

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuenger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

**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**

MPUC Docket No. PL-9/CN-14-916

**ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S
RESPONSE TO MOTION FOR CLARIFICATION OF PRIOR ORDER DATED
JANUARY 23, 2019 APPROVING COMPLIANCE FILINGS AS MODIFIED AND
DENYING MOTION**

INTRODUCTION

Enbridge Energy, Limited Partnership (“Enbridge”) submits this response to the Motion for Clarification of Prior Order dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion (“Motion”), submitted by attorney Evan G. Carlson (“Movant”).

The Landowner Choice Program (the “Program”), proposed by Enbridge and incorporated by the Commission, as modified, as a modification of the Certificate of Need, gives landowners the option of choosing to have Enbridge either: (1) remove existing Line 3; or (2) deactivate existing Line 3 in place and pay the landowner for that. As set out below, Enbridge has complied with all requirements of the Program, the Program has been implemented effectively, and the Commission does not need to clarify any part of the Program.

The Program was formally launched to the landowners in July 2020, with an introductory packet of materials that was developed with input from the independent liaison—Department of

Commerce, Energy Environmental Review and Analysis unit (“DOC-EERA”). In the approximately 10 months that have followed, Enbridge’s Land Rights representatives have worked to implement the Program. Most landowners have chosen the deactivation-in-place option, executed agreements reflecting their choice as well as the fact that they received all information necessary to make their choice, and have been paid accordingly.¹ Some landowners have indicated they intend to elect the removal option. Others are still in the process of making their decisions.

Movant is a lawyer who represents some landowners along existing Line 3. Movant represents 11 of the 12 landowners who have made information requests of DOC-EERA in the Program’s 10-month life. Movant seeks to cause Enbridge to increase the compensation Enbridge has paid and will pay to landowners who elect the deactivation-in-place option. According to his website, Movant represents these landowners on a contingency basis, which means that his own compensation depends on causing Enbridge to pay more money to his clients if they elect the deactivation-in-place option than it has already offered to them, which is the same rate Enbridge has offered to similarly situated landowners who have chosen the deactivation-in-place option.

The Motion is a hyperbole-laden attempt to convince the Commission that the Program, despite its successful implementation, needs some clarification or change to ensure landowners make informed decisions. Movant’s suggestion that the Commission must clarify aspects of the Program is not supported by facts or common sense. Nor is there factual or legal support for Movant’s request that the Commission invalidate hundreds of agreements already reached between landowners and Enbridge that are consistent with the Program.

¹ Payments are made at the uniform rate of \$10 per lineal foot of deactivated-in-place pipeline.

Hyperbole aside, the Commission should recognize that the reason the Motion is before it is that Movant disagrees with the rate of compensation Enbridge is offering to those who choose the deactivation-in-place option and Enbridge's decision to treat all similarly-situated landowners who choose that option equally by paying them \$10 per lineal foot of pipeline deactivated-in-place. Moreover, Movant has not provided any legitimate basis for the Commission to undo decisions made by hundreds of landowners—each of whom agreed they had received all information required under the Program *and* any other information they wanted in order to make their decision between the deactivation-in-place and removal options—or to redesign and start the Program over through “clarification” and “remedies” sought by the Motion.

Enbridge has abided by the Program and the Program has worked as it should. The Motion should be denied in all respects.

PROCEDURAL BACKGROUND

Enbridge proposed the Program in the Certificate of Need proceedings so that landowners along the existing Line 3 could choose to either have the decommissioned pipe removed from their land or have the pipe deactivated in place.²

On June 28, 2018, the Commission voted in favor of granting a Certificate of Need with modifications, including incorporating the Program as modified by the Commission, contingent on Commission review and approval of the modifications. The Commission also required Enbridge to make a compliance filing about the Program (and other Certificate of Need

² See CN Modifications Compliance Filing, Attachment 2A – Landowner Choice Program Description, Docket No. PL-9/CN-14-196 (July 16, 2018) [Doc. ID No. 20187-144948-03].

modifications made by the Commission) by July 16, 2018.³ Parties were invited, and the Department of Commerce was requested, to respond to that filing by July 30, 2018.

