

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

IN THE MATTER OF THE APPLICATION OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP FOR A CERTIFICATE OF NEED AND PIPELINE ROUTE PERMIT FOR THE LINE 3 REPLACEMENT PROJECT IN MINNESOTA FROM THE NORTH DAKOTA BORDER TO THE WISCONSIN BORDER	OAH 11-2500-32764 DOCKET NO. PL-9/CN-14-916 OAH 11-2500-33377 DOCKET NO. PL-9/CN-15-137
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**YOUTH CLIMATE INTERVENORS PETITION FOR RECONSIDERATION OF THE
COMMISSION'S ORDER GRANTING CERTIFICATE OF NEED AS MODIFIED AND
REQUIRING FILINGS**

September 25, 2018

I. INTRODUCTION

The Youth Climate Intervenors ask the Minnesota Public Utilities Commission (“Commission”) to reconsider its Order filed on September 5th, 2018 granting a Certificate of Need (“Order”) for the Line 3 Replacement Project (“Project”).¹

The Commission’s decision is not supported by the evidence in the record and does not align with the legal criteria required for granting a certificate of need. The Commission’s explicit denial of climate science and wholesale dismissal of treaty rights as “unnecessary” are appalling, and its haphazard reasoning to justify its decision is both factually inaccurate and offensive. In this Petition for Reconsideration, we do not restate all of the arguments and evidence that we have presented thus far; our previous filings speak for themselves, and we stand by the arguments therein and incorporate them by reference. Instead, we begin by summarizing our previous arguments, and then provide specific responses and rebuttals to certain sections of the Commission’s recent Order.

These responses include the following:

- A. The Commission Wrongfully Adopted Apportionment Data as a Substitute for a Demand Forecast;
- B. The Commission’s Order is Inconsistent with the Administrative Law Judge (ALJ) Report Without Providing Sufficient Justification, including that:
 1. The Commission denies climate science;
 2. The Commission dismisses any discussion of treaties as unnecessary to their decision;
 3. The Commission ignores site-specific ecological and socioeconomic impact variability for the Project; and
- C. The Commission Has Set an Irresponsible Precedent by Allowing Enbridge to Put a ‘Gun to Its Head’.

We petition the Public Utilities Commission to reconsider its decision, and advocate for a legal and responsible outcome that preserves the rights of young and future generations.

¹ Minn. Stat. 216B.27, subd. 1 (2018).

II. BACKGROUND

The Youth Climate Intervenors petitioned to intervene in this case in May of 2017. As we wrote at the time, “Our generation faces a daunting future, and so we are compelled to fight for our right to the privileges and stability that generations before us took for granted.”² We intervened in this case to make a difference - to fight for our futures - because so much is at stake for our generation. We intervened because young people are tired of watching our “leaders” in government show time and again that they lack the courage or conviction to protect us. We therefore set out to represent ourselves and to build a strong and thorough record regarding the impact of this pipeline on young people. We are here to articulate a vision of a future that works for us.

In addition to our Petition to Intervene, the Youth Climate Intervenors have submitted testimony from ten expert witnesses, participated in the evidentiary hearing, and filed an Initial Brief, Reply Brief, and Exceptions to the ALJ Report. We have also provided comments on the sample route permit and engaged in the concurrent environmental review process of Line 3, filing various motions, letters, and exceptions there as well. Finally, we have participated in procedural elements of the process, filing motions related to scheduling and similar matters. The Youth Climate Intervenors have participated in more than 50 filings (not including certificates of service, notices of appearance, etc.), contributed to at least 585 pages of substance in this record, and independently authored over 200 pages of legal documents. Throughout these filings, we have consistently argued that Line 3 poses unacceptable consequences to the people of Minnesota and should not be granted a certificate of need.

The Commission’s decision in this matter is governed by Minn. Stat. 216B.243, which authorizes a set of four criteria for considering certificate of need applications – Minn. R. 7853.0130. Under the rule, an applicant must prove all four criteria in order to receive a permit – failure to prove any one must result in denial of the application. We believe that Enbridge has not met their burden of proof under any of these criteria. However, we have focused our argument on

² Youth Climate Intervenors Petition to Intervene at 9 (May 21, 2017) (eDocket Nos. 20175-131806 (CN); 20175-131806-01 (R)).

criteria C and D – consequences to society and compliance with all policies, rules, and regulations.

Criteria C requires that the “consequences to society” of granting a certificate of need must be more favorable than the consequences of denying it.³ In our expert testimony and briefs, we submitted evidence of the causal relationship between pipeline expansion and tar sands oil extraction.⁴ We then presented evidence of the impact that extraction and subsequent combustion has on exacerbating climate change, as well as evidence of the many impacts that climate change will have on the people of Minnesota - including each of the Youth Climate Intervenors.⁵ Administrative Law Judge O’Reilly understood the massive scope of these impacts, finding that the social cost of carbon associated with Line 3 would be \$287 billion.⁶ Considering climate change alongside the threats this pipeline poses to water, wild rice, and cultural resources, we concluded that the consequences to society of approving Line 3 as proposed would be negative. The ALJ agreed, concluding in her Finding of Law 27 that:

Applicant has not established [...] by preponderance of the evidence, that the consequences to society of granting the certificate of need for the Project, as proposed, are more favorable than the consequences of denying the certificate so long as the Project includes Applicant’s Preferred Route.⁷

Next, Criteria D of Minn. R. 7853.0130 requires that the project in question must “comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.” In our brief, we noted that Minnesota has a public trust duty to protect

³ Minn. R. 7853.0130(C) (2018).

⁴ Youth Climate Intervenors Initial Post-Hearing Br. at 8-11 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)). See also Ex. YC-2 at 3 (Scott Direct), Ex. YC-12 at 11 (Oil Change International Report), and Ex. YC-4 at 1 (CAPP Press Release).

⁵ Youth Climate Intervenors Initial Post-Hearing Br. at 14-22, (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)). See also Ex. YC-14 (Abraham Direct), Ex. YC-15 (Douglas Direct), Ex. YC-16 (Snyder Direct), Ex. YC-21 (Reich Direct), Ex. YC-23 (Manning Direct), and Ex. YC-26 (Snyder Surrebuttal).

⁶ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 196 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)). See also Ex. EERA-42 at 4-466 (Revised EIS), and Ex. YC-8 (Scott Direct, Attachment 6).

