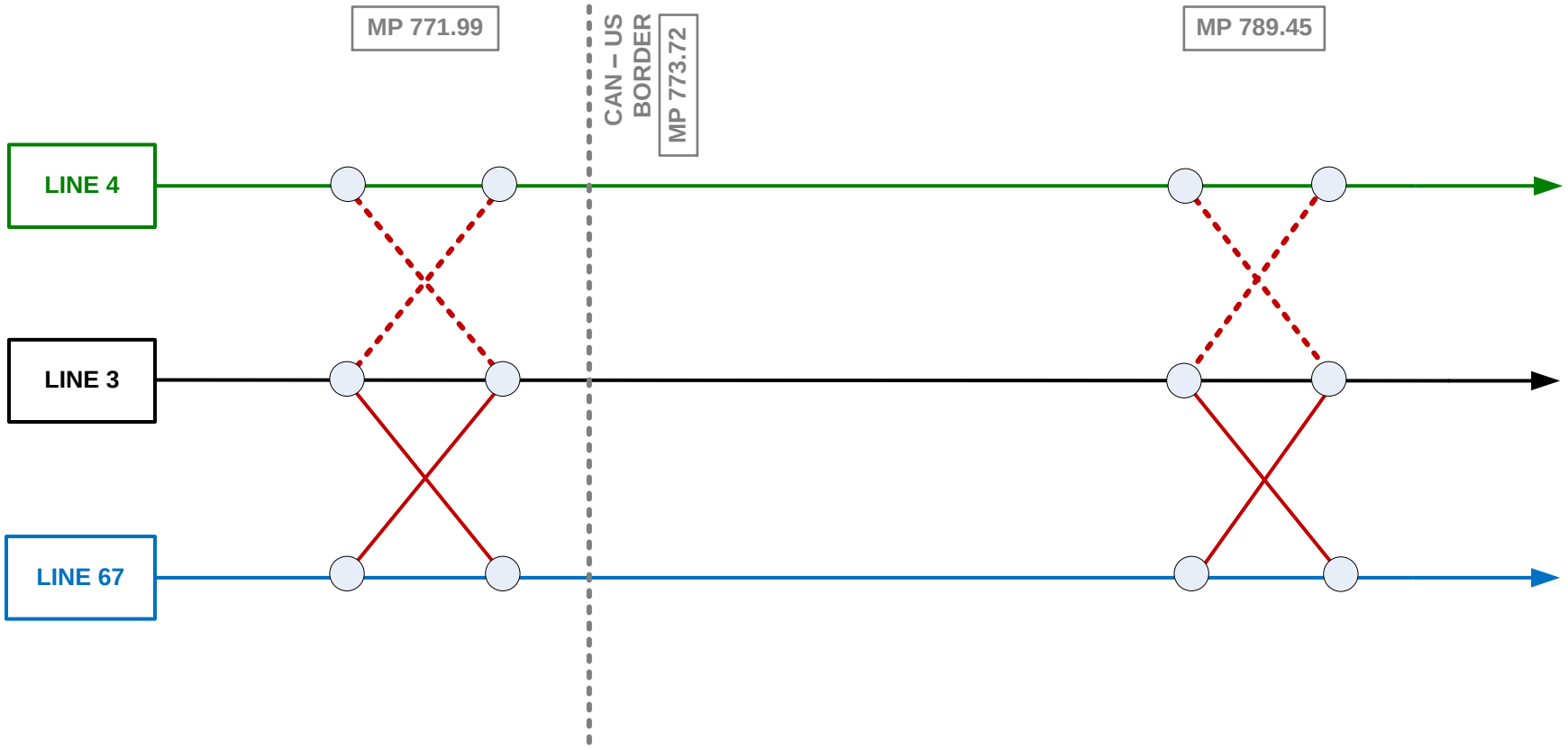

LEGEND

LINE 3

LINE 4

LINE 67

POTENTIAL FUTURE CONNECTIONS

NOTE:
Mileposts on DOU are relative to Edmonton (Line 3)

ENBRIDGE ENBRIDGE INC.	MAINLINE INTERCONNECTIONS DOCUMENT OF UNDERSTANDING	PROJECT DEVELOPMENT	PD LEAD: DAVID O'BRIEN BD SPONSOR: TBA PROJECT CODE/ID: TBA DRAWING NUMBER: BD-PS-10859-DOU	DRAWN BY: B. GRUBER DATE: 02 JUNE 2014 CLASS LEVEL: TBA LAYOUT: A - 1

From: Coburn, David <DCoburn@steptoe.com>
Sent: Friday, June 06, 2014 5:18 PM
To: Hassell, Mary D.; Hahs, Ona M
Cc: Brennan, Michael F
Subject: Memo re Line 67_NEPA.DOCX
Attachments: Enbridge Line 67-NEPA Memorandum.pdf

Mary, Ona – Please see the attached memorandum, which follows up on the NEPA issues raised during our conversation from earlier in the week. As noted in the memo, we will be providing you with additional materials as well. I am copying Mike Brennan for his information.

Please let me know if you have any questions. Regards.

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MEMORANDUM

June 6, 2014

TO: Ona Hahs
Mary Hassell

FROM: David H. Coburn
Josh Runyan

CC: Mike Brennan

RE: NEPA Implications of Lines 3/67 Interconnection Plan

In response to some of the issues discussed at our June 3rd meeting, we provide below a brief overview of why Enbridge Energy, Limited Partnership's ("Enbridge") plans regarding the interconnections on Line 67 can take place in advance of the U.S. Department of State's issuance of the Supplemental Environmental Impact Statement ("SEIS") and the requested Presidential Permit to authorize Enbridge to operate the border segment of Line 67 at its design capacity of 880,000 barrels per day ("bpd").[1]

I. BACKGROUND

At our June 3rd meeting, we discussed Enbridge's plans to utilize the Line 67 pump upgrades in Minnesota to increase the flow of oil on Line 67 before the new Presidential Permit for the increased border crossing volume is issued by DOS. As we discussed, Enbridge will construct interconnections between Lines 3 and 67 in both Canada and the United States. The construction of these interconnections is not subject to any permitting requirements here in the United States. With these interconnections in place, and with the use of increased pump capacity that has been approved by the National Energy Board ("NEB") in Canada and by the Minnesota Public Utilities Commission ("MPUC") in the United States, Enbridge would be in a position to transport an average annual capacity of 570,000 bpd of crude oil on Line 67 in Canada, then

[1] This memorandum contains confidential business information not intended for public dissemination.

move that oil to Line 3 north of the border and across the border, and then, at a point in North Dakota south of the first mainline valves on Lines 3 and 67, transfer the oil back to Line 67 for delivery to Superior, WI.

Assuming that additional permissions are received from the MPUC and the U.S. Army Corps of Engineers, crude oil in the range of 800,000 bpd could eventually be transported using the above routing until such time as the requested Presidential Permit for Line 67 is issued. As we further explained, crude oil now transported across the border on Line 3 would instead be moved off of Line 3 onto Line 67 at a point in Canada, cross the border on Line 67 and then be transferred back to Line 3 at a point in North Dakota proximate to the interconnection described above for further transportation to Superior, WI. The capacity on Line 67 at the border would remain below an average annual capacity of 500,000 bpd.

The operational measures described above will give Enbridge greater flexibility to optimize its currently permitted cross-border capacity on both lines so that it can better meet customer demands while its Line 67 Presidential Permit application remains pending before DOS. As we explained, the unforeseen permitting delay of over a year in the Line 67 process has required Enbridge to assess options, consistent with its obligations as a common carrier operator and its existing permits, to provide the requested capacity demanded by shippers. That assessment has resulted in a recent decision to pursue the steps required to provide Enbridge with the capability to provide its shippers with increased capacity, as needed.

As we discussed at the June 3rd meeting, the interconnections between Lines 3 and 67 are allowable under the current Presidential Permits because: (i) the interconnections will be constructed outside of the Line 3 and Line 67 permitted cross-border facilities, i.e., that segment of pipe that extends from the U.S.-Canada border to the first mainline valve; (ii) capacity of Line 3 will be operated within the historical operating capacity of that line; and (ii) the capacity of Line 67 will remain within the permitted 500kbpd capacity at the border. Further, Enbridge will update its emergency response plans as required by Pipeline and Hazardous Materials Safety Administration ("PHMSA") as necessary. All other applicable PHMSA safety regulations will be complied with, and public outreach by Enbridge on spill response will continue.

II. NEPA ANALYSIS

As you know, the border segment of Line 67 is the only portion of that Line that falls under DOS's Presidential Permitting authority. As relevant here, that authority derives from Executive Order ("E.O.") 13337, which provides that "the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance ***at the borders*** of the United States of facilities connecting the United States with a foreign country." (emphasis added).[2] Enbridge is therefore able to construct interconnections,

[2] DOS has interpreted its authority over cross-border pipelines as extending only to the "near-border area" of the pipeline, which consists of that segment of pipe extending from the U.S. border to the first mainline valve in the United States. This limitation of DOS's permitting authority is supported by recent Presidential Permits issued by DOS which assert jurisdiction

(Continued…)

pump upgrades, or other system modifications that do not impact the border segment of Line 67 without first obtaining DOS approval and without DOS conducting any NEPA review. *See e.g.*, *Save Our Wetlands, Inc. v. Sands*, 711 F.2d 634, 644 n.9 (5th Cir. 1983) (the issuance of a federal permit for an isolated segment of a project cannot be construed to provide the agency legal control over the entire project). Consistent with the existing Line 67 Presidential Permit, Line 67 will remain a crude oil pipeline that transports such oil between points in Canada and Superior, WI.

The fact that the Alberta Clipper Environmental Impact Statement ("EIS") covered the entire Line 67 pipeline does not expand the reach of DOS's permitting authority. Neither does the fact that the EIS mitigation measures are incorporated by reference into the Line 67 Presidential Permit. NEPA contemplates a broad look at potential impacts, including related actions and cumulative impacts. In many cases this results in an agency considering environmental impacts resulting from those portions of a project that are outside the "federal action" which triggered the NEPA review. However, the broad scope of that NEPA review does not redefine a federal agency's authority over a project, or modify the scope of any permit/approval that may be issued by an agency. *See Cape May Greene v. Warren*, 698 F.2d 179, 188 (3d Cir.1983) ("NEPA, however, "does not expand the jurisdiction of an agency beyond that set forth in its organic statute ...") (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 558, 98 S.Ct. 1197, 1219, 55 L.Ed.2d 460 (1978)); *see also Quechan Indian Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 07-cv-0677, 2007 WL 1890267 (D. Ariz. June 29, 2007) ("NEPA does not … expand agency jurisdiction over land uses"). An applicant, such as Enbridge, may thus take steps to operate its existing pipeline to meet commercial needs as it sees fit in areas outside the scope of DOS's permitting authority without being limited by any prior NEPA review.

We understand and appreciate that the SEIS for Line 67 will also consider operational impacts (e.g., spill risks, greenhouse gas impacts, etc.) of the entire Line 67 pipeline, and we do not disagree with this approach. However, we understand this analysis would be based on NEPA's requirements to consider the full range of impacts and any related actions, rather than on any assertion of DOS authority over the non-border segments of the line. In other words, the fact that NEPA may require the consideration of operational impacts along the entire line does not mean that DOS has authority over the entire line, or that no changes consistent with the operation of a commercial pipeline can occur on the non-border segments until that SEIS is complete.

While NEPA precludes the "federal action" from occurring until the NEPA process is complete, here the DOS federal action is limited to the issuance of a new permit to authorize an

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over only the near-border segment of a cross-border pipeline. *See e.g.*, Alberta Clipper (Line 67) Permit (authorizing pipeline facilities extending from the U.S.-Canada border to the "first mainline shut-off valve or pumping station in the United States). This is also consistent with DOS's assertion of its own permitting authority in federal litigation relating to the Alberta Clipper pipeline. *See Sierra Club, et seq. v. Clinton, et seq.*, 09-cv-2622, Doc. 157, at 19 (D. Minn. 2009) (DOS's "authority to regulate the pipeline extends only to the 'first mainline shut-off valve or pumping station in the United States'").

increased flow of oil across the border segment of Line 67. Because construction of the pump stations and interconnections are not occurring within the border segment of Line 67, and are independent from the Line 67 border capacity expansion (as discussed below), this activity is not required to await the completion of the SEIS. *See* 40 C.F.R. 1506.1(b) (requiring an agency to notify an applicant to cease construction of a proposed action under the *agency's jurisdiction* until the NEPA process has been completed); *see also Sierra Club, et al. v. U.S. Army Corps of Engineers*, et al., 13-cv-1239 (KBJ), 2013 WL 6009919 (Nov. 13, 2013 D.D.C.) (rejecting argument that construction of pipeline outside the area of federal permitting jurisdiction could be enjoined pending NEPA review).

This is particularly true where, as here, the interconnections and pump station upgrades have "independent utility," and thus, are not connected to DOS's proposed action to authorize Enbridge to operate the border segment of Line 67 at an increased capacity. Enbridge intends to construct the interconnections and pump upgrades, and to operate those facilities to increase the flow of oil on Line 67 south of the Line 67 border segment, whether or not a new Presidential Permit is issued by the DOS. The interconnections and pump upgrades are not a result (either directly or indirectly) of the DOS's action on Enbridge's pending application because any resulting environmental impacts will occur regardless of whether the DOS issues a new Permit to authorize an increased level of flow on the border segment of Line 67. Federal courts are clear that where each of the two projects would have taken place with or without the other, and/or where each does not rely upon the other for its operation/function, the projects have "independent utility" and are not connected or required to be considered together under NEPA. *Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.3d 1105, 1118 (9th Cir. 2000) ("[W]e have rejected claims that actions were connected when each of the two projects would have taken place with or without the other, and thus, had independent utility."). Moreover, because the two projects will occur independent from one another and not as a direct result of DOS's issuance of a new Presidential Permit, the pump station upgrades and interconnections will not in any way impact or impinge on DOS's decision regarding the application for increased capacity on Line 67. *See Sierra Club v. Peterson*, 717 F.2d 1409, 1412 (D.C. Cir. 1983) (an agency violates NEPA only where it impermissibly commits itself to a course of action before embarking upon a NEPA analysis).

Finally, none of the above should be read to suggest that Enbridge does not still need the new Line 67 Presidential Permit for which it has applied. The above measures for moving oil across the border with the use of interconnections provides Enbridge with the capability to transport increased volumes of crude in the near-term; it does not solve the longer term need for Enbridge to be able to move larger volumes of crude oil across Line 67 at the border, while also utilizing Line 3 up to its historical operating capacity.

We hope this helps address some of the issues raised at our June 3rd meeting. Please let us know if you have require any additional information and/or have further questions. We will provide you under separate cover with the information you have requested about the interconnections and the timing of the Line 3 replacement project, and we will also be providing an update to the pending Line 67 application in the very near term.

From: Coburn, David <DCoburn@steptoe.com>
Sent: Monday, June 16, 2014 5:43 PM
To: Hassell, Mary D.
Cc: Hahs, Ona M; Fred Carey; Arshia Javaherian; Runyan, Joshua
Subject: Update to Enbridge Line 67 Application and Project Description
Attachments: Enbridge Energy, Limited Partnership Supplement Information.pdf

Mary – Please see the attached letter and attachments concerning Line 67. As you will see, those attachments include a Project Description, as well as a recent decision of an MPUC Administrative Law Judge recommending approval of the Certificate of Need that Enbridge has requested to increase the capacity of Line 67 in Minnesota to its full design capacity. We will shortly submit a paper that describes other interconnections that Enbridge has constructed or plans to construct.

Please let me know if you have any questions. Regards. David

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Contains Confidential Business Information

June 16, 2014

VIA E-MAIL & FEDEX

Ms. Mary D. Hassell
Office of Environmental Quality
and Transboundary Issues
U.S. Department of State
OES/ENV Room 2657
2201 C Street, NW
Washington, DC 20520

Re: Supplemental Information in Support of Enbridge Energy, Limited Partnership's November 20, 2012 Application for a Presidential Permit

Dear Ms. Hassell:

This letter is written in further support of Enbridge Energy, Limited Partnership's ("Enbridge") November 20, 2012 application ("Application") which requests that the U.S. Department of State ("Department") issue a new Presidential Permit to authorize Enbridge to operate the "border segment"[1] of its existing Line 67 crude oil pipeline up to its full design capacity (the "Line 67 Project").[2] Enbridge's Application also described the related actions of: (i) increasing pump capacity along Line 67 in two phases; and (ii) the Superior Terminal expansion.

[1] The "border segment" refers to that segment of Line 67 that extends from the U.S.-Canada border to the first mainline valve located in the United States, a distance of approximately three miles.

[2] As the Application explains, the full design capacity for Line 67 is 880,000 barrels per day ("bpd") for heavy crude. This figure, however, will vary based on the type of product transported. For example, the full design capacity of Line 67 would be greater than 880,000 bpd were light crudes transported on the line, which could be case in the future.

Enbridge hereby provides supplemental information to inform the Department of Enbridge's plans to meet anticipated shipper demand on Line 67 through a further related action so that the Department may take such information into account in the preparation of the Supplemental Environmental Impact Statement ("SEIS") for the Line 67 Project.

As indicated in Enbridge's Application, and as explained at our June 3, 2014 meeting, shipper needs dictate that the annual average capacity of Line 67 in the United States be increased up to 570,000 bpd by mid-2014 (referred to as "Phase I"), and up to 800,000 bpd by mid-2015 (referred to as "Phase II"). As we explained, the unforeseen Line 67 Project permitting delay at the Department of over a year has led Enbridge to recently assess options for achieving this additional capacity both at the border, albeit not on Line 67, and on the portion of Line 67 south of the border segment, consistent with Enbridge's obligations as a common carrier pipeline operator and its existing Presidential Permits.

Enbridge's reassessment has taken place against a background in which any failure on the part of Enbridge to provide the requested capacity will cause shippers and refiners to suffer adverse impacts, including increased apportionment and higher transportation costs, which in turn, may lead to higher domestic oil prices. Notably, an Administrative Law Judge ("ALJ") for the Minnesota Public Utilities Commission ("MPUC") issued a Decision[3] on June 12, 2014, concluding that the current capacity of Line 67 is "not sufficient to meet current and expected peak demand for crude oil shipments, [and] [u]nder such circumstances it is likely that the apportionment of nominated shipments of crude will occur with greater frequency and severity on Line 67 if additional capacity is not available." ALJ Recommendation, at ¶ 116. The ALJ concluded that without a near-term capacity increase on Line 67, Enbridge will not be able to provide sufficient capacity to meet shipper demand, thereby requiring shippers and refiners to transport oil via railway or trucks, which are considered to be less reliable modes of transportation and which may cause increased environmental impacts in the form of air and noise pollution. *See id*., at ¶¶ 156-57, 163. Use of these alternative modes of transportation, as opposed to Line 67, will also lead to increased oil costs for consumers. *See id*., at ¶¶ 169-70. The ALJ, thus, recommended that the MPUC approve Enbridge's request for issuance of a Certificate of Need to increase the annual average capacity of Line 67 to 800,000 bpd. The MPUC is expected to issue a final decision by August or September.

To avoid adverse impacts to shippers of the sort described by the ALJ, Enbridge has decided to optimize its existing Mainline System to provide the flexibility and efficiency that it would need to transport increased volumes of crude oil from Canada into the United States within the terms of its existing Presidential Permits, as explained below.

