

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

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**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
COMMENTS ACCOMPANYING DRAFT TRUST AGREEMENT**

INTRODUCTION

Enbridge Energy, Limited Partnership (“Enbridge”) submits these comments accompanying its proposed draft trust agreement (“Trust Agreement”) in accordance with the Minnesota Public Utilities Commission’s (“Commission”) November 4, 2022 Order Directing Enbridge to Draft Trust Agreement for Notice and Comment (“November 2022 Order”).

Enbridge is required by Commission order to decommission Line 93, and the Commission has required that Enbridge establish a decommissioning trust—funded with private funds—to ensure that funding is available to fulfill those decommissioning obligations at the end of Line 93’s useful life. In recognition of the importance of this obligation and the significant amount of money at stake, Enbridge has engaged experts and spent multiple years developing a framework and trust document to ensure that these funds—that will be collected from Enbridge’s shippers for this specific purpose—will be available to implement Enbridge’s obligations. A decommissioning trust fund dedicated to a single pipeline is, to Enbridge’s knowledge, unprecedented in the United States (and certainly in Minnesota), and there is no regulatory framework in Minnesota governing such a trust. However, because similar trusts exist and are federally regulated in Canada, Enbridge has

extensive experience developing and implementing decommissioning trusts for its federally regulated Canadian assets. Enbridge has applied that expertise to the proposed decommissioning trust framework and draft agreement for Line 93. Enbridge understands that other parties may have different preferences regarding some components of the decommissioning trust; however, it is important that the trust be consistent with existing trust law in order to ensure it functions as intended. Like other interested parties here, Enbridge has a significant interest in ensuring that the decommissioning trust is workable, effective in protecting funds from creditors, and contains sufficient funds to complete decommissioning at the end of Line 93's useful life. This proposal accomplishes those common objectives.

As set forth in more detail herein, the draft Trust Agreement included as **Attachment A** with this filing is consistent with the Commission's prior orders and will result in the establishment of a decommissioning trust to ensure that funds are available to decommission the Line 93 pipeline at the end of its useful life.

BACKGROUND

In its Order Granting Certificate of Need as Modified and Requiring Compliance Filings, the Commission approved a certificate of need for Line 93 and required Enbridge to create a decommissioning trust fund based on its Canadian decommissioning trusts:

contingent upon the creation and funding of a trust fund for decommissioning of the Project, including the costs of removal of the Project. Enbridge shall make a compliance filing by July 16, 2018, of the terms and conditions of the decommissioning trust fund *based on the decommissioning trust that the Canadian National Energy Board directed Enbridge, Inc. to fund for the decommissioning of its pipelines in Canada.*¹

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*, Docket No. PL-9/CN-14-916, Order Granting Certificate of Need As Modified and Requiring Filings (Sept. 5, 2018) (reissued May 1, 2020), ordering ¶ 1(D) (emphasis added).

On July 16, 2018, Enbridge submitted a compliance filing which provided a “discussion of the terms and conditions of the decommissioning trust fund based on the decommissioning trust that the NEB² directed Enbridge Inc. to fund for decommissioning of Enbridge pipelines in Canada.”³ In response, on July 20, 2018, the Minnesota Department of Commerce, Division of Energy Resources (“DER”) recommended that the Commission require Enbridge to propose a revised decommissioning trust fund proposal that:

- Is consistent with, and requires no changes to, existing Minnesota and federal law;
- Includes collections over the expected 50-year life of Line 3 project in Minnesota at least to equal approximately \$1.5 billion (USD), as adjusted for inflation;
- Is not controlled by Enbridge Inc. or any present or future affiliated entity;
- Is established only for the purpose of deactivating, monitoring, and removing the pipeline together with remediation of the soil at the time Line 3 is taken out of service in Minnesota; and
- Includes other provisions as required by the Commission.⁴

After several additional comments from Enbridge and other parties, in its Order Approving Compliance Filings as Modified and Denying Motion, the Commission ordered:

The Commission will accept Enbridge’s July 16, 2018 compliance filing and Attachments 3A, 3B, and 3C as further modified by Enbridge’s July 30, September 7, and October 16, 2018 filings relating to the Decommissioning Trust Fund. However, the Commission believes that additional work is needed to develop the Decommissioning Trust Fund. 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

² National Energy Board. The NEB is now the Canada Energy Regulator (“CER”). Note that, in Canada, the term “abandonment” is used in place of “decommissioning”.

³ Enbridge Response to DER Comments regarding Enbridge Compliance Filing on the Decommissioning Trust Certificate of Need Modification (“Enbridge July 2018 Comments”), at 4 and Attachments 3A-C (July 16, 2018).

⁴ DER Comments, at 2 (July 20, 2018).

the Decommissioning Trust Fund. Enbridge shall consult with DER regarding its recommendations that the Decommissioning Trust Fund should:

- Be consistent with, and require no changes to, existing Minnesota and federal law;
- Include collections over the expected 50-year life of Line 3 project in Minnesota to equal approximately \$1.5 billion (USD) at least, as adjusted for inflation;
- Not be controlled by Enbridge Inc. or any present or future affiliated entity;
- Be established only for the purpose of deactivating, monitoring, and removing the pipeline together with remediation of the soil at the time Line 3 is taken out of service in Minnesota.

Enbridge shall analyze for Commission consideration the benefits of establishing the trust consistent with the Environmental Protection Agency and Bureau of Land Management rules for financial assurances for decommissioning trust funds, as well as the Canadian National Energy Board's provisions.⁵

The Commission subsequently opened the above-captioned docket and, on December 20, 2021, issued a Notice of Comment Period providing for three rounds of comments. Enbridge, DER, and other commenters submitted comments. The Commission met to consider the issue on September 22, 2022, and subsequently issued the November 2022 Order. The November 2022 Order directs Enbridge to coordinate with DER, the Fond du Lac Band of Lake Superior Chippewa ("Fond du Lac Band"), and other affected tribal governments, and then to file a draft trust agreement which includes:

- A. An independently reviewed cost estimate for the total contribution amount to be included in the trust, and supporting

⁵ *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*, Docket No. PL-9/CN-14-916, Order Approving Compliance Filings as Modified and Denying Motion, at 8 (Jan. 23, 2019) (reissued May 1, 2020).

documents—or, if not, a proposal and timeframe for the independent review of the cost estimate.

B. A proposed monthly contribution amount and supporting documents.

C. A proposed initial contribution amount to be made upon establishment of the trust.

D. An identification of who or what entities should be the beneficiary.

E. A proposed trustee and information explaining the process used to select the proposed trustee.

F. Provisions that address modifications to the terms of the trust, regular Commission review, and an investment policy.

G. An explanation of Enbridge’s choice to designate South Dakota as the situs for the trust and choice of law for the draft trust—providing a thorough discussion comparing application of Minnesota and South Dakota law, and how to maintain Minnesota as the venue for any judicial actions regarding the trust.

H. A list of the differences between Enbridge’s proposal, the requirements of the Canada Energy Regulator, and the trust requirements under Minnesota Pollution Control Agency rules (Minn. R. ch. 7035.2805)—and the reasons for the differences.⁶

Enbridge addresses each of these items, in order, in Section III below. In addition, in Section I, Enbridge provides a summary of its coordination with other parties, as ordered by the Commission, and key terms of the draft Trust Agreement in Section II.

⁶ *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, Order Directing Enbridge to Draft Trust Agreement for Notice and Comment, at 5-6 (Nov. 4, 2022).

DISCUSSION

I. Coordination.

A. DER.

Since the Commission's September 2022 meeting, and consistent with the November 2022 Order, Enbridge has coordinated with DER regarding the Trust Agreement, including providing a draft of the agreement and meeting multiple times to discuss key provisions of the Trust Agreement. Enbridge provided a draft Trust Agreement to DER on November 14, 2022, and Enbridge and DER met on November 22, 2022, at which time Enbridge walked through its initial draft and described how the draft addressed issues identified in previous Commission orders. DER provided suggested changes to the initial draft on December 19, 2022, and Enbridge and DER met again on December 20, 2022 to discuss DER's comments. Enbridge has incorporated a number of DER's comments into the Trust Agreement included in **Attachment A**. While Enbridge's and DER's preferred approach to several issues differs, Enbridge believes that the coordination was productive and narrowed the areas of difference. Additionally, Enbridge coordinated with DER regarding use of the Independent Engineer to independently review Enbridge's decommissioning cost estimate, as discussed further below.

B. Fond du Lac Band and other Tribal governments.

Enbridge sent a letter and the Commission's Order to the Fond du Lac Band and the other federally-recognized Tribes that were parties in the Line 3 Replacement certificate of need docket. A copy of that letter is included as **Attachment B**. In addition, Enbridge separately reached out to the Fond du Lac Band; to date, none of the tribal governments have requested to meet with Enbridge, nor has Enbridge received any questions or concerns regarding this proceeding.

II. Draft Trust Agreement.

The draft Trust Agreement is included as **Attachment A**, and a summary of the Trust Agreement’s primary terms and conditions is provided in Table 1 below. Enbridge has provided the Trust Agreement to potential trustees, but has not reached final, agreed-up terms with any trustee given that the Trust Agreement will be subject to further review by the Commission. Based on its coordination with potential trustees to date, however, Enbridge anticipates that the substance of the terms of the Trust Agreement will be acceptable to a trustee, particularly given that the Trust Agreement is largely consistent with similar Canadian trusts, and the CER process has demonstrated that the framework and terms of those trusts are workable. Further discussion and explanation of specific terms and conditions is provided in Section II(B), below.

A. Table 1: Summary of Trust Agreement Terms & Conditions

Topic	Description	§
Purpose and nature of trust	Established pursuant to Commission order requiring establishment of a decommissioning trust fund for the purpose of funding decommissioning expenses for Line 93.	1.2
Settlor	Enbridge Energy, Limited Partnership.	Preamble
Trustee	A corporate trustee with presence in South Dakota (or another state with favorable trust laws) and Minnesota (in order to allow any court proceedings involving the trust to be held in Minnesota).	Preamble
Enforcer	Organization or individual designated to enforce the trust, to be appointed by the Commission. The role of the “Enforcer” is similar to the role of the beneficiary under a traditional trust. The Enforcer has the right to receive information and accountings from the trustee, and to hold the trustee accountable for any deviations from the trustee’s duties under the trust document or applicable law.	3.5
Trust type	Non-charitable purpose trust (SDCL §§ 55-1-20—55-1-22.6)	1.3
Beneficiaries	The trust will benefit the environment, the people of the United States, the State of	1.3

Topic		Description	§
		Minnesota and the tribal nations that share its geography, the landowners whose property is traversed or otherwise affected by Line 93, Enbridge, its customers, and their respective successors. However, it is the Enforcer (and not the people and entities benefited by the trust) who will have the legal right to receive accountings and enforce the trust.	
Governing law and situs		South Dakota	7.1
Venue for court proceeding		Minnesota, unless Enforcer consents to different venue	4.1
Contributions	<i>Source of contributions</i>	Contributions to the trust will be made by the settlor (Enbridge) and those amounts will be recovered from shippers as decommissioning charges, pursuant to prior agreement between Enbridge and shippers.	N/A
	<i>Commencement</i>	May 10 of the year following Commission approval of the Trust.	N/A
	<i>Amount</i>	Annual contribution amounts to be calculated to ensure the total amount in the trust fund by October 1, 2051 is the decommissioning cost estimate approved by the Commission.	N/A
Investment Policy		To be drafted by Trustee.	N/A
Distributions		<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; and To the Responsible Party or third parties engaged by the Responsible Party to pay Decommissioning Expenses, after submission of Certificate of Payment of Decommissioning Expense, which requires approval of Enforcer. 	5
Surplus funds		Distribution to a Minnesota abandoned pipeline fund that will be established and maintained for the purpose of funding reclamation of any other abandoned pipelines in Minnesota.	5.3
Reporting and record-keeping		<ul style="list-style-type: none"> Enforcer may demand from Trustee reasonable information related to 	5.2, 6.1

Topic	Description	§
	administration of trust, including periodic accounting. <ul style="list-style-type: none"> Trustee provides annual and quarterly trust accountings to Enforcer and Responsible Party. 	
Term of trust	Perpetual to the extent permitted by law. “Termination Date” defined as the completion of Line 93 decommissioning.	7.4
Revocability	Irrevocable.	1.8
Modification	Pursuant to written instrument executed by Enforcer with: (i) court order; or (ii) consent of Responsible Party and Trustee.	1.6
Periodic Commission review	Every five years.	N/A

B. Discussion of certain terms and conditions.

1. Terms and conditions memorialized elsewhere.

Certain components of the Commission’s November 2022 Order are proposed to be memorialized outside of the Trust Agreement itself because those components are not typically terms and conditions of a trust agreement and to ensure that they may be implemented and adjusted efficiently over the life of the Trust. Specifically:

Regular Commission review: Section 6.1 of the Trust Agreement requires the Trustee to provide annual and quarterly accountings to Enforcer (the Commission’s designee). In addition, Enbridge proposes that the Commission review the Trust every five years, as it does for the decommissioning obligations of other infrastructure in Minnesota and as the CER does for decommissioning trusts for federally-regulated pipelines in Canada. Enbridge anticipates that this five-year review will be reflected in a Commission order, rather than the specific terms of the Trust Agreement, to allow the Commission more flexibility in administering this timeframe, and because the Commission is not a party to the Trust Agreement. In other words, if the five-year timeframe were memorialized in the Trust Agreement, the Agreement would need to be amended should the

Commission subsequently wish to modify that timeframe. Memorializing this review timeframe in a Commission order, instead, allows the Commission to revisit the issue as it sees fit without amending the Trust Agreement. Enbridge would, of course, be bound by both the Trust Agreement and any Commission orders. Enbridge's proposal for regular Commission review is discussed in more detail in Section III(F)(2) below.

