

Attachment 3A: Decommissioning Trust Fund

The Commission included a modification of the Certificate of Need (“CN”) to require that Enbridge establish a decommissioning trust fund, including the costs of removal of the Line 3 Replacement (“L3R”) project pipeline, based on the decommissioning trust that the Canadian National Energy Board (“NEB”) directed Enbridge Inc. to fund for the decommissioning of certain of its pipelines in Canada. Enbridge has laid out the framework to accomplish a decommissioning trust that is similar to what is done for the NEB. As discussed briefly below, and laid out in Attachment 3B, the differences in regulatory structure and applicable law are such that Enbridge will mirror but is unable to wholly replicate the decommissioning trust structure used for NEB-regulated pipelines. This filing includes the following:

- A brief explanation of crude oil pipeline regulatory structures in Canada and the United States;
- A side-by-side comparison of various terms and conditions of the decommissioning trust that was established to comply with NEB requirements (see Attachment 3B) and would be included in the L3R Decommissioning Trust; and
- Steps required to establish the Decommissioning Trust Fund.

The Applicable Regulatory Structures

Canada’s crude oil pipeline regulatory structure is different than the United States’ structure. In Canada, one regulatory body, the NEB, regulates crude oil pipelines comprehensively. This is in contrast with the United States’ regulatory structure, where pipeline safety and rates are under different federal authorities, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and the Federal Energy Regulatory Commission (“FERC”), and decisions to approve projects are made at the state level.

In October 2007, the NEB issued the Land Matters Consultation Initiative, which included a stream of work around financial issues related to abandonment funding.¹ The NEB held a public hearing in 2008 – 2009 to gather input on these issues from stakeholders and decided to implement abandonment funding requirements. The NEB established a framework and action plan that allowed parties to provide input on the requirements. Hearings and technical conferences over the course of several years were held. In short, shippers pay additional tolls to ship on the NEB-regulated pipelines in Canada and those additional tolls are paid into the decommissioning trust fund so that the funds necessary to cover the anticipated removal costs (note that Canada estimates 20% removal in agricultural lands and 80% continued maintenance, not the 100% removal set out by the Commission’s modification to the CN) will be available at the end of the pipeline’s service life. Canadian federal law—the Income Tax Act—was amended

¹ In the NEB’s terminology, “abandonment” is the final removal from operation and discontinuance of service. While “decommissioning” has a slightly different meaning for the NEB, because “decommissioning” is used in the Commission’s modification to the CN, for ease of reference these documents use the word “decommissioning.”

to allow pipeline companies to use the Qualifying Environment Trust (“QET”) structure for the purpose of funding the pipeline companies’ decommissioning trusts.²

The Decommissioning Trust for Enbridge Pipelines in Canada Compared to the Decommissioning Trust Structure for Line 3 Replacement Project in Minnesota

Attachment 3B identifies material terms and conditions of the decommissioning trust for the NEB (available at: <https://apps.neb-one.gc.ca/REGDOCS/Search?loc=2837151&txthl=A4T9Z0&sr=1>) alongside of the analogous proposed terms and conditions for L3R in Minnesota and, where applicable, explains potentially material differences between Canadian laws and regulations with United States and Minnesota laws and regulations, which will affect the decommissioning trust’s structure. On the whole, unless and until trust and/or tax laws applicable to L3R in Minnesota are changed, the decommissioning trust for L3R in Minnesota will be subject to potential legal risks, more difficult to achieve the goals of the Commission, and more costly. Nevertheless, Enbridge is abiding by the Commission’s modification to the CN and in doing so is attempting to mimic the Canadian decommissioning trust fund to the extent possible.

Steps to have Decommissioning Trust Established for L3R

There are several decisions to be made and tasks to be completed in order to establish the Decommissioning Trust, in addition to those items identified on Attachment 3B. The items also include the following:

- A Request for Proposals process for Trustee(s) leading to the selection of the Trustee(s);
- Negotiate and execute Trust Agreement with Trustee(s);
- A Request for Proposals process for Investment Management leading to the selection of the Investment Manager(s);
- Establish Investment Policy for trust funds;
- Review and finalize Decommissioning Cost Estimate;
- Forecasting investment returns and income taxes to establish annual collection amount for funding plan; and
- Negotiate and execute agreement for tolls to fund trust (and obtain FERC approval for such negotiated tolls).

² The Commission’s modification provides that the decommissioning trust for L3R in Minnesota is to be based on the requirements the NEB has on “Enbridge Inc.” for decommissioning of its NEB-regulated pipelines. For clarity’s sake, the requirements and related trust agreements are on and with the pipeline operators (e.g., Enbridge Pipelines, Inc.), not “Enbridge Inc.” Enbridge has assumed that the Commission’s intent is to have the operator of L3R in Minnesota be party to the trust rather than Enbridge Inc., which does not itself collect the tolls from shippers that fund the decommissioning trusts.