On July 16, 2018, Enbridge made the required compliance filing.⁴ In that filing, Enbridge identified how the Commission's modifications to the Program were incorporated into the Program.⁵ Relevant to the Motion, the compliance filing set forth the following:

- Independent Third-Party Engineer – Enbridge would support, at Enbridge's expense, contracting with an independent third-party engineering firm to serve as a resource to landowners. The firm(s) would be selected via a Request for Proposal by PHMSA or DOC-EERA. Contact information to personnel at such firm(s) would be made available to landowners.⁶
- Compensation – Enbridge explained that landowners, subject to reaching an agreement with Enbridge, would be compensated for the deactivation-in-place option. As to the amount of compensation, Enbridge stated that it “anticipate[d] that payments will be roughly equivalent to those made as part of the deactivation process for the Canadian portion of the Line 3 Replacement Project pipeline.”⁷

The Department of Commerce, Division of Energy Resources (“DOC-DER”) and several parties filed comments on the compliance filing. Among other things, DOC-DER proposed that a dispute resolution mechanism—mediation—be included as a modification to the Certificate of Need. DOC-DER and other parties' comments included their positions about the scope of involvement

³ Notice of Compliance Filing Requirements and Comment Period on Certificate of Need Modifications for the Proposed Line 3 Replacement Project, Docket No. PL-9/CN-14-196 (July 11, 2018) [Doc. ID No. 20187-144716-02].

⁴ See CN Modifications Compliance Filing, Attachment 2A – Landowner Choice Program Description, Docket No. PL-9/CN-14-196 (July 16, 2018) [Doc. ID No. 20187-144948-03].

⁵ Cover Letter to Certificate of Need Modifications – Compliance Filing, pp. 3-4, Docket No. PL-9/CN-14-916 (July 16, 2018) [Doc. ID No. 20187-144948-01].

⁶ CN Modifications Compliance Filing, Attachment 2A – Landowner Choice Program Description, Docket No. PL-9/CN-14-196 (July 16, 2018) [Doc. ID No. 20187-144948-03].

⁷ *Id.* at p. 4. The rate paid for the Canadian portion of the Line 3 Replacement Project pipeline in 2015 was \$17 per lineal meter, or roughly \$5.18 per lineal foot.

that the independent third-party engineer (and other third parties) should have in implementation of the Program.

On September 5, 2018, the Commission issued its Order Granting Certificate of Need as Modified and Requiring Filings.

On September 7, 2018, Enbridge filed an Update Regarding Compliance Filing. In that correspondence, Enbridge reiterated its support for making additional third-party resources available to landowners and stated that “Enbridge has agreed to support and fund an agency liaison and independent engineer and will take the steps necessary to assist the Commission in identifying these individuals.”⁸ Still, Enbridge also explained that it did not support comments that suggested that landowners who have hosted existing Line 3 (and often other Enbridge pipelines) on their property for decades, would be unable to make informed decisions without heavy involvement from third parties.

On September 11, 2018, the Commission took no action after meeting to consider the compliance filing and responsive comments.

On November 19, 2018, the Commission met again to consider the compliance filing.

On January 19, 2019, the Commission issued its Order Approving Compliance Filings as Modified and Denying Motion. That order found the Program satisfied the Order Granting Certificate of Need as Modified and Requiring Filings’ requirements once certain modifications were included. Those modifications included provisions regarding compensation, third-party engineering resources, and dispute resolution, as follows:

- “Any landowner whose request for removal cannot be honored for any reason, even after July 1, 2024, shall be offered compensation for allowing the pipe to be decommissioned in-place on the same

⁸ September 7, 2018 Certificate of Need Modifications – Update Regarding Compliance Filing, pp. 3-4 Docket No. PL-9/CN-14-916 [Doc. ID No. 20189-146299-02].

terms as all other landowners who choose decommissioning in-place.”

- “All landowners shall be provided on request a preliminary written removal plan prior to their decision that identifies the extent of removal work, needed staging areas, anticipated reimbursable damages, anticipated permits and approvals needed, and the process for contacting the independent liaison, the independent third-party engineer, and the company during the decision process.”
- “Enbridge shall allow landowners or groups of landowners to select a different independent engineer to consult on removal options. Enbridge is only obligated to reimburse a landowner-selected third-party engineer up to the same terms and rates as those established in the contract that selected the third-party engineer arising out of the request for proposal process. Enbridge is only obligated to reimburse a landowner-selected third-party engineer if the landowner receives prior written approval from the independent liaison that the engineering consultant has shown that they are competent in pipeline removal or environmental damage remediation.”
- “For any disputes arising between landowners and Enbridge regarding the operation of the program that cannot be resolved through the use of the independent liaison and third-party engineer, Enbridge shall offer an independent mediation at Enbridge’s expense. If mediation is unsuccessful, only matters relating to the operation of the program established as a modification to the Certificate of Need may be brought to the Commission. The Commission will not resolve any property rights issues.”

