

ATTACHMENT A

Minnesota Public Utilities Commission Certificate of Need Proceedings, Findings and Conclusions regarding “Important Economic or Social Changes” from the September 5, 2018 Order (“MPUC CN Order”), Reissued on May 1, 2020

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The following paragraphs highlight findings and conclusions from the MPUC CN Order [including page citations] that describe those “**important economic or social changes**” (Minn. Rules, part 7850.0265, subp. 5B) resulting from the Project that the MPUC relied on in part in approving the certificate of need for the Project, contingent on suitable modifications including (i) a parental guaranty for environmental damages; (ii) implementation of Enbridge’s Landowner Choice Program for existing Line 3; (iii) the creation and funding of a trust fund for decommissioning of the Project, including the costs of removal of the Project; (iv) implementation of a neutral footprint program that provides for Enbridge to acquire renewable energy credits to offset the incremental increase in nonrenewable energy consumed by the Project and carries out a tree replacement program; and (v) acquiring and maintaining General Liability and Environmental Impairment Liability Insurance:

- ***The Future Adequacy, Reliability, or Efficiency of Energy Supply***
 - * The forecasts in the MPUC record, together with the evidence of significant, persistent apportionment, show that denial of the Project would adversely impact the adequacy, reliability, and efficiency of delivery of crude oil to all of Enbridge’s customers by continuing and possibly exacerbating the significant levels of apportionment of heavy crude oil on Enbridge’s Mainline System. According to the ALJ, “without any changes to the Mainline System, ... the existing facilities will...not be able to meet future demand.” Even if Enbridge’s Minnesota and regional refinery customers are able, despite apportionment, to obtain adequate supplies of crude oil through other means, such as rail and truck, those means are more costly and uncertain. (p.15).
 - * The MPUC agrees with the ALJ that Enbridge has shown that current facilities are insufficient to meet future demand in a reliable or efficient manner (p. 16).
 - * The MPUC agrees with the ALJ that the Project would make efficient use of resources by reducing required maintenance and running mixed service by carrying both light and heavy crude oil. (p.17).

¹ The Orders reissued on May 1, 2020 are: Order Granting Certificate of Need as Modified and Requiring Filings, September 5, 2018; Order Approving Pipeline Routing Permit With Conditions, October 26, 2018; Order Clarifying Prior Order, Excluding Filing, and Denying Reconsideration, January 18, 2019; Order Approving Compliance Filings as Modified and Denying Motion, January 23, 2019; and Order Accepting Tribal Economic Opportunity and Labor Education Plan as Modified.

- * Increasing the pipeline diameter as proposed from 34 inches to 36 inches would result in 22 percent greater energy savings and reduce greenhouse gas emissions from the Project by 33 percent. The MPUC finds that these concrete energy savings outweigh the possible risk that a slightly higher volume of oil could spill from a 36-inch pipeline. (p. 18).

- ***Reasonable and Prudent Alternatives***

- * The MPUC considered each alternative to the Project presented by a party or person other than Enbridge and finds that none of the proposed alternatives is more reasonable and prudent than the Project. (p. 19):
 - Based on the number of trucks and trains needed, the cost, and the increased risk of accidents and spills, the MPUC agrees with the ALJ that rail and truck are not reasonable or prudent alternatives to the Project. (p. 20).
 - SA-04 was proposed during the EIS scoping process “as an alternative that would completely avoid northern and central Minnesota, and would interconnect with the regional pipeline system closer to the major refineries in central Illinois.” The MPUC agrees with the ALJ’s assessment that SA-04 lacks the efficiency benefits of the Project because it is separate from the Mainline System, and would not reduce apportionment, make use of existing infrastructure, provide system benefits to the Mainline System, or directly serve Minnesota or Wisconsin refineries. Therefore, SA-04 would not directly benefit Minnesotans, but it would be twice as long as the Project, significantly more expensive, have twice the greenhouse gas emissions to transport the same amount of crude oil, and would require permitting in three other states. For these reasons, the MPUC agrees with the ALJ’s assessment that SA-04 would not be a more reasonable and prudent alternative to the Project. (p. 21).
 - The Minnesota Department of Commerce Division of Energy Resources (“DER”) proposed Keystone XL (“Keystone”) as an alternative to the Project. Keystone is a pipeline in development by TransCanada Corporation that would transport approximately 800 kbpd of crude oil from Alberta to Cushing, Oklahoma or Wood River, Illinois via Montana, South Dakota, Nebraska, and Kansas. The ALJ found that Keystone would not directly serve Minnesota or Wisconsin refineries nor refineries in the broader 15-state Midwest Region of the Petroleum Administration for Defense Districts or PADD II. The ALJ also found that shippers that use the Mainline System and do not execute long-term contracts for Keystone would pay significantly more per barrel to ship on Keystone than they would for the Project. And though Keystone would not have environmental or socioeconomic impacts in Minnesota, it would have

