

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Q1: Let's go back on the record for submission of your supplemental direct testimony in this matter. Please state your name again, for the record.

Carlisle Kelly.

Q2. Have you had a chance to review additional discovery materials submitted in this matter by Enbridge, as well as other materials related thereto?

Yes I have.

Q3. Have these materials allowed you to form additional opinions, beliefs and conclusions as relates to this case?

Yes.

Q4: Have the materials you have reviewed changed your underlying opposition to Enbridge's proposed application?

No, I am still strongly opposed to the proposal. In fact, I am even more convinced now that the proposal is being submitted for the purpose of increasing the price of Canadian tar sands product, rather than trying to benefit Illinois citizens.

Q5: Are you aware of any inconsistencies between what Enbridge has indicated to the ICC in its application, and what Enbridge has indicated to others outside of the ICC proceedings?

Yes, I am aware of many inconsistencies.

Q6: Please elaborate on some of the inconsistencies between what Enbridge has indicated in its application, and what Enbridge has indicated outside the ICC proceedings?

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Enbridge has argued in the application its opinion the proposed pipeline project is needed and multiple reasons are offered as to why, in Enbridge's opinion, the project is necessary. Enbridge is proposing to import heavy Canadian tar sands products into the United States and ultimately ship it through Illinois, then from Flanagan on to Patoka and ultimately to the Gulf Coast. Throughout the application, Enbridge alleges Midwestern refineries need the product it intends to transport through its proposed pipe. The fallacy in this whole proposed argument by Enbridge is the fact that Midwestern refineries cannot handle the amount of petroleum products that are available to them today. They are operating at full capacity. The majority of the petroleum refined by Midwestern refineries is traditional crude oil that is pumped as a liquid from below the ground. The majority of petroleum products refined by Midwestern refineries is traditional crude oil, as opposed to Canadian tar sands product. The Midwestern refineries are saturated to capacity and can no longer accept additional petroleum products. The plain and simple fact is that pipeline capacity for the delivery of crude oil to the Great Lakes and Midwest regions of the United States currently exceeds refining capacity.

Q7: What is your information source to support your claim that “pipeline capacity for the delivery of crude oil to the Great Lakes and Midwest regions of the United States currently exceeds refining capacity”?

Enbridge is my source. Public companies, like Enbridge and its affiliates are required by federal law to submit regular reports to the United States Securities and Exchange Commission (SEC). Enbridge Energy Partners, L.P. (Enbridge Partners) is one of the main affiliates listed in the application and is listed throughout the application. Enbridge Partners filed its United States SEC Form 10-K annual report (ENBRIDGE

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

SEC 2006 ANNUAL REPORT) for fiscal year ending December 31, 2006. These filing must be signed by In the ENBRIDGE SEC 2006 ANNUAL REPORT, at page 37, in the last full paragraph on the page, Enbridge Partners plainly states: “Pipeline capacity for the delivery of crude oil to the Great Lakes and Midwest regions of the United States currently exceeds refining capacity.” (Exhibit A) Then again in last year, Enbridge filed its Third Quarter United States SEC Form 10-Q, a regular quarterly report for period ending September 30, 2007. In the report, at page 47, Enbridge again pointed out “pipeline capacity for the delivery of crude oil to the Great Lakes and Midwest regions of the United States currently exceeds refining capacity.” (Exhibit B)

Even Enbridge Annual Reports as far back as year 2000 indicate pipeline capacity in the Midwest exceed refining capacity. (Exhibit C, Enbridge 2000 Annual Report, page 19, last paragraph on page) I think it is fair to say Enbridge clearly knows that Midwest refineries are operating at full capacity and existing pipelines can easily accommodate the refinery needs.

Q8: Why is it important for the ICC to understand the fact that pipeline capacity in the Great Lakes and Midwest regions exceeds refining capacity?

Throughout its application, Enbridge makes the claim that this project is needed. Enbridge fails to clearly point out the fact that pipeline capacity exceeds refining capacity in the region. Illinois refineries and refineries throughout the Midwest already have too much pipeline capacity, and refineries are saturated. The common sound byte often used in the industry is “there hasn’t been a new refinery built in the United States in more than 30 years.” I am not really sure why there hasn’t been any new refineries built, but I

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

believe it has something to do with a desire to control the amount of refined products available to the public, thus keeping prices high.

