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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

**SUPPLEMENTAL COMMENTS OF THE
MINNESOTA DEPARTMENT OF
COMMERCE**

INTRODUCTION

The Department remains deeply concerned about the “purpose trust” structure Enbridge proposed for the decommissioning trust agreement and continues to urge the Commission to adopt, instead, a traditional form of trust. Previously, the Department provided a red-lined revision of Enbridge’s draft which reflected a traditional trust with Enbridge as the identified settlor, the Commission as the named beneficiary, and the Department as the Trust Protector responsible for enforcing the terms of the trust. A clean copy of the Department’s proposed Trust Agreement is attached to these comments as Attachment 1A.

In its reply comments, Enbridge offered revisions to the Department’s draft trust, indicating that, while it believed a traditional trust form was “not optimal,”¹ it would be acceptable with certain revisions. Accordingly, these supplemental comments focus on Enbridge’s proposed revisions to the Department’s trust agreement. A section-by-section response to Enbridge’s Attachment B accompanies these supplemental comments as Attachment 2.

¹ Enbridge Reply Comments (4/12/23) at p. 2.

DISCUSSION

A. The Department's Positions Are Consistent with the Commission's Orders and Furthering the Public Interest.

Enbridge attempts to box in the Commission and Department by claiming prejudgment that requires specific provisions of Canadian trusts and precludes the funding structure recommended by the Department.² This prejudgment not only did not occur, but even if it had, should not prevent the Commission from exercising its judgement to work in the public interest.

Enbridge incorrectly claims that “the Commission’s previous orders require a trust that is similar to those required in Canada, and which includes collections over the expected 50-year life of the pipeline.”³ In fact, the Commission has not rigidly bound itself to the specific requirements or structure dictated by a foreign government, nor any specific timeframe for funding the decommissioning. Instead, the Commission recognized that for “one of the most consequential modifications to the certificate of need” there were still “concerns about the Decommissioning Trust and how it would be structured” that would need to be addressed a separate docket.⁴

In 2017, the Department recommended that if the Commission issued a certificate of need, it should require several modifications to ensure that the Line 3 replacement project met the statutory criteria. Among these was the recommendation to establish a decommissioning trust fund to ensure funds are available to decommission the pipeline. In making this recommendation, the Department emphasized that “[i]f the market for crude oil erodes significantly, Enbridge may be unable to operate, in which case it is unclear what entity would be responsible for the

² Enbridge Reply Comments (4/12/23) at pp. 4, 6–7.

³ Enbridge Reply Comments (4/12/23) at p. 4.

⁴ Docket 14-916 Mtg. Tr. at 56–57 (Nov. 19, 2018).

decommissioning.”⁵ Enbridge has acknowledged that a purpose of the trust is to assure that funds are available for decommissioning if Enbridge is no longer operating.⁶

The Commission determined that a certificate of need for the line would be contingent on the creation and funding of a decommissioning trust fund.⁷ To that end, the Commission ordered that Enbridge make a compliance filing with proposed terms and conditions “based on” decommissioning trusts in Canada.⁸ The Commission did not require the ultimate trust be based on Canadian law, but instead provided Enbridge general direction for consideration.

Following further filings, the Commission opened the current docket for the “purpose of establishing the terms and conditions of the Decommissioning Trust.”⁹ The Commission did not order specific terms and conditions or bind itself to another country’s requirements. Instead, the Commission ordered Enbridge to consult with the Department and “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.”¹⁰ The Commission understood that this is a complex undertaking and thus required Enbridge to “analyze” the

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*, PL-9/CN-14-916, Direct Testimony of Kate O’Connell at 117 (Sept. 11, 2017) (eDocket No. [20179-135395-06](#)).

⁶ Docket 14-916 Mtg. Tr. at 129, 202 (June 26, 2018).

⁷ *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*, PL-9/CN-14-916, REISSUED SEPT. 5, 2018 ORDER at 38 (May 1, 2020) (Reissued CN Order).

⁸ *Id.*; see also Docket 14-916 Mtg. Tr. at 57-58 (Nov. 19, 2018).

