

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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DOCKET NO. PL-9/CN-14-916

DOCKET NO. PL-9/PPL-15-137

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

ORDER JOINING NEED AND  
ROUTING DOCKETS

**PROCEDURAL HISTORY**

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge) applied for a certificate of need to install 337 miles of 36-inch diameter pipe, along with associated facilities, extending from the North Dakota–Minnesota border to the Minnesota–Wisconsin border (the new Line 3 Pipeline), while retiring the current Line 3 Pipeline; this initiated its need docket.<sup>1</sup> Enbridge also applied for a routing permit for the pipeline, initiating its routing docket.<sup>2</sup> In particular, Enbridge proposed to install part of the pipeline in a new right of way paralleling the route proposed for the Sandpiper Pipeline Project.<sup>3</sup>

On May 14, 2015, the Laborers’ District Council of Minnesota and North Dakota petitioned to intervene in this matter as a party; intervention was granted by operation of law.<sup>4</sup> In addition, the Minnesota Department of Commerce (the Department) exercised its right to intervene.<sup>5</sup>

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<sup>1</sup> Docket No. PL-9/CN-14-916, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border* (need docket).

<sup>2</sup> Docket No. PL-9/PPL-15-137, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border* (routing docket).

<sup>3</sup> See Docket No. PL-6668/CN-13-473, *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project* (Sandpiper need docket), and Docket No. PL-6668/PPL-13-474, *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota* (Sandpiper routing docket).

<sup>4</sup> Minn. R. 7829.0800, subp. 5.

<sup>5</sup> *Id.*, subp. 3.

By May 20, 2015, the Commission had received comments from individual members of the public, and from –

- the Carlton County Land Stewards,
- the Department’s Division of Energy Resources (the Department),
- Friends of the Headwaters,
- the Minnesota Department of Natural Resources,
- the Minnesota Center for Environmental Advocacy, and
- the Minnesota Pollution Control Agency.

On August 12, 2015, the Commission issued orders finding both of Enbridge’s applications to be substantially complete. The Commission referred Enbridge’s certificate of need application to the Minnesota Office of Administrative Hearings for contested case proceedings before an administrative law judge, and asked the Department to prepare an environmental analysis of Enbridge’s petition for a certificate of need.<sup>6</sup>

In the routing docket, the Commission authorized the Department to administer a process for developing alternative routes for the Commission’s consideration, and to develop an analysis comparing the environmental consequences of each alternative.<sup>7</sup> But the Commission refrained from referring the routing permit application to the Office of Administrative Hearings pending further developments in the need docket.

On September 14, 2015, the Minnesota Court of Appeals issued an opinion reconciling the Commission’s statutes and rules governing large oil pipelines with provisions of the Minnesota Environmental Protection Act (MEPA<sup>8</sup>); the court clarified its opinion on September 30. The court held that, where proceedings for a routing permit follow proceedings for a certificate of need, the Commission must receive a complete environmental impact statement (EIS) before ruling on the certificate of need.<sup>9</sup> This complicates the Commission’s procedures because traditionally the more detailed environment analysis would occur as part of the routing docket, not as part of the need docket.

On September 15, 2015, the administrative law judge issued an order suspending proceedings in the need docket pending further guidance from the Commission regarding the Court of Appeals decision.

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<sup>6</sup> Need docket, Order Finding Application Substantially Complete and Varying Timelines; Notice of and Order for Hearing.

<sup>7</sup> Routing docket, Order Finding Application Substantially Complete and Varying Timelines.

<sup>8</sup> Minn. Stat. ch. 116D.

<sup>9</sup> See *In the Matter of the Application of North Dakota Pipeline Company LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota; In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota*, 869 N.W.2d 693 (Minn. Ct. App. 2015), review denied (Minn. Dec. 15, 2015).

On September 25, 2015, Enbridge petitioned for the Commission to refer its routing docket to the Office of Administrative Hearings for joint contested case proceedings with the need docket.

On November 9, 2015, the administrative law judge issued an Order for Continuance and Certification in the need docket, asking the Commission to identify the appropriate procedural steps for responding to the Court of Appeals decision.

On November 20, 2015, the Department issued its *Line 3 Alternative Routes Report* in the routing docket. On December 8, the Commission issued a notice in both dockets establishing a deadline of December 23 for filing comments on the report.

