

Enbridge Pipelines (North Dakota) LLC

ORDER ACCEPTING TARIFF, SUBJECT TO CONDITIONS

132 FERC ¶ 61,274 (2010)

In this case, Enbridge Pipelines (North Dakota) LLC (Enbridge) filed an amendment to its tariff to modify its proration policy and address the substantial proliferation of shippers seeking capacity on its system that transported light crude oil from production areas in North Dakota and Montana to an interconnection point in Clearbrook, Minnesota for further movement to refiners in the upper Midwest. Enbridge believed because of significant excess demand for capacity on its system, shippers were forming new entities to request transportation essentially for themselves. The number of shippers had grown from 10 in 2006 to about 180 at the time of filing, and their nominations for transportation in September 2010, for example, were approximately 700,000 bpd when the system capacity was 161,500 bpd. The essence of the new proration program was to freeze temporarily for 24 months, beginning October 1, 2010, the ability of any new shipper by barrels shipped over a period of time to become a regular shipper on the system. Regular shippers had 90 percent of the system capacity reserved for their use and new shippers had the balance, 10 percent. The Commission approved Enbridge's tariff amendment under the extraordinary circumstances of constrained capacity that prevailed as not an unreasonable preference for regular shippers that was a temporary mechanism until a more permanent solution of expanded pipeline capacity became available.

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132 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Enbridge Pipelines (North Dakota) LLC

Docket No. IS10-614-000

ORDER ACCEPTING TARIFF, SUBJECT TO CONDITIONS

(Issued September 30, 2010)

1. On August 30, 2010, Enbridge Pipelines (North Dakota) LLC (Enbridge North Dakota) filed FERC Tariff No. 71.1.0, Rules and Regulations, to amend its proration policy to address the proliferation of new shippers on its system. Enbridge North Dakota states its tariff filing implements a temporary freeze on the creation of Regular Shippers, effective October 1, 2010, to attempt to remove the incentive caused by the existing policy for the artificial creation of new shippers, as explained below. Enbridge North Dakota requests an October 1, 2010, effective date for the tariff. For the reasons discussed below, the Commission accepts FERC Tariff No. 71.1.0 to become effective October 1, 2010, subject to Enbridge North Dakota revising its tariff language as directed herein.

Background

2. Enbridge North Dakota is a 330-mile crude oil gathering and 620-mile interstate transportation system that gathers crude from points near producing wells in 20 oil fields in North Dakota and Montana. The pipeline delivers approximately 161,000 barrels per day (bpd) of light crude to an interconnection with at Clearbrook, Minnesota, for further transportation to refiners in the upper Midwest and eastern Canada.

3. Enbridge North Dakota states its system has capacity constraints and has been under continual proration since February 2006, when maximum capacity was 80,000 bpd. Enbridge North Dakota has steadily increased capacity through expansion projects to the current 161,500 bpd, and has, in Docket No. OR10-19-000, proposed a substantial expansion of capacity by an additional 145,000 bpd in the next two years.

4. Enbridge North Dakota states crude oil production in North Dakota increased from 98,000 bpd in 2006 to more than 300,000 bpd and is expected to continue to rise. Meanwhile, Enbridge North Dakota states the number of approved shippers has grown from 10 in 2006 to approximately 180 and continues to grow. To demonstrate the

prorating issue on its system, Enbridge North Dakota states that the 180 approved shippers nominated a total of 20,965,460 bbls for transportation in August 2010, and 22,335,813 bbls in September 2010, approximately 700,000 bpd, even though total system capacity is only 161,500 bpd.

5. On three prior occasions, Enbridge North Dakota modified its prorating rule to address its constraint problems and held informal shipper meetings at the FERC on July 10, 2007, and most recently on July 13, 2010. Specifically, on August 30, 2007, Enbridge North Dakota filed FERC Tariff No. 52, which allowed the prorating of pipeline capacity to transition from the existing historical based policy to a revised historical policy by amending the definition of a shipper's "Average Monthly Volume." This modification essentially preserved the status of existing shippers as "Regular Shippers" going forward, but it also reserved space for future "New Shippers" on the line with 90 percent of capacity allocated for use by Regular Shippers and 10 percent available for allocation to New Shippers. The Commission accepted FERC Tariff No. 52 despite several shipper protests, and it became effective on October 1, 2007.¹

6. Subsequently in October 2008, Enbridge North Dakota filed FERC Tariff No. 58 on October 17, 2008. The primary change in this revised tariff reduced the amount of the total Available Capacity available to each individual New Shipper during prorating from 2.5 percent to 1 percent. This proposal was in response to concerns raised by shippers relating to the manner in which the revised policies in FERC Tariff No. 46 unexpectedly advantaged New Shippers over Regular Shippers in the allocation process. Enbridge North Dakota discussed this proposal with shippers at a Shipper meeting in Denver in September 2008 and did not receive any opposition to the proposed change. The Commission accepted the revision on November 14, 2008.²

7. Thus, at present New Shippers can become Regular Shippers if they meet the requirement of shipping in nine months of the twelve month period. In FERC Tariff No. 71.1.0, Enbridge North Dakota amends its definition of New Shipper³ in Item 65(b)(i), Proration of Pipeline Capacity, by adding the following language, "Effective October 1, 2010, and for a period of twenty-four (24) months thereafter, New Shippers will not be able to obtain Regular Shipper status until the later of the date which the New

¹ *Enbridge North Dakota*, 120 FERC ¶ 61,197 (2007).

² *Enbridge North Dakota*, 125 FERC ¶ 61,180 (2008).

³ A New Shipper is defined in Item 65(b)(i) as any Shipper that is not a Regular Shipper.

Shipper has had Actual Shipments in at least nine months of twelve months in the Base Period, or when the system is no longer subject to prorationing as identified within Item 65.”

8. Enbridge North Dakota states that an impetus for this filing is its growing concern over the proliferation of new shippers on its system and the related erosion of capacity available for Enbridge North Dakota’s historical shippers. This rapidly increasing number of shippers reflects the ongoing competition for the limited capacity to transport crude oil out of the Williston Basin. The increase in the number of shippers has led to the substantial administrative burden of having to deal with 180 individual shippers (more than one for every 1,000 bpd of capacity on its system), a number that could double in the next 12-24 months. Enbridge North Dakota notes it quadrupled its staff devoted to handling shipper nominations and the related allocation process, and to protect confidential shipper information and assure that affiliated shippers are not obtaining more space than they are entitled to under the existing rules. From a shipper perspective, Enbridge North Dakota states this growing number of new shippers results in diminishing capacity available to existing shippers, thereby giving those shippers an incentive to create (or foster the creation of) additional new shippers in a never-ending attempt to maintain or expand individual shipper capacity allocations. Therefore, Enbridge North Dakota added new language in Item 40(e) of its tariff to address the use of agents on behalf of shippers of record.

Interventions and Protests

9. Flint Hills Resources, LP, Enserco Energy Inc., and EOG Resources, Inc., and EOG Resources Marketing, Inc. (jointly) filed motions to intervene. Suncor Energy Marketing Inc. (Suncor), PowerMark, LLC and Downstream Petroleum Placement Consultants, Inc. (Indicated Shippers), and Centerpoint Access, LLC, Durham Transport, LLC, and Rosedale Capital Partners, LLC (Centerpoint Parties) move to intervene and protest the tariff filing. Nexen Marketing U.S.A. Inc. moved to intervene and filed comments. Enbridge North Dakota filed a response to the protests pursuant to 18 C.F.R. § 343.3(b) (2010) of the Commission’s Regulations.⁴

10. Suncor’s protest challenges the lawfulness of the modification to shipper status contained in the proration procedure proposed in Item 65 of Enbridge North Dakota’s tariff filing. Suncor states the proposed changes implement a freeze on the creation of Regular Shippers. Suncor states that as a New Shipper under Enbridge North Dakota’s

⁴ The Commission denies Indicated Shippers' September 22, 2010, motion for leave to answer and answer. Rule 213(a)(2) of the Commission’s Rules of Practice & Procedure, 18 C.F.R. § 385.213(a)(2) (2010), does not permit answers to answers unless otherwise ordered.

tariff, the proposal effectively eliminates its opportunity to become a Regular Shipper for at least 24 months, denying it and other New Shippers access to its share of the 90 percent of capacity reserved for Regular Shippers. Accordingly, Suncor claims Enbridge North Dakota's proposal reserves a portion of capacity for a particular class of shippers which is unlawful under the Interstate Commerce Act (ICA) as it violates the common carrier's obligation to provide service upon reasonable request. Suncor requests the Commission to reject the filing or suspend it for the maximum period and order a technical conference.

