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REPLY TO MINNEAPOLIS

September 30, 2015

Ms. Jamie MacAlister
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Environmental Review Manager
Minnesota Department of Commerce
Energy Environmental Review and Analysis
85 7th Place East, Suite 500
Saint Paul, MN 55101-2198

Re: Comparative Environmental Analysis Draft Scoping Document for Sandpiper Pipeline and Line 3 Pipeline Replacement – PUC Dockets PPL-13474 and PPL15-137

Dear Ms. MacAlister:

Mille Lacs Band of Ojibwe (“Mille Lacs Band”) submits the following comments regarding the scope of the Comparative Environment Analysis (“CEA”) for the Sandpiper and Line 3 Pipeline Replacement projects. The proposed projects have the potential to cause serious and irreparable environmental impacts. The environmental review must be thorough and demonstrate that the Department has taken a hard look at the potential impacts of the proposed projects and has given careful consideration to all feasible and prudent alternatives. Moreover, to the extent that the Public Utilities Commission intends to use the CEA to satisfy the environmental review requirements for the Certificate of Need (“CON”) proceedings for both projects, the CEA must include analysis of alternative routes and potential impacts necessary to make fully informed decisions regarding the CON applications consistent with the requirements of the Minnesota Environmental Policy Act.

Both projects are proposed to pass through Minnesota’s lake country and have the potential to impact numerous pristine lakes, streams, and wetlands, including sensitive aquatic ecosystems where the Ojibwe people have gathered wild rice for hundreds of years. Wild rice is not merely a source of food; it is a spiritual resource and the act of harvesting wild rice remains an integral part of the Ojibwe culture. Moreover, wild rice is the product of a healthy environment and actions taken to protect wild rice will serve to protect the entire ecosystem. The CEA is the mechanism to identify and determine how to avoid or mitigate the proposed

projects' adverse impacts. As such, it must include a comprehensive analysis of potential impacts and evaluate alternative alignments which avoid these sensitive ecosystems altogether.

Mille Lacs Band provides the following specific comments regarding the scope of the CEA:

1. The CEA must evaluate all feasible and prudent alternatives for the proposed projects. Many alternative routes, such as the current SA-03 alternative, exist which would avoid the sensitive aquatic ecosystems. No decisions regarding the projects can be made without fully evaluating these alternatives. Also, as is typical in the course of environmental review, the Department should continue to consider and evaluate additional alternatives which may avoid unanticipated or particularly serious adverse impacts that are revealed through the course of the analysis.
2. The CEA must evaluate water quality impacts. This includes anticipated impacts to surface and groundwater resources resulting from construction of the projects and the potential short- and long-term impacts of a major spill along the route of either pipeline. The analysis also must include evaluation of the costs of, and likely success of, remedial actions in the event of a spill.
3. The CEA must evaluate water quantity and hydrologic impacts. Groundwater and surface waters interact in complex systems and the grading, excavation, compaction, and filling necessary to construct the pipeline likely will impact these systems. Wild rice and other aquatic species are sensitive to changes in water quality and water levels and the impacts on water quantity and flow must be understood in order to determine the scope of potential on these sensitive and interconnected aquatic ecosystems.
4. Construction of the pipelines along the proposed route likely will unearth Native American cultural items. The CEA must address this possibility and describe the process that will be used to ensure the preservation and repatriation of such items as is required under the Native American Graves Protection and Repatriation Act. The CEA also must address the potential impacts to wild rice waters not only from the ecological perspective but also from the cultural perspective. Adequately addressing the potential cultural impacts of the proposed projects will require consultation with Mille Lacs Band officials. Mille Lacs Band is willing and prepared to meet with the Department to address these issues.

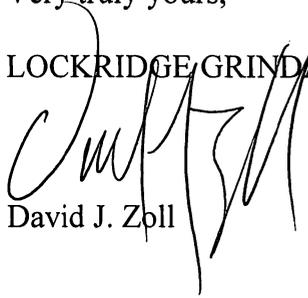
5. The Draft Scoping Document indicates that a single CEA will be prepared for both the Sandpiper and Line 3 Replacement projects. The CEA must evaluate the cumulative impacts that will result from constructing and operating both projects along the same route. Moreover, because economic efficiency dictates that it is preferable to co-locate pipelines along a single route, the CEA should address how the potential impacts may change in nature or magnitude if additional pipelines are developed along the route.
6. At this time, it is unknown whether either of the proposed projects will be approved and constructed or whether, if constructed, they will follow the same route. Accordingly, the CEA should address any potential impacts which may change in nature or magnitude if only one of the pipelines is constructed along a route.

