

144 FERC ¶ 61,035  
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 Energy, Limited Partnership

Docket No. IS13-17-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued July 18, 2013)

1. On February 6, 2013, the Commission convened a technical conference to address FERC Tariff No. 41.3.0 filed by Enbridge Energy, Limited Partnership (Enbridge), which revises the Nomination Verification Procedure on its system. As discussed below, the Commission accepts the proposed tariff record,<sup>1</sup> to become effective July 21, 2013, subject to the conditions discussed herein.

**I. Background of Enbridge's Mainline System Nomination Proposal**

2. On October 22, 2012, Enbridge proposed to modify the Nomination Verification Procedure. The Nomination Verification Procedure ensures a shipper's designated delivery point has "adequate take away capacity" to complete delivery of the nominated barrels of crude oil. Enbridge proposes to verify nominations based upon the capacity of the selected destination facility. Under the proposal, Enbridge will reject any nominations exceeding the capacity of the destination facility. This alters the current verification procedure, which is based upon historic volumes and which limits verified volumes to "the highest volume delivered to that [destination] facility during the 24-month period leading up to July 2010."<sup>2</sup> Enbridge's proposal removes these historical caps from the nomination verification process.

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<sup>1</sup> Enbridge Energy, Limited Partnership, FERC Oil Tariff, Pipeline Tariffs, Rules and Regulations, FERC No. 41.3.0, 41.3.0.

<sup>2</sup> Enbridge incorporated the historical cap into its verification procedure following a July 2010 oil release at Line 6B near Marshall, Michigan. As a result of this incident, Enbridge is subject to operating pressure limits that have reduced system capacity.

3. On December 20, 2012, the Commission issued an order accepting and suspending the tariff records for seven months, to become effective July 21, 2013, and establishing a technical conference.<sup>3</sup> The technical conference was held on February 6, 2013. Initial comments following the technical conference were due on March 8, 2013 and reply comments were due on April 8, 2013.

## II. Late Interventions

4. The December 2012 Order accepted all late interventions. Since that time, MEG Energy Corp. (MEG), Canadian Oil Sands Partnership #1, ConocoPhillips Company, Ultramar Ltd., and Valero Marketing and Supply Company filed late motions to intervene. The Intervenor Group<sup>4</sup> filed comments opposing the late interventions, stating the late interventions are not justified, potentially disruptive, and unnecessary given that the interests of the late-intervenors were represented by other parties.

5. The December 2012 Order set Enbridge's filing for technical conference, and, prior to this order, the Commission had yet to issue a dispositive order in this proceeding. Thus, the Commission finds that granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Pursuant to Rule 214,<sup>5</sup> the Commission grants all late filed motions to intervene filed prior to the issuance of this order.<sup>6</sup>

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<sup>3</sup> *Enbridge Energy, Limited Partnership*, 141 FERC ¶ 61,246 (2012) (December 2012 Order). Following Enbridge's October 2012 filing, Imperial Oil; ExxonMobil Canada Energy; PBF Holding Company LLC and Toledo Refining Company LLC (PBF); Flint Hills Resources Canada, LP (FHR Canada); Suncor Energy Marketing Inc. (Suncor); Phillip 66 Canada ULC (Phillips 66); Pennzoil-Quaker State Canada Inc. (Pennzoil); United Refining Company (United Refining), and St. Paul Park Refining Co. LLC (St. Paul) filed protests. BP Canada Energy Trading Company and BP Products North America Inc.; Marathon Petroleum Trading Canada LLC; and Cenovus Energy Marketing Services Ltd. filed comments.

<sup>4</sup> ExxonMobil Canada Energy; FHR Canada; Imperial Oil; Nova Chemicals (Nova); PBF; Phillips 66; Pennzoil; St. Paul; Suncor; and United Refining.

<sup>5</sup> 18 C.F.R. § 385.214 (2012).

