

150 FERC ¶ 61,069
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 2, 2015

In Reply Refer To:
Enbridge Energy, Limited
Partnership
Docket No. OR15-4-000

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

Attention: Steven Reed
Counsel for Enbridge Energy, Limited Partnership

Ladies and Gentlemen:

1. On December 1, 2014, Enbridge Energy, Limited Partnership (Enbridge Energy) filed a Supplement to the Facilities Surcharge Settlement (Supplement to Settlement)¹ to permit it to recover the costs of its Project 24, which includes four components: (a) the Line 61 Expansion, (b) the Line 67 Expansion, (c) the Line 62 Twin, and (d), the Line 6B

¹ Enbridge Energy states that the Commission approved the Facilities Surcharge Settlement in *Enbridge Energy, Limited P'ship*, 107 FERC ¶ 61,336 (2004). Enbridge Energy explains that the Commission approved the Facilities Surcharge as a component of Enbridge Energy's U.S. tariff rates to allow Enbridge Energy to recover the costs associated with shipper-requested projects through an incremental surcharge added to the existing base rates. Enbridge Energy further states that the Facilities Surcharge Settlement 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 for that reason, the Facilities Surcharge is not subject to indexing.

Expansion.² Enbridge Energy attaches to its filing a letter of support from the Canadian Association of Petroleum Producers (CAPP).³

2. Pursuant to 18 C.F.R. § 385.602 (2014), Enbridge Energy seeks approval of the Supplement to Settlement by January 30, 2015, so that the Project can be reflected in a separate rate filing that it expects to submit on or around February 27, 2015, to be effective April 1, 2015. As discussed below, the Commission approves the Supplement to Settlement.

3. Enbridge Energy states that it determines the projects to be included in the Facilities Surcharge through a negotiating process with CAPP. In this case, continues Enbridge Energy, it proposes to add Project 24 to the Facilities Surcharge to recover the costs of the Project 24 facilities that it expects to place in service in the near future.⁴ Enbridge Energy explains that Project 24 will expand constrained portions of the Lakehead System, which is the U.S. portion of the Enbridge Mainline that transports crude oil and natural gas liquids from Western Canada to the U.S. upper Midwest and on to Eastern Canada and New York State. According to Enbridge Energy, the expanded capacity will help accommodate incremental crude oil production from the Bakken Region of Montana and North Dakota, as well as increased production from the oil fields in Western Canada.

4. Enbridge Energy states that the Line 61 Expansion will expand Line 61 (also known as the Southern Access Line) between Superior, Wisconsin, and Flanagan, Illinois. Enbridge Energy explains that the expansion will include new pump stations, pump station modifications, and new tankage at the Superior and Flanagan terminals.

² Enbridge Energy states that since 2004, the Commission has approved 23 projects for inclusion in the Facilities Surcharge, most recently on July 31, 2014, in Docket No. OR14-33-000, *Enbridge Energy, Limited P'ship*, 148 FERC ¶ 61,082 (2014).

³ Enbridge Energy, Limited Partnership Supplement to Facilities Surcharge Settlement, (Appendix A). CAPP is an association representing producers of essentially all of the crude petroleum transported by Enbridge Energy. CAPP also intervened in this proceeding and reaffirmed its support for the Supplement to Settlement.

⁴ Enbridge Energy states that three of the four components of Project 24 are expected to be in service in 2015. Although the estimated in-service date of one of Project 24's components, the Line 6B Expansion, is some time during the first quarter of 2016, Enbridge Energy clarifies that the costs of the Line 6B Expansion will only be included in Enbridge Energy's 2015 tariff filing if that component goes into service in 2015.

Enbridge Energy estimates that this project will increase the total capacity of Line 61 from 560,000 barrels per day (bpd) to approximately 1,200,000 bpd.

5. Enbridge Energy states that it originally agreed with CAPP that the Line 61 Expansion pipeline would have a 30-inch diameter, and the Commission approved the proposal on those terms in 2006.⁵ However, continues Enbridge Energy, following further negotiations with CAPP, it modified the pipeline's design. Enbridge Energy cites its Notice Regarding Settlement Implementation.⁶

6. Enbridge Energy further states that as part of that update, it agreed with CAPP that it would exclude 12.2 percent of the capital costs of building Line 61 from the Facilities Surcharge calculation at that time, which reflected the incremental cost of building a 42-inch pipeline rather than a 36-inch pipeline. In other words, continues Enbridge Energy, it was upsizing the project to a 42-inch diameter line at its own risk. Enbridge Energy adds that it explained the change to the Commission at the time, stating that a 42-inch pipeline would provide the capacity to relieve bottlenecks and avoid apportionment of scarce capacity through the addition of relatively inexpensive pumping power rather than by the installation of new pipe parallel to the existing route.

