

From: [Wilbert Ahern](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Fwd: Comment on MNPUC Line 3 Pipeline replacement proposal
Date: Wednesday, September 30, 2015 5:12:32 PM

This message refers to MN PUC Docket Numbers PL-9/CN-14916 Certificate of Need PL-9/PPL-15-137 Route Permit

----- Forwarded message -----

From: **Wilbert Ahern** <ahernwh@gmail.com>
Date: Wed, Sep 30, 2015 at 5:06 PM
Subject: Comment on MNPUC Line 3 Pipeline replacement proposal
To: jamie.macalister@state.mn.us

In light of the MN Court of Appeals case [including revisions recorded today], MNPUC should set postpone any action on the Line 3 Pipeline proposal until it has met the requirement for an Environmental Impact Statement [EIS] in order to make a decision on a Certificate of Need for the Sandpiper Pipeline. Since the Line 3 Pipeline replacement, as proposed to the MNPUC, seeks to follow the corridor being sought for the Sandpiper Pipeline, a decision on it must await the determination of a Certificate of Need as well as a Route Permit for the Sandpiper Line. The EIS should take into account System Alternatives 03 to 08 as proposed by interested parties.

This same situation calls for a rejection of the Rejoinder Petition from NDPC for the reasons so ably outlined today by the attorneys for the Carlton County Land Stewards.

Thank you for your attention to these comments.

--

Bert Ahern, President
Palmer Lake Association
23527 County 109
Menahga, MN 56464
[218-732-4312](tel:218-732-4312)

--

Bert Ahern
23527 County 109
Menahga, MN 56464
[218-732-4312](tel:218-732-4312)

From: apache@web.lmic.state.mn.us
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Ahern Wed Sep 30 16:57:47 2015 PPL-15-137
Date: Wednesday, September 30, 2015 4:57:48 PM

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: Wilbert Ahern

County: Hubbard County

City: MENAHGA

Email: ahernwh@gmail.com

Phone: 2182553363

Impact: 23527 COUNTY 109

I urge the MNPUC to postpone action on Line 3 until it has met the MN Court of Appeals requirement to conduct an Environmental Impact Statement for the Sandpiper pipeline as required by the MN Environmental Protection Act. This statement should take into account the alternative routes "SA-03 to SA-08" as previously proposed to the commission.

The MNPUC should reject the rejoinder petition from the NDPC for the reasons so ably spelled out by the attorneys representing the Carlton County Land Stewards today.

Mitigation:

Submission date: Wed Sep 30 16:57:47 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick
andrew.koebrick@state.mn.us

Please provide your contact information. This information and your comments will be publicly available.

Name: Steve Alden Phone: 612 290-6936
Street Address: 1665 Thornhill
City: St Paul State: MN ZIP: 55125
Email: _____

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the Route Permit)
- Are there any alternatives to the project that should be considered? (Related to the Certificate of Need)

The old line is getting worn out.
A new line needs to be built, before
there's any more failure of the old
line.

From: [Mary T Anderson](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: PUC Docket Numbers PL-9/CN-14-916. Certificate of Need PL-9/PPL-15-137 Route Permit
Date: Wednesday, September 23, 2015 10:20:00 PM

I am commenting on the need to consider an alternative route to that being proposed by the Enbridge Co. This is an issue of National health and safety. Minnesota and to our north Canada with our wetlands act as a Huge sponge that slowly and reliably cleans and recharges water for a very large part of the country. We should not be so foolish as to jeopardize this marvelous filtration system! I reside 7 miles north of Enbridges proposed route. The Mississippi River lies North, South, East and West of my home. I am keenly aware of the fragility of our sandy soil and our wetlands and how liquids drain through it seeking a lower point. All liquids including oil flows (when the inevitable leak occurs) down hill and our fragile system will be forever ruined.

Sincerely and With Concern;

Mary T. Anderson
2949 Cemetery Rd. N.W.
Hackensack MN. 56452
Sent from my iPad

Rec'd 08-19-15
Park Rapids - 11AM

Questions for Topic 1

1. What are the climate implications if the proposed pipeline(s) are put into use?
2. The alternatives for the use of the pipelines are not having exploding trains (as viewed in the Enbridge flyer), what about emissions and air quality from the refining and use of the toxic materials?

Topic 4

An alternative could be to keep any new pipelines from being built and decommissioning the existing ones to move away from antiquated technology like fossil fuels.

Use the funds instead to accelerate existing alternative energy sources.



AMERICAN PETROLEUM INSTITUTE

Minnesota & Wisconsin

September 29, 2015

Erin T. Roth
Executive Director

Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Ste. 500
St. Paul, MN 55101

PUC Docket Numbers:

PL9/CN-14-916 Certificate of Need
PL 9-PPL-15-137 Route Permit
Enbridge Line 3 Crude Oil Replacement Pipeline Project

Dear Department of Commerce,

The Minnesota/Wisconsin Petroleum Council is the state office for the American Petroleum Institute (API) based in Washington, DC. API is the major trade association for the oil and natural gas industry worldwide and represents some 650 member companies. API members are involved in all aspects of the industry including operating and building crude oil, natural gas and finished petroleum product pipelines. Many API member companies currently conduct business in Minnesota and the region providing essential petroleum based energy to customers and consumers.

When it comes to pipelines, Pipeline safety is our number one priority. Our ultimate goal is to get to zero spills and the industry has made great strides in that direction. Today, 99.999% of the products that move through petroleum liquid pipelines reach their intended destination without incident. Pipeline technology has been dramatically improved and the best-trained and safest professional labor force in the world builds pipelines.

The Council would like to submit the following comments in support of granting the Line 3 certificate of need and routing permit applications:

-A total replacement of Line 3, rather than replacing aging segments of the existing line, should be studied based upon additional environmental and safety benefits the project provides.

-Pipelines bring many positive benefits to communities and counties along the construction route, not only during the construction phase, but also for the long-term as continued monitoring and maintenance of a line is necessary. The positive economic and tax implications Line 3 will have on these local jurisdictions should be studied as a part of this proceeding. There are numerous examples of these from communities, counties and business owners from previous pipeline construction that can be researched.

-We believe Enbridge's preferred route has far less human impacts over any others that might be studied. We request that studies should include: population impacts; groundwater impacts; drinking

400 Robert Street, North
Suite 1560
St. Paul, MN 55101

Phone 202-682-8304
Cell 608-209-0789
Email rothe@api.org
www.api.org

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water sources and land use disruptions during construction. API believes that the company has done its due diligence in these areas by proposing a route that has the least amount of disruptions to humans and the environment.

-An assessment should be conducted of the training made available by the pipeline industry in Minnesota relating to construction, restoration and maintenance of a pipeline system. In addition, first responder training programs made available by pipeline companies should be reviewed.

-As part of the study, API feels it is prudent to assess alternatives to replacing Line 3. Alternatives should include the additional number of oil trains and/or highway truck traffic that might be necessary if the replacement certificate of need and routing permits are not granted. And, the potential strain it could put on current infrastructure (i.e. roads and bridges, etc.). Also, impacts on agriculture, taconite and forest products industries should be assessed as they could be negatively impacted by the lack of rail capacity and increased truck traffic.

In conclusion, API would like the Department to stick to its regulatory timeline to issue the certificate of need and routing permits. This certainly has not been the case with the Sandpiper pipeline proposal process, despite the efforts of the Governor, the legislature and the business community to streamline the permitting process. The Line 3 project is one example of a project that would benefit from following process preferred by elected officials.

Thank you for your consideration.

Sincerely,



Mr. Erin T. Roth
Executive Director

From: apache@web.lmic.state.mn.us
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Aubid Wed Sep 30 20:37:42 2015 PPL-15-137
Date: Wednesday, September 30, 2015 8:37:43 PM

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: Tania Aubid

County: Aitkin County

City: McGregor

Email: ricelakesempire@excite.com

Phone: 218-426-4685

Impact: Docket# PL-9/CN-14-916 certificate of need PL-9/PPL-15-137 route permit.

1. NO MEANS NO- no pipelines.
2. there was no government to government communications/relations. as a tribal constituent i heard nothing about previous attempts of informational meetings hearings or the like.
3. Enbridge and its employess have not made Minnesota their home or has no intention of making Minnesota their permanent home. therefore that is why the inconsistencies in important environmental numbers were so wrong and why minnesota freshwater system is in jeopardy. Enbridge employees had not taken minnesota's freshwater system into considerations when drawing this plan out.
4. Property owners, old and young, i believe were coerced into believing that this pipeline was a sure thing. due to my data privacy and confidentiality training the property owners that i had talked with. explained to me that they had no other options and so signed their property up for the proposed route and routes in place. this in itself reflects back to anyone or any corporation still practicing removal and genocidal means for profit.
5. 1968 when the pipelines first were put through, tribal people were not included in this matter to voice their opposition. at that time I do believe that tribal people were still not recognized as citizens. Native American Religious Freedom Act wasn't recognized until 1972. to me, tribal people werent and still are not looked upon as equal in citizenship. that is why the pipelines were able to be put in. I was born that same year, (at that time if i could have been able to say no, I sure would have then too) ,almost 50 years later those pipelines are now questionable: the 700,000 barrel spill of colored water in Floodwood, mn was a great eye opener for many in these parts of the woods.
6. Enbridge's limited liability insurance to cover their oil spills is abominable. Did Enbridge not learn from the environmental catastrophe that happened in Kalamazoo MI? no amount of money can or will bring life back.
7. the usage of recycled steel is questionable. i draw this conclusion from the recycling of bottles, there had been incidences of bottle malfunctions. explosions, leaks, breaks, and breeches. To me that means the chemical composition of the steel used in the pipelines now will be more prone to advanced corrosive anomalies

8. PROTECT OUR MANOOMIN (WILDRICE)...DONT KILL MY INDIGENOUS FOOD SOURCE.THIS IS USED FOR DAILY AND CEREMONIAL/RELIGIOUS USES IN MY LIFE.

9. Animals need fresh unpolluted environments to thrive. as well as the plant life here in minnesota.

10. since enbridge has pipelines that were put in back in 1968, a review of the environmental impact statement from that time ,1968, compared to the EIS being ordered this year, 2015 will have a significant impact in determining this outcome.

Tania Aubid

McGregor,MN resident/constituent

Aitkin County Constituent

1855 Treaty Resident

Mille Lacs Band Member

Honor The Earth

Mitigation: OPEN UP PORTFOLIOS TO INCLUDE MORE GREEN ENERGY...SOLAR AND WIND IS A GOOD START

Submission date: Wed Sep 30 20:37:42 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick
andrew.koebrick@state.mn.us

From: jbackowski@aol.com
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Docket # 14-916
Date: Thursday, September 24, 2015 10:40:44 AM

I support the decision of the Minnesota Court of Appeals to require an Environmental Impact Statement in the Sandpiper permitting process. There is no rush to build this pipeline, given the current low oil prices. We have to build our infrastructure right, and an EIS will help ensure that we do. Anyone who insists we move forward without an EIS should explain themselves. Why would we want to build a pipeline without an environmental study first, when our coveted clean water is at stake?

Thank you.

KEEP SMILING!!!!



Cheryl

Wednesday, September 30, 2015

Elizabeth Baker-Knuttila
12029 Far Portage Drive
Park Rapids, MN 56470

Jamie MacAlister
Environmental Review Manager
Minnesota Dept. of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101

Re: PL-9/CN-916 Certificate of Need; & PL-9/PPL-15-137 Route Permit

Dear Ms. MacAlister, DOC;

I am writing to you today to share my concerns regarding the proposed replacement/rebuild of the Line 3 Pipeline through the same corridor as the proposed Sandpiper Pipeline.

First of all, I question whether or not this is a rebuild, or indeed another new pipeline. Various reasons inform that question. The proposed Line 3 rebuild is an enlargement of over 12 % from the old Line 3 pipeline. Most of the route for the "pipeline rebuild" is in an entirely different location, and the current Line 3 pipeline is to be left in place for eternity. It will be carrying at least some tar sands oil while the current line 3 does not, according to Enbridge records. The new Line 3 will be a 36 inch pipe carrying a substantially higher volume than current Line 3. It has been reported that Line 3 will actually be replaced in Canada, with the old Line 3 being removed there. Is that policy in Canada, and why not in the United States?

Environmental Review

1. What human and environmental impacts should be studied in the environmental analysis?

As the District Appellate Court choose in a unanimous decision, to void the previously issued Certificate of Need for the Sandpiper and demand an EIS for the proposed Sandpiper Route, I urge you to use common sense and the intent of the ruling and stop any further discussion/work on the Line 3 pipeline permitting process until that EIS has been completed. There should be NO forward movement on either the Sandpiper or Line 3 rebuild until such time as an EIS has been completed. The EIS should be done with a complete risk analysis along with a report for construction and post construction damage, spill, rupture, leak and economic and environmental assessments! Input from the two leading state environmental and natural resource agencies, the MPCA and the DNR, should be sought as the experts that they are. Evidence that they put forth in the Sandpiper Hearings was largely ignored by the ALJ. Their expert opinions

should be heeded, such as the comment by the MPCA in a document submission to the docket in the permitting procedure for the Sandpiper, the same proposed corridor as that for Line 3.

I offer 3 quotes from the MPCA document submitted on June 24, from p. 15; from the docket of 13-474 and 13-473, in Sandpiper permitting process:

"The 2 routes in this analysis that cross the fewest water bodies and put water resources at the lowest risk for environmental damage both aligned away from the Clearbrook terminal."

The MPCA went on further to state:

"Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest concentration of lakes, streams, and open-water wetlands in the state. Any route proposed out of Clearbrook, either South or East will cross dense expanses of open water."

And again, further down again on page 15:

"Of the 4 possible routes that MPCA staff examined, the proposed Sandpiper route and previously followed Northern route show a significantly higher potential for environmental damage than either system alternatives 3 or system alternative 4 routes. It is also possible that an as of yet unexplained route could also score well relative to the Sandpiper proposal."

In my mind, these quotes by this agency clearly show their concern for this route as a threat to the area holding the most precious water resources in the state. Indeed, the lakes and rivers in areas to the South of the proposed Sandpiper route are deemed to be polluted to such a degree that they are irreparable, while lakes and water bodies in this area are the cleanest and least polluted in Minnesota. So, is it a wise use of our precious resources to put them at risk of contamination in the event of an oil spill of a Line 3 carrying the dirtiest oil on the planet? So, while indeed I understand the role of the DOC and the PUC in permitting business and utilities within the state of Minnesota, I should hope that they would both do so keeping in mind their responsibilities to the current citizens of the state, as well as our children and grandchildren.

Or is the responsibility only to encourage business, and profit, for a foreign company crossing our state and its precious resources and putting them at great risk, for little to NO benefit to the citizens of the state?

It has been said that a CEA is the equivalent of an EIS. This is not true. The CEA is a much less comprehensive review process which leaves out the opportunity for the public to comment. A full EIS includes the involvement of the Environmental Quality Board, with a public scoping meeting, and a Responsible Governmental Unit issuing the scoping decisions. A draft EIS is completed, with *opportunities for the public to comment!!* It further improves upon a CEA by providing obligatory responses to that public comment by the RGU. The EIS is then revised based on those comments and responses, and again put forth for public comment. This is very unlike a CEA where much of the data used is provided by the proposer, along with all of the bias that entails!

Alternate routes

Alternative routes to the proposed Sandpiper corridor were put forth in those proceedings. As it is our state of Minnesota that this foreign pipeline company is passing through, we should have the mandate to see that it traverses areas of our state that are the least susceptible to environmental damage. It seems that the previous ALJ was influenced to believe the company line that the proposed corridor was the “least environmentally sensitive” route in contradiction to the two state agencies charged with protecting our environment, the DNR and the MPCA. I would request further examination of those alternate System Alternatives, and not just route segment alternatives.

In light of the falling oil prices, the push from those allied against climate change, and the citizens concerned with the environment, would not the most prudent choice be to keep those fossil fuels in the ground and use the money that would be spent on their development and transportation on alternative sources of energy, wind and solar? To its credit, Enbridge has a division that is involved in alternative energy projects.

When the Sandpiper had been proposed and that was brought to the public, Enbridge assured us in a public meeting that no further pipelines were being considered for this Sandpiper Route. A short while later, the proposal for the Line 3 rebuild was made public. How many pipelines will be proposed in this new corridor? What are the implications of adding two new high volume pipelines to this area of pristine lakes unparalleled in the state? Will this become the new corridor for replacing worn out pipes presently in the N. corridor? Is this pipeline proliferation? These pipelines will carry 375,000 barrels of Bakken Crude (Sandpiper) and 760,000 barrels of Alberta Tar Sands oil in the Line 3 “rebuild”. This is more than the amount of oil proposed for the Keystone XL pipeline and this route is through Minnesota’s most clean and clear lakes and rivers and through the heart of our counties where tourism is the major economic base. That total is 48,000,000 gallons per day through the area of the Headwaters of

the most important river in the Midwest, the Mississippi, which provides drinking water for numerous cities downstream including St. Cloud, Minneapolis, and St. Paul.

Risks For Spills

Placing two pipelines in the proposed Sandpiper corridor poses great risk to our clean lakes, rivers, wetlands along with the wild rice in those water bodies so important to the sustenance of our Native American citizens, the tourism industry which enjoys those clean waters and employs many throughout the entirety of the proposed route from Clearbrook to Duluth.

Enbridge has a record of costly spills in the United States. The most famous of those is of course, the Kalamazoo Spill in 2010 in Michigan, which became one of the most costly spills in US history to the tune of \$1.2 billion and there are still differing views as to whether or not the spill is entirely cleaned up. Previously the largest US spill was in Grand Rapids, MN. Here in Minnesota we can also look back to the Cohasset oil spill in 2003 and the Clearbrook fire in 2007. Pipelines spill, routinely, even ones built recently and less than 3 years old, as in the case of the Keystone 1 pipeline in SD which was built in 2009. That pipeline developed deep corrosion pits on its line in Missouri. The pits had corroded almost through the pipeline wall in only three years, and were caused by stray electrical voltage. This in spite of modern, high-tech cathodic protection coatings which are touted as sufficient to protect against such corrosion. *

The risk for spills is real and spills of large volumes. The Lakes area of Minnesota would be so adversely affected should such a spill occur. We need to protect the cleanest and most pristine lakes of Minnesota, our fragile aquifer which is among those most susceptible to pollution, our jobs related to the tourism industry, our drinking water, our property values, and indeed our way of life. In Minnesota, our environment defines our state. Please, do all that you can to protect this way of life for us now, and for our children and grandchildren in the future.

Thank you for accepting my comments regarding Line 3.

Sincerely,

Elizabeth Baker-Knuttila

*TransCanadaKeystone Root Cause Report_Feb 15 ver1docx_2_pdf

Line 3 studies

Dave Barnett

Sent: Wednesday, August 12, 2015 2:56 PM

To: Dave Barnett

What are the cumulative affects to rail congestion for US Citizens and Farmers if all of the following proposed oil pipeline projects in this region of the United States are built that are awaiting permits.

Sandpiper – 225,000 barrels per day

Line 3 replacement project – 370,000 barrels per day increase to current flow and reaching its original capacity

ETP's Dakota Access Pipe Line – 570,000 barrels per day

Keystone XL – 830,000 barrels per day

Just these four projects alone would put 1,995,000 or just short of 2 million barrels per day in the best transportation system known to mankind for oil and I would think this should have some effect on rail congestion. In the Sandpiper hearings I heard it said by some that the Sandpiper Pipe Line alone would not relieve the rail congestion in Minnesota. However by looking beyond simply one project and instead considering cumulative projects a study may show a substantial relief to rail congestion.

And now my second study request.

What are the transportation costs to the Environment measured in CO-2 emissions, for transporting a barrel of oil by Rail vs. transporting a barrel of oil by Pipeline? Keeping in mind that the rail car has to make two trips, meaning a trip in both directions to deliver one car load of oil to its destination. I feel it will show that this project is truly the right thing to do from an environmentally conscious viewpoint.

David Barnett

United Association

Special Representative

Pipeline and Gas Distribution Department

Office (918) 482-3847

Cell (918) 625-7145

Comments on Enbridge Line 3 Replacement Construction

Submitted By

Richard Beatty
McGregor, MN

I am a resident of McGregor, MN. I have spent 38 years working for the Federal Government analyzing data and preparing environmental documents for large Federal projects. For 15 of those years I was a Certified Hazardous Materials Manager. After attending information meetings on the pipeline project and reviewing other information I would like to submit my opposition to the placement of the Line 3 Replacement along the proposed route through Crow Wing, Cass, and Aitkin Counties. My position is based on the following points.

1. The proposed alignment is a worst case alignment from an environmental perspective. It would be hard to propose an alternative that had a higher potential to result in significant environmental impact. As has been pointed out many times, the proposed alignment passes through some of the most environmentally sensitive areas in the state. The alignment includes key areas for aquifer recharge; that support significant recreational activity; and contain the majority of the State's economically and spiritually important wild rice habitat. In addition, the surface water from the entire potentially impacted area drains into the Mississippi River, the major waterway in the United States. When (not if) a spill occurs, these resources will be impacted. With any spill of petroleum material, both the material itself and the physical clean-up process would cause negative impacts. In this case, the proposed material to be transported (Canadian Tar Sands products) would significantly magnify these impacts. This tar-sands material has higher acidity than other products and would be moved at higher pressure, both of which would increase the likelihood of a pipeline rupture. When the pipeline does rupture, the tar sands material would be more toxic than most other pipeline materials. In addition, the density of the material would cause it to sink in aquatic areas thus making it extremely difficult if not impossible to recover. End result - the material would remain free product, releasing contaminants into the environment for a long period of time.

A complicating factor is the remoteness of much of the proposed route. It increases the likelihood that a spill would not be visually identified quickly and, as we have seen from a recent spill in Canada, even state-of-the-art detection equipment does not guarantee that this method would rapidly detect a spill. The end result is that along the proposed route, the likelihood of a larger quantity of material being released is greater than along alternative routes which have easier access.

Based on these facts it would seem logical to look for routes where spills would result in less damage. These alternatives have been proposed. Spills along these corridors would result in damage but the likelihood of early detection would increase, the impacted resource would likely recover faster, and the effectiveness of product recovery would be far greater.

2. It has been suggested that resistance to the proposed Line 3 is a case of NIMBY. This is not the case for me. When I have been involved in alternative selection, part of the process involved balancing risk against economic benefit. One would not propose to put a natural gas line under a school because it was the shortest route. Nor would you put a chemical manufacturing plant in a residential neighborhood because the land is reasonably priced. In the current Line 3 proposal, a pipeline that at some point will fail is being placed in a very sensitive environment because it is the most cost effective (cheapest) alternative for the company. It would seem far wiser to follow a selection process that minimizes as much as possible the potential negative impacts along with consideration of minimizing the increased costs.

3. Another factor being used in support of the proposed alternative is that it is a job-provider. My position is that if there is a need for this pipeline (which is a decision to be made elsewhere) then it should be built – just not in such environmentally sensitive areas. In reference to job creation, construction of any of the alternative routes would actually be beneficial for employment as these routes are longer and would need more people and/or time to complete.

4. I worked for 15 years doing closure of underground storage tanks (USTs) at facilities in four states. In all cases, there were specific requirements for closure (40 CFR 280.70). This required that containers left in the ground must be emptied and cleaned by removing **ALL** liquids, dangerous vapor levels, and accumulated sludge, and filled with a harmless, chemically inactive solid, like sand. I do not understand why we are allowing Enbridge to leave the existing line in the ground with what appears to be a cursory cleaning and no fill. In addition, we were required to verify that the UST had not leaked and, if it had, to remediate the area. If anything, a pressurized line in operation for 40 years is far more likely to have leaked than a UST and should be required to meet the same leak detection and remediation standards. The potential for physical failure of the several hundred mile long unfilled abandoned pipeline would also seem to present a significant safety factor. I would suggest that a more prudent set of permit requirements would include a verified thorough cleaning of the pipeline, a subsurface sampling of the ground around the welds of the line and some type of solid filling of the pipe. An alternative to these requirements would be to require the physical removal of the pipeline and inspection of the surrounding soil.

In summary, I am firmly opposed to the current proposed route for the Line 3 Replacement pipeline. The environmental and safety risks far outweigh the economic factors. Thank you for your attention and thoughtful consideration.

Richard J. Beatty
19281 530th Lane
McGregor, MN
e-mail: rjb1946@aol.com

From: [Micki Berg](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Docket numbers 15-137 and 14-916
Date: Tuesday, September 29, 2015 1:20:33 PM

I am commenting in opposition to the Enbridge's Line 3 tar sands pipeline in the phase of the permitting process. I would like the PUC to keep the following in mind while considering whether to approve Enbridge's request for a pipeline on a new route:

Climate change: I don't need to remind you of how use of oil has affected climate globally. This is more than a Minnesota problem but our part in the use and transport of tar sands/oil are something we need to address now.

We don't need more oil, we need more clean energy sources. Our planet, environment and our lives depend on doing the right thing now.

Minnesota's cleanest lakes area: the proposed route as you are aware threatens our remaining pristine lakes. This route will put at risk the ability of yours and my children and grandchildren to have clean lakes to enjoy.

Wild rice: the pipeline would threaten the largest stand of natural wild rice in the country.

Minnesota tourism: the pipeline threatens Minnesota tourism industry. Many communities around our northern lakes depend on this income to survive.

Land value: a disaster similar to Kalamazoo would grossly impact the northern communities surrounding the rivers and lakes here. I am sure to Enbridge that is a drop in the bucket but to private land owners and small businesses, this is their livelihood.

Drinking water: this is a primary necessity of life for you and me.....for everyone. We cannot risk the contamination of our waters that could ultimately poison our drinking water.

Tar sands: we have to stop using tar sands. The dirtiest oil of all. Please do not allow a foreign company to make millions/billions at the expense of Minnesota, your home and mine.

Integrity of Enbridge: historically this company has not proven to be trustworthy. Their track record for safety speaks for itself and their follow through for clean up is yet to be identified. This company is only out to make money!

I believe the risks far outweigh the benefits of this pipeline. Please look into your heart and soul and do the right thing for your state, your children, and their children. Set an example for the nation to see. We have to stop using tar sands and stop this pipeline.

Irene Berg

McGregor, MN

[Sent from Yahoo Mail for iPhone](#)

From: apache@web.lmic.state.mn.us
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Berg Wed Sep 30 08:40:12 2015 PPL-15-137
Date: Wednesday, September 30, 2015 8:40:13 AM

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: Kevin Berg

County: Aitkin County

City: McGregor

Email:

Phone:

Impact: I do not support the building of this pipeline because it crosses many wet lands and when a spill occurs it will have a large negative impact on our rivers and lakes. This pipeline company has a long history of poor performance in the pipeline industry. Many spills will occur and effect will be devistating. We do not need this potential environmental disaster in our wet lands.

Mitigation: I would like the pipeline to be routed along I29 and I94, this would proved quick easy access to respond to leaks and spills. The amount of automobile traffic on these roads would also provide for a quicker identification of leaks and spills.

Submission date: Wed Sep 30 08:40:12 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick
andrew.koebrick@state.mn.us

From: [Jan](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Line 3
Date: Monday, September 28, 2015 8:48:22 PM

Dear Jamie,

This is in reference to PL-9/CN -14-916 and PL-9/PPL-15-137.

I am opposed to Enbridge's Line 3 going thru the lakes and wetland regions of northern Minnesota. There are too many problems that can occur with a tar sands pipeline in our state.

1. Tar sands are difficult and next to impossible to clean up . Case in point: Enbridge's Kalamazoo spill.
2. Pipes can corrode. Case in point: Enbridge's pipeline at the Straits of Mackinac were supposed to last 50 years. They are now 62 years old and the National Wildlife Federation just put out a documentary on the pipes having support issues as well as areas that can corrode. It is a disaster waiting to happen.
3. Enbridge has had 900 spills in ten years.
4. This year a study has come out saying pipelines next to electrical lines can cause premature aging of the pipes. The three year old pipe in Arkansas that burst was caused by an electrical surge in electrical lines close by. Line 3's path is next to a high powered electrical line.
5. Wild rice, which only grows in our northern regions of the US (specifically Minnesota and Wisconsin) is second in being a complete food (you can live only on wild rice and you will have all the amino acids and proteins of a complete meal). Quinoa is the top complete food. Wild rice beds would be further endangered by Line 3.
6. The economic value of tourism and cabin owners far outweighs any taxes received from Enbridge or any employment. Their labor force would be short term to build the line and would only have 22 people after it is built.
7. There are limited pumping stations and inaccessible areas. 22% of oil spills are detected by the oil companies. Citizens detect the most oil spills. Line 3 goes thru uninhabited areas that no citizen would be routinely going thru.
8. Enbridge and the PUC have refused to have Nation to Nation talks with Anishinaabe of Minnesota. Line 3 goes thru ceded territory of the Ojibwe. The federal government gave them rights to hunt, trap and fish in this ceded area..FOREVER! Oil pipelines can not be allowed on this ceded territory. By the way, this is a federal issue...not a state PUC issue. The federal rights of Anishinaabe take precedence over Minnesota's PUC.
9. Oil prices have plummeted from \$100 to less than \$50 a barrel. Enbridge's line 3 is not needed.
10. Shell Oil just withdrew from the Arctic as it is not economical to begin drilling.
11. 82% of Americans believe something needs to be done about climate change. All oil must stay in the ground to make sure our CO2 is kept within a handable number to prevent a world climate disaster.
12. Enbridge wants to export the oil.
13. Line 3 would go thru an historic region: headwaters of the Mississippi River, the path Joseph Nicollet took in 1836 to map all of the upper Mississippi River, 9000 year old travel routes and trails cross Line 3, Anishinaabe artifacts have been found.
14. Muskie and trout are endangered in Outing, MN at the hatchery and Lake Roosevelt. The Outing area is the headwaters of an area that flows south into the Gull Lake chain and into the Crow River south of Brainerd.
15. There are too numerous bogs, wetlands, lakes and rivers to mention here. Suffice it to say, in this age of

dwindling water supplies and drought, northern Minnesota is a gem for water and water quality. Why would the PUC even contemplate destroying this? The commissioners must be good stewards of this land and turn down Enbridge's Line 3.

