BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border	MPUC PL-9/CN-14-916

INTERVENOR FRIENDS OF THE HEADWATERS'

PETITION FOR RECONSIDERATION OF

COMMISSION'S SEPTEMBER 5 ORDER

September 25, 2018

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I. INTRODUCTION

Intervenor Friends of the Headwaters (FOH) submits this Petition for Reconsideration of the Commission's September 5 Order for Granting Certificate of Need as Modified and Required Filings ("the September 5 Order"). Although the September 5 Order is, by its own terms, contingent and not effective until after the Commission issues an Order approving required modifications, the statute governing PUC Petitions for Reconsideration, Minn. Stat. § 216B.27, does not distinguish between tentative and final orders. Consequently, this petition addresses the issues the Commission addressed in the September 5 Order, and FOH reserves the right to file additional reconsideration petitions as the Commission puts together its final decisions on the Certificate of Need (CN) and Route Permit (RP).

This Petition for Reconsideration will follow the organization of Minn. R. 7853.0130, as did the substantive portions of the September 5 Order. That does not mean, however, that FOH in any way concedes that Minn. R. 7853.0130 is the entire universe of law that applies to a PUC decision on a certificate of need. Throughout this petition, FOH will point out places where the PUC's interpretation of the rule's language in isolation conflicts with the "large energy facility" Certificate of Need Statute, Minn. Stat. § 216B.243, the Next Generation Energy Act, Minn. Stat. Ch. 216H, the Minnesota Environmental Policy Act (MEPA), Minn. Stat. § 116D.04, and other applicable state and federal law. FOH submits that the September 5 Order misinterpreted the law, misconstrued many of the Administrative Law Judge's (ALJ) findings, ignored substantial material evidence altogether, and drew conclusions that cannot be supported by the evidence in the record.

II. ADEQUACY, RELIABILITY, AND EFFICIENCY [Minn. R. 7853.0130.A]

The Commission's September 5 Order concludes that "[t]he probable result of denial of Enbridge's application for a certificate of need would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant's customers or to the people of Minnesota and neighboring states." Minn. R. 7853.0130, pt. A. That conclusion is based on the Commission's determinations that the "applicant's demand forecast" is "accurate," or at least not proven to be inadequate, that current facilities and planned facilities that do not require certificates of need cannot meet whatever future demand there might be, and that the proposed new pipeline will make efficient use of resources. *Id.*

FOH submits that that the Commission's rationale is not consistent with the statute or an interpretation of the rule that is consistent with the statute. Further, FOH contends that, not only is the applicant's demand forecast not accurate, there is in reality no applicant demand forecast in this record. The applicant's production forecasts simply assume that demand will always equal supply and are therefore not credible. FOH also submits that current and planned facilities can indeed meet increased demand if it were to appear, and that a new pipeline that will contribute to excess transport capacity cannot be an "efficient use of resources."

A. The September 5 Order is based on a misinterpretation of the applicable law.

The September 5 Order (and the ALJ Report before it) are based on the premise that applicant need not show that its proposed pipeline is needed to meet energy demand in Minnesota and the surrounding region. FOH submits that this statement constitutes legal error.

The purpose of Minnesota's large energy facility statute, Minn. Stat. § 216B.243, is to protect Minnesota consumers, not to protect the economic interests of Enbridge and its shipper customers. Placing those private economic interests at the same level as Minnesota consumer

interests, or not requiring proof of Minnesota consumer benefit at all, is contrary to what the statute requires.

The language of Minn. Stat. § 216B.243 is pretty clear. Look at the legislature's word choices—"long range energy demand" (para. 1), "overall state energy needs" (para. 2), "long-term energy demand" (para. 3), "reliability of energy supply in Minnesota and the region" (para. 5), "satisfying the energy demand" (para. 6). Under the statute then, if there is no unmet energy need in Minnesota or the region, there can be no legitimate basis for granting a certificate of need.

Nothing in the statute obligates the PUC to look after the business interests of Canadian tar sands oil producers who desire easier access to Gulf Coast refiners or export markets. Nothing in the statute obligates the PUC to enhance Enbridge's "rate base" so that it can secure a greater guaranteed return from the rate structure approved by the Federal Energy Regulatory Commission (FERC). Nothing in the statute obligates the PUC to displace other means of transporting oil if they are adequately serving Minnesota consumers. The PUC's task is to determine whether a new pipeline is needed to assure adequate crude oil supply or will offer other benefits to Minnesota and the region, and whether those benefits justify the risks involved. *See generally Lakehead Pipeline Co. v. Illinois Commerce Comm'n*, 296 Ill. App. 2d 942, 696 N.E.2d 345 (Ill. App. 1998)(affirming Illinois Commission's decision to deny a certificate of public convenience and necessity to a pipeline project on the grounds that private economic interests alone were not sufficient to establish need).[1]

FOH acknowledges that Enbridge and some Canadian tar sands producers believe this project will improve their bottom lines. That is not "need" under Minnesota law, however. The rule language cannot be read to make the interests of "applicant's customers" enough to justify

[1] The Illinois Commerce Commission decision that the court affirmed is at 1997 WL 33771802 (Ill. C.C. 1997).

granting a certificate of need without doing violence to the underlying statute. There must be a threshold showing that there is unmet energy demand in Minnesota and the surrounding region.

There is no such showing. The unrebutted evidence is that Minnesota and the entire Midwest PADD II region is awash in oil and will likely continue to be that way. All of the refiners in Minnesota and the surrounding region are operating at or near nameplate capacity. There is no evidence that they cannot obtain the crude oil supplies they require. There is not even evidence that lack of pipeline capacity has materially affected their costs. Even the Canadian Association of Petroleum Producers (CAPP) concedes that little of the oil that would be carried by a new Line 3 would end up in Midwest refineries, that most of it would be headed to the Gulf Coast, and that the business case for the new pipeline is potential greater access to global markets for Canadian tar sands producers like Cenovus, Suncor, and BP.

Providing Canadian tar sands producers with easier access to global markets, with no evidence of unmet energy demands here or in the region, cannot, as a matter of law, be sufficient to justify a certificate of need under Minn. Stat. § 216B.243. That fundamental legal error—that the interests of Enbridge and its shippers to gain greater access to global markets can be enough to justify a CN—infects most of the analysis in the September 5 Order. Contrary to the September 5 Order, the rule does not require giving equal weight to the interests of Enbridge and the shippers and the interests of Minnesota consumers. That interpretation of the rule conflicts with the statute, and therefore cannot be the basis of a lawful ruling.