Enbridge will diligently pursue each of these items and is committed to having the Decommissioning Trust established before L3R is in-service. At this point, because the route for L3R in Minnesota is not yet final, there are critical activities that cannot be completed, including the decommissioning cost estimate that will serve as the basis for the collection of tolls necessary to fund the trust. Enbridge will incorporate any additional Commission guidance following the comment period in completing these activities. In addition, Enbridge will continue to analyze and, where appropriate, pursue legislative and/or regulatory changes and/or guidance that would allow the Decommissioning Trust for L3R in Minnesota to be as close to the requirements for decommissioning trusts for NEB-regulated pipelines as possible.

Attachment 3B: Proposed Terms and Conditions for Enbridge’s U.S. Decommissioning Trust

	Canadian Trust	Proposed US Trust	Notes
Purpose and Nature of Trust	<p>Established as Qualifying Environmental Trust (“QET”) under Canada law for the sole purpose of satisfying “Reclamation Obligations.” The term Reclamation Obligations is defined in the trust agreement as the duty to carry out physical abandonment, decommissioning, or deactivation of the pipeline, the duty to develop a deactivation plan, and the duty to carry out post-abandonment monitoring and remediation. The Canadian National Energy Board (“NEB”) requires that pipeline companies fund their abandonment trusts to provide for removal of 20% of the pipeline on agricultural lands and continued maintenance of all remaining pipeline (including 80% of pipeline on agricultural land and 100% of pipeline not on agricultural land).</p> <p><i>(Articles 1.1 (hh), 2.5)</i></p>	<p>Trust will be established and maintained for the sole purpose of decommissioning and/or deactivating, which could include monitoring, repair, removal, and remediation (collectively “Decommissioning”) of Line 3 Replacement (“L3R”) as required by the PUC (obligation to remove 100% of the pipeline).</p>	<p>The Canadian trust was established as a QET. It took Enbridge and other pipeline companies several years to get the law changed in Canada to allow pipeline decommissioning trusts to qualify as QETs. There is currently no U.S. or MN law similar to the Canadian QET provisions for pipeline decommissioning trusts (provisions currently exist only for Nuclear Decommissioning Trusts (“NDT”) under I.R.C. § 468A). Thus, establishing a similar pipeline decommissioning trust in the U.S. may require changes to federal and state law. Required legislative changes and other aspects of the creation and funding of the trust could take years, as discussed further in this document.</p>

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	Canadian Trust	Proposed US Trust	Notes
Grantor/ Settlor	Enbridge Pipelines Inc. (Canadian Corporation).	The Settlor of the trust will likely be the appropriate Enbridge entity that owns L3R and/or the shippers who pay decommissioning charges to fund the trust.	The determination of the Grantor, Settlor and Beneficiary raise tax and creditor protection issues, as discussed further in this document.
Beneficiaries	Operator of pipeline, anyone with a duty to carry out the physical abandonment, decommissioning, or deactivation of the pipeline, anyone with a duty to develop an abandonment plan, anyone with a duty to carry out post-abandonment monitoring and remediation for portion of pipeline not removed. <i>(Article 1.1 (h), (k), (hh))</i>	Distributions may be made to person or persons with obligation to Decommission L3R.	
Trustees	CIBC Trust Corporation, a Canadian entity approved by the NEB. <i>(Article 1.1 (rr))</i>	Likely a U.S. corporate trustee to be appointed by Enbridge.	<ul style="list-style-type: none"> • Need to interview and select trustee who has a sufficient level of sophistication and experience. In Canada, the trustee selection process and negotiation of the trust agreement took approximately twelve months, given that this was the first time a trust of this nature had been established and there were considerable questions with respect to trustee obligations and liabilities. • As this type of trust does not yet exist, it will be difficult to identify appropriate trustees. • Trustee should be a U.S. domestic entity unrelated to Enbridge.

