



September 7, 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 – Update Regarding Compliance Filing**

**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:

This letter provides an update regarding Enbridge Energy, Limited Partnership's ("Enbridge") July 16, 2018 Compliance Filing discussing implementation of Certificate of Need ("CN") modifications adopted by the Minnesota Public Utilities Commission ("Commission") on June 28, 2018 and reflected in its Order Granting a Certificate of Need as Modified and Requiring Filings dated September 5, 2018 (the "CN Order"). Enbridge has reviewed the comments and recommendations submitted by various parties and state agencies on July 20, July 30, August 10, and August 31, 2018. This update it is intended to clarify certain items and hopefully narrow the issues for discussion at the Commission's September 11, 2018 agenda meeting.

In accordance with Minnesota Rules, part 7829.0500, Minnesota Statutes Chapter 13, and the Protective Order entered by the Commission on April 13, 2015, Enbridge has designated as **NONPUBLIC DATA – NOT FOR PUBLIC DISCLOSURE** certain portions of this letter related to the terms and conditions of Enbridge's insurance policies because they contain data, which, if released, would have a detrimental effect on Enbridge by providing potential competitors and others in the insurance marketplace with valuable information not otherwise readily ascertainable and from which these persons would obtain economic value. Terms and conditions of these insurance policies are heavily negotiated between Enbridge and its insurers, and release of this information could negatively impact Enbridge in future negotiations and

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claims processes. Accordingly, Enbridge and its insurers take substantial steps to protect and keep these insurance policy contract terms confidential. Enbridge is also filing public versions of each document in this docket.

### **1. Parental Guaranty and Financial Information.**

In its July 16, 2018 Compliance Filing, Enbridge provided a revised draft of Exhibit EN-98 as Attachment 1A (the “Parental Guaranty”) and a discussion related to various financial assurance-related topics. In response, several parties and the Minnesota Department of Commerce, Division of Energy Resources (“DOC-DER”) provided detailed comments suggesting revisions to the Parental Guaranty. Enbridge carefully reviewed and considered each comment. Some comments were directed at adding requirements or otherwise significantly modifying what Enbridge understood to be the Commission’s direction related to the purpose and content of the Parental Guaranty.<sup>1</sup> Enbridge did not incorporate those comments. Similarly, several commenters provided conflicting comments within the same section of the Parental Guaranty that could not be reconciled.<sup>2</sup> However, there were several suggestions that clarify and improve the Parental Guaranty in a manner Enbridge believes is consistent with the Commission’s decision. Accordingly, Enbridge has updated the draft Parental Guaranty and included a redline as Attachment A showing changes made to the version submitted on July 16, 2018. The changes made include:

- Revised the definitions of “Beneficiaries” and “Tribes” (Section 1) to further clarify and ensure that Tribes are included within the definition of Beneficiaries.<sup>3</sup>
- Revised the definition of “Obligations” and deleted the definition of “Damages” (Section 1) to address Honor the Earth’s (“HTE”) concern that the prior version limited Enbridge Inc.’s obligations to only those financial obligations arising during the pendency of a bankruptcy proceeding of Enbridge Energy, Limited Partnership.<sup>4</sup> That was not the intent of the prior draft, and the revision resolves this perceived ambiguity.

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<sup>1</sup> See, e.g., DOC-DER July 30, 2018 Comments at 6-11 (suggesting alternative forms of financial assurance or collateral).

<sup>2</sup> Compare, e.g., HTE Comments at 7-8 (modifying Section 6) and DOC-DER July 30, 2018 Comments, Attachment A Redline (modifying Section 6).

<sup>3</sup> See, e.g., FDL Comments at 1, MLBO Comments at 1, and DOC-DER July 30, 2018 Comments at Attachment A, n. 9.

<sup>4</sup> HTE Comments at 2-4.