B. Even under the Commission's misinterpretation of the applicable law, the applicant has not met its burden of proof to establish "need."

1. The applicant never provided an accurate demand forecast.

The Commission's September 5 Order concludes that the applicant's "demand forecasts" are sufficiently "accurate" (which presumably means "credible") to establish the "need" for this

project. The evidence in the record shows, however, that Enbridge never supplied a demand forecast at all, only production forecasts that assumed demand would always be sufficient to soak up the supply. Moreover, as the ALJ concluded and the September 5 Order seemed to agree, the production forecasts that Enbridge did supply were not credible.

Enbridge's demand case rests primarily on the Muse Stancil reports provided by Mr. Earnest, which in turn rely almost entirely on supply forecasts from the Canadian Association of Petroleum Producers. The ALJ's report does a reasonably thorough job of explaining why the CAPP forecasts and forecasts based on them, like the Muse Stancil report, are not credible. Past CAPP production forecasts have proven to be too high, by several hundred thousand barrels per day on multiple occasions. CAPP forecasts do not include a sensitivity analysis of various scenarios, and there is an inherent bias. CAPP and its members are committed to growing the Canadian petroleum industry, and reassuring investors that they are continuing to grow. The Commission's September 5 Order recognizes and acknowledges those limitations, and does not reject any of the ALJ's negative findings. FOH agrees with those findings, and submits that they can only support a conclusion that Enbridge has not met its burden of proof.

What the September 5 Order does not address, however, is the even more fundamental problem with the CAPP forecasts and any forecasts based on them. The fundamental problem is that CAPP forecasts are *not* demand forecasts at all. CAPP forecasts are the result of a survey of *production* estimates, i.e. production goals, from Canadian oil producers. That includes the very same Canadian oil producers with whom the applicant has entered into an agreement to build this project.[2] The survey responses are kept confidential, and any assumptions behind those survey responses—including *any* assumptions about petroleum demand or petroleum prices−are kept

[2] ALJ Finding at 572.

confidential, and therefore are not in this record.[3] Enbridge's Muse Stancil report then divorces its forecasts from petroleum demand altogether, by simply *assuming* that demand from somewhere will fully utilize whatever new production travels through new pipeline capacity, at profitable levels.[4]

Supply does not create demand, however. If that were the case, then *any* proposed pipeline projects would be "needed," no matter what projected demand might be. If the Commission simply *assumes* that increased demand will soak up any increased supply at profitable levels, then there is no reason for it to assess the accuracy of an applicant's demand forecasts, as the statute and rule require.

That requirement in the statute and the rule is, however premised on the possibility that applicants will exaggerate future demand to justify unneeded projects they can add to their rate base. That is why in both the statute and the rule, assessing the accuracy of an applicant's demand forecasts is the *first* task assigned to the Commission.

The September 5 Order acknowledges that previous Commissions have granted Enbridge certificates of need in the past on similar evidence. It even acknowledges that "[i]n previous pipeline proceedings, it was considered reasonable to rely on supply forecasts to establish that demand for refined product, and therefore demand for crude oil, would continue to increase, or at least not decrease, for the foreseeable future."[5] That may be an accurate description of previous Commission decisions, but the assumption that supply forecasts are demand forecasts is *not* reasonable. The Commission should not compound the error by continuing to assume away the need for applicants to provide credible forecasts of demand. There is no set of facts that can turn CAPP forecasts or the Muse Stancil forecasts into demand forecasts, because they assume the

[3] ALJ Finding at 571.
[4] ALJ Findings at 558, 582-83, 594.
[5] September 5 Order at 14.

question of demand away. As a matter of *law*, then, those forecasts cannot satisfy the requirement of Minn. Stat. § 216B.243, subd. 1 (1) or Minn. R. 7853.0130.A(1).

2. The Commission's rejection of credible alternative forecasts on the grounds that they were not "quantified" is completely baseless.

Both the September 5 Order and the ALJ Report both essentially conclude that Enbridge's "demand forecast" evidence lacked any credibility, but then say they must accept the forecast of ever-increasing demand and supply for Canadian tar sands oil because the alternative forecasts provided were not "quantified."

That is simply not true. All of the alternative forecasts provided—the forecasts based on long-term $50 oil prices provided by Intervenor Honor the Earth, the International Energy Agency (IEA) forecasts under an $80 oil price scenario cited by Dr. Joseph for FOH—were as "quantified" as they could possibly be. They show the likelihood of Canadian tar sands supply flattening and then likely dropping over the lifetime of this project, with the attendant likelihood that this project will exacerbate excess oil transport capacity. Lots of numbers, lots of quantification.

If by "quantified" the ALJ and the September 5 Order mean "certain," then obviously no one contends that their forecasts for the future are certain. If by "quantified" the ALJ and the September 5 Order mean "credible," there are two responses. First, if the conclusion of the Commission is that *none* of the forecasts in this record are certain or credible, then no certificate of need can be granted, because it is the applicant that has the burden of proof.

Second, however, the only supportable conclusion is that the alternative forecasts are more credible than the production forecasts based on the CAPP numbers. It was the alternatives that were transparent about their price and demand assumptions, it was the alternatives that conducted a range of sensitivity analyses to consider different scenarios, and it was the

alternatives that considered and incorporated climate policy changes that will be necessary to achieve statutory objectives in both Canada and Minnesota.

As this Commission is well aware, Minnesota's Next Generation Energy Act, Minn. Stat. Ch. 216H, has set a statutory goal of 80% reduction in greenhouse gas emissions by 2050. To accomplish that goal, as the Commission knows, Minnesota's transportation sector, and certainly its automobile and light-duty components, will have to be virtually completely electrified. Since 70% of crude oil goes to refined transportation fuels, the necessary and inevitable electrification of transportation can only lead to dramatic decreases in demand for petroleum. The September 5 Order, however, assumes that Minnesota will not follow its own statutes, that neither the legislature nor the executive branch will adopt the policies necessary to achieve the required results, and that baseline market forces will not move us sufficiently in that direction.

