

ERRATA TO STAFF BRIEFING PAPERS

Commission Agenda

Tuesday, January 9, 2018

PL-9/CN-14-916

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

PL-9/PPL-15-137

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

The staff briefing papers for this item have been revised as follows:

Page 14, Section C.

Staff notes that the April 30, 2018 due date for the Commission's decision on the merits was effectively extended to late May 2018 by the ALJ's decision to extend the timeframe for her report and recommendation from February 28, 2018 to March 30, 2018. Staff is concerned that this latest extension of the Commission's decision on the merits to September 6, 2018, at the earliest, August 30, 2018 calls into question whether the Commission can accept any further extension beyond May 30, 2018 without being at risk of violating the terms of Enbridge's consent to extend the statutory deadlines for the Commission's Final EIS adequacy determination.

A clean version of the revised staff briefing papers is attached.

REVISED Staff Briefing Papers

Meeting Date: January 9, 2018

Agenda Item **1

Company: Enbridge Energy, Limited Partnership

Docket No. PL-9/CN-14-916


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

PL-9/PPL-15-137

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

Issues: What action, if any, should the Commission take on the Joint Motion to Certify the ALJ's December 22, 2017 Order Granting Motion for Adjustment of the Briefing Schedule filed by Enbridge Energy; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Laborers District Council of Minnesota and North Dakota; and Shippers for Secure, Reliable and Economical Petroleum Transportation?

Staff: Scott Ek scott.ek@state.mn.us 651-201-2255

 Relevant Documents	Date
Commission Order Extending Deadline and Setting Procedural Schedule	August 14, 2017

These materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

✓ Relevant Documents	Date
Final Environmental Impact Statement	August 17, 2017
Commission Order Modifying Procedural Schedule	August 25, 2017
Office of Administrative Hearings (OAH) Amended Fifth Prehearing Order	August 29, 2017
OAH Order Denying Motion to Amend Scheduling Order or Certify Issue to Commission	September 11, 2017
Commission Order Denying Reconsideration [of August 25 Order]	October 10, 2017
OAH Report of the Administrative Law Judge [on Final EIS Adequacy]	November 1, 2017
OAH First Post-Hearing Order	November 22, 2017
Commission Order Finding Environmental Impact Statement Inadequate	December 14, 2017
Joint Motion of Petitioners Sierra Club, Friends of the Headwaters, Honor the Earth, Fond du Lac Band of Lake Superior Chippewa, White Earth Band of Ojibwe, Leech Lake Band of Ojibwe, Mille Lacs Band of Ojibwe, Northern Water Alliance of Minnesota and Youth Climate Intervenors for Adjustment of Briefing Schedule	December 14, 2017
OAH Third Post-Hearing Order	December 15, 2017
Enbridge Energy, Limited Partnership Response to Joint Motion	December 18, 2017
Laborers District Council of Minnesota and North Dakota Response to Joint Motion	December 18, 2017
Shippers for Secure, Reliable and Economical Petroleum Transportation Response to Joint Motion	December 18, 2017
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO Response to Joint Motion	December 18, 2017
Friends of the Headwaters Reply Brief	December 19, 2017
Fond du Lac Band of Lake Superior Chippewa Reply Brief	December 19, 2017
Honor the Earth Reply Brief	December 19, 2017
Mille Lacs Band of Ojibwe Reply Brief	December 19, 2017

✓ Relevant Documents	Date
Sierra Club Reply Brief	December 19, 2017
Youth Climate Intervenors Reply Brief	December 19, 2017
OAH Order Granting Motion for Adjustment of the Briefing Schedule	December 22, 2017
Joint Motion to Certify of Enbridge Energy, Limited Partnership; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Laborers District Council of Minnesota and North Dakota; and Shippers for Secure, Reliable and Economical Petroleum Transportation	December 28, 2017
Commission Notice of Request for Immediate Certification and Notice of Special Commission Meeting on January 9, 2018	December 29, 2017
OAH Order Granting Commission Request for immediate Certification	January 2, 2018

Attachments

Attachment A – Summary of Commission Dockets Requiring an Adequacy Decision

I. Statement of the Issues

What action, if any, should the Commission take on the Joint Motion to Certify the Administrative Law Judge’s (ALJ) December 22, 2017 Order Granting Motion for Adjustment of the Briefing Schedule filed by Enbridge Energy; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Laborers District Council of Minnesota and North Dakota; and Shippers for Secure, Reliable and Economical Petroleum Transportation?

