

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 6, 2003

In Reply Refer To:  
Enbridge Pipelines (KPC)  
Docket No. RP03-473-000

Fulbright & Jaworski, L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2623

Attention: William A Williams, Attorney for Enbridge Pipelines (KPC)

Reference: Tariff Sheets Establishing Negotiated Rate Authority and Six Transactions

1. On May 7, 2003, Enbridge Pipelines (KPC) (KPC) filed the revised tariff sheets listed in the Appendix to: (1) establish negotiated rate authority pursuant to the Commission's Alternative Rate Policy Statement (Policy Statement);<sup>1</sup> and (2) reflect six negotiated rate transactions with Kansas Gas Service, a Division of ONEOK, Inc., (KGS).
2. KPC requests that its proposed tariff sheets become effective November 1, 2002. KPC contends that the negotiated rate authority and its request for a retroactive effective date for its proposed tariff sheets are one element of a comprehensive resolution of all pending litigation involving KPC, KGS and the Kansas Corporation Commission (KCC).<sup>2</sup>

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<sup>1</sup>Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996), reh'g denied and clarification denied, 75 FERC ¶ 61,024 (1996), reh'g denied, 75 FERC ¶ 61,066 (1996).

<sup>2</sup>Among the disputes resolved between KPC, KGS and the KCC are aspects of several Commission proceedings involving KPC, including Docket Nos. RP99-485-000, RP02-74-000 and RP03-90-000; the appeals of the KCC and KGS pending in the U.S. Court of Appeals for the D.C. Circuit (Nos. 02-1133 and 02-1160) appealing the Commission's rate orders in Docket Nos. CP96-152-000, et al.; and KPC's appeal in the D.C. Circuit (No. 02-1293) of the Commission's orders in Docket No. RP02-143-000. Also resolved is Kansas state court litigation discussed in the Commission's orders in

(continued...)

KPC states that because of the number and complexity of the disputes simultaneously and comprehensively addressed in the negotiations, and the uncertainty about when the Commission would approve KPC's compliance filing rates in its Section 4 proceeding in Docket No. RP99-485-000, the proposed November 1, 2002, effective date became an integral element in the overall resolution reached by the three parties. By order issued May 9, 2003, the KCC approved the settlement subject to the Commission's approval of KPC's negotiated rates filing in this proceeding.

3. The proposed tariff revisions establishing negotiated rate authority for KPC generally satisfy the Policy Statement requirements and subsequent Commission precedent<sup>3</sup> and are accepted effective November 1, 2002, subject to condition. Acceptance of this filing benefits the public because it allows the pipeline the flexibility to meet the needs of its customers.

4. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2001)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. A motion to intervene was filed by Missouri Gas Energy, a Division of Southern Union Company, and motions to intervene with comments in support were filed by KCC and KGS. No protests or adverse comments were filed.

5. KPC adds new Section 26 to its General Terms and Conditions (GT&C) to implement a negotiated rate program (Original Sheets Nos. 181 and 182). The negotiated rate tariff provisions include the following subsections, summarized below.

6. Subsection 26.1 allows KPC to charge negotiated rates under any rate schedule and provides that KPC's maximum effective rate (maximum base rate plus all applicable surcharges) for service under a rate schedule is available as a recourse rate for any shipper not electing a negotiated rate.

7. Subsection 26.2 provides that a negotiated rate may be calculated by a rate formula, or any rate for service where, for some portion of the contract term, one or more of the

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<sup>2</sup>(...continued)

Docket No. RP02-143-000. 98 FERC ¶ 61,342; 100 FERC ¶ 61,111 (2002).

<sup>3</sup>See ANR Pipeline Co., 87 FERC ¶ 61,241 (1999), Order on Rehearing, 88 FERC ¶ 61,308 (1999); Northwest Pipeline Corp., 79 FERC ¶ 61,416 (1997), Order on Rehearing, 84 FERC ¶ 61,109 (1998); Tennessee Gas Pipeline Co., 76 FERC ¶ 61,224 (1996), Order on Rehearing, 77 FERC ¶ 61,215 (1996); and Questar Pipeline Co., 89 FERC ¶ 61,091 (1999), Order on Rehearing, 90 FERC ¶ 61,047 (2000).

individual rate components may exceed the maximum charge, or may be less than the minimum charge for such component. In addition, the subsection requires that negotiated rates must be mutually agreed to and set forth in writing.

8. Subsection 26.3 allows KPC and a shipper to agree to a negotiated rate for the entire term of a service agreement, or for some portion of the term of a service agreement. KPC and a shipper may agree to apply the negotiated rate to all or a portion of capacity under a shipper's service agreement. A service agreement incorporating such a negotiated rate is referred to as a negotiated rate agreement.

9. Subsection 26.4 provides that a shipper paying for service under a negotiated rate that is higher than the maximum rate is deemed to have paid the maximum rate for purposes of scheduling, curtailment, or interruption of service. The rate considered for scheduling, curtailment, or interruption of firm service shall be the reservation charge or other revenue that KPC is guaranteed to receive, regardless of actual usage.

10. Subsection 26.5 requires KPC file, at least one day prior to the effective date of such negotiated rate, a numbered tariff sheet in this tariff, stating: the shipper's exact legal name, the negotiated rate or the formula used to calculate the rate, the applicable rate schedule, the points of receipt and delivery, the contract quantities, the contract duration, and an affirmation that the affected service agreement does not deviate in any material respect from the form of service agreement in this tariff.

11. Subsection 26.6 provides that once a negotiated rate is in place, the negotiated rate will govern and apply to KPC's service under the service agreement. The subsection also provides that at the end of the period during which negotiated rates are in effect, the otherwise applicable tariff rates or charges govern any service provided to a shipper.

12. Subsection 26.7 provides that the allocation of costs to, and the recording of revenues from, service at negotiated rates will follow KPC's normal practices associated with all of its services under this tariff. Further, this subsection requires KPC to maintain separate records of negotiated rate transactions for each billing period, including the volumes transported, the billing determinants, the rates and surcharges charged, and the revenue received associated with such transactions. KPC must separately identify such transactions in Statements C, I, and J (or their equivalents) filed in any general rate proceeding.

13. Subsection 26.8 gives KPC the right to seek in future general rate proceedings discount-type adjustments in the design of its rates related to negotiated rate agreements.

This subsection allows that, in these situations, KPC may seek a discount-type adjustment based upon the greater of the negotiated rate revenue received or the discounted rate revenues which otherwise would have been received.

14. Lastly, Subsection 26.9 states that Section 26 does not authorize KPC to negotiate terms and conditions of service.

15. KPC's filing includes tariff sheets (Original Sheet Nos. 17 and 17A) to implement six negotiated rate transactions with KGS, pursuant to proposed Section 26 of KPC's GT&C. KPC proposes the agreements become effective November 1, 2002, coincident with the effective date KPC proposes for the implementation of its Section 26 negotiated rate authority. The negotiated rate contracts are summarized below.

No.	Rate Schedule	Negotiated Reservation Rate	Negotiated Commodity Rate	MDQ (Dth)	Contract Termination Date
1.	FT	\$ 8.7722	\$ 0.0176	5,700	10/31/07
2.	FT	\$ 8.2065	\$ 0.0243	21,100	10/31/09
3.	FT-NN	\$ 8.7722	\$ 0.0176	35,000	10/31/09
4.	FT-NN	\$ 4.8549	\$ 0.0090	6,900	9/30/17
5.	FT	\$13.0614	\$ 0.0333	27,568	10/31/09
6.	FT-NN	\$ 8.7722	\$ 0.0176	6,857	3/31/17

16. The remainder of the tariff sheets affected by the new negotiated rate terms and conditions (1) amend the rate provisions under all of KPC's Rate Schedules and the corresponding Forms of Service Agreement to add the option of negotiated rates, (2) delete the non conforming service agreement provisions applicable to service currently provided to KGC and, (3) amend Section 1.21 of the GT&C to add a definition for negotiated rate.

