

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
Saint Paul, Minnesota 55101-2147

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 3 Replacement Project in Minnesota from the North Dakota Border to the Wisconsin Border

MPUC Docket No. PL-9/CN-14-916
OAH Docket No. 65-2500-32764

SUPPLEMENTAL FILING BY THE MINNESOTA DEPARTMENT OF COMMERCE

REGARDING

SPECIFIC DEFICIENCIES OF ENBRIDGE INC'S.
CURRENTLY EFFECTIVE GENERAL LIABILITY INSURANCE POLICIES

August 31, 2018

I. INTRODUCTION

The Minnesota Public Utilities Commission (Commission) issued an oral decision on June 28, 2018 granting a Certificate of Need (CN) for the proposed Line 3 Replacement Project (Project). The Commission granted the CN contingent upon Commission review and approval of several modifications or conditions. It is the Minnesota Department of Commerce's (Department) understanding that, but for the required modifications or conditions, the Commission determined that the record would not support a finding that granting the CN would be more favorable to the public interest than the consequences of denying the CN.

In a Notice issued by the Commission on July 11, 2018, the Commission directed the applicant, Enbridge Energy, Limited Partnership (Enbridge or the Company) to submit compliance filings on five mandatory CN conditions. In its July 11, 2018 Notice, the Commission also requested the Department make recommendations on whether the Commission should approve or modify the Company's compliance filings.

In its August 10, 2018 supplemental recommendations, the Department concluded that the Company's current general liability (GL) insurance coverage applicable to the Enbridge U.S. Mainline System, includes significant exclusions for insurance coverage related to damages caused by a crude oil spill. Further, the Department recommended that the Commission not approve the compliance filing to the extent that Enbridge intends to rely on its current policy language to cover the Project because Enbridge's current policies do not adequately protect the public interest.

The Department received a subsequent information request from the Company for the Department's analysis of the current GL insurance coverage that resulted in its determining the coverage insufficient. While the Company bears the burden to demonstrate to the Commission that its currently-effective GL insurance policies would provide adequate coverage of damages that may arise from crude oil spills on the proposed Line 3 once in operation, the Department submits this supplemental information for the Commission's consideration.

II. ENBRIDGE'S CURRENT INSURANCE COVERAGE IS DEFICIENT

As summarized in its August 10 filing, the Department concluded that the GL insurance policies of Enbridge and Enbridge Inc. applicable to the Enbridge U.S. Mainline system and, potentially, a new Line 3,¹ are deficient because the coverage terms contain significant exclusions related to damages caused by crude oil spills.² **[TRADE SECRET HAS BEEN EXCISED]**. In the Department's assessment, the policies do not cover damages from crude oil spills to any significant degree, if at all.

A. CURRENT GL INSURANCE COVERAGE

1. Policy One

[TRADE SECRET HAS BEEN EXCISED].

¹ Enbridge's currently-effective insurance policies, provided in response to DOC DER IR 311, are attached hereto as Attachment 2. The Department "bates stamped" the policies together with Enbridge's updated response to the IR.

² See, e.g., Attachment 2 at DOC DER 206-207 para. B.12. and DOC DER 137 para. A.3. At trial, Enbridge witness Ms. Lim testified that all of the Company's then-current \$940 million of insurance coverage was available to cover a pipeline rupture. Evid. Hrg. Tr. Vol. 6B (Nov. 9, 2017) at 134 (Lim). See also *id.* at 141-143.

