

**OFFICIAL FILE**

**ILLINOIS COMMERCE COMMISSION**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**ORIGINAL**

ILLINOIS  
COMMERCE COMMISSION

2008 APR 15 10:51

ENBRIDGE PIPELINES (Illinois) L.L.C.

Application pursuant to Sections 8-503, 8-509 and  
15-401 of the Public Utilities Act – the Common  
Carrier by Pipeline Law to Construct and Operate a  
Petroleum Pipeline and when necessary, to Take  
Private Property as Provided by the Law of  
Eminent Domain.

:  
:  
CHIEF CLERK'S OFFICE  
Docket No. 07-0446

**RESPONSE TO MOTIONS TO STRIKE OR ALTERNATIVELY  
MOTION TO AMEND THE SCHEDULING ORDER**

Pursuant to Section 200.190 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.190, the American Petroleum Institute ("API") files this Response to the Motions To Strike or Alternatively Motion To Amend The Scheduling Order ("Response"). In support of this Response, API states as follows:

1. On April 10, 2008, intervenors Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion Coal Holdings, LLC, ("Shelby Intervenors"), filed a Verified Motion To Strike the Testimony of John C. Felmy ("Shelby Motion"). On that same date, various intervenors known as "Pliura Intervenors" filed a Motion To Strike or Alternatively Motion To Amend The Scheduling Order ("Pliura Motion"). In both the Shelby Motion and the Pliura Motion, the movants argue the pre-filed testimony of API witness John C. Felmy should be stricken as being filed outside of the Scheduling Order entered in this proceeding. The Pliura Motion alternatively prays the Scheduling Order be amended, if the API testimony is not stricken, to allow all intervenors an opportunity to file testimony in response to the API testimony.

2. On April 11, 2008, the Administrative Law Judge assigned to this proceeding established a briefing schedule requiring responses to the Motions to be filed on April 14, 2008 and replies, if any, to be filed on April 15, 2008.

3. As noted above, the Shelby Motion and the Pliura Motion move to strike the pre-filed testimony of John C. Felmy on the basis the testimony was untimely filed. Although API does not regularly practice before the Illinois Commerce Commission (“Commission”), API finds it incredulous that testimony can be stricken before it has been offered into evidence. The proper time to present arguments to strike testimony is after it has been offered into evidence, not before.

4. The testimony of Mr. Felmy is not direct testimony, as alleged in the Shelby and Pliura pleadings. It is testimony responsive to that offered by the applicant Enbridge Pipelines (Illinois) L.L.C. (“Enbridge”). Notwithstanding the protestations of the movants, the API testimony has been timely submitted, according to the Scheduling Order entered in this docket, and has been properly served on the parties pursuant to the rules of the Commission. Based on the foregoing, API was under no obligation to seek leave to file responsive testimony.

5. The unspoken objection to API’s testimony, in both the Shelby Motion and the Pliura Motion, appears to be based on the fact that a party had the audacity to file testimony in support of Enbridge. The Judge should disregard the baseless and unsupported allegations raised in these motions and deny the requested relief. All parties will have an opportunity to make the proper motions at the proper time. This is neither the proper place nor the proper time.

WHEREFORE, based on the foregoing, API respectfully requests that an Order be entered to deny the both the Shelby Motion and the Pliura Motion filed on April 10, 2008.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

By: Janice K. Raburn  
Janice K. Raburn

Janice K. Raburn  
Senior Counsel  
American Petroleum Institute  
1220 L Street, NW  
Washington, DC 20008  
raburnj@api.org  
(202) 682-8253

Dated: April 14, 2008

Illinois Commerce Commission

Docket No. 07-0446

**Verification**

I, Janice K. Raburn, being duly sworn, state that I am the attorney representing the American Petroleum Institute, that I have read API's Response to the Motions To Strike or Alternatively Motion To Amend The Scheduling Order and that the statements contained therein are true and correct to the best of my knowledge and belief.

Janice K Raburn  
Janice K. Raburn

Subscribed and sworn to before me this 14 day of April, 2008.

