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January 17, 2022

VIA EMAIL

Matthew Russo
U.S. EPA, Region 5
Office of Regional Counsel (C-14J)
77 W. Jackson Blvd.
Chicago, IL 60604
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RE: *United States v. Enbridge Energy, Limited Partnership, et al.*, Civ. No. 1:16-cv-00914, Consent Decree, Response to Fourth Set of Stipulated Penalties

Dear Mr. Russo:

This letter responds to your letter of December 9, 2021, regarding proposed stipulated penalties. The December 9 letter proposed penalties in the amount of \$2,978,700 for 13 alleged violations of the Consent Decree (“Fourth Set of Stipulated Penalties”). Following an extensive exchange of information between the parties, Enbridge has paid the amount sought by the government. This payment, however, is made without any admission of liability by Enbridge with respect to the alleged violations in order to resolve claims specified in your letter of December 9. Set forth below is Enbridge’s response to the specific allegations contained in the December 9 letter. Bolded text below sets forth EPA’s original description of the alleged violations at issue.

Fourth Set of Stipulated Penalties

- 1. \$314,000 for running an annual Crack In-line Inspection (“ILI”) tool on Original US Line 3, CR-PW, 76 Days late (see Paragraphs 22.d, 28, 30, and 66 of the Consent Decree; VSR4NC01 and VSR5NC01). This amount accrued during the period from April 16, 2019, one year following the previous Crack ILI, until July 1, 2019, the date the Crack ILI tool was run.**

This alleged violation arose from a difference in interpretation between the EPA and Enbridge in understanding the requirement for conducting “annual” ILIs. Enbridge’s interpretation at the time was that the term “annual” in the Consent Decree (“CD”) required that the ILI tools be run

once per calendar year. EPA's interpretation was that each ILI must be scheduled within 12 months of the previous, regardless of when in the year it was scheduled. Enbridge, without agreeing that its initial interpretation was incorrect, subsequently agreed to schedule all Line 3 runs in line with the EPA interpretation that each ILI would be scheduled within 365 days of the previous run, with the exception of the final year of service. As discussed previously, the use of EPA's interpretation resulted in a period between inspections that exceeded 12 months in the last year of service for Line 3, and thus was ultimately not more conservative than Enbridge's interpretation. This difference in interpretation regarding timing had no impact on safety or any pipeline integrity risk reduction actions conducted by Enbridge.

- 2. \$424,000 for calculating the Remaining Life of one Crack feature on Line 1, CR-PW, 98 Days late (see Paragraphs 44 and 60 of the Consent Decree). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the period from April 11, 2019, the deadline for completing the calculation, until July 18, 2019, the date the calculation was completed.**

This allegation relates to a unique internal/external interacting (Stacked) feature. Enbridge agrees that the Remaining Life calculation for this feature was not made during the initial assessment and was then reassessed. The Consent Decree is not clear on how to assess stacked features. This stacked feature was not a Feature Requiring Excavation (FRE) based on both the initial and recalculated Remaining Life. No actions were required based on the recalculation. This is not a safety related concern as no repair was required to be completed on this joint based on both the initial and recalculated Remaining Life. Enbridge reported this non-compliance in the Fifth Semi-Annual Report ("SAR") submitted to EPA on January 17, 2020.

- 3. \$831,600 for uploading Line 5, ENO-EMA, Nondestructive Examination ("NDE") data to OneSource more than 60 Days after completing field investigations relating to the relevant ILI Tool Run (see Paragraph 77.d of the Consent Decree). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the 198-Day period from November 19, 2018, 60 Days after Enbridge approved the NDE data, until June 5, 2019, the date the NDE data was uploaded to OneSource. The proposed penalty amount for this violation is less than the total amount of stipulated penalties that accrued during the period of noncompliance. However, subject to approval of authorized officials, we are prepared to recommend exercising discretion to assess this reduced penalty amount.**

The NDE reports from these inspections were not in the usual format to be uploaded to OneSource and thus were uploaded after the 60 Day CD requirement. Once reformatted the NDE reports were uploaded to OneSource. This is not a safety or pipeline integrity related concern as the information associated with the NDE report was available to Enbridge pipeline integrity personnel for feature assessment even though it was not in OneSource and the features were appropriately mitigated. Enbridge reported this non-compliance in the Fifth SAR submitted to EPA on January 17, 2020.