16. Pope Francis just made a very strong case for protecting our earth. We are all morally and ethically responsible for sustaining it and preserving it for all people, current and in the future. It is time the PUC responds ethically to preserving northern Minnesota and its waters for all of us. Enbridge is a foreign corporation that has few ethical or moral values when it comes to preserving our lands and waters. Minnesotans should not be doing business with them.

16. Enbridge concocted a scheme (the switcheroo) to move tar sands oil across the Canadian border so they would not have to get a Presidential Permit. This is plain wrong! The PUC should not be doing business with this kind of chicanery! Honor the Earth has filed a federal case against Secretary of State Kerry regarding Enbridge's unlawful plan to move oil thru the 16 mile international border area. The PUC should not even be considering Enbridge's Line 3 route while there us a federal appeal going on.

Line 3 is not a rubber stamp issue. The PUC must listen to Minnesotans who are waving red flags about the disaster Line 3 would bring to our state. Enbridge wants to use us as a pass thru state. It also does not want to remove the old Line 3 pipes which can continue to corrode. They want to store nitrous oxide in the old Line 3 pipes. Really? It's more polluting than CO2.

There are too many problems with this pipeline. I hope the commissioners investigate these issues the public is bringing to their attention. They seemed to ignore problems citizens brought up in the Sandpiper hearings and comment period. Let me be clear. Minnesotans are discouraged with the PUC because they feel they are not being heard and the PUC is going to rubber stamp the approval of this line without investigating.

A full EIS needs to be done for the region in which Enbridge wants to place this line.

Jan Best
14326 Dove Court
Prior Lake, MN 55372

Date: September 28, 2015

To: Minnesota Department of Commerce
Attn: Jamie Macalister – Environmental Review Manager

From: Brian Bourdeaux
Erie – Bourdeaux Family Revocable Trust
MN-CL-011.000, MN-CL-012.000, MN-CL-014.000

RECEIVED
SEP 30 2015
MAILROOM

RE: Enbridge Sandpiper & Line 3 replacement
PUC Docket Numbers: PL-9/CN-14-916 Certificate of Need
PUC Docket Numbers: PL-9/PPL-15-137 Route Permit

I am writing in regards to the following properties MN-CL-001.000, MN-CL-012.000 and MN-CL-014.000 (Erie – Bourdeaux Family Revocable Trust) off of Taflin Lake Road in Pine Lake Township in Clearwater County. Currently going through the properties are EPP Corridor (7 lines) and NDPC Line 81.

Enbridge has purchased the following property MN-CL-013.200 for a new tank farm for the Sandpiper & line 81 lines. Enbridge can NOT access the sandpiper line or NDPC Line 81 on this property. For their tank farm to work, they need to defer the pipes from our properties. Currently Enbridge has an easement for the Sandpiper Line to go straight through the properties ID # MN-CL-011.000, MN-CL-012.000 and MN-CL-014.000 (as seen on attached map) and want that easement honored and not to follow the proposed sandpiper line to defer the pipes into their new tank farm on ID #MN-CL-013.200. If they defer the pipes over to the new tank farm, then we are losing valuable farming land, because the land is never the same once they dig. We have lost our valuable soil on other parts of our farms due to Enbridge's digging and them putting the clay base on top. I do not understand why Enbridge would purchase land that they cannot access the sandpiper line or NDPC line 81 on their own property. Our family should not have the burden of losing land in order for Enbridge to get their new tank farm.

EIS (Environmental Impact Statement) study needs to be done first on Enbridge's new tank farm on MN-CL-013.200, before a Certificate of Need or Route Permit is issued. There are two lakes very close to the proposed new tank farm and are the Erie Lake and Klongerbo Lake and lots of wildlife.

Property ID # MN-CL-014.000 is going to be a CENTURY FARM for our family in 2017. Between the sandpiper line being very close to the homestead building site and power lines that would start to go through the homestead that Enbridge and Minnkota Power want. It has been in our family planning that we are going to be rebuilding on the old homestead in the next 5 years. Currently the old farm house is standing. The farm is so important to our family and our heritage.

On Line 3 replacement line move the workstation over to Enbridge property ID # MN-CL-013.200 and not on Erie – Bourdeaux Family Revocable Trust property ID # MN-CL-014.000.

Currently we are waiting to be paid for two death certificates for my mother in law Marilyn Erie, which have been given to Enbridge and they even asked for a third certificate. Also we are waiting on payment for crop damage back in 2013. Enbridge has said they want to put the crop damage payment into the new proposed easement for the new tank farm. Why should we have to wait for our money, when we have turned in the paperwork for the damage? Also my father in law Harvey Erie was told if we sign the easements, we would get the hay crop for 2015 off of MN-CL-013.200, when the agent left, my father in law went to check

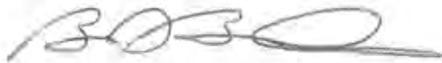
the cattle and the previous renter was already cutting the hay. Enbridge never planned on the Erie – Bourdeaux Family Revocable Trust to receive the hay land in 2015 as part of the easement agreement, because nothing was ever in writing, just verbal by Enbridge.

I do not feel that Enbridge can put up a new tank farm on property ID # MN-CL-013.200, when they cannot access the Sandpiper Line or NDPC Line 81. By looking at the maps, Enbridge knew they could not access the Sandpiper Line or NDPC Line 81 on the property ID # MN-CL-013.200 they purchased. Enbridge needs to honor the easement that they asked for and received by Harvey and Marilyn Erie back in November 2013 for the Sandpiper Line to go straight through the Erie – Bourdeaux Family Revocable Trust properties.

I have also attached a map of the property's being discussed in this letter.

Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'BOB', with a long horizontal flourish extending to the right.

Brian Bourdeaux
Erie – Bourdeaux Family Revocable Trust
31187 151st Street
Princeton MN 55371

PUC Docket Numbers: PL-9/CN-14-916
 PL-9/PL-15-137

Erie - Bourdeaux Family
 Revocable Trust:
 MN-CL-011.000
 MN-CL-014.000
 MN-CL-013.000

Yellow - Sandpiper proposed route

Orange - Easement already given for Sandpiper line

Silver - line 81

darkred - line 3 replacement

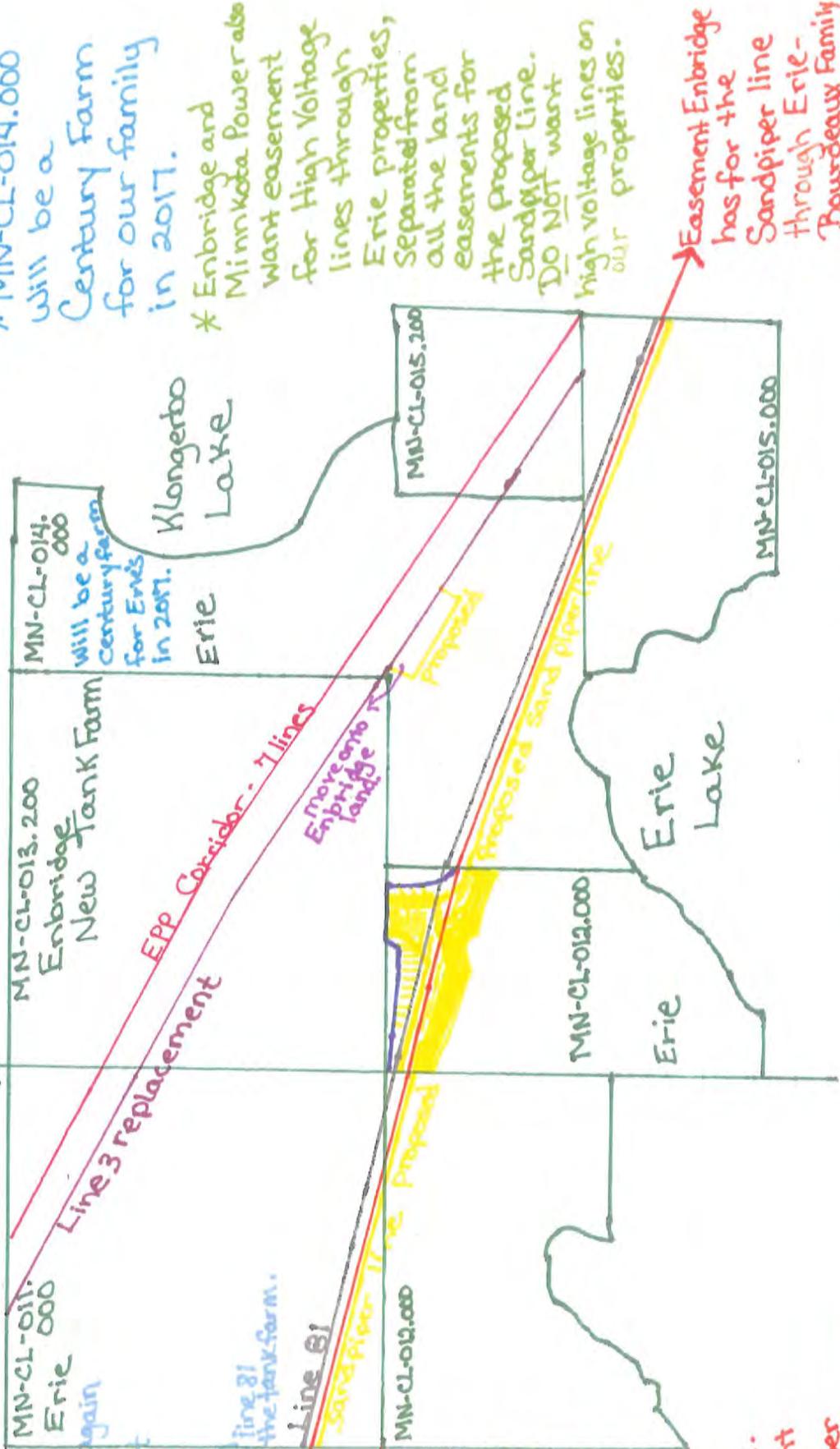
Red - EPP corridor

* Enbridge just asked for more easement on MN-CL-012.000 because they want to bring line 81 into the New Tank Farm easement for Sandpiper into the tank farm.

Easement given to Enbridge for the Sandpiper line, by Harvey + Marilyn Erie Nov. 2013. Want Enbridge to follow the easement they already have and not to follow the proposed Sandpiper line. **DO NOT** want the Sandpiper Proposed line/centerline. Enbridge wants way to much easement to get their New Tank Farm to work. Erie's already given easement for the Sandpiper proposed line to happen and not to let the Sandpiper proposed line to happen and not to let the Sandpiper proposed line to happen.

92

Half Lake Rd



* MN-CL-014.000 will be a Century Farm for our family in 2017.

* Enbridge and Minnkota Power also want easement for High Voltage lines through Erie properties, Separated from all the land easements for the proposed Sandpiper line. **DO NOT** want high voltage lines on our properties.

→ Easement Enbridge has for the Sandpiper line through Erie - Bourdeaux Family Revocable Trust properties.

Erie - Bourdeaux Family Revocable Trust properties.

RECEIVED

SEP 30 2015

MAILROOM

Date: September 28, 2015

To: Minnesota Department of Commerce
Attn: Jamie Macalister – Environmental Review Manager

From: Dawn Bourdeaux
Trustee for Erie – Bourdeaux Family Revocable Trust
MN-CL-011.000, MN-CL-012.000, MN-CL-014.000

RE: Enbridge Sandpiper & Line 3 replacement
PUC Docket Numbers: PL-9/CN-14-916 Certificate of Need
PUC Docket Numbers: PL-9/PPL-15-137 Route Permit

I am writing in regards to the following properties MN-CL-001.000, MN-CL-012.000 and MN-CL-014.000 (Erie – Bourdeaux Family Revocable Trust) off of Taflin Lake Road in Pine Lake Township in Clearwater County. Currently going through the properties are EPP Corridor (7 lines) and NDPC Line 81.

Enbridge has purchased the following property MN-CL-013.200 for a new tank farm for the Sandpiper Line. Enbridge can NOT access the Sandpiper Line or NDPC Line 81 on this property. For their tank farm to work, they need to defer the pipes from our properties. Currently Enbridge has an easement for the Sandpiper Line to go straight through the properties ID # MN-CL-011.000, MN-CL-012.000 and MN-CL-014.000 (as seen on attached map) and want that easement honored and not to follow the proposed sandpiper line to defer the pipes into their new tank farm on ID #MN-CL-013.200. If they defer the sandpiper line over to the new tank farm, then we are losing valuable farming land, because the land is never the same once they dig. We have lost our valuable soil on other parts of our farms due to Enbridge's digging and them putting the clay base on top. I do not understand why Enbridge would purchase land that they cannot access the Sandpiper Line on their own property. On September 9, 2015 we were asked for even more easement land because Enbridge wants to have NDPC Line 81 go into the new tank farm. Our family should not have the burden of losing our excellent agriculture land in order for Enbridge to get their new tank farm.

An EIS (Environmental Impact Statement) study needs to be done first on Enbridge's new tank farm on MN-CL-013.200, before a Certificate of Need or Route Permit is issued. There are two lakes very close to the proposed new tank farm and are the Erie Lake and Klongerbo Lake. Currently on the Erie Lake there are 12 trumpeter swans. Each year more trumpeter swans are on Erie Lake. We also have eagles between the lakes and even an eagle nest on property MN-CL-011.000. Also there are all kinds of wildlife on these properties.

Property ID # MN-CL-014.000 is going to be a CENTURY FARM for our family in 2017. Between the Sandpiper line being very close to the homestead building site and power lines that would start to go through the homestead that Enbridge and Minnkota Power want. It has been in our family planning that we are going to be rebuilding on the old homestead in the next 5 years. Currently the old farm house is standing. The farm is so important to our family and our heritage. Our family wants to keep our farm homestead (future century farm) free of power lines and pipelines. The land has provided our family an agriculture living for 98 ½ years. It will soon be a Century Farm in the State Of Minnesota and we need to be able to receive that honor and be able to pass the farm down to future generations.

On Line 3 replacement line move the workstation over to Enbridge property ID # MN-CL-013.200 and not on Erie – Bourdeaux Family Revocable Trust property ID # MN-CL-014.000.

Currently we are waiting to be paid for two death certificates for my mother Marilyn Erie (passed away April 8, 2014), which have been given to Enbridge and they even asked for a third certificate because they have missed place two death certificates already. I have been called my mother name just in August 2015, which is very difficult. Why can't Enbridge get their paperwork correct, especially since they have received death certificates? Also we are waiting on payment for crop damage back in 2013. Enbridge has said they want to put the crop damage payment into the new proposed easement for the new tank farm. Why should we have to wait for crop damage money, when we have turned in the paperwork for the damages? Also my father Harvey Erie was told if we sign the easements for the new proposed sandpiper line to go into Enbridge new tank farm, we would get the hay crop for 2015 off of Enbridge's property MN-CL-013.200, when the agent left, my father went to check the cattle and the previous renter was already cutting the hay on Enbridge's new tank farm property. Enbridge never planned on the Erie – Bourdeaux Family Revocable Trust to receive the hay off their property (MN-CL-013.200) in 2015 as part of the easement agreement, because nothing was ever in writing, just verbal by Enbridge. Enbridge representative did not bring anything in writing from Enbridge and would not put anything in writing for the hay crop land, but kept telling my dad we could have the hay crops off the land for 2015 for us signing the easements that day.

I do not feel that Enbridge can put up a new tank farm on property ID # MN-CL-013.200, when they cannot access the Sandpiper Line or NDPC Line 81. By looking at the maps, Enbridge knew they could not access the Sandpiper Line or NDPC Line 81 on the property ID # MN-CL-013.200 they purchased. Enbridge needs to honor the easement that they asked for and received by Harvey and Marilyn Erie back in November 2013 for the Sandpiper Line to go straight through the Erie – Bourdeaux Family Revocable Trust properties. Also an Environmental Impact Statement needs to be done on the new tank farm and route before a certificate of need or route permit is granted.

I have also attached a map of the property's being discussed in this letter.

Thank you for your time and consideration in this matter.

Sincerely,



Dawn Bourdeaux
Trustee for Erie – Bourdeaux Family Revocable Trust
31187 151st Street
Princeton MN 55371

Enbridge Sandpiper & Line 3 replacement
PUC Docket Numbers: PL-9/CN-14-916 Certificate of Need
PUC Docket Numbers: PL-9/PPL-15-137 Route Permit

PUC Docket Numbers: PL-9/CN-14-916
 PL-9/PPL-15-137

Erie - Bourdeaux Family
 Revocable Trust:
 MN-CL-011.000
 MN-CL-014.000
 MN-CL-013.000

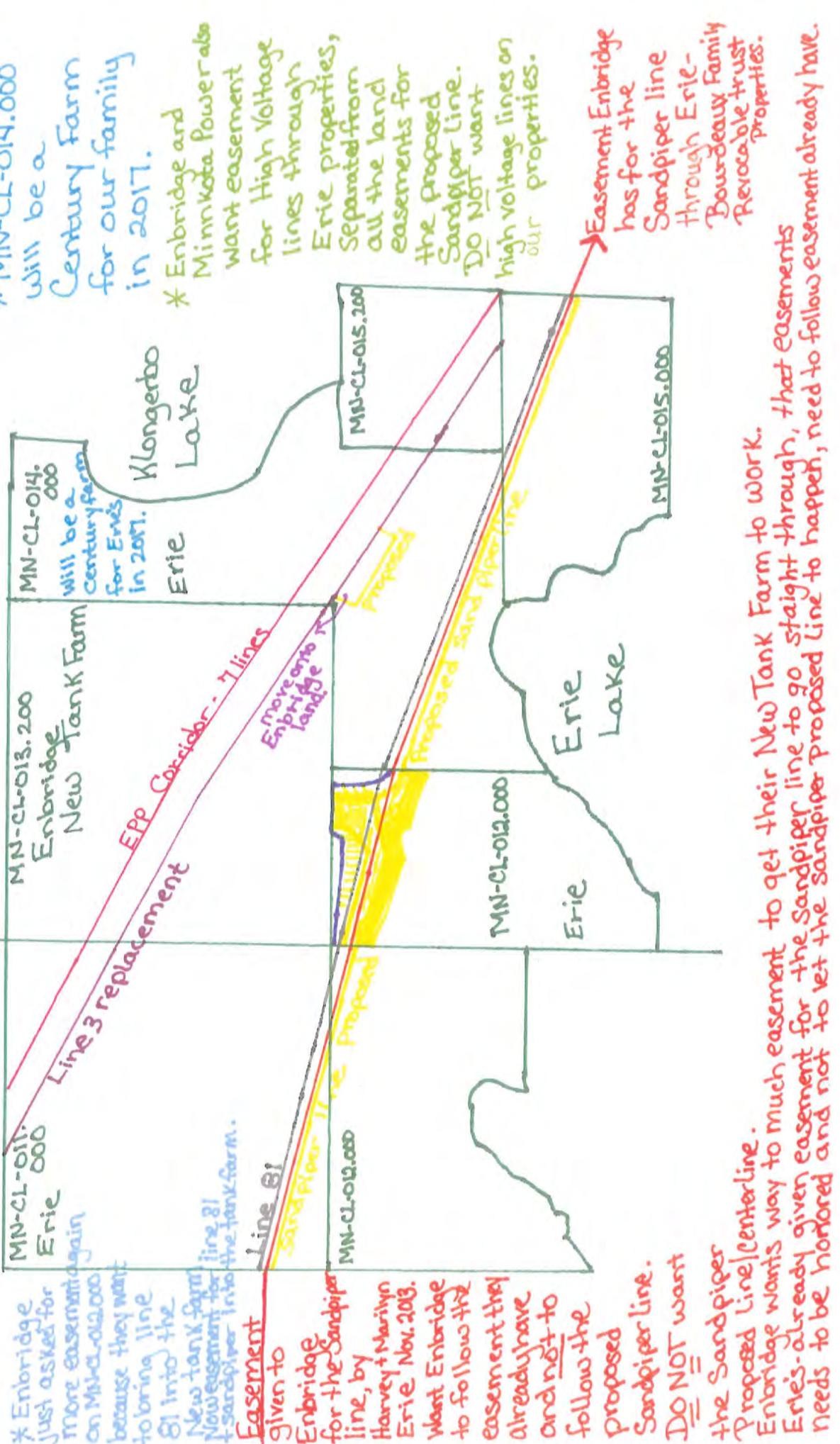
Yellow - Sandpiper proposed route

Orange - Easement already given for Sandpiper line

Silver - line 81

darkred - line 3 replacement

Red - EPP corridor



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Easement Enbridge has for the Sandpiper line through Erie - Bourdeaux Family Revocable trust properties.

* Enbridge just asked for more easement gain on MN-CL-012.000 because they want to bring line 81 into the New Tank Farm. Now easement for Sandpiper into the Tank Farm.

Easement given to Enbridge for the Sandpiper line, by Harvey + Marilyn Erie Nov. 2013.

Want Enbridge to follow the easement they already have and not to follow the proposed Sandpiper line.

DO NOT want the Sandpiper Proposed line/centerline. Enbridge wants way to much easement to get their New Tank Farm to work. Erie's already given easement for the Sandpiper line to go straight through, that easements needs to be honored and not to let the Sandpiper proposed line to happen, need to follow easement already have.

Ries, Natalie (COMM)

From: Ries, Natalie (COMM)
Sent: Monday, October 05, 2015 2:24 PM
To: Ries, Natalie (COMM)
Subject: FW: BUMMIT

From: Bruce Brummitt [<mailto:setsail@gmail.com>]
Sent: Wednesday, September 30, 2015 12:53 PM
To: MacAlister, Jamie (COMM)
Subject: PUC Docket Numbers PL-9/CN-14-916 Certificate of Need, PL-9/PPL-15-137 Route Permit

Cheryl and I have lived in the area of the Headwaters of the Mississippi River for going on our fourth decade. We have children, grandchildren and even a great grandchild who live in the area. We love the pristine environment, the legacy of Itasca State Park, harvesting wild rice, canoeing...and taking friends and family from out of the area to view this, the lifeblood of our nation...the Mighty Mississippi River.

We can't think of a more ridiculous place to route Bakken fracked oils and Alberta tar sand ditbil through...right up there with crossing the Great Lakes...and you can see videos of the condition of those pipelines. The wear, they deteriorate, they leak. It's not if, but when they will. And when they do, how can they be accessed through wetlands and waterways? This is short sighted thinking for something this nation is not really needing now. There is a glut of oil on the market. Refineries are incapable of handling the loads now. Shipping our resources as crude to foreign nations is antithetical to our prosperity. No, in our estimation, there isn't a need. However, if it is determined a need exists then we demand an honest and comprehensive EIS. A CEA is NOT the same as an EIS.

On September 14, the Court of Appeals ruled in favor of Friends of Headwaters', and others, contention that an EIS was necessary under MEPA law. Enbridge and the DOC must comply.

We are citizens of this state and you are our civil servants. You serve at our behest and to protect our interests. We appreciate the job you do and are certain the decision you come to will protect our state's water legacy for our descendants. This is not a choice to be made lightly.

With appreciation for your service, and in defense of our area, we are:

Cheryl Valois

Bruce Brummitt

setsail@gmail.com

(218) 255-4804

24747 Guyles Road

Ponsford, MN 56575-9276

From: [ann buselmeier](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: PUC docket # 15-137, 14-916
Date: Wednesday, September 02, 2015 12:47:10 PM

This serves as my public comment in opposition to the enbridge pipeline in Minnesota. I am opposed to the pipeline. I have reviewed enbridge's safety record with their other pipelines and it is apparent a spill in Minnesota will occur and foul our waters and land.

[Sent from Yahoo Mail for iPhone](#)

Ries, Natalie (COMM)

From: Ries, Natalie (COMM)
Sent: Monday, October 05, 2015 2:58 PM
To: Ries, Natalie (COMM)
Subject: FW: Butcher Mon Sep 28 12:07:29 2015 PPL-15-137

-----Original Message-----

From: apache@web.lmic.state.mn.us [<mailto:apache@web.lmic.state.mn.us>]
Sent: Monday, September 28, 2015 12:07 PM
To: MacAlister, Jamie (COMM)
Subject: Butcher Mon Sep 28 12:07:29 2015 PPL-15-137

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: David Butcher

County:

City: Pequot Lakes

Email:

Phone:

Impact: 1) Is tar-sands oil, which Line 3 expansion would transport, necessary to meet US energy needs?2) To what degree does tar-sands oil transported via Line 3 contribute to global warming?-- global warming, the #1 problem re: the survival of future generations.3) To what extent would the expansion of Line 3 continue the unnecessary dependence on fossil fuels (oil) and inhibit the implementation of renewable energy technology? 4) To what extent does the proposed route by Enbridge endanger water resources which support livelihood--tourism, food extraction(ricing and fishing) and healthy, unpolluted drinking water.

Mitigation: In view of ongoing and increasing global warming it is the height of insanity to continue to support and expand those practices which contribute to it. We are in the midst of a major energy transformation from 'fossils' to renewable and the sooner we make that transformation, the greater the likelihood of survival of future generations. Continued expansion of oil extraction, transport, refining and consumption--especially of bitumen (tar-sands), the most polluting and greatest contributor to global warming--only delays the transformation... to the detriment of our children and their children. It is also the height of insanity to put at risk pristine water resources which are one of the foundations of life and in increasingly short supply. Enbridge's proposed route is a major threat to water resources. LINE 3 SHOULD NOT BE REPLACED OR REBUILT BUT RATHER CLOSED DOWN PERMANENTLY.

Submission date: Mon Sep 28 12:07:29 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick

andrew.koebrick@state.mn.us

From: [Rick Cannata](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Fwd: Line 3 scoping comment
Date: Wednesday, September 30, 2015 3:44:01 PM

Sent from my iPhone

Begin forwarded message:

From: Kevin Pranis <kpranis@liunagroc.com>
Date: September 30, 2015 at 3:26:40 PM CDT
To: Rick Cannata <rcannata@liunagroc.com>, Rick Cannata <cannataice@gmail.com>
Subject: Line 3 scoping comment

Re: Enbridge Line 3 Environmental Analysis (PL-9/CN-14-916 & PL-9/PPL-15-137)

Dear Mr. MacAlister,

I write to you as the Mayor of one of Northern Minnesota's largest cities to recommend that, in its consideration of the proposed realignment of Enbridge's Line 3 pipeline, the Minnesota Public Utilities Commission thoroughly evaluate the potential effect of the project on our residents and communities, as well as the natural environment, giving at least equal weight to the human impacts.

The Commission has asked the public to comment specifically on what impacts should be considered and what methods should be used in the environmental analysis of the project. Here is our feedback:

First, we strongly urge the Commission to look at the impact the project will have on our counties, cities, and school districts, which serve as the social bedrock of Northern Minnesota. The environmental analysis should look at how construction of a replacement pipeline along the proposed route will affect local tax revenues, business development, and employment outlook – and how this will in turn alter the ability of local government to provide basic services to residents.

Second, we urge the Commission to study the impact of recent pipeline projects such as MINNCAN on residents and communities living along the corridor. What was the effect on local tax collections? What was the impact on employment and small business sales during construction? Have these communities seen the significant, lasting negative impacts that opponents claim will occur if the project has approved?

Third, we urge the Commission to begin the process by interviewing local elected officials, business, and civic leaders to find out how communities and residents were affected by past projects, what they expect from the proposed project. We have been through this process before, and we can speak to the opportunities and the challenges large energy infrastructure projects create for elected officials. We can also talk about the struggles our communities face as we try to create high-quality jobs, attract and retain small businesses, and fund critical public services for our residents.

We believe that, if thorough analysis is done, the Commissioner will come to the same conclusion as most of our constituents who recognize that these larger energy projects, when done right, deliver significant benefits to Northern Minnesota at little or no cost. Thank you for your consideration.

Regards,

Rick Cannata
Hibbing, MN
cannataice@gmail.com

Please provide your contact information. This information and your comments will be publicly available.

Name: Jacob Castillo Phone: 612 799 9554

Street Address: 1050 Hadley ave

City: Oakdale State: MN ZIP: 55128

Email: _____

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the *Route Permit*)
- Are there any alternatives to the project that should be considered? (Related to the *Certificate of Need*)

More union jobs to boost local economy



September 30, 2015

Direct Dial: 320-656-3508
Jvonkorff@RinkeNoonan.com

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul, MN 55101

SENT VIA EMAIL ONLY TO: jamie.macalister@state.mn.us

Re: In the Matter of the Applications of Enbridge Energy, Limited Partnership for a Certificate of Need and a Pipeline Routing Permit for the Line 3 Pipeline Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border
Public Utilities Commission (PUC) Docket Numbers:
PL-9/CN-14-916 – Certificate of Need
PL-9/PPL-15-137 – Route Permit

Dear Ms. MacAlister:

On behalf of CCLS, we offer these comments regarding the Line 3 environmental process.

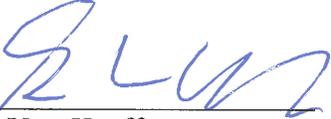
1. It appears the Commission is proceeding on the assumption that it is appropriate to utilize the alternative pipeline procedure for Line 3. We urge the Commission to recognize that since an EIS will be conducted in conjunction with the Sandpiper CON, that an Environmental Impact Statement must be conducted for both Sandpiper and Line-3 applications. In the attached documents, filed in the Sandpiper CON proceeding, CCLS sought to explain why it is necessary for the environmental review to involve interested state and federal agencies, tribal authorities and others *before* the applicant has locked itself into a proposed solution, as it has here, and as it did in Sandpiper.
2. The State of Minnesota and PUC should recognize that pipeline companies are common carriers seeking the power of eminent domain to use private lands, public lands, public waters and tribal lands and tribal treaty lands as a conveyance for petroleum. The current system, as implemented by the Commission's now reversed CON order, treats the location of a pipeline as heavily weighted towards private rather than public interest. The Commission in conjunction with coordinate agencies, state, tribal and federal, should begin instead, by deciding where petroleum can be conveyed with the least impact across Minnesota so that pipeline companies can then submit applications to locate lines consistent with the public interest.

