BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| Beverly Jones Heydinger | Chair |
| Nancy Lange | Commissioner |
| Dan Lipschultz | Commissioner |
| John A. Tuma | Commissioner |
| Betsy Wergin | Commissioner |

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

ISSUE DATE: August 12, 2015

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

ORDER FINDING APPLICATION SUBSTANTIALLY COMPLETE AND VARYING TIMELINES

## PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge) applied for a routing permit 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.

By May 14, 2015, the Commission had received petitions to intervene from Kennecott Exploration Company, and by the Laborers' District Council of Minnesota and North Dakota; intervention was granted by operation of law.[1] In addition, the Minnesota Department of Commerce (the Department) exercised its right to intervene.[2]

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

- the Carlton County Land Stewards,
- the Department's Energy Environmental Review and Analysis staff (EERA),
- Friends of the Headwaters,
- the Minnesota Department of Natural Resources,
- the Minnesota Center for Environmental Advocacy, and
- the Minnesota Pollution Control Agency.

Enbridge filed reply comments.

[1] Minn. R. 7829.0800, subp. 5.

[2] *Id*., subd. 3.

On July 1, 2015, the Commission met to consider the matter and heard oral arguments from Enbridge, the Department, and various commenters.

## FINDINGS AND CONCLUSIONS

### I. Summary

In this Order the Commission finds that Enbridge's application for a routing permit for its Line 3 project is substantially complete, triggering the next phase of review for its application.

As part of this next phase, the Commission will do the following:

- Approve the rule variances sought by the Department.
- Authorize the Department to facilitate the development of route proposals beyond those proposed by Enbridge.
- Authorize the Department to prepare an analysis of alternative route proposals on the basis of their harm to the environment.
- Take other procedural steps to enable an evaluation of the Company's proposed pipeline route.
- Assess an application fee.

### II. Enbridge's Application

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.

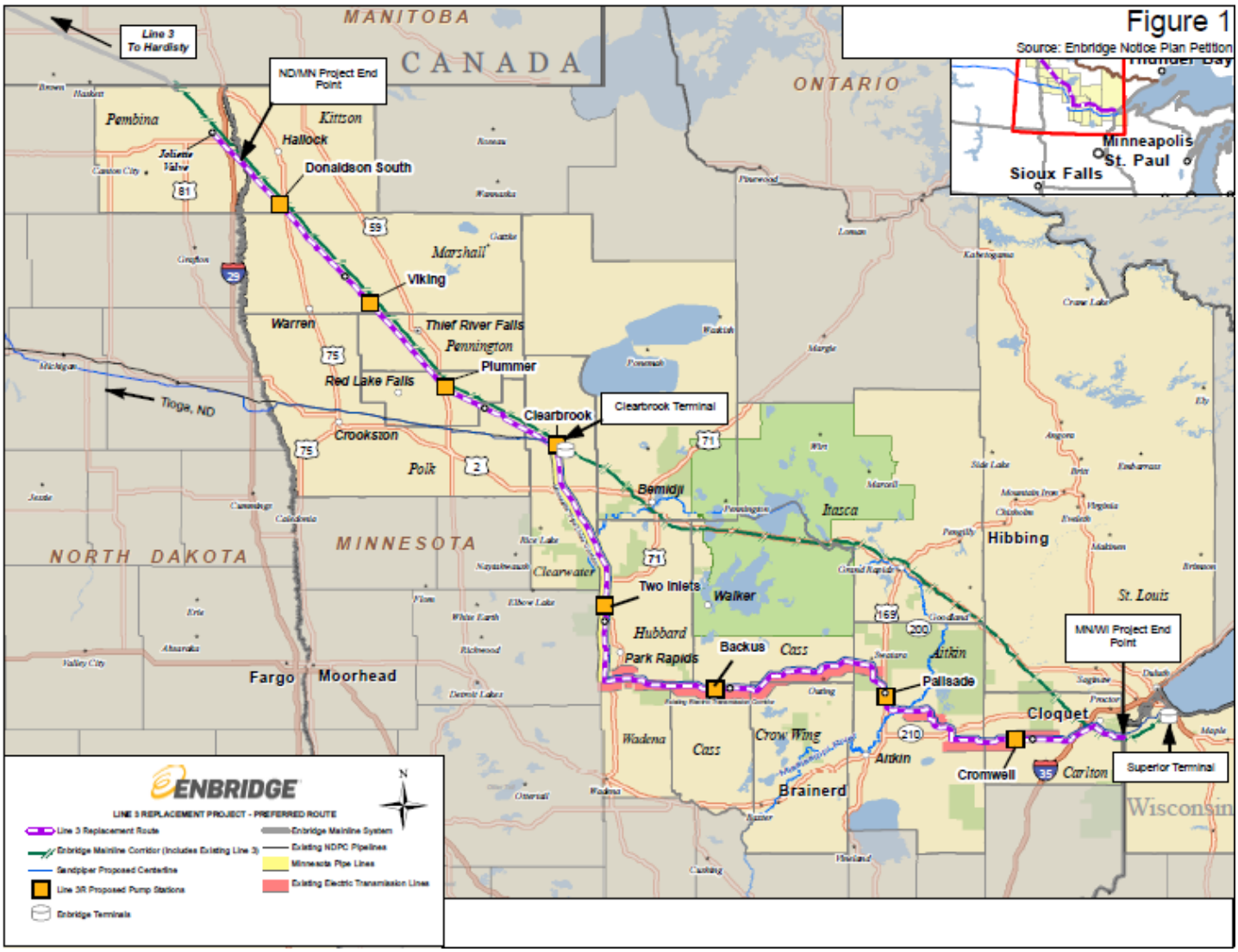
The current Line 3 is a 34-inch pipe extending 282 miles through Minnesota, paralleling many other pipelines. Enbridge proposes to replace it with a 36-inch pipe extending 337 miles through Minnesota, partially along a route parallel to the old Line 3 pipeline, and partially along a new route.

