

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

ORDER FINDING ENVIRONMENTAL IMPACT STATEMENT ADEQUATE AND ADOPTING ALJ LIPMAN'S NOVEMBER 2017 REPORT AS MODIFIED

PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, LP (Enbridge) filed separate applications for a certificate of need and a route permit for a 338-mile crude oil pipeline, along with associated facilities, extending from Neche, North Dakota to Superior, Wisconsin (the Line 3 Project or Project) to replace the existing Line 3 pipeline.

On August 12, 2015, the Commission ordered the certificate of need and route permit applications to be addressed in separate contested-case proceedings, and proceeded to conduct environmental review of the Project.

Between July 20 and September 30, 2015, the scoping process for the comparative environmental assessment required for the Project under the Commission's pipeline route permit rules, Minn. R. ch. 7852, was conducted. The Minnesota Department of Commerce, Energy Environmental Review and Analysis (EERA) and Commission staff conducted 15 public meetings between August 11 and 27, 2015, to discuss methods for assessing the potential human and environmental impacts and alternative routes for the Project.

But in light of a Court of Appeals decision on the environmental review required for another pipeline proposed by Enbridge, the Sandpiper Line,¹ the Commission issued on February 1, 2016, an order joining the need and routing matters for the Line 3 Project into one contested-case proceeding and authorizing EERA to prepare a combined environmental impact statement (EIS).

¹ *In re N. Dakota Pipeline Co. LLC*, 869 N.W.2d 693 (Minn. App. 2015).

On April 11, 2016, EERA issued a scoping environmental assessment worksheet (EAW) and draft scoping decision document (DSDD) to identify the potential issues with the Project and define the scope of the EIS. The second scoping process occurred under the Environmental Quality Board (EQB) rules for an EIS, Minn. R. ch. 4410, between April 11 and May 26, 2016. After conducting 12 public scoping meetings and considering nearly 1,500 written comments, EERA submitted comments and recommendations regarding the scope of the EIS, a proposed final scoping decision document (FSDD), a scoping summary report, and an alternatives screening report on September 22, 2016.

On November 30, 2016, the Commission issued an order approving the scope of the EIS as modified and authorizing issuance of the FSDD.

On December 5, 2016, EERA issued the FSDD, and the Notice of EIS Preparation for the Line 3 Project was published in the *EQB Monitor*.

On May 15, 2017, EERA issued a draft EIS (DEIS), a press release regarding the availability of the DEIS, and a Notice of the Availability of the DEIS was published in the *EQB Monitor*, along with information regarding the public meetings and comment period.²

Between June 6 and 22, 2017, EERA held 22 public meetings in locations along the route alternatives considered in the DEIS. During the comment period of May 15 through July 10, 2017, EERA received approximately 2,860 public comments regarding the DEIS.

On August 14, 2017, the Commission issued an order accepting Enbridge's consent to extend the statutory deadline for the Commission to make its determination on the adequacy of the final EIS (FEIS) for the Project. The Commission also referred the issue of the adequacy of the FEIS to the Office of Administrative Hearings, requesting that an administrative law judge (ALJ) be briefed by the parties and make a report and recommendation to the Commission on the issue.

On August 17, 2017, EERA issued the FEIS. A Notice of the Availability of the FEIS was published in the *EQB Monitor* on August 28, 2017.

The following parties filed briefs with ALJ Eric Lipman regarding the adequacy of the FEIS:

- Enbridge
- Fond du Lac Band of Lake Superior Chippewa (Fond du Lac Band)
- Friends of the Headwaters
- Honor the Earth
- Laborers District Council of Minnesota and North Dakota
- Mille Lacs Band of Ojibwe (Mille Lacs Band)
- Red Lake Band of Chippewa Indians (Red Lake Band)
- Sierra Club

² EERA issued a Revised Notice of Availability of DEIS and Public Information Meetings for the Proposed Line 3 Pipeline Project on May 16, 2017.

On November 1, 2017, ALJ Lipman issued his report (ALJ Report) recommending that the Commission find the FEIS adequate under Minn. R. 4410.2800, subp. 4.

The following parties filed exceptions to the ALJ Report:

- EERA
- Youth Climate Intervenors
- Honor the Earth
- Mille Lacs Band
- Friends of the Headwaters
- Sierra Club
- Fond du Lac Band

On December 13, 2017, the Commission issued a Notice of FEIS Adequacy Decision pursuant to Minn. R. 4410.2800, subp. 6, which was published in the *EQB Monitor* on December 18, 2017.

On December 14, 2017, the Commission issued an order finding that four deficiencies in the FEIS needed to be remedied before the FEIS could be considered adequate under Minn. R. 4410.2800 (December 14 Order).

On February 12, 2018, EERA issued the revised FEIS.

Also on February 12, 2018, the Commission issued a press release and Notice of Availability and Comment Period for the revised FEIS.

On February 27, 2018, the following parties submitted comments on the revised FEIS:

- Minnesota Historical Society – State Historic Preservation Office (SHPO)
- Enbridge
- Fond du Lac Band
- Friends of the Headwaters
- Honor the Earth
- Mille Lacs Band
- Sierra Club

On March 15, 2018, the Commission met to consider the adequacy of the FEIS.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission is grateful to EERA and the assisting agencies for their significant effort in diligently preparing the FEIS. The Commission has carefully reviewed the record and will take the following actions:

- Find that EERA addressed the deficiencies in the FEIS as required by the December 14 Order;
- Find that the FEIS is adequate under Minn. R. 4410.2800, subp. 4;
- Adopt ALJ Lipman’s Report addressing the adequacy of the FEIS as modified by Appendices A and B to this order.

Additionally, the Commission will publish in the *EQB Monitor* public notice of this adequacy decision as required by Minn. R. 4410.2800, subp. 6, upon completion of the reconsideration process provided for by Minn. Stat. § 216B.27 and Minn. R. 7829.3000.

II. Statutory and Regulatory Framework

Enbridge has applied for a certificate of need and route permit from the Commission. Certificates of need for large pipelines are governed by Minn. Stat. § 216B.243 and Minn. R. ch. 7853. Route permits for pipelines are governed by Minn. Stat. § 216G and Minn. R. ch. 7852. The Commission must consider specific criteria before granting a certificate of need or route permit,³ and it must conduct environmental review pursuant to the Minnesota Environmental Policy Act (MEPA), Minn. Stat. ch. 116D.

Under MEPA, if a major governmental action has the potential to create significant environmental effects, an EIS must be prepared by the responsible government unit (RGU).⁴ MEPA also allows for an alternative form of environmental review when approved by the EQB,⁵ and the Commission rules contain one of these alternative processes referred to as a Comprehensive Environmental Assessment,⁶ which the Court of Appeals confirmed in its Sandpiper decision is “MEPA Compliant.”⁷ While pipeline projects subject to joint certificate of need/route permit proceedings undergo a Comprehensive Environmental Assessment, the Commission chose to prepare an EIS for the joint need/route permit proceedings for Line 3 to avoid any public misperception that Enbridge’s Line 3 Project was subject to a different, and thus less stringent, environmental review than Enbridge’s Sandpiper project.

An EIS must identify specific types of reasonable alternatives to the proposed project,⁸ and it must analyze and compare the potentially significant adverse or beneficial impacts generated by the proposed project and the alternatives, be they direct, indirect, or cumulative effects.⁹ Once the final EIS is issued, the RGU must determine whether the final EIS is adequate under the relevant rules.

³ Minn. R. 7853.0130; Minn. R. 7852.1900.

⁴ Minn. Stat. § 116D.04, subd. 2a(a).

⁵ Minn. Stat. § 116D.04, subd. 4a.

⁶ Minn. R. 7852.1500.

⁷ *In re N. Dakota Pipeline Co. LLC*, 869 N.W.2d at 697.

⁸ Minn. R. 4410.2300(G).

⁹ Minn. R. 4410.2300(H).

The final EIS shall be determined adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.¹⁰

MEPA requires that the EIS be prepared and its adequacy determined within 280 days after the notice of its preparation, unless the time is extended by consent of the parties or by the governor for good cause.¹¹

III. Background

A. The Line 3 Replacement Project FEIS

The FEIS consists of 13 chapters and an executive summary that describe the Project and the alternatives selected during the scoping process, compare the potential impacts and cumulative effects of the Project and the alternatives, and discuss possible mitigation measures. Because this is a combined FEIS for the certificate of need and route permit proceedings, the FEIS considers separate alternatives for both the certificate of need and the route permit.