3. We oppose use of the alternative review under these circumstances. The Commission's bifurcation order in Sandpiper recognized that the issues presented by what was described as a pipeline tsunami, required a different approach, and it is plain that the alternative review, even if conducted in full compliance with the letter and spirit of the rule and MEPA is not up to the task.
4. We are concerned that the Commission fails to recognize that the EQB granted the alternative review on condition that an environmental impact statement quality document must be prepared at the time of the application. This document, which the Commission described as an EAS, is not sufficient to meet the minimum requirements called for by the EQB. Once again, this process is moving forward on an inadequate foundation, because the applicant has failed to comply with that requirement. The reason that this aspect of the alternative review is so critical is that the alternative review assumes that due diligence has been conducted before the application has been submitted, and that the applicant's choice of proposed route alternatives has been informed by a high quality environmental analysis. Treating the CEA as an EIS is contrary to the EQB's mandate.
5. We request that the Commission to make use of the testimony, briefs and comments filed in the Sandpiper proceeding in scoping a compliant Environmental Impact Statement. Those comments accompany this letter as does the testimony of Dr. Chapman in the contested case. Regrettably, the ALJ in Sandpiper misunderstood the purpose of Dr. Chapman's testimony. Dr. Chapman was not attempting to complete an EIS for the project: he was seeking to provide examples of the kind of analysis that is required in order to comply with MEPA. An EIS that merely quantifies the types of geographical features does not comply with MEPA.
6. We proposed for consideration the routes identified as system alternatives in the Sandpiper proceeding and listed in Dr. Chapman's attached testimony. There is compelling evidence that a route that crosses southern Minnesota, away from the headwaters, will do the least damage and pose the least risk to the environment. That alternative should be considered in a full Environmental Impact Statement.

Respectfully, we believe that the Commission has incorrectly started with the presumption that pipelines should be located where the applicant proposes to locate them, and then to place the burden on the public to prove, at private expense, that there is a superior location. The testimony in Sandpiper shows that the applicant in these two cases has selected pipeline locations based upon economic considerations, and then sought to justify that location based upon environmental rationalizations. Pipelines should be located in the area of Minnesota where they are least likely to do damage.

Jamie MacAlister
Environmental Review Manager
September 30, 2015
Page 3

Sincerely,



Gerald W. Von Korff
For Carlton County Land Stewards
JVK/vkb/jlc

Attachments

cc: Carlton County Land Stewards (via email)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

**600 North Robert Street
St. Paul, MN 55101**

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

**121 Seventh Place East Suite 350
St. Paul, MN 55101**

In the Matter of the Applications of North Dakota
Pipeline Company LLC for a Certificate of Need
for the Sandpiper Pipeline Project in Minnesota

MPUC Docket Nos. PL-6668/CN-13-473

OAH Docket Nos. 8-2500-31259

**SURREBUTTAL TESTIMONY OF KIM A. CHAPMAN
ON BEHALF OF THE CARLTON COUNTY LAND STEWARDS**

January 21, 2015

Q. Could you summarize your assessment of the environmental review submitted by DOC?

1. Neither the environmental review provided in this docket, nor the information yet supplied by the parties, allows a systematic, fair comparison of system alternatives from an environmental effects standpoint. As a result, the process thus far does not give policy-makers a complete or fair assessment of alternatives.
2. In our review we a) developed reasonable, scientifically-defensible indicators of environmental effects of oil pipelines, b) completed additional GIS analysis of important effects not covered by previous analyses, and c) established a fair basis for comparing environmental effects among alternatives. Our process identified alternatives that are markedly better in their potential environmental effects than the Preferred Alternative.
3. The process to date appears to accept greater potential environmental effects in order to achieve the programmatic goals of the pipeline project. An alternative path forward would be to identify a few alternatives with the potential for lesser environmental effects than the Preferred Alternative, improve those alternatives to meet programmatic goals of the pipeline, and re-evaluate the environmental effects and achievement of programmatic goals among all alternatives. In this way, policy-makers can make a decision which clearly shows the trade-offs between risk to the environment and achievement of a pipeline's programmatic goals, including cost.
4. The most important effects of oil pipelines on the natural environment should be thoroughly investigated before a decision is made to favor one route over others. While dozens of effects can be described, some effects are more important than others because of their intensity, extent and duration. These three components of environment impact are commonly used to describe the significance of environmental effects. Indicators of these effects that were used in the HDR December 2014 assessment of seven system alternatives sought to quantify the extent of the effects. The many indicators, however, varied in their intensity and duration. Moreover, some effects duplicated each other, creating an appearance of a greater effect than if one indicator had been used for a single effect. For example, there is overlap between National Wetland Inventory and Minnesota Public Waters data. With this presentation of data, how is one to judge which system alternative would have the greatest overall effect due to construction, product releases, and operations and maintenance?
5. We focus on the most important effects of oil pipelines on the environment. We previously described these as a) effects of pipeline corridor construction, b) effects of releases, and c) effects of ongoing operations and maintenance. Among the several effects of pipeline corridor construction, we consider an important one to be the direct and indirect impacts on regionally uncommon and declining species (including threatened and endangered species). These typically are found in higher quality habitat as represented in Minnesota by Significant Biodiversity Sites or elsewhere by Ecological High Consequence Areas. An equally important effect is "product releases" or oil spills. Spills that contaminate shallow groundwater are very challenging because contaminants can move laterally to nearby surface waters or vertically to deeper aquifers; in any case, clean-up of

groundwater is very difficult (e.g., Anand P. and C.P.L. Barkan. 2006. Exposure of soil and groundwater to spills of hazardous materials transported by rail. *Journal of the Transportation Research Board* 1943:12-19). Another very challenging effect of oil spill occurs in flowing waters (lotic systems) because the effect is intense, extensive, and of long duration (e.g., Kingston, P. F. 2002. Long-term environmental impact of oil spills. *Science & Technology Bulletin* 7: 53-61). The Kalamazoo River spill, for instance, pooled in a wetland near the pipeline, followed a 700-foot flow path to Talmadge Creek, flowed 2 miles south to the Kalamazoo River, and affected 39.75 miles of the Kalamazoo River. Clearly, spills to streams and rivers are very problematic. Spills to standing waters (lentic systems) are less problematic because the oil spreads more slowly and is more easily contained. Spills that contaminate wetlands are similar to those in lentic systems. Forest fragmentation is an important effect because many common species require interior habitat conditions and are harmed by edge effects. Such species are less likely to become threatened or endangered in the short term than regionally rare or declining species, but preventing habitat fragmentation over the long term is important to maintain viable populations of common species across their ranges. Grasslands are also affected by fragmentation, but the structure of pipeline vegetation provides grassland habitat, whereas it does not provide forest structure and therefore introduces edge effects which decrease the size of interior of forest habitat blocks. Public lands often harbor significant natural resources, such as rare species and undisturbed natural communities, and also support productive wildlife and fish populations. Investment by the public in these lands for the purpose of environmental stewardship and use is undermined by oil pipeline construction and spills. For this reason public and conservation lands are important indicators of the effect of oil pipelines on the environment, though not as important an indicator as spills to streams or fragmentation of large forest blocks because the content of public lands varies from harvested timberland to protected nature reserves.

6. The incomplete nature of the HDR assessment is due to the presentation of many indicators with different intensity and duration, as well as the duplication of effect indicators, giving the appearance of greater or lesser effect simply because multiple indicators are presented, but which essentially describe similar effects. This enables one to pick and choose among indicators in order to favor one system alternative over others.

Q. Did your client, CCLS, ask you to support a particular system alternative(s) or route(s)?

7. No. We were asked to provide advice on how to evaluate routes from an ecological perspective. We were not asked to support any particular route or system alternative. We were also asked to provide advice on whether the environmental review process underway in these proceedings was adequate to guide decision makers. At the beginning of our involvement with this case and prior to any numerical or GIS analysis, AES staff discussed how to represent the most important effects of oil pipelines on the natural environment. We identified the most important effects based on our knowledge of Midwestern ecosystems, general oil pipeline effects, and experience with the oil pipeline industry. We selected scientifically defensible indicators that would describe the intensity, extent and duration of those effects. We developed metrics for indicators, resulting in 23 indicators.

The metric for an indicator typically is acres or counts of locations where a two-mile wide pipeline corridor intersect the indicator. These indicators were not selected to support a preconceived outcome. For most of these indicators, data were not provided in the data sets supplied to us by HDR or the State. In some cases it would require a more deliberative process to assemble that data. In some cases the data may not be available in GIS data sets. In some cases the indicator duplicated another indicator. Lastly some indicators described an effect that was not well understood or studied. We selected seven indicators from the 23 which a) could be defended as representing an important effect due to its intensity, extent and duration, b) could be developed from existing or quickly-created data, and c) did not duplicate other indicators.

Q. How did you go about weighting the criteria you selected?

8. AES created a weighting scheme of the seven most important indicators. AES used GIS analysis to develop data for forest fragmentation, the relationship of a pipeline with overland flow paths, and groundwater contamination (Appendix A). In the HDR assessment, forest fragmentation and intersection of flow paths were not assessed, and a different method of identifying groundwater contamination risk was used than the one used by AES in Minnesota. AES used depth to shallow groundwater and soil drainage class, as recommended by Anand and Barkan (2006). Shallow groundwater is most at risk when the water table is high and soil is highly permeable, such as sand and gravel. HDR used hydraulic conductivity, which is related to permeability, but not depth to water table. For other indicators, we used data provided in tables in the HDR December 2014 assessment. The seven indicators with data source are described in the table below.
9. Based on our understand of the relative importance of the effect on natural resources as described by the seven indicators, AES gave a weight of 3 to loss of habitat for uncommon or declining wildlife, spills to flowing-water systems (lotic), and spills affecting surface groundwater. Forest fragmentation and spills to systems with standing water (lentic) and wetlands received a weight of 2. Effect on public and conservation land received a weight of 1.

MOST IMPORTANT INDICATORS OF PIPELINE EFFECTS				
Effect Category	Specific Effect	Indicator/Data Source	Weighting for Intensity, Extent, Duration	Units
Land Clearing	Loss of habitat for uncommon & regionally declining species	Effects to plant communities/habitats used by uncommon species (e.g., SGCN); MNDNR Sites of Biodiversity Significance data (processed by HDR) used for MN analysis; multiple categories of risk required initial weighting of acres; Ecological High Consequence Areas (processed by HDR) used for multi-state analysis	3	Acres
Product Releases	Alteration of & spread of product in primarily lotic aquatic ecosystems (i.e., flowing surface waters)	Effects of releases on primarily flowing waters via direct contamination; National Hydrography Dataset flowpaths intersecting with pipeline centerline (processed by AES) used for MN and multi-state analyses	3	Count
Product Releases	Contamination of shallow groundwater	Shallow groundwater contamination risk; SSURGO drainage class and minimum annual depth to water table data (processed by AES) used for MN analysis (missing data required extrapolation); hydraulic conductivity data (processed by HDR) used for multi-state analysis; multiple categories of risk required initial weighting of acres	3	Acres
Land Clearing	Forest fragmentation & degradation	Edge effects and shrinkage of core forest habitat due to cleared ROW corridor; National Land Cover Data (processed by AES) used for MN and multi-state analyses	2	Acres
Product Releases	Alteration of & spread of product in lentic aquatic ecosystems (i.e., non-flowing surface waters)	Non-flowing surface waters, including wetlands with surface water and lakes; MNDNR Public Water Basins data (processed by HDR) used for MN analysis; NWI emergent, lake, and pond data (processed by HDR) used for multi-state analysis	2	Acres
Product Releases	Alteration of & spread of product in wetlands with little surface water	Wetlands types without significant standing surface water; NWI data for Types 6, 7 & 8 (processed by HDR, which did not analyze Types 1 & 2) used in MN analyses; NWI forested/scrub (processed by HDR, which did not analyze other non-inundated wetlands) used in multi-state analysis	2	Acres
Land Clearing	Encroachment on public & conservation lands	MN (non-federal) recreation and conservation lands used for MN analysis; SP, SF, SRA, BWSR Conserv. Area, and SNAs (processed by HDR) used in analyses	1	Acres

10. The acreages and counts for indicators varied tremendously, from hundreds of thousands to a couple hundred (see table below). To prevent a single indicator from dominating the results, values were normalized on a 0-1 scale, with 1 assigned to the largest number for an indicator. For example, SA-Appl (the Applicant's or Preferred System Alternative, henceforth "Preferred Alternative") was assigned 1 in Loss of Rare Habitat since it had the largest acreage. Other alternatives were calculated as a percent of the highest value. This process normalized the data and made the contribution of the seven indicators equal. The resulting value was then multiplied by the weight of the indicator, and lastly the weighted values of all indicators were summed.

Q. What were the results of your analysis?

11. The weighting analysis identified SA-04 and SA-05 as the system alternatives in Minnesota with the least potential effect on the indicators (see table below). This is consistent with MPCA's August 2014 analysis using similar indicators. MPCA also included cost of construction and other indicators, which resulted in the same results as our weighting. By contrast, the greatest environmental effects were for the Preferred Alternative, SA-03 and SA-07. The MPCA also identified the Preferred Alternative as having the greatest effect on the natural environment.

SYSTEM ALTERNATIVES - MINNESOTA							
Effect Indicator	SA-01	SA-03	SA-04	SA-05	SA-06	SA-07	SA-08
Loss of Rare Habitat: Initial-Weighted Acres	40,694	25,147	3,588	2,889	13,258	18,310	6,246
Normalized Effect	1.00	0.62	0.09	0.07	0.33	0.45	0.15
Weighted Effect	3.00	1.85	0.26	0.21	0.98	1.35	0.46
Lotic Systems: Number Crossings	141	257	179	65	240	232	149
Normalized Effect	0.55	1.00	0.70	0.25	0.93	0.90	0.58
Weighted Effect	1.65	3.00	2.09	0.76	2.80	2.71	1.74
Shallow Groundwater: Initial-Weighted Acres	329,618	414,666	297,907	148,957	433,433	455,584	275,529
Normalized Effect	0.72	0.91	0.65	0.33	0.95	1.00	0.60
Weighted Effect	2.17	2.73	1.96	0.98	2.85	3.00	1.81
Forest Fragmentation: Initial-Weighted Acres	150,872	64,712	2,311	316	40,394	42,531	12,534
Normalized Effect	1.00	0.43	0.02	0.00	0.27	0.28	0.08
Weighted Effect	2.00	0.86	0.03	0.00	0.54	0.56	0.17
Lentic Systems: Acres	12,592	12,838	2,461	3,834	21,371	31,637	20,412
Normalized Effect	0.40	0.41	0.08	0.12	0.68	1.00	0.65
Weighted Effect	0.80	0.81	0.16	0.24	1.35	2.00	1.29
Wetlands With Little Surface Water: Acres	59,647	40,224	884	217	23,104	24,302	4,827
Normalized Effect	1.00	0.67	0.01	0.00	0.39	0.41	0.08
Weighted Effect	2.00	1.35	0.03	0.01	0.77	0.81	0.16
Public & Conservation Lands: Acres	42,524	4,998	2,400	3,016	13,679	14,463	1,176
Normalized Effect	1.00	0.12	0.06	0.07	0.32	0.34	0.03
Weighted Effect	1.00	0.12	0.06	0.07	0.32	0.34	0.03
Total Relative Effect	12.61	10.72	4.59	2.28	9.62	10.78	5.66

SYSTEM ALTERNATIVES - MINNESOTA							
Effect Indicator	SA-01	SA-03	SA-04	SA-05	SA-06	SA-07	SA-08
Loss of Rare Habitat: Initial-Weighted Acres	40,694	25,147	3,588	2,889	13,258	18,310	6,246
Normalized Effect	1.00	0.62	0.09	0.07	0.33	0.45	0.15
Weighted Effect	3.00	1.85	0.26	0.21	0.98	1.35	0.46
Lotic Systems: Number Crossings	141	257	179	65	240	232	149
Normalized Effect	0.55	1.00	0.70	0.25	0.93	0.90	0.58
Weighted Effect	1.65	3.00	2.09	0.76	2.80	2.71	1.74
Shallow Groundwater: Initial-Weighted Acres	329,618	414,666	297,907	148,957	433,433	455,584	275,529
Normalized Effect	0.72	0.91	0.65	0.33	0.95	1.00	0.60
Weighted Effect	2.17	2.73	1.96	0.98	2.85	3.00	1.81
Forest Fragmentation: Initial-Weighted Acres	150,872	64,712	2,311	316	40,394	42,531	12,534
Normalized Effect	1.00	0.43	0.02	0.00	0.27	0.28	0.08
Weighted Effect	2.00	0.86	0.03	0.00	0.54	0.56	0.17
Lentic Systems: Acres	12,592	12,838	2,461	3,834	21,371	31,637	20,412
Normalized Effect	0.40	0.41	0.08	0.12	0.68	1.00	0.65
Weighted Effect	0.80	0.81	0.16	0.24	1.35	2.00	1.29
Wetlands With Little Surface Water: Acres	59,647	40,224	884	217	23,104	24,302	4,827
Normalized Effect	1.00	0.67	0.01	0.00	0.39	0.41	0.08
Weighted Effect	2.00	1.35	0.03	0.01	0.77	0.81	0.16
Public & Conservation Lands: Acres	42,524	4,998	2,400	3,016	13,679	14,463	1,176
Normalized Effect	1.00	0.12	0.06	0.07	0.32	0.34	0.03
Weighted Effect	1.00	0.12	0.06	0.07	0.32	0.34	0.03
Total Relative Effect	12.61	10.72	4.59	2.28	9.62	10.78	5.66

12. The weighting analysis for the multi-state system alternatives showed that they were largely similar in their total effect, but that SA-08 had the least effect across multiple states. As with the prior Minnesota analysis, the Preferred Alternative had the greatest total effect across the multi-state area, followed closely by SA-07, SA-05, and SA-03.

SYSTEM ALTERNATIVES - MULTI-STATE							
Effect	SA-01	SA-03	SA-04	SA-05	SA-06	SA-07	SA-08
Loss of Rare Habitat: Acres	22,229	26,721	37,725	52,087	20,735	25,980	10,728
Normalized Effect	0.43	0.51	0.72	1.00	0.40	0.50	0.21
Weighted Effect	1.28	1.54	2.17	3.00	1.19	1.50	0.62
Lotic Systems: Number Crossings	237	353	587	691	376	358	263
Normalized Effect	0.34	0.51	0.85	1.00	0.54	0.52	0.38
Weighted Effect	1.03	1.53	2.55	3.00	1.63	1.55	1.14
Shallow Groundwater: Initial-Weighted Acres	657,189	692,071	782,354	738,904	690,014	775,422	602,917
Normalized Effect	0.84	0.88	1.00	0.94	0.88	0.99	0.77
Weighted Effect	2.52	2.65	3.00	2.83	2.65	2.97	2.31
Forest Fragmentation: Initial-Weighted Acres	163,908	77,961	11,750	11,108	53,813	56,066	14,113
Normalized Effect	1.00	0.48	0.07	0.07	0.33	0.34	0.09
Weighted Effect	2.00	0.95	0.14	0.14	0.66	0.68	0.17
Lentic Systems: Acres	57,113	51,686	-	-	35,957	45,650	14,470
Normalized Effect	1.00	0.90	-	-	0.63	0.80	0.25
Weighted Effect	2.00	1.81	-	-	1.26	1.60	0.51
Wetlands With Little Surface Water: Acres	57,113	59,571	43,969	46,206	62,668	72,625	54,664
Normalized Effect	0.79	0.82	0.61	0.64	0.86	1.00	0.75
Weighted Effect	1.57	1.64	1.21	1.27	1.73	2.00	1.51
Public & Conservation Lands: Acres	47,691	11,885	16,886	17,357	23,693	30,248	18,474
Normalized Effect	1.00	0.25	0.35	0.36	0.50	0.63	0.39
Weighted Effect	1.00	0.25	0.35	0.36	0.50	0.63	0.39
Total Relative Effect	11.40	10.38	9.43	10.61	9.61	10.94	6.64

13. This weighting analysis of important oil pipeline effects showed that the Preferred Alternative has the potential for the greatest effects both in Minnesota and also the multi-state area, but SA-07 and SA-03 were only somewhat better (see table below). In Minnesota, this was because the Preferred Alternative has the greatest potential effect on: 1) rare habitats, 2) forest fragmentation and degradation, 3) alteration and spread of product in wetlands with little surface water, and 4) encroachment on public and conservation lands. At the multi-state scale, the Preferred Alternative had the greatest potential effect on: 1) forest fragmentation and degradation, 2) alteration and spread of product in lentic ecosystems, and 3) encroachment on public and conservation lands.

SUMMARY OF MINNESOTA AND MULTI-STATE INDICATORS OF PIPELINE EFFECTS															
Effect Category	Specific Effect	SA-AppI		SA-07		SA-03		SA-06		SA-08		SA-04		SA-05	
		MN	Multi-State	MN	Multi-State	MN	Multi-State	MN	Multi-State	MN	Multi-State	MN	Multi-State	MN	Multi-State
Land Clearing	Loss of rare habitat for uncommon & regionally declining species	3.00	1.28	1.35	1.50	1.85	1.54	0.98	1.19	0.46	0.62	0.26	2.17	0.21	3.00
Product Releases	Alteration of & spread of product in primarily lotic ecosystems (i.e., flowing surface waters)	1.65	1.03	2.71	1.55	3.00	1.53	2.80	1.63	1.74	1.14	2.09	2.55	0.76	3.00
Product Releases	Contamination of shallow groundwater	2.17	2.52	3.00	2.97	2.73	2.65	2.85	2.65	1.81	2.31	1.96	3.00	0.98	2.83
Land Clearing	Forest fragmentation & degradation	2.00	2.00	0.56	0.68	0.86	0.95	0.54	0.66	0.17	0.17	0.03	0.14	0.00	0.14
Product Releases	Alteration of & spread of product in lentic ecosystems (i.e., non-flowing surface waters)	0.80	2.00	2.00	1.60	0.81	1.81	1.35	1.26	1.29	0.51	0.16	-	0.24	-
Product Releases	Alteration of & spread of product in wetlands with little surface water	2.00	1.57	0.81	2.00	1.35	1.64	0.77	1.73	0.16	1.51	0.03	1.21	0.01	1.27
Land Clearing	Encroachment on public & conservation lands	1.00	1.00	0.34	0.63	0.12	0.25	0.32	0.50	0.03	0.39	0.06	0.35	0.07	0.36
Total Relative Effect		12.61	11.40	10.78	10.94	10.72	10.38	9.62	9.61	5.66	6.64	4.59	9.43	2.28	10.61

14. SA-07 had the next highest potential effect at both Minnesota and multi-state scales. In Minnesota this was due to its having the largest potential effect on contamination of shallow groundwater and alteration and spread of product in lentic ecosystems. At the multi-state scale, SA-07 had the largest potential effect on alteration and spread of product in wetlands containing little surface water.
15. SA-03 and SA-06 had the next highest potential effects in Minnesota and at the multi-state scale. In Minnesota, SA-03 had the highest potential effect on alteration and spread of product in primarily lotic ecosystems, although SA-06 and SA-07 had only a slightly lower potential effect.
16. In Minnesota, SA-05 had the least potential effect on the natural environment, due to its low effect on loss of rare habitat, spread in lotic systems, contamination of shallow groundwater, spread in wetlands with little surface water, and forest fragmentation. At a multi-state scale, however, SA-05 had a potential great effect similar to that of SA-07 and SA-03. This was largely due to SA-05 having the greatest potential effect on loss of rare habitat and the spread of product in flowing-water (lotic) systems, and a great potential effect on contamination of shallow groundwater.
17. In Minnesota SA-08 and SA-04 also had relatively low potential effects. In addition, SA-08 had the lowest total ecological effect at the multi-state scale. In Minnesota, SA-08 had the lowest potential effect on encroachment on public and conservation lands. At the multi-state scale, SA-04 had the highest potential effect on contamination of shallow groundwater and relatively high potential effects on loss of rare habitat and the spread of product in lotic systems.
18. In summary, prior analysis by others failed to systematically compare early in the review process the total effect of system alternatives. A thoughtful and fair comparison of pipeline alternatives was

clearly needed early in the process in order to identify alternatives having the least effect on the natural environment.

Q. Do you have concerns about the process currently being used?

19. The process of comment and response in selecting the best oil pipeline route has not helped the outcome. For example, in the August 21, 2014 comments to the PUC by NDPC it was stated that the Preferred Route was the only possible route because the other eight proposed routes did not meet the programmatic goals of the oil pipeline project. Subsequently, the PUC directed DOC to conduct a more thorough environmental review than had been done at that point, and to include six alternatives in addition to the Preferred Route. This resulted in the December 2014 DOC/HDR report which did not draw conclusions about which routes had the lowest environmental effects, but rather stated that advocates of different routes could use the data to support their own route. As I explained above, this does not advance deliberations as to which routes would be best to avoid environmental effects. We demonstrated using a scientifically-defensible approach that serious consideration should be given to other routes if reducing environmental effects is a goal of the pipeline review process. Given the information provided at this point in the pipeline review process, it appears that only the Preferred Route is a reasonable choice, yet choosing that route asks that reasonable concerns about potential environmental effects be a secondary consideration to the feasibility of the route.
20. Based on my understanding of the environmental issues and of the pipeline review process, it seems to me that a logical next step would be to a) select two or three system alternatives with the fewest environmental effects, including the Preferred Route, b) improve or complete the alternative routes to achieve the pipeline's programmatic goals, c) microsite the alternative routes to reduce environmental effects, and d) re-evaluate the environmental effects and the achievement of programmatic goals, such as reducing greenhouse gas emissions and using existing pipeline and utility corridors.

THIS CONCLUDES MY SURREBUTTAL TESTIMONY.

KIM A. CHAPMAN

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**In the Matter of the Application of
North Dakota Pipeline Company LLC
for a Certificate of Need for the
Sandpiper Pipeline Project**

MPUC Docket No. PL-6668/CN-13-473

OAH Docket No. 8-2500-31260

**INITIAL POST-HEARING BRIEF

OF

CARLTON COUNTY LAND STEWARDS**

FEBRUARY 27, 2015

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I. Introduction

The evidentiary hearing received official statements of position on whether NDPC has established that the proposed route should be granted a certificate of need from four governmental entities with jurisdiction over natural resources, the MPCA, the DNR, and two tribal sovereigns. The MPCA and DNR both have vast experience in conducting environmental reviews, and both have statewide jurisdictional responsibility for management of our environmental resources, including lands and waters. The MPCA and DNR have major permitting responsibility for permits that must be granted before a pipeline could be constructed. All four have conducted extensive reviews of the relevant information, and all four have concluded that the environmental reviews are inadequate and all four have urged that superior system alternatives exist. In addition, the only qualified environmental expert to testify, Dr. Chapman, concluded that the environmental review is inadequate, and gave deep and thoughtful professional support for that opinion. The contrary opinion was offered by an employee of NDPC who has never before conducted an environmental review, and whose education consists of a Bachelor's degree in environmental studies.

The PUC cannot ignore these conclusions: the record simply will not sustain a conclusion that the MPCA, DNR's position is incorrect. The record shows that NDPC formed a joint venture with Marathon Petroleum, the Midwest's largest petroleum refinery, and that they decided to develop the route with the least cost that did not cross an Indian reservation. They concluded that any route that exceeded the length of that route would not be studied. They filed

an Environmental Assessment Supplement¹ (Environmental Information Report) that totaled up the kinds of resources but did not weigh in any way the different resources that were being counted, because “that would be an extremely difficult, if not impossible task to achieve.” Ploetz Tr.41, lines 17-22); (pg. 108, lines 4-7). This approach is unlawful and completely contrary to the purpose of an environmental review, which requires evaluation of the environmental impacts: the great reform embodied in both NEPA and MEPA is that major decisions impacting the environment will be made after a public science-based consideration of impacts on the environment.

Both the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency have consistently supplied official statements in these proceedings to the effect that NDPC has not established the elements necessary for grant of a Certificate of Need because the environmental review was improperly conducted, and because there are alternatives which take petroleum from Bakken to Patoka and other refineries via routes that inflict a lesser impact on the environment and with lesser risk of catastrophic damage to the environment in the event of a spill. Agency submission show that:

- (a) the environmental review conducted by NDPC and submitted with its application in the form of a Environmental Assessment Supplement is inadequate;

¹ In its Brief to the Court of Appeals, the PUC explained the significance of the document filed with the application, as follows, Instead of the Commission preparing an EIS or EAW, the approved rules specifically provide that the applicant is **to submit essentially the same information as is found in an EIS**. See Minn. R. 7852.2700. This document filed by the applicant is commonly known as an Environmental Assessment Supplement ("EAS"). The rules then provide for public review and comment, and at least one hearing conducted by an administrative law judge. PUC Brief, *infra*, page 10.

Minn. R. 7852.1300-1700.

- (b) NDPC Selected Pipeline Routes for Analysis in the Environmental Assessment Supplement by Improperly Selecting Only the Shortest Pipeline Length;
- (c) there are numerous particularized insufficiencies in the environmental analysis that prevents adequate review of the key issues in the CON and Routing Proceedings;
- (d) there are feasible routing/system alternatives which are environmentally superior thus prohibiting the grant of a certificate of need;
- (e) NDPC improperly omitted Line-3 from the Environmental Assessment Supplement; and
- (f) NDPC intentionally terminated the federal environmental review by refusing to move forward with its Section 404 permit thus depriving this docket of the benefit of the Federal NEPA review and creating the prospect that there will be three separate reviews of route and system alternatives, and three separate adjudications, when federal and state law both require coordination and consolidation.

One of the critical problems with this record is that NDPC and DOC-EERA have been proceeding on the assumption that an environmental impact review can be value free, can simply list resources, and that by eliminating any scientific conclusions about the degree or importance of impacts, by disclaiming the use of ecological science to render judgments, the environmental review is somehow more objective.

Ms. Ploetz (and for that matter, the CEA) tells us, for example, that both artificial drainage ditches and shallow lakes are bodies of water and that the environmental impact review does its job by pointing out that if a pipeline has a catastrophic spill event that the environmental impact will be the same. Both will get polluted, and so by telling us what features the pipeline crosses, and leaving it to the rest of us to draw our own conclusions from that information, the environmental review is objective and complete. But that contention abdicates the responsibility of an environmental review to tell us that shallow lakes are especially vulnerable to pollution and that they are the subject of a great body of ecological study, entitled to special treatment under

the Minnesota regulatory regimen. NDPC and DOC-EERA have taken the impact out of the Environmental Impact Statement and thus have eviscerated its fundamental purpose.

