<sup>136</sup> See *Minnesota Center for Environmental Advocacy v. Big Stone County Bd. Of Commissioners*, 638 N.W.2d 198 (Minn. Ct. App. 2002) (considering the EIS process and wetland replacement plan approval separately).

<sup>137</sup> Minn. R. 4410.2300.

<sup>138</sup> Minn. R. 7852.1900.

<sup>139</sup> Ex. 100, Tab C, § 2.2.2, p. 2-5.

<sup>140</sup> Ex. 100, Tab C, § 2.2.3, p. 2-7.

<sup>141</sup> See Ex. 104, Tab 7 (Fen Avoidance Alternative); Ex. 116, Tab 5 at part 5.B (Necktie River and Great Lakes Gas Alternative); Ex. 117, part 13.B (Fond du Lac Route Alternative width designed to address concerns related to wetland crossings).

**58.** The MCEA also expressed concerns about an alleged lack of detail regarding wild and scenic river crossings.<sup>142</sup> The Environmental Assessment Supplement to the AC/SLD PRP Application acknowledges the National Wild and Scenic Rivers Act and the requirement for federal agencies to consider methods to mitigate impacts to these waterbodies as part of their permitting process.<sup>143</sup> Enbridge must obtain permits from the United States Army Corps of Engineers,<sup>144</sup> which would be aware of the National Wild and Scenic Rivers Act. The AC/SLD PRP Application and associate materials disclose that the proposed route of the projects will cross four rivers listed in the Nationwide Rivers Index, a list of rivers maintained by the National Park Service that potentially qualify as national wild, scenic or recreational river areas pursuant to Section 5(d) of the National Wild and Scenic Rivers Act.<sup>145</sup> None of these rivers are federally-designated wild and scenic rivers.<sup>146</sup> Nothing in the record indicates that Enbridge will fail to acquire and comply with all relevant permits or environmental regulations.

**59.** The MCEA also asserted that the AC/SLD PRP Application and associated materials should discuss cumulative impacts related to stream crossings, wetlands and permanent clearing.<sup>147</sup> The term “cumulative impacts” relates to consideration of whether a generic EIS is required, not to any project-specific environmental review.<sup>148</sup> The Minnesota Supreme Court has specifically stated that “cumulative impact” and “cumulative potential effects” are different terms under the Minnesota Environmental Policy Act.<sup>149</sup> The definition of “cumulative impact” given in Minn. R. 4410.0200(11) does not apply to the project-specific “cumulative potential effects” criterion given in Minn. R. 4410.1700(7)(B).<sup>150</sup> A “cumulative potential effects” inquiry is more limited in geography and timing than the “cumulative impact” inquiry used for generic EIS determinations.<sup>151</sup> Because the Minnesota rules on the alternative environmental review process require a cumulative potential effects, not a cumulative impacts, analysis,<sup>152</sup> the MCEA’s assertion that a “lack of even the mention of cumulative impacts” renders the Enbridge project-specific environmental review inadequate is therefore incorrect.

**60.** Enbridge has considered the cumulative potential effects of the proposed Projects in accordance with Minnesota law. The Minnesota Rules regarding environmental review for pipeline projects limit the cumulative potential effects

---

<sup>142</sup> MCEA Comments at 4-5.

<sup>143</sup> Ex. 100, Tab C, § 9.2.3, p. 9-5 to 9-6.

<sup>144</sup> Ex. 100, § 4415.0165.

<sup>145</sup> Ex. 100, Tab C, § 9.2.3, p. 9-5 (emphasis added).

<sup>146</sup> Ex. 100, Tab C, § 11.1.1, p. 11-1.

<sup>147</sup> MCEA Comments at 8.

<sup>148</sup> *Citizens Advocating Responsible Development (CARD) v. Kandiyohi County Bd. of Commissioners*, 713 N.W.2d 817, 825 (Minn. 2006).

<sup>149</sup> *CARD*, 713 N.W.2d at 825.

<sup>150</sup> *Id.* at 827.

<sup>151</sup> *Id.* at 830.

<sup>152</sup> Minn. R. 7852.1900(3)(l).

that must be considered to those involving related or anticipated future pipeline construction.<sup>153</sup> Enbridge has no plans for any such construction projects.

**61.** The MCEA also expressed concerns regarding habitat fragmentation.<sup>154</sup> The Environmental Assessment Supplement to the AC/SLD Route Application and associated materials include a discussion of wildlife. The Route Application states that long-term effects on wildlife species will be limited because the pipeline will be collocated with the existing pipeline right-of-way.<sup>155</sup> This means that habitat fragmentation will not be a result of the project, since no additional lines through wildlife habitat will be created along the overwhelming majority of the proposed route. Accordingly, there will be no permanent new fragmentation for the Revised Preferred Route and Alignment.

**62.** The MCEA asserts that Enbridge has not addressed the fact that a permit is required from the U.S. Army Corps of Engineers to discharge fill into a wetland under 33 U.S.C. 1344.<sup>156</sup> Section 4415.0165 of the AC/SLD PRP Application, however, acknowledges that a Section 404 permit from the U.S. Army Corps of Engineers is required for the projects.

**63.** The MCEA also asserts that there is inadequate identification of streams or rivers that will be impacted by the proposed projects.<sup>157</sup> Appendix H to Exhibit 101 presents a list of waterbodies that will be impacted and the location of the crossings. Specific crossing methods cannot be provided for these locations because such methods must be developed in consultation with the appropriate regulatory agency through the agency's permitting process.<sup>158</sup> Information about various crossing methods is also provided,<sup>159</sup> along with information regarding restoration following the crossings.<sup>160</sup>

**Criterion C: Consideration of lands of historical, archeological and cultural significance.**<sup>161</sup>

**64.** Enbridge has conducted a review of the Minnesota State Historic Preservation Office files to identify any recorded cultural resources within the proposed right-of-way.<sup>162</sup> Seven previous reports on archeological studies of the project area were cited.<sup>163</sup> Nine archeological sites were determined to be located within the construction area. Three of these sites have been determined to be eligible for nomination to the National Register of Historic Places. Enbridge will consult with

---

<sup>153</sup> Minn. R. 7852.1900(3)(l).

<sup>154</sup> MCEA Comments at 8.

<sup>155</sup> Ex. 100, Tab C, § 7.2.3, p. 7-6.

<sup>156</sup> MCEA Comments at 4.

<sup>157</sup> MCEA Comments at 5.

<sup>158</sup> Ex. 100, Tab C, § 9.2.1, p. 9-4.

<sup>159</sup> Ex. 100, Tab C, § 9.2.4, pp. 9-6 to 9-9.

<sup>160</sup> Ex. 100, Tab C, §§ 9.2.4, 9.2.5, pp. 9-10 to 9-11.

<sup>161</sup> Minn. R. 7852.1900, subp. 3, C.

<sup>162</sup> Ex. 100, Section 4415.0145, p. 7.

<sup>163</sup> Ex. 100, Tab C, Section 10.1, pp.. 10-1-10-2.

the appropriate federal and state offices to determine measures to avoid, minimize or mitigate adverse effects to the sites.<sup>164</sup>

**65.** Enbridge is also working with the Leech Lake Heritage Sites Program to survey for sites of cultural significance in the Leech Lake area.<sup>165</sup> Enbridge is also working with the U.S. Department of State to address Section 106 cultural resources consultations that agency is conducting with the Fond du Lac Band.

**Criterion D: Consideration of economies within the route including agricultural, commercial or industrial, forestry, recreational and mining operations.**<sup>166</sup>

**66.** Enbridge has determined that approximately 1,993 acres of agricultural land will be temporarily disturbed during construction of the Alberta Clipper/Southern Lights Diluent projects.<sup>167</sup> Construction activity may interfere with planting or harvesting activity.<sup>168</sup> Landowners will be compensated for crop losses or other damage caused by construction activity.<sup>169</sup>

**67.** All drainage systems will be identified and repaired in accordance with the AMP.<sup>170</sup>

**68.** The issue of drainage systems identification and repair was also raised in the context of public hearings conducted in counties along the route.<sup>171</sup> Contractors are responsible for following the proper construction procedures, but Enbridge is responsible for repair of the drain tile systems.<sup>172</sup> Landowners may also choose to affect their own repairs, which Enbridge would pay for if this option is agreed upon by the parties.<sup>173</sup> Landowners will be asked to help locate drain tile systems.<sup>174</sup>

**69.** The proposed Alberta Clipper/Southern Lights Diluent a total of 97.1 acres of “developed” land, which includes both residential and commercial properties.<sup>175</sup>

**70.** Construction disturbance at open-cut road crossings will typically be limited to one day, and if no reasonable detour is feasible, at least one traffic lane will be maintained. The only exception will be for brief periods essential to laying the new pipeline.<sup>176</sup>

---

<sup>164</sup> Ex. 100, Section 4415.0145, p. 7.

<sup>165</sup> Transcript, Cass County Public Hearing, March 26, 2008 at 45-46 (Testimony of Paul Meneghini).

<sup>166</sup> Minnesota Rule 7852.1900, subp. 3, D.

<sup>167</sup> Ex. 100, Tab C, Section 4.3.1, p. 4-5.

<sup>168</sup> Id. at p. 4-6.

<sup>169</sup> Id.

<sup>170</sup> Ex. 101, Tab D, Appendix E – AMP, pp. 6-8.

<sup>171</sup> Transcript, Polk County Public Hearing, November 28, 2007, pp. 42-43. (Testimony of Michael Harris).

<sup>172</sup> Transcript, Polk County Public Hearing, November 28, 2007, pp. 43-44. (Testimony of Jerrid Anderson).

<sup>173</sup> Id.

<sup>174</sup> Id.

<sup>175</sup> Ex. 100, Tab C, Table 4.2-1, p. 4-2.

<sup>176</sup> Ex. 100, Tab C, Section 4.3.6, p. 4-8

71. Approximately 1,343 acres of timber will be affected by construction of the Alberta Clipper and Southern Lights Diluent Projects.<sup>177</sup> Unless otherwise agreed to by Enbridge and the landowner, Enbridge will salvage and sell any merchantable timber removed from property in the right-of-way.<sup>178</sup> Landowners will be compensated for their tree loss based on appraised values for stumpage, or if appropriate, higher ornamental tree values.<sup>179</sup>

72. The project will have limited impact on recreational activities in the area. Three state-designated canoe and boating routes are crossed by the pipeline.<sup>180</sup> Any impacts on water crossings must be mitigated as specified in the EMP.<sup>181</sup>

73. Testimony was presented regarding avoidance of a source of gravel which a landowner wanted to preserve for later extraction.<sup>182</sup> Enbridge indicated that there should be sufficient space to avoid adverse impact on the gravel deposit.<sup>183</sup>

**Criterion E: Consideration of pipeline cost and accessibility.**<sup>184</sup>

74. Enbridge has estimated the cost for the Minnesota portion of the Alberta Clipper/Southern Lights Diluent projects to be \$1,297,000,000.00 (2006 U.S. dollars).<sup>185</sup>

75. Access to the right-of-way will be from public roadways and approved access roads only.<sup>186</sup>

**Criterion F: Consideration of the use of existing right-of-way and right-of-way sharing or paralleling.**<sup>187</sup>

76. Enbridge assessed the Minnesota portion of the Alberta Clipper/Southern Lights Diluent route with the intent of maximizing the use of existing Enbridge right-of-way to the extent feasible, while identifying specific areas, where co-location may not be feasible.<sup>188</sup> As part of this assessment, a number of federal and state databases, maps and information sources were consulted to identify routing

---

<sup>177</sup> Ex. 100, Tab C, Section 3.2.4, p. 3-6.

<sup>178</sup> Id.

<sup>179</sup> Transcript, Pennington County Public Hearing, November 28, 2007, pp. 46-47 (Testimony of Mike Harris).

<sup>180</sup> Ex. 100, Tab C, Section 11.1, p. 11-1.

<sup>181</sup> Ex. 101, Tab D, Appendix B, pp. 10-16.

<sup>182</sup> Transcript, Marshall County Public Hearing, November 27, 2007, p. 38. (Testimony of Clifford McGregor).

<sup>183</sup> Id. (Testimony of Paul Meneghini).

<sup>184</sup> Minn. R. 7852.1900, subp. 3, E.

<sup>185</sup> Ex. 100, Section 4415.0115, subp. 4, D.(3), p. 4.

<sup>186</sup> Ex. 101, Tab D, Appendix B, Section 1.2, p. 3.

<sup>187</sup> Minnesota Rule 7852.1900, subp. 3, F.

<sup>188</sup> Ex. 100, Tab C, Section 2.2, p. 2-4.

constraints.<sup>189</sup> Co-locating with the existing Enbridge right-of-way, generally on the south/western edge of the right-of-way, was initially determined to be the best route.<sup>190</sup>

**Criterion G: Consideration of natural resources and features.**<sup>191</sup>

77. The Alberta Clipper/Southern Lights Diluent PRP Application includes an analysis of the terrain and geology and soils along the proposed route.<sup>192</sup> The Application states the topography of the area is characterized by gently rolling till plains, hilly acres formed by glacial moraines and out wash plains.<sup>193</sup> The elevation of the Alberta Clipper/Southern Lights Diluent pipeline route varies from a low of 767 feet in Kittson County to a high of 1,474 in Clearwater County.<sup>194</sup>

78. Soil characteristics and depths in the project area have been evaluated per county and by acreage.<sup>195</sup> Potential impacts on soils are considered, as are mitigation measures.<sup>196</sup>

**Criterion H: The extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3[6]00 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.**<sup>197</sup>

79. The Alberta Clipper and Southern Lights Diluent Projects are subject to significant regulatory control in addition to that of the PUC. Lists of the various regulatory agencies and the associated permits can be found on page seven of section 7853.0230 of Exhibit 300 and in Section 7852.3000 (4415.0165) of Exhibit 100. The permits apply to water crossings, water discharge, endangered species consultations, historical consultations, and road crossing permits. There is no indication in the record that any of these permits will fail to be issued, nor is there any indication that Enbridge will fail to abide by their terms or conditions.<sup>198</sup> Enbridge provided an updated list of permits to the EFP Staff which are appropriately accepted in the post-hearing record.<sup>199</sup>

---

<sup>189</sup> Id.

<sup>190</sup> Id. at p. 2-5.

<sup>191</sup> Minn. R. 7852.1900, subp. 3, G.

<sup>192</sup> Ex. 100, Tab C, Sections 5.0 and 6.0, pp. 5-1, 6-7.

<sup>193</sup> Id. at Section 5.1, p. 5-1.

<sup>194</sup> Id. (See Table 5.1-1).

