

ANDREW JOHANSON 3/25/13

Flanagan South Pipeline Project  
Enbridge Pipelines (FSP) L.L.C.  
4628 Mike Colalillo Drive  
Duluth, Minnesota 55807  
[www.enbridge.com/flanagansouthpipeline](http://www.enbridge.com/flanagansouthpipeline)  
Toll-free: 877-797-2650



March 21, 2013

[REDACTED]

**RE: CERTIFICATE ISSUANCE**

Dear landowner:

As you may recall, in May 2012 Enbridge Pipelines (FSP) L.L.C. ("Enbridge") filed an application with the Illinois Commerce Commission ("ICC") for a Certificate of Good Standing, along with eminent domain authority, for the Flanagan South Pipeline Project ("Project"). On February 14, 2013, the ICC approved Enbridge's application in its entirety. To read the ICC Order granting the Certificate, please go to the ICC website at [www.icc.illinois.gov/](http://www.icc.illinois.gov/). In the boxed titled "e-docket", enter the Project Docket No. 12-0347, click on "Documents," and open "Order - Final".

Enbridge's goal is to acquire all land and easements through fair and equitable landowner negotiation discussions. Enbridge realizes the enormity of this certificate issuance and will abide by all requirements during construction and once in-service.

**Project Purpose and Description**

The Project will provide expanded access for North American shippers of crude oil to the Cushing hub for continued transportation to the U.S. Gulf Coast refinery complex. Enbridge continues to expand, enhance and reconfigure its mainline system to efficiently and economically transport crude oil needed to sustain the economy's growth and development. The Project includes the construction of a nearly 600 mile, 36-inch diameter crude oil petroleum pipeline and seven pump stations beginning near Pontiac, Ill. and terminating in Cushing, Okla., with the majority of the pipeline generally adjacent to Enbridge's Spearhead Pipeline. The Illinois portion of the Project includes 168 miles of pipeline from Enbridge's Flanagan Terminal near Pontiac to the Illinois/Missouri border near Quincy. Additional pumping capacity will be installed at the Flanagan Terminal, adjacent to the Forest Pump Station in Mason County, and adjacent to the Quincy Pump Station in Adams County.

JOHNSON & JOHNSON, P.C.  
ATTORNEYS AT LAW

COPY

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April 11, 2013

Ron Fuchs  
Senior Lands & Right of Way Specialist  
Flanagan South Pipeline Project  
Enbridge Pipelines (FSP) L.L.C.  
4628 Mike Colalillo Drive  
Duluth, Minnesota 55807

Re: [REDACTED]

Dear Mr. Fuchs:

I represent [REDACTED] with regard to negotiation of the Right of Way and Easement Grants Enbridge Pipelines has requested for an oil pipeline through their property in Fulton County, Illinois. As referenced in my previous letters of August 17, 2012, and January 14, 2013, to Douglas Aller (copies enclosed for reference), I have reviewed the documents Enbridge submitted for their review and discussed them with my clients. I note that such prior letters directed Enbridge to communicate through my office instead of with my clients directly, and that, contrary to that directive, you sent the enclosed letter dated March 21, 2013 directly to my clients attempting to schedule an appointment between my clients and a "land agent" of Enbridge. Please update your records to direct all communications to me instead of communicating directly with my clients further. Please instruct your "land agent" to contact my office to schedule an appointment to discuss this matter further.

As discussed previously, it is my understanding that Enbridge has designated these documents "[REDACTED]" and "[REDACTED]" for reference. It is my understanding that as to both of these parcels, you are seeking a 50 foot wide permanent easement and an 85 foot wide temporary easement, with one parcel having 2120 linear feet of pipeline and the other having 810 linear feet of a single pipeline for transportation of oil. It is further my understanding that there is a location where you seek a larger parcel for a 200' x 100' road crossing. Additionally, it is my understanding that during construction you would need ingress and egress rights over a private gravel road for access to the construction site, and that the applicable measurements of this road are 61' wide by 1391 feet long. It is my understanding that you have offered \$[REDACTED] for these easements.