⁷ Administrative Law Judge Finding of Fact, Conclusions of Law, and Recommendation at 361 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

certain resources, including the atmosphere and water, for all people and future generations.⁸ These responsibilities are established both in the state constitution and in statutes such as Minnesota Environmental Policy Act (MEPA) and Minnesota Environmental Rights Act (MERA).⁹ We argued that the consequences imposed by Line 3 would violate those duties. We also argued that the climate consequences of Line 3 would run counter to Minnesota’s existing climate policies, as well as the global consensus on the need for urgent climate action.¹⁰

In addition to our arguments under criteria C and D, we have also agreed with a number of the conclusions of the Minnesota Department of Commerce, Division of Energy Resources (“DOC-DER”) and other parties that Enbridge has failed to meet its burden of proof under Criteria A: that “the probable result of denial [of the CN] 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.”¹¹ We find significant holes in Enbridge’s oil demand forecast – including reliance on apportionment as a metric and a failure to adequately account for the growing use of electric vehicles.¹² We believe that there is enough evidence on the record to cast significant doubt on Enbridge’s market forecasts – and that therefore, the Applicant has not met their burden of proof under Criteria A.¹³

⁸ Youth Climate Intervenors Initial Post-Hearing Br. at 60 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

⁹ Minn. Stat. §§ 116B.01 et seq. (2018) (MERA); Minn. Stat. §§ 116D.01 et seq. (2018) (MEPA)

¹⁰ Youth Climate Intervenors Initial Post-Hearing Br. at 63-64 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

¹¹ Minn. R. 7853.0130(A) (2018).

¹² Youth Climate Intervenors Initial Post-Hearing Br. at 4-9 (Jan. 23, 2018) (eDocket nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

¹³ The ALJ Report defines this standard as “A ‘preponderance of evidence’ means that the ultimate facts must be established by a greater weight of the evidence. ‘It must be of a greater or more convincing effect and lead you to believe that it is more likely that the claim is true than not true.’ In other words, if it is more likely than not that the facts support the Applicant’s version of the facts, then the Applicant has met its burden. In contrast, if the evidence casting doubt on the Applicant’s facts is stronger and more persuasive, then the Applicant has failed to meet its burden. Under this standard, the Applicant [has] the ultimate burden of persuasion to prove that a CN should be granted in this case.” Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 360 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

III. ARGUMENT

A. The Commission Wrongfully Adopted Apportionment Data as a Substitute for a Demand Forecast

Enbridge Energy has not adequately proven the need for the dramatic increase in tar sands oil transportation capacity that Line 3 would enable. We preserve and reiterate the economic arguments made in our Initial Brief,¹⁴ and emphasize that apportionment data does not qualify as a substitute for a demand forecast.

Apportionment, as defined by the ALJ, “means that Canadian oil shippers who use the Mainline System to transport their products are unable to ship all of the crude they seek to export into the United States.”¹⁵ Apportionment is a poor substitute for demand, however, since the verification process used by Enbridge only requires that the Shippers identify a location for the oil to be stored upon arrival at its destination.¹⁶ This is often in storage tanks, not for immediate use. Apportioning high nominations by Shippers does not indicate a detrimental decrease in the oil available to refineries; it indicates a limit on the amount of oil being stockpiled by Shippers for eventual sale and combustion.

This is further made evident by the fact that the Minnesota Department of Commerce was unable to corroborate Enbridge’s claims that Minnesota refineries would be harmed by apportionment. Minnesota refineries are regularly operating near capacity,¹⁷ and the DOC-DER was unable to find any correlation between months of high apportionment and a reduction in refinery utilization.¹⁸ The ALJ Report repeatedly reinforces that the record does not establish

¹⁴ Youth Climate Intervenors Initial Post-Hearing Br. at 4-11 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

¹⁵ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 8 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

¹⁶ Evid. Hrg. Tr. Vol. 1B (Nov. 1, 2017) (John Glanzer).

¹⁷ Ex. DER-4, Sched. MF-1 at 39 (Fagan Direct).

¹⁸ Ex. DER-9 at 9 (Fagan Supplemental Surrebuttal). Dr. Fagan stated “LEI combined monthly apportionment data...with the fresh feed input data...to examine whether lower feeds to cokers in the Minnesota district occurred during months when apportionment was relatively high. LEI found that there was no correlation. In months when apportionment was relatively high, often so were feeds to cokers....In months when apportionment was low, often so were feeds to cokers.” (Ex. DER-9 at 9). Dr. Fagan used coker inputs as indicators of refinery use, because “Input to cokers reflect the amount of heavy crude a

harm to Minnesota refineries,¹⁹ and points out that “[s]urely, if either refiner was unable to obtain the amount and type of crude oil it needs, they would have mentioned that in their letters in this case. Consequently, their silence speaks louder than their words.”²⁰ The Applicant’s advocacy on behalf of two refineries who could not be bothered to do more than submit vague public comments does not establish sufficient evidence that there are benefits to Minnesota’s refineries,²¹ and certainly not that there would be consequences if the certificate was denied. The ALJ Report agreed that:

Applicant has not...established by a preponderance of the evidence that Minnesota refiners or the people of Minnesota would be adversely impacted by the denial of the Project. The evidence shows that Minnesota refiners are currently receiving sufficient amounts of crude oil to meet their production needs. Therefore, denial of the Project would not result in harm to Minnesota refiners.²²

refinery is consuming relative to its potential consumption: if a coker is operating near full capacity, then it is likely that the refinery is running all the heavy crude it can; if a coker is operating at far below capacity, the refinery is probably running less heavy crude than it could. The EIA tracks Minnesota refining district input to cokers. The EIA data show that, since about 2014, the average API gravity (the lower the number, the heavier the crude) or crude inputs increases during months when feeds to cokers are low....This gives LEI confidence that the EIA coking feed input data does indeed reflect the relative quantity of heavy oil processed.” (Ex. DER-9 at 7).

¹⁹ ALJ Finding of Fact, Conclusions of Law, and Recommendation at 207, 189-191, 193, 206, and 231-232 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

²⁰ ALJ Finding of Fact, Conclusions of Law, and Recommendation at 190-191 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

²¹ “It is telling that neither Flint Hills Refinery nor Andeavor were sufficiently motivated to engage in this process as parties. While the Youth Climate Intervenors have been repeatedly reminded of the responsibilities of being a party, we have also risen to meet them despite a complete lack of training or experience, not to mention the burden of doing so on top of full time jobs or student obligations. Based on our experience, we are confident that either refinery would have been able to meet the obligations of being a party with ease, had they felt that they ‘may be directly affected by the outcome’ of these proceedings [see Minn. R. 1400.6200 ‘Intervention in Proceedings as a Party’]. Instead, they chose not to. Flint Hills in particular not only opted out of being a party to this case, but waited until August 2017 to speak up on the case at all [see Ex. EN-56, Sched 1 at 4 (Earnest Surrebuttal)], and went on to complain in subsequent letters about the lack of proactive consultation from the State that the refinery evidently thought it was inherently entitled to [see Enbridge Energy Initial Post-Hearing Br. at 37 (Jan. 23, 2018) (eDocket Nos. 20181-139252-03 (CN); 20181-139252-04 (R))]. Vague and noncommittal public comments from the Minnesota refineries are hardly grounds on which to establish a case for need or refute the extensive expert testimony of other parties. As the Applicant, Enbridge is required to fully substantiate their case for need. Here, they have failed to do so.” Youth Climate Intervenors Reply Br. at 6 (Feb. 16, 2018) (eDocket Nos. 20182-140258-03 (CN); 20182-140258-04 (R)).

