

124 FERC ¶ 61,159  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

August 14, 2008

In Reply Refer To:  
Enbridge Energy, Limited Partnership  
Docket No. OR08-10-000

Enbridge Energy, Limited Partnership  
c/o Enbridge Pipelines Inc.  
Suite 3000  
425 – 1<sup>st</sup> Street S.W.  
Calgary, AB Canada T2P 3L8

Attention: Ralph Fischer  
Director, Planning and Analysis

Reference: Acceptance of Amendment to Settlement

Ladies and Gentlemen:

1. On February 29, 2008, Enbridge Energy, Limited Partnership (Enbridge Energy) filed a rate increase in FERC Tariff No. 32 that became effective on April 1, 2008. The filing was made in compliance with a previously granted Offer of Settlement<sup>1</sup> (Settlement) under which Enbridge Energy can reconcile facility surcharges annually each April 1<sup>st</sup> to actual costs and throughput for particular shipper-requested pipeline projects that are in service. In addition to the rate increases, Enbridge Energy, in the February 29 filing, sought to amend the Settlement to include surcharges for particular shipper-requested pipeline projects that are not yet in service. The Commission grants the amendment to the Settlement for the reasons discussed below.

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<sup>1</sup> The Offer of Settlement between Enbridge Energy and the Canadian Association of Petroleum Producers (CAPP) was filed on May 20, 2004, in Docket No. OR04-2-000 and approved by the Commission on June 30, 2004, Enbridge Energy, Limited Partnership, 107 FERC ¶ 61,336 (2004).

2. Enbridge Energy under the Settlement is granted: (1) a facilities surcharge framework that it will implement separately from and incrementally to the existing surcharges in its tariff rates (Facilities Surcharge); (2) four settlement agreements negotiated between CAPP and Enbridge Pipelines Inc. on its own behalf and on behalf of Enbridge Energy; and (3) a proposal to permit Enbridge Energy to submit for Commission review and approval, future agreements resulting from negotiations with CAPP where the parties have agreed that recovery of the costs through the Facilities Surcharge is desirable and appropriate.

3. Enbridge Energy states the Facilities Surcharge framework was intended to be utilized to include additional projects negotiated and agreed upon between Enbridge Energy and CAPP. Enbridge Energy also states it is committed to bring these new agreements to the Commission for approval and amendment of the Facilities Surcharge. The FERC Tariff No. 32 filing reflected one previously approved (Project 5) and three proposed new additions (Projects 6, 7, and 8) to the Facilities Surcharge. The projects addressed in the filing of FERC Tariff No. 32 are as follows:

- (a) Project 5 – Southern Access Mainline Expansion Project  
This relates to an expansion project already in service for which Enbridge Energy has previously received Commission approval.<sup>2</sup>
- (b) Project 6 – Tank 34 at Superior Terminal and Tank 79 at Griffith Terminal  
The Superior terminal tank was placed into service in August 2007 and the Griffith terminal tank was placed into service in December 2007.
- (c) Project 7 – Clearbrook Manifold  
The project capital cost of \$9.2 million is included in FERC Tariff No. 32, that went into effect on April 1, 2008, and the project was expected to go into service in June 2008.
- (d) Project 8 – Tank 35 at Superior Terminal and Tank 80 at Griffith Terminal  
The project capital cost of \$27.8 million is included in FERC Tariff No. 32, that went into effect on April 1, 2008, and the Superior terminal tank is expected to go into service in August 2008 and the Griffith terminal tank is expected to be in service in November 2008.

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<sup>2</sup> *Enbridge Energy, Limited Partnership*, 114 FERC ¶ 61,264 (2006).

4. Enbridge Energy states the in-service dates for the projects included in its 2008 annual Facility Surcharge vary, with some projects already in service and others planned to come into service later this year. Enbridge Energy indicates while ordinarily tariff changes related to facilities would go into effect at the time the new facilities go into service, Enbridge Energy seeks a limited waiver of that requirement because of the unique nature of the Facilities Surcharge Settlement. Under the limited waiver Enbridge would include in the Facilities Surcharge, charges for proposed facilities that have not yet gone into service as opposed to waiting until they go into service.

5. Enbridge Energy contends that if it had to wait 30 to 60 days before each project was in service to file a new tariff, there would be multiple changes to the Facilities Surcharge throughout the year, which would unduly burden the shippers, the Commission, and the carrier. Enbridge Energy also contends multiple changes, even small ones, would create rate uncertainty and increases the likelihood of accounting errors. Enbridge Energy believes this requirement is not justified in this case, because the Settlement includes an annual true-up, which ensures that neither the shippers nor Enbridge Energy will be harmed as a result of forecasting errors. Enbridge further contends, the purpose of the Facilities Surcharge is to facilitate streamlined tariff filings based on a settlement with a representative of virtually all of Enbridge Energy's shippers and, by its own terms, the Facilities Surcharge ensures that any difference between projected and actual costs is trued up on an annual basis.

6. Enbridge Energy asserts that in order to reduce the administrative burden and ensure rate stability for their shippers, Enbridge Energy has received support from CAPP to use the following process for including future projects in the Facilities Surcharge.

- As it has previously, Enbridge Energy will file for Commission approval to include those projects that have been agreed to with CAPP in the Settlement. The filing will include a letter of support from CAPP that will set out the terms agreed to by Enbridge Energy and CAPP for determining the revenue requirement for each project.
- Enbridge Energy will apply to the Commission for approval of the Facilities Surcharge every April 1<sup>st</sup>. The Facilities Surcharge will consist of two parts:
  - (1) The first component will contain the projected revenue requirement for all projects agreed to with CAPP for inclusion in the Facilities Surcharge (i.e., both those with and pending Commission approval). Enbridge will include in this

calculation the forecasted projected costs and the anticipated in-service date of the new projects. In addition Enbridge Energy will utilize the expected throughput over which the Facilities Surcharge will be recovered.

(2) The second component will true up the previous year's projected revenue requirement to the actual revenues collected and throughput transported under the Facilities Surcharge in effect that year. The new Facilities Surcharge calculated in the first component will then be adjusted for any over or under collections including carrying charges, as specified in the Settlement.

7. Enbridge Energy requests that this new process be approved for use in its future Facilities Surcharge filings.
8. Enbridge Energy's filing of FERC Tariff No. 32 and the waiver request to modify the Settlement contained letters of support from CAPP. The filing attempts to avert a potential future rate dispute by reaching a negotiated agreement that establishes how Enbridge Energy will recover the costs of expansion projects not yet in service. No protests or adverse comments were received.
9. Inasmuch as the filing is uncontested and its approval would further the Commission's policy of favoring settlements as a means for parties to avoid litigation and thereby lessen the regulatory burdens of all concerned, the Commission approves the amendment to the Settlement on the grounds that it is fair, reasonable, and in the public interest. The Commission's acceptance of the amendment to the Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this filing.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties