

STATE OF MINNESOTA  
IN COURT OF APPEALS

**FILED**

August 18, 2020

OFFICE OF  
APPELLATE COURTS

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

**PETITIONERS’  
STATEMENT OF THE CASE**

Court of Appeals

No: \_\_\_\_\_

Red Lake Band of Chippewa Indians,  
White Earth Band of Ojibwe,  
Honor the Earth, and  
The Sierra Club  
Petitioners,

Minnesota Public Utilities  
Commission Nos:  
PL-9/CN-14-916  
PL-9/PPL-15-137

vs.

**Date of Decision:**

Minnesota Public Utilities Commission,  
Respondent.

Order Finding Environmental  
Impact Statement Adequate,  
Granting Certificate of Need  
as Modified, and Granting  
Routing Permit as Modified  
May 1, 2020

Order Denying Reconsideration  
July 20, 2020

**1. Court or agency of case origination and name of presiding judge or hearing officer:**

The case originated with the Minnesota Public Utilities Commission (“Commission”):

Hon. Katie Sieben	Chair
Hon. Joseph K. Sullivan	Vice-chair
Hon. Valerie Means	Commissioner
Hon. Matthew Schuerger	Commissioner
Hon. John Tuma	Commissioner

**2. Jurisdictional statement:**

**a. Statute, Rule, or Other Authority Authorizing Certiorari Appeal.**

Certiorari appeal is authorized by Minn. Stat. § 216B.52 (2020) in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.63 – 68 (2020). Certiorari appeal of claims under the Minnesota Environmental Policy Act (“MEPA”) is authorized by Minn. Stat. § 116D.04, subd. 10.

**b. Authority Fixing Time Limit for Obtaining Certiorari Review.**

Minn. Stat. § 14.63 states, “A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on all parties to the contested case not more than 30 days after the party receives the final decision and order of the agency.” With regard to claims under the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. § 116D.04, subd. 10, states: “A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on the responsible governmental unit not more than 30 days after the responsible governmental unit provides notice of the final decision in the EQB Monitor.”

**c. Finality of Order or Judgment.**

On May 1, 2020, the Commission issued and served its Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified (“Line 3 Order”). On May 21, 2020, Petitioners timely filed a petition for reconsideration of the Line 3 Order. On July 20, 2020, the Commission issued and served its Order Denying Reconsideration, which order is the final order in Docket Nos. PL-9/CN-14-916 and PL-9/PPL-15-137 and with regard to the adequacy of the Second Revised Final Environmental Impact Statement for the

Line 3 Replacement Project (“2RFEIS”). Petitioners file the appeal here within the 30-day window following issuance of the Line 3 Order, as required by Minnesota Statutes § 14.63. As the Commission has not yet published notice of the 2RFEIS in the EQB Monitor, Petitioners have also filed this appeal “not more than 30 days after the responsible governmental unit provides notice of the final decision in the EQB Monitor.” Minn. Stat. § 116D.04, subd. 10.

**3. State type of litigation and designate any statutes at issue:**

Appeal from Commission decisions:

- finding an environmental impact statement adequate for a crude oil pipeline under Minn. Stat. ch. 116D;
- approving a certificate of need for a crude oil pipeline under Minn. Stat. § 216B.243; and
- approving a routing permit for a crude oil pipeline under Minn. Stat. ch. 216G.

**4. Brief description of claims, defenses, issues litigated, and result below:**

On April 24, 2015, Enbridge Energy, Limited Partnership (“Enbridge”), applied to the Commission for a certificate of need (“CN”) and a route permit (“RP”) for a new pipeline to carry crude oil from the Canadian tar sands region across Minnesota to Enbridge’s terminal in Superior, Wisconsin (“Project”). Enbridge stated that the Project was intended to replace its existing Line 3 crude oil pipeline. By orders dated August 8, 2015, and February 2, 2016, the Commission referred Enbridge’s Applications for a CN and RP to the Office of Administrative Hearings (“OAH”) for a contested case hearing.

In addition, on February 1, 2016, the Commission ordered completion of an environmental impact statement (“EIS”) for the project, and delegated the responsibility for it to the Minnesota Department of Commerce, Energy Environmental Review and Analysis (“DOC-EERA”) unit.

Following a contested case hearing, on April 23, 2018, Administrative Law Judge (“ALJ”) Ann O’Reilly issued her Findings of Fact, Conclusions of Law, and Recommendation (“ALJ Report”). The ALJ Report recommended approval of the CN and RP Applications but only if the Project was placed in the route of the existing Line 3 Pipeline.