FOH submits that the Commission should not and cannot assume that kind of failure. Minnesota is on a path to deep decarbonization and the question is less whether or not it will happen than when. Policy changes can and should accelerate that transition, but that transition is going to occur. Fossil fuels are going to play a greatly reduced role in Minnesota's future, and the last thing this Commission should do is commit to forcing consumers to pay for new fossil fuel infrastructure for the next thirty or forty years. Forecasts that are consistent with decarbonization should be credited, not dismissed, if this Commission is going to honor its commitments under the Next Generation Energy Act.

3. Evidence of apportionment on the Enbridge Mainline system does not establish that "existing facilities" and "planned facilities not requiring a certificate of need" cannot meet future demand.

The September 5 Order then turns to evidence of "significant, persistent apportionment" to support its conclusion on the demand issue. It relies on the ALJ's finding that "without any

changes to the Mainline system . . . the existing facilities will . . . not be able to meet future demand."[6]

Of course, the apportionment projections Enbridge supplied are based solely on the CAPP/Muse Stancil projections, so they suffer from the same defects. Like them, they rely on CAPP's bullish projections of Canadian production, and they assume that demand will soak up all additional supply at profitable levels. So projections of apportionment do not corroborate anything; they are just another way of describing the same projections that, for the reasons stated above, do not provide the Commission with an accurate demand forecast.

Even if Enbridge's apportionment projections were correct, however, that does not mean existing and future planned facilities cannot meet demand. As no one disputes, there is no evidence in the record that any Minnesota or regional refiner has been unable to acquire the crude oil stocks it needs to operate at capacity, despite apportionment on Enbridge's pipelines. Those refiners declined to intervene in this case, and declined to provide witnesses subject to cross-examination, but even their letters never indicated that they were unable to obtain supplies or even that they had to incur materially greater costs because of apportionment.[7] "Existing facilities" then *are* meeting current demand; it just may not be *Enbridge* facilities.

FOH submits that the Commission owes no legal duty to enhance Enbridge's competitive position. No doubt, the premise of this project for Enbridge is that they will be able to capture a greater share of the petroleum transport market, but that should be of exactly zero concern to this Commission. If Enbridge *and its competitors* can adequately, reliably and efficiently supply refiners in Minnesota and the region, or in the Gulf, or eventually the world, then there is no

[6] September 5 Order, at 15; ALJ Finding at 698.
[7] The September 5 Order appears to just assume increased costs without evidence from those refiners.

"adequacy, reliability, or efficiency" case for this pipeline project, even under the Commission's misreading of the statute and the rule.

The September 5 Order essentially concludes that pipeline transport of crude oil is always more "adequate, efficient, or reliable" than oil-by-truck or oil-by-rail.[8] Since virtually any pipeline project will presumably enhance the competitive position of pipeline companies over truck and rail, the Commission (and, to a significant extent, the ALJ) end up just assuming away this part of the rule's requirements.

What the Commission ignores is the likelihood that new pipeline capacity owned and operated by Enbridge's competitors will take a greater share and thereby reduce apportionment on Enbridge's Mainline system. For the light oil currently carried by the old Line 3, there is no apportionment and so, to the extent this project is a "replacement" for old Line 3, the apportionment argument does not apply. For the heavier tar sands oil, where apportionment might be an issue, the assumption in the September 5 Order (and in the ALJ's Report) is that the only way to reduce apportionment on Enbridge's Mainline system is to increase the capacity of Enbridge's Mainline system.

That assumption is false. The vast majority of oil running through the Enbridge Mainline system today does not go to refiners in Minnesota or even the PADD II region. It mostly goes to refiners and export facilities on the Gulf of Mexico. That means that, if some other pipeline or combination of pipelines can get tar sands oil to those export markets, then there will be less pressure on Enbridge's Mainline system, and therefore less apportionment. To whatever extent that Minnesota and regional refiners benefit from less apportionment on Enbridge's Mainline

[8] September 5 Order, at 15. Contrary to that rather blanket conclusion, truck and rail will always have a significant niche because of their flexibility. As the technology develops, it also appears that tar sands oil will soon move by truck and rail in the form of "bitumen balls," and make pipelines the less desirable alternative. https://www.cbc.ca/news/canada/calgary/bitumen-balls-pellets-pipelines-rail-train-transport-energy-alberta-technology-1.4277320

system, then, it does not matter whether that apportionment is reduced because of more Enbridge capacity or more capacity provided by others. Indeed, to the extent that Enbridge Mainline apportionment is reduced because of expansions elsewhere, refiners in this region benefit because they will not have to pay the tolls to support those other projects.

The other two major Canadian tar sands pipeline projects—Trans Canada's KeystoneXL (KXL) and the Canadian Federal Government's Trans Mountain Expansion Project (TMEP)—are not yet done, but they are pretty far along. KXL has State Department approval, has overcome all state-law hurdles, the supplemental environmental assessment for the more recent route adjustments is completed, and the supplementary environmental impact statement (EIS) covering those adjustments is now completed as well.[9] TMEP has now been taken over by the Canadian Federal Government to overcome remaining provincial opposition in British Columbia, and is doing additional consultations with First Nations to address the court's ruling requiring that.[10] Those two projects will add 1,420,000 barrels per day of pipeline capacity to carry tar sands oil to its eventual markets. Even under higher-price scenarios, and assuming no rail and no Line 3, there will be a 220,000 barrel per day surplus in transport capacity by 2030.[11]

Dismissing these alternatives just because they will not deliver oil directly to Minnesota refiners, as both the September 5 Order and the ALJ Report do, does not make any sense. If a barrel of oil that would otherwise be nominated for the Enbridge Mainline travels instead through KXL or TMEP,[12] the likelihood of apportionment on the Enbridge Mainline is reduced

[9] The developer of the KeystoneXL pipeline announced on September 24, 2018 that it plans to start construction in 2019. Grant Schulte, "Keystone XL developer plans to start construction in 2019," AP News (September 24, 2018), https://apnews.com/ade3d9d54fb44526983777548860743d/Keystone-XL-developer-plans-to-start-construction-in-2019

[10] https://www.cbc.ca/news/politics/natural-resources-trans-mountain-1.4832759.

[11] Ex. FOH-6 at 17 (Joseph Direct).

