



May 19, 2022

Via e-filing

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E., Suite 350
St. Paul, MN 55101-2147

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

Dear Mr. Seuffert:

Public Employees for Environmental Responsibility (PEER) is a nonprofit organization that assists federal, state and local public employees in fighting for the ethical management of our natural resources, strong environmental laws, and policies, and accountability and transparency in government actions. We write to comment regarding a Decommissioning Trust Fund for the Enbridge Energy, Limited Partnership Line 3 Replacement Pipeline (Line 3), as required by the Minnesota Public Utilities Commission's (Commission) January 23, 2019, Order Approving Compliance Filings for the Line 3 project. We ask that you expeditiously complete the docket and fully protect Minnesota from picking up the cost of stranded assets abandoned by Enbridge Energy (Enbridge), a foreign corporation with a history of short-changing Minnesotans.

We have serious concerns about the Commission's failure to expeditiously complete a Decommissioning Trust Fund (Trust Fund) for the Line 3 project prior to operation, out of concern for Minnesota's environmental and economic well-being. Enbridge's recent track record of environmental harm leads us to request that you require the strongest and most secure Trust Fund possible for Line 3. Doing so will reaffirm both the Commission's previous commitments in the Line 3 Certificate of Need (CN) docket, and the Commission's consistent standards for decommissioning plans for other types of large energy infrastructure.

The Trust Fund will provide guaranteed funds to retire and remediate Line 3 at the end of its useful life. The Commission mandated its creation before approving Line 3's CN. Indeed, it conditioned the pipeline's CN on Enbridge's establishing a Trust Fund.¹ The Commission also pledged to prepare this fund's terms and conditions through its usual decision-making process.² It is past time for the Commission to protect Minnesotans by following through on these prior commitments. We urge you to make a comprehensive Trust Fund for Line 3 a high priority among the Commission's many ongoing duties. For reasons discussed below, the Commission must hold Enbridge to the most stringent of standards when it oversees the plan for Line 3 decommissioning.

I. Line 3 should be held to the same high standards as other projects overseen by the Commission

The CN condition for Enbridge to establish a Trust Fund for Line 3 aligned with the Commission's other efforts to address long-term decommissioning costs. In 2021 the Commission required decommissioning plans for three proposed wind farms and one solar farm and established a working group on retiring these facilities.³

¹ *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, ORDER APPROVING COMPLIANCE FILINGS AS MODIFIED AND DENYING MOTION (Jan. 23, 2019) [hereinafter January 2019 Order], eDockets ID No. [20191-149212-01](#) at 1 and 7.

² *Id.* at 8 ("The Commission will open a docket with filing deadlines and comment periods set by the Executive Secretary for the purpose of establishing the terms and conditions of the Decommissioning Trust Fund.").

³ *See In the Matter of the Department of Commerce Workgroup on Wind and Solar Facilities*, MPUC Docket No. E-999/M-17-123, ORDER REQUESTING GUIDANCE MATERIALS (July 30, 2021), eDocket ID No. [20217-176627-01](#), at 1; *Site Permit for a Large Wind Energy System in Mower County Issued to Northern States Power Company*, Docket No. IP6557/WS-06-91 (June 30, 2021), eDocket ID No. [20217-176364-01](#), at 23-24; *In the Matter of the Application of Regal Solar, LLC for a Site Permit for the up to 100 MW Regal Solar Project in Benton County, Minnesota*, Docket No. IP-7003/GS-19-395, ORDER GRANTING CERTIFICATE OF NEED AND ISSUING SITE PERMIT, (April 26, 2021), eDocket ID No. [20214-173356-01](#), at 19 of attached site permit; *In the Matter of the Application of Big Bend Wind, LLC for a Large Wind Energy Conversion System Site Permit for the up to 308 MW Big Bend Wind Project in Cottonwood and Watonwan Counties, Minnesota*, Docket No. IP-7013/WS-19-618, ORDER IDENTIFYING ADDITIONAL ROUTE SEGMENT AND ISSUING DRAFT SITE PERMIT, (July 22, 2021), eDocket ID No. [20217-176400-03](#), at 25 of attached draft site permit; *In the Matter of the Application of Buffalo Ridge Wind Energy, LLC for a Certificate of Need for the 109 MW Large Wind Energy Conversion System in Lincoln and*

For example, as the Commissioners considered whether to authorize the transfer a high-voltage transmission line's routing permit to a new owner, Commissioner John Tuma emphasized the importance proper decommissioning planning: "We want to make sure for the landowners that we're doing this right."⁴ He also pressed the petitioners on how they would protect landowners from the line's decommissioning costs: "What have you done as far as setting aside resources so that you have sufficient resources at the time of decommissioning forty years from now?"⁵ Based on the questionable long-term viability of the Canadian tarsands as an energy source, Line 3's Decommissioning Trust Fund will likely be needed far sooner than that.