My clients believe a fair price for the permanent easements to be \$ [REDACTED] per acre. I note the following calculations:

50' x 2120'	=	106000 square feet	=	2.43342 acre
50' x 810'	=	40500 square feet	=	0.929752 acre
200' x 100'	=	20000 square feet	=	0.459136 acre
				<hr/>
				3.820076 acre
			x	\$ [REDACTED]/acre
				<hr/>
				\$ [REDACTED]

The temporary easements would properly be calculated at 30% of the permanent easement price, yielding the following calculations:

85' x 2120'	=	180200 square feet	=	4.13682 acre
85' x 810'	=	68850 square feet	=	1.58057 acre
61' x 1391'	=	84851 square feet	=	1.94791 acre
				<hr/>
				7.6653 acre
			x	\$ [REDACTED]
				<hr/>
			x	\$ [REDACTED]
				30%
				<hr/>
				\$ [REDACTED]

Total base easement cost: \$ [REDACTED]

Additionally, [REDACTED] in-law has a business located upon the property and needs to have the road open to traffic for ingress and egress to her horse stables. Further, during deer season, the [REDACTED] have \$ [REDACTED] in income annually from sale of hunting rights from September to November. In light of these two factors, the Hamms would like to have the following inserted in paragraph FOURTH:

"In the event that Grantee's activities upon the premises interfere with the ability of Grantors' licensees to hunt upon the premises between September 1 and November 30, Grantee shall pay to Grantor the sum of \$ [REDACTED] as liquidated damages. Grantees shall not obstruct access at any time for patrons of the stable, arena, boarding areas, or trail rides operated by the business known as Horse Creek Trails. With regard to any day on which any obstruction occurs for period in excess of 15 minutes, Grantee shall pay to Grantor the sum of \$ [REDACTED] as liquidated damages. In the event the pipeline is severed during normal farming operations, Grantee agrees to indemnify and hold Grantor harmless for any damages to persons or property,

including the pipeline itself, except where claims, injuries, suits, damages, costs, losses, and expenses are caused by the negligence or intentional acts, or willful omissions of Grantors, their heirs, successors, legal representatives, and assigns.”

██████████ would like the ROW to expressly incorporate the construction standards of the Agricultural Impact Mitigation Agreement between Enbridge Pipelines (FSP) L.L.C. and the Illinois Department of Agriculture dated August 2, 2012, as applicable to both the initial construction and any future construction undertaken pursuant to the easement. Construction methods and practices should further be undertaken in a manner designed to reduce the impact of the possible spread of soybean cyst nematodes, such as power washing and/or fumigating equipment, undertaking a monitoring plan, and an agreement to compensate my clients for any loss of yields which results from soybean cyst nematode damage within a four year period following construction. Compaction testing and well-water sampling should be performed upon the right-of-way before and after construction at Enbridge’s expense. Copies of any documentation of the results of such studies, as well as copies of any aerial photographs, and documentation of locations of any temporary or permanent survey markers on my clients’ property.

Additionally, in the first paragraph on page one of the right of way easements, the phrase “or any material or substance that can be conveyed through a pipeline” should be deleted to restrict the use solely to petroleum products. My clients will not agree to a blank check to, for example, flow sludge through the pipeline instead of oil. The easement should specify that the pipeline will be removed in the event its use is discontinued for twenty-four (24) consecutive months.

I wrote to Mr. Aller in August of 2012 asking that he please review this matter and advise with regard to the acceptability of the revised terms and consideration. On two occasions, an employee of Enbridge (who I assume is the “land agent” you referenced in your March 21, 2013 letter), Sam Weaver, made appointments to meet with me and discuss a counteroffer of some sort. On each occasion, Mr. Weaver failed to appear for such appointments and, when I contacted him to follow up, questioned whether or not I in fact represented ██████████ and stated that he wanted to meet with my clients personally to prove that I actually represented them. I subsequently provided documentation of my representation of ██████████. I later had a conversation with Attorney Gerald Ambrose of the firm of Sidley & Austin in Chicago, who indicated that someone named “Joel” would be contacting me on behalf of Enbridge to discuss this matter further. I have to date not received any communications from “Joel.” The next communication was instead your letter directly to my clients asking them to call to personally schedule an appointment. I called this number this morning and left a message after being unable to speak to a human at this number.

