

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

ISSUE DATE: October 26, 2018

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

ORDER APPROVING PIPELINE
ROUTING PERMIT WITH
CONDITIONS

PROCEDURAL HISTORY

I. The Applications

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge or the Applicant) filed separate applications for a certificate of need¹ and a routing permit² to build an oil pipeline, along with associated facilities, extending from the North Dakota–Minnesota border approximately 340 miles to the Minnesota–Wisconsin border (Line 3 Project, or the Project), and to decommission its existing Line 3 pipeline (Existing Line 3) in place. Previously Enbridge had received approval for a notice plan and other procedural matters.³

II. Contested Case Proceedings

On August 12, 2015, the Commission found the applications substantially complete. The Commission referred the applications to the Minnesota Office of Administrative Hearings

¹ Docket No. PL-9/CN-14-916, *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* (need docket).

² Docket No. PL-9/PPL-15-137, *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border* (routing docket or current docket).

³ Need docket, Order Approving Notice Plan, Granting Variance Request, Approving Exemption Requests, and Approving and Adopting Orders For Protection And Separate Docket (January 27, 2015).

(OAH) for contested case proceedings before an Administrative Law Judge (ALJ).⁴ OAH initially assigned Judge Barbara Neilson but, on February 4, 2016, reassigned the matter to Judge Ann C. O'Reilly.

The following parties participated in the contested case proceedings:⁵

- Donovan and Anna Dyrdal (Dyrdals)
- Enbridge
- Fond du Lac Band of Lake Superior Chippewa (Fond du Lac)
- Friends of the Headwaters (FOH)
- Honor the Earth (HTE)
- Kennecott Exploration Company (Kennecott)
- Laborers District Council of Minnesota and North Dakota (Laborers or Laborers' Council)
- Leech Lake Band of Ojibwe (Leech Lake)
- Mille Lacs Band of Ojibwe (Mille Lacs)
- Minnesota Department of Commerce's Division of Energy Resources (DER)
- Minnesota Department of Commerce's Energy Environmental Review and Analysis unit (EERA)
- Northern Water Alliance of Minnesota (NWAM)
- Red Lake Band of Chippewa (Red Lake)
- Shippers for Secure, Reliable and Economical Petroleum Transportation (Shippers, or Shippers Group)
- Sierra Club
- United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (United Association)
- Youth Climate Intervenors (YCI)
- White Earth Band of Ojibwe (White Earth)

III. Public Comments

Throughout the review process, the Commission received extensive public comment on the applications and matters relevant to their review. Written comments, transcripts of comments at public meetings, and summaries of public comments at the various stages are available in the record.⁶ At the public hearings conducted by ALJ O'Reilly alone, over 4,000 individuals registered their names on the public hearing sign-in sheets, and total attendance at the public

⁴ *Id.*, Order Finding Application Substantially Complete and Varying Timelines; and Notice of and Order for Hearing (August 12, 2015); current (routing) docket, Notice of Hearing (February 1, 2016).

⁵ ALJ Report at 6-7.

⁶ *See, e.g.*, Findings of Fact, Conclusions of Law, and Recommendation [of ALJ Ann C. O'Reilly] (ALJ Report) at findings 70 – 111 (April 23, 2018); Report of the Administrative Law Judge [of Eric L. Lipman] at findings 46 – 47; Final Environmental Impact Statement, Appendix T.

hearings was estimated at over 5,500. There were 724 speakers during the 16 public hearings, resulting in over 2,600 pages of public hearing transcripts.⁷

IV. The Environmental Impact Statement and Separate Referral for Recommendation on its Adequacy

Between August 11 and 27, 2015, staff from the Commission and the Minnesota Department of Commerce's Energy Environmental Review and Analysis Unit (EERA) conducted 15 public information meetings in 10 different counties along Enbridge's proposed route. A comment period was open from July 20 to September 30, 2015, to provide the public an opportunity to comment on potential human and environmental impacts and to suggest alternative pipeline routes to be considered in a comparative environmental analysis.

On February 1, 2016, the Commission issued an order authorizing a single contested-case proceeding to address both the need and routing matters, and authorizing the EERA to prepare a combined environmental impact statement (EIS).

On December 5, 2016, EERA issued a notice stating that it would prepare an EIS for the Project and summarizing the scope of the EIS. Publication of the notice triggered the start of a 280-day period under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. § 116D.04, subd. 2a(h)—ending September 11, 2017—for the Commission to make an adequacy determination on the final EIS. This deadline could be extended only upon a finding of good cause by the governor or with the consent of Enbridge as the Project's proposer.

EERA filed a draft EIS in May 2016, and projected that the final EIS would be issued on August 10, 2017.

Between June 6 and June 22, 2017, EERA conducted 22 public information meetings in 22 counties to address the draft EIS. A comment period was open through July 10, 2017.

Recognizing that it could not make an adequacy determination on the final EIS by the September 11 deadline under MEPA, the Commission met on August 3, 2017, to determine the appropriate action to address this issue. At the meeting, Enbridge consented to an extension of the 280-day statutory deadline in return for a date certain by which the Commission would make its determination on the adequacy of the final EIS for Line 3. Enbridge also consented to extend the statutory deadline under MEPA, Minn. Stat. § 116D.04, subd. 3a, which requires the Commission to make its decisions on Enbridge's need and route applications within 30 days of its decision on the adequacy of the Line 3 final EIS.

On August 14, 2017, the Commission issued its order accepting Enbridge's consent to extend the statutory deadline for the adequacy determination, which (i) established a separate record development proceeding to evaluate the adequacy of the final EIS for Line 3; (ii) assigned a second ALJ to provide a report and recommendation on the adequacy of the final EIS (ALJ Eric L. Lipman); and (iii) identified December 11, 2017, as the deadline for the Commission to make

⁷ ALJ Report at finding 71.

its determination on the adequacy of the final EIS for Line 3, and April 30, 2018, as the deadline for its determinations on the Line 3 need and routing applications.

On August 17, 2017, EERA issued the final EIS for Line 3 (FEIS).⁸

V. ALJ Recommendation and Commission Actions on the FEIS

On November 1, 2017, ALJ Lipman issued a report recommending that the Commission find the final EIS to be adequate.

At a December 7 meeting, as memorialized in a December 14 order, the Commission found the FEIS to be inadequate in four specific respects. This triggered a requirement that EERA submit supplemental information within 60 days of service of notice of the decision.⁹

On February 12, 2018, EERA filed a Revised Final EIS.¹⁰ After receiving the parties' written exceptions and oral arguments at a March 15 public meeting, the Commission determined this Revised Final EIS was adequate.¹¹

VI. ALJ Proceedings and Recommendations on the Applications and Exceptions

On January 31, 2017, Enbridge's witnesses filed direct testimony in the contested case proceedings.¹²

⁸ Ex. EERA-29; *see also* Ex. EERA-36, -37, -38, and -39.

⁹ Minn. R. 4410.2800, subp. 5.

¹⁰ Ex. EERA-42.

¹¹ Both dockets, Order Finding Environmental Impact Statement Adequate and Adopting ALJ Lipman's November 2017 Report as Modified (May 1, 2017). This decision is subject to pending appeals (Minn. Ct. App. Docket Nos. A18-1283, A18-1291, A18-1292).

¹² Ex. EN-6 (McKay Direct); Ex. EN-7 (Haskins Direct); Ex. EN-8 (Bergman Direct); Ex. EN-9 (Bergland Direct); Ex. EN-10 (Rennicke Direct); Ex. EN-11 (Lichty Direct); Ex. EN-12 (Kennett Direct); Ex. EN-13 (Gerard Direct); Ex. EN-14 (Fleeton Direct); Ex. EN-15 (Earnest Direct); Ex. EN-16 (Baumgartner Direct); Ex. EN-17 (Wuolo Direct); Ex. EN-18 (Lee Direct); Ex. EN-19 (Glanzer Direct); Ex. EN-20 (TS Glanzer Sched. 4, 6); Ex. 21 (HSTS Glanzer Sched. 5); Ex. EN-22 (Simonson Direct); Ex. 23 (TS Simonson Sched. 2); Ex. EN-24 (Eberth Direct).

By September 12, 2017, the following parties had filed direct testimony in the contested case proceedings: DER, the Dyrdals,¹³ Fond du Lac,¹⁴ FOH,¹⁵ HTE,¹⁶ Kennecott,¹⁷ Laborers,¹⁸ Mille Lacs,¹⁹ Red Lake,²⁰ Shippers,²¹ Sierra Club,²² United Association,²³ White Earth,²⁴ and YCI.²⁵

Between September 26 and October 25, 2017, ALJ O'Reilly conducted sixteen public hearings in eight cities: Thief River Falls, St. Paul, Grand Rapids, McGregor, Hinckley, Bemidji, Duluth, and Cross Lake.

¹³ Ex. DY-1 (Dyrdal Direct).

¹⁴ Ex. FDL-1 (Dupuis Direct); Ex. FDL-2 (Schuldt Direct).

¹⁵ Ex. FOH-1 (Kuprewicz Direct); Ex. FOH-3 (Sched. 2); Ex. FOH-4 (Sched. 3); Ex. FOH-5 (Sched. 4); Ex. FOH-6 (Joseph Direct); Ex. FOH-7 (Smith Direct).

¹⁶ Ex. HTE-1 (Merritt Direct and Attach.); Ex. HTE-2 (Stockman Direct and Attach. LS-01 to LS-34).

¹⁷ Ex. KN-1 (Best Direct).

¹⁸ Ex. LC-1 (Whiteford Direct); Ex. LC-1 (Engen Direct).

¹⁹ Ex. ML-1 (Kemper Direct).

²⁰ Need docket, Ferris Direct (Sept. 11, 2017) (eDocket No. 20179-135399-01).

²¹ Ex. SH-1 (Shippers Grp. Direct).

²² Ex. SC-1 (Kornheiser Direct); Ex. SC-2 (Kornheiser Direct – App. 1); Ex. SC-3 (Kornheiser Direct – App. 2).

²³ Ex. UA-1 (Barnett Direct).

²⁴ Ex. WE-1 (Goodwin Direct).

²⁵ Ex. YC-22 (Otto Direct); Ex. YC-20 (Paulson Direct); Ex. YC-19 (Lamb Direct); Ex. YC-23 (Manning Direct); Ex. YC-1 (Swift Direct); Ex. YC-16 (Snyder Direct); Ex. YC-17 (Attachment 1, Snyder Direct); Ex. YC-18 (Attachment 2, Snyder Direct); Ex. YC-2 (Scott Direct); Ex. YC-3 (Attach. 1, Scott Direct); Ex. YC-4 (Attach. 2, Scott Direct); Ex. YC-5 (Attach. 3, Scott Direct); Ex. YC-6 (Attach. 4, Scott Direct); Ex. YC-7 (Attach. 5, Scott Direct); Ex. YC-8 (Attach. 6, Scott Direct); Ex. YC-9 (Attach. 7, Scott Direct); Ex. YC-10 (Attach. 8, Scott Direct); Ex. YC-11 (Attach. 9, Scott Direct); Ex. YC-12 (Attach. 10, Scott Direct); Ex. YC-13 (Attach. 11, Scott Direct); Ex. YC-14 (Abraham Direct); Ex. YC-15 (Douglas Direct); Ex. YC-21 (Reich Direct).

By October 11, 2017, the following parties had filed reply testimony in the contested case proceedings: Enbridge;²⁶ Fond du Lac;²⁷ Sierra Club;²⁸ HTE;²⁹ United Association;³⁰ Laborers' Council;³¹ and Shippers.³²

By October 23, 2017, surrebuttal testimony had been filed by Enbridge;³³ the DER;³⁴ HTE;³⁵ YCI;³⁶ Fond du Lac;³⁷ FOH;³⁸ Shippers;³⁹ and the Dyrdals.⁴⁰

²⁶ Ex. EN-30 (Eberth Rebuttal); Ex. EN-32 (Kennett Rebuttal); Ex. EN-33 (Haskins Rebuttal); Ex. EN-34 (Baumgartner Rebuttal); Ex. EN-35 (Philipenko Rebuttal); Ex. EN-36 (Gerard Rebuttal); Ex. EN-37 (Earnest Rebuttal); Ex. EN-38 (Glanzer Rebuttal); Ex. EN-39 (Fleeton Rebuttal); Ex. EN-40 (Rennicke Rebuttal); Ex. EN-41 (Lichty Rebuttal); Ex. EN-42 (Johnston Rebuttal); Ex. EN-43 (Lim Rebuttal); Ex. EN-45 (Simonson Rebuttal); Ex. EN-46 (Bergland Rebuttal); Ex. EN-47 (Kinder Rebuttal); Ex. EN-48 (Bergman Rebuttal); Ex. EN-49 (Wuolo Rebuttal); Ex. EN-50 (Lee Rebuttal); Ex. EN-51 (Mittelstadt Rebuttal); Ex. EN-52 (Horn Rebuttal); Ex. EN-54 (Stephenson Rebuttal); Ex. EN-55 (Tillquist Rebuttal).

²⁷ Ex. FDL-3 (Schuldt Rebuttal).

²⁸ Ex. SC-4 (Twite Rebuttal); Ex. SC-5 (Twite Rebuttal, Sched. 1); Ex. SC-6 (Twite Rebuttal, Sched. 2); Ex. SC-7 (Twite Rebuttal, Sched. 3); Ex. SC-8 (Twite Rebuttal, Sched. 4); Ex. SC-9 (Twite Rebuttal, Sched. 5); Ex. SC-10 (Twite Rebuttal, Sched. 6); Ex. SC-11 (Twite Rebuttal, Sched. 7); Ex. SC-12 (Twite Rebuttal, Sched. 8); Ex. SC-13 (Twite Rebuttal, Sched. 9).

²⁹ Ex. HTE-3 (Stockman Rebuttal and Attach. LS-35 to LS-44).

³⁰ Ex. UA-2 (Barnett Rebuttal).

³¹ Ex. LC-3 (Whiteford Rebuttal).

³² Ex. SH-2 (Shippers Grp. Rebuttal).

³³ Ex. EN-56 (Earnest Surrebuttal); Ex. EN-57 (Glanzer Surebuttal); Ex. EN-58 (Rennicke Surrebuttal); Ex. EN-59 (Wuolo Surrebuttal); Ex. EN-60 (Lee Surrebuttal). Between October 23, 2017 and October 27, 2017, Enbridge filed the corrected or updated Surrebuttal Testimony of Allan Baumgartner, Jack Fleeton, Britta Bergland, Heidi Tillquist, and Matthew Horn. *See* Ex. EN-61 (Baumgartner Corrected Direct); Ex. EN-62 (Fleeton Corrected Rebuttal); Ex. EN-63 (Bergland Corrected Rebuttal); Ex. EN-64 (Tillquist Corrected Rebuttal); Ex. EN-66 (Horn Updated Rebuttal); Ex. EN-67 (Horn Updated Rebuttal, Sched. 2).