Chapter 5 of the FEIS evaluates the environmental impacts associated with meeting the need that Enbridge has identified by alternative means. The need alternatives examined in the FEIS are as follows: (1) continued use of existing Line 3; (2) use of other pipelines; (3) oil via System-Alternative 4 (SA-04); (4) oil-by-rail; (5) oil-by-truck; (6) continued use of existing Line 3 supplemented by rail; and (7) continued use of Line 3 supplemented by truck. These need alternatives represent the “take no action” alternative that must be considered when determining whether there is a need for a proposed project,¹² and the alternatives are analyzed using the criteria the Commission will consider in deciding whether to grant or deny a certificate of need for Enbridge’s proposed Project.

Chapters 6 and 7 of the FEIS address the alternatives for the route permit proceeding. Chapter 6 covers route alternatives (RAs) to the applicant’s preferred route,¹³ and Chapter 7 covers smaller

¹⁰ Minn. R. 4410.2800, subp. 4.

¹¹ Minn. Stat. § 116D.04, subd. 2a(j).

¹² See Minn. R. 7853.0130(A)(4); see also Minn. R. 4410.2300(G).

¹³ Chapter 6 addresses 4 route alternatives.

deviations from the applicant's preferred route called route segment alternatives (RSAs).¹⁴ Like the certificate of need alternatives, the route permit alternatives are analyzed using the criteria the Commission will consider during the route permit process.

The major focus of any EIS is the identification, description, and comparison of the potential impacts and mitigation measures for the proposed project and the alternatives to that project. Below is a summary of the FEIS chapters that cover potential impacts from the Project and its alternatives:

- Chapters 5, 6, and 7 of the FEIS discuss the existing conditions of the resources that may be impacted by the Project and each alternative; analyze and compare the potential impacts to these resources from the Project and alternatives; and present possible mitigation measures.
- Chapter 8 discusses the potential impacts of abandoning the existing Line 3 pipeline in place versus removing it, along with mitigation measures for these options.
- Chapter 9 provides “an alternative, qualitative measure of the impacts of [the Project] on American Indian tribes. This chapter reflects American Indian values and relationships to the environment, traditional ecological knowledge, and the impacts associated with constructing a pipeline through areas of traditional, cultural, spiritual, and natural resource significance.”¹⁵
- Chapter 10 “provides a general assessment of the probability of [an accidental oil] spill occurring, a general evaluation of the behavior of crude oil in the environment, a general evaluation of how spilled oil affects the environment, and an assessment of the type and quantity of resources that are exposed along each alternative.”¹⁶
- Chapter 11 contains qualitative and quantitative analyses of the unique and disproportionate impacts that the Project could have on low-income and minority communities, along with possible mitigation measures.
- Chapter 12 analyzes the cumulative potential effects of the Project and its alternatives, considering how past, present, and reasonably foreseeable future actions could impact resources in the geographic area around the Project, along with broader climate change impacts.

EERA was the lead agency in preparing the FEIS, with the Minnesota Department of Natural Resources (MDNR) and the Minnesota Pollution Control Agency (MPCA) acting as assisting agencies.

¹⁴ Chapter 7 addresses 24 route segment alternatives.

¹⁵ FEIS at 9-1. The FEIS pagination specifies both the chapter and page number, so 9-1 refers to page 1 of Chapter 9.

¹⁶ FEIS at 10-1.

B. The ALJ Report

The Office of Administrative Hearings assigned ALJ Eric L. Lipman to the FEIS adequacy matter. The ALJ received and reviewed the FEIS and the parties' comments on the FEIS and compiled his findings, conclusions, and recommendations on the adequacy of the FEIS into the ALJ Report.

The ALJ Report is well reasoned, comprehensive, and thorough. The ALJ made 313 findings of fact and conclusions of law and recommended that the Commission determine that the FEIS is adequate under Minn. R. 4410.2800, subp. 4.

The Commission has itself examined the record, considered the ALJ Report, considered the exceptions to that report, and heard oral argument from the parties. Based on the entire record, the Commission concurs in most of the ALJ's findings and conclusions. For some specific findings, however, the Commission will adopt modifications to the ALJ Report as detailed in Appendix A. The Commission will also adopt supplemental findings, as detailed in Appendix B, that account for the procedural history following the Commission's initial inadequacy finding. On all other issues, the Commission accepts, adopts, and incorporates the ALJ's findings, conclusions, and recommendation.

C. Parties' Positions

The Commission has thoroughly reviewed the parties' comments regarding the FEIS and exceptions to the ALJ Report. Enbridge and the Laborers District Council of Minnesota and North Dakota filed comments supporting the FEIS. The comments and exceptions received from all other parties (Opposing Parties) criticized the FEIS and ALJ Report, claiming that the FEIS was inadequate in various ways and must continue to be revised. These comments and exceptions generally fell into the categories summarized below.

1. Definition of Purpose and Need

Opposing Parties argued that the FEIS improperly defined the purpose and need for the Project by relying on Enbridge's stated purpose and need, as well as Enbridge's stated parameters for the Project.¹⁷ They maintained that the narrow definition of purpose and need restricted the range of alternatives and impacts considered in the FEIS to only those alternatives and impacts relating to the transportation of crude oil to Superior, Wisconsin.

¹⁷ Friends of the Headwaters FEIS Comments at 7–9 (October 2, 2017) (FOH Comments); Friends of the Headwaters Exceptions to the ALJ Report at 13 (November 21, 2017) (FOH Ex.); Honor the Earth FEIS Comments at 7, 10–11 (October 2, 2017) (HTE Comments); Honor the Earth Exceptions to ALJ Report at 2–3 (November 21, 2017) (HTE Ex.); Sierra Club FEIS Comments at 6 (October 2, 2017) (SC Comments); Sierra Club Exceptions to the ALJ Report at 4 (November 21, 2017) (SC Ex.).

2. Analysis of Impacts

Most of the Opposing Parties argued that the FEIS did not adequately consider the potential impacts from the Project. Many of them had a number of concerns about impacts to specific resources,¹⁸ and also had more general complaints about the analysis of impacts in the FEIS. Several of the Opposing Parties argued that while the FEIS considered potential impacts from an accidental oil release at specific points, the analysis failed to address potential impacts of spills on other areas of concern to them.¹⁹ Certain Opposing Parties also maintained that the FEIS did not adequately consider cumulative impacts from the Project, including cumulative impacts from climate change and from potential future pipelines that may be built in Minnesota and Wisconsin.²⁰ Several of the Opposing Parties also expressed concern about the analysis of the impacts associated with corridor sharing versus constructing a pipeline in an entirely new corridor,²¹ and one Opposing Party argued that the FEIS should have considered whether there is financial assurance that Enbridge is able to cover the costs for remediation of spill impacts.²²

One major contention of the Opposing Parties relates to the traditional cultural properties survey that is currently being conducted by tribal representatives in consultation with Enbridge and the U.S. Army Corps of Engineers (USACE).²³ The parties argued that the FEIS cannot be considered adequate without the results of a completed traditional cultural properties survey.²⁴

3. Analysis of Need Alternatives

Many of the Opposing Parties maintained that the FEIS should have considered different alternatives to the need for the Project, pointing to what they believed was the narrow definition of the purpose and need for the Project as the reason that alternatives were unduly restricted for consideration. For example, several of the Opposing Parties argued that the FEIS should have considered renewable energy as an alternative that could meet the energy needs underlying the Project.²⁵ Parties also argued that the FEIS should have incorporated the analysis of a witness for the Department of Commerce, Division of Energy Resources (DER) in the certificate of need

¹⁸ Fond du Lac Band FEIS Comments at 2–10 (October 2, 2017) (FDL Comments); Fond du Lac Band Exceptions to the ALJ Report at 5 (November 21, 2017) (FDL Ex.); HTE Comments at 13.

¹⁹ FOH Comments at 10; FOH Ex. at 9–12; SC Comments at 13.

²⁰ FOH Comments at 12–14; FOH Ex. at 18–22; HTE Comments at 12; HTE Ex. at 4; SC Comments at 11–12; Youth Climate Intervenors Exceptions to the ALJ Report at 2–3 (November 21, 2017) (YCI Ex.).

²¹ Mille Lacs Band FEIS Comments at 3–4 (October 2, 2017) (MLB Comments); FOH Comments at 12–15. Specifically, Mille Lacs Band argued that placing a new pipeline in a corridor with existing pipelines produces zero incremental impacts from increased oil spill risk, while Friends of the Headwaters raised concern about the cumulative impacts of routing multiple pipelines in the same corridor.

²² FOH Comments at 26–27.

²³ In this context, traditional cultural properties are places of traditional religious and cultural importance to American Indian tribes and nations, such as wild rice waters. FEIS at 5–618, –626.

²⁴ FDL Comments at 5; Red Lake Band FEIS Comments at 1–2 (September 28, 2017); FDL Ex. at 8–12; Mille Lacs Band Exceptions to the ALJ Report at 5–8 (November 21, 2017) (MLB Ex.).

²⁵ FOH Ex. at 13; SC Ex. at 4.

proceedings,²⁶ who suggested that the need for oil that would be met by the Project could be fulfilled by using existing pipeline capacity in the region.²⁷ Some Opposing Parties also argued for changes to be made to SA-04 to reduce the environmental risks to vulnerable groundwater resources.²⁸

4. Procedural Issues

A number of the Opposing Parties claimed that the FEIS did not properly consider and respond to their substantive comments on the DEIS, as required by Minn. R. 4410.2600, subp. 10.²⁹ One argued that MEPA imposes an “implied duty” on MDNR and MPCA to submit public comments, and that the FEIS is inadequate because the assisting agencies did not submit public comments.³⁰

Opposing Parties also objected to the procedural schedule of the FEIS, claiming that the evidentiary hearings for the certificate of need and route permit should have occurred after the FEIS adequacy determination.³¹ Lastly, one Opposing Party argued that the Commission and EERA violated Minn. R. 4410.2600, subp. 9, by holding one of the 12 public scoping meetings less than 15 days after the publication of the Notice of Availability of the DSDD in the *EQB Monitor*, and that the Notice of Availability of the DEIS was improperly published in the *EQB Monitor*.³²

D. The Commission’s December 14 Order

In December 2017, after reviewing the record and hearing oral argument from the parties, the Commission identified four specific inadequacies in the FEIS that needed to be remedied before it could be considered adequate under rule 4410.2800, subp. 4:

- 1a. The EIS needs to (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.

²⁶ Although EERA and DER are both divisions within the Minnesota Department of Commerce, they have distinct roles in this proceeding. EERA is the lead agency conducting environmental review for the Project on behalf of the Commission, while DER is a party to the certificate of need and route permit proceedings.

²⁷ FOH Comments at 18–19; SC FEIS at 7; MLB Comments at 1.

²⁸ FOH Comments at 20–21; FDL Ex. at 6–7.

²⁹ FOH Comments at 23; HTE Comments at 12–16; SC Comments at 14; FDL Comments at 2; FDL Ex. at 14; YCI Ex. at 2.

³⁰ FOH Comments at 5.

³¹ HTE Comments at 17–18; FOH Ex. at 3.

³² SC Comments at 16.

- 1b. The EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of HCA drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.
- 1c. The EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.
- 1d. The EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.³³

The December 14 Order stated that the Commission found the FEIS inadequate solely and specifically regarding the four deficiencies described above.

E. The Revised FEIS

After the Commission found the FEIS to be inadequate, EERA had 60 days to make the necessary changes to the FEIS and reissue it.³⁴ EERA complied with this requirement by issuing the revised FEIS on February 12, 2018, which included revisions to chapters 5, 6, and 10, and an additional Appendix U relating to the SA-04 reroute.³⁵

Many of the Opposing Parties argued that EERA's revisions to the FEIS failed to satisfy the December 14 Order and that the FEIS remained inadequate. Parties primarily reiterated their previous arguments regarding analysis of impacts, alternatives, and the timing of the traditional cultural properties survey.³⁶

IV. Commission Action

The Commission has thoroughly considered whether the FEIS is adequate according to Minn. R. 4410.2800, subp. 4. To reiterate, an EIS is adequate under that rule if it satisfies the following requirements:

³³ December 14 Order at 3–4.

³⁴ Minn. R. 4410.2800, subp. 5.

³⁵ The changes to the FEIS are summarized in Appendix B, supplemental findings 301–304.

³⁶ See Comments filed by Fond du Lac Band, Friends of the Headwaters, Honor the Earth, Mille Lacs Band, and Sierra Club, dated February 27 or 28, 2018.

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping;
- C. was prepared in compliance with the procedures of [MEPA] and parts 4410.0200 to 4410.6500.³⁷

After carefully reviewing the record, including the FEIS, the ALJ Report, and all the parties' comments and exceptions, the Commission finds the FEIS adequate according to Minn. R. 4410.2800, subp. 4, for the reasons explained below.

Additionally, the Commission will publish in the *EQB Monitor* public notice of this adequacy decision as required by Minn. R. 4410.2800, subp. 6, upon completion of the reconsideration process provided for by Minn. Stat. § 216B.27 and Minn. R. 7829.3000.

A. Potentially Significant Issues and Alternatives

Minn. R. 4410.2800, subp. 4(A), requires that all potentially significant issues and alternatives that were raised during the scoping process, and for which information can be reasonably obtained, be analyzed in accordance with Minn. R. 4410.2300(G) and (H).

1. Potentially Significant Issues

Item H of Minn. R. 4410.2300 requires “a thorough but succinct discussion of potentially significant adverse or beneficial effects generated [by the proposed project and each major alternative], be they direct, indirect, or cumulative.”

The Commission previously determined that the FEIS needed to be revised in the following respects in order to meet this requirement: (1) clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives (order point 1b); (2) clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive (order point 1c); and (3) clarify that the traditional cultural properties survey must be completed before the start of any construction on the Project (order point 1d).³⁸ Having reviewed the revised FEIS, the Commission now agrees with the ALJ Report, as modified by this order, that the FEIS sufficiently discusses the potential direct, indirect, and cumulative adverse and beneficial effects generated by the Project and each major alternative. The FEIS devotes eight extensive chapters and numerous appendices to this discussion, as summarized in part III.A above.

³⁷ Minn. R. 4410.2800, subp. 4.

³⁸ December 14 Order at 3–4.

In addition to the chapters devoted to the issues of tribal resources, accidental oil spills, environmental justice, and cumulative potential effects, chapters 5 through 7 provide detailed qualitative and quantitative analyses of the following issues and resources that may be impacted by the Project or its alternatives: water resources (which includes groundwater, surface water, wetlands, and floodplains); geology and soils; vegetation; fish and wildlife; unique natural resources; public lands; air quality; cultural resources in Minnesota, Iowa, Illinois, and Wisconsin; commodity production; recreation and tourism; population; employment, income, and tax revenues; planning and zoning; noise and vibration; aesthetics and visual resources; housing; and transportation and public services. For each of these resources, the FEIS describes the regulatory context and methodology for analysis, summarizes the existing conditions of the resource, conducts an impact assessment for each alternative, and proposes possible mitigation measures when applicable for each alternative.

Furthermore, both Enbridge and EERA commissioned studies that provide analysis to help the Commission and the public understand the risks associated with potential oil spill impacts. The study commissioned by Enbridge (with input from state and federal agency staff) modeled hypothetical crude oil releases at seven representative sites along the applicant's preferred route, and the study commissioned by EERA analyzed previous oil spills to provide a historical perspective of inland pipeline oil spills in the U.S.³⁹ The FEIS describes how the spill impact analysis could be used to evaluate the impact of spills at other water bodies that are similar to the 7 representative sites.

The FEIS also analyzes the potential climate change impacts from the Project, including calculations of potential life-cycle carbon emissions under several possible outcomes.⁴⁰ And the Commission agrees with the ALJ Report that the FEIS correctly followed Minn. R. 4410.2000, subp. 4, in declining to include the cumulative impacts of potential future pipeline capacity in Wisconsin.⁴¹

The revisions to the FEIS submitted on February 12, 2018, fulfill the requirements of order point 1b of the December 14 Order. EERA added text in each resource section in Chapters 5 and 6, along with additional footnotes in the summary comparison tables, explaining that the multiple quantitative datasets analyzed for a particular resource should be considered together to prevent

³⁹ ALJ Report at findings 208–212; Appendix A at modified finding 208. The Commission believes that the Enbridge study's approach of choosing sites to model based on "how well they represented the diversity of characteristics that were identified as significant during public scoping" is preferable to the approach urged by Friends of the Headwaters, which argued for choosing "the most sensitive areas" along the applicant's preferred route, because the former approach addresses the breadth of the public's input with respect to what matters most in evaluating oil spill impacts. And the Commission agrees with the ALJ Report that the FEIS adequately considered financial resources to remediate spill impacts. ALJ Report at findings 273–75.

