BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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In the Matter of the Applications 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 Applications of Enbridge Energy, Limited Partnership for a Routing Permit for the Line 3 Replacement – Phase 3 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**

INITIAL BRIEF OF THE SIERRA CLUB

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INTRODUCTION

Enbridge Energy, Limited Partnership ("Enbridge" or "Applicant") bears the burden of demonstrating that the need for its proposed Line 3 "replacement" ("L3R") pipeline is justified taking into account the state of Minnesota's energy planning and conservation policies, the state's overall energy needs, the socioeconomic and environmental impacts of the pipeline, and the existence of more reasonable and prudent alternatives to the pipeline. Sierra Club asserts that Enbridge has failed to meet its burden of proof for justifying a need for the L3R pipeline, as set forth in this Brief.

Enbridge initiated these proceedings with its applications to the Minnesota Public Utilities Commission ("Commission") for a Certificate of Need ("CN") and Routing Permit to build a new 337-mile pipeline to replace the old Line 3 pipeline which was built prior to the existence of the Commission and its regulation of Large Energy Facilities. The Applicant purports to "replace" this dangerous old line with a larger pipeline in a different corridor, carrying different and more destructive crude oil derived from Canadian tar sands. The old Line 3 never received a Certificate of Need and this "replacement" should not either for several reasons:

- Minnesota law forbids building any large crude oil pipeline absent a sufficient showing that there is need for energy that would be produced from that facility.

- Enbridge says it is not required to show a need for energy but, rather, only oil; however, since the law provides that the Commission only can grant a CN based on need for energy, Enbridge fails to make this necessary showing.
- To the extent Enbridge has demonstrated need for energy, they also were required to present evidence that a renewable energy facility would not be a practical alternative, and they have failed to make any showing on this issue.
- Intervening parties have demonstrated that clean technologies like wind power, solar power, and electric vehicles ("EVs") are a practical and preferable alternative without any of the huge environmental costs of the proposed L3R pipeline.
- Both state and national policies align against using Canadian tar sands oil to meet our energy needs.

ARGUMENT

Minnesota Statute Section 216B.243 states that a large petroleum pipeline cannot be built in Minnesota without a Certificate of Need that is:

(A) based on the applicant satisfying the showings required under Section 216B.243, Subdivision 3.

(B) consistent with the criteria for need found in Minnesota Rules 7853.0130; and

(C) issued pursuant to the state's energy planning and conservation policy in Sections 216C.05 to 216C.30;

In these proceedings, Enbridge has failed to meet its burdens and the grant of a CN would be in conflict with the state's energy planning and conservation policy as established by statute. As such, the Commission should deny the Applicant's permits.

I. ENBRIDGE'S APPLICATION MUST BE REJECTED FOR FAILING TO MAKE NECESSARY SHOWINGS UNDER MINNESOTA STATUTE 216B.243

Minnesota Statute Section 216B.243 establishes the statutory requirements for a CN for the proposed L3R pipeline. Subdivision 2 of this Section provides that the Commission must not grant a CN unless Enbridge can show that need for the proposed L3R pipeline is justified based on several criteria including: accurate forecasts of the long-range energy demand on which need for the proposed pipeline is based; the relationship of the proposed pipeline to the state's overall energy needs; and possible alternatives to the proposed pipelines for satisfying energy demand. Section 3a of this statute further provides that the Commission must not issue a CN for the proposed pipeline unless Enbridge has demonstrated that it has explored the alternative of generating power using renewable energy sources, and shown those alternatives to be more expensive, including in terms of environmental costs. Enbridge has not satisfied any of these showing requirements.

A. Enbridge has failed to make the necessary showing that prove there is a need for energy supplied by Line 3, as required by Minnesota Statute 216B

The Commission's function is to regulate "***natural gas and electric*** service in this state with adequate and reliable services at reasonable rates, consistent with the financial and

economic requirements of public utilities and their need to construct facilities to provide such services or to ***otherwise obtain energy supplies***,"[1] in order to plan the energy future of the state. Consistent with this mission, "[n]o large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission,"[2] and "Large Energy Facilities" include "any pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota used for the transportation of coal, crude petroleum or petroleum fuels or oil, or their derivatives[.]"[3] In order to overcome the prohibition on building, the Applicant must "show that demand for electricity cannot be met more cost effectively . . . and . . . the applicant has otherwise justified its need."[4] To vet this showing, "the commission shall evaluate: (1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based[.]"[5]

The legislative findings accompanying these provisions sheds light on why the Legislature chose to regulate Large Energy Facilities and ban unnecessary ones. When the legislature took up the issue in April 1974 and passed H.F. No. 2675, the definition of "Large Energy Facility" was included as it currently reads in the Commission's codified

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[1] Minn. Stat. § 216B.01 (2017) (emphasis added); see also Minn. Stat. § 216B.02 (2017) ("'Public utility' means persons, corporations, or other legal entities, . . . now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof . . .").
[2] Minn. Stat. § 216B.243, Subd. 2 (2017).
[3] Minn. Stat. § 216B.2421, Subd. 2(4) (2017).
[4] Minn. Stat. § 216B.243, Subd. 3 (2017).
[5] Minn. Stat. § 216B.243, Subd. 3(1) (2017)

organic statute,[6] and the Certificate of Need requirement was first articulated.[7] That same law set out a bold legislative finding and purpose for the new agency:

> The legislature finds and declares that the present rapid growth in demand for energy is in part due to unnecessary energy use; that a continuation of this trend will result in serious depletion of finite quantities of fuels, land and water resources, and threats to the state's environmental quality; that the state must insure consideration of urban expansion, transit systems; economic development, energy conservation and environmental protection in planning for large energy facilities; that there is a need to carry out energy conservation measures; and that energy planning, protection of environmental values, development of Minnesota energy sources, and conservation of energy require expanded authority and technical capability and a unified, coordinated response within state government.
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> The legislature seeks to encourage thrift in the use of energy, and to maximize use of energy-efficient systems, thereby reducing the rate of growth of energy consumption, prudently conserving energy resources, and assuring statewide environmental protection consistent with an adequate, reliable supply of energy.[8]

Less than two weeks later, the legislature also passed H.F. No. 1835, which clarified the Commission's focus on:

> public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid

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[6] ***Compare*** Minn. Stat. § 216B.2421, Subd. 2 (2017), ***with*** 1974 Minn. Laws 494, 495 (H.F. No. 2675, § 2, Subd. 5), ***available from Minnesota Revisor at*** 1974 c 307 s 2.

[7] ***See*** 1974 Minn. Laws 494, 499 (H.F. No. 2675, § 7, Subd. 1(f)), ***available from Minnesota Revisor at*** 1974 c 307 s 2.

[8] 1974 Minn. Laws 494, 494-95 (H.F. No. 2675, § 1), ***available from Minnesota Revisor at*** 1974 c 307 s 2.

> unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers.[9]

The definitions provided by the legislature were clear that "utilities" were defined by their corporate status and their provision of electricity or gas service to consumers.[10] The definition does not include corporations whose sole business is provision of crude oil or petroleum products as such, by contrast.

Enbridge's application must be viewed within the powers given the Commission by law. The Commision notably has no legal authority to permit or oversee the gasoline, asphalt, styrofoam, plastics, or pharmaceutical industries. The Commission has no authority over the pricing of such products or the distribution of these derivatives of crude oil—it oversees the functioning of energy utilities as such. Therefore, if Enbridge cannot show that it is proposing a Large Energy Facility that meets the needs for ***energy*** of Minnesota within Minnesota Statute 216B, then it fails to make even the most basic showing required.

The fact that the legislature required a permit for large pipelines "used for the transportation of ***coal***, crude petroleum or petroleum fuels or oil"[11] is telling, especially in light of the above findings setting out the state's energy policy. This definition only describes facilities that provide energy inputs to electrical utilities, hence the inclusion of both coal and

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[9] Minn. Stat. § 216B.01 (2017); ***see also*** 1974 Minn. Laws 890, 890-91 (H.F. No. 1835, § 1), ***available from Minnesota Revisor at*** 1974 c 429 s 1.

[10] 1974 Minn. Laws 890, 891 (H.F. No. 1835, § 2, Subd. 4), ***codified at*** Minn. Stat. § 216B.02, Subd. 4 (2017).

[11] Minn. Stat. § 216B.2421, Subd. 2(4).

oil products. This law did not open the door for large crude oil pipelines through Minnesota that did not serve energy needs of regulated utilities.

In its application, Enbridge has failed to justify its need or forecast long-range energy demand because it has only modeled the transport of crude oil but not its impact on the energy needs of Minnesota.[12] Enbridge's witness has generically explained that in Minnesota:

> The transportation sector consumes approximately 70 percent of the total Minnesota supply of petroleum products, as shown in Figure 3 below. Most of the remainder (~20 percent) is consumed by the industrial sector. Major uses of petroleum products in the industrial sector include asphalt for road construction and agriculture-related diesel demand.[13]

None of these uses for Enbridge's oil qualifies as "energy" that a public utility has a need for under the Commission's governing law. The fact that crude oil in Minnesota is mostly used to produce products sold in non-utility markets outside the purview of the Commission is the most straightforward legal basis for why Enbridge has no right to a permit in this proceeding.

