STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Proposed Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border)))))	**Docket No. PL-9/CN-14-916**

MOTION FOR CLARIFICATION OF PRIOR ORDER DATED JANUARY 23, 2019 ORDER APPROVING COMPLIANCE FILINGS AS MODIFIED AND DENYING MOTION

Pursuant to Minnesota Statute § 216B.25, Movant, on behalf of Movant's clients and other landowners hosting existing Line 3 and effected by the Line 3 Landowner Choice Program, respectfully moves the Minnesota Public Utilities Commission ("Commission") for clarification of its January 23, 2019 Order Approving Compliance Filings as Modified and Denying Motion ("Order"). As discussed below, Movant submits that Enbridge is not in compliance with Commitment Letters and Compliance Filings. Specifically, Enbridge is denying landowners information necessary to make an informed decision by failing to disclose the availability of the Independent Third-Party Engineer at Enbridge's expense, the Landowner's right to negotiate price, and the existence of paid mediation. Clarification of the Commission's understanding of the Commitment Letters and Compliance Filing is needed.

I. PROCEDURAL HISTORY

On April 24, 2015, Enbridge Energy, Limited Partnership (Enbridge) filed an application for a certificate of need for a 338-mile pipeline, along with associated facilities, extending from the North Dakota–Minnesota border to the Minnesota–Wisconsin border to replace the existing Line 3 pipeline.

On June 22, 2018, Enbridge submitted a Commitment Letter describing the Landowner Choice Program.

On June 28, 2018, the Commission held a public agenda meeting and voted unanimously to grant Enbridge's certificate of need for the new Line 3 pipeline contingent upon a number of modifications regarding among other things, the Landowner Choice Program. The Commission orally ordered Enbridge to submit a Compliance Filing by July 16, 2018 that described the components of each of those modifications.

On July 16, 2018, Enbridge submitted its Compliance Filing containing details of the certificate of need modifications in an additional Commitment Letter and corresponding attachments, including Attachment 2A (Landowner Choice Program) and 2B (Introductory Letter to Landowners Regarding the Landowner Choice Program).

On September 5, 2018, the Commission issued its Order Granting Certificate of Need as Modified and Requiring Filings contingent upon implementation of Enbridge's Landowner Choice Program for the Existing Line 3 as described in the June 22nd Commitment letter and July 16, 2018 Compliance Filings, subject to additional modification.

On September 10, 2018, Enbridge submitted additional Compliance Filings.

On January 23, 2019, the Commission issued its Order Approving Compliance Filings as Modified and Denying Motion.

On July 17, 2020, Enbridge submitted additional Compliance Filings containing materials that were sent to landowners, including a revised introductory letter, a revised question-and-answer section, and two flyers, one describing decommissioning in place and another describing removal.

In September 2020 Enbridge sent a letter to landowners about the Landowner Choice Program. That letter is attached as **Exhibit A**.

On September 28, 2020, a status letter from EERA staff of the Minnesota Commerce Department was sent to the Public Utilities Commission referencing the Introductory Letter Enbridge sent.

On November 20, 2020, a status letter from EERA staff of the Minnesota Commerce Department was sent to the Public Utilities Commission.

II. FACTS

The Certificate of Need (CN) was granted contingent upon the Enbridge's Commitment Letters and Compliance Filings describing the Landowner Choice Program. Enbridge is not following the program it described in those letters and filings. Enbridge failed to disclose information to landowners that is necessary for them to make an informed decision about whether to allow decommission in place or to have the pipeline physically removed. First, Enbridge failed to property inform landowners that an independent third-party engineer was available to them at Enbridge's expense. Second, Enbridge never told landowners that they could negotiate price for deactivation in place.

Finally, Enbridge did not tell landowners they were entitled to mediation at Enbridge's expense.

The Landowner Choice Program is new. Landowners are unfamiliar with it. Thorough their prior course of dealings with landowners, Enbridge has had the power of eminent domain. The Landowner Choice Program is different. It is crucial that landowners understand their rights as promised by Enbridge and incorporated into the Certificate of Need by the Commission.

A. THIRD PARTY ENGINEER INPUT IS CRUCIAL TO LANDOWNERS

Enbridge has failed to make disclosures to landowners as required by the Certificate of Need, Commitment Letter and Compliance Filings. Specifically, Enbridge is not disclosing that landowners have access to the third-party engineer for the purpose of informing their decision about whether to decommission in place or remove the pipeline as required by Attachments 2A and 2B to the July 17, 2018 Compliance filings.

In Attachment 2A, Enbridge promised that it was "committed to ensuring that landowners are able to make an informed decision regarding the decision to choose to have existing Line 3 removed or deactivated in place . . . ." It committed that "landowners will have access to a representative from at least one independent, third-party engineering firm knowledgeable in matters relevant to the landowners' choice of deactivation-in-place or removal." And it also said, "Contact information for the appropriate personnel at such firms will be made available to landowners." Furthermore, the September 5, 2018 Order Granting CN and Requiring Filings ordered that the program include "a process for landowners to obtain independent consultation, at

Enbridge's expense, from engineering firms competent in the area of oil pollution remediation or pipeline removal prior to the landowner's decision to remove."

Enbridge submitted an Introductory Letter to landowners (Attachment 2B) with its July 16, 2018 Compliance Filings. That letter contained a question-and-answer section explaining that the third-party engineer is available to landowners to help them make a decision about whether to deactivate in place or remove. One of the questions was "What other resources are available to me to help me make a decision?" The answer to that question was as follows: "an independent, third-party engineering firm has been retained to be an additional resource available through the Landowner Choice Program. That firm, [Insert Name of Firm], is knowledgeable in matters potentially relevant to your decision-making process and can help address technical questions related to your election to remove or deactivate-in-place. Enbridge's Land Rights representative will provide you contact information for the third-party engineering firm."

However, the Introductory Letter that Enbridge ultimately sent, which is contained in Enbridge's July 17, 2020 Compliance Filings, dropped the disclosure of the third-party engineer in answering "what other resources are available to me to help me make a decision?" Instead Enbridge attached two flyers: one describing deactivation in place and another describing removal. Buried in an obscure portion of the removal flyer without any context, the flyer states, "Third-party engineering experts will be available to landowners." Since the decommissioning in place flyer makes no reference to the engineer, at best, the flyers falsely characterize the third-party engineer as only being available as part of the removal process, not the decision-making process relating to the landowner's choice to remove or deactivate in place. It does not disclose that the third-

party engineer is available to assist in the decision-making process and it certainly does not make the third party engineer available to the landowner.

Information from the third-party engineer is critically important to landowners. For instance, the engineer understands that the removal cost to Enbridge can exceed $1,000 per linear foot. The landowner needs to know that cost to remove the line so that it can be compared with the $10 per linear foot offer Enbridge is making for decommissioning in place. Movant suggests information about the cost to remove is precisely the information that Enbridge does not want the landowner to know, and that is why Enbridge is not disclosing to landowners that an engineer is available to landowners, at Enbridge's cost.

Movant has learned that some landowners may have agreed to deactivate in place before the independent third-party engineer and liaison were even appointed. They could not have made an informed decision.

Now that a third-party engineer has been appointed, the liaison can tell a landowner about the third-party-engineer, **if the landowner contacts the liaison**. However, a landowner may never contact the liaison. For instance, it appears that Enbridge's letters to landowners have resulted in very few landowners contacts with the liaison. The EERA's November 20, 2020 update letter states that as of the date of the letter only 12 landowners had made information requests to the liaison. Interestingly, 11 of those requests were made by Movant on behalf of Movant's clients. It is likely that the 12th person was a potential client of Movant who was informed about their rights by Movant.

A landowner will have an incentive to contact the liaison if Enbridge tells landowners that a third-party engineer is available as it committed to doing in Attachment 2B. ("An independent, third-party engineering firm has been retained to be an additional resource available through the Landowner Choice Program.")

Landowners cannot access an independent third-party engineer as required by the CN if they are not aware that the engineer is available to assist with their decision. Enbridge denied landowners the ability to make an informed decision about choosing to have Line 3 removed or deactivated in place. Enbridge has effectively and intentionally hidden the existence of the third-party engineer for the purpose of keeping landowners ***uninformed***.

B. ENBRIDGE HAS NOT TOLD LANDOWNERS THEY HAVE THE RIGHT TO NEGOTIATE THE PRICE FOR DEACTIVATION IN PLACE

Enbridge also failed to inform landowners that it is required to "negotiate" the terms of deactivating in place. "Where landowners choose deactivation-in-place, they will be compensated **(subject to the negotiation of a mutually acceptable compensation** arrangement between Enbridge and the landowner)." Attachment 2A (emphasis added).

The Enbridge material sent to landowners does not inform them of their right to negotiate the terms of deactivating in place. Instead, the Enbridge correspondence to landowners suggests Enbridge has arrived at a rate for deactivation in place and that is the rate at which the landowner will be paid. See September 20, 2020 letter. That letter even tells landowners that if a higher rate per lineal foot is later used, landowners who signed up early will receive the new rate.

Thus, the letter deceptively mischaracterizes the Landowner Choice Program as allowing Enbridge to select the rate, essentially offering the landowner a take-it-or-leave-it offer. The CN and Attachment A2 make no reference to this type of single rate compensation. Rather, the CN makes it clear that Enbridge is required to "negotiate" with landowners. This mischaracterization deprives landowners of the knowledge necessary to make an informed decision.

C. ENBRIDGE HAS NOT TOLD LANDOWNERS THEY WERE ENTITLED TO FREE MEDIATION

Enbridge failed to notify landowners of the right to mediation. The January 23, 2019 Order provides that "For any disputes arising between landowners and Enbridge regarding the operation of the program that cannot be resolved through the use of the independent liaison and third- party engineer, Enbridge shall offer an independent mediation at Enbridge's expense."

Landowners cannot access independent mediation if they are not aware that they are entitled to it. Nor are they likely to seek help if they do not know that the help is at Enbridge's expense.

It appears that the only way a landowner can learn of the paid mediation is through the Liaison. See the September 28, 2020 and November 20, 2020 status updates from the Minnesota Commerce Department, EERA. However, it is important for the Commission to appreciate that landowners may not contact the Liaison before signing to deactivate in place. Movant understands that there may be landowners who have agreed to deactivate in place before the Liaison and independent third-party engineer were even appointed.

III. CLARIFICATION

Movant requests that the commission clarify its January 23, 2018 Order, specifically its interpretation and incorporation of the Compliance Filings that Enbridge submitted when seeking a Certificate of Need for the project. Specific statements requiring further clarification are as follows:

A. Access to at least one independent, third party engineering firm

Attachment A2 to Enbridge's Compliance Filing states "landowners will have access to a representative from at least one independent, third-party engineering firm knowledgeable in matters relevant to the landowners' choice of deactivation-in-place or removal." Please clarify what is meant by "access to a representative." Specifically, please clarify whether this requires Enbridge to disclose to landowners that the knowledgeable engineering representative is available to the landowner to help make their choice, at no cost to the landowner, and whether the representative must have certain knowledge including the relative costs of removal and deactivation-in-place.

B. Contact information made available

Attachment A2 also states "Contact information for the appropriate personnel at such firms will be made available to landowners." What is meant by "made available" in this context? Does this section of Attachment A2 require Enbridge to affirmatively disclose the existence of the third-party engineer at the time the program is introduced to the landowner?

C. Informed decision regarding the decision to choose

Attachment A2 also states "Enbridge is committed to ensuring that landowners are able to make an informed decision regarding the decision to choose to have existing Line 3 removed or deactivated in place . . . ." What is meant by "informed decision regarding the decision to choose." Would that include knowledge of the availability of a third-party engineering representative to assist in making the decision to deactivate-in-place versus removal, the costs of removal and deactivation-in-place, as well as other information contemplated by Attachment A2?

