

July 20, 2022

Via Electronic Filing

Mr. William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, 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
MPUC Docket No. PL-9/CN-21-823**

Dear Mr. Seuffert:

Enbridge Energy, Limited Partnership (“Enbridge”) submits these Supplemental Comments (including Attachment A) in the above-referenced docket.

These Supplemental Comments have been e-filed today through www.edockets.state.mn.us. A copy of this filing is also being served upon the persons on the Official Service List of record. Please let me know if you have any questions regarding this filing.

Sincerely,

FREDRIKSON & BYRON, P.A.

/s/ Christina K. Brusven

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

Katie Sieben
Valerie Means
Matthew Schuerger
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

**In the Matter of the Decommissioning
Trust Fund for the Enbridge Energy,
Limited Partnership Line 3 Replacement
Pipeline**

MPUC Docket No. PL-9/CN-21-823

**ENBRIDGE ENERGY, LIMITED PARTNERSHIP'S
SUPPLEMENTAL COMMENTS**

INTRODUCTION

Enbridge Energy, Limited Partnership (“Enbridge”) submits these supplemental comments in response to the reply comments filed by the Department of Commerce, Division of Energy Resources (“DOC-DER”), Friends of the Headwaters (“FOH”), and Honor the Earth (“HTE”).

Enbridge continues to believe that, at the conclusion of this comment period, the Minnesota Public Utilities Commission (“Commission”) will have sufficient information in this record to allow it provide necessary direction related to key terms and conditions and to authorize Enbridge to establish a Decommissioning Trust Fund. Numerous commenters have expressed concern regarding delay in establishment of the Trust Fund. However, the Commission prudently established this docket to solicit additional information on key issues identified in 2018-2019, and Enbridge believes those issues have been sufficiently addressed to proceed with establishment of the Fund consistent with the Commission’s prior orders and the terms and conditions Enbridge has proposed in this docket. Those terms and conditions are, in turn and as previously directed by the Commission, consistent with decommissioning trusts

approved by the Canadian Energy Regulator (“CER”, formerly the National Energy Board or NEB)—the most relevant regulatory framework – one that applies specifically to pipelines and is currently in functioning well in Canada. The Commission’s process in this matter has been transparent and provided multiple opportunities for public input, but Enbridge respectfully submits that this process has not uncovered any more relevant or useful trust model that would prompt the Commission to materially change its original course. There are, however, several helpful clarifications that have emerged. For the Commission’s convenience, included as Attachment A is a summary term sheet identifying the specific terms and conditions Enbridge proposes that both comply with the Commission’s previous orders and reflect comments received in this record.

DISCUSSION

I. TRUST AGREEMENT TERMS & CONDITIONS.

A. Trust situs / choice of law

Enbridge understands that DOC-DER is now comfortable with a trust that is sited outside Minnesota because of the potential benefits of other states’ laws with respect to creditor protections, among other things. Enbridge agrees and believes that a South Dakota trust would likely be most advantageous here because of state law regarding creditor protections and its proximity to Minnesota.¹

B. Scope of Trust Fund use.

HTE asserts that “Enbridge’s description of the type of [decommissioning] expenses is overly narrow” and identifies several activities not specifically itemized in Enbridge’s prior

¹ Likewise, siting a trust in South Dakota would address FOH’s assertion that “[i]t is not clear to FOH how a trust with Enbridge designated as the beneficiary is protected from being swept into a possible bankruptcy estate, or is beyond the reach of creditors.” FOH Reply Comments at 3.

comments.² Enbridge agrees with HTE that the identified activities³ would be included within the scope of the Trust Fund's use.

C. Beneficiary.

Several commenters continue to object to Enbridge being a beneficiary of the Trust and instead suggest that a state actor or other entity should be the beneficiary. Two primary concerns have been stated in support of these positions: (1) a belief that Enbridge may no longer exist when Line 93 needs to be decommissioned; and/or (2) fear of potential mismanagement or misuse of funds. These concerns, while valid in the abstract, are addressed within the trust framework Enbridge has proposed.

As an initial matter, however, for these purposes, it is important to understand that the "Beneficiary" is not the entity with control over the funds, nor is it the only entity which would "benefit" from the Decommissioning Trust Fund. Rather, the "Beneficiary" is simply the entity for whose benefit the trustee holds title to the trust.

