

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**IN RE ENBRIDGE ENERGY, LIMITED)
PARTNERSHIP)**

**Application pursuant to Sections 8-503,)
8-509, and 15-401 of the Public Utilities Act)
/ The Common Carrier by Pipeline Law for)
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.)**

Docket No. 13-0134

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, a Proposed Order on behalf of Enbridge Energy, Limited Partnership, in the above-captioned matter. The Proposed Order has been reviewed and commented upon by Staff and the intervening parties and all comments received to date have been incorporated therein.

ENBRIDGE ENERGY, LIMITED PARTNERSHIP

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

Dated: April 8, 2014

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CERTIFICATE OF SERVICE

I, G. Darryl Reed, an attorney, certify that I caused copies of the Proposed Order on behalf of Enbridge Energy, Limited Partnership to be served on each of the parties listed on the service list via electronic or regular mail, this 8th day of April, 2014.

/s/ G. Darryl Reed

One of Its Attorneys

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Docket No. 13-0134

ORDER

I. INTRODUCTION AND PROCEDURAL HISTORY

In this proceeding, Enbridge Energy, Limited Partnership (“Enbridge Energy” or “Applicant”) has petitioned by an Application filed February 15, 2013, for the issuance to it of a Certificate of Good Standing pursuant to Section 15-401(a) of the Common Carrier by Pipeline Law (220 ILCS 5/15-401(a)). Pursuant to Section 8-503 (220 ILCS 5/8-503) of the Public Utilities Act (“Act”), Applicant has also petitioned for the entry of an order authorizing it to construct, operate, and maintain approximately seventy-seven (77) miles of a new 36-inch maximum outside diameter mainline crude oil pipeline from an Enbridge Inc. (“Enbridge”) facility (the “Flanagan Terminal”) near Pontiac, Illinois to Lake County, Indiana, there to interconnect with Enbridge terminals located in Griffith and Schererville, Indiana. In addition, Enbridge Energy seeks entry of an order pursuant to Section 8-509 of the Act (220 ILCS 5/8-509) authorizing it when necessary for the construction of the pipeline in Illinois to acquire private property in the manner provided for by the law of eminent domain.

There having been due notice, a pre-hearing conference was held in this matter on April 11, 2013, before a duly authorized Administrative Law Judge of the Illinois Commerce Commission (“ICC” or “Commission”) at the offices of the Commission in Chicago. Counsel for Enbridge Energy, the Commission Staff (“Staff”), and the Illinois Department of Transportation (“IDOT”), appeared and participated in the hearing. There were also appearances at the hearing by Matt Ochalski of GD Realty, LLC on behalf of the Franciscan Sisters of Chicago Service Corporation and Donald Levine of Gonzalez, Saggio and Harlan, LLP on behalf of Mediacom Telephony of Illinois. By order dated April 12, 2013, schedules were set for the submission of pre-filed testimony. Commonwealth Edison Company (“ComEd”) and IDOT filed petitions to intervene on

June 7, 2013, and June 19, 2013, respectively. Pre-filed testimony was then submitted by Enbridge Energy, Staff, and IDOT. Staff filed direct testimony on June 20, 2013, rebuttal testimony on September 12, 2013, and affidavits on April 1, 2014. Rebuttal testimony was filed by Enbridge Energy on August 2, 2013. Enbridge Energy also filed surrebuttal testimony on September 27, 2013.

On October 8, 2013, the Illinois Attorney General (“IAG”) also filed a petition to intervene and submitted comments regarding Enbridge Energy’s Application. Enbridge Energy filed supplemental rebuttal testimony on October 21, 2013. On November 4, 2013, Enbridge Energy filed a motion requesting the Commission to enter an order extending the one-year period for issuing a final order up to an additional six months as authorized by Section 15-401(e) of the Act (220 ICLS 5/15–401(e)). The Commission entered the requested order on November 26, 2013. Pursuant to a continuance on December 11, 2013, Administrative Law Judge Terrance Hilliard (“ALJ Hilliard” or the “ALJ”) set a status hearing for January 23, 2014. On January 22, 2014, ALJ Hilliard continued the hearing scheduled for January 23, 2014, to January 31, 2014. On January 31, 2014, the ALJ continued the hearing scheduled for January 31, 2014, to February 28, 2014. On February 28, 2014, the ALJ continued the hearing scheduled for February 28, 2014 to March 20, 2014. On March 19, ALJ Hilliard continued the hearing scheduled for March 20, 2014 to March 27, 2014 and on March 28, 2014, the ALJ continued the hearing scheduled for March 27, 2014 to April 2, 2014.

On March 28, 2014, Enbridge Energy filed an Errata Sheet, an Amended Application for Certification and Other Relief, and the Verified Statement of John McKay to address the concerns raised by IDOT.

An evidentiary hearing was held at the Commission’s offices in Chicago, Illinois on April 2, 2014. Among others, Enbridge Energy, the Commission Staff, IDOT, the IAG and ComEd were represented by counsel.

Evidence submitted by the Applicant included the testimony of Mark Sitek (Direct and Verification); James Crawford (Direct and Verification); and John McKay (Direct, Rebuttal, Sur-rebuttal; Supplemental Rebuttal, Verification and Verified Statement).

Evidence submitted by Staff included the testimony of Brett Seagle (Direct, Rebuttal and Affidavit), and Janis Freetly (Direct and Affidavit).

Evidence submitted by IDOT included the testimony of Susan Shea (Direct and Verified Statement) and John Fortmann (Direct and Verified Statement).

Neither the IAG nor ComEd presented evidence during the pendency of the proceeding.

With the consent of all parties, the Administrative Law Judge ordered that the matter be decided based on the pre-filed testimony and on the pleadings and evidence submitted during the April 2, 2014 evidentiary hearing. Upon the conclusion of the evidentiary hearing, the record was marked "Heard and Taken." A joint proposed Order was submitted to the Administrative Law Judge on April 7, 2014.

II. STATUTORY PROVISIONS

Section 15-401(a) of the Common Carrier by Pipeline Law states:

(a) No person shall operate as a common carrier by pipeline unless the person possesses a certificate in good standing authorizing it to operate as a common carrier by pipeline. No person shall begin or continue construction of a pipeline or other facility, other than the repair or replacement of an existing pipeline or facility, for use in operations as a common carrier by pipeline unless the person possesses a certificate in good standing. (220 ILCS 5/15-401(a)).

Section 8-503 of the Act states, in part:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order (220 ILCS 5/8-503).

Section 8-509 of the Act states, in part:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility

may enter upon, take or damage private property in the manner provided for by the law of eminent domain. (220 ILCS 5/8-509).

III. BACKGROUND AND RELIEF REQUESTED

Enbridge Energy is a Delaware limited liability partnership with its principal office located at 1100 Louisiana Street, Suite 3300, Houston, Texas 77002 (ph. 712-821-2000). Its limited partner is Enbridge Energy Partners, L.P. (“Enbridge Partners”), a publicly traded limited partnership; its general partners are Enbridge Pipelines (Lakehead), L.L.C. and Enbridge Pipelines (Wisconsin) Inc. Enbridge Energy is an affiliate of Enbridge Pipelines (Illinois) L.L.C. (“Enbridge Illinois”) and of Enbridge Pipelines (FSP) L.L.C. (“Enbridge FSP”). These entities, along with other affiliates, are direct or indirect subsidiaries of Enbridge, Inc. (“Enbridge”) (Amended Application, at 4).

Enbridge is a leading company in the transportation and distribution of energy in North America. Along with its Canadian affiliate Enbridge Pipelines, Inc., Enbridge operates pipelines that, *inter alia*, traverse western Canada to transport crude oil east and south to the United States and eastern Canada. Various Enbridge affiliates directly own and operate a series of liquid petroleum pipeline systems in the United States, including the “Lakehead System,” the U.S. portion of Enbridge’s operationally integrated pipeline system which operates in seven Great Lakes states, including Illinois, as well as the Enbridge Pipelines (North Dakota) L.L.C. system, which operates in the Williston Basin area of eastern Montana and North Dakota and ultimately interconnects directly or via affiliates with the Enbridge Mainline System in Clearbrook, Minnesota, and Cromer, Manitoba. Enbridge’s Spearhead Pipeline, which is owned by CCPS Transportation, L.L.C., an Enbridge-owned entity that is an affiliate of Applicant, operates from Enbridge’s Flanagan Terminal near Pontiac, Illinois to the major national pipeline hub in Cushing, Oklahoma. (Amended Application, at 4-5).

Together with the Canadian pipeline systems of Enbridge Pipelines, Inc., these systems comprise over 15,000 miles of liquid petroleum pipelines and constitute the world’s longest crude petroleum and petroleum liquids pipeline network. They are the primary means of transporting crude oil from Canada to the United States as well as the only pipeline transit system that transports crude oil from western Canada to eastern Canada. Overall, Enbridge’s pipelines transport approximately two-thirds of western Canada’s crude oil production and deliver some 13% of U.S. imports of crude oil. (Amended Application, at 5).

Enbridge Energy and Enbridge Partners were certified as common-carriers-by-pipeline in Illinois by this Commission in its Order in Docket No. 06-0470 and authorized

to construct, operate, and maintain in Illinois pipeline facilities known as the Southern Access Expansion Pipeline and the Southern Lights Pipeline. Enbridge Illinois was certified in Docket No. 07-0446 to construct the Southern Access Extension Pipeline. Enbridge FSP was certified in Docket No. 12-0347 to construct the Flanagan South Pipeline. These pipelines operate, or when completed will operate, cooperatively to provide interstate common carriage of crude oil. Order, April 4, 2007, Dkt. No. 06-0470; Order, July 8, 2009, Dkt. No. 07-0446; Order, February 14, 2013, Dkt. No. 12-0347. (Amended Application, at 5-6).

Another Enbridge business segment – the Natural Gas Transportation business unit – includes partnership interests in the Alliance and Vector interstate natural gas pipelines and the Aux Sable natural gas processing facility. Each of these systems or facilities operates in Illinois. Enbridge also owns and operates natural gas gathering and gas transmission pipelines both on-shore and offshore in the U.S. Gulf Coast region, and natural gas local distribution systems in eastern Canada, including Canada’s largest in the Toronto metropolitan area. (Amended Application, at 6).

The Applicant stated that Enbridge’s pipelines constitute an international and interstate common carrier pipeline system that charges tolls to shippers of crude petroleum and other petroleum liquids; these pipeline entities are not involved in producing or refining petroleum. Within the U.S., Applicant asserted, all tariff rates, applicable surcharges, and terms of shipment for transportation of liquid petroleum through Enbridge pipelines are established and governed by tariffs filed with and regulated by the Federal Energy Regulatory Commission (“FERC”) under the authority of the Interstate Commerce Act of 1887. Applicant contends that as interstate liquid pipelines, the construction, operation, and maintenance of Enbridge’s pipelines are exclusively regulated by the United States Department of Transportation (“DOT”), Pipeline and Hazardous Materials Safety Administration (“PHMSA”), Office of Pipeline Safety (“OPS”), pursuant to various federal laws and regulations, primarily 49 C.F.R. Parts 194 and 195. (Amended Application, at 6).

In addition to its petroleum and natural gas systems, Enbridge has a growing presence in renewable energy, including solar, wind, waste-heat recovery, geothermal, and fuel-cell technologies. Enbridge owns the Chin Chute wind project, a 30-megawatt wind-energy facility near Lethbridge, Alberta, Canada; 90% of the 99-megawatt Talbot wind-energy facility in eastern Ontario, Canada; and 100% of the 250-megawatt Cedar Point wind-energy facility in Colorado. Enbridge also owns the Tilbury and Amherstburg II solar-energy facilities in Ontario, Canada, which combined produce 20-megawatts of electricity, along with its recently completed 80-megawatt Sarnia Solar project, and it has also recently acquired the 50-megawatt Silver State North photovoltaic facility in Nevada. Enbridge has also announced that it will acquire a 50% interest in the 150-megawatt Massif du Sud Wind project being developed in Quebec, Canada. To date,

Enbridge's investments in renewable-energy systems in North America exceed 2.5 billion (except as noted, all figures are U.S. dollars), and it has acquired ownership of or participation in over 1,000 megawatts of renewable energy capacity. Enbridge has committed itself to a long-term objective of offsetting each kilowatt of incremental conventional electricity it consumes in its operations with an equal amount of sustainable or alternatively sourced power. (Amended Application, at 6-7).

Enbridge and its affiliates employ more than 10,000 people, primarily in Canada and the United States. The common stock of Enbridge is widely held and is publicly traded on both the Toronto Stock Exchange ("TSX: ENB") and the New York Stock Exchange ("NYSE: ENB"). In 2011, Enbridge had total capitalization of Cdn \$34.3 billion and earnings applicable to common shareholders of Cdn \$991 million. Enbridge maintains its corporate headquarters in Calgary at 425-1st Street S.W., Calgary, Alberta T2P 3L8 Canada. Enbridge Partners, Applicant's limited Partner, is a publicly held limited partnership, the common units of which are traded on the New York Stock Exchange ("NYSE: EEP"). It is anticipated that EEP will participate with Enbridge Energy in financing the Line 78 Pipeline Project. EEP's principal office is collocated in Houston with that of the Applicant. (Amended Application, at 7-8).

In the instant proceeding, Enbridge Energy is proposing to construct a new 36-inch maximum outside diameter mainline pipeline from Enbridge's Flanagan Terminal near Pontiac, Illinois to Lake County, Indiana, there to interconnect with Enbridge Energy terminals located in Griffith and Schererville, Indiana. The new pipeline, which will be called "Line 78," will largely parallel an existing Enbridge Energy pipeline route in which Enbridge has significant multiple-line rights and will traverse portions of Livingston, Grundy, Kankakee, Will, and Cook Counties in Illinois and also part of Lake County, Indiana. This new pipeline will contribute to the expansion of the Enbridge transportation system's facilities to meet growing crude oil transport needs and demands and will have an ultimate capacity of 800,000 barrels-per-day ("bpd"). (Amended Application, at 1-2).

Applicant states that the new underground pipeline will run for approximately seventy-seven miles in Illinois. The Line 78 Pipeline Project includes a new pumping station to be collocated with the Flanagan Terminal as well as site acquisition for mid-point flow monitoring instrumentation and future pumping-capacity additions required to reach full capacity. Construction is anticipated to commence in late 2014, with an in-service date in mid-2015 (restoration work will continue into 2016). (Amended Application, at 1-2).¹

¹ It is contemplated that five mainline pumps, each of 5,750 HP, two 1,000 HP booster pumps, two 6,000 HP VFD facilities (primary and backup), and pump-housing, pig-launching, and pig-handling facilities will

Applicant represents that the overall cost of the Line 78 Pipeline Project is expected to be approximately \$500 million. The Illinois portion is expected to be about 65% of the total cost, or an investment of approximately \$323 million within the state. At the time the Petition was filed, Applicant estimated that approximately 70% of the planned route of the Line 78 pipeline in Illinois would parallel the northeasterly route of the Line 62 pipeline. The longest deviation from that route will be in southern Cook County and northern Will County, where the proposed route for the new line will change to accommodate development. (Amended Application, at 17).

In addition to the pipeline itself, Applicant currently plans to add pumping capacity at the Flanagan terminal and to acquire acreage (10 acres \pm) in fee near the line's mid-point sufficient initially for flow-meter instrumentation (part of Enbridge's enhanced leak-detection technology) and potentially for an additional pump station. (Amended Application, at 17-18).

Applicant believes that the Application has been properly filed; a public need exists for the transportation of crude petroleum by the pipeline facilities Applicant intends to construct; Applicant is fit, willing, and able to provide common-carrier-by-pipeline service; and the public convenience and necessity requires the granting of the requested certifications and authorizations. (Amended Application, at 4).

IV. FIT, WILLING AND ABLE

Enbridge Energy presented evidence intended to show that it is "fit, willing, and able to provide the service in compliance with this Act, Commission regulations and orders" within the meaning of Section 15-401(b) of the Act, 220 ILCS 5/15-401(b). No intervenor contended otherwise. Staff is of the opinion that Enbridge Energy is fit, willing, and able to construct and operate the pipeline.

A. Enbridge Energy's Position

With respect to whether it is "fit, willing, and able," Enbridge Energy claims that Enbridge has a long history of successfully constructing and operating common carrier pipelines in Canada, the United States, and Illinois. This history began nearly sixty ago in Canada, when an Enbridge predecessor, née Interprovincial Pipe Line, built the first pipeline out of Alberta. Within a few years, Enbridge had successfully brought the pipeline system to the head of the Great Lakes at Superior, Wisconsin, where crude oil was transferred by tanker ships to eastern Canada and U.S. inland ports. This

be added at Flanagan for Line 78. The mid-point station, located at about MP 38, will be equipped with an ultrasonic flow meter, leak-detection instrumentation (material-balance systems), a pig by-pass system, and preparatory items for incremental pumping capacity.

“Lakehead System” was later extended across northern Wisconsin and the Upper and Lower Peninsulas of Michigan to reach Ontario. Additional pipelines were built to deliver crude oil to other markets such as the greater Chicago area. In summarizing its immense growth and impressive breadth of capabilities, Applicant notes that “for decades the Enbridge Mainline System has operated thousands of miles of pipelines and delivered billions of barrels of liquid petroleum to American and Canadian consumers. Today, Enbridge is one of North America’s major independent pipeline systems... [and] transports the majority of the crude oil produced in western Canada and is the major source of crude oil supply for much of the refinery demand in the Midwest, including Illinois, and in Canada.” (Amended Application, at 27-28).

Mark S. Sitek, Vice President – Major Projects Execution for Enbridge Energy, testifies that he knows of no reason to doubt that Enbridge Energy is “fit, willing, and able” to construct Line 78 and to provide common-carrier-by-pipeline service. (Sitek, Enbridge Energy Ex. 1, at 10). Mr. Sitek gives the following reasons to support his conclusion that Enbridge Energy is fit, willing, and able:

- Enbridge has a long history of successfully constructing and operating common carrier pipelines, which Enbridge has done in Illinois for decades;
- Enbridge has one of North America’s largest liquid petroleum pipeline systems, which is not owned by or affiliated with any oil-producing or refining company;
- Enbridge operates thousands of miles of pipeline in the U.S. and Canada, delivering over 2 million bpd of crude to refiners and processors;
- Enbridge operates a number of gathering, processing, and transmission systems for natural gas in the Midwest and Gulf of Mexico;
- Enbridge has demonstrated a willingness to serve as common carrier by a commitment to expend approximately \$500 million to enhance its pipeline system by building Line 78 in order to increase supplies of Canadian and Bakken crude to consumers;
- Enbridge has the capability to finance Line 78, as demonstrated by Enbridge’s financial strength and its access to Canadian and U.S. capital markets, as repeatedly shown in Commission proceedings;
- Enbridge has constructed numerous crude petroleum pipelines in Illinois similar to Line 78 (Line 6A, Line 14/64, Line 61 or Southern Access Expansion, and Southern Lights) as well as two pipeline projects currently underway, or soon to be underway, in Illinois (Flanagan South and Southern Access Extension).