impacts elsewhere in the Midwest. For these reasons, the MPUC agrees with the ALJ's assessment that Keystone would not be a more reasonable and prudent alternative to the Project. (p. 21).

- DER also proposed construction of a new 760 kbpd or 370 kbpd pipeline along the existing right-of-way of the Spectra Energy pipeline ("Spectra"), which was recently purchased by Enbridge. The ALJ found that construction costs for the larger Spectra pipeline would be over \$4 billion higher than for the Project and construction costs for the smaller Spectra pipeline would be over \$1 billion higher than for the Project. The Spectra alternative would not serve Minnesota refiners and would cause underutilization of the Mainline System. For these reasons, the MPUC agreed with the ALJ that neither Spectra alternative would be a more reasonable and prudent alternative to the Project. (p. 22).

- ***Consequences to Society of Granting vs. Denying the Certificate of Need for the Project.***

- * In accordance with rule, the MPUC analyzed the consequences of the Project as proposed by Enbridge and modified by the MPUC, and compared those to the consequences of the continued use of existing Line 3, which would result from denial of the certificate of need. In doing so, the MPUC finds that the consequences of granting the certificate of need with suitable modifications enumerated in the MPUC CN Order are more favorable than the consequences of denying the certificate of need:

- ***Overall State Energy Needs***

The MPUC agrees with the ALJ that the Project would result in a net benefit to overall state energy needs by reducing apportionment on the Mainline System and increasing access for Minnesota refiners to different types of crude oil. Minnesota is one of 19 states that does not produce any oil and therefore relies exclusively on imports to meet its crude oil and refined product needs. In contrast, denying the certificate of need would exacerbate apportionment of heavy crude oil on the Mainline System, potentially forcing shippers and refiners to transport more crude oil by rail, which is less reliable and has greater environmental risks. The extensive maintenance required to keep existing Line 3 in operation would require temporary shutdowns, decreasing the reliability and efficiency of crude oil supply to Minnesota refiners. Continuing to operate existing Line 3 also increases the risk of an accidental release. (p. 26).

- ***Effect on the Natural and Socioeconomic Environments***

The MPUC finds that either granting or denying the certificate of need would have significant consequences for the natural and socioeconomic environments of northern Minnesota.

(i) *Construction Impacts.* Denial of the certificate would require approximately 6,250 integrity digs over the next 15 years to maintain and replace the badly corroded existing Line 3 pipeline. Enbridge estimates that these integrity digs would impact approximately 270,000 acres of land in a manner comparable to new pipeline construction. While the opening of a new pipeline corridor [significantly reduced by the Enbridge-FdL agreement allowing the Project to be constructed through the Reservation along an expanded right-of-way adjacent to the existing Enbridge pipelines] presents the risk of environmental impacts related to construction, continued operation of existing Line 3 presents similar impacts. Also, the MPUC finds that the permanent clearing of trees required in the Project right-of-way is mitigated somewhat by Enbridge's implementation of the required tree replacement program. (pp. 26-27).

