

MPUC Docket No. PL9/CN-07-465 (Certificate of Need)
MPUC Docket No. PL9/PPL-07-361 (Route)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Enbridge Energy, Limited Partnership,
and Enbridge Pipelines (Southern
Lights) LLC for a Certificate of Need for
the Alberta Clipper Pipeline Project and
the Southern Lights Diluent Project

and

In the Matter of the Application of
Enbridge Energy, Limited Partnership,
and Enbridge Pipelines (Southern
Lights) LLC for a Route Permit for the
Alberta Clipper Pipeline Project and the
Southern Lights Diluent Project

**SUMMARY OF TESTIMONY
AT THE PUBLIC HEARINGS,
FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

Proceedings in the consolidated Certificate of Need and Route Permit dockets came before Administrative Law Judge Eric L. Lipman. A series of joint public hearings for both the Certificate of Need Docket and the Route Permit Docket were held in the counties across which the proposed pipelines would run. Specifically, public hearings were held in Beltrami, Carlton, Cass, Clearwater, Itasca, Kittson, Marshall, Red Lake, Pennington, Polk and Saint Louis counties on November 27 and 28, 2007, on January 17, 2008, March 25 and 26, 2008 and on April 8 and 9, 2008. Additionally, an evidentiary hearing on the Certificate of Need Docket was held on May 13, 2008. With the post-hearing submission of compliance materials on July 16, 2008, the hearing record closed.

INTRODUCTION

These proceedings involve the applications for a Certificate of Need and a Routing Permit for two pipelines. Enbridge Energy, Limited Partnership and Enbridge Pipelines, LLC (collectively, Enbridge, or the Applicant) submitted applications for a Certificate of Need in Docket No. PL9/CN-07-465 and a Route Permit in Docket No.

PL9/PPL-07-361 for the proposed Alberta Clipper project and the Southern Lights Diluent project.

As proposed, Enbridge's Alberta Clipper project is a new large energy facility in the form of a 990-mile long, 36-inch diameter petroleum pipeline.¹ This pipeline would run from Hardisty, Alberta, Canada, across Northern Minnesota, to Enbridge's storage tank farm and terminal facility near Superior, Wisconsin.² The Minnesota portion of the project would be approximately 285 miles long, running across the state from Kittson County to the Minnesota-Wisconsin border in Carlton County. These facilities would be used to transport liquid petroleum from the Western Canadian Sedimentary Basin to the Enbridge terminal facilities in Superior, Wisconsin. Part of Enbridge's plan is to integrate the Alberta Clipper project into the larger, trans-national and multi-state network of pipelines known as the Enbridge Mainline System.³

As proposed, Southern Lights Diluent project is a new large energy facility in the form of an approximately 652 mile long, 20-inch diameter pipeline. The proposed project would run from Chicago, Illinois to Clearbrook, Minnesota.⁴ The Minnesota portion of the project is approximately 175 miles long and would traverse from the Minnesota-Wisconsin border in Carlton County to an Enbridge terminal near Clearbrook, Minnesota. These facilities would be used to transport light liquid hydrocarbons known as "diluent," from Illinois refineries for delivery to northern Alberta. Diluents are in demand in northern Alberta, where these products are used to facilitate the transportation of heavier crude oil.⁵ At the Clearbrook Station, Enbridge proposes to reverse the pumping direction of "Line 13" so as to permit the transportation of diluents arriving at the Clearbrook Station north to an Enbridge facility in Edmonton, Alberta.

The proposed projects are controversial. Members of the surrounding communities expressed concern over such issues as pipeline safety, impacts upon land uses and the effect of later greenhouse gas emissions.

The Commission will issue final orders on the Application for Certification of Need and the Routing Permit after examination of this Report, the hearing transcripts, and all of the filings and arguments submitted by the Applicant, the Minnesota Department of Commerce, the Minnesota Center on Environmental Advocacy and other persons and entities interested in this matter.

¹ See, Ex. 300, § 7853.0230 at 6.

² *Id.*

³ *Id.*, at 3 and 6.

⁴ *Id.*, at 7-8.

⁵ *Id.* at 8.

STATEMENT OF THE ISSUES

1. Has Enbridge met the criteria set forth in Minnesota Statutes § 216B.243 and Minnesota Rules Chapter 7853 for a Certificate of Need for a pipeline?

The Administrative Law Judge concludes that the Applicant's has demonstrated the need for the proposed facilities.

2. Has Enbridge met the criteria for issuance of a pipeline routing permit (Routing Permit) set forth in Minn. Stat. § 216G.02, subd. 3, and Minn. R. 7852.1900, subp. 3?

The Administrative Law Judge concludes that the Applicant's application meets those criteria, and recommends that the Routing Permit be issued, subject to the conditions specified below.

3. Do any of the proposed route alternatives minimize the human and environmental impacts associated with the proposed pipeline to a greater extent than the Applicant's Preferred Route?

The Administrative Law Judge concludes that the Applicant's Revised Preferred Route and Alignment minimizes the overall human and environmental impacts of pipeline installation, and recommends that the Minnesota Public Utilities issue a Routing Permit for Revised Preferred Route and Alignment.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF TESTIMONY AT THE PUBLIC HEARINGS

Pursuant to Minn. R. 7852.1700 and 7853.0200, the Administrative Law Judge conducted public hearings to elicit public comment regarding the need for, and routing of a crude oil pipeline from a state border crossing near Mattson, Minnesota and ending at the Minnesota-Wisconsin border in Carlton County, Minnesota.

Over the course of fourteen public hearings – which includes those public hearings held jointly in this matter as to Enbridge's LSr project – 98 members of the public offered testimony.⁶ Additionally, 36 sets of written comments were submitted before the close of the post-hearing comment period on April 21, 2008.

At the outset of the public hearings the Administrative Law Judge made introductory remarks, followed by short presentations from Bret Eknes of the Commission's staff, Karen Finstad Hammel, counsel to the Minnesota Department of Commerce, and a presentation from the Applicants. Following these presentations,

⁶ See, Summary of Written Comments, *infra*.

members of the public asked questions of the panel members and shared their reactions to the material presented.

The views expressed at the hearings held jointly with the LSr project proceeding, or filed in written comments before February 8, 2008, were summarized in the March 24, 2008 report in the LSr proceeding. A summary of the testimony and comments received after March 24, 2008, follows below:

Clearwater County Hearing – Clearbrook, Minnesota

Commissioner Tom Anderson, a Member of the Clearwater County Board of Commissioners, urged a set of effective controls over the use and movement of construction equipment so as to guard against the spread of invasive species – particularly spotted nap weed, leafy spurge and thistles.⁷

Mr. Dan Sauve, the Clearwater County Engineer, reiterated the remarks he made at the public hearing on January 17, 2008, with respect to the control of invasive species. Additionally, Mr. Sauve requested an early, pre-construction meeting with Enbridge contractors and inspectors to discuss permitting and right-of-way practice in the County.⁸ In a post-hearing filing submitted on April 21, 2008, Enbridge notes that it was planning a May 22, 2008 meeting with Mr. Sauve.⁹

Mr. Will Haapala, Regional Manager of the Minnesota Pollution Control Agency, recommended the adoption of a vigorous inspection regimen, both during and after the construction of the proposed pipeline. Specifically, Mr. Haapala urged plans that involve both sturdy controls of construction stormwater and robust emergency response capabilities.¹⁰

Beltrami County Hearing – Bemidji, Minnesota

Mr. Lyle Olson, a landowner in Wilton, Minnesota, made some inquiries as to the proposed alignment at Tracts 623-10 and 623-J, which includes his property. At the hearing, Enbridge officials tentatively estimated that the proposed pipeline route would be 350 feet from the Olson homestead.¹¹

Mr. Jack Gustafson, a resident of Cass Lake, Minnesota, inquired about impacts to the MiGiZi bike trail and several events held on that trail through the summer. Additionally, Mr. Gustafson urged pipeline installation methods in wetland areas that

⁷ Clearwater County Public Hearing Transcript, at 36-37.

⁸ *Id.*, at 37-38.

⁹ Landowner Request Follow-Up, at 1
(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129314>).

¹⁰ *Id.*, at 39-40.

¹¹ Beltrami County Public Hearing Transcript, at 26-32.

preserve the flow of ground water to both sides of the pipeline.¹² In a post-hearing filing submitted on April 21, 2008, Enbridge indicated that the triathlon held in June will not be affected by pipeline construction, but that it is not able to determine whether the other events mentioned by Mr. Gustafson will be impacted.¹³

Ms. Mary Walter, a landowner in Bemidji, Minnesota, made inquiries about the proposed pipeline alignment and the width of the right of way across Tract 610.¹⁴

Ms. Janet Barckholtz, a landowner who owns property adjacent to Enbridge's preferred alignment in Wilton, Minnesota, inquired of plans that Enbridge had in the future with the respect to the installation of additional pipelines. Mark Sitek, Project Director for the Alberta Clipper and Southern Lights Diluents projects, noted that while the company might seek project approvals in the future, it had no plans to do so within the foreseeable future.¹⁵

Dr. Lance Egley, a landowner who owns property adjacent to Enbridge's preferred alignment in Bemidji, Minnesota, had a number of queries about the availability and demand for diluents; the Applicants' plans to add new pipelines in the future; restricting access to pipeline construction areas; and the land survey process. Further, Mr. Egley urged Enbridge personnel to seek permission from the landowner before entering on to property for any purpose.¹⁶

Ms. Geri Nynas, a landowner who owns property adjacent to Enbridge's preferred alignment in Bemidji, Minnesota, inquired as to route of the preferred alignment and the company's future expansion plans.¹⁷

Mr. John Robinson, a resident of Bemidji, Minnesota, inquired as to overlap between the Enbridge pipeline right of way and the right of way that may be sought for a transmission line jointly sought by Otter Tail Power, Minnesota Power and Minnkota Power. Additionally, Mr. Robinson inquired as to Enbridge's methods of combating pipeline corrosion.¹⁸

Mr. Jerry Solheim, a landowner who owns property along Enbridge's preferred alignment in Bemidji, Minnesota, inquired about the proposed pipeline route across Tract 568. Additionally, Mr. Solheim testified as to poor remediation practice following

¹² *Id.*, at 33-35.

¹³ Landowner Request Follow-Up, *supra*, at 2.

¹⁴ Beltrami County Public Hearing Transcript, at 37-40.

¹⁵ *Id.*, at 40-44.

¹⁶ *Id.*, at 44-57.

¹⁷ *Id.*, at 58-63.

¹⁸ *Id.*, at 63-70.

the installation of a predecessor pipeline and an instance of serious misconduct by one of the construction contractors working on that job.¹⁹

Mr. James Burford, a landowner who owns property along Enbridge's preferred alignment in Wilton, Minnesota, detailed what he considered sharp practices as to providing compensation for an earlier easement and a series of poor remediation practices during the construction of a predecessor pipeline.²⁰

Mr. Robert Shimek, a resident of Bemidji, Minnesota, urged disapproval of the Certificate of Need, asserting that extraction and burning of the known stores of tar sands region crude oil will place 112 billion tons of carbon dioxide into the atmosphere. Additionally, pointing to the recent experience of the First Nations people of Northern Alberta, Mr. Simek asserted that the local, regional and global impacts associated with large scale releases of greenhouse gasses counsel a disapproval of the Certificate of Need.²¹

Supervisor Ervin Blom, a Member of the Eckles Township Board of Supervisors, testified as to the poor remediation practice following the installation of a predecessor pipeline. So as to improve remediation of roadways on any future pipeline installation project, Supervisor Blom urged both a pre-construction meeting between Enbridge construction contractors and Township officials, as well as the posting of a performance bond before work is undertaken.²² In a post-hearing filing submitted on April 21, 2008, Enbridge indicated that its staff was scheduled to meet with Members of the Eckles Township Board on June 11 to discuss the matters raised by Supervisor Blom.²³

Ms. Peggy Hanson, a landowner who owns property along Enbridge's preferred alignment in Bemidji, Minnesota, expressed her concerns to the apportioning of impacts and loss of property values among landowners along the proposed pipeline route. Ms. Hanson expressed concern that her land and property values were being diminished, slowly, over time, with each incremental expansion of pipeline operations.²⁴ Enbridge officials indicated that a detailed map will be provided to Ms. Hanson and that Enbridge surveyors would mark with stakes the temporary work space that is sought on the Hanson property.²⁵

Supervisor Jim Edelman, a Member of the Lammers Township Board of Supervisors, expressed concerns over post-construction road remediation practice and the need to assure the safety of workers undertaking pipeline repairs. Additionally,

¹⁹ *Id.*, at 70-83.

²⁰ *Id.*, at 85-95; Ex. AB.

²¹ *Id.*, at 100-107.

²² Transcript, Beltrami County Public Hearing, March 25, 2008, at 110-114.

²³ Landowner Request Follow-Up, *supra*, at 2.

²⁴ Second Beltrami County Public Hearing Transcript, at 27-34.

²⁵ *Id.*, at 30.

Supervisor Edelman requested that Enbridge officials meet with Lammers Township Board Members at an upcoming monthly meeting.²⁶ In a post-hearing filing submitted on April 21, 2008, Enbridge indicated that its staff was scheduled to meet with Members of the Lammers Township Board on May 13, 2008, to discuss the permit process and post-construction restoration practices.²⁷

Mr. Richard Holter, a landowner who owns property along Enbridge's preferred alignment in Cohasset, Minnesota, inquired about setback requirements from pipelines.²⁸ In a post-hearing filing submitted on April 21, 2008, Enbridge stated that it is unaware of any federal, state or local setback law that applies to areas outside of the permanent easement.²⁹

Mr. Chris Leinen, a resident of Bemidji, Minnesota, inquired of the respective costs of transporting crude oil by pipeline as opposed over-the-road transport trucks.³⁰

Mr. Bill Schroeder, a landowner who owns property along Enbridge's preferred alignment in Wilton, Minnesota, expressed concern that alignment of various pipelines across his property – at Tract 612A – will prohibit any reasonable development opportunities of his 40-acre parcel.³¹ In a post-hearing filing submitted on April 21, 2008, Enbridge stated that Enbridge Right-of-Way Agents will contact Mr. Schroeder to discuss the proposed placement of the pipes through Tract 612A.³²

Cass County Hearing – Cass Lake, Minnesota

Mr. Craig Lawson, a resident of Rome, Illinois, expressed the view that, assuming that environmental concerns could be satisfied, transportation of crude oil by way of a pipeline appeared to be the safest method among the various alternatives.³³

Mr. Harold Gehrke, a landowner who owns property along Enbridge's preferred alignment in Cass Lake, Minnesota, expressed the view that, following installation of any pipeline, it was unfair to have the property owner pay property taxes upon that portion of land as to which later development could not occur.³⁴

²⁶ *Id.*, at 30.

²⁷ Landowner Request Follow-Up, *supra*, at 2.

²⁸ Second Beltrami County Public Hearing Transcript, at 40-41.

²⁹ Landowner Request Follow-Up, *supra*, at 2.

³⁰ Second Beltrami County Public Hearing Transcript, at 42-44.

³¹ *Id.*, at 44-49.

³² Landowner Request Follow-Up, *supra*, at 3.

³³ Cass County Public Hearing Transcript, at 23.

³⁴ *Id.*, at 24.

Mr. John Finn, a resident in Bena, Minnesota, inquired about Enbridge's preferred alignment in Cass County.³⁵

Mr. Bernard Rock, Sr., a resident of Cass Lake, Minnesota, expressed concern that there was neither adequate consultation with tribal officials of the Leech Lake Band of Ojibwe nor sufficient disclosures to Band members of any accord between the Band and the Applicants. He asserts that the selection of a pipeline route through the Reservation, and the lack of transparency, are related, and were engineered so as to win swift approval of the proposed pipelines.³⁶

Commissioner Virgil Foster, a Member of the Cass County Board of Commissioners, inquired as to the impacts that pipeline construction and operation would have on the use of large, agricultural sprinklers by landowners along the pipeline route.³⁷

Ms. Sandra Nichols, a resident of Cass Lake, Minnesota, shared her opposition to the proposed project. Ms. Nichols regards the proposed pipeline as a use that is harmful to Indian peoples and at odds with preserving sacred Indian lands. A former pipeline construction worker, she detailed some of the installation practices that she observed and found harmful. Alternatively, she urges transporting crude oil by truck as a way of creating local jobs.³⁸

Mr. Michael Smith, Sr., a resident of Cass Lake, Minnesota, expressed concern that because ancient burial practices did not cluster the bodies of deceased persons in a particular parcel, but rather dispersed them in various unmarked places, installation of the pipeline will result in the disturbance of human remains. Likewise, Mr. Smith expressed concern that when human remains are uncovered during pipeline construction, there is not a proper set of procedures for the handling and return of these remains. Mr. Smith also expressed concern about the disposal of logs during tree-clearing operations by the Applicants' contractors.³⁹

Ms. Patty Smith, a resident of Cass Lake, Minnesota, expressed concern that any easement taken upon a landowner's property should result in full compensation for the land, as would occur with a taking for a public use under the Fifth Amendment. Additionally, she expressed concern about the lack of transparency of the arrangements between the Applicants and tribal officials, the efforts to inform native persons about the deadlines to submit pipeline route alternatives and the stories she has heard regarding construction practices during the installation of predecessor pipelines. She prefers that

³⁵ *Id.*, at 28-29.

³⁶ *Id.*, at 30-34; 75

³⁷ *Id.*, at 35-38, 62-63.

³⁸ *Id.*, at 39, 60-63, 76-78, 88-90.

³⁹ *Id.*, at 43-46.

demand for petroleum products be met through existing pipeline infrastructure and that no new pipelines be installed on Reservation lands.⁴⁰

Mr. Mike Schmid, a landowner who owns property along Enbridge's preferred alignment in Hiram Township (Tract 541-A on Map AC-081), Minnesota, urged the Applicants to move the proposed pipelines to the north side of the current pipelines, between the existing lines and the railroad tracks.⁴¹ In a post-hearing filing, Enbridge indicated that Mr. Schmid's proposed alignment would require moving a crossing point further back, near Highway 101, and on to land that is not owned by Mr. Schmid. Concludes the Applicants: "If necessary, Enbridge can construct the new pipelines in the existing easement on the south side of existing pipelines."

Mr. Michael Smith, Jr., a resident of Cass Lake, Minnesota, expressed concern that installation of the pipeline will have a deleterious effect upon trees and wildlife in the area along the pipeline route.⁴²

Itasca County Hearing – Cohasset, Minnesota

Mr. David LaBorde, a business agent for Teamster's Local 346, testified that approximately 350 members of Local 346 are employed in the pipeline industry, that these workers receive good salaries and benefits on pipeline installation projects, and that there are positive spin-offs from the payment of these salaries to the local businesses that serve these workers. Mr. LaBorde urged the Commission to approve the projects.⁴³

Mr. Jon Holmes, on behalf of his family members who are landowners along the proposed pipeline route in Warba, Minnesota, urged that any pipeline activity, construction or temporary work easements be placed north of the existing pipelines.⁴⁴

Kevin and Julie Braith, landowners along the proposed pipeline route in Swan River, Minnesota, expressed concern about the distance between their home and the path of the proposed pipeline.⁴⁵ In a post-hearing filing, Enbridge asserts that during a May 10, 2008 discussion between the Briaths and an Enbridge Right-of-Way Agent, it became clear that the Braiths had misinterpreted the "blue line" on their routing map. Enbridge contends that because the Briaths understood the "blue line" to represent the centerline of the proposed pipeline, instead of the outer boundary of the requested 500-foot permit width, they overestimated the proposed impacts to their land and home.

⁴⁰ *Id.*, at 49-55; 78-85.

⁴¹ *Id.*, at 65-70.

⁴² *Id.*, at 86-87.

⁴³ Itasca County Public Hearing Transcript, at 23-24.

⁴⁴ *Id.*, at 25-34.

⁴⁵ *Id.*, at 34-43; Ex. 115 (Map AC-100, Tract 250B).

Mr. Bob Norgord, a resident of Bovey, Minnesota, inquired of the properties of, and methods of transporting, diluents.⁴⁶

Mr. Butch Pariseau, President of the International Union of Operating Engineers, Local 49, testified that the approval of the proposed pipelines would benefit the 1,572 Local members who live in the Northern Minnesota district. Mr. Pariseau expressed the view that approval of the project would counteract some of the economic effects of a softening of the housing and road construction markets.⁴⁷

Mr. John Peterson, owner of Northwest Surveying and Engineering, urged the Commission to approve the proposed projects. Mr. Peterson stated that his firm has been a subcontractor for Enbridge on earlier projects and that he appreciated the Applicants' relationship with smaller firms, their workplace safety practices and their "environmental awareness." Additionally, Mr. Peterson expressed the view that the additional energy and economic impact associated with the pipeline were beneficial.⁴⁸

Mr. Peter Williams, who is a landowner along the proposed pipeline route in Deer River, Minnesota, inquired on the likely path of the pipeline route across his property and the impact installation of the pipeline will likely have on gasoline prices.⁴⁹

Mr. Kenneth Matthews, who is a landowner along the proposed pipeline route in Cohasset, Minnesota, sought to confirm that Enbridge's preferred alignment is several hundred feet north of his property.⁵⁰

Mr. Mike Fabisch, an organizer with the Operating Engineers Local 49, urged approval of the proposed projects because of the job opportunities associated with pipeline construction. Specifically, Mr. Fabisch forecasted opportunities for those who operate backhoes, bulldozers, side booms and front-end loaders; as well as those who perform duties in construction right-of-ways and at warehouse areas.⁵¹

Commissioner Karen Burthwick, a Member of the Itasca County Board of Commissioners, inquired as to Enbridge's emergency response and evacuation plans in the event of a break in the proposed Southern Lights Diluents project line.⁵²

Joseph Aalto and Karen Aalto, landowners whose property is adjacent to the proposed pipeline route in Choasset, Minnesota, sought to confirm that Enbridge's preferred alignment is along the north side of Forsythe Lake.⁵³

⁴⁶ Itasca County Public Hearing Transcript, at 44-45.

⁴⁷ *Id.*, at 45-46.

⁴⁸ *Id.*, at 47-48.

⁴⁹ *Id.*, at 49-51.

⁵⁰ *Id.*, at 52-55; Tract 378-B.

⁵¹ Itasca County Public Hearing Transcript, at 55-56.

⁵² *Id.*, at 56-61.

Mr. Emil Johnson, a resident of Grand Rapids, Minnesota, sought to confirm that Enbridge's preferred alignment is along the north side of McKinley Lake.⁵⁴

Mr. Keith Stanley, a landowner whose property is adjacent to the proposed pipeline route in Cohasset, Minnesota, sought to confirm that Enbridge's preferred alignment is along the north side of Forsythe Lake. He likewise expressed safety concerns over the shipment of transporting high volumes of diluents through the proposed Southern Lights Diluents project line. Lastly, Mr. Stanley was critical of the Applicants' timber clearing and reimbursement practice during the installation of a predecessor line and hopes for a better and more collaborative relationship if an easement across his property is sought for the proposed projects.⁵⁵

Ms. Diane Howe, a landowner whose property is adjacent to the proposed pipeline route in Grand Rapids, Minnesota, inquired about the required setbacks of pipelines from existing well heads and detailed her interest in having any pipeline route avoid an outbuilding on her property that is used as a horse riding arena.⁵⁶

Larry and Karen Holmquist, landowners whose property is along the proposed pipeline route in Blackberry, Minnesota, had a number of inquiries about the Applicants' proposed routing on parcels that the couple own. Additionally, the Holmquists were critical of the Applicants' negotiating, construction and environmental practices surrounding the installation of a predecessor line.⁵⁷

Mr. George Berbee, a landowner whose property is along the proposed pipeline route in Cohasset, Minnesota, expressed his concern over the breadth of the proposed 500 route width – a matter that he regards as unreasonably foreclosing other, later development opportunities for landowners. Likewise, he regards the use of condemnation powers to obtain easements as adding to the unequal bargaining power of those proposing large energy facilities.⁵⁸

Mr. Jack Rajala, owner of Rajala Timber Company, urged that construction adjacent to timber lands of harvesters located along the pipeline route should be coordinated with that firm so as to preserve its ingress to and egress from its timber lands. As to the need for the proposed projects, he prefers obtaining petroleum products from Canada, which he characterized as a good neighbor, rather than

⁵³ *Id.*, at 62-65, 119-22; Ex. 115 (Map AC-100).

