

**MINNESOTA PUBLIC UTILITIES COMMISSION  
SUITE 350  
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PAUL, MINNESOTA 55101-2147**

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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

**REPLY COMMENTS OF THE  
MINNESOTA DEPARTMENT OF  
COMMERCE**

The Department of Commerce (Department): (i) replies to Enbridge Energy’s January 3, 2023 comments regarding the Decommissioning Trust (Trust) that the Minnesota Public Utilities Commission (Commission) required as part of the certificate of need for Enbridge’s Line 3 Replacement Pipeline (Line 93) and the accompanying draft trust agreement that Enbridge proposes to govern the trust (Trust Agreement) and (ii) provides recommended revisions to the draft Trust Agreement as shown in **Attachment 1**. The Department can agree to much of Enbridge’s proposed Trust Agreement language, with certain exceptions including the use of the non-charitable purpose trust form, the proposed contribution amount and schedule, and the timing of periodic reviews.

**DISCUSSION**

**I. Disputed Issues**

**A. Non-Charitable Purpose Trust**

Enbridge continues to propose that the Trust be a non-charitable purpose trust and the Department continues to disagree with this form of trust. Enbridge notes, “under trust law, if a trust document does not allow for distributions to or for the benefit of a particular person or entity, that person or entity is not really a “beneficiary” of the trust.” Under South Dakota law, a “non-charitable purpose trust” is a trust

to fund a purpose rather than to benefit a beneficiary. By using a non-charitable purpose trust, Enbridge seeks to insert itself as an indirect beneficiary of the Trust. Under Enbridge's proposal, to fulfill the Trust's purpose, the Trustee would pay Enbridge as it incurs decommissioning costs. However, this misconstrues the purpose of the Trust. The purpose of the Trust is not to provide a fund or a bank account for Enbridge to use to reimburse itself for its decommissioning costs. Rather, the Trust is intended to provide a financial assurance that Enbridge will fulfill its obligations when that time comes.

The Trust is analogous to bonding or insurance, as it is designed to ensure that amounts necessary to satisfy decommissioning obligations will be available to the State of Minnesota should Enbridge or its successors fail to perform their obligations or cease to exist. Thus, the Department asserts that the MPUC should be the beneficiary of the Trust. This will enable the Commission to ensure that the Decommissioning obligations are satisfied and to utilize the Trust funds for decommissioning costs in the event Enbridge fails to meet its Decommissioning obligations. In such case, the Commission as the beneficiary would be able to use (or direct the use of) the funds to pay decommissioning expenses as permitted under the Trust Agreement.

**B. Roles Identified in Trust Agreement**

Enbridge proposes that the roles in the Trust Agreement reflect the non-charitable purpose trust structure, as established under the laws of the State of South Dakota. For the reasons noted above, the Department of Commerce believes the roles should be those of a traditional trust, with a Trustee, Beneficiary and Trust Protector, and has provided for such roles in its revisions to the Trust Agreement in **Attachment 1**.

**C. Amount of Trust Contributions and Periodic Commission Review**

Enbridge has proposed that requirements relating to determining the amount that it must contribute to fund the Trust be contained in a separate Commission order, to avoid having to amend the

Trust Agreement to reflect changes in the funding requirements. The Department does not object to Enbridge's suggestion, with the understanding the Trust Agreement will include language incorporating any such Commission order as an enforceable obligation under the Trust Agreement.

Line 93 has been in use since October of 2021 and Enbridge has known of the requirement to establish a decommissioning trust fund since September 2018. Despite the nearly four years of lead time, Enbridge has yet to reserve any amount toward funding the Trust. Further, Enbridge proposes that it not even make an initial contribution to the decommissioning Trust until May 2024 at the earliest. To mitigate the risk of a shortfall in the amount of trust funds, the Department recommends that the Commission require Enbridge to make a significant initial lump sum payment, followed by ongoing monthly contributions that would result in the Trust holding sufficient funds for Decommissioning expenses by such time as the Commission may determine and well in advance of the date when funds are anticipated to be needed.