Some parties and members of the public filed Petitions for Reconsideration of the January 23, 2019 Order.

On March 27, 2019, the Commission issued its Order Denying Reconsideration of the January 23, 2019 Order.

On June 3, 2019, the Minnesota Court of Appeals reversed a May 2018 Order by the Commission that had determined the Revised Final Environmental Impact Statement for the Project was adequate. The matter was remanded back to the Commission.

On May 1, 2020, the Commission issued its Order Finding Environmental Impact Statement Adequate, Granting Certificate of Need as Modified, and Granting Routing Permit as Modified.

Ecology & Environment, Inc. (“E & E”) was selected by DOC-EERA to serve as the independent, third-party engineering firm under the Program. It was selected before the Court of Appeals’ 2019 decision and was selected again in 2020 after the Commission again granted a CN for the Project.

Enbridge coordinated with the DOC-EERA about how to best introduce and implement the Program with landowners. Through that coordination, it was determined that landowner contacts for third-party resources should be directed through DOC-EERA as the independent liaison, so that the DOC-EERA could coordinate with the independent third-party engineering firm as necessary, rather than to have landowners directly contact E & E. The introductory materials distributed by Enbridge (discussed below) were developed with DOC-EERA’s input and review.

On July 17, 2020, Enbridge sent a copy of the introductory materials to each landowner. Those materials consisted of the introductory letter, “Q & A,” and fact sheets about removal and deactivation-in-place, respectively. The letter explained to landowners, among other things, that Enbridge’s representatives would work to provide landowners with resources needed to make their decisions and that DOC-EERA would be available to provide additional support too:

As part of the Minnesota Public Utility Commission’s permitting process, Enbridge clarified aspects of the program noting that landowners would receive information about environmental permitting and a timeframe that would allow for a fully informed decision. Enbridge’s Land Rights representative will work to provide you with any resources you need to help make your decision. In addition, the Minnesota Department of Commerce, Energy Environmental Review and Analysis unit will serve as an independent liaison to provide additional support through the Landowner Choice Program.

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⁹ See Compliance filing of introductory package, Line 3 Replacement Project – Landowner Choice Introductory Letter, p. 1, Docket No. PL-9/CN-14-916 (filed Aug. 26, 2020) [Doc. ID No. 20208-166178-02].

The Q & A again informed landowners that Enbridge’s Land Rights representatives would work to provide landowners with resources to assist in their decision-making process, and again informed landowners that DOC-EERA would serve as the independent liaison and would coordinate with landowners and appropriate other resources to address landowner questions:

What other resources are available to me to help me make a decision?

Enbridge’s Land Rights representative will work to provide you with resources to assist you in your decision-making process. In addition, an independent liaison can provide additional resource available through the Landowner Choice Program. That liaison, the Energy Environmental Review & Analysis Unit of the Minnesota Department of Commerce, will coordinate with the appropriate resources knowledgeable in matters potentially relevant to your decision-making process and help address technical questions related to your election to remove or deactivate-in-place. Enbridge’s Land Rights representative will provide you contact information for the liaison.

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The removal fact sheet specifically told landowners that “third-party engineering expertise will be available to [them]”:

¹⁰ *Id.* at Q & A, p. 1.



Under the Landowner Choice Program proposed by Enbridge, and required under the Certificate of Need, Line 3 landowners can decide whether the existing Line 3 is deactivated in place or removed from their property, subject to permitting limitations.

This choice is available until July 1, 2025.

Deactivation in place is the most widely used method for pipeline deactivation and is the safest option. Deactivation in place reduces the risk of soil stability issues, avoids major construction activities and reduces the potential risk to existing pipelines from heavy equipment. However, should a landowner choose to have the line removed from their property, Enbridge will do so with the same commitment to safety as it does with all pipeline work activity.

As part of the Minnesota Public Utility Commission (PUC)'s permitting process, Enbridge

clarified aspects of the program noting that landowners would receive information about environmental permitting and a timeframe that would allow for a fully informed decision.

Third-party engineering expertise will be available to landowners.

Enbridge is responsible for its pipelines, whether they are active or not. Enbridge will continue to monitor and maintain the right-of-way.



Website: enbridge.com/line3US
E-mail: enbridgeinmn@enbridge.com
Toll-free: 1-855-788-7812

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¹¹ *Id.* at “Line 3 Landowner Choice Removal Option” fact sheet/flyer, p. 1.