<sup>6</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,009, at P 15 (2007); *Tennessee Gas Pipeline Co.*, 128 FERC ¶ 61,032, at P 33 (2009).

### III. Discussion

#### A. Initial Comments

##### 1. Enbridge's Revised Proposal

6. In its initial comments after the technical conference, Enbridge proposed modifications to the tariff records it submitted on October 22, 2012. Enbridge states these changes resulted from the discussions at the technical conference and subsequent dialogue with its shippers. In Attachments A and B to its comments filed on March 8, 2013, Enbridge included *pro forma* tariff records and a separate Destination Verification Procedure incorporating these revisions. Enbridge states these modifications address the concerns that its initial proposal was vague and permitted too much discretion.

7. The *pro forma* tariff records in Attachment A of Enbridge's Initial Comments provide Enbridge's revised proposal for verifying nominations to destination facilities:

With respect to nominations for delivery to a specific destination facility, the Carrier will contact the destination facility and ask the destination facility to verify the volumes, which have been nominated to its facility by each shipper. The total volumes verified to each destination facility will be limited to the capability of the destination facility to receive volumes from the Carrier. The procedures for establishing the capability of each destination facility and for conducting destination verification are set out in the Destination Verification Procedure.<sup>7</sup>

8. In Attachment B to its comments, Enbridge included the Destination Verification Procedure referenced by the *pro forma* tariff records. The proposed Destination Verification Procedure requires each destination facility (refinery, storage facility or common carrier) to execute an affidavit establishing the facility's maximum capacity for receiving volumes from Enbridge. If the capacity changes, the facility must execute a new affidavit establishing the changed capacity. The Destination Verification Procedure outlines specific criteria for determining the capacity for each type of destination facility (refineries, storage and connecting carriers).<sup>8</sup> Enbridge states that these criteria were

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<sup>7</sup> Enbridge Initial Comments, Attachment A, Enbridge *pro forma* tariff records section 6(c)(2).

<sup>8</sup> For refineries, Enbridge proposes to determine the maximum capacity based upon the lesser of (a) capacity of the pipeline injecting crude into the refinery and (b) the aggregate of the refinery's design capacity, storage capacity and the movement of crude oil out of the refinery. Enbridge Initial Comments, Attachment B, at 4. For connecting

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developed during discussions with refiners and reflect the input and expertise of these industry participants.<sup>9</sup> Enbridge will post the Destination Verification Procedure on its website.<sup>10</sup>

9. Second, on a monthly basis, each Destination facility must provide an affidavit verifying that it expects and agrees to receive the applicable shipper nominations. As a part of the verification process, Enbridge explains it will compare the total nominations by shippers with the proposed destination's capacity. The affidavit provides that Enbridge may limit future verifications for the facility if the actual volumes received from shippers do not equal the verified nominations.

#### **B. Initial Comments Supporting Enbridge's Proposal**

10. Enbridge, the Supporting Shipper Group,<sup>11</sup> Devon Canada Corporation (Devon), and MEG filed comments supporting Enbridge's proposal. They state it is just and reasonable, as Enbridge has proposed, to refuse to verify nominations that exceed the take away capacity of the applicable destination facility. They assert the proposed mechanism is preferable to the current verification procedures in Enbridge's tariff which cap nominations based upon the July 2008 to June 2010 period. They state that volumes from the June 2008 to June 2010 time period do not reflect the current take away capacity

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carriers, Enbridge proposes to determine capacity based upon the least of (a) connecting carrier's design capacity, (b) the take away capacity of the connecting carrier, or (c) the capacity of the pipeline injecting crude into the connecting carrier pipeline. *Id.* at 10. Enbridge proposes to determine the capacity of a storage facility based lesser of (a) the capacity of the pipeline injecting crude oil into the facility and (b) the aggregate of the maximum storage capacity of the facility and the simultaneous movement of crude out of the facility. *Id.* at 7.

