

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

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

MPUC Docket Nos. PL-9/CN-14-916
PL-9/PPL-15-137

OAH Docket Nos. 65-2500-32764 and
62-2500-3337

**MILLE LACS BAND OF OJIBWE PETITION FOR RECONSIDERATION
OF ORDER GRANTING CERTIFICATE OF NEED**

INTRODUCTION

The Mille Lacs Band of Ojibwe submits this joint petition for reconsideration of the Minnesota Public Utilities Commission’s (the “Commission”) September 5, 2018, Order Granting Certificate of Need (“Order”). The record regarding the potential impacts to cultural resources was, and remains, incomplete and, thus, the Commission could not weigh the consequences of granting the certificate against the consequences of denying the certificate as required by Minn. R. 7853.0130, subp. C.

The applicant proposes to construct the Line 3 Replacement Project along a new pipeline corridor which crosses lands where the Anishinaabe fished, hunted, harvested, and gathered wild rice in the region for hundreds of years.¹ The construction and operation of a new petroleum pipeline would impact these ecologically and culturally sensitive lands and a spill would be

¹ Ex. ML-1 at 2-3 (Kemper Direct).

devastating. Administrative Law Judge Ann O'Reilly recognized the significant impacts on the cultural resources and concluded that the marginal need for the project would outweigh the adverse impacts only if the Line 3 Replacement Project were constructed along the existing mainline corridor.²

The Commission rejected this conclusion.³ However, the record regarding the potential impacts on cultural resources—while sufficient to demonstrate that the proposed Line 3 Replacement Project would result in significant adverse impacts—is incomplete. The Traditional Cultural Properties Survey is not completed and, even when it is complete, will address only the Applicant's Preferred Route.⁴ There is insufficient evidence to conduct a meaningful comparison of the impacts on cultural resources or to weigh the consequences of granting or denying the Certificate of Need.⁵ The Commission acted prematurely when it decided to grant the Certificate of Need without the thorough analysis of the potential impacts on cultural resources required by the Minnesota Environmental Policy Act.⁶

Accordingly, the Mille Lacs Band respectfully request that the Commission reconsider its September 5, 2018 Order and defer action on the application for a Certificate of Need until the Traditional Cultural Properties Survey and a comparative analysis of the potential impacts on cultural resources of each of the route alternatives are available.

² See ALJ Report (April 23, 2018) (eDocket No. 20184-142235) at page 362.

³ Order Granting Certificate of Need (September 5, 2018) (eDocket No. 20189-146227) at 25-33.

⁴ The Bands have explained repeatedly that the EIS cannot be deemed complete or adequate until a Traditional Cultural Properties Survey is completed along each route alternative. See, e.g., Joint Tribal Petition for Reconsideration (January 2, 2018) (eDocket No. 20181-138561-01).

⁵ See ALJ Report (April 23, 2018) (eDocket No. 20184-142235) at ¶¶ 1298, 1309.

⁶ Minn. R. 4410.2300.

Dated: September 25, 2018

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/David J. Zoll

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Rachel A. Kitze Collins (#0396555)

Arielle S. Wagner (#0398332)

100 Washington Avenue South,

Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnauen@locklaw.com

djzoll@locklaw.com

rakitzecollins@locklaw.com

aswagner@locklaw.com

**COUNSEL FOR MILLE LACS BAND OF
OJIBWE**