B. Enbridge has failed to make a necessary showing that renewable energy alternatives are not cheaper and preferable for our environmental future.

Minnesota Statute Section 216B.243, Subdivision 3a requires that an applicant who proposes to build a "large energy facility that generates electric power by means of a

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[12] Ex. EN-37, Sched. 1 at 46 (Muse Stancil Rebuttal Report) ("the Enbridge Mainline transports crude oil, not refined product, and it is the demand for crude oil that will drive the utilization of the Enbridge Mainline, not refined product"); ***see, also,*** Ex. EN-56 at 3:81 & 5:121 (Earnest Surrebuttal). See additional discussion of Enbridge's modeling and failure to prove "need" in discussion in Section II.A. of this brief, ***infra***.

[13] Ex. EN-15 at 6:116-19 (Earnest Direct).

nonrenewable energy source" offer evidence that "it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source."[14]

Since "Large Energy Facility" was first defined in 1974,[15] the understanding of the 1974 legislature as to what oil is used for in the energy system is relevant to whether an oil pipeline "generates electric power." As discussed above and elsewhere in this brief, it is apparent that in 1974 (and continuing today, although to a much smaller degree)[16] oil was used for electric power generation and was seen as fungible with other electric power fuels such as coal. It follows that Enbridge's Certificate of Need application must make a showing under Minnesota Statute 216B.243, Subdivision 3a that there is not a better, cleaner alternative.

Enbridge and its supporters in this dispute have failed to make any such showing. On cross examination each Enbridge witness queried admitted on the stand that they had offered no evidence regarding a renewable large energy infrastructure alternative.[17] This is

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[14] Minn. Stat. § 216B.243, Subd. 3a (2017).
[15] 1974 Minn. Laws 494, 495 (H.F. No. 2675, § 2, Subd. 5), ***available from Minnesota Revisor at*** 1974 c 307 s 2.
[16] Ex. SC-4 at 12:16-17 (Twite Rebuttal) (explaining that Flint Hills Resources currently produces petroleum coke for electrical generation using its existing Main Line oil inputs).
[17] ***See, e.g.,*** Evid. Hrg. Tr. Vol. 1B (Nov. 1, 2017) at 45 (Glanzer); Evid. Hrg. Tr. Vol. 2A (Nov. 2, 2017) at 26-27 (Simonson); Evid. Hrg. Tr. Vol. 2B (Nov. 2, 2017) at 65 (Berglund).

the case even though their CN application[18] and the testimony of Mr. Eberth, one of Enbridge's project director for the L3R pipeline, claim that the company has begun investing heavily in renewable energy.[19] Another of Enbridge's L3R project directors, Mr. Simonson, asserted the company's future lay in renewable energy business,[20] and Enbridge could have easily brought evidence on this issue relying on expertise within their company and among the outside experts they hired for this proceeding.[21]

The applicant's silence on this issue is even more stark because other parties offered evidence of the viability of renewable energy alternatives (either requiring a CN or meeting energy needs though smaller distributed generation),[22] and Enbridge failed to take the opportunity to rebut this testimony with any relevant evidence regarding the cost of renewable energy alternatives. Though it was not the intervening parties' duty to make a showing under Minnesota Statute 216B.243, Subdivision 3a, the company's failure to engage on this issue is highlighted by its conspicuous silence.

Minnesota Statute 216B.243, Subdivision 3a, cannot be waived by the Commission, and Enbridge has admitted through its experts' admissions that it offered no evidence on a

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[18] Ex. EN-1 at 5-4 (Enbridge CN Application) ("To date, Enbridge Inc's investments in renewable energy systems in North America exceed $4 billion, and it has acquired... more than 2,200 MW of zero-emission energy (1,600 MW net) – which is enough electricity to supply nearly 750,000 homes with green energy. In 2014 alone, Enbridge Inc. invested approximately $800 million in renewable and alternative energy projects and companies.")
[19] Ex. EN-24 at 18 (Eberth Direct).
[20] Evid. Hrg. Tr. Vol. 2A (Nov. 2, 2017) at 62 (Simonson).
[21] ***See, s***upra note 17. ***See, also,*** Ex. EN-9, Sched. 1 (Bergland Statement of Qualifications).
[22] Ex. SC-4 at 7 (Twite Rebuttal) and Ex. HTE-2 at 60 (Stockman Direct Testimony).

renewable large energy facility alternative. On this basis alone granting a Certificate of Need would be arbitrary and capricious, and not accordance with the law.

C. The Historical Context Under which the Commission and Minnesota Statute 216B were Passed Demonstrate the Importance of Treating the Applicant's Proposed Project as a Large Energy Facility Intended for Generating Electricity

The original Minnesota 1974 law that defined "Large Energy Facility" and required a Certificate of Need for such facility was written during a historic oil crisis, and the law's drafters were dealing with that reality and trying to support society's overall ***energy*** needs. All U.S. presidents who sought to further a National Energy Policy during this era saw oil as a stand-in fuel for utility generation of electricity, and oil imports as a risk to our national energy security. After two historic oil embargoes, the Commision implemented the regulations at issue in this case. Enbridge disagrees that it must play by the same rules applied to other Large Energy Facility applicants, but "[u]pon this point a page of history is worth a volume of logic."[23]

The original Line 3, which Enbridge here proposes to "replace," was constructed in the 1960s in a "pre-regulation"[24] environment where there was no agency charged with regulating electric and natural gas utilities, nor any agency with an eye to preventing wasteful investment and promoting efficient and rational service for consumers. In this pre-regulation

[23] New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).
[24] Ex. EN-13 at 20:613-14 (Gerard Direct Testimony) ("pre-regulation" is a term of art used for pipelines installed before 1970).

era, America ran on oil, and its electric energy system depended on it.[25] The legislature very intentionally began the end of this era in 1974.

Such a policy shift naturally follows from a National Energy Policy announced by President Nixon in April 1973 to Congress.[26] The president foretold impending energy shortages and the possibility of an energy crisis.[27] But he also presented a clear set of policy initiatives to promote domestic energy production, and asserted that "[p]roperly managed, and with more attention on the part of consumers to the conservation of energy, these supplies can last for as long as our economy depends on conventional fuels."[28] These policies included more domestic oil production[29] and explicitly sought to diminish reliance on foreign oil, including Canadian oil.[30]

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[25] ***See generally*** 38 CONG. REC. 12889 (1973) (describing a National Energy Policy intended to end wasteful use of oil by utilities, and other oil supply and demand issues).
[26] ***See*** 38 CONG. REC. 12889 (1973). This was the second message on energy policies ever presented by an American President, including Nixon's earlier message in 1971. ***Id.*** at 12889. President Nixon's message was introduced by Democratic Senator Robert Byrd and was received under unanimous consent of the senate. ***Id.*** at 12889.
[27] ***Id.*** at 12889.
[28] ***Id.***
[29] ***Id.*** at 12890.
[30] ***Id.*** at 12890 (describing domestic oil consumption as "not adequate" because the nation "obtain[s] almost 30 percent of our oil from foreign sources."); ***id.*** 12891 (explaining "we are importing growing quantities of oil at great detriment to our balance of payments" and that an Alaskan pipeline would serve the economy and employment better than a Canadian pipeline); ***id.*** at 12892 (allowing a short-term increase in oil imports to avert a shortage, but stating the overall goal to "reduce our long-term reliance on imports").

Additionally, President Nixon presented oil as the fungible energy source that might replace coal in the short-term and be replaced by nuclear power in the future.[31] Post-2000, the policy envisioned an America that used solar energy and nuclear fusion to replace reliance on fossil fuels.[32]

Just before passage of Minnesota's landmark legislation, only six months after the National Energy Policy announced by President Nixon, the nation experienced a major energy crisis that shook the United States and impacted how future energy policy would be made.[33] In October 1973, oil exporting countries in the Middle East began an oil embargo that caused blackouts and fuel shortages across the country.[34]

Six months after the 1973 Oil Crisis began, the Minnesota Public Utilities Commission was created to manage energy policy through planning and conservation. This era left an indelible mark on Minnesota's legal frameworks in the form of the Commission. Two obvious realities confronted the legislature in early 1974: (1) oil pipelines were a serious

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[31] ***Id.*** at 12891 (equating 155 million tons of coal per year to 1.6 million barrels of oil per day); ***id.*** at 12892 ("By 1980, the amount of electricity generated by nuclear reactors will be equivalent to 1.25 billion barrels of oil, or 8 trillion cubic feet of gas."). ***See also*** 122 CONG. REC. 4749, 4751 (1976) (President Gerald Ford, arguing for additional energy legislation and regulatory powers, also saw oil as an electrical-utility fuel, stating: "If the electrical power supplied by the 57 existing nuclear power plants were supplied by oil-fired plants, an additional one million barrels of oil would be consumed each day.").

[32] 38 CONG. REC. 12889, 12893-94.

[33] ***See*** 122 CONG. REC. 4749, 4749 (1976).