<sup>195</sup> Id. (See Tables 6.2.2-1, 6.2.2-2 and 6.2.2-3).

<sup>196</sup> Id. (See Sections 6.3.1 through 6.3.5).

<sup>197</sup> Minn. R. 7852.1900.H. This rule refers to Minn. R. 7852.3400 for permit conditions related to pipeline right-of-way preparation, construction, cleanup, and restoration practices. Those conditions, however, appear in Minn. R. 7852.3600.

<sup>198</sup> Ex. 307 at pp. 27-28 (Direct Testimony of Bryan J. Minder in MPUC Docket No. PL9/CN-07-465).

<sup>199</sup> See Attachment      to this briefing paper.

**80.** County and township highway officials attended several public hearings. A representative expressing the concerns of local highway officials was present at the November 28 public hearing in Oklee, Minnesota.<sup>200</sup> Red Lake County confirmed that Enbridge has submitted the appropriate applications for Roadway Crossing Permits.<sup>201</sup> It was asked that wherever feasible, heavy loads be directed to state trunk highways rather than lower capacity county highways and townships roads.<sup>202</sup> The County also asked for a 30-day advance notice of the start of construction.<sup>203</sup> Enbridge agreed to comply with these terms. Representatives of Eckles Township<sup>204</sup> and Lammers Township<sup>205</sup> attended public hearings to express their desire to meet with Enbridge to discuss their concerns about road repair. Enbridge met with the township boards to discuss these concerns.<sup>206</sup>

**81.** Enbridge has also developed environmental and impact mitigation plans as part of the Environmental Assessment Supplement to the AC/SLD Route Application.<sup>207</sup> Compliance with these mitigation plans are a condition of a routing permit issued for the Alberta Clipper and Southern Lights Diluent Project.

**82.** Conditions placed on the Alberta Clipper/Southern Lights Diluent Pipeline Routing Permit under Minn. R. 7853.3600 will also help mitigate any impacts to humans or the environment. Minn. R. 3600 contains a list of 14 separate permit conditions, which are addressed as follows:

- The first condition is that “the permittee shall comply with all applicable state rules and regulations.”<sup>208</sup> Compliance with state rules and regulations will ensure that all relevant environmental, safety, and other laws and rules will be followed during construction of the Alberta Clipper/Southern Lights Diluent. This includes compliance with the permits issued by state regulatory agencies as identified in Section 7852.3000 of Exhibit 1. Enbridge has indicated that it will abide by the conditions of all required permits.
- The second condition is that “the permittee shall clear the right-of-way only to the extent necessary to ensure suitable access for construction, safe operation, and maintenance of the pipeline.”<sup>209</sup> Requiring the clearing of land to be limited to only the temporary workspace and the additional permanent easement width described above will serve to keep impacts to the environment to the

---

<sup>200</sup> Transcript, Red Lake County Public Hearing, November 28, 2007, pp. 37-41 (dialogue with Courtland Kleven, Red Lake County Highway Engineer).

<sup>201</sup> Id. at pp. 37-38.

<sup>202</sup> Id. at p. 38.

<sup>203</sup> Id. at p. 39.

<sup>204</sup> Transcript, Beltrami County Public Hearing, March 25, 2008, pp. 110-114 (Testimony of Ervin Blom).

<sup>205</sup> Transcript, Beltrami County Public Hearing, March 26, 2008, p. 35 (Testimony of Jim Edelman).

<sup>206</sup> Landowner Request Follow-Up, filed April 21, 2008, available online at <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129314> (last visited May 19, 2008).

<sup>207</sup> Ex. 101, Tab D, App. B, C, E, F, G.

<sup>208</sup> Minn. R. 7852.3600.A.

<sup>209</sup> Minn. R. 7852.3600.B.

absolute minimum, yet still allow safe construction practices. The permanent easement space will need to be kept free of trees to federally-required inspection of the right-of-way, which Enbridge conducts by air, and allow ready access in case of the need for an emergency repair.

- The third condition is that stream banks must be stabilized with vegetation using native plant species indigenous to the area or by other methods required by applicable state and/or federal permits and/or laws.<sup>210</sup> Enbridge addressed the need and its plan to restore stream banks and prevent erosion in the Environmental Assessment Supplement and the Environmental Mitigation Plan.<sup>211</sup> The Minnesota DNR also issues licenses to cross public waters.<sup>212</sup> This licenses will contain conditions regarding restoration to which Enbridge will adhere to. The presence of this condition in a Pipeline Routing Permit for the Alberta Clipper/Southern Lights Diluent Project will serve to alleviate impacts to the natural environment. Enbridge has also proposed a plan to allow some woody revegetation along riparian corridors.<sup>213</sup> This plan, which is incorporated into the EMP plan, may also be incorporated in the License to Cross Public Waters from the DNR, as it was with the LSr project and is more restrictive than conditions placed on the MinnCan Pipeline Project.<sup>214</sup>
- The fourth and fifth conditions address segregation of topsoil and efforts to reduce the compaction of soil in cultivated lands to as small an area as possible.<sup>215</sup> Bob Patton, a representative of the Minnesota Department of Agriculture, testified that the AMP has been developed to reduce and mitigate damages to agricultural land.<sup>216</sup> Trench-only topsoil segregation will be used in areas of deep topsoil to help reduce soil compaction and ensure that topsoil is preserved for replacement.<sup>217</sup> Another factor of the AMP is to run trucks that string (place) the sections of pipe down the right-of-way over the area that will be trenched to reduce soil compaction.<sup>218</sup> Requiring compliance with the terms of the AMP as a permit condition will help mitigate the impacts on agricultural land and on farming operations.

---

<sup>210</sup> Minn. R. 7852.3600.C,

<sup>211</sup> Ex. 100, Tab C at 9-10; Ex. 101, Tab D, App. B at 12-16 (discussing erosion prevention during construction); Ex. 100, Tab D, App. B at 27 (noting that restoration will include seeding and compliance with permit conditions).

<sup>212</sup> Ex. 200, § 7853.0230 at 7.

<sup>213</sup> Response to Public Comments Provided by the Minnesota DNR, p. 13, available online at <https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5165533> (last visited May 19, 2008).

<sup>214</sup> *Id.*

<sup>215</sup> Minn. R. 7852.3600.D, E.

<sup>216</sup> Testimony of Bob Patton, Minnesota Dept. of Agriculture, Kittson County Public Hearing Transcript at 46.

<sup>217</sup> See Testimony of Bob Patton, Minnesota Dept. of Agriculture, Kittson County Public Hearing Transcript at 48; see also Testimony of Bob Patton, Minnesota Dept. of Agriculture, Red Lake County Public Hearing Transcript at 24.

<sup>218</sup> Testimony of Bob Patton, Minnesota Dept. of Agriculture, Kittson County Public Hearing Transcript at 50.

- The sixth condition is taking steps to protect livestock and crops.<sup>219</sup> Requiring protection of livestock through careful construction methods and notification of livestock issues to landowners is a proposed permit condition for the Alberta Clipper/Southern Lights Diluent Project. Some crop damage will result from construction during the growing season. A witness for the DOC determined and has testified that the presence of the AMP and the fact that any impacted agricultural land can be fully returned to production following construction indicates that such damage should be “minimal and temporary.”<sup>220</sup> Enbridge also plans to compensate landowners for crop damage, as addressed in the AMP.<sup>221</sup> Enbridge will file an Anthrax Mitigation Plan with the MPUC in advance of the issuance of a Routing Permit.
- The seventh condition is requiring all appropriate precautions against pollution of the environment.<sup>222</sup> Preventing pollution to the environment is addressed in the Environmental Mitigation Plan,<sup>223</sup> the Spill Prevention Containment and Control Plan,<sup>224</sup> the Petroleum-Contaminated Soil Management Plan,<sup>225</sup> and the Drilling Mud Containment, Response, and Notification Plan.<sup>226</sup> Enbridge also maintains an emergency response plan and monitors pipelines for human and environmental safety in compliance with federal pipeline safety regulations.<sup>227</sup> The list of permits required for construction of the Alberta Clipper and Southern Lights Diluent Projects will also help ensure that all appropriate precautions are taken to prevent pollution.<sup>228</sup> Finally, environmental inspectors will also be present to inspect construction for compliance with applicable regulations and permits.<sup>229</sup>
- The eighth and ninth conditions deal with keeping the work area clean. First, all waste and scrap produced in the construction process must be removed before construction ends.<sup>230</sup> Second, personal litter, bottles, and paper must be removed daily.<sup>231</sup> The EMP and AMP require these tasks to be completed by Enbridge.<sup>232</sup> Landowners will be asked to review the condition of their property following construction.<sup>233</sup> Such permit conditions are sensible and will be included to help minimize any impact on humans or the natural environment.

---

<sup>219</sup> Minn. R. 7852.3600.F.

<sup>220</sup> Ex. 307 at 17 (Direct testimony of Bryan J. Minder).

<sup>221</sup> Transcript, Clearbrook, Minnesota, Public Hearing, January 20, 2008, p. 42 (Testimony of Michael Harris)

<sup>222</sup> Minn. R. 7852.3600.G.

<sup>223</sup> Ex. 101, Tab D, App. B.

<sup>224</sup> Ex. 101 Tab D, App. C.

<sup>225</sup> Ex. 101, Tab D, App. F.

<sup>226</sup> Ex. 101, Tab D, App. G.

<sup>227</sup> See Ex. 300, § 7853.0630, p. 4-5 (MPUC Docket No. PL9/CN-07-361).

<sup>228</sup> Ex. 100, § 4415.0165.

<sup>229</sup> Ex. 107 at 14-15 (Direct Testimony of Paul Meneghini).

<sup>230</sup> Minn. R. 7852.3600.H.

<sup>231</sup> Minn. R. 7852.3600.I.

<sup>232</sup> Ex. 101, Tab D, App. B at 26; Ex. 101, Tab D, App. E at 9.

<sup>233</sup> Transcript, Clearwater County Public Hearing, January 20, 2008, pp. 32-33 (Testimony of Michael Harris). .

- The tenth condition in Minn. R. 7852.3600 is that all drainage tile damaged during the construction process must be repaired or replaced.<sup>234</sup> Repair of drainage tile is addressed in the AMP.<sup>235</sup> Enbridge will work with landowners to locate drain tile that may be affected by construction prior to the start of the construction process.<sup>236</sup> Any damaged tile will be repaired by Enbridge, or there is a process wherein the landowner may elect to perform the repairs independently.<sup>237</sup> This permit condition, combined with the landowner information checklist and the conditions of the AMP, will serve to reduce impacts to agricultural land.
- The eleventh condition is that all private roads and lanes damaged during and by the construction process must be repaired.<sup>238</sup> Repair of private roads is a condition of the EMP and proposed pipeline routing permit.<sup>239</sup>
- The twelfth condition is that all fences must be replaced or repaired if taken down or damaged during the construction process.<sup>240</sup> Fencing will be braced prior to cutting to prevent slacking of wires. Temporary gates or fencing will be installed to restrict access or contain livestock until construction is complete and permanent repairs can be completed.<sup>241</sup> This condition will serve to reduce the impact on human settlement, and is a proposed permit condition.
- The thirteenth condition concerns protection of trees and shelterbelts to the extent compatible with safe operation, maintenance, and inspection of the pipeline.<sup>242</sup> Shelterbelts should be preserved to the extent practical and consistent with safe construction, maintenance, and inspection of the pipeline. Some practices that could mitigate damage to shelterbelts, such as using Horizontal Directional Drill (“HDD”) methods to install the pipeline are both very expensive, require a wider work area than typical on both sides of the drill, and are incompatible with safe maintenance and inspection of the pipeline. Use of the HDD method could leave some trees intact, but would result in the pipeline being installed very deep in the ground.<sup>243</sup> If the pipeline is installed at depth under trees, it would be very difficult to access the pipeline for maintenance or emergency response activities.<sup>244</sup> In addition, leaving trees over the permanent easement would interfere with proper inspection of the pipeline. Enbridge patrols the pipeline route by air at least 26 times per year, as required by 49 C.F.R. Part 195.<sup>245</sup> The presence of trees over the top of the pipeline would severely hinder this

---

<sup>234</sup> Minn. R. 7852.3600.J.

<sup>235</sup> Ex. 101, Tab D, App. E at 6-8.

<sup>236</sup> Transcript, Red Lake County Public Hearing, November 28, 2007, pp. 42-43 (Testimony of Michael Harris).

<sup>237</sup> Ex. 101, Tab D, App. E at 6; Transcript, Red Lake County Public Hearing, November 28, 2007, pp. 43-44, 49 (Testimony of Jerrid Anderson).

<sup>238</sup> Minn. R. 7852.3600.K.

<sup>239</sup> Ex.101, Tab D App. B at 29.

<sup>240</sup> Minn. R. 7852.3600.L.

<sup>241</sup> Ex. 101, Tab D, Appendix B, Section 1.5.3, pp. 4-5.

<sup>242</sup> Minn. R. 7852.3600.M.

<sup>243</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p. 67 (Testimony of Mark Sitek).

<sup>244</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p. 67 (Testimony of Mark Sitek).

<sup>245</sup> Ex. 300, § 7853.0270 at 3-4.

important safety measure, and would therefore interfere with the safe inspection and operation of the pipeline. This permit condition should not be included in a Pipeline Routing Permit in a manner that would interfere with the safe operation, inspection, and maintenance of the proposed pipelines or inhibit compliance with federal pipeline safety regulations.

- There was considerable discussion with landowners and between the Department and Enbridge representatives regarding tree valuation methods.<sup>246</sup> Enbridge acknowledged that they do work with landowners to recognize the value of “ornamental” trees and they will hire consultants, when necessary, to appraise trees which may have an enhanced value due to aesthetics or sheltering benefits.<sup>247</sup>
- The fourteenth and final condition in Minn. R. 7852.3600 is restoration of the impacted area to natural conditions after installation of the pipeline. This condition requires that the restoration be compatible with the safe operation, maintenance, and inspection of the pipeline.<sup>248</sup> As mentioned above, restoration should not include replanting of vegetation on the permanent right-of-way that would hinder the safe operation, inspection, and maintenance of the pipeline.
- Restoration activities are subject to the terms of the EMP<sup>249</sup> and AMP,<sup>250</sup> as well as landowner inspection and approval.<sup>251</sup> The presence of this permit condition will serve to mitigate impacts on the environment by restoring the land to its prior condition to the extent practical and is included in the proposed permit.

**Criterion I: Consideration of cumulative potential effects of related or anticipated future pipeline construction.**<sup>252</sup>

**83.** The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a 500 foot route width that will accommodate both the LSR and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.<sup>253</sup>

**84.** The Revised Preferred Route and Alignment filed by Enbridge on December 20, 2007 also describes a varying route width to allow installation of both the Alberta Clipper and Southern Lights Diluent pipelines southeast of Clearbrook,

---

<sup>246</sup> Transcript, Pennington County Public Hearing, November 28, 2007, pp. 43-51.

<sup>247</sup> Transcript, Pennington County Public Hearing, November 28, 2007, p. 44 (Testimony of Michael Harris).

<sup>248</sup> Minn. R. 7852.3600.N.

<sup>249</sup> Ex. 101, Tab D, App. B at 26-29, 31.

<sup>250</sup> Ex. 101, Tab D, App. E at 5-10.

<sup>251</sup> Transcript, Clearwater County Public Hearing, January 20, 2008, pp. 32-33 (Testimony of Michael Harris).

<sup>252</sup> Minnesota Rule 7852.1900, subp. 3, I.

<sup>253</sup> Ex. 103.

Minnesota in a manner that causes the least impact on the human and natural environments.<sup>254</sup>

**85.** The proposed routes of the LSr and Alberta Clipper Projects are adjacent and parallel northwest of Clearbrook, Minnesota.<sup>255</sup> For the area northwest of Clearbrook, the same environmental features will be encountered in the LSr and Alberta Clipper Projects, and the same permits and impact mitigation measures should be required.<sup>256</sup>

**86.** Enbridge stated that it has no further plans for pipeline construction in Minnesota, beyond the newly constructed LSr, and the proposed Alberta Clipper and Southern Lights Diluent Projects.

**Criterion J: Consideration of the relevant applicable policies, rules and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location, design, construction or operation of the proposed pipeline and associated facilities.**<sup>257</sup>

**87.** Construction of the Alberta Clipper/Southern Lights Diluent pipelines will require consultation with federal, state and local government agencies. Enbridge has specifically identified 31 permits, licenses or plans that must be obtained, approved and filed prior to proceeding with project construction.<sup>258</sup> Minn. Stat. § 299J.05 governs local pipeline setback ordinances. The design, construction and maintenance of the proposed pipelines are subject to federal pipeline safety regulations found in 49 C.F.R. Parts 190-199. There is no evidence in the record that suggests that the applicable policies, rules and regulations of other state and federal agencies and local government land use laws will not be followed during the construction and operation of the Alberta Clipper/Southern Lights Diluent Project.<sup>259</sup>

**88.** Compliance with such other policies, rules and regulations should be proposed permit condition for the Alberta Clipper/Southern Lights Diluent Project.

---

<sup>254</sup> Ex. 115.

<sup>255</sup> Compare Exhibits 5 (MPUC Docket No. PPL-07-360) and 115.

<sup>256</sup> Compare Ex. 200, § 7853.0230 at 7 (MPUC Docket No. PL9/CN-07-464) to Ex. 300, § 7853.0230 at 17-19. Note that the Alberta Clipper Project will require additional permits due to the need to cross Native American Reservation Lands.

<sup>257</sup> Minnesota Rule 7852.1900, subp. 3, J.

<sup>258</sup> Ex. 100, Section 4415.0165, pp. 1-2

<sup>259</sup> Ex. 207 at 23-24.

**S. Fond du Lac Alternatives.**

The Fond du Lac Alternative is Enbridge's requested route in Carlton County, rather than its initially proposed and preferred route across the Fond du Lac Reservation which parallels the existing Enbridge pipelines.

**EFP Staff Analysis:** Enbridge included information about the Fond du Lac Alternative in the application to demonstrate that it had considered other alternatives.<sup>260</sup> It later filed updated materials for the portion of the route southeast of Clearbrook as a supplemental filing to Alternative 13 on January 7, 2008.<sup>261</sup> Enbridge at that time referred to the proposed route through the Fond du Lac Reservation (its Revised Preferred Route and Alignment) as "Option 1." The route alternative around the Reservation to the west and south updated in the January 7 filing of Alternative 13 was referred to as "Option 2." Enbridge continued to prefer Option 1, until it was stated for the first time during the March 25, 2008 hearing in Clearwater County that it now preferred Option 2:

The second reservation, near Duluth, is the Fond du Lac Reservation and, similarly, we had made an offer to the reservation for our crossing late last year. And this year a group of Enbridge management met with the Fond du Lac to discuss a settlement. Generally, the discussions were positive, we talked about some issues within the reservation, mutual concern. But, regrettably, we were not able to agree on the financial terms, and because of the fact that we are so far apart with respect to compensation, we have decided that we would pursue an alternate route around the Fond du Lac Reservation for these two lines.<sup>262</sup>

Mr. Sitek further discussed this issue at the Carlton County hearing on April 9, 2008:

Your Honor, I would like to briefly discuss the Fond du Lac alternative that we originally filed with our application on June 30th of 2007, and then modified for our route filing on January 7th. Our preference, as I mentioned in my remarks, is to follow our existing pipelines to the extent that that is possible. And correspondingly, our original proposal for routing of these pipelines followed our existing pipelines through the Fond du Lac Reservation. Over the last several months, we've had some extensive discussions with the Fond du Lac Band, but we have not been able to come to an agreement with respect to placing the proposed pipelines adjacent to our existing pipelines.

These negotiations have basically reached impasse, with the two parties a considerable distance apart with respect to compensation. Well, in anticipation of the possibility of this, we filed our route alternative, which proposes to have the two pipelines go around the Fond du Lac Reservation. It's still our belief that following

---

<sup>260</sup>

<sup>261</sup> Ex. 117.

<sup>262</sup> Clearwater County Tr. at 17.

the existing pipelines is preferable, but absent an agreement with the Fond du Lac Band, it was necessary for us to prepare and file this alternative route, which is now our preferred route. Thank you.<sup>263</sup>

The only reason given by Enbridge, during the evidentiary hearings for the route application, for now requesting a route permit for the Fond du Lac Alternative is compensation. However, Mr. Sitek again provided testimony over the objection of counsel for the OES CON and the Fond du Lac Band during the May 13, 2008 Certificate of Need Hearing as follows:

BY MR. WALLI:

Q Mr. Sitek, I would ask if you would provide a brief update on where the negotiations stood at the time the parties, Enbridge and the Fond du Lac Band, reached what we have characterized as an impasse on the access to the originally-requested route through the reservation?

A Okay. Yes, I will do that. At the Carlton County evidentiary hearing, I think we indicated that we had reached an impasse with the Fond du Lac Band. Impasse, you know, can mean different things to different people. It can mean you're a short distance apart and you just can't reach agreement, or it can mean you're a very wide distance apart. And while I tried to hint at that evidentiary hearing that we're a wide distance apart, I think I can provide a little bit more context around that. Normally when we acquire land through easement, we base that acquisition price on the fair market value of the land. So even though we're only asking for a permanent easement and the landowner would still have limited but most use to that property, we still pay the fair market value as if we were actually acquiring that land.

In the case of Fond du Lac, federal law limits it to a 20-year term that you can acquire rights for. In other words, it wouldn't be a permanent easement, it would only be a 20-year term. The route across the Fond du Lac reservation is about 13.2 miles long. The new pipelines would require about 40 feet of new right-of-way and 100 feet of temporary work space. Of that 13.2 miles, the Fond Du Lac Band actually only owns about 1.5 miles of that route.

We entered into negotiations and through a series of conversations, negotiations, discussions, we made a few offers; but our last offer reflected about 25 times the fair market value for that entire 13-mile route. We also own some land on the reservation, and we offered that land -- to transfer that to the band. The acreage of that would replace about 70 percent of the land that we would be seeking the easement for. The band's demand was in the neighborhood of 150 times fair market value of the land and, in addition, the land that we own would also be transferred. So what I'm trying to say is that -- and, again, that's for a 20-year term, that's not for a permanent easement. So 20 years later we'd be in that same situation, and I guess you could logically assume a similar compensation. So I'm trying to indicate,

---

<sup>263</sup> Carlton County Tr. at 18-19.

I guess, that there's a fairly large disparity between our offer and what the band's position was.

Again, as everyone knows, we don't have condemnation authority over land that's owned by the Fond du Lac Band, making it impossible to follow our existing route through the reservation absent any agreement with the band. If the MPC -- MPUC were to order Enbridge to follow our existing route, we could certainly expect that the band's demands would rise even more significantly. And, again, with a 20-year term, we would be in that same position each -- each 20 years.

Obviously, these kind of dollar amounts render these projects -- have significant impacts on the economics of the projects, and those high costs would in turn be reflected in the transportation rate and in prices that consumers ultimately have to pay.

So that summarizes, I guess, the -- where we're at.

MR. WALLI: One follow-up question?

JUDGE LIPMAN: Please.

Q Mr. Sitek, is Enbridge still willing to engage in further discussions with the band if they are interested in doing so?

A Absolutely. And that was communicated again at the Carlton evidentiary hearing, that we're certainly still open. But if there can't be any movement on the part of the band, obviously we're at an impasse.<sup>264</sup>

Following this testimony by Mr. Sitek, counsel for the Band extensively cross-examined Mr. Sitek. Further testimony on the issue is at pages 121-137 of the CON Hearing Transcript, with the following comment stating the Fond du Lac Band's understanding of negotiations:

MS. VAN NORMAN: You know, the one comment I would have -- and it is a comment -- is simply that, you know, the band had not considered the negotiations had to be closed and that the impasse had the same character that Mr. Sitek has stated that it did, and it's been waiting for the phone to ring.

Thus, the only justifications given by Enbridge for changing its mind about wanting the route through the Reservation near the existing pipelines were Enbridge's claims that the tribe wants too much money and it would have to re-negotiate every 20 years because federal law allows only 20-year easements through tribal lands rather than perpetual ones. However, no specific information was provided on costs other than the speculative and conclusory comments by Mr. Sitek, but Enbridge has consistently asserted that compensation amounts to landowners and terms of the easement agreements are beyond the scope of review for the route permit and irrelevant to the Commission's decision.

---

<sup>264</sup> Certificate of Need Hearing Tr. at 118-121.

Although the ALJ report includes scant findings to support his recommendation for the Fond du Lac alternative other than general findings that Enbridge has “carefully planned” the route with regard to criteria in Minn. R. 7852.1900, subd. 3, his recommendation is based primarily on the 20-year issue, which has not been fully developed. Enbridge’s existing pipelines through the Reservation continue to operate under successive 20-year easements granted by the Band. There are no findings and there is no information in the record that would support this alternative relative to the pipeline route selection criteria in the rule. In fact, the record shows that relative to the criteria, the originally proposed route -- the one paralleling the existing pipelines -- is highly superior.

This originally proposed route through the Reservation is favored by the Fond du Lac band and DNR as well. The record demonstrates that the Fond du Lac Band will consent to additional right of way as needed parallel to the existing pipelines, so the fact that eminent domain authority is not available for approximately 1.5 miles along that route is not relevant to the Commission’s decision. The fact that the Band and Enbridge have not reached agreement on terms should not be considered in making the decision. The record further demonstrates that DNR, which controls approximately 50 percent of the additional 21.4 miles that would be required for the Fond du Lac Alternative, has significant concerns about construction over state lands.

DNR’s concerns about the Fond du Lac Alternative are explained in the following excerpt from its April 21, 2008 comments:

The Fond du Lac alternative is a new green field route 21.4 miles in length described beginning on page 64 of the [Comparative Environmental Analysis]. DNR does not have much information about this new alternative, which opens up a significant new corridor through large tracts of undisturbed native communities, including Sites of High Biodiversity Significance. Construction of two large-diameter pipelines through this area will permanently alter these communities, fragment large areas, and open the area to invasive species. This alternative route is a substantial change to what was previously proposed and sent out for DNR review. Most of the 21.4 miles goes through county or state forest. Existing forested area would be replaced with an unnatural grassy habitat. Wildlife habitat and timber production will be impacted. The new route will encumber over one-half mile through an active peat mining operation on State Forestry land. This new route will also impact an additional 23,859 feet of NWI-mapped wetlands including at least 5 stands that are designated as ecologically important lowland conifers. These impacts cannot be mitigated. DNR recommends that significant weight be given to these factors in the upcoming environmental impact statement and comparison of routes.

In the November 13, 2008 letter from DNR Environmental Planner Matt Langan to the EFP Project Manager, DNR reiterated that Enbridge’s Comparative Environmental Analysis (“CEA”) dated March 11, 2008, did not sufficiently address environmental issues to allow a comparison of the alternatives based on environmental impact issues, and that DNR was unable to inform the route permit process because information on potential effects on environmentally sensitive areas was unavailable by the deadline for public comments, and that such potential effects may require

selecting either a different route or an Endangered Species Takings Permit. Particularly, DNR finds that there is not sufficient information on the new 21.4 mile Greenfield route around the Fond du Lac Reservation, which runs through high-quality fish and wildlife habitats, for an informed decision on route selection given the criteria outlined in Minnesota Rules, Chapter 7852.

Enbridge was questioned about the CEA during the Carlton County hearing by OES and PUC staff representatives. Unable to provide additional information at the time, it promised to provide additional information by April 21, 2008, particularly concerning its meaning of “substantially similar” with regard to the route through the Reservation. Enbridge filed a Supplemental Filing to the Fond du Lac Alternative on that date, but the document provided little substantive support for its conclusions in the CEA, although it did provide discussion on each of the criteria in Minn. R. 7852.1900, subd. 3. OES Staff does not believe that Enbridge adequately addressed the questions about the CEA.

However, Enbridge stated in the Supplemental Filing that it was “unable to quantify the pipeline cost difference between the Fond du Lac Alternative and the route through the Reservation.”<sup>265</sup> Since cost is the significant rationale Enbridge provided in support of the Fond du Lac Alternative, the lack of information alone on cost does not support a preference for this alternative.

In addition, Enbridge indicates that it has options for permanent easements on this alternative that are 150 feet, although the permanent route width needed would be only 75 feet. This action is puzzling since Enbridge states it has no future plans for additional pipelines. Because Enbridge has taken steps for a much wider easement than necessary, it is conceivable that Enbridge will in the future abandon its pipelines through the Reservation when the current easement term ends for the same reasons it hasn’t reached agreement for the AC/SLD pipelines, and instead attempt to place all pipelines along the Fond du Lac Alternative route and eliminate all pipelines through the Reservation. If the Fond du Lac Alternative is chosen by the Commission, future arguments for moving these pipelines may center on the decision in *People for Env’tl. Enlightenment and Responsibility (PEER) v. Minn. Env’tl. Quality Counsel*, 266 N.W.2d 858 (Minn.1978). In *PEER*, the Minnesota Supreme Court determined that the Minnesota Environmental Quality Council (MEQC) erred by selecting a new route for an HVTL instead of approving the existing route.<sup>266</sup> The supreme court concluded that “in order to make the route-selection process comport with Minnesota’s commitment to the principle of nonproliferation, the MEQC must, as a matter of law, choose a pre-existing route unless there are extremely strong reasons not to do so.”<sup>267</sup> The supreme court determined that there was no evidence that use of the existing route would impair or destroy the environment; or that the alternative route was preferable because it would result in the condemnation of fewer homes.<sup>268</sup> More significantly for this matter, however is the Supreme Court’s holding that cost cannot override the nonproliferation policy:

[C]ondemnation of a number of homes does not, without more, overcome the law’s preference for containment of powerlines as expressed in the policy of

---

<sup>265</sup> Supplemental Filing at 10.