II. Carlton County Land Stewards

The Carlton County Land Stewards (CCLS) is a grassroots group of families, farmers, landowners and individuals who opposed the creation of a new pipeline right of way through the sustainable agriculture district in Carlton County, but who also strongly favor application of sound environmental principals through a robust environmental review to the location of the future pipeline. CCLS was formed by families directly impacted by the original Southerly route as submitted initially by Applicant². CON Petition to Intervene Par 1. CCLS has several interests in these proceedings. It sought to protect important sustainable and organic farming regions which directly impact members operations. That particularized interest has been protected by the rerouting of the proposed pipeline outside of the organic and sustainable farming region as it exists today, and for that, CCLS is appreciative. At the same time, as a result of its commitment to broad principles of sustainability, the organization resolved that it would not be driven solely by “not in my back yard” principles, but would rather advocate that the PUC and other State agencies use environmental review techniques that would locate any necessary pipeline in that portion of Minnesota least vulnerable to environmental harm from construction of the pipeline and least vulnerable to catastrophic irreparable damage in the event of an accidental spill. It is this second interest that a pipeline, if necessary, be located so as to inflict the least damage, that CCLS believes has not been served.

² Testimony of Steve Schulstrom, Public Hearing Duluth January 6, 2015, p 183.

CCLS initially strongly supported consideration of co-location of the proposed line in the existing Northerly corridor. It reasoned that co-location would minimize the disturbance of previously undisturbed lands and waters. That seemed also consistent with the PEER principles that strongly disfavors development of new corridors³. CCLS submitted comments questioning the completeness of the Environmental Assessment Supplement in the docket and strongly expressing our concern that the EAS, while listing resources, did not apply scientific principles to determine the least impact, as Chapter 116D requires⁴. CCLS began to recognize that the Environmental Assessment Supplement wasn't an environmental review at all, but rather an inventory of resources, a counting of the number of those resources in the vicinity of the proposed pipeline.⁵ The organization became convinced that Environmental Assessment Supplement failed to comply with Chapter 116D, because it merely functioned as a list of resources, rather than a scientific comparison of impacts⁶.

³ People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d 858 (Minn. 1978)

⁴ Document No 20144-98540-03.

⁵ A project of this scale and complexity requires a more comprehensive environmental review than was previously performed by the Department of Commerce. The Sandpiper pipeline and the Line 3 proposals combine to form the largest hazardous liquid materials storage and transportation complex in Minnesota history. As such, the Minnesota Environmental Protection Act mandates a more thorough and rigorous Environmental Impact Statement due to the effects of the proposed facility upon the natural and socioeconomic environments. Until such analysis is done, the Certificate of Need should not be granted. See Tim and Mary Anderson, written comments, docket # 20151-106524-01

⁶ As Dr. Chapman indicates: federal and state agencies evaluate the priority of an effect by its intensity, extent, and duration. Intensity refers to the severity of the direct and indirect impacts on the natural resource. Is a habitat completely destroyed by the effect, or only slightly damaged, for example. Is a groundwater aquifer rendered undrinkable, or only slightly contaminated at levels below a drinking water standard? Extent refers most often to a geographic scope. Lastly, duration indicates the reversibility of an effect: it is permanent or temporary, and if temporary, can recovery be accelerated by restoration and remediation?

CCLS retained Dr. Chapman because it believed that applicant was deviating materially from the robust environmental review intended by Chapter 116D. The organization hoped to provide the ALJ and the Commission with actual scientific evidence on how a quality environmental review should work. CCLS did not instruct Dr. Chapman to select any particular route, but as Dr. Chapman's testimony indicates⁷, he was asked to use his training and experience constructively to make recommendations that would assist the Commission in evaluating the environmental review. It is CCLS fervent hope ALJ and PUC will benefit from submissions offered for this purpose, and that the end-result will be a Minnesota pipeline system that inflicts the least environmental harm, and only if the pipeline is actually necessary.⁸

The CCLS position on routes and system alternatives, then, is not based upon naked self-interest. The organization has not yet taken a position on which route is the best, or which system alternative is the best. The organization's position, rather, is that the best alternative must come from a full development of a record, and that development cannot be adequate unless there is a full and robust compliance with the letter and the spirit of applicable law and policy, including Chapter 116D, the CON, routing and other permitting statutes and rules, and the key

⁷ See Dr. Chapman Surrebuttal Testimony paragraph 7.

⁸ A thorough and robust environmental review will reveal the negative impacts this pipeline proposal will have on Minnesota's environment. Loss of forest biomass exacerbates climate change by decreasing the amount of carbon that can be sequestered. Wetland impacts will reduce their ability to store carbon and mercury another serious environmental problem. Wild rice waters will be harmed and so will indigenous people's cultures and livelihoods. Pipeline rights of way will increase forest fragmentation, which seriously harms many types of living things including songbird populations like the golden winged warbler a species of concern, and the Northern long eared bat a candidate for listing as an endangered species. See Tim and Mary Anderson, written comments, docket # 20151-106524-01.

state regulatory requirements that protect public waters and natural resources such as Minnesota's Water Policy, Chapters 103A-103G, Chapter 83A-102.

III. Procedural History

A. The Application

On November 8, 2013, NDPC simultaneously filed applications for a new Sandpiper Route which would carry Bakken petroleum from the Bakken oil fields to Midwestern refineries at Patoka, Chicago and other refineries in the eastern Midwest as well as refineries served by the Enbridge Lakehead system. Its notice plan had contemplated that the applicant would offer two route alternatives, one corresponding to the currently existing Sandpiper Route running through Clearbrook to Superior (Northerly route) and a second, striking out in a southerly direction, then turning east crossing Aitkin County into Carlton County and then heading northeast to Superior.

However when the application was submitted, the northerly route was eliminated. An environmental assessment supplement (EAS) was filed with the applications. The EAS considered and rejected system alternatives rail (Section 2.2.3) and truck (Section 2.2.2). Applicant rejected the proposed Plains All American Pipeline L.P. reversal, which would have carried Bakken oil via Canada and then via third party carriers to Cushing Oklahoma, because the project had not met its scheduled construction date. (Section 2.2.1, page 2-3). It considered Koch Pipeline Company, L.P.'s possible Dakota Express Pipeline from western North Dakota through Minnesota to Hartford and Patoka, Illinois with a connection that would possibly serve Gulf Coast refineries. These system alternatives would not satisfy the demand, applicant concluded and continued:

Any other pipeline system would require entirely new right-of-way as well as new pump station sites, power supplies, valve sites, and

potential access roads that would likely be equal to or greater in impact than the proposed Project. P. 2-3.

With this single sentence, Applicant summarily rejected any possible alternative route, simply concluding that wherever the pipeline might be located, it could be assumed that the environmental impact would be “equal to or greater in impact than the proposed Project.”

Although not articulated in the application itself, we learned subsequently that NDPC and its part owner Marathon had decided that other pipeline alternatives would be longer, and that longer pipelines would be more costly and that NDPC and Marathon would not accept even a 70 mile increase in pipeline length, because they wanted to hold down the shipping price for Marathon and shippers who would utilize the remaining Sandpiper capacity.

B. Environmental Assessment Supplement Project Description

NDPC’s Environmental Assessment Supplement--- titled an Environmental Information Report, but here referred to by its alternative name (EAS) submitted with both applications was predicated on the belief that it could satisfy its obligations to evaluate environmental impact by enumerating the types of resources through which the proposed pipeline would travel. In the TSR brief to the Court of Appeals, the PUC explained that the purpose of this EAS is to supply the docket with the same information as would be provided by an Environmental Impact

Statement:

Instead of the Commission preparing an EIS or EAW, the approved rules specifically provide that the applicant is to submit essentially the same information as is found in an EIS. See Minn. R. 7852.2700. This document filed by the applicant is commonly known as an Environmental Assessment Supplement ("EAS"). The rules then provide for public review and comment, and at least one hearing conducted by an administrative law judge. Minn. R. 7852.1300-1700.

In Part IV of this brief, we describe the legal framework surrounding the alternative environmental analysis. We show, there, that the alternative environmental analysis was designed to make it possible for a petroleum pipeline applicant to submit simultaneous Certificate of Need and Routing Applications by presenting a professionally prepared EIS. (The adequacy of this document is legally critical, because the Environmental Quality Board granted an alternative review waiver based upon the assumption that the Environmental Assessment Supplement would be equivalent in scope to an Environmental Impact Statement.) The environmental analysis submitted by NDPC was prepared under the direction of Sarah Ploetz. Ms. Ploetz has a bachelor's degree with a major in "environmental studies." Her prior experience consists in providing information requested by permitting authorities, but she has no prior experience in working on an Environmental Impact Statement. Ploetz Tr.66, lines 17-19. Ms. Ploetz was operating under several constraints. First, as discussed below, the NDPC joint venture, which includes Marathon, had determined that their business plan could not justify or support a route that was even modestly longer than the preferred route, because of the additional cost arising from that additional pipe and the filler, the cost of which they customarily allocated to shippers, for some reason. Second, they determined that they would prepare an environmental document that listed and counted environmental resources, but would not make what Ploetz described as "value judgments" by actually by determining which resources were more significant, or by quantifying the nature of the potential impacts.

NDPC's engineering people created GIS shapefiles necessary for identifying the route for design, acquisition and regulator purposes. These GIS shapefiles and their proper use by environmental professionals are described in Dr. Chapman's Rebuttal and Surrebuttal testimony. The route files can be combined using Google or ArcGis software to determine the nature of

soils, geology, geographic, water and numerous other resources. Under NDPC's direction, Ploetz's team decided to use GIS strictly to perform a counting operations, to show, for example, how many water resources, forests, aquifers, towns, cities and counties, intersect with the GIS shapefile describing the proposed route. NDPC told Ploetz to reject any "value judgments" that would determine which aspects of the environment deserved high priority protection, or to describe the nature of environmental impacts that might be involved by placement of the lines in or near these resources. The Environmental Assessment Supplement presented for public review, then, merely counted feature quantitatively and made no qualitative judgments regarding environmental impacts. Ploetz Tr. pg. 22. This failure to actually assess environmental impacts in the environmental assessment supplement filed with both CON and Routing Dockets, has drawn strong objection from MPCA, DNR and Dr. Chapman, because it is completely contrary to the way in which environmental impacts are assessed.

Ms. Ploetz's explained that NDPC's production of an EAS was envisioned as a "straightforward comparison" of the resources, by which NDPC means simply using the quantity of numbers or data to compare alternative systems. (Ploetz pg. 37, lines 20-24)⁹. NDPC did not weigh in any way the different resources that were being counted, because "that would be an extremely difficult, if not impossible task to achieve. Ploetz Tr. 41, lines 17-22); (pg. 108, lines 4-7). Although the EAS is actually submitted in both dockets. Tables reported density of resources only¹⁰. There was no attempt to quantify or compare potential routes based upon how

⁹ A: I mean simply using the quantity of numbers or data that's indicated in the table.

Q: Yes, correct. (pag.37, lines 20-24)

¹⁰ Each line item that you see on the table would be essentially a different factor that was looked at. So the -- where the density comes into play is the -- when you look at the total numbers,

they were impacted by a spill¹¹, nor was there any consideration of the potential increased risk of spill connected to the Line 3 replacement¹².

The limitations imposed by NDPC basically eliminated any judgment as to whether a particular resource or ecosystem was deserving of special consideration or protection. Since NDPC did weight cost and route length, the only indicators that were given weight by NDPC in determining route viability were cost and length. By deciding that environmental impacts should all be counted equally, because all resources are supposedly equal and equally impacted, NDPC violated Minnesota's Environmental Policy Act. By way of example, Ploetz explained that when the Environmental Analysis reviewed water bodies, the environmental review would not differentiate between a shallow lake¹³, and an artificial drainage ditch.¹⁴ The entire

sheer quantity of what was identified within each factor that was looked at, that informs the overall density of the human and environmental features contained, within the two-mile-wide study area. (Pg.123-lines 19-25, pg.124)

¹¹ Q: Okay. Are you involved in projecting or placing values on areas that would be impacted by a spill?

A: As I've testified to earlier, we haven't placed a value on one resource being more important than another. (pg.62, 15-19).

¹² Tr. 106, lines 17-23.

¹³ One of Minnesota's environmental challenges is to protect its numerous shallow lakes. The concern has spawned a major shallow lake program described at <http://www.dnr.state.mn.us/wildlife/shallowlakes/index.html>. The suggestion by NDPC's chief environmental employee that there is no special consideration for shallow lakes suggests a shocking state of ecological and environmental illiteracy. This is another example of the point that we later make, that environmental reviews need to be conducted of teams of scientists each applying their respective discipline so that the review integrates the acquired ecological knowledge specific to Minnesota's natural resources. Indeed, Ploetz admitted the only distinction made in its environmental review was between a water body or a fast-moving water body. Therefore, in their analysis overlap between the two could occur and an inaccurate counting of features is thus possible. (tr. 119, lines 5-9)

¹⁴ Q :And so my question was it more ecologically healthy, is one more ecologically healthy than the other, do you think, if you were to look at – to identify a healthy ecosystem?

environmental assessment document was predicated on merely quantifying the number of types of resources¹⁵.

C. NDPC Files Incomplete USACE Application and Refuses to Complete the Application

In February of 2014, NDPC filed an incomplete Section 404 Clean Water Act Permit application with the US Army Corps of Engineers (USACE). The USACE notified NDPC that the application was incomplete, but NDPC refused to go forward with the application.

Commencing this application would have triggered a federal environmental review under NEPA and would have triggered government to government information exchanges between USACE and Minnesota agencies, as well as consultations with Indian tribes on the impact of the proposal on native resources, as well as impacts on treaty rights. In August of 2014, NDPC's Ploetz filed inaccurate testimony claiming that this application had been completed, and that a permit decision was scheduled.

In September of 2014, less than a month after NDPC filed Ploetz's direct testimony claiming that NDPC had submitted an application for a federal Section 404 permit, the United States Army Corps of Engineers posted a document on the internet publicly announcing that Enbridge-NDP had refused to submit a complete application for Section 404 permit, and that as a result the federal environmental review contemplated by the National Environmental Policy Act could not go forward. We provided a copy of this posting to this docket in October of 2014,

A: Again, I don't feel like I can answer that, because it would depend on the quality of the shallow lake that would be contained within that. There – there are a variety of potential impairments that could be placed on water bodies. You know, the use – human activity use of water bodies can affect that. It's difficult to answer. It's a complex distinction. (pg.118, lines 1-11)

¹⁵ Tr. 128, lines 24-25; pg.129, lines 1-4)

because at the time, NDPC was telling the Commission that bifurcating the process was slowing down the process. We argued that “Enbridge-NDP is acting in the State of Minnesota as if time is of the essence, but it is slow-walking its application process through the federal system.” We wrote:

The USACE announcement made it clear that the USACE had assembled a regulatory team to conduct the required analysis, but that they could not conduct their review, because Enbridge-NDP would not complete its application. Under both state and federal law, these reviews are designed to proceed simultaneously, and one of the major benefits of this collaborative process is that information compiled by each agency will be available to the other. See Minn. Rules section 4410.3900, 40 CFR Part 1501.¹⁶

Perhaps NDPC rationalized that it would be better not to let the USACE look at their application because the USACE would demand under NEPA that a real Environmental Impact Statement would be prepared examining all system alternatives. Perhaps it felt that it could convince the PUC to accept an environmental review that merely listed resources, instead of examining and weighting scientifically the gravity of impacts on those resources. Perhaps it believed that the PUC would ignore environmental regulations requiring that an environmental review encompass

¹⁶ In its January 5, 2015 rebuttal testimony, NDPC once again claimed that it had an active Section 404 permit application and reaffirmed the application date for the Federal 404 permit and environmental review as January 11, 2014. The testimony specifically affirmed that the purpose of the testimony was to update the status of these applications, to make them current. The chart attached affirmed that dates in bold represented actual dates as opposed to estimates. But on cross examination, Ms. Ploetz admitted that actually NDPC had withdrawn its application, and essentially that NDPC had intentionally discontinued the federal environmental review process. We don’t recite this history to attack the credibility of the witness or to embarrass the witness. We assume that when the witness affirmed in August 2014 and again in January 2015 that an application was submitted she believed it to be true. Our problem is that Minnesota’s two regulatory agencies with environmental jurisdiction have attacked the completeness of the environmental review and urged consideration of system alternatives, and the two federal agencies with that jurisdiction have intentionally been removed from the field.

all related activities, but recognized that the USACE would not tolerate conducting an environmental review limited to Sandpiper, when a second pipeline was being proposed for the same route. But whatever the reason, NDPC chose to postpone the federal environmental review, thereby depriving the State of Minnesota of the scientific and regulatory information that would have been compiled in the federal review process, and chose also not to reveal that in its testimony here.

D. PUC Orders Consideration of System Alternatives

As this case advanced in consolidated form, Minnesota agencies became increasingly concerned that NDPC had failed to comply with even minimal standards governing environmental analysis and consequently had confined the route and system alternatives in a way that was inconsistent with the obligation to protect Minnesota's natural resources. In August of 2014, two Minnesota agencies with jurisdiction over Minnesota's public waters and environmental issues warned that Minnesota is facing an unprecedented challenge respecting its petroleum pipeline network that has been called a "pipeline tsunami" of applications for new routes and expansion to routes. This tsunami has been triggered by technological advances in extracting oil from shale rock which drove a 39 percent jump in U.S. production from 2011 to 2014¹⁷. In its letter of August 2014, MPCA¹⁸ wrote:

¹⁷ The United States has been the jewel of global petroleum in recent years, increasing its oil production by more than 50 percent since 2008, and most energy analysts say they believe the good fortunes are sustainable for at least another decade. Natural gas production has been so plentiful that the price of the commodity has plunged, giving consumers and manufacturing industries a financial break, while gas import terminals are being turned around to export. The country has already replaced almost all imports of high-quality African oil with the booming production of the Texas and North Dakota shale oil fields. NYTimes April 21, 2014.

Given the high potential of additional pipelines and replacement or upgrading of existing pipelines in the near future, and within the same corridors, *it is critical that the current effort consider multiple alternatives, including both route and system alternatives.* For the reasons outlined below, limiting the alternatives to route options alone at this stage would unnecessarily narrow the scope of project options to reduce environmental and public health risks. August 6, 2014 Letter to Commission.

MPCA's concerns, as reflected in its official comments include the following:

Future access to potential release sites; construction and operation of the break-out tanks; cumulative impacts from construction of additional pipelines and infrastructure in the area; emergency responsiveness and spill prevention; inspections and monitoring conducted during construction; proposed water body crossing methods and time frames; wastewater issues; and water quality, watershed and wetland issues.

That concern resulted in a decision by the Public Utilities Commission to require an environmental review of alternative routes that did not start and end at the end points selected by the applicant¹⁹.

¹⁸ The Minnesota Pollution Control Agency was established "To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state..." Minn. Stat. § 116.01.

¹⁹ In launching that review, the PUC recognized that a comparison of alternatives might not contain all of the components of a review that would take place when a specific route is being located. But the order issued by the PUC contained no specific guidance on the scope or contents of such a review. The plan adopted was outside the scope of any regulation or other guidance. Neither PUC nor DOC provided for scoping input, nor did they announce publicly the intended scope. The document that was generated has been referred to as a CEA – Comparative Environmental Analysis, but because of its extra-regulatory character, it is not. It is an attempt, by DOC-EERA to interpret the PUC's intentions. CCLS's attempts to gain information on the intended scope of the review were rebuffed.

E. The “High Level” CEA

The so-called high level of review has no regulatory framework to guide its scope. Nothing in the PUC order suggested that it would be acceptable for the MnDOC to conduct a listing of environmental resources, instead of a scientific analysis of the environmental impacts. It is difficult to criticize MnDOC for choosing that path, because as Dr. Chapman points out, it is virtually impossible to attempt to complete a true environmental review of the environmental impacts, and then to provide scientific judgment rating the alternatives in the time allotted. As discussed below, the alternative review envisioned by the Environmental Quality Board expected that the applicant would conduct that level of review and file it with their application.

MnDOC States in the abstract of the Comparison of Environmental Effects of Reasonable Alternatives that the document created is intended to provide analysis of six system alternatives for the Sandpiper Project and to provide valuable information to the Commission to be weighed along with other information in making a need decision;

“For the Sandpiper Project, the Commission concluded that an environmental analysis of six system alternatives, which were identified in the Route Permit docket, and six alternatives to the proposed project identified by NDPC in its CN application would provide it with valuable information to be weighed along with other information while making its need decision. This document is intended to provide that analysis. (Pg.1, CEA)”

In the analysis of each system alternative, the CEA counted the number of features within in a preliminary category as defined with the 12 identified resource areas that public datasets were available for;

“Datasets were identified in 12 resource areas:
Geology/Soils/Groundwater, Ecoregions, Land cover, Water Resources, Special species and critical habitat, Public resource and recreational lands, Cities and population, Community features,

Cultural resources, Contaminated areas, Air emissions, High-consequence areas.(pg.47, CEA)” See table 6-1 on pg. 249.

The CEA describes differences between system alternatives by counting the above referenced features crossed by each alternative route. No qualitative information regarding the alternative systems or analysis of the individual resources particular to that region and the potential to impact of that resource is discussed within the document. No scientific opinion, hydrological, ecological or otherwise was obtained or offered. To distinguish among alternatives, the CEA offers the features in percent-based format of each feature within an alternative. The CEA essentially mirrors the approach taken by Environmental Assessment Supplement. The CEA states that there are few differences among the alternatives and few differences among the potential impacts to some resource category; The CEA merely asserts that system alternatives would have “similar impacts to some resource categories,” but it offers no support for this view, and evidently, it simply means that if a pipeline crosses through a forest, by definition, that is similar to crossing through wetlands, or through a prairie. (Pg. 249, CEA)

In each resource category, the CEA focuses on making tables depicting the different amounts of that resource in each system alternative; making the comparison factor based on quantity and not quality of individual features or specific potential impacts to resources. For example, in relating water resources crossed by each alternative the CEA states;

“Water resources vary considerably by type and extent across system alternatives. Stream crossings range from 1,157 in SA-05 to 615 in SA-Applicant, while the numbers of named lakes crossed range from 159 in SA-07 to 20 in SA-04. Generally, stream crossings are greater in the southern system alternatives while waterbody crossings tend to be higher in the northern system alternatives. (pg.250, CEA).” (See table 6-2A and table 6-2B for examples, both on pg. 250).

There is no statement or section in the CEA document that address the different potential impacts to specific resources in determining value of a resource or adverse effects on one type of resource from another. MnDOC's simple counting of features and its failure to address actual environmental concerns as related to each alternative drew strong criticism from both of the State agencies that have experience in preparing real environmental impact statements. But the fault here is not with MnDOC: the problem is that the Environmental Assessment Supplement was submitted based on the premise that the only factor that really counts and can be weighed pipeline length and pipeline cost.

IV. The Overwhelming Weight of Evidence from Minnesota Regulatory Agencies with Jurisdiction over Natural Resources Establishes that the Applicant Has Failed to Meet the Criteria Necessary for Issuance of a Certificate of Need

We begin with a summary of the position statements of the two major Minnesota regulatory authorities charged with responsibility for protection of Minnesota's environment. We then note that these proceedings have been deprived of the benefit of the Federal NEPA review by NDPC's intentional refusal to proceed with a Section 404 Clean Water Act application and argue that this has harmed the completeness of the environmental review required by law. We then show that Dr. Chapman's testimony strongly supports the conclusions of DNR and MPCA and conclude this section with an itemization of specific deficiencies in the environmental review as described in the testimony.

A. Minnesota Department of Natural Resources

The Minnesota Department of Natural Resources has broad jurisdiction over Minnesota's public waters (including rivers, streams, lakes and wetlands) Minnesota Chapter 103G, game and fish, Chapter 97-102, and broad powers over conservation, state lands, forestry and lands and minerals. The Department of Natural Resources issues pipeline permits for crossings over

public waters and thus has important regulatory authority over pipelines that cross public waters and public lands. All utility crossings (transmission and distribution) of wild, scenic or recreational rivers, or of state lands within their land use districts which are under the control of the commissioner, require a permit from the commissioner pursuant to Minnesota Statutes, section 84.415 or 103G.245 under Minn. Rules 6105.0170. The position of the Department of Natural Resources on matters within its jurisdiction are thus entitled to great weight and cannot be lightly disregarded here. The DNR has vastly more experience and vastly more regulatory responsibility in the critical areas of environmental protection than the Public Utility Commission. Moreover, the Department of Natural Resources has substantial experience among state agencies in the conduct of environmental reviews and maintains a permanent unit with the Department for the Conduct of Environmental Reviews.

Minn. Rules 6135.1000 provides that “It is essential to regulate utility crossings of public lands and waters in order to provide maximum protection and preservation of the natural environment and to minimize any adverse effects which may result from utility crossings.” Rule 6135.1000 subordinates utility crossing permitting regulations to any law, rule or regulation which is stricter in its protection of the environment. Other related environmental laws and rules and regulations include but are not limited to those associated with: A. federal and state wild, scenic and recreational rivers; B. the Minnesota Environmental Protection Act. See Rule 6135.1600. This rule makes it crystal clear that MEPA, all of it, must be applied to any action that would have the effect of siting a pipeline across public waters. Even if the PUC’s rules, or the EQB’s rules, were intended to trump MEPA (and we think they were not) EQB was not granted the jurisdiction to override MEPA in connection with DNR’s regulatory jurisdiction over public waters.

The Department of Natural Resources letter of January 23, 2015 could not be more clear: The environmental review document submitted by NDPC and the comparative environmental analysis are simply inadequate to support the grant of a Certificate of Need.

“In general, due to the limited scope requested for this document, the broad geographic area, and challenges related to the type of data and analysis used, DNR was not able to use this document alone to identify the least environmentally impacting System Alternatives. Examples will be provided below of the type of information that would further inform the Certificate of Need decision for context when considering the most reasonable and prudent System Alternative.”

Despite the manifest deficiencies presented, the DNR “conducted a focused review of SA-03 and SA-Applicant, in an effort to supplement the incomplete environmental review supplied so far.”

The DNR found:

When only comparing the two routes found reasonable by DNR, SA-03 and SA-Applicant, SA-03 appears to impact less natural resources than SA-Applicant. SA-Applicant features that would incur impacts greater than those identified for SA-03 are: forest and wetland acreage, river and stream segment crossings, and crossings of public lands. Cultivated lands and occurrences of already-impaired waters are greater along SA-03, indicating the developed state of lands along this route.

The DNR letter of January 23, 2015 also supports the conclusion that there are superior alternatives, alternatives which it was NDPC’s duty to investigate and analyze in the Environmental Assessment Supplement filed with the application, which are superior to the applicant’s preferred route. The letter states:

Within Minnesota , more southern routes (south of I-94 corridor) have less concentration of natural resources (regardless of length) within the 2-mile corridor. Therefore, there is a greater opportunity for avoidance of resources with the more southern System Alternatives. ... From a natural resource perspective, the more southern routes appear to be feasible and prudent System Alternatives that merit consideration.

B. Minnesota Pollution Control Administration

The Minnesota Pollution Control Agency was established “To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state...” Minn. Stat. § 116.01. The Commission has extensive experience in the preparation of environmental reviews under its statutory authority. Minn. Stat. § 116.02. It has broad and extensive jurisdiction in the protection of Minnesota’s waters, and has regulatory authority over pollution in cooperation with the federal Environmental Protection Agency and the United States Army Corps of Engineers under the Clean Water Act. Like the DNR, MPCA has vast experience in environmental protection, a coordinated responsibility with the federal government in water protection, and substantially more expertise in the crafting of science based environmental reviews.

In its letter of August 2014, MPCA wrote:

Given the high potential of additional pipelines and replacement or upgrading of existing pipelines in the near future, and within the same corridors, it is critical that the current effort consider multiple alternatives, including both route and system alternatives. For the reasons outlined below, limiting the alternatives to route options alone at this stage would unnecessarily narrow the scope of project options to reduce environmental and public health risks. August 6, 2014 Letter to Commission.

MPCA’s concerns, as reflected in its official comments include the following:

Future access to potential release sites; construction and operation of the break-out tanks; cumulative impacts from construction of additional pipelines and infrastructure in the area; emergency responsiveness and spill prevention; inspections and monitoring conducted during construction; proposed water body crossing

methods and time frames; wastewater issues; and water quality, watershed and wetland issues.

In its letter submitted for the record on January 2013, 2015, MPCA stated that the Applicant's proposed route was inferior to other routes analyzed:

SA-Applicant presents significantly greater risks of potential environmental impacts and encroaches on higher quality natural resources than SA- 03 and several other system alternatives. Minn. Rule 7853.0130.8(3). The effects of SA- Applicant on the natural environment support a determination in favor of other alternatives. Minn. Rule 7853.0130.C(2) and C(3).

The letter continued:

During these proceedings, the MPCA has commented extensively on the environmental concerns regarding the route proposed by Applicant in comparison to alternative routes and system alternatives. MPCA's prior comments can be found in Document Nos. 20146- 100780-01,20148-102458-02 and 20148-102458-04, each incorporated by reference. These prior comments have addressed such specific items as access to potential release sites in surface waters, potential to impact ground water, wild rice, the state's highest- quality surface water systems, wildlife habitat, low income populations, watersheds currently being assessed for restoration and protection strategies, fisheries, economies, and numerous other parameters.

In these comments, the MPCA concluded that with respect to protection of the highest- quality natural resources in the state, the SA-Applicant route presents significantly greater risks of potential impacts to environment and natural resources than several of the system alternatives, including SA-03. (emphasis added)

C. Analysis from the US Army Corps of Engineers/EPA is Absent Because NDPC Refused to Proceed with the Section 404 Permitting

In this section, we should be exploring the results of USACE's NEPA review, because both Minnesota and Federal law express a preference for collaboration and information sharing in the respective state and federal reviews, but we cannot do so, because NDPC terminated its federal permit requests. The Clean Water Act, 33 USC Section 1344 (Act section 404) provides

a permitting process for major actions that impact public waters and wetlands. Major actions like the current action require not only a permit but trigger a National Environmental Policy Act (NEPA) environmental review. A federal section 404 permit is listed on submissions by NDPC as one of the necessary permits required. On page 8 of her August 8, 2014 Direct Testimony, NDPC's Senior Environmental Analyst, Ploetz, represented (incorrectly) that NDPC had submitted an application for a Section 404 Permit on February of 2014 and that a decision was expected in August of 2015. If that testimony had been accurate, it would have meant that the USACE would have already launched a NEPA required environmental review parallel to the requirements of MEPA, which is the Minnesota version of NEPA.