³⁴ Ex. DER-6 (O'Connell Surrebuttal); Ex. DER-7 (Fagan Surrebuttal); Ex. DER-8 (Dybdahl Surrebuttal).

³⁵ Ex. HTE-4 (Stockman Surrebuttal and Attach. LS-45 to 56).

³⁶ Ex. YC-25 (Swift Surrebuttal); Ex. YC-26 (Snyder Surrebuttal).

³⁷ Ex. FDL-4 (Schuldt Surrebuttal).

³⁸ Ex. FOH-10 (Joseph Surrebuttal); Ex. FOH-11 (Kuprewicz Surrebuttal); Ex. FOH-12 (Kuprewicz Surrebuttal, Sched. 5).

³⁹ Ex. SH-3 (Shippers Group Surrebuttal).

⁴⁰ Ex. DY-15 (Dyrdal Surrebuttal).

On October 27, 2017, the DER filed “supplemental” surrebuttal testimony which ALJ O’Reilly accepted into the record as late-filed surrebuttal testimony.⁴¹ Enbridge filed responsive testimony on November 8, 2017.⁴²

ALJ O’Reilly convened evidentiary hearings on November 1, 2, 3, 6, 8, 9, 13, 14, 15, 16, 17, and 20, 2017. Sixty-one witnesses testified.

On January 2, 2018, ALJ O’Reilly referred to the Commission a Joint Motion to Certify the ALJ’s December 22, 2017 Order Granting Motion for Adjustment of the Briefing Schedule.

On January 10, 2018, the Commission issued an order addressing the certified motion and asking ALJ O’Reilly to issue her report no later than April 23, 2018.

Between January 16 and February 23, 2018, the following parties variously filed proposed findings, initial briefs, and reply briefs: The Dyrdals, Enbridge, FOH, Fond du Lac, HTE, Kennecott, Laborers, Leech Lake, Mille Lacs, NWAM, Sierra Club, White Earth and Red Lake, and YCI.

On April 23, 2018, ALJ O’Reilly issued her Findings of Fact, Conclusions of Law, and Recommendation (ALJ Report). The ALJ recommended that the Commission grant a certificate of need for the proposed project but only if the Commission selects Route Alternative (AR)-07 (in-trench replacement) as the designated route. The ALJ also specified other conditions.

On May 7, 2018, EERA filed a sample Pipeline Routing Permit. Without specifying a particular route, the document set forth permit conditions that the Commission has typically included in pipeline routing permits, that were recommended in the FEIS, or that were proposed by parties.

By May 9, 2018, the following parties had filed exceptions to the ALJ Report: DER, EERA, the Dyrdals, Enbridge, Fond du Lac, FOH, HTE, Laborers, Leech Lake, Mille Lacs, Red Lake, Shippers, Sierra Club, United Association, White Earth, and YCI. The Commission also received comment letters on the ALJ Report from non-party participants such as the Government of Alberta (Canada), the Association of Oil Pipelines, Association of Freeborn County Landowners, Canadian Oil and Natural Gas Producers, Flint Hills Resources, Minnesota Department of Natural Resources (MDNR), and Minnesota Pollution Control Agency (MPCA).

On May 18, 2018, the following parties and participants filed exceptions to the sample Pipeline Routing Permit: the Dyrdals, Enbridge, Fond du Lac, HTE, MDNR, MPCA, and YCI.

On June 7, 2018, Enbridge filed a letter announcing its “Landowner Choice” program, whereby Enbridge agreed to honor landowners’ requests to have the decommissioned segments of the existing Line 3 (Existing Line 3) removed from their property, provided Enbridge can obtain the relevant permits.

⁴¹ Ex. DER-9 (Fagan Supplemental Surrebuttal).

⁴² Ex. EN-94 (Earnest Supplemental Surrebuttal).

On June 18 and 19, 2018, the Commission met to hear oral arguments on the need and routing dockets from the parties and non-party participants.

On June 22, 2018, Enbridge filed a letter documenting its commitment to, among other things,

- pursue generating \$100 million in economic opportunities for tribal members and businesses related to the Project,⁴³ and
- remove segments of the existing Line 3 upon landowner request (and subject to approval of relevant permitting authorities).

On June 26, 2018, the Commission reconvened to consider the need and routing dockets.

On June 27, 2018, Commission staff filed a revised sample Pipeline Routing Permit, incorporating many of the parties' proposed changes.

On June 27 and 28, 2018, the Commission reconvened to consider the need and routing dockets, and took comments on the revised draft routing permit. On June 28, the Commission found that Enbridge had demonstrated need for the Project and ordered that a route permit be issued for the Project to be built along the Applicant's preferred route (APR), as modified by the Commission, subject to Enbridge and Fond du Lac reaching an agreement within a specified period that the easternmost portion of the pipeline be built along the route of the Existing Line 3 that passes through the Fond du Lac reservation.

On August 31, 2018, Fond du Lac filed a letter stating that it had reached an agreement with Enbridge for the easternmost portion of its Project to be built along the pipeline corridor for the Existing Line 3 which passes through the Fond du Lac Reservation.

FINDINGS AND CONCLUSIONS

VII. Summary of Commission Action

The Commission will grant a Pipeline Routing Permit to Enbridge to build its proposed Project. The permitted route will deviate from the Applicant's preferred route (APR) at Route Segment Alternative (RSA)-05 and RSA-22, which results all or nearly all of the Project being built along existing pipeline and transmission line corridors—including the corridor within the Fond du Lac Reservation in Carlton and St. Louis Counties. The resulting route is approximately 330 miles long.

The Commission also adopts a number of permit conditions addressing risk mitigation, public safety, cost sharing, and economic development.

⁴³ This commitment detailed the commitments previously made in Ex. EN-30 at 19-23 (Eberth Rebuttal), and by Enbridge's chief executive officer in "Our commitment to the people of Minnesota" (June 1, 2018), available at <http://www.enbridge.com/l3commitment>.

VIII. Statutes and Rules—Pipeline Routing Permit

Under Minn. Stat. §§ 216B.2421, subd. 2(4) and 216B.243, subd. 2, no one may build a pipe in Minnesota with a nominal diameter of at least six inches that is designed to transport hazardous liquids unless (1) the project is built within the route specified in a routing permit issued by the Commission, or (2) the project is exempt from Commission jurisdiction under Minn. Stat. § 216G.02. Because Enbridge proposed to build a 36-inch diameter pipeline designed to carry crude petroleum approximately 340 miles through Minnesota, and the Project was not exempt from the Commission's jurisdiction, Enbridge must first obtain a routing permit from the Commission.

In selecting a route, the Commission must consider each proposed route's characteristics and potential consequences—including methods to minimize or mitigate those consequences—to identify the route that minimizes harm to people and the environment.⁴⁴ Specifically, Minn. R. 7852.1900, subp. 3, directs the Commission to consider the following factors when evaluating route alternatives:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;
- H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
- I. cumulative potential effects of related or anticipated future pipeline construction; and
- J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including

⁴⁴ Minn. R. 7852.1900, subp. 2.

ordinances adopted under Minnesota Statutes, section 299J.05 [establishing the minimum distance between a pipeline and the edge of an easement], relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

IX. Project Description

Enbridge proposed to build a 36-inch diameter pipeline designed to carry crude petroleum 340 miles through Minnesota, and to then decommission the Existing Line 3, an aging 34-inch diameter pipeline extending 282 miles from Kittson County on the North Dakota border to Carlton County on the Wisconsin border. The Project includes multiple pumping stations, valves, metering and monitoring equipment, and related electrical facilities.

Existing Line 3 was originally built in the 1960s as part of Enbridge's Mainline System, which transports crude oil to (1) Minnesota Pipe Line Company's interconnecting facilities at Clearbrook, Minnesota for delivery to Minnesota refineries, and (2) the Superior Terminal in Wisconsin, for delivery to other refineries in the United States and Canada. The relevant portion of this Mainline System originates in Canada, crosses into the United States near Nêche, North Dakota, and continues to the North Dakota/Minnesota border at Kittson County. From there the pipelines run through Clearbrook, to the Minnesota/Wisconsin border in Carlton County, and continues to the Enbridge Superior Station and Terminal Facility near Superior, Wisconsin.

On the west side of the state, the Project would parallel the route of Existing Line 3 from the North Dakota border to the Clearbrook Terminal around milepost (MP) 976.2 in the southwest corner of Hubbard County. On the east side of the state, the Project would extend from a point around MP 1121.1 in Carlton County (Carlton) for 9.6 miles to the Wisconsin border, and then on to Superior, Wisconsin. But between these two segments—that is, between Clearbrook and Carlton—parties disagree about the appropriate route.

Part of this disagreement reflects the fact that between Clearbrook and Carlton, the Mainline System pipelines pass through the Leech Lake Reservation and the Fond du Lac Reservation. Enbridge, Fond du Lac, and Leech Lake agree that Enbridge's Line 3 Project cannot cross on or over Leech Lake's or Fond du Lac's reservation lands without their respective consents to do so. This fact, among others, prompted parties to propose routes that deviate substantially from the Existing Line 3 corridor.

The revised FEIS analyzed the APR as well as four other route alternatives (RAs) following different paths between Clearbrook and Carlton. The revised FEIS also evaluated 24 route segment alternatives (RSAs)—that is, relatively short deviations from the APR intended to avoid or minimize some harm that might otherwise arise.⁴⁵ The RAs and RSAs are shown in Figure 1. Enbridge estimates the Project would require 50 feet of permanent right-of-way; for the portion

⁴⁵ The route segment alternatives analyzed in the FEIS are labeled RSA-05, RSA-10, RSA-15, RSA-Blandin, RSA-White Elk Lake, RSA-21, RSA-22, RSA-23, RSA-27, RSA-28, RSA-31, RSA-33, RSA-34, RSA-35, RSA-37, RSA-42, RSA-43, RSA-44, RSA-45, RSA-46, RSA-49, RSA-51, RSA-52, and RSA-53.

of the Project that runs from the North Dakota border to Clearbrook, half of the 50-foot wide right-of-way would overlap Enbridge's existing right-of-way. Enbridge also estimates needing additional temporary construction work area of between 45 feet (in wetland/saturated wetland areas) and 70 feet (in upland areas).⁴⁶

X. Route Alternatives

The revised FEIS analyzed five route alternatives from Clearbrook to Carlton: the APR, RA-03AM,⁴⁷ RA-06, RA-07, and RA-08.

A. Applicant's Preferred Route⁴⁸

After reaching the Clearbrook Terminal, the APR deviates from the Existing Line 3 by turning south along the Minnesota Pipe Line Company right-of-way to the southern portion of Hubbard County near Park Rapids. Thereafter the APR turns east, paralleling an existing transmission line corridor through Wadena, Cass, Crow Wing, and Aitkin counties. At MP 278.5, the APR departs from this corridor and turns southeast, occasionally paralleling other transmission lines through Akin and Carlton counties until it reconnects with the Enbridge Mainline corridor at Carlton. Between Clearbrook and Carlton, the APR parallels other infrastructure for 73 percent of its 220.9-mile length. The estimated cost of the Project if routed along the APR is \$1.4 billion.

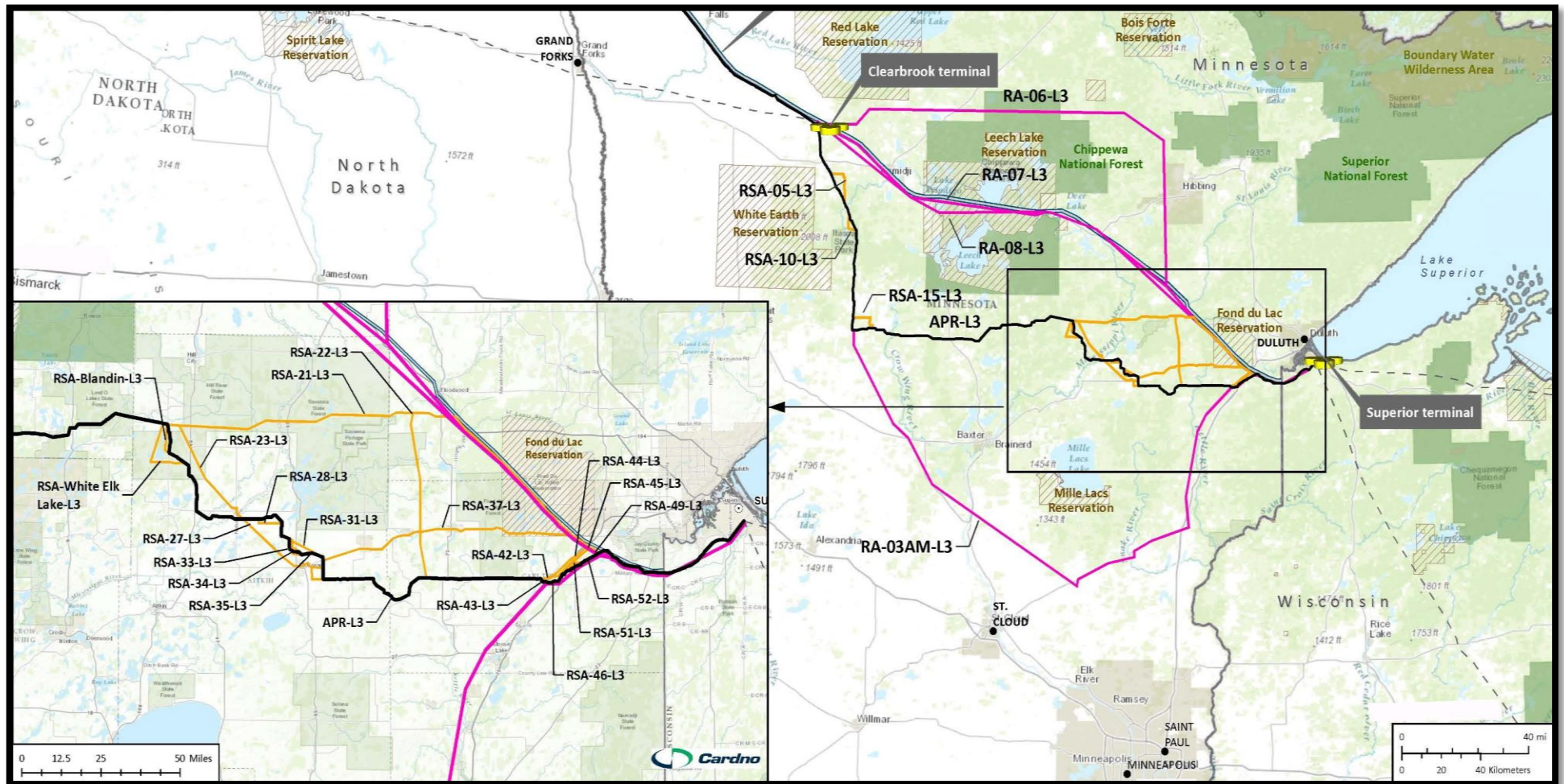
Enbridge states that it developed the APR based on Enbridge's extensive pipeline routing experience, knowledge of applicable federal and state regulations, and input from agencies, customers, landowner, and others. Enbridge conducted its own analysis of route alternatives, considering constraints and opportunities, before identifying a general preferred route. Thereafter Enbridge conducted environmental and engineering surveys to refine the route with the goal of avoiding or minimizing human and environmental impacts, and identifying measures to limit potential harms from building or operating the Project. Through this process, Enbridge says that it has made more than 50 adjustments to the APR to minimize harms.