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 Enbridge recommends for its proposed Sandpiper pipeline.[3] 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,

[3] 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*, 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*.

Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

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 throughout 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.




## III. Commission Jurisdiction and Procedures

Anyone seeking to build a pipeline with a nominal diameter of more than six inches and designed to transport hazardous liquids such as crude oil must first obtain a routing permit from the Commission under Minn. Stat. § 216G.02 and Minn. R. Chap. 7852. The criteria for granting a

permit are set forth at Minn. R. 7852.1900. A party receiving a routing permit may then exercise the power of eminent domain under Minn. Stat. § 117.48.

Minn. R. 7852.2100 to 7852.3100 states how to apply for a routing permit under the Commission's full pipeline route selection procedures.

And Minn. R. 7852.2000, subp. 4, provides the Commission with only about 21 days to determine whether a routing permit application is substantially complete. The act of accepting an application as complete has various consequences. Minn. R. 7852.0800 states that the Commission will act on a routing permit application within nine months of finding the application substantially complete, although the Commission may extend this deadline for cause. And Minn. R. 7852.1400 permits people to propose routes for the Commission's consideration that differ from the routes proposed by the applicant, but only within the first 70 days after the Commission finds the permit application complete.

When evaluating a routing permit, the Commission is free to consider routes proposed by entities other than the applicant – and the Commission takes several steps to solicit alternative routing proposals. First, the Commission appoints a public advisor to help members of the public participate effectively in these route selection procedures – although the advisor may not offer legal advice nor act as an advocate.[4]

Second, the Commission may convene a citizen advisory committee to aid and advise the Commission in evaluating alternative pipeline routes.[5]

Third, the Commission convenes public information meetings. Minn. R. 7852.1300 provides for the Commission to convene meetings in each county through which the proposed pipeline would pass, answering questions and soliciting comments and alternative route proposals.

Fourth, the Commission reviews timely alternative route proposals to ensure that they meet the minimum standards for consideration. A new route proposal must not only be timely; it must set forth appropriate maps or aerial photos, and must include supporting data and analysis.[6]

When the alternative route proposals are assembled and the Commission selects the proposals to be presented at the public hearing, Minn. R. 7852.1500 requires that the Commission prepare, or at least review, an analysis comparing the environmental consequence of each proposal. When this analysis is made publicly available, the Commission convenes another round of public information meetings to present the routes that remain under consideration, and to answer questions about them.[7]

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[4] Minn. R. 7852.1200.

[5] Minn. R. 7852.1000 and .1100.

[6] Minn. R. 7852.1400, subp. 3.

[7] Minn. R. 7852.1300.