I. Planned Interconnections Between Lines 67 and 3; Use of Pump Upgrades

Enbridge intends utilize the Phase I and Phase II upgrades to its Line 67 pump facilities in Minnesota (the "Pump Upgrades") to increase the flow of oil on the non-border segment of Line 67 south of the border segment before the new Presidential Permit for the increased border

[3] A copy of the ALJ Recommendation has been enclosed for your reference as Exhibit A.

segment volume is issued by Department. As we discussed, Enbridge will accomplish this by constructing interconnections between Line 67 and its adjacent Line 3 to provide Enbridge with the capability to allow increased volumes of crude oil to: (1) move on Line 67 in Canada; (2) be transferred to Line 3 at Enbridge's Gretna, Manitoba station at a point approximately 1.5 miles north of the U.S.-Canada border; (3) cross the U.S.-Canada border on the Line 3 border segment; and (4) then be transferred back to Line 67 approximately 16 miles south of the U.S.-Canada border for further delivery to Superior, WI. A total of four interconnections will be constructed between Lines 3 and 67 as part of this project: two interconnections will be constructed between Line 67 and Line 3 at the Gretna station in Canada to allow crude oil to move between the lines north of the border crossing; and two interconnections will be constructed between Line 67 and Line 3 in the United States to allow crude oil to move between the lines at a point in North Dakota about 16 miles south of the border, which is south of the first U.S. mainline valve for each line. A diagram of the proposed interconnections, which was previously shared with you, is attached as Exhibit A.

Enbridge intends to initiate construction of the interconnections in both Canada and the United States in the coming weeks, and construction is expected to be completed by late July. The construction and operation of the U.S. interconnections does not require any federal, state, and/or local approvals. The Canadian interconnections will be constructed within the boundaries of Enbridge's existing Gretna station. Canadian approvals, through a simplified notice process, have been obtained.

Enbridge has also obtained all necessary Canadian approvals to transport increased volumes of crude oil on Line 67 in Canada. Specifically, Enbridge obtained approval from the National Energy Board ("NEB") of Canada to construct the necessary pump stations and increase the capacity of Line 67 in Canada up to 800,000 bpd. Enbridge is currently constructing the pump upgrades in Canada to allow for an increase in the authorized capacity of the line in that country. Once construction of those pump upgrades is complete, which is expected in the coming weeks, Enbridge will have the operational flexibility to flow an increased amount of oil on Line 67 in Canada to the Line 3 border segment for transportation across the U.S.-Canada border.

Enbridge has also obtained all necessary U.S. approvals to transport an average annual capacity of 570,000 bpd on Line 67 south of the Line 3 interconnection and plans to do so in the next several months. As the Department is aware, Enbridge obtained a Certificate of Need from the MPUC in August, 2013 to operate the Phase I Pump Upgrades to transport an annual average capacity of 570,000 bpd on Line 67 in Minnesota. Enbridge initiated construction of the Phase I Pump Upgrades last Fall, and such construction is expected to be completed in July. Once fully constructed, Enbridge will have the capability to operate the Phase I Pump Upgrades to increase the average annual capacity of Line 67 up to 570,000 bpd. However, unless and until the Department issues the requested Presidential Permit allowing Enbridge to transport more than 500,000 bpd across the border on Line 67, the interconnections will actually result in a decrease of 105,000 bpd of crude oil across the Line 67 border segment (from the current 495,000 bpd of heavy crude to 390,000 bpd of light crude), and an increase of 180,000 bpd of crude oil (from 390,000 bpd of light crude to 570,000 bpd of heavy crude) across the Line 3 border segment.

These cross-border volumes are compliant with the currently applicable Presidential Permits for both lines.

The interconnections will also provide Enbridge with the operational flexibility to transport crude oil in the range of 800,000 bpd of oil on Line 67 south of the Line 3 interconnection through the construction and operation of the Phase II Pump Upgrades. As the Department is aware from Enbridge's November 2012 Application, Enbridge intends to construct new pumping facilities at its existing Floodwood, Cass Lake, Donaldson, and Plummer pump station sites to provide the necessary pumping capacity to increase the annual average capacity of Line 67 up to 800,000 bpd. Enbridge applied to the MPUC for a Certificate of Need to operate the Phase II Pump Upgrades at this capacity level, and its application is still pending before the MPUC. As noted above, Enbridge anticipates that the MPUC will issue the Certificate later this Summer.

To construct the Phase II Pump Upgrades at the Floodwood, Plummer, and Donaldson pump station sites, Enbridge will be required to disturb a modest amount of wetlands or other waters of the United States, totaling 2.9 acres. Therefore, Enbridge must also obtain approval from the U.S. Army Corps of Engineers ("Corps"). Enbridge submitted an application to the Corps in November, 2013, which we understand the Corps intends to process under its Letter of Permission procedure. Enbridge's application is currently pending before the agency, which was informed of the interconnection plan outlined here at a meeting at its St. Paul offices on June 10, 2014. Once approval from the MPUC and the Corps is obtained, Enbridge will initiate construction of the Phase II Pump Upgrades, which is expected to take up to approximately 9 months. Upon completion, Enbridge will have the operational flexibility to operate the Phase II pumps to increase capacity of Line 67 south of the Line 3 interconnection in the range of 800,000 bpd, as may be necessary to meet shipper demand. That could happen as early as mid-2015. Again, however, unless and until a new Presidential Permit is issued for Line 67, the average annual capacity of oil transported across the border on that Line will remain below 500,000 bpd.

Enbridge intends to fully comply with applicable Pipeline and Hazardous Materials Administration ("PHMSA") requirements to increase the capacity of the Line 3 border segment, and to increase the capacity of Line 67 south of the Line 3 interconnection. This will include updating applicable emergency response plan procedures, to the extent necessary.

To the extent that Enbridge's Application, which predates the recently-approved interconnection plan described here, does not report that the Pump Upgrades will serve to provide Enbridge with the capability to transport increased volumes of oil, this letter supersedes that Application on this point. Further, an updated project description is attached as Exhibit C for your reference and use. In all other respects, Enbridge's November 20, 2012 Application remains unchanged.

Steptoe
STEPTOE & JOHNSON LLP

II. Precedent for Constructing Pipeline Interconnections

This plan to enhance the operational flexibility of Enbridge's existing pipeline system through interconnections between lines is consistent with current pipeline industry practice. Historically, Enbridge has constructed a number of interconnections between its adjacent lines to ensure shipper needs are met in the event of unforeseen events or contingencies, such as a power outages or maintenance, which may affect Enbridge's ability to use a line or a portion of a line. Enbridge is currently preparing information to provide to the Department regarding Enbridge's practice of optimizing its pipeline system through such interconnections, and will submit this information shortly.

For example, multiple interconnections exist between Enbridge Lines 2, 3, and 4 both in Canada and the United States. An interconnection between Lines 2 and 3, for example, exists near Cromer to allow alternate routing for Line 3 or Line 2 oil in the event of a prolonged line shut-down on those lines. Enbridge is also constructing an interconnection between Line 67 and Line 4 at Hardisty in the event of a shutdown of Line 4 between Edmonton and Hardisty.

III. Independent Utility

The interconnections planned here clearly demonstrate that the Pump Upgrades have independent utility relative to Enbridge's Presidential Permit Application to operate the border segment of Line 67 at an increased capacity. Enbridge intends to construct the interconnections and Pump Upgrades, and to operate those facilities to increase the flow of oil on Line 67 south of border segment, whether or not a new Presidential Permit is issued by the Department. In other words, the interconnections and Pump Upgrades are not a result (either directly or indirectly) of the Department's action on Enbridge's pending application because the Pump Upgrades and interconnections, and any resulting environmental impacts, will occur regardless of whether the Department issues a new Permit to authorize an increased level of flow on the border segment of Line 67. The Pump Upgrades also have independent utility due to the fact that they will provide the necessary operational pumping redundancy to ensure the flexible and continued operation of Line 67 in the event of unforeseen events or contingencies which may impact use of the existing pumps.

Please let us know if you require additional information.

Respectfully submitted,

David H. Coburn
Attorney for Enbridge Energy, Limited Partnership

Enclosures

cc: Ona Hahs, Esq., U.S. Department of State
Fred Carey, Potomac-Hudson Engineering, Inc.

Contains Confidential Business Information

EXHIBIT A

OAH 8-2500-30952
MPUC Docket No. CN-13-153

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Enbridge Energy Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project - Phase 2	**FINDINGS OF FACT, SUMMARY OF PUBLIC TESTIMONY, CONCLUSIONS OF LAW AND RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on April 8, 9, and 10, 2014. The hearing record closed on May 16, 2014, following the receipt of the last of the post-hearing briefs.

Enbridge Energy, Limited Partnership seeks a Certificate of Need authorizing it to expand the capacity of its Line 67 Pipeline. Specifically, the company seeks authorization to increase the accredited operating capacity of Line 67 from 570,000 barrels per day to 800,000 barrels per day (bpd). If authorized, the increased capacity would follow from the installation of four new pump facilities near existing pipeline stations and modifications to three other stations (the Project).

Kevin Walli and John R. Gasele, Fryberger, Buchanan, Smith and Frederick, P.A., and Arshia Javaherian, Senior Counsel, Enbridge Energy, Limited, appeared on behalf of Enbridge Energy Limited Partnership (Enbridge or the Company).

Paul C. Blackburn, Law Offices of Paul C. Blackburn, appeared on behalf of MN350 and the Sierra Club (MN350/Sierra Club).

Jon Erik Kingstad, Law Offices of John Erik Kingstad, appeared on behalf of Donald and Anna Dyrdal.

Frank Bibeau, Attorney at Law, and Peter Erlinder, International Humanitarian Law Institute, appeared on behalf of Honor the Earth.

Julia Anderson and Peter Madsen, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce, Energy Regulation and Planning Unit (DOC-DER).

Michael Kaluzniak and Tracy Smetana, Commission Staff, participated in the Public and Evidentiary Hearings as representatives of the Minnesota Public Utilities Commission (MPUC or the Commission)

STATEMENT OF THE ISSUE

Has Enbridge met the criteria set forth in Minn. Stat. § 216B.243 and Minn. R. ch. 7853 for a Certificate of Need for a pipeline?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that Enbridge has demonstrated the need for the proposed facilities and that no party demonstrated that there was a safer, more affordable or more reliable alternative to the proposed facilities.

Based upon the submissions of the parties, and the contents of the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Enbridge, the Mainline System and Key North American Pipelines

1. Enbridge is a limited liability partnership organized under the laws of the state of Delaware. Its primary business address in the United States is 1100 Louisiana, Suite 3300, Houston, Texas 77002.[1]

2. Enbridge is a wholly-owned subsidiary of Enbridge Energy Partners L.P. a Delaware Master Limited Partnership (Enbridge Partners). Enbridge owns and operates the U.S. portion of the Enbridge Mainline System, which is commonly referred to as the "Lakehead System." Collectively, Enbridge Energy, Limited Partnership, Enbridge Partners, and their Canadian affiliate Enbridge, Inc. are all commonly referred to as "Enbridge."[2]

3. Enbridge owns and operates the 999-mile Line 67 pipeline.[3]

4. Line 67 is one of two pipelines in Enbridge's system that is dedicated to transportation of heavy crude oil from Enbridge's facilities in Hardisty, Alberta, Canada, to Enbridge's terminal and tank farm in Superior, Wisconsin.[4]

5. An Enbridge affiliate – Enbridge Pipelines, Inc. – owns and operates the Canadian pipeline system that interconnects and delivers crude oil into Enbridge's "Lakehead System." This interconnection occurs at the International Border near Neche, North Dakota. Together, the Canadian pipeline system and the Lakehead

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[1] Ex. 1, § 7853.0230, at 1 (Enbridge Application).

[2] Ex. 1, § 7853.0230, at 2.

[3] Ex. 1, § 7853.0230, at 1.

[4] Ex 1, § 7853.0230, at 2.

System form the longest liquid petroleum pipeline in the world. As an operational unit, these two systems are referred to as the Enbridge Mainline System.[5]

6. As part of Enbridge's Mainline System, Line 67 transports heavy crude oil from the Western Canadian Sedimentary Basin (WCSB) into Minnesota.[6]

7. Crude oil that is produced in Western Canada is "landlocked," far from coastal seaports and historically has been transported to refineries by pipeline. There are four major pipelines that transport Western Canadian heavy crude oil from the locations where it is produced: the Enbridge Mainline, the Kinder Morgan Trans Mountain, the Spectra Express, and the TransCanada Keystone pipeline.[7]

8. The Keystone XL project is a proposed 1,179 mile pipeline that would run from Hardisty, Alberta to Steele City, Nebraska.[8]

9. The initial capacity of the Keystone XL project is 700,000 bpd. The design capacity of the project is 830,000 bpd, of which the developers hope to later transport 730,000 bpd of heavy crude oil.[9]

10. The Keystone XL is designed to serve a different sub-market than the Line 67. Its design does not include pipeline infrastructure to serve Midwest refineries.[10]

11. The Keystone XL Pipeline has not yet obtained the regulatory approvals in the United States in order to begin operations.[11]

12. As of the conclusion of the evidentiary hearing in this matter, the in-service date for Keystone XL pipeline was not known.[12]

The Proposed Project and Operations on Line 67

13. In 2013, Enbridge received approvals from the Commission to increase the accredited capacity of Line 67 from 450,000 bpd to 570,000 bpd. Enbridge, the parties and the participants to this proceeding refer to this capacity increase as "Phase 1" of Enbridge's "upgrade project."[13]

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[5] Ex. 1, § 7853.0230, at 1, note 1.

[6] Ex. 1, § 7853.0230, at 1-2.

[7] Ex. 20, Report at 7-8 (Rennike Rebuttal).

[8] Ex. 35, at 33 (Otis Direct).

[9] Ex. 1, § 7853.0540, at 3; Ex. 35, at 33 (Otis Direct); HEARING TRANSCRIPT, Volume 1, at 109 (Earnest Testimony).

[10] Ex. 13, at 9 (Curwin Rebuttal); Ex. 35, at 33 (Otis Direct).

[11] Ex. 13, at 9 (Curwin Rebuttal).

[12] HEARING TRANSCRIPT, Volume 3, at 53 (Demony Testimony).

[13] *See,* MPUC Docket No. PL9/CN-12-590.

14. In its Certificate of Need Application, Enbridge proposes to increase the annual average capacity of Line 67 from the currently permitted capacity of 570,000 bpd to 800,000 bpd. Enbridge, the parties and the participants to this proceeding refer to the requested capacity increase as "Phase 2" of its "upgrade project."[14]

15. This Project involves the installation of new pump facilities, including all valves and appurtenances, near existing Enbridge-owned facilities. Those facilities are located at Enbridge stations in Donaldson, Plummer, Cass Lake, and Floodwood, Minnesota, respectively.[15]

16. Enbridge also proposes to make modifications to its pumping stations in Viking, Clearbrook, and Deer River, Minnesota.[16]

17. All of the station upgrades referenced in the Application will be constructed upon land that Enbridge owns.[17]

18. No new pipeline construction will be required for the Project.[18]

19. Enbridge asserts that its proposed upgrades to Line 67 could be operational as soon as July 1, 2015.[19]

20. At Clearbrook, Minnesota, Line 67 connects to a third-party pipeline to supply crude oil to the Flint Hills, Pine Bend and Northern Tier St. Paul refineries in Minnesota.[20]

21. At Superior, Wisconsin, Line 67 delivers crude oil to the Calumet Specialty Products Partners, L.P. refinery.[21]

22. Although Line 67 ends at Superior, Wisconsin, crude oil can be transported further on the Enbridge Mainline System. The Enbridge pipeline network continues on from Superior, Wisconsin, traveling east across the Upper Peninsula of Michigan. In addition, a different set of Enbridge pipelines travels from Superior southeast across Wisconsin to pipeline hubs near Chicago, Illinois and Cushing,

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[14] Ex. 1, § 7853.0240, at 1-2.

[15] Ex. 1, § 7853.0230, at 3.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*, at 11.

[20] Ex. 1, § 7853.0230, at 2; Ex. 1, § 7853.0240, at 6.

[21] *Id.*

Oklahoma. Eventually, the mainline network reaches refinery centers along the Gulf Coast of Texas.[22]

23. The portion of Line 67 in the United States operates as interstate common-carrier liquids pipeline. It is subject to regulation by the Federal Energy Regulatory Commission (FERC) under the Interstate Commerce Act. Common-carrier pipelines in interstate commerce provide non-discriminatory service to shippers that request transportation services. Any limitation upon this service is contained in the applicable, FERC-approved tariff.[23]

24. The rates charged for the transportation of crude oil from Western Canada along Enbridge's Mainline System are set pursuant to a FERC-approved settlement. Through July of 2021, the Competitive Toll Settlement sets the tolls charged for transportation of crude oil, including the transportation of heavy crude oil on Line 67, from Canada to the markets in the United States.[24]

25. Enbridge dedicates two pipelines in Minnesota to transportation of heavy crude oil: Lines 4 and 67. Currently, the total permitted capacity of Lines 4 and 67 is 1,596,000 bpd.[25]

26. As a common-carrier, Enbridge does not own the crude oil transported on Line 67. It transports specific volumes and types of crude oil to the destinations specified by the shippers.[26]

27. Nominations are made for transportation services that will occur during the following month. Enbridge takes the total volumes of a specific grade or type of crude oil that was nominated by the shippers and compares it to the available capacity for that grade or type of crude oil on the Mainline System.[27]

28. Refinery demand for heavy crude oil is not static. The amounts that are demanded can, and do, vary from month to month. Because of this variability, Line 67 does not operate at its full, accredited capacity every month of every year.[28]

29. As part of its transportation operations, Enbridge verifies both that there is sufficient supply in the shipper's name at the point at which it would receive the oil and

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[22] Ex. 1, § 7853.0240, at 6-8.

[23] Ex. 1, § 7853.0230, at 2.

[24] *See*, Ex. 106 (Excerpt of Competitive Toll Settlement).

[25] Ex. 15, at 6 (Earnest Rebuttal).

[26] Ex. 1, § 7853.0230, at 2; Ex. 1, § 7853.0240, at 11; Ex. 29, FERC No. 41.6.0, at 8, ¶ 14(a) (Oil Pipeline Tariff Filing); HEARING TRANSCRIPT, Volume 1, at 87 and 89 (Earnest Testimony).

[27] Ex. 29, FERC No. 41.6.0 , at 8, § 14(a) (Oil Pipeline Tariff Filing); HEARING TRANSCRIPT, Volume 1, at 186 (Curwin Testimony).

[28] HEARING TRANSCRIPT, Volume 1, at 120-22 (Earnest Testimony).

that there is sufficient capacity at the delivery point to receive the volumes of oil that have been nominated.[29]

30. If the total volume that is nominated exceeds the available capacity of the system, Enbridge imposes an "apportionment" during that month.[30]

31. When Enbridge apportions nominated shipments, every shipper that nominated volumes for transportation along the Mainline System has its deliveries reduced on a *pro rata* basis. Enbridge does not grant priority or preference to any particular shipper during an apportionment.[31]

32. Enbridge calculates the percentage of apportionment through the following formula: (Nominations – Available Capacity)/Nominations.[32]

33. Enbridge likewise imposes a non-performance penalty upon shippers that tender less than 95 percent of an allocated volume at a time when the system is under apportionment. This non-performance penalty is a strong disincentive against leaving needed pipeline capacity unused at a time when other firms have requested service.[33]

34. For shipments of heavy crude oil, Enbridge calculates its capacity for transportation based upon the accredited throughput for both Lines 4 and 67.[34]

35. During the 24 months between February 2012 and February 2014, nominations for oil transportation service along Lines 4 and 67 were apportioned in five different months, including in the months of December of 2013, January of 2014 and February of 2014.[35]

36. Typically, shippers receive notice that the Mainline System has been over-subscribed, and that all nominations will be proportionately reduced, approximately 10 days before the apportionment begins.[36]

37. Following notice of an upcoming apportionment, the alternatives for shippers and refineries are: (a) accept less than the requested amount of crude oil for delivery; (b) choose to purchase or ship a different grade of crude oil, if that oil can be

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[29] Ex. 29. FERC No. 41.6.0 , at 4, § 6(c) (Oil Pipeline Tariff Filing).

