

Staff Briefing Papers

Meeting Date: June 17, 2021

Agenda Item **1

Company: Enbridge Energy, Limited Partnership (“Enbridge”)

Docket No. PL-9/CN-14-916

In the Matter of the Motion for Clarification of Prior Order Dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion in the Line 3 Replacement Project Certificate of Need Docket

Issues:

- What action should the Commission take on the Motion for Clarification of Prior Order Dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion?

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✓ Relevant Documents	Date
Enbridge Certificate of Need Modification Commitment Letter	06/22/2018
Enbridge Certificate of Need Modification Compliance Filing Letter	07/16/2018
(Reissued) September 5, 2018 Order Granting Certificate of Need as Modified and Requiring Filings	05/01/2020
(Reissued) January 23, 2019 Order Approving Compliance Filings as Modified and Denying Motion	05/01/2020
Enbridge Landowner Choice Introductory Letter Compliance Filing	08/26/2020

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ Relevant Documents	Date
Department of Commerce Energy Environmental Review and Analysis (EERA) Landowner Choice Status Update	09/28/2020
EERA Landowner Choice Status Update	11/20/2020
Motion for Clarification of Prior Order Dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion	04/30/2021
EERA Landowner Choice Status Update	05/05/2021
EERA Comments on Motion	05/14/2021
Enbridge Response to Motion	05/14/2021

I. STATEMENT OF THE ISSUES

What action should the Commission take on the Motion for Clarification of Prior Order Dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion?

II. STATUTES AND RULES

7829.0410 Motion Filings

Subpart 1. **Form and content.** A party to a proceeding making a motion filing shall make it in writing, state the grounds for the motion, and set forth the requested commission action. A party shall file and serve a motion filing on the persons listed on the official service list. As a part of a motion filing, a party shall advise other parties that any opposition to the motion must be filed and served on the same list of persons within 14 days of service of the motion filing. The commission will consider only motion filings signed by a party or the party's attorney or authorized representative.

Subp. 2. **Responses.** A party responding to a motion filing shall file and serve a response on the persons listed on the official service list within 14 days of service of the motion filing.

III. PROCEDURAL HISTORY

In its September 5, 2018 *Order Granting Certificate of Need as Modified and Requiring Filing* (reissued on May 1, 2020), the Commission granted to Enbridge a certificate of need for the Line 3 Replacement Project (L3RP) contingent upon modifications that provided for a parental guaranty for environmental damages, a Landowner Choice Program, a Decommissioning Trust Fund, a Neutral Footprint Program, and general liability and environmental impairment liability

insurance. The Commission required Enbridge to make a compliance filing describing the implementation of these modifications, which Enbridge submitted on July 16, 2018.

On January 23, 2019, the Commission issued its *Order Approving Compliance filings as modified and Denying Motion* (reissued on May 1, 2020). The order approved Enbridge's July 16, 2018, compliance filings that described the components of the modifications to the certificate of need.

On August 26, 2020, Enbridge made a compliance filing indicating it had sent correspondence concerning the Landowner Choice Program to approximately 800 landowner addresses that included an introductory letter, a frequently asked question fact sheet, a fact sheet about pipeline deactivation in place, and a fact sheet about pipeline removal.

On September 28, 2020, EERA filed a letter that: (1) identified it will be serving as the Landowner Choice Program independent liaison; (2) indicated Ecology and Environment had been selected as the third-party engineer; (3) acknowledged Enbridge's mailing of the Landowner Choice Program introductory information; (4) identified its own independent website dedicated to the program (<https://mn.gov/eera/web/file-list/14059/>); and (5) described the complaint handling process. EERA provided subsequent program status update filings on November 11, 2020, and May 5, 2021.

On April 30, 2021, a *Motion for Clarification of Prior Order Dated January 23, 2019 Approving Compliance Filings as Modified and Denying Motion* ("Motion") was filed by Mr. Even G. Carlson ("Movant"). In summary, the Motion alleges that Enbridge failed to disclose the necessary information to landowners to allow an informed decision about whether to allow decommission in place or to have the pipeline physically removed. Specifically, the Motion claims that Enbridge failed to: (1) inform landowners that an independent third-party engineer was available to them at Enbridge's expense; (2) tell landowners that they could negotiate price for deactivation in place; and (3) tell landowners they were entitled to mediation at Enbridge's expense.

The Motion requests that the Commission clarify:

- Whether Enbridge is required to disclose to landowners at first contact that a third-party engineer is available at no cost to assist in making an informed decision regarding deactivation in place or removal.
- What information Enbridge should provide and make accessible to landowners deciding between deactivation in place or removal.
- Whether Enbridge is required to negotiate the terms of deactivation in place.

