

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Enbridge Pipelines (KPC)

Docket No. RP04-6-002

ORDER ON REHEARING AND ESTABLISHING TECHNICAL CONFERENCE

(Issued December 22, 2004)

1. This order grants rehearing in part and directs the Commission Staff to convene a technical conference in order to more fully understand and address the issues raised in this proceeding about the negative deferred fuel account balance and the surplus gas on Enbridge Pipelines, formerly Kansas Pipeline Company's (Enbridge KPC's) system. This decision benefits the public because it allows the Commission to obtain necessary information to develop a better understanding of the issues in this case.

Background

2. On October 1, 2003, in accordance with section 23 of its General Terms and Conditions (GT&C),¹ Enbridge KPC submitted revised tariff sheets to adjust its fuel reimbursement percentages to reflect changes in its fuel usage and lost and unaccounted for gas (L&U). The revised tariff sheets proposed, among other things, a decrease in the fuel reimbursement percentages (FRPs) that became effective November 1, 2003. Specifically, Enbridge KPC decreased its FRPs for each zone on the system.²

¹ On October 20, 2003, KPC filed a revised tariff sheet to correct a pagination error in its previous filing of October 1, 2003, in Docket No. RP04-6-000. Third Revised Sheet No. 31A to KPC's FERC Gas Tariff, First Revised Volume No. 1.

² The FRP in each zone are as follows: (a) for Zone 1, the FRP during April to October decreased from 2.2148% to 1.6800% and during November to March the FRP decreased from 1.7637% to 1.6800%; (b) for Zone 2, the FRP during April to October decreased from 0.2224% to 0.0000% and during November to March the FRP decreased from 0.3512% to 0.0000%; and (c) for Zone 3, the FRP was unchanged and remains set at the current 0.00%.

3. The filing was accepted by an OMTR Director's letter order issued on October 31, 2003. The Director found that the filing was made pursuant to a reasonable mechanism allowing Enbridge KPC to compute its fuel use and L&U gas. On December 1, 2003, the Kansas Corporation Commission (KCC) requested rehearing of the letter order arguing that the Commission should not have accepted the filing because of KCC's concern about Enbridge KPC's negative deferred fuel account balance and the surplus gas on the pipeline.

Request for Rehearing

4. In its request for rehearing, KCC asserts that over the last five years Enbridge KPC has generally retained more gas than it has actually used. As a result, it asserts, there has been a growing negative balance in Enbridge KPC's deferred fuel account. KCC also suggested that it appears there is a chronic incorrect estimate of L&U which is most probably the cause of the negative balances.

5. KCC argues that, as a result of failing to use realistic estimates of fuel and L&U in computing the fuel retainage percentage, Enbridge KPC over-recovered actual fuel quantities used and L&U. KCC believes this practice allowed Enbridge KPC to reap a windfall in the form of the time value of money. KCC argues the Commission should not have permitted Enbridge KPC to continue to retain the negative balance in the deferred fuel account for another twelve months without requiring interest to accrue to the benefit of ratepayers (who KCC contends have been overcharged in the past).³ Further, KCC argues that the "remedy" proposed by Enbridge KPC (use of a 0% fuel retainage percentage) is unlikely to rectify or eliminate the negative balance in Enbridge KPC's deferred fuel account balance during the next twelve-month period.

6. KCC requests that the Commission order Enbridge KPC to: (1) refund directly to shippers the negative balance in Enbridge KPC's deferred fuel account; and (2) establish reasonable fuel retainage estimates for use going forward. Alternatively, KCC wants the Commission to order Enbridge KPC to accrue interest on the negative balance (at Enbridge KPC's currently approved authorized rate of return on equity) until the negative account balance is eliminated.

Data Request

7. KCC's request for rehearing raised issues that the Commission had not previously addressed. Therefore, to assist in completing an analysis of the issues, on August 27, 2004, the OMTR Director sent a formal data request to Enbridge KPC. In the data request, the Commission Staff first questioned: (a) whether the negative balances in the

³ KCC Request for Rehearing at 2.

deferred fuel account represents surplus gas to Enbridge KPC's system; (b) If so, how Enbridge KPC manages this negative balance; (c) whether Enbridge KPC receives any financial benefits as a result of this surplus gas; (d) if there are such benefits, are these benefits shared with or passed through to Enbridge KPC's shippers?; and (e) whether this surplus gas benefits or harms the operation of the pipeline.