II. Project Description

Enbridge Energy, Limited Partnership (Enbridge) has filed a certificate of need application and a pipeline route permit application for its proposed Line 3 Replacement Project. The Line 3 Replacement Project is described as a new 337-mile long 36-inch diameter pipeline that would replace 282 miles of the existing 34-inch Line 3 pipeline in Minnesota. The pipeline route proposed by Enbridge would parallel the route of the existing Line 3 pipeline from the North

Dakota-Minnesota border to Clearbrook, Minnesota, but would require a new right-of-way from Clearbrook to Superior, Wisconsin. The existing Line 3 pipeline is proposed to be permanently deactivated and left in-place after the new pipeline is installed, tested, and operational. Associated facilities would include eight pumping stations, valves, metering and monitoring equipment, and related electrical facilities. Enbridge's proposed pipeline route would cross portions of Kittson, Marshall, Pennington, Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

As indicated in the applications, the purpose of the Line 3 Replacement Project is to replace the Minnesota portion of the existing Line 3 pipeline to: 1) address known integrity risks, 2) reduce apportionment due to decreased transport capacity related to integrity issues, and 3) restore flexibility to the Enbridge Mainline System for more efficient operation. The new Line 3 pipeline would have an annual average capacity of 760,000 barrels per day (bpd) and would serve the same markets and transport the same products as the existing Line 3 pipeline. Operationally, the new Line 3 pipeline would continue to transport crude from Canada to the Enbridge terminal facility in Clearbrook for subsequent delivery to Minnesota refineries via interconnected pipeline facilities operated by Minnesota Pipeline Company, and delivery of crude oil to the Superior Wisconsin terminal for subsequent delivery on the Enbridge Mainline System to refineries in the Midwest, Eastern Canada, and the Gulf Coast.

III. Statutes and Rules

Under Min. R. 1400.7600, no motions shall be made directly to or be decided by the agency subsequent to the assignment of a judge and prior to the completion and filing of the judge's report unless the motion is certified to the agency by the judge. No motions will be certified in cases where the judge's report is binding on the agency. Uncertified motions shall be made to and decided by the judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the judge's report. Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. In deciding what motions should be certified, the judge shall consider the following:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or

- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. whether it is necessary to promote the development of the full record and avoid remanding; or
- F. whether the issues are solely within the expertise of the agency.

IV. Procedural History

On August 14, 2017, the Commission issued an Order that: 1) extended the 280-day statutory deadline for environmental impact statement (EIS) preparation under Minn. Stat. § 116D.04, subd. 2a(j) by consent of the parties; 2) referred the matter of Final EIS adequacy to the Office of Administrative Hearings for the appointment of a second administrative law judge (Judge Lipman) for the purpose of developing the record and issuing a report and recommendation on adequacy; and 3) established a procedural schedule for a Commission determination on the adequacy of the Final EIS. The August 14 Adequacy Order was based on the then current contested case schedule, which anticipated Judge O'Reilly's Report to be issued February 28, 2018, with April 30, 2018 as the anticipated date for the Commission reaching its need and routing decisions on the Line 3 Project.

On August 17, 2017, the Department of Commerce issued the Final EIS.