[12] This is the likely outcome, because those pipelines are supported by "take-or-pay" contracts, and Enbridge's Mainline system is not. Enbridge's witness, Mr. Earnest, assumed with no basis whatsoever that it would be the other pipelines, not Enbridge's, that would bear the risk of excess capacity. Ex. FOH-10 at 8 (Joseph Surrebuttal).

by one barrel, just as if the Enbridge Mainline itself had been expanded. It does not make any difference whether Enbridge Mainline capacity becomes available because the Mainline itself has been expanded or because the oil is moving through other non-Enbridge alternatives

It is true, of course, that KXL and TMEP are not yet built. Maybe someday they will be cancelled. That is not, however, a reason justifying approval of a new Line 3. This is not a competition Minnesota should try to win.[13] If the problem is apportionment on the Enbridge Mainline, and there is a reasonable likelihood that that problem can be solved in a way that does not put Minnesota's natural resources and Indian rights at risk, this Commission should take every opportunity to allow those alternatives to proceed.[14] There is no advantage to anyone but Enbridge that Line 3 connects to Enbridge's Superior terminal, or that it would be part of Enbridge's Mainline system and therefore give Enbridge an ability to offer more "flexibility."[15]

[13] The September 5 Order expresses concern for the states through which KXL would pass, but no concern for Wisconsin and Illinois, and their karst regions, and all the states through which the Enbridge Mainline and other Enbridge pipelines that will carry Line 3 oil will pass. There is no principled basis for that distinction.

[14] Of course, an SA-04 or other project, whether owner and operated by Enbridge or by someone else, would also reduce apportionment on Enbridge's Mainline. The September 5 order's assumption that only more Enbridge Mainline capacity can reduce Enbridge Mainline apportionment is simply wrong.

[15] Shippers presumably always prefer more options and more flexibility, especially if they do not have to incur additional costs unless they use a new facility. That is why the evidence of "shipper support"− the willingness of Canadian tar sands producers and customers to agree to higher shipping tolls to support this project—is sufficient to prove that demand will be there. And, in past cases, previous Commissions seem to have used shipper support as a basis for granting certificate of need applications. But, as Dr. Joseph pointed out during the hearing:

> Shipper support for the project does not mean that the project is needed; shippers bear little or no risk agreeing to the higher tolls that Enbridge will charge because shippers will be under no obligation to ship on the Enbridge system, and if they do ship on the Enbridge system they can pass the costs onto consumers.[15]

Moreover, if the shippers in this case had refused to agree to higher shipping tolls, Enbridge would have had the option to go to the Federal Energy Regulatory Commission (FERC) for a rate adjustment based on cost of service anyway.

If there were evidence, as there is with the other potential tar sands pipelines in process, that shippers had made long-term "take or pay" commitments to Enbridge to support this proposed new pipeline, this argument might be entitled to greater credit. But if this minimal level of skin in the game is enough to establish the need for a pipeline project, then the certificate of need process becomes little more than a ministerial exercise. No pipeline is going to be proposed without some potential customer interest.

4. Locking in an enormous crude oil pipeline expansion for the next thirty or forty years is not an "efficient use of resources."

If petroleum demand flattens and drops over the next few decades, then a new Line 3 will soon become another stranded asset, part of a system with excess transportation capacity. If Minnesota fails to adopt necessary climate policies, fails to electrify its transportation fleet, and petroleum demand continues to slowly increase, a new Line 3 is still likely to become a stranded asset as other pipeline projects nearing completion come online. More pipeline capacity in Enbridge's Mainline system is certainly in Enbridge's short-term financial interest. More pipeline capacity running out of the Canadian tar sands region to reach global markets may be necessary (if not sufficient) if the tar sands region is to become competitive again.

But the benefit to Minnesota consumers is zero. Indeed, it is negative because Minnesota consumers will have to pay for this pipeline at the pump, while the benefits will flow elsewhere.

In any regulated rate base environment, the answer to most questions seems to be to build more capital-intensive capacity—more generation, more transmission, more pipelines. Left unchallenged, the historical record shows that utilities and pipeline companies with rate recovery assurance will overbuild to the detriment of consumers. That is why we have public utilities Commissions, and why we have certificate of need and certificate of public convenience and necessity requirements. If, however, a Commission just assumes "if you build it, they will come," that sufficient demand will always be there, that past growth makes future growth a certainty, that disruptive economic and policy changes will not happen, the effectiveness of Commission review is severely compromised.

III. REASONABLE ALTERNATIVES [Minn. R. 7853.0130.B]

Both Minn. R. 7853.0130, pts. A.4 and B require the Commission to consider reasonable alternatives to the project, and indicate that if there are current or planned facilities not requiring CN's that could meet future demand (pt. A.4) or appropriate and reliable alternatives that would have smaller impacts on the natural and socioeconomic environments, (pt. B), then a certificate of need should be denied. While it may not have been the case in previous PUC pipeline cases, there is substantial evidence in this record that reasonable, and indeed preferable, alternatives do exist.

A. There are reasonable alternatives to a new 760,000 barrel per day pipeline to move the 390,000 barrels per day of light crude currently running through the old Line 3.

Throughout this process, Enbridge has characterized this as a "replacement" project, as if the "new" Line 3 would have the same capacity and carry the same product as the "old" Line 3. It, of course, will not. The new Line 3 will carry two to three times as much oil, and will almost entirely carry heavy diluted bitumen from the Canada tar sands, not light oil from the Bakken shale in North Dakota. This is an "expansion" project, designed to increase the capacity of the overall Enbridge Mainline system to carry heavy Canadian crude oil, mostly to markets on the Gulf Coast, and should be evaluated on those terms.

If Enbridge were to shut down the old Line 3 and its light crude shipments, would the only reasonable alternative for moving that light crude be to construct a much larger new pipeline? The answer is, of course, no. There is substantial evidence in the record that existing Line 3 light crude shipments could shift to existing pipelines. There is no apportionment concern about light crude shipments, so presumably there is already excess capacity in the system. Export pipelines from Canada, as of the last quarter of 2016, had about 363,000 barrels per day

of unused capacity, and if even half of that opened up room for additional light crude shipments, most of the volume currently going through the old Line 3 could be accommodated. Enbridge has itself identified a number of low-cost ways to increase the capacity of its Mainline system, including a up to 250,000 bpd expansion of its Lines 2A and 2B, system drag adjustments, station upgrades, restoration of Line 4's capacity, and reversal of its Line 13, all totaling around 500,000 extra barrels per day in Mainline capacity. These are not speculative; Enbridge itself has touted those low-cost capacity expansion options to its investors.[16] And now, it appears highly likely that the Dakota Access Pipeline (DAPL)[17], which carries light crude from the Bakken, will soon expand its capacity by another 100,000 barrels per day as well. As the costs of maintaining the old Line 3 continue to increase, the economics will likely prompt Enbridge to shift from old Line 3 to these other options sooner rather than later, if the "new" Line 3 project is not approved.