7. Enbridge Energy emphasizes that the change to a larger line will allow it to increase the capacity of Line 62 to the full 1,200,000 bpd at a much lower cost than would be incurred to build a new line. Moreover, continues Enbridge Energy, because the additional capacity will now be utilized, the estimated capital cost for the current project includes \$268 million agreed to by the parties as the cost of the 42-inch upsizing (i.e., the equivalent of the 12.2 percent earlier excluded from the Facilities Surcharge).

⁵ Enbridge Energy cites *Enbridge Energy, Limited P'ship*, 114 FERC ¶ 61,264 (2006).

⁶ Enbridge Energy, Limited P'ship, Notice Regarding Settlement Implementation at 2, FERC Docket No. OR06-3-000 (Aug. 15, 2006). In that notice, Enbridge Energy stated in part as follows:

Subsequent developments, including particularly an increase in the forecasts for Western Canadian oil sands production in future years, led to the conclusion that a 30-inch pipeline would not be the most efficient size, since the capacity of such a pipeline could not expand to accommodate future throughput increases without installing new pipe at substantial cost. Initially, the Settling Parties discussed an increase to a 36-inch pipeline (with a potential capacity of up to 800,000 b/d). Ultimately, Enbridge Energy proposed construction of a 42-inch diameter pipeline with an initial capacity of 400,000 b/d (consistent with the original Offer of Settlement), but with a potential maximum capacity of up to 1.2 b/d.

Enbridge Energy adds that the Line 61 Expansion will consist of two phases, the first of which will increase the capacity of the segment to approximately 800,000 bpd beginning approximately during the first quarter of 2015. Enbridge Energy also states that the second phase will increase capacity to the full 1,200,000 bpd, and those facilities are expected to enter service in the third quarter of 2015. Enbridge Energy estimates that the capital cost for this project will be \$1.52 billion.

8. Enbridge Energy next states that the Line 67 Expansion will expand Line 67 (also known as the Alberta Clipper line) between Clearbrook, Minnesota, and Superior, Wisconsin. According to Enbridge Energy, the expansion will include new pump stations and pump station modifications, which will increase the capacity of the segment from 570,000 bpd to approximately 800,000 bpd. Enbridge Energy expects that the expanded line will enter service in mid-2015, with a total capital cost of \$200 million.

9. Additionally, Enbridge Energy explains that the Line 62 Twin portion of Project 24 involves the construction of a new 36-inch pipeline that will parallel Enbridge Energy's existing Line 62 segment between Flanagan, Illinois, and Hartsdale, Indiana, as well the addition of a new pump station. According to Enbridge Energy, the initial total capacity of the new line will be approximately 570,000 bpd, and it is expected to be in service during the third quarter of 2015. Enbridge Energy reports that the total estimated capital cost of this addition is \$500 million.

10. According to Enbridge Energy, the Line 6B Expansion will enhance the Line 6B facilities between Griffith, Indiana, and Stockbridge, Michigan. Enbridge Energy points out that this segment of Line 6B was replaced recently, and the replacement pipe will not be expanded further. Instead, continues Enbridge Energy, the expansion will include pump station modifications and new tankage at the Hartsdale and Stockbridge terminals, which will increase the total capacity of Line 6B from 500,000 bpd to approximately 570,000 bpd. Enbridge Energy expects the Line 6B expansion to commence service during the first quarter of 2016 or earlier, at a cost of \$365 million.

11. Enbridge Energy emphasizes that the surcharge components for Project 24 will be based on annual revenue requirement calculations using factors agreed to through the Facilities Surcharge Settlement. Further, states Enbridge Energy, the surcharge will be trued-up annually to actual costs and throughputs.

12. Notice of the Supplement to Settlement was issued December 10, 2014, with interventions and protests due December 29, 2014. Pursuant to Rule 214 of the Commission's regulations,⁷ all timely-filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted.

⁷ 18 C.F.R. § 385.214 (2014).

Granting late intervention at this stage of the proceeding will not delay or disrupt the proceeding or place additional burdens on existing parties.

13. Suncor Energy Marketing Inc. (Suncor) filed a protest. Flint Hills Resources Canada, LP (Flint Hills) filed a request for clarification or, in the alternative, a protest. CAPP filed a motion to intervene in support of the Supplement to Settlement. Enbridge Energy filed a reply to Flint Hills' request for clarification and Suncor's protest.