[34] As summarized by President Ford, in his own Special Message to the Congress urging enactment of energy legislation: "A little over two years ago, the Arab embargo proved that our Nation had become excessively dependent upon others for our oil supplies. We now realize how critical energy is to the defense of our country, to the strength of our economy, and to the quality of our lives." ***Id.***

danger to the environment, due to a high incidence of leaks and spills;[35] and (2) "our Nation had become excessively dependent upon others for our oil supplies," and the future of the country depended on decreasing its reliance on foreign oil and "regain[ing] our energy independence."[36] Minnesota responded to these realities by prohibiting unnecessary pipelines and regulating energy supplies through the Certificate of Need procedure.

The legislature's findings, quoted above, indicate that in early 1974 it was aware of the challenges of increasing electricity and natural gas demand, and did not endorse unchecked expansion of energy infrastructure as a solution to this immediate problem. Instead, the legislature envisioned a energy system centered on conservation and careful planning.

In early 1976 the next president, Gerald Ford, sent a message to Congress where he set out a revised energy agenda:

> —First, to halt our growing dependence on imported oil during the next few critical years.
> —Second, to attain energy independence by 1985 by achieving invulnerability to disruptions caused by oil import embargoes. Specifically, we must reduce oil imports to between 3 and 5 million barrels a day, with an accompanying ability to offset any future embargo with stored petroleum reserves and emergency standby measures.
> —Third, to mobilize our technology and resources to supply a significant share of the free world's energy needs beyond 1985.[37]

He announced international cooperation, not to import oil but to commit to stop imports: "By reducing demand for imported oil, consuming nations can, over time, regain their

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[35] ***See generally*** Ex. EERA-38 (Figures 1-6 and accompanying data show that pipeline spills were both frequent and severe in the late 1960s and early 1970s).
[36] 122 CONG. REC. 4749, 4749 (1976).
[37] ***Id.***

influence over oil prices and end vulnerability to abrupt supply cut-offs and unilateral price increases."[38] President Ford also accelerated Nixon's plans for post-fossil-fuel energy and described moving the economy away from "easily recoverable domestic fuel reserves" and to new sources of energy such as solar power and advanced conservation "beyond 1985."[39]

A little more than a year later, in April 1977, President Carter delivered a speech to Congress, exhorting them to deal with the energy crisis that gripped the country at the time.[40] He saw foreign oil imports as the main problem, and proposed ambitious policies to greatly reduce imports by 1985—such as "us[ing] solar energy in more than 2 ½ million American homes."[41]

In 1983, following repeated oil crises and the resulting national policy shift, the Commission established the Certificate of Need regulations at Minnesota Rules 7853.0130.

In 1991, the legislature passed H.F. No. 1246, which added requirement that no Certificate of Need may be granted:

> for a large energy facility that generates electric power by means of a nonrenewable energy source . . . unless the applicant for the certificate has demonstrated to the commission's satisfaction that it has explored the possibility of generating power by means of renewable energy sources and has demonstrated that the alternative selected is less expensive (including environmental costs) than power generated by a renewable energy source.[42]

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[38] ***Id.*** at 4751.
[39] ***Id.***
[40] 123 CONG. REC. 11480, 11480 (1977).
[41] ***Id.***
[42] H.F. 1246, 77th Leg., Reg. Sess. (Minn. 1991).

Large renewable energy facilities were scarce at the time, and the legislature's act was another step towards the renewable energy revolution that past presidents of both parties had envisioned for America post-1985. While oil had been pushed partly out of the electrical energy mix by 1991, it was still used for electrical generation—indeed, even in 2017 Minnesota refineries were still using crude oil from Enbridge's main line to produce petroleum coke for electrical generation.[43]

In light of the historic consequences surrounding the Certificate of Need statutory and regulatory provisions, the Commission must hold this Applicant to the high standards the legislature demanded for our energy future. Allowing Enbridge to build a Large Energy Facility without showing that there is a need for the energy the facility will transport is directly opposed to this history.

D. Enbridge Has Failed to Address Need Considering the Most Recent Energy Policy and Conservation Report as Required by Minnesota Statute Section 216B.243, Subdivision 3(3)

Minnesota Statute Section 216B.243, Subdivision 3(3), provides that it is the burden of the applicant for a Certificate of Need to justify need for a proposed project taking into consideration "the relationship of the proposed facility to overall state needs, as described in the ***most recent*** state energy policy and conservation report prepared under section 216C.18 . . ." Pursuant to Section 216C.18, the state energy policy and conservation is a comprehensive report issued every four years that provides projections on the ability of existing and

[43] Ex. SC-4 at 12:16-17 (Twite Rebuttal).

anticipated energy facilities to supply sufficient energy to meet statewide demand, which is the central issue in a Certificate of Need proceeding. The most recent report was issued in 2016 ("2016 Quad Report").[44]

Enbridge's CN application, which was completed in 2015, cites to what was, at the time, the most recent state energy policy and conservation report—published in 2012—as supporting Enbridge's assertion that its proposed Line 3 replacement project is necessary in order to meet the state's energy needs.[45] The Muse Stancil market analysis report that was commissioned by Enbridge to determine the supply and demand for the proposed project and included as part of the CN Application cites to the 2012 Energy Policy and Conservation Quadrennial Report's ("2012 Quad Report") discussion of supply and demand for alternative fuels in Minnesota as indicating some modest interest and growth in ethanol, biodiesel, propane, natural gas, and vehicle electrification but leaving demand for petroleum largely unaffected.[46] In his January 31, 2017 Direct Testimony, Enbridge witness Neil Earnest again cited to the 2012 Quad Report's as supporting the need for the proposed pipeline project to meet Minnesota's energy demand.[47] Enbridge and its witnesses have made no mention to the 2016 Quad Report despite the statutory requirement that it be explicitly be considered in evaluating need for the proposed project.

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[44] MINN. DEP'T O COMMERCE DIV. O ENERGY RE., ENERGY POLICY AND CON ERVATION QUADRENNIAL REPORT 2016 ("2016 Quad Report").
[45] Ex. EN-1 at 4 (CN Application).
[46] Ex. EN-1, App. C at 12-13 (Muse Stancil Report).
[47] Ex. EN-15 at 12 & 36 (Earnest Direct).

It is difficult to accept Enbridge's omission of the 2016 Quad Report[48] as being accidental, as that report makes an extremely strong case for why there is no energy demand for L3R oil. Unlike the 2012 Quad Report, the 2016 Report is extremely comprehensive on renewable energy supply and demand in Minnesota and details how profound its growth has been in those intervening four years. As just a small sampling of relevant sections, the report states:

> Although coal remains the primary feedstock for power generation in the state, its use decreased 25 percent between 2005 and 2015. Use of petroleum fuel to generate power decreased 96 percent over the same time period. That difference, plus an additional 7.5 percent in power generation produced in the state, was provided through a
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> - 520 percent increase in wind
> - 170 percent increase in natural gas
> - 70 percent increase in biomass.[49]

It further provides that:

> Aging infrastructure, financial risks of investing in large electric infrastructure, lower natural gas prices, anticipated new federal EPA regulations on existing electric generating units to reduce carbon dioxide emissions, and the extension of renewable tax credits are all driving a shift toward less carbon-intensive generation.[50]

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[48] Sierra Club Motion For Administrative Notice of the 2016 State Energy Policy And Conservation Quadrennial Report, eDocket No. [xxx], Jan. 23, 2018 (Sierra Club has made a motion to the ALJ to take administrative notice of relevant portions some of the facts in the 2016 Quad Report, consistent with the statutory duty to consider this report; that motion was e-filed on the same day as this brief).

[49] ***Id.*** (Appendix A).

[50] ***Id.*** (Appendix A).

Under Minnesota Statute Section 216B.243, Subdivision 3(3) the Commission must weigh this report, which Enbridge has not put in the record, and which runs counter to its theory of why its facility is needed. The Commission must acknowledge that petroleum fuel to generate power decreased 96 percent from 2005 to 2015, and that this is just further evidence that Enbridge has failed to demonstrate an energy need for its proposed facility. Moreover, consistent with policies and market conditions highlighted by the report, the Commission must acknowledge that this facility would run contrary to the positive environmental move towards less carbon-intensive energy. Enbridge had numerous opportunities to correct the record and put this report in with its testimony, but failed to do so and thus failed to make a showing under Minnesota Statute Section 216B.243, Subdivision 3(3).

II. ENBRIDGE'S APPLICATION MUST BE REJECTED FOR FAILING TO MAKE NECESSARY SHOWINGS UNDER MINNESOTA RULES 7853.0130

A CN is required for any large petroleum pipeline greater than six inches in diameter and having more than 50 miles of its length in Minnesota. Under Minnesota Rule 7853.0130 the grant of a CN requires demonstration of four criteria:

(a) the probable result of denial 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;

(b) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;

(c) the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and

(d) it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Each of these criteria has several sub-criteria that are required to be considered in deciding whether to the grant or deny the CN.

A. Enbridge Fails to Make the Necessary Showing Under Minnesota Rule 7853.0130 (A) that Denial of its CN Application Would Harm the Supply of Energy to Itself, to its Customers, or to Minnesota and Neighboring States

Enbridge has failed to (1) establish energy need, (2) rebut other energy alternative evidence, (3) show that the project will not have catastrophic effects on society and the environment, and (4) that the project is consistent with existing state and federal policies.