[30] Ex. 29, FERC No. 41.6.0 , at 8, § 14(a) (Oil Pipeline Tariff Filing).

[31] HEARING TRANSCRIPT, Volume 1, at 89 and 185-86; Ex. 29, FERC No. 41.6.0 , at 8, § 14(a) (Oil Pipeline Tariff Filing); HEARING TRANSCRIPT, Volume 2, at 38.

[32] Ex. 15, at 6 (Earnest Rebuttal).

[33] Ex. 29, FERC No. 41.6.0 , at 8, § 14(c) (Oil Pipeline Tariff Filing).

[34] Ex. 15, at 4 and 6 (Earnest Testimony); HEARING TRANSCRIPT, Volume 1, at 186.

[35] Ex. 15, at 4, (Earnest Rebuttal); *see also* Ex. 13, Attachment F (Enbridge Response to Department IR 21B, Attachment 21B, Schedule 1).

[36] Ex. 1, § 7853.0240, at 11; HEARING TRANSCRIPT, Volume 1, at 105 (Earnest Testimony).

processed by the destination refinery; or (c) supplement its pipeline shipments with crude oil that is received from another source, such as rail transportation.[37]

The Procedural History of this Docket

38. On February 28, 2013, Enbridge filed a notice plan for the Project with the MPUC.[38]

39. The Notice Plan was revised on April 9, 2013, and accepted by the MPUC on May 8, 2013.[39]

40. Enbridge implemented the Notice Plan between May 29, 2013 and June 5, 2013.[40]

41. Enbridge published notice of its intent to file an application requesting a CN for the Project in a series of local newspapers. While most of the notices were published between May 29, 2013 and June 5, 2013, one newspaper published the notice on July 2, 2013.[41]

42. On June 3, 2013, the Company sent a project-related notice by first class mail to local units of government near the project. Additional mailings to one township, one township supervisor, and to some corrected addresses for local governments were made on June 5, 14, and 21, 2013.[42]

43. The Company sent a project-related notice by first class mail to landowners along the route of Line 67. It likewise sent a notice to those who owned parcels adjacent to the facilities involved in the project. The letter to landowners adjacent to the proposed facilities was mailed on June 4, 2013. The letter to landowners along the route of Line 67 was mailed on June 5, 2013.[43]

44. Enbridge provided notice to individuals who had earlier expressed interest in receiving documents for Enbridge's Phase 1 project. The Company sent a project-related notice by first class mail to these persons on June 5, 2013.[44]

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[37] *See,* Ex. 15, at 21-23 (Earnest Rebuttal).

[38] Certificate of Need Notice Plan (February 28, 2013) (E-Dockets Document No. 20132-84295-01); *see also,* Minn. R. 7829.2560.

[39] Reply Comments and Revised Notice Plan (April 9, 2013) (E-Dockets Document No. 20134-85561-01); Order Approving Notice Plan, MPUC Docket No. PL-9/CN-13-153 (May 8, 2013) (E-Dockets Document No. 20135-86802-01).

[40] Notice Plan Compliance Filing, Public Version, at 1 – 4 (August 5, 2013) (E-Dockets Document No. 20138-89924-03).

[41] Notice Plan Compliance Filing, Public Version, at 1, notes 1 and 3 (August 5, 2013).

[42] Notice Plan Compliance Filing, Public Version, at 2 – 3 (August 5, 2013).

[43] Notice Plan Compliance Filing, Public Version, at 1 – 4 (August 5, 2013).

[44] Notice Plan Compliance Filing, Public Version, at 2 (August 5, 2013).

45. Enbridge filed its Application for the project with the MPUC on June 28, 2013.[45]

46. On July 3, 2013, the MPUC established a comment period on the Enbridge application.[46]

47. The Minnesota State Historic Preservation Office indicated in its comments that no historic properties will be affected by the project.[47]

48. The Minnesota Department of Natural Resources stated in its comments that the "Floodwood station upgrade is located near a surficial drainage to the Floodwood River. This drainage path is an important reason to emphasize careful implementation of the Environmental Plan."[48]

49. DOC-DER recommended that the MPUC declare the application complete pending the submission of additional information from the company.[49]

50. On August 16, 2013, MN350 filed reply comments as to the completeness of Enbridge's application.[50]

51. On August 16, 2013, the Dyrdals also filed comments as to the completeness of Enbridge's application on August 16, 2013.[51]

52. Enbridge filed an amended version of its application on August 16, 2013, as well as reply comments regarding completeness of the submissions.[52]

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[45] Application Cover Letter and Affidavit of Service (June 28, 2013) (E-Dockets Document No. 20136-88672-01). The Application was assigned MPUC Docket No. PL-9/CN-13-153.

[46] Notice of Comment Period on the Application of Enbridge Energy, Limited Partnership For A Certificate of Need for the Line 67-Phase 2 Upgrade Project (July 3, 2013) (E-Dockets Document No. 20137-88853-01).

[47] Minnesota State Historic Preservation Office Comment Letter (July 3, 2013) (E-Dockets Document No. 20137-88920-01).

[48] Minnesota Department of Natural Resources Comments (July 24, 2013) (E-Dockets Document No. 20137-89507-01); *See also,* Comments of Jamie Schrenzel (April 14, 2014) (the "new pump station would be near a ditch system that flows to the Floodwood River and then into the Saint Louis River, which leads to the unique habitat of the Saint Louis River Estuary and Lake Superior").

[49] Comments of the Minnesota Department of Commerce, Division of Energy Resources (July 24, 2013) (E-Dockets Document No. 20137-89504-01).

[50] MN350 Reply Comments Regarding Completeness (August 16, 2013) (E-Dockets Document No. 20138-90359-01),

[51] Dyrdal Comments re Completeness (August 16, 2013) (E-Dockets Document No. 20138-90360-01).

[52] *See,* Ex, 1 (Public Version of the Application); Ex. 2 (Trade Secret Version); Enbridge Reply Comments Regarding Completeness (August 16, 2013) (E-Dockets Document No. 20138-90363-02).

53. By way of an Order dated September 17, 2013, the Commission accepted the August 16, 2013 version of the Application. The Commission also referred the matter to the Office of Administrative Hearings for a contested case proceeding.[53]

54. On September 17, 2013, Enbridge mailed copies of the Application on CD-ROM to a set of 23 libraries in Northern Minnesota.[54]

55. On October 22, 2013, Administrative Law Judge Eric L. Lipman issued the First Prehearing Order, directing interested persons to confer on "a calendar of convenient filing dates and milestones for this proceeding."[55]

56. A Prehearing Conference was held on November 5, 2013.[56]

57. On November 14, 2013, the Administrative Law Judge issued the Second Prehearing Order. The Second Prehearing Order granted the Petitions for Intervention from MN350, the Sierra Club and DOC-DER. The Order also established a hearing schedule and additional procedures for the contested case.[57]

58. On November 18, 2013, the Administrative Law Judge granted the Dyrdals's Petition for Intervention.[58]

59. On December 4, 2013, Enbridge filed revised versions of Section 7853.0520 of its Application. The revised public and trade secret versions of this portion of the Application narrowed the range of trade secret protections claimed by the Company.[59]

60. On January 9, 2014, Honor the Earth filed a Petition for Intervention.[60]

61. On January 28, 2014, the Administrative Law Judge issued the Fourth Prehearing Order (Protective Order).[61]

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[53] MPUC Notice and Order for Hearing, MPUC Docket No. PL-9/CN-13-153 (September 17, 2013) (E-Dockets Document No. 20139-91374-01).

[54] Public Hearing Notice Compliance Filing, Public Version, Exhibits 3a, 3b, 3c (E-Dockets Document No. 20144-97993-02),

[55] FIRST PREHEARING ORDER (October 22, 2013) (E-Dockets Document No. 201310-92846-01).

[56] SECOND PREHEARING ORDER (November 14, 2013) (E-Dockets Document No. 201311-93694-01).

[57] SECOND PREHEARING ORDER (November 14, 2013).

[58] THIRD PREHEARING ORDER (November 18, 2013) (E-Dockets Document No. 201311-93779-01).

[59] Ex. 4 (Public), Ex. 5 (Nonpublic).

[60] HONOR THE EARTH PETITION TO INTERVENE (January 9, 2014) (E-Dockets Document No. 20141-95294-01).

[61] FOURTH PREHEARING ORDER (PROTECTIVE ORDER) (January 28, 2014) (E-Dockets Document No. 20141-95864-01).

62. MN350/Sierra Club, MN350/Sierra Club witness Mary Ellen Denomy, and counsel for the Dyrdals were granted access to trade secret materials under the terms of the Protective Order.[62]

63. On January 29, 2014, the Administrative Law Judge granted Honor the Earth's Petition for Intervention.[63]

64. The MPUC issued a Notice of Public Hearings on February 3, 2014, and a Revised Notice of Public Hearings on February 5, 2014.[64]

65. On February 18, 2014, Enbridge mailed the Revised Notice of Public Hearings to local units of government near the project.[65]

66. On February 20, 2014, Enbridge mailed the Revised Notice of Public Hearings to all landowners along the route of Line 67 and those abutting the proposed facilities to be constructed as part of the project.[66]

67. Enbridge later identified twelve additional landowners. The Revised Notice of Public Hearings was provided to these landowners.[67]

68. On February 20, 2014, Enbridge mailed the Revised Notice of Public Hearings to additional parties interested in the project.[68]

69. Enbridge published the Revised Notice of Public Hearings in areas reasonably likely to be affected by the project. This publication occurred between February 25 and March 4, 2014.[69]

70. Public hearings were held on March 18 - 20, 2014, as follows:

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[62] *See,* EXHIBIT A TO THE FOURTH PREHEARING ORDER (PROTECTIVE ORDER) (January 28, 2014) (E-Dockets Document No. 20141-95864-01).

[63] FIFTH PREHEARING ORDER (January 29, 2014) (E-Dockets Document No. 20141-95898-01).

[64] NOTICE OF PUBLIC HEARINGS (February 3, 2014) (E-Dockets Document No. 20142-96129-01); REVISED NOTICE OF PUBLIC HEARINGS (February 5, 2014) (E-Dockets Document No. 20142-96201-01).

[65] Public Hearing Notice Compliance Filing, Public Version, Exhibits 5a, 5a (E-Dockets Document No. 20144-97993-02).

[66] Public Hearing Notice Compliance Filing, Public Version, Exhibits 1a, 2a, 2c (E-Dockets Document No. 20144-97993-02; Public Hearing Notice Compliance Filing, Trade Secret Version, Exhibits 2b, 2d (e-filed April 4, 2014).

[67] Public Hearing Notice Compliance Filing, Public Version, Exhibit 2e (E-Dockets Document No. 20144-97993-02); Public Hearing Notice Compliance Filing, Trade Secret Version, Exhibit 2f (e-filed April 4, 2014).

[68] Public Hearing Notice Compliance Filing, Public Version, Exhibits 1a, 4a (E-Dockets Document No. 20144-97993-02).

[69] Public Hearing Notice Compliance Filing, Public Version, Exhibits 6a, 6b, 6c (E-Dockets Document No. 20144-97993-02).

- Hallock, Minnesota: March 18, 2014, beginning at 6:30 p.m.
- Thief River Falls, Minnesota: March 19, 2014, beginning at 10:00 a.m.
- Cass Lake, Minnesota: March 19, 2014, beginning at 6:30 p.m.
- Floodwood, Minnesota: March 20, 2014, beginning at 10:00 a.m.
- Duluth, Minnesota: March 20, 2014, beginning at 6:30 p.m.[70]

71. On or around the date of the public hearings in Greater Minnesota, several parties requested relief by way of written motion:

(a) The Dyrdals contested Enbridge's Claims of Confidentiality and Trade Secret Privilege;

(b) The Dyrdals sought to compel responses to discovery;

(c) DOC-DER requested an opportunity to file surrebuttal testimony; and,

(d) MN350/Sierra Club requested a continuance of the Evidentiary Hearing.[71]

72. Honor the Earth joined the requests of the Dyrdals and MN350/Sierra Club.[72]

73. Enbridge opposed the requests of the Dyrdals and MN350/Sierra Club.[73]

74. A Prehearing Conference on the motions was held on March 26, 2014.[74]

75. On March 27, 2014, the Administrative Law Judge issued the Seventh Prehearing Order. This Order:

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[70] REVISED NOTICE OF PUBLIC HEARINGS, *supra.*

[71] DYRDAL MOTION TO CONTEST CLAIMS OF CONFIDENTIALITY AND TRADE SECRET PRIVILEGE (E-Dockets Document No. 20143-97402-01); MEMORANDUM OF LAW IN SUPPORT OF DYRDAL MOTION TO CONTEST CLAIMS OF CONFIDENTIALITY AND TRADE SECRET PRIVILEGE (E-Dockets Document No. 20143-97402-02); MOTION TO COMPEL DISCOVERY (E-Dockets Document No. 20143-97509-01); MEMORANDUM IN SUPPORT OF DYRDAL MOTION TO COMPEL (E-Dockets Document No. 20143-97496-01); DOC-DER MOTION FOR SURREBUTTAL (E-Dockets Document No. 20143-97460-01); MN350/SIERRA CLUB REQUEST TO RECONVENE THE PREHEARING CONFERENCE AND MOTION TO RESCHEDULE THE EVIDENTIARY HEARING (E-Dockets Document No. 20143-97496-01).

[72] LETTER FROM HONOR THE EARTH (E-Dockets Document No. 20143-97513-01).

[73] *See,* MEMORANDUM OF LAW OPPOSING THE MN350/SIERRA CLUB MOTION TO RECONVENE AND RESCHEDULE (E-Dockets Document No. 20143-97605-03); MEMORANDUM OF LAW OPPOSING THE DYRDAL MOTION TO CONTEST CLAIMS OF CONFIDENTIALITY AND TRADE SECRET PRIVILEGE (E-Dockets Document No. 20143-97605-02).

[74] SIXTH PREHEARING ORDER (E-Dockets Document No. 20143-97626-01).

(a) established a deadline for surrebuttal testimony;

(b) revised the deadlines for objections to the admissibility of pre-filed direct and rebuttal testimony, submission of exhibit lists, and objections to admissibility of pre-filed surrebuttal testimony;

(c) rescheduled the evidentiary hearing to April 8 - 10, 2014; and,

(d) adjusted the deadlines for submission of post-hearing briefs.[75]

76. On April 1, 2014, the Administrative Law Judge issued the Eighth Prehearing Order. This Order established procedures for the public hearing to be held in St. Paul, Minnesota, on April 3, 2014.[76]

77. A public hearing was held in St. Paul, Minnesota, on April 3, 2014. Over the course of four hours of public testimony, the Administrative Law Judge heard from 58 witnesses, received 19 exhibits and dozens of handwritten comments. Importantly, the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.[77]

78. Not all of those persons who enrolled on the hearing register and sought recognition on April 3 were able to provide oral testimony before the close of the public hearing. Those who did testify, however, represented a good cross-section of the views on the project and representation from communities that would have otherwise faced challenges in reaching the earlier set of public hearings in Greater Minnesota.[78]

79. The Dyrdals filed an exhibit list on April 4, 2014, but did not pre-file or circulate copies of their proposed exhibits in advance of the evidentiary hearing.[79]

80. Similarly, the Dyrdals did not pre-file, or offer, any direct, rebuttal or surrebuttal testimony as part of its case-in-chief.[80]

81. On April 7, 2014, Enbridge objected to the exhibits proposed by the Dyrdals.[81]

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[75] SEVENTH PREHEARING ORDER (E-Dockets Document No. 20143-97672-01).

[76] EIGHTH PREHEARING ORDER (E-Dockets Document No. 20144-97878-01).

[77] *Id*; ST. PAUL PUBLIC HEARING TRANSCRIPT, at 3-6 and 223-24.

[78] *See,* ST. PAUL PUBLIC HEARING TRANSCRIPT and HEARING ROSTER.

[79] *Compare,* DYRDAL EXHIBIT LIST (E-Dockets Document No. 20144-97999-01) with SEVENTH PREHEARING ORDER, at 2 (E-Dockets Document No. 20143-97672-01).

[80] *See,* MASTER EXHIBIT LIST (E-Dockets Document No. 20144-98581-01).

[81] OBJECTION TO THE DYRDAL EXHIBITS (E-Dockets Document No. 20144-98060-02).

82. On April 7, 2014, the Administrative Law Judge issued the Ninth Prehearing Order. This Order denied the Drydals' request to compel discovery and remove the trade secret designation of certain exhibits. The Order also required Enbridge to submit a redacted, public version of its responses to the DOC-DER's Information Request 21 – an item that was later denominated as Hearing Exhibit 25.[82]

83. On April 7, 2014, copies of the transcripts of the Public Hearings were mailed to 23 public libraries in Northern Minnesota.[83]

84. An evidentiary hearing was held on April 8, 9, and 10, 2014 in St. Paul, Minnesota.[84]

85. The public comment period closed at 4:30 p.m. on April 14, 2014.[85]

86. On April 22, 2014, copies of the transcripts of the Evidentiary Hearing were mailed to 23 public libraries in Northern Minnesota.[86]

Assessing the Application for a Certificate of Need

87. Enbridge predicts that Line 67 will reach its current permitted capacity of 570,000 bpd on an annual basis by mid-2014. It further asserts that the volumes of crude oil that are nominated for shipment after that date will continue to increase.[87]

88. A Certificate of Need is required for any project that will expand an existing large petroleum pipeline by more than 20 percent of its rated capacity, or 10,000 bpd, whichever is greater.[88]

89. Because Enbridge proposes to expand the rated capacity of Line 67 by more than 20 percent, a Certificate of Need is required for the project.[89]

90. Under Minn. R. 7853.0130, review of a Certificate of Need application involves inquiries into four key areas – namely, whether:

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[82] NINTH PREHEARING ORDER (E-Dockets Document No. 20144-98063-01); Ex. 25 (Response to DOC Information Request 21A).

[83] Letter from Shaddix & Associates, at 1-2 (April 7, 2014) (E-Dockets Document No.20144-98067-01).

[84] *See,* HEARING TRANSCRIPTS, (April 8 - 10, 2014).

[85] REVISED NOTICE OF PUBLIC HEARINGS, at 2, *supra*.

[86] Letter from Shaddix & Associates (April 22, 2014) (E-Dockets Document No. 20144-98586-01).

[87] Ex. 4, at 3 (Revised Section 7853.0520).

[88] Minn. R. 7853.0030, D; *see also,* Minn. Stat. § 216B.243, subds. 1 and 2.

[89] Ex. 1, § 7853.0240, at 1.