Q9: What other facts lead you to believe this project is not needed?

Enbridge mentions throughout its application that Illinois-area and Midwest refineries are considering upgrading their equipment to allow them to process heavy Canadian products derived from the tar sands. (Application, pg. 10-11). What Enbridge fails to mention is that these upgrades, even if they come to fruition, will not substantially alter the total refining capacity of the refineries in the region in any significant way. The upgrades are being considered because most refineries have a very difficult time handling the heavy tar sands Canadian products. These tar sands products are laden with problems including the need for expensive refinement techniques, removal of sulfur and heavy metals, and other complicated processes. While refineries might be considering possible modifications, the plain fact remains that pipeline capacity will continue to exceed capacity.

Q10: If pipeline capacity in the Great Lakes and Midwest regions exceeds refining capacity, why is Enbridge proposing to build this pipeline?

Enbridge is proposing to build this pipeline because it wants to transport Canadian tar sands products down to the Gulf Coast, to the only refineries with excess capacity. The Gulf Coast has the only refineries with excess capacity to relieve the glut of Canadian tar sands product. (See Enbridge application, footnote 8, page 15 & 16) The Flanagan to Patoka link is needed because that is the second-to-last step in the process of building a pipeline down to the Gulf Coast refineries. Petroleum producers mining the tar sands in Canada need to access new markets. As it currently stands, their products are

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

landlocked and this has created a large deficit in the price they receive for their product compared to traditional crude oil. These large oil company conglomerates want to raise the price of the tar sands product by opening up new markets. There is currently a glut of Canadian tar sands product in the regional market, and this glut has caused a large price difference compared to other types of traditional crude oil. Since there is no longer anymore refining capacity in the Great Lakes or Midwest, a large pipeline is needed to get the tar sands product down to the Gulf Coast, or to Cushing, Oklahoma.

Q11: Is there anything fundamentally wrong with Enbridge or the large oil companies wanting to build a large new pipeline through Illinois so they can transport their product to the Gulf Coast or Cushing, Oklahoma and increase the price they receive for the product they are mining from the tar sands?

There is nothing fundamentally wrong with a company trying to get the highest price for its product. My problem with this project is that the company wants to use eminent domain to take my property and the property of many landowners so their company, Enbridge and its shareholders, will make a lot of money. I am strongly opposed to that prospect. I believe it is wrong for Enbridge to suggest or imply in the ICC application that Illinois citizens need this pipeline. Enbridge wants this pipeline so it can ship Canadian tar sands product to the Gulf Coast, thereby relieving the glut and raising the price for the product. I think it is wrong for Enbridge to withhold from the ICC what it honestly knows to be the case, that is, "pipeline capacity for the delivery of crude oil to the Great Lakes and Midwest regions of the United States currently exceeds refining capacity."

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Enbridge should have plainly pointed out this fact in its application. Instead, it dances around the issue trying to weave a scenario in favor of its application. Once you understand the issue of excess capacity, if you read the language used in the Enbridge testimony, it is easy to see how Enbridge tries to dance around this issue. For example, in the Enbridge's Dale Burgess Direct testimony at page 6, line 136, the following statement is made: "There is not enough refining capacity in PADD II to meet such consumer demand and thus supplying crude to downstream refiners is critical to meeting local needs. In essence, they have danced around the excess pipeline capacity issue and instead argued that consumers are demanding more products. I believe the importance of this comment is not in what it says, but in what is implied from the comment. Mr. Burgess' comment suggests that Enbridge intends to send its tar sands product somewhere other than PADD II for refining. This comment further substantiates the fact Enbridge intends to use this pipeline for the primary purpose of transporting its products to the Gulf Coast.

I think it is wrong for Enbridge to try and paint a picture that this project will benefit Illinois citizens. The project is being proposed for the purpose of raising the price of Canadian tar sands product and this increased price will ultimately be paid by consumers of the refined products.

Q12: Are you aware of any inconsistencies between what Enbridge has indicated in its ICC application and related discovery materials as opposed to what has been released to financial investors and others.