Contribution amount: Contribution amounts—total and monthly—are not specifically identified in the Trust Agreement. Contribution amounts will be calculated based on the decommissioning cost estimate approved by the Commission, the estimated trust and investment fees, taxes, rate of return, and inflation. As previously stated and consistent with other Commission decommissioning processes, Enbridge proposes that every five years, the Commission and Enbridge would review the decommissioning cost estimate to determine whether it is still reasonable or needs to be revised. This review would also include evaluating whether the estimated trust and investment fees, taxes, rate of return, and inflation were correct or resulted in an over-collection or under-collection for that period. Enbridge would then revise the contribution amounts going forward based on that review. This is consistent with the process in Canada. Again, including the contribution amount in Commission orders rather than the Trust Agreement allows the Commission to update the contribution amounts without amending the Trust Agreement. More detail regarding calculation of a contribution amount is provided in Section III(B)(2) below.

Investment policy: An investment policy is typically separate from a trust agreement because it is preferable to be able to update and amend the investment policy more frequently and more efficiently than amending a trust agreement itself. That is especially the case for this Trust Agreement, which will be in place over decades. Similar to a pension or education fund, Enbridge proposes that the investment policy will allow for a reasonable rate of return to start with, and that

it will become more conservative over time to ensure that sufficient funds are available to decommission Line 93 at the end of its life. Further discussion of an investment policy is provided in Section III(F)(3) below.

2. Non-charitable purpose trust.

Enbridge proposes a non-charitable purpose trust for the Trust Agreement because the Trust is intended to accomplish a particular purpose (decommissioning Line 93) rather than to benefit any particular person(s). Indeed, under trust law, if a trust document does not allow for distributions to or for the benefit of a particular person or entity, that person or entity is not really a “beneficiary” of the trust.

Minnesota law expressly authorizes non-charitable purpose trusts, but does not have a well-developed statutory scheme governing this type of trust. Minn. Stat. § 501C.0409. South Dakota has an explicit statutory framework allowing for a purpose trust which provides clarity and certainty regarding how a purpose trust will be administered. Specifically, SDCL §§ 55-1-20—55-1-22.6 provide specific statutory mechanisms for trusts for non-charitable purposes and hybrid purpose trusts. A trust may be established “for any . . . lawful noncharitable purpose,” and South Dakota law provides that the “purposes of a purpose trust shall be enforced by an enforcer designated in the governing instrument.”⁷ An enforcer is entitled to “demand reasonable information” from the trustee, “including a periodic accounting.”⁸ Here, as discussed in Section III(B)(3) below, Enbridge proposes that the Commission or its designee be the trust Enforcer. Under South Dakota law, the Enforcer plays the role typically played by a beneficiary; the Enforcer represents all permissible beneficiaries.

⁷ SDCL §§ 55-1-20, 55-1-21(3), 55-1-21.4.

⁸ SDCL § 55-1-21.4.

South Dakota’s legislative history reinforces that a purpose trust is not only appropriate here but should be considered the preferred option. Indeed, the South Dakota Legislature conducted a multi-year process consulting leading experts across the country before enacting the purpose trust statutory provisions, and South Dakota is the only state in the country with a continuous task force devoted to trust issues.⁹

The concept of a purpose trust is not new. Every charitable trust is a purpose trust; instead of having a specific beneficiary, a charitable trust will have a specific purpose, and a state’s attorney general can enforce those trusts. Likewise, non-charitable purpose trusts have been around for hundreds of years (the most common involving care of a cemetery or a pet). Minnesota’s statute expressly authorizing purpose trusts was enacted in 2015, effective in 2016. Minn. Laws 2015 Ch. 5 Art. 4 § 7.

Overall, this particular situation—establishing a trust to fund decommissioning of Line 93—is appropriate for a purpose trust and, indeed, appears to be what was called for based on comments filed in this docket thus far, in that it resolves controversy about who should or can be a “beneficiary”. It is focused on ensuring that the purpose of the trust – decommissioning Line 93 – will be accomplished. This is generally consistent with Canadian pipeline decommissioning trusts, the difference being that the CER has the role of the Enforcer by virtue of legislation, and the entity responsible for decommissioning is specifically the trust beneficiary.

3. Roles identified in Trust Agreement.

The Trust Agreement identifies various different roles, which Enbridge summarizes here for clarity. Specifically:

⁹ H.R. 1072, 93d Leg. Assemb. (S.D. 2018); S. 65, 95th Leg. Sess. (S.D. 2020).

- Enforcer: Individual/entity appointed by the Commission and designated to enforce the purpose of the trust. (§ 3.5)
- Responsible Party: Person responsible for decommissioning Line 93, meaning Enbridge and any successor to its decommissioning obligations. (§ 3.9)
- Settlor: Enbridge Energy, Limited Partnership (entity establishing and contributing funds to the Trust). (Preamble)
- Trustee: Entity with custody of Trust assets with obligation to administer assets for the purpose designated in the Trust Agreement. (§ 3.13)

4. Terms related to liability.

During coordination, DER raised questions concerning liability terms in the Trust Agreement. It will be difficult or impossible to find a corporate trustee that is willing to take on potential liability with respect to the decommissioning of an oil pipeline, and that is not the purpose of the Trust. Instead, the Trust Agreement makes clear that only Enbridge (or its successor) will be liable for events that occur as Line 93 is decommissioned.

It is also important for the Trust Agreement to broaden the powers of the trustee in terms of investments. Under applicable trust law, a trustee is generally required to hold a diversified portfolio of investments and not to concentrate the trust investments in a single investment or type of investment. As decommissioning approaches, this trust may need to invest entirely in cash, short term government bonds, and other assets that minimize volatility and risk of loss. Therefore, the Trust Agreement waives some of the duties a trustee would otherwise have with respect to investments. The Trust Agreement does not prevent the trustee from being held liable for negligence, and it does not (and cannot) prevent the trustee from being held liable for gross negligence or acting in bad faith.

III. November 2022 Order requirements.

A. An independently reviewed cost estimate for the total contribution amount to be included in the trust, and supporting documents—or, if not, a proposal and timeframe for the independent review of the cost estimate.

Enbridge coordinated with the Department of Commerce to retain WSP, the same entity engaged by the Department of Commerce to provide an independent engineering review with respect to the Landowner Choice Program. Enbridge proposed that WSP would be appropriate for this review, given its familiarity with removal of the Line 3 pipeline, also in Minnesota. Enbridge first approached the Department of Commerce regarding engaging WSP for this role prior to filing its Supplemental Comments in July 2022. Enbridge approached the Department of Commerce again in September 2022, following the Commission meeting. On November 16, 2022, WSP informed DER and Enbridge that it could provide the services requested, but would need additional time to execute a contract, complete other administrative tasks, and actually perform the review. On December 7, 2022, WSP provided a scope of work for the independent review. The parties executed the agreement on December 12, 2022.

WSP has indicated that it believes it will need approximately four weeks after contract execution to complete its review, after which time it will provide the results of its review to DER; DER will review and provide comment on WSP's draft, and WSP will subsequently provide DER with a final version. As such, Enbridge anticipates that the results of WSP's review will be available to DER in mid- to late-January, and that DER will file WSP's review in this docket once it is finalized.

B. A proposed monthly contribution amount and supporting documents.

1. Collection period.

Enbridge proposes to collect and contribute funds to the Decommissioning Trust Fund over the course of the economic life of Line 93 to ensure the amount needed for decommissioning is

available when the funds are needed. Line 93 is subject to an agreement between Enbridge and its shippers, referred to as the Facilities Surcharge Mechanism (“FSM”), which is a component of Enbridge’s FERC-regulated tariff rates. Per the terms of the FSM, the economic life of Line 93 is stipulated—by contract—as 30 years. Because Line 93 went into service on October 1, 2021, Enbridge proposes to prorate the recovery of the decommissioning cost estimate over the remaining economic life of Line 93 to ensure that the Trust will be fully funded by the end of the economic life of Line 93 (October 1, 2051).

Enbridge understands that some commenters do not agree with a 30-year timeframe for the collection period and argue for a much shorter timeframe.¹⁰ However, the record in this proceeding does not support a shorter timeframe. Indeed, the economic life proposed by Enbridge here (30 years) is actually more conservative (*i.e.*, shorter) than that contemplated by the Commission when it ordered the development of a decommissioning trust in the certificate of need proceeding. In that proceeding, the Commission’s final order specifically referenced collections for a trust over a 50-year timeframe.¹¹

Similarly, some commenters have pointed to Enbridge’s Federal Energy Regulatory Commission (“FERC”) filings regarding shorter economic lives for *other* pipelines and argued that those filings indicate that Line 93, too, will have a shorter economic life¹²—but that is not the case. The FERC filings referred to by the commenters are related to different pipelines—not Line 93. Enbridge included Line 93 costs in its tariff rates, effective April 1, 2022, based on the stipulated

¹⁰ Friends of the Headwaters Comments (July 20, 2022); Honor the Earth Comments (June 27, 2022).

¹¹ *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*, Docket No. PL-9/CN-14-916, Order Approving Compliance Filings as Modified and Denying Motion, at 8 (Jan. 23, 2019) (reissued May 1, 2020).

¹² Honor the Earth Comments (June 27, 2022).

economic life of 30 years and neither FERC nor its shippers have requested to modify that.¹³ It makes sense that Line 93 would have a different economic life than Enbridge's other pipelines—Line 93 was constructed decades later than most of the pipelines in the Mainline System, and it is more than reasonable to anticipate that it will remain used and useful after decades-older pipelines.

Enbridge further notes that its proposed 30-year economic life is *more* conservative (*i.e.*, shorter) than the economic life approved by FERC for pipelines of similar vintage (*i.e.*, newer pipelines). For example, FERC approved a 40-year economic life for the Dakota Access Pipeline and a 70-year economic life for the Cactus II Pipeline.¹⁴ Indeed, the approved economic life for newer pipelines is often more than 30 years. In Canada, the CER's base collection period for collecting/setting-aside decommissioning funds is 40 years.

2. Calculation of monthly contributions.

As shown in **Attachment C**, Enbridge uses the decommissioning cost estimate in 2021 dollars, expected estimated trust and investment fees, taxes, rate of return, and inflation to calculate the total amount that needs to be contributed to the Trust over the collection period. The total amount that needs to be contributed is then divided by the number of months in the collection period to calculate the monthly contribution amount. As noted above, every five years, the Commission and Enbridge will review the decommissioning cost estimate, estimated versus actual trust and investment fees, taxes, rate of return, and inflation to determine whether those values

¹³ Per the Facilities Surcharge rate component filed in Enbridge Energy, Limited Partnership FERC Tariff Nos. 43.44.0 (Docket No. IS22-205-000).