After public hearings and thousands of comments, including comments from Petitioners, on a draft EIS, DOC-EERA prepared what it called a “final EIS” (“FEIS”) and, on August 17, 2017, submitted it to the Commission for its determination whether the FEIS was “adequate” under MEPA, Minn. Stat. § 116D.04, such that it could be declared to be the EIS for the Project. To aid its review, the Commission sent the FEIS to the Office of Administrative Hearings (“OAH”), and, on November 1, 2017, ALJ Eric Lipman issued a report and recommended that the Commission find the contents of the FEIS to be “adequate” under MEPA.

### ***MEPA Decision History***

On December 14, 2017, the Commission issued an order finding the contents of the FEIS to be inadequate on four narrow grounds, and directed DOC-EERA to address those concerns. DOC-EERA submitted a revised FEIS on February 12, 2018. On May 1, 2018, the Commission issued an order finding the contents of the revised FEIS to be

adequate under MEPA, thereby approving the EIS for the Project. Petitions for reconsideration of this order were filed, briefed, and argued on June 27, 2018, but no Commission member moved to grant any petition for reconsideration. The written order denying the petitions for reconsideration, and making the PUC's decision final, was issued on July 3, 2018, and notice of the EIS was published in the EQB Monitor on July 9, 2018.

On August 7, 2018, Honor the Earth filed A18-1283, which the court consolidated with A18-1291 and A18-1292, filed respectively by Friends of the Headwaters and four Ojibwe Tribes, including Fond du Lac Band of Lake Superior Chippewa, Mille Lacs Band of Ojibwe, Red Lake Band of Chippewa Indians, and White Earth Band of Ojibwe. By Order dated June 3, 2019, this court reversed and remanded the Commission's determination of adequacy on the grounds that the EIS failed to address the issue of how an oil spill from Enbridge's proposed Line 3 pipeline project would impact Lake Superior and its watershed. *In re Enbridge Energy, Ltd. P'Ship*, 930 N.W.2d 12, 17 (Minn. App. 2019).

In response, on October 8, 2019, the Commission ordered the DOC-EERA "to revise the final EIS to include an analysis of the potential impact of an oil spill into the Lake Superior watershed . . . ." DOC-EERA prepared a Second Revised EIS and released it for comment on December 9, 2019. Following public comment, on May 1, 2020, the Commission issued its Final Line 3 Order, for which Petitioners submitted a petition for reconsideration on May 21, 2020, which the Commission denied on July 20, 2020, in its Order Denying Reconsideration, thereby finding the 2RFEIS adequate.

### ***CN Decision History***

On September 5, 2018, the Commission issued its Order Granting Certificate of Need as Modified and Requiring Filings (“First CN Approval Order”) (attached), in which it rejected substantial portions of the ALJ Report as well as its overall recommendation and instead granted the CN for the Project. Honor the Earth, the Mille Lacs Band of Ojibwe, the White Earth Band of Ojibwe, the Red Lake Band Of Chippewa, the Minnesota Department of Commerce, Division of Energy Resources (“Department”), Friends of the Headwaters (“FOH”), and Youth Climate Intervenors (“YCI”), timely filed petitions for reconsideration of the CN Approval Order on September 25, 2018 and served all parties. On November 21, 2018, the Commission issued its order denying these petitions for reconsideration. The Sierra Club filed its Petition for Reconsideration on September 26, 2018, and the Commission subsequently struck its Petition. The Sierra Club disputed the Commission’s decision to exclude its Petition and also asserts that because the Commission’s First CN Approval Order did not come into effect until the filing of a subsequent order containing modifications to the Certificate of Need, it was not a final order subject to a petition for reconsideration. On January 23, 2019, the Commission issued its Order Approving Certificate of Need Modifications, and on February 12, 2019, Petitioners filed a timely joint petition for reconsideration, which by order dated March 27, 2019, the Commission denied.

On April 16, 2019, Petitioners appealed First CN Approval Order in No. A19-0510 (consolidated with A19-0599, A19-0602, and A19-0617) with this Court, which by order dated October 29, 2019, dismissed without prejudice because “[t]his court’s

decision reversing the commission’s FEIS adequacy decision [*see In re Enbridge*, 930 N.W.2d at 17] has rendered these appeals moot because—as both the commission and Enbridge concede—the decision in the FEIS appeals has rendered the CN invalid.”

