

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Enbridge Pipelines (FSP) 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 for)	12-0347
Certification and Authority to)	
Construct and Operate a Petroleum)	
Pipeline and when Necessary to)	
Take Private Property as Provided)	
by the Law of Eminent Domain.)	

Reply To Applicant's Opposition To the Reopening of Discovery

As a Reply, the Turner Intervenors, by their undersigned attorney, state:

1. It would be reversible error at this stage in the proceeding to close discovery for Intervenors when it is open to both the Applicant and the ICC.
2. The concept of fairness would be violated by elevating one party over the other. Clearly, the Applicant would not cooperate in the future in answering questions raised by farm owners in the route if it will not do so now.
3. The actions of the Applicant in discovery are also a reflection of what genuineness is below the surface in regard to Applicant's good faith. Directly relating to the Applicant's future performance is its record, when government and the public has had its back turned, which the Applicant cannot distance itself from by being a recently formed Delaware limited liability company. Consider the Wisconsin case where a disregard for the public trust was measured by several hundred intentional violations of Wisconsin law, resulting in a 7

figure settlement with the State of Wisconsin. [Exhibit A hereto] Consider the more recent case brought by Illinois Attorney General Lisa Madigan. [Exhibit B hereto]

4. Consider the Applicant's assertions in opposition to answering the questions of a small group of Livingston County landowners. Applicant suggests that the ICC proceeding relates to discovery in a federal lawsuit. Exhibit C hereto instead shows that two of the Intervenors before the ICC have sought relief in the US Central District case as a matter of law, without the aid of any discovery.

5. It is also healthy, and therefore helpful, in reaching a just decision, for there to be questions from the perspective of a small group of farm owners. Although the ICC has a solid history of doing its part, and more, in upholding the public interest in scrutinizing the activities and actions of those it regulates and those who submit themselves to its jurisdiction solely to seek the power of eminent domain [the Applicant in this case], there might be something revealed by farm owner input which is helpful, even if it is only about little things.

6. This occurred in the ICC proceeding of 07-0446, where the power of eminent domain was not granted because the Applicant, a similar shell LLC in the Enbridge, Inc. complex structure of entities all controlled in Calgary, had demonstrated insufficient good faith in the communication with the landowners in the proposed route. It has now been more than 5 years since it filed that Application and it has still not yet made a good faith demonstration in that case, notwithstanding an invitation from the ICC to do so.

7. When a party has a reluctance to exercise good faith, it should be encouraged to do so. The Administrative Law Judge can temporarily level the playing field. This Applicant is seeking the power of eminent domain. Farm owner questions to a potential taker under eminent domain about a plan of massive excavation through the middle of the farms, in

Exhibit A



2007-2009
BIENNIAL REPORT

State of Wisconsin ♦ Department of Justice ♦ Attorney General J.B. Van Hollen

Protecting the Environment



“Enforcing environmental laws not only protects the public and the environment, but also promotes fair competition. Those who take environmental shortcuts shouldn’t gain a competitive advantage over those who play by the rules.”

~AG Van Hollen

Enforcement of Wisconsin's environmental laws is a primary role of the Department of Justice (DOJ). Violations are referred to the DOJ by regulatory agencies, primarily the Department of Natural Resources (DNR), for prosecution by the DOJ Environmental Protection Unit (EPU). Enforcement includes prosecution of criminal and civil environmental law violations to obtain injunctions, penalties, fees, environmental restoration, and cost recovery.

In 2007-2008, state agencies referred 176 cases to the DOJ for regulatory enforcement. During the same period, the EPU brought to judgment 126 civil and 13 criminal environmental law prosecutions which resulted in awards, penalties, fees and costs totaling over \$6.8 million, not including defendants' ordered restoration costs.



Highlights

- ◆ DOJ settled its case against the Milwaukee Metropolitan Sewerage District. MMSD agreed to pay \$500,000 relating to more than 60 sanitary sewer overflows (SSOs) into Lake Michigan in May 2004, and to implement plans through 2020 to ensure compliance with the federal Clean Water Act and Wisconsin water pollution control laws.
- ◆ DOJ obtained a judgment against Enbridge Energy Limited Partnership for violations of Wisconsin's waterway and wetland protection and storm water control laws relating to pipeline construction in 14 counties across the state in 2007 and 2008. The judgment was for \$ 1.1 million in forfeitures and surcharges, along with restoration of wetlands and watercourses.
- ◆ Govert Well & Pump Inc., agreed to pay \$100,000 in forfeitures and costs for faulty well construction, failure to submit accurate well construction reports, submission of 836 falsified water samples for new wells, and filing 257 water sample reports and 806 well construction reports late. The defendant also agreed to notify the DNR of all future well drilling locations, correct four wells, resample or provide \$50 to each well owner for each unsampled well for the 836 falsified water samples, and correct newly discovered well code violations.
- ◆ U.S. Oil Company, Inc., agreed to pay \$450,000 for violating state air pollution control laws at petroleum bulk storage tanks in Milwaukee, Brown and Dane Counties.

Exhibit B



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Illinois files lawsuit against Enbridge

10/7/2010

CALGARY, Alberta, Oct 7 (Reuters) - The Illinois attorney general filed a lawsuit against Enbridge Inc.'s U.S. affiliate Enbridge Energy Partners on Thursday, as the state seeks to have the company pay the costs incurred cleaning up an oil pipeline spill last month.

Attorney-General Lisa Madigan and James Glasgow, the state's attorney for Will County, filed an eight-count complaint against the company.

The complaint alleges that the Sept. 9 spill of about 6,100 barrels of oil from Enbridge's 670,000 barrel per day Line 6A in Romeoville, Illinois, caused danger to the public health and welfare, violated the water and air pollution laws and created a public nuisance.

The court also agreed to a request for an interim order requiring Enbridge to inspect water mains, sanitary and storm sewers, private wells and groundwater within a half mile of the site to ensure all oil from the spill has been cleaned up.

Enbridge said it has co-operated with all regulatory authorities since the spill and has nearly completed all the requirements imposed by the U.S. Environmental Agency after the incident.

"By filing this action, the Illinois attorney general's office is simply protecting the state's interests and insuring that Enbridge will follow through with addressing any concerns that the state may have arising out of the Line 6A incident," Gina Jordan, a spokeswoman for Enbridge, said in an email.

The suit seeks repayment for the costs incurred by the Illinois Environmental Protection Agency for its oversight of the spill's cleanup and remediation. (Reporting by Scott Haggett; editing by Rob Wilson)