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May 19, 2022

VIA EMAIL: [publicadvisor.puc@state.mn.us](mailto:publicadvisor.puc@state.mn.us)

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

**Re: In the Matter of the Decommissioning Trust Fund for the Enbridge Energy, Limited Partnership Line 3 Replacement Pipeline, Docket No. PL-9/CN-21-823**

To the Members of the Minnesota Public Utilities Commission:

Honor the Earth hereby provides comments to the Minnesota Public Utilities Commission (“Commission”) in response to its Notice of Extended Comment Period of February 9, 2022, for the above captioned docket. Honor the Earth’s comments are primarily procedural and relate to the following issues:

- 1) the Commission’s failure to provide notice, either itself or via order to Enbridge Energy, limited Partnership (“Enbridge”), to the many landowners along the new Line 3 route, which it should do because it is these landowners who are most at financial and physical risk from an abandoned Line 3 pipeline, and who, therefore, are most impacted by the matters in this docket and are the primary beneficiaries of the proposed trust; and
- 2) the need for a contested case hearing, because there are likely to be complex contested material facts that cannot be resolved adequately via a simple comment period process.

Honor the Earth requests that the Commission reconsider its procedural approach to this docket, because as it is structured the docket is fundamentally unfair to landowners and other public participants. As relief, the Commission should refer this matter to the Office of Administrative Hearings for a contested case hearing and order Enbridge to provide written notice of this hearing to all landowners subject to easements or right-of-way agreements for new Line 3.

**I. The Commission Should Provide Notice to the Landowners Subject to Easements and Right-of-Way Agreements for New Line 3.**

Although an abandoned Line 3 pipeline would create risks to directly impacted landowners, public welfare, and the environment in Minnesota, the parties at greatest financial and physical risk are: (a) private landowners subject to easements for new Line 3; and (b) the local and state governmental units that have granted rights-of-way over public lands to new Line 3, for example at road and water crossings. These landowners are the primary beneficiaries of the trust that the Commission has proposed to establish. Since the vast majority of the pipeline was constructed on private land, most of the benefits from the trust would accrue to private landowners. Yet, it appears that the Commission has failed to provide notice of this docket to private or local government landowners. Such beneficiaries should be given notice of this docket, because it could have a substantial impact on the value of their land and their future financial welfare.

The service list for Docket CN-21-823 appears to include only a mish-mash of the parties to the new Line 3 dockets, a small herd of agencies, and smattering of other insiders, though it is difficult to tell who was notified since the service list fails to identify the “company name” for a number of recipients. The service list appears to contain no individual private landowners or representatives of individual private landowners, except for Mr. Alger, who represents the

Dyrdals whose lands are crossed by new Line 3. The Dyrdals, however, have never claimed to represent all landowner interests. Therefore, with this single exception, none of the individual private landowner beneficiaries of the trust proposed to be established by the Commission were given notice of this docket.

It is possible that some of the private business entities whose lands are subject to easements for new Line 3 were notified, but this is uncertain. For example, the Commission notified Great River Energy, which may be a landowner, but otherwise it appears that the Commission did not notify any of the businesses that stand to benefit from the proposed trust.

Likewise, the service list for Docket CN-21-823 does not include any local units of Minnesota state government, such as counties, townships, and cities that own land subject to right-of-way agreements, which local governments would also be beneficiaries of the proposed trust fund. Although the right-of-way agreements probably require end-of-life mitigation, such as filling pipe under roadways, it is unknown but unlikely that these agreements require the establishment of financial assurance instruments, such as bonds or abandonment funds, to ensure that financial resources are available to complete such mitigation. Regardless, the Commission should have notified these local governments so that they have the opportunity to inform the Commission about whether or not they have already required Enbridge to provide financial assurance instruments, and if not to provide comment and testimony on the degree of financial assurance that would be necessary to ensure accomplishment of required end-of-life mitigation on their lands.

Although the Commission notified a number of tribes, including the Fond du Lac Band of Lake Superior Chippewa, the Mille Lacs Band of Ojibwe, the Red Lake Band of Chippewa

Indians, and the White Band of Ojibwe, ironically, these Tribes do not need the State of Minnesota to establish an abandonment trust fund for them as they have the sovereign power to do so for lands subject to their jurisdiction. The Fond du Lac Band, which is the only tribe on whose reservation lands new Line 3 was built, may have required an abandonment trust fund or other financial assurance within its federally approved right-of-way agreement. If not, then it could enter into a cooperative agreement with the State of Minnesota that allows it to benefit from the trust fund.