On October 19, 2020, the Movant made a complaint about the Program. DOC-EERA staff met with the Movant to better understand the concerns and received some follow-up information.¹²

On October 28, 2020, DOC-EERA provided the complaint to Enbridge.

On November 25, 2020, Enbridge provided a response concerning the Movant's complaint.

On April 30, 2021, Movant filed the Motion.

On May 5, 2021, the independent liaison filed a status update.¹³ In that update, the independent liaison stated that “[n]o landowners made information requests in 2021. As of today, 12 landowners made information requests [dating back to 2020]. The independent liaison has provided third-party engineer assessments to all landowners.”¹⁴ The independent liaison explained that he had talked with Movant about Movant's issues and told Movant that, in light of the nature of those issues, mediation was not a logical next step and provided the Movant guidance on how to proceed to bring the matter before the Commission.

SUBSTANTIVE BACKGROUND

As set forth above, the Program lets landowners choose whether to have the existing Line 3 pipeline removed or deactivated-in-place. Enbridge is administering the Program's compensation component similar to how payments were handled for the similar efforts on the Canadian portion of the existing Line 3 pipeline. Specifically, Enbridge is paying landowners who choose deactivation-in-place a uniform rate of \$10 per lineal foot. This equal treatment reflects that fact

¹² See Independent liaison's Line 3 Landowner Choice Program Quarterly Status Update (2020/Q4), pp. 1-2, Docket No. PL-9/CN-14-196 (Nov. 20, 2020) [Doc. ID No. 202011-168470-01].

¹³ Independent liaison's Line 3 Landowner Choice Program Quarterly Status Update (2021/Q1 and Q2), Docket No. PL-9/CN-14-196 (May 5, 2021) [Doc. ID No. 20215-173862-01].

¹⁴ *Id.* at p. 1.

that all landowners choosing the deactivation-in-place option share one fact in common—they are choosing to have underground pipe deactivated in place on their property.

There are approximately 998 privately-owned tracts that host existing Line 3.¹⁵ Owners of 737¹⁶ of those tracts have chosen to sign an agreement for the deactivation-in-place option. Enbridge has determined that the appropriate approach—similar to the one used in the analogous arrangement in Canada—is to treat similarly-situated landowners the same by paying the landowners who choose the deactivation-in-place option \$10 per lineal foot of pipeline to be deactivated on their property. Each landowner signs an agreement documenting their decision and that agreement is recorded, consistent with the Program.¹⁷ In each agreement, each landowner agreed that “Enbridge provided Landowner with all information required by the MPUC and all additional information that Landowner reasonably requested in order to allow Landowner to select the Deactivation-in-Place Option or the Removal Option.”¹⁸ Removal has been requested by landowners of 38 tracts, and there are 223 tracts that are considered “in progress.”

Movant is a lawyer representing approximately a dozen landowners along existing Line 3 in connection with the Program. He runs a website dedicated to the Program. The website sets forth Movant’s view that Enbridge should be required to “substantially increase” compensation to landowners who select the deactivation-in-place option, ostensibly because the costs to Enbridge

¹⁵ These figures include parcels that Enbridge has purchased in connection with the Line 3 Replacement Pipeline project. Additionally, the exact number of eligible parcels can change as Enbridge acquires additional information about sales, subdivisions, or other title updates.

¹⁶ Data as of May 3, 2021.

¹⁷ A representative agreement is attached as Exhibit 1 hereto (identifying information has been redacted).

¹⁸ *Id.* at p. 2.

of removing the pipeline exceed the amount of Enbridge's compensation offer.¹⁹ Movant is only paid if Enbridge compensates his clients at a rate greater than what Enbridge has offered them (and to all others under the Program).²⁰

The Motion requests that the Commission issue several, wide-ranging "clarifications" about the Program. In addition, Movant seeks remedies, apparently including the voiding of hundreds of agreements already executed by landowners under the Program.

DISCUSSION

I. ENBRIDGE HAS COMPLIED WITH THE PROGRAM.

The Motion asserts that Enbridge has failed to disclose to landowners that (1) they have access to a third-party engineer; (2) they can negotiate for more compensation to select deactivation-in-place than Enbridge is offering to pay; and (3) they can access mediation to resolve disputes, at Enbridge's expense. Movant requests that the Commission issue a number of "clarifications" and order certain remedies that would have the effect of starting the Program over, including apparently voiding all of the agreements signed by landowners who have already selected the deactivation-in-place option. The clarifications are unnecessary, and no remedies are appropriate.

