

148 FERC ¶ 61,157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Enbridge Energy, Limited Partnership

Docket No. OR14-34-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 29, 2014)

1. On June 26, 2014, Enbridge Energy, Limited Partnership (Enbridge Energy) filed a petition for declaratory order requesting confirmation that Enbridge Energy may establish a new receipt point on the Lakehead System at Flanagan, Illinois. The new receipt point will be available to shipper nominations only in months when the Lakehead System is in apportionment upstream of Flanagan and not all volumes nominated to or through Flanagan can be accepted. Enbridge Energy states that finding the proposed supplemental nomination procedure (proposed Rule 6(b)) consistent with Commission policy and the Interstate Commerce Act (ICA) is particularly important in this case because an affiliate of Enbridge Energy proposes to construct a new rail terminal at Flanagan. Enbridge Energy asks for action on this petition as soon as possible, but in any event by August 29, 2014. The Commission grants the petition, as discussed below.

**Background**

2. Enbridge Energy owns and operates the U.S. portion of the Enbridge Mainline System (the Lakehead System), which provides transportation of Western Canadian and U.S. crude oil to the U.S. Midwest and points in Eastern Canada and New York state. The Lakehead System is one of the most complex liquid hydrocarbon pipeline systems in the world, transporting many distinct types of crude oil and other commodities for more than one hundred separate shippers on multiple lines, with numerous receipt and delivery points. Enbridge Energy states it is a supply-driven system, with shippers (including producers, marketers, and refiners) nominating supplies from both Canada and the US onto the system on a monthly basis.

3. Enbridge Energy and its affiliates have engaged in an extensive enhancement and expansion program designed to expand access to refinery markets in the US Midwest, Gulf Coast, and other markets for growing North American crude oil production, and the Flanagan Terminal has become a significant hub for those expansion programs. Enbridge Energy operates the Spearhead Pipeline, which runs from Chicago to Cushing,

Oklahoma; the Southern Access Expansion Project (Line 61) from Superior, Wisconsin to Flanagan, where it connects to the Spearhead Pipeline; and a portion of the Spearhead Pipeline between Chicago and Flanagan, which has been reversed and renamed Line 62 and now provides service on the Lakehead System between Flanagan and Chicago. Additionally, more projects will go into service with a connection at the Flanagan hub, including the Flanagan South Pipeline, the Southern Access Extension Pipeline, and the Line 62 Twin Project.

4. At the time Enbridge was planning these downstream expansions and extensions, it was simultaneously planning various upstream expansions and replacements to assure upstream capacity to feed the downstream pipelines being built. However, due to various factors associated with building cross-border pipelines and other related expansions, the timelines for the upstream components have not aligned with the in-service schedule for the downstream components. As a result, Enbridge Energy now foresees the possibility of a temporary period during which the downstream pipelines will have somewhat greater take-away capacity at Flanagan than the upstream delivery capacity available to serve Flanagan.

5. The temporary receipt proposal at Flanagan, in conjunction with the associated new rail facility, is intended to help bridge that temporary gap by providing shippers the opportunity to move barrels by a combination of rail and pipeline in periods when upstream apportionments prevents those barrels from moving via an all-pipeline route. The rail terminal will be designed to handle two unit trains per day, or approximately 140,000 barrels of crude per day (bpd), and may commence service as early as the first quarter of 2016.

### **The Proposal**

6. Enbridge Energy proposes to establish a new receipt point at Flanagan for supplemental nominations whenever upstream capacity constraints prevent barrels that are nominated to or beyond Flanagan from reaching Flanagan. The new receipt point will only accept nominations to alleviate the bottleneck in Flanagan if needed.

7. Enbridge Energy proposes to first conduct the usual nomination, verification, and apportionment process on the Enbridge Mainline for receipts at points upstream of Flanagan. Under proposed Rule 6(b), if any barrels destined for Flanagan or beyond are apportioned upstream of Flanagan, Enbridge Energy will provide notice and shippers will have a supplemental opportunity to nominate barrels for receipt to Flanagan and subsequent transportation on the Lakehead system or on downstream connecting pipelines to the extent the terms of the relevant tariffs are met and the connecting pipelines have space available. The proposed supplemental nomination would only be available if apportionment exists upstream of Flanagan such that some verified nominations to or beyond Flanagan cannot be transported. The new rule would also be subject to the verification process and the pro rata apportionment process.

