

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 NORTH ROBERT STREET  
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**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
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Chair  
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**In the Matter of the Application of  
Enbridge Energy, Limited Partnership for a  
Certificate of Need for the Line 3  
Replacement – Phase 3 Project in  
Minnesota from the North Dakota Border  
to the Wisconsin Border**

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

**POST-HEARING BRIEF OF THE  
UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES  
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**JANUARY 23, 2018**

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## **I. INTRODUCTION**

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (“United Association” or the “UA”) respectfully submits this Post-Hearing Brief in order to provide the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) with its analysis of the socioeconomic and reliability benefits of the Line 3 Replacement Project (“Line 3 Replacement” or the “Project”), as proposed by Enbridge Energy, L.P (“Enbridge” or the “Applicant”). The Rules related to the granting of a certificate of need require that the ALJ and the Commission consider the socioeconomic effect of the Project compared to both the “No Action” alternative and to “reasonable” system alternatives. Compared to both the “No Action” and the system alternative options before the ALJ and the Commission, the Project promises to provide far greater socioeconomic benefits and reliability advantages to the State of Minnesota and its residents. These benefits should be weighed accordingly in the certificate of need decision.

## **II. FACTS**

### **A. The Project**

The purpose of the Project is to replace Enbridge’s existing Line 3, which is a 1,097-mile pipeline that has been in operation since the 1960s through Canada, North Dakota, Minnesota, and Wisconsin.<sup>1</sup> In Minnesota, the Project would entail new construction of approximately 340 miles of 36-inch diameter pipeline from its entrance into Minnesota at the North Dakota border to its exit from Minnesota at Superior, Wisconsin along with new pump stations, 27 mainline valves, and modifications to existing pump stations, including installation of new monitoring and safety

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<sup>1</sup> Ex. EN-1 at 1-5 (CN Application).

equipment.<sup>2</sup> The Project is designed to have an average annual capacity of 760 kbpd, which exceeds the current capacity of Line 3, which is 390 kbpd.<sup>3</sup> The cost of construction of the Project in Minnesota would be approximately \$2.1 billion.<sup>4</sup>

Enbridge and several witnesses, including United Association Pipeline Department International Representative David Barnett and Enbridge expert witness Dr. Richard Lichty, put forth un rebutted evidence that the Project would create thousands of jobs – both during and after construction – and generate hundreds of millions of dollars in labor income and billions of dollars in total economic output statewide.<sup>5</sup>

## **B. The United Association**

The United Association is an international labor organization representing approximately 370,000 plumbers, pipefitters, sprinkler fitters, service technicians, and welders.<sup>6</sup> Within Minnesota, the United Association has approximately 8,500 members, nine local union affiliates, and a state-wide Minnesota Pipe Trades Association, headquartered in Duluth.<sup>7</sup> The United Association also includes Local Union 798, a nationwide local of pipeliners, approximately 125 of whom reside in Minnesota.<sup>8</sup>

David Barnett's un rebutted testimony estimates that the Project would employ approximately 464 UA members in construction of the pipeline and that another 100 UA members would be employed on construction of the new pump stations associated with the

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<sup>2</sup> Ex. EN-24 at 5 (Eberth Direct), EN-22 at 7-10 (Simonson Direct).

<sup>3</sup> Ex. EN-1 at 1-6, 8-3 (CN Application).

<sup>4</sup> Ex. EN-1 at 1-1 (CN Application).

<sup>5</sup> See Ex. EN-1 at 4-5 (CN Application); Ex. EN-11 (Lichty Direct); Ex. UA-1 (Barnett Direct).

<sup>6</sup> Ex. UA-1 at 1 (Barnett Direct).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Project and that these workers would earn between \$40,000 and \$90,000 for their work constructing the Project, depending upon worker classification.<sup>9</sup> Finally, Mr. Barnett testified that another group of approximately 100 UA workers would be employed on deactivation of the current Line 3 and earn approximately \$20,000 to \$60,000 over less than half the number of work hours than other UA workers constructing the Project.<sup>10</sup>

Mr. Barnett also explained that United Association Local 798 members are among the most highly-trained, experienced, and skilled pipeline workers in the United States and are committed to updating America's infrastructure with an emphasis on safety and protection against environmental harm during construction as well as the reliability and efficiency of the end result.<sup>11</sup> In addition, Mr. Barnett's unchallenged testimony described Local 798's vast experience and involvement in every major pipeline project in the United States since receiving its charter in 1949.<sup>12</sup> Mr. Barnett also voiced his confidence that the Project, as designed, could be constructed by UA members with the result being a safe, efficient, and reliable means to transport crude oil.<sup>13</sup> Thus, these skilled workers, whose socioeconomic well-being depends so much on projects like the Line 3 Replacement project, would ensure that it is built using the best and most up-to-date techniques and according to the highest construction standards.