Further, importantly, Enbridge does not propose itself as the "Beneficiary." Rather, consistent with similar trusts in Canada, Enbridge proposes that the trust would name the Beneficiary entitled to receive disbursements from the Trust Fund as "the entity with the decommissioning obligation when it is time to decommission Line 93." At this time, Enbridge holds that obligation and Enbridge fully anticipates that it will still hold that obligation at the end of Line 93's useful life; however, Enbridge's proposed Trust accounts for the circumstance in which that is not the case. To the extent that DOC-DER or the Commission is concerned that *no*

² HTE Reply Comments at 6.

³ HTE lists: "filling the pipe with cement, as under rail and road crossings, abandonment in place with segmentation to prevent water movement, and hazardous waste removal. . . ." See HTE Reply Comments at 6.

entity will exist which will be obligated to decommission Line 93, the Trust could provide for the Commission's designee to receive the funds in those circumstances.⁴

As an alternative, if the Trust is located in South Dakota, under South Dakota law, a trust need not have a beneficiary. Instead of being established to benefit any particular person or organization, a so-called "purpose trust" may be established to accomplish a specific purpose. Enbridge believes that this structure is likely appropriate for the decommissioning trust. The purpose of the trust will be to fund the decommissioning of Line 93. While Enbridge is responsible to decommission Line 93, distributions will be made to Enbridge – not as beneficiary, but as the entity that can accomplish the trust's purpose. If a different business entity or governmental entity were ever to take over responsibility for decommissioning Line 93, that entity would receive distributions.

Regardless of who is named as "Beneficiary" of the Trust, that entity will not have control over disbursement of funds from the Trust—the Trustee will have that control. This separation, after all, is a basic function of any trust. Under the structure proposed by Enbridge, Enbridge would notify the Commission of its intent to decommission Line 93, undertake its decommissioning obligations and then seek payment or reimbursement of its valid expenses from the Trust. The Trustee is only authorized to release funds that are incurred for the specific decommissioning purpose of the Fund and that have been authorized under any necessary Commission approvals. This follows the same process and structure in place with the CER.

Enbridge understands that DOC-DER and other commenters have asserted that a state agency should be the designated beneficiary. For example, DOC-DER states that "the most

⁴ However, it is not clear how this situation would arise. Under the Commission's orders with respect to Line 93, Enbridge is obligated to decommission Line 93. Enbridge anticipates that a successor-in-interest, if any, to Line 93 would similarly be bound by the Commission's orders regarding the pipeline.

logical choice for trust beneficiary would be a state actor that has a role in overseeing the decommissioning.”⁵ Likewise, FOH states that “it should be left up to the State’s unilateral discretion to decide which part of state government should be designated.”⁶ However, no commenter has identified a state agency that is actually authorized and willing to take on this obligation. Enbridge is also unaware of such an agency. As Enbridge explained previously, PolyMet is not a helpful proxy here because the Department of Natural Resources has specific statutory authority and obligations with respect to decommissioning a mine. The same is not true for pipelines in Minnesota.

D. Investment policy.

DOC-DER states that a “formal, written investment policy should be made part of the trust agreement . . . to assure that trust assets are invested appropriately.”⁷ Enbridge has no objection to implementation of an investment policy. Indeed, Enbridge’s Canadian trust funds are subject to investment policies. However, Enbridge respectfully submits that the investment policy should reflect necessary changes over the life of the Trust and is most prudently drafted by the Trustee or an investment adviser.

E. Modification of Trust Agreement.

DOC-DER asserts that Enbridge’s agreement should not be required to amend the Trust.⁸ Both Enbridge and the trustee will be parties to the trust agreement, and Enbridge will be depositing hundreds of millions of dollars over the course of time to fund obligations which, most likely, Enbridge will be responsible for and complete. Under these circumstances, DOC-

⁵ DOC-DER Reply Comments at 5.

⁶ FOH Reply Comments at 2-3.

⁷ DOC-DER Reply Comments at 11.

⁸ DOC-DER Reply Comments at 10.

