BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

600 North Robert Street

St. Paul, MN 55164-0620

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East, Suite 350

St. Paul, MN 55101-2147

In the Matter of the Application of Enbridge Energy, LP, for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border	MPUC Docket No. PL-9/CN-14-916 OAH Docket No. 65-2500-32764

SHIPPERS FOR SECURE, RELIABLE AND ECONOMICAL PETROLEUM TRANSPORTATION'S POST-HEARING BRIEF

JANUARY 23, 2018

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INTRODUCTION

In February 2014, shippers on the Enbridge Energy, Limited Partnership ("Enbridge") Mainline ("Mainline") took the significant step of agreeing to pay Enbridge a surcharge ("Surcharge") to cover the cost of the Line 3 Replacement ("Project" or "L3R"). Over two-and-a-half years later, shippers reaffirmed this decision, agreeing in August 2016 to continue to support the Project by waiving a condition precedent that allowed the shippers to back out of the Project. More recently, the Shippers for Secure, Reliable and Economical Petroleum Transportation ("Shippers Group"), a group of shippers representing a cross-section of Mainline users, again demonstrated their support for the Project by intervening in this certificate of need ("CN") proceeding. Shippers have made these commitments because there is a genuine need for the Project—for which they are willing to pay.

The Mainline, including Line 3, has been plagued by chronic apportionment. Apportionment causes significant disruptions to shippers and their customers. Moreover, apportionment is projected to increase in the absence of the Project. Making matters worse, Line 3 faces pressure restrictions and more frequent repairs, including multi-year dig programs, which impairs reliability, increases apportionment, and causes shipping delays.

The Shippers Group post-hearing brief focuses on four issues. First, the Shippers Group discusses the significance of shipper support for the Project. Second, the Shippers Group reiterates the adverse consequences associated with apportionment. Third, the Shippers Group explains why these conditions are likely to persist. And fourth, the Shippers Group briefly explains why, contrary to the suggestion of some intervenors, Keystone XL, SA-04, and Spectra are not reasonable alternatives to the Project.

PROCEDURAL HISTORY

On April 24, 2015, Enbridge filed its Certificate of Need Application for the Project ("CN Application").[1] Administrative Law Judge ("ALJ") Ann O'Reilly set a due date of May 15, 2017, to intervene in the proceeding.[2] The Shippers Group filed a timely petition for intervention.[3] No party objected to the Shippers Group's petition for intervention. ALJ O'Reilly granted the Shippers Group's petition for intervention on May 31, 2017.[4]

On September 11, 2017, the Shippers Group filed its direct testimony. Paul Kahler, John Van Heyst, and Edward Shahady all testified on behalf of the Shippers Group.[5] Mr. Kahler's direct testimony focused on the impacts of inadequate pipeline capacity on shippers and formal steps shippers have taken to support the Project.[6] Mr. Van Heyst addressed upstream Canadian crude oil production and supply, including forecasts for future production.[7] Mr. Shahady addressed the consequences of constrained pipeline capacity on refiners in the United States, particularly those in the Midwest.[8]

The Shippers Group's same witnesses filed rebuttal testimony on October 11, 2017.[9] The Shippers Group's rebuttal testimony countered the contention that the Project is unnecessary as maintained in the direct testimony of Kate O'Connell, Dr. Chris Joseph, Lorne Stockman, Adam Scott, and Anthony Swift.[10] Mr. Kahler reiterated the consequences of failing to approve the Project on the adequacy, reliability, and efficiency of crude oil supplies to Enbridge's customers,

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[1] Ex. EN-1 (Certificate of Need Application).
[2] Third Prehearing Order at 4 (Oct. 12, 2016) (eDocket Nos. 201610-125629-02 (CN); 201610-125629-01 (R)).
[3] Petition to Intervene (May 15, 2017) (eDocket No. 20175-131886-01 (CN)).
[4] Fourth Prehearing Order (May 31, 2017) (eDocket No. 20175-132405-01 (CN); 20175-132406-01(R)).
[5] Ex. SH-1 (Shippers Group Direct).
[6] Ex. SH-1 at 5-10 (Shippers Group Direct).
[7] Ex. SH-1 at 10-15 (Shippers Group Direct).
[8] Ex. SH-1 at 15-18 (Shippers Group Direct).
[9] Ex. SH-2 (Shippers Group Rebuttal).
[10] Ex. SH-2 (Shippers Group Rebuttal).