2. *Policy Two*

The Department agrees that Enbridge Inc.'s insurance policies appear to cover some pollution losses,³ and that Enbridge Inc. currently has a total aggregate of \$940,000,000 in liability coverage.⁴ But the Department disagrees with Enbridge's claims that terms of **[TRADE SECRET HAS BEEN EXCISED]** Policy Two cover damages arising out of crude oil spills, at least to a meaningful extent. The Department also disagrees with Enbridge's claim that Policy Two **[TRADE SECRET HAS BEEN EXCISED]**.⁵

a. *Definitions*

The definitions in Policy Two **[TRADE SECRET HAS BEEN EXCISED]**.

b. *Coverage Exclusions and Exceptions to Exclusions*

In the Department's view, damages from a future crude oil spill would not be covered under Policy Two. The Department identifies several provisions that initially appear to provide coverage for damages arising from crude oil spills but, upon a closer reading of the policy, appear to exclude such coverage. For example, Policy Two includes **[TRADE SECRET HAS BEEN EXCISED]**. The Department's close inspection of Policy Two, however, found no meaningful coverage for damages caused by crude oil spills.

[TRADE SECRET HAS BEEN EXCISED]. Thus, coverage terms are insufficient to protect the public interest, and appear designed *not to cover* most crude oil pipeline spills. Importantly, coverage for damages from crude oil spills from Enbridge's crude oil transportation operations⁶

³ Attachment 1 (Enbridge Response to DOC IR No. 312).

⁴ Attachment 2 at DOC DER 001 (Enbridge Updated Response to DOC IR No. 311).

⁵ Attachment 1 (Enbridge Response to DOC IR No. 312).

⁶ In its Initial Brief at 126, Enbridge stated that the \$940 million under its then-current GL insurance covered "Enbridge for its legal liability for claims arising out of its operations and includes pollution liability coverage"

appear to be excluded by other policy language, as discussed below. **[TRADE SECRET HAS BEEN EXCISED]**.

III. CONCLUSION

Enbridge has provided its currently-applicable GL insurance policies in response to Department information requests related to Enbridge's compliance filing regarding a condition for a CN for the Project. It is Enbridge's burden – not the Department's – to demonstrate that the terms of its GL insurance policies will provide coverage consistent with the Commission's order. This supplemental filing was submitted in response to an information request seeking the underlying analysis of the Department's August 10 recommendations.

Consistent with its filings on July 30 and August 10, 2018, the Department continues to conclude that Enbridge Inc.'s current GL insurance coverage applicable to the Enbridge U.S. Mainline System and, potentially, a new Line 3, include significant exclusions for insurance coverage related to damages caused by a crude oil spill. Enbridge's current policies with the exclusions and other limiting language will not comply with the terms and conditions in the Department's insurance recommendations. Therefore, the Department continues to recommend that the Commission not approve the Company's compliance filings related to the insurance condition.

Dated: August 31, 2018

Respectfully submitted,

/s/ Kathleen C. Finnegan

Kathleen C. Finnegan

General Counsel

Minnesota Department of Commerce

85 7th Place East, Suite 280

Saint Paul, MN 55101

**Minnesota Department of Commerce
Division of Energy Resources
Information Request**

Docket Number: PL9/CN-14-916 Nonpublic Public
Requested From: Enbridge Energy Date of Request: 7/19/2018
Type of Inquiry: General Response Due: 7/31/2018

Requested by: Peter Madsen
Email Address(es): Peter.Madsen@ag.state.mn.us
Phone Number(s): 651-757-1383

Request Number: 312
Topic: Insurance
Reference(s): Nonpublic Attachments 5A-B of Enbridge's July 16, 2018

Request:

Enbridge witnesses testified and the (now Revised) Final FEIS stated that **[TRADE SECRET BEGINS TRADE SECRET ENDS]**. DOC DER TS Initial Brief at 181 and footnote 857.

- a. Regarding the currently effective Enbridge Inc. GL insurance policies, **please confirm** that they include a GL policy for sudden accidental pollution coverage and for each such policy **confirm** that it **[TRADE SECRET BEGINS ...TRADE SECRET ENDS]**.

RESPONSE:

- a. Enbridge confirms that the currently effective GL insurance policies include sudden and accidental pollution coverage. **[NONPUBLIC DATA HAS BEEN EXCISED]**

Likewise, the sudden and accidental pollution coverage is written back in on the **[NONPUBLIC DATA HAS BEEN EXCISED]**

The remainder of the policies in the liability program follow the form of the policies submitted as Attachments 311A and 311B to Enbridge's Response to DOC-DER IR No. 311, and the submitted copies are representative of the terms and conditions throughout the program.