Thereafter an administrative law judge from the Office of Administrative Hearings convenes public evidentiary hearings under Minn. Rules Chapter 1405.[8] At the conclusion of the evidentiary hearings and briefings, the judge reports her findings, conclusions, and recommendations, and provides a copy to each party.[9]

The Commission then reviews the administrative law judge's report and any comments on it, and identifies the route that best meets the selection criteria.[10]

Finally, Minn. R. 7852.4000 requires an applicant to pay a fee covering the actual costs necessarily and reasonably incurred to process an application, including the cost of the pipeline route selection, permit compliance activities, administrative overhead, and legal expenses.

## IV. Completeness of Application

### A. Timeline Varied

As previously noted, Minn. R. 7852.2000, subp. 4, provides only about 21 days for the Commission to accept a routing permit application as substantially complete, accept the application with conditions, or reject the application. But 21 days is not sufficient time in which to review such large, complex filings.

Under Minn. R. 7829.3200, the Commission may vary its rules upon making the following findings:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting the variance would not adversely affect the public interest; and

3. Granting the variance would not conflict with any standards imposed by law.

Applying this standard, the Commission makes the following findings:

1. Attempting to determine whether Enbridge has filed a complete application within 21 days would impose an excessive burden on parties to the proceeding, including regulatory agencies, and upon the public in general, because this timeframe would needlessly compress the time for scrutinizing the complex proposal.

[8] Minn. R. 7852.1700.

[9] Minn. R. 1405.2400.

[10] Minn. R. 7852.1900.

2. Varying the 21-day timeframe would not harm the public interest; rather, it would serve the public interest by permitting a more thorough analysis of the application.

3. Varying the 21-day timeframe would not conflict with any other legal standard, since this timeframe is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

Consequently the Commission will vary the 21-day timeframe for evaluating the completeness of an application for a pipeline routing permit.

### B. Completeness

Having now reviewed the application and the comments, the Commission concurs with the Department that the application is substantially complete under Minn. R. 7852.2100 to 7852.3100.

While the Commission received many comments criticizing Enbridge's proposal, these comments address the proposal's merits, not the application's completeness; those concerns will be addressed as part of a later contested case proceeding. The Commission's finding of completeness is as to form only; it implies no judgment on the merits of the application.

## V. Alternative Route Proposals

### A. Citizen Advisory Committees

As previously noted, the Commission may establish citizen advisory committees to provide assistance and advice in the evaluation of alternative pipeline routes.[11] After evaluating the characteristics of Enbridge's proposal – for example, its length, complexity, proposed terrain, and known or anticipated controversy – the Department recommends that the Commission organize two committees, each focused on a different segment of the route between Clearbrook and Superior.

Friends of the Headwaters generally supports this proposal, citing Minn. Stat. § 116D.03, subd. 2(2), for the proposition that the Commission should seek out broader perspectives through the use of advisory councils. Enbridge states that it does not oppose the Department's recommendation, but would favor directing any advisory committee to analyze the Line 3 project as a whole rather than as discrete segments.

The Commission finds that the Department's proposal to establish citizen advisory committees to solicit public input and developing alternative routes would likely yield more information on alternative routes in a potentially environmentally sensitive region. Consequently the Commission will authorize the Department to organize one or more committees, and to develop the committees' structure and charge as appropriate for identifying optimal routes for the new Line 3 project.

[11] Minn. R. 7852.1000.

### B. Alternative Route Proposal Process

Minn. R. 7852.1400 provides for members of the public, citizen advisory committees, and the Commission' staff to submit alternative route proposals for review.

Subpart 3.C. provides for members of the public to submit proposals within 70 days of the Commission's acceptance of the route permit application. Subpart 4 provides a deadline to determine if a proposal contains sufficient information, a deadline for the proposer to submit supplemental information, and a mechanism for the proposer to seek reconsideration of a finding that a proposal is incomplete. Finally, the rule provides for identifying the alternative route proposals to be considered during the public hearings.

The Department argues that the rule's timelines are unworkable. In particular, the Department argues that 70 days does not provide the public with sufficient time to analyze a proposal of the size of the Line 3 Pipeline route and to develop a counterproposal. Because Enbridge's proposed route goes through twelve counties, the Department anticipates having to convene many information meetings. The people who attend the final meeting will, through no fault of their own, have little time in which to develop alternative proposals. To remedy this, the Department asks the Commission to vary the deadlines in Minn. R. 7852.1400, subparts 3.C. and 4.

