

139 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enbridge Energy, Limited Partnership

Docket No. IS12-409-000

ORDER ACCEPTING TARIFF

(Issued June 29, 2012)

1. On May 31, 2012, Enbridge Energy, Limited Partnership (Enbridge) filed a tariff record comprising FERC Tariff No. 43.10.0¹ to implement an index-based rate increase under section 342.3 of the Commission's regulations.² In this order, the Commission accepts Enbridge's proposed Tariff No. 43.10.0 to become effective July 1, 2012.

I. Filing

2. Enbridge proposes to increase its rates effective July 1, 2012 by 8.6011 percent, consistent with the multiplier issued by the Commission on May 15, 2012, in Docket No. RM93-11-000. Enbridge explains that the increase applies only to the base transportation rates and not its surcharges, which are not governed by the index.

II. Protest and Answer

3. On June 15, 2012, PBF Holding Company LLC and Toledo Refining Company LLC (PBF) filed a protest. On June 20, 2011, Enbridge filed a response to the protests. On June 21, 2011, Enbridge filed a late revision to its response.

4. PBF asserts the Commission should reject the proposed rate increase because Enbridge's proposed index rate increase is so substantially in excess of the actual cost

¹ Enbridge Energy, Limited Partnership, FERC Oil Tariff, Pipeline Tariffs, [Local Rates](#), FERC No. 43.10.0, 43.10.0.

² 18 C.F.R. § 342.3 (2011).

increases incurred by Enbridge that the proposed rate is unjust and unreasonable. PBF states page 700 of Enbridge's 2011 FERC Form No. 6 shows the cost of service decreased by \$720.8 million from 2010 to 2011, representing a cost decrease of 47.12 percent. Thus, PBF states that under the Commission's percentage comparison test, Enbridge's 47.12 percent decrease in cost-of-service combined with the proposed rate increase of 8.6 percent would provide Enbridge an approximately 55.72 percent revenue increase under its transportation rates. PBF emphasizes that previously, the Commission found that total revenue increases of 10.9 percent³ was sufficient to warrant Commission investigation. PBF also notes page 700 of Enbridge's 2011 FERC Form No. 6 shows revenue exceeded its total cost of service by \$181.9 million, or 18.4 percent.

5. PBF states the Commission should not consider an alternate "Adjusted Cost of Service" in a footnote by Enbridge in its page 700. PBF emphasizes that the Commission has found that "the percentage comparison test is the sole screening tool the Commission applies to determine whether to investigate a protested annual index filing."⁴ PBF contends the Commission should disregard the footnoted data in the screen test because it is unclear whether Enbridge calculated this alternate data using the Commission's 154-B methodology. PBF states the use of such alternate data requires extensive consideration of accounting accuracy and rate reasonableness that the Commission cannot adequately address within the time limits available for its review.⁵

6. In its answer, Enbridge advises that in 2010, it experienced two oil spills on its system.⁶ These spills resulted in extremely high one-time costs. Enbridge states these costs amounted to approximately \$813.0 million. Of these costs, Enbridge recorded \$595 million in 2010 and \$218 million in 2011. Enbridge explained these costs in the footnote to Page 700 of Enbridge's 2011 FERC Form 6. In addition to the one-time costs, Enbridge states that in 2011 they received \$ 335 million in insurance settlements. Also, Enbridge states they booked another \$ 60.8 million dollars due to settlements that became effective in 2011 but related to activity prior to 2010.

³ PBF Protest at 1 *SFPP, L.P.*, 135 FERC ¶ 61,274, at P 11 (2011).

⁴ *Id.* at 5 (citing *SFPP*, 135 FERC 61,274 at P 10)

⁵ PBF Protest at 6 (citing *BP v. West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 6 (2007))

⁶ The first accident occurred in July 2010, near Marshall, Michigan on Line 6B on the Lakehead system. The second occurred in September 2010 in Romeoville, Illinois on Line 6A of the Lakehead system.

7. Enbridge maintains the Commission must treat these one-time costs as an addition to operating costs and the insurance recoveries and settlement recoveries as a subtraction from the operating costs, artificially making their cost of service rise drastically in 2010, and decrease in 2011. Enbridge contends that once you remove these costs and recoveries, it experienced a cost of service increase from 2010 to 2011 and passes the Commission screen for receiving the index increase.

8. Finally, Enbridge points out that PBF/Toledo is not a shipper on their system and not one of its more than 100 shippers challenged the Index Filing.

III. Discussion

9. The Commission will permit Enbridge's late-filed revisions to its response, which was only one day out-of-time. Permitting the late-filed response will not disrupt the proceeding or place additional burdens on existing parties.