1. Enbridge did not assess or model overall demand for energy

Minnesota Rule 7853.0130(A)(1) requires consideration of "the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility." Because Enbridge only modeled the supply and consumption of crude oil

as a commodity, it never made a showing that there is a demand ***for energy*** supplied by the proposed pipeline.

Enbridge's lead witness on demand for oil, attempting to describe the need for this project, fails to convincingly demonstrate that his testimony is in any way tied to demand for energy. Mr. Neil Earnest notes in his direct testimony that while the majority of refined oil is made into gasoline, significant portions go to industrial uses such as making asphalt,[51] and he conflates Minnesota's demand for "lubricants" and "specialty products" with the relevant inquiry before the Commission here.[52] This follows on his focus on discussing demand for all "refined products" in Minnesota and nearby states, where he treats consumption of "asphalt" and "other" as relevant demand he factors into his analysis.[53] Asphalt and "other" already represent a large portion of the output of regional refineries, according to Mr. Earnest.[54] He even notes that: "Among the major types of refined products, the proportion satisfied by the local refineries differs. In recent years, the region has begun to produce an excess of asphalt."[55] This is further confirmed by a letter from Flint Hills Resources, operator of the largest refinery in Minnesota, which states that its facility "produces a significant percentage of the asphalt used in Minnesota and across the country as well as

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[51] Ex. EN-15 at 6:116-19 (Earnest Direct).
[52] Ex. EN-15 at 6:122-24 (Earnest Direct).
[53] ***See*** Ex. EN-15 at 7:156-60 & 8:182 (Figure 4) (Earnest Direct).
[54] ***See*** Ex. EN-15 at 10 (Figure 6) (Earnest Direct) (showing 2015 refinery production of "asphalt" and "other" exceeding 50 kb/day in 2015); ***see also*** Ex. EN-15, Sched. 2 at 114 (Earnest Direct) (showing a combined regional demand for "asphalt" and "other" of 74 kb/d in 2014).
[55] Ex. EN-15 at 10:201-02 (Earnest Direct).

heating fuels and the chemical building blocks for numerous other essential products, including plastics, fertilizers, medicines and synthetic materials."[56]

In response to other parties' evidence and analysis about decreased demand for fossil fuels, Mr. Earnest attempted to change the topic away from energy, asserting "the Enbridge Mainline transports crude oil, not refined product, and it is the demand for crude oil that will drive the utilization of the Enbridge Mainline, not refined product"[57] In response to DOC-DER witness Ms. O'Connell, he laid this position bare, stating: "However, ***the Company did not need to provide a forecast of refined product demand***, since the Enbridge Mainline transports crude oil, not refined product, and it is the future demand for crude oil that will drive the utilization of the Enbridge Mainline."[58] He went on to accordingly note that "my Rebuttal Report demonstrates that the L3R Program will be fully utilized, even assuming a substantial reduction in gasoline demand."[59]

Since Mr. Earnest admits that his analysis shows need even when gasoline demand drops (with a blind eye to demand for electric energy fuel), it is obvious that his concept of need has no bearing on society's demand for combustible fuels or energy. The company's lack of ability to parse out energy use from other refined product demand does not meet the legal standard's requirements.

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[56] Ex. EN-56, Sched. 1 at 4 (Earnest Surrebuttal) (Flint Hills Resources August 16, 2017 letter to Bill Grant).
[57] Ex. EN-37, Sched. 1 at 46 (Earnest Rebuttal) Schedule 1 at 46; ***see also*** Ex. EN-56 at 3:81 & 5:121 (Earnest Surrebuttal) (same).
[58] Ex. EN-37 at 5:152-55 (Earnest Rebuttal) (emphasis added).
[59] Ex. EN-37 at 5:158-60 (Earnest Rebuttal).

2. Enbridge fails to show energy demand for L3R oil in Minnesota or in neighboring states

Another central assumption in Mr. Earnest's analysis runs counter to the requirement that Enbridge demonstrate "the future adequacy, reliability, or efficiency of energy supply to . . . the people of Minnesota and neighboring states."[60]

Enbridge makes no attempt to demonstrate its project will safeguard the energy supply of the region. Mr. Earnest explains this position: "The crude oil throughput of Midwestern and other U.S. refineries is not dependent upon the demand for refined products in either the Midwest or the U.S., as the U.S. is a large exporter of refined product to other parts of the world."[61] He asserts that "U.S. crude oil runs have been increasing because of rising volumes of refined product exports."[62] He goes on to conclude that increasing supply to regional refineries will lead to more international export of refined products, as:

> the U.S. and Midwestern refiners do not require refined product demand growth to increase their crude oil runs or their crude oil processing capacity. They have clearly and quantitatively demonstrated this at both the national and regional level by increasing their crude oil runs with stagnant or modest light refined product demand growth. By the same measure, an increase of throughput on crude oil pipelines, such as the Enbridge Mainline System, is not limited to just the amount required to satisfy an increase in regional or national refined product demand.[63]

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[60] Minn. R. 7853.0130 (A) (2017).
[61] Ex. EN-15, Sched. 2 at 14 (Earnest Direct).
[62] Ex. EN-15, Sched. 2 at 56 (Earnest Direct); ***see also id.*** ("From a global perspective, U.S. refiners are highly competitive due to their size, operational efficiency, and the comparatively low cost of energy (primarily natural gas) in the U.S. relative to other global refining centers.").
[63] Ex. EN-15, Sched. 2 at 58 (Earnest Direct).

He finds that "[a]ccordingly, PADD II crude oil runs can increase without a need for a corresponding rise in local product demand."[64]

When Enbridge's witness admits that demand is "stagnant" in the relevant geographic area,[65] the company has failed to prove a need for additional capacity in accordance with the law. The fact that the company's view of regional demand includes international exports makes a mockery of the regulation's plain language.

3. Enbridge fails to demonstrate its own energy demand for L3R oil

Despite having a strong financial interest in this application, Enbridge's testimony does not prove that the company has any need for the ***energy*** supplied by the proposed project. Since the relevant regulation does not allow need to be shown in revenue streams alone,[66] the company has failed to put up evidence of its own legally-cognizable need.

As a comparison, consider a "normal" Certificate of Need proceeding for a high-power transmission line. Company A proposes a Large Energy Facility to transport

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[64] Ex. EN-15, Sched. 2 at 58 (Earnest Direct).

[65] Ex. EN-15, Sched. 2 at 58 (Earnest Direct); ***see also*** Ex. EN-15, Sched. 2 at 19-20 (Earnest Direct) ("Minnesota refined product demand increased steadily until about 2005, when higher oil prices and various energy conservation measures began to curtail total refined product demand. Since 2005, the demand trends for the different types of refined products have varied. Asphalt, LPG, and heavy fuel oil (the latter is in the 'Other' category in Figure 16 above) have all experienced significant decreases in demand, whereas diesel/No. 2 fuel oil demand in 2013 established a new demand peak. Gasoline, the single largest component of overall refined product demand, is down about 7 percent from its mid-2000s peak, although in the last few years gasoline demand has been relatively constant.").

[66] Minn R. 7853.0130 (A) (applicant must show impact on "energy supply, not its finances).

electricity from a power source to its distribution grid, and then on to end users of electricity. In that case, Company A is able to demonstrate its need for the Large Energy Facility's energy through a description of its service area, the customers it serves, and modeled and projected changes in its capacity to serve these customers in the future (either through changes in its generation abilities or shifts in the customer base). If it does not meet demand for energy, there will be blackouts and people will be without energy—Company A will fail to provide sufficient and reliable service to these customers, a duty of all Minnesota utilities. The Commission maintains oversight of Company A's business practices and finances, down to approving energy rates for individual customers and ensuring they are reasonable. By contrast, in the instant case, the applicant has not named the end users of its energy, it has not defined a service territory, the Commission has no control over the end consumer's rates, and there is no assurance that the Large Energy Facility will be used to provide the public with energy. Enbridge seeks to be held to a much lower standard than other regulated companies.

The applicant here is a common carrier that neither produces nor refines oil, so it has no demonstrable need for energy transported by this facility. The company operates a transit system that can not play favorites: "As a common carrier, Enbridge is obligated to treat all similarly situated customers the same on the Mainline System."[67] Notably, while other

[67] Ex. EN-1 at 3-22 (Certificate of Need Application); Ex. EN-19 at 11:313-14 (Glanzer Direct) ("As a common carrier system, Enbridge does not discriminate against any shipper eligible to ship on its system. ").

Enbridge affiliates are engaged in energy production and distribution, the applicant is not: "As a common carrier, Enbridge does not buy or sell crude oil or petroleum products. Rather, Enbridge serves as a transportation company that ships crude oil to market where it can be refined."[68] The company is blind to who ends up with the product that it transports on behalf of its clients: "As a common carrier pipeline, the recipients of the crude oil transported by the Project could be any number of refineries that are directly or indirectly connected to the Enbridge Mainline System, just as is the case today with Line 3."[69] While the company sees the potential for a large profit in its proposal, financial interests are not a showing of need for energy.

