

142 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Enbridge Pipelines (North Dakota) LLC

Docket No. IS13-189-000

ORDER ACCEPTING TARIFF

(Issued March 28, 2013)

1. On March 1, 2013, Enbridge Pipelines (North Dakota) LLC (Enbridge North Dakota) filed FERC Tariff No. 72.22.0<sup>1</sup> which incorporates an annual update to the surcharges authorized for recovering the costs of the Phase 5 Expansion and the Phase 6 Expansion on Enbridge North Dakota's system. As discussed below, the proposed tariff is accepted to become effective April 1, 2013.

**Background**

2. The Enbridge North Dakota System runs from western North Dakota east to Clearbrook, MN. From 2006 to 2013, Enbridge North Dakota initiated several expansions which increased the pipeline capacity into Clearbrook from 80,000 barrels per day (bpd) to 210,000 bpd. Two of these expansions, known as the Phase 5 Expansion and the Phase 6 Expansion, were the subject of settlements approved by the Commission.<sup>2</sup> The Phase 5 Expansion provides looping of a feeder line between Alexander, ND, and Beaver Lodge, ND, which increased capacity from Alexander, ND, by 25,000 bpd and from Trenton, ND, by 33,000 bpd. The Phase 5 Expansion also

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<sup>1</sup> [Oil Pipelines Tariffs, Local Rates Tariff, FERC No. 72.22.0, 72.22.0](#)

<sup>2</sup> *Enbridge Pipelines (North Dakota) LLC*, 117 FERC ¶ 61,131 (2006) (Order on Phase 5 Settlement); *Enbridge Pipelines (North Dakota) LLC*, 125 FERC ¶ 61,052 (Order on Phase 6 Settlement).

increased capacity on the mainline. The Phase 6 Expansion added approximately 40,000 bpd of capacity into Minot, ND, and approximately 51,000 bpd from Minot to Clearbrook, MN.

3. The Phase 5 Expansion Settlement and the Phase 6 Expansion Settlement implemented cost-of-service based surcharges to recover the costs of each expansion. The surcharges are trued up each year to account for actual costs. The term of the surcharge for the looping in the Phase 5 Expansion is December 31, 2016.<sup>3</sup> The surcharge for the Phase 6 Expansion is for a seven year term following the initiation of service in 2010.

### **Enbridge's Filing**

4. In this filing, Enbridge North Dakota proposes to provide the annual update to the surcharge required by the Phase 5 Expansion and Phase 6 Expansion Settlements. Enbridge North Dakota states that its filing is based upon the cost-of-service methodology in the Phase 5 Expansion Settlement and the Phase 6 Expansion Settlement. Enbridge North Dakota explains that the proposed adjustments to the surcharge are based upon an estimated revenue requirement for 2013. Enbridge North Dakota further states that revenue requirement is divided by the forecasted throughput to calculate a per barrel surcharge. Enbridge states that the Phase 6 Expansion surcharge has been applied to all routes with a destination to Clearbrook, MN, and the Phase 5 Expansion Surcharge applied to all destinations originating in Trenton, ND, and Alexander, ND.

### **Protest and Answer**

5. On March 18, 2013, St. Paul Park Refining Co. LLC (St. Paul Park) filed a protest. In its protest, St. Paul Park objects the changes in the surcharge for recovery of Phase 6 Expansion costs. St. Paul Park requests the establishment of hearing procedures and the suspension of the proposed surcharge rates for the statutory maximum seven-month period permitted under the Interstate Commerce Act (ICA).

6. St. Paul Park alleges that the rates contained in the tariff filing propose increases ranging from 23 to 49 percent. St. Paul Park states that Enbridge has not justified its projection of 2013 total volume of 160,000 barrels per day (bpd) used to determine the Phase 6 Settlement surcharge. St. Paul Park adds that in 2012, Enbridge projected 220,953 bpd, but only moved 190,037 bpd. St. Paul Park states that Enbridge North

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<sup>3</sup> *Enbridge Pipelines (North Dakota) LLC*, 130 FERC ¶ 61,231 (2010). Phase 5 also included an expansion of Enbridge's mainline. However, the surcharge associated with this part of the expansion expired December 31, 2012.

Dakota has not explained why it expects another 30,000 bpd decrease between the 2012 and 2013 volume levels.

7. St. Paul Park contends that the completion of Enbridge's affiliated rail terminal at Berthold, ND, may cause the settlement agreement surcharge rate methodology to be unjust and unreasonable. St. Paul Park states that the Berthold facility permits the loading 80,000 bpd of crude onto rail cars for export from the Williston Basin. St. Paul Park states that the Berthold Rail project is scheduled to be completed in the first quarter of 2013, and, thus, St. Paul Park emphasizes that this is the first time that the Berthold facility has affected the calculation for the Phase 6 Expansion surcharge. St. Paul Park states that the addition of the Berthold facility alters the key factual basis underlying the settlement that established the Phase 6 surcharge. St. Paul Park states that the settlement appears to assume that, with limited exception, all barrels entering Enbridge for trunkline transportation exit at Clearbrook. To the extent this is no longer the case, St. Paul Park states that Enbridge North Dakota has provided no explanation for why shippers on the western portion of Enbridge North Dakota's pipeline system should be exempt from paying their share of Phase 6 Expansion costs. St. Paul Park further alleges that the disparities in the loading fees charged by Enbridge may be lowering the volumes to Clearbrook and increasing the volumes removed at Berthold.

8. St. Paul Park also contends that the seven-year recovery period specified in the Phase 6 Settlement may no longer be just and reasonable. St. Paul Park states that the Phase 6 Settlement Agreement, written in 2008, established a seven-year term to coincide with the peak production in the Williston Basin. However, St. Paul Park states that more recent projections push peak production to 2020 or later.

9. On March 25, 2013, Enbridge filed an answer. Enbridge states that it correctly applied the terms of the settlement methodology to calculate the surcharge, and that St. Paul Park's protest is a collateral attack on the established methodology for the Phase 6 Expansion. Regarding the throughput estimates used to determine the surcharge rates, Enbridge North Dakota states that it applied the same method that it has in the past in accordance with its ordinary business practices. Further, Enbridge North Dakota states that the true-up provision in next year's filing will correct for any over or under recovery based upon the actual 2013 throughput.

10. Enbridge also states that its Phase 6 Expansion surcharge calculation appropriately excluded volumes exiting the system at Berthold. Enbridge quotes the Settlement provision applicable to Phase 6, which states, "the Phase 6 Surcharge will be applicable to all volumes leaving the system at Clearbrook, Minnesota."<sup>4</sup> Enbridge states that the surcharge was limited to shippers transporting to Clearbrook because these shippers

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<sup>4</sup> *Id.* at 7 (quoting Offer of Settlement, Docket No. OR08-6-000, at 7).

receive the main benefit from the Phase 6 Expansion. Similarly, Enbridge North Dakota states that the seven-year period for recovery was explicitly provided by the Settlement and is not relevant to this filing, which implements the annual surcharge level adjustment. Enbridge asserts that St. Paul Park must bring such challenges to the Phase 6 Expansion Settlement terms in a complaint proceeding, and that any such changes can only be made prospectively.

11. To the extent that the protest is not dismissed, Enbridge states that the Commission should reject St. Paul Park's request for the maximum seven-month suspension. Enbridge emphasizes that the Commission's general policy is that oil pipeline tariff filings will normally be suspended for one day only, subject to refund.<sup>5</sup> Enbridge states that where no irreparable injury is demonstrated, the Commission has consistently rejected requests for seven month suspensions.<sup>6</sup>

### **Discussion**

12. The Commission accepts Enbridge's proposed tariff to become effective April 1, 2013. Most of the issues raised by St. Paul Park are objections to the mechanism previously accepted by the Commission for determining the surcharge used to recover Phase 6 Expansion costs.<sup>7</sup> This mechanism specified that the surcharge was to be assessed to "all volumes leaving the system at Clearbrook, Minnesota,"<sup>8</sup> and that the surcharge was to be in place over seven years.<sup>9</sup> The only issue before the Commission in this filing is whether Enbridge has appropriately applied the existing mechanism, not whether the mechanism should be modified. To the extent that St. Paul Park objects to the established methodology used to recover these Phase 6 Expansion costs, St. Paul Park has the option to file a complaint.

13. As for the throughput estimate used by Enbridge to calculate the surcharge in the instant filing, there is no reason to believe the estimated throughput is unreasonable. Furthermore, any collections by Enbridge pursuant to the surcharge are subject to a true-up which will return any over-collections to the shippers. The Commission does not

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<sup>5</sup> Enbridge North Dakota Answer at 10 (citing *Buckeye Pipe Line Co.*, 13 FERC ¶ 61,267 (1991)).

<sup>6</sup> *Id.* at 11 (citing *Chevron Pipe Line Co.*, 66 FERC ¶ 62,100, at 64,286 (1994)).

<sup>7</sup> Order on Phase 6 Settlement, 125 FERC ¶ 61,052.

<sup>8</sup> Offer of Settlement, Docket No. OR08-6-000, at 7.

<sup>9</sup> *Id.* at 6.

view the concerns raised by St. Paul Park regarding the throughput estimate as warranting further investigation.

The Commission orders:

Enbridge's FERC Tariff No. 72.22.0 is accepted, effective April 1, 2013.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.