the people of the State of Minnesota, and neighboring states.[11] Mr. Van Heyst rebutted Dr. Joseph's, Mr. Stockman's, Mr. Swift's, and Dr. Marie Fagan's testimony that the Shippers Group's supply forecasts were inflated.[12] Mr. Van Heyst also testified to the break-even price needed to extract Western Canadian crude oil.[13] Mr. Shahady testified to how a failure to approve the Project would adversely affect refiners and consumers in Minnesota, neighboring states, and other downstream locations.[14]

On surrebuttal two of the Shippers Group witnesses filed testimony, Mr. Kahler and Mr. Van Heyst.[15] The Shippers Group's surrebuttal testimony focused solely on Mr. Stockman's rebuttal testimony.[16] Mr. Van Heyst addressed errors in Mr. Stockman's rebuttal testimony concerning crude oil forecasts and the performance of Steam-Assisted Gravity Drainage ("SAGD") or Cyclic-Steam Stimulation ("CSS") extraction facilities.[17] Mr. Kahler addressed inaccuracies in Mr. Stockman's statements regarding the impacts of denying the Project on crude-oil-by-rail shipments ("crude-by-rail shipments").[18]

After pre-filed testimony was submitted, ALJ O'Reilly held an evidentiary hearing on November 1-3, 6, 8-9, 13-17, and 20, 2017.[19] The Shippers Group's witnesses appeared for cross-examination on November 15, 2017.[20] After the hearing, ALJ O'Reilly issued a First Post-

[11] Ex. SH-2 at 2-16 (Shippers Group Rebuttal).
[12] Ex. SH-2 at 17-28 (Shippers Group Rebuttal).
[13] Ex. SH-2 at 17-18 (Shippers Group Rebuttal).
[14] Ex. SH-2 at 28-32 (Shippers Group Rebuttal).
[15] Ex. SH-3 (Shippers Group Surrebuttal).
[16] Ex. SH-3 (Shippers Group Surrebuttal).
[17] Ex. SH-3 at 2-7 (Shippers Group Surrebuttal).
[18] Ex. SH-3 at 7-11 (Shippers Group Surrebuttal).
[19] Evid. Hrg. Tr. Vols. 1A-12B.
[20] Evid. Hrg. Tr. Vol. 9A at 16-137 (Shippers Group).

Hearing Order. The Order directed parties to file post-hearing briefs by December 31, 2017.[21] ALJ O'Reilly later revised the due date for post-hearing briefs to January 23, 2018.[22]

ARGUMENT

The Shippers Group testimony has focused on the pressing need for the Project. The need for L3R is clear: the Mainline is currently facing chronic apportionment. For 37 of the past 42 months between June 2014 and November 2017, the Mainline has been in apportionment.[23] Between June 2014 and May 2017,[24] monthly apportionment averaged over 23 percent.[25] Projections indicate that apportionment is likely to worsen. The restoration of Line 3's capacity would largely resolve apportionment problems. Therefore, "denial [of the Project] 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 . . . ."[26] Denying the CN will not only adversely affect the future adequacy, reliability, *and* efficiency of energy supply for shippers (i.e., the applicant's customers), but will negatively impact the people of Minnesota and neighboring states.

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[21] First Post-Hearing Order at 4 (November 22, 2017) (eDocket No. 201711-137611-01 (CN) eDockets No. 201711-137610-01 (R)).
[22] Fourth Post-Hearing Order at 5 (January 11, 2018) (eDocket No. 201711-137611-01 (CN) eDockets No. 20181-138800-01(R)).
[23] *See* EN-38, Sched. 2 (Glanzer Rebuttal); Evid. Hrg. Tr. Vol. 9A at 41 (Shippers Group).
[24] The Shippers Group is unaware of any record evidence regarding the percentage of apportionment on the Mainline between June 2017 and November 2017.
[25] *See* EN-38, Sched. 2 (Glanzer Rebuttal).
[26] Minn. R. 7853.0130A.