On August 25, 2017, the Commission, with the consent of all commenting parties, issued an order that modified the procedural schedule for determining the Final EIS adequacy established by its August 14 Order. The modification reflected the change of date for the issuance of the Final EIS from August 10, 2017 to August 17, 2017. The revised schedule preserved the same 46-day public comment period and provided 20 days rather than 23 days to file exceptions to the ALJ's report:

Event	Date
Comments on Final EIS adequacy due	October 2, 2017
ALJ's report on Final EIS adequacy due	November 1, 2017
Exceptions to ALJ's report due	November 21, 2017
Commission decision on Final EIS adequacy	November 30–December 11, 2017

On August 29, 2017, Judge O'Reilly issued an Amended Fifth Prehearing Order which set forth the prehearing and hearing schedule for the combined certificate of need application and route

permit application dockets. The schedule in that order recognized the Commission’s August 25 Order procedural schedule for a Final EIS adequacy determination and identified a post-hearing briefing schedule as follows:

Event	Date
Initial briefs of Parties due	December 11, 2017
Reply briefs of Parties due	January 15, 2018
Report of the ALJ due	February 28, 2018 (anticipated)
Commission decision on Certificate of Need and Route	April 30, 2018 (anticipated)

On November 1, 2017, Judge Lipman issued his Findings of Fact, Conclusions of Law, and Recommendation (Report of the Administrative Law Judge) on the adequacy of the Final EIS.

On November 22, 2017, Judge O’Reilly issued a First Post-Hearing Order. The order modified the hearing schedule identified in the Judge’s August 29 Order as follows:

Event	Date (August 29 Order)	Date (November 22 Order)
Enbridge’s proposed procedural findings due	---	November 20, 2017
Redlined proposed procedural findings due (all other Parties)	---	November 30, 2017
Motions and arguments related to procedural defects	---	November 30, 2017
Reponses to procedural motions or arguments	---	December 7, 2017
Initial post-hearing briefs on substantive issues (all Parties)	December 11, 2017	December 31, 2017
Enbridge’s proposed substantive findings due	---	December 31, 2017
DOC-EERA proposed findings related to Final EIS	---	December 31, 2017
Reply briefs on substantive issues (all Parties)	January 15, 2018	January 26, 2018
Proposed findings (all other Parties)	---	January 26, 2018
Report of the ALJ due	February 28, 2018	March 30, 2018

On December 14, 2017, the Commission issued an order that identified the following four deficiencies in the Final EIS that need to be remedied before it can be considered adequate under Minn. R. 4410.2800:

1. The Final EIS needs to: (i) indicate how far and where SA-04 would need to be moved to avoid the karst topography it would otherwise traverse, and (ii) provide a revised environmental-impact analysis of SA-04 specifically to reflect the resulting relocation of that alternative.

2. The Final EIS needs to clarify that quantitative representations of route and system alternatives do not necessarily reflect the actual qualitative impacts of those

alternatives. For example, the acreage of High Consequence Area (HCA) drinking water sources impacted by SA-04 may be less than the same acreage of HCA drinking water sources impacted by other routes based on the nature of those water sources.

3. The Final EIS needs to clearly identify the extent to which resource impacts of route alternatives in the existing Line 3 corridor are or are not additive, *i.e.*, the extent to which that route alternative would introduce new or additional impacts beyond the impacts of the existing pipelines in that corridor.
4. The Final EIS needs to clarify that the traditional cultural properties survey must be completed before the start of any construction pursuant to any permit granted in this proceeding.

Pursuant to Minn. R. 4410.2800, subp. 5, the Commission ordered the Minnesota Department of Commerce to submit the information identified above by February 12, 2018. The Commission will then reconvene to evaluate the adequacy of the submitted information.

On December 14, 2017, Sierra Club, Friends of the Headwaters, Honor the Earth, Fond Du Lac Band of Lake Superior Chippewa, White Earth Band of Ojibwe, Leech Lake Band of Ojibwe, Mille Lacs Band of Ojibwe, Northern Water Alliance of Minnesota, and Youth Climate Intervenors (Movants) filed a Joint Motion for Adjustment of the Briefing Schedule with Judge O'Reilly. The Motion requested that, in light of the Commission's December 14 Order Finding Environmental Impact Statement Inadequate, the post-hearing briefing schedule should either be stayed or adjusted, pending a Commission determination on the adequacy of the Final EIS. The Movants argued that because the Commission identified four specific deficiencies in the Final EIS that need to be remedied before it can be considered adequate, the record of the proceeding is open until those material facts are received. The Movants argue that the changes ordered for the Final EIS could potentially change the facts underlying issues of central importance in both the certificate need and routing matters, and make it impossible for them to brief their cases until the Final EIS is supplemented and deemed adequate.

On December 15, 2017, Judge O'Reilly issued a Third Post-Hearing Order that requested responses to the December 14 Motion by December 18, 2017, and replies by December 19, 2017.

Timely responses in opposition to the Motion were filed by Enbridge, the United Association, the Laborers Council, and the Shippers (Responders) on December 18, 2017. The Responders generally argued the following:

- The Movants cite to no legal authority within Minnesota Environmental Policy Act (MEPA) or Minnesota Rules that require an affirmative determination of adequacy on a Final EIS before post-hearing briefing is submitted to an administrative law judge.
- The purpose of an EIS is to inform the permitting authority, not to provide support for intervening parties legal arguments.
- In accordance with Minn. R. 7853.0130B, the legal burden of demonstrating there is a more reasonable and prudent need alternative than that of the applicant falls on the parties or persons supporting the alternative. The Responders specifically referred to need alternative SA-04.
- The Movants' request is an unreasonable attempt to further delay this proceeding for an unnecessary reason and should be denied.

Timely replies in support of the Motion were filed by six of the original Movants on December 19, 2017 (Sierra Club, Friends of the Headwaters, Honor the Earth, Fond Du Lac Band of Lake Superior Chippewa, Mille Lacs Band of Ojibwe, and Youth Climate Intervenors). The replies of the Movants generally reiterate the same arguments made in the Motion:

- The additional information requested by the Commission for the Final EIS could contain new information which could affect decisions and that the parties are entitled to have that information available to use.
- The Movants argue that the overall schedule will not be delayed by the extension and that it is well within the Judge's authority to adjust the schedule in these circumstances and the relief requested is appropriate.
- A number of the Movants refer to a supplemental EIS and Minn. R. 4410.3000. Staff notes that the Commission has not determined that it has an adequate FEIS, and so it has not ordered a supplement for the FEIS under this rule. Instead the Commission found the FEIS inadequate under Minn. R. 4410.2800, and is following the requirements of that part to make the FEIS adequate.

On December 22, 2017, Judge O'Reilly issued an Order Granting Motion for Adjustment of the Briefing Schedule. While noting that the only legal requirement under MEPA was for the EIS to

be declared adequate before the issuance of a certificate of need or route permit for a project, and before project construction begins,¹ the ALJ also stated that:

the objective of an EIS is to provide information not just to the governmental agency making the final permitting decision, but to all other parties involved in that decision-making process. In certificate of need and route permit proceedings, the “other person” involved in the decision-making process include the Administrative Law Judge and all parties to the action.²

Without citing any other legal authority, the ALJ concluded that the briefing schedule should be revised so that the parties were not required to make arguments any issues in the contested case proceedings until the Final EIS is found adequate, observing:

If the parties were required to make their final arguments and the Administrative Law Judge were forced to prepare her Report based upon an inadequate EIS, the resulting arguments and recommendations to the Commission could be flawed, incomplete, or inconsistent with the new information set forth in the revised EIS. In turn, the Commission’s decision-making process could be impacted.³

The ALJ therefore revised the schedule as follows:

- Enbridge to file proposed substantive findings on January 12, 2018. Previous due date was December 31, 2017.
- DOC-EERA to file proposed findings related to the Final EIS on February 28, 2018. Previous due date was December 31, 2017.
- All Parties to file initial briefs and proposed findings 14 calendar days after a Commission order finding the Final EIS adequate. Previous due date was December 31, 2017.
- All parties reply briefs to be filed 21 calendar days after the date of service of the initial briefs. Previous due date was January 26, 2018.

¹ ALJ’s December 22 Order, Memorandum at 6-7 (citing Minn. Stat. § 116D.04, subd. 2b).

² *Id.* at 7 (citing Minn. R. 4410.2000, subp. 1).

³ *Id.* at 8.

- ALJ Report to be filed within 60 days of the close of the briefing period. Previous due date was March 30, 2018.

On December 28, 2017, Enbridge, the United Association, Laborers' Council and the Shippers filed a Joint Motion to Certify the issue of the post-hearing briefing schedule to the Commission. The Motion argued that the request to certify the issue to the Commission meets all six criteria set forth under Minn. R. 1400.7600.

On December 29, 2017, the Commission issued a Notice of Request for Immediate Certification of the Joint Motion and a Notice of Special Commission Meeting to address the issue. In its Notice of Request for Immediate Certification, the Commission requested that the Judge immediately certify the Motion to the Commission so that the issues raised may be promptly addressed at a special Commission meeting to be scheduled on January 9, 2018.

On January 2, 2018, Judge O'Reilly issued an Order Granting Commission Request for Immediate Certification which certified the Joint Motion for Adjustment of the Briefing Schedule to the Commission for final determination.

V. Staff Discussion

Staff notes that the ALJ's December 22 Order assumes that the revised schedule for briefing and the ALJ's report and recommendation reflects an investment "of a few extra weeks . . . to ensure that the law is followed and a comprehensive review of the Project is conducted before a final decision is rendered in this important case." Staff's analysis shows, however, that the revised schedule would result in the ALJ report and recommendation being delivered over three months after the March 30, 2018 deadline previously set for the ALJ's report. The extension also raises legal issues that warrant Commission analysis.

Staff believes there are three issues that the Commission must consider. First, what would the new time frame for the Commission's need and routing determinations be under the ALJ's December 22 Order? Second, is this new time frame required by law as the ALJ ruled, or is it otherwise advisable based on past Commission practice or the particular circumstances of this case? Third, does the new time frame violate the terms of Enbridge's consent to extend the statutory deadlines associated with the Commission's EIS adequacy determinations in this case?

A. New Time Frame for Commission’s Line 3 Need and Routing Determinations

The ALJ’s revised briefing schedule depends on when the Commission will be able to meet to determine the adequacy of the revised Final EIS filed by the Department, and when the Commission’s order on its adequacy determination is issued. The table below sets forth the range of timeframes for the Commission’s Final EIS adequacy agenda meeting and order, along with all the subsequent dates that follow from those timeframes, based on the following assumptions:

- The Department will publish a revised Final EIS on February 12, 2018;
- A 10-business-day public comment period on the adequacy of the revised Final EIS will run from February 13 through February 26, 2018;
- The Commission will meet in mid- to late March to determine whether the revised Final EIS is adequate;
- Assuming the revised Final EIS is found adequate, the Commission will issue an order on its adequacy determination within four weeks; and
- The Commission will meet within eight weeks of the ALJ Report to make its determination whether there is a need for Line 3, and if so, what its route will be, as provided in its August 14 FEIS Adequacy Order.

Revised FEIS Filed	Revised FEIS Comment Period Closes	Revised FEIS Agenda Meeting	Revised FEIS Adequacy Order	Dec. 22 Order’s Revised Schedule for Briefing and ALJ Report			Line 3 Need and Route Agenda Meeting
				Initial Briefs (14 days after order)	Reply Briefs (21 days after initial briefs)	ALJ Report (60 days after reply briefs)	
Feb. 12	Feb. 26	March 15	April 12	April 26	May 17	July 16	Sept. 6
Feb. 12	Feb. 26	March 22	April 19	May 3	May 24	July 23	Sept. 13

Under the ALJ's December 22 Order, the soonest the ALJ Report would come to the Commission is July 16, 2018. This is three and a half months later than the current March 30, 2018 due date for the Report.⁴ Allowing eight weeks for staff to draft briefing papers that evaluate a July 16 ALJ Report and associated party exceptions, the earliest the Commission could meet to make its Line 3 need and route determinations is September 6, 2018. This is over three months later than the end of May 2018 timeframe anticipated for the Commission's need and route determinations after the issuance date for the ALJ Report was moved from February 28 to March 30, 2018 as a result of the ALJ's November 22 Order.

B. Justification for New Time Frame for Need and Routing Determinations Based on Law, Commission Practice, and the Circumstances of the Case

Staff is not aware of any legal requirement that the Final EIS be found adequate before the contested case proceedings can move forward with briefing on the merits of Enbridge's Line 3 applications, and the production of the ALJ's report and recommendation on whether there is a need for Line 3, and if so where the line should be routed. The ALJ agreed on this point in her September 8, 2017 order in these dockets addressing this very issue, stating that "the **only dictate in law** is that a [route] permit or [need] application cannot be *granted* and a project cannot be *started* until the EIS is determined to be adequate" (italic emphasis in original; bold emphasis added).⁵

MEPA specifically provides that "[i]f an . . . environmental impact statement is required . . . a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project until . . . the environmental impact statement has been determined adequate. . . ."⁶ Thus, the statute's plain language requires that the EIS adequacy decision be made before the Commission's final decision on the certificate of need and route permit applications, not before briefs are submitted to the ALJ on the merits of those applications in the course of the contested case proceedings. MEPA also requires that the final governmental decision on a project be made "[w]ithin 30 days after final approval of an environmental impact statement . . ."⁷ Hence, MEPA cannot be read to require the EIS adequacy decision before briefing the ALJ in contested case proceedings on the merits of a

⁴ The March 30 due date for the ALJ Report is an extension of the February 28, 2018 due date for the Report which the Commission relied upon when it identified April 30, 2018, as the anticipated date of the Commission's Line 3 need and route determinations. August 14 FEIS Adequacy Order at 3.

⁵ Order Denying Motion to Amend Scheduling Order or Certify Issue to Commission, Memorandum at 11 (September 8, 2017).

⁶ Minn. Stat. § 116D.04, subd. 2b(3).

⁷ Minn. Stat. § 116D.04, subd. 3a; *see also* Minn. R. 4410.2900 (a governmental unit's permitting decisions must be made "within 30 days after the determination of adequacy of a final EIS").

proposed project since to do so would make compliance with the 30-day requirement impossible.

Furthermore, the adequacy of an EIS has always been determined at the time the Commission makes its decision on the merits of the proposed project. As a result, the parties and ALJs have always addressed any inadequacies they perceived in the Draft EIS or Final EIS in their respective briefing and reports in the contested case proceedings, with the parties able to pursue claims of inadequacy directly before the Commission through their exceptions to the ALJ Report. Staff is not aware of any prior contested case proceedings where the EIS for a proposed project was determined to be adequate before parties submitted briefs on the disputed issues in the case, or even before the ALJ report and recommendation in the case was issued. To the contrary, as shown in Attachment A to these briefing papers, Commission adequacy decisions do not predate issuance of the ALJ's report.

In this case, a Final EIS has been available since August 17, 2017. Moreover, the Commission has already identified the inadequacies of the Final EIS, and staff agrees with the ALJ that they are narrow in scope. So in contrast with every other contested case proceeding involving an EIS, the parties and ALJ know exactly what the Commission has deemed adequate and inadequate, and also know how the Commission anticipates the inadequacies will be addressed.

The ALJ opines that the parties and the ALJ are at risk of relying on inaccurate or incomplete information given the Commission's inadequacy determination. For several reasons, this concern does not justify significantly extending the schedule for party briefing and production of the ALJ report and recommendation. First, neither the ALJ nor the parties have explained how they would be unable to effectively deal with whatever uncertainty there may be about the FEIS in this case, in contrast to how parties and ALJs have routinely and effectively dealt with such uncertainty in all prior contested case proceedings. Past experience supports the conclusion that these parties should be able to address any such uncertainties in their briefs to the ALJ. Second, the risk of materially impairing the ability of the parties to make their case to the ALJ is minimal given the narrow scope of the EIS deficiencies and the fact that those deficiencies have already been identified by the Commission. Finally, in this case, as in all prior cases, the ALJ's report and recommendation will be subject to party exceptions, Commission staff analysis, and oral argument before the Commission makes its final decisions on the Line 3 Project.

C. Terms of Enbridge Consent to Extend Statutory Deadlines Associated with Commission's EIS Adequacy Determination

At the agenda meeting where Enbridge made its offer to consent to the extension of both the 280-day statutory deadline for the adequacy determination on the Line 3 Final EIS, and the 30-day statutory deadline for a permitting decision after the adequacy determination, it was clear that the offer contemplated that any inadequacy finding by the Commission would trigger a cure period. It was also clear that any such cure period would run parallel to the contested case proceedings so that the Final EIS could be found adequate with no alteration to the April 30, 2018 date by which the Commission would address the merits of Enbridge's need and route permit applications for Line 3.

