Attachment 5A

General Liability and Environmental Impairment Liability Insurance Modifications

The Commission approved a CN for Enbridge's Line 3 Replacement Project contingent upon Enbridge acquiring and maintaining General Liability and Environmental Impairment Liability insurance policies as proposed by the DOC-DER. It further directed Enbridge to make a compliance filing by July 16, 2018 of all the insurance requirements it will meet based on DOC-DER's recommendations (summarized DOC-DER's Initial Post-hearing Brief).

Table 1 below summarizes Enbridge's understanding that the DOC-DER recommended the following insurance-related requirements[1] and identifies how Enbridge will attempt to comply with each requirement.

To the extent that the Commission seeks assistance evaluating compliance with these insurance provisions, Enbridge suggests the issues be independently reviewed by a state employee of the Minnesota Department of Commerce – Insurance Division with expertise in these matters.

[1] DOC-DER Initial Post Hearing Brief at 163-164.

Table 1: DOC-DER Insurance Recommendations and Enbridge Implementation Comments

DOC-DER Recommendation[2]	Implementation Comments
Enbridge must procure and maintain the following liability insurance policies purchased from insurance companies with no controlling economic ownership ties to Enbridge over the course of the permit duration:	Enbridge renews its General Liability (“GL”) Insurance Program annually on May 1 with a current program limit of $940 million aggregate. In 2018-2019, approximately **[NONPUBLIC DATA HAS BEEN EXCISED]** in coverage comes from affiliated insurance companies, and this amount varies slightly from year-to-year. The use of affiliated insurance companies as part of an overall insurance risk management strategy is typical of large corporations such as Enbridge and the amounts typically fluctuate every year. Therefore, Enbridge’s current GL program complies with DOC-DER’s recommendation to maintain at least $100 million of GL even though some (very little) of that coverage is strategically derived from affiliated insurance companies so as to ensure overall objective and commercial achievability of maintaining the levels of coverage that meet Enbridge's financial risk management objectives. On this basis, Enbridge will continue to comply with this requirement as long as such policies are available on commercially reasonable terms in the future.
GL insurance with a $100 million per loss limit including a “time element” exception to the pollution exclusion (currently in place);	Enbridge’s current GL aggregate policy complies with this requirement, as demonstrated by the attached Certificate of Insurance. (See Attachment 5B.) The most recently available copy of the terms of the GL policies can be found at Exs. DER-16 and DER-17.
EIL insurance with a $100 million per loss limit of liability;	Enbridge enlisted the assistance of Marsh’s Environmental Practice to identify potentially available EIL providers for this coverage. Of the 14 insurers that may have the potential to provide EIL coverage, only three expressed interest in underwriting a policy for a pipeline company. (See Table 2 below.) In order to underwrite such a policy, the insurers require the following information (among

[2] *Id.*

	other requirements): <u>Pipeline</u> - Complete map of the pipeline route and all associated river crossings, water crossings, pumping stations and terminals. - Details on where the pipeline is buried. - Construction schematics and age of the pipeline. - Leak detection and monitoring equipment/systems. - Inspection methods, schedule and most recent results. - Spill Prevention Control / Countermeasures Plan and/or Emergency Response Plan. - Current / proposed flow through rate, product (crude) and volumes. <u>Pumping stations / Terminals:</u> - Complete listing of all aboveground and underground storage tanks at the facilities to include contents, gallon capacity, years installed, construction type (steel, fiberglass, etc.) and description of containment and leak/spill prevention countermeasures. - Spill Prevention Control / Countermeasures Plan and/or Emergency Response Plan. - Any Phase I / Phase II or other environmental assessments of properties used for pumping stations or pipeline construction – required for legacy conditions coverage. <u>General</u> - Details on how environmental issues are reported from the field to corporate. - Schedule of applicable environmental permits and compliance status. - GL, Property and Excess Loss Runs – 10-Year minimum. - Completed signed PLL and Excess applications. As Line 3 Replacement Project nears completion and for when the project goes into service, Enbridge will attempt to procure EIL insurance up to the $100 million in dedicated coverage recommended by DOC-DER and will procure it to

	the extent it is available on commercially reasonable terms. Enbridge will provide a compliance filing to the Commission describing its efforts and any resulting policies.
Both the GL and EIL policies should include one automatic reinstatement of limits provision (guaranteed for Line 3) or an annual aggregate of twice the per loss limit ($200 million);	Reinstatement of limits typically only occurs when the original limit is adversely impacted (i.e., exhausted through a covered loss event) and as such insurers would not readily offer their capacity or price until that adverse time period. Marsh has inquired of the 14 potential insurers whether any would provide an automatic reinstatement of limits for a pipeline, and only one has indicated a willingness to write such a policy and many would not offer an annual aggregate of twice a per loss limit. (See Table 2). With respect to EIL insurance when Enbridge solicits proposals, it will again request such terms, but based on the information Marsh has collected and the record in this proceeding, Enbridge does not anticipate being able to procure insurance with an automatic reinstatement of limits of $100 million, given that the product does not currently exist in the marketplace for pipelines and only one company, with a much smaller capacity, has indicated a willingness to provide it.
These amounts of insurance should be increased by $10 million for both GL and EIL policies every five years until Line 3 pipeline is decommissioned;	Enbridge will seek policies totaling these limits to the extent they are available in the marketplace on commercially reasonable terms.
The State of Minnesota should be named as an Additional Insured under the GL and EIL policies;	Enbridge will add the State of Minnesota as an additional insured under its GL policies and any acquired EIL policies once the Project is in-service.
Enbridge should provide the State of Minnesota with a certificate of insurance on an annual basis that details all endorsements to the policy as they may require;	See Attachment 5B for the Certificate of Insurance for Enbridge's current GL policies.
The $200 million in insurance requirements assumes that $1 billion in payment is available	Enbridge will use best efforts to identify the balance of the Oil Spill Liability Trust Fund on an annual basis. However, Enbridge cannot make ad hoc

from the U.S. Oil Spill Liability Fund; otherwise, Enbridge Inc. is required to increase its insurance requirements in order to meet the enduring $1.2 billion funding level Mr. Dybdahl recommends. The reinstatement of limits provision is required only as to Line 3 and, particularly for the future GL policy, would guarantee continuing coverage of Line 3 under Enbridge Inc.'s GL policy in the event that initial limits are exhausted during the policy period by a spill elsewhere on Enbridge Inc.'s system.	adjustments to the $200 million in commercially reasonable insurance requirements based on the fluctuating balance of the OSLTF due to impacts by others unknown to Enbridge or to the extent that the balance is not publicly known or attainable.
Addressing market availability	Enbridge understands that these insurance requirements apply only to the extent the product is available in the marketplace on commercially reasonable terms.[3] To the extent Enbridge is unable to procure the insurance products as recommended, Enbridge will inform the Commission of its efforts and the response from the marketplace. Mr. Dybdahl recommended GL insurance be used as substitute if EIL insurance is unavailable, and, given that Enbridge's current GL aggregate policy already exceeds the $200 million in recommended coverage, Enbridge does not foresee any immediate obstacles to maintaining $200 million in available GL coverage (as part of its aggregate program) for Line 3 Replacement.
Provide copies of insurance policies.	Exs. DER-16 and DER 17 contain the most recently available representative copies of Enbridge's GL insurance policies. A summary of the terms of these policies is available in Ex. EN-43, Schedule 2 (Lim Rebuttal).

[3] Evid. Hearing Tr. Vol. 8B (November 14, 2017) at 170 (Dybdahl).

Table 2: Environmental Impairment Insurance Markets for Pipelines

[NON-PUBLIC DATA HAS BEEN EXCISED…

Market	Available Capacity (each incident / aggregate) USD*	EIL - Pipeline Appetite	Full Limit Available for EIL on Pipeline Risk**	Limit Reinstatement
Company A	$15MM / $15MM		N	
Company B	$75MM / $75MM - CPL Only		N	
Company C	$25MM / $25MM		Y	
Company D	$25MM / $25MM		Y	
Company E	$25MM / $25MM		N	
Company F	$25MM / $25MM		N	
Company G	$25MM / $25MM		N	
Company H	$20MM / $20MM		N	
Company I	$15MM / $15MM		N	
Company J	$25MM / $25MM Additional Capacity available for select accounts		N	Not available for pipeline operations.
Company K	$25MM /		N	

	$50MM			
Company L	$5MM / $5MM		N	
Company M	$35MM / $70MM		N	
Company N	$15MM / $15MM		N	
Company O	$50MM / $50MM		N	
Company P	$25MM / $25MM		Y	
Company Q	$10MM / $15MM		N	
Company R	$10MM / $30MM		N	
Company S	$25MM / $25MM		N	
Company T	$50MM / $50MM		N	
Company U	$50MM / $50MM		Y	

Will not cover this class of risk

Will consider risk with proper underwriting data and loss history

Has expressed interest / has covered Enbridge risks before

* This column notes the total available capacity of EIL coverage for all potential industry purchasers.

** Y indicates the insurer would make up to its total available capacity as listed on this table available to pipeline companies. N indicates that the insurer will make only a portion of its total available capacity available to pipeline companies.

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PUBLIC DOCUMENT – NONPUBLIC DATA HAS BEEN EXCISED

The NONPUBLIC version of Attachment 5B contains Certificates of Liability Insurance. Given the nature of the document, including its content and format, the entirety of the document has been redacted.