ENVIRONMENTAL LAW
& POLICY CENTER

September 5, 2023

Via eDockets

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: ***In the Matter of the Application of the Decommissioning Trust Fund for the Enbridge Energy, Limited Partnership Line 3 Replacement Pipeline***

MPUC Docket No. PL-9/CN-21-823

Dear Mr. Seuffert:

At the close of business on Friday, August 25, we received the settlement agreement between the Department of Commerce and an Enbridge subsidiary over the Decommissioning Trust this Commission required as a precondition to granting permission to build Line 3 (now 93). Friends of the Headwaters cannot support the settlement, nor do we believe it meets the Commission's requirements.

The problems with the agreement include the following:

1. The target trust fund amount is almost certainly too low.

The $1.2 billion estimate for decommissioning Line 93 has been cited since the certificate of need/routing permit hearing nearly six years ago. The Canada Energy Regulator made "abandonment trust" estimates just four years ago, but now they have concluded that those numbers are **79** percent too low. There is no reason to think the cost of dealing with an abandoned pipeline has skyrocketed in Canada, but remained at the same level in Minnesota. And, of course, no one has ever given the Commission an estimate of what it would cost the *State of Minnesota* to decommission Line 93, which is the relevant number if Enbridge defaults.

2. The "pay-in" period is too long.

The cost of decommissioning Line 93 does not start at some tiny number like $80,000, the annual contribution amount under this agreement, and then eventually become $1.2 or 2 billion. If Line 93 shut down today, it would cost at least $1.2 billion to decommission it. That means there is no set of circumstances—no chance whatsoever—under the made-up assumptions in this agreement, that this trust will be fully funded before 2041, when the consensus among climate experts is that we have to be almost entirely off fossil fuels no later than 2045. And, as

FOH explained in earlier comments, diluted bitumen from Alberta will not be the last to survive as the fossil fuel industry ratchets down. It is close to the least competitive oil in the market, and Permian Basin oil and OPEC oil is almost certainly going to eclipse it well before 2040. If a declining Enbridge oil pipeline business defaults, Minnesota will need the full amount of the trust fund to see that Line 93 gets cleaned up. It will not have that under this agreement.

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3. The "discount rate" assumptions are too generous to Enbridge.

Manipulating the "discount rate"—assuming high real rates of return on investments—has always been the way for those who owe a stream of payments over years to minimize what they owe. According to the current Office of Management and Budget (OMB) Circular A-94,[1] the nominal interest rates on Treasury notes and bonds range from 1.3% per year at a 3-year maturity date, up to 2.5% with a 20-year maturity rate. The real (controlling for inflation) interest rates range from -1.2% at 3 years, up to 0.4% at 20 years. Enbridge and the Department of Commerce are estimating nominal, pre-tax rates of return at 7.91 percent, and real, after-tax rates of return at 5.5 percent, and so the actual annual contributions required to get to $1.2 billion by 2041 get pretty small. FOH has not done the arithmetic, but the Commission could and should insist on seeing scenarios at various discount rate levels to see how they would affect the contribution levels. Certainly, the public is not going to believe an annual contribution of $61,268,721 is sufficient. Nor should they.

4. Leaving the funding responsibility with an Enbridge Subsidiary creates too great a risk of noncompliance.

FOH has previously detailed how corporations use bankruptcy, or the threat of bankruptcy, to avoid environmental cleanup obligations. Isolate liabilities in one corporate entity, and then kick (or threaten to kick) just that entity into bankruptcy to either discharge the obligations entirely or force a favorable settlement.[2] Here, leaving the sole responsibility to "Enbridge Energy-Limited Partnership" simply speeds up that process because the parent company may not even need to reallocate assets and liabilities to protect itself.

5. There are no effective self-correcting mechanisms in this agreement.

The cost of decommissioning Line 93 is going to change every year. So are reasonable discount rate assumptions over different payment periods. So is Enbridge's (and the oil and oil pipeline industry's) overall financial position and the risk of default. But this agreement contains very few opportunities to make needed mid-course corrections to change contribution levels or speed up payments. There will be no point to asking Enbridge for more money when it is running

[1] https://www.whitehouse.gov/wp-content/uploads/2022/05/Appendix-C.pdf

[2] Of course, corporations do not use this tactic just to reduce environmental liabilities. See In re Aearo Technologies LLC, *2023WL 3938436 (Bankr. S.D. Ind. June 29, 2023)(EM attempting to place all liabilities for defective earplugs into subsidiaries that then filed for bankruptcy);* In re LTL Management LLC, 652 B.R.433 (Bankr. D. N.J. July 28, 2023)(Johnson & Jonson putting liability for talc powder in subsidiary and then filing for bankruptcy)

out of money, but that is the position in which this agreement would leave the State of Minnesota.

The result of approving this agreement is that Minnesota's taxpayers, landowners, and environment will not be protected when Enbridge decides Line 93 is no longer profitable enough to operate, whether it be because of a spill or because of the shift away from fossil fuels. Yet again, policymakers will have over-discounted the future, and yet again, policymakers will have let a company with long-term liability privatize its profits and socialize its costs. This Commission can and should demand better than that.

Respectfully submitted,

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