14. Suncor asks the Commission to defer action on the Supplement to Settlement until after Enbridge Energy has filed a tariff to incorporate the costs of Project 24 into its rates. Suncor contends that while the CAPP letter expresses general support for Project 24, it does not address the issues of tank function and excess capacity that are of concern to Suncor. In any event, asserts Suncor, the Facilities Surcharge Settlement did not create a rule that all costs contained in future amendments to the Facilities Surcharge Settlement would be recovered automatically without any opportunity for comment. According to Suncor, the Commission made it clear in *Enbridge Pipelines (Toledo) Inc.* that any challenges to an amendment to the Facilities Surcharge Settlement must be made at the time that those amendments are filed with the Commission and open for comment.⁸

15. Suncor argues that the following Enbridge Energy proposals: (a) to include costs related to the construction of 12 tanks as part of the Line 6B Expansion and Line 61 Expansion and (b) the expansion of Line 61 from 800,000 to 1,200,000 bpd are inconsistent with agreements between Enbridge Energy and its shippers. For example, continues Suncor, with respect to the proposed tankage associated with the Line 61 and Line 6B Expansions, the Supplement to Settlement merely states that tankage will be built, without providing any information relating to the size or function of the tankage, the number of tanks being built, or the location of the tankage. However, Suncor points out that the CAPP letter attached to the filing states that the Line 61 Expansion includes two 333,000-barrel tanks at Flanagan and four 333,000-barrel tanks at Superior. Further, states Suncor, the CAPP letter states that the Line 6B Expansion includes five 333,000-barrel tanks at Stockbridge and one 333,000-barrel tank at Hartsdale. Suncor argues that the Supplement to Settlement does not meet the Commission's requirement that carriers must justify their proposals at the time of their initial filings rather than waiting until after protests are filed.⁹

⁸ *Enbridge Pipelines (Toledo) Inc.*, 130 FERC ¶ 61,270, at P 33 (2010).

⁹ Suncor cites *Magellan Pipeline Co., L.P.*, 149 FERC ¶ 61,222, at P 27 n.6 (2014).

16. Moreover, continues Suncor, it appears that some of the proposed new tanks will not be break-out tanks for transportation on the Mainline, but rather may be receipt or delivery tanks serving other Enbridge pipelines. Suncor states that the break-out requirements for the Line 62 Twin at Flanagan were met through the addition of three tanks in 2014. Therefore, argues Suncor, there seems to be no purpose for two proposed additional tanks at Flanagan except to provide delivery capacity to Enbridge Energy's Flanagan South project. Further, states Suncor, the additional break-out capacity for the Line 6B expansion may be satisfied by two additional tanks, suggesting that the other three new tanks will be used for delivery to Enbridge Energy's Toledo pipeline. Suncor argues that, in this respect, the Supplement to Settlement is inconsistent with an agreement that Enbridge Energy reached with its shippers in October 2012.

17. Suncor asserts that the full expansion of Line 61 will not be used and useful. According to Suncor, the Supplement to Settlement indicates that the expansion of capacity from 570,000 bpd to 1,200,000 bpd is to be carried out in two phases, as described above. Suncor also states that Line 67 (the segment immediately upstream of Line 61) is to be expanded from 570,000 bpd to 800,000 bpd. According to Suncor, the effect of the two expansions will be to increase the Mainline capacity between Clearbrook and Superior to 800,000 bpd and between Superior and Flanagan to 1,200,000 bpd, thereby creating a mismatch in the capacity of the Mainline segments.

18. Additionally, Suncor argues that the Supplement to Settlement fails to provide any justification for the second incremental increase of 400,000 bpd on Line 61. Moreover, continues Suncor, while Enbridge Energy claims that shippers will benefit because of Enbridge Energy's decision to build a larger diameter pipeline, it fails to explain how shippers will be able to use that increase in capacity. Thus, contends Suncor, this mismatch means that the second increment of the Line 61 Expansion of 400,000 bpd of capacity will not be used or useful to shippers, and for that reason, it would be imprudent for the second 400,000 bpd increment to go into the Facilities Surcharge until that occurs.

19. Flint Hills seeks clarification that its interest as a shipper of significant quantities of crude oil to Clearbrook is not adversely affected by (a) the construction of excess incremental capacity downstream of Clearbrook that may not be used or useful without the construction of corresponding upstream capacity, or (b) the inclusion of costs of storage facilities that may not be performing a transmission function related to the Mainline capacity.

20. Flint Hills shares Suncor's concern that Enbridge Energy is expanding the capacity of its Mainline from points downstream of Superior, Wisconsin, to 1,200,000 bpd before it expands Mainline capacity upstream of Superior by a corresponding increment of capacity, or by synchronizing the Mainline expansion downstream of

Superior with construction of the Sandpiper Project approved by the Commission to transport crude oil from North Dakota and Montana to Clearbrook and Superior.¹⁰

21. Flint Hills also seeks clarification that the costs of storage tanks proposed to be constructed in Project 24 and included in the Facilities Surcharge are related exclusively to performing a break-out function, rather than a receipt or delivery function. While Flint Hills does not object to the inclusion of the costs related to sufficient break-out tankage to manage the transportation of crude oil on the Mainline, it asserts that there is not enough information to determine the extent to which the tanks will perform “receipt,” “break-out,” or “delivery” functions.

22. CAPP supports approval of the Supplement to Settlement. First, states CAPP, the Facilities Surcharge Settlement process demonstrates the need for a clear statement of agreed-upon principles relating to the allocation of tankage costs to Mainline services versus allocation to other services, where tankage facilities may serve multiple purposes. According to CAPP, when these underlying principles are resolved, they will be applied in determining the specific costs to be included in Enbridge Energy’s tariff rates. Indeed, continues CAPP, in agreeing to the Supplement to Settlement at issue in this proceeding, it anticipated this result.

23. Additionally, CAPP states that concerns about the potential imbalances in upstream and downstream facilities should not preclude the Commission’s approval of the Supplement to Settlement. CAPP emphasizes that the Facilities Surcharge Settlement serves an important function in the industry’s efforts to accommodate changing conditions and uncertainties relating to such things as regulatory approvals, environmental and other requirements, and volatile supply and demand assumptions.

24. In its reply, Enbridge Energy addresses the issues raised by Suncor and Flint Hills, contending that those issues should not prevent the Commission from approving the Supplement to Settlement. Enbridge Energy emphasizes that these two parties do not oppose recovery of the Project 24 costs, nor do they challenge most components of Project 24. In fact, continues Enbridge Energy, CAPP’s comments in support of the Supplement to Settlement make it clear that concerns about the tankage facilities and the potential imbalance in upstream and downstream facilities should not impact the Commission’s approval of the Supplement to Settlement.

25. Enbridge Energy also emphasizes that nothing in the Supplement to Settlement is intended to deprive any potentially affected party of its ability to challenge tankage costs at the time those costs are actually included in tariff rates. Enbridge Energy contends that Commission approval of the Supplement to Surcharge should not prejudice the rights of

¹⁰ Flint Hills cites *North Dakota Pipeline Co. LLC*, 147 FERC ¶ 61,121 (2014).

any party or result in any recovery of inappropriate costs through the Facilities Surcharge Settlement. Additionally, continues Enbridge Energy, if the tankage principles are not resolved prior to the time that some of the Project 24 tanks enter service, any discrepancy will be resolved by the annual true-up of the Facilities Surcharge Settlement.

26. Enbridge Energy next emphasizes that the Supplement to Settlement does not require a date certain for completion of the second phase. Moreover, continues Enbridge Energy, it is not required to ensure that the in-service date for that facility will coincide with other upstream projects undertaken by Enbridge Energy or its affiliates. Enbridge Energy points out that large pipeline projects and expansions are subject to delay due to numerous factors, which are often beyond the carrier's control, as CAPP recognized in its comments. Enbridge Energy adds that although the Supplement to Settlement indicates that it forecasts an in-service date for the second phase of the Line 61 Expansion in the third quarter of 2015, it may determine to defer the second phase beyond 2015.

27. Enbridge Energy emphasizes that no party questions the necessity of the second phase of the Line 61 Expansion. According to Enbridge Energy, to the extent that the second phase is not expected to be in service in 2015, the costs of that component of Project 24 will not be included in the 2015 Facilities Surcharge Settlement filing. Enbridge Energy asks the Commission to defer addressing any timing issues relating to Line 61 until the second phase costs are included in a tariff filing. Enbridge Energy also states that it will not contend (or support any other party in contending) that Commission approval of the Supplement to Settlement constitutes a determination that the second phase of the Line 61 Expansion is or will be used and useful at a particular time.

28. The Commission will accept the Supplement to Settlement. The Commission finds that CAPP's comments and Enbridge Energy's reply to the issues raised by Suncor and Flint Hills sufficiently address the issues raised by those two parties. The Commission's approval of the Supplement to Settlement does not constitute pre-approval of any costs associated with Project 24. All parties will retain the ability to challenge costs related to Project 24 when Enbridge Energy files rates that include those costs.

29. For these reasons, the Commission approves the Supplement to Settlement on the grounds that it appears fair, reasonable, and in the public interest. The Commission's approval of the Supplement to Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All parties