

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

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

ISSUE DATE: November 21, 2018

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

ORDER DENYING  
RECONSIDERATION, EXCLUDING  
FILINGS, AND GRANTING VARIANCE

**PROCEDURAL HISTORY**

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge) filed an application for a certificate of need for a 338-mile pipeline, along with associated facilities, extending from the North Dakota–Minnesota border to the Minnesota–Wisconsin border to replace the existing Line 3 pipeline.

On September 5, 2018, the Commission issued its Order Granting Certificate of Need as Modified and Requiring Filings.

On September 25, 2018, the following parties filed petitions for reconsideration of the September 5 order:

- Department of Commerce, Division of Energy Resources (the Department)
- Friends of the Headwaters
- Mille Lacs Band of Ojibwe
- White Earth Band of Ojibwe, Red Lake Band of Chippewa, and Honor the Earth (Joint Petitioners)
- Youth Climate Intervenors

On September 26, 2018, Donovan and Anna Dyrdal (the Dyrdals) filed a petition for reconsideration of the September 5 order, and the Youth Climate Intervenors filed Appendix A to their petition for reconsideration that was filed on September 25.

On September 27, 2018, Sierra Club filed a petition for reconsideration of the September 5 order.

On October 4, 2018, Enbridge filed a Motion to Strike Filings regarding the petitions for reconsideration filed by the Dyrdals and Sierra Club and Appendix A filed by the Youth Climate Intervenors.

On October 5, 2018, the following parties filed answers to the petitions for reconsideration:

- Enbridge
- Laborers District Council of Minnesota and North Dakota
- Shippers for Secure, Reliable, and Economic Petroleum Transportation
- United Association of Journeyman and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO

On October 11, 2018, Sierra Club filed a response to Enbridge's Motion to Strike Filings.

On October 18, 2018, the Dyrdals and Youth Climate Intervenors filed responses to Enbridge's Motion to Strike Filings.

On November 19, 2018, the Commission met to consider the petitions for reconsideration and Motion to Strike Filings.

## **FINDINGS AND CONCLUSIONS**

### **I. Untimely Filings**

Under Minn. Stat. § 216B.27, subd. 1, a petition for reconsideration must be filed within 20 days of the date of the Commission's order.<sup>1</sup> Accordingly, the deadline for petitions for reconsideration of the Commission's September 5 order was September 25, 2018. The Commission will exclude the petition for reconsideration filed by the Sierra Club because it was received by the Commission days after the statutory deadline.

The late reconsideration filings of the Dyrdals and the Youth Climate Intervenors, on the other hand, were e-filed on September 25, 2018, but after the Commission had closed for the day at 4:30, and therefore were deemed to be filed on September 26. These filings therefore missed the statutory 20-day deadline pursuant to the Commission's rule that a document is deemed filed with the Commission when it is "received during regular business hours."<sup>2</sup> The Commission, however, may vary its rules.<sup>3</sup> When a filing is not made within a time period established by a rule, notice, or Commission order, the Commission may exclude that document upon determination that "the value of the document to the commission's deliberative process is

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<sup>1</sup> This statutory deadline has been incorporated in Commission rule, Minn. R. 7829.3000, subp. 1.

<sup>2</sup> Minn. R. 7829.0400, subp. 5a. The Commission's regular business hours are 8:00 a.m. to 4:30 p.m.

<sup>3</sup> Minn. R. 7829.3200.

outweighed by prejudice to a party, participant, or the public interest caused by the untimeliness.”<sup>4</sup>

The value of the Dyrdals petition to the Commission’s decision regarding reconsideration of its September 5 Order is outweighed by prejudice to other parties. The petition was submitted hours after the filing deadline, and allowing its inclusion in the record would be a source of confusion in future proceedings, at best. And if the Commission were to consider the petition it could only do so by ignoring Minn. Stat. § 216B.27 and Minn. R. 7829.3000, at great prejudice to Enbridge and other supporters of the certificate of need.<sup>5</sup>

The Youth Climate Intervenors, by contrast, submitted a petition for reconsideration before the filing deadline, but filed Appendix A minutes after the filing deadline. Because the Youth Climate Intervenors filed a timely petition for reconsideration and Appendix A is merely supportive documentation for that timely filing, the Commission determines that the value of Appendix A to the Commission’s decision outweighs any potential prejudice to other parties. The Commission will therefore vary Minn. R. 7829.0400, subp. 5a, and allow inclusion of Appendix A to remain in the record.

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

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest; and
3. Granting the variance would not conflict with standards imposed by law.

The Commission concludes that the requirements for a variance to Minn. R. 7829.0400, subp. 5a, are met, and makes the following findings:

1. Enforcement of the rule would impose an excessive burden upon the Youth Climate Intervenors;
2. Granting the variance would not adversely affect the public interest, because the Youth Climate Intervenors submitted a timely petition for reconsideration and the delay in filing Appendix A was de minimis; and
3. Granting the variance would not conflict with standards imposed by law.

The Commission requests that the Department of Commerce mark the petitions for reconsideration filed by the Dyrdals and Sierra Club as excluded from the record, consistent with Minn. R. 7829.0420, subp. 1(b).

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<sup>4</sup> Minn. R. 7829.0420, subp. 1.

<sup>5</sup> A timely petition for reconsideration is a condition precedent for judicial review. Minn. Stat. § 216B.27.

## II. Petitions for Reconsideration

The Commission has reviewed the entire record and the arguments of the parties.

Based upon this review, the Commission finds that the petitions for reconsideration filed by the Department, Friends of the Headwaters, Mille Lacs Band of Ojibwe, Joint Petitioners, and Youth Climate Intervenors do not raise new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the Commission's September 5 order, and do not otherwise persuade the Commission that it should rethink the decision set forth in that order. The Commission concludes that its decision is consistent with the facts, the law, and the public interest, and will therefore deny the petitions for reconsideration.

The Commission will so order.

### ORDER

1. The petition for reconsideration filed by the Dyrdals on September 26, 2018 (e-Dockets Document ID #20189-146626-02) and the petition for reconsideration filed by Sierra Club on September 27, 2018 (e-Dockets Document ID #20189-146650-01) are excluded from the record of these proceedings.
2. The Commission varies the filing deadline as it applies to Appendix A filed by the Youth Climate Intervenors.
3. The Commission denies the petitions for reconsideration of the Commission's September 5, 2018 order.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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