(a) the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;

(b) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;

(c) the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and

(d) it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Additionally, within each of these broad areas, there are distinct sub-issues that the regulation obliges the Commission to address.[90]

The Impact of the Proposed Facilities upon Regional Energy Supplies

Criteria A-1: Accuracy of the Forecast of Demand for Additional Heavy Crude Oil

91. Minnesota is one of 15 states within Petroleum Area Defense District, Number Two (PADD II).[91]

92. Within PADD II there are significant expansions of pipeline and refinery capacity underway. For example, the Flint Hills Resources refinery located in Rosemount, Minnesota, is expanding its capabilities to refine heavy crude oil. This expansion will permit it to refine an additional 36,000 bpd of heavy crude oil. Flint Hills Resources expressed its support for the project.[92]

93. Additionally, the BP Whiting refinery, located in Whiting, Indiana, is expanding its capabilities to refine heavy crude oil. Following the "complete ramp up" of its plant expansion, the BP Whiting refinery will be able to refine an additional 268,000

[90] Minn. R. 7853.0130, subps. A, B, C, and D.

[91] The states assigned to PADD II by the U.S. Energy Information Administration are: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Oklahoma, Tennessee and Wisconsin. *See generally,* Ex. 6, Appendix C (Earnest Direct).

[92] Enbridge Ex. 12, at Attachment C (Curwin Rebuttal); DOC Ex. 37 at 22, LBO-S-5 and LBO-S-6 (Otis Surrebuttal); Ex. 52, at 13 (Denomy Direct).

bpd of heavy crude oil. The BP Whiting refinery likewise expressed support for the project.[93]

94. These known increases in heavy crude refining capacity exceed the recently-upgraded capacity of Line 67 by an additional 184,000 bpd. The upgraded capacity of Line 67 following the completion of Phase 1 of the project is not sufficient to transport this additional amount of oil.[94]

95. In 2012, Marathon Petroleum completed a $2.2 billion upgrade and expansion project at its Detroit refinery.[95]

96. In February 2013, a $400 million upgrade to the BP-Husky Refining LLC Toledo refinery was complete.[96]

97. Enhancements to the pipeline network downstream of Line 67 are likely to increase the demand for crude oil shipments on the Enbridge Mainline System.[97]

98. The Flanagan South project involves the construction of a 36-inch pipeline from the Enbridge Flanagan terminal near Chicago, Illinois, to Cushing, Oklahoma. Upon completion, the pipeline will have an initial capacity of 430,000 bpd, with a design capacity to transport 600,000 bpd.[98]

99. The only origination point for crude oil traveling onto the Flanagan South pipeline is the Enbridge Mainline System.[99]

100. At the terminal in Cushing, Oklahoma, the Flanagan South pipeline will connect to the Seaway Pipeline. The Seaway pipeline extends from Cushing, Oklahoma, to a terminal near Houston, Texas.[100]

101. The owners of the Seaway Pipeline are in the process of building a second line between Cushing and the Gulf Coast. This second line will substantially increase the capacity of the Seaway system. With this increase in capacity, shipments made on the Flanagan South pipeline could reach the Gulf Coast of Texas.[101]

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[93] Enbridge Ex. 12 at Attachment D (Curwin Rebuttal); Enbridge Ex. 15 at 10–13 (Earnest Rebuttal); DOC Ex. 37 at 11-12 and 23 (Otis Surrebuttal).

[94] Ex. 15, at 12 (Earnest Rebuttal); DOC Ex. 37, at 22-23 (Otis Surrebuttal).

[95] Ex. 1, § 7853.0250, at 5.

[96] *Id.*

[97] Ex. 15 at 15-17 (Earnest Rebuttal).

[98] *Id.*, at 15.

[99] *Id.*, at 17.

[100] *Id.*, at 15.

[101] *Id.*, at 15-16.

102. The global market for refined products is likely to be quite strong and increasing in the near-term.[102]

103. When matched against their global competitors in the refining industry, U.S. refineries have a number of competitive advantages. The size, operational efficiency and the comparatively low cost of energy of refineries in the United States makes them well positioned to compete with other global refining centers.[103]

104. In addition to considerable "downstream demand" for heavy crude oil within PADD II, and beyond, the hearing record makes clear that there will be significant new stocks of Canadian crude oil available for transport.[104]

105. Laura Otis, a Rates Analyst with the Minnesota Department of Commerce, testified credibly that an additional 1.4 million bpd of Canadian crude oil will be available for transportation between 2012 and 2020. If one subtracts 120,000 bpd that can be carried as a result of the Phase I capacity upgrades to Line 67, and subtract another 730,000 bpd that could be transported by the Keystone XL pipeline, there remains over 500,000 bpd of heavy crude oil that would be available for transport.[105]

106. The record contains significant and credible forecasts of increased, near-term demand for heavy crude oil within PADD II.[106]

107. The record contains significant and credible forecasts of increased, near-term production of heavy crude oil by Canadian oil producers and that this oil will be available for transport along Enbridge's Mainline System.[107]

108. For most of this added production of heavy crude oil, it is far more likely that these materials will be exported to other locations than it is that it will be consumed by firms within Western Canada.[108]

109. When Midwestern demand for heavy crude oil increases, alongside increasing supplies oil in Western Canada, the market pressures upon Enbridge's limited transportation services are likely to increase. Increasing the capacity of Line 67 would forestall the rate and frequency of apportioned shipments along Line 67.[109]

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[102] Ex. 19, at 9 (Cicchetti Rebuttal).

[103] Ex. 15, at 28 (Earnest Rebuttal).

[104] *See, e.g.,* Ex. 7, at 31 (Muse Stancil Benefits Analysis).

[105] Ex. 37, at 17 (Otis Surrebuttal).

[106] Ex. 4 (Revised Section 7853.0520 - Public); Ex. 5 (Revised Section 7853.0520 - Trade Secret Version); Ex. 13 at 6 and Attachment A (Curwin Rebuttal); Ex. 15 at 28 (Earnest Rebuttal).

[107] Ex. 7, at 30 – 35 (Muse Stancil Benefits Analysis).

[108] *Compare, e.g.,* Ex. 21, at 5-6 (Earnest Surrebuttal) and HEARING TRANSCRIPT, Volume 2, at 245 (Cicchetti Testimony) with Ex. 53, at 4-6 (Demony Rebuttal).

[109] Ex. 13 at 6 and Attachment A; Ex. 14 (Response to Department of Commerce Information Request 21A – Trade Secret Version); Ex. 15 at 19-20 (Earnest Rebuttal).

Criteria A-2: Effects of Conservation Programs

110. Given the regional and global demands for heavy crude oil, it is unlikely that conservation programs in Minnesota could reduce the demand for this type of oil by 230,000 bpd.[110]

111. Similarly, given the regional and global demands for heavy crude oil, it is unlikely that conservation programs in Minnesota could reduce the demand for heavy crude oil enough to significantly reduce apportionment along Line 67.[111]

Criteria A-3: Effects of Promotional Practices on Demand for Energy

112. Demand for transportation services along Line 67 is a function of the broader market demand for refined petroleum products. Enbridge's services are sought-after by refiners and shippers when the markets for refined products – such as gasoline, diesel fuel, aviation fuel, heating oil and asphalt, among others – are strong.[112]

113. Projecting increases in both oil production and the market demand for refined products, shippers have asked Enbridge to expand its pipeline system.[113]

114. Moreover, Enbridge's shippers have agreed that Enbridge can recover the cost of the proposed project through the toll charges that are assessed to shippers for transporting crude oil.[114]

115. Enbridge has not undertaken activities to promote increased demand for crude oil or refined petroleum products.[115]

Criteria A-4: Ability of Existing Facilities to Meet Future Demand for Energy

116. The current 570,000 bpd limitation on Line 67 is not sufficient to meet current and expected peak demand for crude oil shipments. Under such circumstances, it is likely that the apportionment of nominated shipments of crude oil will occur with greater frequency and severity on Line 67 if additional capacity is not available.[116]

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[110] HEARING TRANSCRIPT, Volume 2, at 239-41 (Cicchetti Testimony).

[111] *Id.*

[112] *See,* Ex. 1, § 7853.0250 at 4.

[113] Ex. 1, § 7853.0250 at 4; Ex. 1, § 7853.0240, at 1-9; Ex. 8, Exhibit A, Schedule 1 (Curwin Direct).

[114] Ex. 8, at 5, and Attachment A, Schedule 1 (Curwin Direct).

[115] Ex. 1, § 7853.0250 at 4.

[116] *See* Ex. 7 at 3-4 (Muse Stancil Benefits Analysis); Ex. 13, Exhibit F, Enbridge Response to Department of Commerce IR21B, Attachment 21B, Schedule 1; DOC Ex. 37 at 11 and 22-23 (Otis Surrebuttal).

117. Enbridge's shippers are knowledgeable and sophisticated parties. It is doubtful that these firms would underwrite capacity expansions on Line 67, through increased tolls, if a pipeline company could increase the amounts of heavy crude oil transported along this line without new infrastructure.[117]

118. The testimony of Mary Ellen Denomy does not point to a different conclusion. In pre-filed testimony, and later during the evidentiary hearing, Ms. Denomy reasoned that Enbridge could avoid apportionment along Line 67 if it was willing to transport both light and heavy grades of crude oil along Line 4. Line 4 is adjacent to Line 67 in Minnesota, and transports both heavy crude oil and "light, sour crude oil" from Clearbrook, Minnesota, to Superior, Wisconsin. As Ms. Denomy testified: "Enbridge may avoid constraints on any one of its pipelines by shifting capacity to other pipelines. As such, the Mainline System as a whole should not be considered apportioned when Enbridge voluntarily choses to fully utilize a single pipeline while leaving substantial unutilized capacity on other pipelines."[118]

119. There are reasons to doubt that an additional 230,000 bpd of heavy crude oil capacity can be obtained by transporting additional barrels of heavy crude oil on Line 4 or shipping by alternating batches of light and heavy crude oil along this pipeline. In general, a pipeline has less capacity to transport heavy crude oil than light crude oil. Thus, there is not a 1-for-1 correlation between the excess capacity that may exist on Line 4, which does ship light crude oil, and the additional amounts of heavy crude oil that could be transported along this line. The capacity of Line 4 to ship additional barrels of heavy crude oil is substantially less than 230,000 bpd.[119]

120. Further, in order to utilize Line 4 for additional heavy crude oil shipments, it is likely that additional pumping stations, and a Certificate of Need proceeding like this case, would be required before any such shipments could occur.[120]

121. While shipping alternating batches of light and heavy crude oil is possible, and is done today, it does create a series of operational difficulties for the transportation company. Pipelines that ship different types of crude oil are less efficient than those lines that are optimized for transportation of a particular type of oil.[121]

122. More importantly, shipping alternating batches of different types of crude oil results in mixture of the shipments (known as "interface contamination"), frustrating the later use of the oil for its intended purpose. For example, if a refinery that is designed to process light, "sweet" crude oil were to receive a shipment that had

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[117] Ex. 53, at 3 (Denomy Rebuttal); HEARING TRANSCRIPT, Volume 1, at 26 and 137(Otis Testimony and Cicchetti Testimony).

[118] Ex. 54, at 3 (Denomy Surrebuttal).

[119] *Compare,* Ex. 15, at 33-34 (Earnest Rebuttal); Ex. 21, at 3 (Earnest Surrebuttal); Ex. 23, at 3-4 (Jurgens Surrebuttal) with HEARING TRANSCRIPT, Volume 3, at 61- 62 (Demony Testimony).

[120] Ex. 23, at 3 (Jurgens Surrebuttal); *see also,* Minn. R. 7853.0030 (D).

[121] HEARING TRANSCRIPT, Volume 3, at 62 (Demony Testimony).

significantly higher sulfur content, because of interface contamination from an adjoining shipment of heavy crude oil, the refiner would have difficulty processing the mixed liquid into jet fuel.[122]

123. Similarly, refiners that ordinarily process heavy crude oil tend to have limited capability to process light crude oil. The crude oil distillation units that are designed to process heavy crude oil require substantial adjustment and modification in order to refine light, sweet crude oil.[123]

124. In those cases where these adjustments and modifications are made, one of the results is under-utilization of equipment and infrastructure that was designed for the refining of heavy crude oil.[124]

125. Refiners expect to receive from pipelines crude oil of the same quality that the oil had at the point of purchase. Moreover, refiners expect that the types of oil that arrive from pipelines will closely match the refining infrastructure at the receiving plant. So as to meet these marketplace expectations, Enbridge dedicates Line 67 to the shipment of heavy crude oil.[125]

Criteria A-5: Contributions of the Facility to the Efficient Use of Resources

126. Line 67 was originally designed, sized, constructed and tested so as to facilitate a later upgrade to an 800,000 bpd capacity, with modest impacts to the surrounding environment.[126]

127. The total design capacity of the pipeline is 880,000 bpd and it is common for pipeline operators to run pipelines at 90 percent of the line's total design capacity.[127]

128. Enbridge has implemented a series of programs to minimize the energy utilized for safe and effective pipeline operation. Enbridge uses a computer control system and a series of variable frequency induction motor drives to calibrate the pressure and flow rates within the pipeline. By closely calibrating the pipeline pressure, Enbridge avoids waste or dissipation of needed energy within the pipeline.[128]

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[122] Ex, 21, at 3 (Earnest Surrebuttal); Ex. 23, at 5 and Exhibit A.6, Response to MN350/Sierra Club Information Request 3.d (Jurgens Surrebuttal); Ex. 24, Enbridge Response to MN350/Sierra Club Information Request 3.k (Enbridge Responses to MN350/SIERRA Club Information Requests 3); Ex. 54, at 3-4 (Denomy Surrebuttal) (quoting Attachment MED-33, which is Enbridge's Response to MN350/Sierra Club Information Request 3.c); HEARING TRANSCRIPT, Volume 1, at 106-08.

[123] Ex. 21, at 4 (Earnest Surrebuttal).

[124] *Id.*

[125] *Id.*; HEARING TRANSCRIPT, Volume 1, at 106 (Earnest Testimony).

[126] Ex. 1, § 7853.0540, at 1; Ex. 13, at 4; Ex. 35 at 32 (Otis Direct); HEARING TRANSCRIPT, 167-68 (Jurgens Testimony).

[127] Ex. 1; § 7853.0230 at 11-12.

[128] Ex. 1; § 7853.0260 at 1-2.

129. Further, Enbridge tracks firm and non-firm power requirements for its pipeline operations and works closely with electrical utilities to plan for transmission and generation needs.[129]

130. The proposed project will effectively use energy resources when moving large quantities of heavy crude oil.[130]

Alternatives to the Proposed Facility

131. In pre-filed testimony, and later during the evidentiary hearing, MN350/Sierra Club urged adoption of a "no action" alternative. As these intervenors reasoned, additional demand for crude oil could be supplied through existing pipelines, planned pipelines, rail transportation and other energy sources.[131]

Criteria B-1: Size, Type and Timing of Facility in Comparison to Alternatives

B-1-A: Keystone XL

132. MN350/Sierra Club MN350/Sierra Club asserted that completion of the Keystone XL Pipeline could eliminate the need for the project "for years."[132]

133. As noted above, however, the in-service date for Keystone XL pipeline is not known. It is unlikely that the Keystone XL pipeline will be operational on or around July 1, 2015.[133]

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[129] *Id.*

[130] *Id.*

[131] *See e.g.,* Ex. 52, at 14 (Denomy Direct); Ex. 53, at 13 (Denomy Rebuttal); HEARING TRANSCRIPT, at 60 and 71-72 (Denomy Testimony).

[132] Ex. 52, at 12 (Denomy Direct); Ex. 53, at 15 (Denomy Rebuttal).

[133] *Compare,* Ex. 54 at 22 (Demony Surrebuttal) ("The permitting delays in the U.S. are not the impetus for these export pipelines, because the industry has been planning these projects since before delay of the Keystone XL became a political hot button .... Moreover, the only U.S. crude oil import pipeline project that has been subject to substantial delay is the Keystone XL Pipeline.") and HEARING TRANSCRIPT, Volume 3 at 102-04 (Demony Testimony) with *Keystone XL Pipeline Project Review Process: Provision of More Time for Submission of Agency Views* (U.S. Department of State, Office of the Spokesperson, April 18, 4014) ("On April 18, 2014, the Department of State notified the eight federal agencies specified in Executive Order 13337 *we will provide more time* for the submission of their views on the proposed Keystone Pipeline Project. Agencies need additional time based on *the uncertainty created by the on-going litigation* in the Nebraska Supreme Court which could ultimately affect the pipeline route in that state. In addition, during this time we will review and appropriately consider the unprecedented number of new public comments, approximately 2.5 million, received during the public comment period that closed on March 7, 2014. The agency consultation process is not starting over. The process is ongoing, and the Department and relevant agencies are actively continuing their work in assessing the Permit application. The Permit process will conclude once factors that have a significant impact on determining the national interest of the proposed project have been evaluated and appropriately reflected in the decision documents. *The Department will give the agencies sufficient time to submit their views.*") (emphasis added) (http://www.state.gov/r/pa/prs/ps/2014/04/224982.htm).

134. Even if the Keystone XL had the necessary regulatory approvals and could begin operations in 2015, there is doubt that it could ship heavy crude oil to key refining centers in the Midwest. The better reading of the hearing record is that the Keystone XL pipeline is not a reasonable alternative to the proposed project.[134]

B-1-B: Shipment of Heavy Crude Oil to Midwestern Refineries by Railroad

135. One possibility suggested by the Environmental Intervenors is to increase the number and frequency of railroad tank cars carrying crude oil to Midwestern refineries. A railroad tank car can hold 585 barrels of heavy crude oil.[135]

136. To transport 230,000 bpd of crude oil by way of railroad tanker cars would require dispatching 786 rail cars each day through Minnesota – 393 cars loaded with crude oil and 393 empty cars returning to the loading facilities.[136]

137. At present, the purchase of new tanker cars is subject to significant supply constraints and such cars are currently "back-ordered" for periods lasting between 15 and 18 months. Even with railcar manufacturers producing new cars at 100 percent of their capacity, there is currently a backlog of orders for 47,000 railway cars.[137]

138. Additionally, to transport crude oil to the destinations that are nominated by oil shippers would require additional rail car loading and unloading facilities and the construction of new lateral rail service lines. There is no suggestion in the record that either these facilities, or the accompanying railway cars, would be available for service at an earlier date than an expanded Line 67.[138]

B-1-C: Renewable Energy Products

139. While the record shows strong public support for an increasing use of renewable energy technologies in order to meet regional energy needs, Dr. Charles Cicchetti testified credibly that there are not widely-available renewable alternatives to liquid petroleum. As Dr. Cicchetti explained, renewable technologies are able to supplant demand for fuel-based electricity generation, but there are not practicable alternatives for liquid petroleum. This is because the key drivers of demand for liquid

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[134] Ex. 35 at 33–35 (Otis Direct); Ex. 37 at 17 (Otis Surrebuttal); HEARING TRANSCRIPT, Volume 3 at 103-04 (Demony Testimony).

[135] Ex. 16, Attachment C (Earnest Rebuttal); Ex. 54 at 17 (Denomy Rebuttal) ("[R]ailway exports are in fact a viable alternative to the Project and that the cost disadvantages and railcar capacity constraints presented by Enbridge and agreed with by the DOC witness may not be as significant as described by Enbridge .... Ultimately, though, railroad exports from Canada in fact are now a significant proportion of total exports and likely to grow, such that they should be considered to meet part of the future demand for crude oil imports from Canada.").

[136] Ex. 20, at 19 (Rennicke Rebuttal).

[137] Ex. 1, § 78563.0540 at 6.