(Sitek, Enbridge Energy Ex. 1, at 10-11).

In addition, Applicant claims that Line 78, as part of the Enbridge Mainline System, will utilize “industry leading pipeline-control and leak-detection systems and advanced computerized control, monitoring, and detection equipment along the pipeline route.” (Amended Application, at 28).

For example, Enbridge’s SCADA (Supervisory Control and Data Acquisition) systems constantly monitor pressure, temperature, density and flow of liquid petroleum data retrieved via sensing devices placed along its pipeline systems. This data is transmitted to the Edmonton Control Center, where highly trained operators use modern pipeline-control technology to monitor Enbridge Energy’s liquid pipelines on a 24/7 basis. These systems allow “Enbridge’s operators [to] maintain its pipelines within established operating parameters and...remotely and automatically shut down pump stations and isolate pipeline segments when they observe abnormal conditions or if safety parameters are exceeded.” (Amended Application, at 28-29). These operators are able to detect even small leaks that would otherwise not be as readily detectable remotely, and shut down lines quickly whenever conditions are discovered that cannot be attributed to normal fluctuations and changes in the flow of petroleum. Applicant concludes that “[t]hese systems are but part of Enbridge’s extensive effort to prevent and detect leaks; detailed maintenance programs, regular inspections, and comprehensive public awareness/education efforts also combine to help prevent, detect, and minimize releases.” (Amended Application, at 29).

Applicant notes that Enbridge’s pipelines are manufactured, constructed, and maintained in accordance with industry and governmental requirements and standards, and often in excess thereof. Applicant states that Enbridge uses in the manufacturing of its pipelines only high quality materials produced by highly qualified fabricators. In addition, Enbridge monitors the pipeline production process, inspecting and factory testing the pipes to assure quality and adherence to standards. Applicant notes that “as with all Enbridge pipelines, the new pipeline is designed to withstand pressures over and above its normal operating pressure. All pipe is inspected and integrity-tested at the factory and transported in accord with federal regulations and the highest transport standards.” (Amended Application, at 30). Moreover, Applicant states that Enbridge “will employ construction, safety, and environmental inspectors not affiliated with its pipeline contractors to assure compliance with...all regulatory requirements and industry standards and practices as well as environmental requirements. Although not yet selected, Enbridge will utilize only highly qualified and experienced contractors to perform the pipeline and facilities construction and installation work.” (Amended Application, at 31). Applicant argues that by employing such personnel, Enbridge Energy’s new pipeline and facilities are ensured to meet and/or exceed all federal and industry standards, as well as to be built to Enbridge’s own demanding specifications.

Finally, Applicant claims that during and after the installation of the new pipeline, the pipeline will be subjected to careful testing to verify its integrity and compliance with all regulatory standards and contract specifications. Such testing will include “checking coating integrity; examining by non-destructive testing 100% of field welds (well above the 10% required by regulation); internally inspecting the entire length of the line by using an in-line inspection tool known as a caliper pig; and hydrostatically testing the pipeline.” (Amended Application, at 31-32).

Applicant argues that Enbridge’s commitment to pipeline safety and accident investigations is demonstrated by its response to the very few releases it has experienced in over sixty years of operating pipelines. Mr. Sitek testifies that he is “fully knowledgeable and compliant with Enbridge’s enhanced safety and system integrity policies, procedures, and standards” in the wake of the incident at Marshall, Michigan. (Sitek, Enbridge Energy Ex. 1, at 17). He notes that he has attached to his testimony Enbridge Energy’s responses to Staff data requests regarding the status of all post-Marshall changes in policies and practices, and he states that Enbridge has “successfully completed and implemented both the NTSB-recommended actions and our own initiatives to improve safety, enhance pipeline integrity, and prevent releases.” (Sitek, Enbridge Energy Ex. 1, at 17). Regarding the incident in Romeoville, Illinois in September 2010, Mr. Sitek states that, although by the time of his testimony the NTSB had yet to release its final report, the NTSB’s “Investigator-in-Charge’s Factual Report,” released in February 2013, does not contain conclusions on causation but contains facts “consistent with our review that an outside force punctured our pipeline and thus released the oil.” (Sitek, Enbridge Energy Ex. 1, at 19-20). According to Mr. Sitek, in early 2012 the Illinois Environmental Protection Agency (“IEPA”) approved Enbridge’s “Remedial Objectives Report/Response Action Plan” for the Romeoville site, and Enbridge continues to work with the IEPA through the Site Remediation program, having taken the following actions:

- completion of the Enbridge action plan’s requirements for soil clean up by removing up to a foot of soil at the site and performing additional sampling to verify that remedial activities were successful;
- completion of sediment requirements as the IEPA verified that persistent polyaromatic hydrocarbon samples collected nearby were linked to historical and current land use in the area and not to the crude release;
- completion of wildlife studies showing that the area had not been used as a habitat for certain endangered species prior to the release; and
- completion of vegetation work in which Enbridge replaced a significant amount of invasive plant species with native species and added a vegetated buffer at the outlet of the retention pond.

(Sitek, Enbridge Energy Ex. 1, at 19). Mr. Sitek adds that since the release, there have been no detections “above baseline criteria in the site’s ground or surface water” and that Enbridge will most probably continue to monitor the water for “another one or two years” while meeting with the IEPA annually to discuss the project direction. (Sitek, Enbridge Energy Ex. 1, at 19).

Mr. Sitek further testifies that, since the September 2010 Romeoville incident, an Enbridge pipeline experienced a reportable release of approximately 1,500 barrels on March 3, 2012, in New Lennox, Illinois, as a result of third-party misconduct (drag racing) that breached the pipeline station perimeter and destroyed an above-ground maintenance appurtenance, but the release did not escape the station perimeter. (Sitek, Enbridge Energy Ex. 1, at 18). According to Mr. Sitek, another release of approximately 900 barrels occurred on November 20, 2012, at BP’s terminal in Mokena, Illinois, when the inside of a relief line between Enbridge’s Line 14 and a BP-operated tank became corroded and failed. (Sitek, Enbridge Energy Ex. 1, at 18). Mr. Sitek further notes that the inside of the relief line was not amenable to inspection and that the release was confined to the tank dike within the Mokena facility, which has now been cleaned up, but the State of Illinois filed a complaint in February 2013 alleging various violations, and the IEPA has also issued a “preliminary notice of its interest.” (Sitek, Enbridge Energy Ex. 1, at 18).

Mr. Sitek also explains the relationship between the applicant Enbridge Energy and Enbridge and elaborates on Enbridge Energy’s financial capacity to construct, maintain, and operate Line 78 in Illinois. He states that Enbridge Energy is an affiliate of Enbridge, which is the “ultimate corporate parent of such System entities as Enbridge Partners and Enbridge Illinois.” (Sitek, Enbridge Energy Ex. 1, at 11). Like Enbridge, Enbridge Partners is a publicly traded company serving as Applicant’s limited partner and has agreed to supply the necessary financing for Line 78 jointly with Enbridge, whose Board of Directors has approved the necessary expenditure for Line 78. (Sitek, Enbridge Energy Ex. 1, at 11-12). Further, according to Mr. Sitek, Enbridge is a “well-established, diversified energy delivery company that operates in various segments of the energy delivery business” from pipelines to renewable energy technology, and it “owns and operates the world’s longest crude oil and liquids pipeline system in Canada and the United States” in addition to running Canada’s largest natural gas distribution company. (Sitek, Enbridge Energy Ex. 1, at 12). Mr. Sitek testifies that, overall, Enbridge employs 10,000 people throughout its subsidiaries, has its stock actively traded on the New York and Toronto stock exchanges, and collected \$25 billion (Cdn.) in revenue in 2012. (Sitek, Enbridge Energy Ex. 1, at 12). Enbridge Partners, Applicant’s limited partner, had \$6.7 billion (U.S.) in operating revenues in 2012 and a market capitalization of approximately \$7.5 billion. (Sitek, Enbridge Energy Ex. 1, at 13).

Mr. Sitek states that, as of the date of the Line 78 Application, the estimated total cost of the facilities planned from the Flanagan Terminal to Indiana will be \$500+ million (U.S.), and of this amount, the Illinois portion of Line 78, which is about 77 miles long, will cost about \$312 million. (Sitek, Enbridge Energy Ex. 1, at 13). Mr. Sitek testifies that the engineering, procurement, and construction (“EPC”) costs in Illinois will consist of \$225 million in pipeline costs, \$48 million in terminal and pump-station costs, and \$40 million for project management and overhead costs. (Sitek, Enbridge Energy Ex. 1, at 13-14). To finance the Illinois portion of Line 78, Mr. Sitek states that short-term debt by Enbridge Partners will initially finance all of Line 78’s construction costs and that, once the new pipeline achieves “in service” status after testing and commissioning around mid-2015 (as currently estimated), the outstanding short-term debt will be refinanced with a prudent combination of long-term debt and equity. (Sitek, Enbridge Energy Ex. 1, at 14). Lastly, Enbridge Partners is publicly traded; is rated as investment grade by Standard & Poor’s (BBB rating) and Moody’s (BAA2 rating); has access to \$3.1 billion (U.S.) in credit facilities; and has a debt-to-equity ratio of about 50/50, which is similar to Enbridge Pipelines (Illinois) L.L.C. and Enbridge Pipelines (FSP) L.L.C. (Sitek, Enbridge Energy Ex. 1, at 14).

Mr. Sitek further elaborates on Enbridge’s ability to finance Line 78 by explaining that the goal of Enbridge’s disciplined capital management is to “ensure that Enbridge entities have sufficient liquidity to meet the capital requirements of the various system projects” by adopting strategies such as:

- employing prudent financing plans to maintain and enhance credit ratings;
- diversifying funding sources for the capital requirements of System projects;
- securing ready access to U.S. and Canadian capital markets; and
- employing a risk-management process to mitigate exposure to market risks.

(Sitek, Enbridge Energy Ex. 1, at 15). Along with its current \$7.5 billion market capitalization, Enbridge Partners utilizes a “\$1.5 billion commercial paper program backstopped by over \$3.1 billion of bank credit facilities,” an arrangement that will help “provide liquidity for the initial funding of the Line 78 project in Illinois.” As Mr. Sitek testifies, the two credit facility agreements, which are over 100 pages long, include a “5 Year Term Facility” for \$2 billion through JP Morgan with a 2017 maturity date and a “364 Day Term Facility” for \$1.1 billion through Bank of America with a 2014 maturity date. (Sitek, Enbridge Energy Ex. 1, at 15). Upon project completion when the pipeline is “in service,” according to Mr. Sitek, Enbridge Partners will refinance by raising long-term debt in the public-debt capital markets and by raising equity from internal sources,

which potentially include “free equity cash flow, re-invested dividends, employee stock purchases, possible issues of new treasury stock, or perhaps hybrid equity.” (Sitek, Enbridge Energy Ex. 1, at 15-16). Mr. Sitek also notes that Enbridge Partners enjoys “stable credit ratings” for two types of security:

- “Senior Unsecured Debt” is BBB (Standard & Poor’s (“S&P”)), Baa2 (Moody’s Investors Service (“Moody’s”)), and BBB (Dominion Bond Rating Service (“DBRS”)) and
- “Commercial Paper” is A-2 (S&P), P-2 (Moody’s), and R-2 (DBRS).

(Sitek, Enbridge Energy Ex. 1, at 16). Lastly, Mr. Sitek adds the following evidence as support for Enbridge’s ability to finance Line 78 in Illinois:

- a long history and “solid record” of successful and profitable pipeline operations;
- the continued strength of North American markets for crude oil and petroleum products;
- Line 78’s route where “transport demand is strong and growing”; and
- the addition to Enbridge Energy’s asset base in the form of right-of-way interests, pipeline assets, and pumping facilities resulting from the Line 78 Pipeline Project.

(Sitek, Enbridge Energy Ex. 1, at 16-17).

B. Staff’s Position

Staff witness Brett Seagle, Gas Engineer with the Commission, summarizes the Company’s contention that it is fit, willing and able to construct and operate the proposed pipeline: “Enbridge Energy claims that it meets the requirements because it has decades of operating experience, uses advanced safety equipment that can remotely detect and control leaks, constructs and operates its pipelines in a way that is safe and environmentally sound, complies with a numbers of different regulatory agencies, and has committed the necessary financial resources to this project.” (Seagle, ICC Staff Ex. 1.0, at 8-9 (citing Application, at 27-38)). Mr. Seagle agrees that the Company is fit, willing and able to construct and operate the proposed pipeline.

Taking into account the concerns of Staff in previous Enbridge certification proceedings, Mr. Seagle assesses that Enbridge Energy is able to operate and maintain the proposed Line 78 Pipeline. Mr. Seagle acknowledges that in Docket No. 12-0347, Enbridge was initially found by Staff to have issues with the operation and maintenance of some of its pipelines causing releases in Marshall, MI, Romeoville, IL and Grand

Marsh, WI. However, he states that in Docket No. 12-0347 Enbridge Pipelines (FSP) was able to provide additional information that addressed Staff's concerns, and Mr. Seagle states that he does not have any issues at this time in this proceeding regarding Enbridge Energy's ability to operate and maintain its proposed pipeline. He reasons that Enbridge "has strengthened and improved the overall reliability of its pipeline control systems as a result of the enhancements it implemented following the July 2010 Michigan incident...[and] Enbridge Energy indicated it would apply these same leak-prevention and risk-mitigation procedures for the proposed Line 78 pipeline." (Seagle, ICC Staff Ex. 1.0, at 10).

Staff witness Janis Freetly, Senior Financial Analyst with the Commission, opines that through its relationship with Enbridge, Enbridge Energy has shown that it is capable of financing the construction, operation and maintenance of the Line 78 Pipeline Project. The total expected cost of the Project is \$500 million. Ms. Freetly states that Enbridge Energy asserts that these costs will be financed initially with short-term inter-company loans from Enbridge Partners or Enbridge. She explains that Enbridge Energy has shown that "[t]he Board of Directors of Enbridge has approved the expenditure of the necessary funding for the Line 78 Pipeline Project and Enbridge and Enbridge Partners have agreed jointly to supply the necessary financing for Enbridge Energy's construction work." (Freetly, ICC Staff Ex. 2.0, at 2). Ms. Freetly states that Enbridge Energy asserts that upon completion of the project, all "outstanding short-term debt will be refinanced with a combination of long-term inter-company debt and equity provided by Enbridge Partners [whose debt/equity ratio is approximately 50/50]." (Freetly, ICC Staff Ex. 2.0, at 3).

Ms. Freetly states that Enbridge energy has shown that Enbridge Partners has access to sufficient capital to provide Enbridge Energy with the capitalization necessary to construct, operate and maintain the Line 78 Pipeline Project. She states that as of February 2013, Enbridge Partners had \$3.1 billion available in unused credit facilities, including \$1.5 billion available to support commercial paper. She explains that Enbridge Energy states that Enbridge Partners can access funds from these credit facilities to finance any expansion projects. In addition, she argues that Enbridge Partners can access capital from debt and equity markets to repay short-term borrowing or finance new long-term growth projects. (Freetly, ICC Staff Ex. 2.0, at 3).

Ms. Freetly notes Enbridge Energy's claims that S&P has assigned Enbridge Partners a long-term corporate credit rating of BBB, which is defined as adequate capacity to meet its financial obligations. Ms. Freetly points out that in late 2012, S&P lowered Enbridge Partners' rating outlook from stable to negative on account of their aggressive growth trajectory through various expansion projects. Ms. Freetly notes, however, that S&P simultaneously affirmed Enbridge Partners' short-term credit rating,

confirming that Enbridge Partners maintains adequate liquidity and access to capital markets to raise additional sources of capital. (Freetly, ICC Staff Ex. 2.0, at 3-4).

In addition, Ms. Freetly notes Enbridge Partners has a Baa2 issuer rating from Moody's, which signifies a company with moderate credit risk. Moody's outlook for Enbridge Partners has remained stable. Moreover, Ms. Freetly notes Enbridge Partners has BBB issuer rating from DBRS, which signifies a company maintaining sufficient liquidity to fully support its needs in the event of difficult market conditions. Finally, she explains that these ratings are supported by the strong sponsorship of Enbridge, which is rated A- by S&P, A (low) by DBRS and Baa1 by Moody's. (Freetly, Staff Ex. 2.0, at 4).

C. Commission Analysis and Conclusion

Enbridge Energy presented evidence intended to show that it is "fit, willing, and able to provide the service in compliance with this Act, Commission regulations and orders" within the meaning of Section 15-401(b) of the Act. Although in some previous certification proceedings Staff has expressed some concerns in this respect about other Enbridge entities, Staff witnesses testified here that Enbridge Energy has shown that it is fully able to construct, operate and maintain its proposed pipeline, and the Commission agrees with Staff on this issue. Staff's position is supported by the testimony of two Staff witnesses, both experts. Staff witness Ms. Freetly, a Senior Financial Analyst, testified that Enbridge Energy, through its relationship with Enbridge and Enbridge Partners, has shown that it has the financial capability to construct, operate and maintain the proposed pipeline originating at Enbridge's Flanagan Terminal near Pontiac, Illinois and running generally adjacent to Line 62 in a northeasterly direction to interconnect with Enbridge Energy pump stations, terminals, and tankage located in Griffith and Schererville, Indiana. (Freetly, ICC Staff Ex. 2.0, at 1-2). In support of her opinion, Ms. Freetly described in detail the analysis she performed, and the bases for her conclusions.