<sup>266</sup> *PEER*, 266 N.W.2d at 864.

<sup>267</sup> *Id.* at 868.

<sup>268</sup> *Id.* at 869.

nonproliferation. Persons who lose their homes can be fully compensated in damages. The destruction of protectable environmental resources, however, is noncompensable to all present and future residents of Minnesota.<sup>269</sup>

The *PEER* decision also does not support Enbridge's now-preferred Greenfield route around the Reservation as Enbridge has provided no other strong support to overcome the state's nonproliferation policy for energy facilities. Thus, the EFP Staff recommends the Commission adopt the following Supplemental Findings and Conclusions:

**Recommendation:** The EFP Staff recommends the following Supplemental Findings and Conclusions regarding the Fond du Lac Alternative:

[Supplemental Finding] **89.** The Fond du Lac Alternative is a 100 percent green field route while the Proposed Route is adjacent to existing rights of way for its entire length. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative]

**90.** Most of the 21.4 miles of the Fond du Lac Route Alternative goes through county or state forest. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative]

**91.** The Fond du Lac Alternative opens up a significant new corridor through large tracts of undisturbed native communities, including Sites of High Biodiversity Significance. [DNR April 21, 2008 letter to ALJ]

**92.** The Fond du Lac Route Alternative crosses more waterbodies than the Proposed Route and affects an additional 23,859 feet of NWI-mapped wetlands including at least 5 stands that are designated as ecologically important lowland conifers. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative; DNR April 21, 2008 letter to ALJ]

**93.** Construction of two large-diameter pipelines through this area will permanently alter these communities, fragment large areas, and open the area to invasive species. Existing forested area would be replaced with an unnatural grassy habitat. Wildlife habitat and timber production will be impacted. [DNR April 21, 2008 letter to ALJ]

**EFP Staff recommended Supplemental Conclusions:**

[Supplemental Conclusion] **1.** The Fond du Lac Route Alternative has more negative impacts when assessed according to the ten-factor test under Minn. R 7852.1900 than the Proposed Route.

**2.** The Fond du Lac Route Alternative is not a reasonable alternative.

---

<sup>269</sup> *Id.*

**T. Department of Natural Resources (“DNR”) concerns.**

**EFP Staff Analysis:** The ALJ summarized DNR’s April 21, 2008, comments (See Attachment 6 in the Commissioner’s Packet) as follows:

\_\_\_ Matthew Langan, outlined a number of concerns with respect to the proposed pipeline routing plan. Principally, the Department expressed the view that because the precise locations of the pipeline routes are not established, the Applicants’ proffered environmental analysis is likewise not sufficiently detailed. The DNR writes: “The Enbridge corridor east of Clearbrook suffers from a lack of site-specific information suitable for determining route and centerline location and appropriate mitigation measures. Additionally, the Department registers its strong concerns as to the Applicants’ Ruffy Brook Crossing Alternative (between Mile Post 912.1 – 916.4, along with milder comments and suggestions as to 24 other water crossings. Lastly, the Department offered a number of detailed suggestions for improvement of Enbridge’s Environmental; Mitigation Plan and Mud Containment Plan.

\_\_\_ Specifically, Mr. Langan suggested measures ... relating to seven distinct topics – namely, clear regulatory controls, regarding combating anthrax, obtaining adjustments in the pipeline center line, crossing of sensitive areas, crossing forested river corridors, undertaking winter construction, proper Horizontal Directional Drill practice and avoiding spills of Bentonite into nearby streams” and environmental management.

DNR’s concerns, while not entirely captured in the above summary, were not specifically addressed by Findings in ALJ Report. Because some of these concerns are relevant to the Commission’s decision regarding route designation and permit conditions, EFP Staff has recommends the following supplemental findings. Supplemental findings were developed to cover the following topical areas addressed in the DNR comment letter: a) information (Finding 94 through 96), b) permit conditions (Finding 97), and c) environmental mitigation plans (Findings 98 through 106).

**94.** DNR commented extensively that more information was needed before a decision to designate a route could be made and that the information provided in the Comparative Environmental Analysis did not address the environmental issues in enough detail to accomplish a comparison of the alternatives based on environmental issues. For the most part, the Alberta Clipper and Southern Lights Diluent Project has only one route. The exception is the Fond du Lac Route Alternative, which is an alternative to the route that crosses the Fond du Lac Reservation. Under Minnesota Rules 7852.0100, subp. 31, a route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles. All of the route proposals accepted for public hearing, with the exception of the Fond du Lac Route Alternative, merely widened out or increased the width of

the proposed route in 23 different areas along the length of the proposed route in Minnesota. This widening out or increasing the width of the route merely allows Enbridge to seek out different alignments or locations for the proposed pipelines in those areas. Route width variability, often provides the flexibility necessary to mitigate impacts associated site specific locations.

**95.** It is recognized that different units of government have different information requirements. The Commission fully expects that Enbridge recognizes the information requirements of other permitting agencies and will comply with those agency requirements and their respective permit conditions. Enbridge shall work with all regulatory agencies with jurisdiction and landowners within the widened route areas to identify a project centerline that balances the negative effects on natural resource with other competing interests.

**96.** The route width being requested by Enbridge in these 23 areas merely increases its ability to work with other permitting agencies and/or landowners to identify solutions to problem areas and mitigate potential impacts. The route width being requested is still less than the permissible of 1.25 miles. If the route width is inadequate, the pipeline routing permit does allow for minor changes outside of the designated route. See Part IV. of the pipeline routing permit. Another mechanism to modify the location of the route is provided for in Minn. Rules 7852.3400.

**97.** The DNR recommended that horizontal directional drilling (HDD) be used to cross the Snake River (MP 843.1), Mississippi River (MP 939.7), Mississippi River (MP 984.7 to MP 988.2). Enbridge is proposing to accomplish these river crossings by HDD. This requirement is a proposed permit condition, as is the requirement to submit an alternative plan if HDD is not successful. Other HDD river requirements may be established by DNR for Enbridge as a part of its licensing requirements. Enbridge has indicated that it will comply with all permit conditions and requirements.

**98.** The DNR recommends the establishment of a “woody buffer maintenance and re-vegetation plan.” Such a plan has been established and is included as a requirement in the filed Environmental Mitigation Plan as Figure 22.

**99.** Enbridge will file an Invasive Species Plan. Enbridge will also submit the Invasive Species Plan to DNR to ensure that it contains a complete list of plants of concern.

**100.** Enbridge’s filed Environmental Mitigation Plans incorporates DNR’s suggestions regarding temporary equipment bridges at Part 2.5.

**101.** Enbridge will work the DNR and landowners to install ATV barriers

**102.** Environmental and agency monitors will be required as a condition of the pipeline routing permit. See permit at V.N.6.

**103.** Enbridge has indicated that it will file a Drilling Mud Containment Plan and that winter construction plans will be filed as necessary.

**104.** Enbridge shall develop a topsoil management plan that separates and places topsoil in areas where subsoil has been excavated.

**105.** Woody vegetation within a river floodplain or adjacent to a water body shall not be cleared for extra temporary workspace unless approved by the DNR as part of the applicable crossing license.

**106.** Equipment bridges shall be used on watercourses, including ditches and intermittent streams. Rocked crossing shall be allowed on a case-by-case basis after review by state environmental inspectors described in Section 2.5 of the Environmental Mitigation Plan.

### ***Proposed Pipeline Routing Permit***

DOC EFP staff has prepared a proposed pipeline routing permit for the Commission's consideration. The proposed permit is similar in many respects to the Pipeline Routing Permit issued by the PUC for the LSr Project (Docket No. PL-9/PPL-07-360).

EFP staff has proposed additional permit conditions that address project related impacts, mitigation of impacts, and language in order to provide precise directives to the Permittee.

The EFP staff proposed permit has three attachments: (1) Minnesota Public Utilities Commission Complaint Handling Procedures; (2) Minnesota Public Utilities Commission Compliance Filing Procedures; and (3) Permit Compliance Filings.

Staff is also proposing to include three Appendices. Appendix A: Agricultural Mitigation Plan; Appendix B: Environmental Mitigation Plan and Appendix C: Aerial Photos Depicting Alberta Pipeline Project and the Southern Lights Diluent Project (November 17, 2008). The photos only present existing information already in the record. The November 17, 2008, photos have been modified for illustration purposes only.

The OES EFP staff proposed permit also incorporates many of the conditions addressed by the ALJ's report in Conclusion 55, unless otherwise noted or discussed.

Staff believes the proposed permit provides terms and conditions that will minimize impacts to humans and the natural environment.

## V. COMMISSION DECISION OPTIONS

### *ENBRIDGES EXCEPTIONS*

#### **A. ALJ Finding 102: Route Location Description**

- 1) Adopt ALJ Finding 102 as requested by Enbridge.

**102.** If both projects are approved as requested by Enbridge, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way with the exception of the 21.4 miles comprising the Fond du Lac Route Alternative.

- 2) Adopt ALJ Finding 102 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option A.1)

#### **B. ALJ Finding 225: Pump Station noise.**

- 1) Adopt ALJ Finding 225 as requested by Enbridge.

**225.** Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measure at a distance of 50 feet from the ~~pumping station structure~~ affected neighboring dwellings, industrial facilities or other affected, non-Enbridge structures) or to any other minimum set by state law.

- 2) Adopt ALJ Finding 225 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option B.1)

#### **C. ALJ Finding 237: Route Width.**

- 1) Adopt ALJ Finding 225 as requested by Enbridge.

237. Enbridge filed its Revised Preferred Route and Alignment Maps on October 10 and December 20, 2007. Together, these two sets of maps establish a ~~500-foot-wide~~ route that varies in width, centered on the proposed 20-inch LSr pipeline, Northwest of Clearbrook, Minnesota.

- 2) Adopt ALJ Finding 237 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option C.1)

**D. ALJ Finding 284: Clarification of positions between Enbridge and the Fond du Lac Band.**

- 1) Adopt ALJ Finding 284 as requested by Enbridge:

284. Enbridge and the Band have not reached an accord of the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines. The Band and Enbridge could not reach an accord because of a dispute over the amount that the Band should be paid for the right-of-way for the Projects, and over the Band's position that compensation must also be paid "for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance;" as alleged by Counsel for the Band.

- 2) Adopt ALJ Finding 284 as modified by EFP Staff:

284. Enbridge and the Band have not reached an accord on the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines. ~~The Band and Enbridge could not reach an accord because of a dispute over the amount "for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance."~~ The Band will consent to the easement and is willing to continue negotiations with Enbridge for an additional easement that parallels the existing easement granted to Enbridge for existing pipelines.

- 3) Adopt ALJ Finding 284 as written.
- 4) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option D.2)

**E. ALJ Finding 291: Clarification of route width.**

- 1) Adopt ALJ Finding 291 as requested by Enbridge:

**291.** The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a ~~500-foot~~ variable route width that will accommodate both the LSr and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.

- 2) Adopt ALJ Finding 291 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option E.1)

**F. ALJ Finding 295: Pipeline location within the route.**

- 1) Adopt ALJ Finding 295 as requested by Enbridge:

**295.** The Alberta Clipper pipeline will be generally constructed and installed adjacent to the existing Lakehead system right-of-way. The Alberta Clipper pipeline northwest of Clearbrook, Minnesota will typically be installed 25 feet from the earlier approved LSr pipeline. Up to 75 feet of permanent easement will be required for both projects (LSr and Alberta Clipper).

- 2) Adopt ALJ Finding 295 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option F.1)

**G. ALJ Finding 302: Regarding the Kezar property at milepost 859.5.**

- 1) Adopt ALJ Finding 302 as requested by Enbridge:

**302.** Kezar Property, Mile Post 895.5. Particular issues were raised by Mr. Joe Kezar regarding his property located at Mile Post 899.5 on the proposed Alberta Clipper project route. Mr. Kezar's comments were also documented in a letter submitted for the record as Exhibit A. Subsequent to the November, 2007 public hearings, Enbridge and the Kezar's were able to agree on a change to the Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota. This change reduces the impacts on human settlement, any Pipeline Routing Permit issued for the Alberta Clipper and Southern Lights Diluent projects should ~~make this~~

agreement—a required condition construction according to this agreement, unless requirements of other state or federal agencies make construction on this alignment impossible.

- 2) Adopt ALJ Finding 302 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option G.1).

**H. ALJ Finding 304: Cory Carlson Property Tract 748.**

**304.** The proximity of the proposed pipelines was presented as a concern by a Polk County landowner, Mr. Cory Carlson of Trail, Minnesota. The particular parcel in question is Tract No. 748. Enbridge indicated a willingness to narrow the distance between proposed pipelines and to reduce workspace immediately adjacent to this home and business location. A drawing of the proposed narrowing of workspace for the Carlson property was introduced as Exhibit 13. A permit condition should direct Enbridge to follow this construction proposal, subject to or according to any other agreement made with from the landowners that keeps the proposed pipelines within the REVISED Preferred Route and Alignment.

- 1) Adopt ALJ Finding 304 as written.
- 2) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option H.1).

**I. Conclusions 34-40: Changing pipeline to the plural pipelines.**

- 1) Adopt ALJ Conclusions 34-40 as requested by Enbridge.

34. Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to human settlements, densely-populated areas and both existing and planned future land uses.

35. Enbridge has carefully its proposed pipelines, so as to minimize the impacts to the natural environment, public lands and designated lands – including natural areas, wildlife habitat, water and recreational lands.

36. Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to lands of historical, archaeological and cultural significance.

37. Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to agricultural, commercial, industrial, forestry, recreational or mining operations.

38. Enbridge has carefully planned its proposed pipelines, so as to minimize costs, consistent with an accessible and safely-operated pipelines.

39. Enbridge has carefully planned its proposed pipelines, so as to maximize the use of existing right-of-way and right-of-way sharing or paralleling.

40. Enbridge has carefully planned its proposed pipelines, so as to minimize the impacts to natural resources and naturally-occurring features.