- Whether Enbridge is required to inform a landowner of their right to paid mediation.

As a remedy to the allegations, the Motion requests that the Commission:

- Require Enbridge disclose to landowners that a 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.
- Require Enbridge disclose to landowners that in the event that they are unable to reach an agreement with Enbridge a no cost mediation process is available.
- Require Enbridge to renegotiate all signed waivers and disclose that the reason for the renegotiation was due to its failure to mention the existence of a third-party engineer, an independent liaison, and a mediation process available at no cost to the landowner.
- Require Enbridge to negotiate waiver price directly with landowners and inform landowners of their right to negotiate.
- Require Enbridge to disclose the terms of all offers that have been made to all landowners, including tribes.

On May 14, 2021, Enbridge filed a response to the Motion. Staff provides the following summary below, but recommends that the Commission review Enbridge's response.

- Enbridge indicated that it has complied with all requirements of the Program, that the Program has been implemented effectively, that the Commission does not need to clarify any part of the Program, and that the Motion should be denied.
- Enbridge indicated that it coordinated with EERA on how best to implement the Program and on the development of the Program introductory materials that were sent to landowners. Enbridge provided copies of the Program introductory materials and pointed to locations within the materials that indicate a third-party engineer and an independent liaison are available at no cost.
- Enbridge maintained that it has signed 737 agreements for deactivation in place at a uniform rate of \$10 per lineal foot. Enbridge indicated that removal has been requested by landowners of 38 tracts, and that there are 223 tracts that are considered to be in progress.
- Enbridge explained that landowners "who choose the deactivation-in-place option are free to agree with Enbridge and accept the \$10 per lineal foot compensation rate.

Likewise, landowners are free to not agree with Enbridge's offer and choose the removal option for monetary or any other reasons."

- Enbridge acknowledged that it is obligated to offer mediation when disputes cannot be resolved through the use of the independent liaison and the third-party engineer.
- Enbridge argued that land rights agreements made between Enbridge and landowners are outside the Commission's authority and that the Commission has expressly indicated it will not resolve property rights issues.

On May 14, 2021, EERA filed comments. EERA, in its role as independent liaison for the Landowner Choice Program, described the efforts it has taken to resolve the Movants concerns, and indicated it was unable to resolve those concerns. EERA acknowledged property rights disputes do not fall under the jurisdiction of the Program, but indicated that the Movants concerns relate more to general operation of the Program. EERA considered the mediation clause in the Program condition, but decided it was not appropriate to ask a mediator to interpret the Commission's intent.

IV. STAFF DISCUSSION

Staff provides the Ordering Points related to the Landowner Choice Program from January 23, 2019 Order:

- Landowners must indicate their decision regarding their participation in the Program by July 1, 2024.
- Enbridge will file a plan by July 1, 2022, outlining steps to be taken to contact landowners who have not responded with their decision regarding their participation in the Program.
- Any landowner whose request for removal cannot be honored for any reason, even after July 1, 2024, shall be offered compensation for allowing the pipe to be decommissioned in place on the same terms as all other landowners who choose decommissioning in place.
- All landowners shall be provided on request a preliminary written removal plan prior to their decision that identifies the extent of removal work, needed staging areas, anticipated reimbursable damages, anticipated permits and approvals needed, and the process for contacting the independent liaison, the independent third-party engineer, and the company during the decision process.

- Enbridge shall provide a final written removal plan to landowners that choose removal prior to commencing removal.
- Enbridge shall allow landowners or groups of landowners to select a different independent engineer to consult on removal options. Enbridge is only obligated to reimburse a landowner-selected third-party engineer up to the same terms and rates as those established in the contract that selected the third-party engineer arising out of the request for proposal process. Enbridge is only obligated to reimburse a landowner-selected third-party engineer if the landowner receives prior written approval from the independent liaison that the engineering consultant has shown that they are competent in pipeline removal or environmental damage remediation.
- The program description, notices to landowners, and documents filed in the Recorder's office of each county shall state that receiving compensation and entering into this program where the landowner allows all or a portion of the pipe to be decommissioned in-place does not alter the obligation of Enbridge to remove exposed pipe as they committed to do in obtaining the certificate of need nor does it alter Enbridge's responsibility to address any environmental or safety law violations of any applicable federal, state, or local law regarding Enbridge's pipe.
- 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. If mediation is unsuccessful, only matters relating to the operation of the program established as a modification to the certificate of need may be brought to the Commission. The Commission will not resolve any property rights issues.

V. COMMISSION DECISION OPTIONS

1. Deny the Motion.
2. Clarify the issues outlined in the Motion and grant the requested relief.
3. Take some other action deemed appropriate.