DER's assertion is impractical, and a modification of the Trust should involve Enbridge's agreement. Appropriate oversight could still be achieved by implementing Enbridge's suggestion that all material modifications to the Trust Agreement be filed with the Commission.

DOC-DER further asserts that any "material amendment" should be subject to DOC-DER and public comment, and Commission review and approval.⁹ Enbridge does not object to Commission review of material amendments and notes this is consistent with the CER's requirements. However, the public comment process identified by DOC-DER could be burdensome and time-consuming, and it is unclear how such a comment process would be beneficial to a Commission decision. Enbridge leaves it to the Commission's discretion as to whether a public comment process would be helpful to the Commission for each material modification of the Trust Agreement.

F. Periodic Commission review.

DOC-DER asserts that the Commission should review the decommissioning cost estimate every three years, rather than the five-year timeframe proposed by Enbridge.¹⁰ DOC-DER does not explain why its shorter timeframe is necessary or appropriate. As Enbridge explained previously, the five-year timeframe is consistent with the Commission's review of decommissioning plans for other infrastructure it permits, as well as the CER's process in Canada, and would likewise be appropriate here.¹¹

⁹ DOC-DER Reply Comments at 10.

¹⁰ DOC-DER Reply Comments at 10.

¹¹ See, e.g., *In the Matter of the Applications of Plum Creek Wind Farm, LLC for a Certificate of Need, Site Permit, and Route Permit for an up to 414 MW Large Wind Energy Conversion System and 345 kV Transmission Line in Cottonwood, Murray, and Redwood Counties*, Docket No. IP-6997/WS-18-700, Site Permit § 11.1 (Sept. 23, 2021) ("The decommissioning plan shall be updated every five years following the commercial operation date. The decommissioning plan shall provide information identifying all surety and financial securities established for decommission and site restoration of the project. . . ."); *In the Matter of*

DOC-DER further asserts that the Commission’s “regular review would also include a forecast of investment returns and taxes that is prepared by a professional investment advisor.”¹² Under Enbridge’s proposal, as identified in its Initial Comments, the trustee would provide annual reports to Enbridge, which Enbridge will file with the Commission.

II. COST ESTIMATE.

DOC-DER asserts that Enbridge should “submit its decommissioning cost estimate for independent review and verification.”¹³ Enbridge does not oppose independent review of the decommissioning cost estimate but suggests that it would be more prudent to have that review take place during the proposed five-year review process, as more updated information will be available as time progresses. As DOC-DER knows, Enbridge’s current estimate is based upon the estimates compiled in Canada, coupled with a contractor’s response to Enbridge’s request for information (“RFI”). Enbridge notes that no commenter has raised a material issue with respect to the decommissioning cost estimate—rather, commenters make generalized requests for more information.

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-19-935, Site Permit § 9.1 (Apr. 26, 2021) (“The Permittee shall submit a decommissioning plan to the Commission at least fourteen (14) days prior to the pre-operation meeting and provide updates to the plan every five years thereafter. The plan shall provide information identifying all surety and financial securities established for decommissioning and site restoration.”); *see also In the Matter of the Petition of Northern States Power Company for Approval of its 2020 Annual Review of Remaining Lives and Five-Year Depreciation Study*, Docket No. E,G-002/M-19-723, Order Approving Petition in Part at Ordering ¶ 9 (Sept. 2, 2021) (requiring filing of five-year depreciation study); EERA Recommendations on Review of Solar and Wind Decommissioning Plans (Commission Docket Number E999/M-17-123) (Mar. 16, 2020) (identifying “proposed schedule for implementing a regular 5-year review of all decommissioning plans”), available at <https://efiling.web.commerce.state.mn.us/edockets/searchDocuments.do?method=showPoup&documentId=%7b1024E570-0000-CD11-98E8-4EC4D05E58E7%7d&documentTitle=20203-161292-01>.

¹² DOC-DER Reply Comments at 10-11.

¹³ DOC-DER Reply Comments at 2.

Enbridge informally suggested to DOC-DER that the independent third party engineer already under the direction of the Department of Commerce, Energy Environmental Review and Analysis, for the Landowner Choice Program would be a logical, qualified independent reviewer of this information. Enbridge would have no objection to the independent engineer reviewing Enbridge's decommissioning cost estimates on the proposed five-year review schedule.