[138] Ex. 1, § 78563.0540 at 6; Ex. 13 at 9.

petroleum – namely, submarket demands for refined products such as gasoline, diesel fuel or asphalt – cannot now be met by renewable products.[139]

Criteria B-2: Cost of Facility and Energy in Comparison to Alternatives

B-2-A: Costs of a Trucking Alternative

140. Using tanker trucks to carry 230,000 barrels of oil per day from Hardisty, Alberta, to oil terminals in the Midwest would be cost-prohibitive. Such an undertaking would require a fleet of 8,280 tankers trucks, costing approximately $200,000 each. Thus the first year expenses for trucks and drivers of $2,387,372,400. This sum is 15 times the $159.3 million Enbridge proposes to expend on the proposed project.[140]

141. More problematic, if one assumes a five-year useful life for tanker trucks that are constantly making the 2,300-mile circuit between Hardisty, Alberta to Superior, Wisconsin, the larger fleet would need to be replaced four times over the useful life of the project. Thus, the $1,656,000,000 initial purchase costs for the fleet would recur at least four times.[141]

142. Ordinarily, crude oil is sent by truck only to locations that are relatively close to a refinery. Trucking is the most expensive transportation mode for moving crude oil over long distances.[142]

B-2-B: Costs of a Rail Alternative

143. Using railroad cars to carry 230,000 barrels of oil per day from Hardisty, Alberta, to oil terminals in the Midwest would be less cost-effective than transporting the same amounts of oil by pipeline. For example, transporting a barrel of oil along the Canadian National railway between Edmonton, Alberta, and Chicago, Illinois, adds $11.31 to the cost of the barrel. Similarly, transporting a barrel of oil along the Canadian Pacific railway between the same points, adds $10.01 to the cost of the barrel.[143]

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[139] *Compare, e.g.,* CASS LAKE PUBLIC HEARING TRANSCRIPT, at 39-40 (Hansen Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 62 (LaForge Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 76 (Crowley Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 87 (Fisher-Merritt Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 149 (Powers Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 163 (DeWitt Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 51 (Ham Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 94 (Romano Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 110 (Hauser Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 120 (Hovey Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 147 (Ferber Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 210 (Nerbonne Testimony) with HEARING TRANSCRIPT, Volume 2, at 241-42 (Cicchetti Testimony).

[140] Ex. 1, § 7853.0540, at 3-5.

[141] Ex. 1, § 7853.0540, at 5.

[142] Ex. 6, at 11 (Earnest Direct).

[143] Ex. 16, Attachment C (Earnest Rebuttal).

144. The current Enbridge mainline toll between Edmonton and Chicago is $4.31 per barrel. Accordingly, the cost advantage of moving oil by pipeline, instead of by rail, amounts to between $5.70 and $7.00 per barrel, depending upon which railway line is used.[144]

145. Enbridge's estimate that Minnesota refineries would face cost increases of $70 million each year if an expansion of Line 67 does not occur, is reasonable and well-grounded in the hearing record.[145]

146. Accommodating an additional 786 railway trips to refineries and oil terminals in Minnesota would require significant capital investments, although no party submitted detailed pricing on the nature and scope of these expenses. It is clear from the record that shipping large volumes of crude oil by railway is not more cost-effective than transporting these same quantities through an expanded Line 67.[146]

147. Further still, an increase of 786 railcar trips between area refineries and Alberta, Canada, would significantly burden Minnesota's railway corridors and diminish the access that agricultural and mining firms have to export markets.[147]

148. The Department of Commerce, and the firms that nominate shipments of oil for transportation, conclude that expanding Line 67 is a preferable option to routing these same amounts by rail to their destinations.[148]

Criteria B-3: Impacts upon Environment from the Facility in Comparison to Alternatives

149. In its application, Enbridge proposes a series of enhancements so as to marshal additional horsepower (and pipeline pressure) along Line 67. The project includes construction of four new pump buildings, improvements to existing pumping station sites, modifying existing pipes and installing new instrumentation.[149]

150. Construction of four new pump station facilities will impact 15.8 acres of agricultural land, 2.98 acres of meadow wetlands and 2.1 acres of trees and shrubs.[150]

151. Enbridge owns all of the land that will be impacted by construction of the project.[151]

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[144] *Id.*

[145] *See, e.g.,* Ex. 15 at 22 (Earnest Rebuttal).

[146] Ex. 16, Attachment C (Earnest Rebuttal); *compare also,* HEARING TRANSCRIPT, Volume 3, at 72-73 (Demony Testimony).

[147] Ex. 20, Report at 16-22, 24-30 and 34 (Rennicke Rebuttal); HEARING TRANSCRIPT, Volume 1, at 143.

[148] Ex. 35, at 39 (Otis Direct); HEARING TRANSCRIPT, Volume 2, at 56.

[149] Ex. 1, § 7853.0230, at 6-10.

[150] Ex. 18, at 2-3 (Turner Rebuttal).

[151] Ex. 10, at 3 (Turner Direct).

152. Enbridge proposes to undertake some trench dewatering and hydrostatic testing, both of which will result in water discharges. Trench dewatering volumes will vary depending upon precipitation and ground water levels, but Enbridge estimates it will encounter between zero and 25,000 gallons of groundwater during construction. It pledges that it will conduct any trench dewatering activities in accordance with its Environmental Mitigation Plan and applicable permits.[152]

153. Hydrostatic testing of new equipment will require use of between 21,000 and 28,000 gallons of water at each station. Like trench dewatering activities, Enbridge pledges to conduct these tests in accordance with its Environmental Mitigation Plan and any applicable permits.[153]

154. Construction of the project will result in short-term increases in noise and fugitive emissions due to operation of construction equipment. However, Enbridge forecasts that the new emissions will not require a discharge permit nor will post-construction ambient noise levels increase because of enhancements to Line 67.[154]

155. To counter-balance these impacts, Enbridge proposes to plant a tree for each tree that is removed in order to build the new facilities and to generate a kilowatt-hour of renewable energy for each kilowatt-hour of energy that is consumed in its pipeline operations.[155]

156. Both the railway and truck alternatives would result in more emissions from transportation for each barrel of oil that is shipped.[156]

157. Likewise, the disturbances from increased truck or rail traffic, traffic congestion and noise pollution, all make the railway and truck alternatives less desirable than the proposed project.[157]

Criteria B-4: Reliability of the Facility in Comparison to Alternatives

158. The key objective of the project is to deliver larger quantities of heavy crude oil to refineries in the Upper Midwest (including Minnesota) and the Gulf Coast. Following delivery, this oil is converted into refined products that are shipped to consumers in Minnesota, the Midwest, and elsewhere in the world.[158]

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[152] Ex. 1, § 7853.0620, at 1 and Table 7853.0620-1.

[153] Ex. 1, § 7853.0620, at 1-2 and Table 7853.0620-1.

[154] Ex. 1, §§ 7853.0620 at 2-3 and 7853.0630, at 1-6; HEARING TRANSCRIPT, Volume 1, at 161.

[155] Ex. 1; § 7853.0260, at 2-3; HEARING TRANSCRIPT, Volume 1, at 162.

[156] Ex. 35 at 36-37 (Otis Direct); *see also,* ST. PAUL PUBLIC HEARING TRANSCRIPT, at 194 (Underdahl Testimony).

[157] Ex. 35 at 37-38 and LBO-6 (Otis Direct); *see also*, HEARING TRANSCRIPT, Volume 3, at 72-73 (Demony Testimony).

[158] *See, e.g.,* Ex. 7, at 3-4 (Muse Stancil Benefits Analysis).

159. Minnesota, and its sister states, benefit from maintaining a more secure supply of crude oil. Access to crude oil from Canada reduces the United States' dependence upon oil that is imported through ocean-going tankers. The oil that is received from countries outside of North America is subject to the special risks faced by all ocean-going vessels on the high seas. In addition, these supplies face the risks of sudden diplomatic and political conflict with OPEC-member nations in South America or the Middle East.[159]

160. Likewise significant, there is a highly-integrated system for distributing refined petroleum products throughout the Midwest. Refined products from the crude oil that is transported along Line 67 are regularly and reliably available to Minnesotans from the refineries within the state and wider region.[160]

161. Lastly, on a per ton-mile basis, the risks of casualty and a discharge of hazardous materials are significantly lower when crude oil is transported along a pipeline, such as Line 67, than when it is transported by truck or railway car. A high rate of safe deliveries of crude oil is a key component of energy reliability.[161]

162. During the public hearing and comment period, several commentators expressed concern over expanding crude oil shipments by rail or truck – options that they argued would increase traffic congestion and the risk of an oil spill.[162]

163. No party put forward an alternative that contributed more to the reliability of regional energy supplies than the proposed project.[163]

Consequences to Society from the Proposed Facility

Criteria C-1: Relationship of Facility to State's Overall Energy Needs

164. Because Enbridge operates its Mainline System as a common carrier, transportation of crude oil to Minnesota is burdened, and reduced in *pro rata* shares, as demand for oil increases at points East and South of Minnesota on the system. As Neil Earnest noted in his testimony, if the proposed expansion is not approved, and the Flanagan South pipeline later reaches 75 percent of its operating capacity (430,000 bpd), significant apportionment will likely result "upstream" on Line 67. Describing generally the magnitude of the effect, he testified that under a 25.9 percent

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[159] Ex. 7, at 17-24 and 27-29 (Muse Stancil Benefits Analysis); Ex. 19, at 7-8 and 53 (Cicchetti Rebuttal).

[160] Ex. 7, at 4 and 14-24 (Muse Stancil Benefits Analysis).

[161] Ex. 1, § 7853.0250, at 2.

[162] *See, e.g.,* CASS LAKE PUBLIC HEARING TRANSCRIPT, at 36 (David Testimony); FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 53 (Kletcher Testimony); FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 59 (Anderson Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 147 (Powers Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 81 (Chastan Testimony); Comments of Chuck MacFarlane (April 10, 2014).

[163] *See,* Ex. 35, at 39 (Otis Direct).

apportionment, deliveries to Minnesota refineries would be trimmed by 62,000 bpd. Moreover, the severity of the shortages is likely to increase if, and when, the Flanagan South pipeline begins transporting 600,000 bpd.[164]

165. While the proposed expansion will not eliminate the apportionment-producing effects of the new Flanagan South capabilities, it forestalls apportionment on Line 67 for a time, and then cuts its impact by nearly half when it reemerges.[165]

166. Delaying apportionment, or reducing its severity, along Line 67 benefits Minnesota's refineries, consumers and energy sector.[166]

167. Likewise important, the addition of 230,000 bpd bolsters the domestic "spare capacity" of oil. Spare capacity commodity stocks can respond quickly to disruptions in other sources of oil supply. Increasing the amounts of spare capacity contributes to the stability of prices following such disruptions and reduces both the severity and duration of sudden price shocks.[167]

168. Dr. Charles Cicchetti testified credibly as to the benefit of reducing dependence upon sources of oil outside of North America and of the measurable benefit that follows from purchasing more oil from Canada. For petroleum consumers in Minnesota, he estimates that the project will result in significant reductions in price and supply volatility. Dr. Cicchetti calculates the Net Present Value benefit of these reductions to be $1 billion each year. Dr. Cicchetti further calculated the Net Present Value benefit to Minnesota's gasoline consumers to be $788 million each year.[168]

169. For the region, the benefits of the project are even larger. Dr. Cicchetti calculated the Net Present Value benefit of the project to the states within PADD II to be approximately $18.4 billion.[169]

170. If the proposed project is approved, Minnesota consumers will likely pay less for petroleum products than they otherwise would without the added pipeline capacity. Additional capacity on Line 67 will likely contribute to longer periods of local price stability for petroleum products, and fewer price shocks of shorter duration than would occur without the project.[170]

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[164] *See,* Ex. 15 at 19, 20 and 23 (Earnest Rebuttal); HEARING TRANSCRIPT, Volume 2, at 43; *see also,* Ex. 7, at 23.

[165] Ex. 15, at 19-20 (Earnest Rebuttal).

[166] *See,* Ex. 1, § 7853.0240, at 4; Ex. 8, at 7; Ex. 13 at Attachments C, D and E (Curwin Rebuttal); Ex. 15 at 22-23 and Table 1 (Earnest Rebuttal); Ex. 19, at 6-7 and 10 (Cicchetti Rebuttal); Ex. 37, at 7 (Otis Surrebuttal).

[167] Ex. 19, at 10-21 (Cicchetti Rebuttal); HEARING TRANSCRIPT, Volume 2, at 99 – 102 (Cicchetti Testimony).

[168] Ex. 19, at 41-42 (Cicchetti Rebuttal).

[169] *Id.* at 51-52.

[170] *Id.* at 6-7; HEARING TRANSCRIPT, Volume 2, at 104-120 (Cicchetti Testimony).

171. During the public hearing and comment period, several commentators argued that purchasing a greater share of crude oil from Canada, a country with whom the United States has a wide-ranging, stable and cordial set of trade relations, would contribute to domestic energy security.[171]

172. Still other commentators expressed skepticism that the proposed expansion of Line 67 had a significant relationship to domestic needs for petroleum. These commentators argued that the real beneficiaries of the proposed expansion were oil-importing countries overseas. Thus, in the view of these commentators, Minnesotans would bear the environmental risks of shipping commodities that are destined for foreign consumers.[172]

Criteria C-2-i: Impact Upon the Natural Environment

173. With respect to "the effect of the proposed facility, or a suitable modification of it, upon the natural ... environment[] compared to the effect of not building the facility," Enbridge focuses its presentation on the likely impacts to the land, water and air in areas adjacent to pumping facilities. The focus of its presentation is, understandably, narrow; estimating only the externalities that are associated with new stations, additional equipment and operating a more robust pipeline.[173]

174. The Environmental Intervenors, and thousands of public commentators, point to the environmental impacts of consuming an additional 230,000 bpd of heavy crude oil. These parties and participants argue that facilitating the processing of this amount of oil – however it may be transported into Minnesota – will be catastrophic to the natural environment; perhaps imperiling human civilization.[174]

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[171] *See, e.g.,* FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 36 (Stone Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 75 (Ridall Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 35 (Melander Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 116 (Walsh Testimony).

[172] *See, e.g.,* CASS LAKE PUBLIC HEARING TRANSCRIPT, at 102 (Elwood Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 93-94 (Jeatran Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 169 (Rust Testimony); Comments of Janice Andersen (April 14, 2014); Comments of Wayne Bailey (April 14, 2014); Comments of Gregory Halbert (April 14, 2014); Comments of Anne C. Jones (April 11, 2014); and Comments of Mary Keranen (April 2, 2014).

[173] *See,* Minn. R. 7853.0130 (C)(2); Ex. 9, at 2-3 (Jurgens Direct); Ex. 10, at 1-3 (Turner Direct).

[174] *See, e.g.,* MN350/SIERRA CLUB'S POST-HEARING BRIEF, at 44 ("As testified to by Dr. John Abraham, Minnesota's risks from climate change are equally [dire] including droughts, flooding, additional health risks and harm to our agricultural, forest products and tourism economies"); DULUTH PUBLIC HEARING TRANSCRIPT, at 103-32 (McSteen Testimony) ("No one here tonight was born at the time that we began our dependence on fossil fuels. And everyone here tonight is currently dependent on fossil fuels. We all drove a car, presumably, everyone here tonight drove a car. We are a part of a system that is taking us to the edge that is causing collapse.... [T]his is about accepting that we are in this together and that we have a fight of -- we are fighting for the survival of humanity and for all we love."); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 51 (Ham Testimony) ("Our carbon-based economy has led us to the brink of planetary destruction"); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 61-62 (Hasbrouk Testimony) ("I'd like to quote from a National Geographic article about the recent scientific report from the Intergovernmental Panel on Climate Change: 'The 772 scientists who wrote and edited the report argue that world leaders

175. In this respect, the hearing record diverges, splitting into two very different directions. The record includes detail as to localized impacts of operating a more powerful pipeline and the global impacts of using, refining or burning petroleum products in general.[175]

176. As to the environmental impacts of retrofitting and operating Line 67, the construction activities will be limited in scope and duration to a handful of sites. The new pump facilities will be installed at, or adjacent to, existing stations, which are industrial sites. No new pipe will be installed outside of these facilities.[176]

177. Because the enhancements to Enbridge's equipment will occur at or near existing pipeline facilities, construction of the upgrades, and operating an expanded pipeline, will have modest impacts to other lands or uses.[177]

178. Importantly, MN350 and the Sierra Club appear to agree that in comparison to extracting crude oil from the ground in Alberta, refining the oil, or burning gasoline that is made from such oil, Enbridge's role in *transporting* Canadian crude oil to Midwestern refineries results in the release of far fewer greenhouses gases into the atmosphere. The pre-filed testimony of the Intervenors' expert John Abraham suggests that between 60 to 80 percent of the total emissions from gasoline, for example, occur when the gasoline is used in motor vehicles. A far smaller percentage, on average, results in transporting crude oil from Canadian oil fields to refineries.[178]

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have only a few years left to reduce carbon emissions to avoid -- enough to avoid catastrophic warming, which would produce significant sea level rise and large scale shifts in temperatures that would dramatically disrupt human life and natural ecosystems.' .... That U.N. report should jolt us all awake. We are standing on the edge of hell and we need to stop burning fossil fuels now. Every thinking person on this planet has to do their part to reorganize our societies away from the suicide march that we are presently on and towards a restoration project for our water, land and, most urgently, our atmosphere."); *see also,* Comments of Betsy Allis (April 14, 2014); Comments of Carol Allis (April 14, 2014); Comments of Lane Ayers (March 30, 2014); Comments of Deanna Bathke (April 14, 2014); Comments of Harry Boyte (April 14, 2014); Comments of Nicholas Carter (April 10, 2014); Comments of Kathleen Chesney (April 7, 2014); Comments of Dianne Chirpich (April 10, 2014); Comments of Lisa M. Erickson (April 10, 2014); Comments of Jeanne Gregory (April 14, 2014); Comments of John Horton (April 6, 2014); Comments of David Howell (April 10, 2014); Comments of Carol K. Johnson (April 14, 2014); Comments of Donna Krisch (April 14, 2014); Comments of Sarah Kuhnen (April 11, 2014); Comments of Brett Lease (March 30, 2014); Comments of Maureen Moore (April 6, 2014); Comments of Theresa Olson (April 14, 2014); Comments of Vilayack Praseuth (April 7, 2014); Comments of Amarnauth Ramdeen (April 6, 2014); Comments of Darby Ringer (April 11, 2014); Comments of Maggie Rozyck (April 14, 2014); Comments of Akilah Sanders-Reed (April 14, 2014); Comments of Ash Stern (April 5, 2014); Comments of Ben Van Lierop (March 30, 2014); Comments of Elizabeth Weir (April 8, 2014); and Comments of Jerry Yanz (April 10, 2014).

[175] *See generally,* Section on Criteria C-2-i.

[176] *See,* Ex. 1, § 7853.0610, at 4-5; Ex. 1, § 7853.0640, at 7-8.

[177] Ex. 1, § 7853.0610 at 2, 7 and 8.

[178] *See,* Ex. 51, Attachment 7, at 7.00062 and 7.00063 (Abraham Surrebuttal) and Ex. 51, Attachment 13, at 7-8 (Abraham Surrebuttal) ("The differences between pathways are much smaller on a WTW basis than on a WTR or WTT basis due to the large-vehicle use component of GHG emissions included in the WTW results. Considering all the pathways in the present analysis, the vehicle-use phase (TTW)

179. Moreover, Mr. Abraham's pre-filed testimony suggests that, on average, the transportation of Canadian heavy crude oil to refineries results in the release of far fewer greenhouse gases than oil transportation operations in other oil producing nations – such as Angola, Ecuador or Saudi Arabia.[179]

180. A key focus for the Environmental Intervenors is thus not a comparison between Enbridge's plans to transport 230,000 bpd and alternative modes of transporting this material, but rather between extracting Western Canadian crude oil from the ground and not pumping that oil at all.[180]

181. Similarly, many of the public commentators who oppose granting a Certificate of Need point to the moral implications of using this amount of crude oil.[181]

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emissions account for 60%–80% of the WTW emissions. These results corroborate general knowledge in the field that the majority of the WTW GHG emissions occur during the TTW phase when conventional internal combustion engine vehicles are assumed.").