- 2) Adopt ALJ Conclusions 34-40 as written.
- 3) Do not adopt ALJ Conclusions 34-40 as recommended by EFP Staff.
- 4) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option I.3)

**J. Conclusion 54: Kezar property.**

- 1) Adopt Conclusion 54 as requested by Enbridge:

54. The Pipeline Routing Permit issued to Enbridge should require construction according to the agreement reached between Enbridge and Joes and Marsha Kezar, or as required by other federal or state agencies.

- 2) Adopt ALJ Conclusion 54 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option J.1)

***FOND DU LAC BAND EXCEPTIONS***

**K. ALJ Finding 8: Exception concerning Fond du Lac Band's identity.**

- 1) Adopt ALJ Finding 8 as requested by the Fond du Lac Band::

8. The Fond du Lac Band of Lake Superior Chippewa (“the Band”) has authority over the land upon which the Applicant’s “Fond Du Lac Option 1” would traverse and it claims usufructuary rights (including the rights to hunt, fish and gather) on

the parcels through which the Applicant's "Fond Du Lac Alternative" would run. Accordingly, the Administrative Law Judge granted the Band's request to joint the routing proceeding as a party.

The Band has federally-delegated regulatory authority for both on-reservation activities, and for off-reservation activities that can affect air and water inside the Reservation. This includes:

a. Treatment-As-a-State status under the Clean Water Act, giving the Band regulatory authority over water quality and Section 401 certification, Section 404 dredge and fill permit, and NPDES permits. See generally, 33 U.S.C. § 518e; see also 40 e-CFR §§ 123, 131, and 233; and

b. Treatment-AS-a State status under the Clean Air Act, giving the Band regulatory authority over even temporary impacts on air quality, including through the course of construction, See 42 U.S.C § 7401 et seq.; see also Tribal Clean Air Act Authority, 40 C.F.R. § 49.

In addition to the surface waters, wetlands, and ground water fully inside the Reservation (totaling over 3000 acres of lakes, 96 miles of streams, and 44,000 acres of wetlands), the Band has additional authority over those bodies of water that cross the Reservation boundaries or the flow into the Reservation. Additionally, the Band will be a participating agency in connection with Enbridge's federal Presidential Border Crossing Permit process.

- 2) Adopt ALJ Finding 8 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff makes no recommendation.

**L. ALJ Finding 228: Exception concerning consultation regarding lands of historical archaeological and cultural significance.**

1) Adopt ALJ Finding 228 as requested by the Fond du Lac Band.  
**228.** Enbridge is working with the Leech Lake Heritage Site Program to survey for sites of cultural significance in the Leach Lake Area. Enbridge is also working with the U.S. State Department to address matters that have been raised in cultural resources consultation that the Department of State is conducting with the Fond du Lac Band under Section 106 of the National Historic Preservation Act.

The record does not show that Enbridge, as part of the state permitting process, consulted with the Fond du Lac Band regarding possible lands of historical, archaeological, and cultural significance along the Revised Preferred Route at the Fond du Lac Alternative, which wraps south and east around the edge of the Fond

du Lac Reservation and runs through areas of traditional cultural and historical importance to the Fond du Lac Band.

- 2) Adopt ALJ Finding 228 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff makes no recommendation.

**M. ALJ Finding 287: Exception concerning consultation regarding lands of historical, archaeological and cultural significance.**

- 1) Adopt ALJ Finding 287 as requested by the Fond du Lac Band.

287. There are no archaeological sites or architectural resource sites listed in the Natural Heritage Inventory along this route alternative. The Band has indicated that two historic trails may be located in the area of this alternative – matters that Enbridge argues should be addressed “through the Section 106 consultations as part of the federal environmental review process.

The record does not show that Enbridge, as part of the state permitting process, consulted with the Fond du Lac Band regarding possible lands of historical, archaeological, and cultural significance along the Revised Preferred Route at the Fond du Lac Alternative, which wraps south and east around the edge of the Fond du Lac Reservation and runs through areas of traditional cultural and historical importance to the Fond du Lac Band.

- 2) Adopt ALJ Finding 287 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff makes no recommendation.

**N. ALJ Conclusion 33(J): Application of Route Selection Criteria.**

See the EFP Staff recommendations relating to the criteria in Minn. R. 7852.1900, subd. 3, below.

**O. ALJ Conclusion 48: Rights on Tribal lands.**

- 1) Adopt ALJ Conclusion 48 as requested by the Fond du Lac Band:

48. Under federal law, right-of-way may be granted through lands on Indian reservation that had been earlier allotted to Individual Indians without the “full

power of alienation,” only by leave of the Secretary of the Interior. Further, right of way on lands belonging to certain federal-organized tribes may not be had ~~over the objection of tribal officials~~ without the consent of the proper tribal officials.

- 2) Adopt ALJ Conclusion 48 as written.
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option O.1)

**P. ALJ Recommendation 2: The Band opposes granting a route permit including the Fond du LAC Alternative.**

- 1) Reject the this recommendation to the extent it recommends approval of at least the portion of the “Revised Preferred Route” around the Fond du Lac Reservation (the Fond du Lac Alternative).
- 2) Adopt Recommendation 2 as written.
- 3) Do not adopt Recommendation 2.
- 4) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option P.2)

***EFP STAFF RECOMMENDED MODIFICATIONS AND SUPPLEMENTS***

**Q. Minor modifications and clarifications specific to the Route Application by EFP Staff.**

- 1) Adopt changes to ALJ findings and conclusions as recommended by EFP Staff:

[Supplemental Finding] 1. Findings 176 through 230 in part III.H.2 in the ALJ Report are incorporated into part IV. of the ALJ’s report to support the standard and criteria of Minn. R. 7852.1900 that guide the Commission in its decision on route designation and permit issuance.

6. The Minnesota Department of Commerce, Office of Energy Security (“OES”) is charged by statute to review Certificate of Need applications for compliance with requirements of Minnesota Statutes, Rules and Commission Orders. The OES includes a separate unit, the Energy Facility Permitting (“EFP”) Staff, which processes applications for route and site permits for energy facilities. Larry

Hartman and Deborah Pile of the EFP Staff are the Project Manager and Public Advisor, respectively, for the route permit docket.

20. On August 1, 2007 the Commission issued an Order Accepting Application, Initiating Full Review, Referring to the Office of Administrative Hearings and Order and Notice of Hearing for the AC/SLD Routing Permit Application under Docket No. PL9/PPL-07-361. Among other items, the Commission:

- authorized the Department's Energy Facility Permitting Staff to initiate the full review process under Minn. Rules, Chapter 4415;
- varied Minn. Rules, Part 4415.0070, subpart 1 to eliminate the requirement to hold a public information meeting/hearing in Hubbard and Aitkin Counties;

35. On October 30, 2007, the Commission accepted Enbridge's Revised Preferred Route and Alignment and Northwest Route Alternatives and varied the requirements of Minn. Stat. 216G.02, subd. 3(b)(5) for the AC/SLD ~~Certificate of Need and Pipeline Routing Permit Application~~

89. On May 8, 2008, pursuant to the Sixth Prehearing Order, Enbridge filed a written summary of the April 8, 2008 oral stipulation of counsel as to the filing of post-hearing briefs on the AC/SLD Certificate of Need Application and Pipeline Routing Permit Application.

90. The contested case hearing on the AC/SLD Certificate of Need Application was held at the Offices of the Commission on May 13, 2008. Additional evidence regarding the Route Application was also received at this hearing.

101. EELP estimates that the cost of constructing the Alberta Clipper project within Minnesota to be \$991 million. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative.

110. EPSL estimates that the construction cost of the Minnesota portion of the proposed Southern Lights Diluent project to be \$306 million. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative. If approved by the Commission, Enbridge anticipates beginning construction of this project in December of 2008, with a planned in-service date of July 1, 2010.

181. Enbridge estimates that the cost of constructing the Minnesota portion of the Alberta Clipper and Southern Lights Diluent, in 2006 dollars, is \$1,297,000,000. This estimate of cost is not specific to the originally proposed route or the revised route including the Fond du Lac Alternative.

178. Approximately 1,343 acres of timber will be affected by construction of the Alberta Clipper and Southern Lights Diluent projects. Although the Fond du Lac route alternative maps illustrate that a significant amount of timber could be affected if that route is chosen, the additional number of acres of timber affected by the Fond du Lac Alternative was not quantified for the record..

214. Enbridge states that in the event that fences are destroyed or damaged during the construction process, it will install temporary gates or fencing so as to restrict access or contain livestock until construction is complete and permanent repairs can be made by Enbridge, or as otherwise agreed by Enbridge and the landowner..

287. There are no archeological sites or architectural resource sites listed in the Natural Heritage Inventory along this route alternative. The Band has indicated that two historic trails may be located in the area of this alternative -- matters that Enbridge argues should be addressed "through the Section 106 consultations as part of the federal environmental review process." The Band also provided information concerning the Band's usufructory rights (hunting, fishing, and gathering wild rice) on ceded land, over which the Fond du Lac Alternative would traverse.

- 2) Do not adopt Staff recommended modifications and clarifications..
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option Q.1)

**R. Criteria for Pipeline Route Selection in Minn. R. 7852.1900, subd. 3.A-J:**

- 1) Adopt the Supplemental Findings and Conclusions recommended by EFP Staff to support a decision to issue a Route Permit:

**Criterion A: Consideration of human settlement, existence and density of populated areas, existing and planned future land use, and management plans.**

[Supplemental Finding] 2. The Alberta Clipper/Southern Lights Diluent (AC/SLD) Pipeline Routing Permit (PRP) Application includes an Environment Assessment Supplement which describes human settlement and population density along the originally proposed route. Municipalities located within one mile of the route are identified in Table 3.1-2. Enbridge has identified 198 structures (residences and commercial buildings) located within 500 feet of the construction work area: in Table 4.3.5-1. Construction impacts are noted and Enbridge outlines steps to control dust near residences, including by spraying water at these construction sites. Further, Enbridge states that construction activity will generally be limited to daylight hours to reduce noise level impacts.

3. The intersections of the Alberta Clipper and Southern Lights Diluent Projects with 314 public roads are identified by jurisdiction and by milepost. Construction methods for road crossings are addressed in the Environmental Mitigation Plan (“EMP”). The number and location of rail crossings have also been identified. All necessary permits required to conduct these crossings will must be obtained from the appropriate regulatory body.
4. The extent of the project’s impact on human settlement is also considered in the context of land uses affected by the construction of the Alberta Clipper and Southern Lights Diluent projects. Specifically, the amount of “developed” land affected by construction is presented as a percentage of total land affected (2.0%) in Table 4.2-1 of the Application.
5. Current land use along the originally proposed route is identified and classified as open land, forestlands, agricultural lands, developed lands, and wetlands/open water. The specific proportion which each of these land use classifications represents is presented in the Application and in Table 4.2-1 of the Environmental Assessment Supplement (EAS).
6. Enbridge has identified three Watershed Districts, ten Counties and one Township where comprehensive land use plans have been established. It is expected that the Alberta Clipper and Southern Lights Diluent projects will must be constructed and operated in a manner consistent with these plans.
7. Enbridge has also sought to identify domestic wells along the proposed route. Review of the Minnesota Geological Survey and Minnesota Department of Health water well information database revealed only twenty-seven domestic wells within 200 feet of the originally proposed pipeline route. Enbridge states that it has and will ask landowners to help identify the location of additional, non-registered wells.
8. During public hearings conducted in counties along the proposed Alberta Clipper and Southern Lights Diluent Project route, the OES EFP Staff inquired regarding planned setbacks from wells. Enbridge indicated that the ground survey process will identify characteristics such as wells. If cased wells are closer than the required setback distance, Enbridge stated that it will work with the landowner to address the issue, possibly by adjusting the location of the pipeline within the approved route, or by abandoning and sealing the cased well and relocating the well to a different part of the property. Enbridge confirmed that any such well relocation would be accomplished at Enbridge’s expense.
9. The setback distance for wells is currently 150 feet. A rulemaking process is currently underway which would propose to reduce the setback standard to 100 feet. Enbridge stated that it is not participating in of this rulemaking process.
10. Enbridge will provide landowners with a checklist to identify features or characteristics of their property, including wells, which are noteworthy in terms of

their location relative to the placement of the proposed pipeline and associated work space.

11. **Berry Property, Mile Post 886.5.** Enbridge has sought to mitigate impacts on particular properties. At the hearing in Oklee, Minnesota on November 28, there was considerable discussion regarding the Berry property at Mile Post 886.5. Enbridge indicated its intention to reduce or “neck down” the line separation of the pipes to approximately 15 feet between pipes. Enbridge also indicated that its construction space would be reduced from approximately 140 feet to approximately 80 feet. Enbridge also noted its intention to install exclusion fencing during construction to provide a barrier which will ensure that the construction area on the property is limited and kept within that which is in the easement agreement.

In a later discussion regarding the Berry property, Enbridge again articulated its intention to reduce the area of disturbance by placing pipes as close together as possible (“necking down”) and to limit the construction workspace as much as possible. A permit condition should require Enbridge to reduce line separation and temporary workspace, to the extent safely feasible, as outlined in the public hearings.

12. **Gunvalson Property, Mile Post 902.** John Gunvalson indicated that the current location of the culvert on his property does not line up with the creek on his property. The result is that significant rainfalls run directly across his field and wash away topsoil. Relocating the culvert to the north side of the pipeline would eliminate this problem. Enbridge representatives indicated at the public hearing that relocating this culvert could be accomplished, if the necessary permits could be obtained from authorities with jurisdiction over the ditch. Enbridge indicated it has subsequently learned that permits will be required from Pine Lake Township and the Red Lake Watershed District. Enbridge applied for these permits and moved the culvert to resolve Mr. Gunvalson’s concerns.

13. **Peggy Hanson Property, Tract 600D, Map AC-076:** Ms. Hanson inquired about the impact to her property. Enbridge officials indicated that a detailed map will be provided and surveyors can mark the temporary work space on the property.

14. **Richard Holter, Tracts T-579E and T-572:** Mr. Holter inquired about what the setback requirements are from pipelines. Enbridge stated it is unaware of any federal, state or local setback laws or ordinances that apply to the area outside of the permanent easement.

15. **Bill Schroeder, Tract 621A:** Mr. Schroeder did not make a particular request, but Enbridge indicated that the proposed alignment would go directly through Mr. Schroeder’s 40-acre parcel. Enbridge stated that its Right-of-Way Agents will would contact Mr. Schroeder to discuss the proposed placement of the pipes through the Schroeder property.

