

Attachment B

Table review of DER revisions

Row No.	DER Reply Comment Redline (March 13, 2023) – Showing Changes to Enbridge’s January 1, 2023 Trust Agreement	Enbridge’s Proposed Changes to DER Reply Comment Trust Agreement	Explanation of Enbridge’s Changes to DER Reply Comment Trust Agreement
1	<p>By this instrument dated the _____ day of _____, 2022³, 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 for the benefit of the Minnesota Public Utilities Commission and any successor agency or agencies then statutorily charged with substantially similar responsibilities (“MPUC” or “Beneficiary”), and _____, Sioux Falls, South Dakota, agrees to act as directed Trustee (the “Trustee”) of the Trust <u>and _____, agrees to act as Trust Protector of the Trust.</u></p>	<p>By this instrument dated the _____ day of _____, 2023, 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”) for the benefit of the Minnesota Public Utilities Commission and any successor agency or agencies then statutorily charged with substantially similar responsibilities (“MPUC” or “Beneficiary”), and _____ agrees to act as Trustee (the “Trustee”) of the Trust.</p>	<p>The Revised DER Agreement would generally incorporate this language, except that the Revised DER Agreement modifies the identify and appointment of the Trust Protector. Instead of appointing the Department of Commerce (“Department”) as Trust Protector, the Revised DER Agreement establishes a process by which Enbridge and the Commission will appoint an individual with expertise in trust administration prior to any distributions from the Trust. Also, the Revised DER Agreement does not refer to the Trustee as the “directed Trustee,” because the Trustee will be directed as to distributions but not as to investments.</p>
2	<p>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 <u>to provide assurance that funds will be available to pay</u> 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.</p>	<p>The Trust is established pursuant to an order issued by the MPUC (also known as the “Commission”) 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”) which provide, in part:</p> <p style="padding-left: 40px;">The Commission approves a certificate of need for the Project contingent upon the creation and funding of a trust fund for decommissioning of the Project, including the costs of removal of the Project.</p> <p>It is Enbridge’s intention to comply with the MPUC Orders, and all provisions of this instrument shall be construed accordingly.</p>	<p>The Revised DER Agreement rejects DER’s changes to the purpose of the Trust and instead quotes the Commission’s Order requiring establishment of the Trust. DER’s objection to a statement that the Trust’s purpose is to fund decommissioning expenses is surprising and inconsistent with its own statements in this proceeding. In support of its recommendation to create the trust, DER’s witness testified that a decommissioning trust fund “would provide Enbridge with a pool of funds to aid in the future cost of removing the pipe from service.” DER’s witness further explained that the trust would allow Enbridge to self-fund decommissioning without having to use future funds: “The main advantage to a decommissioning trust is that Enbridge would be able to self-fund decommissioning of the proposed Project over time and during a period of relative financial strength. By having this fund in place, Enbridge should have sufficient funds available to decommission the proposed Project without having to use future funds, which as indicated above, could be a risk to Minnesota taxpayers.”</p>

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3	<p>1.3The 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.</p>	<p>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 (defined below), Settlor, its customers, and their respective successors, but the sole “Beneficiary” of the Trust, as that phrase is used herein, is the MPUC.</p>	<p>This change names the Commission as the “beneficiary” of the trust, but Enbridge sees no reason not to acknowledge the reality that the Trust will benefit others.</p>
4	<p>1.4It 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.</p>	<p>A material purpose of the Trust is protection of the Trust assets from claims of creditors of Enbridge. Although the MPUC is the Beneficiary of the Trust and the purpose of the Trust is not to benefit Enbridge, distributions from the Trust will pay expenses that Enbridge would otherwise be required to pay, and such distributions could therefore be deemed to benefit Enbridge. Therefore, 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.</p>	<p>Without explanation, DER proposes to delete language that is crucial to minimizing the risk that Trust assets will not be subject to creditor claims. Enbridge’s revised language attempts to assuage the DER’s concerns by acknowledging that the purpose of the trust is not to benefit Enbridge, but also acknowledges that distributions could be deemed to benefit Enbridge because they satisfy Enbridge’s legal obligation to fund decommissioning expenses. Ignoring this fact does not help anyone – other than potential creditors of Enbridge that might seek to attach the Trust assets.</p> <p>In other words, accepting DER’s proposed deletion of this section makes it more likely that Trust assets would be subject to creditor claims.</p>