¹⁹ <https://attorneycarlson.com/landowner-choice-program> (last visited May 13, 2021).

²⁰ <https://attorneycarlson.com/representation-agreement> (last visited May 13, 2021) and <https://img1.wsimg.com/blobby/go/7530df6c-f14f-46ba-bbdb-bb5a47c94f47/downloads/L3%20Waiver%20Retainer.pdf?ver=1582910341262> (last visited May 13, 2021) ("Attorneys' fees for legal services shall be Thirty-three percent (33%) of the gross amount of any recovery in excess of any waiver payment offer existing at the time of signing this Representation Agreement.").

A. Landowners Have Been Informed That They Have Access to a Third-Party Engineer.

Movant complains that Enbridge has not adequately disclosed to landowners the existence of third-party engineering resources. Movant asserts, without support, that “Enbridge has effectively and intentionally hidden the existence of the third-party engineer for the purpose of keeping landowners uninformed.” The purpose of Enbridge’s alleged actions, according to Movant, are that Enbridge does not want landowners to know that the costs to Enbridge of removal are much higher than what Enbridge is offering to pay landowners who choose the deactivation-in-place option. Movant’s allegations are incorrect.

First, as set forth above, the introductory materials were developed with input from DOC-EERA. Thus, Movant’s attempt to discredit Enbridge is in reality a swipe at a collaborative process designed with agency input to reflect that the independent liaison (i.e., DOC-EERA) would coordinate third party resources.

Second, the assertion that Enbridge has “hidden” the existence of the third-party engineering firm from landowners is false. Enbridge’s introductory letter explained that its representatives would work to provide landowners with “any resources [they] need to help make [their] decision” and that, “[i]n addition, the Minnesota Department of Commerce, Energy Environmental Review and Analysis unit will serve as an independent liaison to provide additional support through the Landowner Choice Program.” Movant concedes in his Motion, as he must, that Enbridge told each landowner in the introductory materials that “[t]hird-party engineering experts will be available to landowners.” Yet Movant asserts that the disclosure was “buried in an obscure portion of the removal flyer” each landowner received. The fact sheet/flyer²¹ speaks for

²¹ The first page of the fact sheet/flyer is reproduced on p. 9, above.

itself and the availability of third-party engineering expertise was stated plainly on the flyer's first page. There is simply no support for Movant's allegations that the existence of the independent, third-party engineer was not disclosed by Enbridge.

Third, the fact that it will cost Enbridge more to remove the pipeline than what landowners will be paid for the deactivation-in-place option is not only common sense, but public knowledge. The economic impacts of removing existing Line 3 were discussed in the Environmental Impact Statements,²² at public hearings²³ and the evidentiary hearing,²⁴ and in the Findings too.²⁵ These landowners are experienced pipeline hosts and understand common sense. Most landowners choosing deactivation-in-place would rather not be burdened with the removal and restoration process when they can instead choose the less impactful deactivation-in-place option and also receive \$10 per lineal foot of pipe.

Finally, each landowner who has selected the deactivation-in-place option has executed an agreement with Enbridge that confirms that each of those landowners received "all information required by the MPUC and all additional information that Landowner reasonably requested in

²² Line 3 Project Final Environmental Impact Statement, Ch. 8, § 8.4.1, Table 8.4-1, p. 8-13, Docket No. PL-9/C-14-916 (filed Aug. 17, 2017) [Doc. ID No. 20178-134777-19]; *id.* at § p. 8-15; *see also* The same information was included in the revised Final Environmental Impact Statement, which was released on February 12, 2018 [Doc. ID No. 20182-139964-17], and the second revised Final Environmental Impact Statement, which was released on December 9, 2019. [Doc. ID No. 201912-158156-04].

²³ *See, e.g.*, Findings of Fact, Conclusions of Law, and Order, Finding 290.v, pp. 77-78, Docket No. PL-9/CN-14-916 (Apr. 24, 2018) (summarizing public hearing comments in opposition to the Project regarding removal of existing Line 3) (citing public hearing transcripts) [Doc. ID No. 20184-142235-01]; *id.* at Finding 292.iii, pp. 92-93 (summarizing public hearing comments in support of Project regarding removal and decommissioning) (citing public hearing transcripts).

²⁴ *See id.* at 294, Finding No. 1074.