11. Centerpoint Parties request the Commission reject Enbridge North Dakota's proposed tariff change or suspend the filing for the maximum period and establish a hearing because, as New Shippers since July 2010, they cannot become Regular Shippers in violation of ICA sections 3(1) and 1(6) which "prohibit undue or unreasonable preference or advantage," and "require common carriers to establish just and reasonable regulations and practices affecting classifications," respectively. Centerpoint Parties also claim that Enbridge North Dakota's proposed tariff changes are contrary to and directly violate the Commission's decisions in the *Platte*⁵ and *Bridger*⁶ cases involving prorating.

12. Indicated Shippers are the only Regular Shippers as defined in Enbridge North Dakota's tariff to protest the filing. They state that Enbridge North Dakota failed to sufficiently establish that the proposed tariff changes will not show undue preference to some shippers over others. Indicated Shippers state the revision of the definition of "Average Monthly Volume" is disconcerting because of the interplay of the term "Tender" in the proposed tariff and how it may affect prorating and the way the pipeline calculates prepayments for Regular Shippers. Indicated Shippers assert the new procedures would permit Enbridge North Dakota to reduce a shipper's capacity allocation in future months while retaining prepayments based upon the shipper's prior monthly capacity allocations. Therefore, Indicated Shippers suggest the Commission should direct Enbridge North Dakota to replace "tender" in the definition of Average Monthly volume in Item 65(b) of its tariff with "Actual Shipments" and make any further revisions necessary to essentially keep the same tariff language in place. Indicated Shippers request the Commission to suspend the filing for the maximum period and require Enbridge North Dakota to revise the tariff to eliminate the uncertainty created by the proposed changes.

⁵ *Platte Pipe Line Co.*, 115 FERC ¶ 61,215, at 61,767 (2006) (*Platte*).

⁶ *Bridger Pipeline LLC*, 123 FERC ¶ 61,081, at 61,641 (2008) (*Bridger*).

Response

13. In its response, Enbridge North Dakota states that out of a current total of 180 shippers, only eleven shippers have intervened and of those only six protested the tariff filing emphasizes that the proposed changes represent a fair solution for a difficult situation. Moreover, only four of the six protesting shippers have taken issue with the most significant change in the tariff, which is the temporary freeze on creation of additional Regular Shippers over the next two years. According to Enbridge North Dakota, the other two protesting shippers, i.e. the Indicated Shippers, do not contest that change, but instead raise a number of specific comments on particular aspects of the tariff (including one unchanged feature). Enbridge North Dakota states that the small number of protests is indicative of shipper support of the proposed tariff changes, despite Suncor's claim there is no broad support for the tariff, nor is there an urgent situation to justify the tariff. Further, Enbridge North Dakota reiterates it expects the number of shippers to more than double over the next two years, further eroding pipeline capacity, and making administration of the tariff more onerous.

14. Enbridge North Dakota asserts that the main argument of Suncor and the Centerpoint Parties is that the tariff creates a permanent undue preference for existing Regular Shippers because the tariff makes it impossible for New Shippers to become Regular Shippers.⁷ Enbridge North Dakota's response is that there is no permanent restriction imposed by the tariff since the freeze is a temporary, 24-month period beginning October 1, 2010. Further, Enbridge North Dakota confirms that New Shippers are not being denied service during those two years, but are simply being prevented from attaining Regular Shipper status during that period. New Shippers will continue to move on the system and will continue to accumulate history until such time as the temporary freeze expires or is terminated. Therefore, Enbridge North Dakota maintains its system is not being reserved for the exclusive use of Regular Shippers, and protesters are incorrect in arguing otherwise. Enbridge North Dakota also asserts that the cases relied upon by protesters are similarly inapposite because the situation here differs from the situation in those cases. Enbridge North Dakota states the *Platte* decision⁸ is clearly distinguishable from the facts presented here for the following reasons: (1) *Platte*'s proposal was not a temporary measure, but a permanent bar that would be lifted only if and when the pipeline came out of apportionment; (2) *Platte* did not demonstrate the kind of urgent

⁷ Centerpoint Parties' Protest at 7-8; Suncor Protest at 10-13.