16. **Mike Schmid, Tract 541-A on Map AC-081:** Mr. Schmid requested that the proposed pipelines be located on the north side of the current pipelines, between the existing lines and the railroad tracks. This would require moving a crossing point further back, near Highway 101. Enbridge stated that its contract Right-of-Way Agent will be contacting Mr. Schmid to discuss the location of the proposed pipelines across his property. Subsequent review found that Mr. Schmid does not own the land on the north side where he is asking Enbridge to move the pipeline. Enbridge indicated that, if necessary, Enbridge can construct the new pipelines in the existing easement on the south side of existing pipelines. Enbridge stated that Mr. Schmid will not negotiate for the use of temporary workspace, and Enbridge plans to secure the temporary workspace needed at this location through other measures. However, on November 18, 2008, Enbridge stated that it hopes to meet again with Mr. Schroeder during the week of November 17, 2008.

17. **Kevin and Julie Braith, T-250B, Map AC-110.** Kevin and Julie Braith are concerned about the distance from their home to the new lines. Enbridge indicated that they would provide the Braiths with a detailed map, and if necessary, send a surveyor to review their property with them. Enbridge's contract Right-of-Way Agent met with Kevin and Julie Braith on May 10, 2008 to address their concerns regarding the location of the proposed pipelines relative to their residence and the affect construction may have on their water well. After further review and discussion, it was discovered that they had confused the "blue" line, which is the boundary of the requested route width, with the actual location of the proposed pipelines. Enbridge and the Braiths have reached an agreement that addresses the Braiths' concerns, which is claimed to be trade secret.

18. **Terri Wittwer, T-169, Map AC-120:** At the St. Louis County Public Hearing, the Enbridge panel told Mrs. Wittwer that the pipe would be moved as close as possible to the existing gas pipeline in order to locate it as far as possible from the home site. Enbridge stated it would will provide detailed information regarding the proposed alignment. Subsequently, Enbridge indicates that Enbridge and Mrs. Wittwer were able to resolve Mrs. Wittwer's concerns.

19. **Violet Johnson (appearing on behalf of Kevin Johnson), T-198A, Map AC-117:** A culvert was crushed by a contractor and not repaired during the last project. Violet Johnson was told by Enbridge witness Paul Norgren that Enbridge will meet with her son and make things right. Enbridge stated that its's contract Right-of-Way agent contacted Mr. Kevin Johnson after the date the Landowner Request Follow-up document was filed, and is presently was working with Kevin Johnson to replace the culvert that was crushed during the last project. Enbridge stated that it planned plans to install a 30' x 15" culvert as requested by County officials. Subsequently, Enbridge indicated that Enbridge has resolved the issues raised.

20. **Gerald Lind, T-163A, Map AC-120:** Gerald Lind is a homeowner located at AC-120 T-163A. He voiced a number of safety concerns related to the location of the Gowan pump station. He said that his cabin in within 200 feet of the

pumping station, and that he is afraid of leaks and explosions. Mr. Lind submitted an exhibit that was marked as Exhibit AD. He would like an explanation as to the location of the flare pit, and why any changes to the location may have been made. Mr. Lind expressed his concern about the pipeline's effect on his property value. Enbridge will stated that it would review the drawing entered as Exhibit AD to determine its origin (if possible) and what factors contributed to the siting of the flare pit at its actual location (again, if possible). The current (proposed) alignment would have the Alberta Clipper and Southern Lights pipelines cross the southwest corner of Mr. Lind's property (Tract 163-A), south of the existing Enbridge pipelines. Subsequently, Enbridge indicated that it has successfully resolved Mr. Lind's concerns.

21. **Robert Johnston (on behalf of his mother), T-167, Map AC 120:** Mr. Johnston was concerned about the location of the pipeline and easements, and their effect on his mother's property. He said that the location of the easements would limit the use of the property to light cropping and grazing. Enbridge stated that it would visit Mr. Johnston and his mother with detailed drawings to negotiate and discuss land and timber values. Subsequently, Enbridge indicated that Mr. Johnston's concerns have been successfully resolved.

22. **Earl Stewart (on behalf of David and Marcella Stewart):** The Stewarts requested that Enbridge keep construction north of the railroad tracks, maintain ditches and culverts, clean existing culverts and drains, replace topsoil, level and smooth for crops, bury deep enough for logging equipment to cross and leave service roads intact for their use. Enbridge stated that its contract Right-of-Way Agent will contact David and Marcella Stewart upon completion of the detailed construction alignment sheets for their property. Enbridge further indicated that this part of the route also affects railroad property and it will need to resolve any issues with the railroad before it will be able to resume any negotiations with the landowner. On November 18, 2008, Enbridge advised that it is continuing to examine the feasibility of staying on the north side of the railroad tracks.

23. **Carol Anderson, T-45, Map AC-133:** Carol Anderson was upset that trees were not replanted after the last expansion project. Enbridge subsequently indicated that they contacted the Andersons to follow-up on their concerns, and showed them receipts for payment for trees taken on the last project. This appears to be resolved.

24. **John and Shirley Morgan, and Kevin and Sandy Morgan, T-194-A.** These landowners highlighted significant concerns about the pipelines going through their property, including devaluation due to successive pipeline construction projects. Enbridge indicated it has purchased the properties in fee.

25. **Rich Antilla, T-418, 34929 Church Road, Deer River, MN.** Mr. Antilla opposed the 500 foot route width because it would eliminate 14 acres of his property to use as saleable building sites, and they had purchased the property as an investment of \$187,000. Enbridge indicated on October 9 in a response to an IR

that it had clarified that the 500-foot route is not the ultimate width of the right of way or temporary working space. The Company believes that there will be minimal additional impact at this location because it requires 20 feet of additional permanent easement and the additional work space parallel to the existing pipeline on his property.

26. **Larry and Karen Holmquist, T-282 and T-282B.** The Holmquists stated they are concerned about the location of the proposed pipelines relative to their house and the associated safety risks. The Holmquists' concerns have not been resolved. Enbridge stated that the Holmquists and Enbridge have exchanged offers for a permanent easement and temporary workspace, but have not reached a mutually acceptable resolution.

27. **Dave and Lynn Beatty, T-56A, 625 Cemetery Rd., Wrenshall, MN.** Mr. Beatty asked why Enbridge is asking for additional footage on the south side of the existing line (25 feet) and 75 feet to the north side of the existing line. He stated that the original plan was for 75 feet additional footage to allow installation of both lines on one side of the existing line. Mr. Beatty questioned whether Enbridge had ulterior motives to "bank" additional space for future expansion projects. Enbridge first responded that the Beatty's property will involve a boring under a road and additional temporary workspace will be needed for this special construction technique, but it believes impact to the property will be minimal. On November 17, 2008, Enbridge indicated that it was able to eliminate the temporary workspace that Mr. Beatty was concerned about and that negotiations are ongoing with the Beattys over the final terms of their agreement.

28. **Peggy Holter, T-572, Bemidji, MN.** Ms. Holter opposed any plan to route the pipeline across her property, and noted that her neighbor Tim Falk has an issue with a barn being in the way of the pipeline. Enbridge has proposed a re-route to the eastern side of her property. She stated that Bemidji is growing and her property will be quite valuable for future development, and that the pipeline would significantly reduce the value with the loss of acreage and accessibility. On November 17, 2008, Enbridge stated that it is waiting until after the Minnesota hunting season to flag the temporary workspace, and believes Ms. Holter will sign easement and temporary workspace agreements at that time.

29. **Jim and Cindy Ridley, T-307, Grand Rapids.** The Ridleys stated that the pipeline is virtually making their property worthless as the first pipeline option would be right next to their house, and the second would surround their property by pipelines, create a wind tunnel and leave them with no tree protection. The last pipeline decreased the value of their property significantly. Further they fear for their safety and are experiencing mental anguish and sleepless nights which can affect their health. Enbridge indicated that following refinement of the route through this area, the Ridley's tract is no longer affected by the project.

30. **Michael Karna, T-313, 21205 Bluebird Drive, Grand Rapids.** Enbridge has purchased this property in fee.

31. **Mike Bohnam (Harold Bohnam family), T-321, 21727 County Rd. 71, Grand Rapids, MN.** Mr. Bohnam is concerned with the width of the easement, and the consistent widening of it with successive pipeline projects. Every time the easement gets larger and trees are removed, the winds get stronger and cause higher heating costs due to wind chills. He is concerned with devaluation of his property and detailed issues with prior pipeline construction projects, including increases in invasive weeds, improper soil replacement, and no reseeding. He also stated his intent to raise certified organic beef, and that Enbridge should be responsible and compensate landowners when they come in and do repairs. Enbridge stated that it had been working with Mr. Bohnam about the impact to his trees during construction, but was unable to resolve the issue. Enbridge further stated that it had been unable to contact Mr. Bohnam since the October 9, 2008 response to EFP Staff's IR was sent.

32. **Alice Peterson, T-923.** Enbridge stated that it must respond to a letter from Ms. Peterson and Randy Peterson (Exhibit AH). Further, Enbridge states that Ms. Peterson and Enbridge have resolved the issues successfully.

33. **Dan Sauve, Clearwater County Engineer:** Mr. Sauve requested a meeting with the construction contractor and the Enbridge inspectors when they come into the county. Enbridge has met with the Clearwater County Engineer officials on Thursday, May 22, 2008. The purpose of this meeting is was to ensure that the traffic routes through the county are clearly communicated and the construction schedules are explained.

34. **Jack Gustafson, Cass Lake:** Mr. Gustafson inquired about impacts to the MiGiZi bike trail and several events held on that trail through the summer.<sup>270</sup> Enbridge indicated that the triathlon held in June will not be impacted, but is was not able to determine whether the other events mentioned by Mr. Gustafson will be impacted by construction. Subsequently, Enbridge stated that it is conducting further consultation sessions with the Chippewa National Forest and the State of Minnesota in an effort to address the timing of its construction work activities as it relates to the seasonal use of the MiGiZi bike trail.

35. **Ervine Blom, Eckles Township Board:** Mr. Blom is on the Eckles Township board. He requested that a performance bond be provided to ensure that township roads are repaired after construction. He also requested that an Enbridge representative discuss this matter with the town board. Enbridge representatives met with the Eckles Township Board (June 11) to discuss the Alberta Clipper project, and has had follow-up conversations regarding access roads, crossing Grant Creek and the Mississippi River on June 18, July 28, and August 7, 2008.

36. **Jim Edelman, Lammers Township Board:** Lammers Township asked Mr. Edelman to attend the hearing. Mr. Edelman requested that an Enbridge Representative attend the town board meeting, held on the second Tuesday of the

month at 7:00. Although he did not make any other requests, he indicated that his concerns were with road repair and black dirt. Enbridge representatives attended the Lammers Township Board meeting on May 13, 2008 to discuss the Alberta Clipper and Southern Lights Diluent Projects, explain the permit process, discuss road repair and post-construction restoration practices for topsoil, and explain the post-construction final damage release form.

37. **Jack Rajala - Boundary Company.** Mr. Rajala wants to visit with Enbridge prior to the start of construction. Mr. Rajala indicated that access to the workspace should be communicated to and permission obtained from the Boundary Company before work begins. An Enbridge contract Right-of-Way Agent met with Mr. Rajala to discuss his concerns relative to egress/ingress to the Project from his property by heavy logging equipment during logging operations, advised him that Enbridge was working on a proposed route which would avoid the plant operation west of Deer River, and issues during the construction phase. Enbridge advised Mr. Rajala that if he needed to cross the pipeline easement with logging equipment, he should contact the region Right of Way Agent or Pipeline Maintenance Office in Bemidji and they will assist to install a correct pipeline crossing. The ALJ recommended that the Pipeline Routing Permit should require Enbridge to notify and obtain permission from the Boundary Company prior to the commencement of construction or other activities.

38. **Greg Bernu, Carlton County Commissioner:** Commissioner Bernu asked Enbridge to attend a county board meeting on April 28 at 4:00. Carlton County is interested in working with Enbridge on the Fond du Lac Route Alternative. As requested by Mr. Bernu, Enbridge representatives attended the Carlton County Board meeting on April 28, 2008. At this meeting, Enbridge representatives gave a presentation and answered questions about the Alberta Clipper Project.

**Criterion B: Consideration of the natural environment, public and designated lands, including, but not limited to, natural areas, wildlife habitat, water, and recreational lands.**

[Supplemental Finding] 39. Enbridge has identified some potential impacts on the natural environment both in body of the AC/SLD PRP Application and in the accompanying EAS, in the Northwest and Southeast Comparative Environmental Analysis (CEA's), and in the Fond du Lac Route Alternative Supplement filed on April 21, 2008.

40. The EAS identified four Ecological Classification Systems within which the Alberta Clipper project will be located. From Milepost 801.8 (at the North Dakota border) to Milepost 896.2, much of the area has been converted to agriculture. Typical upland forest cover along the route is aspen-birch forest. A majority of the wetlands present along the REVISED Preferred Rrequested route and Alignment alignment are the emergent marsh or scrub-scrub swamp variety. Information regarding sensitive plant communities was obtained from the Natural Heritage

Program administered by the Minnesota Department of natural Resources and U.S. Fish and Wildlife Service.

41. Vegetation cover will be removed from the construction right-of-way and temporary workspace areas. Active re-vegetation measures will be employed to restore vegetative cover as provided in the EMP.

42. Representative species of existing wildlife resources and fisheries resources have been identified. Enbridge has also consulted with the Minnesota DNR and the United States Fish and Wildlife Service to determine whether threatened or endangered species might be found in the vicinity (within one mile) of the project. Sixteen known occurrences of rare species or plant communities were indicated in the area searched.

43. The water resources in the area of the Alberta Clipper and Southern Lights Diluent Projects have been identified and described. With respect to groundwater resources, the aquifers crossed by the Alberta Clipper Project pipeline route are named and characterized. Enbridge has noted that ground disturbance during construction will generally be less than 10 feet in depth, which remains above the water table for most of the area affected. Enbridge has also submitted a Spill Prevention, Containment and Control Plan which describes measures to prevent groundwater contamination.

44. The surface water resources along the route of the proposed Alberta Clipper and Southern Lights Diluent Projects have also been identified. Water body crossings are categorized and presented by location (milepost), jurisdiction (county), and name and type of water body. Specific construction methods relating to water body crossings are included in the EMP.

45. A separate inventory of wetlands crossings has also been prepared and presented by wetland type, county and number of acres affected. Again, specific construction methods for wetland areas have been described.

46. Enbridge has determined that the Alberta Clipper and Southern Lights Diluent Projects will cross four rivers listed on the National River Inventory, none of which are designated Wild and Scenic Rivers. The only recreational areas crossed by the route of the proposed Alberta Clipper and Southern Lights Diluent Projects are three state-designated canoe and boating routes and the MiGiZi bike trail. The pipeline does come within .5 mile of three state wildlife management areas.