Additionally, this seems to be tied to Mr. Earnest's assumptions, described above. As a common carrier Enbridge is neutral about the product it transports, so long as it meets basic specifications. Like so many widgets, the product it sends is merely a commodity, with no definite purpose, end user, or function. Mr. Earnest's modeling ultimately fails to show a need for the project because all he does is describe a commodity: a product that once it is transported to a global market is sold at a market-clearing price, one that the Applicant's

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[68] Ex. EN-1 at 5-1 (Certificate of Need Application).

[69] Ex. EN-1 at 8-11 (Certificate of Need Application); Ex. EN-10, Schedule 2 at 35 (Report on the Impact of Crude-by-Rail and the "No Action" Scenario) ("Enbridge, therefore, has no commercial control over the destination of the oil that is or could be transported via Line 3. Increased crude oil volumes that would move through Line 3 could be transported for processing to refineries in Minnesota, other Midwest locations, or elsewhere in the U.S. and Canada").

shippers hope is higher than their costs but over which they have no control.[70] This does not justify a Certificate of Need Permit for a Minnesota utility. Showing that the market will eventually consume a commodity when it is sold at a global price does not show there is any need for a particular unit of that commodity, it just describes how a global commodity market works—stated another way, this logic would equally show that ***any*** proposed infrastructure is needed so long as you can identify a global commodity that could be moved to market via that project. It appears that if Mr. Earnest's modeling showed a refiner in Singapore who intended to buy all of the tar sands oil it could acquire in order to make lubricants,[71] then Enbridge would have—under its theory—proven an absolute need for the proposed project. Surely Minnesota's legislature demanded more than that when it

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[70] Mr. Earnest goes to great lengths to illustrate how markets work in a free-trade system as the basis for his findings. ***See***, ***e.g.***, Ex. EN-15 at 7:143-48 (Earnest Direct) ("All refined products move freely across state boundaries and refined product distribution patterns are mostly dictated by the location of the major refining centers, the major demand centers (typically large cities), and the installed network of refined product pipelines. Based upon my industry experience, refiners are constantly seeking to sell their products into the markets that generate the highest prices (net of transportation costs)."); Ex. EN-15, Sched. 2 at 21 (Earnest Direct) ("In part because of the demand variability, the U.S. refining industry relies heavily on inter-state shipments of refined products to meet the needs of all of the individual U.S. states.").

[71] This is of course a hypothetical example, as it appears that Mr. Earnest's Muse models the consumption of "Malaysian light crude" and "Arab Heavy" oils in Singapore without being able to show how much of it is used for lubricants as opposed to energy production. ***See*** Ex. EN-37, Sched. 4 at 1 (Earnest Rebuttal); Ex. DER-4, Schedule 1 at 20 (Fagan Direct) ("The refining value of crude oil is a key driver of the model. The Muse Stancil Report explains that the refining value of various crude oil grades at the refinery gate is 'expressed as a function of crude input' using the AspenTech PIMS ® refinery modeling system. The input crude oil prices represent a variety of crudes: Louisiana Light Sweet, Maya (Mexican heavy crude) delivered to the Gulf Coast; Tapis (Malaysian light crude) delivered to Singapore; and Arab Heavy delivered to Singapore.").

established the Commission to promote the public interest and forbade building unnecessary large oil pipelines absent a real regional energy need.

Enbridge has shown, convincingly, that it wants a guaranteed revenue stream, but has failed to show it has any need for energy produced from the oil it hopes to transport.

4. Enbridge and the Shippers fail to show the Applicant's customers' energy need

Neither Enbridge nor party Shippers for Secure, Reliable and Economical Petroleum Transportation ("Shippers") have made sufficient showing that "denial would adversely affect the future adequacy, reliability, or efficiency of energy supply . . . to the applicant's customers[.]"[72] The Shippers have shown that they want lower costs of doing business, but their testimony fails to show they have a demonstrable need for this infrastructure upgrade and capacity expansion.

Enbridge's customers have many other readily available sources of oil. The Shippers representatives have testified,[73] and Flint Hills Resources has confirmed in letters in the record,[74] that whenever they fail to get the oil they want from the Mainline System they will get oil from other sources. Flint Hills Resources—which has not intervened in this contested case although it does so regularly when it seeks to manage its electrical costs[75] and even

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[72] Minn. R. 7853.0130 (A).
[73] ***See***, ***e.g.***, Ex. SH-1 at 4:3-5 (Kahler Direct) ("Without the Project, . . . shippers' use of alternative modes of transportation, like rail, would be expected to continue and grow.").
[74] ***See*** Ex. EN-56, Schedule 1 (Earnest Surrebuttal) (including both Flint Hills Resources letters).
[75] ***See***, ***e.g.***, In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota, PUC Docket No.

though it expects to be a shipper on the project if approved[76]—asserted that even if old Line 3 were shut down and not replaced, "Flint Hills Resources would likely be compelled to explore other alternatives for meeting its crude oil needs, including the possibility of receiving crude by rail, river vessel, or perhaps other pipeline projects."[77] Consistent with this position, Enbridge's expert testified that regional refineries already can obtain Canadian oil by rail and domestic oil by barge or truck.[78] These sophisticated corporate entities are not in danger of suffering an outage even if Enbridge fails to get permits and decomissions old Line 3, as they have numerous sources of crude oil if a favored source is cut off. Whether other modes of obtaining oil are preferred or not is Flint Hills Resources' business, and by not entering this case a an intervenor the company has made sure that it remains that way. But its preference for one pipeline over another does not demonstrate anything approaching a need for new energy infrastructure.

Nevertheless, the Shippers would have this entire case hinge on something called "apportionment." They assert: "Without the Project, there would not be adequate capacity and so apportionment on the Mainline and shippers' use of alternative modes of

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E-002/GR-15-826 OAH Docket No. 19-2500-33074, Petition to Intervene at 1 (Feb 1, 2016) (collectively intervening with: CHS Inc.; Gerdau Ameristeel US Inc.; USG Interiors, Inc.; and Unimin Corporation).

[76] Ex. EN-56, Sched. 1 at 4 (Earnest Surrebuttal) (Flint Hills Resources letter to Bill Grant of August 16, 2017).

[77] Ex. EN-56, Sched. 1 at 2 (Earnest Surrebuttal) (Flint Hills Resources letter to Scott Ek of October 11, 2017).

[78] Ex. EN-15 at 14:302-06 (Earnest Direct); ***see also*** Ex. EN-15 at 16 (Figure 10)(Earnest Direct).

transportation, like rail, would be expected to continue and grow."[79] But even if this project is approved as proposed, it realistically will not solve the apportionment problem as it can only be counted on to "mitigat[e] apportionment."[80] They testify that apportionment is a common problem in this business,[81] and it causes the Shippers to incur some costs if they choose to ship via the Main Line, pursuant to a contractual relationship with Enbridge. Regional shippers already manage apportionment with numerous tactics, currently "variability in local supply requires the refining industry in the Minnesota Refining District to rely upon a combination of storage facilities and inter-connectivity, primarily by pipeline, with refineries elsewhere in the U.S. to meet the refined product requirements of the people of Minnesota and of its neighboring states."[82] Also, notably, while apportionment is inconvenient for these businesses, even in a worst case scenario where a major regional refiner unexpectedly shut down, evidence put forward by Enbridge suggests this would create a gasoline price shock of a few days at most.[83]

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[79] Ex. SH-1 at 4:3-5 (Kahler Direct).
[80] Ex. SH-1 at 4:11 (Kahler Direct).
[81] Ex. SH-1 at 6:15 (Kahler Direct) ("These repairs routinely increase apportionment and cause shipping delays.").
[82] Ex. EN-15, Sched. 2 at 22 (Earnest Direct).
[83] Ex. EN-15 at 10:224-30 (Earnest Direct) ("On August 8, 2015, the large BP Whiting refinery in the Chicago area unexpectedly shut down its largest crude oil distillation unit. Gasoline prices in the Midwest reacted almost immediately. Chicago bulk spot prices for regular gasoline climbed 16.35¢/gal on August 10 (Monday), and rose another 44.72¢/gal on Tuesday. Retail gasoline prices also reacted as well to the BP refinery outage in both Chicago and Minnesota, as shown in Figure 7, before prices retreated as additional gasoline supplies entered the market in subsequent days.").

Since this project cannot solve the Shippers asserted apportionment problem and they are more than capable of dealing with it (and finding other sources if their shipments are delayed), the existence of some apportionment is not a showing that this project is needed. Apportionment, as annoying as it might be, is a cost of doing business for these sophisticated entities. Until there is a statutory duty for the Commission to force Enbridge to provide these business with free transport, there is no way to solve the identified problem by building a larger Line 3. This is because the severity of apportionment is partly controlled by the Shippers themselves: they compete in using a shared resource and decide how much to elect to ship, and they can readily obtain crude oil inputs from other sources. Based on the Shippers tepid support for a project that will only partly solve their problem, a problem that falls short of being a business need for energy, they have failed to make a sufficient showing to support the applicant's permit.