⁴⁰ Appendix A at modified finding 241a; FEIS at 5-451. EERA reviewed previous U.S. State Department analyses of upstream and downstream life-cycle greenhouse gas emissions estimates, but found those analyses to be inconclusive. *Id.*

⁴¹ ALJ Report at findings 188–190. Furthermore, arguments that the FEIS should have considered the impacts of a higher capacity pipeline ignore that any attempt by Enbridge to change the parameters of the Project would require a revised certificate of need application. ALJ Report at finding 186.

overreliance on any one dataset.⁴² And because there is no expert consensus on which of the various quantitative datasets for a particular resource are the most important in determining which need or route alternative has the most or least impact on that particular resource, it is incumbent upon each reader to make a qualitative judgment as to which datasets are the most useful in making such a determination.⁴³ The additional text also provides guidance in the application of this approach, identifying a couple of quantitative datasets for each resource as being potentially important in the reader's qualitative assessment of which alternative has the most and least impact on a particular resource.⁴⁴

The FEIS also fulfills the requirement of order point 1c of the December 14 Order by clarifying which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive. The language discussed above regarding the relationship between qualitative and quantitative data also helps fulfill the requirements of this order point. These revisions better explain the extent and incremental impacts of corridor sharing for each alternative.⁴⁵

By including additional language clarifying that the traditional cultural properties survey must be completed before the start of any construction on the Project, the FEIS has complied with order point 1d of the December 14 Order.⁴⁶ The traditional cultural properties field survey, the results of which will be compiled into a final written product or report, is part of the broader effort at the state and federal levels to identify all types of historic properties that could be impacted by the Project in order to avoid and mitigate impacts to these properties. Because the Project will need federal approvals, most notably a federal wetlands permit from USACE, Section 106 of the National Historic Preservation Act is triggered. Section 106 requires federal agencies to account for the effects of their actions on historic properties, and the traditional cultural properties survey is required under that federal regulatory scheme.⁴⁷ It is the Commission's understanding that USACE is coordinating with Enbridge, the Minnesota Indian Affairs Council (MIAC), the Fond du Lac Band and other consulting tribes, and SHPO to plan and conduct the traditional cultural properties survey. The Commission does not have authority over the timing of the traditional cultural properties field survey work nor over completion of the final written product, and could therefore not ensure that the results of the traditional cultural properties survey were available before the statutory deadline for the FEIS. Thus, the results of the traditional cultural properties survey were not reasonably obtainable for inclusion in the FEIS.

Furthermore, completion of the traditional cultural properties survey before construction is consistent with the recommendation of MIAC and SHPO.⁴⁸ Completing the traditional cultural properties survey after a route is selected by the Commission for permitting but prior to any

⁴² See, e.g., FEIS at 5-48; 5-103, Table 5.2.1.2-14 note a; 6-172-73; 6-204, Table 6.3.1.1-13 note a.

⁴³ See, e.g., FEIS at 5-48; 5-103, Table 5.2.1.2-14 note b; 6-173; 6-204, Table 6.3.1.1-13 note b.

⁴⁴ See, e.g., *id.*

⁴⁵ See, e.g., FEIS at 5-104, Table 5.2.1.2-14 notes c-g; 6-181; 6-186; 6-204, Table 6.3.1.1-13 notes c-g.

⁴⁶ FEIS at 5-619-20; 6-668.

⁴⁷ 36 C.F.R. 800.1(a), 800.4(b)(1).

⁴⁸ FEIS at 9-20 ("MIAC recommends a complete survey of the entire proposed route; this survey should occur prior to the start of any construction."); SHPO Letter dated February 27, 2018.

construction is also consistent with the Commission’s past practice for similar large, linear projects that potentially impact traditional cultural properties,⁴⁹ and also consistent with federal agency practice.⁵⁰

Although the FEIS does not contain the results of the still-underway traditional cultural properties survey, it does contain extensive analysis of the potential impacts to traditional cultural properties and other cultural resources in compliance with MEPA, including a summary of all known cultural resources located in each of the route alternatives.⁵¹ EERA gathered information about tribal resources by consulting with the sovereign nations affected by the Project, coordinating with tribal natural resource departments and tribal historic preservation offices, conducting community meetings and interviews with tribal elders and historians, accepting and reviewing written comments, and reviewing relevant literature and databases.⁵²

The Commission finds that the FEIS provides adequate information, analysis, and context to guide the Commission and the public in considering the potentially significant adverse or beneficial direct, indirect, or cumulative effects generated by the Project and its alternatives.

2. Alternatives

Item G of Minn. R. 4410.2300 relates to the alternatives to be analyzed in the FEIS, and requires that the FEIS “compare the potentially significant impacts of the proposal with those of other reasonable alternatives to the proposed project.” The FEIS satisfies this requirement by discussing the potential significant impacts to the natural, socioeconomic, and cultural resources of concern for each alternative,⁵³ and then synthesizing that information into tables for each resource that provide a more concise comparison of the potential significant impacts across alternatives.⁵⁴ This allows readers of the FEIS to compare the potential significant impacts of the Project and its alternatives for each major resource that may be affected.

⁴⁹ See *In the Matter of the Application of Minnesota Power for a Route Permit for the Great Northern 500 kV Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching, and Itasca Counties*, Docket No. E-015/TL-14-21, Great Northern Transmission Line Final Environmental Impact Statement at 5-157 (December 18, 2015); *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) L.L.C. for a Routing Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project*, Docket No. PL9/PPL-07-361, Alberta Clipper Project Final Environmental Impact Statement at 4-283, 4-284, 4-312, 4-315, 4-318, <https://www.state.gov/e/enr/applicant/applicants/202466.htm>; see also EERA Reply to Joint Tribal Petition for Reconsideration (January 12, 2018) (EERA Reply).

⁵⁰ EERA Reply at 6–7 (discussing *Te Moak Tribe of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 608 F.3d 592 (9th Cir. 2010), and *Wilderness Soc’y v. U.S. Bureau of Land Mgmt.*, 526 Fed.Appx. 790 (9th Cir. 2013)).

⁵¹ See FEIS at ch. 9, 5-610–5-656, 6-664–6-692; the tables of known cultural resources by route are found at 5-649–5-651, and 6-688–6-690.

⁵² FEIS at 9-13, 9-17–18, 6-667–68.

⁵³ See, e.g., FEIS at 5-14–5-34.

⁵⁴ See, e.g., FEIS at 6-201–6-204.

Item G also requires that the EIS analyze certain types of alternatives, or explain why an alternative was not analyzed.⁵⁵

1. Alternative sites;
2. Alternative technologies;
3. Modified designs or layouts;
4. Modified scale or magnitude;
5. Alternatives incorporating reasonable mitigation measures identified through scoping or the DEIS;
6. No action alternative.⁵⁶

The Commission agrees with the ALJ Report that the FEIS satisfies this requirement by analyzing at least one alternative of each type listed above or explaining why that type of alternative was not analyzed.⁵⁷ The FEIS analyzes a broad range of alternatives to the Project, including many alternatives that were included in the DEIS after they were suggested by the public or state agencies during the scoping process.

The Commission previously determined that the FEIS needed to modify one need alternative, SA-04, to avoid karst topography (order point 1a).⁵⁸ The Commission finds that the revised FEIS fulfills the requirement of order point 1a of the December 14 Order by providing two reroute options that minimize crossing those areas along the route where karst features are nearest to the ground surface and groundwater is particularly vulnerable to contamination. The FEIS concluded that no reasonable reroute of SA-04 entirely avoided karst topography, including the reroute proposed by Friends of the Headwaters.⁵⁹ The FEIS identified options that would minimize exposure of near-surface karst topography and ultimately analyzed two reroute options: the Friends of the Headwaters reroute⁶⁰ and a smaller segment reroute. Appendix U of the revised FEIS includes a full environmental analysis of both the Friends of the Headwaters' proposed reroute and the smaller segment reroute that slightly modifies SA-04 to avoid near-surface karst.