B. There are reasonable alternatives to a new Enbridge pipeline through Minnesota's Lake Country to transport additional heavy crude dilbit from the Canada tar sands.

There is no demand in Minnesota or the PADD II region for more dilbit shipments from Canada. But if the Commission's conclusion is that the financial interests of Enbridge and the tar sands producers are enough to make a case for additional heavy crude transport capacity from Canada, there are reasonable alternatives, including the non-Enbridge pipeline projects that are well underway.

Dr. Joseph's Direct Testimony laid those alternatives out under a variety of scenarios, including both low and high oil supply growth, and no rail or CAPP-forecasted rail.[18] In *every*

[16] Ex. HTE-2 at 32-37 (Stockman Direct)
[17] https://seekingalpha.com/news/3381182-energy-transfer-planning-100k-bbl-day-dakota-access-pipeline-expansion
[18] FOH-6 at 14-17 (Joseph Direct).

circumstance, the combination of TransCanada's Keystone XL project and, now, the Canadian Federal Government's Trans Mountain Expansion Project (TMEP) will lead to a surplus of oil transport capacity even if a new Line 3 is not built. If Canadian oil production is lower, or if CAPP's projection of 550 bpd going by rail is accurate, then just one of those pipeline projects will eliminate any transport capacity shortage. Of course, if supply drops because Canadian tar sands production costs remain too high, or because electrification of transportation reduces overall demand for petroleum, then *none* of these projects will be necessary.

None of the reasons offered in the September 5 Order for dismissing these alternatives as unreasonable are persuasive. The fact that these projects are not already built or almost built simply proves too much. If only built or nearly-built alternatives are "reasonable," then no alternatives will ever be reasonable, because no applicant will come forward if their competitors have already met the need. The fact is that these cannot be dismissed as "hypothetical" projects. Both have secured all necessary federal approvals; indeed, TMEP has been taken over by the Canadian federal government to make sure it gets built. Any remaining state or provincial objections are unlikely to keep these projects from going forward. And they both have the commitments of shippers under take-or-pay contracts for most of their capacity, something Line 3 cannot claim.

The other objection, apparently, is that those alternatives would not be part of Enbridge's Mainline system, would not use Enbridge's Superior terminal, and would not deliver crude oil to Minnesota refiners. There is no requirement, nor could there be under Minn. Stat. § 216B.243, that no alternative can be reasonable unless it would be owned or operated by the applicant. Obviously, Enbridge would prefer that Enbridge be the entity that meets any future demand for crude oil transportation, but that is not a legitimate concern of this Commission. The

Commission is directed to look after the interests of Minnesota consumers, not Enbridge. If the need here is to enhance the access Canadian tar sands producers have to global markets, it makes no difference whether that "need" is met by Enbridge pipelines or non-Enbridge pipelines. If the need here is to reduce apportionment on the Enbridge Mainline system, *any* pipeline or transport system that takes pressure off the Enbridge Mainline can meet that need. None of those concerns require running crude oil through a terminal in Superior, Wisconsin; none of them require delivering oil directly to Minnesota customers; none of them require some kind of coordination with other Enbridge pipelines. Those are Enbridge's interests, not the interests the Commission is obligated by law to protect.

C. SA-04 would also be a reasonable alternative way to meet any need to transport more crude oil from either the Canadian tar sands region or the Bakken shale to Midwestern, eastern Canadian, or Gulf of Mexico markets.

If for some reason all of the current non-Enbridge pipeline projects are cancelled, a new pipeline that largely follows the existing Enbridge natural gas pipeline route, SA-04, could also meet the alleged need for this project, but it would pose far fewer significant environmental risks. It would deliver crude oil to Enbridge's Midwest terminals near Chicago, and from there to refineries in the Midwest, eastern Canada, and, mostly, the Gulf Coast. It would take pressure off Enbridge's Mainline system, and thereby directly reduce the likelihood of apportionment, with the added advantage that Minnesota refiners would not have to pay the cost of constructing it.

As both of Minnesota's natural resource agencies—the Department of Natural Resources (DNR) and the Minnesota Pollution Control Agency (MPCA)—concluded, the SA-04 route would pose far fewer environmental risks. It would bypass Minnesota lake country, it would avoid areas with particularly vulnerable groundwater resources, it would reduce potential

impacts on wild rice, fish, and wildlife habitat, and it would have significantly less potential adverse effect on environmental justice communities. As the DNR put it, "oil spills on routes with greater numbers and density of water features and sensitive natural resources could have greater natural resource impacts than spill on routes with fewer and less dense sensitive areas."[19]

None of the reasons for dismissing SA-04 as unreasonable carry any weight. Like KXL or TMEP, SA-04 would be just as effective at reducing Enbridge Mainline apportionment as an addition to the Enbridge Mainline system itself. It would also deliver tar sands heavy dilbit to the markets where there might be demand for it, albeit by a more direct route than Enbridge's proposed Line 3. It would not be "longer" if one includes the Wisconsin and Illinois pipelines that will have to carry Line 3 oil to the same Enbridge Illinois terminals where SA-04 would end. And, again, since it is likely that very little if any crude oil in a new Line 3 will stop at Superior, Wisconsin, and that virtually all of it will travel south through Wisconsin and Illinois, the potential impact on karst topography will be greater with a new Line 3 than it would be with a pipeline following a route similar to SA-04. An SA-04 route could be more expensive—again, that Enbridge claim does not make apples-to-apples comparisons—but the Minnesota Environmental Policy Act (MEPA), which does indeed apply to PUC decisions, cautions that economic considerations alone cannot be the basis for rejecting an otherwise feasible and prudent alternative that would avoid pollution, impairment, or destruction of any Minnesota natural resource.

