

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

114 FERC ¶61,264

March 16, 2006

In Reply Refer To:
Enbridge Energy, Limited Partnership
Docket No. OR06-3-000

Enbridge Energy, Limited Partnership
1330 Connecticut Avenue, N.W.
Washington, DC 20036-1795

Attention: Steven Reed, Esq.
Counsel for Enbridge Energy, Limited Partnership

Reference: Approval of Offer of Settlement

Ladies and Gentlemen:

1. On December 21, 2005, Enbridge Energy, Limited Partnership (Enbridge Energy),¹ with the support of the Canadian Association of Petroleum Producers (CAPP),² filed an Offer of Settlement (Settlement). By this Settlement, Enbridge Energy seeks Commission approval to implement an additional component of a previously-approved Facilities Surcharge³ that will permit Enbridge Energy to recover the costs of its planned

¹ Enbridge Energy states that Enbridge Pipelines Inc. (EPI) and Enbridge Energy (collectively, Enbridge) own and operate the Canadian and U.S. portions, respectively, of a single pipeline system extending from Canada through the Midwestern section of the United States into Eastern Canada and upstate New York (collectively, the Enbridge System).

² Enbridge Energy states that CAPP producer members account for more than 98 percent of Canada's oil and gas production and that approximately 97 percent of the crude petroleum transported by Enbridge originates in Canada.

³ *Enbridge Energy, Limited Partnership*, 107 FERC ¶ 61,336 (2004) (Facilities Surcharge Order).

expansion of its mainline capacity (the Southern Access Mainline Expansion). This order approves the subject Settlement, as it appears to be fair and reasonable and in the public interest.

2. Flint Hills Resources, LP (Flint Hills) filed comments in qualified support of the Settlement, and Enbridge Energy filed reply comments. No other person filed comments or objections to the Settlement.

3. Enbridge Energy states that, in the Facilities Surcharge Order, the Commission approved the framework settlement establishing the Facilities Surcharge as a component of Enbridge Energy's U.S. tariff rates. According to Enbridge Energy, the Facilities Surcharge provides a flexible mechanism for Enbridge Energy to respond to shipper requests for enhancements or modifications to the pipeline system, greater variety in the types of crude petroleum handled, and increased access by shippers to particular markets or types of crude oil. Enbridge Energy further states that its agreement with CAPP permits Enbridge Energy to recover through the Facilities Surcharge the costs associated with particular shipper-requested projects by means of an incremental surcharge in addition to its existing base rates and other Commission-approved surcharges already in effect.

4. Enbridge Energy states that this Settlement contains the fifth specific agreement submitted under the Facilities Surcharge framework. Enbridge Energy explains that this new agreement relates to the Mainline Expansion portion of the planned Southern Access Program, and further, that it relates solely to the Lakehead System, the U.S. portion of the Enbridge System. However, Enbridge Energy also points out that the Southern Access Program involves a coordinated expansion of capacity on the entire Enbridge System to accommodate a projected major increase in production from the oil sands resources in Western Canada and subsequent importation to the U.S.⁴

5. Enbridge Energy states that it intends the Facilities Surcharge to be a transparent, cost-of-service-based tariff mechanism that it will true-up each year to actual costs and throughput and that it will not subject the surcharge to indexing. Enbridge Energy adds that it will determine which particular projects to include through negotiations between Enbridge Energy and CAPP.

⁴ Enbridge Energy states that the Commission previously took notice of this "expected significant increase in Western Canadian crude oil production over the next decade" and the associated benefits to domestic refiners of having access to this source of refinery feedstock to offset declining domestic crude oil production in the Mid-Continent area. *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 at P 2 (2005).

6. Enbridge Energy emphasizes that it discusses the entire Southern Access Program in the Settlement, but that it is not asking the Commission to determine any regulatory issues relating to the Canadian portion of the expansion project. Enbridge Energy also points out that, upon completion, the project will permit the transportation of an additional 400,000 barrels per day (b/d) to the international border and then to the Chicago area (and points south).⁵

7. Enbridge Energy explains that it expects the U.S. portion of the Mainline Expansion to add 44,000 b/d of capacity in 2007 and up to an additional 146,000 b/d by early 2008. According to Enbridge Energy, the first stage includes 321 miles of new 30-inch pipeline between Superior and Delavan, Wisconsin, along with pump station enhancements upstream and downstream of this segment. Enbridge Energy observes that the projected cost of the first stage is approximately \$499 million for the U.S. portion and \$43 million for the Canadian portion. Enbridge Energy also states that the expansion project's second stage, which it expects to complete in early 2009, will add additional upstream pumping capacity and a new 133-mile pipeline segment from Delavan to Flanagan, Illinois. Enbridge Energy estimates that the second stage costs will total approximately \$388 million for the U.S. portion and \$92 million for the Canadian portion.

8. Additionally, states Enbridge Energy, the new line segment will interconnect at Flanagan with the Spearhead Pipeline, which is currently undergoing a reversal to provide crude oil transportation service from Chicago to Cushing, Oklahoma.⁶ Enbridge Energy further states that, once it completes the Southern Access Mainline Expansion to Flanagan, it will re-reverse the portion of the Spearhead Pipeline northeast of Flanagan to provide access for Canadian production to Chicago via Flanagan,⁷ while the downstream portion of Spearhead will continue to provide access to the trading hub at Cushing.

⁵ Enbridge Energy also states that the Southern Access Program may include an extension of service on the Lakehead System to Wood River or Patoka, Illinois (the "Mainline Extension"). Because the Mainline Extension phase of the Program is still under development, Enbridge Energy does not address it further, or include it, in the Settlement.

⁶ See *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005) (Order on Petition for Declaratory Order).

⁷ Enbridge Energy commits to providing service to Chicago via the Southern Access Mainline Expansion line to Flanagan at the same tariff rate for service to Chicago on the existing Lakehead System, so that shippers will be indifferent economically to which specific line segment to use.

9. Enbridge Energy and CAPP agreed that the shippers should bear the cost associated with the expansion to all delivery points on the Lakehead System in accordance with their usage of the system and Enbridge Energy's existing distance-based rate design. Enbridge Energy maintains that this pricing mechanism is consistent with Commission precedent for oil pipelines.⁸

10. Flint Hills supports the Settlement, subject to the qualification that Commission approval of the Settlement does not set and cannot be used as precedent for any future submission to the Commission by Enbridge Energy for approval of the "Mainline Extension", a possible future extension, rather than expansion, of Enbridge Energy's existing U.S. pipeline system. Flint Hills states it does not oppose the inclusion of costs for this particular Mainline Expansion as the fifth increment in the Facilities Surcharge cost-of-service based tariff mechanism that Enbridge Energy will true-up annually each April 1 based on actual costs and throughput that the Commission approved in its Facilities Surcharge Order.

11. Flint Hills reminds the Commission that it intervened in the Spearhead Pipeline proceeding before the Commission, as well as at Canada's National Energy Board (NEB). According to Flint Hills, it disputed Enbridge Energy's effort to obtain an annual payment or subsidy from the Canadian mainline to reduce the revenue requirement for the Spearhead shippers, which contravened a user pay principle. Flint Hills believes that the Spearhead Pipeline, like the proposed Mainline Extension, is an extension of the mainline and today or in the future should not be rolled into Enbridge's Lakehead mainline.

12. Because the NEB ultimately approved the Spearhead Pipeline subsidy and the order is not on appeal in Canada, Flint Hills wants to make it absolutely clear that its support of the subject Settlement does not, and is not construed to, support in any way the assessment of a surcharge (subsidy) on shippers, including Flint Hills, on a different pipeline in a different country. Moreover, Flint Hills specifically requests that any Commission approval of the subject Settlement make clear that any such approval has absolutely nothing to do with the Spearhead Pipeline and the possible Mainline Extension and does not in any way set a precedent for any future request for approval of any aspect of the possible Mainline Extension and/or the Spearhead Pipeline reversal project or any extension or expansion thereof under the Facilities Surcharge mechanism that was approved by the Commission in its Facilities Surcharge Order.