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Creditor Protection	Trust assets are protected from Enbridge’s creditors under applicable law in Canada.	Enbridge assumes that it is the PUC’s intent that trust assets be protected from Enbridge’s creditors.	<ul style="list-style-type: none"> • If the trust is formed under Minnesota law as a Minnesota trust and if it is funded by Enbridge using its own funds, with Enbridge as settlor and one of the beneficiaries, the trust will likely be a grantor trust for U.S. federal and state tax purposes (<i>i.e.</i>, it will be disregarded for tax purposes), and the trust assets would probably not be protected from Enbridge’s creditors. • To avoid the potential for assets to be subject to creditor claims, Enbridge is analyzing whether there are other options. For example, if the funding comes from shippers via Enbridge’s accounts, it may be possible to obtain a ruling from a probate court that such funds do not belong to Enbridge and, therefore, that the fund’s assets should be protected from creditors. In addition to the time required to prepare a petition for the probate court, the process to acquire a probate court ruling would take two to three months if uncontested and up to several years if contested. Alternatively, Enbridge may consider forming the trust in a different state that would have stronger creditor protection laws for trusts (<i>e.g.</i>, South Dakota or Delaware), although this may have other disadvantages including taking the decision-making out of Minnesota. Enbridge is also exploring whether changing the law such that a pipeline decommissioning trust would be treated similarly to an NDT would offer creditor protection. • It may be possible for shippers who pay the decommissioning charges to make contributions directly to the trust, rather than through an Enbridge entity. However, it is not likely feasible for the shippers to be parties to the trust agreement. If the shippers are the settlors of the trust, the trust may be a non-grantor trust (<i>i.e.</i>, it will be regarded for tax purposes as a taxpayer) and may be exempt from claims of Enbridge’s creditors. • Further analysis is required for all of these options.

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	Canadian Trust	Proposed US Trust	Notes
Governing Law	Province of Alberta and Laws of Canada. <i>(Article 15.6)</i>	Preferably, Minnesota law, subject to creditor protection and trust duration issues.	The trust document would give the trustee the ability to change the situs and governing law of the trust.
Situs of Trust	Province of Alberta, Canada. <i>(Article 2.4)</i>	United States.	Enbridge will attempt to situate as much of the trust in Minnesota as possible. Ultimately, state situs will depend on (a) who is appointed as trustee (see note above) and (b) creditor protection and duration issues.
Contributions	Enbridge Pipelines Inc. makes contributions from amounts collected from shippers as abandonment charges. <i>(Article 4.1)</i>	Enbridge plans to negotiate with shippers and seek approval from FERC to fund the trust with amounts collected from shippers as decommissioning charges.	Likely need Private Letter Ruling (“PLR”) from the Internal Revenue Service (“IRS”) to determine whether decommissioning charges collected from shippers would be taxable income to Enbridge or, alternatively, whether contributions by Enbridge to the Trust would be deductible. Enbridge estimates a nine to twelve month period to obtain a PLR.
Investment	Trustee, after consultation with Enbridge, delegates and appoints one or more investment managers. <i>(Article 5.2)</i>	Trustee after consultation with Enbridge may (a) manage investments itself, (b) engage an investment manager to advise the trustee, (c) delegate investment decisions to an investment manager, or (d) appoint an “investment trust advisor” who can control trustee investment decisions as a fiduciary.	Investment manager should be a U.S. domestic entity (to avoid foreign trust tax status), which is unrelated to Enbridge.

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	Canadian Trust	Proposed US Trust	Notes
Distributions	<ul style="list-style-type: none"> • Trust expenses (trustee fees, costs, admin. expenses, etc.). • Taxes imposed on and payable by the Trust, including all taxes imposed on and payable by the trust. • To a beneficiary for its Reclamation Obligations upon presentation of written direction or order from the NEB. • To a third party designated by the NEB for the purpose of funding the discharge of a beneficiary’s Reclamation Obligations upon presentation of written direction or order from the NEB issued in the name of the third party confirming the amount to be disbursed and the timing of disbursement. <i>(Article 4.2)</i> 	<ul style="list-style-type: none"> • Trust expenses (trustee fees, costs, admin. expenses, etc.). • Taxes imposed on and payable by the trust, including all taxes imposed on and payable by the trust. • Distributions to grantor/settlor to pay any tax resulting from trust. • To a beneficiary or third party for the purpose of Decommissioning L3R (including to develop a Decommissioning plan). 	<ul style="list-style-type: none"> • In Canada, in order for the trustee to distribute funds for the purpose of satisfying Reclamation Obligations, the NEB (having jurisdiction over the abandonment, decommissioning, and deactivation of pipelines as well as rates and other financial matters) issues a written direction to the Trustee. No similar structure exists in the United States. Thus, a disbursement methodology needs to be developed to determine how to distribute funds for Decommissioning. • This aspect of the trust document could lead to protracted negotiations with potential trustees. • Likely need PLR from the IRS to determine (a) taxability of distributions from the trust for the purpose of Decommissioning, (b) deductibility of costs incurred to Decommission are deductible, and (c) taxability of distributions to grantor/settlor to pay tax resulting from trust. Enbridge estimates a nine to twelve month period to obtain a PLR.