⁵⁵ Minn. R. 4410.2300(G) allows an alternative to be excluded if “it would not meet the underlying need for or purpose of the project, it would likely not have any significant environmental benefit compared to the project as proposed, or another alternative, of any type, that will be analyzed in the EIS would likely have similar environmental benefits but substantially less adverse economic, employment, or sociological impacts.”

⁵⁶ Minn. R. 4410.2300(G).

⁵⁷ ALJ Report at findings 115–121; *see also* Appendix A at modified finding 121.

⁵⁸ December 14 Order at 3.

⁵⁹ FEIS at Appendix U-3.

⁶⁰ Staff made slight modifications to the route proposed by Friends of the Headwaters to shorten the route, avoid bisecting cities, and maximize paralleling of existing corridors. FEIS at Appendix U-3.

The Commission finds that the FEIS properly defined the need and purpose for the Project as replacing the existing Line 3 pipeline with a new pipeline that increases the capacity of Enbridge’s pipeline system to transport Canadian crude oil to Minnesota and regional refineries. The Commission also finds that the ALJ Report, as modified by the Commission, explains why alternatives argued for by certain parties were not considered in the FEIS. For example, the FEIS did not consider renewable energy as an alternative to the Project, because “[s]ubstituting wind energy for oil is not a reasonably likely outcome of a commission decision to deny the Certificate of Need for the proposed project.”⁶¹ And arguments that the FEIS should have modified the previously-approved scope by considering a longer life span and different acreage estimates for the Project, based on analysis by an independent consultant, fail to explain how expansion of the scope of the FEIS in this manner is permitted under Minn. R. 4410.2100, subp. 8.⁶²

The FEIS also explains that it did not analyze the use of other regional pipelines to fulfill the need for the Project, as suggested by DER’s testimony, because “[t]he environmental impacts associated with these other pipelines have been (or would be) evaluated in other jurisdictions.”⁶³ Furthermore, “[t]he environmental implications of a Commission determination that existing and/or other proposed pipelines meet the need for the proposed project is addressed in the review of the continued operation of the existing Line 3 at 390,000 barrels per day,” located in Chapter 5 of the FEIS.⁶⁴

The analysis of alternatives in the FEIS is comprehensive and thorough, resulting in the FEIS representing an important part of the record the Commission will review in evaluating alternatives in the certificate of need and route permit proceedings.

B. Responses to Substantive Comments

Minn. R. 4410.2600, subp. 10, and 4410.2700, subp. 1, require that the FEIS respond to timely substantive comments regarding the DEIS, and fulfillment of this requirement is a factor in the adequacy determination.⁶⁵

The Commission agrees with the ALJ Report that EERA, “as the Commission’s agent, responded to the substantive comments that were received during the scoping process and the DEIS review, by making appropriate updates and revisions to the FEIS.”⁶⁶ EERA received approximately 2,860 comments on the DEIS, and EERA held 22 public meetings on the DEIS in

⁶¹ Appendix A at modified finding 177–177a. Furthermore, the argument by Friends of the Headwaters that the FEIS should have considered the alternative of constructing the new Line 3 in the existing Line 3 corridor ignores that RA-07 essentially fulfills this demand by siting the new Line 3 mostly in the same trench as the existing Line 3. FEIS at 4-25.

⁶² See FOH Comments at 7-9.

⁶³ FEIS at 4-8; see also Appendix A modified finding 181a.

⁶⁴ *Id.*

⁶⁵ Minn. R. 4410.2800, subp. 4(B).

⁶⁶ ALJ Report at finding 293.

locations along the route alternatives where the public could submit oral comments.⁶⁷ Appendix T of the FEIS contains responses to all substantive written and oral comments submitted during the DEIS comment period.⁶⁸ The FEIS also includes a number of revisions and additions to the DEIS that were made in response to public comments.⁶⁹ Thus, the FEIS has adequately responded to comments on the DEIS.

C. Compliance with Procedures

The third factor in the adequacy determination requires that the FEIS was prepared in accordance with the procedural requirements of MEPA and Minn. R. ch. 4410. These procedures include a scoping process to identify the significant issues and alternatives that will be addressed in the EIS, issuance of the DEIS and associated public meetings and comment period, and issuance of the FEIS and subsequent adequacy determination.

The Commission agrees with the ALJ Report that the FEIS has complied with the procedural requirements of MEPA and Minn. R. 4410.0200 through .6500.⁷⁰ In several ways, the FEIS has exceeded those requirements. For example, the RGU must hold at least one scoping meeting during the scoping period,⁷¹ and EERA held 12 public scoping meetings during the scoping period, each of which was at least 4 hours long.⁷² Likewise, EERA was required to hold a DEIS informational meeting in the county where the project is proposed,⁷³ and EERA held 22 public meetings in locations along the route alternatives in the DEIS.⁷⁴ The public had many opportunities to participate in the process and be heard with respect to the potential beneficial and adverse impacts of the Project.

The Opposing Parties have cited no provision of MEPA or the rules requiring that the evidentiary hearings in the certificate of need and route permit proceedings occur after the Commission has determined the FEIS to be adequate. In fact, it has been the Commission's longstanding practice to determine the adequacy of the FEIS and issue the route permit at the

⁶⁷ ALJ Report at findings 150–51.

⁶⁸ FEIS at Appendix T-1.

⁶⁹ ALJ Report at finding 167.

⁷⁰ ALJ Report at conclusion 9.

⁷¹ Minn. R. 4410.2100, subp. 3(B). The public scoping meeting must be held at least 15 days after publication of the Notice of Availability of the DSDD and Scoping EAW in the *EQB Monitor*.

⁷² ALJ Report at finding 92. The Commission agrees with the ALJ Report that although one of the public scoping meetings was held one day before the expiration of the 15-day waiting period required under Minn. R. 4410.2100, subp. 3(B), the 11 meetings held after the waiting period more than comply with the rule's requirements. ALJ Report at finding 99.

⁷³ Minn. R. 4410.2600, subp. 2.

⁷⁴ ALJ Report at finding 150.

same time.⁷⁵ Similarly, no provision of MEPA or the rules requires agencies who, like MPCA and MDNR, provided their input and expertise in the preparation of the DEIS and the FEIS, to also file public comments on the FEIS, as some of the Opposing Parties claim. The Commission also finds that EERA's revised Notice of Availability of the DEIS complied with the applicable procedural requirements by including information and a link to the revised Notice in the *EQB Monitor*, ensuring that anyone who needed to view the revised notice could easily access it from the *EQB Monitor*.

In sum, the Commission finds that the FEIS filed on February 12, 2018, is adequate under Minn. R. 4410.2800, subp. 4, because it addresses the potentially significant issues and alternatives raised in scoping, provides responses to the DEIS comments, and was prepared in compliance with the procedures in MEPA and the applicable rules.

ORDER

1. The Commission finds that the Final Environmental Impact Statement for the Line 3 Project filed on February 12, 2018, is adequate under Minn. R. 4410.2800, subp. 4.
2. The Commission adopts the ALJ Report as modified by the supplemental and revised findings in Appendices A & B to this order.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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⁷⁵ See, e.g., *In the Matter of the Application of Minnesota Power for a Route Permit for the Great Northern 500 kV Transmission Line Project in Roseau, Lake of the Woods, Beltrami, Koochiching, and Itasca Counties*, Docket No. E-015/TL-14-21, Order Issuing Route Permit with Modifications (April 11, 2016).