DOC-DER states that taxes and administrative expenses are not reflected in Enbridge's cost estimate.¹⁴ Similarly, FOH questions how discount rates, inflation, investment returns, and similar issues factor into the decommissioning cost estimate.¹⁵ Each of these categories is taken into account when calculating the annual contribution amount. For example, it is not possible to calculate administrative expenses until a trustee is chosen (as expenses may vary among trustees), nor can taxes be calculated until the location of the Trust is identified. Likewise, inflation rates, investment returns, and the like are included when the annual contribution amount is calculated; each of those factors would be reviewed and revised, as needed, during the five-year review period.

III. TIMING OF CONTRIBUTIONS.

DOC-DER and HTE take the position that Enbridge should have started setting aside funds for the Decommissioning Trust Fund before the Commission approved the Fund.¹⁶ However, without Commission approval on the issue, Enbridge could not know the contribution amount, where to deposit any set aside funds, how the Fund would be structured, or any other details related to the Fund ultimately approved by the Commission. Further, the commenters do not explain how these set-aside funds would have been treated for accounting, tax, or other

¹⁴ DOC-DER Reply Comments at 6.

¹⁵ FOH Reply Comments at 2.

¹⁶ *E.g.*, DOC-DER Reply Comments at 2, 7.

regulatory purposes. Indeed, the record in this matter clearly shows that the Commission contemplated this very issue and intentionally chose to proceed with this separate docket, even though it was likely the proceeding would not conclude before the pipeline was placed in service. The Commission chose to open the separate docket, so that the Commission could more fully explore issues raised by DOC-DER; now, as then, Enbridge remains ready to implement the Decommissioning Trust Fund once it is approved:

COMMISSIONER SIEBEN: Essentially, it's saying that once the pipeline reaches the end of its useful life, there will be money set aside through this decommissioning fund beginning sooner than later to – to take it out of the ground. And so my motion is trying to recognize that the company's filing, I think, essentially did that, but the Department of Commerce raised some significant – or some concerns about the Decommissioning Trust and how it would be structured. . . . But that we would open a docket, a separate docket to work out some of the details of the Decommissioning Trust.

MS. BRUSVEN: The one piece of clarification that would be helpful to use is timing. So we had anticipated that we were going to go forward under your order, establish a decommissioning trust fund by the time the project was in service. And I'm not sure, we don't control the schedule for the Commission in terms of getting through another proceeding on these issues, and so I would have some concern that that proceeding may or may not concluded and give us enough time to actually implement that prior to the in-service date of the project. Now, this is for removal of the project at the end of its useful life, so I think we have some time if the Commission is comfortable with that, but I just wanted to raise that timing concern.

MS. BRUSVEN: We're fully supportive, I think, of having more discussion around these items, but just need enough time at the back end of that without jeopardizing, you know, putting the project into service to get that implemented. And, again, I think that because the fund is not anticipated to be used for let's hope decades, that we have time to work through these thoughtfully, but

I just want to raise that again so that we don't end up with an issue at the back end of that process.

COMMISSIONER LIPSCHULTZ: So, Ms. Brusven, what I think I hear you saying is that, beware, this process may result in the trust not actually being up and running when the new pipeline goes into service?

MS. BRUSVEN: Madam Chair, Commissioner Lipschultz, that's correct.

COMMISSIONER LIPSCHULTZ: But that response to that that you gave that I think is contemplated in Commissioner Sieben's motion is, well, we still have time, let's get it right before we put it in place, because there's a long time before it gets decommissioned, one would presume.

MS. BRUSVEN: Madam Chair, Commissioner Lipschultz, we'd agree.

COMMISSIONER SIEBEN: And, Commissioner Lipschultz, just to add to that, that's why having an open docket, but without setting a specific deadline I think is beneficial and helpful.

