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REPLY TO MINNEAPOLIS

May 26, 2016

Ms. Jamie MacAlister
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Environmental Review Manager
Minnesota Department of Commerce
Energy Environmental Review and Analysis
85 7th Place East, Suite 500
Saint Paul, MN 55101-2198

Re: Draft Scoping Decision Document for Sandpiper Pipeline Project – PUC Dockets CN-13-473 and PPL-13-474; and Draft Scoping Decision Document for Line 3 Replacement Pipeline Project – PUC Dockets CN-14-916 and PPL-15-137

Dear Ms. MacAlister:

The Mille Lacs Band of Ojibwe (“Mille Lacs Band”) submits the following comments regarding the scope of the Environmental Impact Statement (“EIS”) for the Sandpiper Pipeline Project and the Line 3 Replacement Pipeline Project.¹ The proposed projects have the potential to cause serious and irreparable environmental impacts. The environmental review must be thorough and demonstrate that the Department has taken a hard look at the potential impacts of the proposed projects and has given careful consideration to all feasible and prudent alternatives consistent with the requirements of the Minnesota Environmental Policy Act.

Both projects are proposed to pass through Minnesota’s lake country and have the potential to impact numerous pristine lakes, streams, and wetlands, including sensitive aquatic ecosystems where the Ojibwe people have gathered wild rice for hundreds of years. Wild rice is not merely a source of food; it is a spiritual resource and the act of harvesting wild rice remains an integral part of the Ojibwe culture. Moreover, wild rice is the product of a healthy environment and actions taken to protect wild rice will serve to protect the entire ecosystem. The EIS is the mechanism to evaluate potential adverse impacts and determine how to avoid or mitigate such impacts. Accordingly, the EIS must include a comprehensive analysis of potential

¹ The Mille Lacs Band is simultaneously filing these comments in each of the PUC dockets for the Sandpiper and Line 3 Replacement projects.

impacts and mitigation measures and must evaluate alternative routes which avoid these sensitive ecosystems altogether.

The Mille Lacs Band provides the following specific comments regarding the scope of the EIS:

1. **The purpose of the project must be defined broadly to encompass reasonable alternatives to the proposed project.** Narrowly defining the purpose of a project (e.g., creating a system to transport oil from Clearbrook, MN to Superior WI) allows the exclusion of alternatives which may use different endpoints to the system. By defining the purpose broadly (e.g., creating system to transport oil to market from North Dakota), the EIS can encompass more alternatives which may lessen environmental impact while also meeting the applicant's needs even though they may be significantly different from what the applicant initially contemplated. This facilitates the outside-of-the-box analysis that is particularly valuable in the context of environmental review. Moreover, adopting a broad purpose allows the EIS to test the economic and other assumptions underlying the applicant's choice of its preferred alignment.
2. **The EIS must evaluate all feasible and prudent alternatives for the proposed projects.** Many alternative routes have been suggested which would avoid the sensitive aquatic ecosystems of north central Minnesota. By fully evaluating these alternatives, the EIS will allow the public and the regulators to understand how the potential impacts of the proposed alignment and the alternatives compare to each other and identify the least environmentally harmful alternative. The draft scoping decision document contemplates that no field-level data will be collected for the alternative routes. The draft scoping decision document should not foreclose the possibility of gathering field-level data if it is necessary for a full analysis of the alternatives. Also, as is typical, the EIS should incorporate new alternatives developed through the course of the environmental review which may avoid unanticipated or particularly serious adverse impacts including detailed analysis of all potential mitigation measures.
3. **The EIS must evaluate potential impacts on water quality and include modeling of several "worst-case" scenario spills along each route included in the EIS.** This evaluation should include the anticipated impacts to surface and groundwater resources resulting from construction of the projects and the potential short- and long-term impacts of a major spill along the route of either pipeline. In order to provide a meaningful comparison of the potential impacts of the various alternatives, the EIS should include modeling of the potential impacts of spills at several locations along each route. The modeling should include "worst-case" assumptions regarding the location (in particularly sensitive areas),

duration, and magnitude of the spill. Finally, the analysis also must include evaluation of the costs of, and likely success of, remedial actions in the event of a spill and whether the applicant should be required to provide financial assurances sufficient to cover the expected response and clean-up costs.