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5	<p style="text-align: center;">ARTICLE 2</p> <p><u>1.6 Neither Settlor nor the Beneficiary may assign all or any part of its rights or obligations under this Trust without the prior written consent of the other and the Trust Protector; further, any successor or assignee of Enbridge must receive approval of MPUC in its regulatory capacity prior to the assignment of any Decommissioning Obligations, which approval may be given or withheld in MPUC’s sole discretion and in compliance with applicable law. For purposes of this Trust, a change of greater than 50% of the voting control or equity ownership of Enbridge or the sale of substantially all of Enbridge’s assets constitutes an assignment in violation of this section.</u></p>	Neither Settlor nor the Beneficiary may assign all or any part of its rights or obligations under this Trust without the prior written consent of the other; further, any successor or assignee of Enbridge must receive approval of MPUC in its regulatory capacity prior to the assignment of any Decommissioning Obligations (defined below), which approval may be given or withheld by MPUC in compliance with applicable law.	<p>Enbridge has adopted DER’s language indicating that transfers of Decommissioning Obligations need to be approved by the Commission (this is also true under existing law, regardless of whether this language is added).</p> <p>The remaining language requiring Commission approval for changes in control or ownership of Enbridge is a significant overreach of authority and inappropriate for inclusion in the Trust Agreement.</p> <p>The trust document is an agreement with the Trustee. It does not alter the scope or requirements of regulatory authority.</p>
6	<p><u>1.7 Creation of this Trust does not relieve or release Enbridge from the responsibility to perform the Decommissioning Obligations, satisfy reclamation or restoration obligations or conduct post-decommissioning monitoring and maintenance obligations provided for in the MPUC Orders, nor may anything herein be construed as limiting or in any way precluding the MPUC’s authority to take any action relating to Line 93 or the Decommissioning or as may be required or permitted by applicable law. The parties acknowledge that the Trust constitutes a financial assurance relating to the Decommissioning Obligations, title to the assets comprising the Trust Estate is vested in the Trustee, and neither the Trust nor the Trust Estate is intended to be governed by, nor shall Settlor or Responsible Party claim protection or rights under, any state’s or governmental entity’s Uniform Commercial Code or other similar laws, rules or regulations governing collateral or secured interests.</u></p>	Creation of this Trust does not relieve or release Enbridge from the responsibility to perform the Decommissioning Obligations, satisfy reclamation or restoration obligations or conduct post-decommissioning monitoring and maintenance obligations provided for in the MPUC Orders, nor may anything herein be construed as limiting or in any way precluding the MPUC’s authority to take any action relating to Line 93 or the Decommissioning or as may be required or permitted by applicable law.	The Revised DER Agreement incorporates “Creation of this Trust . . . permitted by applicable law.” The Revised DER Agreement does not include the remaining language proposed by DER in this section. The purpose of this language is unclear, and DER does not explain why it is included.
7	<p><u>1.8 The assets, income, and principal of the Trust Estate may not be assigned, anticipated or alienated in any manner by the Beneficiary or Settlor, nor shall the Trust Estate be subject to attachment, bankruptcy proceedings or any other legal process, or to the interference or control of creditors or others. This Trust shall be a spendthrift trust within the meaning of South Dakota Statute 55-1-37.</u></p>	[No change.]	This language is not sufficient to maximize the creditor protection of the trust, but Enbridge has confirmed with its South Dakota counsel that it does not impair the protection provided under the provisions making the trust a hybrid purpose/asset protection trust.