⁴⁶ Ex. EERA-29 (FEIS) Section 2.4, at pages 2-14 through 2-17, includes plans depicting the lay-out of the permanent right-of-way and temporary construction work areas for six scenarios: (1) upland segments co-located with Enbridge pipeline corridor, (2) wetland segments co-located with existing Enbridge corridor, (3) upland segments co-located with existing pipelines, transmission lines, or highways, (4) wetland segments co-located with existing pipelines, transmission lines, or highways, (5) upland segments not co-located with other facilities, and (6) wetlands segments not co-located with other facilities.

⁴⁷ While MDNR proposed the original route labeled RA-03, the FEIS analyzed a modified version labeled RA-03AM ("*as modified*").

⁴⁸ Ex. EN-4 (Enbridge Route Permit Application), Executive Summary at 17-20, and Section 7.16 (Cultural Resources); Ex. EN-22 at 8 (Simonson Direct); Ex. EERA-29 (FEIS), Chap. 6; Evid. Hrg. Tr. Vol. 2A at 50 (Simonson); ALJ Report finding 447.

Figure 1: Line 3 Project Route Alternatives (RAs) and Route Segment Alternatives (RSAs) from Clearbrook to Superior



Source: Ex. EERA-29, Figure 7-1 at 7-2 (FEIS). The “-L3” suffix on each RA and RSA denotes “Line 3.”

Compared to placing the pipeline in a route adjacent to or in the same trench as the Existing Line 3, the APR has the advantage of avoiding the Leech Lake and Fond du Lac Reservations. This route also has the advantage of having been subject to the greatest scrutiny. In its application, Enbridge reported completing Phase I cultural resources reconnaissance surveys for approximately 97 percent of the acreage within the Project construction workspace, and implementing a more detailed Phase II analysis of appropriate sites. Enbridge examined the historic preservation files maintained by the Minnesota State Historic Preservation Office (SHPO) and on the Preservation Alliance of Minnesota's website to avoid known National Landmarks, properties listed on the National Register of Historic Places, historic districts, or cultural landscapes. Enbridge also reviewed Cultural Resources Reports for areas within the path of the APR, and identified—and avoided—31 known archaeological sites within a mile of the APR east of Clearwater.

B. Route Alternative RA-03AM⁴⁹

The RA-03AM is the southernmost route considered in the FEIS. In the earlier Enbridge Sandpiper pipeline dockets,⁵⁰ the MPCA proposed RA-03 as a means to avoid the Mississippi headwaters,⁵¹ which the APR passes through, as well as to minimize consequences to Wildlife Management Areas. MDNR proposed modifications to that route.

Like the APR, RA-03AM deviates from the Existing Line 3 corridor around MP 976.2 in the southwest corner of Hubbard County and turns south. Unlike the APR, RA-03AM continues south for approximately 112 miles, paralleling the Viking Natural Gas Pipeline, before turning northeast for 39 miles, paralleling Highway 23. Near Hinckley, it turns north and follows an electric transmission line corridor for 48 miles until it reconnects with the Existing Line 3 corridor west of Interstate 35 around MP 1121.1 in Carlton County. RA-03AM is the longest route alternative addressed in the FEIS. From Clearbrook to Carlton, RA-03AM extends 275.1 miles—roughly 55 miles longer than the APR—at an estimated cost of \$1.7 billion.

C. Route Alternative RA-06⁵²

RA-06 is the northernmost route considered for a routing permit. RA-06 was proposed to avoid the Project crossing the Mississippi Headwaters and Minnesota's Lakes region. The route avoids

⁴⁹ Ex. EERA-29 (FEIS), Chap. 6; Ex. EERA-42 (Revised FEIS), at 4-20 to 23; Ex. EN-22, Sched. 7 at 16-21 (Simonson Direct); ALJ Report at finding 1099.

⁵⁰ *In the Matter of the Application of North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, Docket No. PL-6668/CN-13-473; *In the Matter of the Application of North Dakota Pipeline Company LLC for a Pipeline Routing Permit for the Sandpiper Pipeline Project in Minnesota*, Docket No. PL-6668/PPL 13-474. North Dakota Pipeline Company was an affiliate of Enbridge.

⁵¹ See Minn. Stat. §§ 103F.361-377; <https://www.itascaswcd.org/watersheds/upper-mississippi-river-headwaters>.

⁵² Ex. EERA-29 (FEIS), Chap. 6; Ex. EERA-42 (Revised FEIS), at 4-24; Ex. EN-22, Sched. 7 at 22-27 (Simonson Direct).

the Leech Lake Reservation but crosses the Fond du Lac Reservation; it also crosses the Chippewa National Forest and other national and state forest lands.

RA-06 deviates from the Existing Line 3 corridor around MP 909.4 east of Clearbrook. RA-06 then proceeds 105 miles eastward, primarily through the forests of Beltrami and Itasca counties. At the eastern border of Itasca County, the route turns south, running primarily through forests along the eastern border of Itasca County until it rejoins the Mainline corridor at Carlton. From Clearbrook to Carlton, RA-06 extends 196.7 miles—approximately 23 miles shorter than the APR—at an estimated cost of \$1.2 billion.

D. Route Alternative RA-07⁵³

RA-07 was proposed by scoping commenters. RA-07 does not deviate from the Existing Line 3 corridor; rather, it would involve removing the Existing Line 3 pipe and installing the Project in the same trench. This route would take advantage of an existing Enbridge pipeline corridor rather than creating a new pipeline corridor. But this route alternative crosses the Leech Lake and Fond du Lac Reservations and the Chippewa National Forest. From Clearbrook to Carlton, RA-07 extends 167.7 miles—roughly 52 miles shorter than the APR—at an estimated cost of \$1.0 billion.

E. Route Alternative RA-08⁵⁴

Proposed by MDNR, RA-08 is a variation on RA-07 and has many of the same strengths and weaknesses. But unlike RA-07, RA-08 avoids certain impacts in the area of the Chippewa National Forest and the Leech Lake Reservation, and does not require the complete removal of Existing Line 3 pipe.

RA-08 deviates from the Existing Line 3 corridor around MP 909.4, east of Clearbrook. From there it runs parallel to Highway 2 along the Great Lakes Gas Transmission Company pipeline corridor for 44 miles southeast, then turns east for 43 miles, and southeast for 87 miles to Carlton. From Clearbrook to Carlton, RA-08 extends 164.8 miles—roughly 55 miles shorter than the APR, and 2-3 miles shorter than RA-07—at an estimated cost of \$1.0 billion.

XI. Route Segment Alternatives

The FEIS analyzed 24 route RSAs. These RSAs re-routed certain portions of the APR so that it would not cross on or near natural features and/or human settlements that had been identified during the EIS scoping process as areas to be avoided. Since the completion of the FEIS, the only RSAs to receive significant attention in comments, testimony, hearings, and deliberations were RSA-05, RSA-10, RSA-15, RSA-21, RSA-22, RSA-33, and RSA White Elk Lake.

⁵³ Ex. EERA-29 at Chap. 6 (FEIS); Ex. EERA-42 at 4-25 to 4-27 (Revised FEIS); Ex. EN-22, Sched. 7 at 28-35 (Simonson Direct); ALJ Report at finding 1101.

⁵⁴ Ex. EERA-15 at A-5 (Alternatives Screening Report); Ex. EERA-29 at Chap. 6 (FEIS); Ex. EERA-42 at 4-28 (Revised FEIS); Ex. EN-22, Sched. 7 at 36-41 (Simonson Direct); ALJ Report at finding 1102.

A. RSA-05⁵⁵

In Clearwater County, the APR passes within 600 feet of the Mud Lake basin, and within a mile of Upper and Lower Rice Lakes, which are significant to the White Earth Band. Enbridge proposed RSA-05 to avoid passing near these lakes, or even crossing within the Eastern Wild Rice watershed that would drain to these lakes, and eventually to the Red River. RSA-05 achieves this by taking a 13-mile detour from the mainline corridor between MP 154.1 and MP 164.0.

This detour creates a new corridor through mixed active farmland and forested land, and adds roughly four miles to the pipeline's length—but would avoid five acres of wetland habitat. It would locate more of the pipeline in the Clearwater River watershed (which drains to the Mississippi), but much of the APR already crosses that watershed. It would also cross Walker Brook, which drains to Clearwater River, and crosses intermittent streams that drain to Duncan, Berg, and Moose Lakes and eventually the Little Mississippi River. It would affect 29 additional acres of woodland habitat, which might lead to greater storm water run-off and permanent loss of forest. It would also cross an additional 0.8 miles of vulnerable water table aquifers.

B. RSA-10⁵⁶

In Clearwater and Hubbard counties, LaSalle Creek flows through various wetlands and lakes--the Big LaSalle, Middle LaSalle, and LaSalle—before reaching the Mississippi. The APR crosses LaSalle Creek only 0.5 miles upstream from Big LaSalle Lake, but 0.8 miles from the nearest township road and 1.6 miles from 105th Avenue.

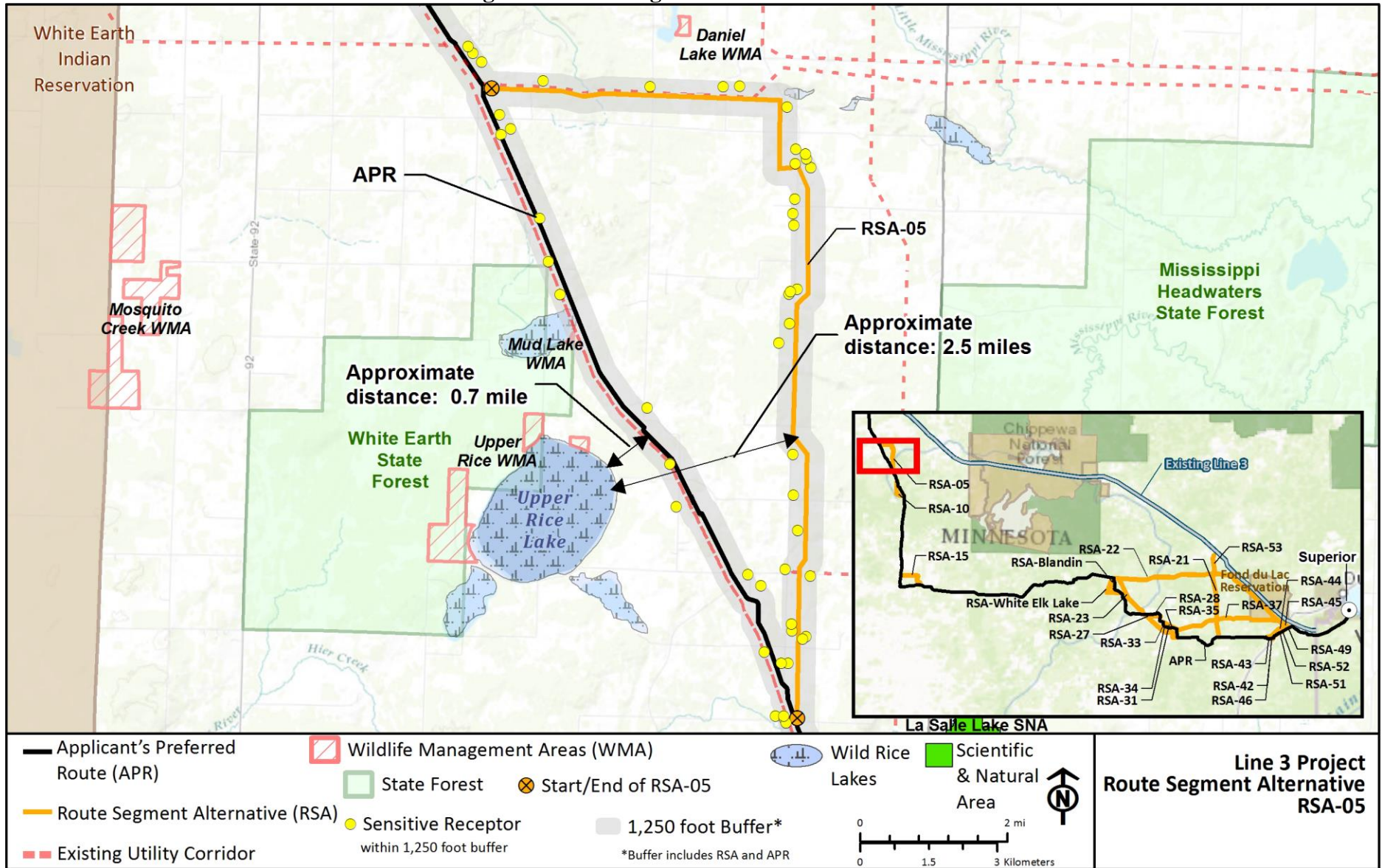
RSA-10 would reroute the pipeline so that it crosses the LaSalle Creek in a more accessible location. RSA-10 deviates from the APR at MP 167.4 to cross the creek at County Road 96, three miles upstream from the lake. The RSA would follow a transmission line corridor and the county road.

But according to Enbridge, RSA-10 would also pass within 750 feet of seven houses—two of which would be directly affected by the Project's construction—and would border Itasca State Park.

⁵⁵ Ex. EERA-42 at 7.3.1 (Revised FEIS); Ex. EN-22, Sched. 7 at 42-45 (Simonson Direct).

⁵⁶ Ex. EERA-42 at 7.3.2 (Revised FEIS); Ex. EN-22, Sched. 7 at 46-51 (Simonson Direct).

Figure 2: Route Segment Alternative RSA-05



Source: FEIS Figure 7.3-1 at 7-10 (February 12, 2018).

Moreover, the Commission recently issued a route permit for the MPL-Laporte Transmission line project in the same vicinity as RSA-10.⁵⁷ According to the FEIS, the MPL-Laporte project would require shifting the RSA-10 centerline 150 feet farther from 281st Avenue to provide adequate spacing between it and the transmission line, leaving a 75-foot gap between the pipeline and transmission line rights-of-way. This separation would expand an existing corridor or create a new corridor, causing greater aesthetic impacts and, if cleared, increased habitat fragmentation and edge effects.

C. RSA-15⁵⁸

Around MP 200 in Hubbard County, the APR crosses Shell River three times, including one crossing that is only 0.5 miles upstream of Upper Twin Lake. Moreover, the route is 0.6 miles from the nearest road, and there is no road access between the APR and the lake, which could complicate efforts to keep an oil spill from reaching the lake.

To help reduce this risk, RSA-15 routes the Project further away from the Twin Lakes and avoids Shell River entirely. While the route segment alternative does cross Fishhook River, it does so 1,300 feet upstream from Shell River and 1.7 miles from Upper Twin Lake, within 900 feet of Arbor Road.

However, RSA-15 passes close to a number of residences along County Highway 14. It also crosses a U.S. Fish and Wildlife Service easement, increases wetland impacts at Fishhook River, and complicates the use of center pivot irrigation systems in the area. Finally, its proximity to a highway, homes, a power line, and a substation would complicate construction.

D. RSA-21⁵⁹

The APR follows a transmission line corridor eastward into Aitkin County. But at MP 278.5 it deviates from that corridor, heading southeastward where it repeatedly crosses the Sandy River. The Sandy River is an ecologically and economically significant fishery. Moreover, it drains to Big Sandy Lake—not only a recreational resource and home to wild rice and trout, but also a location of cultural significance to many native tribes. These facts amplify the potential harm of an oil spill.

In contrast to the APR, RSA-21 continues east along the transmission corridor, then follows another transmission corridor south until it re-joins the APR's corridor at MP 331.9. This route not only keeps the Project away from the Sandy River which flows directly into Big Sandy Lake, it also follows existing corridors for its entire length, whereas the APR segment requires new corridors for almost three-quarters of this length. But RSA-21's southern turn passes close to

⁵⁷ *In the Matter of the Application of Minnkota Power Cooperative, Inc. for a Route Permit for the MPL - Laporte 115 kV Transmission Line Project in Clearwater and Hubbard Counties, Minnesota*, Docket No. ET-6/TL-16-327, Order Approving Route Permit (June 21, 2017).

⁵⁸ Ex. EERA-42 at 7.3.3 (Revised FEIS); Ex. EN-22, Sched. 7 at 59-60 (Simonson Direct).

⁵⁹ Ex. EERA-42 at 7.3.6 (Revised FEIS); Ex. EN-22, Sched. 7 at 74-76 (Simonson Direct).

some wildlife management areas. And because RSA-21 crosses other tributaries and wetlands that eventually flow to Big Sandy Lake, adoption of this route segment alternative would mitigate, but not eliminate, the harms of a spill.

E. RSA-22⁶⁰

Like RSA-21, RSA-22 differs from the APR by continuing east along an existing transmission corridor. But instead of turning south, RSA-22 continues along this corridor until it rejoins the Enbridge Mainline Corridor, and eventually reconnects with the APR at MP 356.7. See Figure 3.

This alternative has many of the same advantages as RSA-21—for example, it follows existing transmission corridors for its entire length, thereby reducing habitat fragmentation, and stays away from the Sandy River, which flows directly into Big Sandy Lake. But by avoiding RSA-21's southward route, this alternative is also able to avoid proximity to other wildlife management areas. In addition, RSA-22 is shorter than RSA-21, and shortens the APR by 9.1 miles. But like RSA-21, this alternative crosses tributaries and wetlands that eventually flow to Big Sandy Lake, meaning that adoption of this segment would mitigate, but not eliminate, the harms of a spill.

The primary disadvantage of RSA-22 is that, unlike either the APR or RSA-21, it would cross the Fond du Lac Reservation.

F. RSA-33⁶¹

Between MP 306.7 and 308.4 in Aitkin County, the APR passes within 1,250 feet of eight residences. The landowner proposed shifting a segment of the line roughly a half-mile to the east. This change would move the line further from the residences, but could impinge upon a local peat-farming operation.

G. RSA-White Elk Lake⁶²

Near MP 277.9 in Aitkin County, the APR crosses through a conservation easement held by the MDNR in Aitkin County as part of the Minnesota Forest Legacy Program. Not only would the RSA lead to habitat fragmentation within this easement, it would arguably violate a term under which the MDNR retains the easement.

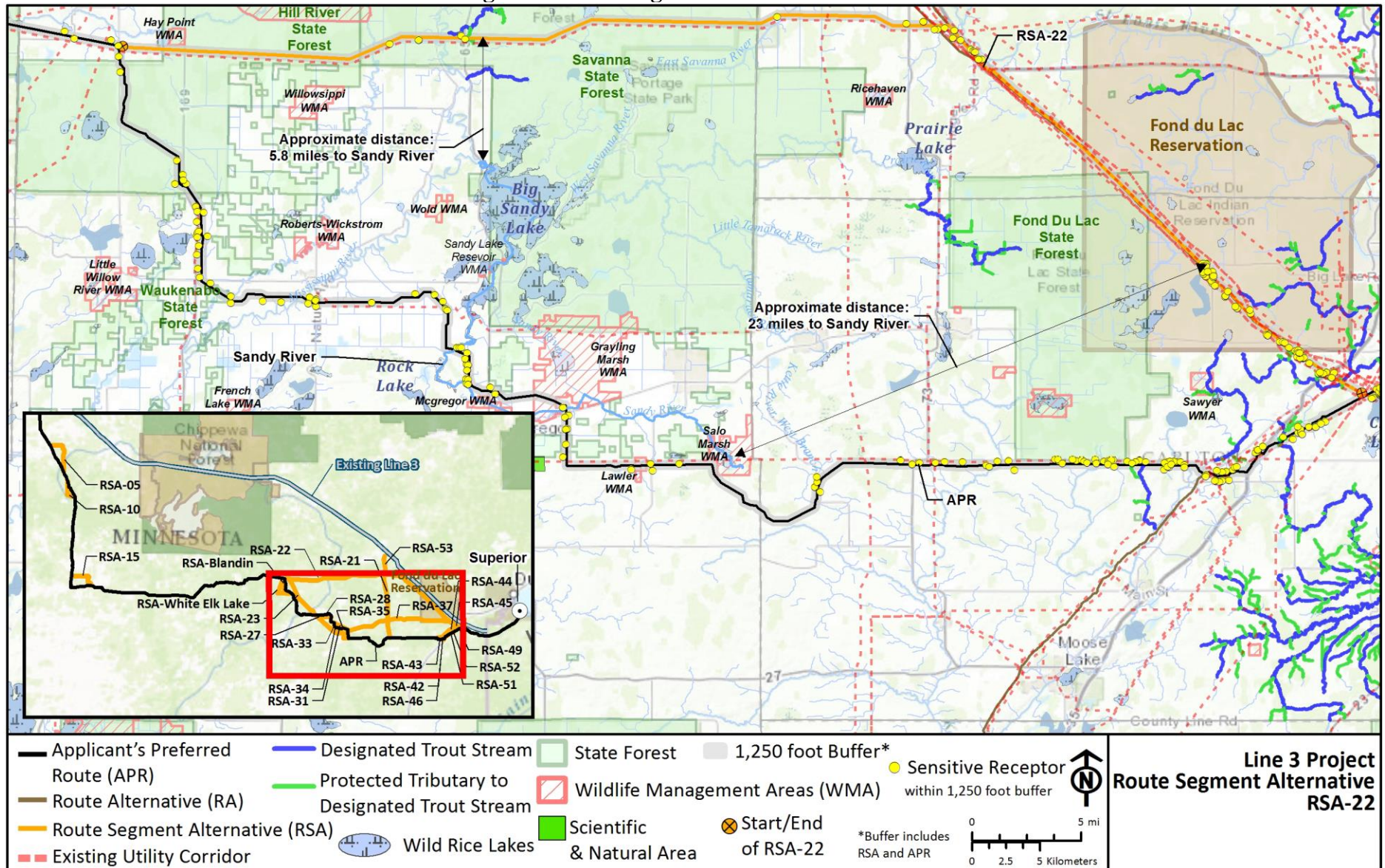
RSA-White Elk Lake would route the Project to the west and south of White Elk Lake along existing transmission line and railroad corridors, thereby avoiding the conservation easement. But this route crosses through a Minnesota Biological Survey site and adds more than three miles to the route.

⁶⁰ Ex. EERA-42 at 7.3.7 (Revised FEIS); Ex. EN-22, Sched. 7 at 72-77 (Simonson Direct).

⁶¹ Ex. EERA-42 at 7.3.11 (Revised FEIS); Ex. EN-22, Sched. 7 at 96-99 (Simonson Direct).

⁶² Ex. EERA-42 at 7.3.5 (Revised FEIS); Ex. EN-22, Sched. 7 at 60-63 (Simonson Direct).

Figure 3: Route Segment Alternative RSA-22



Source: Ex. EERA-42, Figure 7.3-7 (Revised FEIS).

XII. ALJ Report

ALJ O'Reilly made 1405 findings of fact and 44 conclusions of law. Ultimately the ALJ recommended adoption of RA-07, reasoning it would minimize the impacts on human settlement and the natural environment; decrease the cumulative potential effects of future pipeline construction in a new corridor; and maximize the use of existing pipeline rights-of-way and right-of-way sharing and paralleling.⁶³

ALJ O'Reilly also recommended that a route permit for the Project should be subject to a number of conditions, including the following:⁶⁴

- Enbridge must add two pipeline maintenance shops in the state, east of Clearbrook.
- Enbridge must provide an updated, final Field Emergency Response Plan for the Superior Region prior to construction.
- Enbridge must provide the Commission with periodic updates documenting the adequacy of Enbridge's cyber security systems.
- As recommended by the DER, Enbridge must demonstrate that it has adequate and reliable facilities, such as distributed generation or other back-up power, available to provide power to valves if there is an interruption.
- Enbridge must have, and continually maintain, road access or access that does not require the use of equipment or machinery, to reach all shutoff valves in Minnesota.
- Enbridge must report annually on each exposed pipeline segment along Line 3, explaining how Enbridge will meet its Minnesota operating permit conditions and federal requirements.
- Enbridge must prepare and implement a written plan to prevent and mitigate sex trafficking during the construction of the new line, including the mitigation techniques recommended in the FEIS at Section 11.4.1:

To address the potential for sexual abuse or sex trafficking, Enbridge can fund or prepare and implement an education plan or awareness campaign around this issue with the companies and subcontractors it hires to construct, restore, and operate the pipeline. Enbridge can also provide funding to local and tribal law enforcement to identify and stop sex trafficking.

⁶³ ALJ Report at finding 1405. ALJ O'Reilly also recommended that RA-07 be treated as a required modification of the Project for purposes of granting the Project a certificate of need. *Id.* at conclusion 27. The Commission rejected this recommendation. Need docket, Order Granting Certificate of Need as Modified and Requiring Filings, at n.127 (September 5, 2018).

⁶⁴ ALJ Report at conclusion 43.

XIII. Positions of the Parties

Parties advocated a variety of positions regarding the appropriate route to use, and the appropriate conditions to attach to the pipeline routing permit.

A. Route Alternatives

1. Support for RA-07

The Dyrdals supported the ALJ’s recommendation of RA-07. With multiple pipelines already crossing their property, the Dyrdals opposed any further expansion of Enbridge’s pipeline corridor.

Fond du Lac Band proposed an amendment to ALJ O’Reilly’s finding that RA-07 is “a reasonable and viable route option for a true replacement of Line 3” under certain conditions—including the condition that the Commission finds that the Project is needed, and the tribes consent to the route—but did not otherwise object to the finding.⁶⁵ Likewise, Mille Lacs concluded that RA-07 and -08 represented the Project’s least harmful route alternatives, assuming Enbridge could obtain Fond du Lac’s and Leech Lake’s consent for either route.⁶⁶

MDNR concluded that RA-07 would have a smaller impact on Minnesota’s natural resources than the APR, but acknowledged that natural resources were only one factor among many that the Commission must consider in evaluating Enbridge’s request.⁶⁷

2. Opposition to RA-07

Leech Lake, in exceptions to the ALJ Report and during oral argument, stated unequivocally its opposition to permitting the Project to be built on the Leech Lake Reservation—and, indeed, its intention to withhold permission for Enbridge to continue operating any of its pipelines on the reservation when the company’s easements expire in 2029. Leech Lake argued that in-trench replacement—which involves engaging in two major construction projects in a confined space—would create unacceptable safety and environmental risks, both on the reservation and in the adjoining Chippewa National Forest. Finally, Leech Lake stated that it regarded proposals to install the Project on its reservation as an affront to the Band’s sovereignty.

Enbridge, Laborer’s District, Shippers Group, United Association, Association of Oil Pipelines (AOPL), the Government of Alberta, and Flint Hills also opposed the ALJ’s recommendation, echoing many of the same concerns raised by Leech Lake. Enbridge stated that no party submitted evidence or testimony in support of RA-07, which crosses through the Leech Lake and

⁶⁵ See Fond du Lac Exceptions, proposing change to ALJ Report finding 1396.

⁶⁶ Mille Lacs oral argument (June 27, 2018).

⁶⁷ MDNR comments (November 22, 2017) (Batch 18A).

Fond du Lac Reservations, the Chippewa National Forest, a contaminated Superfund Site, 13 cities, and 207 federally-defined High Consequence Areas.⁶⁸

These parties argued that the challenge of both removing the Existing Line 3 pipeline and installing the new one would exacerbate the risk of accidental contact with the active pipelines, overloads on the surfaces above the pipelines, cave-ins, and adjacent pipeline movement. They stated that in-trench replacement would require the Existing Line 3 to discontinue operations for about 16 months. Enbridge explained that it must reduce the amount it delivers to each customer due to the pipeline system's lack of capacity to meet customers' total specified demand; a 16-month outage for Line 3 would exacerbate this apportionment problem.

Finally, given Leech Lake's opposition to permitting new pipelines on their reservation, these commenters argued that approving RA-07 would be the equivalent of the Commission taking no action on Enbridge's request.

3. Support for the APR

Enbridge, Laborer's District, Shippers Group, United Association, AOPL, the Government of Alberta, and Flint Hills argued that, as compared with RA-07, the APR would have fewer consequences for wetlands, waterbodies, and previously recorded historic resources; reduce the number of times the Project would cross through cities, "high-consequence areas," and contaminated Superfund sites; and avoid the Chippewa National Forest, the Leech Lake Reservation, and the Fond du Lac Reservation. And they argued that the APR would cost \$700 million less than RA-07.

But if Fond du Lac consented, Enbridge would favor adopting the APR modified to incorporate RSA-22, noting that the route would be shorter and avoid new corridor construction.⁶⁹ And EERA stated that both RSA-21 or -22 would improve the APR, albeit modestly.⁷⁰

4. Opposition to the APR

The Northern Water Alliance opposed the APR, saying that it crosses 40 percent of the state's clean watersheds. The Alliance argued that the route would be hard to monitor and, in an emergency, hard to reach.

During oral argument Fond du Lac and Mille Lacs each concluded that APR was the least desirable route due to its proximity to Big Sandy Lake.

5. Support for RA-03AM

During oral arguments, EERA noted that RA-03AM has the advantage of requiring fewer miles of new corridor than the APR or RA-06. And the Fond du Lac, Leech Lake, Mille Lacs, Red

⁶⁸ Ex. EN-22, Sched. 7 at 36-37 (Simonson Direct).

⁶⁹ Enbridge oral argument (June 27, 2018).

⁷⁰ EERA oral argument (June 27, 2018).

Lake and White Earth Bands stated that they found RA-03AM preferable to the APR because it would avoid Big Sandy Lake and surrounding areas—a place of cultural importance to the bands—and would result in less impacts on other lands that the tribes ceded to the State in a series of treaties from 1837 to 1889.

Also, noting that RA-03AM's route traversed more populated areas than some other routes, Mille Lacs suggested that leaks along this route might be noticed and remedied more quickly than for other routes.⁷¹

6. Opposition to RA-03AM

RA-03 was initially proposed as a route for Enbridge's Sandpiper project, crossing the state south of Enbridge's Mainline system corridor. While Enbridge was still pursuing that project, routing the Line 3 Project south to intersect with the Sandpiper corridor would permit Enbridge to reduce impacts in the Minnesota Headwaters and Minnesota's Lakes regions, and maximize the use of the new Sandpiper corridor. But when Enbridge abandoned the Sandpiper project, MDNR argued, the advantages of RA-03AM evaporated while its disadvantages remained.

Specifically, EERA and the MDNR stated that RA-03AM poses risks to water along the route. It threatens surface waters, crossing the Mississippi River and its tributaries just upstream of the drinking water intakes for St. Cloud.⁷² And it threatens ground water by traversing known karst conditions for 12 miles (and 2547 acres) in Pine County. Karst topography features caves, sinkholes, fissures, and underground streams, typically forming in regions of plentiful rainfall with a bedrock of easily dissolvable carbonate-rich rock such as limestone, gypsum, or dolomite. An oil spill in a karst region risks polluting the aquifer below, threatening the quality of the groundwater.⁷³

RA-03AM also passes through nine cities. This fact increases the pipeline's burdens to people, homes, and businesses. And it increases the potential for accidental pipeline strikes by third parties.⁷⁴ EERA found no record support for the idea that locating a pipeline in a more heavily populated area would result in quicker leak detection or repair.⁷⁵

Finally, RA-03AM is also the longest route proposed for the Project. Many disadvantages tend to increase as a pipeline's route increases—including the route's cost, the amount of land disrupted and occupied, the amount of pump stations and energy (and the resulting emissions) required for operation, and the risk of leaks and ruptures, including risks from accidental strikes due to land

⁷¹ Mille Lacs oral argument (June 27, 2018).

⁷² MDNR oral arguments (June 26, 2018); EERA oral arguments (June 27, 2018); *see also* FEIS Chap. 10-4.

⁷³ ALJ Report at finding 770.

⁷⁴ EERA oral argument (June 27, 2018); Enbridge oral argument (June 27, 2018).

⁷⁵ EERA oral argument (June 27, 2018)

development or farming.⁷⁶ Given the added length and populated area, Enbridge estimated that selecting this route would delay the Project's completion by two years.⁷⁷

7. Opposition to RA-06

While RA-06 was initially proposed to provide a northern route for the Project that avoids the Mississippi Headwaters, the Lakes Region, and the Leech Lake and Fond du Lac Reservations, none of the parties supported locating the Project along that route. MDNR argued that RA-06's principle shortcoming is its need for an extensive new right-of-way corridor, cutting through 700 acres of undeveloped wilderness and waterways especially in the Chippewa National Forest. Because this development would cause extensive habitat fragmentation in high-value forestlands, likely accelerating the spread of invasive species, MDNR concluded that these shortcomings justified excluding RA-06 from further consideration.⁷⁸

And during oral arguments, DER, Mille Lacs, Leech Lake, MDNR, Red Lake and White Earth largely concurred. In particular, Leech Lake objected to the damage this route would cause to tribal gathering areas and the Chippewa National Forest, which the tribe helps to manage.

8. Support for RA-08

As previously noted, Mille Lacs concluded that RA-07 and -08 represented the Project's least harmful route alternatives, assuming Enbridge could obtain Fond du Lac's and Leech Lake's consent for either route.⁷⁹

9. Opposition to RA-08

Opposition to RA-08 echoed the opposition to RA-07--most prominently, that the route is unworkable because Leech Lake refuses to grant permission for Enbridge to build the Project across the Leech Lake Reservation.

B. Route System Alternatives

1. ALJ Report

Because ALJ O'Reilly ultimately recommended that the Commission authorize Enbridge to build its Project along RA-07, she offered no recommendations regarding the optimal assortment of RSAs to the APR.⁸⁰

⁷⁶ *Id.*; Enbridge oral argument (June 27, 2018).

⁷⁷ Enbridge oral argument (June 27, 2018).

⁷⁸ MDNR comments at 5 (November 22, 2017) (Batch 18A); MDNR oral argument (June 26, 2018).

⁷⁹ Mille Lacs oral argument (June 27, 2018).

⁸⁰ ALJ Report at finding 525.

2. Positions of the Parties

In contrast to the large number of RSAs, the number of parties commenting on them was limited.

Enbridge endorsed the APR, but also supported RSA-05 as a way to accommodate the White Earth Band's interest in minimizing consequences for the Eastern Wild Rice watershed.⁸¹ Enbridge generally opposed the other route system alternatives,⁸² but would support RSA-22 if Fond du Lac would permit the Project to cross its reservation.⁸³

The MDNR concurred with Enbridge's support of RSA-05. Likewise, the MDNR stated that RSA-10, RSA-15, RSA White Elk Lake, and RSA-33 would improve upon the APR by reducing that route's environmental consequences. The MDNR also advised against a number of other RSAs.⁸⁴ During oral argument, MDNR stated that RSA-21 and -22 follow existing transmission lines, but added that these RSA corridors contain designated old growth, candidate old growth, and identified future old growth forest, and also sites of high biodiversity.

Kennecott Exploration Company (Kennecott) noted that the APR would complicate its efforts to mine copper nickel minerals in Carlton County (the Tamarack Project) and harm the "environmentally sensitive" areas that Kennecott acquired as part of that project. These concerns initially prompted Kennecott to oppose the APR, RSA-31, RSA-34, and RSA-35,⁸⁵ but Kennecott later arrived at a settlement with Enbridge and withdrew its objections.

C. ALJ's Permit Conditions

When the Commission issues a pipeline routing permit for the construction of a pipeline and associated facilities, the Commission designates a route for the pipeline, as well as conditions. These conditions may address the conditions for right-of-way preparation, construction, cleanup, and restoration; and any other appropriate conditions for minimizing the harms to people and the environment.⁸⁶

Enbridge agreed to most of the ALJ-recommended conditions listed in Section XII above.⁸⁷ While Enbridge did not object to the recommended condition that it demonstrate that it would have adequate facilities to provide power to operate pipeline valves if there were an interruption to the pipeline's power supply, Enbridge noted that it had already done so⁸⁸—and DER had

⁸¹ Ex. EN-30, at 8 (Eberth Rebuttal).

⁸² Ex. EN-22, Sched. 7 (Simonson Direct).

⁸³ Enbridge oral argument (June 27, 2018).

⁸⁴ MDNR comments at 6-7 (Nov. 22, 2017) (Batch 18A).

⁸⁵ Ex. KN-1 at 3 (Best Direct).

⁸⁶ Minn. R. 7853.0800, subp. 1; 7852.3200, subp. 1.

⁸⁷ Enbridge opening statement (June 18, 2018); Enbridge position letter at 6-8 and attachments (June 22, 2018).

⁸⁸ Ex. EN-81 (Baumgartner Summary).

already acknowledged that it was satisfied with Enbridge's response.⁸⁹ No parties raised other concerns with these conditions.

Parties proposed other non-route recommendations. Fond du Lac proposed revisions to promote clarity and consistency with the revised FEIS and other Project documents, and with relevant law,⁹⁰ and Enbridge had no objections to those changes.⁹¹ Similarly, Enbridge had no objections to MDNR's proposed permit conditions to the extent that they corresponded with the terms already set forth in the draft sample permit, Environmental Protection Plan, or Agricultural Protection Plan.⁹² But Enbridge argued that MDNR's other proposals would be better addressed through the MDNR permitting process Enbridge will engage in for site-specific crossings.

XIV. Commission Analysis

Each route alternative has strengths and weaknesses, as documented in the revised FEIS. The Commission evaluates the alternatives as follows.

A. Rejection of ALJ's Rationale

ALJ O'Reilly recommended that the Commission approve RA-07, granting Enbridge a permit to build its new Project along the same route, and in the same trench, as Exiting Line 3. The ALJ based this recommendation on her conclusion that the consequences of granting a certificate of need for the Project would be more favorable than the consequences of denying the certificate only if the Project were located in the trench of the Existing Line 3.⁹³

The Commission rejected the ALJ's analysis in its September 5, 2018 order granting a certificate of need for the Project:

Incorporating the selection of a particular route to justify the need for a route for a proposed project appears to be inconsistent with the statutory schemes for determining a project's need and its routing. For that reason the Commission has not previously adopted a need analysis that conflates need and routing, and it declines to do so now.⁹⁴

⁸⁹ Ex. DER-6 at 58 (O'Connell Surrebuttal).

⁹⁰ Fond du Lac Exceptions to Department of Commerce—Energy Environmental Review and Analysis Division Sample Permit, at 2 (May 18, 2018).

⁹¹ Enbridge oral argument (June 28, 2018).

⁹² Ex. EERA-29 (FEIS), Appendix E (Environmental Protection Plan) and F (Agricultural Protection Plan).

⁹³ ALJ Report at conclusion 27.

⁹⁴ Need docket, Order Granting Certificate of Need as Modified and Requiring Filings, at n.127 (September 5, 2018).

Because the Commission’s determination of need did not also identify the Project’s route, the Commission must now evaluate the various route alternatives based on the record evidence of each route’s consequences for people and the environment—considering each route’s characteristics and potential consequences, including methods to minimize and mitigate those consequences.⁹⁵

B. Rejection of RA-07 (ALJ’s Recommendation) and RA-08

Whatever the other merits of the ALJ’s recommendation to adopt RA-07, this route poses an insurmountable problem: Enbridge’s easements for its six pipelines crossing the Fond du Lac and Leech Lake Reservations expire in 2029,⁹⁶ and Leech Lake refuses to grant any extension to this easement.⁹⁷ Consequently, Commission adoption of any route crossing the Leech Lake Reservation—that is, RA-07 or -08—would *at most* authorize Enbridge to build a pipeline that would likely have to discontinue operations by 2029.

Enbridge anticipates that the Project would cost \$7.5 billion, with the segment from Clearbrook to Carlton costing roughly \$1 billion (for RA-07) or \$1.4 billion (for the APR).⁹⁸ Limiting the pipeline’s operating life to 2029 would render this investment infeasible—in effect, it would be the equivalent of taking no action on Enbridge’s petition.⁹⁹ And in lieu of Commission approval of a feasible route for its Project, Enbridge stated that it would continue operating—and maintaining—the Existing Line 3.¹⁰⁰

But in finding that Enbridge has demonstrated need for its project, the Commission considered and rejected the possibility of taking no action on Enbridge’s petition.¹⁰¹ First, the Commission concluded that the demand for crude oil justified the continued operation of Line 3. Second, the Commission concluded that the deteriorating condition of Existing Line 3 warranted replacement.

⁹⁵ Minn. R. 7852.1900, subp. 2.

⁹⁶ Ex. FDL-7 (FDL Easement); Ex. FDL-11 (FDL Resolution 1208/09); Ex. LL-1 (Leech Lake Easement).

⁹⁷ Ex. LL-4 (LL Official Statement); Ex. LL-10 (LL Resolution LD2018-073); Evid. Hrg. Tr. Vol. 10A at 70-167 (Brown). Note that, while Fond du Lac entered into a settlement authorizing Enbridge to replace pipe (*see* Ex. FDL-9, excerpts from FDL Settlement Agreement), Leech Lake’s settlement with Enbridge did not expressly mention pipeline replacement (*see* Ex. LL-3 (LL Settlement Agreement)). Leech Lake opposes any replacement of existing Line 3 within its reservation (*see* Evid. Hrg. Tr. 10A at 75:21-15, 81:19 – 82:8 (Brown)).

⁹⁸ Need docket, Ex. EN-1 at 1-9 (CN Application); Ex. EN-24 at 6 (Eberth Direct); Ex. EERA-42, Table 6.6.1 (Revised FEIS).

⁹⁹ United Association oral argument (June 18, 2018).

¹⁰⁰ Enbridge Exceptions at 7.

¹⁰¹ Need docket, Order Granting Certificate of Need as Modified and Requiring Filings (September 5, 2018).

ALJ O'Reilly found that continued operation of Existing Line 3 poses significant risks to Minnesota.¹⁰² Although Enbridge claims that it can maintain the Existing Line 3 in a sufficient condition to meet applicable permit and rule requirements, it acknowledged that “there is no feasible technology or operational changes that can arrest or reverse the external corrosion on Line 3 and/or remove the defects that were inherent in the way the pipe was originally manufactured.”¹⁰³ Even with extensive repairs, flash-welded seams leave a risk of cracking that can only be eliminated by replacing the pipe.¹⁰⁴ Notably, the US Environmental Protection Agency entered into a consent decree whereby Enbridge committed to replace the Existing Line 3 if possible.¹⁰⁵ These facts, among others, led the Commission to reject the option of taking no action on Enbridge’s petition.

Due to Leech Lake’s objection to any route crossing its reservation, neither RA-07 nor RA-08 remain viable alternatives for the Line 3 Project. Consequently the Commission will exclude these routes from further analysis.

C. Comparison of the APR, RA-03AM, and RA-06

Having eliminated RA-07 and RA-08 from consideration, the Commission must choose among the APR, RA-03AM, and RA-06. None of these routes is superior in every respect; each has its strengths and weaknesses, as illustrated by a sample of the data from the FEIS in Table 1 below:

Table 1: Comparative Statistics on Route Alternatives

	APR	RA-03AM	RA-06
Pipeline Length from Clearbrook to Carleton in Miles			
Total Length (Miles)	220.9	275.1	196.7
New Right-of Way (Miles)	59.8	12.9	156.5
Co-Location with Existing Infrastructure from Clearbrook to Carleton			
Co-Located with Existing Infrastructure (Percentage)	73	95	20
Oil/Gas Pipeline (Miles)	66.2	223.6	40.3
Transmission/Utility Lines (Miles)	92	13.8	0
Roads (Miles)	2.9	24.8	0
Land Use Types Crossed from Clearbrook to Carlton in Acres			
Construction			
Agricultural	561.6	1611.1	256.7
Developed	94	385.8	65.4
Forested	1446.5	1137.7	1107.3
Open Land	307.7	399.6	354.2
Open Water	6.4	17	81.8
Wetlands	490.6	509.1	996.3
Operation			
Agricultural	251.6	676.8	107.4
Developed	45.5	157.8	26.4

¹⁰² ALJ Report at finding 836.

