

**OAH Docket No. 8-2500-19094-2**  
**MPUC Docket No. PL9/CN-07-464 (Cert. of Need)**  
**MPUC Docket No. PL9/PPL-07-360 (Route)**

**MPUC Docket No. PL9/CN-07-465 (Cert. of Need)**  
**MPUC Docket No. PL9/PPL-07-361 (Route)**

**STATE OF MINNESOTA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**In the Matter of Application of Enbridge Energy,  
Limited Partnership and Enbridge Pipelines  
(Southern Lights) LLC for a Certificate  
Of Need for the Alberta Clipper Pipeline Project  
And the Southern Lights Diluent Project**

**MINNESOTA CENTER FOR  
ENVIRONMENTAL ADVOCACY  
PETITION TO INTERVENE**

**And**

**In the Matter of Application of Enbridge Energy,  
Limited Partnership and Enbridge Pipelines  
(Southern Lights) LLC for a Routing Permit for  
The Alberta Clipper Pipeline Project and the  
Southern Lights Diluent Project.**

Pursuant to Minn. R. 1400.6200, the Minnesota Center for Environmental Advocacy (“MCEA”) hereby petitions to intervene with party status in the above-referenced proceedings.

**Background and Issues**

This case arises as a result of Enbridge Energy Limited Partnership’s and Enbridge Pipelines LLC’s (hereinafter collectively “Enbridge”), applications for routing permits and certificates of need for petroleum pipelines between the Canadian border in North Dakota and Superior, Wisconsin, which cases are currently pending before the Minnesota Public Utilities Commission (“PUC”) and which are the subject of the above-captioned contested case proceeding before the Honorable Eric L. Lipman, Office of Administrative Hearings (“OAH”). The proposed pipelines will carry crude oil petroleum from the tar sands in Alberta, Canada to a

tank farm in Clearbrook, Minnesota, to tank facilities and/or refineries in Superior, Wisconsin, and potentially to refineries in the greater Chicago area, and will carry diluent from the Chicago area or the Superior area back to the Alberta tar sands. *See* Enbridge Certificate of Need Applications for the LSr, Alberta Clipper and Southern Lights Diluent Projects and Applications for Pipeline Routing Permits for the LSr, Alberta Clipper and Southern Lights Diluent Projects, accepted by the PUC by order dated July 30, 2007.

The pipelines fall under the definition in Minn. Stat. § 216B.2421, subd. 2 (4) of a large energy facility. Such facilities are required to obtain a certificate of need (“CON”) from the PUC prior to construction. Minn. Stat. §216B.243, subd. 2 authorizes the PUC to issue a CON to Enbridge if Enbridge demonstrates that there is a need for the proposed pipelines. Minn. R. 7853.0130 sets forth the criteria for consideration by the PUC in deciding whether to issue a CON, which criteria include consideration of the accuracy of Enbridge’s forecast of demand for the type of energy that would be supplied, the effects of Enbridge’s promotional practices that may have given rise to the increase in energy demand, the ability of current and planned facilities to meet the future demand and the effect of the proposed facility in making efficient use of resources. The PUC must further consider whether a more reasonable and prudent alternative has been proposed and demonstrated by a preponderance of the evidence considering the appropriateness of the pipeline compared to other alternatives, the effect of the proposed pipeline upon natural and socioeconomic environments compared to reasonable alternatives, and a comparison of the effect the proposed pipeline on the natural and socioeconomic environments compared to those environments without the pipeline. *Id.*

Under Minn. Stat. § 216G.02, Enbridge must also obtain routing permits prior to construction. Minnesota Rules ch. 7852 (formerly numbered chapter 4415) require Enbridge to

identify preferred routes for the pipelines and to disclose certain direct environmental impacts of the pipelines.

The CON portion of this proceeding is currently scheduled for evidentiary hearing on January 22, 2008. The deadline for intervention has expired, but for the reasons set forth below, MCEA requests relief from that deadline and that MCEA be allowed to intervene for the limited purposes of questioning witnesses of the other parties and to be allowed the opportunity for briefing.<sup>1</sup>

### **Identity of Petitioner**

MCEA is a Minnesota-based, nonprofit environmental organization that works in the courts, the legislature, and state agencies to protect Minnesota's wildlife, natural resources, and the health of its people. MCEA's five program areas include an Energy Program, which focuses on advancing the pursuit of environmentally sustainable sources of energy and on climate change issues.