In its order accepting Enbridge's consent to extend the statutory deadlines, the Commission established a separate contested case proceeding to address the adequacy of the Final EIS for Line 3, and assigned a second ALJ to provide a report and recommendation on the adequacy of the Final EIS. Further, the Commission set specific due dates for certain items in the procedural schedule for the adequacy proceedings. Importantly, the Commission also stated that none of its determinations impacted the schedule established for the contested case proceedings, specifically including the date by which the Commission would address the merits of the Line 3 project:

Nothing in this order alters the date for ALJ O'Reilly to issue her report and recommendation on the need for, and appropriate route for, the Line 3 Project, currently anticipated to be issued February 28, 2018. And the anticipated date for a Commission decision regarding the need for and route of the Line 3 Project remains April 30, 2018.⁸

Staff notes that the April 30, 2018 due date for the Commission's decision on the merits was effectively extended to late May 2018 by the ALJ's decision to extend the timeframe for her report and recommendation from February 28, 2018 to March 30, 2018. Staff is concerned that this latest extension to September 6, 2018, at the earliest, calls into question whether the Commission can accept any further extension beyond May 30, 2018 without being at risk of violating the terms of Enbridge's consent to extend the statutory deadlines for the Commission's Final EIS adequacy determination.

⁸ August 14 FEIS Adequacy Order at 3.

VI. Commission Decision Alternatives

- A. Take no action.
- B. Request the ALJ to modify the anticipated due date for the ALJ Report to one of the dates below, and to make any other modifications to the parties' briefing schedule the ALJ deems appropriate to facilitate meeting the new ALJ Report issuance date:
 - 1. March 30, 2018;
 - 2. April 15, 2018;
 - 3. April 30, 2018; or
 - 4. Some other date deemed appropriate.
- C. Request that other dates in the ALJ's December 22 Order be modified as deemed appropriate.
- D. Take some other action deemed appropriate.

ATTACHMENT A

Summary of Commission Dockets Requiring an Adequacy Decision

Transmission Line or Large Electric Power Generating Plant

In the Matter of a Joint LEPPG Site Permit, HVTL Route Permit and Pipeline (Partial Exemption) Route Permit Application for the Mesaba Energy Project GS-06-668

Draft EIS Issued	November 2007
Final EIS Issued	November 16, 2009
Report of the Administrative Law Judge	December 28, 2009
Commission Order on Final EIS and Permit	March 12, 2009

In the Matter of the Application of Great River Energy for a Certificate of Need for the Elk River Peaking Station CN-07-678 (Alternative Process); In the Matter of the Application of Great River Energy for a Site Permit for the Elk River Peaking Station GS-07-715 (Full Process).

Draft EIS Issued	November 21, 2007
Final EIS Issued	January 21, 2008
Report of the Administrative Law Judge	March 18, 2008
Commission Order on Final EIS and Permit	May 8, 2008

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for an Extended Power Uprate at the Prairie Island Nuclear Generating Plant CN-08-509; In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for Additional Dry Cask Storage at the Prairie Island Nuclear Generating Plant CN-08-510; In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for an LEPPG Site Permit for the Extended Power Uprate Project at the Prairie Island Nuclear Generating Plant GS-08-690.

Draft EIS Issued	March 17, 2009
Final EIS Issued	July 31, 2009
Report of the Administrative Law Judge	October 21, 2009
Commission Order on Final EIS, CN, and Permit	December 18, 2009

In the Matter of the Route Permit Application by Great River Energy and Xcel Energy for a 345 kV Transmission Line from Brookings County, South Dakota to Hampton, Minnesota TL-08-1474.