Strong standards for decommissioning across all large energy infrastructure protect Minnesotans from paying to dispose of foreseeable toxic pollution. In some cases, the Commission achieved this outcome for ratepayers through CNs. For example, in 2009 it required Xcel Energy to secure a CN for uranium storage that would be needed to retire the Monticello nuclear power plant.⁶ In 2015, the Commission held Xcel to cost estimates included in its CN for other work at Monticello, and refused to let it pass cost overruns on to ratepayers.⁷ Because the Commission retains oversight of Line 3 through its CN and

Pipestone Counties, Minnesota, Docket No. IP-7006/CN-19-309, ORDER GRANTING CERTIFICATE OF NEED AND ISSUING SITE PERMIT, (Jan. 5, 2021), eDocket ID No. [20211-169557-02](#), at 25 of attached site permit.

⁴ *In the Matter of the Petition to Transfer a Portion of the Route Permit for the HVDC Transmission Line System and Associated Facilities in Minnesota*, Docket No. ET2/TL-21-434 COMMISSION MEETING RECORDING at 5:16:47 (Sept. 9, 2021), http://minnesotapuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=1530&meta_id=183427.

⁵ *Id.*

⁶ *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for Additional Dry Cask Storage at the Prairie Island Nuclear Generating Plant*, MPUC Docket No. E-002/CN-08-510, ORDER ACCEPTING ENVIRONMENTAL IMPACT STATEMENT, AND GRANTING CERTIFICATE OF NEED AND SITE PERMIT WITH CONDITIONS, (Dec. 18, 2009), eDocket ID No. [200912-45206-03](#). Specifically, the Commission concurred with an administrative law judge's decision granting Xcel a Certificate of Need at Monticello, on the condition that "[a]ll casks necessary for decommissioning will be subject to a separate [CN] Application to be filed at a later date." *Id.* at 14.

⁷ *In the Matter of a Commission Investigation into Xcel Energy's Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, MPUC Docket No. E-002/CI-13-754, ORDER FINDING IMPRUDENCE, DENYING RETURN

Routing Permit, it should use its authority to assure similarly strong standards for decommissioning this dangerous large energy infrastructure.

II. Line 3 poses a huge financial risk to Minnesota, which only the Commission can offset

While the Commission has dealt with decommissioning in many other contexts, it is especially important in this instance because this project necessitates an independently administered Trust Fund in order to protect Minnesotans and the environment. The Commission has recognized that the Department's estimate of Line 3's \$983 million decommissioning price tag threatens state finances,⁸ and so it required Enbridge to pay it up front.⁹ On January 23, 2019, the Commission affirmed the pipeline's CN on the

ON COST OVERRUNS, AND ESTABLISHING LCM/EPU ALLOCATIONS FOR RATEMAKING PURPOSES (May 8, 2015), eDocket ID No. [20155-110255-01](#), at 1. The Commission concluded that "grounding the remedy on the Company's initial estimates [from the CN] recognizes the importance of these estimates to the Commission's resource-planning decisions. An initial estimate that does not represent a utility's best effort to reflect the full cost of the project, including a reasonable contingency, undermines the integrity of a Commission decision founded on that estimate." *Id.* at 23.

⁸ See *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, CN MODIFICATIONS COMPLIANCE FILING ATTACHMENT C - DECOMMISSIONING COST ESTIMATE (July 16, 2018), eDockets ID No. [20180-147100-04](#), at 6.

⁹ January 23 Order at 8. In the months leading up to this approval, Enbridge had repeatedly committed to setting up the Decommissioning Trust Fund before operations began. See *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, CN MODIFICATIONS COMPLIANCE FILING ATTACHMENT 3A: DECOMMISSIONING TRUST FUND (July 16, 2018), eDockets ID No. [20187-144948-04](#), at 3 ("Enbridge will diligently pursue each of these items and is committed to having the Decommissioning Trust established *before* L3R is in-service")(emphasis added); *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, ENBRIDGE RESPONSE TO DOC-DER COMMENTS RE: ENBRIDGE COMPLIANCE FILING ON THE DECOMMISSIONING TRUST CERTIFICATE OF NEED MODIFICATION (July 30, 2018), eDockets ID No. [20187-145372-01](#), at 5 ("Enbridge has fully abided by the Commission's modification through its Compliance Filing and will fully meet this modification by establishing a

condition that Enbridge set up a \$1.5 billion Trust Fund.¹⁰ The Commission concurrently pledged to establish the standards that that would govern this fund.¹¹ Yet more than three years later, with Line 3 operational,¹² no Trust Fund has been established and the Commission has only just started the necessary process. Considering the high level of risk, it is imperative that this docket be resolved in a manner that fully protects the state from the declining fortunes of the oil industry.