⁵⁴ Itasca County Public Hearing Transcript, at 66-67, 103-09, 122-25; Ex. 115 (Map AC-101).

⁵⁵ Itasca County Public Hearing Transcript, at 68-71; Ex. 115 (Map AC-100).

⁵⁶ Itasca County Public Hearing Transcript, at 71-74; Ex. 115 (Map AC-102).

⁵⁷ Itasca County Public Hearing Transcript, at 75-97; Ex. 115 (Map AC-105 and AC-107).

⁵⁸ Itasca County Public Hearing Transcript, at 98 -103, 129-33.

obtaining supplies from countries in the Arabian Peninsula. Lastly, Mr. Rajala inquired as to the impact to the land of increasing the depth at which the pipeline is placed.⁵⁹

Mr. Rodney Struble, a landowner whose property is along the proposed pipeline route in Warba, Minnesota, inquired about the Applicants' construction schedule, assessment practices, disposal of cleared timber and its use of eminent domain proceedings to obtain easements.⁶⁰

Saint Louis County Hearing – Floodwood, Minnesota

Ms. Terri Wittwer, a landowner whose property is along the proposed pipeline route in Gowan, Minnesota, inquired as to how close the proposed pipeline would travel towards her home and how much additional tree clearing would be required on adjacent property owned by her parents. Additionally, Ms. Wittwer was critical of Enbridge's timber clearing practice during the installation of a predecessor line. The Applicants stated their preference to have the pipeline abut an existing gas line easement at the southern end of her property – and thereby avoid further encroaching upon her homestead. Additionally, Enbridge maintained that by utilizing their existing easement, the amount of additional tree clearing needed to accommodate installation of a new line could be minimized.⁶¹

Ms. Violet Johnson, appearing on behalf of her son, Keven Johnson, who is a landowner along Enbridge's preferred alignment in Floodwood, Minnesota, testified as to the fact that a culvert abutting the property was crushed during the installation of a predecessor line and never repaired.⁶² In a post-hearing filing, Enbridge indicated that it is presently working with Mr. Johnson to install a 30' x 15" culvert to replace the one that was earlier destroyed.

Mr. Matthew Langan, Environmental Planner of the Department of Natural Resources' Environmental Review Unit, detailed the role that the Department's staff is playing in urging modifications to Enbridge's proposals so as to reduce or avoid impacts to the environment, and that it will submit additional analysis as written comments.⁶³

Mr. Jose Sanchez, an independent Right-of-Way Agent in Cohasset, Minnesota, signaled his interest in answering the questions of landowners and working collaboratively to avoid problems.⁶⁴

⁵⁹ *Id.*, at 111, 125-29.

⁶⁰ *Id.*, at 112-19.

⁶¹ St. Louis County Public Hearing Transcript, at 25-34.

⁶² *Id.*, at 35-39.

⁶³ *Id.*, at 39-44.

⁶⁴ *Id.*, at 45-47.

Mr. Dan Kingsley, a business representative for the International Union of Operating Engineers, Local 49, detailed the role that union members would play in any later pipeline construction and the additional training that is associated with such work. Additionally, Mr. Kingsley detailed the relationship between the numbers of hours worked by union members on such projects and the health and retirement benefits that are conferred upon them. As noted earlier, his union supports the granting of a Certificate of Need and accompanying routing permits.⁶⁵

Mayor Dave Ross, of Superior, Wisconsin, testifying as to his support for the proposed projects, urged the Commission to grant a Certificate of Need and accompanying routing permits. Mayor Ross noted that, in his view, the recent installation of two pipelines through the City of Superior was accomplished successfully, with accompanying benefits to the surrounding community. Additionally, Mayor Ross opined that the proposed pipeline capacity would contribute to economic development and meeting future needs for petroleum.⁶⁶

Mr. Jeff Vito, the Director of Development and Government Affairs for the City of Superior, Wisconsin, likewise urged the Commission to grant a Certificate of Need and accompanying routing permits. Mr. Vito shared his view that during the recent installation of pipelines in Superior, Wisconsin, the Applicants were very responsive in meeting the needs and concerns of local residents. Additionally, Mr. Vito asserted that the construction project had many benefits to area small businesses.⁶⁷

Mr. Bruno Zagar, a resident of Floodwood, Minnesota and an Environmental Specialist for the Fond Du Lac Band of Lake Superior Chippewa, inquired as to the status of reviews under the National Environmental Protection Act, the environmental impacts of the Fond Du Lac Route Alternative, the properties of diluent and the data from pipeline diagnostic equipment. Mr. Zagar also inquired as to the proposed pipeline route on a particular parcel in Carlton County, upon which a Band Member lives.⁶⁸

Mr. Gerald Lind, a landowner whose property is along the proposed pipeline route in Gowan, Minnesota, expressed a number of safety and property value concerns relating to the fact that his cabin is approximately 400 feet from the Gowan pumping station. Of particular concern to him, is the Applicants' use of hydrogen sulfide and a flare pit at the station.⁶⁹

⁶⁵ *Id.*, at 47-49.

⁶⁶ *Id.*, at 59-52.

⁶⁷ *Id.*, at 52-54.

⁶⁸ *Id.*, at 54-61, 83-88.

⁶⁹ *Id.*, at 62-67.

Mr. Robert Johnston, on behalf of his mother, who is an owner of property along the proposed pipeline route in Gowan, Minnesota, expressed concerns over the impacts that the pipeline and easements will have upon efforts to later develop this property.⁷⁰

Carlton County Hearing – Carlton, Minnesota

Mr. Dan Olson, the Business Manager for the Laborer's Local 1091, urged Commission approval of the projects. The craft laborers of Local 1091 undertake a variety of tasks in support of engineers, plumbers and Teamsters on pipeline construction projects. In Mr. Olson's view, the proposed project is both an important part of reducing dependence upon oil from the Middle East and of encouraging pursuit a draft multi-billion dollar expansion plan at the Murphy Oil facility in Superior, Wisconsin.⁷¹

Mr. Brent Pykkonen, a business representative for the International Union of Operating Engineers, Local 49, concurred with Mr. Olson's assessment of the benefits flowing from the projects, and added, as a Carlton County resident, that the added economic activity will be particularly helpful for smaller towns along the pipeline route.⁷²

Mr. David Douglas, a landowner whose property is along the proposed pipeline route in Carlton, Minnesota, made several inquiries about the width of the new permanent easements that are sought by the Applicants. Mr. Douglas expressed the concern that the easement that is taken today for the purpose of providing a buffer to other uses, is converted in subsequent years to a pathway for the installation of additional pipelines.⁷³

Mr. James McFarland, a landowner along the pipeline route, inquired as to the width of the sought-after easements and the Applicants' choice of pipeline diameter.⁷⁴

Mr. Richard Bloom, a former pipeline worker and resident of Cloquet, Minnesota, expressed support for the projects, concluding that the economic benefits of the proposed construction would be beneficial to the area. Indeed, Mr. Bloom expressed his interest, and that of his neighbor, in making available land owned by them adjacent to the pipeline route as storage and staging areas for construction activities.⁷⁵

Mr. Duane Laveau, a landowner along the pipeline route in Wrenshall, Minnesota, expressed support for the project. While noting that having a pipeline traverse his dairy farm is, in his words, a "big inconvenience," he believes that receipt of

⁷⁰ *Id.*, at 77-83.

⁷¹ Carlton County Public Hearing Transcript, at 26-28.

⁷² *Id.*, at 28-29.

⁷³ *Id.*, at 29-34.

⁷⁴ *Id.*, at 34-36.

⁷⁵ *Id.*, at 36-39.

crude oil from Canada is preferable to obtaining oil from overseas states. He further notes that he has been well treated by Enbridge construction crews.⁷⁶

Ms. Carol Anderson, a landowner along the pipeline route in Silver Brook Township, Minnesota, testified as to the Applicants' poor tree-clearing and remediation practice as part of the installation of a predecessor line.⁷⁷ At the hearing, Enbridge officials pledged that they would contact the landowner in order to resolve problems at the site.⁷⁸

Mr. Jeff Daveau, a business representative of the Plumber's and Pipefitter's Union Local 11, detailed both the work that the local union members would later perform on any later construction project and his union's support for the project. Mr. Daveau favors both receipt of crude oil supplies from Canada as well as the opportunities that pipeline construction would provide to area tradesmen.⁷⁹

Mr. Tim Krohn, a resident of Cloquet, Minnesota, and GIS Specialist for the Fond du Lac Band of Lake Superior Chippewa, inquired as to the useful lifespan and corrosion rates for pipelines as well as the Applicants' depth of cover and wetland installation practices. Mr. Krohn also testified that the placement of a predecessor line had disrupted the hydrology of particular wetland area and the timber in these parcels.⁸⁰

Mr. Jerald Volkert, a landowner who owns property along the originally-proposed pipeline route in Cloquet, Minnesota, inquired of the likelihood of adoption of the Fond Du Lac Alternative Route, thereby avoiding his property. Additionally, Mr. Volkert expressed support for development of further crude oil supplies from within the territorial borders of the United States.⁸¹

Mr. Tom Conrad, a representative of BendTec, a Duluth, Minnesota company that fabricates, bends and applies coatings to pipe, urged approval of the projects. Mr. Conrad testified that for his firm of 160 employees, the fabrication, coating and inspection work that might arise out of pipeline installation could be very significant. Likewise, Mr. Conrad asserted that the positive introduction to Northern Minnesota that a pipeline construction project would give to workers and businesses from other areas would be of lasting benefit and impact.⁸²

Commissioner Greg Bernu, a Member of the Carlton County Board of Commissioners, expressed concerns over the impact that tree clearing along the Fond du Lac Route Alternative might have upon the County's timber operations on tax-

⁷⁶ *Id.*, at 39-40.

⁷⁷ *Id.*, at 40-43.

⁷⁸ *Id.*, at 41.

⁷⁹ *Id.*, at 44-45; Ex. AH.

⁸⁰ Carlton County Public Hearing Transcript, at 45-52.

⁸¹ *Id.*, at 54-60.

⁸² *Id.*, at 68-71.

forfeited lands in this corridor. So as to discuss issues relating to access and uses of this land in the event that this route alternative is approved, Commissioner Bernu requested that representatives of Enbridge attend the next regularly scheduled meeting of the County Board.⁸³ In a post-hearing filing, Enbridge asserts that company representatives did attend the meeting and were able to address concerns about the projects.

Mr. Earl Stewart, who appeared on behalf of his brother and sister-in-law, who own property along the originally-proposed pipeline route in Floodwood, Minnesota, urged both that a pipeline alignment remain north of the railroad tracks along their property and that the company undertake installation and remediation practices so as to permit later logging uses on the property.⁸⁴

Supervisor Robert Olean, a Member of the Twin Lakes Township Board of Supervisors, expressed concern over the impact to township roads of using heavy equipment during pipeline construction. He sought assurances from the Applicants that roadway access would be maintained and that proper post-construction remediation would occur.⁸⁵

Mr. Dave Kesti, a landowner along the pipeline route in Carlton, Minnesota, expressed concerns that non-lawyer landowners are not sufficiently apprised of the restrictions upon later uses of their land following the grant of a pipeline easement.⁸⁶

SUMMARY OF THE WRITTEN COMMENTS

In addition to 12 sets of written comments that were submitted before the close of the post-hearing comment period on the LSr project, of February 8, 2008 (and detailed in an earlier Report), an additional 24 sets of written comments on the Alberta Clipper and Southern Lights Diluents projects were received by the Administrative Law Judge before the close of the post-hearing comment period on April 21, 2008.⁸⁷ A summary of the written comments in these proceedings follows below:

⁸³ *Id.*, at 71-72.

⁸⁴ *Id.*, at 73-77; Ex. AI.

⁸⁵ Carlton County Public Hearing Transcript, at 79-81.

⁸⁶ *Id.*, at 82-84.

⁸⁷ It should be noted that two written comments were received by the Administrative Law Judge well after the close of the comment period – one from the Refinery Manger of Murphy Oil USA, and a second from the Forest Supervisor of the Chippewa National Forest. While these comments (alongside all of the comments received) will be submitted to the E-Docket system contemporaneously with this Report, out of fairness to other stakeholders neither of these items were reviewed or summarized.

Written Comments from Landowners:

Richard Anderson and Charles Anderson, landowners along the pipeline route in Clearbrook, Minnesota, wrote to urge the Commission to approve the proposed projects. In the Andersons' view, increased access to Canadian crude oil will dampen rising input costs to Minnesota farmers – namely, the cost of petroleum in agricultural fertilizers and the diesel fuel used by farm equipment.

Richard Antilla, a landowner along the pipeline route in Zemple, Minnesota, expressed the view that a 500 foot route corridor is too large and intrusive upon the development plans of affected landowners.

Mark Bonham, a landowner along the pipeline route in Trout Lake Township, detailed a series of poor pipeline construction and land remediation practices that he asserts undermined his later farming operations. Mr. Bonham regarded the impacts to his land to have been far greater, and more significant, than the compensation he received for the original easement.

David and Lynn Beatty, landowners along the pipeline route in Silver Brook Township, questioned the need for the requested easement width and inquired as to what, if any, role state regulators will play in the landowner-company easement negotiations.

Dr. Lance Egley, a landowner who owns property adjacent to Enbridge's preferred alignment in Bemidji, Minnesota, wrote in opposition of granting either Certificate of Need. Dr. Egley argued that additional inquiry into the Applicant's pipeline construction practices, its expansion plans over the next two decades and the safety risks associated with transporting diluents, should precede the granting of a Certificate of Need for either project. Likewise, Dr. Egley urged that the route width be reduced from 500 feet to 300 feet along any permit corridor.

Larry and Karen Holmquist, landowners along the pipeline route in Blackberry, Minnesota, estimated that if the proposed projects are approved, between the six pipelines that will lie on their property, in excess of 2.6 million barrels of oil will cross their land each day. The Holmqvists are concerned about both the risk of explosions and the hazards that might result from an oil spill. Additionally, the Holmqvists express concern over the amount of landowner liability that might follow a pipeline accident. Lastly, the Holmqvists asserted that the Applicants' plan to relocate landowners does not provide the dispossessed enough time to complete a move.

Peggy Holter, a landowner who owns property adjacent to the original pipeline route in Bemidji, Minnesota, opposes any route alternative that would cross her land and diminish later development opportunities for this property.

Jack, Shirley, Kevin and Sandy Morgan, landowners along the existing pipeline route in Floodwood, Minnesota, wrote to detail how the construction crew on the installation of a predecessor line occasioned considerable damage to a mobile home

that was on the property, and despite oral assurances to repair this damage, did not fulfill such pledges.

Mr. Michael Schmid, a landowner who owns property along Enbridge's preferred alignment in Blackberry, Minnesota, while acknowledging the need for additional imports of crude oil from Canada, wrote to urge a pipeline path that will reduce the impacts to landowners and the water table along the approved route. Without a change to the route across his land, Mr. Schmid fears that the addition of two new pipelines will forestall his efforts to subdivide and develop those parcels for later sale.

Alice and Randy Peterson of Argyle, Minnesota, submitted two letters in which they detailed their dissatisfaction with the Applicants' easement negotiating and environmental practices. The Petersons likewise questioned the reliability of the Applicants' projection of future crude oil demand.

Jim and Cindy Ridley, landowners along the pipeline route in Blackberry, Minnesota, wrote to oppose the proposed projects. The Ridleys argue that the pipeline installation will remove the shelter of trees around their home, substantially increase the risk of later hazard and leave them with property of little value in their retirement years.

Mr. Jose Sanchez, an independent Right-of-Way Agent in Cohasset, Minnesota, wrote to signal his support for granting Certificates of Need and Routing Permits to the Applicants. Acknowledging the anger and frustration of many landowners, he argued that the improved training and professional development of Right of Way Agents in recent years has resulted in "better negotiations for all concerned."

Mr. Mike Schmid, a landowner who owns property along Enbridge's preferred alignment in Hiram Township, wrote to urge an alternative alignment, north of the existing pipelines. Mr. Schmid argues that a pipeline route that travels south of the existing pipelines will sever an effective wind break of trees sheltering his home, as well as increase the likelihood that pipeline construction will disturb gravesites in a 19th century "Pauper's Cemetery."

Ivan and Kimberly Stauffer, landowners along the pipeline route in Leonard, Minnesota, wrote to urge the Commission to approve the proposed projects. The Stauffers contend that their community benefits from the Applicants' provision of jobs, tax revenues and "on-going supplies of petroleum."

Joel and Amy Stenseng, landowners along the pipeline route in Clearbrook, Minnesota, wrote to detail their experiences following the explosion of an Enbridge pipeline on their land on November 28, 2007. The Stensengs reported that in the aftermath of the tragedy on their land, representatives of the company have been forthcoming with information and fair with respect to the remediation of damages to their property. Pointing to the Applicants' provision of jobs, tax revenues and support to Clearbrook-area schools and businesses, the Stensengs urged the Commission to approve the proposed projects.

Thirteen landowners along the pipeline route in Cohasset, Minnesota, submitted a petition urging the adoption of a pipeline route that traverses the north side of Forsythe Lake. Additionally, the petition signatories thanked the Commission for the opportunity to “voice our opinions and ask questions, often more than once, and the unhurried manner in which the hearing was held” in Itasca County.

Written Comments from Entities and Associations:

John McKinney, President of the Best Oil Company, wrote to express his strong support for the proposed projects. Asserting that there is a rising demand for petroleum products, he argues that receipt of increased supplies of crude oil from Canada is a superior alternative to relying upon “unreliable and unsecure supply sources.”

David Olson, the President of the Minnesota Chamber of Commerce, wrote to urge the Commission to approve the proposed projects. Mr. Olson argued that the proposed pipeline will improve access to reliable sources of energy, provide job and business opportunities to local residents and boost property tax payments to communities along the proposed route.

Ted Crowe, the Director of Operations of Minnesota Limited, Incorporated, wrote to signal his firm’s support for the proposed projects and to note the benefit that it would represent to the 300 persons that it annually employs to undertake pipeline construction.

David W. Minor, President and Chief Executive Officer of the Superior-Douglas County Area Chamber of Commerce, sounding many of the same themes made by the Minnesota Chamber of Commerce, emphasizes further the benefit that construction related revenues will have to area workers and the businesses that serve those workers. Mr. Minor urges approval of the proposed projects.

Gregory A. Wheeler, Vice President and General Counsel for ProSource Technologies, Incorporated, wrote to urge approval of the proposed projects and to note the benefit that it would represent to the 15 persons it anticipates assigning to project-related surveying, right-of-way and environmental tasks.

Jeanette Brimmer, Legal Director of the Minnesota Center of Environmental Advocacy, detailed some of the claims that it likewise made in its post-hearing briefs – chiefly, that an Environmental Impact Statement is required for the proposed project. Additionally, MCEA asserts that the analyses made by Enbridge do not meet the requirements of the Wetlands Conservation Act and are “grossly deficient” in their description of impacts to wetlands and public waters. Pointing to nine areas of missing detail, MCEA “strongly urges preparation of an EIS that fully analyzes the potential significant impacts from this large pipeline project”

Matthew Langan, Environmental Planner of the Department’s Environmental Review Unit of the Minnesota Department of Natural Resources, outlined a number of

concerns with respect to the proposed pipeline routing plan. Principally, the Department expressed the view that because the precise locations of the pipeline routes are not established, the Applicants' proffered environmental analysis is likewise not sufficiently detailed. The DNR writes: "The Enbridge corridor east of Clearbrook suffers from a lack of site-specific information suitable for determining route and centerline location and appropriate mitigation measures." Additionally, the Department registers its strong concerns as to the Applicants' Ruffy Brook Crossing Alternative (between Mile Posts 912.1 - 916.4), along with milder comments and suggestions as to 24 other water crossings. Lastly, the Department offered a number of detailed suggestions for improvement of Enbridge's Environmental Mitigation Plan and Mud Containment Plan.

FINDINGS OF FACT

I. Parties and Participants

1. The two projects that are the subject of the applications will be owned by different Enbridge affiliates.

2. The Alberta Clipper project will be owned by Enbridge Energy, Limited Partnership ("EELP"), and the Southern Lights Diluent project will be owned by Enbridge Pipelines (Southern Lights) L.L.C. ("EPSL"). In this writing, however, these companies are jointly referred to as "Enbridge" or "the Applicant."

3. Enbridge Energy, Limited Partnership, is a limited partnership organized under the laws of the state of Delaware. EELP's primary U.S. business address is 1100 Louisiana, Suite 3300, Houston, Texas 77002.⁸⁸ EELP is a wholly-owned subsidiary of Enbridge Energy Partners, L.P., which is a Delaware Master Limited Partnership, with headquarters in Houston, Texas. Enbridge Energy Partners is a publicly-held limited partnership, with Class A common units traded on the New York Stock Exchange.⁸⁹

4. Enbridge Pipelines (Southern Lights) L.L.C. ("EPSL"), is a limited liability company organized under the laws of the state of Delaware. EPSL's primary U.S. business address is 1100 Louisiana, Suite 3300, Houston, Texas 77002.⁹⁰ EPSL's parent company, Enbridge Energy Company, Inc., is a Delaware corporation and is, in turn, a subsidiary of Enbridge, Inc., a corporation organized under the laws of Canada.⁹¹

5. Both EELP and EPSL are common carriers of liquid petroleum. As such, their rates, tariffs and accounting practices are subject to the authority of the Federal Energy Regulatory Commission ("FERC").⁹²

⁸⁸ Ex. 300, § 7853.0230 at 2.

⁸⁹ Ex. 300, § 7853.0230 at 3.

⁹⁰ Ex. 300, § 7853.0230 at 2.

⁹¹ Ex. 300, § 7853.0230 at 4.

⁹² Ex. 300, § 7853.0530 at 1.

6. The Minnesota Department of Commerce, Office of Energy Security (“OES”) is charged by statute to review Certificate of Need applications for compliance with requirements of Minnesota Statutes, Rules and Commission Orders.

7. The Minnesota Center for Environmental Advocacy (“MCEA”) is Minnesota-based, nonprofit environmental organization that works to protect “Minnesota’s wildlife, natural resources and the health of its people.”⁹³ As part of its advocacy work in support of environmentally sustainable sources of energy, MCEA is a frequent participant in matters before the Minnesota Public Utilities Commission and is a member organization of the Minnesota Climate Change Advisory Group.⁹⁴

8. The Fond du Lac Band of Lake Superior Chippewa (“the Band”) has authority over the land upon which the Applicant’s “Fond Du Lac Option 1” would traverse⁹⁵ and it claims usufructuary rights (including the rights to hunt, fish and gather) on the parcels through which the Applicant’s “Fond Du Lac Alternative” would run.⁹⁶ Accordingly, the Administrative Law Judge granted the Band’s request to join the routing proceeding as a party.⁹⁷

9. Jon Erik Kingstad is a resident of Washington County and an attorney in the private practice of law. While his petition for formal intervention as a party to both the Certificate of Need and the Routing proceedings was denied, the Administrative Law Judge did extend to him the privilege of submitting initial and reply briefs in this matter as *amicus curiae*.⁹⁸

II. Procedural History

10. Enbridge filed an Application for a Pipeline Routing Permit for Crude Oil Pipelines on June 22, 2007 for the Alberta Clipper and Southern Lights Diluent projects (the “AC/SLD PRP Application”)⁹⁹ with the Minnesota Public Utilities Commission (“MPUC” or “Commission”). The application was filed pursuant to Chapter 7852 of the

⁹³ See, MCEA Petition for Intervention, OAH Docket No. 8-2500-19094-2, at 3.

⁹⁴ *Id.*

⁹⁵ See, *Supplemental Filing to Route Alternatives for Alberta Clipper Project Southeast of Clearbrook, Minnesota and Southern Lights Diluent Project*, OAH Docket No. 8-2500-19094-2 (MPUC Docket No. PL9/PPL-07-361) at 5 (January 7, 2008).

⁹⁶ Compare, *id.* with *Treaty with the Chippewa*, 10 Stat. 1109, Section 11 (“The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President”); see generally, *Treaty with the Chippewa*, 7 Stat. 536, Article V (“[T]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States”).

⁹⁷ See, *Sixth Prehearing Order*, OAH Docket No. 8-2500-19094-2, at 1 (May 5, 2008).

⁹⁸ See, *id.*, at 1-2.

⁹⁹ Exs. 100 and 101.

Minnesota Rules.¹⁰⁰ The AC/SLD Routing Permit Application was assigned PUC Docket No. PL9/PPL-07-361.