10. Protests challenging an index-based rate increase are governed by section 343.2(c)(1) of the Commission's regulations, which provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 [indexing] of this chapter must allege reasonable grounds for asserting that . . . the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable⁷

11. To maintain the relative simplicity of the oil indexing process, the Commission evaluates a protest to an index-based tariff filing using the data reported in the carrier's FERC Form No. 6, Page 700 data in a "percentage comparison test."⁸ The percentage comparison test is a very narrow test that "compare[s] the Page 700 cost data contained in the company's annual FERC Form No. 6 to the data reflected in the index filing for a given year with the data for [the] prior year. . . ."⁹ This test is the "preliminary screening

⁷ 18 C.F.R. § 343.2(c)(1) (2011).

⁸ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082, at P 10 (2010) and *SFPP, L.P., et al.*, 129 FERC ¶ 61,228, at P 7 (2009). The Commission will not consider protests that raise arguments beyond the scope of the percentage comparison test. The Commission will apply a wider range of factors beyond the percentage comparison test in reviewing a complaint against an index-based rate increase. *See id.* P 11 (citing *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,243, at PP 8-9 (2007)).

⁹ *Calnev Pipe Line L.L.C.*, 130 FERC ¶ 61,082 at P 10; *BP West Coast Products, LLC v. SFPP, L.P.*, 118 FERC ¶ 61,261, at P 8 (2007). The percentage comparison test

(continued...)

tool for pipeline [index-based] rate filings,”¹⁰ and is the sole means by which the Commission determines whether a protest meets the section 343.2(c)(1) standard.¹¹

12. In applying the percentage comparison test, the Commission can take cognizance of explanatory information that the pipeline reported on Page 700 of in its FERC Form No. 6. As explained by Enbridge’s Page 700 to its 2011 FERC Form No. 6, Enbridge’s 2010 and 2011 costs were skewed by extraordinary events. In 2010, Enbridge’s costs were inflated by two spills on its system that year.¹² As Enbridge explained on Page 700 of its 2011 FERC Form No. 6, these spills effectively tripled Enbridge’s operating and maintenance expenses and inflated its 2010 total cost of service from \$ 909.8 million to \$ 1,529.8 million. Whereas Enbridge’s 2010 total costs skewed upwards, its 2011 operating costs were distorted downward by an insurance settlement relating to the spills in 2010 and settlement for litigation that occurred prior to 2010.

13. The index serves as a mechanism for recovering a pipeline’s normal business costs, not costs associated with extraordinary one time events that cause an extreme and temporary change in the pipeline’s cost of service.¹³ Thus, the Commission cannot

compares proposed changes in rates against the change in the level of a pipeline’s cost of service.

¹⁰ *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, 59 Fed. Reg. 59,137 (Nov. 16, 1994), FERC Stats. & Regs. ¶ 31,006, at 31,168, *order on reh’g*, Order No. 571-A, 69 FERC ¶ 61,411 (1994).

¹¹ *BP West Coast Products, LLC v. SFPP, L.P.*, 121 FERC ¶ 61,141, at P 6 (2007) (“[T]he Commission uses a percentage comparison test in the context of a protest to an index-based filing to assure that the indexing procedure remains a simple and efficient procedure for the recovery of annual cost increases. [Footnote omitted.] This screening approach at the suspension phase is a snap shot approach that avoids extensive arguments over issues of accounting accuracy and rate reasonableness within the time limits available for Commission review, and highlights the simplicity of the filing procedure. It also precludes the use of the protest procedure to complicate what should in most cases be merely a price adjustment that is capped at the industry’s average annual cost increases.”).

¹² Howard Brown Aff. ¶ 7.

¹³ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act*, Order No. 561-A, FERC Stats. & Regs. ¶ 31,000, at 31,097 (1994) (noting that the purpose of the Index is to ensure recovery of “normal” cost changes, not “extraordinary” cost changes).

ignore the fact that two oil spills temporarily tripled the pipeline's operational costs in 2010. Enbridge isolated the effects of these extraordinary one-time events on Page 700 to its 2011 FERC Form No. 6 and demonstrated that, after taking into account the oil spills' impact, Enbridge's adjusted 2011 cost of service of \$983.7 million exceeds its 2010 adjusted cost of service of \$934.8 million by 48.2 million, or 5.2 percent.¹⁴ Thus, Enbridge's proposed rate increase to the new 2012 index ceiling level is not so substantially in excess of the actual cost increases incurred by the carrier that the rate adjustment should be disallowed.

The Commission orders:

Tariff No. 43.10.0 is accepted to become effective July 1, 2012.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ Enbridge Response at 4.