Under both state and federal regulations for MEPA and NEPA, submitting a completed application would have triggered a federal public environmental review. Part of that federal review, would have triggered information exchanges between the USACE, the EPA, and Minnesota's regulatory agencies, the MPCA, DNR, PUC and DOC-EERA. The State of Minnesota environmental review here would have been supplemented by the information compiled by the expertise of federal agencies, and citizens concerned about the route would then have had the opportunity to explore through the federal process the alternatives disclosed through a federal review. The two processes, NEPA and MEPA are both designed to work together. See 40 CFR § 1503.1 (After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall: (2) Request the comments of: (i) Appropriate State and local agencies); 40 CFR 1501.7 (a) As part of the scoping process, the lead agency shall:

- (1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons

(including those who might not be in accord with the action on environmental grounds).

One of the critical features of NEPA is to allow public officials, including state public officials, to obtain information that will help them take a position on the proposed project. 40 CFR § 1500.1 (NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments and public scrutiny are essential to implementing NEPA.)

The NEPA process –which should have been commenced long ago -- is “intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” But if the NEPA process is intentionally interrupted, then the effect of that is to deny to state regulators, local government, and citizens, the information that would otherwise have been produced in a federal review. MEPA and its implementing regulations similarly call for coordination with any federal environmental review, so that the information compiled by federal agencies can be exchanged with state agencies compiling information, each within their areas of expertise²⁰. Because NDPC has intentionally cancelled the environmental review that otherwise would have taken place, we believe that we are entitled to an inference that the USACE/EPA would have supported the Minnesota regulatory agencies concerns.

²⁰ See for example, the collaboration involved in the PolyMet EIS.
http://files.dnr.state.mn.us/input/environmentalreview/polymet/sdeis/004_executive_summary.pdf, page ES-7.

D. Mille Lacs Band of Ojibwe

Under the provisions of Minnesota Executive Order 13-10²¹,

All Executive Branch agencies of the State of Minnesota shall recognize the unique legal relationship between the State of Minnesota and the Minnesota Tribal Nations, respect the fundamental principles that establish and maintain this relationship, and accord Tribal Governments the same respect accorded to other governments.

The Mille Lacs Band's position represents then the position of a sovereign with regulatory jurisdiction entitled to deference under both State and Federal law. The Mille Lacs Band's reservation consists of three districts composed of several distinct communities that have existed in East Central Minnesota for hundreds of years²². In addition to its successful business enterprises, and its growing investments in public education from pre-school through College, the Mille Lacs Band of Ojibwe has sovereign responsibilities for the environment. The Mille Lacs Band's Department of Natural Resources, under the leadership of its commissioner, works in collaboration with the Minnesota DNR to manage the fish populations and the overall health of the lake. The Band also participates as a member of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), which serves as an intra-tribal regulatory and enforcement agency for natural resources in the Treaty of 1837 Ceded Territory, which includes the East Central Minnesota region and Mille Lacs Lake. The Mille Lacs Band DNR also issues hunting and fishing licenses and permits to Band members and non-Band members that hunt and fish on

²¹ This order represents a continuation of the Executive Orders issued under the Pawlenty administration. See EO-03-05, for example.

²² District 1 includes the main reservation area on the west side of Mille Lacs Lake. District 2 includes communities near Isle on the south side of Mille Lacs as well as communities in East Lake, Sandy Lake and Minnewawa near McGregor. District 3 includes the Lake Lena community near the St. Croix River east of Hinckley.

tribal lands, and enforces related regulations on the reservation. Through its collaboration with the Garrison-Kathio Sewer Management District, the Band has formed ML Wastewater which protects Lake Mille Lacs from pollutants generated by the resort and recreational businesses from Kathio to Garrison.

The Band's Department of Natural Resources writes:

The Mille Lacs Band requests that the Public Utilities Commission deny the North Dakota Pipeline Company's (NDPC) application for a certificate of need for the Sandpiper pipeline. The pipeline route proposed by NDPC would have greater negative impacts to wild rice, water and other natural resources utilized by the Band than several of the system alternatives proposed by the Minnesota Pollution Control Agency (MPCA) and citizen groups. Letter of January 20, 2014. Doc No. 20151-106385-01.

The letter continues:

The proposed route for the Sandpiper pipeline project borders our Minisinaakwaang (East Lake) Community and threatens the Big Sandy Lake and Rice Lake watersheds, in which the Band's members and their ancestors have gathered wild rice and harvested other natural resources for generations. Neither the Comparative Environmental Analysis (Doc. # 201412-105544, Dec. 18, 2014) prepared for the proposed route and the six system alternatives identified by the MPCA nor the revised Environmental Information Report submitted by the North Dakota Pipeline Company (Doc. # 20141-96101-02) discuss the impacts that pipeline construction and operation could have on wild rice waters or other natural resources of critical importance to the Band.¹ It appears that the Minnesota Department of Natural Resources (DNR) and the MPCA have GIS data for mapping wild rice waters,² thus it is not clear why this data was not included in the Comparative Environmental Analysis..... The Band is opposed to the proposed route for the Sandpiper pipeline because of its potential adverse impacts on the Big Sandy Lake and Rice Lake watersheds. The Band asserts that system alternatives SA-03 and SA-04 are more reasonable and prudent alternatives because those alternatives avoid these watersheds, which are of vital cultural, historical and environmental importance to the Band, and present route options with lesser impacts to critical wetlands and watersheds.

We note that in her testimony, Ms. Ploetz contended that wild rice was discussed in an appendix of the Environmental Assessment Supplement. But, the treatment in the supplement represents another example of NDPC's approach to the environmental review: the entire discussion of Wild Rice consists of a table that counts the number of waters which have been identified as supporting wild rice. The table tells us that there are more wild rice supporting lakes on SA-Applicant than on the alternatives, but there is no information, not any, regarding the meaning of that data. See Table EAS page b-5. The EAS is not an environmental impact review, it is a description of the geographic resources.

E. Fond du Lac Band of Lake Superior Chippewa

The Fond du Lac Reservation, established by the LaPointe Treaty of 1854, is one of six Reservations inhabited by members of the Minnesota Chippewa Tribe. The Chippewa Nation is the second largest ethnic group of Indians in the United States. Archaeologists maintain that ancestors of the present day Chippewa have resided in the Great Lakes area since at least 800 A.D.²³. The Fond du Lac Resource Management Division has responsibilities for management, conservation and sustainability of the natural resources of the Fond du Lac Band in order to protect the environment on the Fond du Lac Reservation and within its treaty areas. The Fond du Lac Natural Resources Program is responsible for the wild rice management and restoration activities of the Band. The Band confirms in its letter dated September 29, 2014, the concerns

²³ The LaPointe Treaty of September 24, 1854 (10 Stat. 1109) was the last principal treaty between the several bands of Chippewa inhabiting Northern Minnesota, Northern Wisconsin, and the Western Upper Peninsula of Michigan. In this treaty, the various bands of Lake Superior and Mississippi Chippewa ceded approximately 25% of the land areas of the present states of Minnesota and Wisconsin plus the balance of the Upper Peninsula of Michigan to the United States. The LaPointe Treaty established the Fond du Lac Reservation at 100,000 acres.

repeatedly raised by representatives of White Earth and Honor the Earth that NDPC failed to engage in the kind of due diligence called for when generating an environmental impact statement, and complains of a lack of consultation²⁴. The Band contends as well that recently installed pipelines have resulted in major hydrological changes impacting wild rice resources:

Changes in hydrology affect wetland type, and indirectly affect wetland functions, including wildlife habitat, fisheries habitat, groundwater recharge, surface water retention, nutrient transformation, sediment retention, conservation of biodiversity, etc. The Alberta Clipper and Southern Lights projects have already impacted the Fond du Lac wetlands along the Enbridge pipeline corridor. A Geographical Information Systems (GIS) analysis reveals up to forty (40) newly developed intermittent streams since the pipelines were installed. The National Wetland Inventory (NWI) documents a wetland type change from one side of the pipeline corridor to the other, clearly showing hydrology impacts from pipeline installations.

The role of the Department of Commerce in Public Utility Commission proceedings is to advocate for relevant public interest, the band writes:

In this case, the Department sought no tribal input, leaving a significant section of the public ignored. The Department has an obligation to consult with tribes under Minnesota Governor's Executive Order # 13-10²⁵. The Department has not met its obligations. Enbridge failed to follow through with negotiations with the Leech Lake and Fond du Lac Bands about the pipeline route and no agreement has been reached with the Bands. Although the Fond du Lac Band has concerns about all of Enbridge's proposed routes, the Band is particularly concerned that Enbridge's preferred route was chosen for the sole purpose of going around Indian reservations. As a result, Enbridge's proposed route fails to provide monetary compensation or legal protection to the Band, while exposing the Band to the same threats as if the route were to go directly through the reservation. Further safety

²⁴ Document No. 20149-103433-01

²⁵ <https://mn.gov/governor/images/EO-13-10.pdf>

considerations must be discussed given the increased volatility of Bakken crude oil.

F. Dr. Chapman

Dr. Chapman's testimony explains that the comparative environmental analysis, both EAS and CEA, are not true environmental reviews. In this regard, Dr. Chapman's critique supports the critique offered by MPCA and DNR. We have been given information on how many of certain listed categories of geographic features are found in the vicinity of the proposed pipelines, there has been no effort to use science and regulatory experience to describe the impacts on resources and to weigh those impacts. Both of these documents are value neutral, Dr. Chapman explains, but that neutrality is what renders them useless as environmental impact reviews:

The many GIS analysis results presented in the main HDR report and Appendix B do not reflect the level of severity, extent, and duration of the effects of pipelines. Moreover, any one GIS result or various combinations of GIS results can be used to argue for or against a system alternative. While the HDR report states that the purpose of the report was exactly that, most readers do not have the technical understanding to identify which factors should be given greater weight, and even experts are stymied by the challenge of summarizing the total absolute effect of the system alternatives.

Counting the number of water bodies, as the DNR and MPCA point out, for example, does not assess environmental impacts, it simply lists the number of water bodies. Different water bodies are different in value, have different susceptibilities to pollution, and are entitled to different levels of protection. The entire Clean Water Act protection regimen is based on this principle. See Minnesota Rules Chapter 7050. Waters are protected based upon their use classifications, Rule 7050.0140, their current state of water quality, biological and physical

conditions, and compliance with standards Rule 7050.0150 and other indicators of ecological importance.

The Department of Commerce inventoried geographic features and left lay people to make scientific conclusions they are not qualified to make.

The PolyMet Environmental Impact Statement, when completed, will be entitled to deference, because it was generated by a team of specialists. The agencies that perform these reviews develop procedures designed to make accountable scientific judgments. We may think, those of us who are not qualified, that we can make these inferences, but that in an environmental impact statement, conclusions are made by scientist: hydrologists, biogeochemists, ecologists, and environmental engineers. The reason that an environmental impact statement, properly prepared, is given deference by the Courts, is that it is a product of experience, regulatory experience, scientific experience all driven by the public interest, rather than a business motivation. Dr. Chapman explains

In other projects we have worked on with multiple indicators of effects, we identify the significance of an effect and weight it relative to other effects using scientifically-defensible criteria. Criteria are developed from the scientific literature, employing our professional judgment and that of others. The significance is based on the intensity, extent, and duration of the effect, as discussed above. Data are fitted to a 0-1 scale (normalization) in order to make all effect indicators equal. Lastly, the effect indicator is multiplied by the weight of the significance of the effect. Care must be taken to balance the indicators to both accounts for the variety of effects while not double-counting indicators. The most important effects must be included, with other effects included as needed to account for as many effects as feasible. For example, should the loss of the economic value of timberland, cropland, and minerals be included, and if so, given a low weight? Essentially, the weighting represents a summary of scientific knowledge about the effects of pipelines.

An environmental review cannot simply record that a project is near water bodies: it needs to apply scientific judgment combined with regulatory criteria, to make a determination of which alternative has the greatest negative impacts.

A weighting would identify routes with the greatest and least total effect as determined by careful consideration of the scientific information. It would identify routes that are best at avoiding natural resource effects. The weighting would also reveal the driving environmental effects behind a route's weighted result, and provide data for a discussion of, to use a simple example, the trade-offs in avoiding groundwater contamination on one route versus loss of rare species habitat on another. It may lead to combining different route segments in order to balance the trade-offs in effects.

G. Specific Identified Defects in the Environmental Reviews

In the prior subsections, we have described in a general way the objections lodged by key witnesses or agencies, but we think it is important to list some of the specific objections to the quality of the environmental reviews described by the witnesses.

Treatment of Impacts to Undisturbed Lands. The environmental review's treatment of impacts to undisturbed lands versus previously disturbed lands is inadequate²⁶ and fails adequately to:

- A. Include impacts of fragmentation to forests due to the construction of corridors
- B. Include sites containing area sensitive avian species
- C. Describe the impact of invasive species introduced
- D. Acknowledge construction through undisturbed areas results in habitat loss, conversion, degradation, fragmentation
- E. Recognize ag land has impacted soils already

²⁶ JS 1, pages 3-4 (Reference to JS is to January 23, 2015 DNR letter signed by Jaime Schrenzel on behalf of DNR.

F. Recognize that BMPs are not practical for undisturbed areas

Incomplete Topographic Comparisons. The Environmental review failed to provide completed topographic relief comparisons.²⁷

Failure to Consider the Value of Water Resources Crossed. The environmental review fails to consider the value of water resources being crossed and provide alternative routes or systems to avoid these areas.²⁸

Tamarack State Mineral Lease. The environmental review fails to consider the Tamarack state mineral lease in route determination and fails to identify safety concerns on the possibility of having both future crude oil pipeline and mining operations on the same state-owned land.

Consideration of Co-Location. The environmental review fails to consider drawbacks to co-location.²⁹ This concern is compounded by the failure to include consideration of the proposed connected action under way in the Line-3 Docket and represents a flagrant violation of the requirement that connected actions should not be segmented.

Risk Assessment. The environmental review fails to include a risk assessment of potential damages as a result of an oil leak.³⁰

Consideration of Impact of Corridor Width. The environmental review fails to use varying widths of corridor for assessment.³¹

²⁷ JS 1, page 4 paragraph 1

²⁸ JS 1, page 5

²⁹ JS 1, page 6, paragraph 4

³⁰ JS 1, page 6

³¹ JS 1, page 7

Inadequate Treatment of Threatened and Endangered Species. The environmental review fails to adequately address Minnesota State listed threatened and endangered species and Minnesota sites of biodiversity significance.³²

Failure to Address Undisturbed Soil Preservation. The environmental review fails to adequately address standard measures of preserving undisturbed soil and related impact to undisturbed areas.³³

Failure Adequately to Utilize Hydraulic Conductivity Ratings. The environmental review fails to adequately conduct hydraulic conductivity ratings at appropriate standard pipeline depths.³⁴

In this regard, we make special reference to the conflict in testimony between Barr Engineering's Mr. Wuolo, retained by Enbridge, and Bob Merritt, who testified on March 12, 2014. Mr. Merritt is a Minnesota Licensed Professional Geologist with 32 years of experience as Minnesota Department of Natural Resources Area Hydrologist. He holds a M.S. in Hydrology. Mr. Merritt testified that his concerns about the vulnerability of groundwater in the area traversed by the proposed pipeline led to a detailed hydrological study of the Straight River region. (U.S. Geological Survey Water-Resources Investigations Report 94-4009). Mr. Merritt submitted a copy of the study for the record.

The study, Stream-Aquifer Interactions in the Straight River Area, Becker and Hubbard Counties, Minnesota, studied a representative portion of the investigation area is underlain by an

³² Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7

³³ Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7

³⁴ Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 7

extensive surficial aquifer consisting of glacial outwash. Stark Study, page 3. The study explains:

This aquifer is part of a large surficial aquifer system, called the Pinelands Sands (Helgesen, 1977), which underlies 770 square miles of Becker, Cass, Hubbard, and Wadena Counties. Confined drift aquifers also underlie most of the investigation area. (Stark Study, page 3).

According to the Stark study, the aquifer system in this region values of vertical hydraulic conductivity, which are higher than those reported for other parts of the glaciated northern United States. (Stark Study page 32) The study further indicates that residence-time data obtained in the study are “significant because they indicate that waters in both the surficial and in the uppermost confined-drift aquifers are susceptible to contamination from local recharge.” (Stark Study at page 48) Further, the study indicates that this region is on the Straight River which contains water that is underlain by highly transmissive surficial and confined-drift aquifers.

The Stark study contradicts Mr. Wuolo, a hydrologist for Barr engineering, Mr. Wuolo did not assist in the preparation of Environmental Assessment Supplement. Mr. Wuolo suggested that he believed that acquifers in the Becker, Cass, Hubbard County region were not very transmissive, but that testimony is completely contradicted by The Stark study and the testimony of the former DNR area hydrologist for this region. The study and Mr. Merritt’s presentation appear more reliable in this regard. However, this dispute reinforces the recommendation of the DNR that a properly constructed Environmental Assessment Supplement should have contained a scientific assessment of the actual water resources impacted.

This is the kind of dispute that is not resolved in an environmental review by a lay administrative law judge. Environmental reviews are conducted by agencies with expertise, or if

they lack expertise, by a team of professional experts, under the direction of the agency, who engage in applying science, technical skills and regulatory accountability, to resolve controverted issues. Under MEPA and NEPA, controversies of this nature are resolved by an agency with expertise combined with regulatory accountability. The danger of trying these issues to a lay judge, even a highly skilled, fair adjudicator, is that administrative law affords credibility to the decision because it is made by a team of experts applying agency expertise. And, as we explain later, that is the great flaw in trying to center an environmental review on a listing of geographic features headed by a person with a bachelor's degree in environmental studies.

We continue now with our list of identified flaws in the Environmental Reviews.

Lack of water sensitivity and flow-path analysis. The Environmental Assessment supplement fails to provide comparison of potential environmental effects among the system alternatives, including failing to complete a water sensitivity analysis and flow path analysis³⁵ Instead, the assessment documents merely list the number of resources in the region, which does not provide adequate data to determine which potential routes pose the greatest risk to resources.

Failure to Assess Value and Impact on Public Lands. The environmental review fails to distinguish between all public lands and inadequately address the functionality and service provided by said lands to the public.³⁶ The environmental review fails to clearly define definition of impaired water across different regions crossed in the suggested route; therefore it fails to adequately account for existing water quality conditions.³⁷

Failure recognize biological quality rankings. The environmental review fails to account for the biological quality ranking of specific communities; hydrological continuity, species diversity, disease, regeneration, and presence of invasive species.³⁸

Public Land Crossings. The environmental review fails to quantify the acres of public land crossed, therefore the varying sizes of parcels is not accounted for and the impact assessment cannot be evaluated appropriately.³⁹

³⁵ Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 8

³⁶ Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 8

³⁷ Exhibit 185, doc 20151-106574-01 (Jamie Schrenzel 1/23/15 Comments Letter) page 10; see also (William Sierks 1/23/15 Letter -WS_MPCA-1) page 7, paragraph 3

³⁸ Exhibit 185, page 10

Spire Valley AMA. The environmental review fails to adequately provide information regarding the Spire Valley AMA therefore impact assessment does not include all potential impacts and ramifications:⁴⁰

- A. Fails to conduct geotechnical borings, which must be done in order to adequately assess the depth to aquifer located in the Spire Valley AMA and assess the potential of puncturing the artesian aquifer
- B. Clarification of pipeline construction must be made regarding placement above or below ground
- C. Fails to include potential impacts to the hatchery, the trout stream and aquifer at the Spring Brook crossing

Spill risk and cost Analysis. The environmental review fails to include cost analysis based on evaluation of a system's ability to reduce the risk of a costly spill to a sensitive environment area.⁴¹

Failure to Recognize Consequences of Traversing Glacial Moraines. The environmental review failed to recognize that significant data gathering must be performed in the SA-Application route that transverses glacial moraines prior to understanding the movement of oil discharge in the area and understand the difficulty to accurately assess the potential for groundwater contamination based solely on GIS layers.⁴²

Neglect of Wild Rice Resources. The environmental review Failed to include an impact assessment for the native wild rice of Minnesota.⁴³

These specific shortcomings result from the way in which the Environmental Assessment Supplement was produced. When an environmental review is produced by an organization like the Department of Natural Resources, the team in charge has at their command experts throughout the agency infrastructure who have decades of experience and an agency history in regulating the various topics described above. When they lack expertise in the organization, they

³⁹ Exhibit 185, page 10

⁴⁰ (JS-3) (Jamie Schrenzel 5/30/14 Letter) page 2, paragraphs 1-2

⁴¹ (WS_MPCA-1) page 3, paragraph 2-3

⁴² (WS_MPCA-1) page 10, paragraph 1

⁴³ (WS_MPCA-1) page 10, paragraph 3

can connect to other state and federal agencies with this have this expertise or may utilize where necessary qualified experts with demonstrated track records with the agency. Enbridge's Environmental Assessment Supplement was headed by NDPC's regulatory permitting representative who has a BA in environmental studies. That degree does not prepare a person to recognize the list of above concerns: environmental impact statements that are produced by agencies marshal the resources of experts in their field with actual field experience in regulating the areas involved.

The Environmental Assessment Supplement was prepared by a joint venture with a refinery partner – Marathon -- who insisted that even the smallest price increases would be inconsistent with the refineries price objectives. In contrast, quality Environmental reviews are typically performed by an independent agency itself, or under the control of an independent agency. The purpose of the environmental review was to provide an independent judgment by the responsible agency. As our Supreme Court has explained:

A number of federal courts have also held that it is an abdication of agency responsibility under NEPA for its EIS to rely solely on information prepared by a project's proponent. *City of Des Plaines v. Metropolitan Sanitary Dist. of Chicago*, 552 F.2d 736 (7 Cir. 1977); *Greene County Planning Bd. v. Federal Power Comm.*, 455 F.2d 412, 420 (2 Cir. 1972); *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Comm.*, 146 U.S.App.D.C. 33, 43, 449 F.2d 1109, 1119 (1971). The purpose of all environmental legislation, at both the state and the federal levels, is to force agencies to make their own impartial evaluation of environmental considerations before reaching their decisions. The agency's role in the preparation of an EIS is not to serve as an arbiter between two opposing parties, as a judge is expected to do in the adversary process. Instead, it is expected to be a source of independent expertise whose scientific investigation can uncover the data necessary to make an informed environmental decision.

This theme our Supreme Court continued, was stressed in *Greene County Planning Bd. v. Federal Power Comm.*, (455 F.2d 420):

When “The Federal Power Commission has abdicated a significant part of its responsibility by substituting the statement of PASNY for its own. The Commission appears to be content to collate the comments of other federal agencies, its own staff and the intervenors and once again to act as an umpire. **The danger of this procedure, and one obvious shortcoming, is the potential, if not likelihood, that the applicant’s statement will be based upon self-serving assumptions.**”⁴⁴

The individual flaws, arising as they do in a variety of scientific and technical areas, are the direct result of conducting the environmental assessment supplement as if it were a cataloguing of resources, rather than an effort to use science to determine impacts on resources.

V. The Alternative Environmental Review Authorized by the EQB Contemplates a Submission of full environmental analysis with the Application Commensurate with an Environmental Impact Statement—The Environmental Assessment Supplement Fails to Meet that Standard

In early January, FOH filed a petition for writ of certiorari challenging the PUC’s decision to call for a “high level” environmental review of system alternatives⁴⁵. We understand that FOH asserts that the EQB lacked jurisdiction (and did not intend) to create an alternative review for the Certificate of Need proceedings, and that consequently, it is a violation of Chapter

⁴⁴ In the *No Power Line* case, the Supreme Court held that the fact that the agency’s Environmental Impact Statement was in many respects similar to the Power Company’s submission did not make approval arbitrary and capricious or unlawful. It is critical, to recognize that when the PUC approves an EIS it is not performing the same function as the Supreme Court. The PUC has an obligation to assure that the environmental review meets the policies and objectives of Chapter 116D. It should not accept an environmental review simply because it is not so egregiously bad as to cross the line into being unlawful.

⁴⁵ CCLS did not seek review of that order, because we believe that the issues presented by that order were not ripe for review, because that the order was interlocutory in nature, and because it concluded that the issues could not be decided in the absence of a full record.

116D to issue a Certificate of Need until a full environmental review meeting Chapter 116D standards have been met. It is our view that this issue – whether the review procedure adopted by the PUC comports with Chapter 116D --should be resolved only upon a full record. One of the key issues presented to the Administrative Law Judge in pipeline proceedings is whether the environmental review has been prepared substantively and procedurally in compliance with applicable law. In cases like LSR, for example, parties have not sought to develop a record on this issue, and it is our sense that the PUC and the DOC have failed to give this issue the policy review to which it is entitled. One of CCLS’s primary reasons for advocating in this case, is to call attention to the difference between what NDPC and DOC have characterized as environmental reviews, and what the law requires.

The outcome of FOH’s contention (which we support) is going to result in one of two legal outcomes. One of two contentions must necessarily be true, in this context:

- (A) That a Certificate of Need is a major environmental action resulting in a permit and therefore a full EIS is required because the EQB did not acquire jurisdiction in the routing statute to impact other permits.
- (B) That a Certificate of Need is a major environmental action, and the environmental review for the CON is governed by the alternative review provisions of the Routing Rule (as the PUC contended) and consequently the EAS filed with the CON and Routing applications must meet the standards applicable to an Environmental Impact Statement.

The latter position, (B), is the position taken by the Minnesota Attorney General in the LSR case. See Brief of Public Utilities Commission, *Minnesota Center for Environmental Advocacy*⁴⁶ v *Minnesota Public Utilities Commission*, Court of Appeals No. A10-812. Pages 9ff.

⁴⁶ Review of that case was impacted by the fact that the Minnesota Center had not participated as a party in the contested case.

For purpose of this brief, we assume that alternative B is governing these proceedings, subject to later judicial review of that contention. (We note in passing, that there is simply no provision in the EQB’s authorization of an alternative review for a “high level” of review that substitutes for the review required by the routing rule. Whatever the high level is, it cannot satisfy the need for an EIS, because it was not provided for as an EIS substitute by the EQB.) It is very clear that, if the PUC’s LSr contention is correct, i.e. that the alternative review supplies the environmental impact statement equivalent for a Certificate of Need, then it is the Environmental Assessment Supplement filed by NDPC that must meet the standards under the Routing Rule. The text of the rule, and the history of the EQB’s adoption of that rule, would require that an adequate Chapter 116D compliant document with an environmental analysis, must be filed with the CON and Routing applications, so that the document can be used to inform the parties, agencies, ALJ and PUC in making the CON decision. A review of the history of the alternative review makes that quite clear.

The history leading to the alternative review begins in 1974, when the legislature passed Chapter 116H, which created the Minnesota Energy Agency and designated petroleum pipelines as a large energy facility⁴⁷. 1974 c 307 s 3; 1976 c 333 s 3. Minn. Stat. Sec. 116H.03 subdiv. 5.

⁴⁷ Originally, legislation for high energy facilities called for development of energy corridors for high voltage lines, reflecting the concern that carriers would seek to locate their transmission facilities in inconvenient corridors. Again, the primary focus of the policy debate was upon high voltage power transmission lines, because they were visibly and more obviously impacting an important constituency – Minnesota agriculture. However, the corridor process was eventually abandoned and left to the need and siting process. Thus, *In re Wilmarth Line of C U Project*, 299 N.W.2d 731, 733-34 (Minn. 1980), a high voltage transmission case, explained: “The statute contemplates that certificate of need hearings are of a general nature and deal with broad determinations of public energy needs, the available resources for satisfying those needs, and the desirability of or necessity for additional generating or transmission systems. Minn. Stat. § 116H.13, subd. 3 (Supp. 1979); see 6 MCAR s 2.0611(C). These proceedings may or may not

Criteria for assessment of need were to be promulgated by rule by 1976⁴⁸. Minn. Stat. 116H.13. In 1989, the Environmental Quality Board approved an alternative process for environmental review of pipeline projects like Sandpiper. EQB Rule Part 4415. The alternative review provisions were promulgated pursuant to Environmental Quality Board Rules 4410.3600⁴⁹. The

be site specific, but the determination of need is not dependent on or related to specific sites. Site specific determinations are relegated to route proceedings since corridor-type proceedings have been statutorily abandoned. See Minn. Stat. § 116C.57 (1978).”

⁴⁸ Subdivision 9 of section 116.13 provided: Other state agencies authorized to issue permits for siting, construction or operation of large energy facilities shall present their position regarding need and participate in the public hearing process prior to the issuance or denial of a certificate of need. Issuance or denial of certificates of need shall be the sole and exclusive prerogative of the director and said determinations and certificates shall be binding upon other state departments and agencies, regional, county and local governments and special purpose government districts except as provided in sections 116C.01 to 116C.08 and 116D.04, subdivision 9.

⁴⁹ Subpart 1. Implementation. Governmental units may request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit demonstrates the process meets the following conditions: A. the process identifies the potential environmental impacts of each proposed project; B. the aspects of the process that are intended to substitute for an EIS process address substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner; C. alternatives to the proposed project are considered in light of their potential environmental impacts in those aspects of the process that are intended to substitute for an EIS process; D. measures to mitigate the potential environmental impacts are identified and discussed; E. a description of the proposed project and analysis of potential impacts, alternatives (in those aspects of the process intended to substitute for an EIS), and mitigating measures are provided to other affected or interested governmental units and the general public; F. the governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the project (a copy of environmental documents on projects reviewed under an alternative review procedure shall be submitted to the EQB; the EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor) G. other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the project (the process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the

State's position has been that the alternative review represented a tradeoff designed to fast track certain pipeline proceedings in a way that would meet the full requirements of Chapter 116D, but would accomplish the environmental review more rapidly and efficiently. *The essence of this tradeoff, as articulated by the PUC's counsel, has been that in return for filing an environmental assessment supplement equivalent to an environmental impact statement with the CON and Routing Applications, the applicant would be granted an opportunity to receive a CON and Route Permit on an accelerated basis.*

The tradeoff described by PUC in the LSr brief cannot comply with the letter or spirit of Chapter 116D unless the applicant prepares a professionally prepared, high quality environmental assessment supplement, one that is equivalent to an environmental impact statement in scope and which has anticipated the concerns of the key stakeholder agencies and governmental entities. In this section, we provide the legal basis for the following propositions:

1. That the EQB granted the alternative review assuming that a professionally prepared Environmental Assessment Supplement equivalent to an EIS would be prepared at the time that CON and Routing applications were submitted
2. That the alternative review was not designed to permit CON and Routing decisions to be decided on a mere listing of geographic features. Allowing Con and Routing to be decided without a review that uses science and engineering principles that makes judgments about which route is environmentally superior is inimical to the fundamental ideas behind Chapter 116D.
3. Unless a professionally prepared EAS equivalent in quality to an EIS is submitted with the application, the supplanting of the procedural guarantees in Chapter 116D and implementing regulations cannot be justified, and would not be lawful.

project); and H. the process must routinely develop the information required in items A to E and provide the notification and review opportunities in items F and G for each project that would be subject to environmental review.