11. Enbridge also filed an Application for a Certificate of Need for a Crude Oil Pipeline for the Alberta Clipper and Southern Lights Diluent projects (the “AC/SLD CON Application”)¹⁰¹ with the Commission, pursuant to Chapter 7853 of the Minnesota Rules. The AC/SLD Certificate of Need Application was assigned MPUC Docket No. PL9/CN-07-465.

12. The Minnesota Department of Commerce (“DOC” – which will later include the Office of Energy Security) filed comments with the Commission as to the completeness of the AC/SLD Certificate of Need Application.¹⁰² In the on June 28, 2007 comments, the DOC opined that this Application met the requirements of Minnesota Rules for completeness.¹⁰³

13. The Commission issued a notice of a hearing on the completeness of the AC/SLD Certificate of Need and Routing Permit Applications on June 29, 2007. The hearing was scheduled to be held on July 12, 2007.¹⁰⁴

14. On July 6, 2007 Enbridge filed a request to vary the requirements of Minn. R. 4415.0070¹⁰⁵ to provide a more convenient location for the residents of Aitkin County to attend public hearings.¹⁰⁶

15. The DOC filed comments with the Commission on the completeness of the AC/SLD Routing Permit Application on July 9, 2007.¹⁰⁷ The DOC indicated that this Application was complete.¹⁰⁸

16. On July 10, 2007 Enbridge filed a request to vary the requirements of Minn. R. 4415.0070 to provide a more convenient location for the residents of Hubbard

¹⁰⁰ At the time the AC/SLD Pipeline Routing Permit Application was filed, Chapter 7852 of the Minnesota Rules was numbered as Chapter 4415.

¹⁰¹ Ex. 300.

¹⁰² See, Letter to Burl Haar from Marlon Griffing, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4407927>).

¹⁰³ *Id.*

¹⁰⁴ June 19, 2007 Notice of Commission Meeting, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4473068>).

¹⁰⁵ Later renumbered Minn. R. 7852.1300 (2007).

¹⁰⁶ Petition to Vary the Requirements of Minn. R. 4415.0070 to Provide a More Convenient Location for Aitkin County Residents to Attend Public Hearings, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4730437>).

¹⁰⁷ Comments and Recommendations of the Energy Facilities Permitting Staff (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4634753>).

¹⁰⁸ *Id.* at 9, 14.

County to attend public hearings.¹⁰⁹ As it was with the petition to vary the location of the Aitkin County hearing, Enbridge filed this request to facilitate public access to the meeting.¹¹⁰

17. John and Laura Reinhardt filed comments with the Commission on July 10, 2007, asserting that proper notice must be provided, and noting that Enbridge agreed with their position.¹¹¹

18. On July 12, 2007, the PUC voted to accept the AC/SLD Certificate of Need and Routing Permit Applications.¹¹²

19. On July 27, 2007 the DOC issued an official notice document regarding the acceptance of the AC/SLD Routing Permit Application and the scheduling of public information meetings. This notice document informed readers of the dates and times for public information meetings and open houses; described how to access the applications; provided contact information for employees of the DOC and the Applicants; and included a map of the proposed route of the Alberta Clipper and Southern Lights Diluent projects.¹¹³

20. On August 1, 2007 the Commission issued an Order Accepting Application, Initiating Full Review, Referring to the Office of Administrative Hearings and Order and Notice of Hearing for the AC/SLD Routing Permit Application under Docket No. PL9/PPL-07-361.¹¹⁴ Among other items, the Commission:

- found that no one had asserted that the AC/SLD PRP Application was incomplete;¹¹⁵
- referred the AC/SLD PRP Application to the Office of Administrative Hearings (“OAH”);¹¹⁶
- established the date, time and location of the first Prehearing Conference;¹¹⁷

¹⁰⁹ Petition to Vary the Requirements of Minn. R. 4415.0070 to Provide a More Convenient Location for Hubbard County Residents to Attend Public Hearings, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4731022>).

¹¹⁰ *Id.*

¹¹¹ Comments from John and Laura Reinhardt, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4731033>).

¹¹² Ex. 102 at 7; Ex. 302 at 6.

¹¹³ Ex. 102.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at 2.

¹¹⁶ Ex. 102 at 2, 7.

¹¹⁷ Ex. 102 at 3, 7.

- ordered that the Prehearing Conference on the AC/SLD Routing Permit application was to be consolidated with the Prehearing Conference for the AC/SLD CON Application;¹¹⁸
- ordered that a contested case hearing under Minn. Stat. Ch. 14 and Minn. R. Ch. 1405 be held on the Pipeline Routing Permit Application;¹¹⁹ and,
- noted the nine-month time frame for consideration of the Application set forth in Minn. R. 4415.0045.¹²⁰

21. The Commission also issued an Order on August 1, 2007 “Accepting Application as Substantially Complete, Referring Matter to Office of Administrative Hearings and Issuing Notice and Order for Hearing” for the AC/SLD CON Application under Docket No. PL9/CN-07-465.¹²¹ Among other items, this Order:

- accepted the AC/SLD CON Application as substantially complete;¹²²
- referred the AC/SLD CON application to the OAH for a contested case hearing;¹²³
- noted that Minn. Stat. § 216B.243, subdivision 5 places a 12-month restriction on action upon the AC/SLD CON Application;¹²⁴
- directed Enbridge to work with PUC staff to develop notice materials to individuals and entities listed in Minn. R. 7829.2550, subparts 3 and 4;¹²⁵
- directed Enbridge to provide notice letters to landowners upon issuance of the Order and between 10 and 20 days prior to the public hearings;¹²⁶
- varied the 80-day requirement of Minn. R. 7853.0200, subp. 5 to allow flexibility in scheduling and assure due process;¹²⁷

¹¹⁸ Ex. 102 at 3.

¹¹⁹ *Id.*

¹²⁰ Ex. 102 at 6.

¹²¹ Ex. 302.

¹²² *Id.* at 2.

¹²³ *Id.*.

¹²⁴ *Id.* at 5.

¹²⁵ *Id.* at 6.

¹²⁶ *Id.*

¹²⁷ *Id.*

- directed any party that wished to make an appearance at the hearing to file a notice of appearance within 20 days of the Order;¹²⁸
- ordered Enbridge to provide notice of public and evidentiary hearings through display ads in newspapers of general circulation between 10 and 20 days prior to the start of public hearings;¹²⁹
- directed Enbridge to work with Department of Commerce staff to facilitate a full exploration of the issues;¹³⁰ and,
- requested that the DOC to study the issues and indicate its position on the reasonableness of granting a CON to Enbridge.¹³¹

22. On July 30, 2007, Enbridge sent to all landowners along the proposed route that it identified as being potentially affected by the projects, the official notice, a notice from the U.S. Department of State about its review process, an explanatory letter and a map of the proposed route. These materials were sent by certified mail.¹³² Additionally, these same materials, alongside copies of the AC/SLD CON and PRP Applications, were mailed to 23 public libraries in communities along the proposed route.¹³³

23. On July 30, 2007, similar notice packets were sent to tribal governments and to the governments of towns, statutory cities, home rule charter cities and counties reasonably likely to be affected by the proposed projects.¹³⁴

24. Also on July 30, the Minnesota *Environmental Quality Board Monitor* published a seven-page document titled “Notice of Pipeline Routing Permit Application Acceptance and Public Information Meetings on the Enbridge Pipeline projects.” This document discussed the Alberta Clipper Certificate of Need and Pipeline Routing Permit Applications and provided information to the public regarding the nature of the applications and opportunities for involvement in the permitting process.¹³⁵

¹²⁸ *Id.*

¹²⁹ *Id.* at 7.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Ex. 401. Because the hearings for the LSr and Alberta Clipper projects were consolidated under a single OAH docket number public hearings on both projects were held in counties Northwest of Clearbrook, Minnesota. Likewise, a joint notice was provided to landowners in this area. See, LSr Project Notice Compliance Filing filed on April 8, 2008 in MPUC Docket No. PPL-07-361; *Alberta Clipper Notice Mailing List* (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5179915>).

¹³³ Ex. 402.

¹³⁴ Ex. 404; Minn. R. 7829.2550 (3) (C) (2007).

¹³⁵ Ex. 502.

25. The official notice and a map depicting the proposed route for the projects were published in 34 papers of general circulation between August 1 and August 10, 2007.¹³⁶

26. On August 1, 2007 a similar packet of information including the July 27, 2007 notice document, a cover letter, a map of the proposed route, USDOS Notices of Intent, and a CD-ROM containing the applications was sent by certified mail to 126 different public officials pursuant to Minn. R. 4415.0106.¹³⁷

27. Public information meetings were hosted by the Department of Commerce regarding the proposed projects between August 13 and 23, 2007 in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Cass, Itasca St. Louis and Carlton counties.¹³⁸

28. The first prehearing conference was held, as scheduled, on August 7, 2007 at 1:00 p.m. at the offices of the Commission. From this point forward, the LSR, Alberta Clipper and Southern Lights Diluent projects moved forward under OAH Docket No. 8-2500-19094-2. The First Prehearing Order was issued on August 23, 2007.¹³⁹

29. On October 3, 2007, Enbridge filed a motion to sever proceedings on the AC/SLD Pipeline Routing Application from the rest of the Commission dockets undergoing review in OAH Docket No. 8-2500-19094-2, suspend the October 10, 2007 deadline for the submission of route alternatives for the area Southeast of Clearbrook Minnesota, establish a new calendar, and certify a request to vary the 9-month requirement of Minn. Stat. § 216G.02, subd. 3(b)(5).¹⁴⁰ This motion was filed after the public information meetings. Enbridge concluded that additional time was needed if it was to incorporate the information that it gained about the topography of lands South and East of Clearbrook, Minnesota from the public meetings and its surveys.

30. Northwest of Clearbrook, Minnesota, the land is predominantly agricultural, with large tracts of open, relatively level terrain. Southeast of Clearbrook, the land is primarily forested, with a greater concentration of wetlands and population.¹⁴¹

¹³⁶ Ex. 405.

¹³⁷ Ex. 403.

¹³⁸ See, Affidavit of Paul Meneghini, (October 3, 2007) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4789594>)

¹³⁹ *First Prehearing Order*, OAH Docket No. 8-2500-19094 (August 23, 2007) (*see also*, Ex. 110).

¹⁴⁰ Enbridge Motion to Sever MPUC Docket No. PL9/CN-07-361 from OAH Docket No. 8-2500-19094-2, Suspend the October 10, 2007 Deadline for the Submission of Route Alternatives for the AC/SLD CON Application Southeast of Clearbrook, Minnesota, Establish a new Calendar for MPUC Docket No. PL9/CN-07-361, and Certify the Motion to the Minnesota Public Utilities Commission requesting variation of the nine-month deadline in Minn. Stat. 216G.02 (3)(b)(5) to July 22, 2008 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4789594>).

¹⁴¹ *Id.*

31. Enbridge filed its Revised Preferred Route and Alignment for the portions of the route Northwest of Clearbrook, Minnesota on October 10, 2007.¹⁴²

32. Enbridge also filed nine route alternatives for the route Northwest of Clearbrook, Minnesota on October 10, 2007 (the “Northwest Route Alternatives”). In making these submissions, Enbridge maintained that the alternatives modified the initial proposed alignment for the Alberta Clipper project so as to improve constructability, address landowner concerns and reduce the impacts to the natural environment.¹⁴³

33. On October 8, 2007 the Minnesota Department of Natural Resources (“DNR”) filed comments on the AC/SLD Pipeline Routing Permit.¹⁴⁴

34. A second prehearing conference was held on October 18, 2007, which resulted in the Second Prehearing Order of October 25, 2007. The Second Prehearing Order modified the schedule for the AC/SLD Certificate of Need and Pipeline Routing Permit Application proceedings.¹⁴⁵

35. On October 30, 2007, the Commission accepted Enbridge’s Revised Preferred Route and Alignment and Northwest Route Alternatives and varied the requirements of Minn. Stat. 216G.02, subd. 3(b)(5) for the AC/SLD Certificate of Need and Pipeline Routing Permit Application dockets.¹⁴⁶

36. On November 2, 2007, the DOC issued a document titled “Notice of Public Meetings and Public Hearings Before the Minnesota Public Utilities Commission Regarding: I. [CON] Applications for the LSr, Alberta Clipper and Southern Lights Diluent projects . . . II. Applications for [PRP’s] for the LSr, Alberta Clipper And Southern Lights Diluent projects . . .” This notice discussed the Alberta Clipper and Alberta Clipper CON and PRP Applications, listed the public hearing details and described how members of the public could participate in the review process.¹⁴⁷

37. The November 2, 2007 official notice document was published in the *Minnesota Environmental Quality Monitor* on November 5, 2007.¹⁴⁸

¹⁴² Ex. 103.

¹⁴³ Ex. 104.

¹⁴⁴ Letter of Matt Langan, Environmental Review Unit, Department of Natural Resources (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4804250>).

¹⁴⁵ *Second Prehearing Order*, OAH Docket No. 8-2500-19094 (October 25, 2007) (see also, Ex. 112).

¹⁴⁶ *Commission’s Order, In the Matter of the Application of Enbridge Energy*, Docket Nos. PL-9/PPL-07-360, PL-9/PPL-07-361, PL-9/CN-07-465 (November 30, 2007). (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4854129>).

¹⁴⁷ Ex. 406.

¹⁴⁸ Ex. 502.

38. On November 8, 2007 the DOC authorized the release of Enbridge's Comparative Environmental Analysis for the Route Alternatives Northwest of Clearbrook, Minnesota (the "Northwest CEA").¹⁴⁹

39. On November 9, 2007, eight Enbridge witnesses filed direct testimony for the AC/SLD Pipeline Routing Permit Application Northwest of Clearbrook, Minnesota.¹⁵⁰

40. Also on November 9, 2007, Enbridge mailed the November 2, 2007, official notice and a transmittal letter to the landowners it identified along the proposed Alberta Clipper and Southern Lights Diluent projects route Northwest of Clearbrook, Minnesota.¹⁵¹ The transmittal letter, among other topics, detailed Enbridge's Revised Preferred Route and Alignment and Northwest Route Alternatives and provided a list of locations where related material could be reviewed. The letter further explained that the public hearings and review of the proposed route for the areas south of Clearbrook, Minnesota would be delayed. This letter informed the recipients that the public hearings would be held in the spring of 2008.¹⁵² These materials were sent to landowners by certified mail.¹⁵³

41. Additionally, on November 9, 2007, Enbridge filed its Comparative Environmental Analysis for the Northwest Route Alternatives (the "Northwest CEA").¹⁵⁴ This document compared the Route Alternatives to the route originally described in the AC/SLD Pipeline Routing Permit Application.¹⁵⁵

42. On November 12, 2007, Enbridge mailed the Revised Preferred Route and Alignment maps for the portion of the route Northwest of Clearbrook, Minnesota to public libraries in the communities along the proposed route. This mailing included a transmittal letter and copies of the following items: the Northwest Route Alternatives, Comparative Environmental Analysis, the Applicant's pre-filed testimony, the November 2, 2007 official notice document, and excerpts of related statutes and rules.¹⁵⁶

43. At this same time, notice of the November public hearings was also provided to local government entities – including the Minnesota Historical Society and each regional development commission, soil and water conservation district, watershed management district, County Government or Township Government with jurisdiction

¹⁴⁹ Letter from Karen Finstad Hammel (November 8, 2007) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4827777>).

¹⁵⁰ Exs. 106, 107, 108 and 109.

¹⁵¹ Ex. 407; Attachment G to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080797>).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Ex. 104.

¹⁵⁵ *Id.*

¹⁵⁶ Ex. 408.

over land traversed by the proposed pipeline route. Each entity received a transmittal letter, a copy of the November 2, 2007 official notice document and a CD-ROM containing maps of the Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota.¹⁵⁷

44. Elected officials in the jurisdictions that would be traversed by the proposed pipeline route also received notice of the November public hearings.¹⁵⁸

45. The November 2, 2007 official notice document was published as a advertisement in newspapers of general circulation in Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater Counties. This same advertisement was also published in the *Minneapolis Star Tribune*.¹⁵⁹

46. On November 26 and 27, 2007, Public hearings were held in Kittson, Marshall, Pennington and Red Lake counties.

47. Meetings in Polk and Clearwater counties, originally scheduled for November 29, were postponed following an explosion at Enbridge's Clearbrook, Minnesota facility on the evening of November 28, 2007. So as to permit an opportunity for senior Enbridge personnel, who were members of the Applicants' panel and called away to respond to the explosion, to participate in the hearings, the public hearings for Polk and Clearwater counties were rescheduled to January 17, 2008.

48. Written comments and documents received by Enbridge from various parties on the Alberta Clipper and Southern Lights Diluent projects through mid-November were filed through the E-Docket System on November 21, 2007.¹⁶⁰

49. On December 20, 2007 Enbridge filed its Revised Preferred Route and Alignment for the portion of the AC/SLD project routes Southeast of Clearbrook, Minnesota.¹⁶¹

50. On December 20, 2007 Enbridge also filed Route Alternatives One through Twelve for the portion of the AC/SLD project route Southeast of Clearbrook, Minnesota (the "Southeast Route Alternatives") In seeking revisions to the earlier-proposed route, Enbridge asserted that the changes would permit it the flexibility to address environmental or constructability features along the pipeline route and to align the proposed pipelines so as to minimize adverse impacts.¹⁶²

¹⁵⁷ Ex. 409.

¹⁵⁸ Ex 410.

¹⁵⁹ Attachment K to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080801>).

¹⁶⁰ *Public Comments Received by DOC on the Alberta Clipper and Southern Lights Diluent Projects East of Clearbrook*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4843919>).

¹⁶¹ Ex. 115.

¹⁶² Ex. 116.

51. Following December 20, 2007, the parties referred to both the Northwest and Southeast Revised Preferred Routes and Alignments collectively as the AC/SLD Revised Preferred Route and Alignment

52. On January 2, 2008, the DOC issued a revised official notice document for the rescheduled hearings in Polk and Clearwater counties.¹⁶³

53. Under the cover of a letter sent by certified mail the same day, the official notice document for the rescheduled hearings, and a duplicate copy of the materials sent in the November 2, 2007 mailing, was dispatched to the landowners in Polk and Clearwater counties that Enbridge had earlier identified as being potentially affected by the projects.¹⁶⁴ Additionally, local elected officials¹⁶⁵ and government entities¹⁶⁶ in Polk and Clearwater counties were sent a copy of the revised official notice document. Likewise, the revised official notice also published in local newspapers of general circulation in Polk and Clearwater Counties.¹⁶⁷

54. On January 7, 2008 Enbridge filed a thirteenth route alternative for the AC/SLD projects, known as the Fond du Lac Route Alternative. The Fond du Lac Alternative routes the proposed pipelines around, and outside of, the boundary of the reservation of the Fond du Lac Band of Lake Superior Chippewa. The width of this route alternative varies between 1,000 and 2,000 feet.¹⁶⁸

55. On January 9, 2008, the Minnesota Center for Environmental Advocacy filed a Petition to intervene in all MPUC dockets under review in this proceeding.

56. On January 14, 2008, Enbridge sent a cover letter, overview map of the proposed route of the AC/SLD projects, the official notice of application acceptance issued on August 1, 2007, a copy of the U.S. Department of State's Notice of Intent to Prepare Environmental Assessments for the Alberta Clipper and Southern Lights Diluent projects, and a property-specific map to 67 landowners located Southeast of Clearbrook, Minnesota. These landowners were newly-identified during the

¹⁶³ Attachment L to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080802>).

¹⁶⁴ Attachment M to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080803>).

¹⁶⁵ Attachment N to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080804>).

¹⁶⁶ Attachment O to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080805>).

¹⁶⁷ Affidavits of Publication, Attachment P to the LSr Notice Compliance Filing (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5080806>).

¹⁶⁸ Ex. 117 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4889796>).

development of the Revised Preferred Route and Alignment that was submitted on December 20, 2007.¹⁶⁹

57. Also on January 14, 2008, Enbridge sent a cover letter, overview map of the proposed route of the AC/SLD projects, the official notice of application acceptance, a copy of the U.S. Department of State's Notice of Intent to Prepare Environmental Assessments for the Alberta Clipper and Southern Lights Diluent projects and a property-specific map to 3 landowners located Southeast of Clearbrook, Minnesota. These landowners were newly-identified during the development of the Fond du Lac Route Alternative that was submitted on January 7, 2008.¹⁷⁰

58. Public hearings were held in Polk and Clearwater counties on January 17, 2008. Additionally, a third prehearing conference was held on that date in the hearing room in Gully, Minnesota.¹⁷¹

59. On January 22, 2008, in advance of the contested case hearing that was earlier-scheduled on the LSr project for that day, a hearing was held on the MCEA's Petition to Intervene.¹⁷²

60. By way of a letter dated January 29, 2008, Gregg Downing, an Environmental Review Coordinator with the Minnesota Environmental Quality Board, returned to the MCEA its petition requesting that the Board complete an Environmental Assessment Worksheet (EAW) on the "Enbridge Energy pipeline projects." Downing wrote:

We are returning the petition because we believe the projects in question are exempted from preparation of an EAW by virtue of the fact that they are already undergoing environmental review under an approved Alternative Review process pursuant to Part 4410.3600....

[T]hese pipeline projects are exempted from the citizens' petition process (part 4410.1100), the EAW process (parts 4410.1400 to 4410.1700) and the EIS process (parts 4410.2100 to 4410.2800).¹⁷³

61. On February 5, 2008, Enbridge filed an updated version of the Agriculture Mitigation Plan, a supplement to the AC/SLD PRP Application, on February 5, 2008.¹⁷⁴

¹⁶⁹ *Enbridge Energy, Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C.'S Compliance with Notice Requirements*, (hereafter "Enbridge Compliance Filing"), Attachment Q (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359702>)

¹⁷⁰ *Enbridge Compliance Filing*, Attachment R (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359704>).

¹⁷¹ *Third Prehearing Order*, OAH Docket No. 8-2500-19094 (February 8, 2008), at 1.

¹⁷² *Compare, Fourth Prehearing Order*, OAH Docket No. 8-2500-19094-2 (February 11, 2008).

¹⁷³ Letter of Greg Downing (January 29, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4922182>).

62. On February 8, 2008, the Administrative Law Judge issued a Third Prehearing Order, revising the dates for proceedings on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications.¹⁷⁵

63. On February 11, 2008, the Administrative Law Judge issued a Fourth Prehearing Order, granting in part MCEA's request for intervention as a party in the proceedings on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications.¹⁷⁶

64. On February 15, 2008, Enbridge filed Southeast Route Alternatives Fourteen and Fifteen.¹⁷⁷ These two route alternatives expanded the route width in the areas around Portage Lake and the Mississippi River.

65. No route alternatives were filed by the Minnesota Department of Natural Resources ("DNR"), the MCEA, the Fond du Lac Band of Lake Superior Chippewa, or any other person.

66. On February 15, 2008, the Commission issued notice of its February 28, 2008 meeting, at which the Revised Preferred Route and Alignment Southeast of Clearbrook and Southeast Route Alternatives were to be considered for acceptance.¹⁷⁸

67. In comments submitted on February 20, 2008, DOC Staff urged the Commission to accept the Revised Preferred Route and Alignment Southeast of Clearbrook, Minnesota and the Southeast Route Alternatives.¹⁷⁹

68. On February 29, 2008, Enbridge sent a cover letter, overview map of the proposed route of the AC/SLD projects, the official notice of application acceptance issued on August 1, 2007, a copy of the U.S. Department of State's Notice of Intent to Prepare Environmental Assessments for the Alberta Clipper and Southern Lights Diluent projects and a property-specific map to 16 landowners located Southeast of Clearbrook, Minnesota. These landowners were newly-identified as part of the development of the two final route alternatives that were filed on February 15, 2008.¹⁸⁰

¹⁷⁴ See, Updated Agriculture Mitigation Plan (January 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4922184>).

¹⁷⁵ *Third Prehearing Order*, OAH Docket No. 8-2500-19094 (February 8, 2008).

¹⁷⁶ *Fourth Prehearing Order*, OAH Docket No. 8-2500-19094-2 (February 11, 2008).

¹⁷⁷ Ex. 118.

¹⁷⁸ *Notice of Commission Meeting*, MPUC Docket Nos. PL-9/PPL-07-361 (February 15, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4945358>).

¹⁷⁹ *Comments and Recommendations of the Department of Commerce*, Docket No. PL9/PPL-07-361 (February 15, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4952388>).