<sup>9</sup> To verify the capacity reported by the destination facility, Enbridge may demand supporting documentation. If the destination facility seeks to challenge the capacity assigned by Enbridge, the tariff provides for arbitration procedures.

<sup>10</sup> Enbridge Initial Comments, Attachment A, Enbridge *pro forma* tariff records, section 19.

<sup>11</sup> The Supporting Shippers Group includes: BP Canada Energy Group ULC, BP Products North America Inc., Canadian Oil Sands Partnership #1, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Marathon Petroleum Trading Canada LLC, Total E&P Canada Ltd., Ultramar Ltd., and Valero Marketing and Supply Company.

of destination facilities, including new or recently expanded refining facilities and pipelines. They contend Enbridge's proposed changes to its Nomination Verification Procedures will ensure fair treatment for shippers using the new facilities. They assert the proposal treats all shippers equally because Enbridge will verify each shipper's nominations to downstream delivery facilities in the same manner. Enbridge further posits that Commission precedent gives the pipeline discretion to develop verification procedures based upon the capacity of connecting facilities.<sup>12</sup>

### **C. Initial Comments Opposing Enbridge's Proposal**

11. The Intervener Group filed comments opposing Enbridge's proposal. In addition to joining the comments filed by the Intervener Group, Imperial, FHR Canada, Nova, PBF, Phillip 66, Pennzoil, St. Paul, Suncor, and United Refining filed separate comments opposing the proposal. These comments state that Enbridge's proposal violates sections 1(4),<sup>13</sup> 1(6),<sup>14</sup> and 3(1)<sup>15</sup> of the Interstate Commerce Act (ICA). The Intervenor

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<sup>12</sup> Enbridge Initial Comments at 20 (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,114 (1999), *order on reh'g, SFPP, L.P.*, 91 FERC ¶ 61,135, at 61,519 (2000); *CCPS Trans., LLC*, 125 FERC ¶ 61,394, at P 4 (2008)).

<sup>13</sup> Section 1(4) provides in part: "It shall be the duty of every common carrier subject to this chapter to provide and furnish transportation upon reasonable request therefor...." 49 App. U.S.C. § 1(4) (1988).

<sup>14</sup> Section 1(6) provides in part: "[E]very unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful." 49 App. U.S.C. § 1(6) (1988).

<sup>15</sup> Section 3(1) provides:

It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, associate, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unnecessary prejudice or disadvantage in any respect whatsoever....

49 App. U.S.C. § 3(1) (1988).

Group, FHR Canada, NOVA, Penzoil, United Refining and Imperial argue that Enbridge's proposed verification procedure discriminates against longtime shippers in favor of new shippers and recently constructed or expanded affiliated connecting carriers.

12. These parties state the conditions which led Enbridge to establish the historic caps on nominations, i.e. the operating pressure limits imposed after a July 2010 oil release, continue to restrict the pipeline capacity and have led to prorationing. Thus, they contend shippers have an incentive to submit exaggerated nominations in order to obtain the largest pro rata share under Enbridge's pro rata apportionment measures. These shippers argue that verifying volumes based upon the capacity of the destination facility, as opposed to historic caps, will allow some facilities to submit inflated nominations. For example, these parties allege that facilities with alternative supply sources could nominate the facilities' full capacity while intending to receive at least some supply from other sources, or, alternatively, they speculate that a large facility may nominate shipments for its full capacity although it intends to operate at less than full capacity. They contend that prior to the adoption of the historic caps contained within the current tariff, shippers regularly submitted over-nominations to increase their pro rata share in Enbridge's prorationing procedures. These parties state Commission precedent supports setting aside a certain percentage of capacity for historic shippers.<sup>16</sup>

13. These parties also emphasize that some of the new and expanded pipelines that may be connecting to the mainline system are affiliates of Enbridge. The Intervenor Group alleges that because revenue from the mainline will be the same regardless of the verification or apportionment procedure it employs, Enbridge is seeking to implement a verification procedure favoring nominations to destinations on these affiliated pipelines. They further claim the pipeline cannot revise its verification and prorationing policy by reducing allocations to existing shippers to make room for shippers that travel onto Enbridge's affiliated connecting carriers.<sup>17</sup>