[19] DNR Comment, November 22, 2017, at 2.

IV. CONSEQUENCES OF GRANTING THE CERTIFICATE OF NEED VS. CONSEQUENCES OF DENYING IT. [Minn. R. 7853.0130.C]

A. The law governing the PUC's decision puts a thumb on the scale on the side of protecting Minnesota's waters, natural resources, and cultural resources.

Minn. Rules 7853.0130.C direct the Commission to make a very broad public interest review of any pipeline application, including a serious evaluation of "[t]he effects of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effects of not building the facility." *Id.*, C.2. But the Commission's duty to Minnesota's environment, and, in particular, its water resources, is broader than that. The PUC's duties do not end with the language of its pipeline rule.

The Minnesota Environmental Policy Act (MEPA) imposes a substantive general duty on all state agencies, including the PUC:

> No state action significantly affecting the quality of the environment shall be allowed nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare, and the state's *paramount concern* for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

Minn. Stat. § 116D.04, subd. 6 (emphasis added). The PUC cannot lawfully grant a certificate of need or, for that matter, a route permit for a pipeline project if it does not meet the requirements of MEPA.

Any PUC decision must also conform to Minnesota's Public Trust Doctrine. The state of Minnesota holds title to the waters of this state, not in the usual proprietary sense, but in its sovereign capacity, as trustee for the benefit of the people. That means all state agencies,

including the PUC, owe a fiduciary duty to protect those public waters.[20] As the Minnesota Supreme court held in *State v. Kulevar:*

> It is fundamental, in this state and elsewhere, that the state in its sovereign capacity possesses a proprietary interest in the public waters of this state . . . . While it is established that the public has access to waters capable of substantial beneficial use by all who so desire, the statutes direct that the state fulfill its trusteeship over such waters by protecting against interference by anyone, including those who assert the common-law right as a riparian owner. To permit such owners to interfere with the natural rights of the public to fish, hunt, swim, navigate, or otherwise enjoy such waters would result in subordinating public rights to private rights and in abdicating the state's trust over an incomparable natural resource.

266 Minn. 408, 123 N.W.2d 699 (1963). *See generally* Alexandra Klass, "Modern Public Trust Principles: Recognizing Rights and Integrating Standards," 82 *Notre Dame L. Rev.* 699 (2006); Joseph Sax, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention," 68 *Mich. L. Rev.* 471 (1970). The PUC therefore cannot lawfully grant a CN or an RP to a pipeline project if it would breach the Commission's duty to protect the waters of the state.

Likewise, the PUC cannot lawfully grant a CN or an RP that would interfere with federal Indian treaty rights. In the early to mid-nineteenth century, several Chippewa Bands in Minnesota ceded their territory to the United States in a series of treaties, but in each case reserved the right to hunt, fish, and gather in the "ceded territories."[21] That means state agencies, including the PUC, may not lawfully interfere with those rights, and state actions that potentially damage habitat for resources (like wild rice) in the ceded territories may be enjoined. *See generally Minnesota v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, 119 S.Ct. 1187

[20] This is not just a duty for the DNR or the MPCA, although, as the state agencies with natural resources expertise, all other agencies, including the PUC, should generally defer to their judgment.

[21] In the 1837 and 1854 treaties, the reservation of usufructuary rights was expressed; in the 1855 treaty, those rights were not expressly relinquished. The federal courts have already adjudicated the 1837 and 1854 treaties and found that those reserved rights were never extinguished and put a significant restriction on the discretion of the state of Minnesota to make natural resources policy in those areas. The 1855 treaty is still in dispute, although the DNR has declined to prosecute state game and fish violations against Band members in that area.

(1999) (upholding 1837 treaty hunting and fishing rights); *United States v. Washington*, 827 F.3d 836 (9th Cir. 2016) (reaffirming that treaty fishing rights include a right to protection of habitat). Similarly, section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, protects "traditional cultural water resources and habitat for plants, fish, and wildlife in Indian ceded territories." To the extent, then, that there is ambiguity in the broad language governing large energy facility CNs and RPs, the interpretation that favors the environment, natural and cultural resources must prevail.

B. Granting a Certificate of Need for a new larger pipeline to get an applicant's commitment to retire an older smaller one does not protect Minnesota's natural resources.

At the hearing over the Certificate of Need, concern about the deteriorating condition of the old Line 3 seemed to be a paramount concern. Commission members expressed the belief that Enbridge "had a gun to their head," that, if they did not give Enbridge what it wanted, Enbridge would keep the old Line 3 in service indefinitely and put Minnesota at greater risk of a catastrophic oil spill. That conclusion is not based on the record evidence, but rather on a long list of flawed assumptions.

First is the assumption that it will make economic sense for Enbridge to keep old Line 3 in service indefinitely. Enbridge's own witnesses repeated in their testimony that the issue was money, not safety. The business case for replacing the pipeline is now or is about to become stronger than the business case for continuing to maintain it, whether or not a new Line 3 is built. If Enbridge's application for a new Line 3 CN is denied, the business case for replacing the old Line 3 will still be stronger than continuing to maintain it; the only difference will be the particular set of alternatives Enbridge will choose to replace it. If new Line 3 through Minnesota does not go forward, Enbridge will look to expanding the capacity of its existing pipelines,

probably including the Dakota Access Pipeline in which it has a significant ownership interest. Frankly, the business case for keeping the old Line 3 in service is its potential ability to help get new projects approved.[22]

Second is the assumption that a new pipeline is significantly safer than an older one. There is substantial testimony in the record that "anomaly threats" to a pipeline are often introduced at the *construction* phase (or even the shipping phase), and federally required pipeline strength tests can fail to pick those problems up. Ambitious construction deadlines and startup goals lead to cutting corners, and weakening quality assurance and quality control measures.[23] Stress concentrators, e.g. dents with cuts, cracks, or corrosion within the dent, are often introduced in the construction phase as well, and are not always picked up by inline inspection technologies (ILI tools) or "smart pigs."[24] Trans Canada's Keystone pipeline, which is less than ten years old, ruptured in South Dakota in November 2017, causing a 10,000 barrel spill. The Pipeline and Hazardous Materials Safety Administration (PHMSA) concluded that "mechanical damage that occurred during initial construction," specifically weights that were placed on the pipeline to address buoyancy concerns related to rises in the water table were the likely cause.[25]

Third is the assumption that ongoing maintenance of an older pipeline cannot reduce the risk of an oil spill. Enbridge is absolutely liable under the Oil Pollution Act of 1990 for the costs of a spill from its pipelines, so they have a strong financial incentive to take significant steps to

[22] This is why the analogy to the replacement of the Hastings bridge is inapt. If the old Hastings bridge had been a privately held toll bridge, and the owner said it would agree to replace it with a new one, but only if it also got a contract to build something like a sprawl-inducing toll outer beltway around the Twin Cities, contrary to all public policy, then the analogy would be a bit closer

[23] Ex. FOH-1 at 10-12 (Kuprewicz Direct)

[24] *Id.* at 12.