Allowing Enbridge to fund a lower amount over 30 years, as it is requesting, defeats the purpose of the Trust, in that it does not provide a financial resource in the immediate term to ensure the payment of Decommissioning Expenses should Enbridge encounter financial difficulties, bankruptcy, or other challenges later. For example, if Enbridge experiences financial difficulties in year 10, there will not be adequate resources accumulated in the Trust to pay Decommissioning Expenses. Enbridge's obligation to fund the Decommissioning Trust is independent from the source(s) Enbridge uses to obtain the funding. The fact that Enbridge intends to fund the Trust through surcharges to shippers and that the contract establishing the related facilities surcharge mechanism contractually establishes the economic life of Line 93 at 30 years is not relevant to the timing or amount of required contributions to the Trust. In order to serve its purpose, the Trust needs to be fully funded as soon as reasonably feasible.

The Department also continues to recommend that the Commission review the adequacy of the funding of the Trust at least every three years rather than every five years, as Enbridge has proposed, for the reasons specified in the Department's prior comments.<sup>1</sup> Regular Commission review of the decommissioning cost estimate, investment returns, taxes and administrative expenses, and the length of time over which Enbridge will make contributions is necessary to determine and maintain the appropriate level of Enbridge's ongoing contributions. This regular review would also include a forecast of investment returns and taxes. This review will demonstrate whether modifications of the contribution amount or other changes in the Trust are necessary. A more frequent review of every three years will help to ensure no unexpected shortfall in the necessary Trust funds.

## **II. Undisputed Issues**

### **A. Certain Terms Memorialized Outside of Trust Agreement**

Enbridge proposes that the required periodic review of the adequacy of the Trust and contribution amounts be established by Commission order, rather than in the Trust Agreement. The Department does not object to these matters being governed by a separate order, subject to the caveats discussed above. Similarly, the Department can agree that the Investment Policy governing Trust investments may be amended by written agreement of the Responsible Party and the Trust Protector from time-to-time without requiring an amendment of the Trust, as shown in **Attachment 1**.

### **B. Terms Related to Liability**

The Department of Commerce does not propose any material amendments to the trustee liability provisions included in the draft Trust Agreement submitted by Enbridge.

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<sup>1</sup> See Section V(B) of the Department's reply comments dated June 17, 2022.

### **C. Modifications to Trust Agreement**

With the exception of changing “Enforcer” to “Trust Protector,” for the reasons noted in “Roles Identified in Trust Agreement” above, the Department can agree to the amendment provision proposed by Enbridge.

### **III. Open Issues**

#### **A. Trustee Selection**

Enbridge has not yet identified a trustee and the Department will need to evaluate the qualifications of the trustee once selected by Enbridge.

#### **B. Verification of Cost Estimate**

WSP, the independent contractor, engaged by Enbridge to conduct an independent review of the cost for the total contribution amount to be included in the trust, is still conducting its review. While WSP initially estimated that it would need four weeks after execution of a contract to complete its work, it requires additional time and continues to work on a thorough review. The Department will update the parties and the Commission on a revised timeline and the review will be promptly filed once it is finalized.

### **CONCLUSION**

Accordingly, the Department asks that the Commission adopt the Trust Agreement proposed by the Department, in the form attached to these comments as **Attachment 1**, including specifically, language:

- Establishing the Trust as a traditional trust, rather than a purpose trust, with the Commission as beneficiary and the Department as the Trust Protector;
- Confirming that the terms of any Commission order regarding Enbridge’s obligation to fund the Trust are incorporated into the Trust Agreement;

- Providing that the Commission will review the Trust at least every three years to assure that the Trust assets are sufficient to fulfill the Trust's intended purpose.

The Department will comment regarding the selection of a proposed trustee and the required third-party review of the decommissioning cost estimate when further information becomes available.

Dated: March 13, 2023

Respectfully submitted,

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ATTORNEYS FOR DEPARTMENT OF COMMERCE

THE ENBRIDGE LINE 93  
DECOMMISSIONING TRUST

By this instrument dated the \_\_\_\_\_ day of \_\_\_\_\_, 202~~2~~<sup>3</sup>, 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 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 directed Trustee (the “Trustee”) of the Trust and \_\_\_\_\_, agrees to act as Trust Protector of the Trust.~~

~~ARTICLE 1~~  
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 ~~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 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.

Author [A1]

One of the fundamental disconnects is that Enbridge is viewing this Trust as its bank account to pay for decommissioning expenses, while MPUC is requiring the Trust as a financial assurance that funds will be available in the future. In the event that Enbridge is unable or unwilling to pay decommissioning expenses, the Trust is a source of funding for MPUC to intervene and hire a third-party to complete decommissioning activities.