I. SHIPPERS' AGREEMENT TO THE SURCHARGE DEMONSTRATES THE PROJECT IS NEEDED.

A. Shippers Agreed to Raise Their Tolls and Reaffirmed that Decision.

Nearly four years ago, the Representative Shippers Group ("RSG") approved Enbridge's Issue Resolution Sheet ("IRS").[27] In the IRS, the shippers agreed to a base Surcharge of US$0.80/barrel ("bbl") to underwrite the Project. The Surcharge is added to *all barrels transported* on the Mainline, not just those shipped on Line 3, and is adjusted for throughput per Appendix B of the IRS.[28] The Surcharge increases if shippers transport lower-than-expected amounts on the Mainline.[29] Moreover, in the IRS, shippers agree that should the "RSG vote to terminate the [Project], the RSG will support recovery of all costs incurred as a result of terminating the [Project] through cost recovery to be negotiated and agreed to by Enbridge and the RSG."[30]

Shippers are sophisticated and knowledgeable parties who collectively agreed to the Surcharge to underwrite the Project only after each shipper individually analyzed their respective future crude oil shipping needs.[31] Specifically, before shippers consent to increased tolls, they rely on forecasts of multiple uncertain variables, including supply, demand, and the evolution of the transportation system.[32] The process can take several years.[33] Shippers' incentive to

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[27] Ex. SH-1 at 9 (Shippers Group Direct).
[28] EN-1, Appx. D at 4 (Issue Resolution Sheet).
[29] EN-1, Appx. D at 4-5, 10-11 (Issue Resolution Sheet).
[30] EN-1, Appx. D at 3 (Issue Resolution Sheet).
[31] Ex. SH-2 at 15 (Shippers Group Rebuttal); *see also In re Application of Enbridge Energy LP for a Certificate of Need for the Line 67 Station Upgrade Project – Phase 2*, PUC Docket No. CN-13-153, Findings of Fact, Summ. of Public Test., Conclusions of Law and Recommendation at 18 (June 12, 2014) ("Enbridge's shippers are knowledgeable and sophisticated parties. It is doubtful that these firms would underwrite capacity expansions on Line 67, through increased tolls, if a pipeline company could increase the amounts of heavy crude oil transported along this line without new infrastructure.").
[32] Ex. SH-2 at 15 (Shippers Group Rebuttal).
[33] Ex. SH-2 at 15 (Shippers Group Rebuttal).

accurately assess the need for the Project is accentuated given the possibility that pursuant to the IRS, Enbridge may be able to recover costs from shippers if the Project is terminated.

After their initial commitment in February 2014, Shippers reaffirmed their agreement to pay the Surcharge in August 2016. The IRS allowed the RSG to terminate the Project if Enbridge did not receive regulatory approval by July 2016.[34] This condition precedent was not satisfied.[35] After receiving notice that the condition had not been met, the RSG waived the condition precedent, agreeing to proceed with the Project and pay the Surcharge once the Project goes into service.[36] The timing of the shippers' waiver of the condition precedent is significant. The shippers agreed to the Surcharge in February 2014, a time of relatively high crude oil prices.[37] But they waived the condition precedent in August 2016, after crude prices had dropped over 50 percent to around $45/bbl.[38] This reaffirmation of the commitment after crude oil prices had declined demonstrates that a relatively low-crude-oil-price environment has not diminished the need for the Project. It is also worth noting that the RSG waived this condition despite that it was clear that the Project would not meet the target in-service date of the third quarter of 2017.[39] There is likely no greater evidence of the Project's need than shippers waiving the condition precedent despite a low-crude-oil prices environment and despite the prospect of possibly paying for costs incurred as a result of the Project being terminated.

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[34] EN-1, Appx. D at 2 (Issue Resolution Sheet).
[35] Ex. SH-1 at 10 (Shippers Group Direct).
[36] Ex. SH-1 at 10 (Shippers Group Direct).
[37] Ex. SH-2 at 15 (Shippers Group Rebuttal).
[38] Ex. SH-2 at 15 (Shippers Group Rebuttal).
[39] *See* EN-1, Appx. D at 2 (Issue Resolution Sheet).