My clients do not wish to meet personally with Mr. Weaver, Joel, or anyone else from Enbridge and have hired me to handle this matter. Please promptly respond to the proposal I presented nearly eight months ago and/or have the appropriate “land agent” contact my office to schedule an appointment to discuss this matter with me in person. Cease contacting my clients directly.

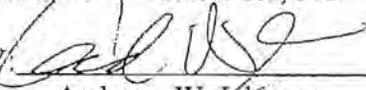
4

I look forward to working with you to resolve this matter. Thanking you, I remain,

Very truly yours,

JOHNSON & JOHNSON, P.C.

BY:

  
\_\_\_\_\_  
Andrew W. Johnson

cc: 

Enbridge Pipelines (FSP) L.L.C.  
1409 Hammond Avenue, 2<sup>nd</sup> Floor  
Superior, WI 54880

Joel W. Kanvik  
Director, U.S. Law  
Office: (715) 398-4560  
Fax: 832-325-5502  
joel.kanvik@enbridge.com



April 15, 2013

Attorney Andrew W. Johnson  
Johnson & Johnson, P.C.  
171 W. Lincoln Avenue  
Lewiston, IL 61542

Re: [REDACTED]

Dear Attorney Johnson:

Enbridge has received and reviewed your demands on behalf of your clients, [REDACTED] with respect to our upcoming Flanagan South Pipeline Project. Set forth below is Enbridge's response, in the order of your letter.

1. With respect to the price for the permanent and temporary easements, Enbridge disagrees with your calculation of area. On the first parcel, Enbridge identifier [REDACTED] the permanent easement taken is 2.4 acres, the temporary workspace is 4.1 acres, and the extra temporary workspace is 1.1 acres. On the second parcel, Enbridge identifier [REDACTED], the permanent easement taken is 0.9 acres, the temporary workspace is 1.6 acres, and the extra temporary workspace is 0.46 acres. Further, we note that you are basing your analysis on \$ [REDACTED] /acre. Per Enbridge's research, the market rate for acreage is \$ [REDACTED] per acre. Therefore, Enbridge's offer for [REDACTED] is \$ [REDACTED] for permanent, \$ [REDACTED] for temporary workspace, and \$ [REDACTED] for extra temporary workspace, for a total of \$ [REDACTED] and Enbridge's offer for [REDACTED] is \$ [REDACTED] for permanent, \$ [REDACTED] for temporary workspace, and \$ [REDACTED] for extra temporary workspace, for a total of \$ [REDACTED]. That yields a total offer for both tracts of \$ [REDACTED].

You have classified the road access as temporary work space, when in fact it is not. Enbridge will maintain the road in as good of condition as prior to any access via the road, but it is not properly classified as temporary workspace, because the character of use is far different (and less). It has been eliminated as temporary workspace in the above totals. Finally, I note that you have listed the 200' x 100' temporary work space (needed for a road crossing) as permanent easement, when it is actually temporary workspace (and therefore payable at 30% of fair market value); it has been classified accurately to arrive at the above total.

2. While Enbridge understands that pipeline construction may disrupt hunting rights, we do not believe that a payment to you in full for those rights, even if our presence on your property amounts to as little as one day, is warranted. Enbridge will agree to pay a prorated portion of the \$ [REDACTED] fee for the percentage of days between September 1 and November 31 Enbridge is present on the property. Also, Enbridge requests substantiation for this amount; a signed contract for the hunting rights for 2013 and proof of payment will suffice. Furthermore, any agreement with respect

Andrew W. Johnson  
April 15, 2013  
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to this point does not belong in a recorded easement. I have enclosed a Supplemental Agreement to address this issue.

3. Enbridge has no intention to interfere with your daughter's stable business, but believes that the standard set forth in your letter, and the penalty, are unreasonable. There is no provision for your daughter to find another way to the stables, or even that the obstruction interferes at all, for the penalty to be payable. Enbridge will agree to make commercially reasonable efforts to maintain access to the stables. Also, as with #2 above, this is not a point that belongs in a recorded easement document. It is included in the Supplemental Agreement.