Yes, I am aware of several inconsistencies. Enbridge recently responded that the "Southern Access Extension pipeline does not have any contracted capacity commitments; as an open-access, common-carrier pipeline it will accept capacity

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

nominations from shippers for transport of liquid crude petroleum that meets the tariff conditions. The precise type of crude petroleum to be carried or the shippers thereof cannot be known until the monthly nominations are presented and accepted.” (Exhibit D)

In the Direct testimony of Dale Burgess submitted by Enbridge at pg. 5, line 112, Mr. Burgess suggests the project is already irrevocably committed at this time. In addition, Enbridge CEO Pat Daniel gave a May 2, 2007 first Quarter Financial Results presentation including slides and a verbal presentation. At slide 6 and 7 of 14, Mr. Daniel showed that the Southern Access Extension project has been undertaken at no capital cost risk and no volume risk to Enbridge. (Exhibit E transcript, and Exhibit F slides of the May 2, 2007 first Quarter Financial Results) During the meeting, Mr. Daniel comments, “But the real prize is what is coming starting in 2009 with Southern Accessprojects that already have the necessary commercial support and are moving forward.” (Exhibit E, pg. 4) In its application, (Application, pg. 6, paragraph 6) Enbridge admits it has committed to building the proposed project, regardless of the outcome of the ICC proceedings herein.

Q13: What is the importance of this evidence?

Enbridge has engaged in this project without incurring any significant risk. It can proceed with the Southern Access Extension and incur no capital cost risk. That means Enbridge will recover its money for capital expenditures from the shippers and producers through a FERC shipping tariff. If the shippers and producers don’t ship a single barrel of product, Enbridge will still be paid a set rate with an expected financial rate of return at 11%. The inconsistency comes about in that Enbridge argues it wants ICC approval for this project, including authority to invoke eminent domain, when in fact Enbridge has

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

already committed to construct this project for the shippers and producers. The project will occur regardless of whether the ICC approves this project or not. The only thing Enbridge wants is to receive eminent domain authority so it can lock in an even higher rate of return than 11%. Enbridge claims to have already committed to this project. Thus, there is no need for the ICC to grant it eminent domain.

Q14. Are you aware of other reasons why the proposed project is not needed?

Enbridge alleges it is needed for the purpose of transporting Canadian product to Patoka, Illinois for the purpose of providing Illinois-area refineries additional product. The conflict comes with the fact that Enbridge already owns the Mustang line which runs from the Chicago area to Patoka. It is very capable of transporting petroleum from the Lakehead System in the Chicago area to the Patoka, Illinois, area. The pipeline is a common carrier system whose tariff rates are regulated by FERC. There is no need for a second common carrier line to run to Patoka, except for the fact Enbridge wants a large 36" pipe to transport 400,000 – 800,000 bpd out of Illinois and down to the Gulf Coast.

Additionally, Enbridge owns and operates the Spearhead line, a 650-mile pipeline between the Chicago-area and Cushing, Oklahoma. The line previously brought traditional crude oil from Oklahoma up to Chicago. It was used for the purpose of bringing crude oil from Cushing, Oklahoma, a major terminal hub for traditional crude oil, and send it to Illinois refineries. Enbridge reversed the Spearhead line in 2006 and now sends petroleum out of Illinois and down to Oklahoma to provide Canadian tar sands producers and shippers with access to markets in the Mid-Continent and southern United States.

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Q15. If there was a need for more Canadian petroleum product by Illinois refineries, then why would Enbridge have reversed the Spearhead line to send product from Illinois to Oklahoma?

There is no need for more product in Illinois. As stated on Enbridge's own website, the line was reversed to "provide Canadian crude oil producers and shippers with access to markets in the Mid-Continent and southern United States." The purpose of the reversal was to relieve the glut of Canadian tar sands product and increase the price for Canadian producers, by accessing new markets. If the Illinois-region really needed additional petroleum products, Enbridge would not be sending them to Cushing, Oklahoma by reversing the Spearhead line.

Q16. Is there a way for you to support your claim that the Chinese government will own product transported in the proposed pipe?

In my opinion, obviously Enbridge does not want this information disclosed and unless. There is a major public relations problem with trying to explain the concept that Chinese and other foreign national interests in the Canadian oil sands are supporting the Enbridge project including attempts to use eminent domain to take property from Illinois landowners for the purpose of raising the price of the tar sands product.