Staff witness Mr. Seagle, an experienced engineer, testified that the Application was properly filed, that Enbridge Energy had demonstrated a public need for the pipeline and the common-carrier-by-pipeline services it will provide, and that the public convenience and necessity is served by Enbridge Energy's right-of-way acquisition program and procedures and by the route Enbridge Energy has selected for the new pipeline. (Seagle, ICC Staff Ex. 1.0, at 5-8; 11-18; Seagle, ICC Staff Ex. 3.0, at 3-10). Moreover, Mr. Seagle noted that he does "not have any issues at this time regarding Enbridge Energy's ability to operate and maintain its proposed pipeline." (Seagle, ICC Staff Ex. 1.0, at 10). He noted that while "Staff took issue with Enbridge Pipelines (FSP) LLC's ability to operate the proposed pipeline in [Docket No. 12-0347] due to releases in Marshall, MI, Romeoville, IL, and Grand Marsh, WI, Enbridge Pipelines (FSP),

however, provided additional information to Staff as well as the record in that case that addressed Staff's concerns." (Seagle, ICC Staff Ex. 1.0, at 10). Enbridge Energy has committed to incorporate the commitments made in Docket No. 12-0347 into this docket, as detailed below in section V.B.1.

The Commission finds the analyses of witnesses Freetly and Seagle persuasive. The Commission observes that no similar but contrary analyses were performed by any other parties.

As a condition of this Order, Enbridge and Enbridge Partners shall fulfill their commitments to provide such financial support to Enbridge Energy as is reasonably necessary for the construction and operation of the proposed pipeline, as described in the record, and Enbridge Energy shall fulfill its commitments to obtain such financial support from Enbridge and Enbridge Partners.

V. PUBLIC NEED/PUBLIC CONVENIENCE AND NECESSITY

A. Public Need/Public Convenience and Necessity Issues other than Routing

1. Enbridge Energy's Position

As recognized by the Commission in Docket Nos. 06-0470, 07-0446, and 12-0347, adequate supplies of petroleum and refined petroleum products are essential to the public and to the economic health and well-being of Illinois, the Midwest, and the nation. Applicant points out that at one time, the United States led the world in the discovery and production of crude oil. Such, however, has not been the case for many decades, and as domestic supply dwindled in various regions, many areas of the nation became dependent on imported crude to provide the means of furnishing the gasoline, fuel oils, asphalts, heating oils, lubricants, and industrial feedstock that fuel the national economy and satisfy the consuming public's needs and demands. Despite new discoveries, growth in demand over time necessitated that a growing percentage of the country's crude oil supply be imported, often from regions and sources not necessarily friendly to the nation or particularly stable and secure or safe from natural disasters and disruptions. Many parts of the continental United States, such as Illinois, which produces less than four percent (4%) of its crude oil requirements, are almost totally dependent on crude oil imports from other U.S. regions or foreign suppliers. Of the five areas designated as national "Petroleum Administration for Defense Districts" ("PADDs"), in PADD II, which comprises Midwestern states including Illinois, only 24% of crude-oil demand is satisfied by PADD II supply sources, and in PADD III, which includes the U.S. Gulf Coast region, just 44% of crude-oil demand is met by native PADD III production sources. (Amended Application, at 18-19).

Applicant states that, due to sharp declines in domestic crude oil production beginning in the 1990s, American dependency on petroleum imports increased substantially in the latter part of the twentieth century, notwithstanding growth in U.S. Gulf production that offset some of the decline in domestic production. Imports of crude petroleum and other petroleum liquids peaked at about sixty percent (60%) of U.S. supply in 2005, with much of the petroleum coming from potentially troubling sources. Since then, however, various developments in the crude oil supply portfolio have gradually enhanced shippers' ability to furnish a greater proportion of refinery supply slates from North American sources, thus helping to alleviate refiners' concerns about supply-source dependability. More specifically, growing supplies of heavy oil from western Canada, development of new U.S. domestic production from sources such as the Williston Basin, enhanced production techniques, increased supplies of alternative-energy types, and slowing demand growth from conservation efforts have all worked to offer alternatives to, and/or to decrease, the need for crude imports from outside North America, especially from troubling sources in unstable/unfriendly nations. Meanwhile, the supply security of substantial offshore imports has been further called into question by concurrent increases in crude demand in developing and emerging economies around the world. Consequently, the percentage of crude supply sourced from outside North America has been and is steadily declining and is projected to continue to do so. By 2012, about 61% of the 14.84 million bpd of crude that North America requires came from purely U.S. and Canadian sources. By 2020, it is projected that Canadian imports into the U.S. alone will surpass those from all OPEC countries combined and that continental crude-oil independence may be achieved by about 2025 as Canadian and U.S. sources displace Middle Eastern and other imports. (Amended Application, at 19-20).

Applicant contends that the significance of these developments for infrastructure is that improved and additional pipeline connectivity is needed to link the growing continental sources of supply, principally western Canada and the Williston Basin/North Dakota fields, with refineries seeking these more reliable supply sources. Existing systems and lines that originally served to carry supplies – both U.S. and off-shore produced crude – from Gulf Coast points to northern, central, and eastern U.S. markets can no longer suffice. Enbridge has led in responding to this shift and need, as shown by the Southern Access Program undertaken in the middle of the last decade and by the more recent acquisition and reversal of the Seaway Pipeline. The Line 78 Pipeline Project is a continuation of these efforts. (Amended Application, at 20-21).

At the instigation of Enbridge and others, this Commission has repeatedly recognized that the crude oil resources of western Canada afford Illinois and much of the United States a desirable, stable, secure, and economic alternative to traditional foreign, off-shore crude oil sources. The increasing availability of Canadian-sourced

crude oil in the last two decades has led to shifts in demand patterns and supply-slate preferences by refiners that required increased pipeline capacity to satisfy the need and demand for Canadian crude oils. Applicant maintains that recognition of these developments and their potential benefit to the public in Illinois and throughout PADD II caused this Commission to approve several major pipeline expansions and additions. Moreover, more recent developments in the United States, particularly the rapid growth of crude production in the Williston Basin resulting from increased exploration and improved production techniques, have in the last few years created a new and significant source of domestic crude that needs market access and serves refiners' need for a reliable, economic, and timely supply of light crude. Applicant asserts that international and interstate pipelines, such as those built and operated by Enbridge, are the most practical means of meeting the needs of Illinois and the nation for long-distance transportation of increased supplies of western Canadian and domestic crude oil. (Amended Application, at 21).

Enbridge argues that the importance of expanding and extending the nation's pipeline infrastructure has been expressly recognized and encouraged by the federal government as a national priority. (Amended Application, at 21-22).

Applicant points out that the "world-class refineries" requiring enhanced pipeline infrastructure include those that will be reached by the new transport capacity of Enbridge Energy's Line 78 Pipeline Project. This Project will expand Enbridge's capacity to transport growing supplies of crude oil produced in the Williston Basin region around North Dakota and light and heavy crude production in western Canada. The transportation demand from Enbridge's customers has exceeded the capacity of Enbridge's Line 62 and other pipelines in the greater Chicago area to transport crude oil to the Enbridge terminals in Indiana and beyond. Line 78 will allow the regional refineries more opportunities to process U.S. and western Canadian crude oil and to reduce reliance on traditional supplies that are imported from outside North America. Enbridge's extensive and expanding network of pipelines east of the greater Chicago area is connected directly or indirectly to refineries in northern Indiana, Michigan, Ohio, Pennsylvania, Ontario, and Quebec. Applicant states that the output of these "world-class refineries" will be available to consumers in much of the nation, including those in Illinois, via the existing system of refined-product transport, which includes numerous petroleum-product pipelines. (Amended Application, at 23).

Applicant states that because Illinois consumers require over 27.0 million gallons per day of refined petroleum products, according to recent (2010) data, including over 13.5 million gallons per day of gasoline, enhancing the nation's capacity to supply such products from diverse sources can only contribute to energy security and consumer satisfaction in Illinois. Demand in Illinois for petroleum and petroleum products for transportation, industrial, and home use has grown since the mid-1990s, despite

economic problems, and remains strong, despite alternative-energy developments. Applicant observes that Illinois has long served as a transportation hub for movement of petroleum by pipeline and that numerous major pipelines traverse Illinois, particularly its northeastern section, to reach local and national markets. Illinois' role has grown as significant amounts of western Canadian and Williston Basin petroleum production increasingly serve Illinois-area refineries and those beyond. Thus, efficient and adequate access to the transportation-facilities hub in Illinois via pipeline is critical to refineries' ability to maintain and enhance their regional investments. For example, BP's ongoing modernization project at its refinery in Whiting, Indiana, will substantially increase BP's capacity to use heavy Canadian crude, and Marathon's near 20% expansion of its Detroit refinery will enable it to capitalize on increased crude oil supply, much of which is delivered by the Enbridge Mainline System. (Amended Application, at 24-25).

Applicant further stated that the Line 78 Pipeline Project, when completed, will help meet the need for stable and reliable sources of oil and provide additional benefits to Illinois and the nation. For instance, Line 78 will increase regional refineries' access to western-sourced crude that is generally discounted from the world price benchmark. Also, the pipeline will increase the likelihood of consumers paying less for the petroleum products they use when there are supply interruptions because the additional oil brought to world markets using the new pipeline will add to the industry's transport capacity. Traditionally, the oil industry produces what it needs and holds little inventory; thus, the ability to bring on line available capacity is a very important determinant of the extent of upward-price pressures related to unexpected supply interruptions. Applicant says that additional oil supply made available via Line 78 will provide an incremental insurance cushion to help diminish price volatility in situations of supply uncertainty. Further, the Line 78 Pipeline Project will enhance national security because it represents an important step toward reducing the nation's reliance on Middle Eastern, African, and South American crude oil by increasing access to energy from our own nation and our close ally, Canada. Such greater energy security is vitally important: Iran and Venezuela, for example, have the capability to carry out their threats to choke off supplies of oil to the United States, thereby threatening the U.S. economy and national security. Lastly, Applicant contends, the expected amount of investment allocable to Illinois from development and construction of the Line 78 Pipeline is over \$300 million, and it is anticipated that between 350-500 directly related construction jobs will be created in Illinois when line installation peaks. (Amended Application, at 25-26).

Enbridge Energy witness Mark Sitek testified on behalf of Applicant to explain how the addition of Line 78 will serve the public need and the public convenience and necessity. Building off of the contentions in Applicant's Application, Mr. Sitek argues that, similar to other Enbridge projects to improve pipeline capacity, Line 78 helps

satisfy the need for “additional pipeline transportation connectivity to link the growing supplies of both heavy and light crude oil from production fields in western Alberta and the Williston Basin, including North Dakota’s Bakken Formation, to Midwestern and other refiners seeking reliable and secure sources for their crude oil feedstocks.” (Sitek, Enbridge Energy Ex. 1, at 5). Further, according to Mr. Sitek, the same type of needs and considerations that supported the Commission’s decision to grant a certificate for Enbridge’s addition of the Flanagan South Pipeline also apply to Line 78: to carry growing supplies of crude northeast from the Flanagan Terminal to refiners in Midwestern states and beyond in order to meet the American public’s demand for “refined petroleum products, particularly for transportation fuels.” (Sitek, Enbridge Energy Ex. 1, at 5).

More particularly, Mr. Sitek testified, the addition of Line 78 will benefit Illinois consumers by increasing the supply of crude petroleum that can be transported to major refineries producing gasoline, asphalts, heating oils, and other petroleum products needed by consumers in Illinois and other regions. (Sitek, Enbridge Energy Ex. 1, at 6). Mr. Sitek explained that the addition of Line 78 will enhance Enbridge’s pipeline system capacity to move greater quantities of crude petroleum from west to east “via the Southern Access Expansion Pipeline, or Line 61, to the Flanagan Terminal to be transported to our terminal facilities in Griffith and Schererville, Indiana.” (Sitek, Enbridge Energy Ex. 1, at 5). From there, the crude can be transported to BP’s refinery in Whiting, Indiana, where BP is seeking greater supplies of Canadian-sourced crude to match the increased refining capacity of its newly modernized facility. (Sitek, Enbridge Energy Ex. 1, at 6). Also, the increased supply of crude can be transported from Griffith and Schererville through Enbridge’s Line 6B to the following refineries:

- Marathon Petroleum Refinery in Detroit, Michigan;
- PBF Refinery and BF-Husky Refinery in Toledo, Ohio;
- United Refinery in Warren, Pennsylvania;
- Shell Refinery, Imperial Oil Refinery, and Suncor Refinery in Sarnia, Ontario; and
- Imperial Oil Refinery in Naticoke, Ontario.

(Sitek, Enbridge Energy Ex. 1, at 6). As Mr. Sitek further noted, refineries’ supply needs have increased because of increased demand from such events as the closing of several refineries in PADD I (Eastern U.S.) and PADD II (Midwest), and because of streamlined or enhanced operations to increase production, for example, at the Detroit Marathon Refinery, which has been upgraded to process Canadian heavy crude and

has increased its capacity from 106,000 bpd to 120,000 bpd. (Sitek, Enbridge Energy Ex. 1, at 7).

In addition to BP's Whiting Refinery, Mr. Sitek testified that the Line 78 Pipeline will also help the Chicago-region refineries of CITGO and ExxonMobil even though they are not directly served by Line 78. (Sitek, Enbridge Energy Ex. 1, at 7). He explained that because Enbridge Energy is a common carrier, it is required to accept all shipper nominations for transport on its lines, and under "apportionment," if a shipper requests transport on a line on which all the capacity is already subscribed to, Enbridge Energy "must reduce all current capacities equally" to accommodate the request. (Sitek, Enbridge Energy Ex. 1, at 7-8). Apportionment therefore may affect pipeline deliveries to numerous refineries unless Enbridge Energy is able to offer adequate capacity to meet shipper demand. (Sitek, Enbridge Energy Ex. 1, at 8). Mr. Sitek testified that apportionment has occurred, and could occur again, on Lines 14 and 6A serving the CITGO and ExxonMobil refineries, and he concludes that constructing Line 78 will help alleviate potential capacity constraints on Lines 14 and 6A by serving as another means for transporting crude oil to Northwest Indiana and beyond. (Sitek, Enbridge Energy Ex. 1, at 8). In addition, Mr. Sitek stated that adding Line 78 will benefit the state and people of Illinois in the following ways:

- enhancing Illinois' role in the nation's petroleum pipeline infrastructure;
- helping to maintain the viability and economic contributions of refineries in the Midwest and Eastern Canada;
- providing consumer protection from "price shocks due to supply disruptions and uncertainties";
- contributing to the growth of trade between North Dakota, Illinois, Indiana, Michigan, Ohio, and Canada, stimulated by petroleum production and refining; and
- creating jobs and other economic benefits that accompany pipeline construction and operation.

(Sitek, Enbridge Energy Ex. 1, at 8-9). Lastly, by routing Line 78 mostly "in or parallel to the existing Enbridge Line 62 right-of-way," Mr. Sitek noted that Line 78 takes an efficient route that "minimizes the burden on Illinois and landowners" that comes with constructing a major pipeline. (Sitek, Enbridge Energy Ex. 1, at 9).

Mr. Sitek further testified that no practical alternatives to Line 78 exist as a means of "safely efficiently, and economically" transporting the volumes of crude that shippers want to move from the Flanagan Terminal to Northern Indiana. (Sitek, Enbridge Energy Ex. 1, at 9). Since Line 78 will transport 600,000 bpd initially, and may

reach 800,000 bpd eventually, Mr. Sitek explained, transporting such a high volume of crude would require “immense numbers of tanker trucks and/or rail cars,” and “neither the road nor rail infrastructure in the Pontiac-to-Griffith/Schererville corridor appears adequate” to accommodate such traffic. (Sitek, Enbridge Energy Ex. 1, at 9). Further, despite the increasing rail capacity to transport crude oil across the nation, Mr. Sitek testified that for the Pontiac-to-Griffith/Schererville corridor, “pipeline transport is safer, less disruptive to traffic flows at highway crossings, more ecologically sound, and less costly than rail transport.” (Sitek, Enbridge Energy Ex. 1, at 9-10).

In his Rebuttal Testimony, John McKay, Manager of Land Services for U.S. Projects, responded to Mr. Seagle's Direct Testimony. Mr. McKay testified that Mr. Seagle's testimony supports Enbridge Energy's Application on most issues. Mr. McKay pointed out that Mr. Seagle states that Enbridge Energy properly filed its petition (Seagle, ICC Staff Ex. 1.0. at 5-6), that Enbridge Energy has demonstrated a public need for Line 78 (Seagle, ICC Staff Ex. 1.0, at 6-8), and that Enbridge Energy is fit, willing, and able to construct and operate Line 78 (Seagle, ICC Staff Ex. 1.0, 8-10). Mr. McKay pointed out that Ms. Freetly's testimony also supports this assessment by affirming Enbridge Energy's financial capability to construct, operate, and maintain Line 78. (Freetly, ICC Staff Ex. 2.0). With respect to whether the public convenience and necessity requires the Commission's issuance of a certificate for Line 78, Mr. McKay testified that Mr. Seagle agrees that the Project will yield significant economic and energy-related benefits for Illinois (Seagle, ICC Staff Ex. 1.0, at 13-15), and that Enbridge Energy has carefully chosen the most efficient route available for Line 78. (Seagle, ICC Staff Ex. 1.0, at 15-18; McKay, Enbridge Energy Ex. 4, at 5).

The principal issue in Mr. Seagle's Direct Testimony addressed by Mr. McKay is that Mr. Seagle's questions whether Enbridge Energy intends to negotiate in good faith on the Line 78 Pipeline Project, and therefore he testifies he is unable to recommend that the Commission grant Enbridge Energy's request for a certificate of public convenience and necessity. Mr. Seagle arrives at this position based on his receipt of allegations of bad faith directly or indirectly from a limited number of landowners with whom Enbridge Pipelines (FSP) sought to acquire property rights for the Flanagan South Pipeline ("FSP") Project, and the expression of some concerns related to the FSP Pipeline Project expressed in a letter sent to the Commission by the Illinois Farm Bureau ("IFB") on behalf of certain landowners in its membership. (Seagle ICC Staff Ex. 1.0, at 3, 18-39; McKay, Enbridge Energy Ex. 4, at 6). In particular, Mr. Seagle's testimony indicates that certain landowners alleged that Enbridge engaged in less than good faith negotiations on the FSP project by engaging in such practices as withdrawing offers for fair market value for lower offers, failing to respond to counter-offers and phone calls in a timely manner, communicating directly with landowners instead of their attorneys, and providing misleading, inconsistent, or incomplete information. (Seagle,

ICC Staff Ex. 1.0, at 19). Mr. Seagle also raises issues with respect to Enbridge's potential exercise of its multiple line rights ("MLRs"), including whether landowners will receive fair compensation and whether Enbridge has issued an ultimatum to such landowners that cuts off further negotiations. (Seagle, ICC Staff Ex. 1.0, at 21; McKay, Enbridge Energy Ex. 4, at 6). Mr. Seagle urges Enbridge Energy to address these allegations and issues in rebuttal testimony.