¹⁸⁰ *Enbridge Compliance Filing*, Attachment S (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359707>).

69. On March 5, 2008, the DOC, now renamed the “Office of Energy Security” or “OES,” issued an official notice of public hearings for Clearwater, Beltrami, Cass, Itasca, St. Louis and Carlton Counties on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications.¹⁸¹

70. On March 7, 2008, the OES authorized the release of Enbridge’s Comparative Environmental Analysis for the Route Alternatives Southeast of Clearbrook, Minnesota (the “Southeast CEA”).¹⁸²

71. On March 10, 2008, Enbridge mailed a cover letter and the official notice document that was issued by the OES on March 5, 2008 to all landowners in Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Beltrami, Hubbard and Cass Counties.¹⁸³

72. Also on March 10, 2008, Enbridge mailed a cover letter, the March 5 official notice of public hearings issued by the OES, transmittal letters, maps showing the Revised Preferred Route and Alignment Southeast of Clearbrook, Minnesota, the Southeast Route Alternatives, the Southeast Comparative Environmental Analysis, and the pre-filed testimony of all witnesses to 23 public libraries along the entire route of the proposed Alberta Clipper and Southern Lights Diluent projects.¹⁸⁴

73. On March 11, 2008, Enbridge filed the Southeast CEA.¹⁸⁵

74. On March 12, 2008 Enbridge sent a cover letter, the March 5 official notice document issued by the OES and a CD-ROM containing transmittal letters, maps showing the Revised Preferred Route and Alignment Southeast of Clearbrook, Minnesota, the Southeast Route Alternatives and the Southeast Comparative Environmental Analysis to all applicable government entities along the entire route of the proposed Alberta Clipper and Southern Lights Diluent projects.¹⁸⁶

75. Pursuant to the Commission’s Order of August 1, 2007,¹⁸⁷ Enbridge had the March 5, 2008 official notice of the public hearings published in 21 newspapers of

¹⁸¹ *Notice of Public Hearings*, (March 5, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4989021>).

¹⁸² *Letter from Karen Finstad Hammel* (March 7, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4994490>).

¹⁸³ *Enbridge Compliance Filing*, Attachment V (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359712>).

¹⁸⁴ *Enbridge Compliance Filing*, Attachment W (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359716>).

¹⁸⁵ Comparative Environmental Analysis of the Route Alternatives for the Alberta Clipper and Southern Lights Diluent Projects Southeast of Clearbrook, Minnesota, (March 11, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4999067>).

¹⁸⁶ *Enbridge Compliance Filing*, Attachment Z (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359715>).

¹⁸⁷ Ex. 302.

general circulation in Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton counties; and likewise in the *Minneapolis Star Tribune*.

76. Two errors were encountered during the process of publicizing the public meetings in the media: The *Bemidji Pioneer* did not publish the notice until March 25, 2008 – the day of the first of two public hearings in Beltrami County. Second, the *Pilot Independent*, a newspaper serving Cass County, did not publish the notice until April 9, 2008; some fourteen days after the Cass County public hearing on March 26, 2008.

77. The impact of these lapses was *de minimus*. With respect to the publication of notice of the hearing Beltrami County, a follow-on hearing proceeded on the very next day after publication, in the same location as the hearing occurred on March 25, 2008.¹⁸⁸ With respect to publication of notice in Cass County, notwithstanding timing of the publication of the notice in the *Pilot Independent*, the *Cass Lake Times*, a periodical of general circulation within the county, published the notice thirteen days in advance of the hearing in Cass Lake.¹⁸⁹ 27 persons signed the hearing roster for the Cass County Public Hearing.

78. On March 14, 2008, the Administrative Law Judge issued a Fifth Prehearing Order, revising the date for submission of pre-filed direct testimony on the application for a Certificate of Need.¹⁹⁰

79. On March 18, 2008, Enbridge sent a cover letter and the March 5 official notice document to all landowners Itasca, Aitkin, St. Louis and Carlton Counties that it identified as being likely to be affected by the proposed projects.¹⁹¹

80. Also on March 18, 2008, Enbridge mailed a cover letter and the March 5 official notice document to all elected officials in Itasca, Aitkin, Carlton, and St. Louis Counties.¹⁹²

81. Public hearings were held on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications on March 25 and 26 in Clearwater, Beltrami and Cass Counties.

82. At the March 25, 2008 public hearing in Clearwater County, Mark Sitek, Project Director for the Alberta Clipper and Southern Lights Diluent projects, testified that the company had been unable to reach an agreement with the Fond du Lac Band of Lake Superior Chippewa for a right-of-way through the Fond du Lac Reservation. Mr.

¹⁸⁸ Compare, *Notice of Public Hearings*, at 3 (March 5, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4989021>).

¹⁸⁹ *Id.*

¹⁹⁰ *Fifth Prehearing Order*, OAH Docket No. 8-2500-19094-2 (March 14, 2008).

¹⁹¹ *Enbridge Compliance Filing*, Attachment BB (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359705>).

¹⁹² *Enbridge Compliance Filing*, Attachment CC (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5359693>).

Sitek stated that Enbridge prefers, and will seek the Commission's approval of, the Fond du Lac Route Alternative.¹⁹³

83. On April 6, 2008, Enbridge filed, as a trade secret document, the landowner notice list for the AC/SLD Certificate of Need and Pipeline Routing Permit Applications.¹⁹⁴

84. On April 8, 2008, Jon Erik Kingstad, Esquire, petitioned to intervene as a party in the AC/SLD Certificate of Need and Pipeline Routing Permit proceedings.¹⁹⁵

85. On April 8, 2008, the Fond du Lac Band of Lake Superior Chippewa filed a petition to intervene in the AC/SLD Pipeline Routing Permit proceedings.¹⁹⁶

86. Public hearings on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications were held in Itasca, St. Louis and Carlton Counties on April 8 and 9, 2008.

87. On April 21, 2008, Enbridge filed a supplement to the Fond du Lac Route Alternative – Southeast Route Alternative Number 13.¹⁹⁷

88. In a letter dated April 25, 2008, Karen Finstad Hammel, Counsel for the OES, stated that a pipeline route through the Fond du Lac Reservation was duly presented to the Commission. In the view of the OES, notwithstanding Enbridge's more recently expressed preference for a route that curves around the Fond du Lac Reservation, the Commission may issue a Routing Permit that authorizes a pipeline route through Reservation land.¹⁹⁸

89. On May 8, 2008, pursuant to the Sixth Prehearing Order, Enbridge filed a written summary of the April 8, 2008 oral stipulation of counsel as to the filing of post-hearing briefs on the AC/SLD Certificate of Need and Pipeline Routing Permit Applications.¹⁹⁹

¹⁹³ Clearwater County Public Hearing Transcript, at 17.

¹⁹⁴ *Notice Mailing Address List*, OAH Docket No. 8-2500-19094-2 (May 6, 2008). (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5179917>).

¹⁹⁵ *Kingstad Petition for Intervention*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5176336>).

¹⁹⁶ *Fond du Lac Band of Lake Superior Chippewa Indians Petition for Intervention*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5083357>).

¹⁹⁷ *April 21, 2008 Supplemental Filing to the Fond Du Lac Route Alternative*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129096>).

¹⁹⁸ *Letter from Karen Finstad Hammel* (April 25, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5144083>).

¹⁹⁹ *Written Summary of the Stipulation as to Post-Hearing Briefing Schedule*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5186909>).

90. The contested case hearing on the AC/SLD Certificate of Need Application was held at the Offices of the Commission on May 13, 2008.

91. By way of an Order dated June 19, 2008, the Commission, in the parallel proceedings on the LSr project, issued Enbridge “a Certificate of Need for its proposed 108-mile, 20-inch diameter pipeline project at an estimated capacity of 186,000 barrels of light sour crude oil per day.”²⁰⁰

III. Application for a Certificate of Need

A. Enbridge, the Mainline System, the Alberta Clipper Project and the Southern Lights Diluent Project:

92. Enbridge and its corporate affiliates own and operate both the longest crude oil and liquids pipeline system in the world²⁰¹ and the largest natural gas distribution company in Canada. Enbridge employs approximately 5,000 people in the United States, Canada and South America.²⁰²

93. Enbridge’s crude oil and liquids pipeline system – known as the “Enbridge Mainline System” – originates in Canada and extends into the United States.²⁰³

94. The United States portion of the Enbridge Mainline System, operated by EELP, is known as “the Lakehead System.”²⁰⁴ The Lakehead System extends over 1,900 miles – stretching from the Canadian border at Neche, North Dakota, moving around the Great Lakes, through the Upper Peninsula of Michigan and Chicago, Illinois, and ending at an eastern terminus at the Canadian border near St. Clair, Michigan.²⁰⁵ Along these various paths, the Lakehead System now consists of approximately 3,300 miles of pipeline.²⁰⁶

95. The Enbridge Mainline System of pipelines supplies the majority of the crude oil refined into products used by Minnesota consumers. In 2006, the Enbridge Mainline System supplied approximately seventy-one percent (71%) of the crude oil demanded by refineries in Minnesota and one-hundred percent (100%) of the crude oil demanded by refineries in Wisconsin.²⁰⁷

²⁰⁰ See, *Commission Order*, MPUC Docket No. PL-9/CN-07-464 (June 19, 2008) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5297314>).

²⁰¹ Ex. 300, § 7853.0230 at 1, n.1.

²⁰² Ex. 200, § 7853.0230 at 5.

²⁰³ Ex. 300, § 7853.0230 at 1, n.1.

²⁰⁴ Ex. 300, § 7853.0230 at 3, 4.

²⁰⁵ Ex. 300, § 7853.0230 at 4.

²⁰⁶ Ex. 300, § 7853.0230 at 3.

²⁰⁷ Ex. 300, § 7853.0230 at 4.

1. Alberta Clipper Project

96. The portion of the Alberta Clipper project that crosses the State of Minnesota will be 285 miles long, stretching between the Minnesota-North Dakota border in Kittson County, and ending at the Minnesota-Wisconsin border in Carlton County, Minnesota.²⁰⁸ The Alberta Clipper project will cross Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis and Carlton Counties.²⁰⁹ Included as part of the Alberta Clipper project is the planned installation of a total three new above-ground pump stations – one each at Enbridge’s Viking, Clearbrook and Deer River stations.²¹⁰

97. The Alberta Clipper project will carry crude oil from the oil sands region in Western Canada to the Midwestern United States.²¹¹ Deliveries to Minnesota refineries will be made through a connection to the non-affiliated Minnesota Pipeline Line at the Enbridge storage tank and terminal facility in Clearbrook, Minnesota.²¹² Crude oil will also be delivered to the Enbridge facility in Superior, Wisconsin.²¹³

98. From Superior, Wisconsin, this crude oil is available for transport through the Lakehead system to other refineries in the Mid-west.²¹⁴

99. The proposed Alberta Clipper will have an initial “annual capacity” – defined as the average sustainable throughput over a year – of 450,000 barrels-per-day.²¹⁵ By adding additional pumping capacity, the Alberta Clipper project could be expanded to achieve a future throughput capacity of 800,000 barrels-per-day.²¹⁶

100. Enbridge does not now have plans to install the pumps needed to achieve this higher capacity.²¹⁷ Instead, Enbridge has designed the proposed pipeline so as to carry higher capacities; permitting future expansions of the Lakehead System without the installation of an additional pipeline.

101. EELP estimates that the cost of constructing the Alberta Clipper project within Minnesota to be \$991 million.²¹⁸

²⁰⁸ Ex. 300, § 7853.0230 at 6.

²⁰⁹ Ex. 300, § 7853.0230 at 6-7.

²¹⁰ Ex. 300, § 7853.0230 at 6; Ex. 300 – Exhibit C.

²¹¹ Ex. 300, § 7853.0240 at 1.

²¹² Ex. 300, § 7853.0240 at 2.

²¹³ Ex. 300, § 7853.0240 at 1-2.

²¹⁴ Ex. 300, § 7853.0240 at 2, 7-9.

²¹⁵ Ex. 300, § 7853.0230 at 10-11.

²¹⁶ *Id.* at 11.

²¹⁷ Ex. 300, § 7853.0240 at 2.

²¹⁸ Ex. 300, § 7853.0230 at 9.

102. If both projects are approved, between Clearbrook, Minnesota and Superior, Wisconsin, the Alberta Clipper project will be constructed concurrently with the Southern Lights Diluent project, within the same construction footprint and parallel to the existing Enbridge right-of-way.²¹⁹

103. EELP anticipates beginning construction of the Alberta Clipper project in December of 2008, with a planned in-service date of December 31, 2009.²²⁰

2. Southern Lights Diluent Project

104. As noted briefly above, the Southern Lights Diluent project will carry light hydrocarbon liquids from refineries in the Chicago area to northern Alberta. Diluents are by-products of the oil refining process that can be useful in facilitating the transport of heavy crude oil.²²¹

105. The proposed project is a 652-mile long, 20-inch outside-diameter pipeline running from the Chicago, Illinois area to Clearbrook, Minnesota.²²² The new construction in Minnesota will extend 175 miles from the Minnesota-Wisconsin border in Carlton County to the Enbridge facility in Clearbrook, Minnesota.²²³ Moving from east to west, the Southern Lights Diluent project will cross Carlton, St. Louis, Aitkin, Itasca, Cass, Hubbard, Beltrami and Clearwater counties.²²⁴

106. The only surface facilities contemplated for the Southern Lights Diluent project are a pump station within Enbridge's existing Clearbrook Terminal and block valves along the right-of-way.²²⁵

107. At the Clearbrook Station, Enbridge proposed to connect the newly constructed line to an existing pipeline – known as Line 13. The pumping direction of Line 13 would then be reversed so as to permit the transportation of diluents north to an Enbridge terminal facility in Edmonton, Alberta, Canada.²²⁶

108. The two projects together establish a pipeline circuit. Heavy crude oil is transported to refineries in the United States through the proposed Alberta Clipper pipeline; diluents are extracted from the crude oil and returned to Canada through the

²¹⁹ Ex. 300, § 7853.0230 at 7.

²²⁰ Ex. 300, § 7853.0230 at 9.

²²¹ Ex. 300, § 7853.0230 at 2 and 8.

²²² Ex. 300, § 7853.0230 at 7.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Ex. 300, § 7853.0530 at 5.

²²⁶ Ex. 300, § 7853.0230 at 7.

Southern Lights Diluent project; which in turn facilitates the transport of future supplies of heavy crude oil to the United States along the Alberta Clipper pipeline.²²⁷

109. The Southern Lights Diluent project will have an “annual capacity” – defined as the average sustainable throughput over a year – of 180,000 barrels-per-day.²²⁸ This annual capacity could be increased to 330,000 barrels-per-day through the addition of new pumping facilities or horsepower.²²⁹

110. EPSL estimates that the construction cost of the Minnesota portion of the proposed Southern Lights Diluent project to be \$306 million.²³⁰ If approved by the Commission, Enbridge anticipates beginning construction of this project in December of 2008, with a planned in-service date of July 1, 2010.²³¹

B. Forecasts of Future Energy Demand:

111. Crude oil production in Western Canada is expected to grow significantly in the future. Forecasts by the Canadian National Energy Board, the Canadian Association of Petroleum Producers and by Enbridge all predict growth in production over the course of the next 15 years.²³²

112. Multiple forecasts from different sources were included in the record. The AC/SLD Certificate of Need Application included a market growth assessment from the Canadian National Energy Board, a production forecast from the Canadian Association of Petroleum Producers,²³³ and Enbridge’s own internal long-range forecast.²³⁴ As to the demand for energy, the record includes several iterations of the Energy Information Administration’s Annual Energy Outlook (“AEO”)²³⁵ and the Office of Energy Security’s analysis of future demand for refined petroleum products in Minnesota.²³⁶

113. As Asian countries consume more petroleum, greater strains on prices in the U.S. domestic market for crude oil are anticipated.²³⁷

²²⁷ Ex. 300, § 7853.0240 at 2.

²²⁸ Ex. 300, § 7853.0230 at 12.

²²⁹ Ex. 300, § 7853.0230 at 13.

²³⁰ Ex. 300, § 7853.0230 at 9.

²³¹ *Id.*

²³² Ex. 300, § 7853.0240 at 10.

²³³ Ex. 300, Exhibit D.

²³⁴ Ex. 300, Exhibit F.

²³⁵ The 2007 Edition of the AEO is referenced in the AC/SLD CON Application (Ex. 300) and testimony of Messrs. Heinen and Earnest (Exhibits 308 and 312).

²³⁶ Exs. 308 and 316.

²³⁷ Ex. 308 at 38.

114. Demand for crude oil transportation on the Lakehead System has increased from 1.35 million barrels-per-day in 2003 to 1.63 million barrels-per-day at the close of 2006.²³⁸

115. This demand for increased crude oil transportation is driven by increasing demand for refined petroleum products, a fall in U.S. production from southern states and shipper preference for crude oil imported from Canada as opposed to imports from outside North America.²³⁹ According to the Energy Information Administration's *AEO 2008*, oil consumption in the United States will increase to approximately 22.8 million barrels-per-day by the year 2030.²⁴⁰

116. Petroleum demand in the West North Central Region, a group of seven states include Minnesota, is expected to rise.²⁴¹ Indeed, Enbridge forecasts that without pipeline expansions for transportation of Western Canadian crude oil, there will be a shortage in pipeline capacity of 1.65 million barrels-per-day as soon as 2015.²⁴²

117. The increase in regional petroleum demand for transportation fuels and other refined products is driven by regional population growth.²⁴³ The Minnesota State Demographic Center predicts that the population of Minnesota will grow by 20.6 percent between 2005 and 2030.²⁴⁴

118. Refineries in Minnesota and the surrounding region have announced or are exploring expansions to meet future demand for refined petroleum products. The Pine Bend refinery in Rosemount, Minnesota was expected to bring a 50,000 bpd expansion online in the fall of 2007.²⁴⁵ The Murphy Oil refinery in Superior is exploring the possibility of expanding.²⁴⁶ Other refineries are in the process of expanding or have announced expansions in Illinois, Indiana, and Michigan.²⁴⁷

119. Based upon its review of petroleum demand forecasts, population trends and crude oil production forecasts, the DOC also concluded that there will be growth in petroleum demand in Minnesota and the surrounding region over the economic lifespan of the AC/SLD projects.²⁴⁸

²³⁸ Ex 300, § 7853.0240 at 1.

²³⁹ Ex 300, § 7853.0240 at 2, 6.

²⁴⁰ Ex. 316 at 26.

²⁴¹ Ex. 308 at 20-24.

²⁴² Ex. 300, Section 7853.0240 at 11.

²⁴³ Ex. 308 at 20.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 14.

²⁴⁶ *Id.*

²⁴⁷ Ex. 303 at 16-17.

²⁴⁸ Ex. 316 at 32.

120. Based upon its review of the *AEO 2008*, and other sources, the OES concluded that demand for refined petroleum products in Minnesota and the surrounding region is expected to rise over the 25-year “economic life” of the AC/SLD projects.²⁴⁹

121. Enbridge and other industry forecasts predict that the supply of diluent produced in western Canada is insufficient to meet demand for these products.²⁵⁰ The Southern Lights Diluent project, with its capability to deliver diluent, is designed to meet expected demand for the materials.²⁵¹

122. MCEA challenges these predictions, asserting that:

[E]stimates of future demand growth based upon the assumption that the future will be similar to the past are inherently unreliable, and there are several reasons to believe that the future may be different than the past. For example, recent legislation at the national level is giving large incentive to bio-fuels and requiring increased fuel efficiency in automobiles. Similarly, states, including Minnesota, are moving toward adopting California clean car standards that will result in even greater efficiencies. Finally, the recent run up in crude prices suggests that prices can rise at more than their historical average.²⁵²

C. The Impact of Conservation Programs:

123. A “preliminary version” of the climate change action plan required by Minn. Stat. § 216H.02 was submitted to the Legislature on February 1, 2008.²⁵³ In general, the preliminary plan recommends pursuing the hoped-for reductions in greenhouse gas emissions through government encouragement of “clean” and renewable energy technologies.

124. During the recently completed 2008 Legislative Session, however, there was no amendment to provisions of Chapter 216B governing the issuance of Certificates of Need for large energy facilities.²⁵⁴

125. OES Rates Analyst Adam J. Heinen expressed the view that even in the event of an increase in Corporate Average Fuel Economy (“CAFE”) standards for

²⁴⁹ Ex. 308 at 30-31; Ex. 316 at 24-25, 32. For its part, Enbridge projects that, with proper maintenance, the functional life of its pipeline will be more than the 25-year depreciation schedule. *Compare, e.g.*, Ex. 300, § 7853.0540 at 2.

²⁵⁰ Ex. 300, § 7853.0240 at 3-4.

²⁵¹ *Id.*

²⁵² Ex. 350, at 6.

²⁵³ See, Letter of Director Edward Garvey and Commissioner Brad Moore (February 1, 2008) (http://www.state.mn.us/mn/externalDocs/Commerce/Letter_for_preliminary_climate_change_action_plan_020508104727_MPCA-MDC%202-1-08.pdf).

²⁵⁴ See, Transcript, Contested Case Hearing, at 112-13.

automobiles, any reductions in consumption that follow from increased fuel efficiency will be outpaced by an increase in overall miles traveled by Minnesotans. Mr. Heinen opined that raising fuel efficiency standards will not reduce demand for the petroleum products, or reduce the need for the proposed projects.²⁵⁵

126. Enbridge's conservation programs are limited to internal corporate efforts to reduce the amount of resources that its operations consume. As a common carrier of petroleum products, it does not have a conservation program that impacts or influences the broader demand for the materials that it transports.

D. The Impact of the Applicant's Promotional Programs:

127. Enbridge has not undertaken any promotional activities that would increase demand for crude oil supplies to Minnesota or the surrounding region.²⁵⁶

128. Crude oil is in demand because it can be refined into various sought-after products; including gasoline, diesel fuel, aviation fuel, heating oil and asphalt.²⁵⁷ Diluent is in demand because it can be used to facilitate the movement of crude oil through pipelines to retail markets.²⁵⁸

E. Meeting Demand Through Current and Planned Facilities:

129. The Lakehead System is only existing pipeline system that connects western Canadian crude oil production with the Upper Midwest. Through the Minnesota Pipeline, the Lakehead System is also the shortest route to Minnesota refineries.

130. The Enbridge Mainline System is currently operating at or near capacity.²⁵⁹

131. The existing capacity of the Mainline System is not sufficient to transport the volume of crude oil that is forecasted as future demand in the Midwest.²⁶⁰

132. Any new pipeline that would meet future demand would require a Certificate of Need. Therefore, there are no existing or planned facilities that can meet the future demand without a Certificate of Need.

133. Enbridge predicts that if the Alberta Clipper project is not constructed, it will begin to "apportion" the limited capacity of the Mainline System among its various

²⁵⁵ See, 308 at 30-31.

²⁵⁶ Ex. 300, § 7853.0250 at 6.

²⁵⁷ Ex. 308 at 18.

²⁵⁸ *Id.*

²⁵⁹ Ex. 300, § 7853.0510 at 2.

²⁶⁰ Ex. 314, at 6 and Exhibit Sitek-1; see also, Ex. 300, § 7853.0240 at 10-11; Ex. 300, Exhibit D, Chart 5.

shipping customers. Enbridge projects that, without additional capacity, perhaps as early as 2010, refineries in Minnesota and Wisconsin will be unable to obtain their desired amounts of crude oil from the Enbridge system.²⁶¹

134. Enbridge projects that if the capacity of its Mainline System is apportioned, the result will be higher prices for access to the remaining, and limited, supplies of crude oil.²⁶²

135. The OES reviewed the impact of renewable fuel sources or technologies as part of its analysis of future demand for refined petroleum products.²⁶³ The OES concluded that even if new alternative energy technologies were adopted at rates faster than expected, these technologies would only slow the growth in demand for refined products, but not reduce the overall demand below current levels.²⁶⁴

F. The Efficiency of the Projects' Use of Resources:

136. Electrical power for pumping on the Lakehead System constitutes approximately thirty-five percent of Enbridge's total operating budget.²⁶⁵

137. Enbridge has an Energy Management Department that negotiates power contracts and allocates power to pumps on the Enbridge Mainline System to assure its economical and efficient use of electrical power.²⁶⁶ Power usage is continually tracked and Enbridge works with electrical utilities to plan for transmission and generation needs.²⁶⁷

G. Possible Alternatives to the Proposed Projects:

138. As part of the review obliged by Minn. R. 7853.0540, Enbridge examined six alternatives to the AC/SLD projects.²⁶⁸ The alternatives considered were:

- (1) "no action;"
- (2) transporting petroleum products by truck;
- (3) transporting petroleum products by rail car;

²⁶¹ Ex. 312 at 9; Ex. 314 at 6.