4. The Environmental Assessment Supplement does not meet the minimum standards required under the alternative review, and conducting a last-minute CEA cannot cure that defect.

In its Brief to the Court of Appeals in the LsR case the state asserted that the alternative review as applied to the Certificate of Need is functionally equivalent to the environmental review process created by Chapter 116D and its implementing EQB regulations. While we support FOH's position that EQB lacked the jurisdiction to exempt the Certificate of Need from traditional review (and for that matter the permitting jurisdiction of MPCA and DNR), in order for the State's position to be true, the alternative review would have to be implemented in full compliance with Chapter 116D, and that has not been the case here.

There cannot be any doubt that Chapter 116D requires that an Environmental Impact Statement must be prepared before any governmental action, and that a Certificate of Need is a government action. Section 116D.04, Subd. 2a, titled: "*When prepared*" states:

Where there is potential for significant environmental effects resulting from ***any major governmental action***, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, *analyzes its significant environmental impacts*, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated..... ***To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.*** (emphasis added).

Governmental action is not limited to a "project." "Governmental action" means activities, *including projects* wholly or partially conducted, permitted, assisted, financed, regulated or approved by units of government including the federal government." Minn. Stat. §116D.04 subd. 1a(2). The statute requires that "The responsible governmental unit shall, to the

extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting.

Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. Minn. Stat § 116D.04 subd. 2a.

The State's position in the Court of Appeals review of the LsR proceedings was that the above quoted provision is complied with by the alternative review in the Routing Rule, because the Environmental Assessment Supplement filed simultaneously with the routing and CON applications meets that requirement by "analyzing its significant environmental impacts." But what NDPC filed with its CON and Routing applications simply does not meet anything approaching the description of the environmental review that must be filed with the application.

The EQB's SONAR⁵⁰ dated September 1988 makes it clear that the alternative review must:

Comply with "the direction provided by Minn. stat., section 116D.03, subd. 1, which states that "the legislature authorizes and directs that, to the fullest extent practicable the policies, regulations and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 1160.06", which is the State Environmental Policy Act. Statement of Need and Reasonableness (SONAR), EQB Rule Part 4415.

The Sonar continues:

"The environmental review criteria found in the Routing Rule, (Criteria F through J) are taken from the content requirements for environmental impact statements found in the rules of the environmental review program (4410). Inclusion of these criteria, when taken with portions of the application contents part of these

⁵⁰ In the Matter of the Proposed Permanent Rules Relating to Pipeline Routing, Minnesota Environmental Quality Board, Statement of Need and Reasonableness, pp 1-2, September 30, 1988.

rules, provides for a level of environmental review consistent with the conditions qualifying for alternative review under the board's environmental review program. This obviates the need for a separate EIS for pipeline routing applications. ***It will be the applicant's responsibility to provide a discussion of these criteria in its application, pursuant to part 4415.0145 (application procedures).***

The routing rule attempts to implement this concept of in several locations. Now renumbered Rule 7852.0200 Subd. 3 emphasizes the function of the routing rule to assess environmental ***impacts***⁵¹, not a general description of the environment. If, for example, a wastewater treatment plant serves a lake, it's not enough to say, merely, this project sends effluent into a lake. An assessment of environmental impacts must explain what impacts the effluent will cause in the lake⁵². In this regard, the testimony of NDPC's environmental team leader completely misunderstands what an environmental impact statement is. She incorrectly believes that the alternative environmental review simply requires a listing of resources, but that is completely false. Rule 7852.0800, regarding application procedure states that

“A person submitting an application for a pipeline routing permit must comply with the application procedures of part 7852.2000

⁵¹ Minnesota Statutes, section 216G.02, recognizes that pipeline location and restoration of the affected area after construction is important to citizens and their welfare and that the presence or location of a pipeline may have a significant impact on humans and the environment. To properly assess and determine the location of a pipeline, it is necessary to understand the impact that a proposed pipeline project will have on the environment. Pipeline route designation procedures, proper pipeline right-of-way preparation, construction practices, and restoration of the affected area will lessen or mitigate the impacts of the proposed pipeline project on humans and the environment. The purpose of this chapter is to aid in the selection of a pipeline route and to aid in the understanding of its impacts and how those impacts may be reduced or mitigated through the preparation and review of information contained in pipeline routing permit applications and environmental review documents.

⁵² See for example, Dead Lake Association, Inc., v MPCA, A04-483 (Minn. App. 2005) (environmental review which failed to describe chemical interactions in a shallow lake was inadequate and MPCA acceptance of the review was arbitrary and capricious.

and submit an application that contains the information required in parts 7852.2100 to 7852.3100.”

If NDPC is correct in asserting that the alternative review governs the CON as well as Routing, then the waiver can only be valid if the EIR or EAS submitted with the applications simultaneously contains an analysis that is equivalent to an Environmental Impact Statement. A mere listing of nearby resources does not meet that standard, and the assumption upon which the EQB waiver was granted was that an EIS equivalent document will be submitted with the application, not generated on the fly during the proceedings. There is no waiver extended a proceeding which would create an EIS equivalent document a month before the evidentiary hearing, and in any event, we have no such EIS equivalent even attempted, let alone created, in this docket.

The SONAR tells us that it is *the applicant's job* to conduct a comprehensive review of potential alternative routes and to report the results in EIS-substitute in the application pursuant to Rule 4415.0170 Evidence of Consideration of Alternative Routes:

The information required in part 4415.0170 is to be included in an application for a pipeline routing permit for a project which will be reviewed in the full nine month process, but not for the partial exemption process. The exclusion of this rule requirement from the partial exemption process can be cross-referenced to part 4415.0035, subpart 1 and to Minn. Stat., section 116I.015, subp. 3(b) (7). **Route alternatives must be considered before the board can determine that the final route decision causes the least environmental impact. *The criteria to be considered by the board (part 4415.0100) in selecting a route with the least impact must be applied to each route which can reasonable be utilized.*** (Emphasis Added).

Contrary to DOC-EERA's interpretation, nothing limits the applicant to routes that begin and end at the applicant's preferred endpoints. The applicant is obligated to “Fully consider reasonable route alternatives, in the initial application. If it fails to do that, the entire process is

undermined, because the waiver of the procedural protections in the traditional environmental review depends upon an EIS equivalent review at the time of the application.

The SONAR continues:

It is to the applicant's advantage to fully consider reasonable route alternatives and to describe its analysis and conclusions in the application for a preferred route. The route selection process is designed to encourage thorough evaluation of all reasonable route alternatives. ***Reasonable route alternatives which are known to the applicant but not included in the application will surface during the process and possibly require additional costs and time to analyze.*** An applicant's credibility is enhanced if full disclosure is reflected at the time of application.

It was never envisioned that a petroleum refiner could control the environmental review by instructing an employee to limit the review to pipelines that would not increase pipeline costs or increase delivery prices.

Again, the drafters of the environmental alternative review contemplated that the applicant would be submitting a competent EIS with their applications for both CON and Routing permit. Without that compliant EIS document, the alternative review could not satisfy MEPA. Under this paradigm, one of the central functions of the hearings that follow the application is to determine whether the document submitted with the application is fully MEPA compliant. To achieve that objective, the applicant should have consulted with the MPCA, PUC, Indian tribes, local government to identify problems and deal with them comprehensively.

Under this paradigm, the Comparative Environmental Analysis, is not designed to “fix” an inadequate environmental impact statement filed by the applicant. A CEA analyzes the information provided by an adequate environmental review, which is submitted with the routing and CON applications. The CEA here was dropped in our laps on December 23, 2014 without any input into the scoping. It doesn't provide, because it could not provide, given the time

allotted, the kind of scientific impact analysis that Chapter 116 intends. Under the EQB waiver, the CEA is designed to compare those routes, using the environmental information submitted by the applicant with the application⁵³.

The application requirements demand that the applicant submit a complete environmental analysis of the preferred route. Rule 7852.2600.⁵⁴ The document must not merely provide description of the environment of the route as Ms. Ploetz contended. Id. Subpart 3. It must also provide an analysis of the impact of the route. Rule 7852.2700⁵⁵. *The essence of the letters from MPCA and the DNR (as well as Dr. Chapman's testimony) is that the faux environmental review document submitted by Enbridge fails to meet that requirement and asking DOC-EERA to try to fix that problem at in a few months' time is simply not authorized by the EQB.* An adequate document should have been available at the time the CON application was submitted, and the remedy for not preparing that document is to deny the CON because the

⁵³ 7852.1500 ALTERNATIVE ROUTE ANALYSIS A comparative environmental analysis of all of the pipeline routes accepted for consideration at public hearings shall be prepared by the commission staff or by the applicant and reviewed by the commission staff. This comparative environmental analysis must be submitted as prefiled testimony as required by part 1405.1900

⁵⁴ Subpart 1. Preferred route location. The applicant must identify the preferred route for the proposed pipeline and associated facilities, on any of the following documents which must be submitted with the application: A. United States Geological Survey topographical maps to the scale of 1:24,000, if available; B. Minnesota Department of Transportation county highway maps; or C. aerial photos or other appropriate maps of equal or greater detail in items A and B. The maps or photos may be reduced for inclusion in the application. One full-sized set shall be provided to the commission. Subp. 2. Other route locations. All other route alternatives considered by the applicant must be identified on a separate map or aerial photos or set of maps and photos or identified in correspondence or other documents evidencing consideration of the route by the applicant. Subp. 3. Description of environment. The applicant must provide a description of the existing environment along the preferred route

⁵⁵ The applicant must also submit to the commission along with the application an analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures. These impacts include but are not limited to the impacts for which criteria are specified in part 7852.0700 or 7852.1900.

environmental review document is not MEPA compliant. The drafters of the alternative review provisions thus contemplated that the application would likewise include a robust consideration of route alternatives and a comparative environmental review of those alternatives⁵⁶. Rule 7852.3100.

Our position is four square consistent with what the PUC told the Court of Appeals in defending the LSR process. There, the State represented to the Court of Appeals that the Environmental Assessment Supplement submitted by the applicant meets the tests for an alternative Environmental Impact Statement because it is subject to a probing review during the administrative proceedings⁵⁷:

The environmental information filed by Enbridge [is] subject to extensive review, comment and analysis by the public and other interested governmental agencies. As part of this process, the ALJ conduct[s] ...public hearings and an evidentiary hearing, as well as an opportunity to comment on the evidence already in the record.

The purpose of that probing review is to determine whether the alternative Environmental Impact Statement submitted with the applications meets the criteria of the regulations. If an EAS can be passed through the PUC simply because in pipelines “anything goes,” that would make a

⁵⁶ 7852.3100 EVIDENCE OF CONSIDERATION OF ALTERNATIVE ROUTES.

If the applicant is applying for a pipeline routing permit under parts 7852.0800 to 7852.1900, the applicant shall provide a summary discussion of the environmental impact of pipeline construction along the alternative routes consistent with the requirements of parts 7852.2600 to 7852.2700 and the rationale for rejection of the routing alternatives.

⁵⁷ The document submitted by the applicant is by custom referred to as an Environmental Assessment Supplement. If that document is deemed sufficient, and if it is subjected to appropriate review in the routing procedure, the State contends, “projects reviewed under that alternative review procedure shall be exempt from environmental review under parts 4410.1100 to 4410.1700, and 4410.2100 to 4410.3000. The mechanism to assure compliance, according to the State, is described in the State’s Brief. The Sonar notes that “the EQB retains its authority under part 4410.2800 to determine the adequacy of the environmental documents that substitute for the EIS in the approved process.”

mockery of the alternative review. NDPC chose to ignore the warning signals that were coming from the major regulatory agencies of Minnesota. It decided to roll the dice, believing that regulators would pass anything, even an EIS authored by a person with a BS in environmental studies that merely counts the number of lakes, forests, and other resources despite repeated warnings that more is required.

In the LSr case, MCEA (which had not intervened as a party to the trial) argued that it was dangerous to allow a pipeline company to take responsibility for authoring the alternative Environmental Impact Statement, and they were right. They warned that environmental reviews are a governmental function, and that a pipeline company might author an EAS that failed appropriately to actually analyze the environmental impacts. Now here, we don't even have a pipeline carrier acting alone: we have a petroleum refinery in a business partnership which creates an economic motivation to drive down costs to the specific partner-refinery, thus creating a potential competitive advantage.

The PUC's brief in the LSr case responded to MCEA's concerns by representing to the Court of Appeals that the hearing process because the contested case hearing and the PUC Commissioners would not approve a project with an inadequate Environmental Assessment Supplement. If the PUC departs from that representation and approves the environmental inventory presented by NDPC here, it will amount to a bait and switch: when the alternative review is being defended, the Court is told that parties can successfully challenge an inadequate EAS/EIS, but when a non-compliant EAS is submitted, the parties would be told that "anything goes."

In the LSR docket, 7-360, the Certificate of Need and Routing Permit proceeded simultaneously. Enbridge filed an Environmental Assessment Supplement on April of 2007, a

Comparative Environmental Analysis for the Route Alternatives filed on October 10, 2007 and a contested case hearing was held on January 22, 2008. According to the State's brief in the LsR docket, the EAS was utilized as the base environmental document for both consolidated dockets and the ALJ's recommended findings issued on March 4, 2008⁵⁸. The key point that we want to make here is that the rationale for allowing the alternative environmental review to substitute for the EIS process is that the environmental impact statement substitute is supplied with the application when filed in the CON and Routing document. When the environmental review document submitted with the application is inadequate, the entire rationale for the alternative review falls apart. That explains why the CON rule can contain environmental criteria: application of the environmental criteria depends upon a Chapter 116D compliant document: the alternative review contemplates that the CON and routing process will be accelerated, but the tradeoff is that the applicant must submit a compliant EIS with the application. Without that compliant document, the entire process falls apart. The compliance determination is an essential part of the review process, which depends upon public comment, public testimony and evidence submitted to the ALJ.

⁵⁸ In the LsR docket, there was no intervenor participating in the evidentiary hearing who challenged the substance of the EAS with evidence. We have not reviewed the content of the EAS supplied in that docket and certainly don't suggest that it was, or was not, EIS compliant. The Court of Appeals reviews the record based upon the issues preserved by the parties in the proceedings, and reviews those issues affording deference to the decision of the PUC. The issue here is not what the PUC can get away with on review, based on the reluctance of a reviewing court to substitute its judgment. The issue here, rather, is what that judgment should be in the first instance.

VI. NDPC Selected Pipeline Routes for Analysis in the Environmental Assessment Supplement by Improperly Selecting Only the Shortest Pipeline Length

In this section, we show that Enbridge and its petroleum refinery partner, Marathon decided to rule out system and route alternatives based upon the false premise that the market could not withstand even small price increases in petroleum delivery cost. We argue that this premise was infected by the fact that one of the NDPC partners is not a petroleum carrier, but rather the Midwest's largest refinery of petroleum products, and that the Environmental Assessment Supplement was thus directed away from system and route alternatives by business motivations instead of the public considerations that are required by Chapter 116D and by NDPC's use of eminent domain to acquire pipeline easements. In summary, we contend:

1. The EAS reported alternatives constrained by Marathon-Enbridge's mutual business commitment to keep prices low and eliminate consideration of alternatives which might even modestly increase Marathon's delivery price.
2. That the designers have operated based upon a grossly erroneous calculations of cost which vastly inflates the alleged cost of additional mileage
3. That the designers of this project were significantly influenced by the business interests of a particular non-carrier owner, Marathon, which understandably wanted to maximize its competitive advantage over competing refineries and retail competitors. A significant part of this case is based upon Marathon-NDPC partners asserting that the routing decision should be driven by their own internal and secret business arrangements designed to maximize this competitive advantage, as opposed to the economics of the petroleum market at large.
4. That the designers of the pipeline predicated the route location upon the position that Marathon and the partner shippers are not willing to pay even 38 cents a barrel extra for a superior location. As we show, the \$0.38 calculation is flagrantly wrong⁵⁹. Nonetheless, the market data provided by the testimony shows that there is plenty of demand for pipeline services at prices far about the additional 38 cents per barrel that Marathon-NDPC used as a ceiling on additional cost.

⁵⁹ See Glanzer cross examination beginning at 32.

The use of individual private shipper contracts to set the cost parameters for a common carrier's route choice would represent an unconstitutional use of the eminent domain power to satisfy private economic advantage. It would be inconsistent with the very concept of common carrier in Minnesota and elsewhere, that a shipper could turn itself into a carrier and then contend that regulation of that common carrier/shipper, must be driven by the private secret contracts between the carrier wearing its carrier hat and the carrier wearing its shipper that. It would also contradict the provisions of section 116D.04 which prohibit the environmental review from selection comparison alternatives based solely upon economic considerations.

A. Market data shows that there is plenty of demand to support the additional costs required by a longer pipeline and hence the Environmental Supplement Assessment improperly eliminated longer pipeline alternatives

The evidence overwhelmingly negates Marathon's and NDPC's assumption that longer pipelines could be excluded from the Environmental Assessment Supplement because the market would not support even small price increases. In NDPC's application contains the following admission contradicting the assumptions that drove the environmental assessment supplement:

Table 8 illustrates, if a Bakken crude oil shipper is seeking to access markets to the east, either in the Midwest or Mid-Continent, the Sandpiper route is unequivocally the lowest cost route. At Patoka, the Sandpiper route offers a total transportation cost that is \$2.62 per barrel less than the alternative, and the Sandpiper advantage to Chicago is \$4.26 per barrel. 20148-102134-03 Earnest CN Direct Testimony, Schedule 2, Page 38.

The claim that an extra 70 miles would sink the pipeline economically is completely rebutted by the recognition that Sandpiper would have a significant price advantage over the competition. Petroleum is carried 1000 miles on the Alberta Clipper from Hardesty to Superior. Southern lights carries petroleum products from 1588 miles from Chicago to Edmonton.

Enbridge's Mainline, also known as the Lakehead system is 1900 miles long. The idea that 70 miles would be significant in this context is absurd.

NDPC's decision to eliminate alternatives from the comparison in the Environmental Assessment Supplement is thus inexplicable, unless it derives from a decision to reject any alternatives that might cost Marathon the refinery operation more. Applicant's shipper partner Marathon evidently prevailed by removing from considerations any route even 70 miles longer. Its claim that the extra 70 miles would cost shippers an extra \$26 million would result in an additional cost of \$.38 per barrel (Palmer Direct) is economically baseless as is its claim that the extra 38 cents per barrel would drive way shippers.

There are numerous flaws in the Palmer calculation. It wrongly pretends that the extra 70 miles of petroleum described as "filler" as if it were sitting stagnant in the pipeline. In fact, once the pipeline is operational, that 70 miles of petroleum moves to the other end of the pipeline where it is refined by Marathon or others. Petroleum is worth substantially more, as much as \$15 per barrel more, at the end of the pipeline when it is delivered to a Marathon refinery than it was at the wellhead in Bakken. By treating the "filler" as if it is immobile, Marathon ignores the fact that the petroleum is actually moving from one end of the pipeline to the other, and that petroleum is made more valuable by moving it from wellhead to refinery head. At a \$15 per barrel price-spread between well-head and refinery, the 348,000 barrels of oil that Marathon says is a burden actually gains five plus million dollars in value by making the trip from Bakken to the Marathon refinery. Perhaps Marathon or its shippers have accepted the filler fiction for purposes of their internal accounting: but the reality is that a pipeline adds value to all of the petroleum, including the fictional 70 miles which NDPC and Marathon treat as immobile.

But even if one accepts Marathon's erroneous hypothesis that it must invest \$26 million into the pipeline as a one-time filler expense without compensating reward, still, Marathon's contention that this translates into a 38 cent per barrel cost to shippers is flagrantly incorrect. Mr. Palmer assumed a price of \$75/barrel for purpose of his argument. Assuming that Sandpiper carries 225,000 barrels per day, let us deduct 15 days a year for maintenance, obviously a conservative assumption. In that case, Sandpiper would deliver 2.4 billion barrels of petroleum in 30 years of operation.

If one spreads Mr. Palmer's one-time cost for 348,000 barrels over 30 years, to apportion the cost of the so-called filler to the pipeline operations, one needs to divide 348,000 barrels, the filler, by 2.4 billion barrels, the petroleum transported by the filler. At \$75 per barrel, assumed by Mr. Palmer, that translates to about a penny of cost added on to each barrel carried not the 38 cents projected by Marathon. By capping the universe of acceptable pipelines in this way, the Environmental Assessment Supplement was predicated upon a false assumption – that longer pipelines were economically infeasible.

But even the penny per barrel calculation still overstates the apportioned cost, *because at the end of the thirty years of operation, Marathon still has the 348,000 left in the pipeline line,* but now that filler petroleum could be sold at 2050 market prices. If the price of petroleum rises from its current \$45 per barrel at the rate of inflation, the pipeline company will have recovered every last dollar of expenditure with interest, and potentially it could make a handsome profit on the filler.

This use of a refinery's internal accounting to cap the cost of pipeline construction is one of the grave dangers of granting the applicant pipeline company control over the drafting of the environmental impact statement – here the environmental assessment supplement. That danger

is compounded when the carrier-applicant has a conflicting fiduciary duty to serve a petroleum refiner which is the dominant refiner in the region. It leads to the inference that NDPC joint venture Marathon has a business motive to drive down its own petroleum delivery costs. We wouldn't let a refinery control the design of rail cars on the theory that the refinery doesn't want the cost of rail shipment to rise.

Marathon is not a common carrier; it is the Midwest's largest and dominant refinery. It has an interest in controlling that market which is significantly different from that of a common carrier. If it is an owner of Sandpiper, reducing the delivery price of petroleum gives it a competitive advantage over other refineries. Yet, the State of Minnesota is being asked to grant a Marathon owned joint venture eminent domain powers, and we are allowing a Marathon owned joint venture to decide which routes should be considered in the Environmental Assessment Supplement. This potential distortion of the public interest is one of the reasons is why it is unacceptable to grant the power of eminent domain to a petroleum refinery operation-- the Midwest's largest petroleum refinery operation-- and then allow that refinery to select comparison routes based upon the length of the pipeline. Doing so, and then allowing the refiner to have a commanding position in the design of the environmental impact statement substitute is fraught with danger and significant public policy and constitutional implications.

B. Applicant's Elimination of Routes Based on the Erroneous Premise that Even Small Price or Cost Increases is Contrary to the Evidence

In the last section, we demonstrated that NDPC/Marathon's selection of routes for study in the Environmental Assessment Supplement was improperly limited by incorrect calculation of the cost associated with a longer route. But route selection was also improperly limited by an improper assumption that Sandpiper could not afford even a small price increase to pay for a

longer more environmentally sound route. NDPC repeatedly argued that the law of supply and demand would drive shippers away because price increases necessarily reduce demand.

Contrary to Applicants' assertion, the general law of supply and demand taken from microeconomics-201 simply does not support the application of that principle to the circumstances here. The basic principle of supply and demand to which applicant's counsel referred in her cross examination of DOC's Heinen assumes complete free competition, a dynamic unrestrained supply and demand. But current market conditions are nothing like that assumption. In fact, there has been a huge explosion of demand for rail service, even though the price of rail is about \$5 per barrel higher than the current market price for pipeline service.

The market is telling us that there is a growing demand for transmission services at prices far above the price proposed by NDPC for its line. Thus the actual demand curve for petroleum transmission is clearing right now at \$5 per barrel greater than the pipeline transmission cost.

If NDPC's new pipeline were to increase the proposed transmission price by \$2 or more to accommodate environmentally preferable locations, shippers would still save money in comparison to rail. The claim that pipeline service demand in this market is ultra-sensitive to increase in price per barrel is preposterous⁶⁰.

We don't criticize Marathon the shipper for trying to convince the State of Minnesota to keep Marathon's delivery prices down, because that is what a corporation driven by profits

⁶⁰ We supported FOH's motion to review the trade-secret protected TSA's, but as we said at the time, our view is that the TSA's are largely irrelevant to the issues that are faced here. The TSA's are private agreements, arrangements among potential customers who are looking for an opportunity to take advantage of what the applicant acknowledges is likely the lowest price alternative in the marketplace at a time when the market is telling us that the demand for even the highest price alternative transportation is exploding beyond all bounds.

would necessarily attempt to do, but it is unacceptable to for the State of Minnesota to allow the author of an Environmental Assessment Supplement to put delivery price above everything else, including the environment. As stated above, building the lowest possible cost pipeline, under ownership by Marathon, will strengthen Marathon's competitive lock on the Midwest market, by establishing it as part-owner of the cheapest possible transmission alternative. But the evidence overwhelmingly shows that there is no economic justification for doing that.

Marathon's position that the partnership cannot withstand even a small increase in cost to accommodate environmental objectives infects the integrity of the environmental review. That environmental review was conducted on behalf of a partnership which had wrongly determined that lengthening the pipeline route was unacceptable, because it increased the price per barrel beyond what Marathon was willing to support. This is why both federal and state courts look with great suspicion on an environmental impact statement which is authored by the project proposer.

VII. A Certificate of Need Must be Denied, because No Chapter 116D Environmental Impact Statement Has Been Completed, and because the Criteria of the CON Rule Have Not Been Met

CCLS has tried to stay true to its articulated Mission to press for a full environmental review. Whether one concludes that the alternative environmental review applies, or whether one agrees that a Certificate of Need requires a traditional Environmental Impact Statement, the environmental review conducted here does not provide a sufficient basis to issue a CON and the CON must therefore be denied.

The evidence shows that there are more reasonable and prudent alternatives. All agency witnesses expressed a preference for one or more of the other alternatives. Even constrained by an incomplete environmental review, MPCA and DNR were able to show that the other

alternative routes reduced environmental impacts. All of the alternative routes meet the requirement that they deliver petroleum to NDPC's customers in Patoka, Chicago and other Midwestern refineries. Regrettably, NDPC has placed the economic review in a straightjacket by eliminating all alternative routes because they are a bit longer than the preferred route. Our proposed findings of fact are due with our next submission, but they will step by step show NDPC has not met its burden to prove that all CON criteria have been met.

At this point, we want to emphasize by way of conclusion, that attempting to analyze these factors is premature, because the CON factors must be analyzed with a complete Chapter 116D compliant environmental review. Requiring a quality compliant environmental review will not prejudice the applicant. It has withdrawn its USACE Section 404 application, and once that application is filed, the USACE will launch a NEPA review. Until a section 404 permit is granted, the project cannot progress in any event. Requiring an adequate environmental review will allow the USACE, DOC, MPCA and DNR to complete this process in the way that the law intends: by marshalling agency resources to supervise an independent options review that is driven by the public interest rather than Marathon's business interests.

It is the applicant's burden to demonstrate that there is not a more prudent and reasonable way than the proposed project to meet reasonable objectives, in this case, to deliver petroleum to Midwestern Refineries. This is The Commission's own description of the Certificate of Need process contains the following explanation of how a Certificate of Need process works:

For larger energy projects, an applicant must receive a Certificate of Need (CON) in conjunction with a routing or siting permit. Through the CON proceedings the applicant must demonstrate using a number of factors prescribed in the rules that the proposed facility is in the best interest of the state's citizens. The applicant must also demonstrate there is not a more

prudent and reasonable way than the proposed project to provide the stated goals.

This is an accurate statement of the law in Minnesota regarding projects that have the potential for material impact upon the environment.

During a colloquy with the Commissioners the topic of the burden of proof was raised, and we told the Commission that this issue must be addressed more thoughtfully than a short oral argument allows. Our answer is in tiers, but at each tier, we contend that the applicant has failed in all respects, however one allocates the burden, to establish the right to a Certificate of Need.

- First, it is quite clear that under the CON Statute, the applicant, not the public, nor interveners bears the burden of proof to demonstrate that the criteria for a certificate of need have been met. See Minn. Stat. 216B.243, subd. 2
- Second, a decision on any permit or other governmental authority cannot be made, unless it is first show that a valid environmental impact statement has been submitted, subjected to scrutiny, and accepted by the responsible governmental authority. That showing has not been made, indeed, there is no substantial evidence in the record that an adequate environmental impact statement or its EQB authorized substitute, has been submitted.

This principle derives from our Environmental Policy Act—which is modelled after the National Environmental Policy Act (NEPA). MEPA is designed (a) to prevent environmental damage⁶¹ and to ensure that agency decisionmakers take environmental factors into account⁶².

In the Minnesota Environmental Rights Act, Section 116B.01 the legislature has declared:

⁶¹ The Senate Report explains that NEPA is a declaration “that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth....The basic principle of the policy is that we must strive in all that we do, to achieve a standard of excellence in man’s relationships to his physical surroundings. S Rep No 296, 91st Cong p 102, 115 Cong. Rec. 40416 (1969).

⁶² “By focusing the agency’s attention on the environmental consequences of a proposed project, [the environmental policy act] ensures that important effects will not be overlooked or

The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction. Minn. Stat. Ann. § 116B.01 (West).