²⁵ *See id.*; *see also, e.g. id.* at pp. 254-255, Finding Nos. 914-915 (describing that removal of existing Line 3 would have similar economic benefits as installation of a new line).

order to allow Landowner to select the Deactivation-in-Place Option or the Removal Option.”²⁶ Each of those landowners also irrevocably waived claims arising out of or relating to the Program or the existing Line 3 pipeline, except for things like Enbridge’s continuing obligations to comply with the commitments made in connection with the Certificate of Need (e.g., remove exposed pipe, address environmental or safety law violations).²⁷

B. Movant’s Complaints About Enbridge’s Decision to Treat Private Landowners Equitably, Instead of Paying Some More Than Others, Lacks Merit.

Movant alleges that Enbridge has failed to inform landowners that they have a right to negotiate a mutually acceptable compensation arrangement with Enbridge if the landowner selects the deactivation-in-place option. These allegations mischaracterize the Program and the facts about its implementation.

First, under the guise of a request for clarification, the Movant is asking the Commission to wade into areas outside of the Commission’s authority—compensation and land rights. Notably, the Commission’s mediation modification expressly states: “The Commission will not resolve any property rights issues.”

Second, as set out above, each landowner who has selected the deactivation-in-place option has agreed that Enbridge has provided them with information required by the Commission *as well as* “all additional information that Landowner reasonably requested in order to allow Landowner to select the Deactivation-in-Place Option *or* the Removal Option.”²⁸ Movant’s allegations that all of these landowners, many of whom have hosted existing Line 3 on their properties for decades,

²⁶ Ex. 1, p. 2.

²⁷ *Id.* at p. 3.

²⁸ Ex. 1, p. 2 (emphasis added).

did *not* have the information they needed to make informed decisions are flatly contradicted by common sense and the record.

Notwithstanding the issues of Commission authority and existing agreements between hundreds of landowners and Enbridge, the facts show that Enbridge's approach is consistent with the Program. Enbridge's July 16, 2018 Compliance Filing explained that Enbridge anticipated compensation paid to landowners choosing the deactivation-in-place option would be roughly equivalent to those made in the deactivation process for the Canadian portion of the Line 3 Replacement Project pipeline. Enbridge is following through on that representation by uniformly compensating private landowners in the Program who choose the deactivation-in-place option and execute the recordable deactivation-in-place agreement at the rate of \$10 per lineal foot, which is slightly more than the amounts paid in connection with the similar efforts in Canada.

On the other hand, Movant's assertion that Enbridge is required to be willing to pay more than \$10 per lineal foot in order to reach a "mutually acceptable compensation arrangement" with some landowners who choose the deactivation-in-place option is inconsistent with Enbridge's Compliance Filing and makes little sense. Enbridge has decided what terms are acceptable to it for the deactivation-in-place option. Landowners who choose the deactivation-in-place option are free to agree with Enbridge and accept the \$10 per lineal foot compensation rate. Likewise, landowners are free to not agree with Enbridge's offer and choose the removal option for monetary or any other reasons. In the former case, there is a "a mutually acceptable compensation arrangement" and in the latter case, there is not.

Movant wants the Commission to read into the Program that Enbridge is required to pay some landowners in the Program more than \$10 per lineal foot. Movant's position appears to be more closely rooted to the fact the equal economic treatment for similarly-situated landowners

does not match the Movant's own economic business model, rather than any actual issues with the Program. Movant's desires, however, do not change the fact that Enbridge is not required to change its offer or treat Movant or his clients differently than similarly-situated landowners.

C. MEDIATION.

Movant asserts that Enbridge has failed to notify landowners that mediation at Enbridge's cost is available to resolve disputes that cannot be resolved through the use of the independent liaison and third-party engineer. Movant offers no factual support for this alleged "fact." Indeed, Movant overlooks the fact that Movant himself has made 11 of the 12 requests for information submitted to the independent liaison. The independent liaison has also reported to the Commission that it determined mediation was not appropriate for Movant's issues. Accordingly, that leaves one other person who has requested information from the independent liaison. There is nothing in the record, including from the independent liaison, which suggests that as to that one landowner, disputes still exist that cannot be resolved through the independent liaison or the third-party engineer. Movant improperly concludes that the absence of landowners requesting mediation suggests that landowners are unaware of or being denied mediation. Movant provides no factual basis that a landowner has or had a dispute that required mediation or requested mediation, but was denied by Enbridge.

II. THE REQUESTS FOR CLARIFICATION ARE UNNECESSARY AND THE REQUESTS FOR REMEDIES ARE INAPPROPRIATE.

In light of the foregoing, Movant's requests for clarification are unnecessary. Likewise, there is no basis for Movant's requests that the Commission take remedial action. As set forth above, the Program is being successfully implemented. Are there some who want Enbridge to pay more for the deactivation-in-place option? Yes. Does this mean the Program, the primary purpose of which was to let landowners decide the fate of existing Line 3, is not working? No.