²⁶² Ex. 312 at 6-9.

²⁶³ Ex. 316 at 29-30.

²⁶⁴ Ex. 316 at 30.

²⁶⁵ Ex 300, § 7853.0260 at 1.

²⁶⁶ Ex. 305 at 5.

²⁶⁷ Ex. 300, § 7853.0260 at 1.

²⁶⁸ Ex. 300, § 7853.0540, 1-14.

- (4) pipeline system alternatives;
- (5) transporting petroleum products by way of alternative routes; and,
- (6) alternative pipeline designs and size.

139. No alternatives were introduced or established by any other person or party.

1. “No Build” Alternative

140. Enbridge reviewed traditional pipeline alternatives – such as pipeline looping and the addition of horse power at existing stations – but these options cannot accomplish the transportation of crude oil that is likely to be produced in Canada, or demanded in the Midwest region. Accordingly, the “no build” alternative was considered but rejected by Enbridge.²⁶⁹

141. Mr. Kingstad and MCEA urged a “no build” alternative because, in their view, access to higher quantities of crude oil – particularly from the Canadian “tar sands” region – at relatively lower prices, is not a socially beneficial result. In their view, the best result for Minnesota, the region and its citizens would be to import and consume smaller quantities of this oil.²⁷⁰

142. The AC/SLD projects’ 36-inch and 20-inch designs provide the most cost-effective combination of capital outlay and pumping capacity for meeting projected near-term demand of petroleum products.²⁷¹

143. The “no build” alternative is not a more reasonable and prudent alternative.

2. Truck Transportation Alternative

144. Transporting 450,000 barrels-per-day of crude oil between Hardesty, Alberta and Superior, Wisconsin would require a daily, 2,200-mile round-trip by a fleet of approximately 21,600 trucks and 43,200 drivers.²⁷²

145. Transporting 180,000 barrels-per-day of diluent between Chicago, Illinois and Edmonton, Alberta would require a daily 3,400-mile round trip by a fleet of approximately 1,200 trucks.²⁷³

²⁶⁹ Ex. 300, § 7853.0540 at 2.

²⁷⁰ See, e.g., MCEA Post-Hearing Brief at 12, 13 and 28; Kingstad Post-Hearing Brief, at 4-5.

²⁷¹ See, Ex. 300, § 7853.0540 at 2 and 12.

²⁷² See, Ex. 300, § 7853.0540 at 4.

²⁷³ Ex. 300, § 7853.0540 at 8.

146. Enbridge asserts that there are neither sufficient vehicles nor drivers available to meet this demand.²⁷⁴

147. Even if transportation of similar quantities of crude oil were possible by truck, the capital and operating costs of such an enterprise compare poorly with the capital and operating costs associated with transporting crude oil by way of the proposed pipeline. Enbridge notes that it is not aware of any trucking operation that is large enough in scale to provide guidance for the pricing of such an alternative. Even without the addition of costs of new vehicles and facilities, Enbridge projects that the operating cost of the trucking alternative would be approximately \$4 billion each year – a figure that far exceeds the capital costs of the proposed projects.²⁷⁵

148. The OES concurred that truck transportation was a poor alternative to the proposed pipeline due to the higher costs, environmental impacts and increased safety risks associated with transporting this quantity of petroleum products by truck.²⁷⁶

149. The trucking alternative is not reasonable compared to the AC/SLD projects.

3. Rail Transportation Alternative

150. Transporting 450,000 barrels-per-day of crude oil between Hardisty, Alberta, and Superior, Wisconsin by rail car is a proposal that is constrained by real limitations. Establishing this rail service – which would include development of spur lines, rail sidings and terminal facilities as well as significant upgrades to the connecting railways – would require significant capital investment and involve prohibitively-high operating costs.²⁷⁷ Indeed, Enbridge projected that even when one excludes the costs of rolling stock and infrastructure, the annual rail costs of such an alternative would be more than \$1 billion each year.²⁷⁸

151. The rail alternative would create significant environmental and social disruption. A total of 24,570 tank cars would be required to move the same volume of crude oil and diluent that can be shipped by the AC/SLD projects.²⁷⁹

152. The time required to move these volumes by rail also establishes that this is a poor alternative. Enbridge estimated that the travel time between Hardisty and Superior would be between 10 and 15 days,²⁸⁰ and the round trip time between the

²⁷⁴ Ex. 300, § 7853.0540 at 5 and 9.

²⁷⁵ Ex. 300, § 7853.0540 at 4, 5, 8 and 9.

²⁷⁶ Ex. 308 at 7.

²⁷⁷ Ex. 300 § 7853.0540 at 5-6, 9-11.

²⁷⁸ Ex. 300 § 7853.0540 at 6.

²⁷⁹ *Id.*, at 5, 10.

²⁸⁰ *Id.*, at 5.

Chicago area and Edmonton, Alberta (the ultimate destination of the Diluent) would approach 30 days.²⁸¹

153. The OES concurred with this assessment, noting the high costs, environmental disruption, and higher public safety risks.²⁸²

4. Pipeline System Alternatives

154. Enbridge examined use of the proposed Keystone Pipeline under development by TransCanada Keystone Pipeline, LLC as an alternative to the Alberta Clipper project.

155. The Keystone Pipeline is not a feasible alternative to the proposed Alberta Clipper project because it does not connect to the refinery markets in Minnesota, Wisconsin and Greater Chicago that would be served by the proposed Alberta Clipper project.²⁸³

156. Enbridge examined using the existing Wood River system to move diluent to the Minneapolis - St. Paul area and a new pipeline route from the Minneapolis - St. Paul area to Clearbrook, Minnesota.²⁸⁴ This alternative was rejected as an alternative to the proposed Southern Lights Diluent project because it would have required 206 miles of new pipeline construction – as opposed to the shorter, 175-mile Southern Lights Diluent route. Likewise, there are capacity and operational constraints to transporting diluents on the Wood River system.²⁸⁵

157. The OES concurred with Enbridge's assessment that there are no feasible alternative pipeline systems to the proposed projects.²⁸⁶

5. Alternative Pipeline Design/Size

158. Enbridge examined use of a 42-inch diameter pipe for the proposed Alberta Clipper project instead of the proposed 36-inch diameter pipe.²⁸⁷

159. This alternative was rejected because it would require higher rates of minimum flow through the pipeline – rates of 525,000 barrels-per-day – in order to prevent different batches of oil from commingling in this larger pipe. Enbridge does not project that this level of transport will be achieved until many years after the proposed

²⁸¹ *Id.*, at 6.

²⁸² Ex. 308 at 7 and 9.

²⁸³ Ex. 300, § 7853.0540 at 3.

²⁸⁴ *Id.*, at 11.

²⁸⁵ *Id.*, at 11-12.

²⁸⁶ Ex. 308 at 12.

²⁸⁷ Ex. 300, § 7853.0540 at 2.

start up dates, obliging less-desirable manual work-arounds so as to keep distinct batches of oil separate from each other.²⁸⁸

160. The 42-inch design is 15 percent more expensive, and would take longer to place in service, than the 36-inch diameter option.²⁸⁹

161. For these reasons, Enbridge rejected a 42-inch pipeline option for the Alberta Clipper project.

162. Enbridge examined use of a 16-inch or 24-inch diameter pipeline for the Southern Lights Diluent project, as opposed to the 20-inch diameter proposal contained in the AC/SLD CON Application.²⁹⁰ Use of 16-inch diameter pipe would have required additional horsepower, which would have offset the reduced cost of the 16-inch pipe sections.²⁹¹ Use of 24-inch diameter pipe would have increased the capital cost of the Southern Lights Diluent project.²⁹²

163. The OES agreed with Enbridge's rejection of the 16-inch design alternative due to higher costs.²⁹³

164. No other party has submitted an alternative pipeline size for consideration.

H. Consequences of Granting the Certificates of Need:

1. Relationship of the Project to the State's Energy Needs

165. The Enbridge Certificate of Need applications are best understood in the context of four key facts: (1) the current Enbridge system is near capacity and unable to ship significant increased volumes to U.S. refineries, if the event of an increased demand for these materials; (2) demand for crude oil appears to be on the rise in Minnesota; (3) Minnesota's position within the larger global market for crude oil supplies rests upon its proximity to supplies of Canadian crude oil; and (4) limiting the access of Minnesota refineries to Canadian crude oil would require that any further demand be satisfied by more costly and less stable sources of supply.

166. If the Alberta Clipper project is not constructed within the next several years, Minnesota refiners, indeed all refineries in the Midwest, will begin to experience apportionment. As the demand for crude oil ship outstrips the available pipeline capacity, apportionment has the effect of driving up the delivered costs of Canadian crude oil to refineries in the Upper Midwest. Higher "feedstock costs" to Minnesota

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Ex. 300, § 7853.0540 at 12.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Ex. 308 at 10-12.

refiners in turn prompt rises in the price of refined products and results in higher prices to consumers.²⁹⁴

167. The OES is convinced that demand for refined petroleum products within Minnesota will grow²⁹⁵ and that there is an economic need for the proposed projects.²⁹⁶

168. Because of their relative proximity to Western Canada, Minnesota refineries enjoy significant cost advantages when processing Canadian crude oil. This advantage arises out of the cost that is associated with transporting crude oil from place to place. For example, transportation costs will add approximately \$4.00 to the cost of a barrel of oil that is delivered from Alberta to the U.S. Gulf Coast, over the cost of delivering that same barrel to a refinery in Minnesota. Conversely, the price associated with delivering oil from Saudi Arabia, to Minnesota refineries, will be much greater than receiving crude oil from closer Canadian suppliers.²⁹⁷

169. The 450,000 barrels-per-day of crude oil capacity of the Alberta Clipper project and the 180,000 barrels-per-day of diluent capacity of the Southern Lights Diluent project will result in more stable supplies to refineries in Minnesota and the surrounding region. Further, an increase in, and a steadying of, the supply of petroleum provided by these projects, will provide some insulation of the Minnesota market from broader, global pressures on the price of crude oil.²⁹⁸

170. The Alberta Clipper project will act to lower the “all-end delivered cost” of Canadian crude oil to Minnesota refineries and refineries throughout the Upper Midwest.²⁹⁹

171. Additionally, by linking to an existing network of pipelines, the added crude oil supplies from the Alberta Clipper line could reach most of the refineries in the Midwestern states of Petroleum Administration for Defense District, Number 2.³⁰⁰

172. The Alberta Clipper provides oil shippers with flexibility to respond to market disruptions – such as over-supply or under-supply in a particular area.³⁰¹ For

²⁹⁴ Evidentiary Hearing Transcript, at 22-23, and 69.

²⁹⁵ Ex. 308 at 21

²⁹⁶ *Id.*

²⁹⁷ Evidentiary Hearing Transcript, at 29, 35.

²⁹⁸ Ex. 308 at 34, 39.

²⁹⁹ Evidentiary Hearing Transcript, at 69.

³⁰⁰ Ex. 300, Tab B, Exhibit E at 23 and Exhibit J at 7-8. During World War II, the U.S. Government's Petroleum Administration for War divided the continental United States into five Petroleum Administration for Defense Districts. The states of Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Ohio, Oklahoma, Tennessee and Wisconsin are within "PADD II."

³⁰¹ Ex. 300, § 7853.0240, at 14-15.

example, if supplies from the Gulf Region are slowed or stopped, the Alberta Clipper pipeline could mitigate the effects of disruptions in supply, and mitigate price increases, for Minnesota and surrounding states.³⁰²

173. Denial of the AC/SLD CON Application, however, would “adversely affect the future adequacy, reliability and efficiency of energy supply to Enbridge’s customers, the people of Minnesota, and surrounding states.”³⁰³ Principally, because there are not good alternative options for providing access to the crude oil supplies that the OES forecasts will be demanded in Minnesota. Aside from the Enbridge pipeline systems, there is a single pipeline (originating in Southern Illinois) into the Minneapolis-St. Paul area.³⁰⁴ This line does not have the capacity to meet the projected need.³⁰⁵

174. There would be degradation in the security of supply to the upper parts of the United States if the Alberta Clipper project is not constructed.³⁰⁶

175. The Southern Lights Diluent project will return diluent to Canadian crude producers to allow them to produce the appropriate grade of crude oil for delivery to refiners, strengthening the commercial linkages between Western Canadian crude producers and refiners in the Midwest.³⁰⁷ If the Southern Lights Diluent project is not constructed, this linkage to the Midwestern refinery market will not established. Conceivably, this might prompt Canadian crude oil producers to look to other markets, where the commercial arrangements are more favorable, for the disposition of crude oil supplies.³⁰⁸

2. Relationship of the Project to Socioeconomic, Natural and Cultural Resources

176. Enbridge has determined that approximately 1,993 acres of agricultural land will be temporarily disturbed during construction of the Alberta Clipper/Southern Lights Diluent projects.³⁰⁹

177. The proposed Alberta Clipper/Southern Lights Diluent project will affect a total of 97.1 acres of “developed” land, which includes both residential and commercial properties.³¹⁰

³⁰² Ex. 316 at 12; *compare also*, Ex. 308 at 35.

³⁰³ *Compare also*, Ex. 307, at 12.

³⁰⁴ Evidentiary Hearing Transcript, at 68.

³⁰⁵ *Id.*

³⁰⁶ *Id.*, at 23.

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 24.

³⁰⁹ Ex. 100, Tab C, Section 4.3.1.

³¹⁰ Ex. 100, Tab C, Table 4.2-1.

178. Approximately 1,343 acres of timber will be affected by construction of the Alberta Clipper and Southern Lights Diluent projects.³¹¹

179. The AC/SLD projects will provide numerous socioeconomic benefits – including increased crude oil supplies, increased tax revenue, employment opportunities in the construction trades and significant spending in local communities.

180. Likewise too, as with any large-scale pipeline installation projects, the AC/SLD projects involve disruptions to property in and adjacent to the easement area, in the near-term, as well as the potential for longer-term hazards – such as an oil spill into the environment.

i. Socioeconomic Impacts of the Projects

181. Enbridge estimates that the cost of constructing the Minnesota portion of the Alberta Clipper and Southern Lights Diluent, in 2006 dollars, is \$1,297,000,000.00.³¹²

182. The primary benefit to Minnesota and the surrounding region of the projects will be increased access to crude oil supplies. The Alberta Clipper project will directly benefit the entire Midwest, including Minnesota consumers and manufacturers, by better ensuring secure supplies of crude available to refineries and by increasing the total volume of crude oil over which it has a comparative transportation cost advantage.³¹³

183. Additionally, if the project is approved by the Commission, Minnesota counties will also enjoy significant increases in property tax revenue. The AC/SLD projects are expected to create an estimated incremental initial tax value of approximately \$14.8 million dollars.³¹⁴ This amount nearly doubles Enbridge's current annual property tax payment of \$7.936 million.³¹⁵

184. The proposed construction project will result a significant amount of spending in Minnesota is expected. Enbridge estimates that the total construction cost of the Alberta Clipper project is \$991 million³¹⁶ and that the total construction cost of the Southern Lights Diluent project is \$306 million.³¹⁷ In order to complete the project, approximately 1,500 workers will be dispersed along the route of the AC/SLD projects

³¹¹ Ex. 100, Tab C, Section 3.2.4.

³¹² Ex. 100, § 4415.0115, at 4.

³¹³ See, Ex. 312 at 11-12 and 15; *compare also*, Ex. 300 § 7853.0250 at 6.

³¹⁴ Ex. 314 at 8.

³¹⁵ *Id.*

³¹⁶ Ex. 100, § 4415.0115, at 4; Ex. 300, § 7853.0230 at 9.

³¹⁷ *Id.*

during the anticipated fourteen-month construction period.³¹⁸ Eyeing this potential, representatives of both business and labor groups in the region have urged approval of the projects, on the grounds that it would result in significant contracting opportunities for local tradesmen and businesses.³¹⁹

185. The project will have limited impact on recreational activities in the area. Three state-designated canoe and boating routes are crossed by the pipeline.³²⁰ Enbridge pledges that the impacts upon water crossings will be mitigated as specified in the Enbridge Environmental Mitigation Plan.³²¹

ii. Natural Environment

186. The Alberta Clipper/Southern Lights Diluent PRP Application includes an analysis of the terrain and geology and soils along the proposed route.³²² The topography of the area is characterized by gently rolling till plains, hilly acres formed by glacial moraines and outwash plains.³²³

187. The elevation of the Alberta Clipper/Southern Lights Diluent pipeline route varies from a low of 767 feet in Kittson County to a high of 1,474 in Clearwater County.³²⁴

188. Enbridge identified potential impacts on the natural environment in the AC/SLD PRP Application,³²⁵ the accompanying Environmental Assessment Supplement,³²⁶ the Northwest and Southeast Comparative Environmental Analyses,³²⁷ and in the Supplemental Filing to the Fond du Lac Route Alternative.³²⁸

189. Potential impacts to resources and the natural environment caused by construction of the AC/SLD projects include wastewater, area runoff, noise, air emissions and potential petroleum spills.³²⁹

³¹⁸ Ex. 100, Tab C, at 3-4.

³¹⁹ Compare, Ex. 100, Tab C at 3-4 with *Written Comments from Entities and Associations*, *supra*, Ex. AH, and Carlton County Public Hearing Transcript, at 26-29 and 44-45.

³²⁰ Ex. 100, Tab C, at 11-1.

³²¹ See, Ex. 101, Tab D, Appendix B, at 10-20.

³²² Ex. 100, Tab C, at 5-1 and 6-7.

³²³ *Id.*, at 5-1.

³²⁴ *Id.* (Table 5.1-1).

³²⁵ Ex. 100, § 4415.0145.

³²⁶ Ex. 100, Tab C.

³²⁷ Ex. 15 and 119.

³²⁸ *April 21, 2088 Supplemental Filing to the Fond Du Lac Route Alternative*, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129096>).

³²⁹ See, e.g., Ex. 100, Tab C; Ex. 300, § 7853.0640.

190. The Environmental Assessment Supplement identified four Ecological Classification Systems within which the Alberta Clipper project will be located.³³⁰ From Milepost 801.8 (at the North Dakota border) to Milepost 896.2, much of the area has been converted to agriculture.³³¹ Typical upland forest cover along the route is aspen-birch forest.³³² A majority of the wetlands present along the Revised Preferred Route and Alignment are the “scrub-shrub swamp” variety.³³³

191. Enbridge obtained information regarding sensitive plant communities from the Natural Heritage Program administered by the DNR and the U.S. Fish and Wildlife Service.³³⁴

192. Representative species of existing wildlife resources and fisheries resources³³⁵ were likewise identified. Enbridge consulted with the Minnesota DNR and the United States Fish and Wildlife Service to determine whether threatened or endangered species might be found in the vicinity (within one mile) of the project.³³⁶ Sixteen known occurrences of rare species or plant communities were indicated in the area searched.³³⁷

193. The water resources in the area of the Alberta Clipper and Southern Lights Diluent projects have been identified and described. With respect to groundwater resources, the aquifers crossed by the Alberta Clipper project pipeline route are named and characterized.³³⁸

194. Enbridge has noted that ground disturbance during construction will generally be less than 10 feet in depth, which remains above the water table for most of the area affected.³³⁹ Enbridge has also submitted a Spill Prevention, Containment and Control Plan which describes measures to prevent groundwater contamination.³⁴⁰

195. Site investigation and construction methods detailed in the Environmental Mitigation Plan and the Agricultural Mitigation Plan will help to suppress the spread of

³³⁰ Ex.100, Tab C, at 7-1 – 7-2.

³³¹ *Id.*

³³² Ex, 100, Tab C, at 7-2.

³³³ *Id.*

³³⁴ Ex. 100, Tab C, at 7-3.

³³⁵ Ex. 100, Tab C, at 7-5 and 7-7.

³³⁶ Ex. 100, Tab C, at 7-8.

³³⁷ Ex. 100, Tab C, at 7-9 (Table 7.4.1-1).

³³⁸ Ex. 100, Tab C., at 8-1 and 8-2.

³³⁹ Ex. 100, § 4415.0145, at 5.

³⁴⁰ Ex. 101, Tab D, Appendix C.

invasive species during the construction process and implementation of these procedures should be a condition of any Pipeline Routing Permit.³⁴¹

196. The surface water resources along the route of the proposed Alberta Clipper and Southern Lights Diluent projects have also been identified. Water body crossings are categorized and presented by location (milepost), jurisdiction (county), and name and type of water body.³⁴² Specific construction methods relating to water body crossings are included in Enbridge's Environmental Mitigation Plan.³⁴³

197. A separate inventory of wetlands crossings has also been prepared and presented by wetland type, county and number of acres affected.³⁴⁴ Enbridge proposes to use specific construction methods for wetland areas so as to minimize the impacts to these areas.³⁴⁵

198. Additionally, as detailed in Section IV below, Enbridge has urged certain route alternatives so as to avoid, or reduce, impacts to identified wetlands.³⁴⁶

199. Enbridge's survey reveals that the Alberta Clipper and Southern Lights Diluent projects will cross four rivers listed on the National River Inventory, none of which are designated Wild and Scenic Rivers.³⁴⁷

200. Enbridge's preferred route³⁴⁸ for the pipeline comes within ½ of a mile of three state wildlife management areas.

a. Construction Impacts

201. Vegetation cover will be removed from the construction right-of-way and temporary workspace areas. In its Environmental Mitigation Plan, Enbridge pledges to employ active re-vegetation measures to restore vegetative cover.³⁴⁹

202. Enbridge has proposed a woody vegetation plan that includes not clearing woody vegetation over the path of underground horizontal directional drilling ("HDD") sites under water bodies, waiting to clear the final 20 feet of any river crossing until 24

³⁴¹ Ex. 101, Tab D., Appendix C, at 8.

³⁴² Ex. 100, Tab C, Section 9.0; Ex. 100, Tab C, Tables 9.1.1-1 and 9.1.1-2.

³⁴³ Ex.101, Tab D, Appendix B, at 10-16.

³⁴⁴ Ex. 100, Tab C, Table 9.3.1-2.

³⁴⁵ Ex, 101, Tab D, Appendix B, at 17-20.

³⁴⁶ See, Ex. 104, Tab 7; Ex. 116, Tab 5 at Part 5.B; Ex. 117, Part 13.B.

³⁴⁷ Ex. 100, Tab C, at 11-1.

³⁴⁸ *Id.*

³⁴⁹ Ex. 100, § 4415.0145, at 4; Ex. 101, Tab D, Appendix B, at 28-29.

hours before construction activity is scheduled to begin and replanting along the banks of riparian corridors to within ten feet of the location of the proposed pipelines.³⁵⁰

203. The Environmental Mitigation Plan proposed by the Applicant includes a series of testing and inspection regimes – including the use of water for Hydrostatic testing of the pipelines and the control of stormwater encountered during the construction phase of the pipelines. Enbridge has pledged that it will employ both erosion control methods and filtering techniques that limit impacts to local streams, rivers and lakes from the water that it discharges.³⁵¹

204. These features of the Enbridge Environmental Mitigation Plan are bolstered by the requirements of the accompanying Water Appropriation Permit from the Minnesota DNR and the National Pollutant Discharge Elimination System (“NPDES”) Hydrostatic Test Water Discharge Individual Permit issued by the Minnesota Pollution Control Agency.³⁵²

205. While petroleum spills are possible during the construction phase – primarily as a result of mishandling petroleum during the refueling of construction vehicles or equipment – Enbridge has a Spill Prevention, Containment and Control Plan to mitigate this risk. For example, among the practices outlined in this plan is that construction equipment will be refueled at least 100 feet from streams or other bodies of water.³⁵³

206. All drainage systems will be identified and repaired in accordance with the Agricultural Mitigation Plan (“AMP”).³⁵⁴

207. So as to reduce soil compaction and ensure that topsoil is preserved for prompt replacement, Enbridge pledges to use trench-only topsoil segregation in areas of deep topsoil. Likewise, Enbridge declares that it will “string” the sections of pipe down the right-of-way over the area that will be later trenched so as to reduce soil compaction. Requiring compliance with the terms of the Agriculture Mitigation Plan as a permit condition will help to mitigate the impacts of pipeline construction on agricultural land and farming operations.³⁵⁵

208. Because access to the pipeline right-of-way will only be from public roadways and approved access roads,³⁵⁶ Enbridge pledges that construction disturbance

³⁵⁰ *Enbridge Energy, Limited Partnership And Enbridge Pipelines (Southern Lights) L.L.C.’S Response to Public Comments Provided by the Minnesota Department of Natural Resources*, at 4 and 10-11 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5165533>).