D. Access to information

Attachment A2 also states "landowners will have access to information necessary to ensure their decisions are informed." What is meant by "access to information" and "decisions are informed." What is meant by "access to information" and "decisions are informed." Specifically, please clarify what information the landowner must be given by Enbridge, and whether a decision can be informed if the landowner is not aware that an independent third-party engineering representative is available, or not aware of the costs of removal and deactivation -in-place.

E. Negotiate

Attachment 2A states "Where landowners choose deactivation-in-place, they will be compensated (subject to the negotiation of a mutually acceptable compensation arrangement between Enbridge and the landowner)." Please clarify whether this requires Enbridge to negotiate the terms of deactivating in place, including the waiver payment price. Does Enbridge's September 2020 letter reflect the intent of Attachment A2 when it offers landowners a take-it-or leave-it price to deactivate-in-place.

F. Mediation

The January 23, 2019 Order states "For any disputes arising between landowners and Enbridge regarding the operation of the program that cannot be resolved through the use of the independent liaison and third- party engineer, Enbridge shall offer an independent mediation at Enbridge's expense." Please clarify whether it is the Commission's intent that landowners be made aware of their right to paid mediation under the landowner choice program prior to making a decision to deactivate in place or physically remove and whether this knowledge is necessary for landowners to make an informed decision.

IV. Remedies

Enbridge has demonstrated a pattern of withholding information or misinforming landowners regarding their right to decide to decommission in place or physically remove. Upon considering and clarifying the above issues, Movant requests that the Commission order the following: (1) Enbridge must disclose to landowners the fact that the third-party engineer and independent liaison are available at no cost to the landowner to assist in ***making the decision*** to decommission in place or remove the pipeline. (2) Enbridge must disclose that the Landowner Choice Program includes a free mediation process in the event that they are unable to reach an agreement with Enbridge's appointed land representatives. (3) Enbridge must renegotiate all waivers that were signed without making the above required disclosures and disclose that the reason for the renegotiation is that they failed to make the above-mentioned disclosures as they are required to do under the Landowner Choice Program, (4) Enbridge must appoint land representatives who are authorized to negotiate waiver price directly with landowners based on the landowner's unique

circumstances and disclose to the landowners that they are authorized to negotiate price. (5) If the Commission determines that the September 2020 is within the intent of the Order and Attachment A2, then Enbridge must demonstrate compliance with the letter by disclosing all offers that have been made to all landowners, including tribes, and what consideration was ultimately paid.

Dated: April 28, 2021

Respectfully submitted,

/s/ **Evan G. Carlson**
Evan G. Carlson - Attorney at Law, LLC
225 South 6th St. Suite 3900
Minneapolis, MN 55402
(952) 212-0824
evan.carlson@attorneycarlson.com

Exhibit A

Enbridge Energy, Limited Partnership
11 E. Superior St., Suite 125
Duluth, MN 55802
www.enbridgeus.com

September 17, 2020

Re: Line 3 Landowner Choice Program

We are writing to advise you that Enbridge Energy, Limited Partnership is proceeding with the Landowner Choice Program ("LOC") of the proposed Line 3 Replacement Project.

Our land agents have been meeting with landowners to discuss the exercise of options pursuant to the LOC. In providing fair compensation to the Landowner, we believe it is important for all landowners to know that compensation will be paid at the same rate per lineal foot to all landowners who are similarly situated.

Be assured that landowners who choose deactivation in place early on will not be at a disadvantage. If a higher rate per lineal foot of compensation is subsequently negotiated in your area, landowners who signed up early will be contacted with an offer to receive the fair higher level of compensation. The end result will be that for those landowners who choose deactivation in place, they will be compensated on the same basis per lineal foot as similarly situated landowners.

Enbridge Energy, Limited Partnership is committed to the fair and equitable treatment of all landowners, and we trust that this information will provide you with the assurance necessary for you to make your decision.

Sincerely,

Rich Kern
Supervisor, Lands and ROW, Liquids Projects U.S.