⁸ *Platte*, 115 FERC ¶ 61,215.

situation presented here; and (3) in any event, Platte's proposal was never directly ruled on by the Commission.⁹

15. In contrast to *Platte's* mere concern that the conditions on its system *could* lead to gamesmanship, *id.* at P 6 (emphasis added), Enbridge North Dakota states it has shown that there is a clear and compelling justification for the temporary freeze on New Shippers attaining Regular Shipper status.

16. Enbridge North Dakota continues that Suncor's reliance on *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*, 124 FERC ¶ 61,199 (2008) and *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025 (2008), respectively, is similarly misplaced. Those decisions involved long-term priority service provisions that created a reservation of capacity for shippers who executed contractual volume commitments during an open season.¹⁰ Here, by contrast, Enbridge North Dakota states the tariff does not create a permanent class of priority shippers in any sense. Regular Shippers must continue to ship physical barrels to preserve their history, which the Commission has held does not constitute a priority service.¹¹ Further, Enbridge North Dakota stresses, as discussed above, this is not a permanent measure but simply a temporary provision to address a pressing immediate concern.

17. Enbridge North Dakota states that Centerpoint Parties' contention that they began shipping under the tariff rules as they existed at the time and therefore had an expectation that they would become Regular Shippers when they completed shipping during 9 out of 12 consecutive months is without merit. Regardless of any particular shipper's subjective expectations, however, Enbridge North Dakota states a pipeline has discretion to adjust

⁹ Even if Enbridge North Dakota's proposal could be construed as similar to *Platte's*, Enbridge North Dakota states the Commission never issued a final ruling on whether *Platte's* prorationing policy was acceptable. Rather, Enbridge North Dakota states the Commission suspended the policy in order to allow for a technical conference, and after the technical conference, *Platte* revised its prorationing proposal thus making the issue moot, *Platte Pipeline Co.*, 117 FERC ¶ 61,296, P 13 (2006).

¹⁰ See *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*, 124 FERC ¶ 61,119 at P 36 (proposal unreasonably restricted access by uncommitted shippers to a portion of the pipeline's capacity "for many years"); *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025 at P 47 ("Keystone's proposal would provide new or uncommitted shippers with access to only 5.75 percent of the pipeline's capacity *on a permanent basis*") (emphasis added).

¹¹ See *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139, at P 12 (2010) (historical based Regular Shipper status "does not guarantee . . . shippers firm capacity").

its tariff provisions to meet new circumstances, as long as the result is just and reasonable and not unduly discriminatory.¹² Enbridge North Dakota states that it considered extending the qualification period for a New Shipper to become a Regular Shipper from 9 of 12 months to 20 of 24 months. That change would have had effects on current New Shippers similar to the proposed two-year freeze, but would not have provided the same opportunity for New Shippers to become Regular Shippers in the meantime if the pipeline were to come out of apportionment. Moreover, Enbridge North Dakota asserts that its tariff provides shippers with more than sufficient notice of the proposed policy change, as shippers have already had ample opportunity over the past several years to establish a pattern of historical volumes and become Regular Shippers.

18. Enbridge North Dakota states the Commission should reject Suncor's argument that its tariff violates the ICA because it could lead to the denial of access to all New Shippers under a certain future set of circumstances, because it is based on a series of highly speculative assumptions about future events.¹³ Similarly, Enbridge North Dakota states the Centerpoint Parties hypothesize that the proposed tariff will effectively "freeze out" new shippers from the market, thus allegedly causing anticompetitive effects. Enbridge North Dakota states that such speculative scenarios provide no reason to prevent it from implementing the proposed tariff changes.