47. The Minnesota DNR submitted numerous extensive comments on October 8, 2007, and April 21, 2008, and letters dated August 1, 2008 and September 21, 2008. DNR also submitted an update to the EFP Staff on November 13, 2008, which summarizes DNR's recommendations. In the letters dated August 1 and November 13, 2008, DNR states that its comments of October 8, 2007 and April 21, 2008 were largely not addressed by the ALJ in his report. Enbridge filed a

Response to the April 21 DNR comments. DNR has recommended a number of permit conditions.

48. Recommendation for dealing with site-specific issues for waterbodies. Enbridge must acquire a License to Cross Public Waters from the DNR. These site-specific issues should and will be thoroughly analyzed and dealt with during that application process. Enbridge will abide by the terms of all permits required by state law.

49. The Minnesota DNR also submitted several comments regarding replacement of woody buffers along streams. At the outset, the right-of-way must be kept clear in order to facilitate inspections of the right-of-way, avoid damage from tree roots, allow timely emergency response, and help delineate the location of the pipelines to reduce the potential of other parties striking the pipeline. Enbridge has proposed a precedent-setting woody vegetation plan to the Minnesota DNR. In general, this plan includes replanting along the banks of riparian corridors to within ten feet of the location of the proposed pipelines.

50. Enbridge has also agreed to limit clearing near river crossings by waiting to clear the final 20 feet of any river crossing until 24 hours before construction activity is scheduled to begin. Enbridge has also agreed not to clear woody vegetation over the path of underground horizontal directional drilling (“HDD”) sites under water bodies.

51. Several of the DNR’s comments concerned ATV and vehicular damage along the route. Enbridge will work with landowners to prevent trespass. Enbridge, however, does not own the land and therefore lacks authority to limit access and cannot place signs or barriers without the landowner’s consent.

52. Topsoil segregation is not a suitable method to prevent the spread of invasive species in upland areas due to the very limited amount of topsoil that is present. The size of the equipment and the presence of tree stumps and roots make this process impractical. The EMP and AMP, however, address the spread of invasive species through early identification of affected locations and cleaning construction equipment.

53. Enbridge acknowledges the need to reduce the spread of invasive species. This is a special concern of the Minnesota DNR. Compliance with the Agricultural and Environmental Mitigation Plans, which is a proposed condition in the Pipeline Routing Permit, will minimize this risk.

54. The MCEA submitted public comments at the end of the comment period. These comments focus on the environmental review conducted for the proposed Alberta Clipper and Southern Lights Diluent Projects. Some of the MCEA’s comments fail to acknowledge facts that have been established in the record.

55. The MCEA's first comment is that Enbridge must apply for a public waters work permit under the Wetlands Conservation Act. Compliance with applicable permits is a required condition of any pipeline routing permit issued by the MPUC. Therefore, if a public waters work permit is necessary under Minnesota law, Enbridge will be required to obtain and abide by that permit.

56. Another concern expressed by the MCEA is the lack of a wetland sequencing analysis in the AC/SLD PRP Application and associated environmental assessment supplement. A wetlands replacement plan is distinct and separate from an Environmental Impact Statement ("EIS"). Inclusion of a wetlands sequencing analysis is not required by law for the AC/SLD PRP Application or even for a full EIS. Minn. Stat. 103G.222 governs wetland replacement plans, but does not require a sequencing analysis in an EIS. Likewise, the rule governing the content of an EIS does not require inclusion of a wetland sequencing analysis, nor does the rule governing the analysis of an application for a pipeline routing permit.

57. Enbridge has considered wetlands in the development of the proposed route of the Alberta Clipper and Southern Lights Diluent projects. Section 2.2.2 of the Environmental Assessment Supplement states that adjustments were made to the proposed route to avoid or minimize impacts to sensitive environmental features. The route development analysis included NWI-mapped and forested wetlands. Several of the route alternatives were specifically developed to avoid or reduce impacts to wetlands.

58. The MCEA also expressed concerns about an alleged lack of detail regarding wild and scenic river crossings. The Environmental Assessment Supplement to the AC/SLD PRP Application acknowledges the National Wild and Scenic Rivers Act and the requirement for federal agencies to consider methods to mitigate impacts to these waterbodies as part of their permitting process. Enbridge must obtain permits from the United States Army Corps of Engineers, which would be aware of the National Wild and Scenic Rivers Act. The AC/SLD PRP Application and associate materials disclose that the proposed route of the projects will cross four rivers listed in the Nationwide Rivers Index, a list of rivers maintained by the National Park Service that potentially qualify as national wild, scenic or recreational river areas pursuant to Section 5(d) of the National Wild and Scenic Rivers Act. None of these rivers are federally-designated wild and scenic rivers. Nothing in the record indicates that Enbridge will fail to acquire and comply with all relevant permits or environmental regulations.

59. The MCEA also asserted that the AC/SLD PRP Application and associated materials should discuss cumulative impacts related to stream crossings, wetlands and permanent clearing. The term "cumulative impacts" relates to consideration of whether a generic EIS is required, not to any project-specific environmental review. The Minnesota Supreme Court has specifically stated that "cumulative impact" and "cumulative potential effects" are different terms under the Minnesota Environmental Policy Act. The definition of "cumulative impact" given in Minn. R. 4410.0200(11) does not apply to the project-specific "cumulative potential

effects” criterion given in Minn. R. 4410.1700(7)(B). A “cumulative potential effects” inquiry is more limited in geography and timing than the “cumulative impact” inquiry used for generic EIS determinations. Because the Minnesota rules on the alternative environmental review process require a cumulative potential effects, not a cumulative impacts, analysis, the MCEA’s assertion that a “lack of even the mention of cumulative impacts” renders the Enbridge project-specific environmental review inadequate is therefore incorrect.

60. Enbridge has considered the cumulative potential effects of the proposed Projects in accordance with Minnesota law. The Minnesota Rules regarding environmental review for pipeline projects limit the cumulative potential effects that must be considered to those involving related or anticipated future pipeline construction. Enbridge has no plans for any such construction projects.

61. The MCEA also expressed concerns regarding habitat fragmentation. The Environmental Assessment Supplement to the AC/SLD Route Application and associated materials include a discussion of wildlife. The Route Application states that long-term effects on wildlife species will be limited because the pipeline will be collocated with the existing pipeline right-of-way. This means that habitat fragmentation will not be a result of the project, since no additional lines through wildlife habitat will be created along the overwhelming majority of the proposed route. Accordingly, there will be no permanent new fragmentation for the Revised Preferred Route and Alignment.

62. The MCEA asserts that Enbridge has not addressed the fact that a permit is required from the U.S. Army Corps of Engineers to discharge fill into a wetland under 33 U.S.C. 1344. Section 4415.0165 of the AC/SLD PRP Application, however, acknowledges that a Section 404 permit from the U.S. Army Corps of Engineers is required for the projects.

63. The MCEA also asserts that there is inadequate identification of streams or rivers that will be impacted by the proposed projects. Appendix H to Exhibit 101 presents a list of waterbodies that will be impacted and the location of the crossings. Specific crossing methods cannot be provided for these locations because such methods must be developed in consultation with the appropriate regulatory agency through the agency’s permitting process. Information about various crossing methods is also provided, along with information regarding restoration following the crossings.

**Criterion C: Consideration of lands of historical, archeological and cultural significance.**

64. Enbridge has conducted a review of the Minnesota State Historic Preservation Office files to identify any recorded cultural resources within the proposed right-of-way. Seven previous reports on archeological studies of the project area were cited. Nine archeological sites were determined to be located within the construction area. Three of these sites have been determined to be

eligible for nomination to the National Register of Historic Places. Enbridge will consult with the appropriate federal and state offices to determine measures to avoid, minimize or mitigate adverse effects to the sites.

65. Enbridge is also working with the Leech Lake Heritage Sites Program to survey for sites of cultural significance in the Leech Lake area. Enbridge is also working with the U.S. Department of State to address Section 106 cultural resources consultations that agency is conducting with the Fond du Lac Band.

**Criterion D: Consideration of economies within the route including agricultural, commercial or industrial, forestry, recreational and mining operations.**

66. Enbridge has determined that approximately 1,993 acres of agricultural land will be temporarily disturbed during construction of the Alberta Clipper/Southern Lights Diluent projects. Construction activity may interfere with planting or harvesting activity. Landowners will be compensated for crop losses or other damage caused by construction activity.

67. All drainage systems will be identified and repaired in accordance with the AMP.

68. The issue of drainage systems identification and repair was also raised in the context of public hearings conducted in counties along the route. Contractors are responsible for following the proper construction procedures, but Enbridge is responsible for repair of the drain tile systems. Landowners may also choose to affect their own repairs, which Enbridge would pay for if this option is agreed upon by the parties. Landowners will be asked to help locate drain tile systems.

69. The proposed Alberta Clipper/Southern Lights Diluent a total of 97.1 acres of “developed” land, which includes both residential and commercial properties.

70. Construction disturbance at open-cut road crossings will typically be limited to one day, and if no reasonable detour is feasible, at least one traffic lane will be maintained. The only exception will be for brief periods essential to laying the new pipeline.

71. Approximately 1,343 acres of timber will be affected by construction of the Alberta Clipper and Southern Lights Diluent Projects. Unless otherwise agreed to by Enbridge and the landowner, Enbridge will salvage and sell any merchantable timber removed from property in the right-of-way. Landowners will be compensated for their tree loss based on appraised values for stumpage, or if appropriate, higher ornamental tree values.

72. The project will have limited impact on recreational activities in the area. Three state-designated canoe and boating routes are crossed by the pipeline. Any impacts on water crossings must be mitigated as specified in the EMP.

73. Testimony was presented regarding avoidance of a source of gravel which a landowner wanted to preserve for later extraction. Enbridge indicated that there should be sufficient space to avoid adverse impact on the gravel deposit.

**Criterion E: Consideration of pipeline cost and accessibility.**

74. Enbridge has estimated the cost for the Minnesota portion of the Alberta Clipper/Southern Lights Diluent projects to be \$1,297,000,000.00 (2006 U.S. dollars).

75. Access to the right-of-way will be from public roadways and approved access roads only.

**Criterion F: Consideration of the use of existing right-of-way and right-of-way sharing or paralleling.**

76. Enbridge assessed the Minnesota portion of the Alberta Clipper/Southern Lights Diluent route with the intent of maximizing the use of existing Enbridge right-of-way to the extent feasible, while identifying specific areas, where co-location may not be feasible. As part of this assessment, a number of federal and state databases, maps and information sources were consulted to identify routing constraints. Co-locating with the existing Enbridge right-of-way, generally on the south/western edge of the right-of-way, was initially determined to be the best route.

**Criterion G: Consideration of natural resources and features.**

77. The Alberta Clipper/Southern Lights Diluent PRP Application includes an analysis of the terrain and geology and soils along the proposed route. The Application states the topography of the area is characterized by gently rolling till plains, hilly acres formed by glacial moraines and out wash plains. The elevation of the Alberta Clipper/Southern Lights Diluent pipeline route varies from a low of 767 feet in Kittson County to a high of 1,474 in Clearwater County.

78. Soil characteristics and depths in the project area have been evaluated per county and by acreage. Potential impacts on soils are considered, as are mitigation measures.

**Criterion H: The extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3[6]00 for pipeline right-of-way preparation, construction, cleanup, and restoration practices.**

79. The Alberta Clipper and Southern Lights Diluent Projects are subject to significant regulatory control in addition to that of the PUC. Lists of the various regulatory agencies and the associated permits can be found on page seven of section 7853.0230 of Exhibit 300 and in Section 7852.3000 (4415.0165) of Exhibit 100. The permits apply to water crossings, water discharge, endangered species consultations, historical consultations, and road crossing permits. There is no indication in the record that any of these permits will fail to be issued, nor is there any indication that Enbridge will fail to abide by their terms or conditions. Enbridge provided an updated list of permits to the EFP Staff which are appropriately accepted in the post-hearing record.

80. County and township highway officials attended several public hearings. A representative expressing the concerns of local highway officials was present at the November 28 public hearing in Oklee, Minnesota. Red Lake County confirmed that Enbridge has submitted the appropriate applications for Roadway Crossing Permits. It was asked that wherever feasible, heavy loads be directed to state trunk highways rather than lower capacity county highways and townships roads. The County also asked for a 30-day advance notice of the start of construction. Enbridge agreed to comply with these terms. Representatives of Eckles Township and Lammers Township attended public hearings to express their desire to meet with Enbridge to discuss their concerns about road repair. Enbridge met with the township boards to discuss these concerns.

81. Enbridge has also developed environmental and impact mitigation plans as part of the Environmental Assessment Supplement to the AC/SLD Route Application. Compliance with these mitigation plans are a condition of a routing permit issued for the Alberta Clipper and Southern Lights Diluent Project.

82. Conditions placed on the Alberta Clipper/Southern Lights Diluent Pipeline Routing Permit under Minn. R. 7853.3600 will also help mitigate any impacts to humans or the environment. Minn. R. 3600 contains a list of 14 separate permit conditions, which are addressed as follows:

- The first condition is that “the permittee shall comply with all applicable state rules and regulations.” Compliance with state rules and regulations will ensure that all relevant environmental, safety, and other laws and rules will be followed during construction of the Alberta Clipper/Southern Lights Diluent. This includes compliance with the permits issued by state regulatory agencies as identified in Section 7852.3000 of Exhibit 1. Enbridge has indicated that it will abide by the conditions of all required permits.
- The second condition is that “the permittee shall clear the right-of-way only to the extent necessary to ensure suitable access for construction, safe operation, and maintenance of the pipeline.” Requiring the clearing of land to be limited to only the temporary workspace and the additional permanent easement width described above will serve to keep impacts to the environment to the absolute

minimum, yet still allow safe construction practices. The permanent easement space will need to be kept free of trees to federally-required inspection of the right-of-way, which Enbridge conducts by air, and allow ready access in case of the need for an emergency repair.