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- Revised Section 5 to state that the Guaranty will continue until the State consents to termination of the Guaranty. This revision addresses HTE's comments suggesting the prior language allowed Enbridge to assert it had fulfilled all obligations and prematurely terminate the Parental Guaranty.<sup>5</sup>
- Revised Section 6 to clarify that the Parental Guaranty would not be impacted by any change to the organizational documents of the Guarantor or the Guaranteed Party, or by a sale or transfer of all or any part of the project. Additionally, this section was revised to clarify that the Parental Guaranty could be assigned or terminated only with approval from the State. These changes clarify the intent of the original draft and address comments by DOC-DER and HTE to these sections.<sup>6</sup>

## **2. Landowner Choice Program.**

Enbridge's July 16, 2018 Compliance Filing reflected the various Landowner Choice Program modifications required by the CN Order.<sup>7</sup> Numerous agencies and parties commented on the Compliance Filing, several raising legal questions about the authority of Enbridge and/or the Commission to implement various aspects of the Landowner Choice Program.

As a threshold matter, Enbridge points out that Enbridge voluntarily proposed the Landowner Choice Program to proactively address concerns regarding existing Line 3 after the Line 3 Replacement pipeline is in-service. Enbridge's willingness to remove portions of existing Line 3 where feasible at a landowner's request, and subject to permitting requirements, is consistent with Enbridge's long-standing relationship with landowners along the existing route and an effort to proactively address the disposition of existing Line 3. These landowners know their land well and already have an existing contractual relationship with Enbridge to host the pipeline. While Enbridge has no objection to making additional resources of a third-party engineer available to these landowners, the extensive comments implying that these landowners cannot make an informed decision about the disposition of existing Line 3 on their property absent heavy agency, legal and third-party resources severely underestimates the capabilities of these landowners and ignores the long-standing relationship between Enbridge and the landowners along the Mainline Corridor.

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<sup>5</sup> HTE Comments at 5-6.

<sup>6</sup> See, e.g., HTE Comments at 6-8 and DOC-DER July 30, 2018 Comments at Attachment A, Section 6.

<sup>7</sup> Enbridge July 16, 2018 Compliance Filing, at 2-3 and Attachments 2A and 2B.

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With the Commission's inclusion of the Landowner Choice Program in its CN Order, the Program is now Enbridge's obligation to implement, subject to reporting and certain other requirements. Inserting another agency or third-party contractor as the primary administrator of the program is administratively inefficient and may actually diminish, rather than improve, the quality and timeliness of information available to landowners participating in the program. Moreover, the Commission has consistently stated that land rights and issues regarding compensation and easement acquisition are outside its jurisdiction, and there is fundamentally no difference between Enbridge's negotiations with landowners regarding the disposition of existing Line 3 and its easement negotiations with landowners for the construction of the Line 3 Replacement. The Commission has never inserted an agency or third-party contractor into an applicant's voluntary easement negotiations, and the Landowner Choice Program implementation should be no different.

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.

### **3. Decommissioning Trust Fund.**

Enbridge provided a response to DOC-DER's July 20, 2018 comments regarding the Decommissioning Trust Fund on July 30, 2018. In that response, Enbridge clarified that, while numerous federal and state tax and trust law issues exist that make it impossible to completely mirror the National Energy Board ("NEB") decommissioning trust fund, Enbridge will establish a decommissioning trust fund under existing laws and will work in parallel to improve the functionality of the fund through legislative and other efforts. Since its July 30, 2018 filing, Enbridge has continued to make progress on establishment of the fund and address the several of these issues by:

- Drafting the trust agreement;
- Identifying and beginning to interview potential trustees;
- Analyzing complex state and federal legal and tax issues surrounding proposed trust; and
- Gathering the information necessary to calculate the estimated decommissioning costs using the NEB-approved calculation methodology.

Enbridge continues to analyze potential legislative and legal efforts that will allow the Line 3 Replacement Decommissioning Trust Fund to function more like the NEB decommissioning trust funds in all regards, but those efforts are not an impediment to establishing a fund prior to Line 3 Replacement going into service, and the trust agreement is

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drafted in a manner that will allow the trust to benefit from those future efforts, should they prove successful.

#### **4. Neutral Footprint Program.**

The Commission approved a CN for the Project contingent upon implementation of a Neutral Footprint Program that (i) acquires renewable energy credits (“REC”) to offset the incremental increase in nonrenewable energy consumed by the Enbridge Mainline System as set forth on pages 4-5 of Enbridge’s June 22, 2018, filing; and (ii) carries out a tree replacement program that plants a new tree on public land in Minnesota for each tree removed in the construction of the Project.

