

128 FERC ¶ 61,208
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

August 28, 2009

In Reply Refer To:
Enbridge Energy, Limited Partnership
Docket No. OR09-5-000

Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Attention: Steven Reed and Cynthia Quarterman
Counsel for Enbridge Energy, Limited Partnership

Reference: Acceptance of Supplement to Settlement

Ladies and Gentlemen:

1. On February 27, 2009, Enbridge Energy, Limited Partnership (Enbridge Energy) filed to supplement its Offer of Settlement (Settlement) previously accepted by the Commission.¹ Enbridge Energy seeks approval to supplement the Settlement to permit recovery of the costs of (a) Project 9, Southern Lights Replacement Capacity, (b) Project 10, Eastern Access (Trailbreaker) Backstopping Agreement, and (c) Project 11, Line 5 Expansion Backstopping Agreement. The Commission accepts the supplement to the Settlement for the reasons discussed below.

2. The Settlement allows Enbridge Energy to recover the costs associated with particular shipper requested projects through an incremental surcharge added to the existing base rates and other Commission-approved surcharges already in effect. The facilities surcharge is intended to be a transparent, cost-of-service-based tariff mechanism that will be trued-up each year to actual costs and throughput and will not be subject to indexing. Enbridge Energy states that the facilities surcharge is intended to provide a flexible and open-ended mechanism for Enbridge Energy to respond to shipper requests.

¹ *Enbridge Energy, Limited Partnership*, 107 FERC ¶ 61,336 (2004). The Commission approved an amendment to the Offer of Settlement. *Enbridge Energy, Limited Partnership*, 124 FERC ¶ 61,159 (2008).

3. Enbridge Energy explains that the facilities surcharge provides a framework for the inclusion of additional projects negotiated by Enbridge Energy and the Canadian Association of Petroleum Producers (CAPP). Contemporaneously with the instant filing, Enbridge Energy also filed FERC Tariff No. 35 in Docket No. IS09-154-000 setting forth facilities surcharge rates effective April 1, 2009, for the newly proposed projects as follows:

(a) Project 9 – Southern Lights Replacement Capacity Project

The Commission approved inclusion of certain costs associated with an asset swap between Enbridge Pipelines (Southern Lights) LLC (Enbridge Southern Lights) and Enbridge Energy Partners, LP's Lakehead System.² Enbridge Southern Lights was permitted to include in the rate base costs associated with acquisition of an existing pipeline, Line 13, from the Lakehead System in exchange for a new line to be constructed for the Lakehead System. In exchange for access to the additional capacity, CAPP agreed that the operating and capital related costs of using certain assets should be borne by the Lakehead System during the interim period. The interim period is from December 31, 2008 (the in-service date of the capacity replacement) to the earlier of the transfer of Line 13 to Enbridge Southern Lights or July 1, 2010, as provided in CAPP's letter of support.

(b) Project 10 – Eastern Access (Trailbreaker) Backstopping Agreement

Project 10 involves costs incurred in the development of the Eastern Access Project, also known as Trailbreaker, which included the proposed expansion of the Lakehead System's Line 6B and the construction of associated Griffith/Hartsdale tanks and facility upgrades in order to meet increased shipper demand for light synthetic crude. CAPP agreed to permit recovery of up to \$8 million of project development costs incurred through December 2008.

(c) Project 11 – Line 5 Expansion Backstopping Agreement

Project 11 involves costs incurred in the development of the Lakehead's Line 5 Expansion Project, which was intended to increase the capacity of the Superior to Sarnia line segment by 50,000 barrels per day. CAPP agreed to permit recovery of up to \$3 million of project development costs incurred through December 2008.

² *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310 (2008), *reh'g denied*, 122 FERC ¶ 61,170 (2008).

4. Enbridge Energy's filing of FERC Tariff No. 35 and the instant supplement to the Settlement contained letters of support from CAPP. Enbridge Energy 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. No protests or adverse comments were received.

5. 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 accepts the supplement to the Settlement on the grounds that it is fair, reasonable, and in the public interest. The Commission's acceptance of the supplement to the Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this filing.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties