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June 7, 2017

E-FILE

Mackenzie Valley Land & Water Board
7th Floor, 4922 48th St, PO Box 2130
Yellowknife, NT X1A 2P6 Canada

Attention: Angela Love

Dear Ms. Love:

**Re: Enbridge Pipelines NW Inc. (“Enbridge”)
Line 21 Segment Replacement Project
Application for Type A Land Use Permit MV2017P0013
Application for Type B Water License MV2017L1-0002
Response to Information Request #1**

Please find attached, Enbridge’s response to Information Request #1 from the Mackenzie Valley Land and Water Board (Board).

Should the Board require any further information, please contact the undersigned.

Sincerely,

Sarah McKenzie
Manager, Regulatory Affairs

Enclosure:

**MV2017P0013 & MV2017L1-0002 – Enbridge Pipelines (NW) Inc. (Enbridge)
Enbridge Response to Information Request #1 – Outstanding Information section 157.1 MVRMA**

1. Was the Line 21 Pipeline Project the subject of a Water Licence or Land Use Permit issued before June 22, 1984?

Yes. On February 16, 1983 the Northwest Territories Water Board issued the primary initial Water Licences N2L6-1126 and N3L6-1126 in relation to the pipeline construction and operation of Enbridge's (then Interprovincial Pipe Line Ltd. (IPL) Line 21 Pipeline Project.

The Line 21 Pipeline Project was also the subject of Land Use Permit #N83P906, issued by Land Resources, Department of Indian and Northern Affairs Canada (Yellowknife) on May 18, 1983.

Construction and operation of the Line 21 Pipeline Project was authorized by the NEB in 1981, pursuant to Certificate of Public Convenience and Necessity No. OC-35.

2. Was the Line 21 Pipeline Project subject to a process of environmental impact assessment before June 22, 1984?

Yes. A comprehensive environmental review for the Line 21 Pipeline Project was conducted by the Federal Environmental Assessment and Review Office (now the Canadian Environmental Assessment Agency). In April 1980, Enbridge (then IPL) prepared an Environmental Impact Statement (EIA) to identify significant environmental impacts and measures designed to mitigate potentially adverse effects. A federal Environmental Assessment and Review Panel (Panel) sought comments on the proposed project from the public and from technical reviewers. In August 1980, the Panel held public meetings in 12 communities in the project area. The Panel considered issues relating to the rationale for the project, the potential impacts of both the physical environment on the project and the project on the physical and human environment, government preparedness and project monitoring. After considering the information presented, the Panel reached a number of conclusions and made recommendations on methods of minimizing environmental impacts which could arise from the construction, operation and maintenance of the Line 21 Pipeline Project. The Panel prepared a comprehensive Report outlining its findings and recommendations. This environmental impact assessment process is specifically referenced in the Environmental Agreement dated September 28, 1982 between Enbridge (then IPL) and Her Majesty the Queen in Right of Canada.

3. What is the relationship between the work proposed for the Line 21 Segment Replacement Project and the original Line 21 Project or undertaking?

The Line 21 Segment Replacement Project (the Project) is a maintenance project that is designed to allow Enbridge to resume normal operation of the Line 21 Pipeline. The Project involves replacing a segment of pipe at a lower depth than the existing segment in order to avoid potential geotechnical issues.

Enbridge is not seeking approval for construction and operation of a new pipeline. Simply stated, the Project involves the replacement of a small segment of the existing Line 21 Pipeline, which has been in place since 1985. The Line 21 Pipeline extends from Norman Wells, Northwest Territories to Zama,

Alberta, a total length of 869 km. The maximum length of pipe to be replaced as part of the Project is only 2.5 km (0.3%).

The sole purpose of the Project is to resume safe operation of the existing Line 21 Pipeline under exactly the same operating conditions. The diameter of the replacement section of pipe is identical to the existing pipe and no increase to capacity is proposed.

4. Were maintenance and operational activities considered as part of the environmental impact assessment of the original Line 21 Pipeline Project?

Yes. Please refer to the response to question 2. The review conducted by the federal Environmental Assessment and Review Panel included environmental impacts which could arise from the construction, operation and maintenance of the Line 21 Pipeline Project.

5. Please list and set out the scope of all regulatory approvals required for the Line 21 Replacement Project.

| Regulator | Scope |
|--|--|
| National Energy Board (NEB) | An Order, pursuant to section 58 of the <i>NEB Act</i> , authorizing Enbridge to install and operate the replacement segment of pipeline. |
| NEB | An Order, pursuant to section 45.1 of the <i>Onshore Pipeline Regulations, 1999 (OPR)</i> , allowing Enbridge to decommission a segment of the Line 21 Pipeline in accordance with the methodology set out in its application. |
| NEB | Such further and other relief as Enbridge may request or the Board may deem appropriate pursuant to section 20 of the <i>NEB Act</i> . |
| Mackenzie Valley Land and Water Board (MVLWB) | Type A land use permit, pursuant to paragraph 26(1) of the <i>Mackenzie Valley Land Use Regulations (MVLUR)</i> for the temporary workspace required for the Project. |
| MVLWB | An Order, pursuant to section 27 of the <i>Waters Act</i> for a Type B Water Licence to obtain water and to cross a watercourse. |
| Government of North West Territories (GNWT) Lands Administration | Such authorizations as the department deems appropriate. |

6. With specific reference to the Applications please provide a detailed explanation of whether the Line 21 Replacement Project represents a significant alteration to the Line 21 Pipeline Project.