To be completed by responder
Response Date: July 25, 2018
Response by: Selina Lim
Email Address: Selina.lim@enbridge.com

Minnesota Department of Commerce
Division of Energy Resources
Information Request

Docket Number: PL9/CN-14-916 Nonpublic Public
Requested From: Enbridge Energy Date of Request: 7/19/2018
Type of Inquiry: General Response Due: 7/31/2018

Requested by: Peter Madsen
Email Address(es): Peter.Madsen@ag.state.mn.us
Phone Number(s): 651-757-1383

Request Number: Updated 311
Topic: Insurance
Reference(s): Nonpublic Attachments 5A-B of Enbridge's July 16, 2018 filing

Request:

Nonpublic Attachments 5A-B of Enbridge's July 16, 2018 filing concern Enbridge's stated compliance with the insurance recommendations of DOC DER and references **[NONPUBLIC DATA HAS BEEN EXCISED]**. Further, on June 28, 2018, counsel for Enbridge agreed that Enbridge's annual compliance filings would include copies of its insurance policies, subject to protections of nonpublic data.

- a. Please provide complete copies of Enbridge Inc.'s currently effective general liability (GL) insurance policies.

RESPONSE:

Attached are copies of the following currently effective base policies for Enbridge's \$940,000,000 liability coverage tower program. The representative policies are:

[NONPUBLIC DATA HAS BEEN EXCISED]

The remainder of the policies in the liability program follow the form of the underlying attached policies and the submitted copies are representative of the terms and conditions throughout the program.

UPDATE:

As requested by DOC-DER on August 3, 2018, Enbridge is also providing copies of

[NONPUBLIC DATA HAS BEEN EXCISED]

The policies included as Attachments 311C and 311D were not provided as part of the July 25, 2018 response because they are not relevant to DOC-DER's request for representative copies of Enbridge's GL insurance policies.

[NONPUBLIC DATA HAS BEEN EXCISED]

To be completed by responder

Response Date: Updated August 7, 2018

Response by: Selina Lim

Email Address: Selina.lim@enbridge.com

In accordance with Minnesota Rules, part 7829.0500, Minnesota Statutes Chapter 13, the Protective Order entered on April 13, 2015 in the MPUC Docket No. PL-9/CN-14-916 and the Amended Protective Order dated January 13, 2017 in MPUC Docket No. PL-9/PPL-15-137, Enbridge has designated as trade secret and nonpublic the attachments to its Response to DOC IR No. 311 related to the terms and conditions of Enbridge's insurance policies because they contain data, which, if released, would have a detrimental effect on Enbridge by providing potential competitors and others in the insurance marketplace with valuable information not otherwise readily ascertainable and from which these persons would obtain economic value. Terms and conditions of these insurance policies are heavily negotiated between Enbridge and its insurers, and release of this information could negatively impact Enbridge in future negotiations and claims processes. Accordingly, Enbridge and its insurers take substantial steps to protect and keep these insurance policy contract terms confidential.

In accordance with Minnesota Rules, part 7829.0500, Minnesota Statutes Chapter 13, the Protective Order entered on April 13, 2015 in the MPUC Docket No. PL-9/CN-14-916 and the Amended Protective Order dated January 13, 2017 in MPUC Docket No. PL-9/PPL-15-137, Enbridge has designated as trade secret and nonpublic the attachments to its Response to DOC IR No. 311 related to the terms and conditions of Enbridge's insurance policies because they contain data, which, if released, would have a detrimental effect on Enbridge by providing potential competitors and others in the insurance marketplace with valuable information not otherwise readily ascertainable and from which these persons would obtain economic value. Terms and conditions of these insurance policies are heavily negotiated between Enbridge and its insurers, and release of this information could negatively impact Enbridge in future negotiations and claims processes. Accordingly, Enbridge and its insurers take substantial steps to protect and keep these insurance policy contract terms confidential.

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