(ii) *Risk of Accidental Release.* A new pipeline will be built with better materials such as thicker, stronger steel and superior coating, better welding technology and engineering, and would be subject to more effective monitoring and testing. The increased capacity of the Project will also likely reduce the volume of oil shipped by rail, by as much as 510 kbpd, further reducing the risk of an accidental release. (pp. 27-28).

(iii) *Climate Change.* While the lifecycle Project greenhouse gas emissions are a significant consequence, they include emissions from ultimate consumption of the oil transported by the Project. These costs do not result directly from the Project, but instead result from the continued demand for crude oil to produce refined products used by consumers. The MPUC finds that the record evidence does not support a conclusion that denial of the certificate would likely significantly reduce crude oil demand. Instead, the evidence establishes that the most likely result would be increased transport by more dangerous means such as rail and continued use of the deteriorating existing Line 3. The MPUC will, however, mitigate climate change impacts by modifying the proposed Project to require Enbridge to purchase renewable energy credits to offset the incremental increase in nonrenewable energy consumed by the Project, and to implement a tree replacement program (pp. 28-29).

(iv) *Impacts to Indigenous Populations.* While the MPUC recognizes the Project's significant impacts on indigenous populations as described in the Revised FEIS, denial of the certificate would also have disproportionate adverse impacts on indigenous populations because it would result in continuing operation of the deteriorating existing Line 3 through the Leech Lake and FdL Reservations. Ultimately, granting the certificate of need would avoid frequent, necessary repairs of existing Line 3 and allow the decommissioning of existing Line 3 through Reservation lands. (pp.29-30).

(v) *Socioeconomic Impacts.* The potential for positive economic impacts to the communities along the Project route is a major benefit of the Project, especially because these communities generally have a lower household income than the state median. The Revised FEIS estimates that the Project will generate 4,200 construction jobs, while Enbridge estimates approximately 7,200 direct jobs would result. Due to Minnesota labor agreement requirements, at least 50 percent of those employed by the Project would come from local union halls. While the specific amount of tax benefits to communities along the Project route is less clear, the MPUC finds that these communities would realize minor to major tax benefits in the form of higher income and property tax revenue resulting from the Project. (pp. 30-31).

(vi) *Abandonment of Existing Line 3.* The MPUC finds that the consequences of granting the certificate are more favorable than the consequences of denying the certificate if the proposed Project is modified to include removal of existing Line 3 as provided in Enbridge's Landowner Choice Program. (p. 31).

○ ***Inducing Future Development***

The jobs created by the Project have the potential to cause indirect and induced economic benefits in the communities along the Project route. For example, a construction worker who spends money on basic goods and services in the local community is causing indirect economic benefits, and a worker who is able to spend more on discretionary items, like entertainment, is causing induced economic benefits in the community. Enbridge presented evidence that the Project would create over 2,400 jobs indirectly and induce the creation of 3,800 jobs. Increased property tax payments to counties along the Project route have the potential to provide long-term support to local governments. (pp. 31-32).

○ ***Socially Beneficial Uses of Output***

The MPUC agrees with the ALJ that the Project output, crude oil, is ultimately refined into numerous products that “are used to meet basic human needs, such as the production of food and the transportation of people and products.” Minnesotans depend on a variety of petroleum products every day, including gasoline, tires, asphalt for roads, jet fuel, medical equipment and products, plastics, furniture, flooring, shingles, insulation, heating fuel, appliances, carpet and clothing. The MPUC acknowledges that the crude oil output from the Project is not used to protect or enhance environmental quality and that governments and businesses, and citizens in Minnesota and around the world are making efforts to reduce fossil fuel consumption in order to mitigate climate change. But the MPUC finds that for this factor, the consequences of granting the certificate of need are more favorable than the consequences of denial, because “...the fact remains that petroleum products derived from crude oil currently and into the foreseeable future have socially beneficial uses.” (p. 32).

- ***Compliance with Existing Law and Policy***
 - * The MPUC agrees with the ALJ’s finding that “there has been no evidence presented that the Project’s design, construction, or operation will be in violation of any applicable laws, rules or regulations.” (pp. 32-33).