Appendix A

Finding	Modification
11	More recently, because of operational and safety issues, Enbridge has not been operating the Line 3 pipeline at this rated capacity. To avoid stress on the pipeline, or mishaps, Enbridge has been shipping on average 360,000 <u>390,000</u> bpd from Neche, North Dakota, to Superior, Wisconsin, through Line 3. ¹¹
13	Enbridge proposes a new pipeline, as a replacement for the existing Line 3, as part of an effort to reclaim a 760,000 bpd throughput capacity from oil terminals in North Dakota <u>Edmonton, Alberta</u> to Superior, Wisconsin. ¹³ [Footnote] ¹³ See Certificate of Need Application at 1-1, 1-6, 2-5 (eDocket Nos. 20154-109653-03, 20154-109653- 01) and Route Permit Application, Section 1 at 1-1, (eDocket Nos. 20154-109661-07, 20154-109661-08, 20154-109661-09)
69	As noted above, Enbridge filed Certificate of Need and Routing Permit applications for the Project on April 24, 2015. On July 20, 2015, the Commission and <u>DOC-EERA</u> issued a notice of public information and scoping meetings for the Project. ⁶⁹
<u>69a</u>	<u>On August 12, 2015, the Commission issued an order finding the Route and Certificate of Need Applications substantially complete and among other things varied Minn. R. 7852.1300, subp. 1, to authorize public information meetings in areas near the proposed pipeline route in lieu of meetings within every county along the route.</u> ^{69a} [Footnote] ^{69a} <u>Commission Order Finding Application Substantially Complete and Varying Timelines, August 12, 2015 (eDocket No. 20158-113179-01).</u>
70	The 2015 scoping period, conducted under Minn. R. ch. 7852 (2015), occurred between July 20 and September 30, 2015. DOC-EERA and Commission staff held 15 public meetings between August 11 and 27, 2017 <u>2015</u> . ⁷⁰
<u>70a</u>	<u>DOC-EERA issued a revised public meeting notice on August 17, 2015, to accommodate a request from the Mille Lacs Band of Ojibwe to hold a meeting at the East Lake Community Center.</u> ^{70a} [Footnote] ^{70a} <u>Revised Public Meeting Notice filed on August 19, 2015 (eDocket No. 20158-113372-01).</u>

Finding	Modification
81	<p>The Commission conducted public scoping for the EIS in April and May 2016.⁸¹</p> <p>[Footnote] ⁸¹ Scoping Summary Report at 2 (September 22, 2016) (eDocket No. 20169-125058-17).</p>
82	<p>The Commission <u>DOC-EERA</u> prepared a Scoping EAW and DSDD.⁸²</p>
83	<p>The Commission accepted Enbridge's completed data portions of the Scoping EAW for use in EIS scoping, and determined Enbridge's Scoping EAW data submittal to be complete for scoping purposes.⁸³</p> <p>[Footnote] ⁸³ Minn. R. 4410.1400 (2015).</p>
84	<p><u>DOC-EERA</u> published the A Scoping EAW and DSDD were issued on April 11, 2016.⁸⁴</p>
121	<p>With respect to a No Action Alternative, the FSDD pledged that the EIS would evaluate <u>the expected condition if the certificate of need is not granted and the existing Line 3 is not replaced as proposed</u>. The FSDD pledged that <u>this analysis would include</u> options for an integrity monitoring and repair program for the Existing Line 3, as well as the potential that additional volumes of oil would be transported using alternative methods and technologies.¹²¹</p>
139	<p>Additionally, the DEIS <u>EQB</u> published notice of the availability of the DEIS in the May 15, 2017 issue of the EQB Monitor. The notice included the dates, times, and locations of the public meetings; notices of where the DEIS was available for public review; and indicated that the comment period would close on July 10, 2017.¹³⁹</p>
208	<p>Enbridge commissioned a modeling analysis of hypothetical crude oil releases on behalf of, and with input from <u>state and federal agency staff, including DOC-EERA, Minnesota Department of Health, and the DNR and MPCA</u>. Staff from the U.S. Army Corps of Engineers were also involved. The analysis modeled the impacts following seven different hypothetical crude oil releases. The computer modeling involved “simulating the chemical and physical behavior of hypothetical oil spills in the selected environments under specified conditions, including weathering processes.”²⁰⁸</p>

Finding	Modification
215	<p>The FEIS also analyzed the potential effects of reducing the pipeline diameter from 34 <u>36</u> inches, as proposed by Enbridge, to 24 <u>34</u> inches. DOC-EERA noted that while the “probability of an incident leading to a crude oil release would . . . be similar for a smaller diameter pipeline,” because the construction and operation impacts “are generally the same, a smaller diameter pipeline configuration was not evaluated as a Project configuration alternative.”²¹⁵</p>
241a	<p><u>Regarding upstream and downstream life-cycle greenhouse gas emission estimates, the FEIS did not include a detailed market analysis of whether the proposed project would induce new oil demand. The FEIS did review the extensive analyses of the issue of whether the approval of a particular oil pipeline could affect upstream production or downstream oil consumption in two recent State Department EIS’s on Canadian crude oil pipelines, one for Keystone XL and one for the Line 67 upgrade. The FEIS found those analyses to be inconclusive. Therefore, the FEIS includes calculations of potential life-cycle carbon emissions using several scenarios that would bracket the possible outcomes.</u>^{241a}</p> <p>[Footnote] ^{241a} <u>FEIS at 5-452</u></p>
277a	<p><u>The FEIS finds that the project and other alternatives would have a disproportionate and adverse impact to both low-income and minority populations along the proposed route, as well as those populations residing or using lands near the Project, in particular, American Indian populations. RA-06, RA-07, and RA-08 would have direct impacts on reservation lands (Leech Lake and Fond du Lac Reservations). Based on the discussion of tribal resources in Chapter 9, any of the routes, route segments, and system alternatives would cross treaty lands and also would have a long-term detrimental effect on tribal members.</u>^{277a}</p> <p>[Footnote] ^{277a} <u>FEIS at 11-22</u></p>
277b	<p><u>The FEIS includes a list of potential mitigation measures that could reduce the impacts of these impacts.</u>^{277b}</p> <p>[Footnote] ^{277b} <u>Id.</u></p>
170	<p>When searching for “reasonable alternatives to the proposed project,” the DOC-EERA reviewed pipeline alternatives that interconnected with “the crude oil</p>

Finding	Modification
	<p>supply region near Edmonton, Alberta” and “served the same Clearbrook and Superior destinations.”¹⁷⁰ <u>Since the primary purpose of the Commission’s Certificate of Need decision is to determine the need for the project, the FEIS does not separately assess the proposed project’s underlying “need.” Instead, the FEIS focuses on providing the information required for the Commission to make informed decisions regarding the environmental impacts of its Certificate of Need and route permit decisions.</u>¹⁷⁰</p> <p>[Footnote] ¹⁷⁰ FEIS at 4-7. FEIS at 1-7.</p>
170a	<p><u>Therefore, when searching for “reasonable alternatives to the proposed project,” the FEIS did not use “need” to screen out potential alternatives because “need” is the primary issue the Commission must assess in its Certificate of Need decision.</u>^{170a}</p> <p>[Footnote] ^{170a} <u>Alternatives Screening Report, supra, at Section 4.1; FEIS at 1-7. See also Sierra Club Scoping Comment Letter, May 26, 2016 at 5 (eDocket No. 20165-121701-02).</u></p>
170b	<p><u>Similarly, the FEIS does not include a separate, redundant market analysis of the economic feasibility of other pipeline endpoints or competing pipeline systems. The cost of a detailed, redundant oil demand market study in the FEIS, which in addition to similar analyses completed in the Certificate of Need process, would exceed its relevance and importance in making an informed decision among alternatives.</u>^{170b}</p> <p>[Footnote] ^{170b} <u>FSDD at 36.</u></p>
171	<p>None of the other non-Enbridge pipelines that are now (or will be) capable of bringing crude oil from Canada connect to Superior, Wisconsin. The Keystone XL pipeline, TransCanada Energy East pipeline, or the Minnesota pipeline are not capable of bringing crude oil to a refinery in Superior, Wisconsin. The FEIS considered other non-Enbridge pipelines including the Keystone XL and TransCanada Energy East pipeline that could be contemplated by the <u>commission as alternatives to meet a need that may be identified in the Certificate of Need process. The FEIS concluded that the relevant environmental impacts of these projects either have been or will be addressed in other jurisdictions and EERA determined that the cost and effort of further analysis in</u></p>