¹⁴ Letter order accepting Dakota Access, LLC's 1/05/18 filing of the Initial Depreciation Rates under DO18-14 et al., available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20180329-3056&optimized=false (last accessed Dec. 13, 2022); Letter order accepting Enterprise Interstate Crude LLC's 12/10/2019 request for approval of initial depreciation rates for its crude oil pipeline system accounts under DO20-9, available at https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20200915-3008&optimized=false (last accessed Dec. 13, 2022).

need to be revised. The review will compare the actual amount in the fund to the expected amount to determine whether there is an over-collection or under-collection for that period. Enbridge would then re-calculate the contribution amounts going forward based on the over or under collection and whether any of the estimates need to be revised.

C. A proposed initial contribution amount to be made upon establishment of the trust.

As discussed in detail in Enbridge's July 20, 2022 Supplemental Comments in this docket, there is no validity to statements that Enbridge should have already been setting funds aside or that Enbridge needs to make any sort of 'catch up' initial contribution. Rather, annual contribution amounts will be calculated to ensure adequate funds are available at the time of decommissioning. Accordingly, Enbridge would propose to make an initial contribution based on the contribution calculation discussed above.

D. An identification of who or what entities should be the beneficiary.

As discussed in Section II(B)(2) above, Enbridge proposes to establish the Line 93 Decommissioning Trust as a non-charitable purpose trust. Under South Dakota law, this means that the trust is established to accomplish a particular purpose. In this way, the trust would be similar to charitable trusts, which are also designated to accomplish particular purposes. This structure is responsive to direction from the Commission and comments from DER and others regarding a public-oriented beneficiary, while also avoiding the pitfalls identified by Enbridge related to identifying a specific state entity and/or landowners as official "beneficiaries." Under traditional trust law, only individuals/entities which may receive distributions from a trust are "beneficiaries." Here, however, trust distributions will be made to the entity decommissioning Line 93 to fund those activities.

Enbridge understands that commenters have expressed concern about the entity with decommissioning obligations to be the “beneficiary”, as Enbridge had initially proposed. Enbridge does not share these concerns—in Canada, too, the “beneficiary” of the trust is the entity with the decommissioning obligation. Nonetheless, Enbridge proposes a structure here that is responsive to those comments. Enbridge’s obligation is to establish a trust to fund the decommissioning of Line 93. Naming beneficiaries other than the entity tasked with the actual decommissioning of Line 93 is contrary to the stated obligation. Distributions can only be made to the entity decommissioning Line 93; otherwise, there is no guarantee that the funds will be used to decommission Line 93.

E. A proposed trustee and information explaining the process used to select the proposed trustee.

Since the Commission’s September 22, 2022, meeting in this docket, Enbridge has refreshed its outreach to potential trustees. Enbridge’s trustee search focused on first identifying reputable organizations with the capacity and expertise to administer a trust of this magnitude with a presence in both South Dakota and Minnesota (and in one case Delaware and Minnesota, as Delaware has trust laws similar to those of South Dakota).

Enbridge limited its search to trustees with trust offices in Minnesota to address the Commission’s comments at the September 22, 2022 meeting regarding preserving a Minnesota venue for court proceedings related to the trust. The Commission indicated that it is important that Minnesota courts be able to assert jurisdiction over the trust. Minnesota’s Trust Code provides that, in order for court proceedings to be venued in Minnesota with respect to a trust that is not created under a will, that does not hold Minnesota real estate, that is not principally administered in Minnesota, and that has not already been the subject of a court proceeding, the trustee of the

trust must be an individual domiciled in Minnesota or an entity that has a trust office in Minnesota.¹⁵

With these factors in mind, Enbridge contacted four potential trustees regarding the Trust Agreement. Three of the entities indicated that they may be interested in serving as a trustee, and counsel for Enbridge gathered information from these potential trustees regarding the terms of the trust, the proposed investment policy, logistics, and related issues. Enbridge evaluated the resulting proposals based on meeting minimum requirements of two offices, strength and expertise of team, reasonableness of comments on the Trust Agreement, fee structure, etc. In light of feedback from DER in late December 2022 which prompted material changes to the Trust Agreement, Enbridge believes more time is needed for the potential trustees to review the revised Trust Agreement before a trustee can be finally selected.

F. Provisions that address modifications to the terms of the trust, regular Commission review, and an investment policy.

1. Trust modifications.

The Trust Agreement provides that it may be amended by the Enforcer, and that amendments are effective with either (i) a court order; or (ii) agreement of the Responsible Party and the Trustee. (§ 1.6) This structure is consistent with trust law, in that trust agreements may generally be amended by court order or the consent of all parties. However, the Trust Agreement here also requires the consent of the Enforcer as additional oversight.

¹⁵ Minn. Stat. § 501C.0207.

2. Regular Commission review.

Under the Trust Agreement, the Trustee will provide annual and quarterly trust accountings to the Responsible Party and the Enforcer. (§ 6.1.) This is consistent with Enbridge’s practices in Canada, where annual reports are filed with the CER.

In addition, separately,¹⁶ Enbridge submits that it would be prudent for the Commission to review the decommissioning cost estimate every five years. This timeframe is consistent with the Commission’s decommissioning plan requirements for other energy projects in Minnesota, as well as the CER’s process in Canada.¹⁷ Enbridge will, as it does under the CER-ordered trusts, continue to rigorously analyze and update the costs of complete removal in its estimate, incorporating lessons learned from the CER’s years-long assessment of the issue and the costs of removal of the original Line 3 pipeline, over the life of Line 93’s operation.

¹⁶ For the reasons discussed in Section II(B)(1), this five-year review timeframe is not reflected in the Trust Agreement, and Enbridge anticipates that it will be memorialized in a Commission order.

¹⁷ 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 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, 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>.

3. Investment policy.

Enbridge does not object to implementing an investment policy here, just as it does with respect to its Canadian trust funds. Enbridge's decommissioning trusts for its CER-regulated pipelines use one of two different investment policies. Enbridge has seen considerably more success with the investment policy used for the trust fund for its Westcoast Energy Inc. pipelines and therefore proposes to use a similar investment policy for Line 93 (*see* **Attachment D**). As discussed in Section II(B)(1), the investment policy is not included within the Trust Agreement so that modifications may be made to the investment policy without amending the entire Trust Agreement. It is anticipated that the investment policy will be modified over time, particularly when decommissioning Line 93 is more imminent. A Line 93-specific investment policy similar to that used for the Westcoast Energy Inc. trusts will be finalized when the trustee is chosen.

During a coordination meeting between Enbridge and DER, DER suggested revisions to the Trust Agreement that would limit the investment options for the trust funds to only those in which Minnesota state agencies are allowed invest,¹⁸ taking the position that the money contributed to the trust are state funds because they are available to the State of Minnesota to accomplish state purposes. Enbridge strongly disagrees with this approach and its underlying premise. Certainly, the Commission has determined that ensuring adequate funding for decommissioning of Line 93 is in the public interest, but that does not mean the more-than \$1 billion decommissioning trust composed of private funds are assets of the State of Minnesota. It is Enbridge's obligation to decommission Line 93, and the purpose of those funds is to fulfill that obligation. Restricting the trustee's investment of those funds in the manner specified by DER is

¹⁸ DER cited Minn. Stat. § 11A.24.

unnecessary and potentially unwise, as the trustee will have the expertise to invest the funds appropriately for their ultimate use.

G. An explanation of Enbridge’s choice to designate South Dakota as the situs for the trust and choice of law for the draft trust—providing a thorough discussion comparing application of Minnesota and South Dakota law, and how to maintain Minnesota as the venue for any judicial actions regarding the trust.

1. Minnesota v. South Dakota law.

Enbridge proposes a South Dakota trust because South Dakota law is more advantageous to accomplishing the purposes of the Trust as compared to Minnesota law in multiple respects.

First, under Minnesota law, a creditor of the settlor of a trust “may reach the maximum amount that can be distributed to or for the settlor’s benefit.”¹⁹ Here, because the Trust assets will be used to satisfy Enbridge’s decommissioning liabilities, if the Trust were a Minnesota trust, regardless of who is named as the beneficiary in the Trust Agreement, under Minnesota law, the assets could potentially be subject to claims of all of Enbridge’s creditors. However, under South Dakota law, assets irrevocably transferred to a trust may be protected from creditor claims.²⁰

Another drawback of Minnesota law is that the duration of a non-charitable Minnesota trust is limited to 90 years, or 21 years after the death of an individual living when the trust was created.²¹ The duration of a trust “created for a noncharitable purpose without a definite or definitely ascertainable beneficiary” is limited to 21 years.²² The laws of South Dakota authorize perpetual trusts.²³

¹⁹ Minn. Stat. § 501C.0505.

²⁰ See S.D.C.L. § 55-16.

²¹ Minn. Stat. § 501A.01.

²² Minn. Stat. § 501C.0409(1).

²³ See, e.g., S.D.C.L. § 43-5-8 (perpetual).

Further, unlike Minnesota, South Dakota has a thorough statutory framework for the establishment of a trust that has no beneficiaries at all, but instead is established to accomplish a particular purpose.²⁴ As discussed in Section II(B)(2) above, Enbridge proposes a non-charitable purpose trust here because it accomplishes the purposes of the Commission's orders and also resolves issues previously raised by the Commission and commenters regarding the appropriate beneficiary of the Trust. The proposed trust document explicitly acknowledges that *all* of the individuals and entities suggested by the Commission and commenters (including the state and all affected landowners) are benefitted by the trust, without creating an impractical number of individuals and entities with rights to receive accountings, communicate with the trustee, receive distributions, enforce the trust, etc.

2. Designating Minnesota for venue.

The Trust Agreement currently designates Minnesota as the venue for a court proceeding with respect to the Trust, unless the Enforcer consents to a different venue. (§ 4.1.) To ensure that venue may appropriately lie in Minnesota under applicable law, Enbridge identified trustees with offices in both South Dakota and Minnesota.

H. A list of the differences between Enbridge's proposal, the requirements of the Canada Energy Regulator, and the trust requirements under Minnesota Pollution Control Agency rules (Minn. R. 7035.2805)—and the reasons for the differences.

1. Canada Energy Regulator.

As Enbridge has previously explained, although the Trust Agreement illustrates a framework to accomplish a decommissioning trust that is similar to that in Canada, the differences in regulatory structure and applicable law are such that the Canadian decommissioning trust structure cannot be wholly replicated for Line 93. At a high level, Canada's federal pipeline

²⁴ S.D.C.L. § 55-1-20.

regulatory structure is different than the United States’ structure. In Canada, one regulatory body, the CER, regulates inter-provincial and international pipelines comprehensively. This is in contrast with the United States’ regulatory structure, where pipeline safety and rates are under different federal authorities, the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) and FERC, respectively, and decisions to approve projects are made at the state level.

In Canada, after several years of public hearings and technical conferences, the CER (then the National Energy Board) established a framework applicable to all federally regulated pipelines in which funds are set aside for decommissioning pipelines, and pipeline companies are authorized to recover those funds from shippers through the tolls charged on each pipeline (note that the CER base case cost estimate assumes 20% pipeline removal in agricultural lands and 80% decommissioning in place, not the 100% removal set out by the Commission’s modification to the CN). Further, Canadian federal law—the Income Tax Act—was amended to allow pipeline companies to use the Qualifying Environment Trust (“QET”) structure for the purpose of funding the pipeline companies’ decommissioning trusts.²⁵

In Enbridge’s July 16, 2018, compliance filing (Attachment 3B), it provided a comparison of a CER-approved trust with a potential U.S. trust.²⁶ With this filing, **Attachment E**, Enbridge includes an update of that comparison which accounts for the specific terms and conditions in Enbridge’s proposed Trust Agreement.

²⁵ The Commission’s modification provides that the decommissioning trust for Line 93 in Minnesota is to be based on the requirements the NEB has on “Enbridge Inc.” for decommissioning of its NEB-regulated pipelines. For clarity’s sake, the requirements and related trust agreements are on and with the pipeline operators (e.g., Enbridge Pipelines, Inc.), not “Enbridge Inc.” Enbridge has assumed that the Commission’s intent is to have the operator of Line 93 in Minnesota be party to the trust rather than Enbridge Inc., which does not itself collect the tolls from shippers that fund the decommissioning trusts.

²⁶ Enbridge Compliance Filing Attachments 3A-C, at Attachment 3B (July 16, 2018).

2. Minnesota Rule 7035.2805.

The Commission also directed Enbridge to discuss differences between the Trust Agreement and a Minnesota Pollution Control Agency (“MPCA”) rule regarding financial assurance for solid waste management facilities. Attachment E also includes a summary of the primary requirements of this rule, as compared to the Trust Agreement proposed here. At a high level, the overall structure of the MPCA rule is similar to the Trust Agreement, in that regular contributions are made over a period of years to ensure that decommissioning/closure can be funded at the end of a facility’s life. Differences between the Trust Agreement proposed here and the MPCA rule are primarily due to the fact that the MPCA rule applies to the industry, generally, and was adopted through formal rule-making.

CONCLUSION

For the reasons set forth herein, the Trust Agreement included with this filing meets the purposes and requirements of the Commission’s orders, and Enbridge requests that the Commission authorize Enbridge to establish a trust consistent with the Trust Agreement.

Dated: January 3, 2023

Respectfully submitted,

/s/ Christina K. Brusven

Christina K. Brusven (# 0388226)

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Partnership**

ATTACHMENT A

THE ENBRIDGE LINE 93 DECOMMISSIONING TRUST

By this instrument dated the _____ day of _____, 2022, ENBRIDGE ENERGY, LIMITED PARTNERSHIP, a limited partnership established under the laws of Delaware (“Enbridge” or “Settlor”), establishes a trust upon the terms and conditions set forth herein (the “Trust”) and _____, Sioux Falls, South Dakota, agrees to act as directed Trustee (the “Trustee”) of the Trust.

ARTICLE 1 NAME, PURPOSE AND NATURE OF TRUST; AMENDMENTS

1.1 The Trust shall be known as THE ENBRIDGE LINE 93 DECOMMISSIONING TRUST.

1.2 The Trust is established pursuant to an orders issued by the Minnesota Public Utilities Commission (“MPUC”) in MPUC Docket Nos. PL-9/CN-14-916 and PL-9/CN-21-823, as the same may be amended or supplemented by subsequent orders (collectively, the “MPUC Orders”) requiring Enbridge to establish a decommissioning trust fund for the purpose of funding Decommissioning Expenses for Line 93, as defined in this instrument. It is Enbridge’s intention to comply with the MPUC Orders, and all provisions of this instrument shall be construed accordingly.

1.3 The Trust is a noncharitable purpose trust established pursuant to §§ 55-1-20 to 55-1-22.6 of the South Dakota Codified Laws for the purpose of funding Decommissioning Expenses for Line 93. Creation and administration of the Trust will benefit the environment, the people of the United States, the State of Minnesota and the tribal nations that share its geography, the landowners whose property is traversed or otherwise affected by Line 93, Settlor, its customers, and their respective successors.

1.4 It is intended that all transfers of property to the Trust shall constitute “qualified dispositions”, and this Trust shall constitute a "trust instrument" as such terms are defined under Chapter 55-16 of the South Dakota Codified Laws. At all times while the applicable law governing the administration of the Trust is that of the State of South Dakota, the Trustee shall be a "qualified person" (defined under § 55-16-3 of the South Dakota Codified Laws) and the Trustee shall carry out its administrative duties in the State of South Dakota.

1.5 In the event legislation or regulations are amended or adopted that would allow a trust for the purpose of decommissioning an oil pipeline to qualify as a decommissioning reserve fund under Section 468A of the Internal Revenue Code and the regulations thereunder, or as a similar fund under newly adopted statutes or regulations, the Trustee may with the consent of the Enforcer, but shall not be required to, amend this instrument so that the Trust would so qualify.

1.6 This instrument may be amended only pursuant to a written instrument executed by the Enforcer; provided, however, no amendment shall be effective without either (i) an order of the Minnesota District Court for the Second Judicial District, Ramsey County, Minnesota, after notice and a hearing, approving such amendment or (ii) joint written consent of the Responsible Party and the Trustee to the adoption of such amendment without a court order.

1.7 Title to property of the Trust is not vested in the Settlor and shall not vest in the Responsible Party until distribution of such property to the Responsible Party, neither the principal nor the income of the trust shall be liable for the debts of the Settlor or the Responsible Party, and neither the Settlor nor the Responsible Party shall have the power to voluntarily or involuntarily transfer, encumber or in any manner to anticipate or dispose of property of the Trust.

1.8 Except as provided in this Article, the Trust is irrevocable and may not be amended.

1.9 The purpose of this Trust is limited to the matters set forth herein and this Trust shall not be construed to confer upon the Trustee any authority to conduct business.

ARTICLE 2 TAX STATUS

2.1 Under current law, Settlor or its partners may be subject to Tax with respect to the property and income of the Trust pursuant to Section 677 of the Internal Revenue Code. Settlor, on behalf of itself and its partners, reserves the right to be reimbursed by the Trustee for any and all such Taxes, to the extent Settlor is unable to pass the cost of such Taxes on to its ratepayers.

2.2 The Trust shall not be a “foreign trust,” as that phrase is defined in Section 7701(a)(31)(B) of the U.S. Internal Revenue Code. Notwithstanding any contrary provision hereof, (a) the Trustee of such trust must be a United States person (as defined in Section 7701(a)(30) of the U.S. Internal Revenue Code), (b) all substantial decisions with respect to such trust (including removal and appointment of Trustees) shall be controlled by one or more United States persons, and (c) such trust shall be subject to the jurisdiction of a court within the United States of America.

ARTICLE 3 IDENTIFICATION AND DEFINITIONS

3.1 The Trust shall be funded pursuant to an order from the MPUC in Docket No. PL-9/CN-21-823, as the same may be amended by subsequent orders.

3.2 “Decommissioning” means (a) abandoning an oil pipeline, as the term is defined in 49 C.F.R. §192.3, including but not limited to complete or partial removal, monitoring, repair, maintenance, restoration and remediation, and (b) planning for such abandonment,

including but not limited to seeking necessary regulatory approvals and negotiating agreements with affected landowners or governmental subdivisions.

3.3 “Decommissioning Expenses” means all expenses approved by the Enforcer with respect to the Decommissioning of Line 93, including but not limited to labor, materials, insurance, professional fees and other costs.

3.4 “Decommissioning Obligations” means the obligation of the Responsible Party to engage in Decommissioning and to incur Decommissioning Expenses with respect to Line 93, under the MPUC Order.

3.5 The “Enforcer” means the individual or organization designated to enforce the purpose of the trust as required by § 55-1-21.4 of the South Dakota Codified Laws. The initial Enforcer shall be appointed by the MPUC.

3.6 The “Internal Revenue Code” refers to the Internal Revenue Code of 1986, as amended from time to time, or corresponding provisions of any subsequent Internal Revenue Code.

3.7 “Line 93” means the oil pipeline described in the Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border (MPUC Docket No. PL9/CN-14-916; OAH Docket No. 65-2500-32764).

3.8 The “MPUC” and the “MPUC Order” shall have the meanings assigned in Article 1 of this instrument.

3.9 The “Responsible Party” means ENBRIDGE ENERGY, LIMITED PARTNERSHIP, a limited partnership established under the laws of Delaware, and any successor(s) to its Decommissioning Obligations by merger, acquisition, assignment and assumption, or otherwise. The Trustee may rely conclusively upon the joint written statement of the last Responsible Party as reflected in the Trust records and the Enforcer as to the identity of any successor Responsible Party.

3.10 “Tax” or “Taxes” means all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local or foreign taxing authority, including but not limited to, income, excise, ad valorem, real or personal property, franchise, gross receipts, license, stamp, transfer or other taxes, including any interest, penalties or additions attributable thereto.

3.11 “Termination Date” means the completion of the Decommissioning of Line 93.

3.12 The “Trust” means the trust established under this instrument.

3.13 “Trustee” refers to any individual, corporation or other legal entity from time to time acting as trustee of a trust under this instrument. All terms relating to the Trustee shall

include both the singular and the plural if at any time there is more than one or where the context so indicates. Any corporation which shall by merger, consolidation, purchase or otherwise succeed to the business of the Trustee relevant to the Trust shall be the successor to the Trustee without any further act or formality, with the same effect as if such successor had originally been named in this instrument. As soon as practical after any such merger, consolidation, purchase or other succession event, the successor Trustee shall provide written notice to the Responsible Party and the Enforcer of its agreement to be bound by this instrument and to administer and distribute the Trust as provided herein.

ARTICLE 4 TRUSTEES

4.1 The principal place of administration of the Trust shall initially be in South Dakota, and pursuant to Section 7.1 of this instrument, the principal place of administration of the Trust may be moved to a different jurisdiction. Wherever the Trust is administered, the Trustee must maintain a “trust office” in Minnesota, as that phrase is used in Minnesota Statutes, § 501C.0207(a)(2)(i), and the venue for a court proceeding with respect to the Trust shall be in Minnesota, unless the Enforcer consents to a different venue.

4.2 The Responsible Party and the Enforcer shall have the right (acting jointly) to remove the Trustee, by written notice delivered to the Trustee.

4.3 If at any time there is a vacancy in the office of Trustee of the Trust, the Responsible Party and the Enforcer (acting jointly) shall appoint such one or more individuals or a corporation or other legal entity (other than the Responsible Party or any officer, director, or affiliate of the Responsible Party) as Trustee of the Trust.

4.4 A Trustee of the Trust may at any time resign by delivering the Trustee’s written resignation to each other Trustee, to the Responsible Party and to the Enforcer. The resignation of a Trustee shall take effect on the later of (1) the date specified in the Trustee’s written resignation, (2) the date of delivery of the Trustee’s written resignation, or (3) if such resignation results in a vacancy in the office of Trustee, the appointment and acceptance of a successor Trustee.

4.5 Upon the appointment of a replacement Trustee, the Trustee that has resigned or been removed shall immediately transfer title to and pay over all of the assets comprising the Trust to the replacement Trustee, less such reasonable amounts as the outgoing Trustee establishes are necessary to cover its unpaid fees and expenses and any amounts owing to it hereunder, and shall transfer all relevant books and records maintained by it to the replacement Trustee. The Trustee that has resigned or been removed shall have no duties, responsibilities or liability with respect to the acts or omissions of any replacement Trustee, and the replacement Trustee shall have no duties, responsibilities or liability with respect to the acts or omissions of any predecessor Trustee.

ARTICLE 5
ADMINISTRATION AND DISTRIBUTION OF TRUST

5.1 Until the Termination Date, the Trust shall be administered and distributed by the Trustee upon the following terms and conditions:

- (1) The Trustee may pay compensation of the Trustee from the Trust, according to its published fee schedule, subject to any discounts that may be applied by mutual agreement of the Responsible Party and the Trustee. Such compensation may be adjusted from time to time in the future in such amounts as may be agreed upon in writing by the Trustee and the Responsible Party. The Trustee shall be entitled to reimbursement for all reasonable and necessary costs, expenses, and disbursements incurred by it in its performance of such services. The Trustee shall pay all Trustee's fees, expenses and compensation from the Trust.
- (2) The Trustee may employ attorneys, accountants, agents or other persons, even though such a person or organization may then be associated with the Trustee (but no such person or organization shall be an affiliate, officer, or director of the Responsible Party), to advise or assist the Trustee in the performance of its duties, and the Trustee may pay the reasonable charges of all such persons and organizations, subject to any limitations with respect to investment fees that may be applied by mutual agreement of the Responsible Party and the Trustee.
- (3) The Trustee may pay, compromise, contest, submit to arbitration, or otherwise settle claims in favor of or against the Trust.
- (4) The Trustee (i) shall pay Taxes, if any, incurred with respect to income and property of the Trust that is not taxable to the Responsible Party, and (ii) shall reimburse the Responsible Party for Taxes incurred by the Responsible Party or its partners with respect to income or property of the Trust.
- (5) In addition, the Trustee shall pay to or on behalf of the Responsible Party such amounts as the Trustee shall deem advisable to pay Decommissioning Expenses. In the exercise of the Trustee's discretion, the Trustee may rely conclusively on a certification of the Responsible Party and the Enforcer made in a form attached hereto as **Exhibit A**, and the Trustee shall have no duty to inquire into the correctness or accuracy of a properly executed certification. Decommissioning Expenses may be paid (a) directly to third parties engaged by the Responsible Party to provide materials or services related to Decommissioning, (b) to the Responsible Party to be used to pay Decommissioning Expenses, or (c) to the Responsible Party as reimbursement for Decommissioning Expenses previously paid by the Responsible Party.

5.2 Pursuant to § 55-1-21.4 of the South Dakota Codified Laws, the Enforcer shall have standing to enforce the purpose of the Trust, and the Enforcer may petition for, consent to, waive, or object to any matter regarding the Trust. The initial Enforcer shall be appointed by the MPUC. The Enforcer may appoint one or more additional or successor Enforcers. The Enforcer may demand reasonable information related to the administration of the Trust from the Trustee, including a periodic accounting. The Enforcer shall act in a fiduciary capacity. The Enforcer shall not be accountable to any person or to the Trustee for any act or omission in relation to the powers given to the Enforcer by this instrument in the absence of gross negligence, fraud or willful misconduct. If no Enforcer or successor Enforcer is acting pursuant to the terms of this instrument, a court having or capable of asserting jurisdiction over the Trust may appoint one or more Enforcers and successor Enforcers.

5.3 Upon the Termination Date, the remaining principal and any accrued or undistributed income of the Trust shall be allocated and distributed to a nonprofit corporation the Responsible Party shall establish, which shall be classified as a private operating foundation under Section 4942(j)(3) of the Internal Revenue Code, and which shall have as its primary purpose the funding of expenses relating to the Decommissioning of abandoned oil pipelines and other similar infrastructure in the State of Minnesota, and associated environmental remediation. To the extent possible, and subject to the requirements of Section 4942(j)(3) and the regulations thereunder, priority shall be given to Decommissioning of pipelines formerly operated by Settlor, but only to the extent Settlor is not legally obligated to fund such Decommissioning. The Trustee is under no obligation to inquire into or determine when and if a termination has occurred hereunder and the Trustee shall make any termination distribution only in reliance upon the Settlor's certification and direction.

5.4 After termination of the Trust, and for the purposes of liquidating and winding up of its affairs, the Trustee shall continue to act as such until its duties have been fully performed. Upon the distribution of all of the Trust for the purposes of the Trust created hereunder or to the Settlor, and payment and discharge of all debts, liabilities and obligations under the Trust, the Settlor will provide the Trustee with a certification that all such debts, liabilities and obligations of the Trust have been met and the Trust can be terminated. At such point, the Trustee shall have no further duties or obligations hereunder.

ARTICLE 6 ACCOUNTINGS

6.1 Until the Termination Date, the Trustee shall provide (a) annual and quarterly trust accountings and (b) monthly account statements for all bank, investment and financial accounts of the Trust to the Responsible Party and to the Enforcer. The Trustee shall also provide the Responsible Party with any other reports and information reasonably requested by the Responsible Party in order to allow the Responsible Party to comply with both its financial reporting and Tax filing obligations, and the Trustee shall also provide to the Enforcer any other reports and information reasonably requested by the Enforcer in order to allow the Enforcer to comply with its role in overseeing the Trust on behalf of the MPUC.

6.2 To the maximum extent allowed under applicable law, the Trustee shall have no duty to keep any other person informed of any facts or information relating to the administration of the Trust, including the existence of the Trust. Any requirement the Trustee would otherwise have to provide notice, accounts or information under S.D. Codified Laws § 55-2-13 is hereby expressly waived.

6.3 Settlor agrees to prepare or cause to be prepared such income or other tax information returns and reports as may be required from time to time, and shall provide copies thereof to the Trustee for execution at least thirty (30) days in advance of their filing deadline. Costs incurred by the Trustee in its review shall be reimbursable expenses in accordance with Section 5.1. Upon request of the Trustee, the Settlor shall provide to the Trustee all statements, documents, lists or other information used by the Settlor in connection with the preparation of such returns. The Settlor shall indemnify and hold the Trustee harmless from all costs and liabilities related to the filing or failure to file any tax or information return unless such cost or liability is due to the Trustee's negligence or willful misconduct.

ARTICLE 7 GOVERNING LAW; POWERS OF TRUSTEE

7.1 The laws of the State of South Dakota shall govern the interpretation and validity of the provisions of this instrument and all questions relating to the management, administration, investment and distribution of the Trust; provided, however, Minnesota law shall apply where specifically referenced in this Agreement and with respect to all decommissioning, permitting, reclamation, remediation, forfeiture and other laws, other than those governing the trust-related provisions of this Agreement. With the consent of the Responsible Party and the Enforcer, the situs of the administration of the Trust may be moved from South Dakota to another jurisdiction, and in that circumstance the Trustee may, but shall not be required to, elect to have the laws that jurisdiction govern the administration of the Trust.

7.2 The Trustee is vested with the powers set forth in this Trust Agreement, including but not limited to those powers conferred by law affecting any Trust created hereunder and the Trust Estate. Furthermore, the Trustee shall have all powers granted by Chapter 55 of the South Dakota Codified Laws, as amended from time to time, subject to any express limitations or contrary directions contained in this instrument.

7.3 The Trustee shall not be liable for any actions it takes or refrains from taking in the accordance with proper directions (or in the absence of proper direction) of the Responsible Party or any of its authorized agents (including delegates or appointees). The Responsible Party shall fully indemnify the Trustee and hold it harmless from loss or liability, including reasonable legal fees and costs, which the Trustee sustains in discharging its duties and responsibilities under this Trust Agreement as directed by the Responsible Party, unless such loss or liability results from the Trustee's negligence, willful misconduct, or violation of the terms of this Trust Agreement. For purposes hereof, negligence shall not include the failure to file a tax or information return in the absence of direction or the failure to consider the prudence

of any direction from the Responsible Party or any of its authorized agents (including delegates and appointees). The foregoing indemnities shall survive the resignation or discharge of the Trustee or termination of this Trust Agreement.

7.4 The Trust shall be perpetual to the fullest extent permitted by South Dakota law. If the Trust is deemed to be subject to the law of a jurisdiction that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then the Trust shall terminate upon the expiration of the longest period that property may be held in trust under the law of such jurisdiction; provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this Section shall apply only to such property.

The trust is established by ENBRIDGE ENERGY, LIMITED PARTNERSHIP, as Settlor, and accepted by _____, Sioux Falls, South Dakota, as Trustee, on the day and year first above written.

ENBRIDGE ENERGY,
LIMITED PARTNERSHIP, Settlor

Witness

By _____
Its _____

Witness

_____, Trustee

Witness

By _____
Its _____

Witness

Exhibit A

CERTIFICATE FOR PAYMENT OF DECOMMISSIONING EXPENSE

This Certificate is submitted pursuant to Section 5.1(5) of the Trust Agreement dated _____, 2022, establishing the Enbridge Line 93 Decommissioning Trust (the "Trust"). All capitalized terms in this Certificate shall have the meanings assigned to such terms in such Trust Agreement. Settlor hereby certifies as follows:

1. The amount to be paid from the Trust to the Responsible Party or to one or more third parties on its behalf pursuant to this Certificate shall be used solely for the purpose of (a) paying in advance the Decommissioning Expenses the Responsible Party plans to incur, as described in Schedule A hereto, or (b) reimbursing the Responsible Party for the Decommissioning Expenses previously incurred by the Responsible Party, described in Schedule A hereto.
2. None of such Decommissioning Expenses have previously been paid from the Trust pursuant to any prior Certificate.
3. The necessary authorizations of governmental authority(ies) having jurisdiction over the Responsible Party and Line 93, if any, have been obtained.

Dated: _____

[RESPONSIBLE PARTY]

By _____
Its _____

[ENFORCER]

By _____
Its _____

ATTACHMENT B

November 29, 2022

Enbridge Energy is establishing a trust to fund the decommissioning of Line 93 (also known as Line 3 Replacement). The Minnesota Public Utilities Commission ("MPUC") must approve the plan to establish the trust (DOCKET NO. PL-9/CN-21-823). The trust is funded by Enbridge and will be used to remove Line 93 when it is no longer in use.

Enbridge appeared before the MPUC on September 22, 2022, to provide an initial proposal to establish the trust. The MPUC considered the matter and issued an order on November 4, 2022. The MPUC is requesting that Enbridge propose a draft of the trust agreement by January 3, 2023, along with the following items:

- an independent review of our cost estimate for removal
- an estimate of the monthly contribution to the trust by Enbridge
- a proposed initial contribution amount
- identification of the beneficiaries
- a proposed trustee and a summary of our selection process
- provisions that address modification, Commission review, and an investment policy
- an explanation for the selection of the situs of law
- a summary of differences between the MPCA trust requirements and the requirements for a trust under the purview of the Canada Energy Regulator.

The MPUC asked Enbridge to consult with the Fond du Lac Band of Lake Superior Chippewa and other affected tribal governments. This process at the MPUC is open to the public and any member of the public are permitted to file comments or questions directed to the commissioners. If you have any questions for Enbridge or would like to schedule a meet with us to discuss these items, please contact:

Jacob Glass jacob.glass@enbridge.com or Patrick Hughley Patrick.hughley@enbridge.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Eberth". The signature is fluid and cursive, with the first name "Paul" being more legible than the last name "Eberth".

Paul Eberth
Director US Tribal Engagement

ATTACHMENT C

Monthly Contribution Amount Calculation

Computation of Annual Contribution Amount		
Step 1: Provide total cost estimated for Decommissioning		
Line 1	Decommissioning cost estimate in dollars in base year (in US 2021 dollars)	1,200,000,000
Step 2: Convert to future value (i.e. cost estimated in future year dollars)		
Line 2	Inflation rate	2%
Line 3	Years in Remaining Collection Period	28
Line 4	Years elapsed between year of cost estimate and current date	2
Line 5	Number of years from cost estimate date to end of Collection Period = Line 3 + Line 4	30
Line 6	Future value of Decommissioning cost estimate = Line 1 * (1 + Line 2) ^{Line 5}	2,173,633,901
Step 3: Calculate company-specific after-tax rate of return on funds collected		
Line 7	Pre-tax rate of return on funds collected	7.91%
Line 8	Adjustment for variable trustee expenses and investment management fees	0.35%
Line 9	Company-specific tax rate on investment income	27.29%
Line 10	After-tax rate of return on funds collected = (1 - Line 9) * (Line 7 - Line 8)	5.5%
Step 4: Compute Annual Contribution Amount		
Line 11	Annual Contribution Amount = (Line 6 * Line 10) / [(1 + Line 10) ^{Line 3} - 1]	34,374,715
Line 12	Monthly Contribution Amount to Trust = (Line 11 / 12)	2,864,559

ATTACHMENT D



Spectra Energy Companies

Qualifying Environmental Trusts

Statement of Investment Policies and Procedures

September 2015

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Section I - Introduction

- 1.1 Westcoast Energy Inc., carrying on business as Spectra Energy Transmission (“**WEI**”), St. Clair Pipelines L.P. (“**SCPL LP**”), Maritimes & Northeast Pipeline Limited Partnership (“**M&NP LP**”), Spectra Energy Empress L.P. (“**Empress LP**”), Spectra Energy Midstream Canada L.P. (“**Midstream LP**”), Express Pipeline Limited Partnership (“**Express LP**”) and Union Gas Limited (“**UGL**”) each own assets that are federally regulated and subject to the five year action plan established under the National Energy Board (“**NEB**”) RH-2-2008 Reasons for Decision relating to Stream 3 of the Land Matters Consultation Initiative. As part of this initiative, the NEB has directed companies to begin setting aside funds annually to cover the costs of abandoning their facilities in the future. By virtue of its MH-001-2013 Reasons for Decision, the NEB has approved the use of a qualifying environmental trust as defined in the Tax Act (“**QET**”) as the mechanism to set aside these abandonment funds.
- 1.2 Accordingly, each of St. Clair Pipelines Management Inc. (“**SCPL GP**”), Maritimes & Northeast Pipeline Management Ltd. (“**M&NP GP**”), Spectra Energy Empress Management Inc. (“**Empress GP**”), Express Pipeline Ltd. (“**Express GP**”) and Spectra Energy Midstream Canada Partner Corporation (“**Midstream GP**”) in their capacity as general partners for SCPL LP, M&NP LP, Empress LP, Midstream LP and Express LP, respectively, and WEI and UGL (each company referred to individually as a “**Pipeline Company**” and together as the “**Pipeline Companies**”) have formed a QET.
- 1.3 More specifically, WEI will form the BC Pipeline QET and the Field Services QET and UGL will form the UGL QET. SCPL GP, M&NP GP, Empress GP and Midstream GP, each in its capacity as general partner for its own limited partnership, will form the SCPL QET, the M&NP QET, the Empress QET, the Midstream QET, and the Express QET, respectively.
- 1.4 This Statement of Investment Policies and Procedures (the “**SIP&P**”) sets out the investment policies and asset allocation applicable to QET funds. It outlines the risk tolerances and return objectives, taking into account the relevant investment principles, time horizon, liquidity requirements and any legal provisions, in order to ensure the investment of the funds is consistent with obligations relating to each QET. It also sets out the processes for monitoring and reviewing the objectives and risk tolerances and changing the asset allocation.