5. Enbridge fails to show that future energy demand cannot be met by current or planned facilities that do not require a CN and to which it has access

Enbridge has also failed to demonstrate that the future energy demand, if any, that would be supplied by the tar sands oil transported on the proposed Line 3 cannot be met using "current facilities and planned facilities not requiring certificates of need."[84] Indeed, ample testimony and evidence in the record demonstrate that future demand for energy can

[84] Minn. R. 7853.0130(A)(4) (2017).

be adequately met through the adoption of clean energy produced by existing and planned facilities that do not require a certificate of need.

In his testimony, Mr. Twite stated that solar photovoltaic and wind generation can be readily scaled to "meet large electric energy demand through the addition of smaller generation facilities to the overall electric grid without needing a [Certificate of Need]."[85] Mr. Twite further testified that electrical energy generation can effectively and sufficiently substitute for oil used as combustible fuel for transportation, heating buildings, and other applications. He further testified that these electric energy solutions are currently available and price-competitive, with wind generation currently being the lowest-cost energy generation resource available and utilities in the Upper Midwest increasingly entering power purchasing agreements for new wind farms at costs much lower than those of running existing coal and combined-cycle natural gas power plants.[86] Furthermore, the costs of wind and solar photovoltaic generation are widely anticipated by experts to continue falling in the coming years.[87] At the same time that supply of clean energy is growing and becoming more cost-effective, future demand for oil is and will continue to persistently drop as both light- and heavy-duty electric vehicles continue to get cheaper, more efficient, and more widely adopted. Evidence in the record supports that electric vehicle sales are strong globally and are strongly forecasted to significantly in the near term as the costs of lithium-ion batteries

[85] Ex. SC-4 at 4:11-12 (Twite Rebuttal).
[86] Ex. SC-4 at 8:8-18 (Twite Rebuttal).
[87] Ex. SC-4 at 8:13-9:2 (Twite Rebuttal).

continue to rapidly decline, making the total cost of ownership cheaper for electric vehicles than for those fueled by gasoline.[88]

This cuts against Enbridge's application for a CN in two ways. First, it means that the already small portion of oil demand from Minnesota's refineries that is used for electric energy generation or for combustible fuel is rapidly and continuously getting even smaller. Second, as a related matter, it means that an even large portion of Enbridge's L3R oil will go to customers who use it for non-energy uses like asphalt.

B. Other Parties Have Demonstrated that More Reasonable and Prudent Alternatives to the Applicant's Proposal Exist and Are Available Now

Experts for Sierra Club, Honor the Earth, and other intervenors—and even members of the public—have entered sufficient evidence into the record to demonstrate by preponderance of the evidence that renewable energy alternatives exist that are viable, cheaper, more efficient, more reliable, and better economically and environmentally than the proposed project.

Renewable energy sources can substitute for multiple current uses of fossil fuels, including energy to support transportation, electricity, and heating needs.[89] On the latter topic the legislature has already found, within its cogenerating power plant policy, that there are potential "significant public benefits" to providing heating by more efficient use of technology and fuel, substituting other power sources "for scarce oil and natural gas, the

[88] Ex. SC-4 at 20:6-14 (Twite Rebuttal).
[89] Ex. SC-4 at 7:15-19 (Twite Rebuttal).

substitution of domestic fuel for imported fuel, and the establishment of a reliable, competitively priced heat source."[90] Similarly, in terms of electrical demand, renewable energy is already demonstrably better than the alternative :

> Utility-scale solar photovoltaic and wind generation are being deployed rapidly as technology has improved and installation costs have fallen. For example, Xcel Energy, the state's largest electric utility, produced just 3 percent of its electricity from wind in 2005; by 2021, Xcel will generate one-third of its electricity from wind. These energy sources could be regulated under the CN threshold for a "large energy facility" if they are larger than 50,000 kilowatts, but due to their scalability they can also meet large electric energy demand through the addition of smaller generating facilities to the overall electric grid without needing a CN.[91]

A third societal need that can be met with renewable energy is transportation. Be it through electrically-powered mass transit (i.e. electric buses or the light rail system) or personal Electric Vehicles (EVs), these technologies are being deployed to replace fossil-fuel-dependent systems. As Mr. Twite testified:

> many electric vehicle models—both light-duty and heavy-duty—are on the market today. Electric vehicles are viable technologies capable of meeting Minnesotans' transportation needs. In the near-term, new electric vehicles will be able to be powered by the existing electricity generation mix, and, as electric vehicle adoption increases, new generation from wind and solar photovoltaics can meet the increased demand for electricity."[92]

Hence, while intervening parties have not proposed a single large energy facility as an alternative to the proposed project, they did not need to do so. The testimony and supporting documentation in the record on available technologies, all of which are flexible

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[90] Minn. Stat. § 216B.166 (2017).
[91] Ex. SC-4 at 7:6-12 (Twite Rebuttal).
[92] Ex. SC-4 at 24:6-10 (Twite Rebuttal).

and scalable up to the demand of Minnesota's entire population, shows that there are many better alternatives to the proposed project that are already being adopted by the market at a speed and scale that is making oil obsolete in energy applications.

C. Parties Have Demonstrated that the Consequences to Society of Granting Enbridge's CN Are Likely to Be Catastrophic

The overwhelming, widespread, and permanent environmental, economic, and social costs of the L3R project as compared to its very limited benefits to Enbridge and its shipper customers is an independent reason for denying the L3R CN application.

The record before the ALJ and Commission contains volumes of expert testimony, data, and analysis that demonstrates with little room for doubt that construction and operation of the L3R pipeline will have definite and serious implications in terms of increasing carbon pollution that contributes to climate change and adverse human and environmental health impacts.

Climate scientist Dr. Abraham provided in his witness testimony that: "There are no fuels more harmful than tar sands. On a comparison basis, tar sands emit more carbon dioxide than conventional oil or coal."[93] Abraham further provided detailed analysis of the multiple ways in which the L3R project, if approved, would increase emissions that affect the global climate. First, the extraction of bitumen from tar sands is more energy intensive than that of conventional crude oil and involves the combustion of natural gas and petcoke, both

[93] Ex. YC-14 at 2 (Abraham Direct).

of which produce additional carbon dioxide emissions.[94] Second, because the L3R pipeline would operate at at least double the capacity of the existing Line 3 pipeline, its "well-to-wheel" emissions would also be significantly greater, totally to the equivalent daily emissions of 16-18 million cars or 23-26 coal plants.[95] As stated by Abraham:

> Emissions from the proposed pipeline would continue [the trend in global warming] for the foreseeable future and make emissions reductions more challenging. This an often forgotten factor--construction of infrastructure like a new pipeline will lock us into continued emissions of greenhouse gases for decades.[96]

The human and environmental costs of climate change will be profound and irreparable. Without significant reductions in greenhouse gas emissions, warming temperatures will contribute to growing sea level rise that stands to displace 150,000,000 people.[97] However, one need not look too far geographically or into the future to see the dire consequences of climate change impacts. Data from NASA shows that the United States, including Minnesota, have had three of the hottest summers on record in 2006, 2011, and 2012. The consequences have included significant economic losses in agriculture resulting from severe droughts and excessive heat.[98] In Minnesota, changes in climate are contributing to more extreme rainfall and flood, as well as excessive heat and drought.[99] These changes in climate also have impacts on human health because they are increasing the habitable range of

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[94] ***Id.*** at 4.
[95] ***Id.***
[96] ***Id.*** at 6.
[97] ***Id.*** at 7.
[98] ***Id.*** at 8.
[99] ***Id.*** at 13.

mosquitos and ticks that can infect humans with disease, increase the risks of food- and water-borne infections, produce deadly extreme weather events like hurricanes and wildfires, and negatively impact outdoor air quality.[100]

In addition to greenhouse gases, the burning of tar sands oil produces other pollutants including carbon monoxide, nitrogen oxides, and particulate matter than contribute to respiratory disease and premature death. Peer-reviewed research in the record indicates that emissions from road transportation and electricity generation are the two largest contributors to premature death from air pollution, resulting in over 100,000 premature deaths per year nationwide.[101] Data and analysis from the Minnesota Pollution Control Agency and the Minnesota Department of Health that is in the record indicates that ozone and particulate matter pollution contributes to 2,000 deaths, 400 hospitalizations, and 600 emergency room visits per year just in the Twin Cities.[102]

The L3R pipeline also poses the risk of enormous environmental damage and economic losses from an oil spill or spills. The risk of an oil spill is significant because of both its probability given the performance of other Enbridge pipelines and those of other pipeline companies, and the magnitude of its adverse impacts. These consequences of an oil spill are further magnified by the enormous costs of clean up, which are often shared if not borne by taxpayers, and the impossibility of completely restoring affected ecosystems and

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[100] ***Id.*** at 15.
[101] Ex. SC-9 at 198 (Twite Rebuttal, Sched. 5).
[102] Ex. SC-10 at 4 (Twite Rebuttal, Sched. 6).

habitats. Once again, because the L3R pipeline would carry tar sands oil, the environmental impacts of a spill would be worse than with conventional crude oil, especially when the contaminated medium is water, because the dense bitumen in tar sands oil sinks and adheres to sediment where it is particularly difficult to remediate.[103]