4. **The EIS must evaluate potential impacts on water quantity and hydrology.** Groundwater and surface waters interact in complex systems and the grading, excavation, compaction, and filling necessary to construct the pipeline likely will impact these systems as will the long-term maintenance, operation, and eventual decommissioning. Wild rice and other aquatic species are sensitive to changes in water quality and water levels and the impacts on water quantity and flow must be understood in order to determine the scope of potential impacts on these sensitive and interconnected aquatic ecosystems. The environmental review also should detailed proposals for mitigation and an analysis of their effectiveness.
5. **The environmental review must evaluate long-term and short-term impacts to wild rice harvesting and identify areas of uncertainty in the analysis.** The proposed route for the Sandpiper and Line 3 Replacement projects passes through five counties which account for nearly one-half of the wild rice harvesting trips according to a 2006 survey conducted by the Minnesota Department of Natural Resources. The shallow and sediment-rich waters where the wild rice thrives are particularly vulnerable to the negative impacts from a potential oil spill. The EIS must analyze how the water quality, quantity, and hydrology impacts mentioned relate to the potential long-term and short-term impacts on the sensitive wild rice waters across the region. This analysis should rely on the best available information regarding the cultivation of wild rice and, where there is uncertainty regarding the potential impacts, explain what additional information is needed and describe the range of the potential impacts (i.e., whether they are likely to be minor, moderate, or severe).
6. **The environmental review must address the potential impact of a spill on fragile fisheries.** The proposed route for the pipeline projects poses a significant threat to the fisheries near McGregor, Minnesota including Lake Minnewawa and Big Sandy Lake. Mille Lacs Band members live near both of these lakes, which are sacred to the Ojibwe people, and utilize the lakes for subsistence fishing of the culturally important Ooga (Walleye). A oil spill along the proposed route could contaminate both lakes and result in many negative short- and long-term effects on fish populations. Rosenthal and Alderdice (1976); Teal and Howarth (1984); Eisler 1987; Bue et al. (1996). These effects include reductions in embryonic survival, disrupted spawning activities, reduced growth, and genetic abnormalities that are passed on to offspring. Bue et al. 1996; Marty et al. 1997; Murphy et al. 1999; Heintz 2000; Dubansky (2013). The petroleum contamination also would

reduce and disrupt benthic organisms which are essential to fish survival. Elmgren et al. (1983); Jewett et al. (1999). Furthermore Polyaromatic Hydrocarbons (PAH's), which include potential carcinogens, tend to increase in fish tissues after oil spills and pose a risk to populations that are dependent upon the consumption of fish as part of their diets. Birkholz (1988); Allan et al. (2012); Eisler (1987); Cheung (2007); Zhonghuan et al. (2010).

7. **The environmental review must address impacts caused by further fragmentation of Minnesota forests.** Minnesota's North Central landscape has some of the State's largest and most unique continuous forest landscape including some of the last large unfragmented forests in the Midwest. Further fragmentation of Minnesota forests caused by the construction of the proposed pipelines will leave the remaining forests smaller, more susceptible to invasive species, and could potentially result in a loss of species diversity. Forest fragmentation also reduces and divides habitat for wildlife species that specialize in forest interiors. Construction of the pipelines along the proposed routes, along with the long-term maintenance, operation, and eventual decommissioning, also would undermine the objectives of the Minnesota DNR's Forest Legacy Program that aims to protect private forests from further threats on fragmentation.
8. **The environmental review must analyze potential impacts on bird species including the regional and extra-regional impacts on migratory bird species.** Disturbances along the proposed pipeline routes may result in abandonment, decreased breeding success, and, in the event of leakage or pipeline system failure, a degraded habitat the cumulative effects of which will threaten these species. These impacts must be evaluated through the environmental review process and include impacts to migratory species which have the potential to extend well beyond the region. The Palisade area of Northern Minnesota is a unique boreal forest which is well known by ornithologists as a breeding and wintering ground for several avian boreal species. In addition, several species with direct ties to the Ojibwe cultural practices have been documented wintering in the area including Great Gray Owls, Northern Hawk Owls, Boreal Chickadees, and sharp-tailed Grouse. The sharp-tailed Grouse are also a food source for the Ojibwe. The area around McGregor, Minnesota is known among ornithologists as the "McGregor Marsh" and is the breeding location for Yellow Rail, and Nelson's Sparrow.
9. **The evaluation of impacts to cultural resources will require a unique approach.** The Ojibwe have lived for centuries in the areas where the pipelines are proposed to be constructed and have a rich and long-standing cultural connection to the land. The cultural resources in the region include burial sites, lands used for hunting, fishing, and gathering, and various plants with medicinal

uses. While some of these resources, such as burial sites, are found in discrete locations, many are spread across the entire region. Understanding the nature of these cultural resources and how they must be protected will require close coordination between the Department and the Mille Lacs Band's Tribal Historic Preservation Office. Moreover, the Department must understand and respect the desire of the Mille Lacs Band to maintain secrecy regarding the location of some of the cultural resources which may be vulnerable to destruction through vandalism or well-intentioned but harmful overuse by visitors.

The EIS also must address the possibility that construction of the pipelines along the proposed route will unearth Native American cultural items and describe the process that will be used to ensure the preservation and repatriation of such items as is required under the Native American Graves Protection and Repatriation Act.

Finally, the EIS also must evaluate the potential impacts to natural resources, in particular to wild rice waters, not only from the ecological perspective but also from the cultural perspective.