Q17. Which Chinese companies are involved in the Canadian oil sands mining projects?

It is my understanding the big three Chinese companies include Sinopec, PetroChina, and China National Offshore Oil Corp or their affiliates all have direct or indirect investments in the Canadian tar sands. Unless Enbridge can be forced to divulge, under oath, the identity of the proposed shippers, I think it is difficult for me to prove the

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

connection. At the same time, Enbridge was directed to answer this question with specificity in this proceeding, yet it has failed to do so. The evasiveness of Enbridge's responses confirms my belief they desire to avoid this topic. In my opinion, it is plainly an intentional and material misrepresentation for Enbridge to claim it has "no knowledge of" foreign countries holding ownership interests in the companies intending to ship product through the pipe. (Enbridge responses to discovery order, Request 3 and their response).

Q18. Has Enbridge been fair, upfront, and honest with the landowners who own real estate in the path of the proposed project?

Absolutely not. Enbridge and its representatives have attempted to conceal important information from landowners as pertains to this project. For example, Enbridge alleges it owns a valid easement through much of the pathway proposed for the project. There is an old, abandoned, inactive petroleum pipeline through much of the proposed pathway. The pipeline was first built in 1939 and is currently in a state of disrepair. The pipe has eroded up out of the ground and constitutes a safety hazard in many areas. There are many creeks and tributaries where the pipeline is exposed as it crosses these waterways. The pipe is full of holes and has leaked substance into the surrounding ground environment. Enbridge alleges it merged with Central Illinois Pipeline Company (CIPC) and acquired easements for much of this project. The validity of these old easements are strongly disputed.

Nonetheless, Enbridge has not told landowners what it plans to do with the old pipeline. In addition, the Enbridge application is silent on its plans for the old pipeline. The ICC is charged with considering, among other things, environmental issues

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

pertaining to a proposed pipeline. Enbridge claims or alleges it has not yet formulated plans for the old pipeline. Enbridge's failure to explain its plans for the old pipeline constitutes a material misrepresentation of the facts.

Many of the landowners up and down the proposed pathway are very elderly individuals, with some well above eighty (80) years of age. More than a few of these elderly landowners are compromised in the sense that they have virtual no experience in dealing with a multibillion dollar foreign national company. They have limited access to information, limited access to the Internet, and difficulty in understanding matters that younger people take for granted. Enbridge representatives appeared at meetings in communities throughout the proposed pathway and told many of these elderly landowners it wanted to build a single pipeline. Later, without any discussions with these landowners, Enbridge sent landowners, including these elderly landowners proposed easements with language allowing two (2) pipelines to be built. The easements sent to landowners in many cases included this language without any suggestion Enbridge had changed the document disclosed in the ICC proceedings and inserted language allowing it to build two (2) pipelines. Illinois has a law known as the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505 et seq.). In my opinion, the concealment, suppression and omission of this material fact constitutes a violation of this law. Again, I am not a lawyer and these matters are best determined in a court of law. But it is difficult for me to believe a company like Enbridge can believe it is ethical proper to tell landowners in public meetings it merely wants an easement for a single pipeline, yet send them a lease containing terms allowing the construction of two (2) pipelines. I am firmly

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

of the opinion this constitutes an ethical deviation in the industry, considering elderly landowners are involved.

I believe these actions show that Enbridge has not participated in good faith negotiations with the landowners.

Q19. Are there other additional reasons why you believe Enbridge has failed to negotiate in good faith with the landowners?

Yes, there are. Enbridge claims it has determined a final proposed course or pathway for its proposed pathway. Enbridge apparently met with ICC staff to discuss the final route chosen and gave rationale as to why it chose the final route and rejected 27 other possible routes. (ICC staff Mark Maple Direct Testimony, pages 12-16). On the other hand, Enbridge has responded to recent discovery requests that “it has not been determined” as to where the proposed pipeline will be constructed in relation to the old, abandoned pipeline. If Enbridge has met with ICC staff and explained where the proposed path will be, then it certainly should know where this path lies in relation to the old pipeline.