Mr. McKay made clear that the purpose of his Rebuttal Testimony was to address these allegations and issues as urged by Mr. Seagle. Mr. McKay pointed out that in a certification proceeding, negotiations between petitioner and individual landowners are typically incomplete and therefore inadequate as a basis to evaluate whether the petitioner has operated in good faith. Mr. McKay argued that Enbridge Energy's practice in negotiating land rights goes well beyond good faith standards. He states that Enbridge Energy's practice is to not offer below current fair market fee value, based on land market studies by an experienced appraiser, and to increase offers where subsequent data demonstrate an increased value. He argued that, moreover, Enbridge Energy takes the extraordinary step of going back to landowners that have completed negotiations and increasing the compensation if new market data show that a similarly situated landowner's property is being valued at a higher figure. That is, if Landowner A is compensated at \$5,000 an acre for permanent easement on January 1, and sixty days later, Landowner B is compensated at \$6,000 an acre based on new market study data or other information, Enbridge Energy will pay Landowner A an additional \$1,000 per acre, if Landowner A and B are similarly situated. (McKay, Enbridge Energy Ex. 4, at 12). Mr. McKay testified that Enbridge applies this policy across all of its projects. (McKay, Enbridge Energy Ex. 4, at 12-13).

To respond to Mr. Seagle's concern about how Enbridge has treated landowners with MLR easements, Mr. McKay first described how MLRs work, using the MLRs on Line 78 by way of example, because those MLRs and the MLRs on FSP are substantially the same. (McKay, Enbridge Energy Ex. 4, at 13). Mr. McKay explained that the MLRs on Line 78 allow Enbridge Energy to construct and maintain one or more additional pipelines in the area determined by the 1952 easement for each property. He stated that Enbridge Energy is required to pay the fee established by the existing MLR to exercise its right to construct and maintain the additional pipeline(s). He says that in essence, at the time the original easement was signed, the landowner agreed to allow for additional pipelines in the future based on a payment amount set in 1952. Mr. McKay argued that because these rights have already been negotiated, condemnation proceedings are not required, and while it is Enbridge Energy's practice to offer and negotiate at current fair market fee value, Enbridge Energy could exercise its existing contract rights under the MLRs to pay the predetermined fee and build the new pipeline. He states that in his understanding, under Illinois law, the enforcement of valid contracts

terms is not bad faith. (*Elecmat Remington, LLC v. 220 Remington Co., LLC*, 2012 IL App (3d) 110663-U, ¶ 63 ("Parties are entitled to enforce the terms of negotiated contracts to the letter without being mulcted for lack of good faith.") (citations removed)). In other words, he states, as valid agreements, Enbridge Energy has a right to enforce its MLRs. (McKay, Enbridge Energy Ex. 4, at 13-14).

Mr. McKay testified that although the MLRs give Enbridge Energy the right to install a second pipeline after compensating a landowner at the 1952 rate, Enbridge Energy is committed to treating the Illinois landowners along the proposed Line 78 route fairly and has communicated that desire to the affected landowners orally and in writing. He states that Enbridge Energy has offered to pay 100 percent of the fair market fee value for the permanent easements and 30 percent of the fee value—well above market rental value—for the temporary workspace easements, which last only during construction. He says that Enbridge Energy determines these amounts through professional assessments of full fee values for each area affected. He also pointed out that it is Enbridge Energy's policy to acquire these interests through negotiation with the landowners even though such negotiation is not required. Finally, he says, Enbridge Energy is committed to ensuring that it pays all landowners the same market fee value on like-kind properties. Thus, as he restates, if Enbridge Energy determines that an offer was too low, even after signing, it will return to the landowner and pay the difference. Mr. McKay maintained that this retrospective increase in the payment amounts is well beyond the acquisition custom and practice of state and federal highway and other departments that acquire easement and fee land for public purposes and should itself be considered evidence of good faith. (McKay, Enbridge Energy Ex. 4, at 15).

These same principles and policies apply to Enbridge Pipelines (FSP)'s treatment of MLRs on the FSP route. Mr. McKay says that for the MLRs along the FSP route, Enbridge commissioned third party independent appraisers to determine the range of fair market fee values for the affected properties. Then, he relates, beginning in August 2012, Enbridge presented landowners with offers based on fair market value. He stated that in November 2012, for those landowners that had not yet accepted the fair market value offer, Enbridge advised landowners of both the fair market value offer and the amount that could be paid based on the terms of the original easement. If possible, the offer and payment were presented in person by the assigned Enbridge field agent; otherwise, they were mailed. According to Mr. McKay, with these communications, Enbridge informed the landowners that its intent was to "modernize" the 1952 payment amount by offering 100 percent of the fair market fee value for the area where the pipeline would be constructed and 30 percent of the fair market value for temporary workspace. Next, he says that in December 2012, Enbridge sent another letter that reiterated the construction plans and offer. Finally, he states that beginning in

March 2013, Enbridge sent letters to the landowners who had not accepted the updated offers described in the earlier communications. These letters contained the payment required by the terms of the original easement. He explained that prior to sending these letters, all landowners who had not accepted the “modernized” payment were contacted by phone and it was explained that negotiations would not be cut off after these checks were sent and that Enbridge was willing to continue negotiations. He related that since the March 2013 letters were sent, Enbridge has attempted to continue negotiations with any landowners who responded and wanted to discuss the project and negotiate toward a mutually agreeable settlement. (McKay, Enbridge Energy Ex. 4, at 15-16).

Turning to Mr. Seagle's specific concerns about MLRs, Mr. McKay stated that according to Mr. Seagle's testimony, the Illinois Farm Bureau (“IFB”) wrote to the Commission on behalf of many of its members who are landowners along the FSP route. The IFB contended that these landowners received a letter from Enbridge dated January 9, 2013, stating that Enbridge would cease negotiations and exercise its 1950s-era easement for an extremely low sum. Some of these landowners were in advanced stages of negotiations, and others had already agreed to terms with Enbridge when they received the letter. Mr. Seagle investigated to determine whether Enbridge may have acted in a coercive, confusing manner by cutting off a productive negotiating process. (Seagle, ICC Staff Ex. 1.0, at 25-27; McKay, Enbridge Energy Ex. 4, at 18).

Mr. McKay explained why he does not believe the concerns raised by the IFB are legitimate. He says that the individuals who received the letter referenced by the IFB, which was sent by Enbridge Pipelines (FSP) on December 26, 2012, are landowners on whose property Enbridge has a MLR easement right negotiated during the construction of what became the Spearhead pipeline in 1952. (Mr. McKay states that Spearhead runs parallel to FSP, much like Line 78 will run parallel to the existing Line 62). Mr. McKay reiterated that, as he previously testified, the MLRs are valid, enforceable property rights that Enbridge could exercise by paying the landowners the amount specified in their respective 1952 agreement. Nonetheless, as Mr. McKay also previously testified, Enbridge has worked and continues to work with landowners to adjust these 1952 amounts to their current fair market value. Thus, he testified that although it is true that subsequent to sending the letter on December 26, 2012, Enbridge sent checks to landowners for the 1952 values, Enbridge did not do so to cut off negotiations to pay current fair market value, but did so in order to maintain the schedule for land acquisition and ensure that Enbridge would be able to move forward with construction. He pointed out that even before Enbridge sent these checks, Enbridge spoke with each landowner over the phone and made it clear that Enbridge was prepared to continue negotiating with them to pay with the fair market value for their property interests. (McKay, Enbridge Energy Ex. 4, at 18-19).

Mr. McKay takes issue with Mr. Seagle's characterization of the December 26, 2012 letter as an "ultimatum" to the landowners who received it. He testified that far from halting negotiations or issuing an ultimatum, the December 26, 2012 letter and others like it directed landowners to contact Enbridge with further questions and concerns. The letter states, "The amount to be paid for constructing the new pipeline is stated in the Easement and was negotiated at the time it was signed. Enbridge's practice is to adjust that amount to reflect present land value as part of our commitment to working fairly with landowners." He pointed out that although the letter states that the standing offer made previously by Enbridge based upon Enbridge's understanding of current market values at the time would expire on January 9, 2013, Enbridge contacted each landowner by phone before sending the checks based on the 1952 easement value specifically to explain that this step was not an ultimatum and that Enbridge would continue negotiations to "modernize" the consideration even if the standing offer expired and Enbridge sent the checks. (McKay, Enbridge Energy Ex. 4, at 20).

Mr. McKay pointed out that moreover, the letter and payments based on the 1952 easements were sent to every landowner that owns property along the FSP route on which FSP owns such an easement, including landowners who had already agreed to a "modernized" offer from Enbridge. Mr. McKay argued that the very fact that Enbridge sent a check based on the 1952 easements to landowners with whom it had already reached an agreement to pay fair market value shows that Enbridge was merely trying to preserve certain legal rights critical to its schedule, and not to force a reduced payment on these landowners. Mr. McKay further pointed out that Enbridge has negotiated to fair market value settlements for 82 additional tracts since sending the December 26, 2012 letter, bringing the total to 540 of 545. He stated that it is hardly credible that Enbridge would have reached an agreement for over 99 percent of such tracts if it were negotiating in bad faith. (McKay, Enbridge Energy Ex. 4, at 21).

Mr. McKay next addressed Mr. Seagle's concerns about good faith negotiating based on feedback from a representative number of individual landowners on the FSP route. Mr. McKay pointed out that as Mr. Seagle explained in his testimony, his receipt of the letter from IFB led him to conduct a survey of landowners affected by FSP construction, and that of the representative survey of 100 landowners he contacted, ten responded, 80% of which had negative views of Enbridge. Mr. McKay further pointed out that of the eight who provided negative feedback – the other two provided positive feedback – only two individual landowners offered additional documentation to support their negative views. (Seagle, ICC Staff Ex. 1.0, at 24). Mr. McKay referred to these two individual landowners as Landowner 1 and Landowner 2. (McKay, Enbridge Energy Ex. 4, at 22).

Mr. McKay first summarized the concerns raised by Landowner 1. According to Mr. Seagle, Landowner 1 states her interactions with Enbridge were confusing and

misleading. She states that she received an offer on November 7, 2012, that referenced an earlier offer letter that she did not receive. Landowner 1 then wrote to Enbridge detailing the inconsistencies, but indicating her desire to continue discussions. Landowner 1 states she never received a response, but that she received another offer letter on December 26, 2012, with terms that were inconsistent with the November offer. According to Landowner 1, this letter did not contain an agricultural impact mitigation agreement, but it did include an ultimatum that if she did not accept the offer, Enbridge would exercise its rights under a 1952 easement by paying a nominal price. On April 25, 2013, Enbridge land agents allegedly met with Landowner 1 and provided her information as to the exact pipeline route that deviated from the description in the 1952 easement. On May 5, 2013, the landowner allegedly received a check for \$374 and a letter that claimed an immediate right to proceed with constructing FSP under the provisions of the 1952 easement. According to Mr. McKay, Mr. Seagle testified that this indicates Enbridge did not provide timely and accurate information to Landowner 1 and that Enbridge abruptly ended negotiations when a mutually beneficial solution was still possible. (Seagle, ICC Staff Ex. 1.0, at 27-31). (McKay, Enbridge Energy Ex. 4, at 22-23).

Mr. McKay testified that he disagrees with Landowner 1's account of her dealings and negotiations with Enbridge. Mr. McKay noted that Landowner 1 owns a parcel on which Enbridge holds a MLR based upon a 1952 easement, but Enbridge, choosing to operate according to its internal policy, engaged in numerous conversations with Landowner 1, Landowner 1's spouse, and Landowner 1's attorney in an attempt to address their individual concerns and to offer Landowner 1 fair market fee value for her property interests. (McKay, Enbridge Energy Ex. 4, at 23). Mr. McKay's testimony provided a detailed review of Enbridge Pipelines (FSP)'s contacts with Landowner 1 by way of refutation. (McKay, Enbridge Energy Ex. 4, at 24-26).

Mr. McKay testified that Landowner 1's allegations and Mr. Seagle's concerns regarding Enbridge's alleged failure to provide accurate information about the exact route of FSP are not valid. He says for the tracts on which Enbridge already owns MLRs, including Landowner 1's tract, Enbridge holds a blanket easement, meaning that the width and location of the easement is not confined to a corridor of specific width. They are limited in area and location by their use. He also testifies his belief that Enbridge is not required to identify the exact location of a planned pipeline. Nonetheless, he testified that Enbridge has generally informed landowners along the proposed FSP route that Enbridge would utilize a 50 foot offset from the existing Spearhead pipeline—despite having no obligation to provide such notice to landowners on whose property Enbridge owns a blanket easement. (McKay, Enbridge Energy Ex. 4, at 27).

Mr. McKay then pointed out that when the Enbridge representatives met with Landowner 1 on July 16, 2013, Enbridge provided updated information concerning the temporary construction workspace that would be necessary on Landowner 1's property. Enbridge also explained why the size of Enbridge's expected workspace changed when Enbridge realized that it would need more room to safely address the crossing of a drainage creek on the property and less room where Enbridge determined after further engineering design that it no longer needed the extra workspace. (McKay, Enbridge Energy Ex. 4, at 27-28).

Mr. McKay also explained why Enbridge does not conduct a certified survey for those properties on which it already owns an MLR easement. He says that in order to prepare a certified plat or a map containing the level of detail wanted by Landowner 1, it would require the completion of a detailed civil survey that must be stamped by a registered professional land surveyor. It would also require the surveyor to enter upon the land to conduct the assessment – an additional imposition that frustrates many landowners. For these reasons, he states, it is Enbridge's policy not to conduct a certified survey for properties on which it already owns an MLR easement. He testified that where Enbridge does need to acquire additional property interests, Enbridge conducts a certified survey in order to prepare for the possibility of a condemnation action, which requires the submission of a certified plat for the property. (McKay, Enbridge Energy Ex. 4, at 28).

Mr. McKay further explained why Enbridge did not provide an agricultural impact mitigation agreement in the letter received by Landowner 1 dated November 7, 2012. That letter contained a proposed easement document that described the "modernized" property rights Enbridge sought to acquire from Landowner 1. He states that typically, Enbridge does not include an agricultural impact mitigation agreement in the easement document because the agricultural impact mitigation agreement does not create or transfer any legal interest in land; it merely deals with construction and restoration matters. He explained that Enbridge does not feel the easement agreements are the proper place to include the agricultural impact mitigation agreement because doing so could cloud title for the property and cause confusion in future transactions. Instead, he says, Enbridge has included the agricultural impact mitigation agreement in the Supplemental Agreements, which are also enforceable against Enbridge. (McKay, Enbridge Energy Ex. 4, at 29).

Finally, Mr. McKay testified that Enbridge continues to seek an arrangement that treats Landowner 1 fairly while respecting Enbridge's existing property rights on her tract. Specifically, he testified, Enbridge continues to seek to provide her with at least 100 percent of the permanent easement value and 30 percent of the temporary easement value as it has done with other landowners on which Enbridge has an MLR easement. (McKay, Enbridge Energy Ex. 4, at 29).

Mr. McKay next addressed the complaints of Landowner 2. He says that according to Mr. Seagle, Landowner 2 states that Enbridge and its representatives made several attempts to communicate or negotiate directly with Landowner 2, as opposed to his lawyer. Mr. McKay stated that Landowner 2 further alleges that Enbridge's offer was based upon unspecified, undisclosed "research" that failed to narrowly tailor an appraisal to Landowner 2's property, and Enbridge allegedly allowed eight months to pass before responding to Landowner 2's counter offer. (McKay, Enbridge Energy Ex. 4, at 30).

Mr. McKay testified to his belief that Landowner 2's account reflects several errors and misconceptions. Mr. McKay alleges that there was some confusion as to whether Landowner 2 was represented by counsel and by whom. Mr. McKay states that his review of the records indicates that Enbridge has sought to negotiate with Landowner 2 and his attorney in good faith. (McKay, Enbridge Energy Ex. 4, at 30).

Mr. McKay provided his explanation as to why there was an eight month lapse between Landowner 2's counter offer and Enbridge's response to the counter offer. He states that Enbridge evaluates and considers every counter offer made by a landowner, including that of Landowner 2. He noted that often such counter offers involve term modifications, revisions to easement documents, or other requests that require review from Enbridge's attorneys and upper management. He stated that Enbridge must consider the merits of each counter offer on its own and in relation to the ongoing negotiations with other landowners along the proposed pipeline, and accordingly a proper analysis of counter offers takes time. He contended that certain landowners may not always be satisfied with Enbridge's response to their counter offers, but that does not mean Enbridge's evaluation of those counter offers was unreasonable. Indeed, he asserts that often, Enbridge finds these counter offers not to be feasible or practical, but Enbridge gives them the time and consideration, and often takes a second or third look at the counter offers before responding. (McKay, Enbridge Energy Ex. 4, at 32).

Mr. McKay testified that in the specific case of Landowner 2, the counter offer involved—to name only a few of the issues raised—a new assessment of what should be classified as a permanent right-of-way and temporary workspace, a different estimate of fair market value, and requests to accommodate hunting rights, horse stable access, pre- and post-construction soil testing, and compensation for yield loss due to soybean cyst nematode damage. He argued that it is not just reasonable, but demonstrative of Enbridge's good faith, that Enbridge took eight months to carefully evaluate and respond to each of Landowner 2's requests. (McKay, Enbridge Energy Ex. 4, at 32-33).

Finally, Mr. McKay testified that he still expects there to be a mutually beneficial solution between Enbridge and Landowner 2. He pointed out that Enbridge has not

issued any ultimatum or halted negotiations with Landowner 2. Similar to Landowner 1, he testifies, Enbridge continues to seek a reasonable, fair agreement. (McKay, Enbridge Energy Ex. 4, at 33).

Mr. McKay testified that the complaints from the six other landowners that provided feedback to Mr. Seagle regarding negotiations with Enbridge were largely similar to those of Landowner 1 and Landowner 2—alleging that they had difficulty making contact with Enbridge agents, obtaining information about the exact route of the pipeline, and receiving quick, diligent responses to counter offers. (Seagle, ICC Staff Ex. 1.0, at 35-36). He pointed out that he already addressed most of these issues in his testimony, particularly in responding to the complaints made by Landowner 1 and Landowner 2. As to the alleged difficulty in communicating with Enbridge agents, Mr. McKay noted that Enbridge's communications with the landowners contain a specific telephone number that Enbridge provides as a means for easily accessing and contacting Enbridge. (McKay, Enbridge Energy Ex. 4, at 33-34).