B. Shippers Have Strong Incentives to Use the Increased Capacity on the Mainline.

Some intervenors[40] and the Department of Commerce ("Department")[41] were concerned that the Enbridge system was not underpinned by long-term contracts with individual shippers. The implication was that "pay-as-you-go," as the Department[42] seemed to indicate, might put the restored Line 3 capacity at greater risk of underutilization. As Mr. Van Heyst stated during the evidentiary hearing, the Surcharge is properly understood as an agreement between shippers as a whole and Enbridge.[43] Under the IRS, the Surcharge is adjusted based on the volume of crude oil shipped on the Mainline.[44] On the one hand, for every 50,000 barrels per day ("bpd") below 2,350,000 bpd shipped on the Mainline, the Surcharge increases by US$.04/bbl.[45] On the other hand, for every 50,000 bpd over 2,835,000 bpd, the Surcharge reduces by US$.035.[46] So the impact of any underutilization is not the problem that intervenors make it out to be. Unlike rate-regulated utilities the Commission oversees, the economic consequences of underutilization of the Mainline are a matter between Enbridge and its shippers and will not be directly borne by Minnesotans.

History also supports that the Project will be used. Enbridge declared apportionment on the Mainline eight of the first eleven months of 2017.[47] Shippers' strong financial incentive to use L3R and the heavy use of the Mainline through this year give lie to the notion that the increased capacity will go unused if the Project is built.[48]

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[40] Evid. Hrg. Tr. Vol. 9A at 69-75 (Shippers Group).
[41] Evid. Hrg. Tr. Vol. 9A at 83-86 (Shippers Group).
[42] Evid. Hrg. Tr. Vol. 9A at 83-86 (Shippers Group).
[43] Evid. Hrg. Tr. Vol. 9A at 73, 86 (Shippers Group).
[44] *See* EN-1, Appx. D at 4-5, 10 (Issue Resolution Sheet); Evid. Hrg. Tr. Vol. 9A at 86 (Shippers Group).
[45] *See* EN-1, Appx. D at 4-5, 10 (Issue Resolution Sheet).
[46] *See* EN-1, Appx. D at 4-5, 10 (Issue Resolution Sheet).
[47] Evid. Hrg. Tr. Vol. 9A at 26, 41-42 (Shippers Group).
[48] In response to a question whether shippers would use L3R, Mr. Kahler testified during the hearing, "Yes, shippers will use the line." Evid. Hrg. Tr. Vol. 9A at 40 (Shippers Group).

II. INADEQUATE PIPELINE CAPACITY CAUSES ADVERSE CONSEQUENCES TO MINNESOTANS, NEIGHBORING STATES, AND SHIPPERS.

The inadequate pipeline capacity serving the Midwest creates inefficiencies borne by Midwest consumers. These problems can spill over into other sectors. Apportionment means that shippers cannot obtain all the Mainline capacity they desire.[49] Therefore, shippers cannot transport on the Mainline all the crude oil demanded by connected refiners.[50] In the 42 months between June 2014 and November 2017, apportionment was declared in all but five months.[51] Chronic apportionment persisted during this time notwithstanding that the Line 67, Phase I and II capacity increases were put in service in September 2014 and July 2015, respectively.[52]

In the first part of 2017, heavy apportionment ranged from 20 to 40 percent.[53] Verified-heavy-crude-oil nominations on the Mainline averaged around 2.8 million bpd during the first nine months of 2017.[54] Apportioning 2.8-million bpd between 20 and 40 percent means shippers were unable to move between 560,000 and 1,120,000 bpd due to apportionment. To ship these barrels, shippers had to resort—if possible—to other methods of shipping crude, such as crude-by-rail.[55] Crude-by-rail shipments are less efficient and more expensive.[56] These inefficiencies may indirectly increase prices for consumers.[57]