Following preparation of the 2RFEIS, on May 1, 2020, the Commission issued its Final Line 3 Order, for which Petitioners submitted a petition for reconsideration on May 21, 2020, which the Commission denied on July 20, 2020, in its Order Denying Reconsideration.

### ***RP Decision History***

The Commission issued its Order Approving Pipeline Routing Permit with Conditions on October 26, 2018 (“First RP Order”). Honor the Earth and The Sierra Club filed petitions for reconsideration on November 15, 2018, and Friends of the Headwaters filed a petition for reconsideration on November 16, 2018. On December 13, 2018, the Commission met and voted to deny the petitions for reconsideration, but it did not issue its Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration until January 18, 2019, four days after the 60-day deadline contained in Minn. Stat. § 216B.27, subd. 4, which deadline passed on January 14, 2019. Friends of the Headwaters, Honor the Earth, and The Sierra Club timely filed appeal A19-0267, which was dismissed by this court without prejudice by order dated October 29, 2019, because the FEIS adequacy decision rendered the First RP Order invalid. *See In re Enbridge*, 930 N.W. 2<sup>nd</sup> at 17.

Following issuance of the 2RFEIS, on May 1, 2020, the Commission issued its Final Line 3 Order, for which Petitioners submitted a petition for reconsideration on May

21, 2020, which the Commission denied on July 20, 2020, in its Order Denying Reconsideration.

***MEPA Claims Raised Before the Commission***

Petitioners claim that the Line 3 Order is in violation of law, not supported by substantial evidence, and arbitrary and capricious, because 2RFEIS fails to consider the full impact of a worst case oil spill from the proposed Line 3 Pipeline on critical areas within the Lake Superior watershed, including the St. Louis River Estuary and Duluth-Superior Harbor, and on Lake Superior itself. Rather than analyze the potential impacts of a worse case discharge near these critical aquatic resources, the 2RFEIS considered just one additional "representative" spill location into Little Otter Creek near Interstate 35 more than 30 miles upstream from Lake Superior. Since the impact of oil spills is attenuated by the distance traveled by the oil through waters, analysis of this single upstream potential spill location meant that the 2RFEIS impact analysis of a spill at this site found little to no impact on the Estuary, Harbor, or Lake Superior. This analysis does not mean that the Line 3 Project poses little threat to the Estuary, Harbor, or Lake Superior. It means only that the 2RFEIS modeled a spill site too distant from these resources to adequately assess the potential significant environmental effects of the Line 3 Project on these critical resources. Yet, the 2RFEIS acknowledges that potential spill locations exist much closer to the Estuary, Harbor, and Lake, and that a spill from one of these closer locations would have different impacts on these critical resources. It also admits that the habitat impacted by a spill from the Little Otter Creek site is the upland rapids and waterfalls of the St. Louis River, which habitats are nothing like the slow

moving and deep waters in the Estuary, Harbor, and Lake. As such, a spill from the Little Otter Creek site is not representative of the effects of a spill into the Estuary, Harbor, or Lake.

Petitioners claim that the purpose of MEPA is to analyze potentially significant environmental effects on particular state resources, and that by choosing to model only one additional upstream location, the Commission’s analytical methodology failed to adequately assess the potential significant environmental effects of the Line 3 Project on the Estuary, Harbor, and Lake Superior, thereby violating Minn. Stat. § 116D.04, subd. 2a(a), and Minn. R. 4410.2300.H.

### ***CN Claims Raised Before the Commission***

Petitioners claim that the Line 3 Order is in violation of law, not supported by substantial evidence, and arbitrary and capricious for the following reasons:

#### Issues Related to the Commission’s Failure to Base Approval of the CN on a Forecast of Demand for Energy

The State’s certificate of need law requires that the Commission determine the “need” for a large crude oil pipeline as a prerequisite to its construction. An applicant for a certificate of need has the burden to prove “need” by providing a “long-range energy demand forecast.” Minn. Stat. § 216B.243, subd. 3 (2019); *see also* Minn. R. 7853.0130.A(1) (2019). As part of its “need” analysis, the Commission must evaluate the “accuracy” of such forecast. *Id.* In support of this determination of accuracy, an applicant must provide and the Commission must consider the information required by Minn. R. 7853.0520 (2020). The Commission must also consider any potential adverse

impacts that a denial of a CN would have on the energy needs of an applicant, an applicant's customers, and "the people of Minnesota and neighboring states . . . ." Minn. R. 7853.0130.A (2020). Thus, Minnesota law defines "need" in terms of energy demand by those that consume it. It does not define "need" in terms of a commercial desire to transport additional crude oil that is unsupported by a proven need for energy by energy consumers.