See response to question 2. The Line 21 Replacement Project is not a significant alteration to the Line 21 Pipeline Project. As the name of the Project indicates, its purpose is simply to replace a segment of

the existing pipeline. The Line 21 Segment Replacement Project is a maintenance project that is designed to allow Enbridge to resume normal operation of the Line 21 Pipeline. The Project involves replacing a segment of pipe at a lower depth than the existing segment in order to avoid potential geotechnical issues.

The scope of Enbridge's applications to the MVLWB is limited to temporary land use and water use required to complete the Project. Specifically, Enbridge has applied for the following:

Application for Type A Land Use Permit:

- Workspace
- Access
- Camps

Application for Type B Water License:

- The use of approximately 10,000 m³ of water to complete drilling and pipeline pressure testing activities

Enbridge is making every effort to use the existing right-of-way to carry out this work and minimize any temporary land use required for the Project. Once installation of the new segment is complete, the land will be restored and no further water withdrawal will be required.

7. With specific reference to the Applications please indicate whether the Line 21 Replacement Project represents an abandonment or decommissioning of the Line 21 Project. Explain why.

The Line 21 Segment Replacement Project is a maintenance project that is designed to allow Enbridge to resume normal operation of the Line 21 Pipeline. Enbridge has not applied to the MVLWB for abandonment or decommissioning. As noted in the response to question 6 above, the scope of Enbridge's applications to the MVLWB is limited to temporary land use and water use required to complete the Project.

8. Please provide your argument to the Board about the application of section 157.1 of the MVRMA to the Line 21 Replacement Project.

Section 157.1 of the MVRMA states as follows:

Part 5 does not apply in respect of any licence, permit or other authorization related to an undertaking that is the subject of a licence or permit issued before June 22, 1984, except a licence, permit or other authorization for an abandonment, decommissioning or other significant alternation of the project.

This section has been judicially considered in the cases of *North American Tungsten Corporation Ltd. v. Mackenzie Valley Land and Water Board*, 2003 NWTCA 5 and *Canadian Zinc Corporation v. Mackenzie Valley Land and Water Board*, 2005 NWTSC 48.

The courts in these two cases have held that section 157.1 of the MVRMA grandfathers from a Part 5 environmental assessment any licence, permit or authorization related to a project for which a licence

or permit was issued before June 22, 1984, unless the project is being abandoned, decommissioned or significantly altered. As stated in *North American Tungsten* (paras 28-29):

In our view, this section is designed to generally parallel the scope of the statutory exemptions granted to projects pre-dating June 22, 1984 under s.74(4) of CEAA. CEAA exempts from environmental requirements any licence issuance or renewal where the “construction or operation of a physical work or the carrying out of a physical activity was initiated before June 22, 1984.” By contrast, s.157.1 of the MVRMA ties the exemption to a licence related to an undertaking that is “the subject of a licence or permit issued before June 22, 1984”.

However, this difference in wording does not reflect a Parliamentary intention to expand the reach of the MVRMA by narrowing the category of projects pre-dating June 22, 1984 that are exempt from full scale environmental assessments. The approach taken under the MVRMA is complementary to that taken under CEAA and intended to be so. Both Acts exempt projects which pre-date the same date, namely June 22, 1984. That is the date on which the Environmental Assessment and Review Process Guidelines Order, SOR/84-467, the predecessor to CEAA, came into effect. The selection of this common date under both CEAA and the MVRMA reflects Parliament’s continuing intention that projects which pre-date June 22, 1984 (as defined under both statutes) are to be subjected to a full scale environmental assessment as prescribed under the applicable legislation only if they depart significantly from their approved mode of operation and engage in, for example, decommissioning, abandonment or significant alternation of the project.

The Line 21 Pipeline Project was licensed prior to June 22, 1984 (see response to question 1 above) and was subject to a process of environmental impact assessment (see response to question 2 above). The Line 21 Pipeline Project is not being abandoned or decommissioned (see response to question 7 above) nor is it being significantly altered (see response to question 6 above). Section 157.1 of the MVRMA therefore applies and exempts the Line 21 Segment Replacement Project from an environmental assessment under Part 5 of the MVRMA.

9. Please provide any recommendations for additional Water Licence or Land Use Permit conditions that could help avoid or mitigate any potential environmental impacts of the Line 21 Replacement Project.

It is Enbridge’s position that the mitigation measures proposed in the Project Environmental Protection Plan (EPP) are adequate and appropriate to mitigate any potential impacts to the environment from the Project. As new information is received or collected the EPP will be re-evaluated and revised as needed.