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<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.*

<sup>11</sup> *See* Ex. UA-1 at 4-7.

<sup>12</sup> *Id.* at 4-5, 7.

<sup>13</sup> Ex. UA-1 at 11-12.

### III. ANALYSIS

#### A. Applicable Law

Under Minnesota Administrative Rule 7853.0130, a certificate of need must be granted if:

- 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 fully 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.

The Rules provide additional considerations to evaluate the above-quoted factors, including consideration of the socioeconomic benefits of the Project. Specifically, Subpart (B)(3) requires consideration of "the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives" when determining whether a more reasonable and prudent alternative to the proposed facility has been proposed. Similarly, Subpart (C)(2) requires consideration of "the effect of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effect of not building the facility" when considering whether the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

**B. The Project Would Have a Positive Socioeconomic Effect Compared to the “No Action” Alternative.**

In deciding whether to grant a certificate of need, the Rules require that the socioeconomic effects of the Project be considered and compared to the alternative of denying the certificate of need.<sup>14</sup> The record in this case is clear that the Project would be of significant socioeconomic value to the State of Minnesota and the members of the United Association, including those who reside in Minnesota, because of the jobs and associated economic benefits it would create. In comparison, the “No Action” alternative would offer none of these economic benefits.

The importance of these socioeconomic benefits to the State of Minnesota and to the United Association’s members cannot be understated and should not be diminished because some of the jobs created will be “temporary.” Although a comparatively small amount of attention has been paid to the uncontroverted socioeconomic benefits of the Project, these benefits deserve due weight in the certificate of need decision, as required by the Rules. The Project also represents a significant safety upgrade to the existing Line 3, which the UA’s expertise in construction would help to ensure.

**1. The Project Would Create a Significant Number of Jobs.**

The record very clearly establishes that many jobs would be created as a result of the Project. Most notably, Dr. Richard Lichty, Emeritus Professor of Economics from the University of Minnesota Duluth, offered a sophisticated statistical analysis of the economic benefits of the Project with quantifiable projections of the jobs that would result from the Project both during and after construction. In addition, David Barnett, International Representative

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<sup>14</sup> MINN. ADMIN. R. 7853.0130(C.2).

assigned to the Pipeline and Gas Distribution Department of the UA, testified, based on his over 40 years of experience in the pipeline industry, about his firsthand observations of the job-creating power of numerous similar projects and the types of jobs he would expect to see flow from the Project.

In his expert analysis, Dr. Lichty employed IMPLAN, an economic input-output modeling software and data package that uses localized economic statistics organized by county, state, and zip code.<sup>15</sup> Dr. Lichty's analysis revealed that construction of the Project would be responsible for the creation of approximately 13,604 jobs and over \$2.2 billion in economic output in the State of Minnesota alone.<sup>16</sup> Over half of the 13,604 jobs created during construction (7,292) would be created as the "direct effect" of the Project, meaning they would be generated directly by construction spending associated with the Project, *e.g.*, the hiring of construction workers and purchasing of needed professional services, equipment, and supplies from the local economy.<sup>17</sup> According to Enbridge's Barry Simonson, the Company expects at least fifty percent (50%) of these workers directly employed on construction of the Project to be employed through local union halls.<sup>18</sup>

According to Dr. Lichty's IMPLAN analysis, the "indirect effect" of the Project – the money spent by local professionals and material and equipment suppliers of the Project to produce their own goods and services – would create an additional 2,481 of the 13,604 total jobs attributable to the construction of the Project in Minnesota.<sup>19</sup> The remaining 3,830 of the 13,604

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<sup>15</sup> Ex. EN-11 at 5.

