

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

SIERRA CLUB, MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, INDIGENOUS ENVIRONMENTAL NETWORK, and NATIONAL WILDLIFE FEDERATION,

Plaintiffs

v.

HILLARY CLINTON, in her official capacity as Secretary of State, JAMES STEINBERG, in his official capacity as Deputy Secretary of State, UNITED STATES DEPARTMENT OF STATE, Lieutenant General ROBERT L. VAN ANTWERP, in his official capacity as U.S. Army Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers; Colonel JON L. CHRISTENSEN, in his official capacity as District Engineer and Commander of the U.S. Army Corps of Engineers; the UNITED STATES ARMY CORPS OF ENGINEERS, TOM TIDWELL, in his official capacity as Chief of the United States Forest Service; ROB HARPER, in his official capacity as Forest Supervisor for the Chippewa National Forest; and the UNITED STATES FOREST SERVICE,

Defendants

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

Defendant-Intervenor

CIV. NO. 09-CV-2622 (DWF/RLE)

DECLARATION OF DENISE MARIE HAMSHER IN SUPPORT OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

1. I, Denise Marie Hamsher, have personal knowledge of the following and make this declaration in support of Enbridge Energy, Limited Partnership's ("Enbridge") Opposition to Plaintiffs' Motion for a Preliminary Injunction ("PI"). The purpose of this Declaration is to demonstrate the public benefits of the Alberta Clipper and Southern Lights Diluent pipelines and to show that a potential months-long interruption in construction-in-progress of those pipelines resulting from a PI will cause public harm, wholly apart from the harm to Enbridge, which is addressed in the accompanying affidavit of my colleague, James Crawford.
2. Enbridge is a limited partnership organized in Delaware. It is wholly owned by Enbridge Energy Partners, L.P. ("EEP"), a publicly held master limited partnership based in Houston, Texas. EEP is involved in energy transportation in the United States and throughout North America with its affiliate Enbridge Inc, a Calgary, Alberta based company. Enbridge operates the U.S. portion of the Enbridge Mainline System, which is a major liquid petroleum and crude oil pipeline system providing transportation of oil from North Dakota and Western Canada to the U.S. Midwest and points in Eastern Canada and New York State, as well as smaller amounts of natural gas liquids from western Canada through Minnesota to the Midwest and eastern Canada. The Canadian portion of the Enbridge Mainline System is operated by a subsidiary of Enbridge Inc. and is regulated by the National Energy Board ("NEB") in Canada. The U.S. portion of the Enbridge Mainline System, which is commonly referred to as the "Lakehead System," is operated by Enbridge.

3. I am currently employed as the Director of Public, Regulatory and Government Affairs for U.S. Major Projects at Enbridge and have been employed at this specific position for the last two years. I have held similar positions with Enbridge since 1985. In my capacity as Director of Public, Regulatory and Government Affairs for Enbridge, I am responsible for strategic counsel with senior management and project teams on all federal and state government relations for U.S activities related to project development and execution. I also oversee the regulatory function for applications to certain state and federal agencies as well as the public and stakeholder consultation effort for all Enbridge expansion projects in the U.S. In addition, I serve as the pipeline industry's representative appointed by the U.S. Secretary of Transportation on the Pipeline and Hazardous Materials Safety Administration's Technical Advisory Committee and on other industry association efforts.
4. As a result of my work, I have extensive knowledge of Enbridge's plans to enhance its ability to transport liquid petroleum to refinery markets in the United States. This increase in transportation capacity is necessary to meet customer requests, including shippers who produce crude oil, shippers that refine crude oil and other marketers that nominate transportation capacity on the Enbridge Mainline System. To meet this transportation capacity demand, Enbridge and its affiliates are in the process of expanding the existing pipeline network by constructing, operating, and maintaining two new pipelines — the Alberta Clipper and Southern Lights Diluent pipelines.

5. As explained below, the completion of the Alberta Clipper and Southern Lights pipelines under the existing schedule is in the public's interest for several reasons.
6. The Alberta Clipper pipeline is a new underground pipeline that is being installed generally adjacent to the existing Enbridge Mainline System. The new pipeline is designed to transport additional supplies of heavy crude oil, beyond that which is currently transported in the existing system, from Hardisty, Alberta to Enbridge's existing Superior, Wisconsin tank facility, a distance of about 1,000 miles, of which about 326 miles are in the United States. The pipeline will be a 36-inch pipeline and, with the pumping facilities being installed as part of the new pipeline, will have the capacity, to transport up to approximately 450,000 barrels per day (bpd) on average of crude into the United States. Once at Superior, the incremental supply of heavy crude will be stored temporarily at existing and new crude oil tanks and then transported by other existing Enbridge pipelines to various refineries in the Midwest and, through interconnections with other third-party pipelines, to other refineries located elsewhere in the United States. The refined oil will then be placed into the flow of refined products, including gasoline, diesel, jet and other transportation fuels; heating oil; asphalt; and petrochemical products for use by consumers, manufacturers, military, airlines and generally throughout the U.S. economy. It is anticipated that the oil transported into the United States from Canada via the Alberta Clipper pipeline will replace the decreasing supply of domestic U.S. oil or oil imported into the United States from other foreign sources outside North America.

7. With the exception of 35 miles, the United States portion of the new pipeline is predominantly within the existing Enbridge pipeline transportation corridor and thus the pipeline is largely being constructed in the same contiguous right-of-way where other Enbridge liquid petroleum pipelines are located, most of which have been in place for decades. The Southern Lights Diluent pipeline is also being built in the same corridor. To the limited extent the pipelines are being built outside of the existing corridor, it is due to landowner requirements or for environmental, safety or constructability reasons.

8. For most of its distance, the construction of the Alberta Clipper Project entails the permanent expansion of this existing right-of-way by no more than 25 to 75 feet. Within this widened right-of-way, new pipeline is laid in the ground and then covered up so that it is not visible, is sufficiently buried to protect from third-party damage and to allow resumption of agriculture use where present, and is not exposed to the elements. Enbridge already holds the property rights through acquisition of easement, license or fee ownership or has agreements for such for substantially the entire route needed to install the pipeline, appurtenances, or facilities and to temporarily use additional land needed during the period of construction. Such rights or agreements include those portions of the pipeline that diverge from the existing right-of-way and have been granted through voluntary negotiations with nearly all of the approximately 1,500 private landowners, businesses, local units of government, or other landholders.

9. Maps of the corridor in which the Alberta Clipper and Southern Lights Diluent pipelines are being constructed are attached as Exhibit 1. The second of these maps also shows the location of the LSr pipeline, the U.S. portion of which is in the same corridor and runs between the Canadian border and Clearbrook, MN. That pipeline was constructed in 2008 and completed earlier this year, following an Environmental Assessment, and a Finding of No Significant Impact, by the State Department and the issuance of a separate Presidential Permit on June 10, 2008, as well as the receipt of U.S. Army Corps of Engineers approval and approvals by the states of North Dakota and Minnesota. The LSr pipeline began operations in March 2009 and is used to transport crude oil from the northern Williston Basin of Saskatchewan to the United States. Each of these pipelines generally follows the east-west transportation and utility corridor of U.S. Highway 2. This is also the main corridor in the area for the BNSF Railway, overhead electric lines, the Great Lakes natural gas transmission pipeline system, the Enbridge Mainline System (referred to as the Lakehead system) and the U.S. highway. While largely still rural farming, pasture, and recreational, the corridor has widened over the many decades of transport and above ground and underground utility use. The third map in Exhibit 1 illustrates the number of pipeline and other corridors in the area. In the late 1980's and 1990's, Great Lakes Gas expanded its natural gas transmission system in this corridor with the construction of a series of additional pipeline loops paralleling its existing pipeline. The U.S. Highway 2 corridor is also undergoing a significant amount of construction activity with major segments being expanded, resurfaced or improved. Over the six decades

of operation in this corridor, Enbridge has expanded its system a number of times, adding complete new pipelines in the same right-of-way (segments of 48-inch pipeline in several years starting in the 1980's; a 24-inch line from the Canadian border to Clearbrook in 1994; a 120-mile series of 36-inch segments in 2002 and another 110 miles of 36-inch segments to join with the existing segments of 48-inch culminating in a continuous new line of 36/48 inch diameter pipeline from Alberta to Superior). During 2009, within the corridor of the U.S. portion of the Alberta Clipper project between the Canadian border and Superior, Wisconsin, Enbridge has also completed approximately 100 maintenance excavations to repair or replace portions of the existing pipelines as part of its ongoing inspection and maintenance program and continued its ongoing clearing program along the existing right-of-way to eliminate excessive amounts of vegetation that limit inspections required by regulations.

10. It is accordingly important to bear in mind that while the Alberta Clipper route is through a generally rural area of northern North Dakota, Minnesota and Wisconsin, this corridor is the primary transportation and energy transmission corridor in the Upper Midwest and has been disturbed a number of times over recent months, years and decades. The construction of the Alberta Clipper project has been subjected to much more extensive environmental reviews by three states and at the federal level than any of the previous projects in this corridor. It will be installed incorporating modern-day practices that avoid, minimize or mitigate impacts on the environment

and residents. The environmental protective practices being employed exceed the practices employed when the pre-existing highway, power lines, gas lines, railroads or other facilities were installed. The existence of these transportation and transmission facilities and the construction and maintenance activity completed for their safe use has not prevented the use of this region by farmers, hunters, fishermen, bird watchers or other outdoor enthusiasts.

11. The routing of the Alberta Clipper pipeline has previously been approved by relevant permitting agencies in the three states that the pipeline will traverse in the United States. In North Dakota following a public hearing and environmental impact considerations, that state's Public Service Commission issued a Certificate of Corridor Compatibility and Route Permit to Enbridge for the Alberta Clipper Project in December 2007 authorizing its construction along a specific corridor for the approximately 16 miles that the pipeline traverses that state between the Canadian border and the Minnesota border. In Wisconsin, Enbridge worked closely with the Wisconsin Department of Natural Resources and other state agencies on the routing of the pipeline for the approximately 13 miles in that state and was awarded the requisite state environmental and other approvals following completion of that state's own environmental assessment.

12. In Minnesota, where most of the pipeline will be located in the United States, that state's Public Utilities Commission (MPUC) – following extensive public proceedings – issued a Certificate of Need and a Routing Permit on December 29,

2008. In issuing the Certificate of Need, the MPUC concluded that the Project was necessary and in the interests of the citizens of the state of Minnesota. The Routing Permit specified the route that can be followed by the pipeline based on specific environmental, land use and other information generated during the course of the MPUC proceeding for all the Project across Minnesota, except for an approximately 17 mile section that was proposed to deviate from the existing pipeline corridor across the Fond du Lac Band of Lake Superior Chippewa (FDL) reservation boundaries. FDL and Enbridge subsequently reached agreement on routing the Project along the existing corridor across the FDL reservation and this section of the Project route was approved by order of the MPUC on June 1, 2009. The MPUC proceeding was extensive, involving first a public informational meeting in 2007 and then a public hearing during the spring of 2008 in each of the twelve counties along the route; several public hearings in St. Paul; mailings to affected stakeholders about the project and proceedings; posting of filings and maps in designated local libraries along the route as required by MPUC; newspaper notices in all local and state-wide newspapers; dozens of written submissions for and against the pipeline, expert testimony, an ALJ fact finding hearing, briefings by the involved parties, and administrative appeals. The MPUC's procedures for review of proposed large energy facilities (which this project is defined by agency rules) incorporate compliance with the Minnesota Environmental Policy Act and provide for broad spectrum public participation, including timely public notice and multiple opportunities for public comment as noted above. It bears note that one of the plaintiffs in this case, the

Minnesota Center for Environmental Advocacy (“MCEA”), was an active participant in the MPUC proceeding and petitioned the MPUC to reconsider the Project approval on January 20, 2009. The MPUC denied the petition on March 2, 2009 and MCEA appealed the MPUC’s December 2008 Project approvals on April 6, 2009, but subsequently voluntarily dismissed their appeals in April 2009 due to their failure to comply with statutory time limits for such an appeal with the Minnesota Court of Appeals. Following the MPUC’s June 30, 2009 denial of MCEA’s June 22, 2009 petition to reconsider the June 1, 2009 approval of the FDL route section, MCEA appealed the MPUC’s final decision on the Routing Permit to the Minnesota Court of Appeals on August 27, 2009 and that matter is pending at this time. In addition, MCEA filed separate state court actions in three counties in Minnesota alleging various deficiencies in the MPUC review and approval process and these actions remain pending at this time.

13. Even though it could have done so, MCEA did not seek any form of injunctive relief in its previous or pending state court challenges and no such injunction has been issued. While similar appeal rights existed for challenging the North Dakota Public Service Commission’s review and December 2007 approval of state permits necessary to construct the Project in North Dakota, neither MCEA nor any of the other plaintiffs in this action availed themselves of that opportunity. While plaintiffs Sierra Club and Indigenous Environmental Network commented to the Wisconsin Department of Natural Resources (WDNR) for consideration in that agency’s review and approval of

the state permits necessary to construct the Project in Wisconsin, none of the plaintiffs availed themselves of the opportunity to appeal or enjoin that agency's approval of the Project. Further, none of the plaintiffs participated in any substantive manner in the WDNR's consideration and approval of an Air Pollution Control Construction Permit to construct and regulate the emissions from five new tanks at the Superior, Wisconsin Tank Terminal that will provide tankage for the Project. At least one representative from Indigenous Environmental Network (IEN) appeared at the public hearing held by the WDNR on July 14, 2009 and offered comments. However, neither IEN nor any of the other plaintiffs availed themselves of the opportunity under state law to challenge the construction and emissions permit approval or seek to enjoin construction of the tanks.

14. Because the Alberta Clipper Project will cross the U.S./Canada border, Enbridge was also required to obtain a Presidential Permit from the Department of State (State Department) prior to commencing construction as required under Executive Order 13337 (Apr. 30, 2004). On May 18, 2007 Enbridge applied to the State Department for a Presidential Permit to construct the Alberta Clipper Project in the United States. Such permits are required for the construction of certain energy related facilities at an international border of the United States. The Executive Order provides that the State Department may issue such permits only upon a determination that the infrastructure at issue would serve the "national interest."

15. The submission to the State Department of Enbridge's application for a Presidential Permit triggered an extensive federal environmental review process under NEPA relative to the Alberta Clipper Project, as well as a review under the National Historic Preservation Act. The State Department served as lead federal agency for NEPA compliance and issued an initial Notice of Intent to prepare an Environmental Assessment for the Alberta Clipper project in July 2007 and then in February 2008 issued its intent to prepare a full Environmental Impact Statement. Notices were published in the Federal Register and distributed to landowners along the proposed route; federal agencies; Indian tribes; state agencies; municipalities and counties; other federal and state elected officials; non-governmental organizations; media; and other interested individuals. Subsequent to the State Department's public notice, the agency conducted interagency consultations with federal and state agencies, Indian tribe representatives and held 11 public scoping meetings in Minnesota and Wisconsin in August, 2007 and an additional meeting in May 2008. In preparing its environmental study, the State Department worked with various other federal cooperating and consulting agencies as follows: U.S. Environmental Protection Agency; the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service; U.S. Forest Service; Natural Resources Conservation Service; Farm Service Agency and Bureau of Indian Affairs. The State Department also cooperated with two Indian tribes whose territory would be crossed by the pipelines, the Fond du Lac Band of Lake Superior Chippewa (FDL Band) and the Leech Lake Band of Ojibwe Indians (Leech Lake Band). The State Department also sought and received technical

assistance from the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, the safety regulator for interstate liquid petroleum pipelines. The environmental study, which reviewed every aspect of the pipeline's direct, indirect and cumulative impacts to the environment, led to the issuance of a lengthy and detailed Draft Environmental Impact Statement ("EIS") for public comment on December 5, 2008. Following its public issuance of the Draft EIS, the State Department conducted six additional public meetings at locations along the route to take comment on the Draft EIS and then, at the request of Fond du Lac and Leech Lake Band members, held two additional comment meetings on the Reservations. Numerous public comments were received on the Draft EIS and, after six months of deliberations, on June 5, 2009, the State Department issued a Final EIS in which it responded to the comments filed and offered additional environmental analysis. The Final EIS responded specifically to comments filed by the plaintiffs in this case.

16. The Final EIS issued by the State Department contained extensive information not only about the Alberta Clipper Project, but also about the Southern Lights Diluent Project (described further below), 188 miles of which will be co-located in the same contiguous right-of-way. Thus, in analyzing land use and impacts to important environmental resources, the Draft and Final EISs provided information relative to the purpose, need and environmental impacts of both pipelines since they share the same right-of-way and will be constructed concurrently. The Draft and Final EISs also

provided extensive information about Enbridge's planned expansion of its existing tank terminal at Superior, WI. Previous segments of the Southern Lights Diluent 20-inch pipeline are already installed in Wisconsin and Illinois and were permitted previously by state and federal regulators with jurisdiction.

17. In a Record of Decision/National Interest Determination ("ROD/NID") dated August 3, 2009, the State Department found the construction of the Alberta Clipper pipeline between Canada and the United States, and the additional capacity it represents, to be in the "national interest." In the ROD/NID, the State Department concluded the project will advance a number of strategic interests of the United States. These include increasing the diversity of available supplies among the United States' worldwide crude oil sources in a time of considerable political tension in other major oil producing countries and regions; shortening the transportation pathway for crude oil supplies; and increasing crude oil supplies from a major non-Organization of Petroleum Exporting Countries producer. Therefore, the United States Secretary of State, under authority delegated by the President, determined that the construction of the Alberta Clipper Project is in the "national interest" and a Presidential Permit was issued. A copy of the State Department ROD/NID is attached as Exhibit 2 to this Declaration. A copy of the Presidential Permit is attached as Exhibit 3.

18. On June 11, 2009, Enbridge received a permit from the U.S. Army Corps of Engineers ("Corps") Omaha District for the North Dakota portion of the Alberta Clipper Pipeline. On August 24, 2009, the Corps issued a Record of Decision

approving the issuance of permits, which were also issued that day, allowing the Alberta Clipper and Southern Lights diluent Pipelines to be constructed in Minnesota and Wisconsin. These permits were issued under Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act. These Corps permits allow Enbridge to construct the Alberta Clipper Project (and the Southern Lights Diluent Project) through wetlands and waters of the United States, subject to the conditions contained in the permits. The Corps permits were issued following extensive analysis undertaken by the Corps, which relied on the State Department EIS, as well as on its own focused environmental review based on data described in its Record of Decision. The St. Paul District of the Corps also issued a separate permit allowing the expansion of the Superior Tank Terminal, also relying on the State Department environmental study and the Corps' own environmental analysis.

19. On June 29, 2009, Enbridge also received approval for an amended Special Use Permit from the U.S. Forest Service's Chippewa National Forest ("CNF") in Minnesota, allowing the Alberta Clipper Project and the Southern Lights Diluent Project to be constructed through federally owned properties within the CNF, subject to the conditions contained in the permit. This amended Permit in effect allows Enbridge to expand its existing pipeline right-of-way through the National Forest to accommodate the two new pipelines next to pipelines that were first installed in 1949 and have expanded, modified, maintained and repaired during each decade since then to reach the existing four pipeline system through the CNF. The CNF Special Use

permit was issued after CNF and the Leech Lake Band (which is largely contiguous with the CNF) jointly completed their own thorough Environmental Assessment (“EA”) of the impacts of the expansion of the right-of-way through the CNF. This EA was initially issued in draft form together with the State Department Draft EIS. Following an opportunity for public comment, a Final EA was issued and published as an appendix to the State Department EIS. The plaintiffs in this proceeding never filed comments directed to the CNF EA, but on August 17, 2009 filed an administrative appeal of the CNF’s ruling issuing the amended Special Permit, raising there many of the same issues they have raised in this action. That appeal was denied by the U.S. Forest Service by decision served on September 28, 2009.