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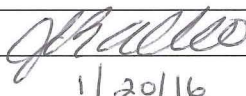
	Canadian Trust	Proposed US Trust	Notes
Surplus Funds	<p>If the Trust is terminated and property remains after all reclamation obligations have been completed and paid for, the trustee, with NEB’s approval, may distribute the fund to any of the beneficiaries and to an Orphan Pipeline Fund in the trustees’ sole discretion.</p> <p style="text-align: right;"><i>(Article 13.3)</i></p>	<p>After final Decommissioning of L3R, surplus funds may be distributed to a MN abandoned pipeline fund that will be established and maintained for the purpose of funding reclamation of any other abandoned Enbridge pipelines in Minnesota.</p>	<p>The Orphan Pipeline Fund in Canada is a not-for-profit corporation that will be established pursuant to a statute of the Parliament of Canada and will maintain funds for the purpose of funding reclamation of abandoned pipelines in Canada. Enbridge is aware of no analogous entity under U.S. law. The new trust document could potentially provide for the creation of a similar entity to operate in Minnesota for Enbridge pipelines.</p>
Tax Obligations	<p>The trust will incur and pay tax obligations of the trust and the trustee will prepare and file income tax returns.</p> <p style="text-align: right;"><i>(Article 7.1)</i></p>	<p>If the trust is a non-grantor trust, to the extent it incurs tax, it will pay its tax obligations and the trustee will prepare and file income tax returns.</p> <p>If the trust is a grantor trust and absent a law change, the tax obligations will fall on the grantor/settlor. The trust will make distributions to the grantor/settlor to pay tax resulting from the trust.</p>	<p>Enbridge will consider seeking change in law to qualify a pipeline decommissioning trust under I.R.C. § 468A for NDTs or through similar provisions. A qualified NDT is taxed as a corporation at a rate of 20%. If federal law change is pursued, Enbridge will consider seeking corresponding state law change. Such a change in the law would likely take years.</p>

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Reporting and Recordkeeping	Trustee provides annual reports to Enbridge, which files the reports with the NEB. <i>(Article 8)</i>	Trustee will provide annual reports to Enbridge and any other known beneficiaries, which will file the report with MPUC.	A sample report, as required by the NEB, is attached hereto as <u>Attachment 3C</u> .
Term of Trust	In accordance with Canadian law pursuant to QET provisions and period of perpetuity legislation of Alberta. <i>(Article 13.2)</i>	In accordance with applicable state law.	MN “rule against perpetuities” currently allows a maximum period for most non-charitable trusts of up to 90 years or lives of identified individuals plus 21 years. Minnesota law exempts charitable trusts, trusts “arising out of a nondonative transfer,” pension funds, and funds held by governmental entities from this limit. Several other states, including South Dakota and Delaware, no longer have such a rule.
Irrevocable	Trust is irrevocable. <i>(Article 13.4)</i>	Trust will be irrevocable.	
Modification	Trust may be amended on agreement of Enbridge and the trustee. <i>(Article 13.1)</i>	Trust may be amended on agreement of Enbridge and the trustee.	Enbridge is further analyzing the appropriate scope and procedures for amendments of the trust document. Enbridge will have to carefully analyze the tax, creditor protection, and other legal implications of allowing amendment of the trust. These will vary depending on the situs of the trust and the applicable state law.

Appendix XV

Reporting Form – Companies using Trusts for Set-aside mechanism

Table I.1 Update on Abandonment Funding for Pipeline with Trust			
Regulatory Instrument Holder (entity which holds certificate/order)	Enbridge Pipelines Inc.		
Filed by (company name) if different from regulatory instrument holder	N/A		
Pipeline System Name (for each, fill-in separate form)	The Canadian Mainline System (including Line 8)		
For Group 2 companies, associated order numbers or certificates	N/A		
Update on Abandonment Funds			
Year open date	01/01/15	Planned	Actual
Year open balance	millions	\$0.0	\$0.0
Directed by Board to set aside	millions	\$34.9	\$34.9
Collected from Shippers	millions	\$34.9	\$33.2
Contributed by Pipeline Owners	millions	\$34.9	\$33.2
Other	millions	\$0.0	\$0.0
Earnings within Trust	millions	\$0.6	\$0.6
Taxes paid on earnings within Trust	millions	\$0.2	\$0.0
Disbursements (and Board orders authorizing the disbursements)	millions	\$0.0	\$0.0
Year Close Balance	millions	\$35.3	\$33.8
Year close date	31/12/15		
Any Other relevant information	See attached.		
Compliance Confirmation			
The Investment Policy (or Statement of Investment Policy and Practices) filed with the Board still current and in use?	Agree		
All investment decisions and actions the year complied with this Investment Policy throughout the year?	Agree		
Changes in cost estimates, or other components that could prompt material changes in funding plan	No changes		
Pipeline is still in operation	Agree		
Filed by (Officer of the Pipeline System Certificate holder) <i>Print name of individual</i>	Jody Balko		
Signature			
Dated	1/20/16		

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Material Variance Explanations

Actual Income taxes paid were nil as 2015 was the first year of operation of the trust. Accordingly the trust had no earnings history which could form the basis of tax instalment payments during 2015.