²² ALJ Findings of Fact, Conclusions of Law, and Recommendation at 9 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

The ALJ also adopted Enbridge expert Mr. Glanzer's testimony that between January 2015 and February 2017, shippers were able to move approximately 80% of their nominated barrels through the Mainline System,²³ and that even based on Enbridge's questionably optimistic projections, future apportionment would only increase 2-4% above current levels between 2019 and 2035 if the Project is not approved.²⁴ This means shippers would still be able to transport roughly 75-80% of their nominated barrels. If demand for oil decreases and prices drop, as is likely if climate policies continue to move forward, it would be reasonable to assume apportionment would also decrease, meaning the Applicant's customers would be able to move an even greater percentage of their desired product. Apportionment cannot validly substitute for a demand forecast because it exaggerates a false narrative of an impending crisis for oil supply chains that is not supported by the other evidence in this record.

The Commission's Order vastly misunderstands this reality, arguing that in the future, Minnesota refineries will be forced to obtain crude oil by rail or truck in order to have adequate supplies.²⁵ This entirely ignores the significant evidence on the record that under this current "significant, persistent apportionment," Minnesota refineries nonetheless operate near capacity and have been for the last three years.²⁶ Enbridge's own expert, Mr. Rennieke, confirmed that crude oil shipments by rail through Minnesota have, in fact, been declining since 2014.²⁷ With apportionment only expected to increase a maximum 2-4% over the next sixteen years, it's difficult to understand how the Commission views the threat of a dramatic increase in oil transport by rail or truck as reasonable -- especially when it is well-established on the record by multiple parties, including Enbridge, that rail and truck are not viable alternatives for the oil supply associated with the Line 3 expansion.²⁸

²³ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 181 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

²⁴ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 182 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

²⁵ Order Granting Certificate of Need as Modified and Requiring Filings at 15 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

²⁶ Ex. DER-9 at 8 (Fagan Supplemental Surrebuttal).

²⁷ Ex. EN-10, Sched. 2 at 5 (Rennieke Direct).

²⁸ Youth Climate Intervenors Initial Post-Hearing Br. at 10-11 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

Believing in a false capacity crisis heralded by apportionment data also indicates that the Commission considers carbon reduction policies to be largely inconsequential -- a troubling conclusion to the Youth Climate Intervenors and anyone who has read the relevant testimony on the record. The supply forecasts used to substantiate Enbridge's apportionment claims are contained in their Muse Stancil Report. The Youth Climate Intervenors maintain that the Muse Stancil Report improperly relies on inflated global oil market forecasts that do not account for Canadian or international climate policies,²⁹ and that long-term growth of tar sands oil production is not and should not be guaranteed.³⁰ Apportionment means there is more oil that could be shipped than capacity to move it; this is inevitably the case in a carbon constrained economy, because the majority of Canadian oil reserves need to remain unexcavated and unburned.³¹ Although Enbridge called this analysis "superficial,"³² this is in fact the sobering and blunt truth of physics. By relying on apportionment data and defining "need" in terms of tar sands reserves--and the Shippers' obvious motivation to create profit regardless of harm--rather than incorporating demand forecasts, the Commission adopts a legal foundation that ignores both the reality of climate change and its statutory duty to realistically analyze product markets for proposed Projects.

The Commission even acknowledges that a demand forecast would have been beneficial to its analysis, and that a demand forecast would present fundamentally different information than apportionment data, with the potential to significantly alter or reverse conclusions drawn from isolated apportionment data. The Commission's Order establishes that:

In 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. However, governmental initiatives to reduce fossil fuel consumption to address climate change, and expanded adoption of electric vehicles could, in the future, influence whether the type of supply forecast evidence submitted in this

²⁹ Youth Climate Intervenors Initial Post-Hearing Br. at 4 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

³⁰ Youth Climate Intervenors Initial Post-Hearing Br. at 8 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

³¹ Ex. YC-12 at 14 (Oil Change International Report).

³² Enbridge Energy Initial Post-Hearing Br. at 23 (Jan. 23, 2018) (eDockets Nos. 20181-139252-03 (CN); 20181-139252-04 (R)).

case will be sufficient to support conclusions about demand. But in this case, the Commission agreed with the ALJ that the record lacks sufficient evidence of the extent to which these forces could reduce demand during the forecast period.... Evidence of governmental efforts to reduce refined product demand and forecasts of future EV adoption are unpersuasive on this record when viewed in conjunction with the evidence showing substantial and persistent apportionment on the Mainline System.³³

In other words, the Commission acknowledges that a demand forecast would provide fundamentally different -- and potentially contradictory -- data that would be more accurate than a supply forecast, but decides since no such demand forecast has been submitted, the Commission can't determine *how* different that data would be, and so assumes that a demand forecast *wouldn't* provide contradictory data in this case, and subsequently concludes that such information is therefore unnecessary for their analysis. This circular and convoluted logic follows an admission by the Commission that *climate policy and electric vehicles adoption rates could refute supply forecasts*. This contradictory reasoning exposes the extent to which the Commission has ignored the record and substituted its own will rather than making conclusions based on its expertise. In taking this approach, the Commission has also effectively relieved Enbridge of its burden to accurately forecast the demand for the type of energy it would transport,³⁴ and shifted the burden of producing such evidence onto intervening parties like the Youth Climate Intervenors.³⁵

The Commission's logic becomes even murkier when the Order goes on to argue that "petroleum products derived from crude oil currently and into the foreseeable future have

³³ Order Granting Certificate of Need as Modified and Requiring Filings at 14 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

³⁴ See Minn. R. 7853.0130, Subd. (A)(1).

³⁵ The Commission's Order asserts in a footnote that the "This finding [that the record lacks sufficient evidence of the extent to which these forces could reduce demand during the forecast period] does not shift the burden of proof from the Applicant to the intervenors, but rather recognizes that the intervenors' evidence failed to rebut Applicant's evidence." Order Granting Certificate of Need as Modified and Requiring Filings at 14 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)). While the Commission may wish this was the legal standard, it is incorrect and unsubstantiated, and contradicts the definition of burden of proof in the ALJ Report, which states "if the evidence **casting doubt** on the Applicant's facts is stronger and more persuasive, then the Applicant has failed to meet its burden," (emphasis added). ALJ Findings of Fact, Conclusions of Law, and Recommendation at 360 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

socially beneficial uses,”³⁶ and uses the existence of products like fuel and plastics to justify positive impacts on society that would result from building Line 3. Without a demand forecast we have no data on whether the additional oil capacity from Line 3 would have a quantifiable impact on the availability of those products, especially as climate policy drives electrification and efficiency efforts across transportation and manufacturing industries. As presented by the Commission, these arguments are nothing more than inane and tired rhetoric that cannot properly be analyzed in the context of the statutory criteria for the Project. As the ALJ Report asserted, “it is common sense that reduced demand for refined products would also impact the price, supply, and profitability of crude oil.”³⁷ There is considerably more quantitative evidence on the record about electrification, climate policy, electric vehicles, and the imminent decline in demand for oil than there is for a mysterious increase in the demand for roofing shingles and other products referenced by the Commission’s Order. Therefore, in the absence of a demand forecast, such spurious statements are speculation at best and wholly inconsistent with the preceding statements in the Order that require much more substantive data for arguments related to demand.