14. The Intervenor Group, Penzoil, PBF, Imperial, St. Paul, Suncor, and Phillips 66 criticize Enbridge's original tariff proposal as vague and giving the carrier too much discretion in determining whether to accept the verified nominations presented to it by facilities. These comments state that Enbridge, as a common carrier pipeline, is not

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<sup>16</sup> Joint Interveners at 4 (citing *Enbridge (N. D.) LLC*, 120 FERC ¶ 61,197 (2007); *Enbridge Pipelines (N.D.) LLC*, 132 FERC ¶ 61,274 (2010); *Enbridge Pipeline (N. D.) LLC*, 140 FERC ¶ 61,193 (2012); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296 (2006); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007)).

<sup>17</sup> *E.g.*, FHR Initial Comments at 8 (citing *Dixie Pipeline Co.*, 140 FERC ¶ 61,127 (2012)).

capable of assessing the capacity of a refinery or another facility to receive crude oil. PBF, Suncor, Phillips 66 and St. Paul add that Enbridge failed to address how it will evaluate contingency measures related to shutdown or season fluctuations. Further, they state Enbridge provided an inadequate mechanism for facilities or shippers to contest in a timely manner Enbridge's assessment of a facilities capacity. They also request that Enbridge provide additional examples and scenarios to demonstrate how it will apply the proposed verification procedure.

#### **D. Reply Comments Supporting Enbridge's Proposal**

15. Enbridge, the Supporting Shippers Group, and MEG filed reply comments supporting Enbridge's proposal. Enbridge and Supporting Shippers Group assert the proposal is non-discriminatory because the verification procedure based upon capacity applies similarly to all facilities. In response to shipper concerns that the changes will hurt historic shippers, Enbridge states that on a common carrier there is always a possibility that existing shippers' volumes will be reduced by nominations from new or expanding shippers seeking access to the same constrained capacity on the pipeline. Enbridge states such risks are inherent to an open access system. Enbridge further claims its proposal will curb "air barrels" by ensuring nominations are valid. However, Enbridge adds that the ability of any tariff provision to curb air barrels is limited.

16. Enbridge and Supporting Shippers Group dispute assertions that the proposal is vague or ambiguous. They state that, as revised in Enbridge's initial comments, the proposal limits Enbridge's discretion by using affidavits from the destination facilities and specifying standardized formulas for determining capacity. The Supporting Shippers Group emphasize that if a facility fails to take volumes specified in the affidavit, Enbridge may limit the volumes available to the facility in the future. Enbridge states its proposal contains a dispute resolution procedure allowing a facility an opportunity to challenge any capacity determinations.

#### **E. Reply Comments Opposing Enbridge's Proposal**

17. The Intervenor Group, PBF, Nova, St. Paul, Phillips 66, and Suncor filed reply comments opposing the proposal. They state that although Enbridge made certain changes to address the implementation of its proposal, these changes did not address concerns about air barrels and the effect of the proposal on the ultimate apportionment of mainline capacity. These parties assert Enbridge's proposal is "unduly preferential to shippers and downstream facilities that are positioned to expand their ability to accept increased deliveries of oil."<sup>18</sup> The Intervenor Group states that facilities that are not

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<sup>18</sup> *E.g.*, Intervenor Group Reply Comments at 10.

planning to operate at full capacity or that have alternative sources of fuel would have the flexibility to inflate their nominations. These parties assert Enbridge failed to explain the effect on historic shippers if it verifies downstream nominations up to the fully expanded capacity of the connecting pipelines, which have been expanded in excess of mainline capacity upstream. These parties assert the new procedure will immediately and significantly lower the capacity available to facilities historically served from the mainline and divert capacity to serve new or expanded connecting pipelines. These parties emphasize several shippers are highly dependent on Enbridge for supply and may not have alternative modes for transporting crude oil to their facilities. They argue that Enbridge failed to meet its burden that the verification and apportionment mechanisms are just and reasonable “in light of the factors applicable to each pipeline’s provision of service to its customers.”<sup>19</sup> The Intervenor Group alleges the proposal will not lead to a just and reasonable result.