¹⁰³ Ex. EN-12 at 20 (Kennett Direct).

¹⁰⁴ ALJ Report at finding 930.

¹⁰⁵ Ex. EN-30, Sch. 1 (Final Consent Decree).

	APR	RA-03AM	RA-06
Forested	631	470.5	460.9
Open Land	151	143.5	148.6
Open Water	3.8	7.1	33.7
Wetlands	254.2	211.2	415.3
Potential Noise and Vibration Impacts			
Number of Sensitive Noise Receptors	524	1507	328
Number of Sensitive Vibration Receptors	5	13	2
Potential Impacts on Aesthetics and Visual Resources			
Indian Reservations Affected (Acres)	0	0	79
Special Management Areas (Acres)	439	32	875
Scenic Byway Crossings	4	6	2
Scenic River/River Trail Crossings	2	4	1
Highly Visually Sensitive Travel Routes Crossed	95	138	46
Residences with 300 Feet of Work Area	78	368	76
Permanent Loss of Forested Areas for Right-of-Way (Acres)	631	471	461
Potential Impacts on Housing			
Residences within Construction Work Area	6	16	9
Residences within 50 Feet of Construction Work Area	7	39	8
Structures within Permanent Right-of-Way	18	3	7
Potential Impacts on Transportation and Public Services			
Road and Highway Crossings	164	329	112
Rail Crossings	2	11	4
Utility Crossings	67	106	51
Airports within 20,000 Feet	1	0	0
Potential Impacts on Groundwater			
Domestic Wells	164	396	40
Public Wells	1	10	0
Wellhead Protection Areas (Acres)	0.6	329	56
Drinking Water Supply Management Areas (Acres)	172	849	131
Karst Topography (Acres)	0	2547	0
Potential Impacts on Surface Waters			
Waterbody Crossings	109	167	137
Surface Flow Crossing Only	94	153	121
Impaired Water Crossings	13	14	1
TMDL Study Area Crossings	3	6	1
Trout Stream Crossings	6	9	8
National Rivers Inventory-Listed River Crossings	7	1	2
Wild Rice Waterbodies	5	6	5
Mississippi Headwater Crossings	1	1	0
Mississippi River Crossings	2	2	0
Permanent Loss/Alteration of Forested Wetlands (Acres)	62	48	228
Permanent Loss/ Alteration of Scrub/Shrub Wetlands (Acres)	108	84	104
Potential Impacts to Public Lands, Cultural Resources, and Other			
Loss or Alteration of Habitat in WCAs (Acres)	159	19	135
Impacts on MCBS Sites (Acres)	382	156	481
Impacts to Federal Lands Due to Right-of-Way (Acres)	2	11	38
Impacts to State Lands Due to Right-of-Way (Acres)	199	14	331
Impacts to County Lands Due to Right-of-Way (Acres)	228	119	5
Known archaeological/historic sites directly affected by construction	8	13	1
Miles of Populated Areas Crossed by Pipeline Centerline	2.9	14.9	3.4

Source: Ex. EERA-29 at Chapter 6 (FEIS).

Minn. R. 7852.1900, subp. 3, sets forth a list of factors the Commission should consider in selecting among competing routes and conditions. The Commission will address these below:

1. Human settlement, existence and density of populated areas, existing and planned future land use, and management plans

Effects on populated areas. The FEIS concluded that the Project would trigger a mostly temporary influx of non-local workers, some temporary disruption of traffic and services, and the permanent loss of some residences and structures.¹⁰⁶

Different routes would have different consequences. The APR passes within 750 feet of 98 homes. RA-06 has more than twice the impact, passing within 750 feet of 213 homes. But RA-03AM has a still greater impact, passing within 750 feet of nearly 500 homes; as a result, numerous homes, garages, and commercial properties would need to be removed to build it.¹⁰⁷ Moreover, RA-03AM passes through nine cities, bringing it within 750 feet of public venues and businesses in congested and developed areas with constricted workspaces, three airports, one school, 13 additional structures, and two cemeteries. Enbridge questions whether there is sufficient space to conduct the necessary horizontal directional drilling where RA-03AM would pass under the US Highway 169/State Highway 23 intersection in Milaca, and the Mississippi River at Little Falls.¹⁰⁸ And with the increased length through populated areas comes increased risk of accidental contacts by third parties, especially farmers and property developers.

ALJ O'Reilly found as follows:

1339. When comparing the APR and the route alternatives to each other, the APR would be expected to have the lowest impact on populated areas. It has the lowest number of populated areas within the [region of interest] and the lowest total population within those populated areas. It also has the least acreage along of permanent right-of-way that crosses populated areas....

1340. The next highest population exposure would occur from RA-03AM, where approximately 10 times as many people are in populated areas along the pipeline route. The permanent right-of-way acreage that would need to remain cleared in the populated areas would be five times greater for RA-03AM than for APR.

1341. RA-06 ... would increase the exposed population within populated areas.

On balance, these factors favor the APR.

¹⁰⁶ Ex. EERA-29 at 6-770 (FEIS).

¹⁰⁷ Ex. EN-22, Sched. 7, at 23 (Simonson Direct).

¹⁰⁸ *Id.*, at 23-24.

Safety measures. While Enbridge selected its APR to mitigate the extent to which the proposed pipeline's construction and operation will impinge upon the public, the Project will inevitably create some new risks and burdens. The revised sample Pipeline Routing Permit addressed steps to mitigate risks and burdens related to its Project. These considerations do not favor any pipeline route over the others.

But in addition to the conditions set forth in the sample permit, the Commission will direct Enbridge to take the following measures.

First, the Commission will designate a Public Safety Liaison, and direct Enbridge to work with the Liaison to ensure proper execution of the Pipeline Routing Permit's public safety and private security provisions. The Liaison will be the point of contact for the Commission, the parties, and local governmental units on safety and security issues. The Liaison may retain staff and professional services, but will have no authority to oversee or direct law enforcement authorities.

Second, the Commission will direct Enbridge to develop public safety and security plans for this project. Before beginning construction in any county, Enbridge should obtain approval for these plans from the county sheriff or, if unable to do so, from the Commission.

Third, during construction, the Commission expects Enbridge to work with local authorities to prohibit public access to the right-of-way, if required for public safety and security. But in taking such actions, the Commission also expects Enbridge, its contractors, and its assigns to respect the rights of the public to legally exercise their constitutional rights without interference. Specifically, the Commission expects these Enbridge's agents to avoid engaging in counterinsurgency tactics or misinformation campaigns designed to interfere with the public's legal exercise of constitutional rights. Moreover, the Commission expects that these agents will comply with Minnesota's Private Detective and Protective Agent Services statutes and rules at all times.¹⁰⁹ As a condition of the routing permit, the Commission will direct Enbridge to act accordingly.

Fourth, to address parties' concerns about problems that have arisen in other construction projects, the Commission will direct Enbridge to develop a Human Trafficking Prevention Plan to educate, equip, and encourage people associated with pipeline construction and operation, and members of the public generally, to prevent and report Project-related human trafficking. As part of this plan, Enbridge would maintain a toll-free hotline throughout the Project's construction for receiving reports of human trafficking. Enbridge must file the plan with the Commission 60 days before beginning construction, and incorporate the plan into its employee training and education as discussed in Section 4.7 of the Pipeline Routing Permit.

Moreover, Enbridge should develop this plan in coordination with the EERA, the Minnesota Human Trafficking Taskforce, and the Minnesota Indian Affairs Council (MIAC), and all Minnesota Tribes that wish to participate. EERA has agreed to formally extend invitations to the Minnesota Human Trafficking Taskforce, MIAC, and the governments of all Tribes in Minnesota or in MIAC for this purpose. Enbridge will be responsible for coordinating, completing, and delivering the plan—so Enbridge should document its efforts to engage these entities.

¹⁰⁹ Minn. Stat. § 326.32 *et seq.*; Minn. R. Chap. 7506.

Safety expenses. Finally, parties noted that pipeline projects in other parts of the country have sometimes resulted in added burdens to law enforcement and social service agencies. Given the possibilities that the Project could cause similar effects, the Commission will direct Enbridge to help defray these added costs by creating, funding, and administering a Public Safety Escrow Trust as follows:

- A. The Public Safety Liaison must confer with law enforcement/social service agencies of affected local units of government, including tribal governments, about the appropriate sums required to meet the enhanced law enforcement and social service needs arising from the Project.
- B. The Executive Secretary, after consulting with the Public Safety Liaison, will determine the appropriate initial amount to be deposited into the Public Safety Escrow Trust Account, and any subsequent amounts.
- C. Before beginning construction, Enbridge must establish the Public Safety Escrow Trust Account in an independent US financial institution, designate the financial institution as trustee, and make deposits as specified.
- D. The Executive Secretary will establish a plan for distributing funds to enhance existing law enforcement agencies and social services task along the route.

The fund would have two parts. First, the Executive Secretary would arrange for providing funds, before construction begins, to help existing law enforcement and social service agencies along the route in combatting drug and human trafficking during pipeline construction. The Public Safety Liaison will coordinate these drug and human trafficking grants after consulting with local and tribal governments near the route, Minnesota Human Trafficking Taskforce, and MIAC.

Second, the fund would permit local units of government to seek reimbursement for the added costs for law enforcement, public safety, public health, planning, and other services arising from activities in and around the construction site during the term of the routing permit as a direct result of the pipeline construction. After having sought reimbursement from state or federal funding programs as appropriate, local units of government and tribal governments could submit to the Public Safety Liaison a written request for reimbursement. The request should contain an itemized list of expenses and sufficient detail to permit the Commission to determine whether the services rendered were reasonable and appropriate additional municipal services uniquely provided due to the construction of the pipeline during the term of this permit.

Examples of reimbursable expenses will include incremental expenses related to—

- coordination of public safety and emergency responders;
- public safety-related costs for maintaining the peace in and around the construction site;
- review and oversight of any private security services;
- public emergency management services;
- transportation management, parking, and traffic control services; and
- any other emergency first responder, public safety, public works, and public

health-related services provided in and about the construction site as a direct result of the construction of the pipeline.

These measures should help Enbridge mitigate the Project's effects on human settlements generally.

2. The natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands

Each of the routes considered would affect the natural environment—and the Commission will address many of those consequences further below. At this point, the Commission will address two topics: pipeline length and karst topology.

Environmental consequences tend to increase with pipeline length. At a length of 275.1 miles between Clearbrook and Carlton, RA-03AM is the longest route alternative under consideration. Construction of this route would require the greatest amount of land disruption. It would require the greatest number of pumping stations, and require the greatest amount of energy (and generate the greatest amount of emissions) to operate. And it would provide the greatest opportunity for a third party to accidentally come into contact with the pipeline while farming a field or developing a building. Both the APR and RA-06 are shorter, at 220.9 miles and 196.7 miles, respectively.

In addition, a leak along RA-03AM's route would pose unique threats to surface and ground water. As previously noted, the route crosses the Mississippi River and its tributaries just upstream of the drinking water intakes for St. Cloud.¹¹⁰ And RA-03AM crosses known karst conditions along approximately 12 miles (and 2547 acres) of its route through Pine County.¹¹¹ In contrast, no known karst features are present along the APR or RA-06.¹¹²

These facts weigh against RA-03AM.

3. Lands of historical, archaeological, and cultural significance

The APR, as modified, avoids or mitigates the Project's consequences for lands of historical, archaeological, and cultural significance.

Enbridge is conducting archeological field surveys for a large portion of the APR, using state-approved field methods, and commits to completing the survey for the entire route.¹¹³ Also, Enbridge has developed an Unanticipated Discovery Plan to avoid or mitigate harms to any

¹¹⁰ MDNR oral arguments (June 26, 2018); EERA oral arguments (June 27, 2018); *see also* FEIS Chap. 10-4.

¹¹¹ ALJ Report at finding 770.

¹¹² Ex. EERA-42 at 6-365; ALJ Report at finding 1210.

¹¹³ Ex. EN-9 at 9-10 (Bergman Direct).

archeological resources discovered during construction, including human remains.¹¹⁴ These practices comply with the Manual for Archaeological Projects in Minnesota, adopted by the Minnesota State Historic Preservation Office (SHPO).¹¹⁵ Based on Enbridge's reports, SHPO has provided feedback that Enbridge has incorporated into its planning, resulting in some workplace and centerline changes or other mitigation measures.¹¹⁶ No other route alternative has received this level of scrutiny.

Enbridge is also participating in the U.S. Army Corps of Engineer's Tribal Cultural Resources Investigation (TCR Investigation) with Fond du Lac to identify along the APR all historic properties of traditional religious and cultural significance to tribes in Minnesota and the region. Enbridge has committed to incorporating any avoidance and mitigation measures required as a result of that investigation.¹¹⁷ But, as with the archeological field surveys, the Army Corps' TCR Investigation is limited to the APR.

The Commission will adopt conditions requiring Enbridge to have tribal monitors and liaisons throughout the Project's construction to provide an additional perspective in the search for items of historical, archaeological, and cultural significance.

Finally, Enbridge proposed RSA-05 to address a concern raised by White Earth about Lower Rice Lake, a specific waterbody of importance to tribal members. RSA-05 would address that concern by locating the Project further away from both Lower Rice Lake and Mud Lake. The aggregate environmental costs incurred by RSA-05 roughly balance its benefits. Given this fact, and given White Earth's preference for adopting the alternative, the Commission concludes that the APR is improved with the adoption of RSA-05 because it mitigates impacts to lands of historical, archaeological, and cultural significance.¹¹⁸

4. Economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations

The FEIS indicates that the Project's consequences for economies specifically within the route corridor would be minor and temporary.¹¹⁹ For example, the FEIS concluded that the Project's construction, regardless of the route chosen, would cause at most a minor, temporary effect on

¹¹⁴ Ex. EN-48 at 7 (Bergman Rebuttal); *see* Minn. Stat. § 307.08 (requiring notification upon discovery of human remains).

¹¹⁵ Ex. EN-9 at 9-10 (Bergman Direct).

¹¹⁶ Ex. EN-48 at 2 (Bergman Rebuttal)

¹¹⁷ *Id.* at 4-5.

¹¹⁸ Ex. EN-50 at 50 (Lee Rebuttal).

¹¹⁹ Ex. EERA-29 (FEIS) at § 6.5.1.

access to recreational resources, on recreational spending, or on the local economy—and operation of the Project would have no effect.¹²⁰

If the construction process leads to crop loss or damage to drain tiles, Enbridge has agreed to provide compensation.¹²¹ RA-06 routes the Project through the active Keetac Mine near Keewatin, which could pose construction challenges due to the consolidated and fractured rock, it would also unavoidably affect the mine’s operations. And while Kennecott initially alleged that APR might affect its mining operations in Aitkin and Carlton Counties, Enbridge and Kennecott were able to resolve their differences and Kennecott withdrew its objections.