COMMISSIONER LIPSCHULTZ: And I agree, Commissioner Sieben. I think you've done it the way – the best – I think your approach is the best approach to take. We do have some time. We want to get it right, I think, before we put it in place.¹⁷

DOC-DER then presents several calculated monthly payments that may be made to fund the Trust depending on the Commission's requirements for the Trust.¹⁸ These amounts are in the range of Enbridge's expectations; however, they do not appear to account for interest earned on the Trust over time, and the calculated amount would also depend on the tax rate, trustee expenses, and estimated discount and inflation rates, among other things. The range of values provided by the DOC-DER demonstrates why Enbridge could not be expected to set aside funds

¹⁷ Docket 14-916 Mtg. Tr. at 56:23-57:13; 60:19-61:9; 63:15-25; 64:10-65:8 (Nov. 19, 2018).

¹⁸ DOC-DER Reply Comments at 8.

until the Commission has provided direction on the location of the Trust and the Trustee is chosen.

For the first time in its reply comments, DOC-DER refers to a “security deposit account” with the Department of Commerce that the Department uses with insurance and trust companies.¹⁹ Enbridge is not familiar with this mechanism, and DOC-DER does not identify the specific statutory authorization for the Department of Commerce’s management of such accounts. As such, it is unclear to Enbridge how such a mechanism would work and how/whether it is authorized under existing law for these purposes. Enbridge is not aware of such an account being used in any other Commission proceedings.

IV. LIFE OF LINE 93.

HTE continues to assert, without supporting facts, that the Commission should require significant upfront or early funding of the Decommissioning Trust Fund because Line 93 will be removed from service before the contractual 30-year period ends. For example, HTE asserts that the “same reasoning” regarding a 20-year economic life for remainder of the Mainline System “holds here” for Line 93.²⁰ This is not accurate. As Enbridge previously explained, Line 93 is different from the Mainline System—it is a brand new asset and was not included in Enbridge’s proposed update regarding the economic life of the Mainline System (which, as Enbridge previously stated, has not been approved by FERC and is subject to shipper objections). For

¹⁹ DOC-DER Reply Comments at 9.

²⁰ HTE Reply Comments at 3. HTE quotes a heading out of context from Enbridge’s Initial Comments regarding a 50-year lifespan and accuses Enbridge of “contradiction”. As was clear from Enbridge’s Initial Comments, this heading was a reference to the specific language in the Commission’s prior January 23, 2019 Order Approving Compliance Filings, in which the Commission ordered Enbridge and DOC-DER to consult regarding DOC-DER’s recommendation that the Decommissioning Trust Fund should “[i]nclude collections over the expected 50-year life of Line 3.” Enbridge’s Initial Comments then plainly stated that the economic life of Line 93 is set at 30 years by contract.

avoidance of doubt, Enbridge restates here again that Enbridge and the shippers specifically agreed that, upon approval from the Commission, costs of decommissioning Line 93 will be recovered from shippers; Enbridge and shippers agreed that the funds would be contributed by Enbridge to a trust based on direction from the Commission.

HTE further asserts that a shorter collection period—much shorter than the actual, contractually-stipulated life of Line 93—would benefit shippers.²¹ This is not accurate. Shippers regularly take the position that a shorter collection period is more burdensome. Further, as already explained, a shorter collection period here would run counter to the existing agreement. Likewise, HTE misunderstands the FERC proceedings. The docket HTE refers to is not relevant to HTE’s argument;²² that was not a filing to include the costs of Line 93 in rates. Rather, Enbridge filed to include the construction costs of the U.S. portion of Line 93 in the Facilities Surcharge Mechanism (“FSM”) on March 1, 2022 (refiled on March 17, 2022); those costs were not protested and have been included in the FSM since April 1, 2022.

V. PROCESS & SCHEDULE.

A. DOC-DER milestones and schedule.

As explained in its Initial Comments, Enbridge continues to believe that the following steps after the conclusion of this comment period will result in timely creation of a Decommissioning Trust Fund acceptable to the Commission:

- Identify the basic terms and conditions of the Decommissioning Trust Fund. *See Attachment A.*
- Authorize Enbridge to establish the Decommissioning Trust Fund, consistent with those terms and conditions.

²¹ HTE Reply Comments at 3-4.

²² HTE Reply Comments at 4.

- Require Enbridge to submit a compliance filing indicating that a decommissioning trust agreement, consistent with the Commission's Order, has been negotiated with a trustee, subject to final review by the Executive Secretary prior to execution.
- Delegate to the Executive Secretary authority to review the final Trust Agreement for consistency with the Commission's order.