DOC-DER provided comments challenging Enbridge’s proposed calculation methodology for determining required REC purchases. Enbridge’s proposed calculation methodology implements its commitment as reflected on pages 4-5 of Enbridge’s June 22, 2018 filing; namely, to purchase RECs to offset the difference between the electric usage on the Enbridge Mainline System before and after the Line 3 Replacement Project goes into service. This methodology is consistent with the CN Order.<sup>8</sup> In its July 30, 2018 comments, it appears that the DOC-DER would instead have preferred that the Commission require Enbridge to purchase RECs equal to the difference between electricity usage on Line 3 Replacement and existing Line 3. Enbridge continues to maintain that its proposed calculation methodology is reasonable and consistent with the CN Order.

Regarding the Tree-for-Tree Commitment (“T4T Program”), as explained in its July 16, 2018 Compliance Filing, Enbridge proposed to implement the CN Order by broadening the qualifying activities beyond just planting a new tree on public lands for every tree removed by construction of the Project. Specifically, Enbridge noted that there is often more environmental benefit in preserving existing forested areas through conservation easements than literally planting new trees on public lands for each tree removed. Generally, it appears that the commenting parties agree with this broader approach.<sup>9</sup> Enbridge agrees with comments suggesting that the T4T Program participant qualifications should be broad enough to include

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<sup>8</sup> CN Order at 35 (“Enbridge proposed instead to purchase renewable energy credits in the amount equal to the incremental increase in total non-renewable electric energy usage on the Mainline System after the Project is in service. The Commission will require Enbridge to acquire renewable energy credits consistent with the terms set forth on pages 4-5 of its June 22, 2018 Commitment Letter...”)

<sup>9</sup> See, e.g., MDNR Comment “there should be the ability for replacement on public and private lands” at 4.

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local communities, Tribes,<sup>10</sup> and affected landowners.<sup>11</sup> If, however, the Commission determines that Enbridge's July 16, 2018 proposal is inconsistent with the intent of the CN Order, Enbridge will limit the T4T Program to only planting replacement trees on public lands.

Enbridge is also working with the MDNR to address their concern regarding Enbridge's proposal to replace merchantable timber, meaning trees larger than eight inches in diameter.<sup>12</sup> This was the standard used under Enbridge's original Neutral Footprint Program, but if MDNR recommends a different standard be used, Enbridge is willing to adjust that threshold. Enbridge has communicated this to the MDNR and is willing to discuss the issue further, as needed.

## **5. Insurance.**

Enbridge strongly disagrees with DOC-DER's incorrect and untimely conclusions and analyses regarding Enbridge's general liability insurance program. DOC-DER's most recent filing on August 31, 2018, offers unreliable and, whether intentional or not, misleading information to the Commission. DOC-DER's August 10, 2018 and August 31, 2018 Comments suggest that Enbridge's current general liability insurance policies do not adequately provide coverage in the event of a release on the Line 3 Replacement. Indeed, a fair reading of DOC-DER's August 31, 2018 Comments suggest that, despite the testimony of Ms. Lim and also Mr. Dybdahl that Enbridge's policies provided substantial coverage, Enbridge's general liability policies may now provide no coverage at all. Put differently, DOC-DER would have the Commission and public believe that Enbridge, North America's largest pipeline operator, does not insure for losses related to accidental releases from its pipelines. This is simply untrue.

First, it is important to point out that the Commission has reliable, record evidence that Enbridge's current general liability insurance program provides proven coverage that helps to replenish Enbridge's balance sheet in the unlikely event of an accidental release on its pipelines.<sup>13</sup> Enbridge's Director, Insurance Risk Management, Selina Lim, provided sworn testimony and stood for cross examination during the contested case.<sup>14</sup> In contrast, DOC-DER chose not to have its witness even review the language of Enbridge's insurance policies until the very end of the contested case proceeding.<sup>15</sup> Despite acknowledging his own prior testimony

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<sup>10</sup> FDL Comment at 5.

<sup>11</sup> Dyrdaahl Comment at 4.

<sup>12</sup> MDNR Comment at 4.