Enbridge did not provide and the Commission did not consider a forecast of demand for energy. Instead, Enbridge provided a forecast of a potential increase in crude oil production in western Canada (a supply forecast) and used this supply forecast directly and also mathematically modified it into a so-called apportionment forecast to justify a finding of need for the Project. Rather than provide a direct forecast of demand for energy, Enbridge assumed that future global demand for crude oil would be sufficient to consume the increased production of crude oil in western Canada forecast by Enbridge. However, Enbridge failed to provide any evidence supporting the validity of this assumption. No other party to the administrative proceeding introduced evidence into the record showing that demand for crude oil in Minnesota, neighboring states, the U.S. or globally will steadily increase at a rate sufficient to demand all of Enbridge's forecasted increase in western Canadian crude oil supply. Instead, the evidence in the record related to future consumer demand for crude oil in Minnesota, neighboring states, the U.S., and globally consists of evidence showing that demand for crude oil during the forecast period will decrease in Minnesota, neighboring states, the U.S., and globally.

The Commission failed to require that Enbridge provide a forecast of demand of energy and failed to consider the evidence in the record related to declining demand for crude oil and instead justified its decision based its reliance on crude oil supply forecasts in prior pipeline need determinations. The Commission’s failure to require and rely upon a forecast of demand for energy violates the plain language of Minn. Stat. § 216B.243, subd. 3, and Minn. R. 7853.0130.A(1) to determine need based on demand for energy.

Even if the law allows the Commission to substitute an oil supply forecast for an energy demand forecast, Enbridge failed to provide quantified evidence that allows a determination of the accuracy of its crude oil supply forecast, as required by Minn. R. 7853.0520. This regulation requires that an applicant provide a quantified forecast of demand for energy that includes a “list of the annual and peak day quantities expected, using the appropriate units of measure . . . .” *Id.* To allow the Commission to evaluate the accuracy of such forecast, an applicant must also provide “a discussion of the methods, assumptions, and factors employed for purposes of estimation . . . .” and “a discussion of the effect on the forecast of possible changes in the key assumptions and key factors . . . .” *Id.* A quantified verifiable forecast is required to allow consideration of how changes in forecast methodology, assumptions, and key factors would impact the forecast. The Commission may not rely on a forecast in which none of the underlying calculations, methodologies, or key assumptions are quantified.

Enbridge relies on a forecast of western Canadian crude oil supply provided by the Canadian Association of Petroleum Producers (“CAPP”). Enbridge failed to provide the data, assumptions, or detailed methodology underlying this forecast of supply, such that

the CAPP forecast is neither transparent nor verifiable. Enbridge justified this omission based on the argument that CAPP's forecast data is proprietary and non-public, and not subject to disclosure. As such, the accuracy of Enbridge's supply forecast cannot be assessed except by the reputation of the trade association that produced it. Enbridge did not provide a transparent and verifiable forecast of western Canadian crude oil supply and did not assert that it could not provide such forecast. The Commission's failure to require a transparent verifiable forecast violates Minn. R. 7853.0520.

Issues Related to Consideration of Pipeline Safety as a Decision Factor, Consideration of which Is Not Allowed by Minn. Stat. § 216B.243 or Minn. R. Chapter 7853, and Is Preempted by the Federal Pipeline Safety Act, 49 U.S.C. § 60104(c).

Minn. Stat. § 326B.243, subd. 3, and Minn. R. 7853.0130 do not include consideration of pipeline safety as a factor in pipeline certificate of need decisions. Although Minn. R. 7853.0130.D allows the Commission to consider whether “it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments,” this provision allows the Commission to consider whether or not a proposed facility will fail to comply with other law. It does not allow the Commission to consider whether an existing facility should be replaced. Enbridge also provided testimony stating that it could continue to operate existing Line 3 in compliance with federal law if a certificate of need for the Project is denied. No Minnesota law or regulation authorizes the Commission to regulate pipeline safety nor does it in practice regulate pipeline safety. As a result, neither the

Commissioners nor the Commission staff have special expertise to make judgments about pipeline safety.