DOC-DER appears to disagree and has suggested a much longer process. As an initial matter, Enbridge understands that both the Commission and DOC-DER are committed to public participation and transparency in each agency's process. The process proposed by Enbridge is consistent with those goals, as well as the goal to expeditiously establish the Trust. Indeed, unlike decommissioning obligations established for other types of infrastructure, this Decommissioning Trust Fund has already been the subject of open meetings and multiple rounds of public comment. Thus, the record before the Commission already identifies the issues which are of importance to the public, and in its comments, Enbridge has attempted to respond to those issues.

In its reply comments, DOC-DER included a table identifying various "tasks" and its proposed deadlines for those tasks. Enbridge recreates that table below, with a column added for Enbridge's responses.

Task	Due date	DOC-DER notes	Enbridge response
Enbridge to consult with tribal authorities.	Commence as soon as possible.		Enbridge continues to defer to the Commission's discretion regarding consultation with tribal authorities.
The Commission to issue an order requiring the establishment of the decommissioning trust and establishing a schedule.	Following an agenda meeting where comments submitted in response to the Commission's Notice of Comment Period are considered.		DOC-DER's reference to "establishing a schedule" is unclear. As stated elsewhere, the Commission will have sufficient information to issue an order concerning the Decommissioning Trust Fund at the conclusion of the

Task	Due date	DOC-DER notes	Enbridge response
			comment periods in this docket.
Enbridge to file for review and Commission approval a final, independently reviewed cost estimate.	Within one month of a Commission order establishing a schedule.	The Department believes that it is important that the cost estimate be independently reviewed to avoid potential bias. The Commission should review the estimate every three years to determine whether it is necessary to increase the amount of contributions.	Independent review of the cost estimate is unnecessary, as Enbridge has no incentive to seek to underfund the Decommissioning Trust Fund, and no commenter has identified any deficiency in the cost estimate Enbridge has already provided. Enbridge continues to suggest a five-year review schedule because this timeframe is consistent with other Commission dockets. A lesser timeframe would likely be inefficient and unmanageable for both Enbridge and the state agencies involved.
Establish a monthly amount to be contributed to the trust fund.	Within two months of a Commission order approving the cost estimate.	The amount of monthly required contributions should be based on the estimated decommissioning cost and the length of time that the line is anticipated to remain in service. The Commission should review the monthly contribution amount as part of a triennial review of the cost estimate and adjust the monthly contribution amount as needed.	The monthly contribution amount will need to be calculated at the time the Decommissioning Trust Fund is established.
Enbridge to make an initial contribution, equal to twelve months' worth of monthly contributions, to begin funding the trust, with monthly contributions thereafter.	Within three months of a Commission order establishing a schedule.	In its September 2018 Order, the Commission required Enbridge to establish a decommissioning trust fund as a condition of granting a certificate of need. Although the pipeline was placed in service on October 1, 2021, Enbridge has yet to establish a reserve to fund the trust. A substantial initial lump sum contribution is necessary to	Enbridge disagrees that a "substantial initial lump sum" is necessary or appropriate. Enbridge has diligently complied with Commission direction on this issue, and the Commission understood that the Fund would not be immediately established when it decided to refer this issue

Task	Due date	DOC-DER notes	Enbridge response
		assure that the funding of the trust is not further delayed.	to a separate docket.
Enbridge to file for comment and Commission approval a list of terms and conditions required to be included in the final trust agreement.	Within one month of a Commission order establishing a schedule.	Certain terms and conditions that the Department believes are critical to the success of the trust are discussed below.	Enbridge has provided detail regarding the material terms and conditions it proposes as part of the Decommissioning Trust Fund. <u>See Attachment A.</u> It would be inefficient to negotiate terminology in the Trust Agreement in the public space, particularly where the specific terms and conditions of any agreement will be subject to acceptance by a trustee.
Commission to approve a final list of required terms and conditions.	Within six months of Enbridge filing its proposed list of terms and conditions.		At the conclusion of this comment process, the Commission will have sufficient information and public input to issue an order regarding the general, material terms and conditions for the Decommissioning Trust Fund.
Enbridge to file, for comment and Commission approval, the identity of a proposed trustee and provide information explaining the process used to select the proposed trustee.	With one month of a Commission order establishing a schedule.		It is not clear that this process is necessarily workable. Ideally, the selection of the trustee and the negotiation of specific terms and conditions would occur on approximately the same timeframe.
Commission to approve a trustee.	Within three months of Enbridge identifying a proposed trustee.		See comment in prior row.
Enbridge to file for comment and Commission approval a proposed trust	Within six months of Commission approval of a trustee.	This is intended to allow Enbridge sufficient time to negotiate with the trustee regarding the agreement's terms. The Department has	As described previously, Enbridge proposes to file the final form of the Agreement as a compliance filing after