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[49] Ex. SH-1 at 6 (Shippers Group Direct).
[50] Ex. SH-1 at 6 (Shippers Group Direct).
[51] *See* EN-38, Sched. 2 (Glanzer Rebuttal); Evid. Hrg. Tr. Vol. 9A at 41 (Shippers Group).
[52] EN-38, Sched. 2 (Glanzer Rebuttal).
[53] Evid. Hrg. Tr. Vol. 9A at 41 (Shippers Group).
[54] *See* EN-38, Sched. 3 at 9 (Glanzer Rebuttal).
[55] Ex. SH-2 at 7 (Shippers Group Rebuttal).
[56] Ex. SH-2 at 7 (Shippers Group Rebuttal); *In re Application of Enbridge Energy, LP for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project – Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Docket No. PL-9/CN-13-153, Order Granting Certificate of Need at 8-9 (Nov. 7, 2014); *In re Application of N. Dakota Pipeline Co. for a Certificate of Need for Sandpiper Pipeline Project in Minn.*, Docket No. PL-6668/CN-13-473, Order Granting Certificate of Need with Conditions at 28 (Aug. 3, 2015).
[57] *See* Ex. SH-2 at 29-30 (Shippers Group Rebuttal).

The effects of these inefficiencies are not confined in the energy sector.[58] As discussed in the Government of Alberta's comments, increased crude-by-rail traffic has led agricultural producers to experience backlogs in attempting to transport their product by rail.[59] Similarly, Minnesota's iron ore industry has had trouble transporting taconite due to constrained rail logistics.[60] The Commission recognized these adverse consequence of crude-by-rail when it approved the Sandpiper CN application.[61] The Commission observed that denying the application would increase rail congestion, with negative consequences for the already constrained delivery of propane and coal, and the shipment of agricultural products.[62]

These problems will worsen if the Project is not approved. Without recovery of Line 3's capacity, apportionment is predicted to steadily increase, peaking at 38 percent in the early 2030s.[63] Indeed, although apportionment is predicted to reduce to zero percent in 2022, even with L3R, apportionment will then creep steadily upward, reaching a peak of 18 percent in the early 2030s.[64]

A. Minnesota Experiences the Negative Consequences of Apportionment Regardless of Whether Its Demand Increases.

During the evidentiary hearing, various intervenors attempted to cast apportionment as an issue caused by demand downstream of Minnesota and overseas demand—and the Project as

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[58] Comment by Government of Alberta (Nov. 21, 2017) Batch 18A (eDocket Nos. 201711-137680-01 (CN); 201711-137680-02 (R)).
[59] Comment by Government of Alberta at 6 (Nov. 21, 2017) Batch 18A (eDocket Nos. 201711-137680-01 (CN); 201711-137680-02 (R)).
[60] Comment by Government of Alberta at 6 (Nov. 21, 2017) Batch 18A (eDocket Nos. 201711-137680-01 (CN); 201711-137680-02 (R)).
[61] *In re Application of N. Dakota Pipeline Co. for a Certificate of Need for Sandpiper Pipeline Project in Minn.*, Docket No. PL-6668/CN-13-473, Order Granting Certificate of Need with Conditions at 29 (Aug. 3, 2015).
[62] *In re Application of N. Dakota Pipeline Co. for a Certificate of Need for Sandpiper Pipeline Project in Minn.*, Docket No. PL-6668/CN-13-473, Order Granting Certificate of Need with Conditions at 29 (Aug. 3, 2015) ("[D]enying the application would likely result in more petroleum being shipped by rail . . . . This would in turn increase rail congestion, with negative consequences for the already constrained delivery of propane and coal.").
[63] EN-38, Sched. 3 at 5 (Glanzer Rebuttal).
[64] EN-38, Sched. 3 at 6 (Glanzer Rebuttal).

serving only that demand.[65] First, it is worth noting that Minnesota refiners have stated that the Project is critically important and will support anticipated capacity needs at those refineries.[66]

Second, the intervenors' questioning betrays their lack of understanding of the effects of apportionment. Apportionment is determined based on total verified nominations on the Mainline. The open-access principle of the Mainline dictates that all new and old customers have the same right to access Mainline capacity.[67] To ensure new and old customers are treated equally, Enbridge's Federal Energy Regulatory Commission ("FERC")-regulated tariff requires Enbridge to reduce all Mainline shippers' verified nominations on a pro rata basis if apportionment is declared.[68] Therefore, the intervenors' premise that the Project would predominately benefit downstream demand is specious. When the Mainline is apportioned, all shippers downstream of the apportionment point face apportionment regardless of whether they are a new or legacy shipper, or have increased their nominations or not.