- 4. \$831,600 for uploading Line 5, WNO-WMA, NDE data to OneSource more than 60 Days after completing field investigations relating to the relevant ILI Tool Run (see Paragraph 77.d of the Consent Decree; VSR4NC18 and VSR5NC13). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the 198-Day period from November 19, 2018, 60 Days after Enbridge approved the NDE data, until June 5, 2019, the date the NDE data was uploaded to OneSource. The proposed penalty amount for this violation is less than the total amount of stipulated penalties that accrued during the period of noncompliance. However, subject to approval of authorized officials, we are prepared to recommend exercising discretion to assess this reduced penalty amount.**

The NDE reports from these inspections were not in the usual format to be uploaded to OneSource and thus were uploaded after the 60 Day CD requirement. Once reformatted the NDE reports were uploaded to OneSource. This is not a safety or pipeline integrity related concern as the information associated with the NDE report was available to Enbridge pipeline integrity personnel for feature assessment even though it was not in OneSource and the features were appropriately mitigated. Enbridge reported this non-compliance in the Fifth SAR submitted to EPA on January 17, 2020.

- 5. \$216,000 for failing to add 27 Corrosion features on Line 1, CR-PW, to the Dig List as Features Requiring Excavation (“FRE”) within 180 Days after completion of an ILI Tool Run despite the fact that Enbridge had not at that point resolved data quality concerns relating to such features (see Paragraphs 34.f and 37 of the Consent Decree; VSR4NC06). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the four-Day period from February 14, 2018, 180 Days after tool removal, until February 18, 2019, the date the data quality concerns were resolved.**

The Line 1 Investigative Dig Program did not add features to the Dig List until 4 Days after the 180-Day period for Data Quality evaluation. This occurred because there is ambiguity in how Paragraph 34 of the Consent Decree is drafted, and Enbridge did not interpret that investigative digs needed to be added to the dig list while working through the Data Quality issues. This was not a safety related concern as the repaired features confirmed the Data Quality issue and the reported features were determined not to meet excavation criteria.

- 6. \$234,500 for uploading Line 3, CR-PW, NDE data to OneSource more than 60 Days after completing field investigations relating to the relevant ILI Tool Run (see Paragraphs 39, 40, and 77.d of the Consent Decree; VSR4NC20). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the 107-Day period from May 19, 2019, 60 Days after Enbridge approved the NDE data, until September 4, 2019, the date the NDE data was uploaded to OneSource. The proposed penalty amount for this violation is less than the total amount of stipulated penalties that accrued during the period of noncompliance.**

However, subject to approval of authorized officials, we are prepared to recommend exercising discretion to assess this reduced penalty amount.

This NDE assessment was performed on a joint adjacent to a Consent Decree excavation and is not classified as a Feature Requiring Excavation. Currently all NDE reports are uploaded to OneSource within 60 Days, but early in the CD there were no timelines established for non-CD Digs as the terms "completed" and "all" digs are not clearly defined in the CD. Enbridge believes that there are still open questions about the current interpretation of Paragraph 77.d.

- 7. \$10,000 for a five-Day outage of the 24-hour Alarm on the entirety of Line 14 (see Paragraphs 92 and 102 of the Consent Decree; VSR4NC21). This amount accrued during the period from December 7, 2018, the first Day of the outage, until December 12, 2018, the date the alarm was restored.**

The 24-hour Alarm was inadvertently disabled on Line 14 for a 5-day period. The MBS system including 24-hour Alarm was disabled during a planned pipe replacement, and when the MBS was reinstated the 24-hour Alarm was unknowingly excluded from the restart. During the 24-hour Alarm outage, Enbridge's additional and complementary leak detection capabilities, including other MBS alarm types, the Rupture Detection System, controller monitoring, visual surveillance and reports, and scheduled line balance calculations, remained operational and effective. Continuous leak detection capabilities remained in place on Line 14 for the duration of the 24-hour Alarm outage and as a result the outage was not a safety-related issue.

- 8. \$4,000 for failing to properly account for the combined depth of one intersecting Crack/Corrosion feature on Line 4, DR-FW, when making a Field Burst Pressure calculation (see Paragraph 40 and Appendix B of the Consent Decree; VSR4DI09). Although Enbridge never performed a correct Field Burst Pressure calculation for this feature, it proceeded to complete an ILI tool depth bias analysis that incorporated the incorrect value. For purposes of this penalty assessment, EPA proposes to assess stipulated penalties as follows: (1) one Day for performing an incorrect Field Burst Pressure calculation on October 11, 2018; and (2) one Day for failing to incorporate the correct Field Burst Pressure calculation into the bias analysis that Enbridge performed in accordance with Paragraph 40 of the Consent Decree. The proposed penalty amount for this violation is less than the total amount of stipulated penalties that accrued during the period of noncompliance. However, subject to approval of authorized officials, we are prepared to recommend exercising discretion to assess this reduced penalty amount.**

Enbridge completed the Field Burst Pressure calculations and met the requirements of the Consent Decree. This information was presented and reviewed by the Independent Third Party (ITP) with no compliance issues identified. Enbridge disagrees that any non-compliance occurred.