13. Finally, Flint Hills states that it predicates its qualified support of the subject Settlement upon the regulatory rate principle that the shippers who will use the expanded

⁸ Enbridge Energy cites *SFPP, L.P.*, 104 FERC ¶ 61,163 at P 10-11 (2003).

pipeline capacity pay for a distance based incremental rate increase and also realize any corresponding potential rate reduction arising from the pipeline system's expanded capacity.⁹

14. In its reply comments, Enbridge Energy emphasizes that Flint Hills fully supports the Settlement as presented. However, continues Enbridge Energy, Flint Hills then raises issues regarding the possible future Mainline Extension and asks the Commission to confirm that its approval of the Settlement does not set any precedent regarding possible future requests. Enbridge Energy stresses that the Mainline Extension is a possible extension of service on the Lakehead System to Wood River or Patoka, Illinois. According to Enbridge Energy, that project is still under development and clearly is not included in this Settlement. If and when the Mainline Extension moves forward, Enbridge Energy states that it will seek appropriate rate treatment for it at that time.

15. Enbridge Energy also clarifies that the Spearhead Pipeline is not owned by Enbridge Energy or its parent Enbridge Energy Partners, L.P. (EEP), and is not part of the Lakehead System.¹⁰ Enbridge Energy clarifies that nothing in the instant Settlement is intended to affect in any way, the service rates on the reversed Spearhead Pipeline from Chicago to Cushing, Oklahoma, and the Settlement does not implicate any issues resolved by the NEB with respect to Spearhead, including the issues raised by Flint Hills on appeal in Canada.

16. Enbridge Energy reiterates that, once the Southern Access Mainline Expansion is completed to Flanagan, Illinois, it will re-reverse the segment of the Spearhead Pipeline between Flanagan and Chicago to permit service via the Lakehead System to Chicago through the new Southern Access line. Moreover, continues Enbridge Energy, following that re-reversal, it will include the costs of that segment in the Southern Access Mainline Expansion surcharge in accordance with the agreement between Enbridge Energy and CAPP. However, Enbridge Energy emphasizes that this change will not affect the rates for southbound service to Cushing through the Spearhead Pipeline, as stated in the Petition for Declaratory Order filed on behalf of the owner of Spearhead in Docket No. OR05-1-000. Thus, concludes Enbridge Energy, the Commission need not address any

⁹ Enbridge Energy projects that the proposed expansion will result in "heavy petroleum shippers on [the Canadian portion of] the Enbridge System [seeing] their Canadian rates decline by an estimated \$0.09 per barrel when the expansion is fully in service and fully utilized." Settlement at 8.

¹⁰ Enbridge states that, although related through its ultimate parent company, the owner of Spearhead, CCPS Transportation, LLC, is under largely separate ownership from EEP, which is a publicly traded entity.

issues regarding southbound service through the Spearhead Pipeline in approving the Settlement in this docket.

17. Enbridge Energy filed the Offer of Settlement in advance of the proposed tariff rate filing and not in response to any litigated proceeding. The Settlement attempts to avert a potential future rate dispute by reaching a negotiated agreement that establishes how Enbridge Energy will recover the costs of an additional expansion project. No person filed comments opposing the Settlement; the comments of Flint Hills merely ask the Commission to clarify that its approval of the Settlement will not be employed as a precedent in support of future projects that are outside the scope of this proceeding and the previously-established Facilities Surcharge.

18. The Commission approves the Settlement on the grounds that it appears fair, reasonable, and in the public interest. As requested by Enbridge Energy, the Commission grants waiver of the tariff filing requirements under 18 C.F.R. §§ 342.1, 342.3(a) and 342.4, to implement the proposed surcharge, as delineated in the Settlement. Further, the Commission grants Flint Hills' request and holds that approval of the Settlement does not constitute approval of any other project beyond the scope of this proceeding. Accordingly, the Commission's approval of the Offer of Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this filing.

By direction of the Commission.

Magalie R. Salas,
Secretary.

cc: All Parties