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October 21, 2022

VIA EMAIL

Matthew Russo
U.S. EPA, Region 5
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RE: *United States v. Enbridge Energy, Limited Partnership, et al.*, Civ. No. 1:16-cv-00914,
Consent Decree, Response to Fifth Set of Stipulated Penalties

Dear Matt:

This letter responds to your letter of October 12, 2022, regarding proposed stipulated penalties. The October 12 letter proposed penalties in the amount of \$1,141,000 for six alleged violations of the Consent Decree (“Fifth 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 October 12. Set forth below is Enbridge’s response to the specific allegations contained in the October 12 letter.

Fifth Set of Stipulated Penalties

- 1. \$4,000 for completing the preliminary data quality review for one Crack In-line Inspection (“ILI”) Tool Run on Line 65, GF-CR, two Days late. (See VSR8NC01).**

Under Paragraph 34.a of the Consent Decree, Enbridge was required to complete the preliminary data quality review relating to this ILI Tool Run within 30 Days after receipt of the Initial ILI Report. Enbridge received the Initial ILI Report for this Tool Run on March 19, 2021, so Enbridge was required to complete the preliminary data quality review relating to this Tool Run by no later than April 19,

2021. However, Enbridge did not complete its preliminary data quality review relating to this Tool Run until April 21, 2021 – two Days after the applicable deadline. EPA is assessing the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the two Days that the preliminary data quality review was late.

Enbridge Response:

During the Semi-Annual Report (SAR) 8 reporting period, Enbridge discovered an issue related to the ILI report receipt date for the L65 GF-CR UTCD November 2020 ILI. It was determined that the ILI Analyst inadvertently entered the ILI Report receipt date incorrectly into the Enbridge system that is used for tracking and scheduling ILI related task deadlines.

The date entered into Enbridge's system was the ILI Report receipt date deadline (3/22/2021) and not the actual ILI Report receipt date (3/19/2021) which resulted in an incorrect Final Assessment Approval (SME) deadline being established. The incorrect Final Assessment Approval (SME) deadline resulted in the preliminary quality review and the Interacting Feature review being completed 2 Days later (4/21/2021) than the 30-Day Consent Decree deadline of 4/19/2021. This is an administrative error and not a safety concern as all other Consent Decree requirements were met for this ILI including the addition of FRE's to the Dig List and the imposition of required PPR's.

Enbridge has completed a full review of all current ILI report receipt dates and has determined that no other programs had similar data entry discrepancies.

2. \$4,000 for identifying one intersecting dent/Crack Feature Requiring Excavation ("FRE") on Line 65, GF-CR, two Days late. (See VSR8NC01).

Under Paragraph 58.a.(1) and (2) of the Consent Decree, Enbridge was required to identify all Unmitigated Intersecting Features detected based on this Tool Run within 30 Days after receipt of the Initial ILI Report relating to this Tool Run. Enbridge received the Initial ILI Report for this Tool Run on March 19, 2021, so Enbridge was required to complete the identification of all Unmitigated Intersecting Features detected on the basis of this Tool Run by no later than April 19, 2021. However, Enbridge identified one intersecting dent/Crack FRE relating to this Tool Run on April 21, 2021 – two Days after the applicable deadline. EPA is assessing the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the two Days that identification of this FRE was late.

Enbridge Response:

See explanation for Item #1 above. Items #1 and #2 relate to the same underlying facts.

- 3. \$384,000 for adding one dent FRE on Line 14, AM-MK, to the Dig List 90 Days late. (See VSR8NC02).**

No later than 180 Days after the ILI tool was removed from Line 14 at the conclusion of the above-referenced ILI, Enbridge was required, pursuant to Paragraph 37 of the Consent Decree, to identify all dents that qualify as FRE and to add such dents to the Dig List. Since the ILI tool was removed from Line 14 at the conclusion of the above-referenced ILI on June 16, 2020, all FREs relating to this ILI were required to be added to the Dig List by no later than December 16, 2021. Based on an initial incorrect feature characterization, Enbridge did not add one dent feature to its Dig List until March 16, 2021 – 90 Days after the applicable deadline. EPA is assessing the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each of the 90 Days that Enbridge was late in adding this FRE to the Dig List.

Enbridge Response:

Enbridge does not agree that this issue arose from “incorrect feature characterization.” The vendor conducting the ILI characterized this feature as a “bottom-side dent,” and reported that characterization in the Initial ILI Report provided to Enbridge. A bottom-side dent of this size would not be considered an FRE under the Consent Decree. The characterization used was consistent with the methodology that Enbridge has consistently applied in over 50 geometry programs since the start of the Consent Decree in 2017. As a result, Enbridge had no reason to believe that this feature was an FRE at the time the ILI report was received.