We assert that the Commission’s reliance on apportionment as a substitute for demand is not supported by the substantial evidence on the record. In relying on this inaccurate metric, the Commission fails to evaluate “the accuracy of the long-range energy demand forecasts” for the Project, and must therefore reconsider its issuance of the certificate of need.³⁸

B. The Commission’s Order is Inconsistent With the ALJ Report, Without Providing Sufficient Justification.

The Commission’s Order disregards the majority of the findings and conclusions of the ALJ Report. The Commission’s decision to permit the project directly contradicts the ALJ’s

³⁶ Order Granting Certificate of Need as Modified and Requiring Filings at 32 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

³⁷ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 174 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

³⁸ Minn. Stat. 216B.243 Subd. 3(1).

conclusion that Enbridge’s proposal failed to meet Criteria C of Minn. R. 7853.0130.³⁹ The ALJ Report clearly states:

Applicant has not established...by preponderance of the evidence that the consequences to society of granting the certificate of need for the Project, as proposed, are more favorable than the consequences of denying the certificate so long as the Project includes Applicant’s Preferred Route.⁴⁰

The Commission fails to justify its deviation from the ALJ Report in three key areas: (1) the Commission denies climate science and ignores the ALJ Report findings on social cost of carbon; (2) the Commission dismisses any discussion of treaties as unnecessary; and (3) the Commission ignores site-specific ecological and socioeconomic impact variability for the Project.

1. The Commission denies climate science and ignores the ALJ Report findings on social cost of carbon.

The Commission’s Order deviates from the ALJ Report regarding the social cost of carbon for Line 3 in a number of ways, starting with a basic denial of climate science. The ALJ Report Finding 676 states that “The ALJ accepts [the] calculations [from the EIS] as established in fact and adopts the finding of the incremental life-cycle [greenhouse gas] emissions (GHGe) for the Project will be 193 million tons of carbon dioxide emissions (CO₂e), totaling \$287 billion in social costs.”⁴¹

The Commission’s Order, however, argues that since “[greenhouse gas] emissions can differ substantially from one study to the next...[t]he Commission...does not adopt the ALJ

³⁹ Minn. Rule 7853.0130 requires the PUC to find that “the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.” The PUC must consider “(1) the relationship of the proposed facility, or a suitable modification of it, to overall state energy needs; (2) the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility; (3) the effects of the proposed facility or a suitable modification of it, in inducing future development; and (4) socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality.”

⁴⁰ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 361 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁴¹ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 196 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

Report at finding 676 and those findings that rely on finding 676.”⁴² This seems to align the Commission with the ever-shrinking minority who do not believe in climate science or climate models, dismissing it simply because variability exists between studies. This position is inconsistent both with the intellectual standards our Commission should be held to, and its own rhetoric in this case and previous cases.⁴³ This position is also unsupported by any party on the record, since not even Enbridge disagreed with the fundamental ability to estimate greenhouse gas emissions.⁴⁴

Since the EIS clearly references the Department of State Supplemental Environmental Impact Statement on Line 67 (“DOS 2017”)⁴⁵ as the source for the life cycle GHG emissions analysis and incorporates that document by reference, the Commission can be understood to have categorized the ten different models used in that analysis as not credible.⁴⁶ Such a stance indicates the Commission views the entire scientific field of estimating greenhouse gas emissions as unreliable, which is shocking and in direct opposition to current scientific and political consensus.

⁴² Order Granting Certificate of Need as Modified and Requiring Filings at 28-29 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)), which reads in full, “The FEIS acknowledges the limitations of the lifecycle greenhouse gas analysis: ‘Note that there are assumptions and data limitations in the characterization of life-cycle [greenhouse gas] emissions that vary between studies. As a result, the [greenhouse gas] emissions can differ substantially from one study to the next. Since the studies reviewed do not consistently disclose the details of their analysis, and often rely on proprietary models and data, a thorough assessment of the reasons for this variability is not possible.’ FEIS at 5-466. The Commission therefore does not adopt the ALJ Report at finding 676 and those findings that rely on finding 676.”

⁴³ For example, Pub. Util. Comm’n, Docket E-999/CI-14-643, Order Updating Environmental Cost Values (Jan. 3, 2018).

⁴⁴ Ex. EN-47 at (Kinder Direct).

⁴⁵ U.S. Department of State (DOS). 2017. Draft Supplemental Environmental Impact Statement Line 67 Expansion. Applicant for Presidential Permit: Enbridge Energy, Limited Partnership. <https://www.state.gov/documents/organization/273539.pdf> Accessed Sept. 25, 2018.

⁴⁶ DOS 2017 at 6-76, which reads in part “The analysis of estimated lifecycle greenhouse gas emissions in this SEIS uses publicly available data from published studies to provide quantitative estimates of total lifecycle greenhouse gas emissions (on a per barrel bases) for WCSB....The Department relied upon 10 studies from government, industry, and academic sources to obtain lifecycle greenhouse gas emissions fo WCSB crude oil and crude oil from other sources (Bergerson et al. 2012; Brandt et al. 2015; Cai et al. 2015; Charpentier et al. 2011; Cooney et al. 2017; Ghandi et al. 2015; Keesom et al. 2009; National Energy Technology Laboratory 2009; Nimana et al. 2015; TIAX LLC and MathPro, Inc. 2009). These studies used engineering models and industry data to generate lifecycle emissions estimates for WCSB and other crude oils.”

The Youth Climate Intervenors also note that dismissing these studies because they “often rely on proprietary models and data”⁴⁷ is precisely the argument that many parties made about the CAPP oil market forecast models, with the difference being that while the Commission is not expected to act as experts on climatology, the Commission *is* expected to make expert judgement calls about energy and utility markets related to the projects before them.