Enbridge alleges it received permission to survey from eighty-eight percent (88%) of the landowners up and down the proposed pipeline pathway. I strongly dispute this figure and claim this is not a true statement. Enbridge has not submitted anything to verify or substantiate this allegation or claim, and we certainly claim this is yet another false statement on the part of Enbridge. In many cases of which we are aware, Enbridge approached landowners, many of them elderly, and told them it had the right to survey on the land. These elderly landowners, many of whom did not wish to be confrontational, and being unable to confirm or deny this Enbridge claim, sat back and watched while

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Enbridge representatives came onto their lands. This can hardly be interpreted as Enbridge receiving “permission” to survey from 88% of the landowners. Enbridge deceived many of these landowners by supporting their desire with untrue claims.

In numerous cases, I am aware of cases where Enbridge entered the property of landowners after being specifically instructed not to go onto the land. Enbridge responded in many cases it had made a mistake, or that a sub-contractor hired to do the surveying work mistakenly entered the property. I believe the numerous situations where Enbridge representatives entered the property of landowners without permission shows a pattern of deception.

In another episode, I am aware of a situation whereby landowners have been told if they do not accept a proposed offer for an easement agreement, Enbridge will withdraw the offer and pay only 40% of the initial proposed offer. These attempts to coerce or strong-arm landowners disgust me greatly.

Q19A. How will landowners determine whether they will have more than one pipeline easement through their property?

That is a very difficult question to answer, and Enbridge has been unwilling to shed light on this topic. I have requested that Enbridge disclose with specificity where and the approximate length or distance the proposed pipeline will not run within the old Central Illinois Pipeline Company easement. It is difficult to understand why Enbridge will not disclose this information to landowners. This is just another example showing the bad faith negotiations used by Enbridge. There is not a single reference in the Enbridge application or materials explaining with specificity how Enbridge plans to deal with the

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

issue. It is just as difficult to understand how the ICC could expect landowners to respond to this issue, when in fact Enbridge has not disclosed its plans for the old pipeline.

Enbridge claims to have received approval from 88% of the landowners granting them permission to survey the property, without any supporting documents other than the statement it received said permission. I strongly dispute this claim. But regardless of that disputed point, if Enbridge has conducted these surveys, and if Enbridge has determined where the pipeline is proposed, it must know the exact route where the old pipeline lays and where the proposed pipeline will traverse. Enbridge representatives flagged the route of the old pipeline across my particular property, even without my permission. Enbridge conducted surveys on my property without my permission. If Enbridge truly does not know with specificity where the old pipeline runs and where the proposed pipeline is planned, then the ICC should probably halt further proceedings until Enbridge can assure the commission it knows answers to these basic questions.

Q20. Are you familiar with other information that shows Enbridge is using strong-arm tactics or being heavy-handed with landowners?

Yes, I am aware of other examples. Enbridge has recently responded to discovery requests and indicated it has not threatened anyone with anything. (Exhibit D at pg. 6, responding to Request No. 35.) That is simply not true. As a simple fact, Enbridge representatives claimed they could force me to accept another pipeline and pay me only the amounts required in an old 1939 easement. Enbridge has threatened me that eminent domain will be granted to the application and I will receive less money if I fight them as opposed to going along with their wishes. Enbridge has a pattern of using the threat of eminent domain to coerce landowners during easement negotiations.

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Q21. Do you have any evidence that Enbridge or its affiliates use the threat of eminent domain as leverage against landowners when trying to negotiate easement offers?

Yes, I do. During its recent October 3, 2007, “Enbridge Day 2007” conference, significant light was shed on how Enbridge uses the threat of eminent domain or “expropriation” as leverage against landowners. A transcript of the meeting is attached as Exhibit G. During the meeting, the issue of eminent domain came up. Exhibit G, page 25. Richard Bird, Enbridge Executive V.P. and Enbridge CEO Pat Daniel responded to the inquiry about eminent domain. Mr. Bird commented the company likes to use the right of expropriation, or eminent domain, “so there is a little more leverage on our side in negotiations to keep things reasonable.” It is remarkable that Enbridge would admit this type of strategy on the record, especially knowing the meeting was being recorded. They attempted to rehabilitate the response by including the company’s standard response that it only uses eminent domain as a last result.

I think it is clear the company uses the threat against of eminent domain as leverage against landowners. This appears to be the unwritten policy of the company. This is greatly disturbing considering the fact many of these landowners are elderly individuals who are in a compromised condition as relates to ability to negotiate. It creates a tremendously un-level playing field, when a multi-billion dollar company uses the threat of eminent domain against landowners, many of who are elderly in age.

Q22. What evidence do you have to suggest the proposal is being proposed to move Canadian tar sands to the U.S. Gulf Coast?

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

In response to recent discovery requests, Enbridge has responded the product will be upgraded in Canada and the United States. During the recent October 3, 2007 Enbridge Day Conference, the subject of moving petroleum to the Gulf Coast for the purpose of upgrading was discussed at length. (See Exhibit G and Exhibit G1, slides to presentation) I think it is important to point out that the word “Illinois” was used one single time (pg. 9) in the 61 page transcript of the Enbridge Day event, and then only in passing. Richard Bird, Executive V.P. of Enbridge, Inc. commented, “...the commercial terms and agreements on the Southern Access extension to Patoka, Illinois, an expansion of the Spearhead pipeline, again to Cushing, Oklahoma, are finalized, subject to regulatory approval.” That is it, just one single reference to the state of Illinois. If this project were being proposed to benefit the citizens of Illinois, there would obviously be discussion in that regard at the annual “Enbridge Day” conference. I might also add this statement directly conflicts with Enbridge’s recent responses that the “Southern Access Extension pipeline does not have any contracted capacity commitments”, as alleged by Enbridge in its responses to discovery requests (Exhibit D, at page 2)

In contrast, the first approximately 30 pages explain in detail Enbridge’s plans to move Canadian tar sands product to the Gulf Coast and its refineries located there. The Enbridge Day report explains in detail the strategies by Enbridge for moving product through the Lakehead system and down to the Gulf Coast. Extensive discussions occur, in depth.

Q24. Does the Enbridge Day transcript explain the economic rationale for why Enbridge wants to move Canadian product down to the Gulf Coast?

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Yes. At page 7 of the Enbridge Day report, Richard Bird, Enbridge, Inc. V.P. explains the economic rationale in detail. He comments, “So, if you can move crude from western Canada to the Gulf Coast for something less than \$13 a barrel, and we sure think we can, there’s significant arbitrage to be captured there and shared between western Canada producers and Gulf Coast refiners.” Mr. Bird goes on to explain, “The reason that that (sic) discount exists at the moment is because of the landlocked nature of Canadian production. And in the absence of access to new and more liquid markets, whether that’s the Gulf Coast or elsewhere, it can only grow worse and, in fact, explains why Canadian heavy crude producers are keen to see the Gulf Coast market and why Gulf Coast refiners are keen to see that heavy crude—heavy Canadian crude in their market.” I think if anyone reviews the first 30 pages or so of the Enbridge Day 2007 transcript, you will come away with a full understanding of the real reason Enbridge is proposing the project.

Q26. What is the reason Enbridge is proposing ICC project 07-446?

The Flanagan to Patoka link is the last piece of the puzzle, before getting to the Gulf Coast. Enbridge has recently unveiled the Texas Access pipeline joint venture with ExxonMobil. The project is proposed to travel to Texas from Patoka within the pathway of easements that ExxonMobil already holds. As Enbridge Energy Partners, L.P. CEO Terrance McGill recently said, the Gulf Coast is the “Holy Grail” for producers. (Exhibit H, OGIS Symposium, January 17, 2008, at ~7:10 minute mark of recording). Mr. McGill goes onto say (Exhibit H) at the ~14:39 minute mark, “....so we see the refineries getting ready for this big chunk of crude oil that will be coming downstream. So even with that, we’ll have more crude oil than the upper Midwest and the Midwest can handle. How do

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

we get down to the Gulf Coast? There have been a couple attempts at this, one of them is by Enbridge.....”

Mr. McGill also says (Exhibit H, ~15:24 minute mark), “The problem is these aren’t very big diameter pipes. Trying to get heavy crude through a twenty inch line is like sucking malt through a straw. So that’s led to Exxon, Exxon-Mobil and Enbridge working on a joint venture to build a 36” pipeline to move 450,000 barrels down from Patoka generally following the Pegasus right-of-way to get down to the refineries and certainly the Exxon refinery and other sources in the United States. So you’ll see the map has been complete from the Oil Sands all the way to the Gulf.”

