

The Commission met on **Monday, November 19, 2018** with Chair Lange and Commissioners Lipschultz, Schuerger, Sieben, and Tuma present.

The following matters were taken up by the Commission:

PL-9/CN-14-916

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

1. Commissioner Lipschultz moved that the Commission deny admission of the petitions for reconsideration submitted by Donovan and Anna Dyrdal and the Sierra Club and admit Appendix A submitted by Youth Climate Intervenors.

The motion passed 5-0.

2. Commissioner Lipschultz moved that the Commission deny reconsideration of the Commission's September 5, 2018 order.

The motion passed 5-0.

3. Commissioner Sieben moved that the Commission deny Honor the Earth's Motion to Disclose Insurance Exclusion Clauses.

The motion passed 5-0.

4. Commissioner Lipschultz moved that the Commission approve the Parental Guaranty as presented in Enbridge's October 16 filing with the following language added to Section 10 of the Parental Guaranty:
 - a. "Upon request of the Commission or the Department of Commerce, the Guarantor will, within 90 days after the end of each fiscal year of the Guarantor, deliver to the Commission and the Department of Commerce a copy of Guarantor's consolidated and consolidating financial statements for such fiscal year, audited by independent certified public accountants (including a balance sheet, income statement, statement of cash flows, statement of shareholder's equity, and, if prepared, such accountants' letter to management)."
 - b. "Guarantor acknowledges and consents to suit in the courts of the State of Minnesota for specific performance or other relief by Beneficiary State of Minnesota upon any breach or failure of Guarantor to comply with the terms of Section 10."

The motion passed 5-0.

5. Commissioner Tuma moved that the Commission approve the Landowner Choice Program described in Enbridge's July 16 compliance filing with the following modifications:
 - a. Landowners must indicate their decision regarding their participation in the Program by July 1, 2024.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Enbridge shall provide a final written removal plan to landowners that choose removal prior to commencing removal.
 - f. 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.
 - g. 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.

- h. 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.

The motion passed 5-0.

6. Commissioner Sieben moved that the Commission accept Enbridge's July 16, 2018 compliance filing and Attachments 3A, 3B, and 3C as further modified by Enbridge's July 30, September 7, and October 16, 2018 filings relating to the Decommissioning Trust Fund. A docket shall be opened with filing deadlines and comment periods set by the Executive Secretary for the purpose of establishing the terms and conditions of the Decommissioning Trust. Enbridge shall consult with DER regarding the provisions on page 4 of DER's November 5, 2018 letter. Enbridge shall 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.

The motion passed 5-0.

7. Commissioner Sieben moved that the Commission approve the Neutral Footprint Program described in Enbridge's July 16 compliance filing with the following modifications:
 - a. The calculation of incremental energy and RECs to be purchased by Enbridge shall be based on the difference between a representative baseline level of electricity use for the existing Line 3 and the annual electricity use for the new Line 3.
 - b. Enbridge shall consult with the Minnesota Department of Natural Resources to determine a tree-for-tree net zero impact. This net zero calculation shall not be limited to merchantable timber. Trees removed from private land shall be replaced on private land in consultation with the landowner. Trees removed from tribal reservation land shall be replaced on tribal reservation land or other land as directed by the tribal government. Trees removed from public land (state, county, or municipal) shall be replaced within the same jurisdiction to the extent practicable and upon consultation with the unit of government that has jurisdiction over the removal.

- c. Enbridge shall annually file on April 1 the results of the Neutral Footprint program.

The motion passed 5-0.

8. Commissioner Sieben moved that the Commission approve Enbridge's July 16 compliance filing related to general liability and environmental impairment liability insurance as modified by the following:
 - a. Regarding insurance availability, the phrase "market availability of insurance on commercially reasonable terms" should be modified to mean "the type of insurance and terms that are available to pipelines generally in the marketplace; that insurance and its terms should be deemed to be terms that are commercially reasonable for the coverage available to any one pipeline risk generally in the marketplace and not just to Enbridge."
 - b. In order for the Commission to conclude that minimum coverages of general liability and environmental impairment liability insurance are unavailable to Enbridge, Enbridge must show that insurance coverage is unavailable to its peer group of pipeline companies as benchmarked by an international insurance brokerage firm with experience in insuring a threshold number of pipeline companies.
 - c. Carriers affiliated with any Enbridge entity may provide insurance coverage only up to \$50 million for general liability assuming the present \$940 million in total general liability coverage or 5 percent of the \$100 million minimums for both general liability and environmental impairment liability insurance, such that 5 percent of the \$100 million minimum would be up to \$5 million for general liability and environmental impairment liability insurance.
 - d. Enbridge is permitted to use its general liability aggregate coverage to cover Line 3, as Enbridge presently intends to do, or choose to provide a reinstatement of a limits policy that would need only cover Line 3. Enbridge shall purchase an annual environmental impairment liability policy with aggregate coverage of \$200 million or demonstrate that this coverage is unavailable in the marketplace to Enbridge Inc.'s peer group of pipeline companies, as benchmarked by an international insurance brokerage firm with experience in insuring a threshold number of pipeline companies.
 - e. Enbridge shall increase the amount of its insurance in the event that total available funding from the Oil Spill Liability Trust Fund falls below \$1 billion so as to maintain a total of \$1.2 billion (including insurance) available in the event of a spill on Line 3.
 - f. Enbridge shall make a revised insurance filing consistent with this order. The general liability insurance policies shall provide coverage for damages arising out of oil spills, and not include requirements that would be impractical or impossible to implement.

The \$50 million general liability self-insurance limitation assumes that Enbridge maintains its general liability umbrella coverage of \$940 million for its total operations.

- g. Enbridge is required to annually file a full copy of the lead general liability and environmental impairment liability insurance policies and endorsements applicable to Line 3, including any policies and restrictive endorsements that may diminish coverage for crude oil spills in any way including by other insurance carriers within the coverage stack.
- h. Enbridge must include the following Minnesota American Indian tribes as additional insureds on its policies:
 - i. Fond du Lac Band of Lake Superior Chippewa
 - ii. Leech Lake Band of Ojibwe
 - iii. Mille Lacs Band of Ojibwe
 - iv. Red Lake Band of Chippewa
 - v. White Earth Band of Ojibwe
- i. Enbridge bears the burden to show that one or more of its insurance policies provide the insurance coverage described above and the language of other policies does not diminish or eliminate that coverage.

The motion passed 5-0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: February 13, 2019



Daniel P. Wolf, Executive Secretary