

110 FERC ¶ 61,038  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 21, 2005

In Reply Refer To:  
Enbridge Pipelines (KPC)  
Docket Nos. CP96-152-031,  
CP96-152-032, and  
CP96-152-033

Enbridge Pipelines (KPC)  
1100 Louisiana, Suite 3300  
Houston, TX 77002

Attention: Cynthia A. Corcoran, Director  
Regulatory Compliance and Senior Counsel

Reference: Compliance Filing, Refund Plan, and Request for Rehearing

Ladies and Gentlemen:

1. On December 13, 2004, Enbridge Pipelines (KPC), formerly Kansas Pipeline Company (Enbridge KPC), filed *pro forma* tariff sheets<sup>1</sup> and a refund plan with respect to its initial Natural Gas Act section 7 rates in purported compliance with the Commission's Order on Remand issued on October 8, 2004 (October 8 Order).<sup>2</sup> The *pro forma* tariff sheets and refund plan cover the period December 2, 1997 through November 8, 2002 (locked-in period).<sup>3</sup> Enbridge KPC and the Missouri Public Service Commission (Missouri Commission) request expedited acceptance of the tariff filing and the refund

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<sup>1</sup> See Appendix.

<sup>2</sup> *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,042 (2004). The United States Court of Appeals for the District of Columbia Circuit vacated and remanded the initial rates approved by the Commission for Kansas Pipeline Company (Kansas Pipeline), now Enbridge KPC. *Missouri Public Service Commission v. FERC*, 337 F.3d 1066 (D.C. Cir. 2003).

<sup>3</sup> The tariff sheets and the refund plan were filed in Docket Nos. CP96-152-033 and CP96-152-032, respectively. On November 9, 2002, new rates took effect under Enbridge KPC's rate increase application in Docket No. RP99-485-000.

plan. Enbridge KPC also filed on December 13, 2004 a motion for leave to withdraw its request for rehearing of the October 8 Order if and when the Commission accepts its refund filings without modification.

2. The Commission issued public notices of Enbridge KPC's filings on December 21, 2004 (69 Fed. Reg. 77,749 and 78,005), permitting comments, protests, or interventions as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Notices of intervention, unopposed timely filed motions to intervene, and all motions to intervene out of time filed before the issuance of this order are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)). Granting late interventions will not disrupt the proceeding or place additional burdens on existing parties. No adverse comments were filed. The Missouri Commission supports the filings.

3. As required by the October 8 Order, Enbridge KPC filed *pro forma* tariff sheets addressing the rates applicable to firm and interruptible transportation service during the locked-in period, which Enbridge KPC claims reflect the understandings and agreements reached among Enbridge KPC and each of its firm and interruptible customers and their consensus view regarding the appropriate development of cost-of-service rates that would have been in effect for the locked-in period.<sup>4</sup>

4. Enbridge KPC requests waivers of sections 154.102(e)(2) and 154.201(1) of the Commission's regulations to permit its filing of unmarked *pro forma* tariff sheets.<sup>5</sup> Enbridge KPC claims that its acquisition of Kansas Pipeline Company (KPC) was the second transfer of KPC to occur during the locked-in period and, consequently, Enbridge KPC has been unable to identify a copy of the KPC FERC Gas Tariff as it existed on December 2, 1997. In addition, Enbridge KPC states that the absence of the information identified under these sections will impact neither the Commission's review of this compliance filing, nor the effective distribution of the refund amounts that Enbridge KPC has detailed in the refund plan.

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<sup>4</sup> Without opposition from its customers or the Missouri Commission, Enbridge KPC filed, and the Commission granted, a Request for Extension of Filing Deadlines and a Request for Extension of Time in its attempt to finally resolve this proceeding.

<sup>5</sup> 18 C.F.R. § 154.102(e)(2) (providing for the numbering of tariff pages within a natural gas company's FERC Gas Tariff) and 18 C.F.R. § 54.201(a) (requiring the inclusion of marked versions of the tariff pages showing changes between the filed numbered tariff sheet and the then currently effective sheet of the same number).

5. Enbridge KPC also requests a waiver of the October 8 Order's requirement that Enbridge KPC provide certain historical information.<sup>6</sup> Asserting good cause exists for granting this waiver, Enbridge KPC submits that the filing seeks solely to obtain authorization of refunds, not establishment of rates or charges on a prospective basis and, given the consensus reached with its customers and the already lengthy history of this proceeding, it would be an inefficient use of resources to produce and review materials from such remote time periods.

6. Enbridge KPC's refund plan details, as required by the October 8 Order, the amount of any refund due to each customer, with separately stated estimates of interest due; the calculations supporting the refund amounts; and a proposed method for distributing such funds. Enbridge KPC's proposed methodology for developing refunds in accordance with the October 8 Order is the result of consensus agreements with its various firm and interruptible transportation customers. Consistent with the agreements, the refund plan is divided into four primary sections: (1) Revised Cost of Service; (2) Missouri Gas Energy Refunds; (3) Atmos Energy Refunds; and (4) Interruptible Transportation Refunds. Each section includes the previously effective rates, the new locked-in period rates, refund amounts, and underlying work papers. In accordance with the October 8 Order and agreements among Enbridge KPC and each of its customers, Enbridge KPC is refunding to each identified customer an amount equal to the difference between (a) the dollar amount paid by the customer for actual paid-for volumes during the locked-in period, and (b) the dollar amount that would have been paid for such volumes at the revised rate established pursuant to the October 8 Order. Interest on the refund amounts is calculated pursuant to section 154.501(d) of the Commission's regulations, 18 C.F.R. § 154.501(d).

