

142 FERC ¶ 61,109
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 13, 2013

In Reply Refer To:
Enbridge Energy, Limited Partnership
Docket No. OR13-11-000

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

Attention: Steven Reed
Counsel for Enbridge Energy, Limited Partnership

Reference: Approval of Supplement to Facilities Surcharge Settlement

Ladies and Gentlemen:

1. On December 12, 2012, Enbridge Energy, Limited Partnership (Enbridge Energy) filed a Supplement to its Facilities Surcharge Settlement (Supplement to Settlement)¹ to permit it to recover the costs of two projects, which are (1) the Flanagan Tank Replacement Project (Project 17), and (2) the Eastern Access Phase I Mainline Expansion (Project 18).² Enbridge Energy explains that these projects are intended to respond to a likely substantial increase in domestic U.S. crude production in the Bakken field, as well as Canadian crude oil production, to meet refinery demands in the U.S. and Eastern Canada. Enbridge Energy states that the Canadian Association of Petroleum Producers

¹ Enbridge Energy states that the Commission approved its Facilities Surcharge in an order issued June 30, 2004. *Enbridge Energy, Limited Partnership*, 107 FERC ¶ 61,336 (2004) (Facilities Surcharge Order). Enbridge Energy further states that the Commission also has accepted previous amendments and supplements to the Settlement, most recently in *Enbridge Energy, Limited Partnership*, 138 FERC ¶ 61,223 (2012).

² Enbridge Energy states that Project 17 has an overall estimated cost of \$38.7 million and includes the replacement of two out-of-service tanks with two new tanks. Enbridge Energy also explains that Project 18 has an overall cost of \$1.7 billion and includes the Line 5 Mainline Expansion, the Line 62 Spearhead North Expansion, and the Line 6B Pipe Replacement from Griffith, Indiana, to Stockbridge, Michigan.

(CAPP) supports its filing. Pursuant to 18 C.F.R. § 385.602 (2012), Enbridge Energy seeks approval of the Supplement to Settlement to become effective April 1, 2013.

2. Enbridge Energy states that, in the Facilities Surcharge Order, the Commission approved the Facilities Surcharge framework establishing the Facilities Surcharge as a component of Enbridge Energy's U.S. tariff rates. Enbridge Energy explains that the Facilities Surcharge allows it to recover the costs associated with shipper-requested projects through an incremental surcharge added to the existing base rates and other effective Commission-approved surcharges. Enbridge Energy adds that the Facilities Surcharge is intended to be a transparent, cost-of-service-based tariff mechanism that it will true-up each year to actual costs and throughput, and, therefore, the Facilities Surcharge is not subject to indexing.

3. Enbridge Energy explains that it determines the projects to be included through a negotiating process with CAPP. Enbridge Energy states that, in addition to the standard Facilities Surcharge terms, it negotiated with CAPP two additional adjustments for the protection of shippers that are applicable to Project 18.

4. First, states Enbridge Energy, the Line 6B Replacement will avoid certain future integrity-related capital expenditures on that line, which provides part of the economic rationale for the project. Therefore, continues Enbridge Energy, it has agreed with CAPP that, through June 30, 2012, it will reduce the revenue requirement for the surcharge component by the commensurate revenue requirement associated with certain agreed-upon capital costs. Enbridge Energy also states that, over the period ending on that date, the total agreed-upon capital cost reductions total \$228 million.

5. According to Enbridge Energy, the second adjustment relates to the overall cost of Project 18 and its three components. Enbridge Energy explains that it has agreed with CAPP to employ a capital cost risk-sharing mechanism for the project, which will help protect shippers from potential capital cost increases. Enbridge Energy maintains that the adjustment initially applied only to the three elements of Project 18 and included a \$1.3 billion threshold, above which the adjustment would have applied. However, continues Enbridge Energy, it subsequently reached agreement with CAPP to expand the capital cost risk-sharing mechanism to include the Eastern Access Phase 2 Mainline Expansion, which is scheduled to go into service in 2014 and is not part of Enbridge Energy's request in this proceeding. Enbridge Energy explains that this agreement raised the overall threshold to \$1.85 billion.

6. Enbridge Energy further explains that, under the amended capital cost risk-sharing arrangement extending through June 30, 2021, the Facilities Surcharge components relating to Project 18 and the Eastern Access Phase 2 Mainline Expansion will reflect a collective rate base of no more than \$1.85 billion plus 50 percent of any actual capital cost in excess of that amount. Because the projected cost of the two projects together is estimated to be approximately \$2.2 billion, Enbridge Energy states that the effect of this arrangement is to reduce the total revenue requirement that it would otherwise collect

under the Facilities Surcharge. In addition, Enbridge Energy emphasizes that it is put at risk for any capital cost increases from the current estimates because it will recover only 50 percent of any such increase through June 30, 2021. Enbridge Energy adds that, beginning July 1, 2021, its rates will no longer be subject to the negotiated cap.

7. Enbridge Energy asserts that the negotiated adjustments will provide substantial benefits to shippers that would not be available through the usual rate recovery mechanisms applicable under the Commission's oil pipeline rules. Enbridge Energy maintains that, combined with the benefits that shippers will derive from the increased capacity of its Lakehead System, these adjustments clearly demonstrate that the addition of these two projects to the Facilities Surcharge is fair, reasonable, and in the public interest.

8. Enbridge Energy seeks an effective date of April 1, 2013, for this filing. It states that it intends to make a separate tariff filing to incorporate these projects as part of its Facilities Surcharge as of that date.

9. Notice of the filing was issued January 22, 2013, with interventions and protests due on January 29, 2013. Pursuant to Rule 214 of the Commission's regulations,³ all timely-filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not delay or disrupt the proceeding or place additional burdens on existing parties. The filing is unopposed.

10. Inasmuch as this filing is uncontested and is consistent with the already approved Facilities Surcharge framework, the Commission approves the Supplement to the Settlement, finding that it appears fair, reasonable, and in the public interest. The Commission's approval of the Supplement to the Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All parties

³ 18 C.F.R. § 385.214 (2012).