Mr. McKay testified that the complaints of these individual landowners are not indicative of Enbridge's overall negotiations with landowners. He pointed out that Enbridge has at this point acquired the necessary property rights for 700 of the 767 tracts along the FSP route in Illinois, and has reached agreements with landowners of 540 out of the 545 tracts along the FSP route on which Enbridge owns MLRs. This shows, he states, that overwhelmingly the process has advanced without significant trouble. Mr. McKay further testified that it is important to note that out of the sampling of 100 people Mr. Seagle contacted, only eight were inclined to actually respond with their negative feedback, and only two of those 100 people provided substantive comments through documentation. (McKay, Enbridge Energy Ex. 4, at 34).

As further evidence of Enbridge's good faith, Mr. McKay mentions again Enbridge's policy to pay landowners the current market value for their property interests. Under this policy, Enbridge not only adjusts amounts listed in easement agreements signed years ago up to their current market levels, but also revises its outstanding offers or amends its agreed-to price terms when Enbridge determines that its prior study or understanding of the fair market value was low, even if Enbridge has already paid a landowner. (McKay, Enbridge Energy Ex. 4, at 35). This policy applies not just to permanent easements sought from landowners, but to offers for the temporary easements needed during pipeline construction. He further states that according to Enbridge's policy, if a specific route on an single line right tract has not been selected when an offer is made, Enbridge calculates the permanent fee value based upon a worst case scenario (i.e., one in which the longest route or most workspace is required), even if a less impactful route is eventually chosen. Similarly, he stated, where Enbridge actually requires more workspace during construction than originally agreed upon on (including on MLR tracts), those landowners are compensated for the additional land

used. On other lands, if it is determined that less workspace is required, those landowners are allowed to keep the higher payment. (McKay, Enbridge Energy Ex. 4, at 35-36).

Mr. McKay further testified that Enbridge is also willing to accommodate reasonable landowner requests. He stated that, for example, in certain instances, Enbridge will seek to amend its construction schedule to align with landowner activities, including planting, harvesting, or other agricultural tasks. Additionally, he says that Enbridge negotiates various solutions such as the construction of another access driveway or a payment for the rental value of inaccessible land and/or the value of crops that cannot be planted or harvested as a result of construction. Mr. McKay explained that Enbridge will also consider an adjustment of its proposed route in response to landowner concerns. He says that Mr. Seagle recognizes this in his testimony: "Enbridge Energy has redesigned its route in multiple instances to take landowner concerns into consideration, often at extra expense to the Company." (Seagle, ICC Staff Ex. 1.0, at 16) (emphasis added). Mr. McKay pointed out that Enbridge cannot accommodate every request, but where feasible, Enbridge works with landowners to do so. (McKay, Enbridge Energy Ex. 4, at 36).

Mr. McKay testified that additionally, Enbridge does not cease its good faith efforts once a condemnation has been filed. He explained that where Enbridge has initiated such actions against landowners along the FSP route, Enbridge has continued to seek a negotiated settlement. He stated that Enbridge has already reached several settlements, and will continue to negotiate with the remaining landowners. (McKay, Enbridge Energy Ex. 4, at 36-37).

In response to Mr. Seagle's question regarding what, if any, steps Enbridge Energy has taken to improve its approach to landowner negotiations, Mr. McKay says that Enbridge Energy feels that its existing practices and policies serve well the goal of seeking to acquire land rights through a process that is as efficient, expedient, and nonintrusive as reasonably possible. He maintains that Enbridge believes that its willingness to conduct negotiations in good faith with landowners along the FSP route is evident in part from the fact Enbridge has reached agreements with landowners of 700 of the 767 tracts along the FSP route. Enbridge Energy does not have any specific plans to change its approach at this time. (McKay, Enbridge Energy Ex. 4, at 37).

Mr. McKay testified that the Commission should be confident that Enbridge Energy landowner negotiations for Line 78 will be conducted in good faith because Enbridge Energy intends to comply with the same internal policies that were used during FSP negotiations. Mr. McKay represented that since the submission of his Direct Testimony, Enbridge Energy's negotiations for the Project have progressed well. He states that as of July 19, 2013, Enbridge Energy has made over 3,800 contacts with the

267 landowners now understood to own the 386 tracts along the Line 78 route. He also pointed out that Enbridge Energy has permission to conduct surveys on approximately 96 percent of those tracts, and has acquired easements or options for nearly one-third of those tracts. (McKay, Enbridge Energy Ex. 4, at 38). Mr. McKay further stated that regarding the 120 landowners (owning 154 tracts) along the Line 78 route on which Enbridge Energy owns MLRs, Enbridge Energy has reached agreements with many of those landowners. Forty-nine landowners (owning 64 tracts) have agreed to payments at "modernized" levels, and Enbridge Energy continues to negotiate with the 71 remaining landowners (owning 90 tracts with MLRs) and expects to reach closure with at least 55 additional landowners by November 15, 2013. (McKay, Enbridge Energy Ex. 4, at 39).

2. Staff's Position

Mr. Seagle testifies that Enbridge Energy sufficiently demonstrated a public need for the pipeline. He explains that customer demand currently exceeds existing pipeline capacity. He points out that the Company has received letters from high-ranking employees at three refineries offering their support for the construction of the pipeline and the increased capacity it would provide. Moreover, Enbridge Energy has already entered into a commercial agreement with Marathon Petroleum Corporation to increase pipeline transportation capacity through the proposed Line 78. Finally, Mr. Seagle concludes that "[t]he increased crude oil supply should help to serve the needs of the general public in Illinois and throughout the country for crude oil products." (Seagle, ICC Staff Ex. 1.0, at 7). He points to "BP's ongoing modernization project at its Whiting, IN refinery, which will substantially increase its ability to use heavy Canadian crude, and Marathon's almost twenty-percent expansion of its Detroit refinery – Michigan's only such facility – to take advantage of increased crude oil supply, much of which is delivered by the Enbridge Mainline System" as indications of increased demand in the region for more refined oil products and crude oil shipments. (Seagle, ICC Staff Ex. 1.0, at 8). Mr. Seagle testifies that his determination of sufficient public need is based on an examination of the general public and not just the needs of a few individuals or private entities. (Seagle, ICC Staff Ex. 1.0, at 7).

Mr. Seagle next considers any information regarding the proposed pipeline submitted by the federal government, another state agency or a local governmental unit. He notes that IDOT provided a map highlighting sections of land along the route of the proposed pipeline that were also intended for future use by IDOT. In addition, Mr. Seagle states that Enbridge Energy provided Staff a list of permits/clearances required from various state agencies before the commencement of construction of the proposed pipeline. He explains that Enbridge Energy has endeavored to comply with the requirements for attaining each of the permits/clearances and has provided details regarding the status of each. Finally, Mr. Seagle notes that Enbridge Energy held

multiple public meetings at locations along the pipeline route at which agents of the Company addressed issues raised by landowners and local government entities. (Seagle, ICC Staff Ex. 1.0, at 12-13).

Mr. Seagle notes the existence of a demand in Illinois and the surrounding area for both crude petroleum and the resulting products such as gasoline. He states that the proposed pipeline would serve this demand by ensuring “a reliable supply of refined products and may help to mitigate high gasoline prices in the region. At the very least, it may minimize price spikes that occur when maintenance, leaks, or other occurrences remove other pipelines from service because it would increase the amount of alternate sources of supplies feeding the region.” (Seagle, ICC Staff Ex. 1.0, at 13-14). Moreover, he notes that the project is estimated to create 300-500 construction jobs and invest \$300 million into the local Illinois economy.

Aside from economic benefits, Mr. Seagle opines that the proposed pipeline will assist in meeting the nationwide demand for increased transport capacity from North American crude oil sources to refineries throughout the country. He explains that “[t]his nationwide need requires improved and additional pipeline transportation connectivity to link the growing supplies of both heavy and light crude oil from production fields in western Alberta and the Williston Basin, including North Dakota’s Bakken Formation, to Midwestern and other refiners seeking reliable and secure sources for their crude oil feedstock.” (Seagle, ICC Staff Ex. 1.0, at 14). Mr. Seagle further explains that the “same needs and considerations that led to the construction of the Flanagan South Pipeline to carry crude oil southwest from the Flanagan Terminal (approved by the Commission in Docket No. 12-0347 on February 14, 2013), apply to this project to carry growing supplies of crude northeast from Flanagan to refiners in Illinois/Indiana, Michigan, Ohio, Ontario, and perhaps beyond.” (Seagle, ICC Staff Ex. 1.0, at 14-15).

Finally, Mr. Seagle considers complaints raised regarding Enbridge Energy’s negotiations with landowners to obtain land rights. In considering whether Enbridge Energy is engaging in good faith negotiations with landowners, Mr. Seagle looks to the “reasonableness of Enbridge Energy’s negotiation procedures, whether the Company followed its procedures, the nature and extent of the contacts between the Company and the landowners, and the basis for any offers.” (Seagle, ICC Staff Ex. 1.0, at 18). Mr. Seagle states that Staff has received complaints from a number of landowners claiming that Enbridge has engaged in less than good faith negotiations in its prior dealings on an Enbridge pipeline project—the FSP. The complaints of landowners as to that project include, among other things, that: 1) “an Enbridge entity offered the current fair market value to some landowners, but then later withdrew those offers;” 2) “an Enbridge entity has failed to respond to counter-offers in a timely fashion, but requested expedited treatment for its discussions;” 3) “an Enbridge entity has not timely returned phone calls or responded to letters sent to it via certified mail from landowners and

landowners' attorneys;" and 4) "an Enbridge entity provided misleading and inconsistent information regarding where and to what extent a pipeline would cross the landowner's property." (Seagle, ICC Staff Ex. 1.0, at 19).

Mr. Seagle states that these complaints are relevant to the inquiry into whether good faith negotiations have occurred or will occur in the present case. First, Mr. Seagle notes that the procedures presently in place replicate those procedures in place at the time of the prior case. Notably, Enbridge witnesses in both cases claimed that it is the Company's practice to offer the current fair market fee value in easement negotiations with landowners. Second, Mr. Seagle explains that many of the cited complaints by landowners have been made within the last year. Finally, Mr. Seagle expresses concern that Enbridge Energy has not advanced negotiations for easements in the instant case to the point where landowners would even necessarily be able to raise their concerns while the docket is open.

Mr. Seagle recommends that the Commission consider a letter dated January 16, 2013, from the Illinois Farm Bureau ("IFB") to the Commission ("IFB Letter") that discusses calls the IFB received from landowners upset about a letter they received from an Enbridge entity. The IFB stated that these landowners received a letter ("Enbridge Letter") indicating that the Enbridge entity intended to cease negotiations and proffer the nominal sum contained in the Right of Way agreement if the landowners refused to complete negotiations prior to a January 9, 2013 deadline. He argues that many of the landowners were still in the process of conducting their own independent negotiations. Mr. Seagle testifies that in some cases landowners were informed of the negotiations deadline despite having already agreed to new easement terms with the Enbridge entity. He explains that the IFB Letter notes that the Enbridge Letter was very confusing to landowners. (Seagle, ICC Staff Ex 1.0, at 25-26).

In summarizing his concerns regarding the IFB Letter, Mr. Seagle testifies that the "letter alleges that the nature of the negotiations changed because Enbridge surprised and, as the IFB puts it, coerced and confused Illinois landowners with its letter." (ICC Staff Ex. 1.0, at 27). Moreover, Mr. Seagle states that "the IFB letter indicates Enbridge and some of the landowners had already reached agreement or were still in the process This means that negotiations might have resulted in negotiated settlements, but that Enbridge's actions may have disrupted that process." (Seagle, ICC Staff Ex. 1.0, at 27).

In addition, Mr. Seagle notes that the Commission has been contacted by others informally with concerns regarding the Enbridge entity's manner of negotiation. As a result of these contacts, Staff conducted a representative survey of approximately 100 of the roughly 630 landowners affected by the Enbridge entity's pipeline construction project authorized by Docket No. 12-0347. Staff utilized a pre-written survey, using

neutral questions to avoid influencing the respondent in any fashion. Mr. Seagle explains that of the sampling of 100 landowners he contacted 10 provided substantive feedback, 80% of which was negative. Staff received eight negative comments regarding the Enbridge entity's manner of negotiation. Mr. Seagle states that he received additional documentation from two landowners who had negative views of the Enbridge entity's negotiations. (Seagle, ICC Staff Ex. 1.0, at 23-24). From this representative survey, Staff deduced that the results were likely to be similarly extrapolated on the wider number of landowners impacted.

As an example of the impacts, Mr. Seagle explained that the first landowner who had a negative view of the negotiations ("Landowner 1") discusses how the Enbridge entity handled her requests for more information due to concerns regarding the precise placement of the pipeline. She claims that her placement issues could have easily been resolved with a simple meeting and a GPS device. Instead, Landowner 1 states that her negotiations with the Enbridge entity were "fraught with guile, intimidation, evasion, confusion, and even lies." (Seagle, ICC Staff Ex. 1.0, at 27).

Mr. Seagle states that Landowner 1 complained about her experience with the Enbridge entity's ROW agreement agents. She claims that she received a letter on November 7, 2012, detailing a monetary offer for easement rights on her property. While the letter mentioned that the Enbridge entity had made a previous offer, she states that she never received this earlier offer. Landowner 1 attempted to track down the letter and discover its contents; however, the Enbridge entity was unable to provide any details regarding its whereabouts or the nature of the previous offer it contained. In response, Landowner 1 returned a certified letter to Mr. Ronald Fuchs and Mr. Douglas Aller, senior ROW agents for the Enbridge entity, detailing the new offer's inconsistencies and indicating her desire to continue negotiations. She claims that she never received a response to this letter from the Enbridge entity. (Seagle, ICC Staff Ex. 1.0, at 28).

Mr. Seagle states that Landowner 1 says that she received another letter on December 26, 2012, which contained an offer that was also inconsistent with the offer she received in the previous letter. This letter set a deadline of January 9, 2012, for the landowner to respond by accepting the offer along with the accompanying document, "Additional Pipeline Rights Exercise and Receipt". Mr. Seagle states that Landowner 1 indicates that this second letter gave Landowner 1 an "ultimatum that if the landowner did not accept this offer, the Enbridge entity would exercise the 1952 ROW amount and tender a check for the nominal price for the Enbridge entity's entitlement to construct an additional pipeline on the landowner's property." (Seagle, ICC Staff Ex. 1.0, at 29).

Then, Mr. Seagle says that on April 25, 2013, the Enbridge entity's land agents met with Landowner 1 to discuss where exactly a portion of the line would traverse her

property. Landowner 1 claims that the agents indicated that the proposed pipeline would cross the portion of her land that she was most concerned about, a portion she argues was not part of the ROW agreement. Landowner 1 claims that she expressed these concerns to the land agents, but no official offers or counter-offers were discussed at this meeting. Shortly after this meeting, on May 5, 2013, Landowner 1 received a letter from Mr. Fuchs, which “claimed that the landowner provided no response to [sic] Enbridge’s offer [found in the letter dated December 26, 2012], declared expiration of that offer, proffered a check for \$374, and claimed immediate entitlement to begin pre-construction activities and construction of Flanagan South pipeline under provisions of the 1952 easement document.” (Seagle, ICC Staff Ex. 1.0, at 30).

Mr. Seagle testifies that these events raise concerns that the Enbridge entity did not provide timely and accurate information, indicating a lack of good-faith in its negotiation process with landowners. Specifically, Mr. Seagle notes concern regarding the Enbridge entity’s failure to respond to the alleged counter proposal of Landowner 1. In addition, he cites as troublesome that the Enbridge entity did not provide the landowner with information on how the pipeline would actually affect her property until April 2013. Further, Mr. Seagle expresses apprehension regarding the Enbridge entity’s termination of negotiation proceedings just one week after the landowner expressed concern about the proposed location of the pipeline. He concludes by stating that “further negotiations and discussion should have taken place and a solution that was beneficial to both parties could have been reached; however, due to the content [of] the abrupt letter, which ended negotiation, a mutually amicable solution was never reached.” (Seagle, ICC Staff Ex. 1.0, at 31).

Mr. Seagle also pointed to a second landowner who had a negative view of the negotiations (“Landowner 2”). Landowner 2 argues that from the onset of the initial contact between the Enbridge entity and the Landowner 2’s attorney, the Enbridge entity acted in a manner that lacked good faith while negotiating for easement rights on the landowner’s property. Mr. Seagle showed that Landowner 2 states that the Enbridge entity ROW agents repeatedly attempted to negotiate directly with the landowner despite the fact that they knew he was represented by counsel. Moreover, Landowner 2 asserts that the Enbridge entity did not respond to Landowner 2’s counter-proposal until eight months had passed, and then provided an unreasonably short three week time frame for Landowner 2 to respond to the Enbridge entity’s new proposal. Mr. Seagle opines that Landowner 2 states that in this final proposal, the Enbridge entity set a per acre price that was based on research that was unspecified, undisclosed and not narrowly tailored to the landowner’s specific parcel of land. (Seagle, ICC Staff Ex. 1.0, at 31-32).

Mr. Seagle states that Landowner 2 asserts that on a number of occasions between October 2012 and January 2013, Enbridge entity personnel, including the land agent Sam Weaver, made appointments to discuss the easement rights with the Landowner 2 through the attorney but failed to show up at those scheduled meetings. Mr. Seagle shows that Landowner 2 states that this indicates that Mr. Weaver did not wish to speak with Landowner 2 through an attorney, but would rather speak directly with Landowner 2 directly. In response, Landowner 2's attorney provided the Enbridge entity with a notarized statement by Landowner 2 specifically requesting that they not contact the landowner directly. (Seagle, ICC Staff Ex. 1.0, at 32-33).

Mr. Seagle states that Landowner 2's attorney claims that despite this letter, the Enbridge entity sent surveyors to the property who attempted to communicate directly to Landowner 2's son before being directed to speak only with Landowner 2's counsel. Shortly after this directive, the Enbridge entity's attorney, Gerald A. Ambrose, phoned Landowner 2's attorney. Landowner 2's attorney summarized the contents of this call in a letter dated March 13, 2013 to Attorney Ambrose, reiterating that the Enbridge entity personnel should not contact his client directly. However, shortly thereafter, Mr. Fuchs, senior ROW agent, again attempted to contact Landowner 2 directly via a letter dated March 21, 2013. The landowner's attorney stated that he left multiple voicemails and sent a letter to Mr. Fuchs in response to his letter, directing the Enbridge entity to not contact his client directly. The landowner's attorney stated that Mr. Fuchs again ignored these directives sending two additional letters dated April 9, 2013 to his client at his son's address. (Seagle, ICC Staff Ex. 1.0, at 33-34).