On December 17, 2015, the Commission met to consider the matter.<sup>10</sup>

## **FINDINGS AND CONCLUSIONS**

### **I. Summary**

In this order the Commission authorizes joint proceedings to consider Enbridge's Line 3 certificate of need application and its routing permit application.

Furthermore, the Commission authorizes the Department to prepare a combined EIS to address issues related to both dockets in accordance with Minn. Stat. ch. 116D and Minn. R. ch. 4410. Specifically, the Commission –

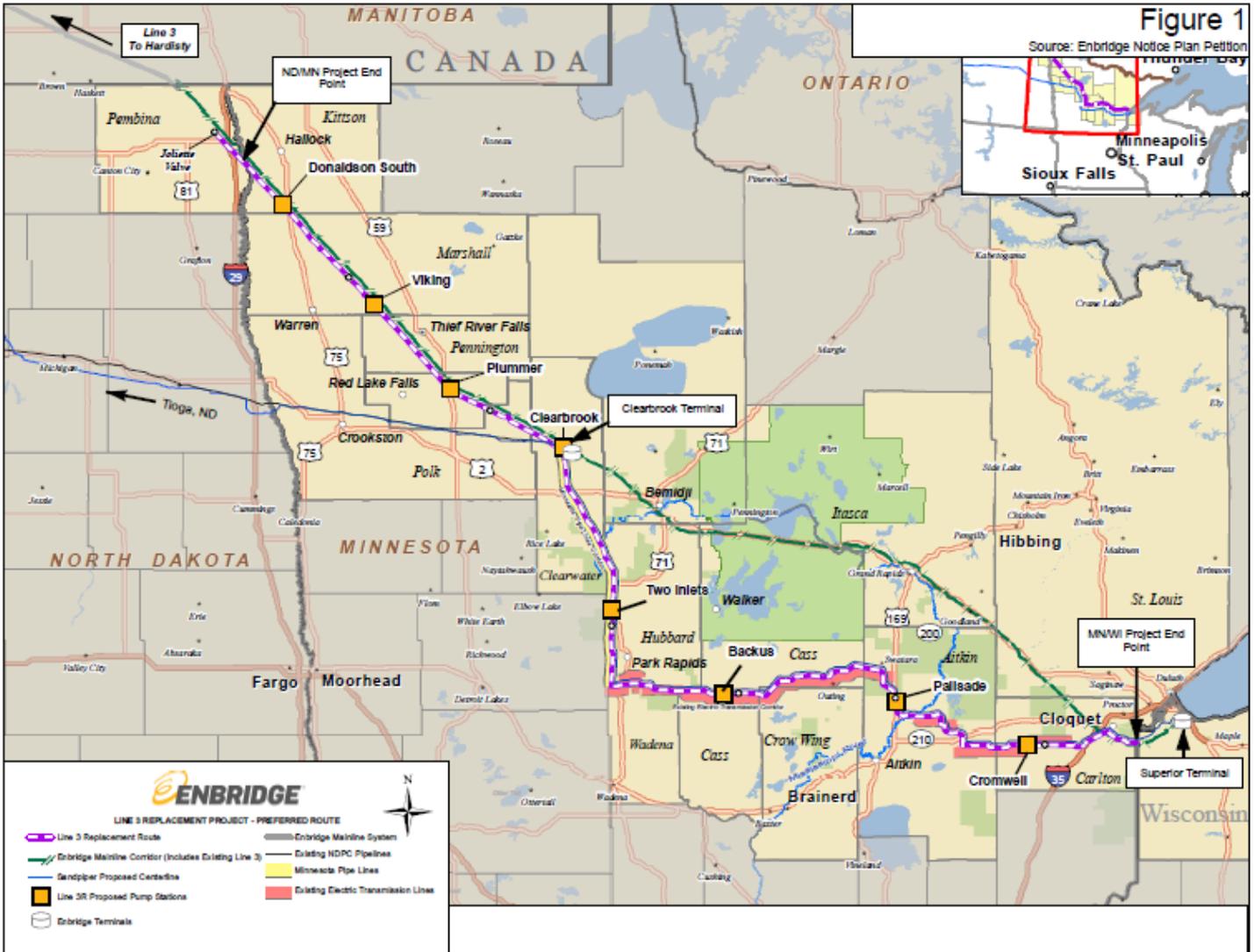
- Authorizes a combined environmental review of the need and routing dockets that considers the cumulative impact of the Sandpiper Pipeline Project and the Line 3 Project.
- Asks the Department to submit for Commission approval the list of proposed routes and route segments that the Department regards as appropriate for further consideration in the EIS.
- Requires completion of the final EIS prior to the filing of intervenor direct testimony.
- Rescinds the December 8, 2015 notice requesting comments from parties on the *Line 3 Alternative Routes Report*.