No party opposed this proposal, but Enbridge emphasized the importance of adhering to the prescribed statutory timeframes.[12]

The Commission concludes that the public would be well served by granting the Department's request to vary these rule subparts, thereby allowing additional time for identifying and developing alternative route proposals. Again, Minn. R. 7829.3200 allows the Commission to grant a variance to its rules under the following conditions:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting the variance would not adversely affect the public interest; and

3. Granting the variance would not conflict with any standards imposed by law.

Each of these requirements applies to the deadlines in Minn. R. 7852.1400:

1. Enforcing the rule would impose an excessive burden upon the public, upon parties, and upon regulators. It would not allow adequate time to convene advisory committees, to schedule and conduct the required public meetings, to permit interested people to submit alternative route proposals after those meetings, to evaluate those proposals, and to provide sufficient opportunity to supplement the proposals as necessary.

[12] Minn. Stat. §§ 216B.243, subd. 5, and 216G.02, subd. 3(b)(5).

2. Varying the rule would not adversely affect the public interest; rather, it would serve the public interest by allowing more time for the submittal and development of alternative routes for possible consideration during the next public hearings.

3. Varying the rule would not conflict with any other legal standard since this timeframe is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

Thus the Commission will grant the Department's request to vary Minn. R. 7852.1400, subparts 3.C. and 4.

Finally, the Commission will authorize the Department to administer the alternative route proposal development process.[13] When someone proposes an alternative route, the Commission authorizes the Department to provide feedback to the proposer regarding whether the alternative route is adequately described and justified, and whether it was timely filed. By exercising this authority, the Department can compile and analyze a list of routing alternatives for the Commission's consideration.

## VI. Comparative Environmental Analysis

As previously noted, after the list of pipeline route alternatives has been appropriately documented, supported, and selected, Minn. R. 7852.1500 provides for the creation of a document analyzing the environmental consequences of each of these alternatives.

In the interest of securing a fully developed and impartial analysis for the Sandpiper routing docket, the Commission found it useful to authorize the Department to prepare a comparative environmental analysis as follows:

> It should analyze how well each route meets the routing permit selection criteria set forth in statute and rule. This analysis should provide a tool to assist the public and agencies in understanding the environmental consequences of the various alternatives. Specifically, the analysis should identify routes with common or similar environmental consequences. And the analysis should identify 1) routes that require no environmental mitigation, 2) routes with negative environmental consequences that would need mitigation, together with alternative mitigation strategies, and 3) routes with negative environmental consequences that cannot be mitigated. The analysis should also identify routes with fatal flaws.
>
> Finally, the Department should include recommendations for permit language, including language specifically drafted for certain routes.[14]

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[13] See *supra*, Docket No. PL-6668/RP-13-474, Order Finding Application Substantially Complete and Varying Timelines; Order for Hearing (February 11, 2014).

[14] *Id*. at 8.

Consistent with this decision, the Department reports that it has already begun preparing a comparative environmental analysis for the Sandpiper project -- and that this analysis is incorporating consideration of the environmental consequences of the new Line 3 where it would parallel the Sandpiper project. To ensure the Department's continuing progress, the Commission will direct Enbridge to provide any information needed for this analysis.

## VII. Public Information Meetings

Minn. R. 7852.1300, subp. 1, provides for the Commission to convene public information meetings in each county crossed by an applicant's preferred pipeline route. In the context of the Sandpiper routing docket, the Commission confronted the question of whether to vary the requirement to convene a meeting in each of the counties, and found it appropriate to vary this requirement.[15]

The same issue arises in the current docket. Out of the 337 miles that the new Line 3 pipeline would travel through Minnesota, Enbridge's proposed route would pass through some sparsely-populated miles of Crow Wing, Red Lake, and Wadena Counties. The challenge of finding meeting spaces within each county even where the pipeline would touch only a small portion of a county – and where superior facilities may exist just across a county boundary – may exceed their benefit.

Again, Minn. R. 7829.3200 allows the Commission to grant a variance to its rules under the following conditions:

1. Enforcing the rule would impose an excessive burden upon the applicant or others affected by the rule;

2. Granting the variance would not adversely affect the public interest; and

3. Granting the variance would not conflict with any standards imposed by law.

These requirements apply to 7852.1300's obligation to convene a public information meeting in each county along the proposed pipeline route:

1. Enforcing the duty to convene a hearing in every county would burden the agencies charged with the duty to organize such meetings, and may burden the parties charged with the duty to attend such meetings. If these efforts delay the task of convening all the necessary meetings and developing the appropriate list of alternative routes, enforcing this rule would burden Enbridge as well.

2. Varying the requirement to convene meetings within every county would not adversely affect the public interest. The Department has committed to securing appropriate locations for informational meetings all along the length of the proposed route. Members of the public would benefit from attending meetings in convenient and appropriate facilities -- not merely from attending meetings within their own county.

[15] *Id*. at 7-8.

3. Varying the requirement to convene public information meetings within every county would not conflict with any legal standard since this requirement is set by rule, not statute, and may be varied under Minn. R. 7829.3200.

For the foregoing reasons the Commission will vary the requirement of Minn. R. 7852.1300, subp. 1, and instead allow for meetings in areas near, and conveniently spaced along, the proposed route.

Finally, to facilitate participation by Native Americans in the vicinity of the proposed line, the Commission will ask parties to consider conducting at least one required meeting on or near tribal lands.

## VIII. Review Process

To facilitate the review of the application, and the public's participation in that review, the Commission will direct Enbridge to do the following:

A. Facilitate in every reasonable way the continued examination of the issues requested by Commission staff and the Department.

B. Place a copy of the application, printed or on a compact disc (CD), for review in a government center or public library in each of the counties to be traversed by the proposed pipeline.

C. Post its application and any required supplements to a publicly available website.

Finally, in the interest of maintaining flexibility, the Commission will delegate administrative authority to the Commission's Executive Secretary. In particular, the Executive Secretary will be authorized to vary Commission-imposed deadlines.

## IX. Budget and Application Fee

Finally, Minn. R. 7852.4000 directs an applicant for a routing permit to pay a fee to cover the actual costs necessarily and reasonably incurred in processing the application and reviewing permit compliance activities, as well as the cost of administrative overhead and legal expenses. Excess funds are to be returned to the applicant. An applicant will ultimately receive an accounting of all costs incurred in processing the application, and may present objections to the Commission.

Having analyzed the application, the Department prepared a budget of up to $700,000. Enbridge reviewed the budget and raised no objection.

The Commission finds the Department's analysis to be sound and consistent with the objectives of Minn. R. 7852.4000. Consequently, the Commission will approve the budget and fee.

## ORDER

1. The Commission varies Minn. R. 7852.2000, subp. 4, to extend the period for determining the completeness of the routing permit application for the Line 3 project.

2. The Commission accepts as substantially complete the application of Enbridge Energy, Limited Partnership, for a routing permit for the Line 3 project

3. To publicize its application for a routing permit, Enbridge shall take the following actions:

   A. Place a copy of its application, in print or on a compact disc (CD), for review in a government center or public library in each of the counties traversed by the proposed pipeline.

   B. Post its application and all required supplements to a publicly available website so that they can be accessed electronically.

4. The Department's EERA is authorized to establish one or more citizen advisory committee(s) and develop a proposed structure and charge for the advisory committee(s).

5. Regarding the development of alternative route proposals:

   A. The Commission authorizes the Department to administer the alternative route proposal development process under Minn. R. 7852.1400.

   B. The Commission varies Minn. R. 7852.1400, subp. 3.C. to extend the 70-day time limit for people to complete their alternative pipeline route proposals.

   C. The Commission varies Minn. R. 7852.1400, subp. 4, to extend the time limits associated with Commission approval of route alternatives to be considered at hearing.

6. Regarding public information meetings and public evidentiary hearings:

   A. The Commission varies Minn. R. 7852.1300, subp. 1, to authorize public information meetings in areas near, and conveniently spaced along, the proposed pipeline route in lieu of meetings within every county along the route.

   B. The parties should consider conducting at least one required meeting on or near tribal lands.

7. Enbridge shall facilitate in every reasonable way the continued examination of the issues identified by Commission staff and the Department. In particular, Enbridge shall provide the Department with any additional information required to complete its comparative environmental analysis reflecting the environmental consequences of both the proposed Sandpiper and Line 3 projects from Clearwater to Superior.

8. The Commission delegates administrative authority over this matter, including authority over timing issues, to its Executive Secretary.

9. The Commission approves the Department's proposed application fee of $700,000 to recover the costs to be incurred processing the pipeline routing permit application.

10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary

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