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8	<p>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. <u>Settlor and Beneficiary acknowledge that (i) the Trust is a grantor trust under the tax law and that Settlor will be liable for income taxes due as a result of income and realized gains earned by the Trust Estate, and (ii) the Trustee will file and furnish Form 1041 as the Trust’s method of reporting using the Trust’s EIN and not the Settlor’s EIN in all tax filings. Settlor may request from the Trustee the amount necessary to reimburse Settlor for Settlor’s federal, state, and local tax liability as a result of income received or gains recognized by the Trust for that respective tax year. Distributions of amounts from the Trust to pay taxes shall not reduce the Contribution Amount required to be maintained by Settlor pursuant to the relevant MPUC Order.</u></p>	<p>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. The Trustee will file and furnish Form 1041 as the Trust’s method of income tax reporting using the Trust’s EIN and not the Settlor’s EIN in all tax filings. Distributions of amounts from the Trust to pay taxes shall not reduce the Contribution Amount required to be maintained by Settlor pursuant to the relevant MPUC Order.</p>	<p>Modified language to reflect that the trustee will not want to have discretion as to whether to pay income taxes on the Trust income.</p>
9	<p>3.1 The Trust shall <u>“Contribution Amount” means the initial amount to be funded pursuant to an order from the MPUC in Docket No. PL-9/CN-21-823, as the same may be and any additional amounts to be added from time to time as required by such order and as amended by subsequent orders, which amount is intended to provide financial assurance that funds will be available to pay all Decommissioning Expenses and which may be adjusted over time. It is anticipated that such amount will be adjusted no less frequently than every three years, to reflect the remaining financial assurance requirements for Decommissioning, provided that such review interval may be amended by MPUC Order without requiring an amendment of this Trust.</u></p>	<p>“Contribution Amount” means the initial amount to be funded pursuant to an order from the MPUC in Docket No. PL-9/CN-21-823, and any additional amounts to be added from time to time as required by such order and as amended by subsequent orders.</p>	<p>The frequency with which the Commission reviews the decommissioning cost estimate is not a matter for the Trustee and does not need to be included in the Trust Agreement—it is not something the Trustee will enforce.</p>
10	<p>3.3 “Decommissioning Expenses” means all expenses approved by the Enforcer with respect <u>relating</u> to the Decommissioning of <u>the</u> Line 93, including but not limited to labor, materials, insurance, professional fees and other costs <u>identified in applicable MPUC Orders.</u></p>	<p>“Decommissioning Expenses” means all expenses relating to the Decommissioning of Line 93, including but not limited to labor, materials, insurance, professional fees and other costs.</p>	<p>Removed language requiring that all Decommissioning Expenses just be “identified in applicable MPUC orders.” It would be administratively burdensome and unnecessary for the Commission to meet and issue an order for every reimbursed Decommissioning Expense.</p>

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11	<p>3.4 “Decommissioning Obligations” means the obligation of<u>under MPUC Orders for</u> the Responsible Party to engage in Decommissioning and to incur Decommissioning Expenses with respect to Line 93, under, and fund the MPUC Order.</p> <p>3.5The “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<u>Trust.</u></p>	<p>“Decommissioning Obligations” means the obligation under MPUC Orders of the Responsible Party to engage in Decommissioning and to incur Decommissioning Expenses.</p>	<p>The need for DER’s proposed revisions here are unclear. Including the funding of the trust as a “Decommissioning Obligation” does not make sense given that the purpose of the trust is to fund decommissioning.</p>
12	<p><u>3.8</u> 3.9The “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; <u>provided that Enbridge shall remain subject to the Decommissioning Obligations, jointly and severally with any successor to its business, until such time as it is released from such obligations pursuant to an MPUC Order.</u> The Trustee may rely conclusively upon the joint written statement of the last Responsible Party as reflected in the Trust records and the Enforcer<u>Trust Protector</u> as to the identity of any successor Responsible Party.</p>	<p>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 Trust Protector as to the identity of any successor Responsible Party.</p>	<p>The Trust Agreement is an agreement with the Trustee. It does not modify the scope of the Commission’s regulatory authority or Enbridge’s obligations under applicable Commission Orders. It is unnecessary and potentially confusing and conflicting to attempt to incorporate the entire scope of the Commission’s authority and applicable orders in the Trust Agreement document. The Trustee is not responsible for enforcing Decommissioning Obligations.</p>
13	<p><u>3.10</u> 3.11“Termination Date” means the completion of the Decommissioning of Line 93 <u>as evidenced by an order of the MPUC in its regulatory capacity.</u></p>	<p>“Termination Date” means the completion of the Decommissioning of Line 93.</p>	<p>The Commission orders, rules, and statutes do not contemplate that the Commission will issue an order evidencing the completion of the decommissioning of Line 93, so Enbridge has not incorporated DER’s language here. The DER revisions envision a much broader and involved role for the Commission and Department in decommissioning and administration of the trust than contemplated previously in this record.</p>
14	<p><u>3.12</u> “Trust Estate” means the original fund balance and all other monies and other assets transferred to the Trust, together with all earnings and profits thereon.</p>	<p>[No change.]</p>	<p>This language is unnecessary because there is no ambiguity here on what constitutes the Trust Estate, but the language also does not cause an issue.</p>