19. Enbridge North Dakota reiterates that the goal of its tariff filing is to deter the proliferation of New Shippers, which has the effect both of burdening the pipeline and continually eroding the capacity allocation of other shippers. Enbridge North Dakota maintains that if the tariff works as intended, the availability of service for New Shippers should increase, not decrease, because there will be fewer New Shippers contending for the 10 percent of pipeline capacity set aside for them. If the dire circumstances

¹² See, e.g., *Suncor Energy Market Inc.*, 132 FERC ¶ 61,242 at P 144 (2010) ("there is no single prorationing methodology that will satisfy the competing interests of the pipeline and its shippers"); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296 at P 48 ("Certain parties have asked the Commission to require consideration by Platte of the shippers' past and expected future reliance on Platte to move their volumes. In some cases, the shippers have cited expenditures for facilities based on their expectations or their desire for some preference based on emergencies related to types of production. . . . [T]he Commission will not require Platte to accommodate these shippers' speculations concerning future levels of production volumes.").

¹³ The circumstances Suncor describes are that New Shippers will continue to sign up on the system as production of Bakken crude oil increases, which in turn will cause the New Shipper category to become overcrowded, which in turn will lead to New Shippers being granted allocations of capacity that fail to meet the minimum tender sizes in the Tariff, which in turn will leave New Shippers unable to ship crude oil at all.

hypothesized by the small number of protesting shippers were to arise, Enbridge North Dakota states it is more than willing to consider different alternatives at that time (and of course the Commission's processes are always available if shippers are not satisfied with those alternatives).

20. With respect to Indicated Shippers concern that the use of the words "tender" and "tendered" in the definition of "Average Monthly Volume" in Item 65(b) and in Item 65(f) creates uncertainty because it is unclear whether it refers to the tariff's definition of "Tender," or some other definition of "tender," Enbridge North Dakota clarifies that it did not intend the changes to Item 65(b) to create any different result than would have occurred under the prior version. In particular, the use of the word "tendered" in that sections was intended to refer to the actual shipments by shippers (just as the prior language did). However, if the Commission is concerned on this point, Enbridge North Dakota states it would not object if the Commission conditioned its acceptance of the tariff by requiring Enbridge North Dakota to change the wording of the definition of "Average Monthly Volume" in Item 65(b) to "the average of a Regular Shipper's monthly Actual Shipments during the Base Period with respect to the line segment or segments subject to prorating," and to capitalize all other uses of the word "tender" or "tendered" in the new language to conform to the defined term in its tariff.

21. Enbridge North Dakota states the Indicated Shippers argue that Item 65(g) is ambiguous because it could apply to some Regular Shippers whose services are curtailed, and not apply to other Regular Shippers who are similarly situated. Enbridge North Dakota clarifies that Item 65(g) does apply to all shippers. If extraordinary circumstances prevent Enbridge North Dakota from delivering volumes provided by all Regular and New Shippers, Enbridge North Dakota could, in its discretion, exclude that month from the Base Period. Enbridge North Dakota states the exclusion of that month from the Base Period would apply to all shippers and, therefore, the expressed concerns about treating similarly situated Regular Shippers differently under this section are unwarranted.

22. Enbridge North Dakota states that the Indicated Shippers' request that the Commission should require it to account for all prepayments it receives from shippers and to provide interest on these prepayments, either by permitting shippers to select an escrow account with an interest rate agreeable to them, or by providing shippers with the FERC's interest rate. Enbridge North Dakota asserts the Commission must disregard this argument on prepayments because it did not modify its tariff with respect to this issue. Enbridge North Dakota adds that, it is well-settled that unchanged tariff provisions cannot be the basis for a protest.¹⁴

¹⁴ See, e.g., *TE Products Pipeline Co., LLC*, 130 FERC ¶ 61,257, at P 16 (2010) (disallowing protest on unchanged tariff provision). Enbridge North Dakota states it is in

23. Enbridge North Dakota states the protesting shippers have also requested that the Commission suspend the effective date of the tariff for the maximum seven months, primarily so that the Commission can hold a hearing or technical conference on the issues they have raised. Enbridge North Dakota maintains the protesting shippers have failed to support that request and that unlike other proceedings where the Commission suspended a tariff for seven months to provide the opportunity for the parties to attempt to resolve the issues through a technical conference or other process, here Enbridge North Dakota has already held numerous meetings with its shippers (including one at the Commission's office that was open to all shippers). Enbridge North Dakota states the record relevant to this issue is before the Commission now and nothing would be added by additional meetings or conferences that would simply delay the resolution of a pressing issue that becomes worse with each passing month. Enbridge North Dakota submits that for these reasons, the Commission should deny the protests and permit its tariff filing to become effective October 1, 2010, without suspension or investigation.

