



Enbridge is not carrying "natural crude oil" and thus cannot be a public utility and cannot have eminent domain power. In response to such meritless arguments, Enbridge states as follows:

1. Any cogent reading of the initiating Application filed by Enbridge clearly and unambiguously shows that Enbridge seeks certification as a "common carrier by pipeline" under the Common Carrier by Pipeline Law ("CCPL"), which is set forth in Article XV of the Act. *See* 220 ILCS 5/15-100 *et seq.*; Application at 1, 18-19, 27. Further, Section 15-101 of the CCPL expressly provides that Section 8-503 (authority to construct) and Section 8-509 (eminent domain authority) of the Act are "fully and equally applicable to common carriers by pipeline ... ." 220 ILCS 5/15-101. Thus, despite the misplaced protestations of the Intervenors, the Illinois General Assembly has determined that a common-carrier-by-pipeline can, in fact, have eminent domain power.

2. Under the CCPL, a common-carrier-by-pipeline is defined as anyone engaged in "the conveyance of gas or any liquid other than water for the general public in common carriage by pipeline ... ." *See* 220 ILCS 5/15-201. This definition is controlling and must be used by the Commission in its determinations. Enbridge's line is clearly a liquid transport line, and the Intervenors do not and cannot claim otherwise. Their contrived argument regarding "bitumen" is thus pointless. As well, it cannot be denied that Enbridge intends to engage in common carriage by pipeline for the general public (Intervenors do not assert otherwise and cannot now so contend).\*

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\* How the liquid transported in a common carrier pipeline is produced is irrelevant to a certification application, since the CCPL only requires that the carrier be engaged in conveying "any liquid." As well, Intervenors misrepresent the facts, implying that Enbridge will carry only bitumen. As the Application clearly shows, Enbridge does and will transport both crude petroleum from "conventional Canadian oil deposits" and American "light, sweet crude"

3. The "oil" definition erroneously relied upon by Intervenors is not part of the Act or the CCPL but rather is part of the Illinois Oil and Gas Act, 225 ILCS 725/1, which is an entirely different statute having nothing to do with public utilities or common carriers or this Commission but rather is designed to allow the Illinois Department of Natural Resources to prevent waste in the production of oil and gas in Illinois production fields. This Commission's authority is vested in 220 ILCS 5/1-101 *et seq.*, not in the Oil and Gas Act, which has no bearing on any issue here.

4. Pursuant to the applicable provisions of the Act and the CCPL, the Commission can grant eminent domain power to any certificated common-carrier-by-pipeline that is conveying any liquid other than water. The Intervenor's Motion clearly admits that Enbridge will be carrying liquid hydrocarbons of some type. Moreover, in pleadings filed by other participating Intervenors, there is an explicit admission that the product being carried is a "liquid" energy source. "Motion of Certain Intervenors Pertaining To The Schedule For Discovery and Testimony Presented By The Intervenors," October 30, 2007, at 2. Thus at least some intervenors have a basic understanding of Illinois public utility/common carrier law.

5. The Commission has in fact exercised jurisdiction in regard to pipelines that can or will carry synthetic crude petroleum and has granted eminent domain authority to such carriers. *See* ORDER, April 4, 2007, Transcanada Keystone Pipeline, LP, Docket No. 06-0458; ORDER, April 4, 2007, Enbridge Energy Partners, L.P. and Enbridge Energy, Limited

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produced in the Williston Basin area of the United States, as well as crude oil produced from the oil sands. Application at 4, 12 n.4. To the extent intervenors may be arguing that a common-carrier-by-pipeline can only transport "oil" produced in Illinois fields, the argument is nonsensical and would create a Commerce Clause violation. Moreover, there is no practical difference for refining purposes between crude produced from oil sands and so-called "natural" crude.

Partnership, Docket No. 06-0470. Moreover, the Commission has always broadly construed "oil" to include liquid hydrocarbons other than "natural crude oil," such as gasoline and fuel oil, and has granted eminent domain authority to pipelines carrying such "manufactured" products. *See, e.g.*, ORDER, August 3, 1977, Amoco Pipeline Company, Dkt. No. 77-0285; ORDER, August 3, 1977, Amoco Pipeline Company, Dkt. No. 77-0297. Clearly, the Intervenors have failed to raise any valid issue in their Motion that could or should cause the Commission to deviate from its prior decisions or fail to exercise its jurisdiction here.

**WHEREFORE**, for all of the reasons stated herein, Enbridge respectfully request that the Commission deny the Motion to Dismiss Petition for Authority to Exercise Eminent Domain.

Respectfully submitted,

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.

OF COUNSEL:

Joel W. Kanvik  
Senior Counsel  
Enbridge Energy Company, Inc.  
1100 Louisiana  
Houston, Texas 77002  
(713) 821-2000

Gerald A. Ambrose  
G. Darryl Reed  
Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
(312) 853-7000

Attorneys for Applicant

Dated: November 2, 2007

By: /s/ G. Darryl Reed  
One of Its Attorneys



**CERTIFICATE OF SERVICE**

I, G. Darryl Reed, an attorney, certify that I caused copies of the Response to Motion to Dismiss Petition for Authority to Exercise Eminent Domain, filed on behalf of Enbridge Pipelines (Illinois) L.L.C. ("Enbridge"), to be served on each of the parties listed on the service list via electronic or regular mail, this 2<sup>nd</sup> day of November, 2007.

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/s/ G. Darryl Reed

One of the Attorneys for

ENBRIDGE PIPELINES (ILLINOIS) L.L.C.

Gerald A. Ambrose  
G. Darryl Reed  
Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
(312) 853-7000