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	<p><u>3.13 “Trust Protector” means a trust protector as defined Section 55-1B-6 of the South Dakota Codified Laws and is given only the powers granted by this instrument. The MPUC shall appoint the initial and any successor Trust Protector, and the initial Trust Protector shall be the Minnesota Department of Commerce.</u></p>	<p>“Trust Protector” means a trust protector as defined § 55-1B-1(2) of the South Dakota Codified Laws and is given only the powers granted by this instrument. The Beneficiary and the Responsible Party shall appoint the initial and any successor Trust Protector. If no Trust Protector or successor Trust Protector 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 Trust Protectors and successor Trust Protectors. The Trust Protector shall act in a fiduciary capacity. The Trust Protector shall not be accountable to any person or to the Trustee for any act or omission in relation to the powers given to the Trust Protector by this instrument in the absence of gross negligence, fraud or willful misconduct. The Trust Protector shall be an individual meeting the following qualifications:</p> <ol style="list-style-type: none"> (1) The Trust Protector must be a licensed attorney or a certified public accountant. (2) The Trust Protector must have knowledge of South Dakota trust laws and have experience in administering or advising clients regarding the administration of large trusts. (3) The Trust Protector must not be employed by or affiliated in any way with the Trustee or any Interested Party. 	<p>This revision changes the statutory reference to the statute defining a “trust protector.” The statute cited by the DER lists the powers a trust protector can be granted. Neither Enbridge nor the Commission or Department should control distributions as Trust Protector. This role requires expertise and could be administratively burdensome and require responsiveness to review and approve distributions. As such, a neutral third party should be appointed with expertise in trust administration. Distributions are not likely to happen for several decades. Therefore, even more important than who will serve as the initial Trust Protector is how a successor will be appointed and what qualifications the Trust Protector should have. Enbridge’s proposed language accomplishes this purpose.</p>

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15	<p>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, <u>provided that such replacement Trustee is not an affiliate of the predecessor Trustee.</u></p>	[No change.]	Enbridge does not object to this revision.
16	<p>5.1 <u>Upon creation of the Trust, Responsible Party shall contribute the Contribution Amount to the Trust in accordance with the amounts and time frame set forth in the MPUC Order.</u> Until the Termination Date, the Trust shall be administered and distributed by the Trustee upon the following terms and conditions: <u>provided that distributions from the Trust to pay any of the following shall not reduce the Contribution Amount required to be maintained by Settlor as set forth in the relevant MPUC Order:</u></p>	Until the Termination Date, the Trust shall be administered and distributed by the Trustee upon the following terms and conditions, provided that distributions from the Trust to pay any of the following shall not reduce the Contribution Amount required to be maintained by Settlor as set forth in the relevant MPUC Order:	<p>With respect to the first addition proposed by DER, the Trust Agreement is an agreement with the Trustee. It does not modify the scope of the Commission’s regulatory authority or Enbridge’s obligations under applicable Commission Orders, and it is unnecessary and potentially confusing and conflicting to attempt to incorporate the entire scope of the Commission’s authority and applicable orders in the Trust Agreement document. The Trustee is not responsible for enforcing Enbridge’s obligation to fund the Trust.</p> <p>With respect to the second addition (starting, “provided that. . .”), Enbridge does not object.</p>
17	<p>(3) The Trustee may, <u>with the approval of the Trust Protector,</u> pay, compromise, contest, submit to arbitration, or otherwise settle claims in favor of or against the Trust.</p>	[No change.]	