As illustrated in the Shippers Group rebuttal testimony, if Minnesota refineries demand remains constant but downstream demand increases by approximately 30 percent, and the Mainline is apportioned by 20 percent, Minnesota refineries will face 20-percent apportionment.[69] This, despite Minnesota refineries' demand being static. Therefore, it is irrelevant whether downstream or Minnesota demand increases; if apportionment is declared, Minnesota refiners are unable to get all the crude oil they demand, and they and their consumers will bear the adverse consequences.

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[65] *See, e.g.*, Evid. Hrg. Tr. Vol. 9A at 52-54, 64 (Shippers Group).
[66] *See, e.g.*, Comment of Flint Hills Resources (Nov. 21, 2017) (eDocket Nos. 201711-137585-01 (CN); 201711-137585-02 (R); Comment of Andeavor (Oct. 27, 2017) (eDocket Nos. 201710-136872-01 (CN)).
[67] Ex. SH-2 at 10 (Shippers Group Rebuttal).
[68] Ex. SH-2 at 9-10 (Shippers Group Rebuttal).
[69] Ex. SH-2 at 9-11 (Shippers Group Rebuttal).

B. Enbridge Has a Robust Verification Process to Ensure that Shippers Can Actually Ship the Amounts They Nominate.

During the evidentiary hearing, some intervenors attempted to raise the specter that apportionment was not a real issue on the Mainline suggesting that shippers nominate more barrels than they could ship.[70] This is not a significant issue. On the Mainline, apportionment is declared based on *verified* nominations, not simply the nominations shippers make.[71] To verify the nominations, an officer of each destination facility (e.g., refineries) must submit a sworn affidavit—under penalty of perjury—that the facility can accept the nominations being sent to it.[72] Additionally, if apportionment is declared and a shipper does not ship all the crude oil it nominates, the shipper is subject to penalty.[73] Heavy apportionment on the Mainline ranged from 20 to 40 percent during the first seven months of 2017.[74] To suggest over nominations cause this high level of apportionment assumes Enbridge's rigorous verification process, which has been accepted by FERC, cannot identify over nominations of 20 to 40 percent.

III. CREDIBLE FORECASTS INDICATE THAT APPORTIONMENT IS LIKELY TO PERSIST INTO THE FUTURE.

Because the supply of Western Canadian crude oil is likely to continue to increase, if the Project is not approved apportionment is likely to continue and get worse. The Canadian Association of Petroleum Producers ("CAPP") forecasts that Western Canadian crude oil supply will increase by 1.3-million bpd by 2030.[75] This represents an approximately one-third increase in supply.[76] Intervenors attempted to undermine these projections by questioning the accuracy of

[70] *See, e.g.*, Evid. Hrg. Tr. Vol. 1B at 77-80 (Glanzer).
[71] Evid. Hrg. Tr. Vol. 1B at 77 (Glanzer); Evid. Hrg. Tr. Vol. 9A at 42 (Shippers Group).
[72] *See* Evid. Hrg. Tr. Vol. 1B at 79 (Glanzer).
[73] Evid. Hrg. Tr. Vol. 1B at 57, 75 (Glanzer); Evid. Hrg. Tr. Vol. 9A at 67 (Shippers Group).
[74] *See, e.g.*, Evid. Hrg. Tr. Vol. 9A at 41 (Shippers Group).
[75] Ex. SH-1 at 12 (Shippers Group Direct).
[76] *See* Ex. SH-1 at 12 (Shippers Group Direct).