Enbridge’s procedure in applying Table 4 of the Consent Decree historically has been to determine dent orientation (top-side versus bottom-side) solely by the location of the Most Severe Point (MSP) identified in the Initial ILI Report. Enbridge followed this procedure here. Enbridge’s application of the term “top-side” applies best engineering judgement and is consistent with industry practice. The definition of top-side used has been clearly documented within Enbridge’s Minimum Reporting Requirements (MRR) and previously has been provided to the ITP. Enbridge believed (and maintains) that this definition satisfied Consent Decree requirements.

During the SAR8 reporting period, Enbridge discussed this specific feature with the ITP. The ITP asked Enbridge to provide a profile of the feature aligned to its orientation, which Enbridge did. Importantly, the additional information provided in this profile was not contained in the Initial ILI Report. Although the MSP is bottom side, a portion of the profile does fall above the demarcation between the top and bottom side of the pipeline. It is this portion of the profile that led the ITP to interpret this feature as a top-side dent under Table 4 of the CD.

The method relied upon by the government in assessing the penalty for this item requires the use of a dent profile aligned to pipe orientation, which is not contained in an Initial ILI Report and does not appear anywhere in CD requirements. The generation of a profile aligned to orientation requires additional data analysis to be completed and would require Enbridge’s ILI vendor’s

software and reporting processes to be modified for a profile to be incorporated into an Initial ILI Report. Given that the methodology used by Enbridge and its' vendor is detailed in the MMR, Enbridge did not foresee this interpretation issue arising. This methodology generally is industry-practice, and was provided to the ITP. The ITP did not raise concerns in previous programs regarding the method that Enbridge and its vendor used to assess top-side versus bottom-side dents.

The particular feature at issue on Line 14 is not a safety-related concern. While Enbridge did not (and does not) believe this feature is a Feature Requiring Excavation under the terms of the CD, Enbridge nevertheless agreed to excavate and repair the feature in question, as requested by EPA. The feature was repaired on April 8, 2021 (in advance of any "potential FRE" repair deadline).

4. \$12,000 for failing to perform adequate visual inspections of each of the Line 5 Dual Pipelines in 2016, 2018, and 2020. (See VSR8NC03).

Under Paragraph 68.c of the Consent Decree, Enbridge is required to complete periodic visual underwater inspections of each of the Line 5 Dual Pipelines in the Straits of Mackinac ("Straits") to ensure compliance with specified requirements of the Consent Decree, including a requirement to ensure that portions of each Dual Pipeline located within 65 feet of water or less are continuously covered in a buried trench on the floor of the Straits. Each of the visual underwater inspections performed by Enbridge during 2016, 2018, and 2020 were inadequate to assure compliance with the continuous cover requirement applicable to each Dual Pipeline, because each of those inspections failed to cover all portions of the inspected pipeline located in shallow portions of the Straits. EPA is assessing the stipulated penalty amount prescribed under Paragraph 164.e of the Consent Decree for each incomplete visual inspection of the east leg of the Dual Pipelines in 2016, 2018, and 2020, and a separate penalty for each incomplete visual inspection of the west leg of the Dual Pipelines in 2016, 2018, and 2020.

Enbridge Response:

Enbridge believes that successful inspections were completed in 2016, 2018, and 2020 to confirm coverage of the Dual Pipelines. In those years, Enbridge collected an extensive amount of bathymetric survey data using a Kongsberg MUNIN autonomous underwater vehicle (AUV) equipped with a Kongsberg EM 2040 multibeam echosounder (200/300/400 kHz), and an EdgeTech 4600 combined bathy/side scan sonar. The surveys collected approximately 11 million data points in 2016; approximately 16 million data points in 2018; and approximately 18 million data points in 2020. Enbridge utilized this extensive data to develop the Digital Terrain Model (DTM), which combined with satellite images, confirmed coverage for sections of the Dual Pipelines located in less than 65-feet of water.

Subsequently, in 2021, Enbridge completed an additional survey to address the ITP's feedback that a visual inspection (as opposed to bathymetric survey) should be performed under Paragraph 68.c to confirm coverage of the Dual Pipelines in shallow water near shorelines of the Straits. Prior to 2021, Enbridge was not aware of the ITP's view that additional visual inspections should be completed – above and beyond the inspections occurring in 2016, 2018, 2020. As a result of the 2021 visual inspection, all parties now agree that Enbridge has fulfilled the requirements under Paragraph 68.c to perform a visual inspection to confirm that the Dual Pipelines remain continuously covered in all areas in less than 65 feet of water depth.

5. \$8,000 for imposing an incorrect Point Pressure Restriction (“PPR”) for one intersecting dent/Crack FRE on Line 5, IR-NO. (See VSR8DI04, 21VIRD008, and 21VIRD011).