~~1.3 The 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.~~

~~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.~~

1.1 ~~1.5~~ 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 ~~Enforcer~~ Trust Protector, but shall not be required to, amend this instrument so that the Trust would so qualify.

1.2 ~~1.6~~ This instrument may be amended only pursuant to a written instrument executed by the ~~Enforcer~~ 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.

1.3 ~~1.7~~ 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.

1.4 ~~1.8~~ Except as provided in this Article, the Trust is irrevocable and may not be amended.

1.5 ~~1.9~~ 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.

#### ARTICLE 2

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.

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.

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.

ARTICLE 2  
TAX STATUS

~~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.~~ 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.

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 ~~The Trust shall~~ "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.

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 ~~approved by the Enforcer with respect~~ relating to the Decommissioning of the Line 93, including but not limited to labor, materials, insurance, professional fees and other costs identified in applicable MPUC Orders.

3.4 “Decommissioning Obligations” means the obligation ~~of~~ under MPUC Orders for the Responsible Party to engage in Decommissioning ~~and to~~ incur Decommissioning Expenses ~~with respect to Line 93, under~~ and fund the ~~MPUC Order.~~

~~3.5 The “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 Trust.~~

3.5 ~~3.6~~ 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 ~~3.7~~ “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 ~~3.8~~ The “MPUC” and the “MPUC Order” shall have the meanings assigned in Article I of this instrument.

3.8 ~~3.9~~ 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 ~~Enforcer~~Trust Protector as to the identity of any successor Responsible Party.

3.9 ~~3.10~~“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 ~~3.11~~“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 ~~3.12~~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 ~~3.13~~“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 ~~Enforcer~~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 ~~Enforcer~~Trust Protector consents to a different venue.

Author [A2]  
Provisions relating to protections afforded the Trustee will likely change once the trustee is identified. We reserve the right to comment further on such trustee provisions.

4.2 The Responsible Party and the ~~Enforcer~~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 ~~Enforcer~~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 ~~Enforcer~~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

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 ~~may~~shall pay compensation of the Trustee from the Trust, according to its published fee schedule, subject to any discounts that may be applied by

Author [A3]  
The changes to the trustee compensation are acceptable provided that the order that sets forth Enbridge’s funding obligations is clear the Enbridge must contribute amounts sufficient to pay all Trustee fees and expenses and any taxes related to the Trust.

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. ~~The Trustee shall pay all Trustee's fees, expenses and compensation from the Trust.~~

- (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) ~~shall~~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) ~~In addition, the Trustee shall pay to or on behalf of~~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 ~~such amounts as the Trustee shall deem advisable~~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,~~ 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

Author [A4]

This is acceptable, so long as it is clear that Responsible Party is effectively paying these expenses.

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-

~~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.~~

- (1) 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 ~~Enforcer~~Trust Protector 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~~Trust Protector may demand reasonable information related to the administration of the Trust from the Trustee, including a periodic accounting. The ~~Enforcer~~Trust Protector shall act in a fiduciary capacity. The ~~Enforcer~~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 ~~Enforcer~~Trust Protector 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.~~

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~~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 ~~Settlor's~~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 ~~for the purposes of the Trust created~~ Estate as provided hereunder ~~or to the Settlor~~, and payment and discharge of all debts, liabilities and obligations under the Trust, the ~~Settlor~~ 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 ~~to the Enforcer~~ 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~~ tax filing obligations, and the Trustee shall also provide to the ~~Enforcer~~ Trust Protector any other reports and information reasonably requested by the ~~Enforcer~~ Trust Protector in order to allow the ~~Enforcer~~ Trust Protector to comply with its role in overseeing the Trust on behalf of the MPUC.

6.2 ~~To~~ 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~~  
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 ~~Enforcer~~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 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 Agreement ~~as 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 ~~of~~for discharge of the Trustee or termination of this Trust Agreement.

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

~~Exhibit A~~ **CERTIFICATE FOR PAYMENT OF DECOMMISSIONING EXPENSE**

This Certificate is submitted pursuant to Section 5.1(5) of the Trust Agreement dated \_\_\_\_\_, 202~~2~~3, 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. ~~Settlor~~ 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)~~ (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 \_\_\_\_\_

~~[ENFORCER]~~ [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.

Document comparison by Workshare Compare on Monday, March 13, 2023  
10:00:42 AM

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Total changes	216
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