18. Additionally, the Intervenor Group states that notwithstanding Enbridge’s proposed changes to its procedure, the new rules remain vague and subject to interpretation. The Intervenor Group states that Enbridge’s revised proposal assesses the maximum verifiable nominations to a connecting facilities based upon “capacity of the pipeline injecting crude oil” and that the determination of such capacity remains at Enbridge’s discretion. For example, the Intervenor Group states that in the case of United Refining’s refinery, the verified capacity will be limited by the capacity of the mainline segment connecting to the refinery. The Intervenor Group states the capacity of this line would be determined at the sole discretion of Enbridge and could incorporate limits imposed by Enbridge, including pressure restrictions, integrity work, and general maintenance. The Intervenor Group adds that Enbridge appears to use a different definition of “injection of crude” oil for connecting carriers than it does for other facilities. The Intervenor Group further objects to the provisions included in the proposal for challenges to the verification process, stating they take too much time.

#### **F. Commission Determination**

19. The Commission accepts Enbridge’s proposal subject to conditions. In its initial comments, Enbridge submitted *pro forma* tariff records containing modifications to its proposal. As revised in the *pro forma* records, the Commission finds Enbridge’s proposal to be just and reasonable.

20. The objective of the Mainline Nomination Verification Procedure, as defined by Enbridge’s tariff, is to verify that a shipper has supported its nomination with adequate

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<sup>19</sup> Intervenor Group Reply Comments at 2 (citing *Suncor Energy Marketing, Inc.*, 132 FERC ¶ 61,242, at P 24 (2010)).

supply at its supply point and “adequate take away capacity” at the destination facility.<sup>20</sup> In order to evaluate a destination facility’s capacity, Enbridge proposes to assess the actual capacity of the shipper’s designated destination facility as opposed to relying, consistent with Enbridge’s existing tariff, upon the indirect evidence provided by historic shipments. The examination of current capacity accounts for the addition of new facilities as well as possible changes at existing facilities that increase (or decrease) the destination facility’s capacity. Enbridge’s proposal is a reasonable refinement of its procedures for identifying nominations that exceed the capacity at a shippers’ selected destination.

21. Contrary to the assertions of the Intervenor Group and its members’ separate comments, the proposal does not discriminate against shippers using older facilities to favor shippers using newer facilities. First, Enbridge proposes procedures for calculating the capacity at each type of facility (connecting carriers, refiners, and storage). This process makes no distinction between older and new facilities or between new and historic shippers. Second, there is no reason why Enbridge’s calculation of a destination facility’s take away capacity should fail to fully recognize newly added facilities or expansions. Failure to acknowledge new capacity results in an inaccurate assessment of existing capacity. Third, once Enbridge verifies shipper nominations, it may determine whether the verified nominations exceed system capacity. To the extent capacity constraints exist, how Enbridge allocates capacity on its pipeline among the shippers with verified nominations relates to Enbridge’s prorating procedures. Enbridge has not proposed to change its prorating procedures and this prorating process is not at issue in this proceeding.<sup>21</sup>

22. The concerns raised by shippers regarding the possibility of air barrels<sup>22</sup> do not justify rejecting the proposal. Enbridge’s proposal includes several provisions restraining

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<sup>20</sup> Enbridge, FERC Oil Tariff, Pipeline Tariffs, Rules and Regulations Tariff, section 6(c).