4. Enbridge will include standard language about burying the pipeline at a sufficient depth to permit agricultural operations; this point is also covered by the AIMA (see below) and thus no further elaboration is necessary. With respect to any indemnification, the document reflects a standard indemnification clause that provides for an indemnification of the landowner by Enbridge for damages related to Enbridge's activities on the right-of-way, but excepting any damages caused by the negligent or intentional acts of the Grantor, just as your language requests.

5. Enbridge will agree to abide by the AIMA, but again that is not appropriate in a recorded document. Please see the enclosed Supplemental Agreement.

6. Enbridge will abide by the construction procedures set forth in the AIMA. However, Enbridge declines to provide any compensation for yield loss due to soybean cyst nematode damage. There are myriad pathways for such infestation to occur, including action or inaction of your client, and it would not be appropriate to allocate that risk to Enbridge.

7. Enbridge will agree to soil compaction testing pre- and post-construction. Well-water sampling is not appropriate, however. Enbridge will provide your clients with the results of the compaction studies.

8. Enbridge declines to remove the phrase "or any material or substance that can be conveyed through a pipeline" or to otherwise confine the use of the pipeline to petroleum products only. However, in the spirit of compromise, and in recognition of your clients' interest in not having waste transported across their property, Enbridge will insert the following after the parenthetical set forth above: "(provided, that, in no case shall Grantee transport radioactive waste or sewage through the pipeline)".

9. Finally, Enbridge cannot agree to any sort of non-use provision that forces an abandonment. Abandonment requires affirmative, knowing actions in the pipeline context, and non-use is not and should not force such a result.

After you have reviewed this letter and the Supplemental Agreement, please let me know how you would like to proceed. Enbridge's land services agent can finalize the documentation and make payment to your clients once we have an agreement. If you have any questions, please feel free to contact me directly.

Andrew W. Johnson  
April 15, 2013  
Page 3 of 3

Sincerely,

ENBRIDGE PIPELINES (FSP) L.L.C.



Joel W. Kanvik  
Director, U.S. Law

Enclosure

C: Ron Fuchs  
John McKay  
Sam Weaver.

SUPPLEMENTAL AGREEMENT TO ADDITIONAL PIPELINE RIGHTS EXERCISE AND  
RECEIPT

This Agreement made by and between \_\_\_\_\_ ("Landowner") and Enbridge Pipelines (FSP) L.L.C. ("Enbridge"). Any capitalized terms not defined herein shall have the meaning set forth in the Additional Pipeline Rights Exercise and Receipt by and between the parties hereto ("Additional Line Right Agreement").

WITNESSETH:

1. Landowner has provided documentation of the lease of the property owned by Landowner and affected by the Additional Line Right Agreement (the "Property") for hunting rights, effective September 1 and expiring November 31. Enbridge shall pay a pro rata share of the fee for such hunting rights, based on the ratio of the number of days Enbridge is engaged in construction or restoration on the Property to the number of days from September 1 through November 31.
2. Landowner has represented that there is a business operating on the Property that requires access via certain roads on the Property to stables located on the Property. Enbridge shall take commercially reasonable measures to either keep the access road open so that Landowner can access the stables, or provide other reasonable means of access to the stables.
3. Enbridge has previously entered into an Agricultural Impact Mitigation Agreement ("Mitigation Agreement") with the Illinois Department of Agriculture dated August 2, 2012.
4. This Mitigation Agreement prescribes construction standards and policies which affect the agricultural impact due to the pipeline construction.
5. The parties have entered into an Additional Line Right Agreement simultaneously with this Agreement. Enbridge shall abide by the Mitigation Agreement in conjunction with the construction of the pipeline on Landowner's property pursuant to the Additional Line Right Agreement.
6. This Agreement shall not be recorded by either party.

Dated this \_\_\_ day of \_\_\_\_\_, 2013.

LANDOWNER

ENBRIDGE PIPELINES (FSP) L.L.C.