8. Enbridge Energy states the proposal will promote greater efficiency of existing infrastructure by allowing shippers to utilize what would otherwise have been underutilized capacity. The proposal responds effectively to requests for increased downstream delivery capability while Enbridge Energy expands the upstream pipelines. Enbridge Energy asserts the proposed plan meets the need of shippers to transport crude to distant markets, while minimizing the amount of underutilized capacity either upstream or downstream of Flanagan. Finally, Enbridge Energy asserts obtaining regulatory confirmation of the validity of the supplemental nomination process at Flanagan is necessary to permit the receipt point project to go forward.

### **Notice and Interventions**

9. Notice of the petition issued July 1, 2014. Interventions and protests were due July 28, 2014. Pursuant to Rule 214 of the Commission's regulations,<sup>1</sup> 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 disrupt the proceeding or place additional burdens on existing parties.

### **Suncor's Comments**

10. While no protests were filed, Suncor Energy (Suncor) filed a comment letter on July 30, 2014, two days after the comment period closed. While Suncor is supportive of adding Flanagan as a temporary receipt point and Enbridge Energy's focus on mitigating Lakehead System apportionment and avoiding adverse rate changes, Suncor wished to register several concerns and suggestions with the Commission. In particular, Suncor expresses concern over Rule 6(b), and asserts the rule effectively contradicts the open access nature of the common carriage of the Lakehead System. Specifically, Suncor states Rule 6(b) limits system access for a subset of shippers accessing the system at Flanagan to periods of upstream apportionment that are inherently not open access. Suncor asserts there are no classes of shippers on a common carriage system such as Lakehead. Further, Suncor states open access is a system-wide principle of common carriage, and questions why Enbridge Energy should make any rule specific to one location.

11. Suncor states it is concerned about how the concepts underlying Rule 6(b) could be applied in the future. Suncor opines it may create a precedent that can apply in the future to terminating or suspending existing receipt or delivery points if doing so results in the most efficient utilization of the Lakehead System and downstream connecting pipelines. Such action, continues Suncor, would further benefit Enbridge Energy by minimizing the occurrence of underutilized capacity and avoiding adverse rate effects on

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<sup>1</sup> 18 C.F.R. § 385.214 (2014).

Mainline Shippers. Suncor states introducing the utilization of downstream pipeline capacity in the consideration of whether to allow access to the Lakehead System is an inappropriate incorporation of Enbridge Energy's investments outside the Lakehead System. Finally, Suncor maintains the basis for Rule 6(b) has not considered impacts to service quality or harm to specific Shippers.

12. Suncor requests the Commission to require Enbridge Energy to explain how Rule 6(b) is consistent with the Lakehead System being common carriage and past Enbridge Energy submissions to the Commission regarding open access.

13. Suncor asserts there are two deficiencies in Rule 6(b), and asks the Commission to direct Enbridge to amend Rule 6(b) to constrain secondary nominations to available downstream capacity post initial nomination and consider secondary nominations for incremental volumes for periods outside of upstream apportionment.

### **Enbridge Energy's Response**

14. On August 11, 2014, Enbridge Energy submitted a response to Suncor. Enbridge Energy reiterates that the Flanagan receipt point will be available for shipper nominations only in months when the Lakehead System is in apportionment of Flanagan such that not all of the volumes nominated to or through Flanagan can be accepted. Enbridge Energy further states while the proposed Rule 6(b) does not specify that the supplemental allocations are subject to downstream availability, the remaining provisions of Rule 6 do apply to supplemental nominations, including the verification that the nominating shipper has space available on a downstream connecting carrier. Enbridge Energy further notes supplemental nominations at the proposed Flanagan receipt point could not displace shippers that were already awarded capacity on downstream segments on the Lakehead System itself. Enbridge Energy reiterates the supplemental nomination process will not deprive any downstream shippers of the barrels they were previously allocated in the initial nomination process.

15. Enbridge Energy further asserts the proposal is reasonable and nondiscriminatory because under the supplemental nomination process, Enbridge Energy would allow all shippers an equal opportunity to nominate barrels for receipt at Flanagan and subsequent transportation on the Lakehead System or on downstream connecting pipelines. Enbridge Energy states it intends the proposal to help bridge a temporary period during which downstream pipelines will have somewhat greater take-away capacity at Flanagan than upstream delivery capacity to serve Flanagan.

16. Enbridge Energy notes the proposed policy allows shippers the option to nominate additional barrels in certain months to the extent space remains on the system depending on their individual business needs, and the policy is only applied to capacity that would otherwise go unutilized. Enbridge Energy asserts it seeks a ruling allowing it to

implement the proposed policy to address this specific set of facts and does not intend to create a precedent that would become a “standard practice” as Suncor fears.

### **Discussion**

17. Enbridge Energy requests a declaration by the Commission that its proposed new Rule 6(b) and the supplemental nomination procedure set forth therein is consistent with Commission policy and with Enbridge Energy’s common carrier obligations under the ICA. Enbridge Energy notes that under Section 554 of the Administrative Procedure Act, an agency, at its discretion, may issue a declaratory order to terminate controversy or to remove uncertainty.<sup>2</sup>

18. In the instant petition, Enbridge Energy seeks sufficient certainty about its nomination procedures to permit its affiliated company to invest in related facilities to begin accepting rail deliveries at Flanagan. Further, Enbridge Energy reiterates that Flanagan will not be a receipt point for nominations on the system all the time. Enbridge Energy determined that a regular receipt point at Flanagan would not be beneficial to either the Lakehead system or its shippers, and devised this solution to balance the economics of the pipeline system and the interests of shippers, as described above.

19. Suncor’s concerns are not supported in their comments. Enbridge Energy’s proposed Rule 6(b) does not contravene its common carrier obligation; rather, Enbridge Energy is providing a temporary operational solution to the underutilization of its system downstream of Flanagan. Suncor’s assertion that the proposed secondary nomination process is not open to everyone is misplaced. Enbridge Energy will provide the transportation service to anyone that requests it, and shippers that nominate in the initial process are not being deprived of their requested service. Shippers will have an additional option based on their business needs, and it is open to everyone once Enbridge Energy makes that operational determination.

20. The Commission finds Suncor’s concern about Enbridge being able to terminate or suspend existing receipt or delivery points at will is misplaced. Under the ICA, oil pipelines do not need abandonment authorization and can cancel service by simply filing a tariff. Barring other contractual agreements in place, and assuming there are no issues raised concerning undue discrimination or undue preference, Enbridge Energy is not required under the ICA to guarantee origin or destinations to shippers, Suncor included.

21. The Commission grants Enbridge Energy’s petition. The Commission finds that, as described in the petition, the proposed rule and supplemental nomination procedure balances between the pipeline’s interest in efficiently utilizing the pipeline and its

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<sup>2</sup> See 5 U.S.C. § 554(e) (2014).

obligation to provide service upon reasonable request.<sup>3</sup> Further, the proposal appears to be in the best interest of the pipeline as well as the shipper community, and allows for constrained pipeline capacity to be allocated in an equitable manner that is consistent with the common carrier obligation established in ICA section 1(4) and the statutory restrictions on unjust and unreasonable classifications, regulations, and practices.

22. The Commission reminds Enbridge Energy that the mechanism should be fully and completely described in its rules and regulations tariff. Enbridge Energy, in its response to Suncor, did offer to add additional language to the proposed Rule 6(b), clarifying that Enbridge Energy will not accept supplemental nominations for receipts at Flanagan in excess of the space available on downstream segments of the Lakehead System and downstream connecting carriers. The Commission directs that Enbridge Energy honor that offer, as it further clarifies the unique situation at hand.

23. Further, to comply with ICA section 1(4), Enbridge Energy must hold this option out to all shippers in a fair and non-discriminatory manner.

The Commission orders:

Enbridge Energy's petition is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>3</sup> See *Dixie Pipeline Company, LLC*, 141 FERC ¶ 61,109 (2012).