The Commission should not assume that affected private and public landowners have received adequate or meaningful notice via the Commission's notices of comment for this docket, as these appear to have been published only via eDockets. Nobody but insiders monitor eDockets. Although there has been limited press reporting on this docket, due to its financial importance to landowners the Commission should not rely on such press and/or other informal outreach efforts by third parties as providing adequate notice to landowners.

Therefore, the Commission should delay further action in the above captioned docket until after it has formally notified, or ordered Enbridge to formally notify all of the landowners subject to easements or right-of-way agreements for new Line 3 of the existence of this docket.

## **II. The Commission Should Refer this Matter to the Office of Administrative Hearings for a Contested Case Hearing.**

To Honor the Earth's knowledge there are no prior abandonment trust funds established in the U.S. It is difficult for Honor the Earth and other commenters with limited resources to anticipate all of the future mitigation needs and trust fund structural and legal issues that may arise in this docket. Therefore, this first round of comments is of limited substantive value to all interested persons except Enbridge and Department of Commerce ("Department"), because only

these two entities are likely to have the resources necessary for proposing the details of an abandonment trust fund. As a practical matter, the long lead time before the first comment period is of little to no value to any party other than Enbridge and the Department.

The way this comment period will likely work is that on May 19 Enbridge and the Department will both file versions of an abandonment plan, and other parties will file either very general comments or procedural comments, because there is nothing yet in the record on which to comment. Then on June 20, the parties will file comments on whatever is filed by Enbridge and the Department, and all parties will file reply comments on July 20. This structure essentially gives all interested parties, including but not limited to impacted private, state, tribal, and local government landowners, just 30 days to initially review and comment on what may be a set of very legally and financially complex documents filed by Enbridge and the Department.

It should be noted that this simple comment structure does not provide any opportunity for interested persons to ask clarifying questions or conduct discovery before comment submission, regardless of the stated or unstated assumptions made by Enbridge and the Department, or the complexity of the filed documents. It would likely be challenging for any interested parties to identify and retain professional assistance on specialized technical, financial, or legal matters within the 30 days allotted for the second round of comments. Since nothing has yet been filed in this docket (other than Honor the Earth's petition to open this docket), it is possible that commenters will find the 30-day comment period insufficient to address the novel and important issues that might be raised in this docket.

With regard to the scope of this docket, Honor the Earth anticipates that establishment of an abandonment trust fund will require Commission consideration of a number of critical components, including but not limited to the following:

- 1) an estimate of the amount of funding needed, in turn based on either an abandonment plan for properties along the route or an assumption of funding needs based perhaps on Enbridge's likely preferred approach that no pipe be removed or substantially mitigated except at limited locations, such as road and railroad crossings;
- 2) identification of the time period over which funding will be paid into the trust account;
- 3) formation of the legal entity that holds the trust funds;
- 4) the trust fund's contribution payment schedule;
- 5) identification of the allowed uses for the fund, such as for pipe removal, segmentation, grouting (filling with cement), hazardous materials cleanup, and perpetual cathodic protection; and
- 6) identification of the entities that may use the fund and the conditions in which they may use it, for example, the entities that may access the fund should Enbridge or a subsequent owner of the pipeline either dissolve before or at the time of the abandonment or fail to undertake required mitigation.

Analysis of the foregoing issues will likely raise important and novel questions of fact and law. Even assuming that landowners have received adequate notice, the Commission should not expect that they will have the capacity to understand, analyze, and comment on such matters in just 30 days and without the ability to ask questions or conduct discovery or retain experts.

Given the scope of this docket and its potential complexity, Honor the Earth requests that the Commission refer this matter to the Office of Administrative Hearings for a contested case hearing, so that the Commission may benefit from an administrative law judge report before making critical decisions on this novel matter. A contested case hearing would also provide the proposed trust fund's primary beneficiaries (impacted landowners) a full opportunity to consider the potential adverse impacts of abandonment of new Line 3 on their lands, make decisions about needed mitigation, cross examine Enbridge and Department experts, and comment meaningfully on any proposed abandonment trust fund mechanisms or plans. A failure by the Commission to provide impacted landowners with notice and a reasonable opportunity to protect their interests through a formal hearing would mean that the Commission would inappropriately act *in loco parentis* for the trust fund's many hundreds of beneficiaries. They should be given notice and an opportunity to speak for their own interests.

### CONCLUSION

For the foregoing reasons, Honor the Earth requests that the Commission refer this matter to the Office of Administrative Hearings for a contested case hearing, and require that Enbridge provide written notice of this matter to all landowners subject to an easement or right-of-way agreement for new Line 3.

Dated: May 19, 2022

Respectfully submitted,

/s Paul C. Blackburn

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