Mr. Seagle further relates that Landowner 2's attorney received a phone call from Mr. Weaver who emailed him a letter dated April 15, 2013 from Enbridge entity attorney Joel Kanvik. The emailed letter was a counter-proposal from the Enbridge entity that required a response from the landowner within three weeks. This counter-proposal was the first such offer made by the Enbridge entity since receiving Landowner 2's counter-offer in a letter dated August 17, 2012. In response, Landowner 2's attorney mailed a letter to the Enbridge entity questioning whether they had bargained in good faith in light of the very limited amount of time they provided for a response to the counter-proposal despite they themselves not responding for nearly eight months to the landowner's earlier counter-offer. (Seagle, ICC Staff Ex. 1.0, at 34).

Mr. Seagle concludes that "[t]he allegations made by Landowner 2 indicate that Enbridge was not actively negotiating with Landowner 2 or was attempting to bypass Landowner[2's] attorney to negotiate. Neither circumstance provide any assurance that Enbridge was acting in good faith." (Seagle, ICC Staff Ex. 1.0, at 35).

Mr. Seagle states that his discussions with the six other landowners who expressed negative views towards the Enbridge entity's manner of negotiation

confirmed the concerns of Landowner 1 and Landowner 2. He notes that these other landowners claimed to have made repeated attempts to contact the Enbridge entity's ROW agents without success. Moreover, he states that the landowners believed that the Enbridge entity had not provided enough detail regarding the exact location that the pipeline would traverse their property. In noting similarities between all eight landowners who expressed negative views regarding the negotiations, Mr. Seagle explains that each had hired an attorney to represent them during the process. These landowners claimed to experience long delays in receiving responses to their counter-offers, most dramatically when their attorneys attempted to modify language in the easement contract. Mr. Seagle acknowledges that these delays may have been due to the volume of requests and the substance of the proposed language alterations, but he concludes that "the majority of the landowners and their attorneys did not feel that Enbridge made a diligent effort to address their concerns and proposed amendments to their respective easement contracts." (Seagle, ICC Staff Ex. 1.0, at 36).

In response to his concerns regarding the allegations in the IFB letter and the results of the survey sample, Mr. Seagle explains that in Staff Data Request ENG 1.52, he requested that Enbridge Energy provide documentation for each instance in Docket No. 12-0347 where Enbridge entities "issued the original [ROW agreement] payment, a complete explanation of the easement negotiation process with that landowner, and the company's rationale for issuing such a payment versus a payment based on current market rates." (Seagle, ICC Staff Ex. 1.0, at 36). He notes that Enbridge Energy responded to this data request with a general statement discussing broadly how the Enbridge entity handled all instances on the FSP route where original existing easements were in force. Mr. Seagle deems this original response to be insufficient because he had requested detailed information regarding what had occurred in each individual instance. Ultimately, Mr. Seagle argues that Enbridge Energy's response to Staff Data Request ENG 1.52 is necessary to assure that "there were legitimate reasons for [the Enbridge entity] providing only the nominal amount set forth in the 1950s easements rather than providing a market based amount that other landowners in similar circumstances have received in Docket No. 12-0347." (Seagle, ICC Staff Ex. 1.0, at 37).

Mr. Seagle concludes by noting that Enbridge Energy has been engaged in discussions and negotiations with landowners for compensation offers to acquire easements for the proposed pipeline since March 19, 2013. In light of questions concerning the existence of good faith negotiations in a prior pipeline project, Mr. Seagle states that he cannot recommend that the Commission reach a finding that Enbridge Energy has acted in good faith in the instant proceeding. As a result, he encourages Enbridge Energy to address in its rebuttal testimony all those concerns

raised regarding issues arising during Docket No. 12-0347, and to describe any steps taken to improve its approach to landowner negotiations in the instant proceeding.

Mr. Seagle acknowledges in his rebuttal testimony, however, that Enbridge Energy addressed each of his concerns in its rebuttal testimony. (Seagle, ICC Staff Ex. 3.0, at 4). Mr. Seagle states that he was concerned that the multiple-line right easements are written in such a fashion that Enbridge Energy's payment to landowners to construct and install an additional pipeline is based on land valuations from 1952. (Seagle, ICC Staff Ex. 3.0, at 5). From Enbridge Energy's rebuttal testimony, however, Mr. Seagle understands that it is Enbridge Energy's practice to offer the current fair market price for any additional property used in construction of the proposed pipeline, instead of the 1950s valuation. (Seagle, ICC Staff Ex. 3.0, at 6). Also, the concerns he raised in his direct testimony resulted from his discussions with individuals involved in the negotiation process between Enbridge Pipelines (FSP) and the landowners of the tracts with multiple-line right easements from Docket No. 12-0347. Enbridge Pipelines (FSP) has now reached agreement with 99% of those landowners. (Seagle, ICC Staff Ex. 3.0, at 7). He therefore finds no reason to dispute Enbridge's assertion that the individual landowners' experiences discussed in his direct testimony are not indicative of Enbridge Pipelines (FSP)'s overall negotiations with landowners. (Seagle, ICC Staff Ex. 3.0, at 7). Mr. Seagle states that Enbridge Energy representatives updated him on their intent to negotiate in good faith in a meeting on July 10, 2013. (Seagle, ICC Staff Ex. 3.0, at 6).

3. Commission Analysis and Conclusion on Public Need/Public Convenience and Necessity other than Routing

The Applicant and Staff agree that the proposed pipeline will serve both a public need and the public convenience and necessity. As discussed above, Applicant presented considerable evidence tending to show that the requisite standards were met. Staff examined this evidence in detail, conducted its own analyses, and concluded that the Commission should issue a certificate authorizing Enbridge Energy to operate as a common carrier by pipeline.

Staff witness Mr. Seagle found that Applicant has demonstrated a public need for the Line 78 Pipeline based upon the needs of the general public in Illinois and throughout the country. First, he found that Enbridge's commercial agreement with Marathon Petroleum Corporation "indicates a strong demand for transporting product over this proposed pipeline" because the agreement provides for "increased pipeline transportation capacity to Marathon's Detroit refinery, which is served indirectly by Line 78, that fills the void generated by Marathon's recent upgrade to its refinery." (Seagle, ICC Staff Ex. 1.0, at 6). Second, he concluded that demand in the region exists for more crude oil shipments because of demand for more refined-oil products, exhibited by

Marathon's "almost twenty-percent expansion of its Detroit refinery" and BP's "ongoing modernization project at its Whiting" refinery in Indiana. (Seagle, ICC Staff Ex. 1.0, at 8). Third, Mr. Seagle also agreed with Enbridge Energy's assertion that transportation demand from Enbridge's customers has exceeded the capacity of Line 62 and other pipelines in the greater Chicago area to transport crude oil to the Enbridge terminals in Indiana and beyond. (Seagle, ICC Staff Ex. 1.0, at 7). Fourth, he cited the three letters Enbridge received from high-ranking employees at the BP (Indiana), Marathon (Michigan), and United (Pennsylvania) refineries, all of which discussed their support for the increased capacity that would be made available by Line 78. (Seagle, ICC Staff Ex. 1.0, at 7). Finally, Mr. Seagle does not dispute Applicant witness Mr. Sitek's conclusion that no practical alternative to Line 78 exists for safely and efficiently transporting the volumes of crude that shippers want to move from the Flanagan Terminal to northern Indiana. (Sitek, Enbridge Energy Ex. 1, at 9).

Mr. Seagle also found that Applicant had demonstrated that the pipeline would serve the public convenience and necessity. (Seagle, ICC Staff Ex. 1.0, at 12-15; Seagle, ICC Staff Ex. 3.0, at 2). With respect to the public convenience and necessity, the Commission must consider a number of factors listed in Section 15-401(b) of the Act (220 ILCS 5/15-401(b)), including any evidence presented by the Illinois Environmental Protection Agency regarding the environmental impact of the proposed pipeline or facility, any evidence presented by state or federal governmental entities regarding the proposed pipeline's impact on energy security in Illinois, any evidence presented by IDOT regarding the impact of the proposed pipeline or facility on traffic safety, road construction, or other transportation issues, and any evidence presented by the Department of Natural Resources regarding the impact of the proposed pipeline or facility on any conservation areas, forest preserves, wildlife preserves, wetlands, or any other natural resource.

IDOT provided a map highlighting sections of land that Enbridge Energy determined to be part of the route of Line 78 and also highlighting land that IDOT intended for future use. (Seagle, ICC Staff Ex. 1.0, at 12). IDOT'S concerns relate specifically to one aspect of routing, discussed *infra*. Further, in response to Staff Data Request ENG 1.26, Enbridge Energy listed the current status of permits and clearances required by various state agencies before the commencement of pipeline construction, and based on Enbridge Energy's response, Mr. Seagle concluded that Enbridge Energy is endeavoring to comply with the requirements for attaining each permit or clearance. (Seagle, ICC Staff Ex. 1.0, at 13).

Staff also found that the proposed pipeline will provide conveniences to and serve the Illinois public, such as by helping to ensure a reliable supply of refined products, and potentially mitigating high gasoline prices in the region or, at the very least, minimizing price spikes that occur when maintenance, leaks, or other issues

remove other pipelines from service because it would increase the amount of alternate sources of supplies feeding the region. The project is also expected to create 350-500 directly related construction jobs in Illinois when line installation peaks. (Seagle, ICC Staff Ex. 1.0, at 13-14).

Staff also found that there were benefits to Illinois from the proposed pipeline and facilities besides economic benefits. Staff witness Mr. Seagle noted that Enbridge Energy indicates that the Line 78 Pipeline Project is being undertaken to meet the demand for adequate and efficient transport capacity to supply the North American-sourced crude oil sought by refiners to meet the American public's need and demand for refined petroleum products, particularly for transportation fuels, and this nationwide need requires improved and additional pipeline transportation connectivity to link the growing supplies of both heavy and light crude oil from production fields in western Alberta and the Williston Basin, including North Dakota's Bakken Formation, to Midwestern and other refiners. (See Enbridge Energy Ex. 1 at 4-5). Also, this project will carry growing supplies of crude northeast from the Flanagan Terminal to refiners in Illinois, Indiana, Michigan, Ohio, Ontario, and perhaps beyond. (Seagle, ICC Staff Ex. 1.0, at 14-15).

The one issue on which there first appeared to be some dispute between Staff and Enbridge Energy – a dispute which has now been resolved based on the rebuttal testimony of Staff witness Seagle – was whether Enbridge Energy intends to negotiate in good faith with landowners on the route of Line 78. Mr. Seagle investigated complaints that Enbridge has engaged in less than good faith negotiations made by a number of landowners based on their experience in negotiating with Enbridge. (Seagle, ICC Staff Ex. 1.0, at 18-37). Mr. Seagle is now satisfied that Enbridge Energy has adequately addressed his concerns.

Based on the record, the Commission finds that a public need for the proposed service exists and that the public convenience and necessity require issuance of a certificate authorizing Enbridge Energy to operate as a common carrier by pipeline. Given these and other findings in this Order, the Commission concludes that a certificate of good standing should be issued to the Applicant.

B. Location and Routing-Related Issues

1. Enbridge Energy's Position

The Line 78 Pipeline Project consists of a new pipeline originating at Enbridge's Flanagan Terminal near Pontiac, Illinois and running generally adjacent to Line 62 in a northeasterly direction to interconnect with Enbridge pump stations, terminals, and tankage located in Griffith and Schererville, Indiana. (Amended Application, at 16).

Enbridge Energy witness John McKay testified that in developing plans for the Line 78 Pipeline project, Enbridge Energy conducted a thorough analysis of the alternatives before selecting the preferred route. First, Mr. McKay explained, Enbridge Energy considered a wide range of alternatives that would make use of existing, modified, or proposed pipeline systems. However, the use of those lines was determined to be infeasible because existing crude deliveries would be displaced on those lines and they would not provide the capacity needed without the installation of a parallel pipeline. Enbridge Energy next considered routing that would follow existing rights-of-way and other corridors so as to minimize undue burdens to the general public. According to Mr. McKay, Enbridge Energy determined that use of the Line 62 right-of-way provided a preferable alignment for the segment located between Flanagan station and approximately sixty-three miles to the northwest in Will County. (McKay, Enbridge Energy Ex. 3, at 4-5).

Mr. McKay explained that it would be difficult, however, to collocate Line 78 with the remaining portion of Line 62 without significant construction challenges and impacts upon residential and commercial areas. Mr. McKay stated that Enbridge Energy therefore chose a route alternative for the remaining segment which avoids residential properties and specialty land uses in heavily developed areas without significantly increasing the length of the proposed Line 78 pipeline. Mr. McKay contends that the chosen route of the pipeline is the most effective means of minimizing the need for new routing, is predominately located in rural areas used for agricultural purposes, and is the most feasible path for the new pipeline, thus comprising the most publicly effective and convenient way to provide the needed transportation service and capacity. (McKay, Enbridge Energy Ex. 3, at 5-6).

Over one-third of the Line 78 right-of-way will be comprised of property where Enbridge Energy possesses MLRs, for which reason the collocation of the Line 78 and Line 62 pipelines is the most effective and least burdensome method of routing the new pipeline. (Amended Application, at 17). Mr. McKay explained that the Line 78 pipeline will be generally installed at an offset of fifty feet southerly from the center line of Line 62, in order to ensure adequate space for construction and on-going maintenance activities. (McKay, Enbridge Energy Ex. 3, at 3). Applicant stated that such collocation of the lines means routing-related issues will be minimized. (Amended Application, at 17).

After selecting its route, Enbridge Energy personnel, consultants, and contractors began intensive field investigations and site inspections to refine the path of the right-of-way. Mr. McKay noted that as part of that process, Enbridge Energy personnel have met with numerous landowners, developers, Farm Bureau representatives, and public officials along the route to provide information, review plans, look at properties, and answer questions. Enbridge Energy has made over 1000 contacts with Illinois

landowners on the proposed route and held four “open house” forums, which, according to Mr. McKay, led to a number of refinements to the route plan. Mr. McKay states that Enbridge Energy is now continuing that process and is in the course of obtaining consent for the requisite civil and environmental surveys required to do detailed civil engineering work and prepare environmental permit applications. Enbridge Energy has received consent to survey from ninety-three percent of the landowners along the route. (McKay, Enbridge Energy Ex. 3, at 7-8).

According to Mr. McKay, Enbridge Energy began negotiations for compensation offers to acquire right-of-way easements for Line 78 on March 19, 2013. Enbridge Energy studied property values all along the proposed route in order to make reasonable, good-faith offers when negotiating compensation. Mr. McKay emphasized that for the basic right-of-way, Enbridge Energy seeks only easement interests, which are designed to impose only a limited burden on the properties crossed by the right-of-way and to retain for the landowner the right to fully use and enjoy the property in any way that does not endanger the safe or efficient operation of the pipeline. Mr. McKay contended that Enbridge Energy will be negotiating in good faith because Enbridge Energy will work closely with landowners to define a route, be as flexible as possible on the exact placement, when requested or reasonably practical reduce the width of the work area to avoid land or environmental features, and deal fairly with landowners. Enbridge Energy will, in Mr. McKay’s estimation, be “unquestionably fair” by basing all its purchase offers on the estimated fee value of all acreage impressed with the permanent easement, even though Enbridge Energy will actually acquire only an easement interest. (McKay, Enbridge Energy Ex. 3, at 11-12).

In his Rebuttal Testimony, Mr. McKay also addressed the testimony of Susan Shea pertaining to the plans for the South Suburban Airport (“SSA”) and IDOT’s concerns about the route of Line 78 through the anticipated footprint for the project. Mr. McKay stated that Enbridge Energy was aware of the SSA plans to the extent IDOT responded to Enbridge Energy’s requests for information and followed IDOT’s progress in implementing these plans. He said that only at the time of its intervention in these proceedings did IDOT allege that there were problems and incompatibility with the proposed route of Line 78. (McKay, Enbridge Energy Ex. 4, at 39).

Mr. McKay reiterated that as he stated in his Direct Testimony, Enbridge Energy conducted a thorough analysis of alternative routes and determined that a route for Line 78, which largely tracks the existing Line 62, was optimal. That route passed through the proposed area for the SSA. Notably, he said, Staff witness Brett Seagle agreed with the assessment that this route was optimal. (Seagle, ICC Staff Ex. 1.0, at 15-18). Mr. McKay represented that Enbridge Energy also considered its plans for Line 78 in the context of the SSA, and continued to believe the contemplated route was preferable and

most compatible with the needs of the SSA and the public and the ongoing use of existing Line 62. (McKay, Enbridge Energy Ex. 4, at 40).

Mr. McKay explained that there were four key reasons why Enbridge Energy had not altered the path of Line 78 to avoid the area designated for the proposed SSA project. First, the status of the SSA project had been and continued to be uncertain. Second, Line 62 already crosses the property that IDOT had identified as constituting the "Inaugural" and "Ultimate" Footprints. Third, pipelines can coexist with airports. Fourth, re-routing Line 78 would mean that many additional landowners would be affected by the proposed route. (McKay, Enbridge Energy Ex. 4, at 40).

Mr. McKay explained that although IDOT had made progress regarding the SSA project, there were still a number of hurdles before construction of the proposed airport would begin. He stated that as Ms. Shea acknowledged in her testimony, the master plan for the SSA project had not been finalized. (Shea, IDOT Ex. 1, at 6). It was not until May 2013 that IDOT had submitted all chapters of the master plan to the Federal Aviation Administration ("FAA"), and five out of the nine chapters were still under review. (Shea, IDOT Ex. 1, at 7). Mr. McKay pointed out that in addition, the Illinois State Archaeological Survey was in the process of completing the required archaeological field surveys; the FAA would need to prepare an Environmental Impact Statement and Record of Decision; and IDOT had not yet acquired many of the parcels of land necessary to complete the SSA project. (Shea, IDOT Ex. 1, at 7-9). Further, Mr. McKay said legislative bodies that likely include the United States Congress and the Illinois General Assembly would need to appropriate funds for the completion of the project. Although the Illinois legislature recently passed a bill providing the U.S. Department of Transportation authority to negotiate agreements and contracts for development of the SSA project (Illinois Senate Bill 0020), to his understanding the unresolved and significant issue of funding remained. He concluded that with so many intermediate steps yet to be completed, the execution of the SSA project was far from a foregone conclusion. (McKay, Enbridge Energy Ex. 4, at 40-41).