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18	<p>(5) In addition, the Trustee shall pay to or on behalf of<u>The Contribution Amount may be increased or decreased by MPUC Order and will be evaluated no less frequently than once every three years, or as otherwise provided by MPUC Order. So long as the Responsible Party is not in default of its Decommissioning Obligations,</u> the Responsible Party such amounts as the Trustee shall deem advisable<u>and the Trust Protector may agree to release funds from the Trust to pay or reimburse Decommissioning Expenses directly by jointly executing a certificate in the form of Exhibit A and directing the Trustee to make such payments. 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,</u> event that Responsible Party is in default of its Decommissioning Obligations, as evidenced by an MPUC Order, the Trust Protector may direct the Trustee to pay Decommissioning Expenses by executing a certificate and delivering a copy of the MPUC Order stating that the Responsible Party is in default. The Trustee shall pay such Decommissioning Expenses as set forth in any such properly executed certification 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 <u>specified</u> Decommissioning Expenses, or (c) to the Responsible Party as reimbursement for Decommissioning Expenses previously paid by the Responsible Party:</p> <p>5.2 Pursuant to § 55-1-21.4 of the South Dakota Codified Laws, the Enforcer, or (d) <u>upon a certification of default to the MPUC or its designee to pay for Decommissioning Expenses. Section 55-1B-2 of the South Dakota Codified Laws shall apply to this Trust and nothing herein shall be construed in any way to diminish the Trustee’s protection from liability and responsibility that is provided to an "excluded fiduciary" as defined under Section 55-1B-1(5) of the South Dakota Codified Laws.</u></p>	<p>The Responsible Party or the Beneficiary may request that the Trust Protector approve distributions from the Trust to pay Decommissioning Expenses. The Trust Protector shall have the discretion to approve such distributions, subject to the fiduciary obligation to achieve the material purposes of the trust.</p> <p>The Trust Protector may direct that Decommissioning Expenses 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. If the Responsible Party fails to meet its obligations to engage in Decommissioning, as determined by the court having jurisdiction over the Trust, resulting in the Beneficiary directly engaging in Decommissioning, the Trust Protector may direct that Decommissioning Expenses be paid (a) directly to third parties engaged by the Beneficiary to provide materials or services related to Decommissioning, or (b) to the Beneficiary to be used to pay Decommissioning Expenses.</p>	<p>The revisions proposed by DER are unworkable and problematic. First and foremost, DER added the concept of “default” to this agreement without defining what constitutes default, adding any process or standard for determining “default.” Then, DER proposes that any “default” of “Decommissioning Obligations” would prevent distributions from the Trust to actually fund Decommissioning Obligations. DER has broadly defined Decommissioning Obligations as also including funding the Trust, so under DER’s formulation, if there is an assertion that the Trust was underfunded in one year or another, there could be a “default”, and no money would be distributed to actually decommission Line 93. This is unworkable, poses due process/notice issues, and does not accomplish the purpose of the Trust. Enbridge’s proposed language is clear that the money in the Trust will come out of the Trust to fund decommissioning of Line 93, and the language provides safeguards to ensure that the funds are directed towards decommissioning activities.</p>

