

152 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Enbridge Energy, Limited Partnership

Docket No. IS15-203-001

ORDER ON REHEARING

(Issued August 18, 2015)

1. On March 31, 2015, the Commission issued an order accepting a tariff filing of Enbridge Energy, Limited Partnership (Enbridge).<sup>1</sup> In doing so, the Commission denied a protest by Suncor Energy Marketing, Inc. (Suncor) challenging the accuracy and reasonableness of the capacity and volume inputs used by Enbridge to calculate its Facilities Surcharge and request for information quantifying those inputs. On April 30, 2015, Suncor filed a timely request for rehearing. As discussed below, the Commission denies the rehearing request.

**Background**

2. On October 27, 1998, Enbridge's predecessor, Lakehead Pipe Line Company, Limited Partnership (Lakehead) filed an offer of settlement with the Commission in Docket No. OR99-2-000 (1998 Settlement). The settlement governed Lakehead's rate recovery for the costs of capacity expansion projects to broaden Lakehead's ability to transport heavier crude oil.

3. The 1998 Settlement created a cost recovery framework that was to be employed by Enbridge in future amendatory settlements as approved by the Commission. The existing rates were to be treated as a floor, subject to indexing, with the costs associated with expansion projects recovered as a separate surcharge in addition to the indexed base rates. As revenue was generated from the expansion, the revenue was credited against

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<sup>1</sup> *Enbridge Energy, Limited Partnership*, 150 FERC ¶ 61,253 (2015) (March 2015 Order).

the expansion project, so only the net costs of the project were included in the surcharge. The 1998 Settlement was approved by the Commission on December 21, 1998 and expired on December 31, 2013 according to its terms.

4. On June 30, 2004, the Commission approved for Enbridge a similar uncontested settlement framework that would allow Enbridge to recover the costs associated with building new infrastructure projects on the Lakehead System through an incremental surcharge, rather than as a part of base rates subject to indexing (FSM Settlement).<sup>2</sup> The mechanism would be true-up each year to actual costs and throughput. As additional projects were agreed upon, Enbridge would be permitted to submit those to the Commission for approval by means of supplements to the FSM Settlement, which would amend or supplement the original FSM Settlement.

5. Since 2004, many supplements to the FSM Settlement have been approved by the Commission.<sup>3</sup> Among these, and of relevance here, Enbridge filed and received approval for amendatory settlement supplements to recover costs associated with the Southern Access (SA Settlement)<sup>4</sup> and the Alberta Clipper Projects (ABC Settlement),<sup>5</sup> two recent projects that significantly expanded Enbridge's pipeline capacity.

6. On December 1, 2014, Enbridge filed its most recent supplement to amend the FSM Settlement to include the costs for Project 24, which entails the expansions of Lines 61, 67, 62 Twin, and 6B. Flint Hills Resources, LP (Flint Hills) filed a request for clarification and Suncor filed a protest regarding the inclusion of costs related to tankage and the second phase of the Line 61 Expansion. On February 2, 2015, the Commission approved the supplement to the FSM Settlement, noting that all parties could challenge

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<sup>2</sup> *Enbridge Energy, Limited Partnership*, 107 FERC ¶ 61,336 (2004). "FSM" means "Facilities Surcharge Methodology." For the sake of uniformity and ease of reference, this order shall use the acronym "FSM" when referring to either the FSM Settlement or the FSM methodology (although the latter usage might be mildly redundant).

<sup>3</sup> See FERC Docket Nos. OR06-3-000, OR08-10-000, OR08-12-000, OR09-5-000, OR10-7-000, OR11-5-000, OR12-8-000, OR13-11-000, OR14-33-000 and OR15-4-000.

<sup>4</sup> Offer of Settlement at Exhibit III, P 5(d)(2), Docket No. OR06-3-000 (Dec. 21, 2005).

<sup>5</sup> Offer of Settlement at Exhibit I, § 13, Docket No. OR08-12-000 (June 27, 2008).

cost inputs related to Project 24 when Enbridge files the actual tariff rates to recover these costs.<sup>6</sup>

7. On February 27, 2015, Enbridge submitted FERC Tariff No. 43.16.0 which implements portions of the approved supplement, for one year, commencing on April 1, 2015. The filing reflects the true-up of the difference between estimated and actual costs and throughput data in the prior year. It also contains the 2015 projected costs and throughput data for each of the projects previously approved by shippers, including Project 24 components. The filing did not include any of the Project 24 costs that were protested by Flint Hills or Suncor in the December 2014 proceeding. The filing would result in a rate decrease on the Enbridge system of approximately 4 percent.

8. Suncor filed a motion to intervene on March 16, 2015, alleging that in calculating the surcharges, Enbridge used an outdated base capacity from the expired 1998 Settlement, 243,000 cubic meters per day ( $m^3/d$ ), which would overcollect by \$94.6 million per year, resulting in unjust and unreasonable rates. Suncor contended that the current throughput on the Enbridge system should be 199,400  $m^3/d$ . Further, Suncor urged the Commission to reject Tariff No. 43.16.0 for failure to comply with the transparency and disclosure requirements contained in the FSM Settlement. Alternatively, Suncor requested that the Commission set the Enbridge tariff for hearing before an Administrative Law Judge, with preliminary referral to a settlement judge to explore the possibility of a negotiated resolution.

9. On March 20, 2015, Enbridge filed a response to the protest.<sup>7</sup> Enbridge explained that it applied the FSM Settlement in exactly the same manner as it has since 2004. Enbridge asserted that none of the costs allowable under the FSM methodology have been challenged in this docket. Further, Enbridge stated that a shipper cannot challenge an unchanged element of a pipeline's tariff, and since the FSM has not changed since 2004, a challenge to the methodology was inappropriate.

10. Enbridge further argued that Suncor cannot rely on the expired 1998 Settlement to challenge the FSM calculation. Enbridge stated that the revenue credit agreed upon in the supplemental SA and ABC Settlements to the FSM Settlement do *not* use a base capacity to calculate index revenue credits, but rather use Qualifying Volumes (QV).

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<sup>6</sup> *Enbridge Energy, Limited Partnership*, 150 FERC ¶ 61,069 (2015).

<sup>7</sup> Response of Enbridge Energy, Limited Partnership to the Motion to Intervene and Protest of Suncor Energy Marketing Inc., Docket No. IS15-203 (filed Mar. 20, 2015) (March 20 Answer).

QVs are the incremental throughput transported by Enbridge Energy<sup>8</sup> which flow in Lines 6A and/or 61, and are not a measure of capacity. Enbridge explained that Suncor incorrectly argues the FSM relies on a base capacity and that given the use of QVs following the Southern Access and Alberta Clipper supplements to the FSM Settlement, Suncor's challenge to the FSM methodology was misplaced.

11. On March 31, 2015, the Commission issued an order denying Suncor's protest.<sup>9</sup> The Commission found Suncor's protest did not address whether Enbridge appropriately applied the existing FSM methodology, but rather, raised objections to the existing FSM methodology itself. The Commission stated it had no reason to find that Enbridge's cost calculations were unreasonable or that it incorrectly applied the existing FSM methodology to determine the facilities surcharge in the subject tariff filing. The Commission further found that the next true-up would return any over-collections to shippers in the following compliance filing.

### **Request for Rehearing**

12. Suncor requests rehearing, alleging the Commission failed to address Suncor's argument that Enbridge's calculations were not in compliance with the FSM and were therefore unsupported.

13. Specifically, Suncor alleges the Commission ignored Suncor's argument that the tariff filing failed to provide information on volume data in a sufficiently transparent manner, so as to comply with the FSM Settlement and satisfy Enbridge's burden to justify its tariff rates.

14. Suncor further alleges the March 2015 Order used the term Qualifying Volumes but the term does not appear in the tariff filing, and Enbridge provided no support for the earlier QV adjustments for Southern Access and Alberta Clipper. Suncor argues in the subject tariff filing for the current project, that there was no mention of the amount of pre-expansion capacity or incremental throughput or what rates were used to determine the QV adjustments. Generally Suncor questions how, or whether, Enbridge has explained the impact and use of QV adjustments on the FSM other than on Southern Access and Alberta Clipper. In sum, the FSM methodology apparently means something different for Suncor than what it means for Enbridge (and the other FSM shippers).

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<sup>8</sup> QVs are measured by movements beyond Superior, not upstream of the Lakehead System, as in the 1998 Settlement.

<sup>9</sup> *Enbridge Energy, Limited Partnership*, 150 FERC ¶ 61,253 (2015).

15. Suncor also contends its protest was improperly characterized as a collateral attack on the FSM, and the March 2015 Order should have addressed Suncor's contention that the input to the FSM, i.e., base capacity,<sup>10</sup> was improperly calculated by Enbridge.

16. Suncor argues that the Commission erroneously determined the annual true-up would cure any potential over-recoveries by Enbridge, stating if Enbridge did not properly use the FSM methodology or properly apply the QV concept, the error would be embedded in the true-up process and not corrected.

17. Lastly, Suncor contends the March 2015 Order effectively waived the burden of proof in concluding there was no reason to find Enbridge's cost calculations for the existing FSM were unreasonable. Suncor claims that Enbridge did not provide calculations or references to support the revenue credit as required by its understanding of the FSM; accordingly, Suncor asserts there was no basis to determine whether or not the costs claimed by Enbridge were properly calculated in accordance with what Suncor contends is (or should be) the FSM methodology.