Draft EIS Issued	October 21, 2009
Final EIS Issued	January 26, 2010
Report of the Administrative Law Judge	April 22, 2010
Commission Order on Final EIS and Permit	September 14, 2010

ATTACHMENT A

Summary of Commission Dockets Requiring an Adequacy Decision

In the Matter of the Application for a Route Permit for the Monticello to St. Cloud 345 kV Transmission Line Project TL-09-246

Draft EIS Issued	January 11, 2010
Final EIS Issued	March 26, 2010
Report of the Administrative Law Judge	May 18, 2010
Commission Order on Final EIS and Permit	July 12, 2010

In the Matter of the Application for a High Voltage Transmission Line Route Permit for the Essar Steel Transmission Project TL-09-512

Draft EIS Issued	February 12, 2010
Final EIS Issued	May 27, 2010
Report of the Administrative Law Judge	June 30, 2010
Commission Order on Final EIS and Permit	August 2, 2010

In the Matter of the Application for a Route Permit for the Hiawatha Transmission Line Project TL-09-38.

Draft EIS Issued	January 8, 2010
Final EIS Issued	June 7, 2010
Report of the Administrative Law Judge	October 8, 2010
Commission Order on Final EIS and Permit	February 10, 2012

In the Matter of the Application for a Route Permit for the Bemidji – Grand Rapids 230 kV Transmission Line Project TL-07-1327

Draft EIS Issued	February 25, 2010
Final EIS Issued	September 2, 2010
Report of the Administrative Law Judge	September 20, 2010
Commission Order on Final EIS and Permit	November 5, 2010

In the Matter of the Application for a Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project TL-09-1056.

Draft EIS Issued	September 6, 2010
Final EIS Issued	January 7, 2011
Report of the Administrative Law Judge	April 25, 2011
Commission Order on Final EIS and Permit	June 24, 2011

ATTACHMENT A

Summary of Commission Dockets Requiring an Adequacy Decision

In the Matter of the Route Permit Application for the CapX 2020 Hampton – Rochester – La Crosse 345 kV Transmission Line TL-09-1448

Draft EIS Issued	March 21, 2011
Final EIS Issued	August 31, 2011
Report of the Administrative Law Judge	February 8, 2012
Commission Order on Final EIS and Permit	May 30, 2012

In the Matter of the Application for a Route Permit for the Pleasant Valley to Byron 161 kV Transmission Line Project TL-09-1315

Draft EIS Issued	October 4, 2010
Final EIS Issued	November 30, 2010
Report of the Administrative Law Judge	January 7, 2011
Commission Order on Final EIS and Permit	March 3, 2011

In the Matter of the Application of ITC Midwest LLC for a Certificate of Need for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin and Faribault Counties CN-12-1053; In the Matter of the Application of ITC Midwest LLC for a Route Permit for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin and Faribault Counties TL-12-1337.

Draft EIS Issued	March 24, 2014
Final EIS Issued	July 14, 2014
Report of the Administrative Law Judge	September 8, 2014
Commission Order on Final EIS and Permit	November 25, 2014

Pipelines

(MinnCan) In the Matter of the Application of Minnesota Pipe Line Company for a Certificate of Need for a Crude Oil Pipeline CN-06-02; In the Matter of the Application of Minnesota Pipe Line Company for a Routing Permit for a Crude Oil Pipeline PPL-05-2003

Comparative Environmental Analysis	August 7, 2006
Additional Comparative Environmental Analysis	September 28, 2006
Report of the Administrative Law Judge	November 20, 2006
Commission Order on CN and Permit	April 13, 2007

In the Matter of the Application of Enbridge Pipelines (Southern Lights) LLC for a Certificate of Need for the Alberta Clipper Pipeline Project and the Southern Lights Crude Oil Pipeline Project CN-07-464 and CN-07-465; In the Matter of the Application of Enbridge Pipelines (Southern Lights) LLC for a Route

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Summary of Commission Dockets Requiring an Adequacy Decision

Permit for the Alberta Clipper Pipeline Project and the Southern Lights Crude Oil Pipeline Project PPL-07-360 and PPL-07-361.

Comparative Environmental Analysis
Report of the Administrative Law Judge
Commission Order on CN and Permit

November 9, 2007
March 24, 2008
June 19, 2008