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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 Second and Third Sets of Stipulated Penalties

Dear Matt:

This letter responds to your letter of May 8, 2020, seeking payment of stipulated penalties for alleged violations of the Consent Decree. As we have discussed, Enbridge is prepared to pay the penalty amounts proposed in your letter. In doing so, however, Enbridge wishes to make clear that all of these alleged violations were largely administrative in nature and did not result in any safety issues, missed integrity risk reduction activities, loss of product or any damage to the environment. In addition, it should be clear that Enbridge self-reported to EPA the issues cited in your letter through the required Consent Decree Semi-Annual Reports. Enbridge nevertheless is prepared to resolve these issues as proposed in your letter.

**Second Set of Stipulated Penalties**<sup>1</sup>

- 1. \$78,750 for adding three Crack features on Line 4 DR-FW to the Dig List 21 Days late (see Paragraphs 37 and 47 of the Consent Decree). This amount accrued from July 31, 2018, the Dig List deadline, through August 21, 2018, the date the features were added to the Dig List.**

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<sup>1</sup> Bolded text sets forth EPA's original description of the alleged violations at issue.

An administrative oversight led to the delay described above. There was no impact to safety or any pipeline integrity risk reduction actions.

- 2. \$100,800 for recalculating the pressure restrictions for seven features on Line 6A PE-AM under dig timeline extensions eight Days late (see Paragraph 49.c of the Consent Decree). This amount accrued from September 5, 2018, the original Dig List deadline, through September 13, 2018, the date the recalculated pressure restrictions were approved.**

An administrative oversight led to the delay described above. However, the pressure at the location of the features was already lower than the pressure restriction required under ¶ 49.c because of a discharge pressure restriction already in place. As a result, pressure in this segment never exceeded the limit applicable under ¶ 49.c, and applying the required pressure restriction under ¶ 49.c would have had no practical safety benefit once it was administratively imposed.

- 3. \$1,701,000 for adding three Corrosion features on Line 6A AM-GT to the Dig List 240 Days late (see Paragraphs 37 and 50 of the Consent Decree). This amount accrued from April 9, 2018, the Dig List deadline, through December 5, 2018, the date the features were added to the Dig List.**

For these three features, Enbridge had used vapor corrosion inhibitor (“VCI”) injections to manage corrosion by establishing corrosion growth rates. Therefore, even though the Consent Decree does not expressly allow VCI injection to be used as a mitigation method in place of excavation, the feature was reasonably mitigated from a safety and integrity management perspective. Enbridge further notes that the excavations were all completed within Consent Decree timelines once the features were added to the Dig List, and thus there was no delay in the ultimate repair of the feature.

- 4. \$1,011,600 for determining a pressure restriction for one Corrosion feature on Line 6A AM-GT 238 Days late (see Paragraph 52 of the Consent Decree). This amount accrued from April 11, 2018, two Days after the Dig List deadline, through December 5, 2018, the date the pressure restriction was calculated.**

As explained for penalty #3, above, this feature was mitigated through VCI injection. Furthermore, the pressure restriction under ¶ 52 of the Consent Decree had no effect on the operation of the line because of the more restrictive discharge pressure restriction already in place. Accordingly, the adding of this pressure restriction had no practical safety benefit once it was administratively imposed.

- 5. \$6,000 for completing the Threat Integration for the Line 3 CR-PW segment three Days late (see Paragraph 58 of the Consent Decree). This amount accrued from September 4, 2018, 30 Days after the Initial ILI Report, through September 7, 2018, the date the Threat Integration was completed.**

This isolated incident was due to an administrative error. No other deadlines from this program were impacted, and this oversight had no impact on safety or any pipeline integrity risk reduction actions.

- 6. \$799,000 for a loss of the 24-hour Alarm capability on the Line 67 FW-PA segment for 173 Days ( see Paragraphs 92, 96, and 103 of the Consent Decree). This amount accrued from February 16, 2018, 270 Days after the Effective Date of the Consent Decree, through August 8, 2018, the date that the issue was corrected.**

During the 24-hour alarm outage on this segment, Enbridge's primary and complementary leak detection capabilities on Line 67, including the Material Balance System ("MBS"), the Rupture Detection System, controller monitoring, visual surveillance and reports, and scheduled line balance calculations, were all in place for this segment. Furthermore, all other Line 67 segments were fully covered by the 24-hour alarm during this time period. It was also confirmed that Enbridge did not miss any 24-hour Alarms on this segment during the period of the outage, and this and the complementary layers of leak detection described above resulted in minimal risk to the leak detection system on this segment as a result of the alarm outage.

### **Third Set of Stipulated Penalties**

**EPA identified numerous instances in which Enbridge failed to comply in a timely manner with Consent Decree provisions relating to certain intersecting or interacting features on Lakehead System pipelines. More specifically, Enbridge failed to complete timely identification and evaluation of thousands of "shallow dent" features on Lakehead System pipelines to determine whether such dents met dig selection criteria specified in Paragraph 58 and Table 5 of the Consent Decree. As a result, Enbridge failed to excavate and repair or mitigate shallow dents with indications of metal loss, cracking, or stress risers, as contemplated by Paragraph 58 of the Consent Decree. Between the date of entry of the Consent Decree and March 30, 2019, Enbridge conducted at least ten different ILIs that triggered a duty to look for intersecting dent/corrosion features. EPA assessed stipulated penalties in the amount of \$3,075,000 for such violations ("the Third Set of Stipulated Penalties").**

This proposed penalty results from a disagreement between Enbridge and the EPA regarding the assessment of shallow dents under the Consent Decree. "Dent" is not a defined term in the Consent Decree; nor does a standard exist within industry that defines the depth required for intersecting or interacting geometric features requiring assessment. Accordingly, Enbridge used the same parameters for assessing dents over a certain depth that it developed independent of the Consent Decree. Both during and prior to the Consent Decree, Enbridge's program consistently evaluated shallow dents for any interacting feature that could potentially pose a threat.

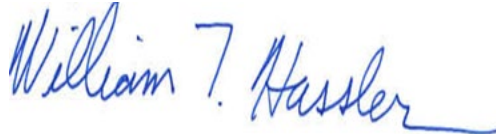
Once this interpretation issue was identified by the parties, Enbridge and the EPA worked together to negotiate the proposed Fifth Modification of the Consent Decree, which resolves the

parties' disagreement. This proposed Modification incorporates a technically advanced method for evaluating shallow dents interacting with corrosion, involving Finite Element Analysis. The proposed Fifth Modification of the Consent Decree will require assessments of shallow dents, including pressure restrictions and excavations if certain criteria are met. Working with EPA and DOJ, Enbridge applied these criteria to all programs run since the Effective Date of the Consent Decree. In doing so, Enbridge assessed hundreds of additional features, and issued a handful of additional excavations. None of those excavations found a feature that would have posed a threat to pipeline safety based on field results. Accordingly, Enbridge continues to believe that its pre-existing program for assessing interacting shallow dents was appropriately assessing and selecting features for excavation that could have potentially posed a threat to pipeline safety.

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We appreciate the opportunity to respond to your letter and to briefly summarize the company's position while at the same time resolving the matters raised. In doing so, Enbridge's agreement to pay the penalties outlined above should not be deemed an admission of any violations of the Consent Decree.

Sincerely,



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David Coburn  
*Attorneys for Enbridge Energy, Limited Partnership*

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