[179] *See,* Ex. 51, Attachment 7, at 7.00062 and 7.00063 (Abraham Surrebuttal).

[180] *See, e.g.,* Ex. 50, at 4-5 (Abraham Direct) ("The Project will result in an increased capacity to transport crude oil from the Tar Sands Region to oil refineries.... Combustion of these fuels will result in greater future emissions of CO2, the principle greenhouse gas, as well as other greenhouse gases, than would exist absent the Project."); HEARING TRANSCRIPT, Volume 3 at 26-27 (Abraham Testimony) ("If you are serious about reducing our exposure to climate change costs, then we have to leave the dirtiest carbon in the ground. In fact, the opposing expert, Dr. Cicchetti, cited a Carnegie Study yesterday, and one of the three summary points at page of that document was let us not extract unconventional dirty fossil fuels."); FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 88-89 (Pearson Testimony) (A Goldman Sachs report suggests that there is "a window of opportunity now for Alberta to be getting those oil sands, tar sands out, because they expected that that window would close over the next 10 years if the capacity to get the oil out is not built. And that therefore it would, in fact, stay in the ground."); *see also,* DULUTH PUBLIC HEARING TRANSCRIPT, at 87 (Fisher-Merritt Testimony); Comments of Harrison Beck (April 14, 2014); Comments of McKinley Johnson (April 7, 2014); Comments of Mary Ludington (April 14, 2014); Comments of Dylan Maxon (April 9, 2014); Comments of Judith Pryor (April 11, 2014); Comments of John Stuart (April 8, 2014); and Comments of Nicholas Turnman (April 9, 2014).

[181] *See, e.g.,* HALLOCK PUBLIC HEARING TRANSCRIPT, at 48 (Bragg Testimony) ("[I]t can't be denied that oil and the harvesting of fossil fuels, as us humans have started to ... initiate climate change. And so I don't see it as responsible continuing operations. I feel that is denying facts."); FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 89 (Pearson Testimony) ("I think this is something that we'll look back on some decades from now and say: 'Oh, my god, how could we have not seen what the consequence was.'"); DULUTH PUBLIC HEARING TRANSCRIPT, at 77-78 (Crowley Testimony) ("This is a global issue ... and we have a moral responsibility here in Minnesota to take a stand that shows leadership and understanding of the critical moment we are facing in history"); DULUTH PUBLIC HEARING TRANSCRIPT, at 125-26 (Bol Testimony) ("If we think about during World War II and the Nuremberg Trials, we think about that the guards had some moral responsibility, they just can't say that they were following the process, they were following the orders"); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 63 (Hasbrouck Testimony) ("Facilitating the burning of fossil fuels is an immoral act once you know the consequences"); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 199 (Ahler Testimony) ("[A]s a society and as a planet, we cannot afford to extract or use this additional tar sands oil. Increasing the capacity of the Alberta Clipper pipeline would make us bad neighbors to the global community. We have a moral and ethical responsibility to consider all of our global neighbors in this decision, and this is clearly not in the interest of the global public."); *see also,* Comments of Wilamette Brennaman (April 10, 2014); Comments of Nan Cocliss (April 6, 2014); Comments of Peter J. Frederick (March 30, 2014); Comments of Terrie Ten Eyck (April 14, 2014).

182. While the Commission could decide not to grant a Certificate of Need for this project on the grounds that Minnesota should not permit the transportation of heavy crude oil, there is real doubt that withholding approval for an expanded Line 67 will result in Canadian oil supplies "remaining in the ground." This is because the price impact of denying the Certificate of Need will add approximately $11 to the cost of a barrel of oil. As Dr. Cicchetti persuasively testified, however, Canadian oil producers will very likely continue to extract oil from Alberta so long as the Gulf Coast price point for a barrel of oil is at least $50 per barrel – a level that is half the rate at which Canadian oil regularly trades now. Accordingly, while an $11 price change on a $100 barrel of oil may be very unwelcome to certain companies in the oil business such a spike is not likely to dissuade oil producers from extracting oil from Alberta or refiners from processing Canadian petroleum.[182]

183. The Environmental Intervenors likewise argue that all of the greenhouse gas emissions that are associated with the extraction, refining and use of Alberta crude oil should be attributable to this project. As the Intervenors reason, these greenhouse gas impacts will occur because Enbridge transports heavy crude oil from tank farms in Canada to refineries in the United States.[183]

184. Attributing all of the greenhouse gas impacts from the oil that Enbridge transports, to the project, is problematic – in terms of both causation and calculations. As a common carrier, Enbridge delivers crude oil between destinations along the Mainline System. It does not extract or refine the oil that it transports. This is important because the amounts of greenhouse gases released could, potentially, be very different depending upon how oil is extracted, where it is refined and how it is used.[184]

185. The record does not support a conclusion that Enbridge has the market-power or the legal authority to direct the final destinations of nominated shipments.[185]

186. The record does not suggest that Enbridge has the ability to direct how Canadian crude oil is extracted, where it is refined or how it is used.[186]

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[182] *Compare,* Ex. 16, Attachment C with HEARING TRANSCRIPT, Volume 2 at 121 and 245-46 (Cicchetti Testimony).

[183] *See,* Ex. No. 50, at 5 (Abraham Direct) ("*The increased greenhouse gas emissions from the crude oil transported by the Project* will increase the concentration of greenhouse gases in our atmosphere. This increased concentration of greenhouse gases will adversely impact our atmosphere and result in faster *overall warning of our global climate as well as result in greater changes to Minnesota's climate than would happen without the Project.*") (emphasis added).

[184] *See, e.g.,* Ex. 51, Attachment 7, at 7.00039, 7.00062 and 7.00063 (Abraham Surrebuttal); HEARING TRANSCRIPT, Volume 2, at 153-54 and 170-71 (Cicchetti Testimony).

[185] *See,* HEARING TRANSCRIPT, Volume 1 at 185 (Curwin Testimony) ("[A]s a common carrier we have to essentially provide equal opportunity to our system. Similarly situated shippers are entitled to the same access as each other that are similarly situated."); HEARING TRANSCRIPT, Volume 2 at 38 (Otis Testimony) ("Enbridge's Line 67 is a common carrier pipeline, Enbridge is required to treat every shipper nominating capacity on its mainline system equally").

[186] *See,* Section on Criteria C-1, *supra.*

187. For these reasons, the better reading of the requirements of Part 7853 is to assess the environmental impacts at, or adjacent to, Line 67. The record establishes that the range of these impacts, at points near the pipeline, is temporary and modest.[187]

Criteria C-2-ii: Impact Upon the Socioeconomic Environment

188. The cost of the project is estimated at $159.3 million.[188]

189. The project will benefit the localities immediately adjacent to the affected pumping stations, largely through the spin-off effects from construction-related activity and the higher personal property tax revenues garnered from the upgraded facilities.[189]

190. The construction-related impacts include new, project-related demand for construction workers, skilled tradesmen, construction materials, fuel, equipment and services from local businesses.[190]

191. Using the Regional Input-Output Modeling System, Enbridge estimated that approximately 2,400 person-years of temporary construction jobs will be created during the nine-month construction phase of the project.[191]

192. The Regional Input-Output Modeling System predicts total economic benefit of the project is estimated at $360 million during the year of construction.[192]

193. During the construction phase of the project, unemployment in the areas near the pumping stations would be reduced and payroll taxes would rise.[193]

194. Enbridge expects to purchase some of the items needed for construction of the project locally, including consumables, fuel, equipment, and miscellaneous construction-related materials.[194]

195. Local businesses would also benefit from the temporary demand for goods and services generated by the workforce's need for food, lodging and supplies.[195]

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[187] *Id.*

[188] Ex. 1, § 7853.0240, at 13.

[189] *See, e.g.,* Ex. 1, § 7853.0240 at 11-13; THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 53-54 (Grover Testimony).

[190] Ex. 1, § 7853.0240, at 14.

[191] *Id.* at 12.

[192] *Id.*

[193] *Id.*

[194] *Id.*

[195] *Id.*

196. During the public hearings, among the most-energetic proponents of the project were tradesmen and local officials who live in communities that straddle the pipeline route. Each group hopes that the project would result in lower unemployment in higher-wage construction and engineering sectors, and that those who obtain work will in turn look to other local firms for goods and services.[196]

197. Using its current tax schedules, Enbridge estimates that as much as $2.23 million in additional property taxes will be paid in Minnesota starting in 2016.[197]

198. Local property taxpayers would likely benefit from a larger local tax base, against which levies for school districts and local units of government could be made. During the public hearing in Thief River Falls, for example, local officials testified as to the relief that a broader and more diversified tax base means to homeowners in Clearwater and Marshall Counties.[198]

199. Lastly, the projected $360 million in economic benefits, and later purchases of crude oil, contributes to a positive trade relationship between Minnesota and the Canadian provinces.[199]

Criteria C-3: Impact of the Facility Upon Future Development

200. The project will result in increased access to Canadian heavy crude for refineries in the United States; including refineries in Minnesota, Wisconsin, the Chicago area, the Detroit area, the Toledo area, eastern Canada and the United States Gulf Coast region.[200]

201. Refiners require access to reliable and economical supplies of raw materials in order to remain competitive and plan for expansions of their facilities.[201]

202. Refiners in the Chicago area, the Detroit area, the Toledo area, eastern Canada and along the United States Gulf Coast have the capability to refine heavy crude oil or other grades of crude oil sourced from western Canada.[202]

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[196] *See, e.g.,* THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 29 (Chastan Testimony); CASS LAKE PUBLIC HEARING TRANSCRIPT, at 46 (McMahon Testimony); FLOODWOOD PUBLIC HEARING TRANSCRIPT, at 39 (Britz Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 35 (Barr Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 69-70 (Rossetter Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 119 (Bennett Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 40 (Poweleit Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 44 (Shew Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 110-11 (Cannata Testimony).

[197] Ex. 1, § 7853.0240, at 13.

[198] THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 53-54 (Grover Testimony); THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 56 (Bing Testimony); *see also,* ST. PAUL PUBLIC HEARING TRANSCRIPT, at 32-33 (Blazar Testimony).

[199] HEARING TRANSCRIPT, Volume 2, at 71, lines 1-9.

[200] Ex. 1, § 7853.0250, at 5.

[201] *Id.*

203. Refineries along the United States Gulf Coast are configured to process the increased supplies that will be transported through existing pipeline systems via the expanded Line 67.[203]

204. Enbridge estimates that if the project is approved, in 2015 the project will yield economic benefits of 97 new jobs and another $23 million in economic impacts. These estimates rise to 183 new jobs per year and an additional $44 million economic impact for each year after 2015.[204]

205. The Minnesota Chamber of Commerce echoed the claims of regional refiners, asserting that better access to supplies of Canadian crude oil would drive expansions of local business, inside and outside of the oil industry.[205]

Criteria C-4: Socially Beneficial Uses of the Oil Transported by the Facility

206. The refineries that receive crude oil from Enbridge's Mainline System produce a wide range of industrial and commercial products – including transportation fuels, heating oil, asphalt and jet fuel.[206]

207. Following the development of these products, Midwestern refineries ship these materials to markets within Minnesota and PADD II and across the globe. Because the distribution system for these items is highly integrated, refined products produced from crude oil are readily available in each of these markets.[207]

208. The secondary markets for refined petroleum include manufacturers of medicines, health products and feed stocks.[208]

The Facility's Future Compliance with Law and Rules

Criteria D: Design, Construction or Operation of the Line and the Law

209. The project is subject to a number of federal, state and local permitting requirements.[209]

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[202] *Id.*

[203] *Id.*

[204] Ex. 1, § 7853.0240, at 13.

[205] ST. PAUL PUBLIC HEARING TRANSCRIPT, at 31-33 (Blazar Testimony).

[206] Ex 1, § 7853.0240, at 1-2 and 14; Ex. 7 at 1 (Muse Stancil Benefits Analysis).

[207] Ex. 7 at 3-4 and 17-19 (Muse Stancil Benefits Analysis).

[208] Ex. 35 at 47 (Otis Direct).

[209] Ex. 1, § 7853.0230, at 14-5 and Table 7853.0230-2.

210. During the proceedings on its application to the Commission, Enbridge began the permitting process with these other units of government.[210]

211. The design, construction and operation of the project are subject to regulation and oversight by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).[211]

212. Enbridge had its Incident Contingency Plan (formerly known as an Emergency Response Plan) reviewed by multiple agencies, including the PHMSA and the U.S. Environmental Protection Agency.[212]

213. PHMSA approved Enbridge's Incident Contingency Plan in July of 2013.[213]

214. With respect to predictions of Enbridge's future compliance with federal, state and local environmental standards, the public hearing record again diverges. Pointing to the 2010 pipeline spill in Kalamazoo, Michigan, many stakeholders questioned Enbridge's ability to safely transport heavy crude oil along Line 67.[214]

215. Still other stakeholders expressed doubt as to whether such quantities of oil could ever be safely transported, particularly in areas near sensitive waterways.[215]

216. In an effort to address this critique, tradesmen and engineers who worked on Enbridge sites in the past testified as to the company's rigor on environmental compliance.[216]

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[210] Ex. 1, § 7853.0230 at Table 7853.0230-2.

[211] Ex. 1, § 7853.0270, at 2; *see also,* 49 U.S.C. 2001 *et. seq*; 49 C.F.R. Part 195.

[212] HEARING TRANSCRIPT, Volume 1, at 189-190 (Curwin Testimony).

[213] *Id*, at 190 (Curwin Testimony).

[214] *See, e.g.,* CASS LAKE PUBLIC HEARING TRANSCRIPT, at 100-102 (Elwood Testimony); SAINT PAUL PUBLIC HEARING TRANSCRIPT, at 217-19 (Wahmhoff Testimony); Comments of Kendrick Alexander (April 14, 2014); Comments of Louis B. Asher (April 7, 2014); Comments of Harrison Beck (April 14, 2014); Comments of Kathleen O'Halloran Blake (April 14, 2014); Comments of Winston Cavert (April 9, 2014); Comments of Loni Coppin (April 9, 2014); Comments of Lisa M. Erickson (April 10, 2014); Comments of Sara Nelson-Pallmeyer (April 9, 2014); Comments of Lisa Wersal (April 7, 2014).

[215] *See e.g.,* ST. PAUL PUBLIC HEARING TRANSCRIPT, at 77-78 (Hollander Testimony); Comments of Hayat Ahmed (April 7, 2014); Comments of Tayler Bartell (April 14, 2014); Comments of Judith Britton (April 11, 2014); Comments of Angelina Chase (April 14, 2014); Comments of Jason Cooney (April 14, 2014); Comments of Amber Cougle Fienwald (April 11, 2014); Comments of Tega Foliui (April 14, 2014); Comments of Larry D. Hawke (April 14, 2014); Comments of Tawna Herdklotz (April 7, 2014); Comments of Katherine Korus (April 9, 2014); Comments of Ruthie Nowak (April 14, 2014); Comments of Wendy Parks (April 14, 2014); Comments of Steve Sandberg (April 14, 2014); Comments of Kevin Ray Smith (April 11, 2014); Comments of Mary Jane Sommerville (April 14, 2014); Comments of Rose Vennewitz (April 14, 2014); and Comments of Pader Vue (April 6, 2014).

[216] *See, e.g.,* THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 30 (Chastan Testimony); THIEF RIVER FALLS PUBLIC HEARING TRANSCRIPT, at 43-44 (Skipton Testimony); CASS LAKE PUBLIC HEARING TRANSCRIPT, at 45 (Zeto Testimony); DULUTH PUBLIC HEARING TRANSCRIPT, at 38 (Weidman Testimony);

217. The best reading of the hearing record is that Line 67 can safely transport 800,000 bpd and that this result is best guaranteed through high standards in the permitted process and rigorous oversight of company compliance with conditions imposed by the Commission.[217]

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The record contains significant and credible forecasts of increased, near-term demand for heavy crude oil within PADD II.[218]

2. If the project is not approved, in the near-term, Lines 4 and 67 will enter into ever-increasing levels of apportionment. The shippers, refiners and residents of Minnesota and neighboring states would all be negatively impacted by increasing levels of apportionment on Lines 4 and 67.[219]

3. There are no conservation programs, at either the state or federal level, which will eliminate the need for the project.[220]

4. The need for additional supplies of heavy crude oil exists now in the marketplace and was not created by Enbridge's promotional practices.[221]

5. There are no existing or planned facilities that can satisfy the demand for crude oil that are met through an expansion of Line 67.[222]

6. Enbridge demonstrated that the proposed expansion of Line 67 is a cost-effective means of addressing the increased demands for heavy crude oil within Minnesota and the states of PADD II.[223]

7. No party demonstrated that there was a safer, more affordable or more reliable alternative to meet the demand for heavy crude oil than the proposed project.[224]

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see also, DULUTH PUBLIC HEARING TRANSCRIPT, at 40 (Palmer Testimony); ST. PAUL PUBLIC HEARING TRANSCRIPT, at 140-141 (Sayles Testimony).

[217] *See,* Ex. 1, §§ 7853.0250 and 7853.0270.

[218] *See,* Minn. R. 7853.0130 (A)(1).

[219] *See, id.*

[220] *See,* Minn. R. 7853.0130 (A)(2).

[221] *See,* Minn. R. 7853.0130 (A)(3).

[222] *See,* Minn. R. 7853.0130 (A)(4).

[223] *See,* Minn. R. 7853.0130 (A)(5).

8. The proposed project will enhance the future adequacy, reliability, and efficiency of the energy supply needed by the state of Minnesota.[225]

9. The proposed upgrades to Line 67, and the later operations of an expanded pipeline, will have modest impacts upon the surrounding environment.[226]

10. The addition of 230,000 bpd will contribute to the stability of oil prices in Minnesota and reduce the severity and duration of future periods of price volatility.[227]

11. The project will benefit the localities immediately adjacent to the affected pumping stations, through the spin-off effects from construction-related activity and the higher personal property tax revenues garnered from the upgraded facilities.[228]

12. A wide range of industrial and commercial products – including transportation fuels, heating oil, asphalt and jet fuel – are the refined products that result from crude oil transported on Line 67. Additionally, the secondary markets for refined petroleum include manufacturers of medicines, health products and feed stocks.[229]

13. Enbridge established that it can construct and operate the proposed facilities in compliance with applicable federal, state and local permitting standards.[230]

14. Enbridge established that it can construct and operate the proposed facilities in compliance with applicable federal, state and local environmental standards.[231]

15. Application of each of the factors listed in Minn. R. 7853.0130 supports the granting of the requested Certificate of Need.

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[224] *See,* Minn. R. 7853.0130 (B); *In re Application of the City of Hutchinson (Hutchinson Utilities Commission) for a Certificate of Need to Construct a Large Natural Gas Pipeline*, A03-99, slip op. at 11 (Minn. Ct. App. 2003) (unpublished) ("An applicant fails to meet this burden when another party demonstrates that there is a more reasonable and prudent alternative to the facility proposed by the applicant. This regulatory scheme is simply a practical way to prevent the issuance of a certificate of need when there is a more reasonable and prudent alternative to the proposed facility without requiring an applicant to face the extraordinary difficulty of proving that there is not a more reasonable and prudent alternative.") (citations omitted).

