

143 FERC ¶ 61,221
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. IS13-273-000

ORDER ACCEPTING TARIFF FILING

(Issued June 6, 2013)

1. On May 8, 2013, Enbridge Pipelines (North Dakota), LLC (Enbridge) filed FERC Tariff No. 71.15.0 in Docket No. IS13-273-000 to add a Hydrogen Sulfide standard applicable to its system.¹
2. Enbridge also requests special permission to implement the standard on one day's notice as a recent test at the Berthold Station in North Dakota revealed a high level of hydrogen sulfide vapor, which it claims represents a serious health and safety threat to those persons who come into close proximity to the crude. As discussed below, Enbridge's filing is accepted to be effective May 9, 2013, as proposed.

Background

3. Enbridge owns and operates a pipeline system spanning 970 miles from Plentywood, Montana to an interchange with the Enbridge Lakehead System at Clearbrook, Minnesota. The system transports crude oil and has a capacity of up to 210,000 barrels per day (bpd).
4. The subject filing consists of Enbridge FERC Tariff No. 71.15.0 to add a specification for hydrogen sulfide to ensure the health and safety of Enbridge employees and to ensure that the quality of crude transported on the Enbridge system is upheld. Under the new specification, Enbridge reserves the right to reject crude that does not contain a hydrogen sulfide content of 5 parts per million (ppm) or less. However, under certain circumstances Enbridge may accept crude with a hydrogen sulfide level higher than 5 ppm.

¹ Enbridge Pipelines (North Dakota), LLC, FERC Oil Tariff, Tariffs, Rates, Rules, & Regs, FERC No. 71.15.0, 71.15.0.

Protests and Answer

5. On May 10, 2013, Plains Marketing, L.P. (hereafter, Plains) filed a motion to intervene, a protest, and an emergency motion for an order rejecting the proposed tariff.
6. Plains states that one day's notice to implement the new standard is unfair as Plains may have to shut in up to 4,000 bpd of crude that may not meet the standard, causing great economic harm to Plains. Further, Plains mentions that Enbridge had not previously had a hydrogen sulfide standard and questions why one is suddenly necessary on one day's notice after only one test. Plains states that the lack of a standard prior to May 9, 2013, and the use of only one test, undermines Enbridge's claim that the health and safety of its employees is being compromised.
7. Additionally, Plains mentions that all other Bakken pipelines that have a hydrogen sulfide standard impose the standard at 10 ppm, twice the maximum of the 5 ppm that Enbridge proposes in its filing. Plains argues that if Enbridge must implement a standard, 10 ppm would be an appropriate level, consistent with other pipelines and sufficient to avert any health and safety concerns.
8. Finally, Plains requests an emergency order rejecting Enbridge's filing. First, Plains states that it and other shippers have had no time to adjust their operations. Second, Plains alleges that Enbridge has not adequately supported its choice of 5 ppm instead of the 10 ppm used by other pipelines operating in North Dakota. Finally, Plains states it will suffer significant monetary losses if Enbridge refuses to accept crude above the 5 ppm standard during the 30 days that the filing is under review by the Commission.
9. Plains filed a supplement to its May 10, 2013 protest on May 29, 2013. In its supplemental protest Plains withdraws its objection to both the 5 ppm standard and the one day's notice of implementation. However, Plains makes a number of other requests. Plains requests that the Commission start the 30 day statutory clock from May 17, 2013. Plains requests that the Commission make the new hydrogen sulfide standard effective May 18, 2013. Plains requests that the Commission establish a technical conference for Enbridge and Enbridge's shippers to discuss procedures that Enbridge will take if it is notified crude will exceed the new hydrogen sulfide standard. Finally, Plains requests that the Commission require Enbridge to keep a log of its decisions on every notification of crude that is above the 5 ppm contained in Enbridge's new standard.
10. Hess Corporation filed a motion to intervene on May 15, 2013.
11. Marathon Petroleum Trading Canada LLC and Marathon Petroleum Company LP (Marathon Petroleum) filed a motion to intervene and comments on May 22, 2013. Marathon states that it is unsure how the new standard will affect its commercial interests and relationships with its suppliers.

12. Murex Petroleum Corporation (Murex) filed a motion to intervene, protest, and request for technical conference or hearing on May 23, 2013. Murex states that Enbridge provided no support in its transmittal letter or filing for the imposition of a hydrogen sulfide standard. Additionally, Murex argues that Enbridge is not giving proper prior notice to shippers and the proposed standard creates an unreasonable limitation on crude transportation. Murex states that there is technology available that could protect Enbridge's employees from exposure to high levels of hydrogen sulfide and Enbridge has not adequately explained how it tests for hydrogen sulfide. Finally, Murex argues Enbridge does not provide sufficient information for shippers to know how crude with hydrogen sulfide content above 5 ppm will be handled, leaving far too much uncertainty for shippers.

13. Enbridge filed answers on May 14, 17 and 28, 2013.

14. Enbridge points out that hydrogen sulfide is quite dangerous and has been recognized as such by the U.S. Government's Occupational Safety and Health Administration (OSHA). Enbridge states that its test at the Berthold facility revealed levels of hydrogen sulfide vapor in one storage tank at 1200 ppm. Enbridge further states that occupational exposure to hydrogen sulfide at 50 ppm or more can cause shock, convulsions, or death. Enbridge also notes that low concentrations (trace to 10 ppm) can cause eye, nose, throat and respiratory system problems. Moreover, Enbridge points out that prolonged exposure can cause bronchitis, pneumonia, migraine headaches, pulmonary edema, and loss of motor coordination.

15. Additionally, Enbridge states that should hydrogen sulfide continue to be present in such high levels an affiliated downstream rail facility will shut down its facility to receipts from Enbridge. Also, Enbridge states that the Tesoro pipeline, a downstream connection to Enbridge, has an absolute prohibition on crude with hydrogen sulfide levels above 5 ppm. As such, should Enbridge continue to experience high levels of hydrogen sulfide Enbridge will suffer over 80,000 bpd loss of pipeline transportation capacity from the Bakken fields. Furthermore, Enbridge posits that as a comingled system all shippers will suffer when a few shippers tender crude with high hydrogen sulfide content, lowering the quality of crude system-wide.

16. Enbridge also discusses what led to the emergency necessitating its request for one day's notice. Enbridge states that a test on May 5, 2013, at the Berthold facility revealed hydrogen sulfide levels that could cause death, or serious injuries and health problems for its employees, as well as employees at downstream facilities and an affiliated rail facility. The levels discovered in the test violate OSHA regulations for maximum exposure levels.

17. Furthermore, Enbridge states that 5 ppm is not an absolute limit. Enbridge explains that those shippers with crude above 5 ppm must inform Enbridge as to the level of hydrogen sulfide of their crude, and if Enbridge can ensure the safety of employees,

ensure system quality, and ensure the crude will be accepted for delivery downstream, it will work with the shippers to accept their crude.

18. Finally, in its May 17, 2013 filing, Enbridge attaches a notice sent to all shippers explaining that the 5 ppm standard is not an absolute prohibition and explains the information it needs to decide if it can accept crude with a hydrogen sulfide content higher than 5 ppm.

Discussion

19. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2012), all timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted.

20. The Commission recognizes that there are dangers posed by exposure to hydrogen sulfide. OSHA sets maximum exposure limits at either 10 or 20 ppm depending on the nature of the work, with an absolute prohibition of exposure above 50 ppm.² Exposure to hydrogen sulfide at levels of 100 ppm can cause death; however, OSHA states exposure to hydrogen sulfide levels of 700-1000 ppm causes rapid unconsciousness, or immediate collapse within 1 to 2 breaths and death within minutes.³ Exposure to levels over 1000 ppm can cause nearly instant death.⁴ The test at the Berthold facility revealed levels in one holding tank at 1200 ppm. It would appear that this level is far above anything considered "safe." Based on these exposure dangers and the results from Enbridge's test at the Berthold facility, the Commission concludes that there is sufficient justification to allow Enbridge to implement its proposed hydrogen sulfide standard to ensure safe operation of its system and the health and safety of its employees.

21. Additionally, the Commission will allow the tariff to go into effect on one day's notice because of the health and safety dangers that may result from crude with high amounts of hydrogen sulfide.

22. The Commission denies all of the requests made by Plains in its supplemental protest. The Commission will not impose additional restrictions on Enbridge or require a technical conference. The Commission finds Enbridge's representations to work with shippers to permit transporting crude above the 5 ppm limit reasonable. If shippers believe that Enbridge's procedures to accept non-conforming crude are insufficient or are

² See <http://www.osha.gov/SLTC/hydrogensulfide/standards.html> (Accessed, May 22, 2013).

³ *Id.*

⁴ *Id.*

operating in a discriminatory manner they may file a complaint. The Commission will not change the statutory date of the filing or the effective date of the tariff changes. The Commission notes that many parties, including Plains, protested in a timely manner and the Commission finds it unnecessary to restart the process based on a later date.

23. The Commission recognizes that placing this tariff into effect on one day's notice may have caused some difficulties for shippers who may have had crude that did not meet the new 5 ppm hydrogen sulfide standard. However, in the situation presented here the Commission must place health and safety concerns above commercial matters. The Commission also notes that Enbridge has stated clearly that it will work with shippers to enable them to ship crude with a hydrogen sulfide content that exceeds the 5 ppm hydrogen sulfide standard and the Commission expects that Enbridge will live up to its representations.

The Commission orders:

Enbridge's FERC Tariff No. 71.15.0 is accepted, effective May 9, 2013.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.