Moreover, the federal Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.* (2019), in Section 60104(c), expressly preempts state regulation of interstate pipeline safety, and Section 60102(a)(2)(B) authorizes the U.S. Secretary of Transportation to regulate “replacement” of interstate crude oil pipelines. Therefore, the Commission has neither the jurisdiction, statutory authority, nor the expertise to determine that there is a need to replace an existing interstate crude oil pipeline because it is unsafe or would be less safe than a new pipeline. Instead, the Commission’s decision making role is defined by the criteria included in Minn. Stat. § 216B.243, subd. 2, and Minn. R. 7853.0130.

Yet, the CN Orders found need for the Project based primarily on pipeline integrity and safety concerns related to the existing Line 3 Pipeline, and not on demand for the energy that would be provided by additional crude oil imports resulting from constructing the Project. Therefore, the Commission’s CN Orders should be vacated because:

- they are in excess of statutory authority and beyond the jurisdiction of the Commission, Minn. Stat. § 14.69(b), and infringe on exclusive federal authority over pipeline safety and replacement of interstate crude oil pipelines, 49 U.S.C. §§ 60102(a)(2) and 60104(c);
- the Commission considered pipeline safety extensively throughout the contested case hearing such that the CN Order was made upon unlawful procedure, Minn. Stat. § 14.69(c); and

- the Commission misapplied Minn. Stat. § 216B.243, subd. 3, and Minn. R. 7853.0130 by considering decision criteria not identified by these laws, such that its orders are affected by an error of law, Minn. Stat. § 14.69(d), and are arbitrary and capricious, Minn. Stat. § 14.69(f).

Issues Related to a Failure to Consider a Complete Tribal Cultural Properties Survey for All Alternatives Considered

Minnesota Rule 7853.0130.B(3), C(2), and D require that the Commission consider the consequences to society of granting or denying a certificate of need. Here, Enbridge proposes to construct the Project along a new pipeline corridor crossing lands where the Anishinaabe fished, hunted, harvested, and gathered wild rice in the region for hundreds of years. The construction and operation of a new petroleum pipeline would impact these ecologically and culturally sensitive lands and an oil spill could be devastating. Therefore, impacts to the Ojibwe Tribes and individual Ojibwe are consequences that must be considered by the Commission. The Commission is required to consider the relative effects of all alternatives on the Ojibwe under Minn. R. 7853.0130(B)(3).

Here, a tribal cultural properties survey for each alternative considered under Minn. R. 7853.0130(B)(3) is necessary to understanding the potential effects of approval of the Project on the Ojibwe Tribes and Ojibwe individuals. The Commission failed to perform such survey of all route alternatives, such that there is insufficient evidence in the record to conduct a meaningful comparison of the impacts on cultural resources of the various routes or to weigh the consequences of granting or denying the Certificate of

Need under Minn. R. 7853.0130.B(3), C(2), and D. Therefore, the Commission’s CN Orders are in violation of law and arbitrary and capricious.

Issues Related to a Failure to Include Evidence Related to State and Federal Petroleum Conservation Plans

The CN law requires that the PUC “evaluate . . . the effect of existing or possible energy conservation programs under . . . federal or state legislation on long-term energy demand . . . .” Minn. Stat. § 216B.243, subd. 3(2) (2019). Rather than consider the effect of such programs on “long-term energy demand,” the Commission considered only the efficiency of operation of the Project’s electrical pumps, which do not operate on petroleum fuels. Minnesota Statute § 216B.243, subd. 3(2), requires that the Commission evaluate the potential impact of petroleum conservation measures on crude oil demand, because conservation of petroleum is related to the underlying purpose of the certificate of need law. In contrast, electricity conservation resulting from the use of newer pumps does not relate to or impact consumer demand for petroleum products. By failing to consider the impact of petroleum conservation measures on the need for the Project, the Commission failed to comply with Minn. Stat. § 216B.243, subd. 3(2).