[225] *See,* Minn. R. 7853.0130 (C)(1).

[226] *See,* Minn. R. 7853.0130 (C)(2).

[227] *See,* Minn. R. 7853.0130 (C)(3).

[228] *Id.*

[229] *See,* Minn. R. 7853.0130 (C)(4).

[230] *See,* Minn. R. 7853.0130 (D).

[231] *Id.*

Based upon these Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

The Minnesota Public Utilities Commission should:

1. **GRANT** the requested Certificate of Need.

2. **CONDITION** the Certificate of Need upon Enbridge's receipt of each of the required permits listed in Table 7853.0230-2 of the Revised Application.

Dated: June 12, 2014

ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Notice is hereby given that exceptions to this Report, if any, by any party adversely affected must be filed under the time frames established in the Commission's rules of practice and procedure, Minn. R. 7829.2700 and 7829.3100, unless otherwise directed by the Commission. Exceptions should be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted pursuant to Part 7829.2700, subpart 3. The Commission will make the final determination of the matter after the expiration of the period for filing exceptions, or after oral argument, if an oral argument is held.

The Commission may, at its own discretion, accept, modify, or reject the Administrative Law Judge's recommendations. The recommendations of the Administrative Law Judge have no legal effect unless expressly adopted by the Commission as its final order.

MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street
Saint Paul, Minnesota 55101

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June 12, 2014

See Attached Service List

Re: In the Matter of the Application of Enbridge Energy Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project-Phase 2-

OAH 8-2500-30952
MPUC CN-13-153

To All Persons on the Attached Service List:

Enclosed herewith and served upon you is the Administrative Law Judge's **FINDINGS OF FACT, SUMMARY OF PUBLIC TESTIMONY, CONCLUSIONS OF LAW AND RECOMMENDATION** in the above-entitled matter.

If you have any questions, please contact my legal assistant Rachel Youness at (651) 361-7881 or rachel.youness@state.mn.us.

Sincerely,

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

ELL:ry
Enclosure

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

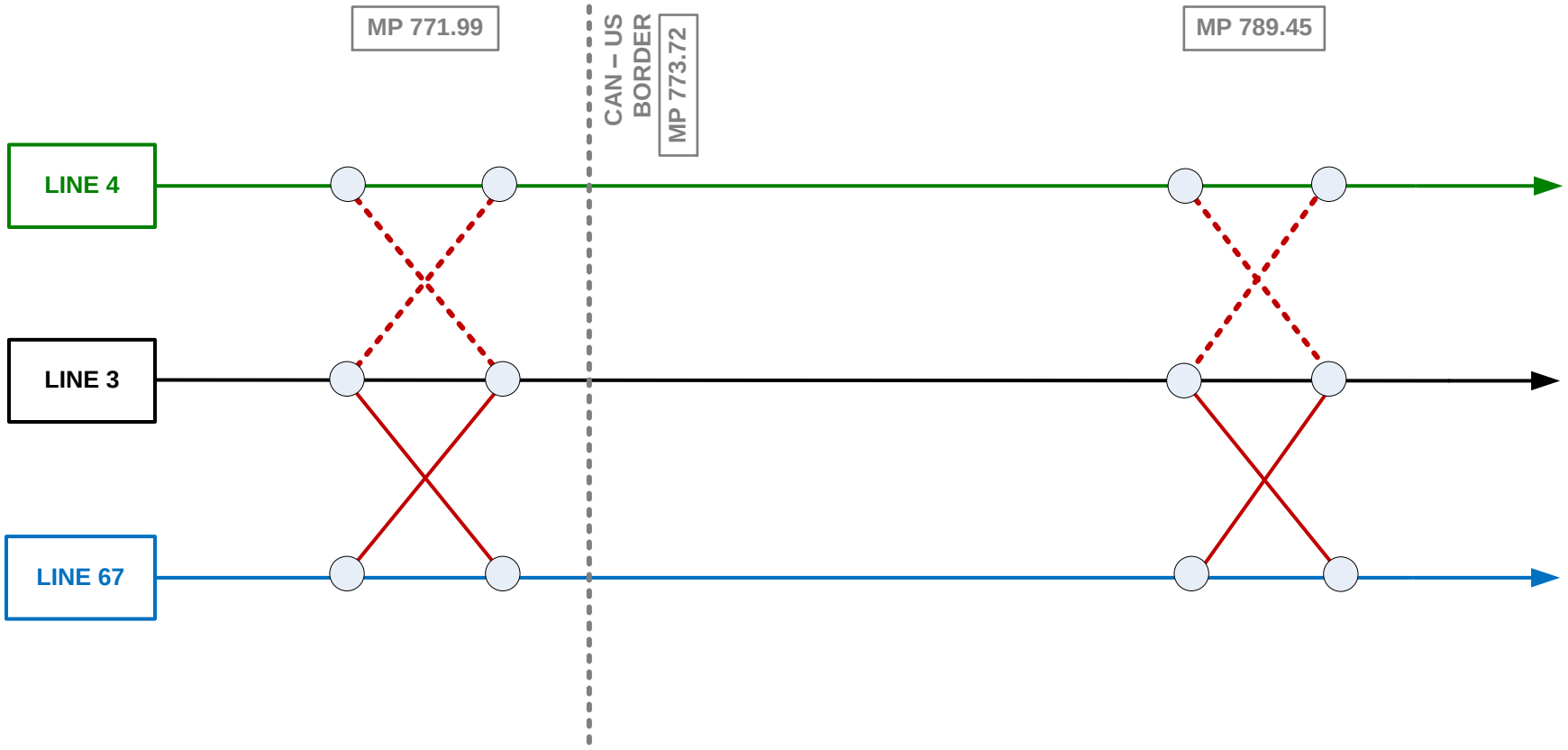
CERTIFICATE OF SERVICE

In the Matter of the Application of Enbridge Energy Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project-Phase 2-	OAH Docket No.: 8-2500-30952

Rachel Youness, certifies that on June 12, 2014 she served a true and correct copy of the attached **FINDINGS OF FACT, SUMMARY OF PUBLIC TESTIMONY, CONCLUSIONS OF LAW AND RECOMMENDATION** by eService, and U.S. Mail, (in the manner indicated below) to the following individuals:

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes
Frank	Bibeau	frankbibeau@gmail.com	Honor the Earth	51124 County Road 118 Deer River, Minnesota 56636	Electronic Service	No
Paul	Blackburn	paul@paulblackburn.net		PO Box 17234 Minneapolis, MN 55417	Electronic Service	No
Tim	Bray	tim.bray@crowwing.us	Crow Wing County	16589 County Road 142 Brainerd, MN 56401	Electronic Service	No
Randall	Doneen	randall.doneen@state.mn.us	Department of Natural Resources	500 Lafayette Rd, PO Box 25 Saint Paul, MN 55155	Electronic Service	No
Donovan	Dyrdal	dyr-valley@hughes.net		13142 180TH ST NW Thief River Falls, Minnesota 56701	Electronic Service	No
Peter	Erlinder	proterlinder@gmail.com	International Humanitarian Law Institute	325 Cedar St. Suite 308 St. Paul, MN 55101	Electronic Service	No
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes
John R.	Gasele	jgasele@fryberger.com	Fryberger Buchanan Smith & Frederick PA	700 Lonsdale Building 302 West Superior Street Duluth, MN 55802	Electronic Service	No
Travis	Germundson	travis.germundson@state.mn.us		Board of Water & Soil Resources 520 Lafayette Rd Saint Paul, MN 55155	Electronic Service	Yes
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes
Arshia	Javaherian	arshia.javaherian@enbridge.com	Enbridge Energy	26 East Superior Street Suite 309 Duluth, MN 55802	Electronic Service	No
Cynthia	Johnson	cjohnson55802@yahoo.com		3228 Boundary Road Mahtowa, MN 55707	Electronic Service	No
Jon	Kingstad	kings011@tc.umn.edu	Law Firm of Jon Erik Kingstad	Lake Elmo Bank Bldg STE 280 600 Inwood Ave N Oakdale, MN 55128	Electronic Service	No
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes
Eric	Lipman	eric.lipman@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Electronic Service	Yes
Peter	Madsen	peter.madsen@ag.state.mn.us	Office of the Attorney General-DOC	Bremer Tower, Suite 1800 445 Minnesota Street St. Paul, Minnesota 55101	Electronic Service	No
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	Yes
Kevin	Walli	kwalli@fryberger.com	Fryberger, Buchanan, Smith & Frederick	380 St. Peter St Ste 790 St. Paul, MN 55102	Electronic Service	No

EXHIBIT B



LEGEND

LINE 3

LINE 4

LINE 67

POTENTIAL FUTURE CONNECTIONS

NOTE:
Mileposts on DOU are relative to Edmonton (Line 3)

ENBRIDGE ENBRIDGE INC.	MAINLINE INTERCONNECTIONS DOCUMENT OF UNDERSTANDING	PROJECT DEVELOPMENT	PD LEAD DAVID O'BRIEN	DRAWN BY B. GRUBER
			BD SPONSOR TBA	DATE 02 JUNE 2014
			PROJECT CODE/ID TBA	CLASS LEVEL TBA
			DRAWING NUMBER BD-PS-10859-DOU	LAYOUT A - 1

EXHIBIT C

Project Description

On November 20, 2012, Enbridge Energy, Limited Partnership ("Enbridge") applied to the Department of State ("Department") for a Presidential Permit to operate and maintain the segment of its existing Line 67 crude oil pipeline that is subject to the August 3, 2009 Presidential Permit held by Enbridge for that Line ("2009 Presidential Permit") up to its full design capacity (referred to herein as the "Line 67 Project").[1] Line 67 is a 36-inch diameter pipeline that originates in Hardisty, Alberta and crosses the U.S.-Canada border near Neche, North Dakota and traverses portions of that state and Minnesota, terminating in Superior, Wisconsin, a distance of approximately 325 miles in the United States.

The 2009 Presidential Permit authorizes Enbridge to "construct, connect, operate, and maintain pipeline facilities at the border of the United States and Canada at Neches, North Dakota, for the transport of crude oil and other hydrocarbons between the United States and Canada." The "United States facilities" that are the subject of the 2009 Presidential Permit are described in that Permit as "A 36-inch-diameter pipeline extending from the United States – Canada border near Neches, North Dakota, up to and including the first mainline shut-off valve or pumping station in the United States." That segment of Line 67 (the "border segment") authorized in the 2009 Presidential Permit is located entirely within Pembina County, North Dakota, and extends approximately three (3) miles from the border to the first U.S. mainline shut-off valve.

Enbridge completed construction of Line 67 between the border and Superior in 2010. Line 67 is operational and currently transports an average annual capacity of approximately 495,000 bpd of crude oil across the U.S.-Canada border into the United States. That volume is less than the 500,000 bpd that was assessed by the Department in its 2009 Final Environmental Impact Statement issued in connection with Line 67, which was appended to and made part of the 2009 Presidential Permit.

The purpose of the Line 67 Project is to increase the capacity of the 3-mile long border segment of Line 67 from 500,000 bpd up to the full design capacity of Line 67. For the heavy crude oil now transported on the Line, this would result in an increase in the current Line 67 throughput at the border segment to approximately an average annual capacity of 800,000 bpd. No construction of any additional facilities or pipe will be required in the border segment that is the subject of the 2009 Presidential Permit.

[1] The full design capacity for Line 67 is 880,000 barrels per day ("bpd") for heavy crude oil, yielding an annual average capacity of 800,000 bpd for heavy crude oil. The full design capacity of a pipeline will vary based on the type of product transported. Thus, the full design capacity of Line 67 would be greater than 880,000 bpd were light crudes transported on the line, which could be the case in the future.

Related Projects

Related to the Line 67 Project, Enbridge is pursuing two additional projects, each of which has independent utility relative to the Line 67 Project. These are: (1) the U.S. Pump Upgrade and Interconnection Project ("Pump Upgrade/Interconnection Project"); and (2) the Superior Terminal Expansion Project. Neither of these projects requires a new or amended Presidential Permit, and thus, neither is the subject of Enbridge's November 20, 2012 Presidential Permit application.

Pump Upgrade/Interconnection Project

The Pump Upgrade Project consists of pump upgrades at seven pump station sites in Minnesota, as well as the construction of interconnections between Line 67 and Line 3. The pump upgrades will be undertaken in two phases: (1) Phase I, to be completed by the fall of 2014, consists of pumping upgrades to Enbridge's existing Clearbrook, Viking, and Deer River Line 67 pump station facilities in Minnesota to increase the annual average capacity of Line 67 south of the Line 67 border segment up to 570,000 bpd; and (2) Phase II, which consists of the construction of new Line 67 pump station facilities at Enbridge's existing Floodwood, Plummer, Donaldson, and Cass Lake pump station sites in Minnesota to increase Line 67 capacity south of the Line 67 border segment up to an average annual capacity of 800,000 bpd, as may be necessary to meet anticipated shipper demand. The pump upgrades described here will not only provide increased capacity for Line 67, but will also provide redundancy for the existing pumps on Line 67 and flexibility to potentially allow the new pumping capacity to be used for other adjacent lines should that become necessary.

Enbridge has obtained approval from the Minnesota Public Utilities Commission ("MPUC") to operate the Phase I pump upgrades to increase the capacity of Line 67 in Minnesota up to 570,000 bpd. Construction of the Phase I pump upgrades was initiated in the fall of 2013, and is expected to be completed in mid-2014. Enbridge has also applied to the MPUC to operate the Phase II pump upgrades to increase the capacity of Line 67 in Minnesota up to an average annual capacity of 800,000 bpd. Enbridge's application is pending before that agency, which is expected to take final action in August or September 2014. To construct the Phase II pump upgrades at the existing Donaldson, Plummer, and Floodwood pump station sites, Enbridge must also obtain a Letter of Permission from the Corps pursuant to Section 404 of the Clean Water Act. Enbridge's application the Letter of Permission is currently pending before the Corps. Subject to obtaining the MPUC and Corps permits, as well as any other local authorizations that may be required, Enbridge plans to have the Phase II pump upgrades operational in mid-2015 should anticipated shipper demand so require.

In addition to the pump upgrades, to provide the flexibility and capability to meet that demand consistent with its existing permitted pipelines, Enbridge will construct interconnections between Line 67 and adjacent Line 3, an Enbridge pipeline which is also at present used for crude oil transportation between Canada and the United States pursuant to a Presidential Permit issued on December 12, 1991. Specifically, a total of four interconnections will be constructed between Lines 3 and 67 as part of this project: two interconnections will be constructed between Line 67 and Line 3 at the Gretna station in Canada to allow crude oil to move between the lines north of the border crossing; and two interconnections will be constructed between Line 67 and Line 3 in North Dakota at a point approximately 16 miles south of the U.S.-Canada border and thus outside the Line 67 border segment. With these interconnections, Enbridge will be capable, as the pump station upgrades become operational in the two phases described above, of transporting volumes of crude oil in excess of 500,000 bpd across the U.S.-Canada border on Line 3 (which is not subject to a 500,000 bpd Presidential Permit limitation) and then transferring that oil via the interconnections to Line 67 for further delivery to Superior, WI.

The construction and operation of the U.S. interconnections does not require any federal, state, and/or local permits. Approvals from the National Energy Board ("NEB") of Canada have been obtained to construct the two interconnections in Canada. Construction of the interconnections in both the U.S. and Canada is expected to be completed by mid-2014, at about the time that the Phase I pump upgrades will be completed.

Superior Terminal Expansion Project

The Superior Terminal Expansion Project will consist of the installation of two new storage (breakout) tanks at Enbridge's Superior Terminal in Douglas County, Wisconsin. The Superior Terminal Expansion Project will also occur in two phases. The first phase consists of the construction of two new tanks and ancillary equipment. Enbridge received necessary approvals from the Corps and the State of Wisconsin to undertake construction activities associated with this phase, which is now in the final stages of construction. The second phase of the Superior Project consists of modifications to the incoming Line 67 relief system at the Superior Terminal. Enbridge has obtained approval from the Corps and the State of Wisconsin to undertake the construction activities associated with this second phase.

From: Coburn, David <DCoburn@steptoe.com>
Sent: Tuesday, June 24, 2014 5:33 PM
To: Hassell, Mary D.
Cc: Hahs, Ona M; Fred Carey; Arshia Javaherian; Runyan, Joshua
Subject: Letter on Interconnections
Attachments: Enbridge Energy, Limited Partnership June 24, 2014 Letter re Interconnec....pdf

Mary – Please see the attached letter advising of Enbridge's process for assessing the need for new interconnections between its lines and several examples of other interconnections, as you requested.

We look forward to answering any questions that you might have. Regards. David

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Steptoe
STEPTOE & JOHNSON LLP

Contains Confidential Business Information

June 24, 2014

VIA E-MAIL

Ms. Mary D. Hassell
Office of Environmental Quality
and Transboundary Issues
U.S. Department of State
OES/ENV Room 2657
2201 C Street, NW
Washington, DC 20520

Re: Supplemental Information in Support of Enbridge Energy, Limited Partnership's November 20, 2012 Application for a Presidential Permit

Dear Mary:

This letter follows up on our June 16, 2014 letter in which we stated that we would provide additional information concerning Enbridge Energy, Limited Partnership's ("Enbridge") practices to enhance the operational flexibility of its pipeline system through the construction of interconnections between existing lines.

As we informed you, Enbridge intends to construct interconnections between Lines 3 and 67 to optimize its Mainline System to provide the flexibility and efficiency that it would need to transport increased volumes of crude oil from Canada into the United States, as may be necessary to meet shipper demand. Such interconnections are not unusual in the Enbridge system. Below, we have provided a summary of Enbridge's internal practices to identify the need for such interconnections, including Enbridge's ongoing assessments to optimize its existing system in this manner. We have also set forth below examples of other interconnections between Enbridge lines, including diagrams of such interconnections, to illustrate the circumstances under which Enbridge has constructed interconnections to meet shipper demand and maintain the operability and reliability of its entire pipeline system.

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I. Enbridge System Optimization

Enbridge, as a common carrier pipeline operator, continually assesses measures to optimize the performance and operation of its existing pipeline system to ensure that shipper demands are met. Enbridge, for example, has an Infrastructure Planning Group ("IP Group"), which conducts routine assessments of the entire Enbridge system to identify long-term measures to maintain the operability and reliability of Enbridge pipelines, including the construction of interconnections or other facilities. This includes the assessment of variables, such as system integrity and throughput requirements/limitations, to assess Enbridge's capability to transport crude volumes in the event of unforeseen circumstances, such as extended system outages or maintenance. As part of this process, the IP Group will consider various scenarios and configurations on the Enbridge system to assess measures that would optimize system performance and ensure that long-term shipper demand is met. In many instances, the IP Group's assessment will result in recommendations to construct interconnections or other facilities between existing lines to help ensure that Enbridge has the capability to transport increased or stranded product due to inoperability and/or restrictions on segments of Enbridge lines.

Enbridge also has a Network Optimization Group, which assesses near-term measures to transport monthly shipper nominations on existing lines. The Network Optimization Group will, for example, recommend various measures, including the construction of facilities and/or interconnections between existing lines, to provide Enbridge with the operational flexibility to eliminate bottle-necks and provide the capacity volumes that has been and/or may be demanded by shippers in the near-term.