17. The Commission accepts KPC's proposed tariff revisions, with the exception of proposed GT&C Subsection 26.8 concerning discount adjustments in future rate cases. The Commission generally does not permit pipelines to make discount type adjustments for negotiated rate type adjustments to rate design volumes in Section 4 rate cases. However, the Commission has permitted pipelines to include tariff language permitting such adjustments in the limited situation where the pipeline agrees to a discounted rate with a shipper and then converts it to a negotiated rate.<sup>4</sup> It appears that KPC's language contained in its Subsection 26.8 attempts to include such a provision. However, KPC's language lacks the specificity of the tariff language we approved in Northwest in some respects. Northwest's tariff states:

Transporter will not seek in future general rate proceedings discount-type adjustments to demand charge billing determinants for capacity converted from Recourse Rate service agreements to Negotiated Rate service agreements, unless the Recourse Rate had been discounted. In those situations where Transporter had granted a market-justified discount to the Recourse Rate and subsequently converted the service agreement to a Negotiated Rate service agreement, Transporter may seek a discount-type adjustment. Such adjustment would be based on the greater of: (I) the Negotiated Rate revenues received or (ii) the discounted Recourse Rate revenues which otherwise would have been received.<sup>5</sup>

18. Unlike Northwest's tariff language, KPC's proposed tariff language fails to specify that it will not seek a discount-type adjustment unless a recourse rate was granted a market-justified discount and subsequently converted to a negotiated rate. We will require KPC to, within 15 days of the date of this order, file a revised tariff sheet(s) to modify its Subsection 26.8 to conform to Northwest's tariff language. Further, consistent with our actions in Northwest, if KPC seeks a discount type adjustment in a rate case, we will apply the standards used for affiliate discounts.<sup>6</sup> Therefore, in a rate case, KPC will have the burden of proving that any discount reflected in the negotiated rate is required to

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<sup>4</sup>See Northwest Pipeline Corp., 79 FERC ¶ 61,416 (1997), order on reh'g, 84 FERC ¶ 61,109 (1998)(Northwest).

<sup>5</sup>Section 19.5, Sixth Revised Sheet No. 246, Northwest Pipeline Corp., FERC Gas Tariff, Third Revised Volume No. 1.

<sup>6</sup>Northwest, 79 FERC at 62,754, and 84 FERC at 61,605.

meet competition. By contrast, for non-affiliate discounted rates the Commission applies a presumption that the discount is necessary to meet competition.<sup>7</sup>

By direction of the Commission.

Linda Mitry  
Acting Secretary

cc: All Parties

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<sup>7</sup>See *Panhandle Eastern Pipe Line Co.*, 71 FERC ¶ 61,228 at 61,867-70 (1995), and *Koch Gateway Pipeline Co.*, 74 FERC ¶ 61,088 at 61,279-81 (1996).

**Appendix**

**Enbridge Pipelines (KPC)  
FERC Gas Tariff, First Revised Volume No. 1**

***Tariff Sheets Accepted Effective November 1, 2002***

First Revised Sheet No. 16B	Original Sheet No. 182
Second Revised Sheet No. 17	First Revised Sheet No. 300
Original Sheet No. 17A	First Revised Sheet No. 301
First Revised Sheet No. 22A	First Revised Sheet No. 302
First Revised Sheet No. 22B	Original Sheet No. 310A
First Revised Sheet No. 22C	First Revised Sheet No. 311
Second Revised Sheet No. 23	First Revised Sheet No. 312
First Revised Sheet No. 41	Original Sheet No. 322A
First Revised Sheet No. 42	First Revised Sheet No. 323
First Revised Sheet No. 43	First Revised Sheet No. 324
First Revised Sheet No. 47	Original Sheet No. 333A
First Revised Sheet No. 53	First Revised Sheet No. 344
First Revised Sheet No. 54	First Revised Sheet No. 345
First Revised Sheet No. 55	First Revised Sheet No. 346
First Revised Sheet No. 58	Original Sheet No. 355A
First Revised Sheet No. 63	First Revised Sheet No. 356
First Revised Sheet No. 103	First Revised Sheet No. 357
First Revised Sheet No. 104	Original Sheet No. 366A
Original Sheet No. 181	