Witness Dr. Kornheiser, Vice President of the Kalamazoo River Watershed Council, provided direct testimony about causes of the 2010 Enbridge Line 6b oil spill into the Kalamazoo River in Michigan, which spilled 1 million gallons of oil into the river in less than 18 hours, as well as the costs, challenges, and outcomes of the spill cleanup, river habitat restoration, and the penalties associated with those efforts. According to Dr. Kornheiser's testimony and the findings of the National Transportation Safety Board, the Line 6b spill was the result of Enbridge's inadequate maintenance practices and failure to address known defects in the pipeline, as well as the lack of adequate regulatory oversight.[104] The magnitude of the spill was worsened by the failure of Enbridge's control staff to identify that a rupture had occurred and then to respond to it properly but to, instead, make the spill worse by increasing pressure in the pipeline to respond to the drop in flow they had detected as a result of the rupture.[105] Kornheiser described how the spill was only identified once residents started to smell it.[106]

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[103] Ex. SC-1 at 9 (Kornheiser Direct).
[104] ***Id.*** at 5 and Ex. SC-2 (Kornheiser Direct, App. 1).
[105] Ex. SC-1 at 6 (Kornheiser Direct).
[106] ***Id.***

As was the case with the Line 6b spill into the Kalamazoo River, an oil spill from the proposed L3R pipeline would produce significant environmental contamination and human health impacts. Volatile pollutants from the spill like benzene would evaporate into the air and present health risks for residents and first responders, especially if the spill went undetected for a period of time (320 were made ill by the Line 6b spill).[107] The spilled oil would travel for miles with the flow of water to adjacent rivers and streams and contaminate shorelines, sediment, and plantlife.[108] Testimony from aquatic ecologist and wild rice expert Nancy Schuldt explained that the spill of oil from the L3R pipeline in northern Minnesota would be especially problematic because the areas shallow groundwater table.[109] She further testified that a spill into an aquatic environment would effects "the nesting areas and food sources for a variety of plants, birds, fist, and other animals."[110] Because, as explained above, tar sands oil is able to reach and contaminate sediments more readily that conventional crude oil, a spill from the L3R pipeline would also affect crayfish, mussels, and the larger animals that eat them.[111]

An oil spill from the L3R pipeline would also create significant economic costs for the state and people of Minnesota were it to shut down fishing, boating, and other outdoor recreational activities (as did the Line 6b spill, in some instances permanently) which

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[107] ***Id.*** at 7.
[108] ***Id.*** at 8.
[109] Ex. FDL-2 at 6 (Schuldt Direct).
[110] ***Id.***
[111] ***Id.***

constitute economic sectors for some of the areas in Minnesota through which the proposed pipeline would run. The Line 6b spill also forced 150 families to relocate and several homes to be abandoned.[112] As explained by witness Nancy Schuldt, the need to relocate would be existentially devastating for treaty-rights-holding indigenous groups who cannot relocate their land and resources for which they hold treaty rights.[113]

Particularly alarming is the opinion that Dr. Kornheiser provided based on his experience participating in the cleanup and remediation efforts of the Line 6b spill. He testified:

> I have grave concerns that Enbridge is committed to putting safety and environmental protection above profit and cost considerations. Part of the settlement between Enbridge and the US EPA and Department of Justice was a requirement for improved surveillance, maintenance and safeguards of other pipelines in the Great Lakes region in the future. However, it appears that Enbridge is resisting this exact process regarding another major oil pipeline in Michigan, Line 5 rather than providing maximal compliance and cooperation.[114]

In comparison to these enormous, widespread, and enduring environmental, economic, and social costs, the benefits to society of building the L3R pipeline are minimal, if any. Indeed, as described in previous sections of this brief, the oil transported on L3R is not needed by consumers nor even really by local refineries. The only benefits to society of building the L3R pipeline that have been asserted in these proceedings is the creation of jobs. However, ample evidence in the record demonstrates that the current tight labor

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[112] Ex. SC-1 at 13 (Kornheiser Direct).
[113] Ex. FDL-2 at 9 (Schuldt Direct).
[114] ***Id.*** at 14.

market combined with the barriers to entry to the pipeline labor force seriously throw doubt on these claims.[115] At the same time, however, testimony on the record demonstrates that renewable energy creates more long-term jobs and more economic benefits to Minnesota than oil-based infrastructure does.[116]

D. All Applicable Policies Argue Against Minnesota Increasing Reliance on Foreign Oil, Contrary to Both State and National Initiatives

Both state and national policies currently in force argue against approval of Enbridge's applications. The State of Minnesota has a strong preference for clean energy and a high-tech renewable energy future, including mandates for the Commission to promote electric vehicles and aid in the curtailment of climate change pollution. At the national level the Trump Administration is clear that it will go to great lengths to promote domestic energy production.

1. Minnesota law and policies require the Commission to promote clean energy and move the energy system away from high-pollution fuel sources like tar sands oil

Minnesota law favors renewable energy use and moving away from fossil fuel infrastructure projects. It is contingent on the the Commission's to be consistent in this permitting decision with its other statutory authorities and directives. Across the Commission's and the state's policies there is a clear preference for renewable and clean technologies over imported oil.

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[115] Evid. Hrg. Tr. Vol. 7A (Nov. 13, 2017) at 56 (Joseph).
[116] Ex. SC-4 at 10 (Twite Rebuttal).

a. Electric vehicles are favored by Minnesota policies

The Commission has a primary function in increasing the adoption of EVs among customers of its regulated electric utilities. "The Minnesota Legislature has ordered the Commission to oversee special electric tariffs for EV owners who are customers of Minnesota's three investor owned utilities."[117] The intent of this policy is to promote EV ownership by lowering individual costs.[118] It would be a huge setback to the state's goals of increasing EV ownership by perpetuating the era of Canadian oil imports that depress the cost of less efficient gasoline vehicles.

Moreover, the state itself is required to purchase EVs and similar vehicles, as:

> Minnesota Statutes Section 16C.135 Subdivision 3 states: "when purchasing a motor vehicle for the central motor pool or for use by an agency, the commissioner or the agency shall purchase a motor vehicle that is capable of being powered by cleaner fuels, or a motor vehicle powered by electricity or by a combination of electricity and liquid fuel, if the total life-cycle cost of ownership is less than or comparable to that of other vehicles and if the vehicle is capable of carrying out the purpose for which it is purchased."[119]

Like the above initiative for personal EV adoption, this policy will be harmed if Enbridge is able to assure and increase the supply of tar sands oil in the Midwest for decades to come. Approving the permit would mean fewer cleaner-fuel vehicles in the state's fleet.

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[117] Ex. SC-4 at 25:2-3 (Twite Rebuttal) (citing Minn. Stat. §216B.1614.).
[118] Ex. SC-4 at 25:4-5 (Twite Rebuttal).
[119] Ex. SC-4 at 25:7-12 (Twite Rebuttal).

b. State Greenhouse Gas Reduction Goals Will Be Harmed by the Proposed Project

As Mr. Twite explained in rebuttal testimony:

> the legislature passed the greenhouse gas emissions goal for the state as Minnesota Statute Section 216H.02, the Renewable Energy Standard in Minnesota Statute Section 216B.1691, and the Solar Energy Standard in Minnesota Statute Section 216B.1691 Subdivision 2f. All Commission oversight in integrated resource planning must adhere to these goals and standards, and CN proceedings accordingly must assist in reaching the same goals on a project-by-project basis.[120]

This duty is consistent with current goals to further address Minnesota's climate pollution, in concert with other governments. Governor Dayton has committed the state to uphold the Paris Climate Agreement and Clean Power Plan, focusing the state's policy on energy conservation and renewable and cleaner energy in order to meet the emissions reductions goals.[121] Permitting the Line 3 project as conceived would make it much harder for Minnesota to meet its commitment.[122]

c. Minnesota Energy Policy Strongly Favors Conservation and Renewable Energy

Minnesota law is replete with forward-thinking energy policy (some quoted above) and reflects the foresight of a state that met energy shortages with comprehensive policy as far back as forty-four years ago. One such example, which runs wholly counter to approving

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[120] Ex. SC-4 at 26:5-10 (Twite Rebuttal).
[121] Ex. SC-4 at 26:13-18 (Twite Rebuttal).
[122] Ex. SC-4 at 27:2-5 (Twite Rebuttal).

a tar sands pipeline when efficiency and renewable alternatives are available is found in an "Energy Planning" policy in Minnesota Statute Section 216C.05, Subdivision 1, stating in part:

> The legislature finds and declares that continued growth in demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, the development and use of renewable energy resources wherever possible, and the creation of an effective energy forecasting, planning, and education program.
>
> The legislature further finds and declares that the protection of life, safety, and financial security for citizens during an energy crisis is of paramount importance.
>
> Therefore, the legislature finds that it is in the public interest to review, analyze, and encourage those energy programs that will minimize the need for annual increases in fossil fuel consumption by 1990 and the need for additional electrical generating plants, and provide for an optimum combination of energy sources and energy conservation consistent with environmental protection and the protection of citizens. . . . progress[ing] toward greater reliance on cost-effective energy efficiency and renewable energy and lesser dependence on fossil fuels in order to reduce the economic burden of fuel imports, diversify utility-owned and consumer-owned energy resources, reduce utility costs for businesses and residents, improve the competitiveness and profitability of Minnesota businesses, create more energy-related jobs that contribute to the Minnesota economy, and reduce pollution and emissions that cause climate change.[123]

The Legislature is explicit that the public interest means less use of imported fossil fuels, the opposite of Enbridge's proposal here.

d. Legislators' Comments in This Record Demonstrate their View that State Policies are against permit approval

[123] Minn. Stat. § 216C.05, Subd. 1 (2017).