The ALJ Report makes a number of findings that follow from Finding 676, all of which are critical to any reasonable analysis of the climate impacts from the Project under Minn. R. 7853.0130 Criteria C and D:

680. The ALJ further finds that the carbon-intensive nature of tar sands oil extraction, and the increased use of production of non-renewable fossil fuels does not further Minnesota’s renewable energy and reduction of GHG emission goals set forth in Minn. Stat. 216C.05, subd. 2 and 216H.02, subd. 1. Consequently, this Project, which makes the transportation and consumption of fossil fuels easier and more economical for tar sands oil producers, does not further the renewable energy goals of this State and should be viewed as a ‘negative’ in the application of the need criteria to this Project.⁴⁸

861. Fossil fuel emissions and tar sands oil production are significant contributors to climate change. Climate change is real, it is currently occurring, and its impacts are potentially devastating to mankind. Climate change amplifies temperature extremes and drought/flood cycles; impacts the migration of living species; affects agriculture; rises the sea level; increases the frequency of wildfires, windstorms, and insect infestations; diminishes forest growth and health; and increases the severity and frequency of storms and flooding, among other things. Climate change also has human health impacts.⁴⁹

862. In addition, climate changes negatively impact lands and resources that are particularly important to preserving traditional ways of life. Changes to Minnesota’s land and natural resources affect hunting, fishing, wild rice farming, maple sugar gathering, and the collection of plants for medicines, spiritual and

⁴⁷ Order Granting Certificate of Need as Modified and Requiring Filings at 29 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

⁴⁸ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 197 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁴⁹ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 240-241 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

ceremonial purposes, shelter, and other needs -- all critically important to the Anishinaabe culture.⁵⁰

916. In comparing economic benefits of the Project to not building the Project, some have argued that the 30-year social cost of carbon attributable to the Project outweighs any temporary benefit that the Project can bring to the state. The DOC-EERA estimates, and the ALJ has adopted as a finding, that the 30-year social cost of carbon for direct and indirect GHG emissions associated with this Project is approximately \$673,365,150; and the 30-year social cost of carbon for incremental life-cycle GHG emissions is \$287 billion. The Applicant's and DOC-DER economic analysis does not take into account these costs.⁵¹

922. A new Line 3 capable of transporting more crude and heavy crude would reduce apportionment on the Mainline System, thereby making it easier and more economical for Canadian tar sands oil producers to transport their product. Less expensive and more efficient transport, combined with increased volume of available oil, however, has the likely result of encouraging -- or at least not reducing -- the use and dependence on fossil fuels locally, nationally, and globally. Such a result is a negative consequence from an environmental perspective, where most governments around the world, including Minnesota, are seeking to reduce GHG emissions, increase the use of renewable energy sources, and decrease reliance on fossil fuels.⁵²

948. In addition, the Project serves to increase the availability and consumption of fossil fuels, the extraction and burning of which are known contributors to climate change. Accordingly, the Project does not further Minnesota's environmental policies and goals to reduce the GHG emissions across all sectors and to facilitate the use of renewable energy sources.⁵³

The Commission provides no substantive justification for contradicting these findings. Aside from the aforementioned denial of science, the Commission simply declares that “[t]he

⁵⁰ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 241 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁵¹ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 255 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁵² Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 256 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁵³ Administrative Law Judge Findings of Fact, Conclusions of Law, and Recommendation at 262 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

record evidence does not support a conclusion that denial of the certificate of need will significantly reduce demand for crude oil. Instead, the evidence establishes that the most likely result of denial will instead be increased transport of crude oil via more dangerous means such as rail, and continued use of the deteriorating Existing Line.”⁵⁴ In addition to the information in section A of this Petition, refuting claims about transportation of this oil by rail, the Youth Climate Intervenors reiterate that there is substantial evidence on the record affirming that Canadian tar sands oil extraction is constrained by pipeline capacity.⁵⁵ The Commission’s Order, by contrast, cites no information on the record that substantiates its arguments, despite the enormous deviation from the findings of the ALJ Report.

The Commission’s obvious fear of dealing with a complex problem like climate change is disheartening, and insulting when compared to the raw fear expressed by the Youth Climate Intervenors about actually facing the consequences of climate change. Such cowardice and willful ignorance is shameful, especially coming from decision makers charged with charting the course of Minnesota’s energy future.

The Youth Climate Intervenors request that the Public Utilities Commission reconsider its reasoning in relation to the climate impacts of the proposed Project, and respect the scientific consensus and findings of the ALJ rather than ignoring the problem.

2. The Commission dismisses any discussion of treaties as unnecessary to its decision.

The Commission has systematically erased and devalued the input of tribal bands and indigenous peoples throughout this process, from patronizing them when they attended meetings, to ultimately making a decision that contradicts the fierce advocacy of the majority of intervening bands. The Commission’s Order continues this pattern of racism toward Anishinaabe

⁵⁴ Order Granting Certificate of Need as Modified and Requiring Filings at 29 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

⁵⁵ Youth Climate Intervenors Initial Post-Hearing Br. at 10-14 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)). See *also* Ex. YC-2 at 3 (Scott Direct), Ex. YC-12 at 11 (Oil Change International Report), Ex. YC-4 at 1 (CAPP Press Release), Ex. YC-14 at 2-3 (Abraham Direct), *and* Ex. YC-27 (Scott Summary), which states “Pipelines facilitate tar sands production growth. Any increase in tar sands production also leads to an increase in climate pollution, directly undermining efforts to address the climate crisis.”

communities by explicitly dismissing any discussion of treaties and the rights preserved therein as ‘unnecessary’ for the Commission’s analysis, stating:

The ALJ report included a section discussing the treaties between the federal government and the Native American sovereign nations located in Minnesota. The Commission concludes that this discussion is not necessary to the Commission’s decision, and therefore does not adopt these findings.⁵⁶

The treaties themselves were tools of genocide leveraged by colonial governments to cheat tribes out of their land and rights by using foreign government structures and coercion in an eerily similar manner to that which has played out through this proceeding. This statement, that the Commission concludes any discussion of treaties is not necessary to its analysis and decision about the impacts of a project to land directly protected under treaties to which the intervening tribes are parties, displays a horrifying perspective of white supremacy and continued intentional erasure of Anishinaabe culture by this Commission. To entirely excuse any discussion of treaties is an act of racism and willful ignorance, and a direct continuation of the legal genocide of indigenous peoples. This is a shameful and disgusting approach for the modern-day State government to endorse.

This statement also directly contradicts rhetoric in other parts of the Order. Specifically, the Order acknowledges the following:

The Project’s impacts to indigenous populations are of serious concern to the Commission. The Project route would traverse territory that was originally ceded by Minnesota’s Ojibwe and Chippewa tribes (collectively referred to as the Anishinaabe tribes or people) through treaties with the federal government, which determine the usufructuary rights the Tribes retain to hunt, fish, and gather wild rice and other resources in these lands in accordance with their traditional practices.⁵⁷

⁵⁶ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 9 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁵⁷ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 29-30 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

This lip service is especially offensive in light of the fact the Commission’s declaration that treaties are not relevant is ensconced in a footnote, rather than the body of the Order. The Commission’s ultimate decision to permit the pipeline is rooted in the notion that despite the clear advocacy of four tribal bands that the interests of their members would be best served by denying the certificate of need, the Commission somehow knew better than those nations what ‘consequences to society’ would be least destructive. This also directly contradicts the Administrative Law Judge Report, which states:

The ALJ finds that the effects of the Project, as proposed, upon Minnesota’s natural resources and Native American people (particularly the Anishinaabe), weigh heavily against granting of a CN to a project that would abandon an old pipeline and establish a new pipeline corridor through Minnesota.⁵⁸

The Commission is perpetuating a five-hundred-year legacy of white supremacy in which white governments continually coerce and override the nations of people who were here long before colonizers. The Youth Climate Intervenors implore the Commission to reevaluate its offensive dismissal of the treaties, and instead affirm the rights and autonomy of indigenous peoples.