### **II. Enbridge's Line 3 Pipeline Proposal**

In lieu of repairing its aging Line 3 pipeline, Enbridge proposes to build a new pipeline to serve the same market, but with a larger capacity.

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<sup>10</sup> During the hearing the Sierra Club withdrew a September 23, 2015 motion to extend the period for interested persons to comment on these dockets, or to re-open the comment period, due to the uncertainty created by the Court of Appeals decision.



The current Line 3 is a 34-inch pipe extending 282 miles through Minnesota, paralleling many other pipelines. Enbridge proposes to replace it with a 36-inch pipe extending 337 miles through Minnesota, partially along a route parallel to the old Line 3 pipeline, and partially along a new route.

Specifically, Enbridge proposes to build the new line following the path of the existing Line 3 pipeline from the North Dakota-Minnesota border in Kittson County to the Clearbrook Terminal in Clearwater County. From the Clearbrook Terminal the pipeline would extend to Superior, Wisconsin, in a new right of way paralleling the route proposed for the Sandpiper pipeline.<sup>11</sup> Enbridge states that space constraints in and adjoining Line 3’s existing pipeline corridor prompt Enbridge to propose a different route for the new Line 3 between Clearbrook and Superior. In its entirety, the new pipeline would traverse Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

<sup>11</sup> See Sandpiper need docket; Sandpiper routing docket.

To build the new Line 3, Enbridge states that it would need 25 to 65 feet of new right of way and 45 to 70 feet of temporary right of way along the route west of Clearbrook, and 50 feet of new right of way and 60 to 85 feet of temporary right of way along the route east of Clearbrook. Enbridge also proposes to build associated facilities, including eight pumping stations, valves, meters, monitoring equipment, and related electrical facilities. Enbridge seeks to have the pipeline operational by the second half of 2017.

Enbridge proposes to have the new Line 3 serve the same markets and transport the same products as the existing Line 3 pipeline. But while Line 3 currently has a capacity of 390,000 barrels per day (bpd) due to size and pressure restrictions triggered by concerns about the line's reliability, the new Line 3 would have a capacity of 760,000 bpd.

### **III. Positions of the Parties and Participants**

Parties and participants offered recommendations on how to proceed, both in the Line 3 Pipeline dockets and in the Sandpiper dockets.

#### **A. The Department**

In response to the Court of Appeals decision, the Department recommended that the Commission 1) return the need docket and refer the routing docket to the Office of Administrative Hearings for joint contested case proceedings, and 2) authorize the Department to prepare a single EIS addressing both dockets. Moreover, the Department recommended that where the Line 3 and Sandpiper pipelines would travel in the same right of way, the EIS would address both projects, including their cumulative effects.

To provide parties and participants with an adequate opportunity to evaluate the environmental consequences of each of the alternative routes, at hearing the Department recommended that the date for intervenors to file their direct testimony follow the date for issuing the final EIS. The Department argued that a final EIS would provide the appropriate foundation for other parties to develop their own analyses.

#### **B. Enbridge**

Enbridge recommended that the need and routing dockets be processed concurrently, and that the Department develop an EIS that would address both dockets. Enbridge also supported creating an EIS that would address both the Line 3 and Sandpiper projects, including their cumulative impacts.

However, Enbridge opposed proposals to combine the analysis of the Route 3 Pipeline with the Sandpiper Pipeline, given the many differences between the projects. According to Enbridge, the two projects have different applicants, different timelines, different rationales, and different routes for a substantial part of their lengths. Furthermore, the two pipelines would transport different types of oil from different origins.

Finally, Enbridge cautioned against adopting procedures that would necessitate undue delay. For example, while Enbridge supported developing an EIS addressing both the need and routing dockets, Enbridge argued that intervenors should be able to develop direct testimony based on a *draft* EIS rather than a *final* EIS. Requiring the Department to finalize its EIS before intervenors

file their direct testimony would unduly delay the proceedings, Enbridge argued, and would needlessly constrain the Department's ability to modify its EIS in response to new information.

### **C. Laborers' Council**

The Laborers' Council supported Enbridge's view that the Commission should refer the need and routing dockets to the Office of Administrative Hearings for joint contested case proceedings. The Laborers' Council also emphasized the importance of proceeding in a timely fashion.

