

Senator  
John Marty

**Senate**  
State of Minnesota

Scott Ek  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101

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

OAH Docket No. 65-2500-32764  
MPUC Docket No. PL-9/CN-14-916;

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

OAH Docket No. 65-2500-33377  
MPUC Docket No. PL-9/PPL-15-137

Dear Mr. Ek,

I am writing to urge the rejection of a Certificate of Need for the Enbridge Line 3 Replacement project.

**This is nothing less than a litmus test about whether we are serious about addressing climate change.** Despite Minnesota’s good work in promoting renewable energy, if we allow this unneeded tar sands pipeline to go ahead, we will have failed the litmus test. We will have failed our descendants.

Minnesota Administrative Rules 7853.0130 requires that four criteria each be met in order to grant a Certificate of Need (CON). I question whether the proposal meets any of the four:

**Under Minnesota Rules 7853.0130, Criterion A,** the certificate of need should be granted if “the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply.”

The Department of Commerce and others have provided strong testimony that Enbridge has failed to show any “need” for the project beyond a *desire* for more efficiency in their system. This has little to do with Minnesota’s need, and much to do with Enbridge’s desire to make more money.

The demand for oil in the US has turned a corner and is declining. In late June, the Wall Street Journal ran a story, “*A New Problem for Keystone XL: Oil Companies Don’t Want It*” that begins, “After weathering years of protests, pipeline operator TransCanada is

struggling to attract customers amid low crude prices and competing oil-transportation options.” The reality is that rapid advancements in electric vehicle and battery technology and renewable energy and energy efficiency will continue to reduce our tragic dependence on crude oil-based fuels. Growing concerns about climate change may well speed up this decline. On October 26, the Canadian National Energy Board issued its latest report, which now projects that Canadian use of fossil fuels will begin declining by the end of 2019 as well<sup>1</sup>.

Under Minnesota law, denial of a certificate of need should occur simply on this basis alone, without even needing to look at the other three criteria.

**Under Criterion B** of 7853.0130, the certificate of need should not be granted if there is “a more reasonable and prudent alternative to the proposed facility.” Others have shown that even if Enbridge could demonstrate a need, that there are better alternatives – energy efficiency and conservation, as well as electrification of the transportation system – that could address those needs, meaning that neither the first or second criteria for granting a certificate of need are met.

But I want to focus attention on the third and fourth criteria:

**Under Criterion C**, a certificate of need should not be granted unless the consequences to society are more favorable than not granting a CON. The consequences to society from the Line 3 Replacement project *are* worse than the consequences of not allowing the project to move forward. And, this is to be measured not only by the consequences for our generation, but also *the consequences for future generations*. To quote from the Minnesota Environmental Policy Act, in MN Statutes 116D,

“... it is the continuing responsibility of the state government to ... fulfill the responsibilities of each generation as trustee of the environment for succeeding generations”

Many of the people most affected by the proposed pipeline are native people, whose families have lived here for hundreds of years or longer. For them, the impact of the pipeline matters not only while it is under construction and while it is transporting tar sands, but also 100 years from now, decades after it is no longer in use. The environmental review stated that “disproportionate and adverse impacts would occur to American Indian populations” regardless of the route chosen.

There will be a disproportion impact on the native peoples of Minnesota, and the children, grandchildren, and future generations of *all* Minnesotans will be hurt. They will face significant, permanent harm from climate change.

The environmental review said that the pipeline project will make our climate-altering greenhouse gas emissions even *worse* than they already are. There are profound environmental and health impacts that would result from the project’s contribution to greenhouse gas emissions.

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<sup>1</sup> CBC News, *Canada's fossil fuel use to peak in 2019, National Energy Board now projects*, Robson Fletcher, October 26, 2017 <http://www.cbc.ca/news/canada/calgary/neb-fossil-fuel-demand-2017-report-canada-energy-future-1.4372967>

Without this pipeline, the economics of tar sands extraction – already costly – simply don't make sense, and the oil and gas companies will leave the tar sands in the ground. Expanding rail capacity for transporting tar sands is too expensive and cannot be sustained.

Certainly, the economy will continue to use fossil fuels as we transition to a clean energy future. However, this pipeline project is facilitating the extraction of additional tar sands oil – the dirtiest of fuels with a greenhouse gas impact as much as 37% higher<sup>2</sup> than conventional oil. We need to minimize greenhouse gas emissions as we phase out the use of fossil fuels over the next few decades, not encourage the use of the most harmful of those fossil fuels.

**Under 7853.0130, Criterion D** the CON must be denied if the proposed facility “will fail to comply with those relevant policies” of state, federal, and local governments.

Enbridge has a history of irresponsible behavior. Enbridge was responsible for the costliest oil pipeline spill ever recorded – it cost over \$1.2 *Billion* to clean up a 2010 spill in Michigan. Enbridge describes the Line 3 Replacement as the largest in their history. Enbridge has been out of compliance with state and federal law in the past,<sup>3</sup> and there is no reason to believe Enbridge will comply in the future.