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19	(1) <u>The Trustee shall pay from the Trust all costs and expenses incurred by the Trustee which are related to the defense of the Trustee’s payments of Decommissioning Expenses to or on behalf of the Responsible Party or Beneficiary, including attorney’s fees, and including the reasonable expense of the Trustee’s own efforts in defending any such payment, at the time such costs and expenses are incurred.</u>	[No change.]	
20	5.2 <u>The Trust Protector</u> shall have standing to enforce the purpose of the Trust, and the Enforcer <u>Trust Protector</u> 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 <u>Trust Protector</u> may demand reasonable information related to the administration of the Trust from the Trustee, including a periodic accounting. The Enforcer <u>Trust Protector</u> shall act in a fiduciary capacity. The Enforcer <u>Trust Protector</u> 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 <u>Trust Protector</u> 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.	Each Interested Party shall have standing to enforce the purpose of the Trust, and may demand reasonable information related to the administration of the Trust from the Trustee, including a periodic accounting. <i>[remaining language moved to Section defining Trust Protector]</i>	Enbridge does not generally object to the concept in this paragraph, subject to revisions elsewhere regarding how the Trust Protector is identified.
21	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 <u>has</u> 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 joint certification and direction <u>of the Responsible Party and the Trust Protector, which certification is subject to prior approval of the MPUC in its regulatory capacity.</u>	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 has 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	It is unclear what DER’s additional language is proposed to mean, and it potentially is inconsistent with the Commission’s and Department’s jurisdiction. Once decommissioning of Line 93 is complete, if there are remaining funds in the Trust, neither the Commission nor the Department has a role in determining where those funds go—they are not State of Minnesota funds. Enbridge’s language reflects that any remaining funds would be transferred to a nonprofit corporation to fund the decommissioning of other pipelines. This is consistent with Enbridge’s prior statements and proposals in this docket.

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		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 joint certification and direction of the Responsible Party and the Trust Protector.	
22	<p>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<u>Estate as provided</u> hereunder or to the Settlor, and payment and discharge of all debts, liabilities and obligations under the Trust, the Settlor<u>Responsible Party and Trust Protector</u> 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.</p>	[No change.]	
23	<p>6.1 Until the Termination Date <u>and unless otherwise waived in writing</u>, 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, <u>the Beneficiary</u>, and to the Enforcer<u>Trust Protector</u>. 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<u>tax</u> filing obligations, and the Trustee shall also provide to the Enforcer<u>Trust Protector</u> any other reports and information reasonably requested by the Enforcer<u>Trust Protector</u> in order to allow the Enforcer<u>Trust Protector</u> to comply with its role in overseeing the Trust on behalf of the MPUC.</p>	Until the Termination Date and unless otherwise waived in writing, 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 Interested Parties. 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 Trust Protector any other reports and information reasonably requested by the Trust Protector in order to allow the Trust Protector to comply with its role in overseeing the Trust.	With DER’s proposed restructuring of the Trust, the Trust Protector does not oversee the Trust on behalf of the Commission. Under DER’s proposal, the Commission is now the “Beneficiary” and has standing to enforce the trust in its own right. The Trust Protector is a fiduciary charged with accomplishing the purposes of the trust not on behalf of any particular interested party. As noted above, the Trust Protector should be an independent party not affiliated with any other interested party and should have expertise in trust administration.

Row No.	DER Reply Comment Redline (March 13, 2023) – Showing Changes to Enbridge’s January 1, 2023 Trust Agreement	Enbridge’s Proposed Changes to DER Reply Comment Trust Agreement	Explanation of Enbridge’s Changes to DER Reply Comment Trust Agreement
24	<p>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 of<u>for</u> discharge of the Trustee or termination of this Trust Agreement.</p>	<p>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 Trust Protector. The Trust Estate 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 Trust Protector, 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. The foregoing indemnities shall survive the resignation of discharge of the Trustee or termination of this Trust Agreement.</p>	<p>The revised trust does not give the Responsible Party the power to direct the trustee. The trust assets, and not any party to the trust, will indemnify the trustee.</p>
25	<p><u>7.5 The Trustee has sole discretion to manage the Trust Estate, subject to the restrictions on permissible investments set forth in the investment policy statement agreed to in writing by the Responsible Party and the Trust Protector, which policy may be amended by written agreement of the Responsible Party and the Trust Protector from time-to-time without requiring an amendment of this Trust.</u></p>	<p>[No change.]</p>	
26	<p>[On Certificate for Payment of Decommissioning Expense:]</p> <p><u>*Signature of the Responsible Party is not required if a copy of an MPUC Order stating that the Responsible Party is in default of its Decommissioning Obligations is provided.</u></p>		<p>Enbridge cannot agree to DER’s ill-defined and unworkable addition of the concept of “default” to the Trust Agreement. <i>See</i> Row 18 above.</p>