<sup>13</sup> *E.g.*, Ex. EN-93 at 1 (Lim Summary).

<sup>14</sup> *E.g.*, Exs, EN-43 (Lim Rebuttal) and EN-93 (Lim Summary).

<sup>15</sup> *See* Evid. Hrg. Tr. Vol. 8B (Nov. 14, 2017) at 73 (Dybdahl).

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that Enbridge's insurance policy "actually works" and is "good insurance",<sup>16</sup> Mr. Dybdahl asserted that the language of the policies would not impact his recommendations,<sup>17</sup> and he offered no pre-filed testimony, nor did DOC-DER question Ms. Lim on these topics during the hearing. Thus, this newfound discontent with Enbridge's general liability policies could have been addressed through pre-filed testimony if DOC-DER had reason to question the effectiveness of those policies. Enbridge stands behind Ms. Lim's testimony.

Second, DOC-DER has constructed its Attachment 2 to the August 31, 2018 Comments in a manner that obfuscates and misleads readers, making it impossible to connect the policies with Enbridge's descriptions of the policies, as provided in its responses to DOC-DER IR Nos. 311 and 312. Here is why that is important: DOC-DER comments on two of the four policies provided, but analyzes only one of two relevant policies. They comment on the irrelevant "Policy 1," which is Enbridge's US General Liability Coverage Policy and then only on "Policy 2" which is Enbridge's US Umbrella Liability with Pollution Liability Policy which must be read in conjunction with the accompanying Canadian Master Umbrella Liability with Pollution Liability Policy. Further explanation is required to sort through the misdirection in DOC-DER's filing. To assist readers in navigating these issues, Table 1 below outlines and provides references to the policies discussed herein.

**Table 1: Reference Table to Enbridge Insurance Policies<sup>18</sup>**

Policy Name	Enbridge Citation	DOC-DER Citation	Reviewed by DER?	Relevant to Discussion of Pollution Coverage?
Canadian Master Umbrella Liability with Pollution Liability Policy	Attachment 311A	Attachment 2 pages DER 14-88	No	Yes
US Umbrella Liability with Pollution Liability Policy	Attachment 311B	Policy 2 Attachment 2, pages DER 89-151	Yes	Yes

<sup>16</sup> Evid. Hrg. Tr. Vol. 8B (November 14, 2017) at 89-91 (Dybdahl).

<sup>17</sup> Evid. Hrg. Tr. Vol. 8B (November 14, 2017) at 122 (Dybdahl).

<sup>18</sup> See Enbridge Response to DOC-DER IR No. 311, updated August 7, 2018, and Attachments A-D.

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Canadian Commercial General Liability (Canadian Operations) Policy	Attachment 311C	Attachment 2, pages DER 152-205_	No	No
US General Liability Coverage Policy	Attachment 311D	Policy 1 Attachment 2, pages DER 206-332	Yes	No

Enbridge provided “Policy 1” on August 3, 2018 as a supplement to its original response to DOC-DER IR No. 311 and labeled it Attachment 311D. As noted in Enbridge’s updated IR response, Policy 1 (Attachment 311D) wasn’t included in the original submittal because *it does not and is not intended to provide pollution liability insurance coverage*. Instead, it is an underlying [NONPUBLIC DATA HAS BEEN EXCISED... ...NONPUBLIC DATA HAS BEEN EXCISED] layer of insurance that provides coverage for other events, such as potential losses to third party property due to fire. Further, as Enbridge explained, its terms are [NONPUBLIC DATA HAS BEEN EXCISED...]

[NONPUBLIC DATA HAS BEEN EXCISED] of Enbridge’s \$940 million general liability insurance program. DOC-DER asked to see it because there is a reference to its existence in the Umbrella General Liability Policies, but analyzing this policy and concluding it provides insufficient pollution coverage is like reading Enbridge’s automobile or workers’ compensation insurance policies and concluding that those policies do not provide coverage for pollution liability. Of course they do not provide such coverage. That is not their purpose. Enbridge stated as much to DOC-DER both orally at the time of the supplemental response and in writing when Policy 1 and its Canadian equivalent were provided. However, given that DOC-DER removed Enbridge’s labels on the policies and did not link or otherwise disclose this important information in its August 31, 2018 Supplemental Comments, it would be nearly impossible for a reader to connect Enbridge’s explanation of this policy with the DOC-DER’s analysis.