The Motion does not suggest, nor could it, that Enbridge has refused or disputed a landowner's choice to remove the pipe on their property, with or without the involvement of third-party resources. Instead, the record shows that every landowner who has elected the deactivation-in-place option has agreed that they received "all information required by the MPUC *and* all additional information that Landowner reasonably requested in order to allow Landowner to select the Deactivation-in-Place Option *or* the Removal Option."

Movant first asks the Commission to order Enbridge to disclose (or disclose again) that the independent liaison and third-party engineer are available to landowners. For the reasons set forth above, there is no basis for issuance of such an order.

Next, Movant requests the Commission order Enbridge to disclose the existence of mediation at Enbridge's expense. As it stands, Enbridge is obligated to offer mediation when disputes cannot be resolved through the use of the independent liaison and the third-party engineer. Other than the Movant's issues, which the independent liaison determined were not appropriate for mediation, Enbridge is not aware at this time of any disputes about the Program that cannot be resolved through the independent liaison and the third-party engineer. If such a dispute arises in the future, then Enbridge will, pursuant to the Program's requirements, offer mediation to help in resolving the dispute.

Movant next asks the Commission to void or somehow undo the hundreds of deactivation-in-place agreements that have been completed between Enbridge and landowners, and recorded in the real estate records. Once that is done, then Enbridge would then be required to renegotiate payments "based on the landowner's unique circumstances." There is no factual basis or legal authority for the Commission to order such remedies. Movant advances a false conclusion based off the assertion that a landowner "could not have made an informed decision" without the

assistance of a third-party engineer, an assertion that is flatly contradicted by the record developed throughout these proceedings and specifically in the Program’s implementation.

Finally, Movant argues that, if the Commission determines it is ok for Enbridge to pay similarly-situated landowners the same amounts—\$10 per lineal foot, then the Commission should order Enbridge to disclose all deactivation-in-place offers “made to all landowners, including tribes, and what consideration was ultimately paid.” Movant offers no basis for this request. Further, this request goes right to the heart of the land rights agreements made between Enbridge and landowners—these are areas that the Commission does not have authority over and has expressly indicated it will not decide as part of the Program.

CONCLUSION

For the foregoing reasons, Enbridge respectfully requests that the Commission deny the Motion.

Dated: May 14, 2021

Respectfully submitted,

/s/ Christina K. Brusven

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**Attorneys for Enbridge Energy, Limited
Partnership**

Exhibit 1

10/9



A000197404

OFFICE OF THE COUNTY RECORDER
KITTSOON COUNTY, MINNESOTA
FILED AND RECORDED ON

10/20/2020 9:00 AM

PAGES: 9
REC FEES: 46.00

KRISTEN HULTGREN
KITTSOON COUNTY RECORDER
BY *[Signature]* Dep
Pa. Enbridge *\$46-*

**AGREEMENT REGARDING
DEACTIVATION-IN-PLACE OF LINE 3 PIPELINE**

This Agreement Regarding Deactivation-in-Place of Line 3 Pipeline ("Agreement") is made effective as of the date last signed below, by and between *[Redacted]*

[Redacted] ("Landowner") and Enbridge Energy, Limited Partnership, a Delaware limited partnership ("Enbridge"), and their respective successors, assigns, and grantees.

RECITALS

WHEREAS, Landowner owns real property that is described on the attached Exhibit A (the "Property");

WHEREAS, Enbridge owns the Line 3 ("Existing Line 3") pipeline, a portion of which traverses the Property pursuant to easement rights ("Enbridge Easement Rights") held by Enbridge;

WHEREAS, Enbridge is in the process of constructing a replacement for the Existing Line 3 pipeline, which replacement is known as the Line 3 Replacement pipeline;

WHEREAS, Enbridge applied for, and the Minnesota Public Utilities Commission ("MPUC") granted a Certificate of Need ("CN") for, the Line 3 Replacement pipeline in Docket No. CN-14-916;

WHEREAS, the CN requires Enbridge to implement the Landowner Choice Program, pursuant to which the Landowner was given the option, among others, to either (a) receive compensation in exchange for allowing Enbridge to permanently deactivate-in-place that portion of the Existing Line 3 pipeline that is on the Property (the "Deactivation-in-Place Option") or (b) require Enbridge to remove all or part of the Existing Line 3 pipeline from the Property to the extent it is feasible to do so after the Line 3 Replacement pipeline is completed and in-service (the "Removal Option");