Patricia Leonard-Moore  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Patricia Leonard-Moore  
Notary Public, District of Columbia  
My Commission Expires 7/14/2012**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ENBRIDGE PIPELINES (Illinois) L.L.C. :  
 :  
Application pursuant to sections 8-503, 8-509 and : Docket No. 07-0446  
15-401 of the Public Utilities Act – the Common :  
Carrier by Pipeline Law to Construct and Operate a :  
Petroleum Pipeline and when necessary, to Take :  
Private Property as Provided by the Law of :  
Eminent Domain. :

NOTICE OF FILING

**TO: SEE ATTACHED SERVICE LIST**

**PLEASE TAKE NOTICE** that on this date I have filed with the Clerk of the Illinois Commerce Commission, the Response To Shelby Intervenors' Verified Motion To Strike the Testimony of John C. Felmy and Pliura Intervenors' Motion To Strike or Alternatively Motion To Amend The Scheduling Order on behalf of the American Petroleum Institute ("API") in the above-captioned matter.

AMERICAN PETROLEUM INSTITUTE.

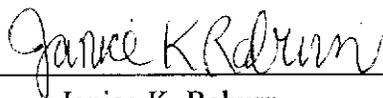
By: Janice K. Raburn  
Janice K. Raburn

Dated: April 14, 2008

Janice K. Raburn  
Senior Counsel  
American Petroleum Institute  
1220 L Street, NW  
Washington, DC 20008  
raburnj@api.org  
(202) 682-8253

**CERTIFICATE OF SERVICE**

I, Janice K Raburn, an attorney, certify that I caused copies of the Response To Shelby Intervenors' Verified Motion To Strike the Testimony of John C. Felmy and Pliura Intervenors' Motion To Strike or Alternatively Motion To Amend The Scheduling Order, filed on behalf of American Petroleum Institute ("API"), to be served on each of the parties listed on the service list via electronic or regular mail, this 14<sup>h</sup> day of April, 2008.



Janice K. Raburn

AMERICAN PETROLEUM INSTITUTE

Janice K. Raburn  
Senior Counsel  
American Petroleum Institute  
1220 L Street, NW  
Washington, DC 20008  
raburnj@api.org  
(202) 682-8253

Service List -- 07-0446

The Honorable Larry Jones  
Administrative Law Judge  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
mailto: [ljones@icc.illinois.gov](mailto:ljones@icc.illinois.gov)

Janis Von Qualen & James V. Olivero  
Office of General Counsel  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield, IL 62701  
mailto: [jvonqual@icc.illinois.gov](mailto:jvonqual@icc.illinois.gov)  
mailto: [jolivero@icc.illinois.gov](mailto:jolivero@icc.illinois.gov)

Mark Maple  
Engineering Department  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
mailto: [mmaple@icc.illinois.gov](mailto:mmaple@icc.illinois.gov)

Janes Freetly  
Finance Department  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
mailto: [jfreetly@icc.illinois.gov](mailto:jfreetly@icc.illinois.gov)

Gerald A. Ambrose  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, Illinois 60603  
312-853-7496 (fax 853-7036)  
[gambrose@sidley.com](mailto:gambrose@sidley.com)

G. Darryl Reed  
Sidley Austin LLP  
One South Dearborn, Ste 3500  
Chicago, IL 60603  
(312) 853-7766 (fax 853-7036)  
[gdreed@sidley.com](mailto:gdreed@sidley.com)

Joel W. Kanvik  
Enbridge Energy Company, Inc.  
1100 Louisiana, Ste. 3300

Houston, TX 77002  
713.821.2110 (fax 821.2229)  
[joel.kanvik@enbridge.com](mailto:joel.kanvik@enbridge.com)

Thomas J. Pliura  
Atty. for Intervenors  
Law Offices of Thomas J. Pliura  
LeRoy, IL 61752  
mailto: [tom.pliura@zchart.com](mailto:tom.pliura@zchart.com)

Jon Robinson, Atty. for Intervenors  
Bolen Robinson & Ellis, LLP  
202 S. Franklin St., 2<sup>nd</sup> Floor  
Decatur, IL 62523  
mailto: [jrobinson@brelaw.com](mailto:jrobinson@brelaw.com)

Roy P. Farwell, Attorney  
Union Pacific Railroad Company  
100 North Broadway, Ste. 1500  
St. Louis, MO 63102  
mailto: [ecortivo@up.com](mailto:ecortivo@up.com)