### **Outcome of Proceeding Directly Affects Petitioners' Interests**

MCEA regularly participates in matters before the PUC where identification and quantification of environmental costs and risks associated with energy choices are at issue. For example, MCEA is a party in the Big Stone II coal plant transmission line proceedings before the PUC. MCEA is also a participant on the Minnesota Climate Change Advisory Group ("MNCCAG") working on strategies to address global warming and is a member of the Clean Energy Minnesota coalition which coalition has worked on various legislative initiatives to foster clean and renewable energy and to combat global warming. The outcome of this proceeding will

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<sup>1</sup> MCEA has submitted written comments by the December 14, 2008, deadline on the routing portion of the matter. It is unclear when public comment deadlines for the CON are from the notices in the dockets. MCEA will submit public comments that include the CON portion no later than the January 17, 2008, date on which final public hearings are held.

directly affect the interests of MCEA because the Enbridge proposals will increase delivery of crude petroleum to the Upper Midwest with the potential effect of keeping oil prices lower and fostering increased refining and ultimate use of petroleum, in turn increasing global warming emissions. MCEA is particularly concerned about the impacts of this increased crude oil delivery and refining as MCEA and others, including the Governor and the State Legislature, have been working over the past several years to *decrease* oil and energy consumption and to cap, control, and ultimately reduce, global warming pollutants. MCEA questions the stated need for the Enbridge pipelines, particularly given recent policy developments at the state and federal levels.

**1. MCEA's concerns regarding stated need for the pipelines.**

Enbridge's materials from earlier in 2007, both in their filing and on their website, argue that the Upper Midwest will have steadily increasing need for delivery of tar sands crude oil from Canada, citing to refining industry demand and growth. However, a number of developments during 2007, including very late in the year, call that demand into question. The Annual Energy Outlook ("AEO") for 2007 has recently been revised with the revised 2008 version showing significantly less petroleum demand and use, across all sectors, from that projected in 2007. Interestingly, the 2008 AEO notes that increased refining may be the only sector that is increasing demand on the industrial side, a completely circular argument for so-called "need" for more petroleum, and one of the factors the PUC is to consider in assessing the CON.

Far more importantly, the U.S. Department of Energy posts a very large cautionary statement about even relying on the 2008 AEO as the 2008 AEO currently does not consider and incorporate the December 2007 passage and signing into law of H.R. 6, the "Energy

Independence and Security Act of 2007.” The Department of Energy clearly states that it is compiling a revised 2008 AEO reference case that will include the impact of H.R. 6 on energy demand. Clearly, H.R. 6 will have a significant impact in dampening previous forecasts of need for petroleum. H.R. 6 imposes new fuel efficiency standards that will significantly reduce petroleum use for transportation. It also incorporates requirements and incentives for alternative fuels that will further reduce the need for expanded petroleum imports. For example, Minnesota is a large producer of ethanol and other biofuels and statutorily requires the use of ethanol in automobiles and 2% biodiesel. These alternative fuels will certainly negatively impact need for increased tar sands petroleum.

There have also been a number of legislative and policy initiatives in Minnesota and the Upper Midwest that will also reduce demand for petroleum. As noted above, the Minnesota Legislature set large reduction goals and renewable energy standards during the 2007 legislative session. These goals and requirements will dampen predicted increases in carbon-emitting fuels and the use of nonrenewable fuels. The Minnesota Legislature’s actions have resulted in the convening of the MNCCAG, a large stakeholder effort, including the Governor’s office, whose mission is to develop strategies for the reduction of greenhouse gas emissions in Minnesota. MNCCAG’s work is divided into categories, including the Land Use and Transportation Technical Working Group (“Transportation TWG”). The Transportation TWG of MNCCAG has posted a working list of strategies, a large number of which are designed to reduce vehicle miles traveled and resulting petroleum use and demand. *See*, <http://www.mnclimatechange.us/ewebeditpro/items/O3F14413.pdf>, (demonstrative partial copies of the Transportation TWG Summary List of Policy Options enclosed.) For example, the Transportation TWG sets forth a number of strategies for reducing the number of miles driven, including land use and

development strategies, and also sets forth strategies for reducing the per vehicle energy consumption through improved efficiency. The PUC must consider the impact that more oil will have on these important policy efforts.

Finally, in November of 2007, the Midwestern Governors (including premiers from Canadian provinces), led by Governor Pawlenty, met and developed the Midwestern Greenhouse Gas Accord (“MGA”), <http://www.midwesterngovernors.org/resolutions/GHGAccord.pdf>, committing to multi-sector approaches for the reduction of greenhouse gas emissions, including the development of alternative and renewable fuels. Part of the MGA requires the participating states to assess carbon costs associated with various energy and fuel choices and to ensure that the lowest carbon sources are fostered and utilized. Tar sands crude has much higher carbon emissions than conventional crude. *See* various materials submitted with MCEA’s December 14, 2008 comments.

## **2. MCEA’s participation.**

MCEA has an interest in ensuring that the PUC has a developed factual record on which to evaluate the proposals in this proceeding. MCEA acknowledges that the period for intervention has passed, but MCEA further notes that the public interest as represented by MCEA is noticeably absent from a party participant perspective. Allowing MCEA party status for at least the opportunity to question the witnesses of the existing parties on these topics and to brief the legal issues associated with the CON and to a lesser extent, the environmental issues associated with routing will serve to foster full exploration of public interest issues in this proceeding and will not prejudice any existing parties in that they will have to do no further preparation. Nor is MCEA asking to extend any other existing deadlines such as briefing or submission of testimony so MCEA’s participation will not delay the process. MCEA seeks only

to participate in the existing process. In order to so participate, MCEA respectfully requests to intervene.

Dated: January 9, 2008

Respectfully submitted,

/s/Janette K. Brimmer

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