<sup>21</sup> In its prorating procedures, Enbridge allocates capacity on a pro rata basis and no party challenges the pro rata allocation methodology. See Intervenor Group Reply Comments at 7. Pro rata allocation awards a share of the available capacity to each shipper based on the shipper's proportionate share of all nominations, regardless of a shipper's history of shipments on the pipeline. Similar pro rata allocation methodologies are common on oil pipelines. *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 26 (2010).

<sup>22</sup> Air barrels are over-nominations made by a shipper to increase its proportionate share of all nominations and, thus, that shipper’s pro rata allocation.

the nomination of air barrels. The proposed verification procedure limits shipper nominations beyond the capacity of the selected destination facility. Further, each month, the proposal requires destination facilities to provide an affidavit certifying the facility expects and can receive the volumes nominated by each shipper.<sup>23</sup> Enbridge's proposal also provides that it may limit future nominations to the facility if the actual volumes received do not equal the verified nominations.<sup>24</sup> As another safeguard, to the extent Enbridge is under prorationing, Enbridge's tariff allows it to assess a penalty on any shipper failing to submit its verified volumes.<sup>25</sup> Enbridge's proposed procedures sufficiently address concerns regarding possible shipper over-nominations.<sup>26</sup>

23. The shippers' remaining concerns regarding the implementation of Enbridge's proposal lack merit. The proposal does not award Enbridge undue discretion. On the contrary, Enbridge's proposal contains a detailed methodology relying on an extensive verification procedure. Also, the time frame for resolving disputes over the verification procedure is no different than typically exists for resolving disputes regarding a pipeline's operational practices. For any shipper's objection to a pipeline's application of its tariff, the Commission's complaint process is the available remedy. Finally, Enbridge's proposals calculate facility capacity in a non-discriminatory manner. Contrary to the

Intervenor Group's assertions, the standard for measuring delivery capacity to refiners and storage facilities ("Injection of Crude Oil") also applies to connecting carriers.<sup>27</sup>

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<sup>23</sup> Enbridge Initial Comments, Attachment B.

<sup>24</sup> *Id.*

<sup>25</sup> Enbridge, FERC Oil Tariff, Pipeline Tariffs, Rules and Regulations Tariff, Section 14(c).

<sup>26</sup> The Intervenor Group speculates that a shipper may escape detection if its over-nominations (i.e. air barrels) are reduced via the pro rata allocation down to crude quantities that the shipper can transport. Intervenor Group Reply Comments, Appendix. This argument assumes the destination facility will make false statements in the affidavits provided to Enbridge. It also assumes Enbridge will receive similarly false information from the supply point. Finally, this argument assumes the shipper can precisely calibrate any false statements so that, after the pro rata allocation procedure is applied, the shipper's pro rata share equals its actual needs. Finally, the Commission is not aware of any methodology which can completely eliminate all possibility of air barrels created by false shipper nominations, and, as discussed above, Enbridge's proposal provides reasonable procedures for controlling this potential abuse.

<sup>27</sup> For "Injection of Crude Oil" is defined as "the sustainable, rateable, and

24. The Commission accepts the proposal subject to the condition that Enbridge file within seven days, revised tariff records consistent with the *pro forma* tariff records submitted with its initial post technical conference comments.<sup>28</sup>

#### **IV. Intervenor Group's Alternative Proposal**

##### **A. Intervenor Group Comments**

25. In its initial and reply comments, the Intervenor Group urges the Commission to adopt a different verification procedure than the procedure proposed by Enbridge. The Intervenor Group proposes to verify 90 percent of the capacity on Enbridge's mainline system based upon historical peak demand for existing facilities and connecting carriers. The Intervenor Group proposes to allocate the remaining 10 percent of capacity to new demand associated with new facilities and connecting carriers. After verifying volumes using this process, the Intervenor Group states its proposal retains the long-standing pro rata method used by Enbridge to apportion capacity. The Intervenor Group proposes to keep its methodology effective through mid-2015. The Intervenor Group states its proposal allows an orderly transition to accommodate the needs of both historical demand and new demand. Although this proceeding involves a filing initiated by a pipeline rather than a shipper filed complaint, the Intervenor Group states the Commission previously considered shipper presented alternatives to a pipelines' proposed tariff change.<sup>29</sup> PBF, Nova, St. Paul, Phillips 66, and Suncor filed comments separately expressing support for the Intervenor Group's proposal.