Granting the CON by ignoring that past behavior and assuming that Enbridge will henceforth comply with all laws and regulations would require the suspension of good judgment. Unfortunately, it is neither sufficient nor realistic to pretend that state and federal agencies have the resources to properly inspect and enforce compliance.

However, the biggest failure of the project to meet Criterion D is the Line 3 Replacement's failure to comply with the relevant policies in state law related to greenhouse gas emissions.

Minnesota has had greenhouse gas reduction goals in law since 2007. This project does not comply with that policy. In fact, this pipeline and its impact on climate change is diametrically opposed to the policy in Minnesota Statutes 216H.02 - Greenhouse Gas Emissions Control.

Allowing the Line 3 Replacement will require many years of transporting tar sands oil to pay for the construction of this expensive project. As we move to a clean energy economy, we should use fossil fuels with lower climate impacts. This project is targeted at one of the worst fuels, and its construction will extend the use of those fuels far beyond what would occur without the pipeline.

As a result, the Line 3 project is *not* in compliance with 216H.02. It is headed in the opposite direction. It does not meet Criterion D of MN Rules 7853.0130.

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While the proposal fails all four of the required criteria and the certificate of need should be denied, we cannot ignore very real concerns about jobs. Construction of the pipeline would create good, well-paying union jobs that are very important to workers, which has led to significant political pressure to approve the project. While that is not justification for building

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<sup>2</sup> Oil Change International, *Petroleum Coke: The Coal Hiding in the Tar Sands*, (January 2013), p. 4, 39 <http://priceofoil.org/content/uploads/2013/01/OCI.Petcoke.FINALSCREEN.pdf>

<sup>3</sup> <http://archive.jsonline.com/news/wisconsin/37009324.html/>; <http://shebpr.es/2zA0fMI>

a project that fails to meet the legal criteria for a certificate of need and would cause more harm than benefit, we must take seriously the need to create jobs for the building trades.

To address the need to create a significant number of jobs for members of the building trades, it is important to consider how the existing Line 3 will be handled going forward. Although the Public Utilities Commission cannot order Enbridge to do so, they should do whatever possible to encourage removal of the existing Line 3, instead of abandoning it. This should be done not simply because it is a labor-intensive project that would create many of the desired jobs, but because it would prevent a serious injustice.

Currently, Enbridge's plan for the old pipeline is described as "permanent abandonment in place" as if that is a good result. When the existing pipeline is no longer in use – and the Department of Commerce findings stated that "Minnesota would be better off if Enbridge proposed to cease operations of the existing Line 3, without any new pipeline being built" – the landowners who have been forced to host the Line 3 Pipeline for about 50 years deserve the chance to determine what happens on their property. They should have the right to decide whether it will be removed or left in place with appropriate mitigation measures to prevent leaks or other problems. Rather than respecting the interests of local landowners, Enbridge wants to decide this question based solely on its corporate interests.

Leaving an aging pipeline in place is like buying a new car and leaving the old, rusting car in the backyard, slowly dripping remnants of toxic fluids into the ground. Fluids *do* continue to leak out, even if the tanks have been drained.

However, in this case, the analogy is even worse. It is like leaving your rusting car in *somebody else's* backyard, without their consent, to pollute their soil and water.

Enbridge's refusal to take responsibility for fully cleaning up their mess could be challenged by the Public Utilities Commission. While the PUC cannot force Enbridge to remove all parts of the pipeline where the local property owners request it, they could help build pressure on Enbridge to act in a responsible manner.

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Regulatory decisions on pipelines and other energy infrastructure can frequently be a balancing act between competing interests.

But when scientists estimate that there is a **1-in-20 chance that human-caused climate change will have an impact that is "beyond catastrophic"** by the end of the century, threatening the very survival of our descendants,<sup>4</sup> the balancing act here is not a close call. As one of the scientists explained it, "To put in perspective, how many of us would choose to buckle our grandchildren to an airplane seat if we knew there was as much as a 1-in-20 chance of the plane crashing?"<sup>5</sup>

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<sup>4</sup> Proceedings of the National Academy of Sciences of the United States of America, Yangyang Xua, and Veerabhadran Ramanathan, *Well below 2 °C: Mitigation strategies for avoiding dangerous to catastrophic climate changes*, <http://www.pnas.org/content/114/39/10315.full>

<sup>5</sup> Ramanathan, Veerabhadran, <https://www.scientificamerican.com/article/the-window-is-closing-to-avoid-dangerous-global-warming/>

And the risk of *merely* “catastrophic” climate impacts is far higher than 1-in-20.

Transporting massive amounts of tar sands oil through Minnesota puts our lands and waters at risk as well as *worsening* our climate crisis simply to address Enbridge’s perceived “need.” This pipeline project is *not* needed to meet the energy needs of Minnesota or our neighboring states.

With the climate crisis in mind, and an uncertain market for this dirtiest form of oil, **this is truly a litmus test about whether Minnesota is serious about addressing climate change.**

For the sake of the children of today and tomorrow, we dare not fail that test.

Sincerely,

A handwritten signature in blue ink that reads "John Marty". The signature is written in a cursive style with a large, stylized initial "J".

John Marty