### **Commission Analysis**

18. This case presents two issues: (1) what composes the existing FSM methodology, and (2) having determined that the existing FSM methodology emerged from the uncontested ABC and SA Settlement amendments to the FSM, did the Commission fail to address Suncor's arguments that Enbridge's tariff and supporting cost inputs and calculations were not in compliance with the existing FSM. The Commission finds that it did not err and reaffirms the holding of the March 2015 Order accepting Enbridge's tariff filing. In essence, the acceptance of the tariff filing was a rejection of Suncor's arguments about what was the existing FSM, where these arguments were couched as a protest to the inputs of the tariff filing.

19. Suncor and Enbridge disagree as to what composes the FSM methodology, and therefore are at odds over how to calculate the facilities surcharge for the subject tariff and for the Southern Access and Alberta Clipper Projects. Enbridge claims it is employing a QV process here, just as was done in the FSM supplemental settlements for Alberta Clipper and Southern Access. Suncor claims that the FSM or the revenue credit calculation here and for the Southern Access and Alberta Clipper Projects should work in

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<sup>10</sup> As discussed more fully *infra*, since base capacity is not, however, part of the existing FSM as determined herein, it is not the type of "input" that is relevant to a protest to a tariff filing implementing the current FSM.

the same manner as the revenue crediting mechanism in the 1998 Settlement.<sup>11</sup> Upon review of the SA and ABC Settlements, the Commission found in the March 2015 Order that the SA and ABC Settlements' credit index revenue were based on QVs.<sup>12</sup> This finding is reaffirmed here. Therefore, the existing FSM methodology uses this QV process.

20. Consequently, the complaint by Suncor that Enbridge used an improper figure to calculate the base capacity of the FSM is not pertinent because base capacity levels are not used by the QV process. The March 2015 Order properly advised Suncor that to the extent it objects to the existing FSM methodology itself (as opposed to the cost inputs to which the methodology is applied), it may file a complaint.

21. Suncor further claims the FSM methodology lacks transparency and that Enbridge did not provide information on how QVs were calculated. Enbridge's March 20 Answer explained that Enbridge communicated with Suncor representatives numerous times to discuss how index revenue credits affect the facilities surcharge.<sup>13</sup> Further, the Commission finds that although the Pre-Expansion Capacity or incremental throughput used to determine QV adjustments were not included in Enbridge's tariff, the Pre-Expansion Capacity was defined in the SA Settlement,<sup>14</sup> and consequently widely available. The Commission therefore finds no transparency issue.

22. Suncor challenges the Commission's finding in the March 2015 Order that the annual true-up would cure any potential over-recoveries by Enbridge. Suncor claims that Enbridge could potentially over-recover annually by \$94.8 million, if Enbridge does not employ Suncor's interpretation of the FSM. The March 2015 Order simply held that this

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<sup>11</sup> Suncor acknowledges that the 1998 Settlement expired. *See* Suncor Protest at P 16. No member of the Canadian Association of Petroleum Producers (CAPP) other than Suncor has objected to Enbridge's understanding of the existing FSM methodology as now employing a somewhat different methodology from that in the 1998 Settlement.

<sup>12</sup> Under the SA Settlement, index revenue on QVs is credited 50 percent to the Facilities Surcharge, and under the ABC Settlement, index revenue on QVs above 400,000 bpd is credited 100 percent to the Facilities Surcharge.

<sup>13</sup> March 20 Answer at Attachment A, P 4-5.

<sup>14</sup> The SA Settlement defined the Pre-Expansion Capacity for Line 6A as 100,000 (m<sup>3</sup>/d) with all heavy crude slate transported. The Pre-Expansion Capacity for Line 14 is defined as varying between 39,000 m<sup>3</sup>/d - 51,500 m<sup>3</sup>/d depending on the crude slate transported. *See* SA Settlement, Offer of Settlement at Exhibit III, P 5(d), Docket No. OR06-3-000 (Dec. 21, 2005).

alleged over-recovery could not occur insofar as Enbridge was employing the proper FSM methodology. In that context, to the extent Enbridge had some over-recovery using the QV as part of the FSM methodology, the tariff on file explicitly calls for an annual true-up for actual costs and throughput as a remedy. Consequently, the Commission confirms that an incorrect input to the FSM using the QV methodology would be cured during the true-up, and Suncor's objection is based on the false premise that a non-QV approach should be used.

23. To the extent Suncor is also suggesting that the QV approach itself was not properly implemented, Suncor provided no information that would suggest Enbridge inappropriately applied the QV methodology as part of the FSM to determine the facilities surcharge in the subject tariff. Suncor's core challenge is the assertion that Enbridge should have used certain pre-1998 capacity of segments in calculating the index revenue credits for the FSM. As stated above, base capacity levels are not part of the existing FSM methodology that was approved by the Commission in the SA and ABC uncontested settlement supplements.

24. Consequently, the Commission will deny rehearing, and affirm its finding that Enbridge correctly applied the existing FSM methodology, and Enbridge's cost input calculations were reasonable.

The Commission orders:

Suncor's request for rehearing of the March 2015 Order is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.