Under Paragraph 59.b of the Consent Decree, within two Days after determining that a dent feature has any indication of cracking, Enbridge is required to limit operating pressure at the location of the feature to not more than 80% of the highest actual operating pressure at the location of the feature over the last 60 days. Based on the above-referenced ILI, Enbridge identified an intersecting dent/Crack FRE on Line 5 on April 9, 2021 and calculated a PPR of 472 pounds per square inch (“psi”) based on the highest actual operating pressure at the location of the feature during the 60-day period prior to April 9, 2021. Although Enbridge confirmed the previous identification of the dent/Crack FRE on April 12, 2021, instead of establishing a PPR of 472 psi based on the 60-day period prior to initial identification of the feature, Enbridge revised the PPR to incorrectly reflect operating pressure increases that occurred subsequent to the initial, correct identification of the dent/Crack FRE. Enbridge established the incorrectly calculated PPR of 490 psi on April 12, 2021, and the PPR remained in effect until April 16, 2021, when Enbridge repaired the dent/Crack FRE. EPA is assessing the penalty amount prescribed in Paragraph 164.e of the Consent Decree for each of the four Days that the incorrectly calculated PPR was in effect.

Enbridge Response:

Enbridge does not believe that it “incorrectly reflect[ed] the operating pressure increases that occurred subsequent to the initial, correct identification of the dent/Crack FRE.” Enbridge applied the correctly-calculated PPR of 490 psi based on the “highest actual operating pressure... over the last 60-days” from when the dent/Crack FRE was identified via Subject Matter Expert (SME) approval on April 12, 2021. The fact that the 60-day high changed between approval by the SME and subsequent review of this approval by the supervising Subject Matter Lead (SML) should not have resulted in a non-compliance, consistent with EPA precedent regarding stipulated penalties. Enbridge believes that it fully satisfied Consent Decree requirements as previously interpreted by EPA.

In this case, a pressure restriction of 80% of the 60-day high was approved by the SME, resulting in a preliminary PPR of 472 psi. However, between the time of the Subject Matter Lead (SML) analysis and the approval of the SME, operating pressure had increased slightly, and on the date the SME approved the 80% of 60 day high the resulting pressure restriction to be applied was 490 psi. Note, however, that if operating pressure had *decreased* during this period, the pressure restriction would have been lower than the preliminary pressure restriction approved by the SML. In this case it simply happened to be slightly higher. The Consent decree timelines and processes that Enbridge has consistently used to be in compliance with the wording have always reflected the SME approval, rather than the SML approval, as being the final pressure restriction imposed, and the SML approval is simply the preliminary approval of the 80% of the 60-day high but is not the date that the 60-day period was calculated from.

Enbridge was previously fined by the EPA for using multiple approval dates under the CD (4th Stipulated Penalties – item 9, 10, 13) and Enbridge agreed to move to only have one approval date (SME approval). This proposed fine implies that the EPA has now reverted to the SML approval date and/or multiple approval dates. In light of this changing interpretation, this penalty issue was unforeseeable to Enbridge.

6. \$729,000 for failing to maintain the 24-hour Alarm re-optimized threshold for Line 2 for 159 Days. (See VSR9NC06).

Under Paragraph 103.c of the Consent Decree, Enbridge is required to establish optimized 24-hour Alarm thresholds for each Lakehead System pipeline and thereafter continuously maintain compliance with such optimized alarm thresholds. Pursuant to Paragraph 103.c of the Consent Decree, Enbridge established an optimized 24-hour Alarm threshold of 810 cubic meters (“m3”) for Line 2. Enbridge did not maintain this optimized alarm threshold during the period between April 15, 2021 and September 21, 2021 but instead operated under a higher alarm threshold of 1075 m3. EPA is assessing the penalty amount prescribed in Paragraph 164.e of the Consent Decree for each of the 159 Days that Enbridge failed to maintain the optimized 24-hour Alarm threshold for Line 2.

Enbridge Response:

Enbridge discovered and self-reported an issue related to the Line 2 24-hour Alarm where the production thresholds did not match the re-optimized value that had been put in place as a result of lower flow rates on the line. Enbridge took immediate action and restored the 24-hour Alarm thresholds to the correct re-optimized values the same day the issue was discovered.

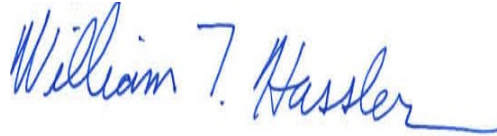
No safety-related concerns resulted from the discrepancy, as during the period in question Enbridge’s leak detection capabilities including Material Balance System (MBS), the Rupture Detection System and controller monitoring remained operational and effective. The 24-hour Alarm remained fully functional and continuously met the 3% sensitivity performance requirements of the Consent Decree. A review following the incident confirmed that no Alarms

were unassessed or unreported as a result of the threshold discrepancy. Following this event, Enbridge enhanced its training, processes and procedures to prevent any re-occurrence.

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Enbridge appreciates the opportunity to respond to EPA's letter of October 12, 2022.

Sincerely,



Bill Hassler
David Coburn
Josh Runyan
Attorneys for Enbridge Energy, Limited Partnership

cc: K. Peaceman, EPA
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