<sup>16</sup> Ex. EN-11, Schedule 2 at 7 (Lichty Direct); Ex. EN-73 at 1 (Lichty Witness Summary).

<sup>17</sup> Ex. EN-11, Schedule 2 at 4 (Lichty Direct).

<sup>18</sup> Ex. EN-22 at 18 (Simonson Direct).

<sup>19</sup> Ex. EN-11, Schedule 2 at 4, 7 (Lichty Direct).



total estimated jobs from construction of the Project would be due to the “induced effect” of the Project – economic activity caused by income generated by the Project, *e.g.*, wages earned directly or indirectly from the Project and then spent on goods and services in the local economy.<sup>20</sup>

Dr. Lichy’s economic analysis of job production as an “induced effect” of the Project is supported by David Barnett’s unchallenged testimony about his observations of economic activity resulting from pipeline construction, based on his more than 40 years’ experience in the pipeline construction industry and 44,000 hours of experience in construction of similar projects. Specifically, David Barnett described the demand that pipeline workers would create for goods and services from local businesses during construction, *e.g.*, food, lodging, recreation, and other daily needs.<sup>21</sup> David Barnett’s testimony estimated that United Association workers would spend approximately \$1,000 per week in Minnesota on these goods and services during construction of the Project, boosting local businesses.<sup>22</sup>

From this body of evidence, it is clear that construction of the Project would generate many socioeconomic benefits within the State of Minnesota as well as jobs for Minnesota residents and United Association members.

## **2. The Project Would Increase Labor Income and Have a Positive Household and Total Economic Impact in Minnesota.**

Along with job creation, Dr. Lichy’s IMPLAN analysis estimated the “labor income” – the before-tax income projected to result from each category of economic benefit (direct, indirect, and induced). The total amount of labor income that Dr. Lichy’s analysis determined

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<sup>20</sup> *Id.*

<sup>21</sup> Ex. UA-1 at 11:230-235 (Barnett Direct).

<sup>22</sup> *Id.*

would be produced by the Project is \$864,721,326.<sup>23</sup> This labor income divided by the total 13,604 jobs estimated to be created by the Project yields an average income per job created of \$63,564.

David Barnett, in his uncontroverted testimony, estimated that over 550 skilled members of the United Association engaged in pipeline and pump station construction could expect to work approximately 1,440 to 1,500 hours each and earn between \$40,000 and \$90,000 during construction of the Project, depending on the work performed and classification of the worker, as well as pension contributions and health benefits for themselves and their families.<sup>24</sup> Mr. Barnett estimated that approximately 100 UA workers employed on deactivation of the existing Line 3 would work a combined 61,000 hours and earn between \$20,000 and \$50,000, depending upon worker classification, in addition to pension contributions and health benefits.<sup>25</sup> These earnings for the UA's highly-trained construction workers correspond with the numbers generated by Dr. Lichty's IMPLAN analysis. None of the aforementioned projected economic benefits of the Project would materialize if the Project is not built in favor of the "No Action" alternative.

Moreover, these projected jobs and earnings should not be diminished in significance, as some have suggested, because they may be predominantly "temporary" during the construction phase. As Mr. Barnett discussed in his direct testimony, virtually all construction jobs are temporary; the fact that they are temporary is precisely what makes them so important to construction workers, whose livelihoods depend on a steady supply of temporary employment to

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<sup>23</sup> Ex. EN-11 at 7 (Lichty Direct).

<sup>24</sup> Ex. UA-1 at 9 (Barnett Direct).

<sup>25</sup> *Id.* at 9-10.

provide complete incomes for themselves and their families.<sup>26</sup> During the evidentiary hearing, Dr. Lichty explained that: “The jobs are temporary. The industry is not. The industry depends on ongoing projects, and this is an ongoing project...the construction industry is a permanent industry like any other industry that needs a series of projects to stay viable.”<sup>27</sup> These jobs should be valued for the important and significant economic impact that they would have on Minnesota and numerous workers within the State, none of which would be realized if the Project is not approved.

**C. The Project Would Have a Positive Socioeconomic Effect Compared to SA-04.**

Minnesota Administrative Rule 7853.0130(B.3) requires consideration of “the effect of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives” when determining whether a more reasonable alternative to the Project has been proposed. Here, the FEIS for the Project analyzed SA-04, a hypothetical pipeline delivering oil directly to Joliet, Illinois and bypassing Clearbrook, Minnesota and Superior, Wisconsin. Compared to SA-04, the record is clear that the Project would have significant socioeconomic advantages

The record demonstrates that SA-04 is not a viable alternative to the Project and would not be constructed. Due to its operational shortcomings in terms of capacity and lack of connectedness to the points the Project serves, it lacks commercial support and no party proposes to build it.<sup>28</sup> As explained by the Shippers for Secure, Reliable and Economical Petroleum Transportation (the “Shippers”), the Project is supported by shippers who cannot obtain all the

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<sup>26</sup> See Ex. UA-1 at 10-11 (Barnett Direct).

<sup>27</sup> TR Vol. 1B at 161:4-9.

<sup>28</sup> Ex. EN-37, Sched. 1 at 39-40 (Earnest Rebuttal).

Enbridge Mainline capacity they need to make deliveries to the specific locations that the Project would serve (Clearbrook, Minnesota and Superior, Wisconsin) because of apportionment. These shippers do not support SA-04 as a viable system alternative because it does not meet these delivery needs.<sup>29</sup> Furthermore, no engineering or regulatory work has been done to plan for the construction of SA-04.<sup>30</sup>

For these reasons, if SA-04 were to be approved instead of the Project as proposed, the socioeconomic benefits of the Project, described above, would not come to pass because the choice of SA-04 would be the same as choosing the “No Action” alternative. Under that scenario, the socioeconomic benefits of the Project would not be realized and United Association members and all others who stand to benefit economically from the Project would be directly harmed by the associated loss of essential jobs and income. Because of this probability that SA-04 would not be built, the Project, as proposed, is far more likely to have a positive socioeconomic impact. This probability should be weighed accordingly in the decision of whether to grant the certificate of need.

**D. The Probable Result of Denial of the Project Would Adversely Affect Future Reliability of Energy Supply Within Minnesota.**

Pursuant to Minnesota Administrative Rule 7853.0130, a certificate of need must be granted if “[t]he 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.” Here, the record shows that denial of the Project’s application would adversely affect reliability of future energy supply from a safety standpoint.

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<sup>29</sup> Ex. SH-1 at 9 (Shippers Direct).

<sup>30</sup> Ex. EN-37, Sched. 1 at 39-40 (Earnest Rebuttal).

As discussed above in Section III(C), under the “No Action” alternative, the existing Line 3 would continue to operate at its existing capacity, which has been reduced by Enbridge for safety and integrity reasons to 390 kbpd.<sup>31</sup> During the evidentiary hearing, Laura Kennett, Supervisor of Pipeline Asset Integrity Projects for Enbridge, described how the methods and materials used to coat and weld the pipe in existing Line 3 make it susceptible to corrosion, cracking, and the formation of defects along its seams.<sup>32</sup> The “No Action” alternative would also mean that Enbridge would have to conduct thousands of integrity digs over the next several years to ensure the continued safe operation of the pipeline.<sup>33</sup> These integrity digs would cause disruption to the natural environment and Line 3’s ability to operate efficiently with minimal interruption.<sup>34</sup> The disruption to the natural environment caused by these integrity digs – which would involve repeated partial excavations of Line 3 for anywhere from two days to two weeks – would have to continue indefinitely year after year, compounding the disruption they would cause.<sup>35</sup> Britta Bergland, who is Senior Analyst, Shareholder, and the Chief Operating Officer of Merjent, Inc., an environmental consulting firm based in Minneapolis, Minnesota, and State Permitting Lead for the Project for Enbridge, estimated that these integrity digs would have to be performed on approximately one-half of the tracts of land through which the existing Line 3 runs for an indefinite period of time.<sup>36</sup>

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<sup>31</sup> Ex. EN-12 at 23-34 (Kennett Direct).

<sup>32</sup> See Ex. EN-12 at 12-13 (Kennett Direct).

<sup>33</sup> Ex. EERA-29 at 4-6 – 4-7; Ex EN-12 and 23-34 (Kennett Direct).

<sup>34</sup> See Ex. EN-9 at 7 (Bergland Direct).

<sup>35</sup> See *id.*; Ex. EN-40 at 10 (Rennicke Direct).

<sup>36</sup> Ex. EN-46 at 7 (Bergland Rebuttal).

In comparison, a newly-constructed Line 3 would be constructed using the most up-to-date technology and techniques, including the use of pipe with advanced coating techniques, a wall thickness that is thirty-five percent (35%) greater than the current Line 3, and a high-tech leak detection and monitoring system.<sup>37</sup> When it approved the Canadian portion of the Project in December 2016, Canada’s National Energy Board (“NEB”) recognized these facts, observing that:

This Project is an important step in the continuing lifecycle of the Line 3 pipeline. Pipeline replacement is one way that a pipeline can be maintained to ensure its continued safe operation. In this case, if the Existing Line 3 Pipeline were not removed from service, it would require ongoing pressure restrictions and repairs, including extensive multi-year integrity digs. In contrast, the new Line 3 Replacement Pipeline will be built to modern standards and will operate with improved safety and reliability. This is a significant benefit of the Project.<sup>38</sup>

In addition to this use of modern and sophisticated materials and techniques, David Barnett’s uncontroverted testimony described the rigorous and extensive training that UA pipefitters and welders receive in all aspects of their craft as well as job-specific training related to local environmental issues and hazards.<sup>39</sup> Mr. Barnett’s unchallenged testimony also discussed how this training has resulted in tangible results on projects constructed by UA pipeliners. For example, on one pipeline project similar to the one at hand – the Flanagan South pipeline, which runs for 590 miles through Illinois, Missouri, Kansas, and Oklahoma using 36-inch diameter pipe of a similar wall thickness as proposed for the Project – UA members completed the mainline welding with an overall weld repair rate of 1.97 percent, which is far

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<sup>37</sup> See Ex. EN-22 at 5 (Simonson Direct); Ex. EN-35 at 5 (Philipenko Rebuttal); Ex. EN-16 at 13 (Baumgartner Direct); Ex. EN-12 at 20 (Kennett Direct).

<sup>38</sup> Ex SH-2 at 13-14 (Shippers Rebuttal).

<sup>39</sup> See Ex. UA-1 at 5-7 (Barnett Direct).

below the ten percent (10%) standard acceptable to the Federal Energy Regulatory Commission (“FERC”) and the industry standard of five percent (5%).<sup>40</sup>

The combination of these modern pipeline materials and technology and the UA’s expert and highly-trained labor would produce a new Line 3 that would operate according to the highest standards of safety and efficiency. If the Project were to be denied, however, the existing Line 3 would remain a less reliable option posing disruption and risk to the natural environment.

#### **IV. CONCLUSION**

For the reasons described above, the positive effects on the socioeconomic environment and reliable transportation of energy are far greater if the Project is granted a certificate of need as proposed compared to the “no action” or any system alternative. Furthermore, the socioeconomic benefits of the Project should not be diminished because the projected job creation from the Project would include a number of “temporary” jobs. To diminish the value of jobs on this basis would be to diminish the livelihoods of thousands upon thousands of American construction workers whose livelihoods depend upon so-called “temporary” jobs.

The socioeconomic benefit that the Project offers to Minnesota and United Association members – job creation along with related economic benefits – will not come to pass if the “No Action” alternative is selected instead of the Project. Moreover, if SA-04 is chosen, the Project may very well not proceed at all, which would produce the same damaging result as if the “No Action” alternative were selected. Given the assured lack of socioeconomic benefits from the “No Action” alternative and the probability that SA-04 will produce the same result, the Project should be preferred over any of these options and its socioeconomic benefits should be weighed

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<sup>40</sup> Ex. UA-1 at 7 (Barnett Direct).

accordingly when considering the certificate of need factors required by Minnesota Administrative Rule 7853.0130. Furthermore, the drastic improvement that the Project represents over the existing Line 3 in terms of reliability and safety should be given due weight in the certificate of need analysis.

For these important reasons and others, the United Association also supports and respectfully requests to join Enbridge's Proposed Findings of Fact, Conclusions of Law, and Recommendations, filed on January 16, 2018.

Date: January 23, 2018

Respectfully submitted,

/s/ Ellen O. Boardman

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