- 9. \$8,000 for imposing a Point Pressure Restriction (“PPR”) for one intersecting dent/Crack FRE on Line 3, GF-CR, four Days late (see Paragraph 59 of the Consent Decree). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the period from November 14, 2019, two Days after the SML’s “PI Listing Approval Request Email,” until November 18, 2019, the date the PPR was imposed.**

Prior to entering into the Fifth Modification of the Consent Decree, Enbridge and the DOJ had different interpretations regarding what triggered the start time for different assessment processes. Enbridge agreed through the 5th modification to use the DOJ interpretation moving forward. The ITP assessed additional information that Enbridge provided and recommended this item to be Compliant. The four-day delay occurred as a result of this differing interpretation and was not a safety related concern, given conservatism built into Enbridge’s ILI programs.

- 10. \$16,000 for imposing PPRs for eight Crack FRE on Line 6A, AM-GT, one Day late (see Paragraphs 46.b and 47 of the Consent Decree). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the period from August 21, 2019, two Days after the SML’s “PI Listing Approval Request Email,” until August 22, 2019, the date the PPRs were imposed.**

Prior to entering into the Fifth Modification of the Consent Decree, Enbridge and the DOJ had different interpretations regarding what triggered the start time for different assessment processes. Enbridge agreed through the 5th modification to use the DOJ interpretation moving forward. The one-day delay occurred as a result of this differing interpretation and was not a safety related concern given conservatism built into Enbridge’s ILI program.

- 11. \$35,000 for failing to timely impose a PPR for one intersecting dent/Crack FRE on Line 5, MA-BC (see Paragraphs 34.f, 38.b, 46.b, and 59.b of the Consent Decree; VSR6NC04). Although Enbridge excavated the feature at issue as part of a validation dig, it did not complete the dig within the 180-Day outer limit for resolving data quality concerns, so Enbridge should have treated the feature as a presumptive FRE as of that time, and it should have imposed a PPR within two Days after that date. For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the 16-Day period from January 23, 2020, 182 Days after tool removal, until February 8, 2020, the date of excavation/repair.**

Enbridge did not interpret the Data Quality provisions as requiring a PPR once a Data Quality issue was identified. The Data Quality issue was resolved by the vendor, and the vendor reissued the ILI report reclassifying the feature as a geometric anomaly, not a crack. Enbridge issued the dig as a validation dig and repaired the feature, regardless of the fact it did not meet Consent Decree excavation criteria. The Data Quality issue was resolved when the revised report was received, and did not need to wait until the feature was excavated and NDE assessed.

This is not a safety related concern as Enbridge correctly determined that this feature did not meet Consent Decree excavation criteria, as confirmed by NDE in the field.

12. \$6,000 for repairing one intersecting dent/Corrosion FRE on Line 6A, PE-AM, three Days late (see Paragraphs 38.a and 58 of the Consent Decree; VSR6NC05). This amount accrued during the period from January 15, 2020, 30 Days after the feature was added to the Dig List, until January 18, 2020, the date of excavation/repair.

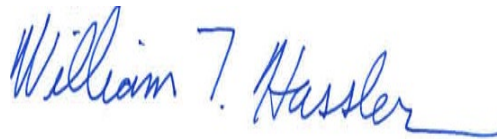
As part of Enbridge's internal quality review process, it was determined that the Dig deadline for this Feature was inadvertently set with a 60-Day deadline instead of the required 30-Day deadline per Paragraph 58.c in the Fifth Modification of the Consent Decree. The Feature was repaired with a sleeve on 1/18/2020, 3 Days after the 30-Day Dig deadline. The three-day delay did not have any safety impact given conservatism built into Enbridge's ILI program. Enbridge identified the error, corrected it immediately and self-reported it to the ITP/EPA. Enbridge reported this non-compliance in the Sixth SAR submitted to EPA on July 17, 2020

13. \$48,000 for imposing PPRs for eight Corrosion FRE on Line 6A, PE-AM, three Days late (see Paragraph 52.b of the Consent Decree; VSR6NC09). For purposes of this penalty assessment, EPA proposes to assess stipulated penalties that accrued during the period from July 1, 2019, two Days after the SML's "PI Listing Approval Request Email," until July 4, 2019, the date the PPRs were imposed.

Prior to entering into the Fifth Modification of the Consent Decree, Enbridge and the DOJ had different interpretations regarding what triggered the start time for different assessment processes. Enbridge agreed through the 5th modification to use the DOJ interpretation moving forward. The three-day delay occurred as a result of this differing interpretation and was not a safety related concern, given conservatism built into Enbridge's ILI program.

Enbridge appreciates the opportunity to respond to EPA's letter of December 9, 2021.

Sincerely,



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Attorneys for Enbridge Energy, Limited Partnership

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Matthew Russo
January 17, 2022
Page 7

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