8. Second, the Staff questioned whether the source of the surplus gas is primarily due to L&U gas on the system. While lost and unaccounted for gas typically results in less available gas in pipelines, on Enbridge KPC in many months, it is shown as an addition to its system supply. Therefore, Staff questioned: (a) whether Enbridge KPC has undertaken any analysis to determine the source of this surplus gas supply; (b) if so, what are the results of the analysis; and (c) what, if any corrective action, does Enbridge KPC propose to eliminate or reduce this imbalance.

9. On October 27, 2004, Enbridge KPC submitted its answers to Staff's data request.⁴ In response to the first question, Enbridge KPC states that the negative balance represents surplus gas to its system and that it manages this negative balance through Operational Balancing Agreements (OBA's) and Pre-determined Allocations (PDA's). Enbridge KPC further states that it does not receive any financial benefit as a result of the surplus gas because the negative balance flows to OBA's or PDA's as appropriate. Finally, Enbridge KPC states that the surplus gas neither benefits nor harms its pipeline operations. However, it points out that the annual nature of its current fuel tracker provisions may place the pipeline in a position of requiring that it purchase gas for system use. In response to the second question, Enbridge KPC states it has undertaken an analysis of the source of this surplus gas supply and determined that the source of the surplus gas is primarily due to the lost and unaccounted for gas on the system. Enbridge KPC states that to correct this situation it has tested and upgraded measurement equipment including its software.

10. On November 5, 2004, KCC filed a petition requesting the Commission to compel Enbridge to provide more responsive answers to the data request. Specifically, KCC contends that a more responsive answer to part of the first question would have explained how OBA's and/or PDA's are utilized to manage the negative balance and under which circumstances OBA's and/or PDA's are viewed as appropriate. KCC is concerned that shippers who have transportation service (and who are charged fuel) on KPC's system should be the recipients of the benefits of the negative account balance in proportion to the quantities of gas for which they have been charged fuel. In KCC's opinion using OBA's and/or PDA's to manage the negative balance does not assure that shippers

⁴ A response was due 30 days after the request was sent; however, Enbridge KPC requested and extension of time to file its response, which was granted.

receive any benefit. Further, KCC contends that Enbridge KPC's response to the first question lacks sufficient detail about the operation of OBA's or PDA's to assure that Enbridge KPC does not in fact receive financial benefits.

11. KCC argues that Enbridge KPC's response to the second question is even more objectionable because it evades an explanation of the cause of the existence of the negative L&U gas on its system. KCC believes that Enbridge KPC should have explained what it is doing about this problem. KCC argues that simply saying that it has upgraded measurement equipment lacks sufficient detail to constitute a constructive response. They contend that a good faith response would have explained why Enbridge KPC experiences negative L&U (surplus gas), the basis for the conclusion that the negative L&U was related to measurement equipment on its system and how upgrades that the measurement equipment should rectify the problem in the future.

12. On November 22, 2004, Enbridge KPC filed an answer opposing the petition to compel responses. Enbridge KPC argues essentially that no additional information is required in order for the Commission to accept the tariff sheets it tendered and therefore the Commission should reject the KCC's petition as unnecessary.

Discussion

13. The Commission grants rehearing in part of the October 31, 2003 order so that further procedures can be established to address the issues raised by KCC. KCC has raised some concerns about Enbridge KPC's pattern of establishing fuel retention percentages which recover more gas than its actual fuel use and L&U and whether such overrecoveries benefits Enbridge KPC in a manner which should be taken into account in its fuel recovery mechanism. Enbridge KPC's responses to Staff's data request have not provided sufficient information to resolve the issues raised by KCC at this time. For example, Enbridge KPC has not given a sufficient explanation of how it manages its surplus gas through OBA's and PDA's for the Commission to determine whether the pipeline benefits financially from the surplus gas. Therefore, in order to get the information necessary to resolve the issues in this case, the Commission directs its Staff to convene a technical conference.

14. Enbridge KPC must be prepared at the technical conference to address the issues raised by the KCC's November 5, 2004 petition and to fully support its position on each issue. A technical conference is an informal, off-the-record, conference at which the parties and the Staff can explore the issues raised in this proceeding, gain an understanding of the facts, and obtain additional information regarding the positions of the parties in order to facilitate a more informed resolution of the issues. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding and, together with the record developed to date, will form the basis for further Commission action.

The Commission orders:

(A) The Commission grants rehearing in part.

(B) Staff is directed to convene a technical conference to discuss and clarify the issues as discussed in the body of this order. Staff is to report back to the Commission within 120 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.