##### **B. Comments Opposing the Intervenor Group's Proposal**

26. Enbridge and Supporting Shippers Group state that the alternative proposal advanced by the Intervenor Group is procedurally improper.<sup>30</sup> Enbridge and the

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on-going movement of crude oil into [the facility]." Enbridge Initial Comments, Attachment B.

<sup>28</sup> In both this proceeding and Docket No. OR13-15-000, the Intervenor Group filed a motion to consolidate the two proceedings. As explained in the order in Docket No. OR13-15-000, we are rejecting the motion to consolidate.

<sup>29</sup> Intervenor Group Initial Comments at 9 (citing *Platte*, 132 FERC ¶ 61,242).

<sup>30</sup> Enbridge Reply Comments at 9 (*BP West Coast Prod. v. FERC*, 374 F.3d 1263, 1278 (D.C. Cir. 2004); *Colonial Pipeline Co.*, 141 FERC ¶ 61,133, at P 19 (2012); *Enbridge Pipelines (N.D.) LLC*, 132 FERC ¶ 61,274, at P 33 (2010)).

(continued...)

Supporting Shippers Group also state that the Intervenor Group's proposal is inconsistent with sections 3(1), 1(4), and 1(6) of the ICA because it results in undue discrimination favoring historic shippers. They state the Intervenor Group's proposal allocates capacity using a frozen 24-month cap based on demand from July 2008 to June 2010 for all downstream facilities. They assert this proposal discriminates against shippers that (a) seek to transport volumes to destinations that did not exist prior to July 1, 2010, (b) were not utilizing their full capacity during the 24-month frozen time frame, or (c) are nominating volumes to facilities which expanded after 2010. Supporting Shippers Group state that by restricting nominations to specific destinations based upon historical patterns, the Intervenor Group's proposal precludes new markets from accessing the Enbridge mainline. Supporting Shippers Group add that the Intervenor Group's proposal is not well-defined. They point out that the Intervenor Group failed to provide *pro forma* tariff sheets laying out their proposal. MEG also agrees with the Supporting Shipper Group that the Commission should reject Intervenor Group's proposal.

### C. Commission Decision

27. Under the ICA, the pipeline has the primary initiative to propose the rates, terms, and conditions for its services. If the rates, terms, and conditions proposed by the pipeline are just and reasonable, the Commission must accept them, regardless of whether other rates, terms, and conditions may also be just and reasonable.<sup>31</sup> In this case, Enbridge has filed a proposed Nomination Verification Procedure that the Commission has deemed to be just and reasonable.<sup>32</sup> Thus, we will not consider the alternative proposal advanced by the Intervenor Group.

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<sup>31</sup> *Amerada Hess Pipeline Co.*, 69 FERC ¶ 61,297, at 61,246 (1994), *rev'd on other grounds*, *ARCO Alaska Inc. v. FERC*, 89 F.3d 878 (D.C. Cir. 1996). *See also ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 49 (2005), (citing *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998 1002-1004 (D.C. Cir. 1999) (applying the same principle to parallel provisions of the Natural Gas Act).

<sup>32</sup> This proceeding is different from the *Platte* proceeding in which the Commission (a) determined that a pipeline's proposed tariff change was not just and reasonable and (b) held, based upon a complaint, that the pipeline's existing tariff provision was not just and reasonable. *Platte*, 132 FERC ¶ 61,242. Because the Commission is accepting Enbridge's proposed tariff change, those circumstances do not exist here.

The Commission orders:

The tariff record listed in footnote 1 of this order is accepted to become effective July 21, 2013, subject to Enbridge's filing of revised tariff records within 7 days consistent with the discussion herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.