20. The Canadian portion of the Alberta Clipper project was approved by the Canadian National Energy Board (NEB) in February, 2008 and, following receipt of other provincial and federal authorizations, the Canadian portion of the Alberta Clipper project began construction in May, 2008, halted for the winter season and resumed in the spring of 2009 and is now nearing completion of the installation in that nation. The review and consideration of the Canadian portion of the Project following extensive public notice, informational sessions along the route, field hearings and regulatory proceedings by the NEB. I am not aware of any of the plaintiffs in this lawsuit having sought such injunctive relief as the Canadian portion of the project proceeded toward completion. A copy of the NEB authorization is set forth at Exhibit 4 to this Declaration.

21. Separate from Alberta Clipper, but, as described above, sharing the same right-of-way between Superior, WI and Clearbook, MN, Enbridge is also constructing an unrelated 188-mile segment of the Southern Lights Diluent pipeline. That pipeline is a 20-inch interstate liquid petroleum pipeline that will be used, in conjunction with an existing pipeline (Line 13) that already crosses the international border, to transport up to 180,000 bpd of diluent northbound to Canada. The Southern Lights Diluent pipeline actually begins in Illinois, but has already been constructed between there and Superior, WI.

22. The diluent, a light hydrocarbon, will supplement diluent currently supplied by refineries in northwestern United States and western Canada. This diluent is used in diluting the supply of heavy crude oil produced in Alberta's oil sands region. The crude oil will then meet Enbridge and other pipeline tariff specification requirements for pipeline transportation approved by the Federal Energy Regulatory Commission (FERC), allowing crude oil transportation by pipeline to refinery markets in Canada and the United States. The diluent transported through the Southern Lights Diluent pipeline will not be dedicated to use with the crude oil that will flow through the Alberta Clipper pipeline, but will be added (as will other diluent obtained from other regions and sources) to Alberta sourced crude oil and flow through other heavy crude oil pipelines that exist to transport supply out of Alberta to any number of U.S. and Canadian refinery markets.

23. As noted above, Enbridge plans to have both the Alberta Clipper and Southern Lights Diluent Projects completed by the middle of 2010. Doing so will allow the public benefits of the pipelines' deliveries and construction to be met as soon as possible.
24. Construction of the Alberta Clipper and Southern Lights Diluent pipelines, related pump stations and the Superior Tank Terminal upgrades began in the United States on August 20, 2009, following receipt of the Presidential Permit.
25. The public interest will be harmed if this Court issues a PI interrupting the construction in progress and barring continued construction of the pipelines. Any delay in the ongoing construction of the Alberta Clipper Project in the United States will delay the realization of the various "national interest" benefits identified by the State Department at page 25 of its ROD/NID. It will, for example, delay the access by refineries of diverse, reliable and available oil supplies "in a time of considerable political tension in other major oil producing countries and regions." It will delay the benefit of importing oil from "the largest and closest foreign supply source to domestic refineries that do not require, in contrast to other suppliers, many days or weeks of marine transportation." It delays the benefit of obtaining more oil from a non-OPEC producer. Further, it fails to send the positive signal that the State Department sought to send through issuance of the Presidential Permit "about the future reliability and availability of a portion of United State's energy imports" or to realize the economic benefit of construction jobs and the pipeline facilities along the project route in the immediate term. Any delay will also not allow the United States

to recognize the benefit that the State Department identified of “additional supplies of crude oil to make up for continued decline in imports from several other major U.S. suppliers.” ROD/NID at 25.

26. The Alberta Clipper and Southern Lights Diluent Projects are crucial to the long term energy security in the United States. As noted, the Alberta Clipper pipeline is designed to transport up to 450,000 bpd of crude oil into the United States. As the State Department found at page 10 of its ROD/NID, the U.S. Energy Information Agency (EIA) projects that, “the balance between domestic supply and demand will require the ‘unconventional’ oil supply from Canada, which is predominantly heavy crude from reserves in western Canada, to grow from about 1.5 million bpd in 2008 to over 4.3 million bpd by 2030.” Any delay in construction of the Alberta Clipper pipeline would therefore result in a shortage of pipeline capacity to the refinery markets served by the Alberta Clipper pipeline and restrict the ability of refiners to access this supply to meet anticipated U.S. refined product demand. As concluded in the EIS, there are no other practical transportation modes available to serve this need. In order to maintain anticipated output, these refineries must access other sources of crude oil supply, based on the availability of pipeline capacity to transport those supplies from point of import or origin.

27. The State Department’ ROD/NID also found that, “many U.S. refiners have been, or are in the process of being, retrofitted to accommodate heavy crude in order to remain cost-competitive with overseas suppliers of refined petroleum products.” The

ROD/NID noted that “The crude oil that the Alberta Clipper Project would assist in delivering to U.S. refiners would replace or supplement a portion of that existing supply of heavy crude oil.” ROD/NID at 10. In fact, several Midwest refiners that are expected to receive the incremental supplies of crude oil delivered with the Alberta Clipper project have undertaken extensive renovations in expectation of receiving and refining such crude, including Flint Hills Refinery in Minnesota and the BP refinery outside Chicago in Whiting, Indiana. A delay in the construction of the pipeline could place the benefits of the refinery retrofitting undertaken by U.S. refiners in jeopardy by forcing these refiners to seek oil from sources that are more distant and less reliable, again, subject to the near term availability of transportation capacity from those sources.

28. Since many crude oil production areas in the southern Midcontinent United States have seen lower production levels, and as production in Mexico has fallen, refineries in the Midwest would (but for imported Canadian crude) need to turn to additional imports arriving from outside North America that land at the U.S. Gulf Coast and that are subject to disruption due to political unrest in the foreign countries, hurricanes, or other factors. They would also need to modify and/or expand the pipeline systems from the U.S. Gulf to the Midwest, some of which have previously been reversed in response to the fall in production from the southern Midwest and Midcontinent and to accommodate Canadian and northern Rockies crude oil production increases. Transportation from the Middle East or Venezuela or elsewhere incurs longer transit

times that result in higher total transport costs, which is one reason why refiners that can or will in the future process heavy crude oil have increased their demand for supply from western Canada. A number of assessments of crude oil supply and forecasts noted that (prior to the most recent and temporary decline in the economy) there is little “spare capacity” in the world or in refineries and this results in volatility in refined product stocks and consumer pricing, as seen at many times in the last decade. As stated in the Final EIS, “*After the world economy recovers from the current recession.... , world oil demand through 2030 in the IEA (2008) Reference Scenario reflects a world-wide oil demand growth rate of about 1 percent per year.*” (Final EIS Section 1.2.2.2), despite the best efforts in conservation and use of alternative energy sources.

29. The benefits of the Alberta Clipper Project cannot be met by other pipelines. The Keystone pipeline was issued a Presidential Permit in March, 2008 and is currently being constructed by TransCanada to bring increased supply of western Canadian crude oil into the United States, primarily from rising production from Alberta’s oil sands. This pipeline will serve different refinery markets and thus offers no substitute for the Alberta Clipper pipeline. Moreover, as Keystone has entered into agreements with shippers for long term capacity commitments for the pipeline, monthly common-carrier nominations on that system are restricted. Construction of the Keystone pipeline has not been enjoined, even though the Presidential Permit issued to

Keystone was challenged in two separate U.S. District Courts, in the District of Columbia and South Dakota. Those challenges have now proven to be unsuccessful.