Finally, we remind the Department of its obligation, pursuant to Governor Dayton's Executive Order 13-10, to engage in government-to-government consultation with Mille Lacs Band and other Indian tribes. Allowing tribal governments to participate in proceedings in the same capacity as members of the public is not sufficient. Rather, the Department must affirmatively consult with the Band to identify and address issues relating to the projects which may affect the Band and its members. Mille Lacs Band looks forward to engaging in a substantive and productive dialogue with the Department relating to the environmental review of the proposed pipeline projects.

Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.


David J. Zoll

c: Mille Lacs Band of Ojibwe
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September 30, 2015

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: Docket Nos. PPL-13-473 (Sandpiper)
PPL-15-137 (Line 3)

To the Minnesota Public Utilities Commission:

The White Earth Band of Ojibwe expects that an Environmental Impact Statement examining the cumulative effects of the Sandpiper Pipeline and the Line 3 Pipeline will be completed, considering all routes in consideration during the Sandpiper proceedings, and any additional route or project alternatives offered during the scoping period. Completion of an Environmental Impact Statement for both projects is consistent with the opinion of the Minnesota Court of Appeals,¹ and satisfies, in part, the obligations of the State of Minnesota to engage in meaningful consultation and co-management of resources with the Tribal Nations of the State.² Completion of an Environmental Impact

¹ *In the Matter of the Application of the North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota*, No. A15-0016 (Sept. 14, 2015), slip op.

² *See, e.g.*, *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 205 (1999); *United States v. Dion*, 476 U.S. 734 (1986); *Washington et al. v. Washington State Commercial Passenger Fishing Vessel Ass'n, et al.*, 443 U.S. 658 (1979); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt*, 700 F.2d 341, 365 (7th Cir. 1983); and *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 653 F. Supp. 1420, 1430 (W.D. Wisc. 1987). As illustrated by *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204, 208 (1999) and the agreements stemming from that litigation, and the litigation and subsequent agreement reached between the State of Minnesota and the Bois Forte Band of Chippewa and the Grand Portage Band of Lake Superior Chippewa, the State of Minnesota is well aware of its obligations to engage in co-management and meaningful consultation with the successors in interest to the Treaties for the management of resources within the treaty-ceded territories.

Statement is also consistent with the trust responsibility of the Federal Government to the Tribal Nations of the State.³

The following observations are offered, after participation in the Sandpiper Pipeline proceedings for approximately 18 months: the Commission and the Applicant have a preference for locating major pipeline infrastructure in less populated areas at the risk of damaging unimpaired natural habitats and burdening poorer, less politically mobilized populations. This is unequivocally “environmental injustice,” and has measureable disproportionate impact on remote and impoverished communities within the State. This is unacceptable, and should be at the forefront of consideration for the Public Utilities Commission.

Additionally, the Applicant appears to be advantaged in the permitting proceedings, such that participation by the public and other State agencies has no impact at all on the substance of the proceedings. The Applicant and the Commission both asserted throughout the Sandpiper proceedings that no other party had met the specificity required for consideration of any alternative that did not closely mirror the route offered by the Applicant, despite the Applicant having the burden of proof in these proceedings, despite the Applicant acknowledging that it took years and significant man-power to develop its proposed route, and despite “failure of the Applicant to propose a viable alternative for consideration in this proceeding.”⁴ This cannot possibly be the intent of the statutes and rules governing pipeline permitting – what would be the purpose of allowing for public participation under these circumstances?

The White Earth Band of Ojibwe urges the Commission to use common sense and consider the policy and intent of the statutes and rules that govern permitting proceedings to meaningfully consider all reasonable alternatives offered (including the so-called “SA-03 to SA-08” alternatives in consideration for the Sandpiper proceeding). The statutes and rules cannot possibly be read to mean that only engineering firms with extensive time, resources, and man-power may offer route alternatives that deviate from the Applicant’s route for consideration by the Commission. Moreover, the Applicant should be held to its obligations to propose “viable alternatives” at the risk of denial of its applications. What Enbridge (in any iteration including the North Dakota Pipeline Company, LLC) has asked of the State of Minnesota is to be “pass-through” state for a massive quantity of unrefined product, to be refined and placed into commerce elsewhere. The Company should be held to exacting standards given the gravity of its request, and must participate fully and meaningfully in an Environmental Impact Statement of all of the Company’s pending and proposed projects within the State. If, as the Applicant avers, it has offered a technically sound and environmentally safe option, then it should have no objection to an Environmental Impact Statement which would demonstrate its position.

In the alternative, or additionally, the State of the Minnesota reaps the immeasurable benefit from an Environmental Impact Statement of being assured that all due consideration was made of the proposed locations for any major pipeline infrastructure project within the State. Although the Commission has given little weight to the comments of the public received to date, it is clear from the Commission’s own materials, that thousands of members of the public have

³ See, Petition to Intervene, White Earth Band of Ojibwe (May 1, 2014).