Finding	Modification
	<p><u>the EIS would exceed its relevance and importance in making an informed decision among alternatives.</u>¹⁷¹</p> <p>[Footnote] ¹⁷¹ <i>Id.</i> at 4-7 – 4-8.</p>
173	<p>The Administrative Law Judge disagrees. Because of the nature of Minnesota’s market for crude oil, it was not irrational or inappropriate for the DOC EERA to focus upon proposals that could deliver crude oil to terminals in Clearbrook, Minnesota and Superior, Wisconsin. In this context it is important to emphasize that Minnesota refineries have not imported crude oil from a country other than Canada since 2008. Moreover, the only pipeline by which “non-Canadian” crude oil imports could be delivered to Minnesota refineries, was taken out of service in 2013.¹⁷³ Thus, while not all of the crude oil that is shipped on Enbridge’s Mainline system remains in Minnesota (or Superior, Wisconsin), the oil that is needed by Minnesota companies travels on this interstate network. <u>The FEIS did appropriately include a description of the applicant’s stated purpose in the chapter that describes the applicant’s proposed project.</u>^{173a} <u>A description of the proposed project is a standard part of any EIS.</u>^{173b}</p> <p>[Footnote] ¹⁷³ Direct Testimony of Neil Earnest at 13 (eDocket No. 20171-128683-02); <i>see also</i> FEIS at ES-1 (“Nearly all of the heavy crude oil refineries in the Upper Midwest receive a portion of their oil, either directly or indirectly, from the Enbridge Mainline system”).^{173a} FEIS Chapter 2 at 2-4.^{174b} Minn. R. 4410.2300 (E).</p>
174	<p>Further, because crude oil supplies for refineries in Minnesota and Wisconsin travel alongside supplies that are destined for other parts of the country, a rise in demand from these other locations that is not matched by increases in pipeline capacity results in “apportionment” on the pipeline and delays of oil shipments to Midwestern companies.¹⁷⁴</p> <p>[Footnote] ¹⁷⁴ <i>See</i> FEIS at 2-5 (“As a common carrier, Enbridge is required to treat all similarly situated crude oil customers on the Enbridge Mainline system without discrimination. Thus, when demand from refineries is greater than the capacity of the pipeline system, Enbridge must apportion the pipeline capacity as regulated by the Federal Energy Regulatory Commission, typically resulting in all refineries receiving less capacity to transport crude oil nominations than requested.”); Comment of Flint Hills Resources (August 16, 2017) (eDocket No.</p>

Finding	Modification
	<p>20179-135394-01) (“In the last 10 years, more than one million barrels per day of pipeline capacity have been added downstream of Clearbrook while upstream pipeline capacity has not kept pace. This has led to greater apportionment or ‘rationing’ of shipments because the upstream portion of the system cannot accommodate all the volumes for which it has received nominations. This imbalance creates inefficiencies that hinder a refinery’s ability to access its most preferred or economic crude slate. Apportionment also can make it more difficult for refineries to respond to spikes in demand, make up for supply outages or unplanned events, and it can create operational inefficiencies, including underutilization of equipment. These inefficiencies and supply constraints ultimately harm consumers.”); Comment of Todd Borgmann, Calumet Specialty Products Partners, L.P., (July 8, 2017) (eDocket No. 20179-135394-01) (“Currently the logistics out of Western Canada, including the Enbridge Pipeline System, are constrained in that demand exceeds transportation capacity out of the basin. If additional capacity on Enbridge Line 3 is not made available, we may be faced with undue and unnecessary risks tied to capacity apportionment and/or operational/supply disruptions, both of which would have a negative impact on our operations.”); Comment of C. Mike Palmer, Marathon Petroleum Company, L.P. (July 7, 2017) (eDocket No. 20179-135394-01) (“MPC has been a shipper on the Enbridge Mainline System for many years. MPC is concerned with the ongoing, consistent apportionment that has been occurring on the Enbridge Mainline System, which has been as high as 36% in February of 2015. MPC believes that without the full replacement of Line 3 apportionment will continue and in fact increase for US refiners in Minnesota and PADD II, such as MPC.”).</p>
175	<p>For these reasons, connectivity to terminals in Clearbrook and Superior were key features to be assessed in the FEIS, albeit not the only features that were evaluated.¹⁷⁵</p> <p>[Footnote] ¹⁷⁵ See, e.g., FEIS at 4-8 (System Alternative 04 “is a conceptual pipeline alternative to a different endpoint that is analyzed for comparative purposes. SA 04 and other CN Alternatives could not actually be permitted under this process”); FEIS at Table 4.23 (Certificate of Need Alternative Pipelines).</p>
177	<p>The Administrative Law Judge disagrees. To the extent that some of the crude oil supplies sought by area refiners is intended to be fashioned into pharmaceuticals, plastics or asphalt, it was not error for the DOC EERA to focus on</p>

Finding	Modification
	<p>methodologies that were capable of delivering supplies of oil from one point to another. Technologies like electric powered automobiles or electricity from wind turbines are arguably substitutes for gasoline or diesel fuel, but they are not genuine alternatives to the other, wider range of products that are manufactured from petroleum.¹⁷⁷ <u>The FEIS evaluates the environmental impacts of the potential outcomes of denying the Certificate of Need should there be demand for the amount of crude oil transportation requested by the applicant: continued use of Existing Line 3, use of other pipelines, System Alternative SA-04, rail, trucks, and a combination of these.</u>¹⁷⁷ <u>Substituting wind-energy for oil is not a reasonably likely outcome of a commission decision to deny the Certificate of Need for the proposed project. The Commission is of course free to evaluate whether wind energy and other renewable energy technologies may eventually reduce or eliminate the need for 370,000 or 760,000 barrels per day of crude oil in the region and in North America. The Commission, however, cannot order this outcome in this docket.</u></p> <p>[Footnote] ¹⁷⁷ See, e.g., Comment of Flint Hills (eDocket No. 20177-134089-01) (Flint Hills Resources' Pine Bend refinery in Rosemount, Minnesota “produces a significant percentage of the asphalt used in Minnesota and across the country as well as heating fuels and the chemical building blocks for numerous other essential products, including plastics, fertilizers, medicines and synthetic materials”); Comment of Todd Borgmann (eDocket No. 20177-134089-01) (the Calumet refinery in Superior, Wisconsin produces “500 thousand gallons per day of Asphalt and Fuel Oil”); Comment of the Duluth Seaway Port Authority (July 10, 2017) (eDocket No. 20177-134089-01) (“The crude oil that moves through Line 3 is refined for use as fuel and as a feedstock for a wide variety of products that all of us use every day, including medical supplies, eye and sun glasses, bike parts, auto and jet components, asphalt for roads and roofs, and poly fiber fabrics used to make clothing, outdoor gear and tents”); Bemidji Public Hearing Transcript, at 94 (Suave). FEIS at 4-3.</p>
177a	<p><u>Therefore, for purposes of the FEIS, the installation of tens of thousands of megawatts of wind-turbine capacity and the associated use of electric vehicles in the region is not evaluated as a reasonable outcome of the denial of the certificate of need for the proposed crude oil pipeline at issue here. The FEIS is not inadequate because it did not evaluate the feasibility and impacts of such renewable energy alternatives.</u></p>

Finding	Modification
179	<p>In this case, the ability of the proposed project to transport crude oil is more than a feature that is “desirable from the standpoint of the applicant;” it is a key expectation among Enbridge’s customers who use petroleum to manufacture a wide range of products.¹⁷⁹</p> <p>[Footnote] ¹⁷⁹ See, e.g., Direct Testimony of Paul Kahler, at 6-7 (eDocket No. 20179-135394-01).</p>
181	<p>It does not appear that the Mille Lacs Band raised this suggestion during either the scoping process or in its comments to the DEIS, giving DOC-EERA (or others) a reasonable opportunity to respond.¹⁸¹ Still, the hearing record includes valuable detail on this important question.</p>
181a	<p><u>As with other “need” related issues, the FEIS did not complete a separate, redundant analysis to that in the Certificate of Need process regarding whether existing pipelines in the Enbridge Mainline could meet the project’s stated “need.” Still, the hearing record includes valuable detail on this important question.</u></p>
182	<p>The Enbridge Mainline system consists of Line 3 and other pipelines, including Line 1 (237,000 bpd), Line 2A (442,000 bpd), Line 2B (442,000 bpd), Line 4 (796,000 bpd), and Line 67 (890,000 bpd).¹⁸²</p> <p>[Footnote] ¹⁸² FEIS at 4-7.</p>
183	<p>The record suggests only a fraction of the oil that Enbridge proposes to ship along a refurbished Line 3 could be transported by other nearby pipelines.¹⁸³ For this reason, the DOC EERA did not commit error by not detailing this particular suggestion as an alternative to the proposed project.</p> <p>[Footnote] ¹⁸³ See FEIS at 4-7—4-8; Honor the Earth Information Request No. 2 (Sept. 7, 2017) (eDocket No. 201710-136749-01) (“The projects . . . are not alternatives to a Line 3 Replacement for a variety of reasons. The capacity recovery projects listed (‘Line 2A Capacity Recovery’, ‘Line 2B Capacity Recovery’, ‘Line 4 Capacity Recovery’) are projects designed to restore those respective lines back to their annual quoted capacities. Lines 2A and 2B do not provide heavy capacity out of Western Canada that historical and forecast apportionment indicates is required, hence are not alternatives to Line 3 Replacement. Capacity recovery of Line 4 provides some incremental heavy</p>