III. Enbridge has shortchanged local governments on needed taxes and sought to abandon its pipes with no money set aside for actual decommissioning

Enbridge's recent past in Minnesota demonstrates that without the strongest Trust Fund requirement, Enbridge will attempt to change the rules of the game and leave its costs on Minnesotan taxpayers and landowners.

In July of 2021 the state of Minnesota and Enbridge settled a tax dispute that threatened to bankrupt many northern Minnesota counties and municipalities.¹³ At issue was the value of Enbridge's Mainline, and Enbridge sought to claw back tens of millions of dollars in payments that had already been collected and spent by local governments and school

Decommissioning Trust *before* L3R is placed in service that will fund the complete removal of L3R")(emphasis added); *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, CERTIFICATE OF NEED MODIFICATIONS - UPDATE REGARDING COMPLIANCE FILING (Sept. 7, 2018), eDockets ID No. [20189-146299-02](https://www.mprnews.org/story/2021/09/29/enbridge-says-line-3-replacement-complete-opens-friday), at 4 (explaining that efforts to change some of the Trust Fund's details were "not an impediment to establishing a fund *prior to* Line 3 Replacement going into service") (emphasis added).

¹⁰ January 23 Order at 8.

¹¹ *Id.*

¹² *Enbridge says Line 3 replacement complete, opens Friday*, ASSOCIATED PRESS, Sept. 29, 2021, <https://www.mprnews.org/story/2021/09/29/enbridge-says-line-3-replacement-complete-opens-friday>.

¹³ Walker Orenstein, *In settling tax case, Minnesota agrees to pay Enbridge more than \$45 million for overvaluing pipeline property*, MINNPOST, July 1, 2021, <https://www.minnpost.com/greater-minnesota/2021/07/in-settling-tax-case-minnesota-agrees-to-pay-enbridge-more-than-45-million-for-overvaluing-pipeline-property/>.

boards.¹⁴ In the end, the state was forced to return \$45 million to Enbridge, including \$30 million reimbursements to local governments so that they could survive the unprecedented, multi-year hit to their tax base.¹⁵ Going forward, counties can expect less in taxes from Enbridge, meaning that they will either have less revenues overall or will have to increase the tax burden on smaller business and individuals.¹⁶ Minnesota taxpayers thus were forced to pick up tens of million in costs for Enbridge's still-operating pipelines, and rural governments were left with less resources to address future harms from the company's pipelines—a risk that could balloon into far higher costs should Enbridge go bankrupt and abandon its infrastructure within the state.¹⁷

It is also worth remembering that despite offering a “landowner choice” program, at the command of the Commission, Enbridge largely failed to remove the old Line 3. It accomplished this outcome by pressuring landowners to take a small amount of money to accept perpetual abandonment on their land. Enbridge had estimated that removing old Line 3 would have cost \$1.28 billion, or \$855 per linear foot.¹⁸ By providing landowners with biased and incomplete information,¹⁹ Enbridge successfully convinced

¹⁴ See *Around the area: Enbridge tax appeal could cost counties millions*, ASSOCIATED PRESS, Mar. 28, 2017, <https://apnews.com/article/business-north-dakota-st-cloud-minnesota-e52ef23f85fe4f92a3f420e9614e02e6>.

¹⁵ Orenstein, *supra* note 13.

¹⁶ *Id.* (“Hilgart said counties will still collect less in taxes going forward if Enbridge’s property is valued lower, which could shift the burden to other residents or businesses or leave local governments to figure out how to handle the hit to revenue.”).

¹⁷ Similar to its unwillingness to pay taxes, when caught damaging Minnesota resources the company has also failed to engage in cleanup ordered by state agencies within the time frames set by those agencies. Katy Read, *Enbridge fails to meet aquifer cleanup deadline*, STAR TRIBUNE, Oct. 16, 2021, <https://www.startribune.com/enbridge-fails-to-meet-aquifer-cleanup-deadline/600107200/>. The company was forced to pay the maximum penalty allowed under the relevant law, \$20,000, and caused approximately \$3 million in damage to state resources. *Id.*

¹⁸ *In the Matter of the Application of Enbridge Energy, Limited Partnership for a Routing Permit for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border* MPUC Docket Nos. P-9/PPL-15-137, SECOND REVISED FINAL ENVIRONMENTAL IMPACT STATEMENT (Dec. 19, 2019) [hereinafter 2nd Revised Final EIS], eDockets ID No. [201912-158156-03](#) at 8-13.