Minnesota Lawmakers are on record in this case demonstrating that the applicant's proposed project is not supported by Minnesota policies. Senator John Marty explained in his public comments:

> 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.[124]

2. National Policy Supports domestic energy production, including strong support for domestic oil development, to the exclusion of foreign sources

President Trump, like his predecessors, sees domestic energy production at the center for his plans for a national energy policy. The current administration is pushing policies that support domestic energy production to the exclusion of all other energy sources.

[124] Comment by Sen. John Marty (date unknown) (Batch 12) (eDocket Nos. 201711-137314-01 (CN); 201711-137314-02 (R)).

In March of 2017 the president issued a Presidential Executive Order on Promoting Energy Independence and Economic Growth that set out his vision for the country's energy future.[125] That future is based solely on domestic energy sources:

> It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.[126]

The Executive Order required immediate action by executive agencies to "review existing regulations . . . and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. . ."[127]

Significantly, the Executive Order commanded the: EPA Administrator to "Review of Regulations Related to United States Oil and Gas Development" and "suspend, revise, or rescind" rules on emissions standards for the industry; and the Interior Secretary to review rules covering hydraulic fracturing on federal and Indian lands, oil and gas leasing rights, and a rule on "Waste Prevention, Production Subject to Royalties, and Resource Conservation" for the industry.[128]

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[125] Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 31, 2017).
[126] ***Id.*** Section 1. Policy. (a)
[127] ***Id.*** Section 1. Policy. (c)
[128] ***Id.*** Sec. 7. Review of Regulations Related to United States Oil and Gas Development.

Federal agencies have reacted. Agencies have prepared reports as required by the Executive Order,[129] and are now moving rapidly to remove "burdens" from the domestic oil and gas industry. While it would be difficult to list every agency action on this topic, a few illustrative examples are indicative of the direction of national policy:

- The Interior Department has stated that it will review and revise a rule singled out by the Executive Order, "Waste Prevention, Production Subject to Royalties, and Resource Conservation," and also has plans for its sub-agencies:
    - The U.S. Fish and Wildlife Service will review the final rule entitled "Management of Non-Federal Oil and Gas Rights."
    - The Bureau of Safety and Environmental Enforcement and/or the Bureau of Ocean Energy Management will review:
        - The proposed rule "Offshore Air Quality Control, Reporting, and Compliance."
        - The final rule "Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control."
        - The final rule "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf."[130]
- The Interior Department is in the final rulemaking stage of recission of the 2015 Bureau of Land Management Hydraulic Fracturing Rule.[131]
- The EPA has proposed to change emissions standards for new, reconstructed, and modified oil and gas well site sources of air pollution.[132]
- The EPA has proposed to remand a rule that would have controlled the storage of coal ash produced by power plants, and is in a final rulemaking stage on repealing

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[129] ***See***, ***e.g.***, U.S. Department of Interior Energy Report, 83 Fed. Reg. -----, 1733 ("Interior's review and actions are included in its Final Report on Actions that Potentially Burden Domestic Energy (Final Energy Report). This report is available on the internet at https://www.doi.gov/sites/doi.gov/files/ uploads/interior_energy_actions_report_ final.pdf.").
[130] ***Id.*** at 1733.
[131] 83 Fed. Reg. -----, 1672.
https://www.gpo.gov/fdsys/pkg/FR-2018-01-12/pdf/2017-28207.pdf
[132] ***Id.*** at 1674.

part of the Clean Power Plan that applied carbon pollution emissions limits to existing power plants.[133] Both of these actions intended to lower costs on energy production using domestic coal inputs.

- The Department of Commerce has proposed a rule that would allow the oil and gas industry to "take" (i.e. harass, injure, or kill) marine mammals (such as whales and dolphins) incidentally while surveying the outer continental shelf for extractable resources.[134]

Several of the above-mentioned agency actions are also in furtherance of Executive Order 13795 "Implementing an America-First Offshore Energy Strategy," which states findings that: "America must put the energy needs of American families and businesses first and continue implementing a plan that ensures energy security and economic vitality for decades to come;" and, "Increased domestic energy production on Federal lands and waters strengthens the Nation's security and reduces reliance on imported energy."[135] This Executive Order goes on to state: "It shall be the policy of the United States to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience. . ."[136]

Based on this order, federal agencies have acted swiftly to open the vast majority of the nation's outer continental shelf to oil production. For example, in early January 2018 the Department of Interior announced it was proposing to open up "more than 98 percent of

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[133] ***Id.***
[134] ***Id.*** 1686.
[135] 82 Fed. Reg. 20815 (Apr. 28, 2017) https://www.federalregister.gov/d/2017-09087 https://www.gpo.gov/fdsys/pkg/FR-2017-05-03/pdf/2017-09087.pdf
[136] ***Id.*** § 2.

the [Outer Continental Shelf (OCS)] resources available to consider for oil and gas leasing during the 2019-2024 period."[137] The Agency explained: "Allowing for the potential discovery of new oil and gas reserves on the OCS is consistent with the Administration's America-First Energy Strategy, which seeks to achieve energy security and resilience by reducing U.S. reliance on imported energy."[138]

While the Sierra Club in no way supports President Trump's policies described in this section, they are the national policy of the U.S. and they are designed to flood the U.S. and global markets with cheap oil. In light of this, there is no need for the Applicant's proposed project.

CONCLUSION

Enbridge's application for a Certificate of Need falls far short of the legal requirements for which Enbridge bears the burden of proof under the law. By failing to adequately demonstrate that the proposed L3R pipeline meets a need for energy, failing to show that the proposed pipeline is cheaper than more environmentally and economically beneficial renewable energy alternatives, and failing to relate the need for the proposed pipeline to the 2016 state energy policy and conservation report prepared under section 216C.18, Enbridge did not make the necessary showings for obtaining a Certificate of Need under Minnesota Statute 216B.243. Furthermore, not only has Enbridge failed to show that

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[137] Notice of Availability of the 2019-2024 Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program and Notice of Intent To Prepare a Programmatic Environmental Impact Statement, 83 Fed. Reg. 829, 830 (Jan. 8, 2018).
[138] ***Id.***

the proposed pipeline satisfies any need for energy of any relevant entity or community, it has not even shown that the proposed pipeline seeks to satisfy a need for energy. Rather, Enbridge defines the oil transported by the proposed pipeline as a commodity sold on a global market for non-energy applications outside the jurisdiction of the Commission's Certificate of Need authority. As such, Enbridge has also has fallen short of meeting its burden under Minnesota Rules 7853.0130(A). By failing to rebut evidence that cheaper renewable energy alternatives to the proposed pipeline are available, that the environmental and socioeconomic harms of the proposed pipeline far outweigh its benefits, if any, and that numerous state and federal policies are aligned against building the proposed pipeline, Enbridge also has not met its burden under Minnesota Rules 7853.0130(B)-(D).

Climate change is a scientific fact, and the proposed pipeline threatens to accelerate it further. As ALJ Schlatter wrote not too long ago:

> While estimating damages, particularly far into the future, remains a difficult problem full of uncertainty, there is now undeniable evidence that CO_2 emissions are already having a dramatic impact on the Earth and its climate. A modern proverb graphically illustrates the dichotomy of conservatism in the face of climate change: "When the last tree is cut down, the last fish eaten, and the last stream poisoned, you will realize that you cannot eat money."[139]

The time has come for the Commission to follow the direction of the Legislature and the wisdom gained from the 1970s oil embargoes, and decline permission for a Large Energy

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[139] In the Matter of the Further Investigation into Environmental and Socioeconomic Costs Under Minn. Stat. § 216B.2422, Subd. 3, Docket Nos. MPUC E-999/CI-14-643 OAH 80-2500-31888, Findings of Fact, Conclusions, and Recommendations: Carbon Dioxide Values at 127 (April 15, 2016).

Facility with no energy purpose. It might upset Enbridge that this changes "business as usual" but the business it does on old Line 3 was never permitted by the Commission. The idea that a "pre-regulation" pipeline that was built with defects and without any showing of public benefit could be "replaced" with a larger facility in a different location carrying substantially different product, thus saddling future Minnesotans with the dangers that were never properly vetted in the first place, is utterly unreasonable. In 2018 it is finally time to move towards the bold policies, first presented in the early 1970s and now found throughout Minnesota law, that will lead this state towards clean domestic energy—denying this application is entirely consistent with the state Minnesota has been, and where its leaders and people foresee it is heading towards.