⁹ *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*, PL-9/CN-14-916, REISSUED JAN. 23, 2019 ORDER at 14 (May 1, 2020)

¹⁰ *Id.*

provisions of Canadian and U.S. federal trust provisions to determine if those structures would work in Minnesota's best interest. That analysis is what is occurring here in these comments.

The Commission should not accept Enbridge's invitation to rewrite history in a way that would confine the Commission to following Enbridge's hand-picked provisions of the Canadian framework. Instead, the Commission should continue its practice of seeking the most robust information possible to develop the best way forward to protect Minnesota for decades to come.

B. The Department Has the Necessary Independence and Expertise to Serve as Trust Protector.

Enbridge disagrees with the appointment of the Department as Trust Protector, arguing a lack of clarity regarding the Department's authority and that the Department lacks the necessary resources, independence, and expertise.¹¹ None of these objections have merit.

First, the Commissioner of the Department of Commerce "is responsible for the enforcement of chapters 216A, 216B, and 237 and the orders of the commission issued pursuant to those chapters."¹² Therefore, if the Commission has authority to issue an order, the Department has the authority to enforce it. Here, the Department's authority stems from the Commission's order that its approval of Enbridge's certificate of need to construct Line 93 be conditioned on the creation of a decommissioning trust fund to assure the availability of funds to pay for decommissioning the line.¹³ Enbridge has never challenged the Commission's authority to require Enbridge to fund a decommissioning trust fund as a condition of granting Enbridge's petition for a certificate of need or to require that the trust fund be established on reasonable terms for the protection of the public interest. The time to raise such a challenge is long past. If the Commission

¹¹ Enbridge Reply Comments (4/12/23) at p. 10.

¹² Minn. Stat. § 216A.07, subd. 2.

¹³ Reissued CN Order.

orders that the Department serve in the role of Trust Protector, that is all the authority that the Department requires.

Second, Enbridge asserts that the Trust Protector “should be an individual . . . who can act as an independent fiduciary – not under the control of any interested parties”¹⁴ These requirements do not weigh against the Department serving as Trust Protector. The Department is not under the control of any interested party and is able to act as an independent fiduciary on behalf of Minnesotans. Enbridge does not explain how its suggestion that it should be the one to propose the Trust Protector¹⁵ advances its professed desire for independence of the Trust Protector. There is no reason for Enbridge to have any role in selecting who will be responsible for enforcing the trust terms.

Third, Enbridge’s professed concerns about the adequacy of the Department’s resources and expertise are similarly misplaced. Enbridge suggests that the primary function of the Trust Protector is to approve distributions from the trust.¹⁶ In fact, the role of the Trust Protector is not limited to approving distributions, but rather, extends to matters relating to removal of the trustee,¹⁷ appointment of successor trustees,¹⁸ assignment of rights and obligations,¹⁹ approval of the settlement of claims,²⁰ execution of amendments to the trust agreement,²¹ and general responsibility to enforce the trust agreement terms.²² The approval of distributions is only part, albeit an important part, of the Trust Protector’s role. Each of these responsibilities will require

¹⁴ Enbridge Reply Comments (4/12/23) at p. 10.

¹⁵ Enbridge Reply Comments (4/12/23) at p. 10.

¹⁶ Enbridge Reply Comments (4/12/23) at Attachment B, p. 6.

¹⁷ Department Reply Comments (3/13/23) at Attachment 1, Section 4.2.

¹⁸ Department Reply Comments (3/13/23) at Attachment 1, Section 4.3.

¹⁹ Department Reply Comments (3/13/23) at Attachment 1, Section 1.6.

²⁰ Department Reply Comments (3/13/23) at Attachment 1, Section 5.1(3).

²¹ Department Reply Comments (3/13/23) at Attachment 1, Section 1.2.

²² Department Reply Comments (3/13/23) at Attachment 1, Section 5.2.

consideration of the public interest. The Department is ready, willing, and able to perform these functions. To the extent that it requires special expertise, the Department has the ability to retain consultants to advise and assist it, as it has done in this case.