³⁵¹ Ex. 101, Tab D, Appendix B at 22-23; Ex. 300, §§ 78536.0230 at 17-18 and 7853.0620 at 1-2.

³⁵² Ex. 101, Tab D, Appendix B at 23; Ex. 300, § 7853.0230 at 17-18.

³⁵³ Ex. 300, § 7853.0630 at 6-7; *see also*, Ex. 101, Tab D, Appendix F.

³⁵⁴ Ex. 101, Tab D, Appendix E – Agriculture Mitigation Plan at 6-8.

³⁵⁵ Kittson County Public Hearing Transcript, at 46-50.

³⁵⁶ Ex. 101, Tab D, Appendix B, at 3.

at open-cut road crossings will typically be limited to one day. Moreover, Enbridge states that if a detour is not practicable at that location, Enbridge will, to the extent that construction operations permit such access, maintain at least one open traffic lane.³⁵⁷

209. In order to assure compliance with Enbridge's various environmental plans and conditions imposed by state agencies, Enbridge has retained a team of inspectors to review the progress of pipeline construction and the overall system following the completion of the construction phase. These inspectors will work alongside, and share information with, the independent inspectors who are gauging compliance with the AMP.³⁵⁸

b. Damage to Property

210. Approximately 42% of the route of the Proposed AC/SLD project crosses agricultural land.³⁵⁹

211. While Enbridge contends any agricultural land disturbed during construction is likely to return to productive use soon after construction, installation of a new pipeline in agricultural areas will necessarily result in disruption to soils and crops.

212. Enbridge has pledged to compensate landowners for crop losses or other damage caused by construction activity based upon market rate price of the item that is destroyed.³⁶⁰

213. Similarly, unless otherwise agreed to by Enbridge and the landowner, Enbridge pledges that it will salvage and sell any merchantable timber removed from property in the right-of-way and compensate landowners for any loss of trees. Enbridge states that it will compensate landowners for their tree loss based upon either the appraised values for stumpage or, in those cases where it is appropriate, the value of ornamental trees.³⁶¹ If necessary, Enbridge further pledged to hire appraisers to assess trees which may have an enhanced value due to the trees' aesthetics or sheltering properties.³⁶²

214. Enbridge states that in the event that fences are destroyed or damaged during the construction process, it will install temporary gates or fencing so as to restrict access or contain livestock until construction is complete and permanent repairs can be made.³⁶³

³⁵⁷ Ex. 100, Tab C, at 4-8

³⁵⁸ Ex. 101, Tab D, Appendix E at 14-15; Ex. 300, § 7853.0630 at 7; Red Lake County Public Hearing Transcript, at 21 and 24-25.

³⁵⁹ Ex. 100, §. 4415.0140 at 2; Ex. 307 at 16.

³⁶⁰ Ex. 101, Tab D, Appendix E at 1; Clearwater County Public Hearing Transcript, at 42.

³⁶¹ Pennington County Public Hearing Transcript, at 46-47.

³⁶² *Id.*, at 44.

³⁶³ Ex. 101, Tab D, Appendix B, at 4-5.

215. The Enbridge AMP addresses methods of preserving agricultural land during construction – including proper practices as to topsoil stripping and segregation, the depth of cover over the installed pipeline, the compaction of soils, weed control and the prevention of erosion.³⁶⁴

c. Risks Associated With Pipeline Operation

216. The design, construction and any later operation of the AC/SLD projects is subject to oversight by the United States Department of Transportation, Pipeline and Hazardous Material Safety Administration. All pipeline materials are inspected for integrity before leaving the factory, are transported according to regulatory specifications, protected from corrosion, and tested again after installation.³⁶⁵

217. Enbridge pledges to design and construct the AC/SLD projects according to industry standards for pipe, pipe coating, valves and other materials. Moreover, Enbridge declares that it will subject all field-welded joints to x-ray inspection – an inspection practice that exceeds the requirements of the current regulations.³⁶⁶

218. The completed system will be hydrostatically tested prior to being placed in service. Additionally, Enbridge has a series of systems to inspect, test and verify the integrity of the pipeline following installation.

219. Enbridge patrols the pipeline route by air, at two week intervals, for a total of 26 times per year.³⁶⁷

220. In compliance with federal regulations, Enbridge undertakes periodic preventive maintenance activities. Moreover, the procedures that the Applicant used during the inspection process have been reviewed by the Federal and State regulators. The Minnesota Office of Pipeline Safety frequently monitors maintenance work during onsite inspections.³⁶⁸

221. Enbridge operates and manages the Lakehead System from a central control center in Edmonton, Alberta. While a computerized system is used to ensure that the pipelines are operating properly, the control center is staffed at all times to monitor pipeline performance, initiate shutdown procedures (if necessary) and respond to any emergency conditions.³⁶⁹

222. The OES examined the report issued by the National Transportation Safety Board (“NTSB”) following a July 4, 2002 pipeline accident in Cohasset,

³⁶⁴ See, generally, Ex. 101, Tab D, Appendix E.

³⁶⁵ Ex. 300, § 7853.0270 at 2, 5; Red Lake County Public Hearing Transcript, at 67.

³⁶⁶ Ex. 300, § 7853.0270 at 1-6; accord, Red Lake County Public Hearing Transcript, at 64-65.

³⁶⁷ Ex. 300, § 7853.0270 at 4.

³⁶⁸ Ex. 300, § 7853.0270 at 2-5; 49 C.F.R. §§ 192.935, 192.937 (2007).

³⁶⁹ Ex. 300, § 7853.0270 at 2-3.

Minnesota. Following its review of the report, the OES concluded that Enbridge plans for, and responds well to, pipeline emergencies that occur.³⁷⁰

223. All Enbridge operations personnel are trained in emergency response procedures and emergency response crews are stationed in Thief River Falls and Bemidji, Minnesota. Federal regulators have also approved Enbridge's emergency response plans – plans that will be updated to include the AC/SLD pipelines if the projects are approved by the Commission.³⁷¹

224. Transporting petroleum through a pipeline, presents fewer safety risks for long-distance shipping than transporting petroleum by truck, rail, barge or tank ship.³⁷²

225. Daily operation of the completed AC/SLD projects will generate no perceptual noise in the approved right-of-way along the pipeline path. There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measured at a distance of fifty feet from the pumping station structure) or to any other minimum set by state law.³⁷³

226. Because the pipeline pumps are powered by electricity, and operate as closed systems, under normal operating conditions the AC/SLD projects will not contribute to local emissions into the air.³⁷⁴

iii. Cultural Resources

227. Enbridge has conducted a review of the Minnesota State Historic Preservation Office files to identify any recorded cultural resources within the proposed right-of-way.³⁷⁵ Eight previous reports on archeological studies of the project area were cited. Nine archeological sites were determined to be located within the construction area. Three of these sites have been determined to be eligible for nomination to the National Register of Historic Places.³⁷⁶

228. Enbridge is working with the Leech Lake Heritage Sites Program to survey for sites of cultural significance in the Leech Lake area.³⁷⁷ Enbridge is also working with the U.S. Department of State to address matters that have been raised in cultural

³⁷⁰ Ex. 307 at 19.

³⁷¹ Red Lake County Public Hearing Transcript, at 65-68.

³⁷² Ex. 300, § 7853.0250, at 2-3; Ex. 307 at 25-26.

³⁷³ Ex. 300, § 7853.0620, at 4-5.

³⁷⁴ Ex. 300, § 7853.0620, at 4.

³⁷⁵ Ex. 100, § 4415.0145, at 7.

³⁷⁶ Ex. 100, § 4415.0145, at 7 and Tab C, at 10-1-10-2.

³⁷⁷ Cass County Public Hearing Transcript, at 45-46.

resources consultation that the Department of State is conducting with the Fond du Lac Band under Section 106 of the National Historic Preservation Act.³⁷⁸

229. Enbridge pledges to consult with the appropriate federal and state offices on measures to avoid, minimize or mitigate adverse impacts to these sites.³⁷⁹

230. The proposed Alberta Clipper and Southern Lights Diluent projects cross three state-designated canoe and boating routes³⁸⁰ and the MiGiZi bike trail.³⁸¹

3. The Effect of the AC/SLD Projects in Inducing Future Development

231. The AC/SLD projects will contribute to future development in Minnesota.³⁸²

232. The AC/SLD projects pipeline will provide the resources that are needed in order for Minnesota's refineries to expand, as well as meet an increasing demand for refined products, while making a minimal draw upon regional electric, water or transportation resources.³⁸³

233. Moreover, if the assessments of witnesses testifying at the public hearing can be credited, approval of the projects may well have a strong influence in encouraging a multi-billion dollar expansion of the Murphy Oil facility in neighboring Superior, Wisconsin.³⁸⁴

4. Regulatory Compliance

234. As a common carrier of petroleum products, Enbridge's activities in Minnesota (and elsewhere) are overseen by a number of different state and federal agencies. The record does not establish that Enbridge will be unwilling or unable to meet applicable policies, rules or regulations as to the design, construction and operation of the AC/SLD projects.³⁸⁵

³⁷⁸ Ex. 100, § 4415.0145, at 7; *compare generally*, 36 C.F.R. Part 800 (2007).

³⁷⁹ Ex. 100, Section 4415.0145, at 7.

³⁸⁰ Ex. 100, Tab C, Section 11.1, at 11-2.

³⁸¹ 1st Beltrami County Public Hearing, at 32-35.

³⁸² Ex. 300, §§ 7853.0230 at 9 and 7853.0250 at 6-7; Ex. 307 at 24.

³⁸³ See, Ex. 300, §§ 7853.0260 and 7853.0640 at 1-3; Ex. 307 at 24.

³⁸⁴ See, e.g., St. Louis County Public Hearing Transcript, at 52-54; Carlton County Public Hearing Transcript, at 27.

³⁸⁵ See, Ex. 307 at 27-28; Contested Case Hearing Transcript, at 93.

I. Conclusions of the Parties and Participants as to the AC/SLD Certificates of Need Applications

235. The OES concluded that the consequences to society caused by granting a Certificate of Need to Enbridge for the AC/SLD projects would be more favorable than the consequences of denying the AC/SLD Certificate of Need Application. It urges the Commission to grant the Certificates of Need for the AC/SLD projects.³⁸⁶

236. MCEA and Mr. Kingstad both conclude that the hearing record does not establish that the overall consequences to society of granting the certificate of need are more favorable than the consequences of denying the Application.³⁸⁷

IV. Application for a Pipeline Routing Permit

237. Enbridge filed its Revised Preferred Route and Alignment Maps on October 10 and December 20, 2007. Together, these two sets of maps establish a 500 foot-wide route, centered on the proposed 20-inch LSr pipeline, Northwest of Clearbrook, Minnesota.³⁸⁸

238. Southeast of Clearbrook, Minnesota the Revised Preferred Route and Alignment varies in width, centered on the proposed Southern Lights Diluent project.³⁸⁹

239. Enbridge asserts that a variable width Route and Alignment is necessary in order to permit Enbridge to minimize impacts to human settlements and environmentally sensitive areas, while pursuing sound engineering design and construction practices along the proposed route.³⁹⁰

A. Route Selection Process and Analysis

240. Enbridge undertook a multi-disciplinary process to developing its initial route and later route alternatives. Enbridge assembled a project team to perform comprehensive, in-depth environmental assessment which included both desktop and field level environmental review of the route of the proposed projects.³⁹¹ This team considered environmental, engineering and economic factors for the pipeline project route.³⁹²

³⁸⁶ Ex. 307 at 23, 28-29.

³⁸⁷ See, e.g., MCEA Post-Hearing Brief at 30; Kingstad Post-Hearing Brief, at 16.

³⁸⁸ Ex. 107, at 8.

³⁸⁹ See, Ex. 115.

³⁹⁰ Ex. 105, at 2-3; Ex. 107, at 8; Ex. 108, at 8-9

³⁹¹ Ex. 107, at 6-7.

³⁹² Ex. 100, Tab C, at 2-1.

241. Environmental analysis and survey work relating to the projects has been underway since late 2006. Enbridge personnel have consulted with landowners throughout the survey process.³⁹³

242. The Natural Heritage Information System (“NHIS”), administered by the Minnesota DNR, contains data on aggregations of rare plants, rare and non-rare animals, native plant communities and geologic features.³⁹⁴

243. The AC/SLD PRP Application includes an Environment Assessment Supplement which describes human settlement and population density along the proposed route. Municipalities located within one mile of the route are identified in Table 3.1-2.³⁹⁵ Enbridge has identified 430 residences within 500 feet of the proposed pipeline.³⁹⁶

244. Enbridge has identified 318 intersections of the Alberta Clipper and Southern Lights Diluent projects with public roads.³⁹⁷

245. Current land use along the proposed route is identified and classified as open land, forestlands, agricultural lands, developed lands, and wetlands-open water.³⁹⁸ Two percent of all of the land affected by the construction of the Alberta Clipper and Southern Lights Diluent projects is “developed land.”³⁹⁹

246. Enbridge has identified three Watershed Districts, ten Counties and one Township where comprehensive land use plans have been established.⁴⁰⁰ Enbridge asserts that the Alberta Clipper and Southern Lights Diluent projects will be constructed and operated in a manner consistent with these plans.⁴⁰¹

247. As part of the route development process, Enbridge reviewed the NHIS database to a distance of one mile on either side of the center of the proposed route⁴⁰² – including the Fond du Lac Route Alternative.⁴⁰³

³⁹³ Red Lake County Public Hearing Transcript, at 16.

³⁹⁴ See generally, Minnesota DNR’s National Heritage Information System (<http://www.dnr.state.mn.us/eco/nhnrp/nhis.html#datarequest>).

³⁹⁵ Ex. 100, Tab C, at 3-3 (Table 3.1-2).

³⁹⁶ Ex. 100, Tab C, at 4-7 (Table 4.3.5-1).

³⁹⁷ Ex. 100, Tab C, at 4-8 (Table 4.3.6-1); Ex. 101, Tab D, Appendix D.

³⁹⁸ Ex. 100, Sec. 4415.0140, at 2.

³⁹⁹ Ex. 100, Tab C, at 4-2 (Table 4.2-1).

⁴⁰⁰ Ex. 100, Tab. C, at 4-5.

⁴⁰¹ *Id.*

⁴⁰² *Enbridge Energy, Limited Partnership And Enbridge Pipelines (Southern Lights) L.L.C.’S Response to Public Comments Provided by the Minnesota Department of Natural Resources*, at 7 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5165533>).

⁴⁰³ *Id.*

248. Enbridge's review of the Minnesota Geological Survey and Minnesota Department of Health's water well information database revealed only twenty-seven domestic wells within 200 feet of the pipeline route.⁴⁰⁴ Enbridge has sought, and pledges to seek, the aid of landowners to identify the location of non-registered wells.⁴⁰⁵

249. During public hearings Enbridge pledged that if the ground survey process identified cased wells that are closer than the required setback distance, Enbridge will either adjust the location of the pipeline within the approved route or, at its expense, relocate the well to a different part of the property.⁴⁰⁶

250. Enbridge pledged to provide landowners with a checklist to identify distinctive features of affected properties – including the placement of wells.⁴⁰⁷

251. Following the filing of the AC/SLD PRP Application, Enbridge participated in the Department's public information meetings and continued to consult with individual landowners to address route and alignment issues.

252. On October 10, 2007, Enbridge filed its Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota⁴⁰⁸ and Northwest Route Alternatives.⁴⁰⁹

253. On December 20, 2007 Enbridge filed its Revised Preferred Route and Alignment Southeast of Clearbrook, Minnesota⁴¹⁰ and the first 12 of 15 Route Alternatives for the projects Southeast of Clearbrook.⁴¹¹

254. The thirteenth (13th) Southeast Route Alternative, the Fond du Lac Alternative, was filed on January 7, 2008.⁴¹² The fourteenth (14th) and fifteenth (15th) Southeast Route Alternatives were filed on February 15, 2008.⁴¹³

B. Route Alternatives

1. Northwest of Clearbrook, Minnesota

255. Enbridge filed nine route alternatives Northwest of Clearbrook, Minnesota on October 10, 2007 for its Alberta Clipper project in order to address environmental

⁴⁰⁴ Ex. 100, Tab C, at 8-3 and Table 8.3.3-1.

⁴⁰⁵ *Id.*; see also, Pennington County Public Hearing Transcript, at 39-40.

⁴⁰⁶ Pennington County Public Hearing Transcript, at 40.

⁴⁰⁷ See, Ex. 124; Itasca County Public Hearing Transcript, at 21-22.

⁴⁰⁸ Ex. 103.

⁴⁰⁹ Ex. 104.

⁴¹⁰ Ex. 115.

⁴¹¹ Ex. 116.

⁴¹² Ex. 117.

⁴¹³ Ex. 118.

impacts, human settlement concerns and pipeline constructability.⁴¹⁴ The nine Route Alternatives Northwest of Clearbrook are:

Northwest 1: Coulee Crossing Alternative, Mile Post 805-4.⁴¹⁵

256. The Coulee crossing alternative shifts the point of crossing a small, frequently dry streambed approximately 50 feet southwest from the location identified in the Alberta Clipper Application.⁴¹⁶ Enbridge urges this alternative so as to minimize environmental impact to the unnamed Coulee and improve constructability of the project.⁴¹⁷

Northwest 2: Donaldson Station Alternative, Mile Post 814.0.⁴¹⁸

257. This alternative deviates from the existing right-of-way southwest of Donaldson Station and crosses under Minnesota Highway 11. The alternative route passes between an existing electrical substation and an abandoned residence, then turns east and crossing under a county road, and rejoins the existing right-of-way as the project continues to the southeast.⁴¹⁹ Enbridge urges this alternative so as to ease congestion with existing utilities and existing pipelines near the Donaldson Station property and Minnesota Highway 11.⁴²⁰

Northwest 3: Farmstead Alternative, Mile Post 822.9.⁴²¹

258. This alternative turns south of the existing right-of-way west of a group of farm buildings and their associated shelter belt.⁴²² The alternative was developed at the request of the landowner, so that the alignment would circle around a physical structure and minimize the impact on the landowner's structures and shelter belt.⁴²³

Northwest 4: Farmstead Alternative, Mile Post 831.3.⁴²⁴

259. This alternative crosses under the existing pipeline at a point northwest of farmstead buildings and tree shelter belts located at Mile Post 831.3.⁴²⁵ The pipelines

⁴¹⁴ Ex. 107, at 10.

⁴¹⁵ Ex. 104, Tab 1.

⁴¹⁶ Ex. 108, at 11.

⁴¹⁷ *Id.*

⁴¹⁸ Ex. 104, Tab 2.

⁴¹⁹ Ex.108, at 12.

⁴²⁰ *Id.* at 12-13.

⁴²¹ Ex. 104, Tab 3.

⁴²² Ex. 109, at 9.

⁴²³ *Id.*

⁴²⁴ Ex. 104, Tab 4.

will parallel the north side of the existing right-of-way crossing under the existing right-of-way southeast of the Farmstead buildings and shelter belt.⁴²⁶ The alternative was developed to reduce impact to the landowner due to insufficient space between the south side of the existing right-of-way and the farmstead located at Mile Post 831.3.⁴²⁷

Northwest 5: Revised Middle River Alternative, Mile Post 836.0.⁴²⁸

260. This alternative will employ a horizontal directional drill to cross under a private driveway, the Middle River and County Road 4.⁴²⁹ Enbridge urges this alternative because the close proximity of a driveway, river crossing and county road at this location make the horizontal directional drill method a superior alternative to traditional construction methods.⁴³⁰

Northwest 6: Snake River Alternative, Mile Post 843.1.⁴³¹

261. The proposed pipelines will parallel the southern-most existing pipeline in Enbridge's right-of-way offset to the south by approximately 25 feet for the Alberta Clipper pipeline.⁴³² By installing the pipeline in an area that was cut for workspace for installation of a predecessor pipeline in 1994,⁴³³ this alternative reduces both the amount of tree clearing required and reduces the amount of pipe needed for the Alberta Clipper project by approximately 300 feet.

Northwest 7: Fen Avoidance Alternative, Mile Post 853.5.⁴³⁴

262. Under this alternative, the proposed pipeline will cross under existing pipelines within the existing right-of-way at or near 60th Street N.W. in Viking, Minnesota, and for the Alberta Clipper project, run parallel to the northern-most existing pipeline at a distance of approximately 25 feet. Approximately 2,700 feet southeast of this crossing point, Enbridge proposes that the pipeline cross back, under the existing pipelines, and continue to the southwest parallel to the existing right-of-way.⁴³⁵

⁴²⁵ Ex. 109, at 9.

⁴²⁶ *Id.*

⁴²⁷ *Id.*; Ex. 109, at 10.

⁴²⁸ Ex. 104, Tab 5.

⁴²⁹ Ex. 107, at 11.

⁴³⁰ Ex. 107, at 12.

⁴³¹ Ex. 104, Tab 6.

⁴³² Ex. 107, at 11.

⁴³³ Ex. 107, at 12.

⁴³⁴ Ex. 104, Tab 7.

⁴³⁵ Ex. 107, at 12.

Enbridge urges this alternative so as to avoid impacts to an environmentally sensitive calcareous fen that lies along the pathway along the original pipeline route.⁴³⁶

Northwest 8: Red Lake River Alternative, Mile Post 864.2.⁴³⁷

263. This alternative calls for the pipelines to cross under the existing pipelines in the existing right-of-way. This alternative proposes a change to the location of the Horizontal Directional Drill (HDD) crossing of the Red Lake River.⁴³⁸ Enbridge urges this alternative so as to avoid structures on the southeast side of the originally-proposed HDD river crossing.⁴³⁹

Northwest 9: Railroad Crossing Alternative, Mile Post 896.0.⁴⁴⁰

264. This alternative proposes a change to the location at which the project crosses from the north side of the existing right-of-way to the south side of the existing right-of-way. Enbridge urges this alternative so as to improve constructability of the proposed pipeline by providing a larger area for temporary workspace to affect the railroad crossing and to avoid existing utility poles.⁴⁴¹

2. Southeast of Clearbrook, Minnesota

265. Enbridge filed a total of fifteen route alternatives for the Alberta Clipper and Southern Lights Diluent projects Southeast of Clearbrook, Minnesota. On December 20, 2007, Enbridge filed twelve route alternatives.⁴⁴²

266. On January 7, 2008, Enbridge filed Southeast Route Alternative Number 13, which is the Fond du Lac Route Alternative.⁴⁴³ Two additional Southeast Route Alternatives, number 14 (Portage Lake Residence Alternative) and number 15 (Mississippi River Alternative) were filed on February 15, 2008.⁴⁴⁴

267. Enbridge urges the Southeast Route Alternatives so as to minimize impacts to human settlements and environmentally sensitive areas, while pursuing sound engineering design and construction practices along the proposed route. The fifteen Southeast Route Alternatives are:

⁴³⁶ Ex. 107, at 12-13.

⁴³⁷ Ex. 104, Tab 8.

⁴³⁸ Ex. 108, at 13.

⁴³⁹ *Id.* at 14.

⁴⁴⁰ Ex. 104, Tab 9.

⁴⁴¹ Ex. 108, at 14.

⁴⁴² Ex. 116.

⁴⁴³ Ex. 117.

⁴⁴⁴ Ex. 118.

Southeast 1: Ruffy Brook Crossing and Leonard Alternative, Mile Post 912.1 - 916.4.

268. This alternative proposes a change to the alignment of the new pipelines from the north to the south side of the existing Enbridge pipelines at approximately Mile Point 912.1, with a deviation to the south of the existing Enbridge pipelines by up to 1400 feet.⁴⁴⁵ Enbridge urges this alternative alignment so as to avoid a site of potential cultural significance, eliminate two crossings of Ruffy Brook at Mile Point 912.2, achieve a more perpendicular crossing of Ruffy Brook at Mile Point 915.0 and meet a landowner request to place the alignment south of the existing Enbridge pipelines at Mile Point 916.⁴⁴⁶

269. The DNR disputes the Applicants' conclusion that the environmental impacts of the Ruffy Brook Route Alternative are substantially similar to its initial route. DNR contends:

[T]he new alignment on a greenfield route is adverse [as to the natural environment, public waters and 'cumulative effects'] compared with the June 2007 route. For example, aerial photos of this area show what appears to be permanent changes in the Ruffy Brook channel at each of the existing crossings, and clearly show much more undisturbed natural habitat along the proposed greenfield route. The Ruffy Brook crossing with the least impact to natural resources is clearly the north corridor, where it is already disturbed, it is a perpendicular crossing, and adjacent areas of the corridor have much less fish and wildlife habitat present.