Mercer Turner  
Atty. for Intervenors  
Law Office of Mercer Turner, P.C.  
202 N. Prospect, Ste. 202  
Bloomington, IL 61701  
mailto: [merceturner1@msn.com](mailto:merceturner1@msn.com)

Thomas J. Healey  
Counsel-Regulatory  
Illinois Central Railroad Company  
17641 S. Ashland Ave.  
Homewood, IL 60430  
mailto: [tom.healey@cn.ca](mailto:tom.healey@cn.ca)

Andrew Holstine  
Atty. for Intervenors  
The Wochner Law Firm  
707 Skokie Blvd., Ste. 500  
Northbrook, IL 60062  
mailto: [aholstine@wochnerlawfirm.com](mailto:aholstine@wochnerlawfirm.com)

Service List – 07-0446

William J. Holstine  
Trustee of Alice E. Temple Trust  
c/o Hertz Management  
415 South 11<sup>th</sup> Street  
Nevada, IA 50201-0500  
mailto: [wholstine@nev.hfmgt.com](mailto:wholstine@nev.hfmgt.com)

Craig R. Hedin, Esq.  
Atty. for Illinois Oil & Gas Association  
Campbell Black Carnine Hedin Ballard &  
McDonald, P.C.  
108 S. 9<sup>th</sup> Street  
Mt. Vernon, IL 62864  
mailto: [chedin@illinoisfirm.com](mailto:chedin@illinoisfirm.com)

Eric T. Ruud  
Civil Division  
McLean County State's Attorney's Office  
115 East Washington Street, Ste. 401  
Bloomington, IL 61702-2400  
mailto: [eric.ruud@mcleancountyil.gov](mailto:eric.ruud@mcleancountyil.gov)

Scott C. Helmholz, Esq.  
Elliott M. Hedin, Esq.  
Atty. for Intervenors  
Brown, Hay & Stephens, LLP  
205 South Fifth Street, Ste. 700  
Springfield, IL 62705  
mailto: [shelmholz@bhslaw.com](mailto:shelmholz@bhslaw.com)  
mailto: [ehedin@bhslaw.com](mailto:ehedin@bhslaw.com)

Robert J. Beyers  
Atty. for Intervenors  
Law Offices of Robert Dodd and Associates,  
LLC  
Chase Bank Building  
303 S. Mattis, Ste. 201  
Champaign, IL 61821  
mailto: [rjbeyers@doddlaw.net](mailto:rjbeyers@doddlaw.net)

Brian Granahan  
Rebecca Stanfield  
Environment Illinois Research & Education  
Center  
407 S. Dearborn, Ste. 701  
Chicago, IL 60605

mailto: [bgranahan@environmentillinois.org](mailto:bgranahan@environmentillinois.org)  
mailto: [rstanfield@environmentillinois.org](mailto:rstanfield@environmentillinois.org)

Ann Alexander  
Shannon Fisk  
Natural Resources Defense Council  
101 North Wacker Drive, Suite 609  
Chicago, IL 60606  
mailto: [aalexander@nrdc.org](mailto:aalexander@nrdc.org)  
mailto: [SFisk@nrdc.org](mailto:SFisk@nrdc.org)

Joseph B. Taylor  
Joseph B. Taylor & Associates  
216 S. Center St.  
Clinton, IL 61727-1920  
mailto: [tkrlaw@verizon.net](mailto:tkrlaw@verizon.net)

J. Todd Greenburg  
City of Bloomington  
109 East Olive Street  
Bloomington, IL 61701  
mailto: [tgreenburg@cityblm.org](mailto:tgreenburg@cityblm.org)  
James Richard Myers  
Atty. for Fayette Water Company  
LeFevre Oldfield Myers Apke & Payne  
Law Group, Ltd.  
303 South Seventh Street  
Vandalia, IL 62471  
mailto: [myers@lawgroup ltd.com](mailto:myers@lawgroup ltd.com)

Hunt Henderson  
Atty. for Intervenors  
112 East Center Street  
Le Roy, IL 61752  
mailto: [hunt.henderson@verizon.net](mailto:hunt.henderson@verizon.net)