If the Commission determines that it does not want the Department to serve as Trust Protector, it will need to make an alternative selection at the outset of the trust; appointment of a Trust Protector cannot wait until the trust begins making distributions. Selecting an independent Trust Protector or successor Trust Protector should not be subject to Enbridge's approval,

C. The Trust Agreement Should Expressly Confirm Enbridge's Obligation to Fully Fund the Trust.

Enbridge proposes omitting from the Department's draft a number of provisions that specify Enbridge's obligation to fund the trust. Enbridge's stated basis for omitting these provisions is that they will not be enforced by the trustee.²³ Enbridge's argument fails to recognize that these provisions are intended to be enforced by the Trust Protector, not the trustee. Contrary to Enbridge's suggestion, the trust agreement is not solely limited to provisions that affect the trustee.

It is troubling that, after agreeing to the establishment of a decommissioning trust fund and a rough estimate of the contribution needed in order to obtain the necessary permits to build its pipeline, Enbridge now seeks to avoid having those terms included into a legally binding contract establishing such fund. The trust agreement must set out Enbridge's responsibilities – including the responsibility to fund the trust in the manner ordered by the Commission – to assure that the purposes of the trust are accomplished.

As explained in previous comments, the Department is very concerned that continued delay in requiring Enbridge to contribute to the trust fund is increasing the risk that the trust will not

²³ Enbridge Reply Comments (4/12/23) at Attachment B, pp. 4-5.

have sufficient assets when it comes time to decommission the line. Enbridge has rejected including language establishing an amount or schedule for contributions in the trust agreement, insisting that funding requirements should be addressed in a separate Commission order, to avoid having to amend the trust agreement if future circumstances should require that the funding amount or timing be changed.

The Department, by way of compromise, agreed that this approach was acceptable so long as the trust agreement clearly established Enbridge's commitment to comply with the Commission's orders regarding funding. Enbridge, in its proposed revision of the Department's draft trust agreement, stripped out key language regarding its obligation to fund the trust, arguing that such language is "unclear," "unnecessary," and "potentially confusing."²⁴ How the inclusion of such a key provision of the trust could be unnecessary or confusing is baffling and Enbridge has provided no evidence to support such a bold claim. The Commission should reject Enbridge's proposed revisions and require the inclusion of this fundamental tenet in the trust agreement.

Uncertainty regarding the economic life of the line makes it all the more imperative that the trust be fully-funded as soon as reasonably possible. The Department shares Friends of the Headwaters' concern that the line has been in operation for more than two and a half years and Enbridge has yet to contribute anything toward decommissioning costs. The time remaining for Enbridge to fund the trust dwindles by the day.

Enbridge's plan to make minimum equal payments limited to the amount that it collects from shippers until some as-yet unknown time in the distant future is highly risky. When the Commission issued its Reissue Order in the certificate of need proceeding ordering Enbridge to create a decommissioning trust, the line's anticipated life was 50 years. In comments Enbridge

²⁴ Enbridge Reply Comments (4/12/23) at Attachment B, p. 5.

filed with the Commission two years later, it stated that it had entered into an agreement with shippers that provided for a 30-year economic life.²⁵ The economic life of Enbridge's mainline system is only 20 years. The pace and intensity of efforts to decarbonize our economy continue to increase, which will challenge the line's economic viability.

The Commission should not gamble that Enbridge, a company whose continued financial health is closely tied to the carbon economy and depends heavily on continued consumption of fossil fuels, will still be around on October 1, 2051, which is the date by which Enbridge says that the trust will be fully funded.²⁶ The potential harm to the public interest if there are not sufficient assets in the trust when needed far outweighs any harm that might result to Enbridge if the trust is sufficiently funded some number of years before the funds are needed.

CONCLUSION

The Department requests that the Commission adopt the Trust Agreement as proposed by the Department, as set forth in the document attached to these comments as Attachment 1A.

²⁵ Enbridge Initial Comments (5/10/22) at p. 9.

²⁶ Enbridge Initial Comments (5/10/22) at p. 10.