30. The Alberta Clipper pipeline and concurrent 188-miles of construction of the Southern Lights Diluent pipeline, will also serve an important public interest as a source of the short and long-term employment along the route of the pipelines in North Dakota, Minnesota and Wisconsin and at the expansion of existing pump station facilities along the route and tank terminal in Superior, Wisconsin. A halt of construction will place thousands of workers on “standby” and, according to various labor agreements and depending on the expected length of time of the stoppage, workers will continue to receive standby wages at a reduced rate. If the shutdown in construction is perceived by the workers to be short term, and in light of the current unemployment rates regionally and nationally, it is unlikely that many of the construction workers will leave the area to find other employment. However, any shutdown resulting from the issuance of a PI would be of uncertain duration, and could possibly last many months. It would thus be perceived by some workers to place their employment prospects at risk and some percentage of the specially skilled workers likely would start looking for other opportunities, including in other parts of the country. Moreover, a reduction in wages along with uncertainty of how long the standby wages would be paid (and the attending risk of layoffs without pay if the work stoppage were prolonged) would curtail the local spending that the towns along the route have already experienced since the August mobilization of workforce.

31. With the relocation of many workers, there would be further indirect impact to local communities which have now prepared for hosting the large influx of workers by extending hours at local cafes, renting previously empty houses and apartments, and extending the season at seasonal camp grounds and resorts. Many of the businesses, according to the local Chambers of Commerce and local community leaders, have hired or extended the hours of workers at these establishments. The attached pictures at Exhibit 5 illustrate this. Any delay resulting from a PI would cause considerable uncertainty in the area communities, undermining business plans of numerous businesses that have prepared their workforce and ordered perishable food and other supplies. These businesses acted responsibly and proactively to prepare for the planned boost from pipeline workers upon news of the August 20, 2009 approval by the Department of State and widespread media coverage of construction immediately starting. It is not a simple matter of just postponing the economic benefits to local communities should continued construction be enjoined, as in many cases the carrying costs for local small businesses will pose immediate and unrecoverable economic harm to communities already hard hit by the current economic downturn. The disruption would be felt by lodging facilities, restaurants, gasoline service stations, laundry facilities, convenience stores and other retail establishments. Enbridge expects its contractors to spend \$110 million in the communities along the pipeline during construction.

32. The economic benefits to the local communities that would be placed at risk by a PI are noteworthy enough to be observed by elected officials. During a tour of construction on September 2, 2009 in Carlton County, Minnesota, U.S. Congressman Jim Oberstar was quoted in the media as saying *“This is a fantastic ‘private sector’ stimulus program....praising [the project’s] impact on jobs, small town businesses and the state’s economy”* (Duluth, MN News Tribune report September 2, 2009). Further, the additional pipeline and facilities added in the U.S. portion of the Alberta Clipper project add significant 2011 property tax base in each county and state crossed by the expansion project. Property tax revenues will increase substantively and are estimated to be an annual incremental \$19.8 million in Minnesota and \$1.3 million in Wisconsin, with the majority of Wisconsin’s increase adding to the revenues of one county alone given the pipeline and tank facilities are located in Douglas County in Superior, Wisconsin. While a PI may only delay the completion of these taxable assets and property tax revenues, the uncertainty of the projects’ ultimate completion presented by a PI will result in uncertainty in these counties as they plan their budgets and future year tax revenues. It should be noted that the incremental revenue in these rural counties is a significant percentage of the total property tax revenues in many of these rural counties. For instance, in Clearwater County, Minnesota the annual incremental revenue is an estimated 33.5% of the total property tax revenue for the entire county.

33. Letters of support for Enbridge's position from organized labor representatives, local elected officials and business representatives are attached as Exhibit 6 to this Declaration. These letters underscore the importance of these projects in terms of providing much-needed jobs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of October 2009.

s/ Denise M. Hamsher
Denise M. Hamsher