Section II - Definitions

Definitions

- 2.1 “Abandonment Costs” means the estimated costs to abandon the pipeline systems and associated facilities, including the costs of abandonment planning, as updated from time to time and as approved by or filed with the NEB.
- 2.2 “Cash and Short Term Securities” has the meaning set out in section 7.4.
- 2.3 “Designated Stock Exchange” has the meaning set out in section 7.9.
- 2.4 “Equity Securities” has the meaning set out in section 7.6.
- 2.5 “Fixed Income Securities” has the meaning set out in section 7.5.
- 2.6 “Investment Authority” has the meaning set out in section 3.6.
- 2.7 “Investment Grade Rating Agency” has the meaning set out in section 7.9.
- 2.8 “Investment Manager” means one or more independent professional investment managers retained by the Trustee to manage the QET Fund.
- 2.9 “NEB” means the National Energy Board.
- 2.10 “Pipeline Companies” has the meaning set out in section 1.2.
- 2.11 “QETs” means, collectively, the BC Pipe QET, Field Services QET, UGL QET, SCPL QET, M&NP QET, Empress QET, Express QET and Midstream QET.
- 2.12 “QET Fund” means, in respect of a QET, the assets held under the QET.
- 2.13 “SIP&P” means this Statement of Investment Policies and Procedures.
- 2.14 “Tax Act” means the *Income Tax Act* (Canada) and the regulations thereunder, as amended.
- 2.15 “Trust Agreement” means the agreement between the Trustee and a Pipeline Company relating to the relevant QET.
- 2.16 “Trustee” means the trustee of a QET.

Section III - Organization and Roles

General

- 3.1 Persons providing custodial, management or investment advisory services to the QETs, including but not limited to the Pipeline Companies, Trustee and Investment Manager shall:
- a) acknowledge in writing that they have read this SIP&P and have adhered to its provisions;
 - b) carry out their duties and responsibilities honestly and in good faith consistent with the purposes and nature of the liabilities of the QETs and with the care, diligence and skill that a person of ordinary prudence would exercise;
 - c) exercise a degree of knowledge and skill that they possess or, by reason of their profession or the purpose for which their services are retained, they ought to possess; and
 - d) create and maintain written records of all material decisions relating to the QET Fund, including where appropriate, minutes of meetings, noting time and place, attendees, conflicts, matters discussed and material decisions reached.
- 3.2 No person shall take any action or fail to take any action that would cause a QET to cease qualification as a QET under the Tax Act. All persons responsible for governance of a QET or providing services to a QET shall take, or refrain from taking such actions as may be required by the NEB.

Pipeline Companies

- 3.3 Each Pipeline Company shall select the Trustee for its QET, and shall obtain NEB approval of the Trustee and Trust Agreement.
- 3.4 In accordance with section XI, the Pipeline Companies and the Trustee shall review this SIP&P at least once each year and shall make such changes as they determine are appropriate. The Pipeline Companies shall promptly file a copy of the SIP&P and any amendment thereto with the NEB, the Trustee and each Pipeline Company.
- 3.5 For the purpose of ensuring compliance with section 7.9 a) i), the Pipeline Companies shall provide the trustee a listing of:
- All persons that are “related” to or partnerships that are “affiliated” with, any of the Pipeline Companies; and
 - All persons or partnerships in which any of the Pipeline Companies or any persons with whom any of the Pipeline Companies are not dealing at arm’s length own, directly or indirectly, in aggregate, (i) not less than 10% of the issued shares of any class of shares of such corporate issuer; or (ii) not less than 10% of the fair market value of all interests in a partnership or a trust that is the issuer, as the case may be.

The Pipeline Companies shall provide written notice to the trustee of any changes to the listing described above.

Trustee

- 3.6 The Trustee has final authority for making day-to-day investment decisions and executing investment transactions relating to the QET, within the confines of the SIP&P (“**Investment Authority**”) The Trustee may consult with and rely on professional investment advisors and the views of the Pipeline Companies. The Trustee may delegate Investment Authority to another person, including an affiliate. Any consultation or delegation shall be in compliance with the terms of the QET and any direction of the NEB.

Investment Manager

- 3.7 Subject to the terms of its engagement agreement, the Investment Manager shall
- a) exercise functional discretionary management authority over the portion of the QET Fund allocated to it, including specific asset allocation and selection, investment performance monitoring, and compliance with this SIP&P;
 - b) provide periodic reporting to the Trustee and the Pipeline Companies relating to its performance and compliance in accordance with reporting procedures or directions provided to it by the Trustee from time to time; and
 - c) promptly report to the Trustee and to the Pipeline Companies any material developments that may affect the portion of the QET Fund under its management, and any material deviation from objectives established in any written mandate provided to it by the Trustee or any deviation from strategies, policies or objectives set out in this SIP&P.

Section IV – Legal Provisions and Tax Constraints

- 4.1 Notwithstanding any other provision of this SIP&P, investment of the QET Fund must comply with the terms of the Trust Agreement, National Energy Board MH-001-2013 Reasons for Decision and the QET provisions of the Tax Act. In the event of any inconsistency between this section 4.1 and any other provision of the SIP&P, this section will govern.

Section V – Risks and Return

Risks

- 5.1 Market risk, capital preservation and liquidity risk shall be managed and mitigated through diversification between asset classes as provided through the asset allocation set forth in this SIP&P.
- 5.2 Currency risk is controlled by limiting investments in foreign stocks through the asset allocation guidelines set forth in this SIP&P.
- 5.3 Credit risk is managed by requiring that 90% or more of the market value of short term securities has a minimum credit rating of A-, or its equivalent, and that 90% or more of other Fixed Income Securities have a minimum credit rating of BBB, or its equivalent.
- 5.4 The Pipeline Companies have communicated the balanced portfolio approach to their shippers who have not raised any concerns regarding this strategy.

Return

- 5.5 The target rate of return for each QET is 6.25% per annum less investment management, custody and fees necessary for the operation and maintenance of the QET paid from the QET.
- 5.6 The targeted rate of return will be reviewed periodically taking into account performance benchmarks and actual returns and shall be amended as necessary to ensure that the targeted return is realistic in view of actual returns of the investment portfolios.

Section VI – Investment Principles and Strategy

- 6.1 Although the collection period for each QET may vary, the investment principles and strategy for the QETs assume that the QET Fund will be invested over a period of not less than 19.5 years. Given these long term horizons applicable to all QETs, the same investment principles and strategy will apply to all of the QETs. The appropriateness of using the same investment principles and strategy for all the QETs will be reviewed at minimum every five (5) years.
- 6.2 The QET Fund will be diversified both by asset class and within asset class. Within each asset class, securities will be diversified among economic sector, industry, quality, and size. The purpose of diversification is to provide reasonable assurance that no single security will have a disproportionate impact on the performance of the total fund.
- 6.3 The efficient frontier is a concept in modern portfolio theory that is a set of optimal portfolios that offers the highest expected return for a defined level of risk or the lowest risk level for a given level of expected return.
- 6.4 The objectives for the balanced investment portfolio approach are to preserve capital and maximize risk-adjusted return on investment with an objective to outperform the benchmark by 0.30% over rolling four-year periods.
- 6.5 Except for payment of allowable fees and expenses associated with the QET and investment transactions, there is minimal or no liquidity requirement within a 5 year period. Liquidity requirements will be reviewed annually.

Section VII – Strategic Asset Allocation

Asset Allocation and Performance Benchmark

7.1 The asset allocation and performance benchmark are as follows:

Asset Class	Min	Target	Max	Benchmark
Cash & Short Term Securities	0%	0%	10%	FTSE TMX 60-Day T-Bill Index
Fixed Income Securities	20%	40%	50%	FTSE TMX Universe Bond Index
Canadian Equities	0%	5%	20%	S&P/TSX Composite Index
Canadian Small Cap Equities	0%	10%	15%	BMO Small Cap Weighted Index
U.S. Equities	5%	25%	30%	S&P 500 Index (C\$)
International Equities	5%	20%	25%	MSCI EAFE Index (C\$)

Rebalancing Criteria

7.2 If the asset mix deviates from the above ranges at the end of any quarter, the Investment Manager shall take corrective action to bring the asset mix back within the range as soon as practicable.

In the case of rapidly fluctuating markets, market forces may cause an asset class to move outside of its permitted range. In such cases, the Investment Manager may use its discretion to adjust investment allocations back to within the established limits but in any case this must be completed by the following month end.

Approved Investments

7.3 Each investment made by the Investment Manager **must be** listed in paragraphs (a), (b), (c), (c.1), (d) or (f) of the definition of “qualified investment” in section 204 of the Tax Act (as referred to in sections 7.4 to 7.7), **must not be** a “prohibited investment” as defined in section 211.6 of the Tax Act (see restrictions listed in section 7.9 b) and is subject to other restrictions listed in sections 7.8 to 7.10.

7.4 Cash and Short Term Securities

The Investment Manager may invest in Cash and Short Term Securities, in this SIPP, defined as money, deposits or Fixed Income Securities or Equity Securities (referred to in sections 7.5 and 7.6, with restrictions listed in sections 7.8 to 7.10, as applicable), with a maturity of less than 365 days.

7.5 Fixed Income Securities

The Investment Manager may invest in Fixed Income Securities, defined in this SIPP in reference to the following investments:

- a) debt obligations of, or guaranteed by, the Government of Canada, the government of a province or a municipality of Canada including their agencies and crown corporations¹, subject to other restrictions listed in section 7.9 and section 7.10;

¹ paragraph (b) of the definition of “qualified investment” in section 204.

- b) debt obligations issued by a corporation, mutual fund trust or limited partnership the shares or units of which are listed on a Designated Stock Exchange in Canada², subject to Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10;
- c) debt obligations issued by a corporation the shares of which are listed on a Designated Stock Exchange outside Canada³, subject to Canadian tax restrictions set out in section 7.9 and other restrictions listed in section 7.10;
- d) debt obligations issued by an authorized foreign bank and payable at a branch in Canada of the bank⁴, subject to Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10;
- e) debt obligations with an investment grade rating with an Investment Grade Rating Agency with DBRS, Fitch, Moody's or S&P and either: (i) the debt obligations must have been issued as part of a single issue of debt of at least \$25 million; or (ii) in the case of debt obligations that are issued on a continuous basis under a debt issuance program, the issuer of the debt obligations must have had issued and outstanding debt under the program of at least \$25 million⁵, and subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10; and
- f) guaranteed investment certificates issued by a trust company incorporated under the laws of Canada or of a province⁶, subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10.

Fixed Income Securities with an effective term to maturity of less than 365 days will remain Fixed Income Securities for asset mix purposes (floating rate notes will also be considered Fixed Income Securities, with the next reset date deemed to be the final maturity date).

7.6 Equity Securities

The Investment Manager may invest in Canadian, Canadian Small Cap, US and International Equities that are listed on a Designated Stock Exchange (other than futures contracts or derivatives instrument in respect of which the holder's risk of loss may exceed the holder's

² sub-paragraph (c)(i) of the definition of "qualified investment" in section 204.

³ sub-paragraph (c)(ii) of the definition of "qualified investment" in section 204.

⁴ sub-paragraph (c)(iii) of the definition of "qualified investment" in section 204.

⁵ paragraph (c.1) of the definition of "qualified investment" in section 204.

⁶ paragraph (f) of the definition of "qualified investment" in section 204.

cost)⁷, subject to Canadian restrictions listed in section 7.9 and other restrictions listed in section 7.10.

7.7 Other securities

The Investment Manager may invest in other securities which it determines appropriate for this portfolio including but not limited to investment funds which invest primarily in investments such as mutual and other aggregated or investment funds, including those related to Scotia Institutional Asset Management, and exchange-traded funds/index participations units.

Such other securities **must not be issued by partnerships and must be** listed on a Designated Stock Exchange **and must not be** futures contracts or other derivatives instruments in respect of which the holder's risk of loss may exceed the holder's cost⁸ and are subject to the Canadian tax restrictions listed in section 7.9 and other restrictions listed in section 7.10.

Qualitative and Quantitative Restrictions

The Investment Manager must comply with the following restrictions:

7.8 US tax restrictions and requirements

Investments listed in section 7.4 cannot include (i) United States dollars or (ii) other money which is readily convertible into United States dollars.

This requirement shall preclude the temporary deposit of any currency in accounts other than interest bearing accounts in the deposit department of the Trustee or any banking affiliate of the Trustee pending investment in other qualified investments, or pending deployment to discharge reclamation obligations authorized under the QET.

7.9 Canadian tax restrictions and requirements

- a) The acquisition, holding or disposition of any of the investments shall not be undertaken in a manner that would result in the QET being a borrower.
- b) Investments listed in sections 7.5 to 7.7 may be subject to the following restrictions, as the case may be.
 - i. Investments listed in paragraphs b) to e) of section 7.5 and sections 7.6 and 7.7 must not be issued by:
 - Any of the Pipeline Companies;

⁷ paragraph (d) of the definition of "qualified investment" in section 204.

⁸ paragraph (d) of the definition of "qualified investment" in section 204.

- A person that is “related” to or a partnership that is “affiliated”⁹ with, any of the Pipeline Companies, such as Spectra Energy Corp (NYSE: SE); or
 - A person or a partnership in which any of the Pipeline Companies or any person with whom any of the Pipeline Companies is not dealing at arm’s length¹⁰ own, directly or indirectly, in aggregate, (i) not less than 10% of the issued shares of any class of shares of such corporate issuer; or (ii) not less than 10% of the fair market value of all interests in a partnership or a trust that is the issuer, as the case may be.
- ii. Securities listed in sections 7.6 and 7.7 must not include interests in a partnership, unless such type of securities has been confirmed in a ruling or published administrative position of the Canada Revenue Agency, or in a “comfort letter” issued by the Department of Finance (Canada) as a “qualified investment” and not a “prohibited investment” for a QET for purposes of the rules in section 211.6 of the Tax Act.
- c) A Designated Stock Exchange has the meaning set out in section 248(1) of the Tax Act, for which a designation by the Minister of Finance under section 262 is in effect and listed under the Minister of Finance’s following website:
<http://www.fin.gc.ca/act/fim-imf/dse-bvd-eng.asp>
- d) Investment Grade Rating Agency is a prescribed credit rating agency under subsection 4900(2) of the *Income Tax Regulations* and includes, on the date hereof:
 A.M. Best Company Inc;
 DBRS Limited;
 Fitch, Inc.;
 Moody’s Investors Service Inc; and
 Standard & Poor’s Financial Services LLC.

7.10 Other restrictions and requirements

- a) Fixed Income Securities
- Minimum credit rating on any security must be BBB(low) or R1(low) by DBRS, or equivalent by S&P or Moody’s.
 - Maximum effective term to maturity for short-term securities will be 365 days.
 - Asset-backed securities shall be rated by at least two rating agencies and fully backed with a global-style liquidity facility covering both accrued interest and principal.

⁹ “Related” has the meaning set out under subsection 251(2) of the Tax Act and “affiliated” has the meaning set out under section 251.1 of the Tax Act and would include Spectra Energy Corp and any of its subsidiaries, directly or indirectly owned.

¹⁰ “Not dealing at arm’s length” has the meaning set out in sub-section 251(1) of the Tax Act and its determination is a question of facts. Factors such as the existence of common mind, parties acting in concert to make decisions, etc. will be relevant to the factual determination.

- Collateralized debt obligations shall be fully collateralized with highly liquid issues rated R-1 (high) or AAA, as applicable, that otherwise meet the requirements of this SIP&P for cash and short term securities in section 7.4.
- The aggregate duration of the portfolio shall be maintained within one year of the FTSE TMX Universe Bond Index.
- No more than 5% of the QET Fund shall be invested in any one corporation or security with the exception of those issued or guaranteed by the Government of Canada or by a province of Canada having at least an “A” rating.

b) Equity securities

- Not more than 5% of the large capitalization Canadian Equity portfolio shall be invested in securities not included in the S&P/TSX Composite index.
- Not more than 5% of the small capitalization Canadian Equity portfolio shall be invested in securities not included in the BMO Small Cap Weighted index.
- Not more than 5% of the U.S. equity and International equity portfolios shall be invested in companies having market capitalization below \$1 billion (USD).
- Not more than 5% of the International equity portfolio shall be invested in countries not included in the MSCI EAFE Index.
- The Investment Manager may not invest in related issuers, such as Spectra Energy Corp (NYSE: SE), unless the securities are held passively within the context an exchange-traded fund or an index fund.

c) Other, applicable to all investments:

- Maximum exposure to illiquid securities is limited to 5% of the portfolio. A security will be deemed to be illiquid if its resale is prohibited by agreement or statute or if the security cannot be readily sold into the market at a reasonable competitive price during usual market conditions.
- Maximum aggregate exposure to any single non-government issuer is limited to 10% of the market value of the portfolio.
- Investments in commodities, precious metals, mineral rights, bullion or collectibles are not permitted.

Section VIII - Voting rights

- 8.1 The responsibility of exercising and directing voting rights acquired through the QET Fund's investments shall be delegated to the Investment Manager, who shall be required at all times to act prudently and in the best interest of the QETs. The Investment Manager shall be required to provide a copy of their voting rights policy to the Trustee and the Pipeline Companies.
- 8.2 The Investment Manager shall be required to maintain a record of how the QET Fund's voting rights have been exercised and provide a copy of such record to the Trustee annually.
- 8.3 In case of doubt as to the best interest of the QETs, the Investment Manager shall be required to request instructions from the Trustee and act in accordance with such instructions.
- 8.4 The Investment Manager shall be required to advise the Trustee and provide details in advance of the vote when the Investment Manager has acquired on behalf of itself and its clients securities to which are attached 10% or more of the voting rights of that class of securities.

Section IX - Monitoring Investment Performance and SIP&P Review

- 9.1 The Trustee and the Pipeline Companies will review the SIP&P periodically and at least annually and propose any changes to the SIP&P as necessary to ensure that the targeted return is reflective of the actual achieved returns of the investment portfolios. More specifically, the Trustee shall meet with the Pipeline Companies at least annually to review, discuss and consider:
- a) the QET Fund and liabilities to monitor the target asset allocation, including any mismatch between portfolio assets and abandonment liabilities;
 - b) the risk profiles and compliance with this SIP&P, applicable law or any regulatory requirements;
 - c) any changes to applicable law or any regulatory requirements;
 - d) material changes to the estimated Abandonment Costs and expected future performance over the market performances and rate of returns;
 - e) issues and opportunities in the market relating to the QET Fund;
 - f) the fees and expenses incurred in managing the QET Fund;
 - g) shortcomings of the SIP&P or investment policies and procedures that emerge in practical application; and
 - h) any other key issues and concerns that may affect future performance of the QETs.
- 9.2 The Trustee shall meet at least once a year with the Investment Manager to discuss investment performance, investment strategies, expected future performance and any changes in the Investment Manager's organization, investment processes and professional staff.

Section X - Conflicts of Interest

- 10.1 The Pipeline Companies shall satisfy themselves that an appropriate policy regarding conflicts of interest exists and is followed by any parties providing management and/or investment advisory services to the QETs. As a minimum, the Code of Ethics and Standards of Professional Conduct adopted by the Institute of Chartered Financial Analysts shall be expected to apply to the Investment Manager.
- 10.2 The Investment Manager shall not directly or indirectly lend monies of the QETs to a related party or invest those monies in the securities of a related party, or enter into a transaction with a related party, except as follows:
- a) The Investment Manager may acquire securities of a related party if the securities are acquired at a public exchange, or if the value of the transaction is nominal or the transaction is immaterial to the QETs. A related party transaction shall be classified as nominal or immaterial if such transaction represents less than 0.5% of the QET Fund.
 - b) The Investment Manager may enter into a transaction with a related party if the transaction is required for the operation or administration of the QET Fund and the terms of the transaction are not less favorable to the QETs than market terms and conditions.
- 10.3 None of the parties providing management and/or advisory investment services to the QETs shall knowingly permit his or her interest or duty to conflict with the proper exercise of his or her duties and powers as described herein.
- 10.4 If a party providing management and/or advisory investment services to the QETs has or acquires any material interest, direct or indirect, in any matter in which the QET Fund is concerned or may benefit materially from knowledge of, participation in, or by virtue of an investment decision or holding of the QET Fund, or may be perceived as such, the person involved shall, as soon as practicable, disclose this conflict of interest in writing to the Trustee.
- 10.5 Every disclosure of a conflict of interest and the process for dealing with it under this section shall be recorded in the minutes of the relevant written record of material decisions taken by the Trustee or Investment Manager pursuant to section 3.1(d).
- 10.6 The failure of a person to comply with the procedures described in this Section shall not of itself invalidate any decision, contract or other matter. In the event such failure is discovered, the decision, contract or other matter pertaining to the investment of the QET Fund which is affected by such failure shall be reconsidered by the Trustee.

Section XI – Review and Confirmation or Amendment

- 11.1 This SIP&P will be reviewed and affirmed at least annually, but otherwise whenever a major change is apparent or necessary. Such review may be prompted by:
- a) a material change in the expected Abandonment Costs;
 - b) a revision to the expected long-term trade-off between risk and reward on key asset classes;
 - c) a shift in the financial risk tolerance of the QETs;
 - d) shortcomings of the investment policies and procedures that emerge in their practical operation;
 - e) modifications that are recommended by an Investment Manager;
 - f) changes in applicable legislation; or
 - g) such other event or circumstance as may be relevant to prudent management of the QET funds.

AUTHORIZATION

(Number and position as per paragraph 4 of Certified Resolution):

Dated this _____ day of _____, 20____.