Dated: April 19, 2023

Respectfully submitted,

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ATTORNEYS FOR DEPARTMENT OF
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THE ENBRIDGE LINE 93 DECOMMISSIONING TRUST

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 _____, Sioux Falls, South Dakota, agrees to act as Trustee (the “Trustee”) of the Trust and _____, agrees to act as Trust Protector 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 orders issued by the 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 to provide assurance that funds will be available to pay 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 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 Trust Protector, but shall not be required to, amend this instrument so that the Trust would so qualify.

1.4 This instrument may be amended only pursuant to a written instrument executed by the Trust Protector; 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 (defined below) and the Trustee to the adoption of such amendment without a court order.

1.5 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 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 Section 55-16-3 of the South Dakota Codified Laws) and the Trustee shall carry out its administrative duties in the State of South Dakota.

1.6 Title to property of the Trust is not vested in the Settlor and shall not vest in the Responsible Party unless and 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.

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

1.8 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.

1.9 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.

1.10 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.

1.11 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.

ARTICLE 2 TAX STATUS

2.1 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, and the Trustee may pay with the consent of the Trust Protector, 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.

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 "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, 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.

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 relating to the Decommissioning of the Line 93, including but not limited to labor, materials, insurance, professional fees, costs and other expenses identified in applicable MPUC Orders.

3.4 “Decommissioning Obligations” means the obligation under MPUC Orders for the Responsible Party to engage in Decommissioning, incur Decommissioning Expenses, and fund the Trust.

3.5 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.

3.6 “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).

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

3.8 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; 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. 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.

3.9 “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.

3.10 “Termination Date” means the completion of the Decommissioning of Line 93 as evidenced by an order of the MPUC in its regulatory capacity.

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

3.12 “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.

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.

3.14 “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 Trust Protector 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 Ramsey County, Minnesota, unless the Trust Protector consents to a different venue.

4.2 The Responsible Party and the Trust Protector 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 Trust Protector (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, to the Beneficiary, and to the Trust Protector. 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, provided that such replacement Trustee is not an affiliate of the predecessor Trustee.

ARTICLE 5
ADMINISTRATION AND DISTRIBUTION OF TRUST

5.1 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. 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:

- (1) The Trustee shall 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 from the Trust for all documented reasonable and necessary costs, expenses, and disbursements incurred by it in its performance of such services.
- (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, with the approval of the Trust Protector, 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) may reimburse the Responsible Party for Taxes incurred by the Responsible Party or its partners with respect to income or property of the Trust.
- (5) 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, the Responsible Party 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 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 specified Decommissioning Expenses, (c) to the Responsible Party as reimbursement for Decommissioning Expenses previously paid by the Responsible Party, **or** (d) or 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.

- (6) 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.

5.2 The Trust Protector shall have standing to enforce the purpose of the Trust, and the Trust Protector may petition for, consent to, waive, or object to any matter regarding the Trust. The Trust Protector may demand reasonable information related to the administration of the Trust from the Trustee, including a periodic accounting. 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.

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 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 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, which certification is subject to prior approval of the MPUC in its regulatory capacity.

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 Estate as provided hereunder, and payment and discharge of all debts, liabilities and obligations under the Trust, the Responsible Party and Trust Protector 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 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 Responsible Party, the Beneficiary, and the Trust Protector. 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 on behalf of the MPUC.

6.2 Except as provided in this Article, 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 Trust Protector, 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 of 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 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 or discharge of the Trustee or termination of this Trust Agreement. Distribution of amounts from the Trust Estate to indemnify the Trustee shall not reduce the Contribution Amount required to be maintained by the Settlor pursuant to the relevant MPUC order.

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.

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.

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 _____, 2023, 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. Responsible Party 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 _____

[TRUST PROTECTOR]

By _____
Its _____

*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.

Attachment 2

Table review of Commerce 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	Commerce Further Reply
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<u>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 _____</u>, 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>	<p>The Department of Commerce has sufficient expertise, resources and knowledge to act as Trust Protector and ensure that funds are distributed in accordance with the Commission’s Orders. Thus, it should be named as the initial Trust Protector of the Trust. It is common for Trust Protectors to be appointed from the inception of the Trust to and sign the Trust Agreement in order to acknowledge its appointment and fiduciary duties. Thus, while Commerce accepts the deletion of the word “directed” before Trustee, it does not agree to the appointment of a Trust Protector in the manner proposed by Enbridge.</p>

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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>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</p>	<p>The purpose of the Trust to is assure that Decommissioning Expenses will be paid and Line 93 will be properly decommissioned. Thus, Commerce rejects Enbridge’s change in full.</p>

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			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.”	
3	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.	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	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.	Enbridge’s proposed language may be used to expand the interested parties with respect to interpretation and enforcement of the Trust. Commerce rejects the proposed change.