Commission Analysis

24. The Commission accepts FERC Tariff No. 71.1.0 to be effective October 1, 2010. It represents a reasonable accommodation of the competing interests of shippers seeking transportation on Enbridge North Dakota's pipeline system, which currently is prorated because it does not have the capacity to accept the total volume of crude oil that the shippers wish to tender. Protesters failed to persuade the Commission otherwise.

25. Enbridge North Dakota's pipeline system has been in continual prorationing since February 2006 and recent dramatic increases in crude oil production in the Williston Basin are expected to continue for the next several years.¹⁵ The Commission attempted to address the prorationing issues in its earlier orders.¹⁶ We approved the Regular Shipper and New Shipper split, in part, because New Shippers had the ability to convert to Regular Shippers. However, the record in this docket demonstrates that the number of entities wanting capacity on Enbridge North Dakota far exceeds the amount of available capacity; thus, neither the Regular Shippers nor the New Shippers are getting the service they expected when we approved the prior prorationing proposals.

the process of developing a tariff change to address prepayments more specifically, and will take into account the Indicated Shippers' comments in doing so.

¹⁵ See Tariff Filing, Transmittal Letter at 1.

¹⁶ *Enbridge Pipelines (North Dakota)*, 118 FERC ¶ 61,162 (2007), *reh'g denied*, 120 FERC ¶ 61,197 (2007), *reh'g denied*, 122 FERC ¶ 61,196 (2008); and *Enbridge North Dakota*, 125 FERC ¶ 61,180 (2008).

26. Under section 3(1) of the ICA, it is unlawful for an oil pipeline “to make, give or cause any undue or unreasonable preference or advantage to . . . any particular description of traffic, in any respect whatsoever . . .” Furthermore, the ICA states that common carriers, including oil pipelines, have the duty to furnish transportation upon reasonable request and the duty to establish, observe and enforce just and reasonable regulations and practices.¹⁷ Enbridge North Dakota’s proposal will eliminate the opportunity for New Shippers to convert to Regular Shippers for the next twenty-four months. We acknowledge that Enbridge North Dakota’s proposal creates a preference but do not believe that it creates an “unreasonable preference” prohibited by the ICA because the New Shippers will not be denied service since they still have access to 10 percent of the capacity and they still have the ability to establish a history of regular shipments to convert to a Regular Shipper at the end of the 24 month period. We also find that Enbridge North Dakota’s proposed prorationing policy does not create an “unreasonable advantage” because it is limited to the next 24 months, at the end of which Enbridge expects its proposed expansion of an additional 145,000 bpd, in Docket No. OR10-19-000 will become available and the problem prompting this tariff revision should no longer exist. Indeed, the Commission will hold Enbridge North Dakota to its commitment that “[b]ecause this is a temporary emergency measure, it will be re-evaluated no later than twenty-four months from the effective date.”¹⁸ During these next 24 months, we expect Enbridge North Dakota to continue to work with its shippers to devise a solution to the situation caused by growth in shippers on its capacity-constrained system.

27. Therefore, under these extraordinary circumstances, the Commission will approve the proposal with the expectation that Enbridge North Dakota and its Regular Shippers and New Shippers will develop a potential resolution to this issue.

28. Enbridge North Dakota’s proposal is another attempt to address the continuing excess demand on its system. According to Enbridge North Dakota, the constant growth of New Shippers continues to erode the share of the pipeline capacity available to Regular Shippers, a fact that no protestant denies. In order to protect their eroding share of capacity, Enbridge North Dakota believes that Regular Shippers have been encouraging the creation of New Shippers that will provide them access to the additional space allocated to those New Shippers. This vicious cycle of continued shipper growth and excessive nominations, 180 shippers growing at a rate of 10 or more per month and likely to continue to grow unless the Commission accepts the proposal, plus

¹⁷ ICA §§ 1(4), 1(6).