Finding	Modification
	<p>capacity out of Western Canada; however, it does not eliminate historical and forecasted heavy apportionment.”); Surrebuttal Testimony of Lorne Stockman at 12 (Oct. 23, 2017) (eDocket No. 201710-136739-02) (“If future Canadian crude oil supply that is available for export is as high as forecast by the industry in the CAPP 2017 Report, then it is likely that apportionment on the Enbridge Mainline System will increase. If future Canadian supply is significantly less than the CAPP 2017 supply forecast and the Project is not built, then apportionment would depend on how much oil is available for export and whether shippers have access to other transportation options.”); Surrebuttal Testimony of Chris Joseph at 10 (Oct. 23, 2017) (eDocket No. 201710-136730-03) (“Minnesota refineries have the ability to obtain oil via other means such as rail to make up shortfalls resulting from any apportionment that might occur”); Rebuttal Testimony of Paul Kahler, John Van Heyst and Edward Shahady at 5 (Sept. 11, 2017) (eDocket No. 201710-136412-02) (“Data used by the State Department indicates that verified monthly nominations of Western Canadian heavy crude oil exceeded accepted nominations by an average of almost 195,000 barrels per day for the first 12 months after the Line 67 expansion. This represented an average of 11 percent apportionment for this period. The report also noted that Line 67 was subject to apportionment 10 out of the 12 months indicating the demand exceeded the design capacity.”) (emphasis in original).</p>

Appendix B

Finding	Supplement
294	<p>On December 7, 2017, the Commission met to consider the adequacy of the Final EIS. At that meeting the Commission identified four deficiencies in the Final EIS that need to be remedied before the Final EIS can be considered adequate under Minn. R. 4410.2800. The Commission requested that the Department submit the supplemental information within 60 days, as required under Minn. R. 4410.2800, subp. 5.</p>
295	<p>On December 13, 2017, the Commission issued a Notice of Final Environmental Impact Statement Adequacy Determination. The notice was distributed in accordance with Minn. R. 4410.2800, subp. 6.²⁹⁴</p> <p>[Footnote] ²⁹⁴ Notice of Final Environmental Impact Statement Adequacy Determination Line 3 Replacement Project, December 13, 2017, Document ID 201712-138116-01 and 201712-138116-03.</p>
296	<p>On December 14, 2017, the Commission issued its Order Finding Environmental Impact Statement Inadequate.²⁹⁵ The Order identified the four deficiencies that must be remedied before the FEIS can be considered adequate:</p> <ul style="list-style-type: none"> a. The Final EIS needs to include additional information to: (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse, and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative. b. The Final EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those alternatives. For example, the acreage of High Consequence Areas (HCA) drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources. c. The Final EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive—i.e., the extent to which that route alternative would introduce

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	<p>new or additional impacts beyond the impacts of the existing pipelines in that corridor.</p> <p>d. The Final EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.</p> <p>[Footnote] ²⁹⁵ Order Finding Environmental Impact Statement Inadequate, December 14, 2017, Document ID 201712-138168-02.</p>
297	<p>On December 18, 2017, the EQB published Notice of Final Environmental Impact Statement Adequacy Determination.²⁹⁶</p> <p>[Footnote] ²⁹⁶ EQB Monitor, December 18, 2017, Vol. 41, No. 51 (https://www.eqb.state.mn.us/sites/default/files/documents/EQB%20Monitor%2C%20December%2018%2C%202017.pdf).</p>
298	<p>On February 12, 2018, the Department issued the revised Final EIS.²⁹⁷ The Department distributed copies of the revised Final EIS in accordance with Minn. R. 4410.2700, subp. 3. In addition, the Department provided electronic copies of the revised Final EIS to 48 public libraries throughout Minnesota.</p> <p>[Footnote] ²⁹⁷ Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project, February 12, 2018, Document ID 20182-139959-02 and 20182-139959-04.</p>
299	<p>On February 12, 2018, the Commission issued a Notice of Availability and Comment Period for the Revised Final EIS. Comments on the revised Final EIS were accepted from February 12, 2018 to February 27, 2018. The notice was circulated in accordance with Minn. R. 4410.2700, subp. 3.²⁹⁸ The notice was published in the February 12, 2018 EQB Monitor.²⁹⁹ The Commission also issued a press release on February 12, 2018, that announced the availability of the revised Final EIS and that identified the associated public comment period.³⁰⁰</p> <p>[Footnote] ²⁹⁸ Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Line 3 Replacement Project February 12, 2018, Document ID 20182-139993-02 and 20182-139993-04.</p> <p>[Footnote] ²⁹⁹ EQB Monitor, February 12, 2018, Vol. 42, No. 7.</p>

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	<p>[Footnote] ³⁰⁰ Minnesota Public Utilities Commission Issues Notice of Availability and Comment Period for the Revised Final Environmental Impact Statement on the Proposed Line 3 Replacement Project, February 12, 2018, Document ID 20182-139991-03.</p>
300	<p>The Commission received and reviewed hundreds of timely comments from interested stakeholders during the comment period on the revised FEIS. Due to the volume and general nature of the comments, these Findings do not separately recount or address each comment received.</p>
301	<p>Relative to Ordering Point 1.a. of the December 14 Order, the Department, in consultation with the Minnesota Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA) prepared a new appendix to address this item (revised Final EIS Appendix U). No viable routes were identified that entirely avoid karst; however, Appendix U contains an analysis of two reroute options that minimize crossing through areas where karst features are nearest to the ground surface. Appendix U contains tables that compare each new SA-04 option to the segment of SA-04 that it would replace using the full suite of environmental parameters evaluated in Chapters 5, 10 and 11 of the EIS.³⁰¹</p> <p>[Footnote] ³⁰¹ Revised Final EIS at Appendix U.</p>
302	<p>Relative to Ordering Point 1.b. of the December 14 Order, the Department, in consultation with DNR and MPCA, addressed this item by explaining in the Final EIS that an individual dataset should be used in context with other related data in order to reduce the chance of over-reliance on a single data set. As a result, in each resource section in Chapters 5 and 6 of the revised Final EIS, red bold text was added to the methodology section which explained that datasets should be considered together and in context, not in isolation, as each dataset has limitations. The revised Final EIS included footnotes to the impact summary table that explain this, and provide a specific example of why this is the case. The revised Final EIS included a similar explanation in red bold in the overall introductory section in chapters 5 and 6 and in Section 10.4 of the Final EIS.³⁰²</p> <p>[Footnote] ³⁰² Revised Final EIS at Chapters 5, 6, and 10.</p>
303	<p>Relative to Ordering Point 1.c. of the December 14 Order, the Department, in consultation with DNR and MPCA, clarified that the impacts reported in the Final</p>

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	<p>EIS, even along existing corridors, are the incremental impacts that the project will have, over and above impacts from any past projects.³⁰³ For example, where corridor sharing resulted in fewer incremental impacts, the Final EIS already reflected this, so new quantitative analysis would not be suitable. Instead, additional footnotes were added to the summary tables at the end of each resource section, which point the reader to pages containing qualitative discussions describing the nature of the incremental impact. As a result, in each resource section in chapters 5 and 6 of the Final EIS, the following was added in red bold font:</p> <ul style="list-style-type: none"> • Text in the methodology discussion explaining that the quantitative data in the tables should be reviewed with the qualitative discussion in the text. • Text in the existing environment and environmental impact discussions noting the type and extent of corridor sharing, and highlighting that these sections take the implications of corridor sharing into account. • Footnotes in the impact summary table noting the type and extent of corridor sharing of each alternative and pointing the reader to the qualitative discussion of impacts in the chapter that explains the nature of the incremental impact. <p>Similar explanations have been added to the introductory sections in Chapters 5 and 6 and in Section 10.4.</p> <p>[Footnote] ³⁰³ Revised Final EIS at Chapters 5, 6, and 10.</p>
304	<p>Relative to Ordering Point 1.d. of the December 14 Order, sections 5.4.1 and 6.4.1 of the revised Final EIS include the following language, “In its December 14, 2017, order finding the Line 3 Project EIS inadequate, the Commission specified that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in the Line 3 Project proceeding.”³⁰⁴</p> <p>[Footnote] ³⁰⁴ Revised Final EIS at Sections 5.4.1 and 6.4.1.</p>