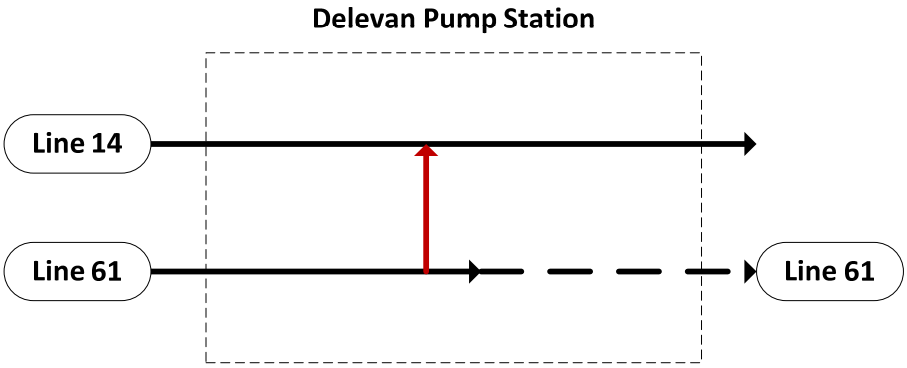
Enbridge maintains a number of multi-disciplinary committees which are designed to assess modifications to the Enbridge system as may be necessary to respond to changes in market demand. The committees, for example, assess measures to optimize the existing Enbridge system, including the construction of interconnections, based on existing or future market condition assumptions. In addition, Enbridge conducts an annual "Long Range Plan," which is a company-wide exercise to assess long-term system performance. This annual assessment includes the use of software to model multiple pipeline iterations and to assess measures, such as interconnections, which may be used to improve the performance the existing system, as permitted.

II. Examples of Enbridge Interconnections

Over the years, the groups identified above have recommended a number of interconnections between existing lines and tankage to enhance the operability and reliability of the Enbridge system, thereby helping to ensure the continued operation of Enbridge's system to meet shipper demand. We have summarized below a number of the interconnections that Enbridge has constructed on its system, including the purpose and need for each interconnection, as well as a diagram. Please note that the examples below are meant to be illustrative only, and are not inclusive of all existing and/or historical interconnections on Enbridge-owned lines.

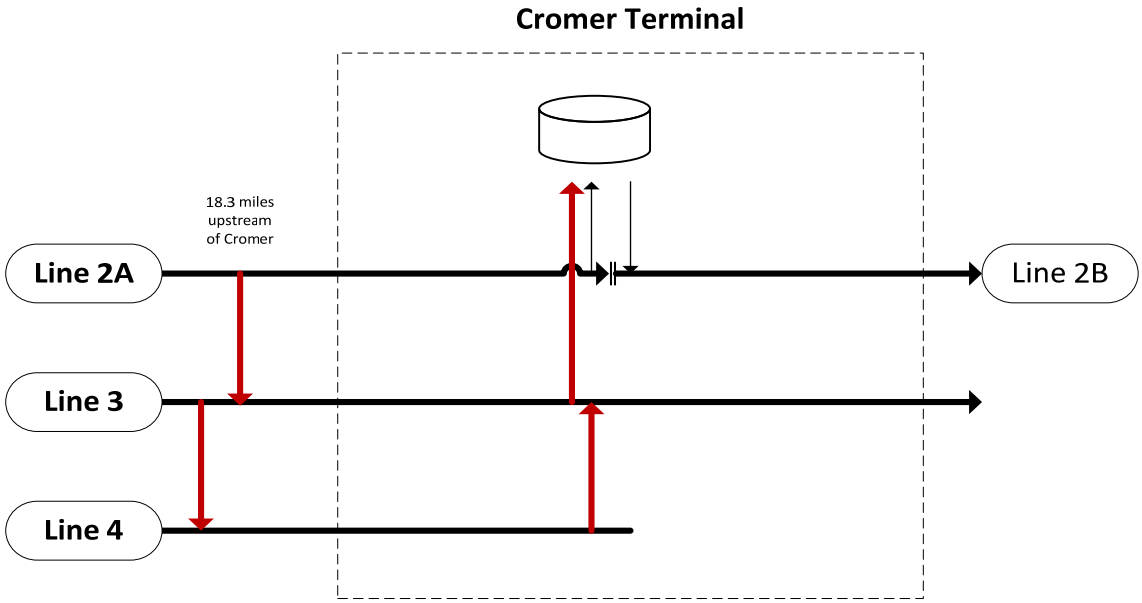
- **Line 61 to Line 14 Interconnection:** Today, Line 61 is a crude oil pipeline which extends from Superior, WI to Flanagan, IL. In 2007, construction of only that portion of Line 61 which extends from Superior to Delevan, WI was completed. Construction beyond Delevan to Flanagan could not be completed due to a delay in obtaining the necessary right-of-way approval from the State of Illinois. While Enbridge's application was pending before the State of Illinois, Enbridge constructed an interconnection between Line 61 and Line 14 to allow volumes of crude oil moving on Line 61 to be transported through the State of Illinois on Line 14 until such time as the regulatory process was complete. The remaining segment of Line 61, extending from Delevan to Flanagan, was later constructed in 2009.

  A diagram of the Line 61/14 interconnection is below:



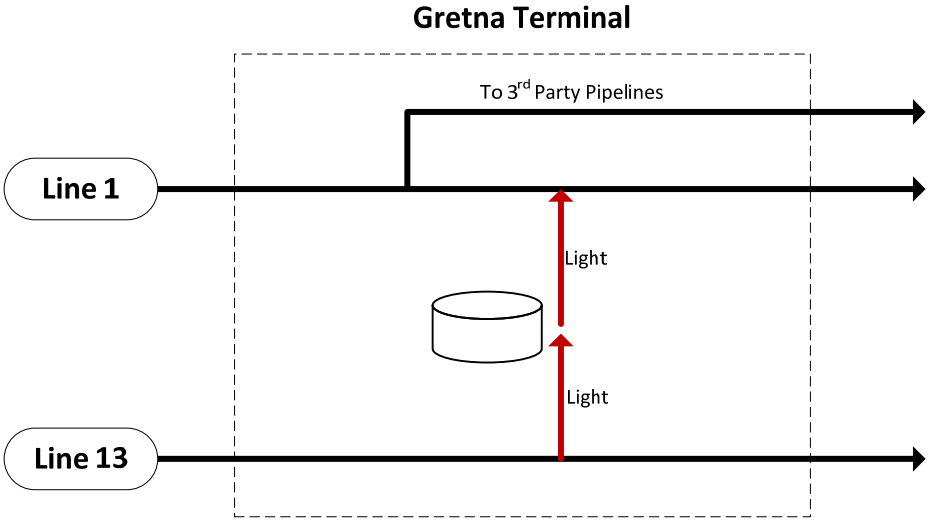
- **Line 3 Interconnection to Tankage at Cromer, Manitoba:** In the 1960's and 70's Line 3 was utilized to transport volumes of heavy crude. In the 1980's and 90's, however, market conditions required that light volumes be transported on segments of Line 3 north of Enbridge's Terminal at Cromer. To maintain the transportation of heavy crude volumes north of Cromer, interconnections were constructed between Lines 3 and 4 to allow: (i) Line 4 to receive heavy volumes from Line 3 north of Cromer; and (ii) to transfer those volumes back to Line 3 at the Cromer Terminal for further delivery to Superior, WI on Line 3. To facilitate the transportation of light crudes on Line 3 north of Cromer, interconnections were constructed between Lines 2A and 3 and break-out tanks to allow: (i) Line 3 to receive light crude from Line 2A north of Cromer; (ii) transfer that light crude to break-out tanks at Cromer; and (iii) for the light crude to be transferred from the break-out tanks for further delivery on Line 2B at Cromer. These interconnections can now be used to allow alternate routing for Line 2 or Line 3 crude in the event of a prolonged line shut-down on either line.

  A diagram of these interconnections is below:

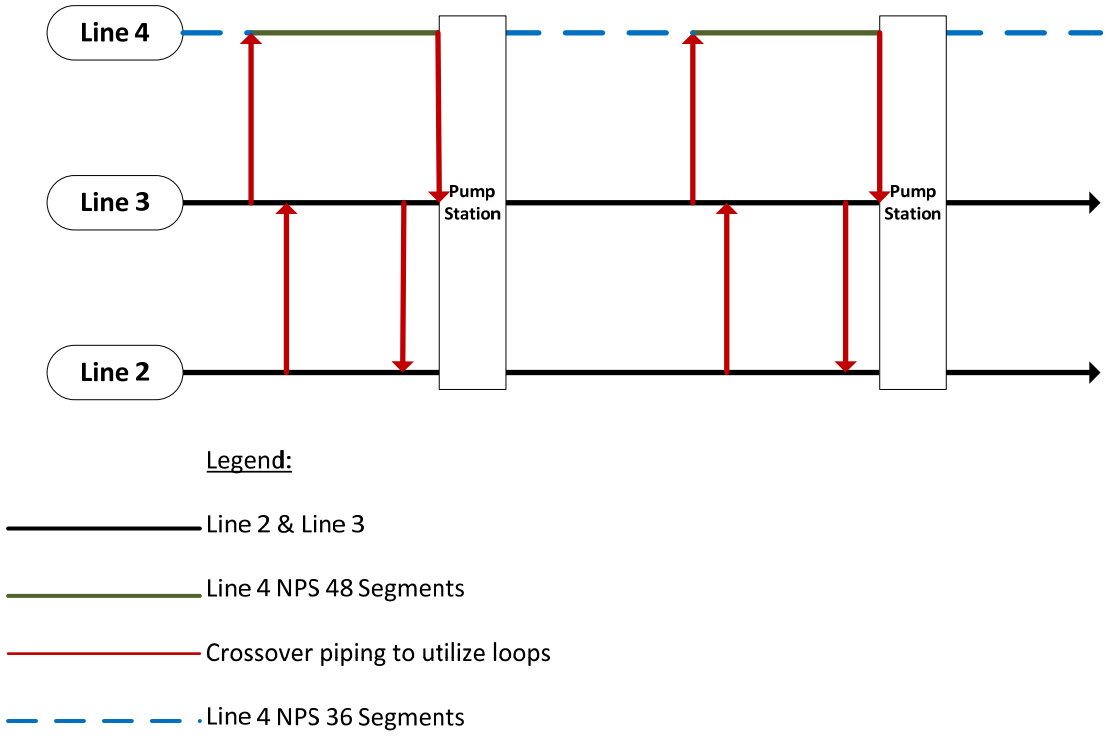


- **Line 1/13 Interconnection at Gretna, Manitoba:** In the 1990's, Line 1 carried refined petroleum products, natural gas liquids, and light crudes. At Enbridge's Gretna Terminal, these products were transferred from Line 1 onto third-party pipelines for further delivery to Winnipeg, Manitoba. In order to utilize the capacity of Line 1 south of the third-party lines, an interconnection was constructed between Lines 1 and 13 via the use of tankage to allow light volumes to be transferred from Line 13 for further delivery on Line 1. The interconnection helped Enbridge to maximize existing capacity on its lines to transport crude into the United States as necessary to meet shipper demand.

  A diagram of this interconnection is below:

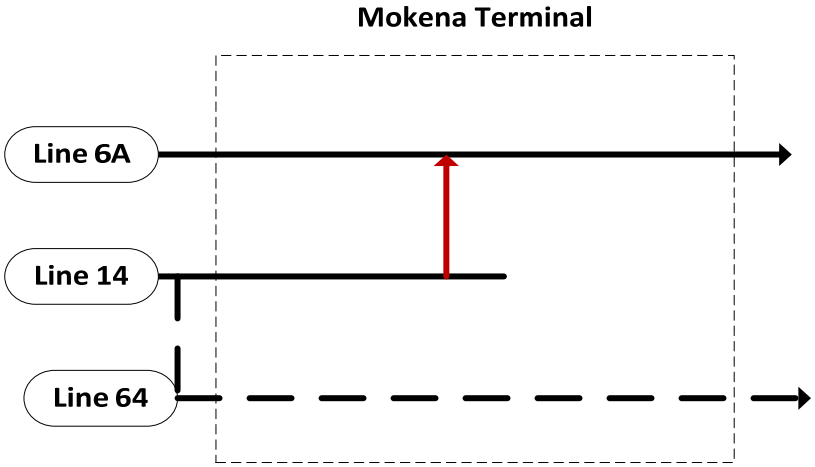


- **"Pre-Terrace" Interconnections:** In the early 1970's, interconnections were constructed between Lines 2, 3, and 4 to allow crude oil volumes to move between these lines. For example, Line 4 included 25-30 segments of 48-inch pipe, which ranged in length from 8 to 22 miles long between Hardisty, Alberta, and Superior, WI (the "Terrace" project eventually connected these segments contiguously). The 48-inch segments of Line 4 were utilized to receive Line 3 volumes, thereby allowing Line 2 volumes to be transferred to Line 3. The purpose of these interconnections was to maximize existing system capacity to meet shipper demand.



- **Interconnection Between Lines 14/6A at Mokena, IL:** Prior to the time that Line 64 was put into service (a crude oil pipeline which extends from upstream of Mokena, IL to Enbridge's Griffith/Hartsdale, IN Terminal), Enbridge constructed an interconnection between Lines 14 and 6A to allow crude volumes to move from Line 14 to Line 6A for further delivery to the Chicago area. Line 64 is now fully constructed, and the interconnection remains in place to provide Enbridge with the operational flexibility to transfer Line 14 crude volumes to Line 6A in the event of unforeseen circumstances that would prevent use of Line 64.

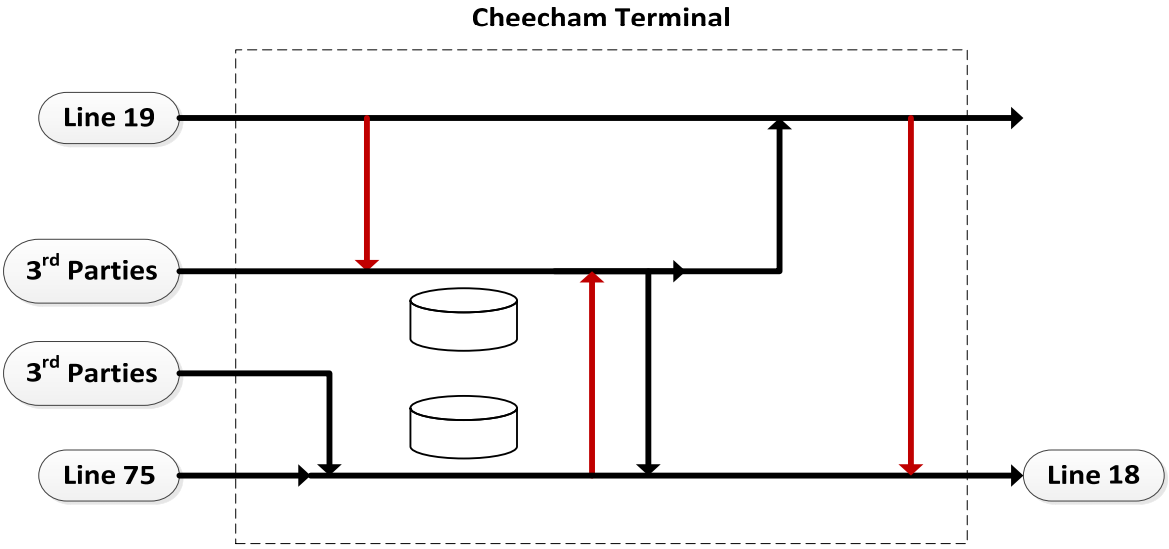
  A diagram of the interconnection is below:



- **Interconnection Between Lines 18/19 at Cheecham, Alberta Terminal:** Enbridge constructed an interconnection between Lines 18 and 19 at its Cheecham Terminal to allow crude volumes to be transferred from Line 19 to Line 18. This interconnection provides Enbridge with the capability to ensure the continued transport of Line 19 volumes in the event of: (i) a prolonged shut-down on Line 19 south of Cheecham; and/or (ii) the unavailability of Cheecham tankage.

  Additional connectivity exists at the Cheecham Terminal between these lines to allow shippers to access either Line 18 or Line 19 to minimize impacts to shippers with dedicated line contracts in the event of a prolonged shut down on one line. An interconnection also exists between Line 19 and Cheecham tankage to provide Enbridge with the flexibility to transfer Line 19 volumes to tankage, and/or Line 18, as necessary to meet shipper demand.

  A diagram of the connectivity at the Cheecham Terminal is below:



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The interconnections we have described between Line 3 and 67 are fundamentally similar to the other interconnections we have described above; each of these is designed to enhance system flexibility and efficiency. Please let us know if you require additional information or have any questions.

Regards.

David H. Coburn
Attorney for Enbridge Energy, Limited Partnership

cc: Ona Hahs, Esq., U.S. Department of State
Fred Carey, Potomac-Hudson Engineering, Inc.

From: Dunn, Patrick M
Sent: Thursday, July 24, 2014 12:28 PM
To: dcoburn@steptoe.com; jrunyan@steptoe.com
Subject: Reply to June 16 Enbridge letter
Attachments: [Untitled].pdf

Messrs. Coburn and Runyan:

Attached please find our letter of reply to your letter, dated June 16, concerning the proposed Enbridge Line 67 project.

Please feel free to contact us with any questions.

Patrick Dunn

This email is UNCLASSIFIED.

United States Department of State

Washington, D.C. 20520

VIA EMAIL

David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington DC 20036

July 24, 2014

Dear Mr. Coburn,

Thank you for your letter of June 16, 2014, in which you describe the changes that Enbridge Energy, Limited Partnership (Enbridge) has made to its plans for the Line 67 Expansion Project. Based on the information you have provided, Enbridge's intended changes to the operation of the pipeline outside of the border segment do not require authorization from the U.S. Department of State. Should, however, any of the provided information prove to be materially incorrect or incomplete, we would need to revisit that conclusion. Furthermore, that conclusion only applies to the existing Presidential Permit and does not have an impact on the authority of any other federal agencies or other entities or groups that may need to approve or acquiesce to these changes.

Pursuant to your June 16 letter, we will consider the letter and its attachments (including the project description at Exhibit C) to amend and be part of your application for a Presidential Permit for the capacity expansion in Line 67. Thank you as well for submitting the redacted version of that letter on July 18; we will post the redacted letter and the attachments from the original letter for public review on our website with the rest of the application.

The Department has been carefully analyzing the intended new approach to the proposed Line 67 capacity expansion project described in the June 16 letter. Since the intended new approach introduces more complexity to the scope of the environmental analysis for the Supplemental Environmental Impact Statement (SEIS), the Department will release a new Federal Register Notice updating the March 15, 2013 Notice of Intent[1] in order to inform the public and agencies

[1] "Notice of Intent" here refers to the Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) and To Conduct Scoping and To Initiate Consultation Consistent with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) for the Proposed Enbridge Energy, Limited Partnership, Line 67 Capacity Expansion Project. 78 F.R. 16565 (March 15, 2013).

of the new project description. That Notice will also invite public and other agencies' views on the proposed scope of our review.

Regarding the scope of the review, the Department has determined that, based on the previous scoping comments and an assessment of the new information you provided (including regarding related actions), the Department's supplemental environmental analysis will still include an evaluation of potential impacts associated with the full-line capacity increase in Line 67 and information on the infrastructure changes required to achieve that capacity increase (as described in Enbridge's original Line 67 Permit application and clarifications thereto). In addition, the Department will analyze whether there are additional and/or different reasonably foreseeable impacts that would occur in Line 3 and/or in another set of facilities in the Lakehead System stemming from the planned increase in capacity. We will contact you separately to request additional data concerning these issues.

Please do not hesitate to let us know if you have any further questions. We look forward to continuing to work with you.

Thanks and best regards,

Patrick Dunn