Issues Related to the Commission’s Failure to Consider the Effect of Upgrades to Existing Pipelines

The Certificate of Need statute requires that the Commission “evaluate . . . possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy . . . transmission facilities . . . .” Minn. Stat. § 216B.243, subd. 3(6) (2019). Similarly, the Commission’s CN regulations require that that the Commission “consider[] . . . the ability

of current facilities and planned facilities not requiring certificates of need, and to which the applicant has access, to meet the future demand . . . .” Minn. R. 7853.0130.A(4) (2019). Petitioners presented evidence that Enbridge plans to expand a number of its existing pipeline facilities that together would provide more capacity than the net increase that would be provided by the Project. In response, the Commission failed to discuss the potential effect of all of these proposed upgrades and instead dismissed them out-of-hand, stating: “[t]he ALJ also found that Enbridge’s planned projects on the Mainline System would not meet the future demand for crude oil, and the Commission agrees with that assessment.” CN Approval Order at 17. The ALJ’s report and the Commission orders failed to consider all of Enbridge’s proposed expansion projects and incorrectly considered only whether or not some of these individual expansion project could by themselves provide the same capacity as the Project, rather than consider the “ability” of these expansion projects to meet part of a possible future demand for additional crude oil. By failing to evaluate the ability of Enbridge’s existing crude oil pipelines to meet a possible need for energy, the Commission violated Minn. Stat. § 216B.243, subd. 3(6) and Minn. R. 7853.0130.A(4).

Issues Related to the Commission’s Failure to Consider the Full Impacts of the Greenhouse Gas Emissions That Would Result from Construction of the Project

Minnesota Rule 7853.0130.C requires that the Commission consider the effects of the Project on the natural and socioeconomic environment of the state compared to not building it. The Administrative Law Judge found that the Project would result in incremental life-cycle greenhouse gas emissions of 193 million tons of carbon dioxide,

with a cost to society of \$287 billion. The Commission dismissed the Administrative Law Judge's findings because of variability in the estimates of emissions and costs, and as a consequence decided to entirely disregard most of the climate change impacts of the Project. The Commission cited no record evidence supporting its factual conclusions that estimates are too unreliable to consider in the balancing required by Minn. R.

7853.0130.C. The Commission's decision to disregard this evidence is also contrary to Minnesota policy that expressly recognizes climate change and its economic and environmental costs to the people within Minnesota, including the Anishinaabe peoples who claim a right to continue to live on their lands in accordance with their beliefs and culture, which is their human and legal right to do. Accordingly, the Commission's unsupported decision to disregard the lion's share of the climate change effects of the Project is unsupported by substantial evidence in view of the entire record as submitted and is arbitrary and capricious.

### ***RP Claims Raised Before the Commission***

Petitioners claim that the Commission's Line 3 Order was contrary to law, not supported by substantial evidence and was arbitrary and capricious. More specifically, Petitioners claim that the Line 3 Order is in violation of law and arbitrary and capricious because it too narrowly defined the range of route alternatives that must be considered within Minn. Stat. Ch. 216G and its implementing regulation in Minn. R. 7852, in light of the alternative standards contained in Minn. Stat. Ch. 116D, the Minnesota Environmental Policy Act ("MEPA"). Petitioners also claim that the Line 3 Order was based on an inadequate record because it admittedly did not include consideration of a

complete survey for tribal and cultural properties of the Anishinaabe tribes (“TCP Survey”) located in Minnesota for Enbridge’s preferred route and all alternative routes, thereby making comparison of the impacts of the Project on tribal resources and properties impossible, as required by Minn. R. 7852.1900, subp. 3A-D, 3.G-H, and 3.J. Petitioners further claim that the Line 3 Order failed to consider the Project’s cumulative potential effects as required by Minn. R. 7852.1900, subp. 3.I. Petitioners further claim that the October 26 Order failed to minimize adverse human and environmental impacts, as required by Minn. R. 7852.0200, subp. 4.A., because it selected Enbridge’s preferred route even though more feasible and prudent alternatives exist and the Project is not consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction, in violation of Minn. Stat. § 116D.04, subd. 6, Minn. Stat. § 116B.04, Subd. 1 and 116B.02, Subd. 5 (Minnesota Environmental Rights Act), and the public trust doctrine. More generally, Petitioners also claim that the October 26 Order is inadequate because it failed to include and is not based on the information and analyses required by MEPA, which standards apply here because Minn. Stat. § 216G and its implementing regulations are an alternative form of review designated by the Environmental Quality Board pursuant to Minn. Stat. § 116D.04, subd. 4a.

The foregoing issues being presented to the Commission, by approving the CN and RP and finding the 2RFEIS adequate, the Commission rejected all of the foregoing arguments.