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		the MPUC.		
4	<p>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.</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.</p> <p>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</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.</p> <p>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</p>	<p>Commerce accepts this change. This provision was inadvertently deleted.</p>

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		Trustee shall carry out its administrative duties in the State of South Dakota.	to creditor claims.	
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>	Permitting the transfer of greater than 50% of the voting control or equity ownership of Enbridge or the sale of substantially all of its assets would provide Enbridge with the opportunity to effectively avoid its responsibilities under the Trust Agreement. Commerce believes that Enbridge should not be permitted to do an end run around its obligations. The provision does not require that the MPUC approve a change of control, but only provides that a change of control without Commission approval may constitute a violation of the Trust Agreement.

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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>	<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.</p>	<p>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.</p>	<p>A Trust Agreement is interpreted in accordance with its terms. Therefore, it is relevant to the Trustee and Trust Protector’s administration and to a court’s interpretation and enforcement of the trust to memorialize the intent of the parties in creating the Trust. The parties do not intend for the rights, obligations, and purposes reflected in the Trust Agreement to be undermined by the application of laws relating to collateral or secured interests that should be inapplicable under the circumstances.</p>
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>	<p>[No change.]</p>	<p>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</p>	

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			trust.	
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.</p> <p>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>	<p>The Trustee may only make distributions as directed by the Trust Protector. Thus, the Trustee does not have to exercise discretion. The discretion would be exercised by the Trust Protector. Thus, there is no need to change this provision. We have included a provision that provides that the Trustee may make the reimbursement with the consent of the Trust Protector.</p>

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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>	<p>It is relevant to the Trustee and Trust Protector to understand the obligations and intentions of the parties in order to perform their roles. In addition, any court who enforces the terms of the Trust will review the Trust based on the intent of the parties as expressed in the Trust document itself. Therefore, it is useful to include such language.</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>	<p>The reference to costs identified in applicable MPUC orders was not intended to be exclusive but rather expansive. The phrase “identified in applicable MPUC Orders” is modified by the phrase, including but not limited to. The reference to MPUC Orders is intended to provide the Trust Protector with a resource to determine applicable costs. It is not intended to require that all costs be identified in MPUC Orders. Commerce has amended the provision to</p>

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				state: “....professional fees, costs and other expenses identified in applicable MPUC Orders.
11	<p>3.4 “Decommissioning Obligations” means the obligation of<u>under MPUC Orders</u> <u>for</u> the Responsible Party to engage in Decommissioning and to₂ 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>	<p>Since there will be an ongoing need to fund the Trust, funding is an integral part of the Decommissioning Obligations. This provision is included to provide guidance to the Trustee and Trust Protector regarding distributions to Enbridge. Specifically, such distributions should not be made to Enbridge if either (i) Enbridge has not met its funding obligations or (ii) the funding of the Trust is insufficient to meet the Trust’s goals.</p>

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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.</p> <p>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>	<p>A Trust Agreement is interpreted in accordance with the terms of the document. Therefore, it is relevant to the Trustee and Trust Protector’s interpretation and trust administration to memorialize the intent of the parties in creating the Trust. In addition, any court enforcement action will depend on a court’s interpretation of the trust document. It is vital to memorialize the intent of the parties in creating the Trust. Moreover, since the Trust defines Responsible Party, this provision makes clear that the Trustee and Trust Protector understand that Enbridge will remain a Responsible Party even after any sale of its business. It seems this would benefit Enbridge as it potentially could continue to receive reimbursement for Decommissioning Expenses it incurs after it is sold. Thus, Commerce rejects this</p>

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				change.
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>	<p>The completion of the decommissioning must be approved by Commerce. Enbridge cannot be permitted to unilaterally determine that it is has satisfied its obligations</p>

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14	<u>3.12 “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.</u>	[No change.]	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.	
	<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>	“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	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	Commerce rejects Enbridge’s revision as to the identity, scope, and power of the Trust Protector. The qualifications of the Trust Protector identified by Enbridge are wholly inadequate to carry out the purposes of the Trust and to ensure that the Trust provides assurance that Enbridge will meet its Decommissioning Obligations. Moreover, the Beneficiary should be empowered to appoint the Trust Protector.