In contrast to many parties’ focus on the Project’s burdens, Enbridge emphasizes the Project’s effects on stimulating economic activity. Enbridge cites 23 statements from firms, business associations, and local government agencies supporting the Project.¹²² And Enbridge claims that the Project would create a large amount of employment—including for Native Americans living in proximity to the route—and property tax revenues.¹²³ Specifically, Enbridge declared that it would seek to create \$100 million (US) in economic opportunities for tribal members and businesses related to the Project within three years of the Project going into service.¹²⁴ Enbridge stated that it would hire tribal contractors owned by tribal members, purchase materials and equipment through suppliers owned by tribal members, and hire and train tribal members as part of the construction work force to conduct pre-construction surveys, build the Project, deactivate and remove the existing Line 3, conduct post-construction site restoration, and do related activities.¹²⁵

The fact that RA-06 potentially creates conflicts with the Keetac Mine weighs in favor of picking a different route. But otherwise, because each route would be expected to generate comparable levels of economic development, the Commission does not regard these factors as favoring one route over another.

To monitor Enbridge’s pledges regarding economic development, the Commission will direct Enbridge to report annually on—

- the number of construction workers employed by the Project, identifying the number of total workers who are from Minnesota and who are members of Minnesota tribes; and
- the changes in Enbridge’s county property tax liability for each county in which the Project is being constructed.

¹²⁰ *Id.* at 6-723.

¹²¹ Ex. EN-6 at 10 (McKay Direct).

¹²² Enbridge Revised Proposed Findings of Fact, at para. 698.

¹²³ Ex. UA-1 at 9-10 (Barnett Direct).

¹²⁴ See Open Letter from Al Monaco, President & CEO, Regarding “Our commitment to the people of Minnesota” (June 1, 2018), available at <http://www.enbridge.com/l3commitment>; Enbridge letter (June 22, 2018).

¹²⁵ *Id.*

In addition, the Commission will direct Enbridge to file, obtain Commission approval for, and implement its Tribal Economic Opportunity and Labor Education Plan. As part of that filing, Enbridge must explain how it intends to fulfill its pledge to pursue \$100 million in economic opportunities for tribal members and businesses related to the Project within three years of the Project going into service, and how it will do the following:

- Give preference to Minnesota-based tribal members and businesses, identifying specifically how it gives this preference.
- Develop a specific program for recruiting and training Native Americans in the region to qualify for a broad spectrum of employment opportunities within the pipeline industry. Enbridge should develop this program in cooperation with (1) local labor councils regularly engaged in Enbridge’s construction and integrity projects, (2) regional Native American tribes, and (3) educational institutions able to provide the relevant training.
- Identify the appropriate role for a Commission-appointed Tribal Liaison, and how the Liaison will be able to audit efforts to ensure that Enbridge is implementing this plan.
- File quarterly reports on the results of its tribal economic engagement efforts for the Project, and annual reports on its activities and expenditures implementing its Tribal Economic Opportunity and Labor Education Plan.

The Commission will authorize information requests and comments related to Enbridge’s plan, and provide Enbridge with the opportunity to respond, before determining whether the plan fulfills Enbridge’s pledges and the terms of this order.

5. Pipeline cost and accessibility

Cost: Table 2 sets forth the FEIS’s estimated costs of Project construction and operation for each route alternative under consideration, with separate estimates for (1) the entire segment to be built in Minnesota and (2) the segment from Clearbrook to Carlton.

Table 2: Project Cost Estimates¹²⁶

	Construction Cost		Energy Operating Cost (annual)	
	Minnesota	Clearbrook to Carlton	Minnesota	Clearbrook to Carlton
APR	\$2.1 billion	\$1.4 billion	\$47.1 million	\$30.7 million
RA-03AM	\$2.4 billion	\$1.7 billion	\$54.8 million	\$38.2 million
RA-06	\$2.0 billion	\$1.2 billion	\$43.9 million	\$27.3 million

¹²⁶ ALJ Report at findings 1355 and 1360.

The table shows that, between Clearbrook and Carlton, the cost of RA-03AM exceeds the cost of the two alternatives by 15% to 40%. That said, EERA generated these cost estimates as a function of each route alternative's length, without attempting to adjust for the unique aspects of each route.¹²⁷ As a result, the Commission understands that Table 2 reflects rough estimates.¹²⁸

Accessibility: The Commission must also consider Enbridge's access—legal and practical—to each proposed route. The remoteness of RA-06 is illustrated by the route's lack of electrical transmission lines for three pumping stations, and lack of temporary housing for construction workers.¹²⁹

The Commission notes with approval Enbridge's emergency response protocols, including the region-specific Field Emergency Response Plan (FERP) to ensure quick access and response to emergencies arising from the Project.¹³⁰ To ensure that Enbridge continues to exercise appropriate vigilance, the Commission will direct Enbridge to—

- provide an updated final Field Emergency Response Plan for the Superior Region prior to commencing construction of the Project;
- have and continually maintain road access, or access that does not require the use of equipment or machinery, to reach all shutoff valves in Minnesota; and
- maintain two pipeline maintenance shops between Clearbrook, Minnesota and Superior, Wisconsin.

In addition to these conditions on maintaining access to its Project, ALJ O'Reilly recommended requiring Enbridge to demonstrate that it would have adequate and reliable facilities available to provide power to valves, in the event of a local black-out. The ALJ made this recommendation at the urging of DER. But DER has now acknowledged that it received, and is satisfied with, information about Enbridge's plans for managing a local black-out. Consequently the Commission will decline to adopt this recommendation.

Finally, accessibility is not limited to the ability to reach and address problems in the field. Accessibility also pertains to Enbridge's ability to manipulate a pipeline's operations remotely via computer networks—and the ability to exclude others from doing so. To ensure that Enbridge is taking sufficient precautions to protect the public interest, the Commission will direct the Applicant to provide periodic updates on the adequacy of its cyber security systems.

¹²⁷ Ex. EERA-29 at 6-820 (FEIS).

¹²⁸ Enbridge exceptions to ALJ Report, Redlined ALJ Report at new paragraphs 1287-88.

¹²⁹ Ex. EN-22, Sched. 7 at 31 (Simonson Direct).

¹³⁰ Ex. EN-7 at 5 (Haskins Direct); Ex. EN-24, Sched. 3 (Eberth Direct).

6. Use of existing rights-of-way and right-of-way sharing or paralleling

Between Clearbrook and Carlton, the APR follows existing rights-of-way for 73 percent of its length;¹³¹ RA-03AM follows them for 95 percent of its length;¹³² while RA-06 follows them for only 20 percent of its length. More significantly, RA-06 requires 156.5 miles of new right of way, compared with only 59.8 miles for the APR and 12.9 miles for RA-03AM. As ALJ O'Reilly correctly observed, "This is a significant drawback of this particular route alternative [RA-06]."¹³³ This factor disfavors RA-06.

However, while RA-03AM was designed to follow existing infrastructure, that infrastructure runs through the heart of nine cities, including Staples, Little Falls, Milaca, Mora, and Hinckley, Minnesota. Enbridge questioned the practicality and wisdom of routing the Project through city centers. Yet if the Project were re-directed around the cities and away from the existing infrastructure corridors, then RA-03AM would lose one of its principle advantages.¹³⁴

Finally, the APR combined with RSA-22 would share or parallel existing rights-of-way for all or nearly all of its length.¹³⁵ This fact favors the APR combined with RSA-22.

7. Natural resources and features

Because RA-03AM is the longest route analyzed—roughly 54 miles longer than the APR—it inevitably requires disturbing more acreage than any other route. It crosses 67 more waterbodies (13 of which are considered major) and 23 more Minnesota public waters inventory streams than the APR. Due to its length, RA-03AM would require the construction of an additional pump station, thereby increasing air emissions by 15 percent and power consumption by 131 gigawatt-hours/year compared to the APR.¹³⁶

RA-06 avoids Minnesota's Lake Region and the Mississippi Headwaters, but still crosses 27.9 more miles of National Wetlands Inventory wetlands—including 23 more miles of forested wetlands, and 27 more waterbodies—than the APR. And, significantly, it cuts through the Chippewa National Forest.

On balance, these factors favor the APR.

¹³¹ ALJ Report at finding 1371.

¹³² *Id.* at finding 1373.

¹³³ *Id.* at finding 1372; *see also* Ex. EERA-29 at 6.2.4.2.2 and 6.7 (FEIS).

¹³⁴ Ex. EN-22, Sched. 7 at 16-21 (Simonson Direct); EERA oral argument (June 27, 2018); Enbridge oral argument (June 27, 2018).

¹³⁵ Ex. EN-4 (Enbridge Route Permit Application), Executive Summary at 17-20; Ex. EN-22 at 8, Sched. 7 at 72-77 (Simonson Direct); Ex. EERA-29 at Chap. 6 (FEIS); Ex. EERA-42 at 7.3.7 (Revised FEIS).

¹³⁶ Ex. EN-22, Sched. 7 at 23 (Simonson Direct).

8. The extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices

Minn. R. 7852.3400 sets forth the process by which a permittee may seek amendments to the permit's route or conditions.

Enbridge has made more than 50 alterations to its initial APR in order to mitigate the Project's effects on people and the environment, and the Pipeline Routing Permit contains multiple plans for mitigating the Project's harms. For example, the APR crosses only one MPCA/MDNR-identified wild rice waterbody—and Enbridge commits to minimize the consequences to that area through the use of horizontal directional drilling, whereby Enbridge can lay pipe segments without creating a trench for the entire length.¹³⁷

While oil spills would affect the natural environment, the conditions attached to the Pipeline Routing Permit mitigate those risks to the extent possible. For example, the permit's Environmental Protection Plan addresses spill prevention, containment, and control measures; invasive species management measures; and erosion and sediment control measures along the edge of the construction workspace, and while crossing hydrologically connected waterbodies.

On balance, these factors do not favor one routing alternative over another.

Decommissioning: As ALJ O'Reilly noted, decommissioned and abandoned pipes can harm people and the environment by, for example, serving as a conduit for spreading contamination. Removal of abandoned pipes can also cause harm by, for example, disrupting terrain and triggering accidental oil spills. On the other hand, removing decommissioned oil pipes provides the opportunity to discover, and remediate, existing contamination.¹³⁸

Given these facts, Enbridge has agreed to initiate a Landowner Choice Program, whereby Enbridge would remove segments of the decommissioned Existing Line 3 pipe upon landowners' request (and subject to approval from relevant permitting authorities).¹³⁹ This is in addition to Enbridge's duty to remove all exposed segments of the Existing Line 3 in consultation with the landowner and the appropriate permitting authorities. And Enbridge agreed to report annually on any exposed pipeline segments that it has not yet removed, identifying how and when Enbridge will meet federal requirements regarding these segments. The Commission will approve these conditions. But because these conditions would apply to any route alternative selected, this factor does not favor one alternative over another.

¹³⁷ Ex. EN-50 at 10 (Lee Rebuttal).

¹³⁸ ALJ Report at finding 887, citing Ex. EERA-29 at 8-1 (FEIS).

¹³⁹ The Commission addresses Enbridge's Landowner Choice Program in the context of its Order Granting Certificate of Need as Modified and Requiring Filings (September 5, 2018).

9. Cumulative potential effects of related or anticipated future pipeline construction

The FEIS addresses the possible cumulative effects of a new pipeline corridor in Chapter 12, where it notes that:

If a new pipeline corridor outside of the existing Enbridge Mainline (such as the [APR], RA-03AM, or RA-06) were to be permitted for the proposed Project, the new corridor would create an opportunity for future corridor sharing that could ultimately result in accumulation of multiple pipelines within the corridor chosen for the Line 3 Project....

The addition of another pipeline within a new pipeline corridor would require the widening of the right-of-way and would introduce additional spill risk. In general, the widening of the corridor would incrementally increase the effects on the resources described for each of the routes in Chapter 6 of this EIS....

In addition, adding an additional pipeline in any of these new corridors would increase the accidental release risk exposure of the same resources described along each of the routes in Chapter 10.¹⁴⁰

The FEIS identifies the general impacts of an additional new corridor, including effects on planning and zoning laws; aesthetics, vegetation, wildlife, agriculture and timber production; cumulative spill risk; and contribution to climate change.¹⁴¹ Regarding spill risk, the EERA clarified that the choice to install a mile of pipe in one location rather than another would obviously shift the location of any oil spill risk, but would not have much effect on the overall likelihood of a spill.¹⁴²

The Commission will not pre-judge the appropriate route for any future pipeline. That said, given that neither in-trench replacement nor the No Action options are viable alternatives, any choice the Commission makes will entail authorizing some length of new pipeline corridor for the Project—a fact that may influence future pipeline routing cases. But this dynamic, by itself, does not favor the APR, RA-03AM, or RA-06.

That said, the APR combined with RSA-22 would share or parallel existing rights-of-way for all or nearly all of its length.¹⁴³ This fact favors the APR combined with RSA-22.

¹⁴⁰ Ex. EERA-42 at 12-39 (Revised FEIS).

¹⁴¹ *Id.*, at 12-39 to 12-48.

¹⁴² EERA oral argument (June 27, 2018).

¹⁴³ Ex. EN-4 (Enbridge Route Permit Application), Executive Summary at 17-20; Ex. EN-22 at 8, Sched. 7 at 72-77 (Simonson Direct); Ex. EERA-29 at Chap. 6 (FEIS), Ex. EERA-42 at 7.3.7 (Revised FEIS).

10. The relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities

Minn. Stat. § 299J.05 requires local authorizes to establish a minimum distance between a pipeline and the edge of an easement.

The FEIS identifies various laws, rules, and regulations that Enbridge must obey in order to build the Project.¹⁴⁴ In addition to these authorities, Enbridge will have to obey the policies embedded in the Pipeline Routing Permit. This would be true regardless of the route the Commission authorizes.

Executive Order 12898 directs federal agencies to evaluate how the environmental and health effects of their decisions might affect minority and low-income populations, and to identify mitigating measures when this occurs. The FEIS found that each of the proposed route alternatives would have disproportionate adverse impacts on low-income minority populations—including American Indian populations—living in or using lands around the Project,¹⁴⁵ and Enbridge has committed to taking the appropriate mitigating measures.¹⁴⁶

The Commission takes note of Enbridge’s commitments and, as previously discussed, will establish related conditions on the grant of a routing permit. But because the FEIS’s finding of disproportionate impact applied to each of the routing alternatives, this finding does not favor any route alternative over another.