**5. List specific issues proposed to be raised on appeal.**

- a. Whether the Commission violated MEPA and the opinion in *In re Enbridge*, 930 N.W. 2d 12, by failing to adequately analyze the potential significant environmental effects of an oil spill from the proposed Line 3 Pipeline on the St. Louis River Estuary, the Duluth-Superior Harbor, and Lake Superior.
- b. Whether the Commission violated the law by failing to provide a forecast of demand for crude oil as required by Minn. Stat. § 216B.243, subd. 3 (2019), and Minn. R. 7853.0130.A(1) (2019).
- c. Whether the Commission violated the law by substituting an assumption of demand for crude oil rather than providing a transparent verifiable forecast of demand for crude oil, as required by Minn. R. 7853.0520 (2019).
- d. Whether the Commission's reliance on Enbridge's assumption of unlimited crude oil demand is not based on substantial evidence, in that all or almost all of the evidence in the record shows that demand for crude oil in Minnesota, neighboring states, the U.S., and globally will decrease over the forecast period.
- e. Whether the Commission's failure to require disclosure of the detailed methodology, key assumptions, key factors, and data underlying Applicant's forecast of demand violated Minn. R. 7853.0520 (2019).
- f. Whether the Commission's consideration of pipeline safety issues as a basis for its CN Orders is in violation of law because pipeline safety is not a

decision criteria under Minn. Stat. § 216B.243, subd. 3, or Minn. R. 7853.0130 (2019).

- g. Whether the Commission's determination that the Project is needed to replace existing Line 3 to improve pipeline safety is preempted by the Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.* (2019).
- h. Whether the Commission violated Minnesota Rule 7853.0130.B(3), C(2), and D (2019) by failing to require completion and consideration of a tribal cultural properties survey for all alternative routes.
- i. Whether the Commission violated Minn. Stat. § 216B.243, subd. 3(2) (2019), by failing to consider the impact of petroleum conservation measures on the need for the Project.
- j. Whether the Commission violated Minn. Stat. § 216B.243, subd. 3(6) (2019) and Minn. R. 7853.0130.A(4) (2019) by failing to adequately consider the ability of upgrades to applicant's existing infrastructure to meet demand for energy.
- k. Whether the Commission's decision to disregard evidence of the impacts of greenhouse gas emissions was without foundation in substantial evidence.
- l. Whether the PUC's refusal to consider route alternatives that bypassed Enbridge's existing tank farms but also bypassed Minnesota lake country and ceded territories where the Ojibwe bands have federal treaty-based hunting, fishing, and gathering rights violated the Minnesota pipeline route statute and rules.

- m. Whether the PUC’s decision to accept Enbridge’s proposed route, with only minor modifications, violated the statutory requirement that a route selection must “minimize adverse human and environmental impacts.”
- n. Whether the PUC’s decision to not require completion of a Tribal Cultural Properties survey for Enbridge’s entire proposed route and for alternative routes before issuance of its Order Granting Route Permit violated Minn. R. 7852.1900, subp. 3A-D, 3.G-H, and 3.J.
- o. Whether the PUC’s decision failed to properly consider cumulative potential effects in accordance with Minn. R. 7852.1900, subp. 3.I.
- p. Whether the PUC’s decision to accept Enbridge’s proposed route, with only minor modifications, violated the requirement in the Minnesota Environmental Policy Act that state agencies must not permit facilities that would pollute, impair, or destroy Minnesota natural resources when feasible and prudent alternatives are available, as well as Minnesota’s public trust doctrine.

**6. Related appeals:**

Friends of the Headwaters filed a related appeal (EMACS Reference Number: 151131597782483871), which was not assigned a docket number at the time of Petitioners’ filing.

There were three prior appeals of previous PUC decisions involving the line 3 project. On June 3, 2019, this Court reversed the PUC’s decision and found the “first revised” environmental impact statement did not meet the requirements of MEPA. The

Court then dismissed the certificate of need and routing permit appeals in light of its ruling on the EIS. Petitioner anticipates that other intervenors in the PUC hearings for the Line 3 Replacement Project may file appeals simultaneously with or subsequent to this appeal.

**7. Contents of record.**

Is a transcript necessary to review the issues on appeal? Yes ( ) No (X)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes ( ) No (X)

**8. Is oral argument requested? Yes (X) No ( )**

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes ( ) No (X)

**9. Identify the type of brief to be filed:**

Formal brief under Rule 128.02

**10. Names, addresses, and telephone numbers of attorney for appellant and respondent.**

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White Earth Band of Ojibwe,  
Honor the Earth, and  
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