3. The Commission ignores site-specific ecological and socioeconomic impact variability for the Project.

The Commission’s September 5, 2018, Order states that “the Commission does not adopt the ALJ’s analysis or conclusion that need in this case is contingent on selection of a particular route.”⁵⁹ This fundamentally contradicts Criteria C of Minn. R. 7853.0130, which requires the Commission to consider “the effect of the proposed facility...upon the natural and socioeconomic environments.”⁶⁰ By dismissing any discussion of site-specific impacts that would result from

⁵⁸ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 248 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁵⁹ Order Granting Certificate of Need as Modified and Requiring Filings at 9 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

⁶⁰ Minn. R. 7853.0130(C)(2) (2018).

different routes, the Commission is abdicating its responsibility to seriously consider the ways in which the Project impacts local environments and communities.

The ALJ Report repeatedly expressed that permitting construction on Enbridge's Preferred Route would induce consequences to society far greater than would be permissible considering the limited benefits of the Project.⁶¹ Many of these impacts are contingent on the creation of a new pipeline corridor through ecologically sensitive and culturally significant parts of our State.

The ALJ Report, recognized as "comprehensive and thorough" by this Commission's Order,⁶² discusses at length the impacts to human settlement; natural resources and features; lands of historical, archaeological, and cultural significance; impacts on economies; and cumulative potential effects of related or future pipeline construction for the various routes.⁶³ For example, the Preferred Route would impact more miles of shoreland,⁶⁴ more acres of forested land,⁶⁵ more special management areas,⁶⁶ some of the highest quality water resources in the state,⁶⁷ more croplands and pasture,⁶⁸ significant permanent habitat fragmentation,⁶⁹ and more rare native plant communities⁷⁰ than the other route alternatives.

⁶¹ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 361 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)). See *also* ALJ Report at 9. The ALJ repeats the finding "Applicant has not established, however, by a preponderance of the evidence, that the consequences to society of granting the certificate of need for the Project as proposed, are more favorable than the consequences of denying the certificate so long as the Project includes Applicant's Preferred Route."

⁶² Order Granting Certificate of Need as Modified and Requiring Filings at 9 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

⁶³ ALJ Findings of Fact, Conclusions of Law, and Recommendation at 304-351 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁴ Ex. EERA-42 at 6-52 (Revised EIS), cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 304 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁵ Ex. EERA-42 at Table 6.2.1-11 (Revised EIS), cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 305 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁶ Ex. EERA-42 at 6-102 (Revised EIS), cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 307 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁷ Ex. EERA-42 at Table 6.3.1.1-13 (Revised FEIS), cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 312 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁸ Ex. EERA-42 at 6-424, cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 322 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁶⁹ Ex. EERA-42 at Table 6.3.4-24, cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 327 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁷⁰ Ex. EERA-42 at Table 6.3.3-31, cited by ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 322 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

For example:

The [Applicant's Preferred Route (APR)] would impact 18,215 acres of high vulnerability water table aquifers; 26,382 acres of high groundwater contamination susceptibility; and 15,475 acres of high pollution sensitivity areas. In addition, the APR would expose 12,318 acres of unusually sensitive ecological (high consequence) areas and 2,444 acres of high consequence drinking water sources to the risks of accidental release. And the APR would place over 83,000 acres of drinking water areas of interest at risk of potential releases. Moreover, the APR is located within 2,500 feet of over 28,000 acres of Minnesota Biological Survey (MBS) sites of biodiversity significance, which would be placed at risk in an event of release.⁷¹

The Commission, by dismissing all site-specific impacts that vary by route as irrelevant to analyzing consequences to society, has effectively dismissed any consideration of impacts such as endangerment of drinking water sources.

As discussed above in section B-2 of this Petition, dismissing site-specific impacts also shows an offensive disregard for indigenous tribal cultural resources which may exist along the route, and the treaty rights specific to certain areas within the State of Minnesota.⁷² Throughout this process, many parties, including the Youth Climate Intervenors, have argued that a full Traditional Cultural Properties Survey should have been included as part of the Environmental Impact Statement ("EIS") for this Project.⁷³ In fact, on December 7th, 2017, Commissioner Lipschultz told parties that "there's absolutely no way [he] would ever vote to authorize a pipeline in an area without this assessment being done well in advance of it."⁷⁴ Despite this, at the time of this Order, no such survey has been completed (as part of the EIS or otherwise).

⁷¹ ALJ Report Findings of Fact, Conclusions of Law, and Recommendation at 312 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

⁷² ALJ Findings of Fact, Conclusions of Law, and Recommendation at 248-249 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)). See also ALJ Report at 334.

⁷³ Joint Tribal Petition to Reconsider and Amend the PUC's December 14 Order (Jan. 2, 2018) (eDocket Nos. 20181-138561-01 (CN); 20181-138561-02 (R)).

⁷⁴ Oral Argument/Deliberation Items at 5:14:38, In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the NorthDakota Border to the Wisconsin Border (December 7, 2018) http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=677. See also Youth Climate Intervenors Reply to Tribes Joint Petition for Reconsideration (Jan. 12, 2018) (eDocket Nos. 20181-138892-01 (CN); 20181-138892-02 (R)).

Of course, impacts to cultural resources vary from route to route. An important sacred site located on one route will naturally not be located on another route a hundred miles away. Minnesota is not a homogenous landmass, and while no route is a good route for this pipeline, not all routes are the same when it comes to impacts to these traditional cultural properties. As the consequences to society may therefore vary across routes, it follows that a study that assesses consequences across routes is a crucial element of a need determination. While the adequacy of the EIS is not the subject of this filing, the failure of the EIS to provide a complete record for the Commission's decision led to a failure to fully evaluate the consequences to society as required under the law. This and other failings of the EIS to measure consequences (as we have previously argued) therefore undermine the Commission's decision to approve a certificate of need.

The Commission's blanket refusal to consider site-specific impacts under Minn. R. 7853.0130 Criteria C also contradicts the standards the Commission appears to use under Criteria B, in which it dismisses System Alternative 04 (SA-04), an alternative pipeline project proposed by intervenor Friends of the Headwaters that would avoid northern Minnesota and transport oil directly to Chicago-area refineries, in part due to "concern about SA-04's proximity to karst topography in southern Minnesota."⁷⁵ Variables such as soil, topography conditions, and water resources have an enormous impact on what consequences to society a project would have, as acknowledged by the Commission itself in its examination of SA-04.

Furthermore, both of Minnesota's agencies with expertise in environmental impacts, the Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources, expressed that the Preferred Route had the highest environmental consequences, and advocated for alternative routes.⁷⁶ This Commission seems to have distressingly little regard for input of expert State agencies in the proceeding, all of whom advised that the proposed Project did not meet the legal criteria before the Commission.