Task	Due date	DOC-DER notes	Enbridge response
agreement.		engaged the services of a trust expert to provide the Commission with expertise in reviewing the terms of the trust agreement.	the Commission issues an order approving the required material terms. Enbridge submits that this process would be more efficient.
Commission to approve a final trust document.	Within three months of Enbridge filing its proposed trust agreement.	Although “final,” the trust agreement will necessarily contain provisions that address how the agreement may be modified.	See comment in prior row.

B. Establishment of terms and conditions

DOC-DER asserts that the “parties should have an opportunity to review and comment on . . . the trust agreement itself,” stating that DOC-DER “is in the process of engaging the services of a trust expert to advise it in this matter.”²³ After consulting with trust experts and those familiar with the CER process, Enbridge identified the material terms and conditions for the Trust Agreement in its Initial Comments. A trust such as this one presents numerous complex issues, including those related to trust law and taxation, and Enbridge’s proposal accounts for and reflects those complexities. As discussed previously, Enbridge proposes a process in which the Commission would approve the material terms and conditions and then Enbridge would finalize a trust agreement with a trustee willing to accept those general terms and conditions, with the final agreement submitted in a compliance filing. In Enbridge’s view, this process provides flexibility in selecting a trustee, and Enbridge had previously understood that the selection of a trustee was an importance consideration for DOC-DER and the Commission. In

²³ DOC-DER Reply Comments at 9-10. The Commission’s order directing further process on the Decommissioning Trust Fund was issued in January 2019. The Commission initially opened this comment period in December 2021 and, in January 2022, DOC-DER requested additional time to allow it to engage an expert. To the extent that DOC-DER believes it requires additional expertise, it has already had ample time, and DOC-DER’s engagement of an expert is no reason to delay this process.

other words, presenting a potential trustee with a final agreement in take-it-or-leave it form would likely narrow the scope of potential trustees. Enbridge continues to believe that its proposed process would be most efficient and result in the best outcome in this docket.

C. Additional notification.

HTE asks the Commission to require Enbridge to “disclose the current status of its discussions with shippers” and states that the Commission should “[o]ffer[] to include the shippers as parties in interest in this docket.”²⁴ Enbridge does not agree to disclose its discussions with shippers in this docket. Not only are those discussions highly confidential, but they are irrelevant to the framework identified by the Commission for establishing the Decommissioning Trust Fund. With respect to including shippers as parties, Enbridge respectfully submits that no further Commission action is needed. As the Commission is aware, shippers previously participated in the certificate of need proceedings. If shippers wished to participate in this docket too, they had the opportunity and necessary experience to do so.

HTE also asserts that the Commission should provide notice to landowners.²⁵ Once again, Enbridge defers to the Commission’s discretion regarding appropriate notice.

D. Contested case proceeding.

HTE continues to assert that the Commission should refer this proceeding to the Office of Administrative Hearings for a contested case proceeding.²⁶ However, the majority of the issues identified for HTE for a contested case are not appropriate for resolution in a contested case because they are legal or procedural issues. Further, Enbridge notes that HTE’s continued

²⁴ HTE Reply Comments at 5.

²⁵ HTE Reply Comments at 8.

²⁶ HTE Reply Comments at 7-8.

request for a contested case is counter to its stated goal of having the trust expeditiously established and funded.