### **D. Department of Natural Resources**

While the Department of Natural Resources made no specific recommendations, it noted that holding joint proceedings involving both the Line 3 and Sandpiper Pipeline projects would minimize the extent to which the Commission would be asked to render decisions in these cases based on inconsistent facts.

### **E. Carlton County Land Stewards**

The Carlton County Land Stewards (CCLS) objected to the possibility that the Commission or administrative law judge might be called upon to evaluate the merits of the Line 3 Pipeline project without the benefit of the record currently being developed on the Sandpiper Pipeline project. To this end, CCLS argued for either staying consideration of Line 3 until Sandpiper is fully resolved, or consolidating the Line 3 proceedings with the Sandpiper proceeding and developing a rigorous environmental review of all the alternative routes.

### **F. Friends of the Headwaters/Minnesota Center for Environmental Advocacy**

In contrast to Enbridge, Friends of the Headwaters (FoH) argued that the Commission must address the Line 3 and Sandpiper Pipeline dockets jointly. And given the similarity in the projects' locations, sizes, and cumulative effects, the Minnesota Center for Environmental Advocacy (MCEA) contended that the two pipeline projects are connected and phased actions and must be considered a single project. By treating the two pipelines as part of the same project, the Commission can evaluate them on the basis of a consistent factual record, rather than having different factual records in different proceedings about identical locations.

At a minimum, FoH/MCEA recommended that the Department prepare a rigorous environmental review document to address both the Line 3 and Sandpiper projects.

### **G. Mille Lacs Band of Ojibwe/White Earth Band of Ojibwe/Honor the Earth**

The Mille Lacs Band of Ojibwe, White Earth Band of Ojibwe, and Honor the Earth favored postponing action on the Line 3 project pending final resolution of the Sandpiper project. They also favored creating an EIS to address both the Line 3 and Sandpiper projects.

## **H. Sierra Club**

At hearing, the Sierra Club stated its opposition to reviewing the Line 3 Pipeline project before the Sandpiper Pipeline project was resolved. Consequently the Sierra Club advocated postponing action on Line 3.

## **IV. Commission Action**

### **A. Joint Contested Case Proceedings**

The Commission may elect to evaluate an applicant's certificate of need petition and routing petitions jointly or separately.

Each option has its advantages. Joint proceedings provide administrative efficiencies, a more convenient forum for members of the public to provide comments pertaining to both dockets, and a reduced chance of causing public confusion and frustration. In contrast, separate proceedings permit parties to focus on one docket at a time; separate proceedings also help demonstrate that questions about the need for a project are not overlooked while parties and participants engage in the more detailed process of considering a project's specific location. The applicable statute favors conducting joint hearings for large energy facilities unless doing so would be infeasible, inefficient, or otherwise contrary to the public interest.<sup>12</sup>

The Commission had already referred the certificate of need application for contested case proceedings, but had not yet determined how to proceed with the routing permit application. But the Court of Appeals recently held that when the Commission conducts the need proceeding before the routing proceeding, it must have a full environmental impact statement before ruling on a pipeline's need. This finding complicates the process of conducting the proceedings separately, because the most detailed environmental analysis generally occurs in the context of the routing proceeding.

Following this ruling, the Department, Enbridge, and the Laborers' Council recommended that the Commission refer both the Line 3 need and routing dockets to the Office of Administrative Hearings for joint contested case proceedings; no party opposed the proposal.

Balancing the various considerations, the Commission has decided by separate order to refer the routing docket to the Office of Administrative Hearings for contested case proceedings.<sup>13</sup> The Commission now concurs with the Department, Enbridge, and the Laborers' Council that Office of Administrative Hearings should conduct joint contested case proceedings with need and routing dockets.

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<sup>12</sup> Minn. Stat. § 216B.243, subd. 4, provides for joint hearings on the need for, and site or route for, a proposed large energy facility unless the Commission determines that joint hearings would not be feasible, more efficient, or in the public interest. "[A]ny pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives" qualifies as a large energy facility. Minn. Stat. § 216B.2421, subd. 2(4).

<sup>13</sup> See routing docket, Notice of Hearing.

However, given the size and complexity of both the Sandpiper and Line 3 projects, and the degree of record development that has already occurred in the Sandpiper dockets, the Commission concludes that the administrative challenges of completely combining consideration of these two projects would exceed the benefits. Consequently the Commission will decline to combine review of the Line 3 and Sandpiper projects completely.