⁷⁵ Order Granting Certificate of Need as Modified and Requiring Filings at 21 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

⁷⁶ Comments by MPCA (November 22, 2017) (Batch 25) (eDocket Nos. 201711-137629-02 (CN)) *and* Comment by MDNR at 6 (November 22, 2017) (Batch 18A) (eDocket No. 01711-137640-01 CN)) *and* Memorandum of Understanding in MPUC 14-916 at 1, (Mar. 7, 2016) (eDocket No. 20163-118961-01) *and* ALJ Findings of Fact, Conclusions of Law, and Recommendation at 353-354 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)).

It is inconsistent with the Commission's own Order and with the intent of the statute to ignore the site-specific impacts of a project, and the Youth Climate Intervenors request that the Commission reconsider its dismissal of these critical variables. While the Youth Climate Intervenors maintain that the climate impacts, which would occur no matter where the pipeline was constructed, should result in a denial of the certificate for the Project regardless of route, our party also fundamentally believes in a functional process that upholds the many concerns brought by other intervenors and considers them with due diligence. For that reason, we ask that the Commission reconsider its dismissal of site-specific impacts and fully evaluate the consequences to society of constructing and operating the proposed Line 3.

C. The Commission Has Set an Irresponsible Precedent by Allowing Enbridge to Put a 'Gun to Its Head'

Let's review the record for a moment. A foreign oil transportation company with a long history of catastrophic spills is operating multiple pipelines through the State of Minnesota, transporting over two million barrels of crude oil per day. Several of these pipelines are "vintage" pipelines, built in the 1960s or earlier. The company has provided extensive testimony claiming that at least one of these pipelines, existing Line 3, is in extremely poor condition - it already requires extensive repairs and has leaked multiple times. Now, this same company wants Minnesota's permission to build another, larger pipeline, very close to critical water resources. If it doesn't get permission, the company intends to run this allegedly dangerous pipeline for as long as they can possibly do so.

In its arguments, Enbridge has walked a very fine line. It has sought to represent existing Line 3 as a serious safety concern to the people of Minnesota. It has raised alarm bells about corrosion and significant numbers of integrity digs.⁷⁷ Enbridge's comments inspired

⁷⁷ Note that when Enbridge's initial 2015 application for the Project forecasts 4,000 integrity digs on the old Line over the course of the next fifteen years, but Enbridge has now changed that number to 7,000 digs (6,250 of which would be in Minnesota), claiming the increase was because 'that was several years ago and conditions have changed since then,' (Evid. Hrg. Tr. Vol 7B (Nov. 13, 2017) at 144 (Paul Eberth)). Nearly doubling the estimated number of integrity digs suggests either a substantial inflation of the numbers in more recent statements, or a serious and recent miscalculation about the condition of

Commissioner Sieben to compare the pipeline to the I-35 Bridge shortly before it collapsed.⁷⁸ And yet, despite all of this fear-mongering, Enbridge has refused to call its pipeline unsafe. It has said that a new line would be “safer,” but it refuses to actually testify that its pipeline is dangerous, perhaps knowing that such an admission could force it to shut the pipeline down regardless of new pipeline approvals. Despite Enbridge’s careful wordplay, the subtext of this argument is clear: it wants the Commission to fear the existing Line 3 and give the company what it wants, lest that threat continue. Clearly, the Commission felt this fear, as expressed by Commissioner Lipschultz on June 28th: “It feels like a gun to our head, that somehow compels us to approve a new line because of the risks -- and the real risks -- of that existing pipeline and the problems that could occur. But when I think about that, all I can say is the gun is real, and it’s loaded.”⁷⁹

This is extortion, plain and simple. As DOC-DER witness Kate O’Connell’s testified during the Evidentiary Hearing, “it seems like a certificate of threat, frankly, to tell you the truth.”⁸⁰ One might normally expect a government agency to reject and admonish a corporation for holding a “gun to [its] head.” Instead, the Commission gave that corporation everything it wanted. In doing so, the Commission went beyond its statutory authority and wrongfully considered factors outside of Minn. R. 7853.0130. Specifically, the Commission made its decision to grant the certificate of need based on speculation over the management of a pipeline, existing Line 3, that is outside of the Commission’s control.

The Commission pointed out that a denial of the certificate of need would “preclude the Commission from requiring Enbridge to remove any portion of the Existing Line 3,”⁸¹ and relied heavily on that fact in deciding to grant the certificate of need. However, a denial of the

Existing Line 3 on the part of the company. See *also* Youth Climate Intervenors Initial Post Hearing Br. at 46 (Jan. 23, 2018) (eDocket Nos. 20181-139273-02 (CN); 20181-139271-02 (R)).

⁷⁸ Oral Argument/Deliberation Items In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the NorthDakota Border to the Wisconsin Border (June 27, 2018), http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=748.

⁷⁹ Oral Argument/Deliberation Items at 1:12:38, In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the NorthDakota Border to the Wisconsin Border (June 28, 2018), http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=750.

⁸⁰ Evid. Hrg. Tr. Vol. 12A (Nov. 20, 2017) at 88 (Kate O’Connell)

⁸¹ Order Granting Certificate of Need as Modified and Requiring Filings at 31 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

certificate of need here would not preclude other authorities, such as the DNR and Enbridge's Consent Decree with the EPA, from regulating the existing line's operation. The Commission, in presuming its responsibility over that pipeline, has worked in excess of its statutory authority and made its decision to grant the certificate of need in err of the law by considering factors outside the given rule and which are not under the jurisdiction of this Commission.⁸²

To be clear, given Enbridge's rhetoric throughout this process, we understand the Commission's concern over the future of the existing Line 3. While Enbridge has maintained in its testimony that the existing line is safe, the age of the pipeline and the number of repairs forecasted are noticeable. Fortunately, existing authorities provide reassurance regarding future operation of the existing line. First and foremost, the sting of Line 3 being a "loaded gun" is mitigated by the Consent Decree between Enbridge and the Federal Government, which makes clear that Enbridge has a responsibility to secure Line 3 if regulatory approval for a new line cannot be achieved.⁸³ Of course, regulations imposed by state and federal pipeline safety agencies apply here as well.⁸⁴ Finally, in addition to its responsibility under the Consent Decree, Enbridge also has a clear business incentive to keep its existing pipeline running in a safe manner. And if safe maintenance of the line through integrity digs becomes cost-prohibitive, economic and moral logic suggests that, rather than risk operating an unsafe pipeline, the company would shut Line 3 down.

However, if Enbridge does fail in its duty to safely maintain existing Line 3, both the DNR's existing licenses for the pipeline and Minn. Stat. 84.415 contain relevant language suggesting that the DNR has contractual authority to have Enbridge vacate all public land and water crossings and remove the pipes from those lands/waters. Specifically, the statute says, "Any such license shall be cancelable upon reasonable notice by the commissioner for substantial violation of its terms, or if at any time its continuance will conflict with a public use

⁸² ALJ Findings of Fact, Conclusions of Law, and Recommendation at 111 (April 24, 2018) (eDocket Nos. 20184-142238-01 (CN); 20184-142237-01 (R)), which states "Because Existing Line 3 was installed before certificates of need and route permits were required in Minnesota, the line is not subject to the jurisdiction of the Commission." See *also* Sierra Club Reply Br. at 37 (Feb. 16, 2018) (eDocket Nos. 20182-140237-02 (CN); 20182-140237-01 (R)).