When referring to the economics of the two Southern Access projects, including the extension between Flanagan and Patoka, Richard Bird, Enbridge, Inc. V.P. states, at page 10 of Exhibit G, that the economic “returns are super-charged..”, and this probably states the reason best. To quote Richard Bird, Enbridge, Inc. V.P., the reason for the Southern Access Extension pipeline between Flanagan and Patoka is because the economic returns to Enbridge and its shareholders are “super-charged.”

Q27. Is there any discussion in the Enbridge Day 2007 conference materials or transcript, or any of the other conference presentations from Enbridge Energy Partners, Inc. to support a claim that Illinois citizens will benefit?

There is not a single comment in any of the materials that claims Illinois citizens will benefit from the proposed pipeline. Nothing. The transcripts and presentations are replete with examples as to how Enbridge and its shareholders will benefit. There is abundant information explaining how the project will increase the price of Canadian tar sands product, and thus raise the per barrel price of the product, by unlocking the

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

presently “land-locked” resource. The information explains in detail how the major foreign-national oil companies will benefit and how the Gulf Coast refineries will benefit. What is lacking in these materials is an explanation as to how the public will benefit. Prices for the product will go up, but that certainly does not benefit Illinois consumers.

Q28. Do you have any concerns from a safety standpoint, about the proposed project or the old pipeline which Enbridge alleges it owns?

Yes, I have numerous safety concerns. In regards to the old CIPC pipeline, it appears there have not been annual reports submitted regarding the old pipeline. We have included pictures of the pipeline including numerous areas where it has eroded out of the ground. In response to recent discovery answers, Enbridge alleges it does not know what pipeline is referenced in my complaint letter to the Office of Pipeline Safety. (Exhibit D response to Request No. 27) This is just another example of the evasiveness of Enbridge’s responses. Enbridge knows very well which pipeline the Office of Pipeline Safety letter refers to, but they continue a façade feigning a lack of knowledge. It is typical of how they have approached this entire project.

The failure to submit federally required annual reports, including verification of cathodic protection and testing processes, corrosion inspection requirements and numerous other safety requirements calls into question Enbridge’s ability to safely operate a pipeline. While I do not believe Enbridge seriously believes pipeline annual reports are not needed for its petroleum and hazardous liquids pipelines, it is interesting to hear responses stating “no annual reports are required...” (Exhibit D, response to Request No. 26) There is no factual support for Enbridge’s claim that annual reports and cathodic protection are not required for the old CIPC pipeline.

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

I have included as Exhibit I, a copy of a National Transportation Safety Board investigation report where a 16” hazardous liquids pipeline ruptured releasing 270,000 gallons of hazardous liquids into a creek. About 90 minutes after the rupture, the liquid ignited in a fire and burned approximately 1 ½ miles of the creek. Two 10-year-old boys and an 18-year-old man were killed as a result of the accident, and eight additional people were injured. The accident caused an estimated \$45 Million in property damage. Per the recent release of information from Enbridge, the products proposed for transport through the pipe include many types of highly flammable by-products of the tars sands petroleum. Upgrading of these products creates a highly flammable substance, with an explosive tendency. In addition, diluents used to dilute the heavy Canadian tar sands generally use naphtha, a highly flammable petroleum akin to “white gas” or Coleman fuel. These products are highly explosive. The recent explosion in Clearbrook, Minnesota on Enbridge’s Lakehead line is a prime example of how dangerous these materials can be.

I have included as Exhibit J, a copy of a National Transportation Safety Board (NTSB) investigation report where an Enbridge pipeline ruptured near Cohasset, Minnesota releasing about 252,000 gallons of crude oil into a marsh. Costs of clean-up after the accident were estimated to be \$5.6 Million. Luckily, there were no personal injuries from the accident.

For purposes of demonstrating the serious nature of these hazardous liquids pipelines, I have include copies of several other NTSB reports outlining accidents. (Exhibits K, L, M, N, O, P) The exhibits are by no means an exhaustive list of the accidents that have occurred with liquid pipelines as relates to this matter.

Q49. Does this conclude your testimony?

SUPPLEMENTAL DIRECT TESTIMONY OF CARLISLE KELLY
Illinois Commerce Commission Docket Number 07-0446
January 25, 2008

Yes it does unless I am asked to provide additional testimony.