CAPP forecasts.[77] In response to these critiques, the Shippers Group notes that the Commission has seen fit to rely on CAPP forecasts in issuing certificates of need in the past.[78] Moreover, CAPP forecasts are in-line with other forecasts—including forecasts promoted by the intervenors. For example, the Canadian National Energy Board predicts that Western Canadian crude oil production will increase by 1.257-million bpd between 2017 and 2030.[79] Similarly, the Alberta Energy Regulator predicts bitumen production growth of 1.34-million bpd in Alberta between 2016 and 2026.[80] These numbers are in-line with the CAPP forecast of 1.3 million bpd by 2030. CAPP's forecasts are also consistent with some intervenor forecasts. For instance, the 2017 CAPP Production Forecast predicts an increase in production of between 467,000 bpd between 2018 and 2021.[81] During the same time period, the Rystad Base Case, relied on by Mr. Stockman, predicts an increase of 440,000 bpd.[82] The modest six-percent difference between the two forecasts hardly suggests the CAPP forecast is artificially inflated.

Moreover, the methodology CAPP uses to collect the forecasts have benefits over other forecasts relied on by intervenors. CAPP's annual forecast is based on a survey of its producing members.[83] CAPP members are engaged in the exploration, development, and production of Canadian crude oil and have on-the-ground knowledge of crude oil markets and their own plans.[84] Moreover, in creating its composite forecast, CAPP weighs the survey responses based

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[77] *See, e.g.*, Ex. HTE-2 at 23 (Lorne Stockman Direct); Ex. DER-4 at 23 (Marie Fagan Direct).
[78] *See, e.g.*, *In re Application of Enbridge Energy, LP for a Certificate of Need for the Line 67 (Alberta Clipper) Station Upgrade Project – Phase 2 – in Marshall, Clearwater, Itasca, Kittson, Red Lake, Cass, and St. Louis Counties*, Docket No. PL-9/CN-13-153, Order Granting Certificate of Need at 14-15 (Nov. 7, 2014) (collecting examples of the Commission's reliance on CAPP forecasts and relying on CAPP forecasts to grant a Certificate of Need).
[79] Ex. SH-1 at 13 (Shippers Group Direct).
[80] Ex. SH-1 at 13 (Shippers Group Direct).
[81] Ex. SH-3 at 5 (Shippers Group Surrebuttal).
[82] Ex. SH-3 at 4 (Shippers Group Surrebuttal).
[83] Ex. SH-1 at 13 (Shippers Group Direct).
[84] Ex. SH-2 at 20 (Shippers Group Rebuttal).

on each of the company's track record regarding project development.[85] Consequently, if a producer has a history of being overly ambitious in its predictions, CAPP will give relatively less weight to that producer's predictions.[86] By relying on members' predictions, CAPP's forecasts reflect the then prevailing crude-oil-price environment.[87] It is no surprise then that CAPP's 2016 and 2017 forecasts are the lowest of any recent year, reflecting the then-current low-crude-oil price environment.[88]

For these reasons, the Shippers Group urges the Commission to rely on the CAPP forecasts as it has done in the past.

IV. NONE OF THE ALTERNATIVES PROPOSED BY OTHER PARTIES ARE REASONABLE ALTERNATIVES TO THE PROJECT.

During the hearing, Keystone XL was again advanced by intervenors as a potential reasonable alternative to the Project.[89] Keystone XL simply does not serve the demand the Project would serve.[90] The Project will serve refiners connected to the Mainline via Clearbrook, Minnesota, and Superior, Wisconsin.[91] Keystone XL is designed to serve the Gulf Coast.[92] Although Keystone XL may have the capability to make crude oil deliveries at Cushing, Oklahoma, there is limited eastbound pipeline capacity from Cushing to serve Midwest refineries and none to serve Minnesota refineries.[93] Therefore, Keystone XL is not a realistic alternative to serve Midwest demand. In fact, if Keystone XL is built and the Project is not built, Keystone XL could harm the Midwest by diverting the supply of Western Canadian crude needed to meet

[85] Ex. SH-3 at 3 (Shippers Group Surrebuttal).
[86] Ex. SH-3 at 3 (Shippers Group Surrebuttal).
[87] Ex. SH-2 at 21, 24-25 (Shippers Group Rebuttal).
[88] Ex. SH-2 at 23-24 (Shippers Group Rebuttal).
[89] Evid. Hrg. Tr. Vol. 9A at 29-32 (Shippers Group).
[90] Evid. Hrg. Tr. Vol. 9A at 40 (Shippers Group).
[91] Ex. EN-1 (Certificate of Need Application).
[92] Evid. Hrg. Tr. Vol. 9A at 32 (Shippers Group).
[93] Ex. SH-2 at 32 (Shippers Group Rebuttal).

