

July 30, 2018

VIA ELECTRONIC FILING

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101-2147

Re: **Certificate of Need Modifications
Enbridge Response to DOC-DER Comments Re: Enbridge Compliance Filing
on the Decommissioning Trust Certificate of Need Modification**

**In the Matter of the Application of Enbridge Energy, Limited Partnership for
a Certificate of Need for the Line 3 Replacement – Phase 3 Project in
Minnesota from the North Dakota Border to the Wisconsin Border
MPUC Docket No. PL-9/CN-14-916; OAH Docket No. 65-2500-32764**

Dear Mr. Wolf:

Enbridge Energy, Limited Partnership (“Enbridge”) submits this letter in response to the Department of Commerce—Division of Energy Resources’ (“DOC-DER”) July 20, 2018 letter regarding the Decommissioning Trust portion of Enbridge’s July 16, 2018 compliance filing (“Compliance Filing”). In its letter, DOC-DER recommended that the Commission not approve the Compliance Filing. In this letter, Enbridge responds to DOC-DER’s letter and provides clarification regarding the Decommissioning Trust and its understanding of the Certificate of Need (“CN”) modification ordered by the Minnesota Public Utilities Commission (“Commission”).

Introduction

Enbridge’s discussion of the Decommissioning Trust in its Compliance Filing is responsive to the Commission’s CN modification; the CN modification required Enbridge to “make a compliance filing by July 16, 2018 of the terms and conditions of the decommissioning trust fund based on the decommissioning trust that the Canadian National Energy Board directed

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Enbridge, Inc. to fund for the decommissioning of its pipelines in Canada.”¹ By its plain terms, the Commission’s modification seeks terms and conditions reflecting similar terms required of Enbridge (and other pipeline companies) by the Canadian National Energy Board (“NEB”). Enbridge’s Compliance Filing contained a document setting out the terms and conditions that would be included in a decommissioning trust. As set out in that filing, the laws that apply to the decommissioning trusts before the NEB are different than the laws that will apply to the trust established under the Commission’s order under domestic state and federal law. Accordingly, Enbridge cannot simply, as DOC-DER suggests, both establish the Decommissioning Trust under existing Minnesota and federal law and at the same time make the Decommissioning Trust for the Line 3 Replacement Project (“L3R”) mimic the decommissioning trusts required by the NEB. Put differently, without changes to state or federal law, the L3R Decommissioning Trust will not, as a matter of necessity, have the same characteristics and protections as the decommissioning trusts approved by the NEB.

Response to DOC-DER’s Letter

DOC-DER misunderstands the purpose and content of Enbridge’s filing, and DOC-DER’s position is not consistent with the intent and spirit of the Commission’s Decommissioning Trust modification. It appears that DOC-DER’s position is that Enbridge should simply establish a trust under available Minnesota and federal law, regardless of whether and how those laws align with the laws applicable to NEB-regulated pipelines, and regardless of whether those laws allow a trust to meet the principles and requirements as set out by the NEB (such as the requirement that funds must only be available for decommissioning). According to DOC-DER’s letter, DOC-DER’s “understanding [is] that the Commission ordered the Company to establish a trust fund for the purposes of [L3R].”² With that understanding set forth, DOC-DER states that “there are acceptable forms of trust agreements that can be implemented without the need for changes in Minnesota or federal law.”³ Based on these positions, DOC-DER recommends the Commission reject the adequacy of Enbridge’s filing and “order Enbridge to propose a revised decommissioning trust fund proposal that:

- Is consistent with, and requires no changes to, existing Minnesota and federal law;

¹ *Handout – Commission – Commissioner Handouts, June 28 Meeting*, Docket No. PL-9/CN-14-916 (July 11, 2018), eDockets ID No. **20187-144692-01**, at 1.

² DOC-DER Letter, at 1

³ *Id.*

- Includes collections over the expected 50-year life of [the] Line 3 project in Minnesota at least to equal approximately \$1.5 billion (USD), as adjusted for inflation;
- Is not controlled by Enbridge Inc. or any present or future affiliated entity;
- Is established only for the purpose of deactivating, monitoring, and removing the pipeline together with remediation of the soil at the time Line 3 is taken out of service in Minnesota; and
- Includes other provisions as required by the Commission.”

Enbridge addresses each of DOC-DER’s comments in more detail below.