¹⁸ Tariff Filing, Transmittal Letter at 4; Enbridge North Dakota Answer at 8 (“Here, by contrast, the Tariff does not create a permanent class of priority shippers in any sense.”).

approximately 22 million bbls in monthly nominations, more than three times the system's capacity of 161,000 bpd. Enbridge North Dakota notes that essentially, the 22 million bbls in monthly nominations results from virtually all active shippers nominating the full capacity of the line. This situation benefits no one and contributes to large and growing administrative burdens on the pipeline.

29. To address this situation Enbridge North Dakota proposed a temporary measure until the more permanent solution of greater capacity will become available when its pending expansion project commences service. We agree that, given these essentially uncontested facts, Enbridge North Dakota's proposed temporary measure is reasonable. New Shippers are not being denied service during those two years, but are simply being prevented from attaining Regular Shipper status during that period. New Shippers will continue to move on the system and will continue to accumulate history until such time as the temporary freeze expires or is terminated. Thus, contrary to the claim of protesters, the system is not being reserved for the exclusive use of Regular Shippers, and protesters are incorrect in arguing otherwise. The fact that New Shippers cannot convert to Regular Shippers during this period is not an "undue preference" since the circumstances warrant this treatment.

30. The *Platte* decision is not controlling here. *Platte*'s proposal did not put in place a temporary period for the policy, thus creating a situation where new shippers could not become historic shippers so long as the pipeline system required prorationing. Indeed, the Commission's reason for questioning the *Platte* provision was that it essentially constituted a permanent bar to new shippers becoming regular shippers because there was no prospect of *Platte* emerging from apportionment. In contrast, Enbridge North Dakota states it is not proposing a permanent bar to New Shippers becoming Regular Shippers. Rather, this is a temporary measure that will be re-evaluated no later than 24 months from now.

31. We also find no merit in Centerpoint Parties' reliance argument. The pipeline has been in proration since 2006, and all agree that the number of shippers on the system has increased considerably. Enbridge North Dakota attempted to address the problem of over-nominations by means of FERC Tariff No. 46 in 2007, and then in FERC Tariff No. 52, filed August 1, 2007 -- prior to the submission of nominations for September 2007 transportation. The Commission finds these factors have given all shippers sufficient notice of the importance of establishing a shipping history. The fact that Centerpoint Parties first began shipping in July 2010 does not alter this conclusion. For these reasons, the Commission will not suspend FERC Tariff No. 71.1.0, and schedule a hearing, as requested by Centerpoint Parties.

32. Since Enbridge North Dakota states it does object to the Commission conditioning its acceptance of the tariff, we direct Enbridge North Dakota to change the wording of the definition of "Average Monthly Volume" in Item 65(b) be changed to "the average of a Regular Shipper's monthly Actual Shipments during the Base Period with respect to the

line segment or segments subject to prorating,” and to capitalize all other uses of the word “tender” or “tendered” in the new language to conform to the defined term in its tariff. We further direct it to file such revision within 15 days of the date of this order.

33. Enbridge North Dakota asserted that the Indicated Shippers’ argument regarding prepayments must be disregarded because Enbridge North Dakota did not modify its tariff with respect to this issue. We agree. Since the proposal does not modify the prepayment tariff provision, we will not consider the Indicated Shipper’s argument here. Concerns about that provision cannot be raised in a protest but must be made in another proceeding.

34. Based upon a review of the filing, the Commission finds that Enbridge North Dakota’s tariff filing is just and reasonable. Accordingly, pursuant to section 15(7) of the Interstate Commerce Act, the Commission will accept FERC Tariff No. 71.1.0 for filing, to become effective October 1, 2010, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Enbridge North Dakota’s FERC Tariff No. 71.1.0 is accepted for filing, to become effective October 1, 2010.

(B) Enbridge North Dakota is directed to make the tariff language changes as directed herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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