⁴ Order Authorizing Recommencing of Route Permit Proceedings and Providing Direction for the Scope of the Comparative Environmental Analysis (August 3, 2015), at Order (2).

offered comment, many of whom expressed sincere and immediate concern that the Applicant's projects as proposed pose a significant risk to an impaired natural habitat within the State. This was evident at the public hearings regarding the scope of environmental review as well - the public testimony was replete with opposition to the proposed (co-)location of the Sandpiper and Line 3 as offered by the Applicant. Thorough environmental review now before consideration of the Applications for Certificates of Need and Routing Permits for both Sandpiper and Line 3 is required for the Commission to make informed decisions and for the public to have any meaningful participation.⁵

The environmental assessment ordered by the Commission and completed at DOC-EERA staff on the "system alternatives" SA-03 through SA-08 was invalidated by the Minnesota Court of Appeals. That environmental review was significantly insufficient to meet the requirements of the Minnesota Environmental Policy Act. The Commission recognized this in its order that qualitative as well as quantitative consideration must be made of the impact of the proposed routes, and that Sandpiper and Line 3 must be considered cumulatively.⁶ The routes SA-03 through SA-08 must be considered in the Environmental Impact Statement, along with any other route alternative currently in consideration or any route or other alternative offered during the scoping period. The Commission previously held that environmental review of these six routes would "provide [the Commission] with valuable information to be weighed along with other information of record while making its need decision,"⁷ and that environmental review would "ensure that the record in the certificate of need proceeding contains an adequate, albeit preliminary, environmental analysis of the system alternatives."⁸ The parties now understand that "preliminary" review is inadequate, but the conclusions of the Commission are no less true - meaningful environmental review of the alternative routes in consideration by DOC-EERA in fall of 2014 is necessary to the Certificate of Need proceedings for both the Sandpiper and Line 3.

The White Earth Band of Ojibwe emphasizes again for the Commission that the State of Minnesota has an obligation to engage in meaningful consultation and co-management of resources within the 1855 Treaty-ceded territory with the Tribal Nation successors in interest to the Treaty *which cannot be abrogated* by State statute or any other internal policy of the

⁵ See, In the Matter of the Application of the North Dakota Pipeline Company, LLC for a Certificate of Need for the Sandpiper Pipeline Project in Minnesota, No. A15-0016 (Sept. 14, 2015), slip op.pgs. 10-11 ("The United States Supreme Court has explained that early-stage environmental review . . . is critical because it ensures that that[sic] important environmental effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.") *citing* Robertson v. Methow Valley Citizens Council, 490 U.S. 349 (1989) (internal quotations and punctuation omitted).

⁶ Order Authorizing Recommencing of Route Permit Proceedings and Providing Direction for the Scope of the Comparative Environmental Analysis (August 3, 2015), at Orders (9) & (10) (Although the Commission did not specifically find that the DOC-EERA environmental analysis was insufficient, its findings evidenced its acknowledgment of the criticisms made by many parties that to simply count resources in a proposed path of a pipeline is grossly inadequate and misleading because no consideration is made to the purity or impairment of the resources, a much more meaningful question for review.).

⁷ Order of the Public Utilities Commission dated October 7, 2014 at VI(B), p. 11.

⁸ *Id.* at p. 12.

Minnesota Department of Commerce or other Executive action of the State of Minnesota.⁹ The obligations of the State of Minnesota are an extension of the Federal trust responsibility owed to Tribal Nations which cannot be met simply by participation of the White Earth Nation and Honor the Earth in the permitting proceedings. The obligation is one of nation-to-nation consultation, and must be done unequivocally and directly with the Tribal Nations. The White Earth Band of Ojibwe advises the Commission that to go any further with permitting of the Sandpiper Pipeline and the Line 3 Pipeline without meaningful consultation and co-management of usufructuary use rights resources is a violation of the trust responsibility.

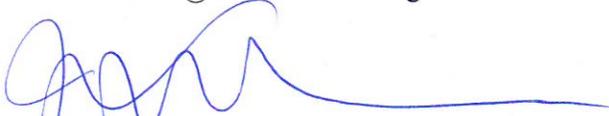
The White Earth Band of Ojibwe looks forward to meaningful consultation with the State of Minnesota, and development of a co-management plan for usufructuary use rights resources within the 1855 Treaty-ceded territory. And, expects that an Environmental Impact Statement will be completed, considering all routes offered in the Sandpiper proceedings including SA-03, SA-04, SA-05, SA-06, SA-07, and SA-08, as well as all other route and alternative options offered during this scoping period, which considers both the proposal for the Sandpiper Pipeline and the proposal for the Line 3 Pipeline.

The White Earth Band of Ojibwe appreciates the consideration of the Commission in this matter.

Sincerely,



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⁹ *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). This case and its progeny establish that the United States Federal Government, and by extension the States, have an obligation to the Tribal Nations of the country, and that this obligation is enduring.