The CEA indicates that the landowner wishes to have the pipelines placed south of the existing pipelines at MP 916. This is east of the Ruffy Brook habitat area, and should be able to be easily achieved by crossovers routinely used elsewhere when there are environmental or habitation restrictions along the existing pipeline corridor.⁴⁴⁷

Southeast 2: Wilton Reroute Alternative, Mile Post 932.5 – 935.2.

270. The Wilton Reroute Alternative presses the alignment further south and west of the existing Enbridge pipelines than originally proposed. Rather than 500 feet south and west of the existing Enbridge pipelines, the alternative lies parallel to and up to 1200 feet south and west of the existing Enbridge pipelines.⁴⁴⁸ Enbridge urges this alternative so as to avoid impacts to ornamental landscaping for three residences and direct impact to several other residences along the previously-proposed alignment.⁴⁴⁹

⁴⁴⁵ Ex. 116, Tab 1, Section 1A.

⁴⁴⁶ Ex. 116 Tab 1, Section 1B.

⁴⁴⁷ DNR Written Comments, at 7.

⁴⁴⁸ Ex. 116, Tab 2, Section 2A.

⁴⁴⁹ Ex. 116, Tab 2, Section 2B.

Southeast 3: Bemidji Powerline Alternative, Mile Post 936.4 – 937.3.

271. The Bemidji Powerline Alternative aligns the two proposed Enbridge pipelines adjacent and southwest of a high voltage overhead electric transmission line. Enbridge urges this alternative alignment so as to avoid construction safety challenges, and impacts to the later maintenance operations, associated with working around high voltage transmission lines.⁴⁵⁰

Southeast 4: Bemidji Residential Subdivision Reroute Alternative, Mile Post 937.7 – 938.6.

272. Rather than aligning the two new pipelines immediately adjacent to existing Enbridge pipelines, at Mile Point 937, the Bemidji Residential Subdivision Reroute Alternative would deviate up to 1000 feet south and west of the existing Enbridge pipelines. The alternative turns south at Mile Point 937.7 to parallel with U.S. Highway 2 for approximately 2000 feet, then turns east, crossing Highway 2 and proceeding east to join the existing Enbridge pipeline corridor and Mile Point 938.6.⁴⁵¹ This alternative avoids the residential subdivision of seven homes and two businesses that are within 100 feet of the previously proposed alignment near Mile Point 938.⁴⁵² Enbridge urges this alternative so as to avoid both the increased costs, and adverse impacts to nearby homes and businesses, that are associated with the previously-proposed alignment.

Southeast 5: Necktie River and Great Lakes Gas Alternative, Mile Post 945.2 – 946.2.

273. The Necktie River and Great Lakes Gas Alternative crosses under the Great Lakes natural gas pipeline at Mile Point 945.2 and aligns the two proposed new Enbridge pipelines adjacent to the south side of the Great Lakes natural gas pipeline for approximately 5000 feet.⁴⁵³ The Great Lakes Gas pipelines are currently located 40 to 70 feet from the existing Enbridge pipelines. The originally-proposed alignment of the Alberta Clipper and Southern Lakes Diluent pipelines would have placed these lines south of the existing pipelines by 25 and 50 feet respectively. Enbridge urges this alternative alignment so as to place the two proposed new pipelines at a safe distance for construction and future maintenance of both the Great Lakes Gas pipelines.⁴⁵⁴

274. Enbridge considered and rejected an alternative which would have placed the new pipelines north of the existing Enbridge pipelines. This alternative was rejected

⁴⁵⁰ Ex. 116, Tab 3, Section 3B.

⁴⁵¹ Ex. 116, Tab 4, Section 4A.

⁴⁵² Ex. 116, Tab 4, Section 4B.

⁴⁵³ Ex. 116, Tab 5, Section 5A.

⁴⁵⁴ Ex. 116, Tab 5, Section 5B.

due to the presence of an extensive wetland on the north side of the existing Enbridge right-of-way.⁴⁵⁵

Southeast 6: Bena to Ball Club Alternative, Mile Post 978-.1 – 988.2.

275. The Bena to Ball Club Alternative would place the new Enbridge pipelines adjacent to the south side of the northern-most route of two separate but parallel utility routes in this area. The originally-filed pipeline route proposed to align the new pipelines adjacent to the north side of the southern-most utility route.⁴⁵⁶ Enbridge urges this alternative alignment so as to avoid crossing the open water of Nusca Lake, avoid residences on the east side of the Mississippi River and achieve a shorter horizontal directional drill path for the Mississippi River crossing.⁴⁵⁷

Southeast 7: Forsythe Lake Route Alternative, Mile Post 1004 – 1005.6.

276. The Forsythe Lake Route Alternative aligns the two proposed new Enbridge pipelines adjacent to an overhead electric transmission line route on the north side of Forsythe Lake. The originally-submitted route placed the proposed pipelines adjacent to the existing Enbridge pipelines on the south side of Forsythe Lake.⁴⁵⁸ Enbridge, and several Forsythe Lake area landowners, urge this alternative alignment so as to avoid routing the new pipelines in close proximity to residences on the south side of the lake.⁴⁵⁹

Southeast 8: Gunn Road to Blackberry Alternative, Mile Post 1011.5 – 1017.

277. The Gunn Road to Blackberry Alternative would align the two proposed new pipelines on the south side of the existing Enbridge pipeline route.⁴⁶⁰ Enbridge, and several area landowners, urge this alternative alignment because its use of previously-cleared areas would reduce the amount of tree clearing between the two mile posts by more than 50 percent over the originally-proposed route.⁴⁶¹

Southeast 9: Shallow Lake and Swan River Alternative, Mile Post 1021.8 – 1025.2.

278. The Shallow Lake and Swan River Alternative would change the alignment of the proposed route from the south of the existing Enbridge pipelines to the north of the existing Enbridge pipelines.⁴⁶² This alignment locates the two proposed

⁴⁵⁵ *Id.*

⁴⁵⁶ Ex. 116, Tab 6, Section 6A

⁴⁵⁷ Ex. 116, Tab 6, Section 6B.

⁴⁵⁸ Ex. 116, Tab 7, Section 7A.

⁴⁵⁹ Ex. 116, Tab 7, Section 7B; Itasca County Public Hearing Transcript, at 68-71.

⁴⁶⁰ Ex. 116, Tab 8, Sections 8A and 8B.

⁴⁶¹ *Id.*

⁴⁶² Ex. 116, Tab 9, Section 9A.

new pipelines further from Shallow Lake and residences along the lake's northeast shore, as well as providing for a later perpendicular crossing of Swan River.⁴⁶³

Southeast 10: Floodwood Station Alternative MP 1043.9 – 1045.4.

279. The Floodwood Station Alternative would change the location for crossing U.S. Highway 2 to a point approximately 400 feet northwest of the originally-proposed crossing.⁴⁶⁴ Enbridge urges this alternative alignment so as to avoid approximately 200 feet of open water crossing on the west side of the existing Enbridge pipelines, obtain a better position at which to bore under U.S. Highway 2 and achieve a more gradual bend to the pipeline in this portion of the route.⁴⁶⁵

Southeast 11: Farmstead Alternative, Mile Post 1051.6 – 1052.

280. This alternative would locate the new pipeline south rather than north of an existing farmstead on Tract 169.⁴⁶⁶ This alternative was requested by the owner of the farmstead at Tract 169 because it minimizes the impact on the land owner and co-locates the Enbridge pipeline with an existing pipeline (not owned by Enbridge) south of the farmstead residence.⁴⁶⁷

Southeast 12: Farmstead and Wrenshall Alternative, Mile Post 1077.5 – 1079.9.

281. The Farmstead and Wrenshall Alternative would change the south to north crossing of existing Enbridge pipelines by moving this crossing approximately 2.4 miles further to the west.⁴⁶⁸ This alignment places the two new pipelines a greater distance from the residence on Tract 72.⁴⁶⁹

Southeast 13: Fond du Lac Alternative, Mile Post 1056 – 1073.

282. The Fond du Lac alternative would depart from the existing Enbridge pipeline corridor at Mile Post 1056.2 and establish a new pipeline right-of-way which would travel south and then east around the Fond du Lac Reservation's western and southern boundaries to rejoin the Enbridge pipeline corridor at Mile Post D1073.2 directly west of Interstate Highway 35.⁴⁷⁰

⁴⁶³ Ex. 116, Tab 9, Section 9B.

⁴⁶⁴ Ex. 116, Tab 10, Section 10A

⁴⁶⁵ Ex. 116, Tab 10, Section 10B.

⁴⁶⁶ Ex. 116, Tab 11, Section 11A.

⁴⁶⁷ Ex. 116, Tab 11, Section 11B.

⁴⁶⁸ Ex. 116, Tab 12, Section 12A.

⁴⁶⁹ Ex. 116, Tab 12, Section 12B.

⁴⁷⁰ Ex. 117, Tab 13, Section 13A.

283. The Fond du Lac Route Alternative was developed to allow Enbridge to move forward with the proposed Alberta Clipper and Southern Lights Diluent projects in the event that it was unable to reach agreement with the Fond du Lac Band of Lake Superior Chippewa for a new right-of-way across the Fond du Lac Reservation.⁴⁷¹ This route alternative was identified in the AC/SLD PRP Application⁴⁷² and was revised on January 7, 2008, when it was submitted as the thirteenth Southeast Route Alternative.⁴⁷³

284. Enbridge and the Band have not reached an accord on the amount of compensation to be paid to the Band in return for a 20-year of lease of tribal lands crossed by the pipelines.⁴⁷⁴ The Band and Enbridge could not reach an accord because of a dispute over the amount that the Band should be paid “for past damages associated with the four existing pipelines across the Reservation, environmental mitigation and tribal regulatory compliance.”⁴⁷⁵

285. The Fond du Lac Route Alternative does not cross any land owned by the Band.

286. There are no urban centers or heavily populated areas along the Fond du Lac Route Alternative⁴⁷⁶ – the terrain is generally forest and wetland parcels.⁴⁷⁷

287. There are no archeological sites or architectural resource sites listed in the Natural Heritage Inventory along this route alternative.⁴⁷⁸ The Band has indicated that two historic trails may be located in the area of this alternative – matters that Enbridge argues should be addressed “through the Section 106 consultations as part of the federal environmental review process.”⁴⁷⁹

⁴⁷¹ Ex. 117.

⁴⁷² Ex. 100, Tab C, at 2-9 to 2-11.

⁴⁷³ Ex. 117.

⁴⁷⁴ Clearwater County Public Hearing Transcript, at 17; Carlton County Public Hearing Transcript, at 18-19; Supplemental Filing to the Fond du Lac Route Alternative, at 2; *compare also*, 25 U.S.C. § 321 (2006).

⁴⁷⁵ Post-Hearing Brief of the Fond du Lac Band of Lake Superior Chippewa, at 2; Contested Case Hearing Transcript, at 129.

⁴⁷⁶ *Proposed Route Alternative and Alignment Maps*, Ex. 117.

⁴⁷⁷ Ex. 117, Table 2.2.3-2.; *April 21, 2008 Supplemental Filing to the Fond Du Lac Route Alternative*, at 7 (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5129096>).

⁴⁷⁸ *Id.* at 9.

⁴⁷⁹ *Id.*, at 9, n.8.

Southeast 14: Portage Lake Residence Alternative, Mile Post 970.5 to 972.3.

288. The Portage Lake residence alternative would expand the route width up to 1,200 feet.⁴⁸⁰ Enbridge urges an expanded route width in this area so as to obtain flexibility to avoid impacts to landowners and natural features of the terrain.⁴⁸¹

Southeast 15: Mississippi River Alternative, Mile Post 984.7 to 988.2.

289. The Mississippi River Alternative would expand the route width up to 3,000 feet.⁴⁸² Enbridge urges an expanded route width in this area so as to avoid impacts to landowners near the Town of Ball Club and to natural features of the terrain.⁴⁸³

C. Land Required for Pipeline Installation

290. The LSr pipeline construction scheduled for 2008 will be followed by the proposed 36-inch Alberta Clipper pipeline, which is scheduled for construction in the fourth quarter of 2008 through 2009.⁴⁸⁴ The Alberta Clipper CON⁴⁸⁵ and PRP⁴⁸⁶ Applications were filed on June 22, 2007.⁴⁸⁷ The LSr CON and PRP were joined with the Alberta Clipper Applications in a single docket at the Office of Administrative Hearings for purposes of public information meetings, public hearings, and pre-hearing conferences.

291. The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a 500 foot route width that will accommodate both the LSr and Alberta Clipper pipelines northwest of Clearbrook, Minnesota.⁴⁸⁸

292. The Revised Preferred Route and Alignment filed by Enbridge on December 20, 2007 also describes a varying route width to allow installation of both the Alberta Clipper and Southern Lights Diluent pipelines southeast of Clearbrook, Minnesota in a manner that causes the least impact on the human and natural environments.⁴⁸⁹

⁴⁸⁰ Ex. 118, Tab 14, Section 14A.

⁴⁸¹ Ex. 118, Tab 14, Section 14B.

⁴⁸² Ex. 118, Tab 15, Section 15A.

⁴⁸³ Ex. 118, Tab 15, Section 15B.

⁴⁸⁴ Ex. 1, § 4415.0115, at 2; Ex. 100, § 4415.0115, at 4.

⁴⁸⁵ MPUC Docket No. PL9.CN-07-465.

⁴⁸⁶ MPUC Docket No. PL9/PPL-07-361.

⁴⁸⁷ MPUC Docket Nos. PL9.CN-07-465 and PL9/PPL-07-361.

⁴⁸⁸ Ex. 103.

⁴⁸⁹ Ex. 115.

293. The proposed routes of the LSr and Alberta Clipper projects are adjacent and parallel northwest of Clearbrook, Minnesota.⁴⁹⁰ The same environmental features will be encountered in the LSr and Alberta Clipper projects, and the same permits and impact mitigation measures will be required.⁴⁹¹

294. Enbridge has no further plans for pipeline construction in Minnesota, beyond the proposed LSr, Alberta Clipper, and Southern Lights Diluent projects.

1. From the North Dakota-Minnesota Border to Clearbrook, Minnesota.

295. The Alberta Clipper pipeline will be generally constructed and installed adjacent to the existing Lakehead system right-of-way.⁴⁹² The Alberta Clipper pipeline northwest of Clearbrook, Minnesota will be installed 25 feet from the earlier-approved LSr pipeline.⁴⁹³ Up to 75 feet of permanent easement will be required for both projects (LSr and Alberta Clipper).⁴⁹⁴

296. A 140-foot-wide construction right-of-way will allow for temporary storage of topsoil and soil and accommodate safe operation of construction equipment.⁴⁹⁵ Following construction, Enbridge would maintain a permanent 75 foot right-of-way, measured from the outer most existing pipeline.⁴⁹⁶

297. Additional temporary workspace, generally 75 feet or less in width and 300 feet or less in length, will be required in limited areas.⁴⁹⁷ Enbridge provides depictions of temporary extra workspace required at directional drilling sites, water body crossings, open-cut road crossings, pipeline and utility crossings, wetland crossings, pipeline cross-overs and underground (bored) highway and rail crossings.⁴⁹⁸

298. For this portion of the proposed projects, Enbridge has achieved very high rates of negotiated settlements with landowners along the pipeline route – having obtained, by April of 2008, easements for 97 percent of the impacted parcels.⁴⁹⁹

⁴⁹⁰ Compare, Exs. 5 and 115.

⁴⁹¹ Compare, Ex. 200, § 7853.0230 at 7 with Ex. 300. § 7853.0230 at 17-19.

⁴⁹² Ex. 100, Section 4415.0125, at 3.

⁴⁹³ Ex. 109, at 5.

⁴⁹⁴ *Id.*

⁴⁹⁵ Ex. 100, Tab C, at 1.6.

⁴⁹⁶ *Id.*

⁴⁹⁷ Ex. 109, at 5.

⁴⁹⁸ Ex. 101, Tab D, Appendix A.

⁴⁹⁹ Itasca County Public Hearing Transcript, at 113.

2. From Clearbrook, Minnesota to the Minnesota-Wisconsin Border.

299. The Alberta Clipper and Southern Lights Diluent pipelines will generally be installed parallel and adjacent to the southern boundary of the existing right-of-way corridor from the Clearbrook terminal to the Minnesota-Wisconsin border.⁵⁰⁰ The combined projects will typically require a maximum construction footprint of 140 feet, composed of up to 75 feet of additional permanent easement for both pipelines and 65 feet of temporary workspace.⁵⁰¹ The 75 feet of additional permanent easement is necessary to accommodate a 25-foot offset between the existing and new pipelines, a 25 foot buffer zone between the pipelines and a 25-foot buffer zone to the newly located southern boundary of the right-of-way.⁵⁰²

300. Approximately 60 miles of the proposed pipelines southeast of Clearbrook may require winter construction.⁵⁰³ Efforts are directed at establishing a contiguous 140 foot construction space along the right-of-way for typical construction methods.⁵⁰⁴

301. The Alberta Clipper and Southern Lights Diluent projects may require up to 105 feet, rather than the typical 75 feet, of additional permanent easement in areas constructed during the winter.⁵⁰⁵ The additional space is necessary to accommodate greater separation of pipelines in wetland areas and to provide sufficient space for ditch spoils and construction equipment.⁵⁰⁶ Construction workspace in winter construction areas would remain at 140 feet – the same as for summer construction operations.⁵⁰⁷

D. Stakeholder-Specific Issues

302. **Kezar Property, Mile Post 859.5.** Particular issues were raised by Mr. Joel Kezar regarding his property located at Mile Post 859.5 on the proposed Alberta Clipper project route. Mr. Kezar's comments were also documented in a letter submitted for the record as Exhibit A.⁵⁰⁸ Subsequent to the November, 2007 public hearings, Enbridge and the Kezar's were able to agree on a change to the Revised Preferred Route and Alignment Northwest of Clearbrook, Minnesota.⁵⁰⁹ This change reduces the

⁵⁰⁰ Ex. 100, § 4415.0125, at 2.

⁵⁰¹ *Id.*

⁵⁰² *Id.*, at 3.

⁵⁰³ Ex. 100, Tab C, at 1-13.

⁵⁰⁴ Ex. 123, at 7.

⁵⁰⁵ Ex. 123, at 4-5.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ See, Ex. A.

⁵⁰⁹ Letter to Judge Lipman from Enbridge on behalf of Enbridge and Joel and Marsha Kezar, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4933862>).

impact on human settlement, any Pipeline Routing Permit issued for the Alberta Clipper and Southern Lights Diluent projects should make this agreement a required condition.

303. **Berry Property, Mile Post 886.5.** At the hearing in Oklee, Minnesota on November 28, there was considerable discussion regarding the Berry property at Mile Post 886.5.⁵¹⁰ Enbridge indicated its intention to reduce or “neck down” the line separation of the pipes to approximately 15 feet between pipes.⁵¹¹ Enbridge also indicated that its construction space would be reduced from approximately 140 feet to approximately 80 feet. Enbridge also noted its intention to install exclusion fencing during construction to provide a barrier which will ensure that the construction area on the property is limited and kept within that which is in the easement agreement.⁵¹² A permit condition should require Enbridge to reduce line separation and temporary workspace, to the extent that this is consistent with safe installation and operation practice.

304. **Carlson Property, Mile Post 896.** The proximity of the proposed pipelines was presented as a concern by a Polk County landowner, Mr. Cory Carlson of Trail, Minnesota.⁵¹³ The particular parcel in question is Tract No. 748.⁵¹⁴ Enbridge indicated a willingness to narrow the distance between proposed pipelines and to reduce workspace immediately adjacent to this home and business location.⁵¹⁵ A drawing of the proposed narrowing of workspace for the Carlson property was introduced as Exhibit 13.⁵¹⁶ A permit condition should direct Enbridge to follow this construction proposal, subject to agreement from the landowners.

305. **Gunvalson Property, Mile Post 902.** John Gunvalson indicated that the current location of the culvert on his property does not line up with the creek on his property.⁵¹⁷ The result is that significant rainfalls run directly across his field and wash away topsoil.⁵¹⁸ Relocating the culvert to the north side of the pipeline would eliminate this problem.⁵¹⁹ Enbridge representatives indicated at the public hearing that relocating this culvert could be accomplished, if the necessary permits could be obtained from authorities with jurisdiction over the ditch.⁵²⁰ A condition on the Alberta Clipper and

⁵¹⁰ Red Lake County Public Hearing Transcript, at 27-36.

⁵¹¹ Red Lake County Public Hearing Transcript, at 28-29.

⁵¹² Red Lake County Public Hearing Transcript, at 30, 35; Pennington County Public Hearing Transcript, at 59.

⁵¹³ Polk County Public Hearing Transcript, January 17, 2008, at 26-43.

⁵¹⁴ Polk County Public Hearing Transcript, January 17, 2008, at 28.

⁵¹⁵ Polk County Public Hearing Transcript, January 17, 2008, at 37-38 (Testimony of Michael Harris).

⁵¹⁶ See, Ex. 13. (LSr Routing, Docket No. PL9/PPL-07-360).

⁵¹⁷ Polk County Public Hearing Transcript, 44-45.

⁵¹⁸ *Id.*, at 45.

⁵¹⁹ *Id.*, at 47.

⁵²⁰ *Id.*, at 46, 48.

Southern Lights Diluent projects should direct Enbridge to obtain the required permits from Pine Lake Township and the Red Lake Watershed District.

306. **Jack Rajala - Boundary Waters Land and Timber Company**, of Ranier, Minnesota. As noted above, Mr. Rajala urged that construction adjacent to timber lands of harvesters located along the pipeline route should be coordinated with that firm so as to preserve its ingress to and egress from its timber lands.⁵²¹ Enbridge agrees and the Pipeline Routing Permit should require Enbridge to notify and obtain permission from the Boundary Waters Land and Timber Company prior to the commencement of construction or other activities adjacent to that firm's property.

E. Useful Conditions Upon a Grant of the Pipeline Routing Permits

307. Construction of the Alberta Clipper/Southern Lights Diluent pipelines will require consultation with federal, state and local government agencies. Enbridge has specifically a lengthy series of permits, licenses or plans that must be obtained, approved and filed prior to proceeding with project construction.⁵²²

308. There are conditions that the Commission could place upon the Alberta Clipper and Southern Lights Diluent Pipeline Routing Permits that would mitigate negative impacts of pipeline installation and operation.

309. Minn. R. 7853.3600 contains a list of 14 such conditions. Enbridge should be directed to:

- a. adhere to "all applicable state rules and regulations;"⁵²³
- b. "clear the right-of-way only to the extent necessary to ensure suitable access for construction, safe operation, and maintenance of the pipeline."⁵²⁴
- c. stabilize stream beds with vegetation using native plant species indigenous to the area or by other methods required by applicable state or federal permits or laws;⁵²⁵
- d. cover segregation of topsoil and reduce the compaction of soil in cultivated lands to as small an area as possible,⁵²⁶

⁵²¹ Itasca County Public Hearing Transcript, at 108-112; Landowner Request Follow-Up, at 3.

⁵²² Ex. 100, Section 4415.0165, at 1 - 2

⁵²³ Minn. R. 7852.3600 (A) (2007).

⁵²⁴ Minn. R. 7852.3600 (B) (2007).

⁵²⁵ Minn. R. 7852.3600 (C) (2007).

⁵²⁶ Minn. R. 7852.3600 (D) and (E) (2007).

- e. adhere to the provisions of the earlier-filed Agricultural Mitigation and Environmental Mitigation Plans, so as to protect livestock and crops;⁵²⁷
- f. submit, in advance of the issuance of a Routing Permit, an Anthrax Mitigation Plan that has measures to protect livestock and crops;⁵²⁸
- g. adhere to the provisions of the Agricultural Mitigation Plan, Environmental Mitigation Plan,⁵²⁹ the Spill Prevention Containment and Control Plan,⁵³⁰ the Petroleum-Contaminated Soil Management Plan,⁵³¹ and the Drilling Mud Containment, Response, and Notification Plan,⁵³² so as to protect against pollution of the environment;⁵³³
- h. replace or repair all drainage tile that is damaged during the construction process;⁵³⁴
- i. repair all private roads and lanes that are damaged as a result of the construction process;⁵³⁵
- j. replace or repair all fences that are damaged as a result of the construction process;⁵³⁶
- k. preserve trees and shelterbelts to the extent compatible with safe construction, operation, maintenance or inspection of the pipeline,⁵³⁷ and,
- l. restore – to the extent compatible with safe operation, maintenance or inspection of the pipeline – any impacted areas to their natural condition after installation of the pipeline.⁵³⁸

⁵²⁷ Minn. R. 7852.3600 (F) (2007).