⁸³ Consent Decree at 25-27, *United States v. Enbridge Energy, Ltd P'ship* (W.D. Mich. 2017), No. 1:16-cv-0094-GJQ-ESC, ECF No. 14.

⁸⁴ 49 U.S.C. § 60101 et seq. (2012); Minn. Stat. § 299j.01 et seq. (2018).

of the land or water over or upon which it is granted, or for any other cause."⁸⁵ Standard license language between the DNR and Enbridge follows the same pattern, continuing that "[i]n the event of termination . . . the permittee shall remove all structures, fixtures and other property from the premises to a clean and natural condition within ninety (90) days Time is of the essence Such property not removed, at the election of the Commissioner, shall become the absolute property of the State" Appendix A provides examples of these utility license agreements.⁸⁶

Finally, additional parties besides the DNR could exercise some power over the existing Line 3. The Minnesota Environmental Rights Act ("MERA"), for example, gives Minnesotans the right to "maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned, from pollution, impairment, or destruction."⁸⁷ Should a person decide that operation of the existing Line threatens these resources, this statute could give a court the power to investigate the threat. Other authorities may be relevant as well. For example, a tribal government or individual landowner might take action under the terms of their easement, if they were to find Enbridge in violation of any of those terms.

In the end, while a multitude of other agencies, rules, agreements, and statutes govern existing Line 3, the Commission has no authority over it. In fact, by granting Enbridge a certificate of need based on the threat of harm from existing infrastructure, the Commission has set a dangerous expectation that any corporation can get whatever it desires from our government as a reward for irresponsible behavior. The Youth Climate Intervenors ask that the Commission reconsider this troubling precedent and stand up to a foreign corporation attempting to bully the state of Minnesota. In the presence of already-existing regulatory

⁸⁵ Minn. Stat. 84.415, subd. 1 (2018).

⁸⁶ These licenses were obtained pursuant to the Minnesota Government Data Practices Act, Minn. Stat. 13.03, subd. 3, and received shortly before this Petition deadline. We do not suggest that these are the exact Line 3 licenses, but include them as evidence of standard language in liquid pipeline utility licenses to cross Minnesota's public lands and waters.

⁸⁷ Minn. Stat. 116B.03 Subd. 1.

authority, threats are no good reason to grant a certificate of need for a brand new pipeline in Minnesota.

D. Regarding Future Petitions for Reconsideration

The Order filed by the Commission on September 5th states that it “shall become effective on the day Commission issues its order approving the modifications required herein.”⁸⁸ Given this, we are somewhat uncertain as to whether or not this Order is a final decision by the Commission. Ultimately, we chose to file our Petition for Reconsideration today, as Minn. R. 7829.3000 states that such petitions are due “within 20 days of the date the decision or order is served by the executive secretary,” and does not mention the date an order becomes effective. The rule also states that “a second petition for rehearing... will not be entertained.” However, if the Commission amends this Order in the process of approving any modifications, the Youth Climate Intervenors reserve the right to supplement or amend our Petition for Reconsideration at that time, in order to respond to any such changes.

IV. CONCLUSION

For the reasons stated in this petition, we ask the Commission to reconsider its Order and deny a certificate of need for the Line 3 pipeline. The Order is based on a flawed reading of the record, improperly applied burdens of proof, and misinterpretations of the Commission’s authority. It overemphasizes apportionment, ignores electric vehicles and climate science, and stretches the Commission’s authority to matters well beyond its bounds. Above all, the Order authorizes a certificate of need when it is clear from the record that the costs to society of this pipeline far exceed its benefits. Accordingly, the Order is in violation of Minn. R. 7853.0130, and should be reversed.

⁸⁸ Order Granting Certificate of Need as Modified and Requiring Filings at 39 (Sept. 5, 2018) (eDocket Nos. 20189-146227-01 (CN)).

As a final note, the Commission's Order is not just on the wrong side of the law - it's on the wrong side of history. With every barrel of oil that is pulled out of the ground, the burden that we place on future generations grows heavier. If Line 3 is built, 760,000 barrels of tar sands oil will flow through Minnesota. Heavy machinery will tear through lands that many consider sacred. Oil will rush underneath rivers and wild rice beds. To our north in Canada, the expansion of tar sands extraction will continue unchecked, further exacerbating the climate crisis. At this critical juncture in our history, permitting a new long-term investment in fossil fuel infrastructure is pure folly and imposes tremendous costs to society. As we have said time and again, these costs will fall first and foremost on young people, including the Youth Climate Intervenors.

At the Commission's final decision meeting on June 28th, Commissioner Lipschulz directly addressed the Youth Climate Intervenors, saying:

I speak really more than anything to the Youth Climate Intervenors, because it's your future more than ours. And you have a great opportunity, if you do this right, to make a difference. And I think the point here -- it's one thing to make a point, but it's another thing to make a difference, and you've already made a difference.⁸⁹

Commissioners, we now respond directly to you. You're absolutely correct - this is about our future. Today's new pipelines will be tomorrow's vintage ones. Today's tar sands extraction will be tomorrow's sea level rise. The shadow of climate change looms over us - we are inheriting a dangerous world and an uncertain future. A future where this pipeline is needed for thirty years is a bleak one for our generation. If Enbridge is right about the slow adoption of electric vehicles, then global temperatures will continue to rise. If Enbridge is right that the demand for tar sands oil extends decades, then the severe storms and heat waves described in our testimony will become the norm.

For obvious reasons, we cannot accept this. *We reject the Commission's version of the future.* We don't think that assuming the failure of climate action for a demand forecast is good public policy. And we think that instead of telling young people to go out there and make a

⁸⁹ Oral Argument/Deliberation Items at 1:22:34, In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the NorthDakota Border to the Wisconsin Border (June 28, 2018), http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=750.

difference, the Commission should consider the impacts of its own actions. Instead of assuming a broken future, we suggest that the Commission should work alongside us in building a better one. In twenty years, today's students and young people will be tomorrow's parents, teachers, scientists, and Public Utilities Commissioners. And we *will* make a difference. We don't need this pipeline because our generation will revolutionize electric vehicles and build community solar gardens and wind farms in place of coal plants and refineries. We will write a new future: one in which our air and water are cleaner, and one in which we leave things better than we found them.

Years from now, when our generation writes the history of this era, we will tell the story of our fight for a livable future. We will tell the next generation how fossil fuel companies lied about science and fought tooth and nail to squeeze every last drop of profit out of the ground while they still could. We'll tell them about our cowardly governments, and how they failed time and again to protect us. How they caved when an industry put "guns to their head," how they refused to open their eyes to a world without fossil fuels. But most importantly, we'll tell them how young people kept fighting. This is our future, and we will not let this Order stand.

Respectfully Submitted,

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