Although Minnesota’s Environmental Policy Act (MEPA) is modelled after the National policy act NEPA. 25 Minn. Prac., Real Estate Law § 9:3 (2013 ed.), our act differs in that it impose substantive protections for the environment by barring governmental approvals of projects that are not shown to be the “least impact solution.” Both environmental Policy Acts are “action forcing” statutes⁶³—in other words, they are designed to govern and drive the ultimate decision to grant or deny requested authority. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989). But action cannot be forced, when the environmental review is inadequate, as it is here, and that requirement, of an adequate environmental review supercedes other specific laws. As Minnesota’s Supreme Court has stated:

Throughout the statutes are policy statements recognizing that often there are conflicts between preserving the environment and promoting the economy. Minn.St. 116D.03, subd. 2(c), states that

underestimated only to be discovered after resources have been committed or the die otherwise cast. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

⁶³ The term “action forcing” was introduced during the Senate’s consideration of NEPA, see Kleppe v. Sierra Club, 427 U.S. 390, 409, n. 18, 96 S.Ct. 2718, 2730 n. 18, 49 L.Ed.2d 576 (1976), and refers to the notion that preparation of an EIS ensures that the environmental goals set out in NEPA are “infused into the ongoing programs and actions of the Federal Government,” 115 Cong.Rec. 40416 (1969) (remarks of Sen. Jackson).

all departments and agencies shall“(i)identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations.” In that vein, Minn.St. 116D.04, subd. 6, prohibits the issuance of a permit for natural resources management and development if it is likely to have an adverse impact on the environment “so long as there is a feasible and prudent alternative.” The section concludes by stating, “Economic considerations alone shall not justify such conduct.” This policy is echoed elsewhere in the statutes, Minn.St. 116B.04 and 116B.09, subd. 2. Reserve Min. Co. v. Herbst, 256 N.W.2d 808, 827-28 (Minn. 1977)

Under both state and federal laws, if there is potential for significant environmental impacts, the Responsible Governmental Unit (RGU) prepares an environmental review document that analyzes the impacts of the proposed project and describe alternatives that may reduce, mitigate or avoid those impacts. There is no precedent in the entire sweep of environmental law, that an agency or party that believes that a project imposes an unacceptable or avoidable impact, must itself submit an application for project approval for the alternative project. Nothing in Minnesota’s Environmental Policy Act nor in the Minnesota Environmental Rights Act justifies the conclusion that those who contend that there exists a feasible lesser impact solution must carry that heavy burden—and it is a complete misreading of the routing rule to suggest that it does so. On the contrary, MERA and MEPA taken together establish that the proponent of a project has a heavy burden to reject a lesser impact solution. Once project opponents have demonstrated that a project inflicts major environmental damage, the burden shifts to the project proponent to demonstrate that there exists no feasible lesser impact alternative. State by Archabal v. Cnty. of Hennepin, 495 N.W.2d 416, 423 (Minn. 1993) (We believe that these cases, taken together, establish an extremely high standard for defendants to meet in establishing an affirmative defense). See People for Environmental Enlightenment &

Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, 266 N.W.2d 858 (Minn. 1978). (Destruction of seven or eight homes was considered insufficient to overcome the law's preference against proliferation of high voltage transmission lines and the destruction of natural resources.); State, by Powderly v. Erickson, 285 N.W.2d 84, 89 (Minn. 1979).

When an Applicant submits a faulty environmental impact statement, the remedy is to demand a revised environmental impact statement. It is not permissible to force other parties to present evidence to fix the defects in the environmental impact statement (or its alternative substitute). If a developer proposes to put an industrial plant with effluent that has mercury content next to Lake Superior, but the developer fails to explore the impact of the mercury on Lake Superior, the developer can't defend the permit by saying: "nobody proved that there is a mercury damage to Lake Superior, so we win." The Dead Lake MPCA permitting case cited above, is an excellent example of that principle. An invalid environmental review stops permitting in its tracks, because nobody has the burden of proof on any environmental issue, until a complete examination of the environmental impacts has been submitted and accepted.

Dated: February 27, 2015

Respectfully Submitted,

RINKE NOONAN

/s/ Gerald W. Von Korff

Gerald W. Von Korff, #113232

P.O. Box 1497

St. Cloud, MN 56302-1497

320-251-6700

Email: jvonkorff@rinkenoonan.com

ATTORNEYS FOR CARLTON COUNTY
LAND STEWARDS

Please provide your contact information. This information and your comments will be publicly available.

Name: KEVIN CHAPPELAIN Phone: 612-508-1284
Street Address: 601 2ND AVE
City: NEWPORT State: MN ZIP: 55055
Email: CHAPPELAIN61@MSN.COM

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the *Route Permit*)
- Are there any alternatives to the project that should be considered? (Related to the *Certificate of Need*)

PIPELINES ARE A MUCH BETTER METHOD OF
MOVING PETROLEUM PRODUCTS THAN RAIL. VERY
IMPORTANT TO RE-BUILD INFRASTRUCTURE.

(K)

Department of Commerce

[energy](#)

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Public Comments

Note: A bug has been identified on this page which effects some browsers. If you do not see a "submit" button at the bottom of the page, please do not fill out the form. Instead, please email your comment to the environmental review manager for your project.

Thank you for taking the time to supply public comments for this project. Filling out this form and pressing submit will send your comments to the environmental review manager and register them in the project's public record. Please refrain from using profanity in your comments, as these words may cause your submission to be flagged as spam and not submitted.

Please note, this comment form is solely for open comment periods where comments are directed to the Minnesota Department of Commerce. Some comments during the permitting process may need to be directed to other agencies, e.g., the Office of Administrative Hearings. Please check the applicable notice for the appropriate place to send comments. See [Notices](#), [Press Releases](#), and [Meetings](#).

Project

The following projects are open for comment. What project would you like to comment on?

Line 3 Pipeline Replacement (Scoping) ▼

Contact Information

First name *

Sonja

Last name *

Clapp

Address

13045 Breezy Pines Dr.

City *

Park Rapids

State

MN

Zip code

56470

County

RECEIVED

SEP 25 2015

MAILROOM

Hubbard County ▼

Email

sonjaclapp@icloud.com

Phone

218-779-4496

Comments

Impacts

Please share your comments on the potential issues and impacts that should be considered in the environmental document to be prepared for this project. If you are commenting on a draft environmental document that has already been issued (e.g., draft EIS, draft site permit), what issues and impacts need to be further addressed?

Docket Numbers: PL-9/CN-14-916-Certificate of Need
PL-9/PPL-15-137-Route Permit

NDPC's preferred route puts the Mississippi Headwaters at risk along with the rivers, lakes, streams, wetlands and other natural resources in the area. There is a need to investigate an alternate less invasive route. The burden of proof is on the applicant of the CON to show reasonable and prudent alternatives.

An alternative route, namely SA-03, has been proposed. The Commission refused to consider SA-03 as a potential alternative due to higher construction costs for the oil companies. However, we must be mindful that the Commission needs to determine whether the private interests of the oil companies outweigh the public interests of the State of Minnesota , its citizens and its

Mitigation

Please share your comments on how the issues and impacts you've listed might be mitigated. If this is a project with a route, are there alternate routes or route segments that should be considered that would mitigate impacts? If so, please describe them. If this is a project with a site, are there alternate sites that should be considered that would mitigate impacts? If so, please describe them.

See above

Please provide your contact information. This information and your comments will be publicly available.

Name: Paul Collins Phone: (651) 774-9588

Street Address: 2434 7th Ave E.

City: N. St. Paul State: MN ZIP: 55109

Email: _____

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the *Route Permit*)
- Are there any alternatives to the project that should be considered? (Related to the *Certificate of Need*)

I support replacing this pipeline to protect the environment & create jobs & support the economy

From: [michael dagen](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Docket PL-9/PPL-15-137 and PL/CN-14-916
Date: Friday, September 25, 2015 8:51:36 AM

To Whom it May Concern,

I am writing to comment on the "Certificate of Need" and "Route Permit" for the Enbridge line 3 oil pipeline replacement project. The validity of this comment and review process is more than questionable after the unanimous vote of support by the Minnesota Public Utility Commission for Enbridge's Sandpiper oil pipeline project earlier this year. I choose to share my thoughts and perspective on this attempt to create a oil pipeline corridor through the region in which I live, in hopes of inspiring others to comment as well. Not all Minnesotans are willing to sell out the long term livability of our home for short term profits for a foreign corporation. After listening to debates, attending meetings and following this important matter for over a year, here are some aspects of these oil pipeline projects that I would like to point out:

- 1. Water is more valuable than oil.** At a time when other parts of this country and world are literally starving for clean water resources, here in Minnesota we live amongst over 10,000 fresh water lakes and wetlands. Many of the lakes located along the company's proposed route for the pipeline corridor are some of the cleanest, least polluted lakes in the state. If one takes a look at a ground water map of Minnesota which shows the sensitivity of areas to contamination, it appears as if Enbridge intentionally chose a route for their pipelines through the most sensitive areas in the state.
- 2. Creating more pipelines only increases oil companies' capacity for profit, which does not justify the risk posed to Minnesota's clean water resources.** The idea of creating more oil pipelines to alleviate congested railroad lines is a misconception as oil companies use these two transportation methods: rail and pipeline; to access different markets for their product. Most of the oil shipped by rail ends up on the coasts of our country, while much of the oil that would pass through this pipeline corridor would end up in Superior, WI or Chicago. Oil companies are going to ship their product to the places where they can make the most profit, so adding more pipelines will not necessarily eliminate the congested rail line problem. Since the recent decline of oil prices, if you pay attention around the state you will notice miles of parked oil train cars. It is time to slow down, take a step back and see how we can make the process of transporting oil safer for everyone, including the environment. What appears clear to me is that the explosive "trade secret" chemicals used in the fracking process should be eliminated completely or extracted before transport. Along with removing the explosive chemicals before transport, the train cars used to transport oil should have double hulls to eliminate the chance of leakage during a derailment. Any pipeline built in Minnesota should use a similar double hulled technology. Rather than over produce oil which saturates the market, we should encourage the scaling back of dirty "fossil" resources as the move is made to renewable energy options.
- 3. Why would oil pipelines ever be permitted to run through inaccessible wetland areas that would be nearly impossible to ever clean up?** Enbridge's stated response time to an oil spill is upwards of 60 hours. Can you imagine watching a ruptured pipeline leak oil into a river for 3 days straight? Another argument for the creating the pipeline corridor is the jobs that the project will create. Most of jobs that this project would create would be short term, so why not route the pipelines through southern Minnesota where the soil isn't nearly as susceptible to contamination. The southerly route proposed by the Friends of the Headwaters would keep the

builders of the pipeline employed longer, protect the more sensitive areas of the state from oil spills and create a route for the pipeline that would be more accessible when there is an oil leak.

After the recent ruling by the Minnesota Court of Appeals requiring a full Environmental Impact Statement (EIS) on the Sandpiper pipeline, the Line 3 replacement project should have it's own expanded environmental review to study the effects of transporting corrosive tar sands oil across the state. What a foreign corporation has proposed here is a pipeline corridor running through the heart of Minnesota's lakes and wetlands. It is our job as custodians of the land to protect it for future generations. We must not allow the livability of our Minnesota home to be sacrificed in the name of profits for the oil industry. The oil fracking industry will leave western North Dakota an uninhabitable wasteland and if we don't speak up and pay attention these oil pipelines could do the same to our beautiful Minnesota home.

Respectfully,
Michael Dagen
Hewitt, MN

From: [Jan Dalsin](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Sandpiper Pipeline CN-14-916, PPL-15-137
Date: Wednesday, September 30, 2015 4:34:02 PM

To Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce

Via Email

An eminent-domain-based pipeline project has no legitimate place in the world in which we live: A world severely challenged by threats to ecosystems and environments which we hold dear, not only in Minnesota, but also in areas around us — areas which might be described as concentric circles radiating out from our vantage point, or areas identified by their aquifers, rivers, watersheds, or areas governed by biospheres.

The unanimous verdict of the Minnesota Court of Appeals requiring an Environmental Impact Statement on the Sandpiper is a breath of fresh air, addressing the Catch-22 conundrum endemic in the process by which the question of “routing” was coupled with the question of “need.”

I support the need for the EIS on the Sandpiper project, both as to the question of a new, replacement pipeline, and the question of what to do with the current, aging, pipeline.

Lois Dalsin
1440 Randolph Avenue, #102
St. Paul, MN 55105

From: davidb@uslink.net
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Comments on Line 3
Date: Tuesday, September 29, 2015 11:01:30 AM

Impacts

Please share your comments on the potential issues and impacts that should be considered in the environmental document to be prepared for this project. If you are commenting on a draft environmental document that has already been issued (e.g., draft EIS, draft site permit), what issues and impacts need to be further addressed?

- 1) Is tar-sands oil, which Line 3 expansion would transport, necessary to meet US energy needs?
 - 2) To what degree does tar-sands oil transported via Line 3 contribute to global warming?-- global warming, the #1 problem re: the survival of future generations.
 - 3) To what extent would the expansion of Line 3 continue the unnecessary dependence on fossil fuels (oil) and inhibit the implementation of renewable energy technology?
 - 4) To what extent does the proposed route by Enbridge endanger water resources which support livelihood--tourism, food extraction(ricing and fishing) and healthy, unpolluted drinking water.
-

Mitigation

Please share your comments on how the issues and impacts you've listed might be mitigated. If this is a project with a route, are there alternate routes or route segments that should be considered that would mitigate impacts? If so, please describe them. If this is a project with a site, are there alternate sites that should be considered that would mitigate impacts? If so, please describe them.

In view of ongoing and increasing global warming it is the height of insanity to continue to support and expand those activities and practices which contribute to it. We are in the midst of a major energy transformation from 'fossils' to renewable energy and the sooner we make that transformation, the greater the likelihood of survival of future generations. Continued expansion of oil extraction, transport, refining and consumption--especially of bitumen (tar-sands), the most polluting and greatest contributor to global warming--only delays the transformation... to the detriment of our children and their children.

It is also the height of insanity to put at risk pristine water resources which are one of the foundations of life and in increasingly short supply. Enbridge's proposed route is a major threat to water resources.

LINE 3 SHOULD NOT BE REPLACED OR REBUILT BUT RATHER CLOSED DOWN PERMANENTLY.

Please provide your contact information. This information and your comments will be publicly available.

Name: Roy Decker Phone: 651-774-3601

Street Address: 7769 Country Lane

City: Lino Lakes MN 55014 State: MN ZIP: 55014

Email: _____

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the Route Permit)
- Are there any alternatives to the project that should be considered? (Related to the Certificate of Need)

We need this new line to protect the environment

From: [Martha DeLisi](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: PL-9/CN-14-916 Certificate of Need and PL-9/PPL-15-137 Route Permit.
Date: Tuesday, September 29, 2015 9:06:45 PM

Hello Jamie,

I am writing to you to persuade the State of Minnesota to rethink their stance on allowing a pipeline to be routed in and around the Headwaters of the Mississippi. I have lived in Hubbard County for 40 years and have watched the destruction of the soil through extensive fertilizer and herbicide usage. The addition of the Enbridge pipeline in the northern tier of the state will only further the desecration of our beautiful lakes, streams and rivers. We do not want it in our state.

Martha DeLisi
Nevis, MN.

Sent from my iPad

Please provide your contact information. This information and your comments will be publicly available.

Name: Tony DeRose Phone: 612-296-7211

Street Address: 645 6th Street W.

City: Hudson State: WI ZIP: 54016

Email: _____

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the *Route Permit*)
- Are there any alternatives to the project that should be considered? (Related to the *Certificate of Need*)

pipelines are the safest means of transporting crude oil and gas. Pipelines also create jobs for many.

Please provide your contact information. This information and your comments will be publicly available.

Name: Christi Dick Phone: 763-645-9143

Street Address: 500 3rd St

City: Newport State: MN ZIP: 55055

Email: Christilou4114@Comcast.net

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the Route Permit)
- Are there any alternatives to the project that should be considered? (Related to the Certificate of Need)

I am for the replacement of the pipeline, it is needed due to the condition of the pipe - for safety reasons and this will also create needed revenue / jobs in the area

Christi Dick

Sept. 12, 2015

Dear Jamie and Mn. Dept of Commerce,

IT would be a reckless act to allow Enbridge
To place an oil pipeline in The Mississippi Watershed.
This would be a disaster waiting to happen, and
put our Tourism economy in jeopardy.

Enbridge claims they'll use "modern pipe
materials". The very same materials that resulted
in a massive spill in Alberta this summer.

We Minnesotans understand that clean
water is our most important resource.
We must protect our water for generations
to come.

I attended the pipeline public hearing
in McGregor Aug. 25th but didn't have a chance
to speak, so I am sending my comments to
be considered along with so many of my
friends and neighbors who share my feelings.

Jane Dieth Jim Lynskey
41916 248th place
McGregory Mn 55960
218-768-2064

Sincerely,

Jane Dieth
(Jane Dieth)
Jim Lynskey
Jim Lynskey

MAILROOM

SEP 15 2015

RECEIVED

From: [Kate Dougherty](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: PUC Docket numbers PL-9/CN-14-916 Certificate of Need PL9/PPL-15-137 Route Permit
Date: Wednesday, September 30, 2015 6:15:01 PM

Ms Macalister:

As a resident of northern MN and the City of Duluth, and one who spends a great deal of time in our great MN woods, swimming and fishing in our many pristine lakes and rivers, I demand an honest and comprehensive EIS regarding this pipeline.

The Court of Appeals ruled in favor of Friends of Headwaters' contention that an EIS was necessary under MEPA law. Enbridge and the DOC must comply.

Thank you.

Kathleen A Dougherty
2117 Hillcrest Drive
Duluth, MN 55811

To: PUC

Re: Docket Number: PL-9/CN-14-916 (certificate of Need)
and PL-9/PPL-15-137 (Route Permit)

Sent by email to: Jamie.macalister@state.mn.us and by fax: 651-539-0109, and online:
mn.gov/commerce/energyfacilities/#comment

From: Barbara Draper

2212 19th Ave NE

Minneapolis, MN 55418

barbaradraper@gmail.com

248-941-3406

Regarding Enbridge's stated need for a new line 3, following are my comments on the certificate of need and route permit, most specifically as they pertain to the following criteria delineated in Minnesota Administrative Rules 7853.0130:

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated, considering other things, criteria 2, 3, 4, as follows:

2. The cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by alternatives
3. The effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives
4. The expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering among other things, criteria 2 and 4:

2. The effect of the proposed facility upon the natural and socioeconomic environments compared to the effect of not building the facility.
4. Socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality

Comments:

Scientists agree: the cost of burning of oil is the ruin of Earth. The pipeline the PUC is considering is not just a tube of metal and the oil inside is not just a passive natural resource any more than a rolled up piece of paper stuffed with tobacco is passive. They both deliver natural resources that will be burned by the end user with serious consequences. For decades tobacco was subsidized and its danger minimized as the tobacco industry proselytized doubt, sometimes paying doctors to deny the health consequences. Finally, sense prevailed, not due to regulatory wisdom but due to lawsuits. Now cigarettes are heavily taxed, advertising prohibited, and they are hidden behind shop counters.

Oil and the pipelines that seemingly, passively mainline it, will end the Earth as we know it. “Game Over,” in the words of James Hansen, NASA scientist. What wisdom will the PUC play in this dangerous game of innocent oil transport?

Following are cost and consequences that must be studied as well as benefits of alternatives:

1. Cost of removing the old pipeline and cleaning up the oil and byproducts that has surely leaked into the ground. This will require assessment of the following:
 - a. Assessment of corrosion of the pipeline.
 - b. Assessment of the soils
 - c. Assessment of the product in the pipelines and deposited on the walls of the pipeline
 - d. Assessment of chemicals in the pipelines
 - e. Assessment of pipeline coatings, historical leaks and spills and possible PCB contamination from lubricants.
2. Cost of leaving the pipeline in place, which is comparable to an abandoned gas station’s old tanks remaining in the ground. Such costs include the cost of leaked oil and byproducts remaining in the soil, the cost of those pollutants leaching into soils, aquifers, rivers, lakes. And then the cost of cleaning those up.
3. A hydrologic study to assess the costs of having created a conduit (the tunneled earth) which will provide a roadway for contaminants to run into area wetlands, and, in other cases, to unnaturally drain water from areas.
4. The cost of training firefighters (\$3million recently requested for additional training for oil-spill clean-up training)
5. The cost of equipment and manpower that the state and local communities must purchase to fight eventual spills or leaks and to monitor for leaks.
6. The cost of the use of eminent domain to run rough-shod over Native American treaty rights.
 - a. This includes the cost of the moral integrity of the people of Minnesota for not upholding their end of a treaty, which grants to Native People use of the land to hunt, immigrant forefathers of the Midwest. If we are to claim to be just people, then we must act that way. And just because we think we need something, is not justification.
 - b. The economic cost to the Ojibwe tribe of loss of ricing beds and of diminished fishing and hunting that will follow oil spills and leaks.
 - c. The social cost to the Ojibwe tribe of the loss of traditional ways of life.
 - d. The social and emotional cost to Ojibwe people of once again being unconsidered, being disregarded.
7. The cost of the use of eminent domain to run rough-shod over family farms for the benefit of for-profit corporations.
8. The cost to tourism when there is the inevitable spill. See the cost to Colorado tourism with the recent spill from an EPA site. See the cost to the Kalamazoo Area of Michigan where the Kalamazoo River was (and is still) profoundly contaminated by a tar sands pipeline leak.
9. The health cost to the people of Minnesota from continuing to breathe contaminated fossil-fuel-laced-air.
10. The specific costs of Tar Sands clean-up, as distinguished from the clean-up of oil in general. Tar Sands are much more hazardous and difficult to clean-up than regular oil. In fact, we don’t have any good clean-up methods. Tar sands oil cannot be given the same clean-up costs as regular oil.

11. The cost of the “infertility crisis” which refers to the decimation of eggs, larvae, fetus and juvenile life-forms as a consequence of oil leaks and spills and hence, a serious reduction on the adult population several years later, decimating future generation of fish, wildlife, pollinating insects and food chain life. (See *This Changes Everything* by Naomi Klein, Simon & Schuster Paperbacks, 2014, p. 430-432.
12. The cost of fracking must be assessed. A pipeline is not an innocent metal tube. And if Minnesota sites one, it is not an innocent handler. The cost to the earth, our earth, of extraction must be weighed. States and Countries have banned fracking due to its horrific consequences. The moral choice to be a transporter of a substance whose extraction has been shown to sicken the earth and water, to cause earthquakes and so on, must be considered. The PUC must consider the cost of extraction because pipelines are facilitators of fracking.
13. The cost of climate change caused by the burning of fossil fuels must be assessed. The content carried by the pipeline and the consequences of its use must be added in. This pipeline will not carry water. It will carry tar sands oil for burning. Scientists agree the burning of fossil fuels is causing climate change, game over for earth.
 - a. The cost of droughts, including the cost of reduced crop yield due to climate change caused by the burning of fossil fuels.
 - b. The cost of flooding due to climate change caused by the burning of fossil fuels (see attachment 1: <http://www.climatehotmap.org/global-warming-locations/grand-forks-nd-usa.html>)
 - i. This would also include such things as the \$2Billion cost of the massive flood control proposed for the Red River, which will have major impacts on Minnesota.
 - c. The cost of more extreme weather, including such things as the hail storm in Minneapolis in May 2015.
 - d. The cost of insurance premiums which are rapidly rising due to extreme weather.
14. One of the criteria in the Administrative Rules 7853.0130 for the granting of a certificate of need is a determination that a more reasonable and prudent alternative to the proposed facility has not been demonstrated. **This determination must be made by an analyst independent of the applicant and the cost of that study must be paid for by the applicant since it is required under the certificate of need process.** Independent determination must be made of
 - a. The need for energy
 - b. The costs and benefits of alternative energy sources, such as renewables.
 - c. **The determination must affirmatively answer that a more reasonable and prudent alternative to the proposed facility has not been demonstrated**

The PUC is appointed as guardian for the people of Minnesota. A for-profit company, Enbridge, has asked you for permission to run a pipeline that carries toxic material, which is extracted using toxic chemicals and destructive means. PUC, be our Guardians. Yes, we need energy. But Minnesota can have that energy with renewables. The focus of the guardian’s duty is not just to entertain one supplier, but to consider alternatives. Take your focus off of Enbridge’s request and consider we, the people, who you are to safeguard. Consider what is the safest source of energy for us, for our children, our grandchildren, for our home, Earth.

Thank you

Attachment 1

<http://www.climatehotmap.org/global-warming-locations/grand-forks-nd-usa.html>

Grand Forks, ND, USA

Top Impact

FRESHWATER (Extreme wet)

Other Impacts

PEOPLE (Costs)

PEOPLE (Health)

*rophic flooding.*¹

Key Facts

Grand Forks, ND, sits across the flood-prone Red River from its twin city of East Grand Forks, MN. As the climate changes, scientists expect Grand Forks to become wetter in the spring, increasing the risk of severe flooding.^{8,10}

- In 1997, the Red River rose to record levels,⁴ killing 11 people,⁵ forcing more than 60,000 people to evacuate,⁶ and causing more than \$5 billion in damage.⁷
- The Red River flooded again in 2009—nearly matching what had been deemed a 100-year flood just 12 years earlier.⁴
- If our carbon emissions continue to rise at today's high rates, spring rainfall in Grand Forks is projected to increase 45 percent or more by the end of this century.^{4,8,12}

Details

Grand Forks—North Dakota's third-largest city and home of the University of North Dakota²—sits at the junction of the Red River and the Red Lake River.³

In 1997, the Red River rose to record levels, devastating Grand Forks and its twin city of East Grand Forks, MN.⁴ The flood killed 11 people⁵ and forced the evacuation of more than 60,000 people from the two cities.⁶ Damage to the region's homes, businesses, and farms topped \$5 billion.⁷

The Red River flooded again in 2001, 2006, and 2009. And the 2009 flood nearly equaled the 1997 flood, which had been considered a once-in-100-years event.⁴

From 1958 to 2008, annual precipitation in eastern and central North Dakota rose by 10-25 percent.⁸ Heavy downpours in the Midwest now occur about twice as often as they did a century ago.⁹

On average in the United States, the amount of rain falling during the heaviest 1 percent of rainstorms has risen nearly 20 percent—almost three times the rate of increase in total precipitation.^{8,10} The Midwest saw an even larger average increase of 31 percent, surpassed only by the Northeast (at 67 percent).⁸ Scientists attribute the rise in heavy precipitation to climate change that has already occurred over the past 50 years.¹¹

What the Future Holds

Because of climate change, scientists expect northern areas of the Great Plains to receive significantly more precipitation than they do today.⁸ That means the climate is likely to shift from very cold and dry to warmer and moister, as moisture-laden air from the south meets colder air from the north at higher latitudes than on average in the past century.⁸

If our carbon emissions continue to rise at today's rates, spring rainfall in Grand Forks is projected to rise 45 percent or more by the end of this century.^{4,8,12} If we make significant efforts to reduce our emissions, spring in Grand Forks is projected to become 10-15 percent wetter.⁸

Flood risk in the region is already high in winter and spring than in other seasons, so these changes are expected to bring more frequent flooding. Risks include damage to homes, businesses, and infrastructure such as roads and bridges; higher costs for insurance and emergency management; and threats to public health, with more lives threatened.¹⁰

So-called 100-year floods are likely to become more frequent.⁸ Because transportation planners use such events to determine infrastructure needs, future plans based on the past are likely to become less reliable. And planners will need to develop models that take into account the effects of climate change.¹³

Paradoxically, flooding and dry days are related. Climate models project not only more-intense rainstorms but also longer periods with little precipitation in between.¹⁴

Changing rain patterns and rising temperatures also threaten crop productivity in the Great Plains. Wet springs are likely to delay planting, for example.⁸ And in hotter weather, plants typically require more water simply to retain the same amount of moisture.

However, soil moisture and water availability in the region are likely to decline faster than precipitation rises—through evaporation from Earth's surface as well as the leaves of plants (a process known as [evapotranspiration](#)). In some areas, even today's levels of water use are projected to exceed future supply unless infrastructure is improved to supply enough water during droughts.⁸

[Credits](#)

Endnotes

1. Photograph: No credit per request of original source. [↑](#)
2. U.S. Census Bureau. 2008. North Dakota QuickLinks. Online at <http://quickfacts.census.gov/qfd/states/380001k.html>. Accessed April 6, 2010. [↑](#)
3. University of North Dakota, 2010. About UND. Online at <http://www.und.edu/aboutund/>. Accessed April 6, 2010. [↑](#)
4. Union of Concerned Scientists. 2009. *Confronting climate change in the U.S. Midwest: Minnesota*. Online at www.ucsusa.org/mwclimate. Accessed April 6, 2010. [↑](#)
5. Lott, N., T. Ross, T. Houston, A. Smith, and K. Shein. 2009. *Billion-dollar U.S. weather disasters, 1980-2008*. Washington, DC: National Climatic Data Center. Online at <http://www.ncdc.noaa.gov/img/reports/billion/billionz-2008.pdf>. [↑](#)
6. National Oceanic and Atmospheric Administration (NOAA). 2010. Northern Plains flooding. Washington, DC. Online at <http://www.ncdc.noaa.gov/oa/reports/dakotaflood/dakotaflood.html>. Accessed April 25, 2010. [↑](#)
7. National Climatic Data Center, NOAA, Asheville, NC. 1997. Storm data (by state). Cited in C.A. Perry. 2005. *Summary of significant floods in the United States and Puerto Rico, 1994 through 1998 water years*. U.S. Geological Survey Scientific Investigations Report 2005-5194. Washington, DC. [↑](#)
8. U.S. Global Change Research Program. 2009. *Global climate change impacts in the United States*, edited by T.R. Karl, J.M. Melillo, and T.C. Peterson. Cambridge University Press. [↑](#)
9. Kunkel, K., K. Andsager, and D. Easterling. 1999. Long-term trends in extreme precipitation events over the conterminous United States and Canada. *Journal of Climate* 12:2515-2527. [↑](#)
10. Kunkel, K.E., P.D. Bromirski, H.E. Brooks, T. Cavazos, A.V. Douglas, D.R. Easterling, K.A. Emanuel, P.Ya. Groisman, G.J. Holland, T.R. Knutson, J.P. Kossin, P.D. Komar, D.H. Levinson,

- and R.L. Smith, 2008: Observed changes in weather and climate extremes. In: *Weather and climate extremes in a changing climate: Regions of focus—North America, Hawaii, Caribbean, and U.S. Pacific Islands*, edited by T.R. Karl, G.A. Meehl, C.D. Miller, S.J. Hassol, A.M. Waple, and W.L. Murray. Synthesis and Assessment Product 3.3. Washington, DC: U.S. Climate Change Science Program, pp. 35-80. ↑
11. Trenberth, K.E., P.D. Jones, P. Ambenje, R. Bojariu, D. Easterling, A. Klein Tank, D. Parker, F. Rahimzadeh, J.A. Renwick, M. Rusticucci, B. Soden, and P. Zhai. 2007. Observations: Surface and atmospheric climate change. In *Climate change 2007: The physical science basis*. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, edited by S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor, and H.L. Miller. Cambridge University Press. ↑
 12. The emissions scenarios referred to here—from the Intergovernmental Panel on Climate Change—are the high-emissions path known as A1FI, and the low-emissions path known as B1. Emissions over the past several years have followed the high-emissions path. ↑
 13. National Research Council. 2008. *Potential impacts of climate change on U.S. transportation*. Special report 290. Washington, DC: Transportation Research Board. Online at <http://onlinepubs.trb.org/onlinepubs/sr/sr290.pdf>. Accessed April 5, 2010. ↑
 14. Gutowski, W.J., G.C. Hegerl, G.J. Holland, T.R. Knutson, L.O. Mearns, R.J. Stouffer, P.J. Webster, M.F. Wehner, and F.W. Zwiers. 2008. Causes of observed changes in extremes and projections of future changes. In: *Weather and climate extremes in a changing climate: Regions of focus—North America, Hawaii, Caribbean, and U.S. Pacific Islands*. Edited by T.R. Karl, G.A. Meehl, C.D. Miller, S.J. Hassol, A.M. Waple, and W.L. Murray. Washington, DC: U.S. Climate Change Science Program. ↑

Rec'd 08-12-15
Thief River Falls
Public Info Meeting

Minnesota Public Utilities Commission,

I would like to request from the PUC written rules and regulations governing pipeline abandonment. I don't believe a certificate of need should be granted when they have not completed a proper restoration over the last two lines that were installed. The Alberta Clipper and the LSr. I have included a few of the numerous pictures that show the destruction of the land where the restoration process has not been completed.