⁵²⁸ Minn. R. 7852.3600 (F) (2007); *compare also*, Anthrax Mitigation Plan for the LSr Project, (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=5179910>).

⁵²⁹ Ex. 101, Tab D, Appendix B.

⁵³⁰ Ex. 101 Tab D, Appendix C.

⁵³¹ Ex. 101, Tab D, Appendix F.

⁵³² Ex. 101, Tab D, Appendix G.

⁵³³ Minn. R. 7852.3600 (G), (H) and (I) (2007).

⁵³⁴ Minn. R. 7852. 3600 (J) (2007).

⁵³⁵ Minn. R. 7852.3600 (K) (2007); Ex.101, Tab D at B at 29.

⁵³⁶ Minn. R. 7852.3600 (L) (2007).

⁵³⁷ Minn. R. 7852.3600 (M) (2007).

⁵³⁸ Minn. R. 7852.3600 (N) (2007).

310. With respect to the depth of cover along the pipeline route, Enbridge should be permitted to seek the waivers allowed by Minn. Stat. § 216G.07, subdivisions 2 and 3.

CONCLUSIONS

I. ANALYSIS OF THE NEED FOR THE PROPOSED FACILITY

1. Pursuant to Minn. Stat. §§ 14.50 and 216B.243, the Public Utilities Commission and Administrative Law Judge have jurisdiction to consider Enbridge's applications for a Certificate of Need and a Routing Permit.

2. Minn. Stat. § 216B.243 governs certificates of need for large energy facilities, including crude oil pipelines.

3. Minnesota Rules Part 7853 governs the application process and Minn. R. 7853.0130 sets for the showing that must be made in order for issuance of a Certificate of Need to be proper.

4. Under Minn. R. 7853.0130, the Certificate of Need application, alongside accompanying comments and filings, is assessed according to a four-factor test. Those factors are:

- (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.⁵³⁹

⁵³⁹ Minn. R. 7853.0130 (A), (B), (C) and (D) (2007).

A. 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

5. Petroleum demand in the Midwestern states of Petroleum Administration for Defense District, Number 2 – which includes Minnesota – is expected to rise.⁵⁴⁰ Specifically, crude oil is in demand because it can be refined into various products that are sought-after in the marketplace; including, gasoline, diesel fuel, aviation fuel, heating oil and asphalt.⁵⁴¹

6. While the Minnesota Legislature has established a schedule of emission reductions as state goals,⁵⁴² the methods by which Minnesota will reach these lower emission levels has yet to be determined. The Legislature has directed certain members of the Governor's Cabinet to develop and submit a "climate change action plan" for the Legislature's review – presumably, so that it may direct the emission reduction process through additional legislation.⁵⁴³

7. The demand for crude oil supplies in Minnesota (and the surrounding region) is not the result of promotional activities undertaken by Enbridge; but rather market demands from domestic oil shippers and refineries.⁵⁴⁴

8. No existing or planned facilities can meet the future demand without a Certificate of Need.

9. The net result of the Alberta Clipper project will be an increase in system capacity of 450,000 barrels-per-day.

10. The best conclusion from the record is that a denial of Certificates of Need for the Alberta Clipper and Southern Lights Diluent projects would "constrain petroleum supply to Minnesota and surrounding regional markets, leading to higher petroleum prices . . . [which would] adversely affect the future adequacy, reliability, and efficiency of energy supply to the applicant, the applicant's customers, and to the people of Minnesota and neighboring states."⁵⁴⁵

⁵⁴⁰ See, Ex. 300 § 7853.0240 at 5; Ex. 308 at 38-40.

⁵⁴¹ Ex. 308 at 18.

⁵⁴² See, Minn. Stat. § 216H.02 (1) (2006).

⁵⁴³ See, Minn. Stat. § 216H.02 (2) (2006).

⁵⁴⁴ Ex. 300 §§ 7853.0240 at 5; 7853.0250 at 6.

⁵⁴⁵ See, Ex. 308 at 40.

B. A More Reasonable and Prudent Alternative to the Proposed Facility-Pipeline has Not Been Demonstrated By a Preponderance of the Evidence on the Record By Third Parties or Other Persons or Entities

11. A more reasonable and prudent alternative to the proposed facilities have not been demonstrated by a preponderance of the evidence on the record.

12. Because no action would tend to “constrain petroleum supply to Minnesota and surrounding regional markets, leading to higher petroleum prices,” the no-action alternative is not a more reasonable and prudent alternative.

13. The Minnesota portion of the highway system between Hardisty, Alberta and Superior, Wisconsin cannot easily or well accommodate a fleet approximately 21,600 transport trucks each day.⁵⁴⁶

14. Due to the associated costs, environmental disruption and reduced safety, transportation of 450,000 barrels of oil per day, by truck, is not a reasonable alternative to the Alberta Clipper project.

15. The Minnesota portion of the highway system between Chicago, Illinois and Edmonton, Alberta cannot easily or well accommodate a fleet approximately 1,200 transport trucks each day.

16. Due to the associated costs, environmental disruption and reduced safety, transportation of 180,000 barrels of diluents per day, by truck, is not a reasonable alternative to the Southern Lights Diluent project.

17. Due to the associated costs, environmental disruption and reduced safety, transportation of 450,000 barrels of oil per day by rail is not a reasonable alternative to the Alberta Clipper project.

18. Due to the associated costs, environmental disruption and reduced safety, transportation of 180,000 barrels of diluents per day by rail is not a reasonable alternative to the Southern Lights Diluent project.

19. The TransCanada Keystone Pipeline is not a feasible alternative to the Alberta Clipper project because it does not connect to refinery markets in Minnesota.⁵⁴⁷

20. Because following the route of the existing Lakehead System permits Enbridge to use existing pumping station equipment, and requires the least amount of additional new right-of-way, it is a reasonable option and the best alternative.

⁵⁴⁶ Ex. 200, § 7853.0540 at 5-6, 10; Ex. 208 at 8-9.

⁵⁴⁷ Ex. 300 § 7853.0540 at 3.

C. The Consequences to Society of Granting the Certificate of Need are More Favorable than the Consequences of Denying the Certificate

21. The primary benefit of the Alberta Clipper and Southern Lights Diluent projects to Minnesota and the surrounding region is improved access to crude oil supplies. The proposed pipeline will fortify the claims of consumers of petroleum products – whether they are a refinery or a later purchaser of refined products – against broader disruptions in the oil market.

22. The addition of shipping capacity of 450,000 barrels of oil per day will result in a more stable supply to refineries in Minnesota and the surrounding region.⁵⁴⁸

23. The Alberta Clipper and Southern Lights Diluent projects will provide numerous socioeconomic benefits – including increased crude oil supplies, increased tax revenue and significant investments that will spur employment and spending in local communities.

24. Approval of the applications for Certificates of Need for the Alberta Clipper and Southern Lights Diluent projects will result in significant socioeconomic benefits over both the short and long terms.

25. The negative environmental consequences, such as disruption to cropland, damage during construction and potential oil spills can be mitigated (and in many cases fully remediated), through observance of the various plans accompanying the Enbridge Application.

26. The socioeconomic benefits of constructing the Alberta Clipper and Southern Lights Diluent projects outweigh the effects of pipeline construction upon the natural environment.

27. Denial of the Certificates of Need for the Alberta Clipper and Southern Lights Diluent projects Application will result in a loss of the potential socioeconomic benefits and would “adversely affect the future adequacy, reliability and efficiency of energy supply to Enbridge’s customers, the people of Minnesota, and surrounding states.”⁵⁴⁹

D. The Design, Construction, and Operation of the Proposed Facility Will Comply with the Relevant Policies, Rules and Regulations of All Other Applicable Agencies and Governments

28. There is no indication in the record that the design, construction or operation of the Alberta Clipper and Southern Lights Diluent projects will not comply

⁵⁴⁸ Ex. 300 § 4415.0115 at 5.

⁵⁴⁹ Compare, Minn. R. 7853.0130 (A) (2007).

with the relevant policies, rules, and regulations of other state and federal agencies and local governments.⁵⁵⁰

E. Conclusion Regarding a Certificate of Need for the projects

29. The Public Utilities Commission should grant a Certificate of Need to Enbridge Pipelines (Southern Lights) L.L.C. and Enbridge Energy, Limited Partnership for the Alberta Clipper and Southern Lights Diluent projects.

II. ANALYSIS OF THE PROPOSED ROUTING

A. Regulatory Analysis

30. Minnesota Statutes Chapter 216G governs the routing of crude oil pipelines.

31. A pipeline may not be constructed in Minnesota without a Pipeline Routing Permit issued by the PUC.⁵⁵¹ Minnesota Rules Chapter 7852 provides the detailed requirements that an applicant must meet to receive a Pipeline Routing Permit.

32. Environmental review is a part of the Pipeline Routing Permit process. Under the rules of the Environmental Quality Board (EQB), “any pipeline reviewed under Chapter 4415⁵⁵² automatically satisfies EAW and EIS requirements.”⁵⁵³

33. Under Minn. R. 7852.1900, the pipeline route application, alongside accompanying comments and filings, is assessed according to a ten-factor test. Those factors are:

- (a) Human settlement, existence and density of populated areas, existing and planned future use, and management areas;⁵⁵⁴
- (b) The natural environment, public and designated lands, including, but not limited to, natural areas, wildlife habitat, water and recreational lands;⁵⁵⁵
- (c) Lands of historical, archeological, and culture significance;⁵⁵⁶

⁵⁵⁰ Compare, Minn. R. 7853.0130 (D) (2007).

⁵⁵¹ Minn. Stat. § 216G.01 (2) (2006).

⁵⁵² The Environmental Quality Board formerly governed the pipeline routing process through Minnesota Rules Chapter 4415. Chapter 4415 was subsequently renumbered without substantive changes to Chapter 7852.

⁵⁵³ *Guide to Minnesota Environmental Review Rules*, at 20 (<http://www.eqb.state.mn.us/documents/rulguid3.pdf>).

⁵⁵⁴ Minn. R. 7852.1900 (3)(A) (2007).

⁵⁵⁵ Minn. R. 7852.1900 (3)(B) (2007).

- (d) Economies within the route, including agricultural, commercial or industrial, forestry, recreational and mining operations;⁵⁵⁷
- (e) Pipeline cost and accessibility;⁵⁵⁸
- (f) Use of existing rights-of-way and right-of-way sharing or paralleling;⁵⁵⁹
- (g) Natural resources and features;⁵⁶⁰
- (h) The extent to which human or environmental affects are subject to mitigation by regulatory control and by application of the permit conditions contained in Part 7852.3400 for pipeline right-of-way preparation, construction, clean up, and restoration practices;⁵⁶¹
- (i) Cumulative potential effects of related or anticipated future pipeline construction;⁵⁶² and,
- (j) The relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.⁵⁶³

34. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to human settlements, densely-populated areas and both existing and planned future land uses.

35. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to the natural environment, public lands and designated lands – including natural areas, wildlife habitat, water, and recreational lands.

36. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to lands of historical, archeological and cultural significance.

37. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to agricultural, commercial, industrial, forestry, recreational or mining operations.

⁵⁵⁶ Minn. R. 7852.1900 (3)(C) (2007).

⁵⁵⁷ Minn. R. 7852.1900 (3)(D) (2007).

⁵⁵⁸ Minn. R. 7852.1900 (3)(E) (2007).

⁵⁵⁹ Minn. R. 7852.1900 (3)(F) (2007).

⁵⁶⁰ Minn. R. 7852.1900 (3)(G) (2007).

⁵⁶¹ Minn. R. 7852.1900 (3)(H) (2007).

⁵⁶² Minn. R. 7852.1900 (3)(I) (2007).

⁵⁶³ Minn. R. 7852.1900 (3)(J) (2007).

38. Enbridge has carefully planned its proposed pipeline so as to minimize costs, consistent with an accessible and safely-operated pipeline.

39. Enbridge has carefully planned its proposed pipeline so as to maximize the use of existing right-of-way and right-of-way sharing or paralleling.

40. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to natural resources and naturally-occurring features.

41. As Enbridge acknowledges in its submissions, the benefits of the proposed projects can be maximized, and its adverse impacts reduced, by application of certain regulatory controls – including the permit conditions contained in Minn. R. 7852.3600 relating to pipeline right-of-way preparation, construction, cleanup and restoration practice.⁵⁶⁴

42. The testimony and comments of many landowners, who complained of past abuses by construction contractors hired by the Applicants, was credible. Thus, a vigorous set of controls over post-construction remediation practices are needed and desirable. So as to prevent the recurrence of sharp subcontractor practices, the imposition of strict regulatory controls and oversight by the Commission is warranted.

43. There is not other pipeline infrastructure that Enbridge could access so as to meet the forecasted need.

44. The record of this proceeding demonstrates that Enbridge has satisfied the criteria set forth in Minn. Stat. § 216B.243 and Minn. R. 7853.0130.

45. No party or person has demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to the proposed pipeline.

46. The Applicant has conducted an appropriate environmental assessment consistent with Minn. R. 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. R. 4410.3600

47. The Minnesota Public Utilities Commission should grant a Pipeline Routing Permit to Enbridge Energy Limited Partnership and Enbridge Pipelines (Southern Lights) L.L.C. for the proposed Alberta Clipper and Southern Lights Diluent projects.

48. Under federal law, rights-of-way may be granted through lands on Indian reservations that had been earlier allotted to individual Indians without the “full power of alienation,” only by leave of the Secretary of the Interior. Further, rights of way on lands

⁵⁶⁴ Compare also, Ex. 1, Section 4415.0145; Ex. 200, Section 7853.0630.

belonging to certain federally-organized tribes may not be had over the objection of tribal officials.⁵⁶⁵

49. Moreover, even in those instances where the Secretary of the Interior grants a pipeline right of way on Indian land, the Secretary's authority to make the grant is limited to an initial 20-year term, and perhaps, a second, follow-on term of 20 years.⁵⁶⁶

50. The routing permit should authorize construction and operation of the Alberta Clipper and Southern Lights Diluent projects within the Revised Preferred Route and Alignment and Route Alternatives filed by Enbridge.

51. The Pipeline Routing Permit should authorize construction along the proposed Fond du Lac Route Alternative as opposed to a direct route through the Fond du Lac Reservation.

52. In this circumstance, obtaining a permanent easement for the pipeline route, as opposed to the possibility of obtaining a 20-year leasehold, is preferable.

53. Environmental review of the AC/SLD PRP Application has satisfied the requirements of Minnesota law.

54. The Pipeline Routing Permit issued to Enbridge should require construction according to the agreement reached between Enbridge and Joel and Marsha Kezar.

⁵⁶⁵ See, 25 U.S.C. § 321 (2006) (The Secretary of the Interior is authorized and empowered to grant a right-of-way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by an Indian tribe or nation in the former Indian Territory, through any lands reserved for an Indian agency or Indian school, or for other purpose in connection with the Indian Service, or through any lands which have been allotted in severalty to any individual Indian under any law or treaty, but which have not been conveyed to the allottee with full power of alienation upon the terms and conditions herein expressed"); 25 U.S.C. § 324 (2006) ("No grant of a right-of-way over and across any lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), as amended; the Act of May 1, 1936 (49 Stat. 1250); or the Act of June 26, 1936 (49 Stat. 1967), shall be made without the consent of the proper tribal officials. Rights-of-way over and across lands of individual Indians may be granted without the consent of the individual Indian owners if (1) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (2) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (3) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary of the Interior finds that the grant will cause no substantial injury to the land or any owner thereof; or (4) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof); *Nebraska Public Power District v. 100.95 Acres of Land in County of Thurston, Hiram Grant, et al*, 719 F.2d 956, 961 (8th Cir. 1983).

⁵⁶⁶ 25 U.S.C. § 321 (2006) ("the rights herein granted shall not extend beyond a period of twenty years: *Provided further*, That the Secretary of the Interior, at the expiration of said twenty years, may extend the right to maintain any pipe line constructed under this section for another period not to exceed twenty years from the expiration of the first right, upon such terms and conditions as he may deem proper"); compare also, Contested Case Hearing Transcript, at 129.

55. The Pipeline Routing Permit issued to Enbridge should require Enbridge to adhere to the conditions urged above, in Finding Number 309.

Based upon these Findings of Fact and Conclusions, and for the reasons stated in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. Enbridge's Application for a Certificate of Need for a Crude Oil Pipeline known as the Alberta Clipper Project, and a pipeline known as the Southern Lights Diluent Project, should be GRANTED.

2. Subject to the conditions set forth in the Conclusions, Enbridge's Application for a Routing Permit for a crude oil pipeline known as the Alberta Clipper Project, and a pipeline known as the Southern Lights Diluent Project, including the most-recent Revised Preferred Route and Alignment and Route Alternatives, should be GRANTED.

Dated: July 17, 2008

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Shaddix and Associates and Braden, Undeland
Transcript prepared, eight volumes

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule which the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply (if any), and an original and 15 copies of each document should be filed with the Commission.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if one is held.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendations and that the recommendations have no legal effect unless expressly adopted by the Commission as its final order.

MEMORANDUM

While the Findings and Conclusions above detail the Administrative Law Judge's analysis under the applicable statutes and regulations, a few of the arguments raised in the briefs submitted by MCEA and Mr. Kingstad deserve some additional exposition.

As part of its opposition to granting the requested Certificates of Need, MCEA makes four key claims: (1) the estimates predicting a rising demand for crude oil are poorly substantiated; (2) the claim that the sought-after energy facilities will shelter Minnesotans from volatility in global markets is likewise not supported by the record; (3) the OES has failed to analyze the Application in light of state policy goals on the reduction of greenhouse gas emissions; and (4) the environmental analysis completed by the Applicants does not comply with Minnesota law. In the view of the Administrative Law Judge, none of these claims is availing.

A focal point of MCEA's challenge to the Certificate of Need Application is a critique of the predictive powers of the drafters of the *Annual Energy Outlook* to estimate, from year to year, what the demand for crude oil will be.⁵⁶⁷ As detailed above, the Applicants and the OES both point to the 2008 AEO in support of their view that demand for crude oil will rise, despite record high market prices for crude oil.⁵⁶⁸

Even if the analysts at the Energy Information Administration are not able to see far into the future, and the *Annual Energy Outlook* is of limited use in predicting demand for crude oil, in the view of the Administrative Law Judge, the assessment of energy facilities under Minnesota Rule 7853.0130 involves a more modest calculus. The text of the Rule makes clear that the Commission is to undertake a broad analysis of the costs and benefits of a proposed project; and in the most general sense, assure that our state is not burdened by an improvident program of overbuilding large energy facilities.⁵⁶⁹ On this record, the risk that access to an additional 450,000 barrels of Canadian crude oil each day would be unwelcome to regional refiners, or their customers, seems very remote. The much narrower debate as to whether nationwide demand for oil is leveling off,⁵⁷⁰ or will be slightly higher than in 2007,⁵⁷¹ is one that seems to be of more relevance to Enbridge's stockholders and financiers than it is dispositive of any of the much broader factors set forth in Minnesota Rule 7853.0130.

⁵⁶⁷ See, MCEA Post-Hearing Brief, at 9-13; *compare also*, Exs. 352 and 353.

⁵⁶⁸ See, Exs. 300, 308, 312 and 316.

⁵⁶⁹ See, *e.g.*, Minn. R. 7853.0130 (c) (2007) (the Commission shall consider "the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate").

⁵⁷⁰ See, MCEA Post-Hearing Reply Brief, at 3.

⁵⁷¹ Ex. 308 at 37-38; Contested Case Hearing Transcript, at 228-29.

MCEA and Mr. Kingstad appear to acknowledge that the stocks of crude oil are, in fact, in demand. Indeed, it is precisely the prospect that larger quantities of oil will be extracted, refined and burned, that is a continuing concern to them.⁵⁷²

With respect to the second claim – namely, that the proposed energy facilities will not shelter Minnesotans from price volatility in what is now a global market for crude oil – MCEA points to Enbridge’s multi-state network of pipelines, and asserts that these lines are to benefit consumers and interests outside of the Midwest. Prompting the Applicants to prove the negative, MCEA argues that because crude oil is a fungible commodity, if it can be shipped to wealthier states, it will be shipped away.

This argument fails for two reasons. First, if Rule 7853.0130 were interpreted as MCEA urges, requiring specific proof that energy resources will be cabined in Minnesota (at least long enough for regulators to assess their benefits), it is doubtful that any pipeline or transmission line could be permitted in modern day. It is common for large energy facilities to be linked together in multi-state networks; and the standards in Part 7853 are drafted against this backdrop. Thus, the Commission’s ability to assess the relative costs and benefits of new infrastructure should not be so cramped as to require applicants, as a practical matter, to only propose projects that run to our borders’ edge or to the edge of a “neighboring state.” Such a reading of the regulatory requirements understates the Commission’s ability to assess the costs and benefits of proposed facilities and would artificially narrow the range of applications that are presented to the Commission for consideration. Second, even if it could be established that no additional barrels of oil will be later requested by Minnesota refiners or manufacturers – a matter that is not supported by this record – the proposed pipelines would still confer some benefits upon our state and neighboring states. Having a deeper supply of crude oil as to which we have a relative transportation price advantage, over supplies from the Gulf Coast, is itself an important benefit.⁵⁷³

With respect to the claim that approval of the Certificate of Need is inconsistent with state policies on reducing greenhouse gas emissions, the Commission has had an opportunity to consider this claim in the context of the related LSr project and did not find it availing. On this record, there is not a reason to revisit this claim now.

Lastly, as to the claim that an Environmental Impact Statement is required on the proposed projects, the Administrative Law Judge finds the view expressed by the Environmental Quality Board, in its January 29, 2008 letter to the MCEA, the better reading of the applicable law. In that letter, Mr. Downing, an Environmental Review Coordinator with the Board, noted that the proposed projects were being assessed through the Alternate Review Process found in Minn. R. Part 4410. This review process is intended as a substitute for an Environmental Impact Statement.

E. L. L.

⁵⁷² See, MCEA Post-Hearing Brief at 25; MCEA Reply Brief at 11; Kingstad Post-Hearing Brief, at 5.

⁵⁷³ See, Ex. 312 at 9-15; Ex. 300 § 7853.0250 at 6; Evidentiary Hearing Transcript, at 69-70.



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July 17, 2008

Dr. Burl W. Haar, Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101

Re: *In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project;*
and
In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Route Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project;

MPUC Docket No. PL9/CN-07-465 (*Certificate of Need*)
MPUC Docket No. PL9/PPL-07-361 (*Route*)
OAH Docket No. 8-2500-19094-2

Dear Dr. Haar:

The document listed below has been filed with the E-Docket system and served as specified on the attached service list.

Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations

Sincerely,
/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Telephone: (651) 361-7842

ELL:mo
Encl.

cc: All Parties on the Attached Service List

OAH Docket No. 8-2500-19094-2

MPUC Docket No. PL-9/CN-07-465 (Certificate of Need)

MPUC Docket No. PL-9/PPL-07-361 (Route)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

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STATE OF MINNESOTA
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CERTIFICATE OF SERVICE

<p>Case Title: <i>In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project</i></p> <p>and</p> <p><i>In the Matter of the Application of Enbridge Energy, Limited Partnership, and Enbridge Pipelines (Southern Lights) LLC for a Route Permit for the Alberta Clipper Pipeline Project and the Southern Lights Diluent Project</i></p>	<p>OAH Docket No. 8-2500-19094-2</p> <p>MPUC Docket No. PL-9/CN-07-465 <i>(Certificate of Need)</i></p> <p>MPUC Docket No. PL-9/PPL-07-361 <i>(Route)</i></p>
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Mary Osborn certifies that on the 17th day of July, 2008, she served a true and correct copy of the **Summary of Testimony at the Public Hearings, Findings of Fact, Conclusions and Recommendations**; by electronic mail (as indicated on the Service List) to the following individuals:

All Individuals on the Official Service List	