D. Commission Action

1. Route Alternative

The Commission has reviewed the written record of the case, including the ALJ Report and exceptions, and considered the oral arguments of the parties and other commenters. On this basis, the Commission concludes that the APR, subject to the route segment alternatives and conditions described below, best optimizes the considerations set forth at Minn. R. 7852.1900, subp. 3.

The APR is the most closely studied route in the record. Enbridge has conducted a preliminary archeological survey identifying where the Project might affect natural and cultural resources, and the Army Corps and Fond du Lac are pursuing a TCR Investigation to identify traditional and cultural resources of significance to Minnesota and regional tribes.¹⁴⁷ As a result of these

¹⁴⁴ Ex. EERA-29 at 6-52 to 6-55 (FEIS).

¹⁴⁵ Ex. EERA-42 at 11-22 (Revised FEIS).

¹⁴⁶ Ex. EN-30, Sched. 5 at 9 (Eberth Rebuttal).

¹⁴⁷ ALJ Report at finding 526, citing Dupuis Summary, Survey Progress Report (Feb. 1, 2018).

and other analyses, Enbridge has adjusted the APR's centerline at more than 50 locations, and adjusted the route 23 times to avoid or minimize potential harms.¹⁴⁸

But among the many factors that influenced the Commission's decision, some of the most prominent factors are the qualities that the APR does *not* have. Unlike RA-07 and -08, the APR does not rely on obtaining unobtainable consent from Leech Lake. Unlike RA-06, the APR does not rely on clearing large swaths of forest land in the Chippewa National Forest and other areas, with all the habitat fragmentation that that would entail. And unlike RA-03AM, the APR does not pass through nine cities, cross karst topology or the Mississippi just north of St. Cloud, or prolong the operation of the Existing Line 3 by years as Enbridge seeks to secure the miles of additional property rights. The Commission appreciates the role of EERA and the MDNR in clarifying the challenges posed by each route, but especially RA-03AM.

In reaching this decision, the Commission is mindful of the many who cautioned against it. For example, ALJ O'Reilly recommended rejecting any route other than RA-07 with in-trench replacement. This recommendation reflects the ALJ's concern with the consequences of leaving abandoned pipe in the ground, and the ALJ's view that the Commission lacked jurisdiction to order Enbridge to remove the decommissioned pipe. But, in contrast to the facts presented to the ALJ, the Commission confronted new facts—including the fact that Enbridge has volunteered to grant landowners the choice to have the old pipe removed from their land. In short, landowners will have the discretion (subject to approval from relevant permitting authorities) to have the Existing Line 3 removed from their property regardless of the route the Commission chooses—provided the Commission makes a choice that would enable Enbridge to decommission Line 3.

Similarly, parties such as Fond du Lac, Leech Lake, and the Northern Water Alliance each opposed the APR in particular due to the route's proximity to Big Sandy Lake. While the risk of an oil spill can never be completely eliminated, it can be mitigated through the selection of appropriate route segment alternatives. The Commission will turn to that issue next.

2. Route Segment Alternatives

The record provides the Commission with grounds to improve upon the APR as described in the FEIS through the selection of route segment alternatives. Again, the FEIS identified 24 RSAs, identifying areas where the APR creates a conflict with some local resource, and an alternative route intended to eliminate or mitigate the conflict.

Enbridge agreed to adopt RSA-05 to route the Project further away from a wild rice watershed. The Commission finds this route segment alternative best balances the competing needs in that region, and so will approve it.

In order to better manage the risk that the Project could develop a leak where it crosses LaSalle Creek, MDNR proposed RSA-10 to shift the crossing point further from Big LaSalle Lake and closer to roads. However, this alternative would also route the Project closer to several residences and next to Itasca State Park, and the new route would be difficult to reconcile with a

¹⁴⁸ Ex. EN-22, Sched. 7 at 1 (Simonson Direct).

new Commission-approved transmission line.¹⁴⁹ Accordingly, the Commission will decline this route segment alternative.

Similarly, in order to better manage the risk that the Project could develop a leak where it crosses Shell River, MDNR proposed RSA-15 to shift the Project further from the Upper Twin Lake and closer to roads, avoiding the Shell River entirely. However, this alternative would also route the Project closer to residences and across a US Fish and Wildlife Service easement. Moreover, the new route's proximity to the highway, homes, a power line and a substation would complicate construction. Accordingly, the Commission will decline this route segment alternative as well.

In contrast, the Commission will adopt RSA-22 as negotiated between Fond du Lac and Enbridge. As previously noted, this segment alternative permits the pipeline to avoid the Sandy River, which flows into Big Sandy Lake. This lake is celebrated not only for its fishing recreation,¹⁵⁰ but also as a cultural site central to the histories of various Native American tribes. Tribal accounts and the records of fur traders show that the Anishinaabe have gathered wild rice and harvested plants in the Big Sandy Lake and Rice Lake watersheds for centuries.¹⁵¹ The region's cultural significance is underscored by accounts of the hundreds of Anishinaabe that perished there in the 1850s.¹⁵² Because much of the opposition to the APR focused on the route's proximity to the Sandy River and Big Sandy Lake, adoption of this segment alternative should help ameliorate these concerns.

Moreover, the Sandy River crossing is one of a collection of resource conflicts created by the APR traversing the Mississippi Headwaters and Minnesota's Lakes region. These conflicts are documented in the FEIS's discussion of RSA-Blandin, RSA-White Elk Lake, RSA-21, RSA-23, RSA-27, RSA-28, RSA-31, RSA-33, RSA-34, RSA-35, RSA-37, RSA-42, RSA-43, RSA-44, RSA-46, RSA-51, and RSA-52. By following RSA-22, the Project avoids nearly all of these resource conflicts.

RSA-22 also has the advantage of routing all or nearly all of the Project along existing pipeline and transmission line corridors. Finally, RSA-22 shortens the APR, and thus should be expected to reduce the cost, disruption, fragmentation of natural resources, and risk of spill, among other burdens associated with length. The Commission notes that Enbridge and the EERA each acknowledged that adoption of RSA-22 would improve the APR.

With the benefit of Fond du Lac's consent, the Commission will authorize Enbridge to build the Project along the APR modified by RSA-05 and -22—subject to conditions.

¹⁴⁹ *In the Matter of the Application of Minnkota Power Cooperative, Inc. for a Route Permit for the MPL - Laporte 115 kV Transmission Line Project in Clearwater and Hubbard Counties, Minnesota*, Docket No. ET-6/TL-16-327, Order Approving Route Permit (June 21, 2017).

¹⁵⁰ Ex. EERA-29, Appendix P, Tribal Resources and Impacts (FEIS).

¹⁵¹ Tribal Cultural Resource Management survey, Fall 2017 Progress Report (February 13, 2018). *See also* Pub. Mtg.. Tr. Vol. 5B at 136-37; Vol. 8B at 152-54.

¹⁵² White Earth Report, Chap. 4, Overview of Projects, at 2 (February 26, 2018).

3. Conditions

The Pipeline Routing Permit will be granted subject to the conditions described in this order and set forth in the Ordering Paragraphs. But in addition, the sample Pipeline Routing Permit identified a number of conditions regarding the process Enbridge must follow while building the Project. Fond du Lac proposed revisions to promote clarity and consistency with the revised FEIS, other Project documents, and relevant law, and Enbridge accepted those revisions. The Commission will adopt the revised sample Pipeline Routing Permit, further revised to incorporate Fond du Lac's modifications, and direct Enbridge to comply with its terms.

ORDER

1. Subject to the conditions set forth below, the Commission hereby grants a routing permit to Enbridge Energy, Limited Partnership, for its Line 3 Replacement Project, in accordance with Minn. Stat. § 216G.02 and Minn. R. 7852.1900, along the Applicant's Preferred Route as modified by RSA-05 and RSA-22.
2. Enbridge shall comply with the terms of the Pipeline Routing Permit, issued contemporaneously with this order, which incorporates the changes proposed by the Fond du Lac Band in its Exceptions to Department of Commerce—Energy Environmental Review and Analysis Division Sample Permit (May 18, 2018).
3. Regarding exposed segments of Existing Line 3 in Minnesota, Enbridge shall—
 - A. remove all exposed segments in consultation with the landowner and the appropriate permitting authorities, and
 - B. annually report any exposed pipeline segments that are not yet removed and identify how and when Enbridge will meet federal requirements regarding these segments.
4. To address the risk of emergencies in the field, Enbridge shall—
 - A. provide an updated final Field Emergency Response Plan for the Superior Region prior to commencing construction of the Project;
 - B. have and continually maintain road access, or access that does not require the use of equipment or machinery, to reach all shutoff valves in Minnesota; and
 - C. maintain two pipeline maintenance shops between Clearbrook, Minnesota and Superior, Wisconsin.
5. Enbridge shall provide periodic updates to the Commission on the adequacy of Applicant's cyber security systems.

6. The Executive Secretary shall designate a Public Safety Liaison to work with Enbridge to ensure all the public safety and private security provisions of the Pipeline Routing Permit are executed appropriately. The Public Safety Liaison will be the point of contact for the Commission, the parties, and local governmental units on safety and security issues and may, with the Executive Secretary's approval, hire or contract for clerical and auditing services to fulfill the obligations under the permit. The Public Safety Liaison is not to exercise any oversight or in any way direct law enforcement activities of authorities for local, state and federal agencies.
7. Enbridge shall work with local authorities to prohibit public access to the right-of-way during construction to promote public safety and security, as needed.
 - A. Enbridge and its contractors and assigns shall –
 - 1) respect the rights of the public to legally exercise their constitutional rights without interference,
 - 2) refrain from participating in counterinsurgency tactics or misinformation campaigns designed to interfere with the public's legal exercise of constitutional rights, and
 - 3) comply with Minnesota's Private Detective and Protective Agent Services statutes and rules.¹⁵³
 - B. Before beginning construction in any county, Enbridge shall obtain approval for its public safety and security plans from the county sheriff or, if unable to do so, from the Commission.
8. Enbridge shall develop a Human Trafficking Prevention Plan.
 - A. Enbridge shall design the plan to educate, equip, and encourage the public and those associated with pipeline construction and operation to prevent and report Project-related human trafficking. Enbridge shall establish a toll-free hotline for reporting human trafficking during the Project's construction. Enbridge shall incorporate the plan into the employee training and education required by Section 4.7 of the Pipeline Routing Permit.
 - B. Enbridge shall develop the plan in coordination with the EERA, the Minnesota Human Trafficking Taskforce, and the Minnesota Indian Affairs Council, and all Minnesota Tribes that wish to participate. EERA will issue a written invitation to assist in the development of the plan to the Minnesota Human Trafficking Taskforce, MIAC, and the governments of all Tribes within the state MIAC and the governments of all Tribes within the state. Enbridge shall retain all other responsibilities for coordinating, completing, and implementing the plan, and shall document all efforts to engage the above entities. Enbridge shall file the plan with the Commission 60 days before beginning construction.

¹⁵³ Minn. Stat. § 326.32 *et seq.*; Minn. R. Chap. 7506.

9. Enbridge shall create and fund a Public Safety Escrow Trust Account to help defray the costs of the added burdens to law enforcement and social service agencies along the pipeline route arising from the Project.
- A. The Public Safety Liaison shall confer with law enforcement/social service agencies of affected local units of government, including tribal governments, about the appropriate sums required to meet the enhanced law enforcement and social service needs arising from the Project.
 - B. The Executive Secretary, after consulting with the Public Safety Liaison and the Tribal Liaison, shall determine the appropriate initial amount to be deposited into the Public Safety Escrow Trust Account, and any subsequent amounts.
 - C. Before beginning construction, Enbridge shall establish the Public Safety Escrow Trust Account in an independent US financial institution, designate the financial institution as trustee, and make deposits as specified. The financial institution shall manage the trust according to the terms of the Pipeline Routing Permit.
 - D. The Executive Secretary shall establish a plan for distributing funds before construction begins to enhance existing law enforcement and social service agencies along the route in combatting drug and human trafficking during the Project's construction. The Public Safety Liaison shall coordinate these drug and human trafficking grants after consulting with local and tribal governments near the route, the Minnesota Human Trafficking Taskforce, and MIAC.
 - E. Local units of government may also seek reimbursement for the added costs for law enforcement, public safety, public health, planning, and other services arising from activities in and around the construction site during the term of the routing permit as a direct result of the pipeline construction. After having sought reimbursement from state or federal funding programs as appropriate, local units of government may submit to the Public Safety Liaison a written request for reimbursement. The request should contain an itemized list of expenses and sufficient detail to permit the Commission to determine whether the services rendered were reasonable and appropriate additional municipal services uniquely provided as a result of the construction of the pipeline during the term of this permit.
 - F. Examples of reimbursable expenses include incremental expenses related to—
 - 1) coordination of public safety and emergency responders;
 - 2) public safety-related costs for maintaining the peace in and around the construction site;
 - 3) review and oversight of any private security services;
 - 4) public emergency management services;
 - 5) transportation management, parking, and traffic control services; and

- 6) other emergency first responder, public safety, public works, and public health-related services provided in and about the construction site as a direct result of the construction of the pipeline.
10. Enbridge shall provide periodic updates to the Commission on the adequacy of Enbridge's cyber security systems.
11. Enbridge shall report annually on—
 - A. the number of construction workers employed by the Project, identifying the number of total workers who are from Minnesota and who are members of Minnesota tribes; and
 - B. the changes in Enbridge's county property tax liability for each county in which the Project is being constructed.
12. Enbridge shall file, obtain Commission approval for, and implement a Tribal Economic Opportunity and Labor Education Plan. As part of this plan, Enbridge shall do the following:
 - A. Endeavor to create for tribal members and businesses \$100 million (US) in economic opportunities related to the Project within three years of the Project going into service. Enbridge shall hire tribal-owned contractors, purchase materials and equipment through tribal-owned suppliers, and hire and train tribal members as part of the construction work force to conduct pre-construction surveys, build the Project, deactivate and remove the existing Line 3, conduct post-construction site restoration, and do related activities.
 - B. Give preference to Minnesota-based tribal members and businesses, and identify specifically how it gives this preference.
 - C. Develop a specific program for recruiting and training Native Americans in the region to qualify for a broad spectrum of employment opportunities within the pipeline industry. Enbridge shall develop this program in cooperation with (1) local labor councils regularly engaged in the Applicant's construction and integrity projects, (2) regional Native American tribes, and (3) educational institutions able to provide the relevant training.
 - D. Propose a role for a Commission-appointed Tribal Liaison, and describe the liaison's auditing authority to confirm compliance with the plan.
 - E. File quarterly reports on the results of its tribal economic engagement efforts for the Project, and annual reports on the plan's activities and expenditures.

After Enbridge files its draft plan, the Executive Secretary will set a schedule for submission and responses to information requests, party comments, Enbridge's reply comments, and Commission review and approval.

13. The Commission adopts the ALJ Report to the extent it is consistent with and necessary for the Commission's decision in this order.
14. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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