At this time we are waiting for the results for the determination of the Department of Commerce after the field visit that was recently done on August 10, 2015, after a five year lapse since the last time that they stopped by while in the area on another matter; a transmission line.

Enbridge is set to commence on two maintenance digs currently. On August 12, 2015 the subcontractors (I believe the subcontractor name is Casper) showed up to start making things ready to start the maintenance digs. After the field visit on August 10 with Larry Hartman, Jamie Macalister, Greg Olson and Todd Brister I believed that Enbridge would have their subcontractors take some kind of precautions to help mitigate the weed situation and not make it worse. There was nothing in place regarding decontamination of equipment or clothing.

Todd Brister came out to discuss the situation with me. He stated that Enbridge and/or their subcontractors are coming on the land regardless of the weed situation. So I was left with one of two options to try and mitigate the current weed situation. One was to have them mow the weeds and then for them to try get them into somewhat of a pile and then for myself to burn them. The other option that was suggested was to go through the sunflowers bordering the R.O.W. After speaking with some at Enbridge, Mr. Bister said that the later would not be possible as then the old three lines would be involved and that would take considerable time to get all the required measurements and everything staked out. It was then agreed that we would follow the plan of the R.O.W. being mowed as the only alternative to going in and letting the weed seeds disperse haphazardly as they may. They would only agree to mow as far out on the R.O.W. as needed to complete the maintenance dig.

I want it to be noted on record that the restoration is still not complete from the Alberta Clipper Pipeline.

Donovan Dyrdal















JON ERIK KINGSTAD
Attorney at Law

Lake Elmo Bank Building Suite 200
600 Inwood Avenue North
Oakdale, MN 55128

Tel. (651)-731-0892

September 30, 2015

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
Division of Energy Resources-Energy Facilities Permitting
85 7th Place East, Suite 500
St. Paul, MN 55101-2198
E-mail: jamie.macalister@state.mn.us

**Re: Supplemental Comments of Donovan and Anna M. Dyrdal
and Dyr-Valley Enterprises, Ltd.
Public Comment: In the Matter of the Applications of Enbridge Energy,
Limited Partnership for a Certificate of Need and a Pipeline Routing Permit for
the Line 3 Pipeline Replacement Project in Minnesota from the North Dakota
Border to the Wisconsin Border Public Utilities Commission (PUC) Docket
Numbers:
Routing Permit PL-9/CN-14-916
Certificate of Need PL-9PPL-15-137**

Dear Ms. MacAlister:

These comments are being submitted as “Supplemental Comments” on behalf of my clients, Donovan and Anna M. Dyrdal, 13142 -180TH Street NW, Thief River Falls, MN 56701 and Dyr-Valley Enterprises, Ltd., 12744 180th St NW, Thief River Falls, MN 56701, with respect to the above Applications by Enbridge Energy, L.P. My clients, collectively referred to below as “the Dyrdals”, will also be submitting comments each under their own letterhead and signatures. They have asked me to address certain legal issues concerning the Applications and their status.

The Dyrdals object to the Commission’s acceptance of Enbridge Energy’s Applications without complying with the “conditional exclusion” procedures in Minn. Stat. § 216G.03, subd. 3 (c) and Minn. Rules part 7852.0500, subp. 1. Enbridge Energy, L.P. is well aware that there is no basis for a routing permit for a “replacement pipeline.” A routing permit for a “replacement pipeline” in an existing right-of-way is an oxymoron-a contradiction in terms. In this case it is also misleading because Enbridge’s true purpose, stated in its application, is to leave the existing pipeline in place

and add another pipeline. If approved, such pipeline would be the eighth pipeline crossing the Dyrdals' property within the existing right-of-way footprint now about 150 feet wide. Minn. Stat. 216G.03, subd. 3 (c) provides:

(c) The rules do not apply to temporary use of a route for purposes other than installation of a pipeline, to securing survey or geological data, to repair or replacement of an existing pipeline within the existing right-of-way, or to minor relocation of less than three-quarters of a mile of an existing pipeline. The rules do not apply to construction of new pipeline in a right-of-way in which pipeline has been constructed before July 1, 1988, or in a right-of-way that has been approved by the commission after July 1, 1988, except when the commission determines that there is a significant chance of an adverse effect on the environment or that there has been a significant change in land use or population density in or near the right-of-way since the first construction of pipeline in the right-of-way, or since the commission first approved the right-of-way. (underlining added).

See also Minn. Rule part 7852.0300, subp. 2. Minn. Rule part 7852.0500, subp. 1 establishes a “conditional exclusion procedure” which governs a proposal to “replace” a pipeline with an additional pipeline:

Subpart 1. **Procedures.** A pipeline company having a reasonable basis to assert that a pipeline routing permit is not required to construct or operate a proposed pipeline under Minnesota Statutes, section 216G.02, shall so notify the commission and the county board of each county through which the pipeline will be constructed. The commission shall make a determination on whether to grant a conditional exclusion provided for in part 7852.0300, subpart 2, only when the pipeline company:

A. completes the environmental assessment worksheet (EAW) review procedures as provided in parts 4410.1000 to 4410.1700; and

B. provides information that will allow the commission to determine if there has been a significant change in land use or population density in or near the right-of-way since the first construction of pipeline in the right-of-way, or since the commission first approved the right-of-way. This information will be distributed with the EAW for comments.

Clearly, Enbridge has “reasonable basis to assert that a pipeline routing permit is not required” for a replacement pipeline. Therefore, the Commission may not accept its applications for a routing permit to construct an additional pipeline in the same right of way without complying with the rest of Minn. Rule part 7852.0500. The Commission should not permit Enbridge Energy, L.P. to circumvent this procedure and the environmental review aspects of such conditional exclusion by simply applying for a routing permit. This improperly forces the burden of proving or identifying some environmental impact on the affected landowners, rather than on the government which is supposed to conduct the environmental review.

The Dyrdals submit that the Commission must deny a conditional exclusion to Enbridge Energy for two reasons. First, under Minn. Rule part 7852.0500, subp. 2.B. “there has been a significant change in land use. . . since the first construction of the pipeline in the right-of-way, or since the commission first approved the right-of-way” over the Dyrdals’ lands. The first pipeline was installed in 1950. Two more pipelines were installed before pipeline routing became regulated in the 1970’s. One of these was Line 3. The Minnesota EQB approved two more pipelines in 1994 and 1998. The first pipeline approved by the Commission was the Alberta Clipper and Southern Lights/LSr pipeline. The existence of seven pipelines across agricultural land has created in effect a pipeline route use which is demonstrably inconsistent with the surrounding agricultural land use by the Dyrdals. The Commission must deny the conditional exclusion and require Enbridge to submit an application for routing permit over an alternative route under either a partial routing permit under 7852.0600 and 7852.0700 or the full routing permit procedures. See Minn. Rule part 7852.0500, subp. 4.

Two, the Commission cannot proceed in any event without an Environmental Assessment Worksheet (EAW) and a determination based on an EAW that there is no “significant chance of an adverse effect on the environment. . .” under Minn. Rule part 7852.0500, subp. 2.A. The Minnesota Environmental Quality Board’s (MEQB) rules on Mandatory EAWs in Minn. Rule part 4410.4300, subp. 7 Item A, apply here. This rule and Minn. Rule part 7852.0500, subp. 1 A require the MEQB, as the “responsible governmental unit (RGU)”, to prepare an EAW “[f]or routing of a pipeline, greater than six inches in diameter and having more than 0.75 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivatives.” The Commission must determine from such EAW or a full EIS, if required, what the cumulative environmental impact is likely to be on the affected properties, including both the Dyrdals’ lands and the lands of Dyr-Valley Enterprises, Ltd. of having eight side-by-side pipelines.

My clients have already made known the myriad environmental problems from having just seven pipelines on their lands. This Commission has never addressed this impact as cumulative impact. The Dyrdals have previously made known the inadequacies of the routing permit and Agricultural Mitigation Plan and Environmental Mitigation Plan in Complaints and Comments in MPUC Docket No. PL95/PPL- 07-361 beginning January, 2010. Enbridge violated the permit and the Plans during the construction of the Lsr and Alberta Clipper pipelines and has to this date failed to complete a satisfactory restoration of tour land as required by the permit and the Commission’s rules. They have been patiently waiting for the Commission to allow a hearing or a meeting time to address these unresolved complaints and issues. These Complaints and the Comments in that docket are incorporated by reference in this docket as evidence for the need for an alternative route and an EAW.

The Commission outlines four issues to be addressed in comments from the public:

1. What human and environmental impacts should be studied in the environmental analysis?
2. Are there any specific methods to address these impacts that should be studied in the environmental analysis?
3. Are there any alternative routes or route segments that should be considered? (Related to

the Route Permit)

If proposing an alternative route or route segment, consider the following:

Does the alternative address an unavoidable impact?

Does the alternative offer significant environmental or socioeconomic benefits compared to the proposed project?

Is the alternative feasible and prudent?

Does the alternative meet the described need and purpose for the project?

4. Are there any alternatives to the project that should be considered? (Related to the Certificate of Need)

My clients and I have addressed the first question in their other comments and their comments filed in their complaints in MPUC Docket No. PL95/PPL- 07-361. I would add that the Commission needs to address the problem of soil destratification and wetland drainage caused by pipelines and pipeline construction that has been exacerbated on the Dyrdal lands from the seven pipelines. The other questions can and should only be addressed once the Commission rejects Enbridge's application or treats its application as one for a "conditional exclusion", denies such conditional exclusion and requires Enbridge to refile its application for a partial or full routing permit using an alternative route to the present one using the existing right-of-way.

Thank you.

Very truly yours,



Jon Erik Kingstad

Attorney for Donovan and Anna M. Dyrdal
and Dyr-Valley Enterprises, L.P.

cc: Clients

September 30, 2015

Donovan and Anna Dyrdal
Farmers/Landowners
12744 180th St NW
Thief River Falls, MN 56701

Jamie MacAlister
Environmental Review Manager
Minnesota Department of Commerce
Division of Energy Resources-Energy Facilities Permitting
85 7th Place East, Suite 500
St. Paul, MN 55101-2198
E-mail: jamie.macalister@state.mn.us

**Re: Public Comment: Line 3 Pipeline Replacement Project PUC Docket Numbers
PL-9/CN-14-916 Certificate of Need PL-9PPL-15-137**

Jamie MacAlister:

Environmental & Human impacts of proposed Line 3 route.

Route Permit Mitigation Plan: Pre & Post Line 3 Construction measures for Donovan & Anna Dyrdal & Sections 20 & 29 in Norden Township, Pennington Co.

We insist that Enbridge use an alternative route for the Line 3 Replacement Project, unless they are able to complete the restoration for the installed LSr and Alberta Clipper lines done in 2008 and 2009. We currently have seven Enbridge pipelines crossing two sections of our agricultural land. The last two lines have left such an impact on our land that it is not suitable for farming. Enbridge *already* has an alternative route plan for which they have already compensated at least one landowner (and possibly several others) to the south of our property for the right to use their land if needed for line three. Since this land is available for use by Enbridge, they should go ahead and use it. The proposed route is included. ON THE ATTACHED MAP. By using the alternative route, this will help prevent the further desecration of our land and to our livelihood. Enbridge has done little or nothing to restore our land back to pre-construction condition after the construction of the LSr in 2008 and the Alberta Clipper in 2009. We are still farming, at great expense, the chopped up triangular pieces of once straight fields, in the wake of these two pipelines. The impact from the construction of another line will only serve to compound the problems that already exist. During construction, the soil will be disturbed to depths of greater than 90" if done properly; the ground will become compacted in the travel lanes, workspace areas, and anywhere else, the heavy equipment travels. If this project goes anywhere from a year to a year and a half as Enbridge states the project could last, it will also

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further impede the restoration of the LSr and Alberta Clipper R.O.W., by adding additional subsidences, compaction and more likely than not, another weed seed bank.

In Enbridge's Line 3 Replacement Summary, they have very nicely laid out what happens following construction, the restoration process and how they coordinate restoration with landowners. From first-hand experience, Enbridge clearly has not been diligent in the execution of post construction restoration in any of these areas. The Enbridge summary does not honestly represent how it actually restores the land to pre-construction conditions. Here is an old saying that perhaps Enbridge should adopt.

If you borrow something from someone, return it in as good of condition as you borrowed it or in better condition than when you got it.

THIS IS ALSO ONE OF THE COMMISSION'S RULES: 7852.3600 PERMIT CONDITIONS FOR RIGHT-OF-WAY PREPARATION, CONSTRUCTION, CLEANUP, AND RESTORATION. § N. The permittee shall, to the extent possible, restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline. Restoration must be compatible with the safe operation, maintenance, and inspection of the pipeline

This *is not* a replacement project, but an installation of an entirely new pipeline. A new pipeline demands a new EIS. A replacement project would remove the existing line three, which it is not part of the plan. The old easements (1950) grant a R.O.W. and easement for the purpose of laying, maintaining, operating, patrolling, altering, repairing, renewing and removing in whole or in part a pipe line for the transportation of crude, petroleum, its products and derivatives, whether liquid or gaseous, and/or mixtures thereof, together with the necessary fixtures, equipment and appurtenances, over, through, upon, under and across the described land (not adding additional land). This does not say that the Pipeline has a right to decommission and leave the pipeline in the ground indefinitely to deteriorate and contaminate the ground and its aquifers.

However, Enbridge should remove the old line three. Line 3 is one of the three completely exposed lines that run through our field drainage ditch. It acts as a dam, completely blocking or inhibiting the flow of water. Line 3 is one of the three shallow buried lines that we cannot properly farm over due to the lack of coverage. Enbridge will not allow their heavy equipment to traverse the oldest part of the right of way for fear of damaging them. Yet they will hold the Dyrdals responsible for any damage that occurs to these very shallow lines as they try to use the land for their purpose and livelihood.

The other two shallowest lines will also have to be "replaced" or as Enbridge calls it deactivated, then where will these lines go? Through even more of our land, and cause us to lose production capacity on an even larger amount of our once productive agricultural land. When does it stop? This is a foreign company using our eminent domain laws for private financial gain.

Environmental Impacts & Project Alternatives to consider.

The Dyrdals insist that Enbridge remove Line 3 and use an alternative route to replace the capacity lost. If the commission does not require Enbridge to use an alternative route, we would propose that the following measures be incorporated into the restoration plan for our property.

1. A survey of pre and post-construction grade elevations, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way.
2. Construction soil sampling and analysis of pre and post-construction soil types at least 24" deep, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way.
3. Both pre and post-construction compaction tests both on and off the proposed right of way, at intervals of 12 locations per every 100 feet in a grid like manner, on and off the proposed right of way. Decompact all travel lanes and turn around areas specifically to meet or exceed areas adjacent to the ROW.
4. Enbridge shall bring in quality topsoil to meet or exceed preconstruction/maintenance digs to alleviate subsidence and lost top soil and soil mixing.
5. A comprehensive preventive plan agreed on in advance of the start of all construction, to deal with any/all noxious weed issues that may occur due to the length of the construction process and restoration. Enbridge states in its project Summary, that the restoration process can take longer than 1 year due to weather conditions and other environmental impacts, that would allow a seed bed of noxious weeds to take a strong foot hold in that time frame, on prime agricultural land.
6. All litter from Enbridge employees and/or its subcontractors is removed on a daily basis.
7. Remove all waste and scrap from construction daily and completely by the end of the construction period.

Professional independent contractors agreed upon by both Enbridge and the Dyrdals should conduct all measures, testing and inspections.

We do not want to go through another six plus years of trying to get our land adequately restored to preconstruction status as we are still to date struggling with Enbridge to restore land to the pre-construction status as resulted from the construction of the LSr and Alberta Clipper lines which were laid in 2008 and 2009.

Sincerely,



Anna Dyrdal
Donovan & Anna Dyrdal

From: apache@web.lmic.state.mn.us
To: [MacAlister, Jamie \(COMM\)](#)
Subject: eggers Mon Sep 7 09:07:56 2015 PPL-15-137
Date: Monday, September 07, 2015 9:07:57 AM

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: robert eggers

County: Hubbard County

City: park rapids

Email: bobiniowa538@aol.com

Phone:

Impact: I am tired of the Enbridge lies about how safe modern pipelines are. The Nexen leak this Summer in Alberta was double walled pipeline , less than one year old and leaked for two weeks befor discovery. Enbridge people constantly state that the new pipelines are safe and leak detection systems will immediately detect leaks and shut down pipeline.

A LIE!

Alberta has shut down all of Nexen lines. Why would they due that if pipelines are safe?

Mitigation: The Enbridge route is through a very porus sand aquifer. A leak would permanently damage some of Minnesotas most pristine lakes and rivers. A route further South would not affect such an aquifer.

Certainly an enviormental impact study should be required.

Submission date: Mon Sep 7 09:07:56 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick
andrew.koebrick@state.mn.us

From: apache@web.lmic.state.mn.us
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Ellens Wed Sep 30 20:38:44 2015 PPL-15-137
Date: Wednesday, September 30, 2015 8:38:46 PM

This public comment has been sent via the form at: mn.gov/commerce/energyfacilities/publicComments.html

You are receiving it because you are listed as the contact for this project.

Project Name: Line 3 Pipeline Replacement

Docket number: PPL-15-137

User Name: Elizabeth Ellens

County:

City: Moorhead

Email: erellens@cord.edu

Phone: 2182321433

Impact: A full EIS is the only responsible choice after one considers the seriousness of climate disruption (climate change). These areas of Minnesota are highly sensitive and highly important areas to many species. The Audubon Society should be consulted about the importance of these areas, for bird species, for example. Climate disruption alone, is enough to warrant a full EIS. However, additional reasons augment the argument for a full EIS. These are: 1) the local economies are dependent on tourism (threatened by this pipeline), and 2) the pipeline threatens lands reserved for native populations, the Ojibwe.

Mitigation: 1. The Audubon Society should be consulted about developing an alternative plan.

2. Is the increase in movement of oil really even necessary? Wouldn't increase extraction and movement of oil simply deplete the resource sooner?

Submission date: Wed Sep 30 20:38:44 2015

This information has also been entered into a centralized database for future analysis.

For questions about the database or the functioning of this tool, contact:

Andrew Koebrick
andrew.koebrick@state.mn.us

Please provide your contact information. This information and your comments will be publicly available.

Name: Dennis Enbege Phone: 715-997-1327
Street Address: 1783 160th ST
City: New Richmond State: WI ZIP: 54019
Email: WD

Please share your comments on the proposed Line 3 Pipeline Replacement Project.

- What human and environmental impacts should be studied in the environmental analysis?
- Are there any specific methods to address these impacts that should be studied in the analysis?
- Are there any routes or route segments that should be considered? (Related to the *Route Permit*)
- Are there any alternatives to the project that should be considered? (Related to the *Certificate of Need*)

Put the line in
off

From: [Katie Engelmann](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: comments
Date: Wednesday, September 30, 2015 10:11:17 PM

Jamie,

I am discouraged that I was not able to submit my comments for the following project using the newly redesigned PUC website. After hitting the submit button several times, they still did not appear. I was not alerted of your contact information until tonight. I hope I can still submit these comments in regards to the project. Please let me know if my comments will be received or if I have missed the deadline.

Thank you,

Katie Engelmann

PUC Docket Numbers PL-9/CN-14-9...16 Certificate of Need, PL-9/PPL-15-137 Route Permit

The Sandpiper pipeline is proposed to be routed through Polk County of which I am a resident. The following are my views on why the project is not in the public's interest. First and foremost, the pipeline is a support system to oil extraction by method of hydraulic fracturing from the Bakken fields in North Dakota. Catastrophic climate change impacts are already occurring in Minnesota and globally. As a citizenry, we should be focusing on curtailing such extraction instead of supporting it. Currently the oil and gas industry enjoys exclusions and exemptions to major federal environmental statutes including: Comprehensive Environmental Response, Compensation and Liability Act, Resource Conservation and Recovery Act; Safe Drinking Water Act, Clean Water Act, Clean Air Act, National Environmental Policy Act, Toxic Release Inventory under the Emergency Planning and Community Right-to-Know Act. As a result of this lack of oversight, human health, wildlife communities and the environment are being threatened. Until more thoughtful state regulations are enacted in North Dakota and until the petroleum industry at large is held accountable to remedy the negative impacts on human health and the environment, Minnesota should not put our human communities, land or water systems at risk of degradation.

The proposed preferred Sandpiper route poses threats not only to waterways and wetlands in Polk County, but along the entire route. While I am concerned about the pipeline crossing the Red River of the North and Red Lake River Watercourses, I am equally concerned about the route crossing the state's most famous river, the Mississippi. This pristine headwaters area is a valuable and cherished natural resource residents of Minnesota and across the nation. The bounty of freshwater resources including wild rice beds, lakes and rivers and fisheries generate \$7.2 billion annually. This doesn't include the tourism industry which grosses even more. I am concerned that multiple pipelines will be allowed to follow this corridor including the proposed replacement Line 3.

Estimates predict that the Bakken oil boom is at or near peak production. The current no build alternative that allows for road or railway transport will continue meeting the need to transport oil to refinery destinations. The Sandpiper will not eliminate or reduce the oil being transported by rail and truck. It will only allow more extraction to occur. Rail and truck

transport allow flexibility to reach refineries and are the most feasible method given the short term production expectations.

The impact on communities in North Dakota that area associated with the 'Bakken Boom' have experienced unsustainable population growth leading to human trafficking, crime, drug use and trafficking, lack of adequate and safe housing, shortage of police and emergency response workers, cost of living increases and many health problems. This industry does not support the health and wellbeing of our neighbors in North Dakota. Minnesota's natural resources should not be placed at risk for the economic advancement of the North Dakota Pipeline Company and its desire to transport hazardous material. This project is not in the public interest of current or future citizens of Minnesota.

PUC Docket Numbers PL-9/CN-14-916 Certificate of Need
PL-9/PPL-15-137 Route Permit

Page 3

**Submit Comments,
Alternative Routes, Route Segments, Project Alternatives**

Topics Open for Public Comment:

- Please focus your comments on information that will help answer the following questions.
- In your comments, please state which question(s) you are addressing.
 1. What human and environmental impacts should be studied in the environmental analysis?
 2. Are there any specific methods to address these impacts that should be studied in the environmental analysis?
 3. Are there any alternative routes or route segments that should be considered? (Related to the Route Permit)

If proposing an alternative route or route segment, consider the following:

- o Does the alternative address an unavoidable impact?
- o Does the alternative offer significant environmental or socioeconomic benefits compared to the proposed project?
- o Is the alternative feasible and prudent?
- o Does the alternative meet the described need and purpose for the project?

4. Are there any alternatives to the project that should be considered? (Related to the Certificate of Need)

If proposing an alternative to the project, consider the following:

- o Project size – can a smaller or larger sized project better meet the decision criteria?
- o Project type – can a different method (for example, existing pipeline, rail, or truck) meet the need?
- o Project timing – is the project needed now or in the future?
- o Is the alternative feasible and prudent?
- o Does the alternative meet the described need and purpose for the project?

Comment Period Comments accepted through September 30, 2015
Please include the PUC Docket Numbers (above) in all communications.

Online mn.gov/commerce/energyfacilities/#comment

Email jamie.macalister@state.mn.us

U.S. Mail Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul MN 55101

Fax 651-539-0109

3PP ATTACHED
9-30-15
FAKED
4:00PM DE

Important Comments will be made available to the public via the Public Utilities Commission's and the Department of Commerce's websites, except in limited circumstances consistent with the Minnesota Government Data Practices Act. Personally identifying information is not edited or deleted from submissions.

9-30-15

PUBLIC UTILITIES COMMISSION
JAMIE MACAUSTER, ENVIRONMENT REVIEW
MINN DEPT OF COMMERCE
85 TH PLACE, SUITE 500
ST. PAUL, MN 55101
FAX: 651-539-0109

RE: ENBRIDGE PIPE LINES
DOCKET NOS PL-9/CN-14-916
PL-9/PPL-15-137

I WISH TO COMMENT & VOICE AN
OBJECTION TO ANY PIPE LINES ALONG
THE PROPOSED ROUTE THRU A VIRGIN
LAND & WATER AQUIFER OF THE
LAKE REGION USING A JUSTIFICATION
OF A POWER LINE EASEMENT. THE
ENVIRONMENTAL IMPACT & POTENTIAL
RISK TO OUR WATER IN EXCHANGE
FOR SOME TEMPORARY ECONOMIC
(JOBS) DOESNT MAKE SENSE

I HAD SUBMITTED ARGUMENTS AGAINST
THE SAND PIPER LINE AND THIS 30"
LINE INCREASES THE RISK THREE FOLD.
JUDGE LIPMAN'S RULING ON THE
SAND PIPER ROUTE BEING AWAY FROM
(CONT.)

PP. 2 CONT.

TOWNS & POPULATION DOESN'T HELP IN THE CASE OF A LEAK SINCE RESPONSE WILL BE LONGER & DAMAGE TO AQUIFER UNFIXABLE

AS I HAD PROPOSED AN ALTERNATE ROUTE DUE EAST FROM CLEARBROOK THEN SOUTH TO INTERSECTION OF EXISTING PIPELINE ALONG HWY 2 STAYING OUT OF THE MISSISSIPPI BASIN & LAKE REGION, THIS SHOULD BE CONSIDERED IN ANY ENVIRONMENTAL IMPACT STUDY. IT WOULD BE AS SHORT AS THE PROPOSED ROUTE & SIGNIFICANTLY LESS DAMAGING. THE ECONOMIC BENEFIT (JOBS) WOULD BE THE SAME. THE DNR RECOMMENDED ROUTE ALSO IS BETTER AND THE EXISTING LINE'S ROUTE MAKE SENSE FOR BOTH PIPELINES.

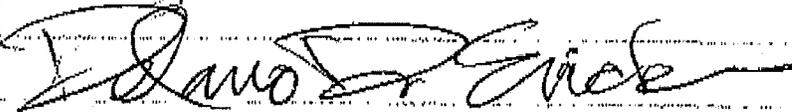
SINCE THE COURT OF APPEALS REVERSED THE SANDPIPER CERT OF NEED & ROUTE AND REQUIRED AN EIS, BOTH PIPELINES SHOULD BE CONSIDERED IN THE EIS INCLUDING AN ANALYSIS OF ALTERNATE ROUTES

(CONT.)

#3 (CONT.)

ENBRIDGE'S PLAN TO DO A GEA DOES NOT FULLY ADDRESS OUR CONCERN & THE VALUE WE PLACE ON LAKES & WATER AQUIFERS. I THINK AN INDEPENDENT SOURCE NOT ASSOCIATED W/ ENBRIDGE BUT FUNDED & DIRECTED BY THE STATE (INCLUDING DNR & PEOPLE IN THE LAKES REGION INPUT) DO A STATE WIDE REVIEW & EIS ON PIPELINE ROUTES AND HOLD ANY ACTION BY PUC UNTIL DONE.

RESPECTFULLY SUBMITTED



DELANO & SUSAN ERICKSON

2107 PENINSULA RD. OUTING MN (LAKE)

2317 KIRKWOOD LA.

PLYMOUTH, MN 55441

P.S. I APPRECIATED YOUR SEND ME INFO & WOULD LIKE A RESPONSE TO THIS LETTER

TEL No 763-559-4172 HOME
612-840-8081 CELL

From: [susan e](#)
To: [MacAlister, Jamie \(COMM\)](#)
Subject: Docket numbers 15-137 and 14-916
Date: Wednesday, September 30, 2015 3:16:33 PM

dear jamie - not sure i'm doing this right... but i want to discuss the impact of the pipelines on our wilderness. for a number of reasons. we are first of all forgetting that we need places of beauty and silence and nature in our lives.

all of us. but even more so, the vulnerable in our societies, i am a teacher and studies are showing that kids with any number of "labels", add, adhd, autistic spectrum, etc, benefit greatly from being in nature. not to mention older people with alzheimers and dementia. we are losing our "silent" places - or our places where we hear pure nature unpolluted by human-made sounds, we are lighting the world with artificial light and interfering with things like migrations.

and it affects us. slowly, perhaps, but insidiously. we are thinking that this is "normal" and not even questioning the negative impact it has on us - and our children.

thanks
susan erickson
faribault