By: \_\_\_\_\_

By: \_\_\_\_\_

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April 19, 2013

Joel W. Kanvik  
Director, U.S. Law  
Enbridge Pipelines (FSP) L.L.C.  
1409 Hammond Avenue, 2<sup>nd</sup> Floor  
Superior, WI 54880

Re: 

Dear Mr. Kanvik:

I received your letter dated April 15, 2013. I note that I had previously written to Enbridge personnel or representatives on multiple occasions, including August 17, 2012, and January 14, 2013, and I appreciate finally receiving a response to my August 17, 2012 letter eight months later. I understand the timing of your response to be a representation that eight months is a reasonable time to consider an offer and respond, and expect that good faith negotiations on the part of Enbridge will provide my clients and I with a comparable amount of time to respond to your proposal. I note that the April 9, 2013, letters that Ronald C. Fuchs inappropriately sent addressed to my clients directly places an arbitrary deadline of May 9, 2013 upon the time frame to respond with a counteroffer and threatens condemnation if my clients do not agree by such date. I further note that my clients do not live at the address referenced in the prior communications; that is their son's address, which is part of the reason I repeatedly have directed Enbridge to send communications to me instead of attempting to contact my clients directly. To the extent that the sending of a certified parcel to the party from whom the easement is sought may be necessary to establish notice, please be aware that Enbridge mailed such parcel to the wrong individuals, and the return receipt will only demonstrate that the parcel was delivered to my clients' son, not to my clients.

Condemnation requires as a prerequisite that the party seeking condemnation has bargained in good faith. Please note that if Enbridge had promptly responded to my letter of August 17, 2012, there would be plenty of time to resolve this matter prior to May 9, 2013; however, I do not consider Enbridge's conduct to meet its requirement of bargaining in good faith if it does not provide my clients with a comparable amount of time to respond as that which Enbridge took. Please note that I am providing a copy of this response to Brett Seagle of the Illinois Commerce Commission, who I understand to be investigating the issue of whether or not Enbridge's conduct in negotiations with numerous parties meets its duty to bargain in good faith. In short, it is our position that Enbridge may not claim that it has bargained in good faith when it has created a "time crunch" by its own delay in promptly responding to our counteroffer provided months ago.

At the present time, I have no authority yet to accept your counterproposal or respond with a counterproposal. Our prior settlement offer was based upon what we believed to be a discounted figure of \$ [REDACTED] per acre proffered in hopes of promptly resolving this matter last fall without the expense of an appraisal or further delay. Enbridge, however, chose further delay in resolving this matter. In order to adequately respond, I have ordered an appraisal of my clients' property to evaluate its fair market value. I understand recent sales of rural property in the southern portion of Fulton County to range from \$ [REDACTED] /acre to over \$ [REDACTED] /acre. I find it unlikely that my clients' property will appraise for the \$ [REDACTED] /acre you offered or less, and find it more likely that it will appraise for something closer to the top end of this range, probably more than the \$ [REDACTED] that we proposed previously. If you would like to have whatever market data you believe to support a price of \$ [REDACTED] /acre considered, please forward it and I will provide it to the appraiser for inclusion in his analysis. If you have an appraisal specific to my client's property, please provide it promptly.

Once I have the appraisal completed, I will provide a substantive response to your letter of April 15, 2013. Again, given the delay Enbridge has created in these negotiations, it is our position that good faith bargaining requires Enbridge to provide my clients with sufficient time to gather information and an expert opinion to respond to your assertions of value.

I look forward to working with you to resolve this matter amicably. Thanking you, I remain,

Very truly yours,

JOHNSON & JOHNSON, P.C.

BY:

  
Andrew W. Johnson

cc:

[REDACTED]  
Brett Seagle

C

Hello, my name is Brett Seagle and I'm an engineer with the Illinois Commerce Commission. The Commerce Commission is the state agency where pipeline companies, like Enbridge, request permission for new pipeline construction. I understand that Enbridge has been in contact with you to obtain an easement across your property for its pipeline. I am just calling to see if you had reached an agreement with Enbridge and to get your comments about the negotiation process.

Land Agent \_\_\_\_\_

Name of your attorney \_\_\_\_\_

Date of last offer or signed easement \_\_\_\_\_

Did Enbridge have an existing easement on the property? \_\_\_\_\_

Reason for not signing easement \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_