[25] Ben DuBose, "PHMSA: Weight on Keystone Pipeline Led to Coating Failure, Oil Spill," *Materials Performance* (June 4, 2018), http://www.materialsperformance.com/articles/coating-linings/2018/06/phmsa-weight-on-keystone-pipeline-led-to-coating-failure-oil-spill.

forestall that occurrence. And the testimony of Enbridge witnesses all confirmed that they can keep the old Line 3 safe if they continue to make the necessary substantial investments.

Of course, the point is that no crude oil pipeline is "safe." All of them—old or new—carry the risk of spills, and even catastrophic spills if they happen in the wrong place and time. We hope that new safety measures, including the still-developing American Petroleum Institute Recommended Practices (APIRP) 1173 "Pipeline Safety Management Systems'" will work to reduce the risk of spills from *all* crude oil pipelines. But the reality is that spills like Enbridge's 2010 Kalamazoo spill are the result of human error—not interpreting control room signals correctly, slow responses, using surface booms to capture sinking dilbit—and human error is just as likely to occur with a new pipeline as it is with an older one.

If this Commission denies a certificate of need for this project, the most plausible outcome is that Enbridge will choose to retire the old Line 3 for financial reasons, and use currently unused pipeline capacity or easily obtained low cost expansion measures to keep the light crude currently running through the old Line 3 flowing.[26] If the Commission, on the other hand, grants the CN, we take Enbridge at its word that it will retire the old Line 3 and find another way to transport that volume of light crude. Same result, but perhaps different timing. At the same time, however, the Commission will have locked in an additional 730,000 (up to 915,000) barrels per day of pipeline capacity to carry heavy crude dilbit from the Canadian tar sands for the next several decades, with all of its attendant risk for that entire time. It will have opened up a new corridor through some of Minnesota's most vulnerable natural resources, and it will have paved the way for Enbridge to shift all of its pipelines and over 2 million bpd in

[26] Or, if the cost/benefit numbers don't add up, Enbridge will, like any business, cede the money-losing or insufficiently profitable business to competitors.

capacity to that new corridor once its easements with Leech Lake and Fond du Lac expire. That is a poor bargain.

C. The Commission's September 5 Order grossly understates the potential environmental risks of letting this pipeline project go through.

The September 5 Order provides three short paragraphs on page 27 about the risk of an accidental oil release, which it does acknowledge is a "significant concern expressed by Opponents to the certificate of need." Then, it dismisses the climate impacts of a new pipeline in three short paragraphs on pages 28 and 29. Neither effort meets the Commission's obligation to seriously consider the environmental and socioeconomic impacts of even a single pipeline project, much less the series of new pipeline projects in the new corridor that are likely to come between now and 2029, when Enbridge's permission to cross reservation lands expires.

The environmental risks of a crude oil pipeline or set of pipelines in operation for decades through some of Minnesota's most vulnerable and irreplaceable natural resources are significant and outweigh any potential benefits. The environmental impact statement for this project stops short of analyzing the likely impacts of a spill at any specific site, but it does provide a generic description of the harm an oil spill can cause.

Crude oil contains several toxic compounds that can pose a threat to human health and wildlife, particularly the aromatic hydrocarbons referred to as "BTEX"—benzene, toluene, ethyl benzene, and xylenes.[27] Diluted bitumen, which will be the bulk of what will travel through a new Line 3, poses unique risks if it spills. As it "weathers"—or as the diluent evaporates—the specific gravity of "dilbit" can increase to more than the specific gravity of water, which means that it can sink to the bottom of a waterbody, as it did in the Marshall, Michigan spill. If it comes into contact with even a small amount of suspended sediment, it will adhere to it and can sink

[27] Ex. FOH-13 at 24, 60-61 (National Academy of Sciences, *Spills of Diluted Bitumen from Pipelines).*

even its density is less than water.[28] It can stick to animals, aquatic vegetation, and rocks, and its adhesive properties can greatly complicate cleanups.[29]

Oil spills on land, like the spill on the new Keystone pipeline last November, do not spread very far, but once oil comes into contact with water, it can spread rapidly.[30] It can persist for years in surface water and in groundwater. Wetlands at the land-water interface pose special cleanup problems if contaminated, because they are fragile and often impossible to fully restore.[31]

The degree of risk depends on the nature of the landscape a pipeline is passing through. The September 5 Order tries to separate the consideration of environmental effects at the certificate of need phase from that same consideration at the route permit phase. The fact remains, however, that some surface waters are more pristine than others, some groundwater and drinking water resources are more vulnerable than others, some areas are richer in wetlands than others, and some areas have greater fish and wildlife or plant populations susceptible to oil contamination.

This proposed pipeline will travel through some of the cleanest surface waters in Minnesota, some of the most vulnerable aquifers, and some of the most wetland and habitat-rich parts of the state. DNR and FOH maps in the record graphically demonstrate the risk. Of course, the extent of environmental damage from any particular construction incident or any particular spill cannot be predicted with accuracy. But, as the recent analysis of the potential costs of an Enbridge Line 5 spill in the Straits of Mackinac shows, the costs of cleanup can be several hundred thousand dollars per mile of shoreline affected, and the total cost of a large spill

[28] *Id.* at 28-29.
[29] *Id.* at 30-31. A light crude spill from the old Line 3 would also pose great problems for water and wildlife, but it would not pose the unique problems that would be created by a dilbit spill from a new Line 3.
[30] *Id.* at 41.
[31] *Id.* at 54.

in these circumstances can easily exceed $1 billion. A light crude spill on flat farmland with easy access can be mitigated quickly and reasonably effectively. But a dilbit spill in a central Minnesota wetland complex without easy access, with a shallow aquifer, with iconic lakes and rivers downstream, would be enormously difficult if not completely impossible to remedy.