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		<p>gross negligence, fraud or willful misconduct. The Trust Protector shall be an individual meeting the following qualifications:</p> <p>(1) The Trust Protector must be a licensed attorney or a certified public accountant.</p> <p>(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.</p> <p>(3) The Trust Protector must not be employed by or affiliated in any way with the Trustee or any Interested Party.</p>	<p>several decades.</p> <p>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:	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	Commerce contends that it is both relevant to the Trustee and Trust Protector’s interpretations of the Trust Agreement to understand the intent of the Trust and the parties. Thus, reciting the Responsible Party’s intent and obligations to fund the Trust is useful. A court will look to the four corners of the Trust document to enforce its terms and evaluate whether the Trustee and Trust Protector are acting in accordance with the terms of the document. Therefore, it is imperative to memorialize the intent of the parties in creating the Trust in the Trust Agreement itself. Moreover, this

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			<p>enforcing Enbridge’s obligation to fund the Trust.</p> <p>With respect to the second addition (starting, “provided that ”) , Enbridge does not object.</p>	<p>provision reflects Enbridge’s commitment to comply with the MPUC orders in full. Commerce rejects Enbridge’s deletion of the first sentence. Commerce approves of Enbridge’s acceptance of the clause beginning with “provided that....”</p>
17	(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.	[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, the Responsible Party</u> 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><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 specified Decommissioning Expenses, or (c) to the Responsible Party as reimbursement for Decommissioning Expenses previously paid by the Responsible Party.</u></p> <p>5.2 Pursuant to § 55-1-21.4 of the South Dakota Codified Laws, the Enforcer, or (d) or 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.</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</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,</p>	<p>This provision provides a remedy in the event that Enbridge fails to meet its obligations. It does not state that Enbridge cannot receive funds in the event it is in default of its obligations under the MPUC orders. Rather it states that the Trust Protector may direct funds to whomever it chooses to fund the Decommissioning Expenses. In fact, contrary to Enbridge’s statement, the paragraph specifically states that Decommissioning Expenses may be paid to the Responsible Party. Moreover, the term default is not ambiguous as Enbridge’s obligations will be set forth in the MPUC Order. Commerce rejects Enbridge’s changes in full.</p>

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		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.	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.	
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.]		

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20	<p><u>5.2 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.</p>	<p>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.</p> <p><i>[remaining language moved to Section defining Trust Protector]</i></p>	<p>Enbridge does not generally object to the concept in this paragraph, subject to revisions elsewhere regarding how the Trust Protector is identified.</p>	
21	<p>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></p>	<p>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</p>	<p>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</p>	<p>The Settlor should not be permitted to unilaterally initiate a termination distribution. The joint instruction to initiate a termination distribution is a reasonable requirement to protect the trust assets.</p>

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		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 joint certification and direction of the Responsible Party and the Trust Protector.	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.	
22	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.	[No change.]		

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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>	<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.</p>	<p>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.</p>	<p>Since the Trust Protector will be approving distributions from the Trust and is a fiduciary, the Trust Protector should have access to information regarding the operation of the Trust. Commerce rejects Enbridge’s changes in full.</p>

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24	<p>7.3 The Trustee shall not be liable for any actions it takes or refrains from taking inthe 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 Agreementas 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 o<u>f</u>or 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>	<p>It is acceptable for the agreement to provide for the Trust to indemnify the Trustee if language is included to make clear that any distribution for purposes of indemnification will not reduce Enbridge’s contribution obligation.</p>

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25	<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>	[No change.]		
26	[<i>On Certificate for Payment of Decommissioning Expense:</i>] <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>		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.	<i>See</i> response in Row 18 above.