- The third condition is that stream banks must be stabilized with vegetation using native plant species indigenous to the area or by other methods required by applicable state and/or federal permits and/or laws. Enbridge addressed the need and its plan to restore stream banks and prevent erosion in the Environmental Assessment Supplement and the Environmental Mitigation Plan. The Minnesota DNR also issues licenses to cross public waters. This licenses will contain conditions regarding restoration to which Enbridge will adhere to. The presence of this condition in a Pipeline Routing Permit for the Alberta Clipper/Southern Lights Diluent Project will serve to alleviate impacts to the natural environment. Enbridge has also proposed a plan to allow some woody revegetation along riparian corridors. This plan, which is incorporated into the EMP plan, may also be incorporated in the License to Cross Public Waters from the DNR, as it was with the LSR project and is more restrictive than conditions placed on the MinnCan Pipeline Project.
- The fourth and fifth conditions address segregation of topsoil and efforts to reduce the compaction of soil in cultivated lands to as small an area as possible. Bob Patton, a representative of the Minnesota Department of Agriculture, testified that the AMP has been developed to reduce and mitigate damages to agricultural land. Trench-only topsoil segregation will be used in areas of deep topsoil to help reduce soil compaction and ensure that topsoil is preserved for replacement. Another factor of the AMP is to run trucks that string (place) the sections of pipe down the right-of-way over the area that will be trenched to reduce soil compaction. Requiring compliance with the terms of the AMP as a permit condition will help mitigate the impacts on agricultural land and on farming operations.
- The sixth condition is taking steps to protect livestock and crops. Requiring protection of livestock through careful construction methods and notification of livestock issues to landowners is a proposed permit condition for the Alberta Clipper/Southern Lights Diluent Project. Some crop damage will result from construction during the growing season. A witness for the DOC determined and has testified that the presence of the AMP and the fact that any impacted agricultural land can be fully returned to production following construction indicates that such damage should be “minimal and temporary.” Enbridge also plans to compensate landowners for crop damage, as addressed in the AMP. Enbridge will file an Anthrax Mitigation Plan with the MPUC in advance of the issuance of a Routing Permit.
- The seventh condition is requiring all appropriate precautions against pollution of the environment. Preventing pollution to the environment is addressed in the Environmental Mitigation Plan, the Spill Prevention Containment and Control Plan, the

Petroleum-Contaminated Soil Management Plan, and the Drilling Mud Containment, Response, and Notification Plan. Enbridge also maintains an emergency response plan and monitors pipelines for human and environmental safety in compliance with federal pipeline safety regulations. The list of permits required for construction of the Alberta Clipper and Southern Lights Diluent Projects will also help ensure that all appropriate precautions are taken to prevent pollution. Finally, environmental inspectors will also be present to inspect construction for compliance with applicable regulations and permits.

- The eighth and ninth conditions deal with keeping the work area clean. First, all waste and scrap produced in the construction process must be removed before construction ends. Second, personal litter, bottles, and paper must be removed daily. The EMP and AMP require these tasks to be completed by Enbridge. Landowners will be asked to review the condition of their property following construction. Such permit conditions are sensible and will be included to help minimize any impact on humans or the natural environment.
- The tenth condition in Minn. R. 7852.3600 is that all drainage tile damaged during the construction process must be repaired or replaced. Repair of drainage tile is addressed in the AMP. Enbridge will work with landowners to locate drain tile that may be affected by construction prior to the start of the construction process. Any damaged tile will be repaired by Enbridge, or there is a process wherein the landowner may elect to perform the repairs independently. This permit condition, combined with the landowner information checklist and the conditions of the AMP, will serve to reduce impacts to agricultural land.
- The eleventh condition is that all private roads and lanes damaged during and by the construction process must be repaired. Repair of private roads is a condition of the EMP and proposed pipeline routing permit.
- The twelfth condition is that all fences must be replaced or repaired if taken down or damaged during the construction process. Fencing will be braced prior to cutting to prevent slacking of wires. Temporary gates or fencing will be installed to restrict access or contain livestock until construction is complete and permanent repairs can be completed. This condition will serve to reduce the impact on human settlement, and is a proposed permit condition.
- The thirteenth condition concerns protection of trees and shelterbelts to the extent compatible with safe operation, maintenance, and inspection of the pipeline. Shelterbelts should be preserved to the extent practical and consistent with safe construction, maintenance, and inspection of the pipeline. Some practices that could mitigate damage to shelterbelts, such as using Horizontal Directional Drill (“HDD”) methods to install the pipeline are both very expensive, require a wider work area than typical on both sides of the drill, and are incompatible with safe maintenance and inspection of the pipeline. Use of the HDD method could leave some trees intact, but would result in the pipeline being installed very deep in the ground. If the pipeline is

installed at depth under trees, it would be very difficult to access the pipeline for maintenance or emergency response activities. In addition, leaving trees over the permanent easement would interfere with proper inspection of the pipeline. Enbridge patrols the pipeline route by air at least 26 times per year, as required by 49 C.F.R. Part 195. The presence of trees over the top of the pipeline would severely hinder this important safety measure, and would therefore interfere with the safe inspection and operation of the pipeline. This permit condition should not be included in a Pipeline Routing Permit in a manner that would interfere with the safe operation, inspection, and maintenance of the proposed pipelines or inhibit compliance with federal pipeline safety regulations.

- There was considerable discussion with landowners and between the Department and Enbridge representatives regarding tree valuation methods. Enbridge acknowledged that they do work with landowners to recognize the value of “ornamental” trees and they will hire consultants, when necessary, to appraise trees which may have an enhanced value due to aesthetics or sheltering benefits.
- The fourteenth and final condition in Minn. R. 7852.3600 is restoration of the impacted area to natural conditions after installation of the pipeline. This condition requires that the restoration be compatible with the safe operation, maintenance, and inspection of the pipeline. As mentioned above, restoration should not include replanting of vegetation on the permanent right-of-way that would hinder the safe operation, inspection, and maintenance of the pipeline.
- Restoration activities are subject to the terms of the EMP and AMP, as well as landowner inspection and approval. The presence of this permit condition will serve to mitigate impacts on the environment by restoring the land to its prior condition to the extent practical and is included in the proposed permit.

**Criterion I: Consideration of cumulative potential effects of related or anticipated future pipeline construction.**

83. The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a 500 foot route width that will accommodate both the LSr and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.

84. The Revised Preferred Route and Alignment filed by Enbridge on December 20, 2007 also describes a varying route width to allow installation of both the Alberta Clipper and Southern Lights Diluent pipelines southeast of Clearbrook, Minnesota in a manner that causes the least impact on the human and natural environments.

85. The proposed routes of the LSr and Alberta Clipper Projects are adjacent and parallel northwest of Clearbrook, Minnesota. For the area northwest of Clearbrook, the same environmental features will be encountered in the LSr and Alberta Clipper Projects, and the same permits and impact mitigation measures should be required.

86. Enbridge stated that it has no further plans for pipeline construction in Minnesota, beyond the newly constructed LSr, and the proposed Alberta Clipper and Southern Lights Diluent Projects.

**Criterion J: Consideration of the relevant applicable policies, rules and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location, design, construction or operation of the proposed pipeline and associated facilities.**

87. Construction of the Alberta Clipper/Southern Lights Diluent pipelines will require consultation with federal, state and local government agencies. Enbridge has specifically identified 31 permits, licenses or plans that must be obtained, approved and filed prior to proceeding with project construction. Minn. Stat. § 299J.05 governs local pipeline setback ordinances. The design, construction and maintenance of the proposed pipelines are subject to federal pipeline safety regulations found in 49 C.F.R. Parts 190-199. There is no evidence in the record that suggests that the applicable policies, rules and regulations of other state and federal agencies and local government land use laws will not be followed during the construction and operation of the Alberta Clipper/Southern Lights Diluent Project.

88. Compliance with such other policies, rules and regulations should be proposed permit condition for the Alberta Clipper/Southern Lights Diluent Project.

## **S. The Fond du Lac Alternative.**

### **1) Adopt the Supplemental Findings and Conclusions of the EFP Staff:**

[Supplemental Finding] 87. The Fond du Lac alternative is a 100 percent green field route while the Proposed Route is adjacent to existing rights of way for its entire length. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative]

89. Most of the 21.4 miles of the Fond du Lac Route Alternative goes through county or state forest. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative]

90. The Fond du Lac alternative opens up a significant new corridor through large tracts of undisturbed native communities, including Sites of High Biodiversity Significance. [DNR April 21, 2008 letter to ALJ]

91. The Fond du Lac Route Alternative crosses more waterbodies than the Revised Preferred Route and affects an additional 23,859 feet of NWI-mapped wetlands including at least 5 stands that are designated as ecologically important lowland conifers. [Ex. 117 Supplemental Filing to the Fond du Lac Route Alternative; DNR April 21, 2008 letter to ALJ]

92. Construction of two large-diameter pipelines through this area will permanently alter these communities, fragment large areas, and open the area to invasive species. Existing forested area would be replaced with an unnatural grassy habitat. Wildlife habitat and timber production will be impacted. [DNR April 21, 2008 letter to ALJ]

[Supplemental Conclusion] 1. The Fond du Lac Route Alternative has more negative impacts when assessed according to the ten-factor test under Minn. R 7852.1900 than the Proposed Route.

2. The Fond du Lac Route Alternative is not a reasonable alternative.

2) Do not adopt the Supplemental Findings and Conclusions of the EFP Staff.

3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option S.1)

#### **T. Department of Natural Resources (“DNR”) concerns.**

1) Adopt the EFP Staff’s Supplemental Findings relating to DNR Comments:

94. DNR commented extensively that more information was needed before a decision to designate a route could be made and that the information provided in the Comparative Environmental Analysis did not address the environmental issues in enough detail to accomplish a comparison of the alternatives based on environmental issues. For the most part, the Alberta Clipper and Southern Lights Diluent Project has only one route. The exception is the Fond du Lac Route Alternative, which is an alternative to the route that crosses the Fond du Lac Reservation. Under Minnesota Rules 7852.0100, subp. 31, a route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles. All of the route proposals accepted for public hearing, with the exception of the Fond du Lac Route Alternative, merely widened out or increased the width of the proposed route in 23 different areas along the length of the proposed route in Minnesota. This widening out or increasing the width of the route merely allows Enbridge to seek out different alignments or locations for the proposed pipelines in those areas. Route width variability, often provides the flexibility necessary to mitigate impacts associated site specific locations.

95. It is recognized that different units of government have different information requirements. The Commission fully expects that Enbridge recognizes the information requirements of other permitting agencies and will comply with those agency requirements and their respective permit conditions. Enbridge shall work with all regulatory agencies with jurisdiction and landowners within the widened route areas to identify a project centerline that balances the negative effects on natural resource with other competing interests.

96. The route width being requested by Enbridge in these 23 areas merely increases its ability to work with other permitting agencies and/or landowners to identify solutions to problem areas and mitigate potential impacts. The route width being requested is still less than the permissible of 1.25 miles. If the route width is inadequate, the pipeline routing permit does allow for minor changes outside of the designated route. See Part IV. of the pipeline routing permit. Another mechanism to modify the location of the route is provided for in Minn. Rules 7852.3400.

**Permit Conditions.**

97. The DNR recommended that horizontal directional drilling (HDD) be used to cross the Snake River (MP 843.1), Mississippi River (MP 939.7), Mississippi River (MP 984.7 to MP 988.2). Enbridge is proposing to accomplish these river crossings by HDD. This requirement is a proposed permit condition, as is the requirement to submit an alternative plan if HDD is not successful. Other HDD river requirements may be established by DNR for Enbridge as a part of its licensing requirements. Enbridge has indicated that it will comply with all permit conditions and requirements.

**Environmental Mitigation Plan.**

98. The DNR recommends the establishment of a “woody buffer maintenance and re-vegetation plan.” Such a plan has been established and is included as a requirement in the filed Environmental Mitigation Plan as Figure 22.

99. Enbridge will file an Invasive Species Plan. Enbridge will also submit the Invasive Species Plan to DNR to ensure that it contains a complete list of plants of concern.

100. Enbridge’s filed Environmental Mitigation Plans incorporates suggestions regarding temporary equipment bridges at Part 2.5.

101. Enbridge will work the DNR and landowners to install ATV barriers

102. Environmental and agency monitors will be required as a condition of the pipeline routing permit. See permit at V.N.6.

103. Enbridge has indicated that it will file a Drilling Mud Containment Plan and that winter construction plans will be filed as necessary.

104. Enbridge shall develop a topsoil management plan that separates and places topsoil in areas where subsoil has been excavated.

105. Woody vegetation within a river floodplain or adjacent to a water body shall not be cleared for extra temporary workspace unless approved by the DNR as part of the applicable crossing license.

106. Equipment bridges shall be used on watercourses, including ditches and intermittent streams. Rocked crossing shall be allowed on a case-by-case basis after review by state environmental inspectors described in Section 2.5 of the Environmental Mitigation Plan.

- 2) Do not adopt the Supplemental Findings of the EFP Staff relating to DNR Comments..
- 3) Take some other action.

**EFP Staff Recommendation:** Staff recommends Option T.1)

#### **U. Adoption of ALJ Recommendations.**

1. Adopt ALJ Findings of Fact and Conclusions.
2. Adopt as amended the ALJ Findings of Fact and Conclusions.
3. Take some other action deemed more appropriate.

**EFP Staff Recommendation:** Staff recommends Option 2.

#### **V. Permit Issuance**

1. Grant the OES EFP staff proposed recommended pipeline route permit to Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., for:
  - A. The Alberta Clipper project, an approximately 290-mile long, 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) crude oil pipeline and associated facilities, that will begin at the North Dakota/Minnesota border in Kittson County and terminate at the Minnesota/Wisconsin border in Carlton County, Minnesota. The Alberta Clipper Pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton; and
  - B. The Southern Lights Diluent project, an approximately 182 mile long, 20-inch outside diameter, high pressure (1,334 psig) diluent pipeline and associated facilities that will begin at the Wisconsin/Minnesota border and terminate at the Enbridge Terminal located in Clearbrook, Minnesota, located in Clearwater County. The Southern Lights Diluent pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami, and Clearwater.

2. Grant the OES EFP staff proposed recommended pipeline route permit with modifications to Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C., for:
  - A. The Alberta Clipper project, an approximately 290-mile long, 36-inch outside diameter, high-pressure (1,313 pounds per square inch gauge) crude oil pipeline and associated facilities, that will begin at the North Dakota/Minnesota border in Kittson County and terminate at the Minnesota/Wisconsin border in Carlton County, Minnesota. The Alberta Clipper Pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton; and
  - B. The Southern Lights Diluent project, an approximately 182 mile long, 20-inch outside diameter, high pressure (1,334 psig) diluent pipeline and associated facilities that will begin at the Wisconsin/Minnesota border and terminate at the Enbridge Terminal located in Clearbrook, Minnesota, located in Clearwater County. The Southern Lights Diluent pipeline will be buried underground and primarily within and adjacent to Enbridge's existing rights-of-way in the Minnesota counties of Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami, and Clearwater.

**EFP Staff Recommendation:** Staff recommends Option 1.