Third, and perhaps most importantly, the DOC-DER’s analysis of Policy 2 is simply wrong. Policy 2 is Enbridge’s [NONPUBLIC DATA HAS BEEN EXCISED ...]

[NONPUBLIC DATA HAS BEEN EXCISED] and was provided as Attachment 311B to Enbridge’s Response to DOC-DER IR No. 311. DOC-DER did not comment on Attachment 311A, which is the [NONPUBLIC DATA HAS BEEN EXCISED ...]

[NONPUBLIC DATA HAS BEEN EXCISED]. This is a significant omission by DOC-DER, given that Endorsement 16 of that policy provides [NONPUBLIC DATA HAS BEEN EXCISED]



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**EXCISED**

**.. NONPUBLIC DATA HAS BEEN EXCISED].**

The importance of analyzing both Attachments 311A and 311B are highlighted when reviewing DOC-DER's concerns that Policy 2 (Attachment 311B) does not provide **[NONPUBLIC DATA HAS BEEN EXCISED ... ... NONPUBLIC DATA HAS BEEN EXCISED]**. Enbridge disagrees with this conclusion, given that no such exclusion is present in the Policy 2 (Attachment 311B). Nonetheless, if Attachments 311A and 311B are **[NONPUBLIC DATA HAS BEEN EXCISED ...**

**... NONPUBLIC DATA HAS BEEN EXCISED].** DOC-DER's concern regarding the **[NONPUBLIC DATA HAS BEEN EXCISED ...**

**NONPUBLIC DATA HAS BEEN EXCISED].** ...

The DOC-DER concerns regarding the **[NONPUBLIC DATA HAS BEEN EXCISED ...**

**... NONPUBLIC DATA HAS BEEN EXCISED].** Enbridge has successfully submitted claims under numerous policies containing a similar definition of this term without issue. Finally, the discussion of **[NONPUBLIC DATA HAS BEEN EXCISED ...**

**... NONPUBLIC DATA HAS BEEN EXCISED].** Again, Enbridge has successfully submitted claims under numerous policies containing similar terms without issue.

Enbridge respectfully submits that the DOC-DER's comments regarding Enbridge's general liability insurance are not remotely credible. In response to information requests from Enbridge (see Attachment B, pages 1-2), DOC-DER stated that it continued to use only Mr. Dybdahl and Mr. Grant to perform this analysis, not insurance experts at the DOC. As noted in testimony, Enbridge employs the services of Marsh, a respected, experienced, worldwide insurance broker to customize language specific to Enbridge's operations and has been successfully doing so for decades. Enbridge, with the assistance of Marsh, has demonstrated its

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ability to procure policies that fulfill its business purpose and has successfully submitted claims under these policies before for expenses related to crude oil releases on the Enbridge pipeline system.

Staff Briefing Papers also asked that Enbridge indicate whether it plans to comply with the various insurance requirements summarized in Section IV.A.3 of the Briefing Papers. As indicated in Enbridge's July 16, 2018 Compliance Filing, Enbridge intends to seek insurance that complies with each of these requirements. However, as indicated in the Compliance Filing, based on current market information, Enbridge believes it will be difficult to obtain the Environmental Impairment Liability insurance and the reinstatement of limits terms DOC-DER has suggested. That said, Enbridge will use commercially reasonable efforts to comply with each requirement, and if the insurance is not available, Enbridge will inform the Commission of its efforts and the outcome.

It is also worth noting again that neither general liability nor environmental impairment liability insurance provide direct funding to respond to a release. Insurance does not influence Enbridge's emergency response efforts or the resources used in the unlikely event of a release. Enbridge's substantial financial resources are the most relevant demonstration of financial assurance, and the Parental Guaranty further bolsters that assurance by ensuring Enbridge Inc.'s substantial financial resources are available if needed to respond to a release on the Line 3 Replacement Project.

## **6. Conclusion**

Enbridge appreciates the opportunity to provide this update and looks forward to further discussion of these items at the September 11, 2018 agenda meeting.

Sincerely,

*/s/ Christina K. Brusven*

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