10. **The environmental review must consider the impacts on traditional Ojibwe gathering and medicine with an understanding of the breadth and variety of resources upon which the Band depends.** The Ojibwe have long collected medicines from the lands they have inhabited. The proposed pipeline projects will pass through the lands of the Mille Lacs Band's District II community. The native plant communities in the area are classified as Northern Rich Tamarack Swamp, Northern Spruce Bog, Northern Poor Conifer Swamp, Northern Open Bog (McGregor Marsh), and Northern Poor Fen. Traditional Cultural Medicines found in this area include original cultural foods, spiritual medicines, and plants used for other traditional purposes. The Ojibwe consider food as medicine for our bodies and these resources are important to the survival of the culture and the Band.

Some traditional foods threatened by the pipeline include: Wild Rice, Cattails, fish, mushrooms, game animals, a variety of berries and roots. Some spiritual Medicines are Bitterroot (WeKay), Lily pad roots (blood pressure medicine), sage, sweet grass, Labrador Tea, Cranberry, & Red-osier Dogwood (Kinnikinik), iron wood (Heart medicine), birch (aspirin and headache medicine), Cha Ga (fungus of birch trees along river areas used as a tea for the treatment of cancer), clams in water as well as the Megas Shell used in ceremonies, and red cedar (Ojibwe tobacco). Many other plants are used for traditional purposes, including reeds from wetlands (used for mats and housing), birch bark from birch trees (used for everyday utensils and containers), Tamarack (many uses in handmade structures for religious practices and crafts), Paper Birch (traditional basketry,

crafts and the inner bark is known as a traditional food), White Cedar (important tree for ceremonial purposes and medicinal values), Red Maple (sap is collected in the spring), and Balsam Fir (important tree where boughs are collected for ceremonial purposes). Many other culturally significant, even vital, species could be identified by the Band's gatherers. These are just a few of the many traditional and cultural resources that the Mille Lacs Band finds and uses in District II.

11. **The EIS must address cumulative impacts that would result from constructing both pipelines along the same corridor as well as the unique impacts that would occur if only one pipeline is constructed.** The EIS must evaluate the cumulative impacts that will result from constructing and operating both projects along the same route. Moreover, because economic efficiency dictates that it is preferable to co-locate several pipelines along a single route, the EIS should address how the potential impacts may change in nature or magnitude if additional future pipelines are developed along the routes for the Sandpiper and/or Line 3 Replacement projects. Finally, because it is unknown whether either of the proposed projects will be approved and constructed or whether, if constructed, they will follow the same route, the EIS should address any potential impacts which may change in nature or magnitude if only one of the pipelines is constructed.
12. **The EIS must include an analysis of socio-economic, mental health, and environmental justice impacts cause by the potential loss of cultural and environmental resources.** As noted above, the Ojibwe have a deep and long-standing connection to the natural environment. This connection is integral to their cultural identity and the loss of these resources has resulted in have profound impacts on mental health including increased incidence of alcoholism, depression, and suicide. The evaluation of health impacts in the EIS must include these impacts in addition to impacts to physical health resulting from potential exposure to pollutants, contaminants, and increased noise and dust during construction.
13. **The potential impacts are amplified by the fact that the proposed route for the pipelines runs through the middle of the Mille Lacs Band's District II Community.** District II's government services are located in the East Lake community south of the proposed pipelines while the Minnewawa and Sandy Lake communities are located north of the proposed pipelines. Closure of a roadway in the region as a result of a major pipeline failure would isolate the Minnewawa and Sandy Lake communities from the basic services provided through the East Lake community and would isolate family members living in different regions from each other. The effects of bisecting the community with the proposed pipelines would be particularly significant for the extremely

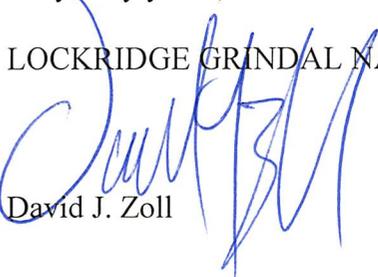
traditional community with strong ties to time-honored culture and the emotional toll of a spill in the area would be devastating.

14. **The environmental review must consider the consequences of abandonment of the old Line 3, as well as the long-term impact of a policy of abandoning defunct pipelines.** Enbridge currently proposes to leave the old Line 3 in the ground with only minimal remediation. The environmental review must evaluate the potential impacts of abandoning the existing Line 3 pipeline, the proposed pipelines at the end of their useful life, and the cumulative impacts of abandoning multiple pipelines in the same region.
15. **The environmental review should be informed by the unique information and expertise which the Mille Lacs Band and other tribal governments can provide.** The Mille Lacs Band's Department of Natural Resources has extensive information regarding the natural and cultural resources in the area along with a highly skilled and knowledgeable staff. Consistent with Governor Dayton's Executive Order 13-10, regarding government-to-government consultation with Indian tribes, the Mille Lacs Band is ready and willing to share its expertise with the Department in order to ensure that the best possible environmental impact statement is prepared. We appreciate the coordination that has occurred to date and look forward to engaging in a substantive and productive dialogue with the Department relating to the environmental review of the proposed pipeline projects.

Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.


David J. Zoll

c: Mille Lacs Band of Ojibwe
Charles N. Nauen
Rachel Kitze Collins