7. More specifically, using the new locked-in period rates based on the revised cost-of-service of \$22.6 million approved in the October 8 Order, the following refund amounts (excluding interest) were calculated:

Missouri Gas Energy	\$10,288,060
Atmos Energy	49,356
Interruptible Transportation	<u>414</u>
Total:	\$10,377,722

Subject to approval of this refund plan and acceptance of the tariff sheets, Enbridge KPC will disburse refunds to each of the identified customers accordingly.

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<sup>6</sup> Ordering Paragraph (D) of the October 8 Order required Enbridge KPC to file Accumulated Deferred Income Tax balances as of September 30, 1996, and verify the basis for its balances attributable to (a) market entry costs, (b) acquisition premiums, (c) net debt expenses, and (d) project development costs.

8. Enbridge KPC requests that the Commission accept the *pro forma* tariff sheets and refund plan, without condition or modification, and grant any waivers of the Commission's regulations to the extent necessary to authorize the refunds described herein. Further, Enbridge KPC requests expedited treatment of this filing and acceptance of the refund plan by December 30, 2004 in order to provide its customers with the refund amounts as soon as possible. Enbridge KPC asserts that acceptance of these filings will complete its compliance with the October 8 Order.

9. The Missouri Commission filed comments in support of the refund plan. Acknowledging this has been a prolonged case fraught with controversy, the Missouri Commission indicates that Enbridge KPC made significant effort to work with its customers and the Missouri Commission to develop a refund plan that complied with the Commission's directives. Based on review of Enbridge KPC's underlying cost-of-service computations and the refund plan, the Missouri Commission reports that Enbridge KPC's cooperative approach resulted in refund calculations fully supported by the Missouri Commission. The Missouri Commission states that the compliance filing appropriately implements the Commission's recent directives and resolves all issues the Missouri Commission viewed as pending in this docket. The Missouri Commission also notes that, with the winter heating season at hand, expeditious approval of the refunds would be of particular benefit to consumers. Accordingly, the Missouri Commission joins in Enbridge KPC's request that the Commission approve the refund plan on an expedited basis.

10. The directives and findings set forth in the October 8 Order are based on the Commission's review of Enbridge KPC's initial rates applying the Commission's customary ratemaking policies, consistent with the findings of the U.S. Court of Appeals for the D.C. Circuit. The October 8 Order recognized the potential for refund obligations because the initial rates that had been charged reflected a cost-of-service greater than the approved \$22.6 million revised cost-of-service. The October 8 Order did not make a final ruling regarding the pipeline's refund obligations but, rather, ordered Enbridge KPC to file a refund plan showing how it calculates the refund that would be due each customer.

11. We have reviewed the refund plan, including the calculations developing the revised cost of service and the computation of refund amounts due, and the associated *pro forma* tariff sheets. The refund plan reflects a total refund amount of \$10,377,722 excluding interest, based on the use of the revised \$22.6 million cost-of-service required by the October 8 Order. In addition, the refund plan provides for the payment of interest on the refunds, as also required. Moreover, the Missouri Commission fully supports Enbridge KPC's calculation of the refund amounts. Accordingly, we find that Enbridge KPC is in compliance with our October 8 Order and hereby accept its tariff filing and refund plan.

12. With respect to Enbridge KPC's requests for waiver, the Commission agrees with Enbridge KPC that the absence of the information identified in regulations under sections 154.102(e)(2) and 154.201(a) does not affect review of this compliance filing or the effective distribution of the refund amounts. Secondly, the Commission finds that Enbridge KPC has shown good cause for waiving the requirement in Ordering Paragraph (D) of the October 8 Order, particularly in light of the consensus agreement among all parties and the difficulties associated with record retrieval stretching back nine years. Therefore, the Commission grants waiver of our regulations under sections 154.102(e)(2) and 154.201(a), and the requirement in Ordering Paragraph (D) in October 8 Order.

13. As a consequence of the foregoing, Enbridge KPC is ordered to make the refunds specified in its refund plan, together with interest calculated pursuant to section 154.501(d) of our regulations. Within 30 days of this order, Enbridge KPC must file a refund report specifying the refunds made and the interest paid to each customer. The refund report must also include all workpapers necessary to support the disbursement made by Enbridge KPC. Enbridge KPC must also file, within 30 days of this order, effective tariff sheets which contain the rates applicable to firm and interruptible transportation service during the locked-in period.

14. Finally, Enbridge KPC has moved for leave to withdraw its request for rehearing of the October 8, 2004 Order in the event we unconditionally approve its refund filings. Given that we are approving in this order Enbridge KPC's tariff filing and refund plan, without modification and in accordance with the waivers requested therein, Enbridge KPC's request for rehearing of the October 8 Order, which was filed only as a protective matter in the event negotiations on the refund calculations failed, is now moot, and we therefore grant Enbridge KPC's motion to withdraw its rehearing request.

By direction of the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

cc: All Parties

**APPENDIX**

**Enbridge Pipelines (KPC)  
FERC Gas Tariff, First Revised Volume No. 1**

Pro Forma Sheet No. 15  
Pro Forma Sheet No. 16  
Pro Forma Sheet No. 16A  
Pro Forma Sheet No. 21  
Pro Forma Sheet No. 22  
Pro Forma Sheet No. 26  
Pro Forma Sheet No. 27  
Pro Forma Sheet No. 28  
Pro Forma Sheet No. 29  
Pro Forma Sheet No. 30  
Pro Forma Sheet No. 31  
Pro Forma Sheet No. 31A  
Pro Forma Sheet No. 31B  
Pro Forma Sheet No. 31C