Midwest demand.[94] Decreasing Midwest available supply will tend to increase crude oil costs. Additionally, Midwest refiners will have difficulty accessing their most preferred source of crude oil.[95]

Regarding System Alternative-04 ("SA04"), "[n]ot only does SA-04 fail to provide a *more* reasonable and prudent alternative than the proposed Project, it is not a reasonable or prudent alternative at all.[96] SA-04, unlike the Project as proposed, does not connect to Clearbrook[97] or Superior.[98] For this and other reasons, no one has proposed to build SA-04, no engineering work has been completed, and no commercial support efforts have been initiated.[99] Even worse, SA-04 is estimated to cost $3 billion more than the Project.[100]

The Spectra Pipeline System ("Spectra") is likewise not a reasonable alternative to the Project. Like SA-04 and Keystone XL, Spectra serves neither Clearbrook nor Superior.[101] Moreover, a recent Spectra open season seeking shipper support failed to receive commercial support.[102] Finally, as with SA-04, no party is proposing to actually build Spectra, no significant engineering work has been done, and no regulatory efforts have been started.[103] For these reasons, Spectra is not a reasonable alternative to the Project.

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[94] Ex. SH-2 at 32 (Shippers Group Rebuttal).
[95] Ex. SH-2 at 30-32 (Shippers Group Rebuttal).
[96] Ex. SH-2 at 12 (Shippers Group Rebuttal).
[97] Ex. SH-2 at 12 (Shippers Group Rebuttal).
[98] Ex. EN-38 at 9 (Glanzer Rebuttal).
[99] Ex. SH-2 at 12 (Shippers Group Rebuttal).
[100] Ex. SH-2 at 12 (Shippers Group Rebuttal).
[101] Ex. EN-38 at 16 (Glanzer Rebuttal).
[102] Ex. SH-2 at 32 (Shippers Group Rebuttal).
[103] Ex. EN-37, Sched. 1 at 59 (Earnest Rebuttal).

CONCLUSION

The Shippers Group steadfastly believes the Project is needed. None of the testimony, evidence, rebuttals, or surrebuttals from others have changed this conviction. The facts support the Shippers Group's position.

Shippers, who are Enbridge's customers, remain committed to the Project, which is fully developed, funded, and ready to be executed. Shippers agreed to the Surcharge to cover the cost of the Project. If Mainline utilization does not unfold as shippers expect, shippers will pay a higher Surcharge (as adjusted per the IRS). Shippers and Enbridge, not Minnesota citizens, bear the costs and risks.

Failure to approve the Project would harm the future adequacy, reliability, and efficiency of energy supply of all stakeholders dependent on the Mainline (including Minnesota) because:

- The Mainline (including Line 3) has been plagued by chronic apportionment, which adversely affects the adequacy and efficiency of supply to Minnesota, neighboring states, and beyond.
- Existing Line 3 operates subject to ongoing pressure restrictions and repairs, including multi-year dig programs, which impairs reliability, increases apportionment, and causes shipping delays.
- Mainline apportionment is predicted to worsen. Mainline apportionment affects all shippers, whether their shipments are destined for Minnesota or further downstream. Apportionment on the Mainline means shippers must seek less efficient and more expensive alternatives to transport their crude oil, such as crude-by-rail.
- Pipeline alternatives to the Project, like Keystone XL or Spectra, fail to serve the demand connected to the Mainline. SA-04 is a concept, does not connect to Clearbrook or Superior; lacks commercial development, funding, and engineering; and is estimated to cost $3 billion more than the Project.

For these above reasons, the Shippers Group recommends that the Commission approve the CN.

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DORSEY & WHITNEY LLP

By /s/ Michael J. Ahern
Michael J. Ahern (#0000668)
ahern.michael@dorsey.com
Brian B. Bell (#0395215)
bell.brian@dorsey.com
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
Facsimile: (612) 340-2868

ATTORNEYS FOR INTERVENOR SHIPPERS FOR SECURE, RELIABLE, AND ECONOMICAL PETROLEUM TRANSPORTATION