¹⁹ *In the Matter of the Application of Enbridge Energy, Limited Partnership, for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border*, MPUC Docket No. PL-9/CN-14-916, MOTION FOR CLARIFICATION OF PRIOR ORDER DATED JANUARY 23, 2019 ORDER APPROVING COMPLIANCE FILINGS AS MODIFIED AND DENYING MOTION, eDockets ID No.

a majority of them to take payments of \$10 per foot to permanently abandon its pipeline on their property.²⁰ This was beneficial to the company's bottom line, but much like the tax dispute, it leaves Minnesotans with the full cost of cleaning up after Enbridge at a later date.²¹ With the lessons learned from the "landowner choice" program, namely Enbridge's failure to provide landowners a real choice, it is important to set strong terms so that the company won't be able to again mislead Minnesotans to minimize its costs.

IV. Pipelines can be fully remediated, but this was not done for old Line 3 in Minnesota

Enbridge's failure to take long-term responsibility for its infrastructure is inconsistent with industry best practices. For example, TC Energy has removed all of its Keystone XL infrastructure at its own cost under a decommissioning plan approved by the Bureau of Land Management (BLM) in August 2021.²² The federal government required that "TC Energy 'at its own expense, shall remove the Border facilities'" as a condition of the Presidential Permit.²³ TC Energy removed the pipe it had installed, sent it away for salvage, and "performed reclamation measures to restore the land disturbed by the removal of the pipe as required by the decommissioning plan."²⁴ Even after taking those measures, TC Energy continues to monitor the vegetation it planted and has had to report back to BLM on that progress.²⁵

[20214-173710-02](#) (April 28, 2021) at 1 ("Enbridge is denying landowners information necessary to make an informed decision by failing to disclose the availability of the Independent Third-Party Engineer at Enbridge's expense, the Landowner's right to negotiate price, and the existence of paid mediation.").

²⁰ Mike Hughlett, *PUC tells Enbridge to provide more information to Line 3 landowners*, STAR TRIBUNE, June 17, 2021, <https://www.startribune.com/puc-tells-enbridge-to-provide-more-information-to-line-3-landowners/600069361/?refresh=true>

²¹ The Commission ordered Enbridge to partially correct its action by providing additional information to landowners who hadn't already accepted the company's first offer. *See id.*

²² TC Energy Corporation and Transcanada Keystone Pipeline LP's Status Report, Indigenous Environmental Network v. Biden, 2021 WL 2187286 (Oct. 19, 2021) (No. 178) at 1.

²³ *Id.* at 1-2.

²⁴ *Id.* at 2. The company also relinquished all of its right-of-way grants to the federal government as soon as BLM determined that the company had done an adequate job, and is releasing all the easements it had secured. *Id.*

²⁵ *Id.* at 3.

The new Line 3 is of the same era as the remediated Keystone XL project, and there is no reason for it to be held to a lower standard. Indeed, since Line 3 has far more potential to leak than the incomplete Keystone XL, the bar should be higher on Enbridge to prove it has fully removed its infrastructure and restored the landscape when Line 3 is decommissioned. It would be consistent with regulatory practice, namely the conditions placed on TC Energy by its Presidential Permit and BLM's oversight, for the PUC to ask that Line 3's removal and complete remediation be paid for up front in a Trust Fund that is entirely outside the company's control. Since the current Commission cannot be assured Enbridge will be around to oversee removal, it is imperative that a Trust Fund be established instead of a company assurance or other decommissioning plan that is contingent on the future solvency of Enbridge.

V. Minnesota must not be left holding the bag for Line 3's abandonment, decommissioning, and remediation

PEER asks the Commission to prioritize and expeditiously complete docket 21-823, holding this project to the high decommissioning standards necessary for such a project. Doing so will fulfill the commitment the Commission made upon approving this pipeline, and spare future Minnesotans the enormous cost of remediating it.

By contrast, delaying this decision or settling for a weak decommissioning plan without a Trust Fund could saddle Minnesota taxpayers and landowners with billions of dollars in foreseeable costs. The Commission has set strong standards for decommissioning other types of large energy infrastructure in the past and must do so expeditiously here to protect the public against picking up the tab for Line 3.

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