CONCLUSION

Enbridge appreciates the opportunity to provide these supplemental comments and submits that the decommissioning trust framework and terms presented herein and in Enbridge's Initial and Reply Comments are consistent with and responsive to the Commission's prior orders on this issue. Enbridge respectfully requests that the Commission approve the terms and conditions identified in Attachment A. This will provide sufficient direction to allow Enbridge to identify a trustee, negotiate a final trust agreement, and move forward in time to begin funding the Trust in May 2023.

Dated: July 20, 2022

Respectfully submitted,

/s/ Christina K. Brusven

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Partnership

Attachment A

Line 93 Decommissioning Trust Fund: Summary of Proposed Terms & Conditions

Topic		Description
Purpose and nature of trust		Trust will be established and maintained for the sole purpose of decommissioning Line 93 in compliance with the Minnesota Public Utilities Commission’s (“Commission”) Orders.
Settlor		Enbridge Energy, Limited Partnership.
Trustee		A U.S. domestic corporate trustee not affiliated with Enbridge.
Beneficiary(ies)		<ul style="list-style-type: none">Entity or person(s) with obligation to decommission Line 93;If no such entity, the Commission’s designee.
Governing law and situs		South Dakota, with trust drafted to provide maximum protection against Enbridge’s creditors.
Contributions	<i>Source of contributions</i>	The Trust will be funded with amounts collected from shippers as decommissioning charges, pursuant to prior agreement between Enbridge and shippers.
	<i>Commencement of contributions</i>	May 10 of the year following Commission approval of the Trust. ¹
	<i>Amount</i>	\$1.2 billion, pro-rated until October 1, 2051.
Investment	<i>Investment manager</i>	U.S. domestic entity; likely an affiliate of corporate trustee.
	<i>Investment policy</i>	To be drafted by Trustee or investment advisor.
Distributions	<i>Process</i>	Enbridge will notify Commission of intent to decommission, incur decommissioning expenses, and seek payment or reimbursement from the Trust, subject to Commission oversight.
	<i>Purposes</i>	<ul style="list-style-type: none">Trust expenses (trustee fees, costs, administrative expenses, etc.);Taxes imposed on and payable by the trust, liability of the settlor;Distributions to settlor to pay any tax resulting from trust income; andTo a beneficiary or third party for the purpose of decommissioning Line 93.

¹ Under the process proposed by Enbridge, this would result in commencement of funding on May 10, 2023.

Topic	Description
Surplus funds	After final decommissioning of Line 93, surplus funds may be distributed to a Minnesota abandoned pipeline fund that will be established and maintained for the purpose of funding reclamation of any other abandoned Enbridge pipelines in Minnesota.
Tax obligations	<ul style="list-style-type: none"> • If the trust is a non-grantor trust, to the extent it incurs tax, it will pay its tax obligations, and the trustee will prepare and file income tax returns. • If the trust is a grantor trust, absent a law change, the tax obligations will fall on the grantor/settlor. The trust will make distributions to the grantor/settlor to pay tax resulting from the trust. • Enbridge suggests the trust be drafted to allow for more favorable tax treatment, should it become available through private letter rulings or legislative changes.
Reporting and record-keeping	Trustee will provide annual reports to Enbridge, which will file the report with Commission.
Term of trust	The longest period that a trust under this instrument may continue under the laws of the jurisdiction that is the situs of the trust. Under Minnesota law, the duration of the trust would likely be limited to 90 years. Under South Dakota law, there is no limit on how long the trust could exist. At that point, a successor trust could be created.
Irrevocable	Trust will be irrevocable.
Modification	Trust may be amended by agreement of Enbridge and the trustee, with material modifications submitted by Enbridge for Commission approval.
Periodic Commission review	Every five years.

**In the Matter of the Decommissioning
Trust Fund for the Enbridge Energy,
Limited Partnership Line 3 Replacement
Pipeline**

MPUC Docket No. PL-9/CN-21-823

CERTIFICATE OF SERVICE

Breann L. Jurek certifies that on the 20th day of July 2022, she e-filed a true and correct copy of Enbridge Energy, Limited Partnership's Supplemental Comments and Attachment A via eDockets (www.edockets.state.mn.us).

Said document was also served as designated on the Official Service List on file with the Minnesota Public Utilities Commission and as attached hereto.

Executed on: July 20, 2022

Signed: /s/ Breann L. Jurek

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