As additional pipelines are added to a corridor, and as more and more oil passes through them, the likelihood of a spill only goes up. The likelihood of a spill at any one location is of course small, but the likelihood of a spill on a new Line 3 or on any new pipelines added to this new corridor is quite high over their expected lifetime. Safety standards supposedly continue to improve, but the oil spills from pipelines continue to come, with millions of gallons spilled since the "wake up call" Enbridge Kalamazoo spill in 2010. Minnesota need not take that risk, and the Commission cannot wish that risk away by not addressing it in its Certificate of Need Order.

The Commission's summary dismissal of climate impacts is equally problematic and, again, is based on a false assumption. That assumption is that if a new Line 3 is not built, the same amount of heavy crude oil from the tar sands will still be extracted, the same amount will be transported, and the same amount of refined product will eventually be burned, with the result that the net impact on greenhouse gas emissions and climate change will be zero.

That is exactly the assumption the Tenth Circuit and the D.C. Circuit rejected just last year. In *WildEarth Guardians v. BLM,* 870 F.3d 1222 (10th Cir. 2017), the court was considering a BLM proposal to grant new mining leases to extend the life of two major coal mines in the Powder River Basin in Wyoming. The EIS prepared by the Bureau acknowledged the quantity of coal proposed in the leases would result in approximately 382 million tons of annual carbon dioxide emissions from electricity generation, but then concluded that there would be no

appreciable difference in total carbon dioxide emissions whether or not the new leases were granted. According to BLM:

> It is not likely that selection of the No Action alternative would result in a decrease of U.S. CO2 emissions attributable to coal mining and coal-burning plants in the longer term, because there are multiple other sources of coal that, while not having the cost, environmental, or safety advantages, could supply the demand for coal beyond the time that the Black Thunder and North Antelope Rochelle mines complete recovery of their coal in their existing leases.

Id. at 1228-29.

The court flatly rejected what it called BLM's "perfect substitution" assumption. *Id.* at 1234. As the court recognized, other potential sources of coal might be more costly, which would affect demand and the substitutability of non-coal sources of energy, citing an Energy Information Administration (EIA) Energy Outlook which showed a projected difference of 26% between a "low cost" case and a "high cost" case. The court found the perfect substitution assumption to be "irrational" because it was contrary to basic supply and demand principles. *Id.* at 1236. Indeed, the court expressly held that "it was an abuse of discretion to rely on an economic assumption, which contradicted basic economic principles, as the basis for distinguishing between the no action alternative and the preferred alternative." *Id.* at 1237-38. The D.C. Circuit adopted the same reasoning rejecting the perfect substitution model for natural gas pipelines in *Sierra Club v. FERC,* 867 F.3d 1357 (D.C. Cir. 2017).

The same rationale applies here. Canadian tar sands oil's competitiveness is currently limited, the industry claims, by a transport bottleneck. If that bottleneck were to ease because pipeline transport capacity increased, tar sands oil might be more competitive, leading to increased production and supply levels. At the same time, however, Canadian tar sands oil extraction remains expensive and energy-intensive. The production of a barrel of Canadian tar sands oil leads to the release of significantly more greenhouse gases that the production of a

barrel of oil from other sources. If the result of granting a CN for a new Line 3 is an increase in the volume of oil supplied by Canadian tar sands sources instead of other sources, it will increase greenhouse gas emissions and climate change. If the result of granting a CN for a new Line 3 is a moderation of crude oil prices from supply increases, as basic economic theory would indicate, then it may be cleaner energy sources like renewables that will become less competitive.

The social cost of the additional carbon that will be released under those scenarios may not be nearly $300 billion, but it is not zero and the Commission's decision to dismiss those impacts is a serious mistake. If the tar sands shippers did not think a new Line 3 would enhance the competitiveness of their product, and they believed that, if a new Line 3 was not built, they could just use other transport and be just as competitive, they would not be supporting this proposal. They would have no reason to do so.

Consequently, the reasonable inference from the evidence in this record is that this project will increase greenhouse gas emissions substantially, and those increased emissions will have a substantial social cost that will be borne by us and by future generations. That cost will almost certainly outweigh whatever value there might be in getting Enbridge to promise to do what it is already in their economic interest to do with the old Line 3.[32] The PUC's responsibility, particularly under Minn. R. 7853.0130.C and the Statute, is to balance the benefits and costs of a new project. In this case, the external costs far outweigh the benefits, whether it is an Enbridge promise to retire the old Line 3 or the temporary jobs that, in a full-employment economy, will simply be shifted from other, perhaps more worthwhile projects. Contrary to the

[32] The September 5 Order also addresses needed modifications to the CN. The hearing on those modifications has not yet concluded, however, and the modifications have not been finalized. In their current form, they are inadequate to protect Minnesota taxpayers from the costs of a spill, and the reasons are spelled out in FOH's Memorandum in Response to Enbridge's Compliance Filings on the topic. Those arguments are hereby incorporated into this document so there is no risk of waiver.

Commission's September 5 Order, fossil fuel consumption is not "socially beneficial," because the social costs it imposes are too great. Making it easier for the most expensive, most energy-intensive, and most environmentally damaging crude oil resources to find global markets affords no benefit to Minnesota or to society at large.

V. CONCLUSION

The September 5 Order on the Certificate of Need is not final and not effective, and will not be until the issues raised with respect to modifications are resolved. Nevertheless, because of the language of Minn. Stat. § 216B.27, FOH has to state and restate its objections to the September 5 Order to avoid the risk of waiver, even though the Certificate of Need in this case remains a moving target.

Nevertheless, FOH does point out in this Petition that the analysis in the September 5 Order on demand, on adequacy, reliability, and efficiency, on reasonable alternatives, on environmental and climate risks, and on the balance of risks and benefits was seriously flawed, and cannot provide a lawful basis for granting a Certificate of Need to this project. For the reasons stated above, Intervenor Friends of the Headwaters respectfully requests that its Petition for Reconsideration be granted, and that no Certificate of Need be awarded.

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