A Proposal that is Consistent with and Requires no Changes to Existing Minnesota and Federal Law

As explained above, DOC-DER’s understanding disregards, entirely, and entirely without explanation, the plain language and apparent intent and spirit of the Commission’s direction that the Decommissioning Trust for L3R be based on the Enbridge-NEB decommissioning trusts. So that the Commission and all stakeholders could see some of the material issues and differences between the NEB trusts and the Decommissioning Trust available under current domestic laws, Enbridge’s Compliance Filing transparently identified material differences in the applicable laws and discussed how changes would be necessary to domestic laws in order for the Commission-ordered Decommissioning Trust to be more like the NEB-required trusts. For example, Enbridge explained that current Minnesota trust law may not, absent a change in the law or a favorable probate court ruling, afford the same sort of protection for the Decommissioning Trust funds from creditors’ rights as the Canadian law affords for the NEB-required decommissioning trust funds. Enbridge identified this issue because it assumed that the Commission would prefer the L3R Decommissioning Trust fund be as immune from creditors’ claims as possible. Likewise, Enbridge explained that, under current Minnesota and federal law, there may be more adverse tax consequences from the Decommissioning Trust funding than occurs in Canada. These additional tax obligations would increase rates to ship oil on the Enbridge Mainline. Enbridge again flagged this issue because it assumed the Commission would like to avoid increasing tolls, if feasible under the circumstances. Although DOC-DER’s filing does not address these issues, presumably, these goals, which benefit Minnesota citizens, should be held by DOC-DER, as well.

Setting a \$1.5 Billion (USD) Fund Amount

DOC-DER’s letter asks the Commission to set an exact required funding amount; specifically, \$1.5 billion (USD), adjusted for inflation. The Commission does not need to set the amount.

Enbridge will, as it does under the NEB-ordered trusts, continue to rigorously analyze and update the costs of complete removal, incorporating lessons learned from the NEB's years-long assessment of the issue, to fully fund the Decommissioning Trust, based on removal of the pipeline, over the life of L3R's operation. As set out in the Compliance Filing, Enbridge proposes to file the Trustee's annual reports with the Commission each year.

Control of the Trust

DOC-DER takes the position that neither Enbridge Inc. nor any present or future affiliated entity should control the Decommissioning Trust. Enbridge has made this commitment.

Purpose of the Trust

DOC-DER states that the Commission should order that Enbridge should be required, in a new proposal, to make clear that the Decommissioning Trust is established only for the purpose of deactivating, monitoring, and removing the pipeline together with remediation of the soil at the time L3R is taken out of service in Minnesota. Enbridge's Compliance Filing already showed that Enbridge will establish a Decommissioning Trust to fund the complete costs of removing L3R.⁴ In light of this, it is not clear why DOC-DER thinks this point is one that requires rejection of the Compliance Filing or that needs further Commission direction. The issue is not with the purpose of the Decommissioning Trust; rather, the issue is how the Decommissioning Trust can be lawfully established so that it best meets the Commission's modification and produces outcomes similar to those produced by the NEB-required trusts upon which the modification is based.

Enbridge agrees that if at all possible, the Decommissioning Trust should be established for the sole purpose of decommissioning activities. Where Enbridge and the DOC-DER diverge is that Enbridge is also committed to making the Commission-required Decommissioning Trust consistent with the NEB-required decommissioning trusts, which is part of the Commission's Decommissioning Trust CN modification. However, to fully accomplish this, as noted, changes to domestic law will be required.

Commission Conditions

Enbridge's Compliance Filing fully abided by the Commission's modification. That said, Enbridge invited additional input from the Commission in light of the differences identified in the Compliance Filing. Enbridge's position is that such additional input, if any, should consider

⁴ See Attachment 3B, p. 1 ("Trust will be established and maintained for the sole purpose of decommissioning and/or deactivating, which could include monitoring, repair, removal, and remediation [of L3R]. . . .").

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the issues that Enbridge has laid out in its filing, including differences in existing Canadian and domestic laws.

Conclusion

It is not clear to Enbridge what the DOC-DER's desired outcome is for the Decommissioning Trust, given the apparent contradictions between DOC-DER's position, the language and intent of the Commission's modification, and the domestic laws that are in place. Nevertheless, Enbridge is interested in working with the DOC-DER to ensure that the Commission's L3R Decommissioning Trust modification is achieved in a way that is most beneficial to all stakeholders, assuming that DOC-DER shares that goal.

To be clear, Enbridge is committed to making the Commission-required Decommissioning Trust for L3R "as close to the requirements for decommissioning trusts for NEB-regulated pipelines as possible."⁵ Contrary to DOC-DER's assertion, Enbridge unequivocally stated that it "is committed to having the Decommissioning Trust established before L3R is in-service."⁶ That remains the case—Enbridge has fully abided by the Commission's modification through its Compliance Filing and will fully meet this modification by establishing a Decommissioning Trust before L3R is placed in service that will fund the complete removal of L3R. In the interim, and to the extent practicable, Enbridge will pursue the identified changes to domestic law to accomplish this goal and any further direction the Commission provides on these issues.

Enbridge is available to address any questions the Commission may have on this matter.

Sincerely,

/s/ Christina K. Brusven

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⁵ Attachment 3A, p. 3.

⁶ *Id.*