2019

WHEREAS, Enbridge provided Landowner with all information required by the MPUC and all additional information that Landowner reasonably requested in order to allow Landowner to select the Deactivation-in-Place Option or the Removal Option;

WHEREAS, Landowner has selected the Deactivation-in-Place Option;

WHEREAS, Landowner and Enbridge have reached an agreement on the terms of Landowner's selection of the Deactivation-in-Place Option;

WHEREAS, Landowner and Enbridge wish to memorialize their agreement in a document to be placed of record; and

NOW, THEREFORE, in consideration of the covenants and agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landowner hereby consents to the deactivation-in-place of the Existing Line 3 pipeline, as set forth in the following terms and conditions.

TERMS AND CONDITIONS

1. **Recitals.** The foregoing recitals are substantive in nature and incorporated herein.
2. **Authority.** Landowner covenants for the benefit of Enbridge that Landowner is the lawful fee simple owner of the Property and that Landowner has the sole and complete right and authority to enter into this Agreement.
3. **Irrevocable Grant of Right for Deactivation-in-Place.** Landowner hereby irrevocably grants to Enbridge the perpetual right to permanently deactivate-in-place Existing Line 3 on, over, under, and through the Property, and take such steps on the Property as Enbridge deems expedient for the continued maintenance (including cathodic protection), patrol, alteration, or repair of Existing Line 3.
4. **Discretion Regarding Deactivation-in-Place.** Landowner understands and agrees that Enbridge shall retain the sole discretion as to the means and methods of deactivation-in-place Existing Line 3 and shall not attempt to control the manner in which Enbridge deactivates-in-place Existing Line 3. Landowner shall not take any action, or allow any others to take any action, on the Property that may interfere with Enbridge's enjoyment of the benefits and rights granted herein.
5. **Relationship to Easement Rights.** The rights granted by Landowner to Enbridge herein are cumulative to Enbridge's Easement Rights in the Property and shall not limit said rights in any way.
6. **Restoration of Property.** Enbridge agrees that, if it directly causes actual damage to Landowner's landscaping, roads and driveways, curbs, gutters, sewers, water and underground utilities, fences, livestock, or crops when Enbridge deactivates-in-place, maintains, patrols, alters, or repairs Existing Line 3, Enbridge will restore the damaged Property to as near its original condition as is reasonably possible and remove therefrom all debris, spoils, and equipment resulting from Enbridge's use of the same. Enbridge may, in lieu of performing such restoration, elect to pay for such actual damages described above.

7. **Enbridge's Continuing Obligations to Comply with Law.** Landowner's selection of the Deactivation-in-Place Option, entry into this Agreement, and receipt of payment by Enbridge do not alter Enbridge's obligation to remove exposed portions of the Existing Line 3 pipeline as Enbridge committed to do in connection with the Line 3 Replacement pipeline CN nor does it alter Enbridge's responsibility to address any environmental or safety law violations under any applicable federal, state, or local law regarding the Existing Line 3 pipeline.

8. **Waiver.** By entering into this Agreement, Landowner understands and agrees that Landowner irrevocably waives any and all claims Landowner has or may have had arising out of or relating to the Landowner Choice Program or the Existing Line 3 Pipeline. Except the obligation to make the agreed-upon payment to Landowner, Enbridge shall have no further liability, duty, obligation, or responsibility to Landowner with respect to the Existing Line 3 pipeline or the Landowner Choice Program, except as specifically set forth herein.

9. **Grant Runs with the Land.** The easements and covenants contained in this instrument shall run with and against the Property.

10. **No Modifications.** It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that the terms herein may only be modified in writing.

11. **Governing Law.** This instrument shall be governed by the laws of Minnesota.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed this 25 day of September, 2020.

GRANTOR:

By: [Redacted]
Print Name: [Redacted]

By: [Redacted]
Print Name: [Redacted]

PERSONAL ACKNOWLEDGEMENT:

STATE OF MN)
COUNTY OF RITSON) ss.

The foregoing instrument was acknowledged before me this 25 day of September, 2020 by [Redacted]

Kimberly Klegstad
Sign Name

Kimberly Klegstad, Notary Public
Print Name

My Commission Expires: 1/31/2022



EXHIBIT A

County of Kittson, and State of Minnesota, and described as follows, to-wit:

[REDACTED]

PIN(s) [REDACTED]