## **B. Environmental Analysis**

To process an application for a pipeline routing permit, Minn. R. 7852.1500 provides for compiling a list of potential alternative routes and a document analyzing the environmental consequences of each of these alternatives (comparative environmental analysis). The Department previously reported that it was preparing a comparative environmental analysis for the Sandpiper project, and that this analysis would incorporate consideration of the environmental consequences of the new Line 3 where it would parallel the Sandpiper project.<sup>14</sup>

The Court of Appeals now specifies that the Commission, when evaluating the need for a petroleum pipeline before evaluating the route, must have an environmental impact statement (EIS) before it can rule on an application for a certificate of need. Consequently the Commission will authorize the preparation of an EIS under Minn. Stat. ch. 116D and Minn. R. ch. 4410 that addresses environmental issues pertaining to the need docket as well as the routing docket. The Commission will authorize the Department to administer the EIS process in consultation with the Commission's Executive Secretary.

To best reconcile the contested case process and Commission rules with the MEPA process, the Commission will provide two additional clarifications. First, the Commission will ask the Department to submit for Commission approval the list of alternative routes and route segments that the Department recommends for further scrutiny in the EIS.

The Commission previously authorized the Department to administer a process of collecting and developing alternative route proposals, and of recommending a list of alternatives for environmental review.<sup>15</sup> Now the Commission is authorizing the Department to develop an EIS. But the rules governing the development of an EIS creates ambiguity about whether the Department would then proceed to develop the EIS based on its own list of alternatives, or whether it would seek Commission review of that list. Minn. R. 7852.1400, subp. 4, however, specifies that "the commission must consider acceptance of the route proposal[s]." To comply with this rule, the Commission will ask the Department to submit for Commission approval the list of proposed routes and route segments that the Department regards as appropriate for further consideration.

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<sup>14</sup> Routing docket, Order Finding Application Substantially Complete and Varying Timelines, at 8 (August 12, 2015).

<sup>15</sup> Routing docket, Order Finding Application Substantially Complete and Varying Timelines at 8 (August 12, 2015).

Second, the Commission will require that the final EIS be completed before intervenors are required to file direct testimony in this matter. A final EIS, identifying the alternative route and route segments under consideration and their respective environmental consequences, will provide a common basis for parties to develop and defend their recommendations to the Commission.

### **C. Status of Prior Commission Actions**

As previously noted, on December 8, 2015, the Commission issued a notice establishing a deadline of December 23, 2015, for interested persons to comment on the Department's *Line 3 Alternative Routes Report*. Given the consequences of the Court of Appeals decision, the Commission will rescind this notice.

But except as inconsistent with the current order, the Commission will reaffirm its prior decisions in the need docket, as reflected in its Order Finding Application Substantially Complete and Varying Timelines; Notice of and Order for Hearing (August 12, 2015).

### **ORDER**

1. The Commission again refers Docket No. PL-9/CN-14-916, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, to the Office of Administrative Hearings for contested case proceedings, this time to be held jointly with Docket No. PL-9/PPL-15-137, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*. The routing docket is referred to the Office of Administrative Hearings this date by separate order.<sup>16</sup>
2. The Commission affirms its Order Finding Application Substantially Complete and Varying Timelines; Notice of and Order for Hearing (August 12, 2015) except as inconsistent with the present order and the Commission's Notice of Hearing issued in the routing docket.
3. The Commission authorizes the preparation of a combined environmental impact statement that addresses issues related to the certificate of need and routing permit dockets in accordance with Minn. Stat. ch. 116D and Minn. R. ch. 4410. Specifically, the Commission does the following:
  - a. Authorizes the Department to administer the EIS process in consultation with the Executive Secretary.
  - b. Asks the Minnesota Department of Commerce to submit for Commission approval its proposed list of alternative routes or route segments to include in the EIS.
  - c. Requires completion of the final EIS prior to the filing of intervenor direct testimony.

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<sup>16</sup> Routing docket, Notice of Hearing.

- d. Rescinds the December 8, 2015 notice requesting comments from parties on the *Line 3 Alternative Routes Report* filed by the Department.
4. The Commission authorizes a combined environmental review that considers the cumulative impact of the Sandpiper Pipeline Project<sup>17</sup> and the Line 3 Project.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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<sup>17</sup> See Sandpiper need and routing dockets.