This SIP&P is accepted by:

WESTCOAST ENERGY INC., CARRYING ON BUSINESS AS SPECTRA ENERGY TRANSMISSION	SIGNATURE
ST. CLAIR PIPELINES L.P. by its general partner ST. CLAIR PIPELINES MANAGEMENT INC.	SIGNATURE
SPECTRA ENERGY EMPRESS L.P. by its general partner SPECTRA ENERGY EMPRESS MANAGEMENT INC.	SIGNATURE
EXPRESS PIPELINE LIMITED PARTNERSHIP by its general partner EXPRESS PIPELINE INC.	SIGNATURE
SPECTRA ENERGY MIDSTREAM CANADA L.P. by its general partner SPECTRA ENERGY MIDSTREAM CANADA PARTNER CORPORATION	SIGNATURE
MARITIMES & NORTHEAST PIPELINE LIMITED PARTNERSHIP by its general partner MARITIMES & NORTHEAST PIPELINE MANAGEMENT LTD.	SIGNATURE
UNION GAS LIMITED	SIGNATURE
THE BANK OF NOVA SCOTIA TRUST COMPANY	SIGNATURE
1832 ASSET MANAGEMENT L.P.	SIGNATURE

ATTACHMENT E

Topic / Term	Proposed Trust Agreement	CER Trust	MPCA Rule	Discussion
Purpose and nature of trust	Established pursuant to the Minnesota Public Utilities Commission (“Commission”) order requiring establishment of a decommissioning trust fund for the purpose of funding decommissioning expenses for Line 93.	Established as Qualifying Environmental Trust (“QET”) under Canada law for the sole purpose of satisfying “Reclamation Obligations” (duty to carry out physical abandonment, decommissioning, or deactivation of the pipeline, the duty to develop a deactivation plan, and the duty to carry out post-abandonment monitoring and remediation).	To comply with requirement in Minn. R. 7035.2695 that an owner/operator of a solid waste management facility provide assurance that funds will be available when needed for closure and/or postclosure care of, and/or contingency action for the facility. ¹	No material differences.
Settlor	Enbridge Energy, Limited Partnership	Each Canadian Enbridge subsidiary with CER-regulated pipelines, such as Enbridge Pipelines Inc. (EPI), Westcoast Energy Inc. (WEI), etc.	Owner or operator of solid waste management facility	No material differences.
Trustee	A corporate trustee with presence in South Dakota (or another state with favorable trust laws) and Minnesota (in order to allow any court proceedings involving the trust to be held in Minnesota).	The NEB (predecessor of the CER) ruled that the Trustee must (1) be a regulated trustee under the <i>Trust and Loan Companies Act</i> , (2) be licensed as a trustee, (3) be resident in Canada and (4) have offices in the province where the pipelines are located. The initial trustee for the EPI trust was CIBC Trust Corporation (Canadian entity approved by CER) and the initial trustee for WEI was The Bank of Nova Scotia Trust Company (“ScotiaTrust”). In	Entity with authority to act as a trustee and whose trust operations are regulated and examined by a federal or Minnesota state agency (Minn. R. 7035.2705(A)).	Each trust structure involves the appointment of a qualified trustee and only allows distributions in accordance with the circumstances set out in the trust agreement.

¹ Note: Pursuant to Minn. R. 7035.2695, the Minnesota Pollution Control Agency (“MPCA”) has identified, by rule, various mechanisms to provide financial assurance, one of which is a trust. In addition, MPCA’s rules provide the option of a surety bond, letter of credit, self-insurance, and for an owner/operator to propose a non-standardized financial assurance mechanism. The summary in this table reflects only the trust and not the other financial assurance mechanisms which MPCA has determined may be acceptable.

Topic / Term	Proposed Trust Agreement	CER Trust	MPCA Rule	Discussion
		2020, Enbridge consolidated all trusts under one trustee, ScotiaTrust, with approval of the CER. The trustee makes administration decisions, investment decisions and distribution decisions, subject to the circumstances set out in the trust agreement which have been approved by the CER.		
Enforcer	Organization or individual designated to enforce the trust, to be appointed by the Commission. The role of the “Enforcer” is similar to the role of the beneficiary under a traditional trust. The Enforcer has the right to receive information and accountings from the trustee, and to hold the trustee accountable for any deviations from the trustee’s duties under the trust document or applicable law.	The CER receives annual reports from each pipeline company and trustee and can enforce compliance with the trust agreement.	None. As beneficiary, the MPCA may enforce the trust.	The proposed trust takes advantage of a concept under South Dakota law—the appointment of an “Enforcer” that is not the settlor or a beneficiary of the trust but has standing to enforce the terms of the trust to accomplish its stated purpose.
Beneficiary(ies)	The trust will benefit the environment, the people of the United States, the State of Minnesota and the tribal nations that share its geography, the landowners whose property is traversed or otherwise affected by Line 93, Enbridge, its customers, and their respective successors. However, it is the Enforcer (and not the people and entities benefited by the trust) who will have the legal right to receive	The NEB ruled this should be a class, rather than an individual, so the beneficiaries are the operator of pipeline, anyone with a duty to carry out the physical abandonment, decommissioning, or deactivation of the pipeline, anyone with a duty to develop an abandonment plan, anyone with a duty to carry out post-abandonment monitoring and remediation for portion of pipeline not removed. The NEB considered whether landowners	MPCA and any successor agency.	The proposed trust will be created under a South Dakota law that does not require a specific person or entity to be named as a beneficiary, but is to accomplish a specific purpose – in this case the decommissioning of Line 93. Normally, a trust beneficiary has the right to enforce a trust. Here, the Commission may appoint an individual or institution (including

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		accountings and enforce the trust.	should be beneficiaries and rejected this idea. It would require a committee of landowners which would require a significant amount of time, resources, and financial expertise. Instead, the NEB relied on the five-year reviews to ensure it had adequate oversight.		itself) as Enforcer to enforce the terms of the trust, which is similar to the CER's role in Canada.
Governing law and situs		South Dakota	Laws of Canada and the province/territory in which the pipeline is located.	Minnesota	South Dakota trust law has two important advantages over Minnesota trust law. First, the duration of the trust is unlimited. Second, the assets of the trust will be exempt from claims of Enbridge's creditors.
Venue for court proceeding		Minnesota, unless Enforcer consents to different venue.	One of the provinces in which the pipeline is located.	Minnesota	No material differences.
Contributions	<i>Source</i>	Contributions to the trust will be made by the settlor (Enbridge) and those amounts will be recovered from shippers as decommissioning charges, pursuant to prior agreement between Enbridge and shippers.	Contributions to the trust are made by the settlor (Enbridge) and those amounts are recovered from shippers pursuant to prior agreement between Enbridge and shippers.	Monthly contribution by owner/operator.	Trust agreement consistent with CER trusts; not specified in MPCA trust.
	<i>Commencement</i>	May 10 of the year following Commission approval of the trust.	Each trust commenced in 2015 in accordance with the NEB's order, following multiple years of regulatory proceedings.	Before initial receipt for waste disposal; first payment determined according to formula set forth in rule (Minn. R. 7035.2705(C)).	Trust agreement consistent with CER trusts; earlier establishment of trust possible under MPCA rules because of existing legal framework defining terms of trust.

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	<i>Amount</i>	Annual contribution amounts to be calculated to ensure the total amount in the trust fund by October 1, 2051 is the decommissioning cost estimate approved by the Commission.	Annual contribution amounts to ensure the total amount in the trust fund by the end of the collection period. The CER set a base case collection period of 40 years (Jan 1, 2015 – Dec. 31, 2054).	Based on cost estimate attached to agreement, pro-rated over operating life of the site, where operating life is determined according to formula set forth in rule (Minn. R. 7035.2705(C)).	No material differences – each trust structure bases contribution amount off estimate of cost of decommissioning / closure.
Investment Policy		To be drafted by trustee.	QETs are permitted to make only certain investments, which must comply with the list of qualifying investments set out in the Tax Act. <i>See, e.g.</i> , Attachment D.	Trustee to use the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.	Statement of Investment Policies and Procedures consistent with CER; MPCA rule does not require a specific investment policy.
Distributions		<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; and • To the Responsible Party or third parties engaged by the Responsible Party to pay Decommissioning Expenses, after submission of Certificate of Payment of Decommissioning Expense, 	The trustee may make distributions to pay trust expenses and pay taxes. Distributions may be made to a beneficiary or third party to meet Reclamation Obligations upon presentation of written direction or order from the CER.	The trustee shall make payments from the Fund as the Agency Commissioner shall specify, in writing, to provide for the payment of the costs of contingency action, closure, and/or postclosure care of the facilities covered by this Agreement. The trustee shall reimburse the Grantor or other persons as specified by the Agency Commissioner from the Fund for contingency action, closure, and postclosure expenditures in amounts the Agency Commissioner shall	The proposed decommissioning trust allows the trustee to rely conclusively on a certificate of payment submitted by the Responsible Party (Enbridge or its successor) and approved by the Enforcer (appointed by the MPUC).

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	which requires approval of Enforcer.		<p>specify in writing. In addition, the trustee shall refund to the Grantor the amounts the Agency Commissioner specifies in writing. Upon refund, these funds shall no longer constitute part of the Fund as defined herein.</p> <p>All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund.</p> <p>All other expenses incurred by the trustee in connection with the administration of this trust, including fees for legal services rendered to the trustee, the compensation of the trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the trustee shall be paid from the Fund.</p>	
Surplus Funds	<u>Upon termination:</u> distribution to a Minnesota abandoned pipeline fund that will be established and maintained for	<u>Upon termination:</u> distribution to any of the beneficiaries or to an Orphan Pipeline Fund ² in the trustees' sole discretion. Trustee	<u>During facility operation:</u> If the value of the trust fund is greater than the sum of the current cost	MPCA rule authorizes owner to recoup funds during facility operation if overpayments occur;

² The Orphan Pipeline Fund in Canada is a not-for-profit corporation that will be established pursuant to a statute of the Parliament of Canada and will maintain funds for the purpose of funding reclamation of abandoned pipelines in Canada.

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	the purpose of funding reclamation of any other abandoned pipelines in Minnesota.	must seek CER approval before disbursing funds.	estimates, the owner or operator may submit a written request together with supporting documents to the commissioner for release of the amount in excess of the sum of the current cost estimates covered by the trust fund. <u>Upon termination:</u> All remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or to any successors or assigns of the Grantor.	draft trust agreement and CER trust do not contemplate this. MPCA rule also provides that funds remaining after closure are returned to the owner. Under CER trust, funds can be returned to beneficiary or contributed to a pipeline decommissioning fund. For proposed trust agreement here, excess funds are contributed to pipeline decommissioning fund—not returned to owner.
Reporting and record-keeping	<ul style="list-style-type: none"> Enforcer may demand from trustee reasonable information related to administration of trust, including periodic accounting. Trustee provides annual and quarterly trust accountings to Enforcer and Responsible Party. 	Trustee provides annual reports to Enbridge, which files the reports with the CER.	Trustee provides annual report to Agency Commissioner regarding value of trust.	No material differences.
Term of trust	Perpetual to the extent permitted by law. “Termination Date” defined as the completion of Line 93 decommissioning.	In accordance with Canadian law pursuant to QET provisions and period of perpetuity legislation of the applicable province.	Trust continues until terminated at written agreement of Grantor, trustee, and Agency Commissioner. Minnesota law may limit duration to 21 or 90 years.	South Dakota law allows the proposed trust to last indefinitely. Under Minnesota law, a trust generally must terminate within 21 years after the death of an individual living when the trust was created or after 90 years. Minn. Stat. § 501A.01.

Attachment E

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				However, with respect to a trust that is established to accomplish a non-charitable purpose (such as decommissioning a pipeline) and that does not have an ascertainable beneficiary, Minnesota law limits the duration to 21 years. Minn. Stat. § 501C.0409.
Revocability	Irrevocable.	Irrevocable.	Irrevocable.	No material difference.
Modification	Pursuant to written instrument executed by Enforcer with: (i) court order; or (ii) consent of Responsible Party and trustee.	By agreement of Enbridge and the trustee and approval of the CER.	By agreement of Grantor, the trustee, and the Agency Commissioner, or by the trustee and the Agency Commissioner if the Grantor ceases to exist.	The three trust forms are generally consistent, in that modification of the trust agreement requires consent by both the settlor and the trustee, with some degree of regulatory oversight.
Periodic review by regulator	Every five years.	At least every five years, or earlier if directed by the CER.	Not specified in Minn. R. 7035.2805. A related rule (Minn. R. 7035.2685) provides detailed calculations to prepare cost estimates, contemplates increases due to inflation, and requires that they be updated “whenever a change in site conditions increases the cost of closure, postclosure care, or corrective action.”	The three trust forms are generally consistent in that they involve review and update from time to time during a facility’s life.