Mr. McKay also testified that Line 62 crossed through the "Inaugural" and "Ultimate" Footprints of the proposed SSA project. Thus, he pointed out that if the SSA project went forward, Enbridge Energy and IDOT would need to address the concerns raised by Ms. Shea regardless of whether Line 78 was constructed. Put another way, he stated that Line 78 would parallel Line 62 through the proposed footprint of the project, and for that reason did not raise any issues beyond those presented by Line 62. (McKay, Enbridge Energy Ex. 4, at 41).

Mr. McKay also addressed the coexistence of airports and underground pipelines. He testified that the coexistence of airports and pipelines underneath them is indeed possible, and federal regulations governing pipelines and airports address these

circumstances and how to deal with any incompatibilities. He also testified that to his understanding, airports often require their own “hydrant systems” to carry aircraft fuel or other hazardous liquids to and from locations operated by the airport. He stated that the engineering used to design these internal systems could likely be employed to reduce any risks involved with an oil pipeline running beneath airport grounds. (McKay, Enbridge Energy Ex. 4, at 42).

Mr. McKay further testified concerning the effect on landowners of rerouting Line 78 to avoid the SSA project area. He stated that rerouting Line 78 to avoid the SSA project area would have a significant effect on surrounding landowners. He pointed out that Enbridge Energy selected Line 78’s route to minimize impact to landowners as much as possible. Thus, he stated rerouting to avoid the SSA project area would mean that the pipeline would require more acreage overall, which would in turn affect a greater number of landowners. He stated that in addition, any new route for Line 78 would mean that many new landowners would be affected by the pipeline’s construction. (McKay, Enbridge Energy Ex. 4, at 42).

According to Mr. McKay, rerouting Line 78 around the SSA project also could have an adverse effect on Enbridge Energy’s ability to complete the new pipeline. He testified that because rerouting the pipeline to avoid the SSA project area would affect a significant number of new landowners, Enbridge Energy would have to initiate contact with these new landowners and begin the negotiation process anew. Mr. McKay stated that Enbridge Energy had already contacted all the landowners along the current Line 78 route several times and conducted Open House meetings for the landowners along that route. He said that for any new landowners affected by a rerouting of Line 78, Enbridge Energy would have had to initiate contact and conduct similar meetings to refine the route based on additional information it could gather. Mr. McKay concluded that starting the process of contacting new landowners at that point in time ran the risk of delaying the completion of Line 78. He stated that negotiations with landowners take time, and in the event that Enbridge Energy was unable to reach satisfactory agreements with the landowners, condemnation actions require additional time. He stated that furthermore, time-sensitive environmental inspections and surveys related to endangered species, such as the Indiana Bat, had already occurred along the current route, and such surveys for a new route would not occur again until the window for inspection opened at a later date. The bottom line, he said, was that rerouting at this point in time posed a threat to Enbridge Energy’s ability to complete the Line 78 route in a timely fashion. (McKay, Enbridge Energy Ex. 4, at 42-43).

Mr. McKay testified that as Enbridge Energy has shown in its initial response and in bi-weekly updates to Staff’s Data Request 1.49, which were included as Attachment D to his testimony, Enbridge Energy had engaged in substantial discussions with IDOT about the SSA project. He also stated that Enbridge Energy had cooperated to conduct

land surveys and exchanged information to better understand any potential problems caused by installing Line 78 beneath the proposed airport grounds. (McKay, Enbridge Energy Ex. 4, at 43).

Mr. McKay further testified that the concerns raised by Ms. Shea in her petition about the path of Line 78 were not reasons to deny the certificate. He said that Enbridge Energy is sensitive to the concerns of IDOT and would continue to have a productive relationship that focuses on finding mutually agreeable solutions to any potential issues that might arise with respect to the SSA project and Enbridge Energy's pipelines. Mr. McKay pointed out that because Line 62 already passes through the area that would be affected by the SSA project, Enbridge Energy already anticipated devoting time and resources to ensuring that both the pipelines and the airport run smoothly and effectively should the SSA project become a reality. According to Mr. McKay, the point was the concerns that Ms. Shea raised in her petition apply equally to the currently-existing Line 62, and routing Line 78 parallel to this existing line would not pose any additional difficulties. He stated that Enbridge Energy anticipated that engineers from IDOT and Enbridge Energy could develop a design and work plan for Line 78 along the existing Line 62 route that would be substantially compatible with the design and operation of the airport. (McKay, Enbridge Energy Ex. 4, at 44).

Mr. McKay testified that if the SSA project continues as planned, to ensure that Line 78 did not hinder the construction and operation of the airport, Enbridge Energy would continue to have an open dialogue with IDOT regarding the SSA plans as they progress and would work with IDOT to address any concerns that arise with respect to the construction or operation of the SSA. He stated that Enbridge Energy was willing to assist with any necessary engineering analyses to ensure that the SSA project could proceed without risk to the pipelines. He also stated that Enbridge Energy would work with IDOT to implement procedures for any issues that might arise in the secured area of the SSA. Finally, he testified that although Enbridge Energy did not anticipate any problems in this section of the pipeline, particularly given the many safety measures it described in its Line 78 application, it did recognize the need for such planning and will work closely with IDOT to plan for any contingencies. (McKay, Enbridge Energy Ex. 4, at 44-45).

Mr. McKay also addressed the testimony of John Fortmann with respect to the Illiana Expressway Project. Mr. Fortmann's testimony discusses the Illiana Expressway project and IDOT's concerns regarding Line 78's proposed route through the Illiana Expressway's planning corridor. Mr. Fortmann states that the Commission should require Enbridge Energy to modify its Line 78 route so that the road will cross it at a perpendicular angle. (McKay, Enbridge Energy Ex. 4, at 45).

Mr. McKay testified that Enbridge Energy had followed the planning progress for the Illiana Expressway and was aware of it at the time that the route for Line 78 was planned. However, he stated that it was only late in the Line 78 routing process that the preferred route of the expressway was announced. (McKay, Enbridge Energy Ex. 4, at 45).

Mr. McKay testified that he did not find the concerns expressed in Mr. Fortmann's testimony persuasive, primarily for two reasons. First, he testified the estimated cost for the road is approximately \$1.25 billion, and neither the United States Congress nor the state legislatures of Illinois or Indiana have appropriated the money to pay for this considerable expense. He also testified that even through the Illiana Expressway project had received certain regulatory approvals from federal agencies, he was also aware that three conservation groups recently filed a federal lawsuit against those agencies to block the project. (*Openlands v. United States Dep't of Transp.*, No. 1:13-cv-04950, (N.D. Ill. July 10, 2013)). Mr. McKay pointed out that these conservation groups allege the environmental impact survey upon which approval was granted failed to establish a need or lack of alternatives for the roadway. He said the lawsuit casted additional doubt not just upon the construction of the Illiana Expressway altogether, but upon exactly where the roadway will be placed if it is built. As he stated, even Mr. Fortmann notes in his testimony that "the exact right-of-way boundaries within that planning corridor are currently being refined." (Fortmann, IDOT Ex. 2, at 3). Therefore, said Mr. McKay, Enbridge Energy could not even be sure where it would need to modify its route because the exact path of the Illiana Expressway was unknown. Mr. McKay concluded that the uncertainties surrounding the expressway made it unreasonable to impose modifications to what Commission Staff agreed is the preferable route for Line 78. (McKay, Enbridge Energy Ex. 4, at 45-46).

Mr. McKay pointed out that another problem with Mr. Fortmann's position is that like the SSA project, Line 62 already crosses the property identified by IDOT for the Illiana Expressway, and it does so at a non-perpendicular angle. He said that because Enbridge Energy planned to place Line 78 parallel to the currently operating Line 62, Line 78 did not pose any additional logistical concerns beyond those that already exist with respect to Line 62. Finally, Mr. McKay represented that based upon recent landowner negotiations regarding the routing of Line 78, it was likely in any event that the location of Line 78 would be modified and that modified route would be compatible with the IDOT request that the pipeline cross the expressway at a 90° angle. (McKay, Enbridge Energy Ex. 4, at 46).

Mr. McKay also testified that in Docket No. 07-0446, Enbridge Illinois sought to build a pipeline that would run through McLean County, but the county board raised concerns that the pipeline would interfere with plans for a potential highway. (*Enbridge Pipelines (Illinois) L.L.C.*, Dkt. No. 07-0446, Order, at *48-49 (I.C.C. July 8, 2009)). He

stated that in that proceeding, Enbridge Illinois argued that the project was in the very early [*sic*] of conceptualization and that pipelines co-exist with highway developments throughout Illinois. (*Id.*). He said that the Commission accepted these arguments and authorized Enbridge Illinois to construct the pipeline along the route originally proposed. (*Id.* at *57). Mr. McKay pointed out that in that case, Enbridge Illinois agreed that if the highway were ever built, it would do what was reasonably necessary to protect the pipeline and accommodate the highway at Enbridge Illinois's expense. (*Id.*). (McKay, Enbridge Energy Ex. 4, at 47).

For all the foregoing reasons, Mr. McKay testified that the Commission should not issue a certificate to Enbridge Energy on the condition that the route cross the Illiana Expressway corridor at a perpendicular angle. He stated that following the announcement of a preferred route and the Intervention filing, preliminary express design drawings were requested and were under review. He also stated it is uncertain whether the Illiana Expressway will be constructed, and requiring Enbridge Energy to reroute Line 78 for a speculative project would not be appropriate.

Similarly, Mr. McKay testified that the Commission should not issue a certificate to Enbridge Energy on the condition that no above-ground facilities were located in the corridor. At that point in time, he said that Enbridge Energy did not anticipate the construction of above-ground structures, but Enbridge Energy may determine [*sic*] such facilities are necessary. He stated that in the event that Enbridge Energy determines that they are needed in the corridor, Enbridge Energy will work closely with IDOT to ensure the placement of the above-ground facilities does not interfere with the construction or operation of the Expressway. (McKay, Enbridge Energy Ex. 4, at 48). Mr. McKay also testified that the Commission should not issue a certificate to Enbridge Energy on the condition that Line 78 be buried at a sufficient depth to accommodate the planned expressway. He said that such a condition is unnecessary, because it is in Enbridge Energy's best interest to install Line 78 at a sufficient depth to accommodate future projects and construction in the area. (McKay, Enbridge Energy Ex. 4, at 48).

In Mr. McKay's Surrebuttal Testimony, he addressed the status of Enbridge Energy's negotiations with IDOT. Mr. McKay explained that Enbridge Energy is modifying its pipeline route and designs to 100% conform with (1) the technical recommendations of IDOT per its June 20, 2013, testimony with the Commission; (2) the published IDOT design standards and the Illiana Expressway design plans; and (3) the recommended engineering design specifications provided by the IDOT design consultant, Parker Brinkerhoff. Right-of-way acquisition is also underway for this route deviation. (McKay, Enbridge Energy Ex. 5, at 2). Mr. McKay asserted that Enbridge Energy is confident a mutually agreeable route for Line 78 can be developed utilizing the existing Line 62 corridor. According to Mr. McKay, transmission pipelines cross many other airports and these uses coexist without undue burdens. Development of the

Line 78 and 62 pipelines into the SSA master plan would avoid future right-of-way availability issues, increased costs, and delays that would be present when and if the SSA is constructed. (McKay, Enbridge Energy Ex. 5, at 3). Regarding the status of negotiations with IDOT, Mr. McKay noted that a meeting to resolve open issues was scheduled for October 7, 2013. Enbridge Energy understood that most of IDOT's concerns were engineering in nature, which Enbridge Energy believed could be easily addressed. (McKay, Enbridge Energy Ex. 5, at 3).

On October 21, 2013, Mr. McKay filed Supplemental Rebuttal Testimony responding to the comments filed by the Illinois Attorney General ("IAG") on October 8, 2013, regarding what the IAG characterized as the "adequacy and completeness" of the information included by Enbridge Energy in its Application. More specifically, Mr. McKay answers the IAG's five questions and provides the information sought by the IAG. In addition, Mr. McKay discusses an SSA avoidance reroute Enbridge is proposing to avoid critical portions of the SSA.

The IAG's first question is "How Will Enbridge Implement Adequate Pipeline Leak Detection Measures into its Construction and Operation of the Proposed Pipeline?" Mr. McKay testifies that the answer to this question and the answer to the IAG's fourth question, which is "To What Extent Does Enbridge Intend to Incorporate and Implement the NTSB's Recommendations in its Construction and Operation of the Proposed Pipeline?" (McKay, Enbridge Energy Ex. 6, at 2-3), need to be discussed together. This is because, according to Mr. McKay, the IAG's comments make clear that its concerns are based on the Findings and Recommendations contained in the NTSB's report on the 2010 Marshall, Michigan release, and therefore how Enbridge Energy will implement adequate leak detection measures into its Line 78 (the first question) is directly related to what extent Enbridge Energy intends to implement the NTSB's recommendations on the Marshall, Michigan spill (the fourth question). (McKay, Enbridge Energy, Ex. 6, at 2-3).

Mr. McKay first described the Marshall, Michigan release and why it occurred. In July 2010, Enbridge had a pipeline release of approximately 843,444 gallons of crude oil in Marshall, Michigan. Although Enbridge takes responsibility for and does not deny that the Marshall, Michigan release revealed some problems with Enbridge's processes and procedures at that time, it is important to understand the root cause of that incident. He argues that the Marshall release resulted from the failure of the anti-corrosion tape coating used when the pipeline – Enbridge's Line 6B -- was constructed in 1969. Tape was the industry's preferred corrosion-prevention technology at the time. Subsequently, it has been determined that under certain conditions tape coating will lose adhesion and disbond (separate) from the pipe. This causes "tenting" which can impair and impede cathodic protection systems used to prevent corrosion. Corrosion resulting from the tape failure caused pipe damage that allowed a release. The release was exacerbated

by operational failures in the Enbridge Control Center when Line 6B, which had been shut down as part of regular operations (the line was not in a state of continuous flow), was restarted. Various mistakes and failures in recognizing and addressing operational alerts caused a release situation to go unrecognized for too long, allowing the problem to grow. The NTSB report discusses the Marshall incident in detail. Briefly stated, the incident occurred because of the exterior corrosion discussed above, and operational errors that occurred when the line was being restored to active operation. Failure to recognize and respond to alarms and data reports produced repeated attempts to restart the line rather than a prompt shutdown. (McKay, Enbridge Energy Ex. 6, at 3-4).

Mr. McKay then explained why the operational and procedural changes Enbridge Energy has made as a result of the Marshall, Michigan release "will prevent the failure mechanisms experienced at Marshall, Michigan." In particular, Mr. McKay stated that unlike Line 6B involved in the Marshall, Michigan release, the Line 78 pipe will have its corrosion-protection epoxy coating fusion bonded to the pipe at the factory, where all pipe sections will be inspected by and for Enbridge Energy. In addition, Mr. McKay explains that the manufacturer will use double submerged arc welding or "DSAW" to produce the seam welds on Line 78. (McKay, Enbridge Energy Ex. 6, at 4).

As for the actions being taken by Enbridge Energy to incorporate and implement in Line 78 the NTSB's recommendations stemming from the Marshall, Michigan release are concerned, Mr. McKay says that these responses are the same that were approved by the Commission as set forth in detail at pages 12-14 of its Docket No. 12-0437 Order and as specifically ordered at page 21 of the that Order. Those responses are:

- A. With respect to Pipeline Integrity, Enbridge has already or will take the following actions:
- The external tape coating applied to Line 6B, which was the root of the failure, will not be utilized on the proposed pipeline;
 - Implementation of changes to the integrity management program to assure improvements to long-term monitoring and mitigation policies;
 - Changes to inspection frequencies, repair methodologies, quality assurance programs, detailed procedure enhancements, additional technologies, and organizational restructuring;
 - Increased integration of planning and issue resolution formalized through new committees and planning processes;

- Re-organization of the functional areas responsible for pipeline and facility integrity resulting in a doubling of the number of positions dedicated to integrity;
 - An increase in pipeline integrity management spending in 2011 and 2012 resulting in an increase in the number of in-line inspection programs and integrity digs (including excavation, examination, maintenance and repair by welded sleeve or pipe segment replacements);
 - Strengthened focus on the tools, technologies, and strategies to ensure pipeline networks perform safely, reliably, and in an environmentally responsible manner; and
 - Implementation of process and procedure enhancements to ensure that a feature similar to the one that led to the Line 6B Marshall incident will be identified and repaired.
- B. Regarding its Leak Detection Program, Enbridge plans the following actions:
- Implementation of additional leak detection analysis procedures;
 - Establishment of a Pipeline Control Systems and Leak Detection department;
 - Enhancement of the Leak Detection Analyst Training Program;
 - Implementation of a Leak Detection Instrumentation Improvement Program; and
 - Implementation of changes to the Pipeline Control Systems to improve controller decision support systems.
- C. Enbridge will also augment its pipeline control capacity, including Control Center Operations ("CCO"), through the following actions:
- Development and implementation of corporate and CCO specific "Golden Rules" (safe operating, when in doubt -- shutdown, emergency procedures);
 - Revision of and enhancement to all procedures pertaining to decision-making, handling pipeline start-ups and shutdowns, leak

detection system alarms, communication protocols, and suspected column separations;

- Revisions to documents associated with the newly revised processes and procedures;
- Augmentation to CCO staff, technical support, engineering and operator positions and enhancement to the organizational structure to better support operators and to manage span of control and workloads;
- Enhancement of training programs in all areas;
- Consolidation, in November 2011, of the new CCO for operation of most Enbridge liquid pipelines in North America to Edmonton, Alberta, Canada; and
- Emphasis on Enbridge's clear message that it operates its pipelines safely and if, for any reason, the pipelines cannot be operated safely, they will be shut down and will not be restarted until Enbridge knows exactly what is going on.

D. In addition to the operational changes noted above, Enbridge also plans to implement changes to its Pipeline Public Awareness and Emergency Response Programs by:

- Development of an online and in-person training tool to provide Enbridge-specific information to emergency responders in its host communities;
- Addition of Community Relations positions in key locations along Enbridge liquid pipeline routes;
- Increased spending (\$50 million) between 2012 and 2013 to improve equipment and capabilities, develop better tools to deal with particular waterborne spills, and improve training programs;
- Implementation of specialized training for a cross-business unit response team, to respond to large-scale events anywhere in North America that would require more resources than a single Enbridge liquid pipeline operating region or business unit could provide;
- Conducting an emergency-response preparedness assessment to identify additional strategic equipment purchases to enhance

capabilities to more rapidly respond and contain a significant release anywhere in the Enbridge system; and

- Additional personnel in each Enbridge liquid-pipeline operating region to improve emergency-preparedness planning and coordination.

