

**STATE OF MINNESOTA
IN COURT OF APPEALS**

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

**RELATOR'S
STATEMENT OF THE CASE**

**COURT OF APPEALS
NUMBER**

**MINNESOTA PUBLIC UTILITIES
COMMISSION DOCKET NO.
PL-9/CN-14-916**

1. Court or agency of case origination and name of presiding judge or hearing officer.

The case involves decisions by the Minnesota Public Utilities Commission.

2. Jurisdictional statement

(A) Appeal from district court.

Not applicable.

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Minn. Stat. §§ 216B.27, subds. 2, 5; 216B. 52, subd. 1; 14.63-.69 (2018).

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g., mailing of decision, receipt of decision, or receipt of other notice):

The time limit for obtaining certiorari review is fixed by Minn. Stat. § 14.63. The Commission denied the Minnesota Department of Commerce's request for reconsideration of its September 5, 2018 order on November 21, 2018.

(C) Other appellate proceedings.

Not applicable.

(D) Finality of order or judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes (X) No ()

If yes, provide date of order:

November 21, 2018.

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes () No ():

Not Applicable

If yes, cite rule, statute, or other authority authorizing appeal:

Minn. Stat. §§ 216B.52 and 14.63 provide for appeal of an order of the Commission within 30 days after a request for rehearing pursuant to Minn. Stat. § 216B.27, subds. 2, 5, has been denied.

3. State type of litigation and designate any statutes at issue.

This appeal arises from the Minnesota Public Utilities Commission's September 5, 2018 order granting Enbridge Energy, Limited Partnership a certificate of need and its November 21 order denying reconsideration. The Commission granted a certificate of need to Enbridge for the Line 3 Replacement Project in Minnesota from the North Dakota border to the Wisconsin border, without evaluating the accuracy of a long-range energy demand forecast on which the necessity for the facility is based as required by Minn. Stat. § 216B.243 (2018) and Minn. R. 7853.0130 (2017). The Commission's rules define "demand" under Minn. R. 7853.0010, subp. 8 (2017) and "forecast" under Minn. R. 7853.0010, subp. 9 (2017).

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

Minnesota law provides that a large energy facility, including a crude oil pipeline, may not be sited or constructed in Minnesota without the issuance of a certificate of need by the Commission. Minn. Stat. §§ 216B.2421; 216B.243 (2018). In determining whether to grant a certificate of need, the Commission "shall evaluate . . . the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based . . ." Minn. Stat. § 216B.243, subd. 3(1). The Commission's rules similarly require the Commission to consider "the accuracy of the applicant's forecast of demand

for the type of energy that would be supplied by the proposed facility” Minn. R. 7853.0130 A(1). The Department opposed granting the certificate of need because the record in the proceeding does not contain a demand forecast for energy, crude oil, that would be supplied by the new Line 3. The Commission granted a certificate of need to Enbridge for a crude oil pipeline without any evaluation, or consideration, of a long-range demand forecast of crude oil as required by Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1). The Department requests that the court of appeals determine whether the Commission’s order is affected by legal error and should be reversed and remanded to remedy the legal error. Minn. Stat. § 14.69 (2018).

In addition, Minnesota law places the burden of proving need for the facility on certificate of need applicants such as Enbridge. *See* Minn. Stat. § 216B.243, subd. 3. The Commission shifted the burden to other parties, such as the Department, to show that demand for crude oil would decrease during the forecast period. The Department requests that the court of appeals determine whether the Commission committed legal error by placing the burden of production on intervenors to introduce evidence on a statutory requirement. The Department requested that the Commission reconsider its order on these issues, but the Commission declined.

5. List specific issues proposed to be raised on appeal.

Whether Minnesota law requires the Commission to evaluate the accuracy of a long-range demand forecast for the type of energy that would be supplied by a proposed facility under Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1) and whether failure to do so in this case constitutes legal error.

Whether Minnesota law permits the Commission to shift the burden of proof to parties other than an applicant for a large energy facility to introduce a long-range energy demand forecast and evidence of lower future demand for the type of energy that would be supplied by the proposed facility under Minn. Stat. § 216B.243, subd. 3(1) and Minn. R. 7853.0130 A(1) and whether doing so in this case constitutes legal error.

6. Related appeals.

**List all prior or pending appeals arising from the same action as this appeal.
If none, so state.**

Court of Appeals Docket Nos. A18-1283, A18-1291, A18-1292. These consolidated appeals involve an appeal of the Commission’s determination of the adequacy of the environmental impact statement pertaining to the proposed project.

Court of Appeals Docket No. A18-2092. This appeal also involves an appeal of the Commission’s September 5, 2018 and November 21, 2018 orders.

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state.

Not applicable.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes (X) No ()

If yes, full (X) or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (X)

If not, has it been ordered from the court reporter? Yes () No (X)

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No ()

Not applicable.

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No ()

Not applicable.

8. Is oral argument requested? Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. (X)

10. Names, addresses, zip codes and telephone numbers of attorney for relator and respondent.

RELATOR

Peter E. Madsen
Assistant Attorney General
Katherine Hinderlie
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2134
(651) 757-1383 (Voice)
(651) 297-1235 (Fax)
peter.madsen@ag.state.mn.us
katherine.hinderlie@ag.state.mn.us

*Attorneys for Relator Minnesota
Department of Commerce*

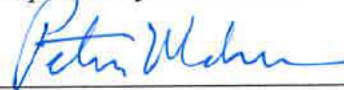
Dated: December 21, 2018

RESPONDENT

OFFICE OF THE ATTORNEY GENERAL
Lisa A. Crum
Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street, Suite 1100
St. Paul, MN 55101
(651) 757-1291 (Voice)
(651) 282-5832 (Fax)
lisa.crum@ag.state.mn.us

*Attorney for Respondent Minnesota Public
Utilities Commission*

Respectfully submitted,



PETER E. MADSEN
Assistant Attorney General
Attorney Reg. No. 0392339

KATHERINE HINDERLIE
Assistant Attorney General
Attorney Reg. No. 0397325

445 Minnesota Street, Suite 1800
St. Paul, MN 55101-2134
(651) 757-1383 (Voice)
(651) 297-1235 (Fax)
peter.madsen@ag.state.mn.us
katherine.hinderlie@ag.state.mn.us

*Attorneys for Minnesota Department of
Commerce*