Also, as Enbridge Pipelines (FSP) did in the Docket No. 12-0437 proceeding, Mr. McKay offers the following commitment by Enbridge Energy for the Line 78 pipeline:

The new Line 78 pipeline will benefit from the heightened importance and top priority status placed on integrity management because the pipeline will be designed and constructed with the application of the latest technologies that have been established to improve overall pipeline reliability;

Because Enbridge has strengthened and improved the overall reliability of the pipeline system, the Line 78 pipeline will not be exposed to the same conditions that caused the Line 6B Marshall incident; and

All of the enhancements implemented by Enbridge following the July 2010 Michigan incident and NTSB Recommendations with respect to the Pipeline Control, Leak Detection, Pipeline Public Awareness Program and Emergency Response Preparedness are appropriate to and will be applied in a timely manner by Enbridge in its prevention and risk mitigation of the Line 78 pipeline.

(McKay, Enbridge Energy Ex. 6, at 5-7).

Mr. McKay summed up Enbridge Energy's overall reaction to the NTSB report on the release at Marshall, Michigan by testifying that "Enbridge accepts the accident investigation facts and conclusions of the NTSB report (but not its characterizations) and Enbridge will implement all of the company-related recommendations that are included in the report." (McKay, Enbridge Energy Ex. 6, at 7-8).

Mr. McKay also responded to the IAG's second question, which is "What federal, state, and local agency 'Environmental Protection Standards' does Enbridge believe are applicable to the construction and institution of the proposed pipeline?" He testifies that during the development of Line 78, Enbridge Energy will be coordinating with, submitting applications to, and receiving permits or authorizations as required from, the federal, state, and local agencies listed in Attachment C to his testimony. He avers that through consultation and the permit application process, the specific standards required

by the federal, state and local agencies will be identified, and Enbridge Energy will prepare permit applications for Line 78 that incorporate these standards, including the environmental protection standards specified by the agencies. He represents that Enbridge Energy will agree to take the actions necessary to meet the agencies' environmental protection requirements or other requirements so that the permits or authorizations are issued. Finally, he represents that Enbridge Energy will then adhere to the permit requirements and environmental protection standards included in the application materials during construction and restoration activities. (McKay, Enbridge Energy Ex. 6, at 9-10).

Mr. McKay also addressed the suggestion by the IAG that Enbridge Energy had been remiss in not obtaining coverage from the Illinois Environmental Protection agency for storm water discharges from construction site activities. He points out that the final rule of the federal Environmental Protection Agency ("EPA"), effective June 12, 2006, exempts storm water discharges of sediment from construction activities at oil and gas sites from the requirement to obtain a National Pollutant Discharge Elimination System ("NPDES") permit except in very limited instances not applicable here. Accordingly, Mr. McKay testifies, Enbridge Energy is exempt from having to obtain coverage from the Illinois Environmental Protection Agency under its "National Pollutant Discharge Elimination system General NPDES Permit for Storm Water Discharges from Construction Site Activities." However, Mr. McKay also testifies that on each of its construction projects, including Line 78, Enbridge Energy implements an Environmental Protection Plan covering a wide range of environmental issues, including soil erosion and sediment control during and after construction. In addition, he notes, Enbridge Energy will be applying for the NPDES permit for hydrotest water discharges. Finally, Mr. McKay points out that the EPA rule he described is not intended to interfere with the state's authority to regulate any discharges, pursuant to state law, through a non-NPDES permit program. On Line 78, he testifies, the non-NPDES erosion control regulations in effect are those of Will County, and Enbridge Energy is coordinating with the County to fulfill their storm water permit requirements. (McKay, Enbridge Energy Ex. 6, 10-11).

Mr. McKay also responded to the IAG's third question, which was "How Will the Regulators and Public Know that Enbridge's Emergency Response Plans for Proposed Pipeline are Adequate?" He testified that effective August 30, 2013, Enbridge's new Integrated Contingency Plan ("ICP") serves as the emergency response plan for Enbridge U.S. Liquids Pipelines. According to Mr. McKay, the ICP follows an industry recognized format for response planning, and received its five year approval from the Pipeline and Hazardous Materials Safety Administration ("PHMSA") on July 11, 2013, which was a significant milestone. Indeed, Mr. McKay represented that Enbridge's plan was the first and only industry plan to undergo an extensive review process, which

included the U.S. EPA, the U.S. Coast Guard and Canada's National Energy Board. Mr. McKay further testified that importantly, in light of the IAG's concerns about the Marshall, Michigan release incident, the ICP addresses the gaps identified in the NTSB report on the 2010 Line 6B incident and strengthens Enbridge's emergency capability to respond effectively to any incident that might occur on Enbridge's pipelines. He explained that the ICP is based on the Incident Command System ("ICS"), which promotes an integrated and coordinated response. He testifies that Enbridge's Regional Incident Management Teams ("IMT"), and its Spill Management Teams ("SMT"), along with business support groups, will use the ICP to effectively manage an emergency. Mr. McKay also pointed out that a big update to the new ICP is the identification of Oil Spill Response Organizations ("OSROs") or key contractors to respond at the time of an incident, and that these OSROs have been identified for each geographical response zone in the U.S. Finally, Mr. McKay testifies that Enbridge's ICP demonstrates that adequate resources are in place to respond to a worst-case release scenario in each Geographical Response Zone within required response times. (McKay, Enbridge Energy Ex. 6, at 11-12).

Mr. McKay also responded to the IAG's fifth question "What Measures Will Enbridge Employ to Protect this State's Natural Resources During its Construction and Operation of the Proposed Pipeline?" He says that in asking this question, the IAG indicates that it is particularly concerned with what measures Enbridge Energy will take for crossing the Kankakee River. Mr. McKay testified that Line 78 will cross the Kankakee River within the boundaries of the Kankakee River State Park. He stated that the location of the crossing is directly adjacent to the existing Enbridge Spearhead Pipeline (Line 62) and approximately 1.9 miles south of Highway 85. He stated that a construction plan has been developed to avoid negatively impacting aquatic resources (including fresh water mussels) associated with the Kankakee River by installing this section of pipeline via a horizontal directional drill ("HDD") that spans beneath the entire river channel, including the directly adjacent resource areas. He testified that this HDD will minimize impacts to the Kankakee River State Park and the aquatic habitat because ground disturbance will not occur other than what is required for completing the HDD, hydrotesting the pipeline, and clearing for aerial inspection. He pointed out that field surveys at the Kankakee River, including surveys for biological, archaeological, and threatened and endangered species, have been performed, as they have or will be for the entire project footprint. He says that the results of these surveys will be included in the applicable permit applications. In addition, he noted that Enbridge Energy has initiated and will have ongoing consultations with the regulatory agencies which will provide permits or authorizations required to construct the project and the crossing of the Kankakee River and Kankakee River State Park. He stated this will include coordination with the USFWS, USACE, Illinois EPA, and the Illinois DNR to insure that protection of natural resources within the State of Illinois is an integral component of the

projects' development from inception to final restoration. He testifies that coordination with the Illinois DNR will include submitting plans for review under the CERP (Comprehensive Environmental Review Process) for all work proposed within the limits of the Kankakee River State Park. Enbridge Energy will be submitting permit applications to these agencies, as required to receive permits or authorizations to complete the crossing. (McKay, Enbridge Energy Ex. 6, at 12-14). Enbridge Energy commits to provide the Commission with copies of those permits or authorizations upon receipt.

In addition to responding to the five questions propounded by the IAG, in his Supplemental Rebuttal Testimony Mr. McKay addressed several issues regarding whether Line 78 should be rerouted to avoid critical portions of the proposed SSA. Mr. McKay testified that Enbridge Energy is now proposing what it calls the SSA avoidance reroute. The reroute is designed to avoid the portion of the proposed airport that IDOT designated as the "Pipeline Exclusionary Zone." He explained that the originally proposed route of Line 78 would not have crossed the inaugural runway, but would have crossed runways and taxiways planned for the second phase of the SSA. Mr. McKay then related that after discussions with IDOT representatives, Enbridge Energy is electing now to route Line 78 around the "Pipeline Exclusionary Zone" such that the pipeline avoids these future runways and taxiways. (McKay, Enbridge Energy Ex. 6, at 14). In the Verified Statement of John McKay, filed March 28, 2014, in this docket, Mr. McKay described and attached revised Exhibits B and C reflecting changes because of the SSA reroute of Line 78 to the original Exhibits B and C attached to Enbridge Energy's Application. Mr. McKay also filed a new exhibit, Exhibit C-1, which is a redlined version of the original Exhibit C to reflect the changes in the legal description of the route. In addition, on March 28, 2014, Enbridge Energy filed an Amended Application which includes these revised Exhibits B, C and C-1 and certain other minor changes required by the SSA reroute. Because of this proposed pipeline rerouting, Mr. McKay concluded that Line 78 will not conflict with the future runways and taxiways of the SSA and thus will avoid any need for the case-by-case, in depth engineering analysis IDOT has proposed. (McKay, Enbridge Energy Ex. 6, at 14).

Although as of the date of Mr. McKay's Supplemental Rebuttal Testimony, Enbridge Energy had not shared the new proposed route with IDOT, Mr. McKay testified that Enbridge Energy had notified landowners on the new proposed route, including IDOT where it owns tracts on the new route. Moreover, Mr. McKay explained why Enbridge Energy believes that the reroute will meet IDOT's requirements. He states that the "Pipeline Exclusionary Zone," which IDOT created, is avoided by the proposed Line 78 reroute, and thus the reroute does what Ms. Shea, testifying for IDOT, requested, namely, that "the pipeline at least be re-routed outside of the area depicted in yellow on Exhibit F [the Pipeline Exclusionary Zone]." In addition, Mr. McKay testified

that although the reroute will not avoid the future, ultimate airport boundary, Enbridge Energy will accommodate IDOT's concerns there as well. (McKay, Enbridge Energy Ex. 6, at 15). Enbridge Energy's understanding is that IDOT has now agreed to and accepted this new route.

Mr. McKay also testified that Enbridge Energy is addressing IDOT's concern regarding the SSA's access road. In her testimony, IDOT witness Ms. Shea had raised the concern that the proposed Line 78 route will cross underneath the proposed SSA Access Road. (Shea, IDOT Ex. 1, at 12). Mr. McKay pointed out in response that Enbridge pipelines cross roads, including those owned and maintained by IDOT, throughout the State. To receive approval by IDOT to cross an existing road, he says Enbridge applies for the appropriate permit with IDOT using the IDOT Bureau of Design and Environmental Manual. The SSA Access Road is not currently built, but Mr. McKay testified that Enbridge Energy will design the section of the pipeline crossing under the proposed SSA Access Road to be in compliance with current IDOT permit requirements. Although he noted Enbridge Energy cannot obtain a permit for a road that is not yet built, he testified that Enbridge Energy will work with IDOT to ensure that this future crossing and other future crossings, such as the proposed Illiana Expressway, meet with permit requirements as if a formal permit process were applicable. (McKay, Enbridge Energy Ex. 6, at 15-16).

Mr. McKay also made clear that Enbridge Energy was willing to make operational modifications where its pipeline is within the ultimate airport boundary. He stated that discussions with IDOT, although not complete, have included proposals addressing the concerns raised by Ms. Shea regarding FAA regulations, construction and maintenance, and overall security within the proposed security fence. He also pointed out that Enbridge recently constructed a pipeline through an airport in Livingston County, Michigan, wherein many of these same concerns were addressed. In short, Mr. McKay testified, Enbridge Energy has committed to IDOT that it is willing to enter into an agreement addressing IDOT's operational and security concerns within the expanded airport footprint. (McKay, Enbridge Energy Ex. 6, at 16).

The final set of issues addressed by Mr. McKay in his Supplemental Rebuttal Testimony are Enbridge Energy's responses to four Staff data requests – ENG. 1.56, ENG 1.57, ENG 1.58, and ENG. 1.59. These responses were included in Mr. McKay's Supplemental Rebuttal Testimony by prearrangement with Staff.

In ENG 1.56, the Staff asked whether the informational packet had been sent to landowners along the SSA avoidance reroute and, if so, when the packet was sent. Mr. McKay testifies that as required under Part 300, Section 300.30 of the ICC's rules of Practice and Procedures, the ICC Information Packet was sent to all landowners of tax record along the proposed SSA avoidance reroute, as currently designed, on the

following dates – February 15, 2013 (U.S. Certified Mail), October 2, 2013 (FedEx), and October 10, 2013 (FedEx). Mr. McKay also testifies that landowners located along the SSA avoidance reroute, where the origination and termination of this reroute ties back in with the proposed Line 78 route, were sent the Informational Packet at the time the Petition was filed on February 15, 2013. Other landowners, identified as the reroute was designed, deviating away from the originally proposed route through the SSA, were sent the Informational Packet in October 2013. Additionally, he says, mailings containing the Informational Packet were resent on October 16, 2013, to one landowner, owning one parcel abutting this reroute due to incorrect or inadequate mailing information provided in tax records. (McKay, Enbridge Energy Ex. 6, at 17).

In ENG 1.57, Staff asked that Enbridge Energy provide certain information about landowners affected by the reroute and also requested that monthly written updates of this information be provided to Staff through the duration of the discovery phase of the docket. In response, Mr. McKay provides a landowner line list associated with the SSA avoidance reroute and, separately, a spreadsheet summarizing the negotiation status with landowners affected by the reroute. He indicated there are approximately 20 tracts, owned by 14 landowners, crossed by the proposed SSA avoidance reroute. Mr. McKay also represents that in the event further route adjustments are necessary in the vicinity of this reroute, Enbridge Energy has distributed project information and the ICC Informational Packet to an additional 110 abutting properties. Finally, Mr. McKay pledges that updates to this information will be provided monthly to ICC Staff through the duration of the discovery phase of this docket. (McKay, Enbridge Energy Ex. 6, at 18).

In ENG 1.58, Staff asked whether Enbridge Energy made a purchase offer for the easements, rights-of-way, or other estates or interests in real property to every landowner for all parcels along the reroute of the project? In response, Mr. McKay testifies that as of the time of his testimony, Enbridge Energy had not made a purchase offer for easements, rights-of-way, or other estates or interests in real property to every landowner of all parcels along the SSA avoidance reroute because Enbridge Energy was then in the process of obtaining survey permissions, and as of the time of the testimony had received permission on 16 of the 20 tracts currently crossed by the proposed SSA avoidance reroute (80%). Mr. McKay testifies that Enbridge Energy initiated civil and environmental surveys on the reroute on October 8, 2013. He also testifies that Enbridge Energy then anticipated that detailed discussions and negotiations for compensation offers for land rights with landowners along this reroute would begin on November 1, 2013. Mr. McKay represents that as these land negotiations progress, Enbridge Energy will provide Staff with updates as that information became available. (McKay, Enbridge Energy Ex. 6, at 19).

In ENG 1.59, Staff asked that Enbridge Energy describe any efforts made by Enbridge Energy to provide a purchase offer that was not identified in response to ENG 1.58, and also provide a narrative explanation of the then current status of the negotiations. In response, Mr. McKay points out that his answer to ENG 1.58 also provides the answer to ENG 1.59. (McKay, Enbridge Energy Ex. 6, at 19).

2. The Illinois Department of Transportation's Position

Susan Shea, Director of Aeronautics for IDOT, testified regarding Line 78's proposed route through the site designated by IDOT for the construction of the SSA. According to Ms. Shea, the SSA will provide improved access to air transportation to Chicago's south suburban market, and in July 2002, the FAA issued a "Record of Decision" approving the site that IDOT selected for the SSA in Will County. (Shea, IDOT Ex. 1, at 3-4). Ms. Shea testifies that within the SSA project site, IDOT has identified the geographical boundaries for the development of the inaugural airfield, which she refers to as the "Inaugural Footprint," and the boundaries for longer-term development and expansion of the airfield facilities, referred to as the "Ultimate Footprint." (Shea, IDOT Ex. 1, at 5). The "Inaugural Footprint" will include such facilities as a 9,500-foot primary runway, a passenger terminal with at least four gates, a 5,000-foot general aviation runway, an air traffic control tower, and cargo aircraft facilities. (Shea, IDOT Ex. 1, at 5). Ms. Shea states that IDOT, in coordination with the FAA, has prepared an "Airport Layout Plan" that shows the planned locations of the "Inaugural" and "Ultimate" airfield facilities and has prepared an "Airport Access Plan" that analyzes expected traffic impacts and roadway modifications resulting from the inaugural airport. (Shea, IDOT Ex. 1, at 5-6).

Ms. Shea further testifies that, as of May 2013, IDOT submitted a nine-chapter "airport master plan" to the FAA, which has accepted or approved four chapters and is currently reviewing the remaining five chapters, and IDOT has also submitted two environmental reports to the FAA, which has accepted one report and is in the process of finalizing its formal acceptance of the other report. (Shea, IDOT Ex. 1, at 6-7). Ms. Shea anticipates that, once the FAA issues a Record of Decision addressing the SSA's "master plan," IDOT will move forward with the SSA's final design, development, and construction. (Shea, IDOT Ex. 1, at 8). In June 2013, according to Ms. Shea, Illinois House Bill 215 appropriated "over \$71 million" for IDOT's "land acquisition activities in connection with the SSA," and Senate Bill 20 affirmed IDOT's authority, among other things, to establish planning boundaries, acquire land, and carry out construction in relation to the SSA project. (Shea, IDOT Ex. 1, at 8). Lastly, Ms. Shea testifies that IDOT has acquired about 52% of the 5,800 acres in the Inaugural Footprint, which amounts to 79 parcels totaling 2,420 acres; has instituted condemnation proceedings for 11 more parcels in the Inaugural Footprint totaling 658 acres; and has acquired an

additional 203 acres in the Ultimate Footprint while other parcels are in active negotiations or being prepared for condemnation. (Shea, IDOT Ex. 1, at 9).

According to Ms. Shea, IDOT is concerned that under the proposed pipeline route Line 78 “will adversely impact the planned airport facilities and be incompatible with long-term development of the SSA,” explaining that the route runs from the “southwest portion of the project site near Illinois Route 50 and North Peotone Road to the northeast portion of the site near Pauling Road and Elms Court Lane,” crossing both the Inaugural and Ultimate Footprints. (Shea, IDOT Ex. 1, at 9). Within the Inaugural Footprint, Ms. Shea testifies, eight parcels of land lie on the proposed pipeline route, and of these eight, six are currently owned by IDOT, one is subject to pending condemnation proceedings, and the last one is land that IDOT intends to acquire. (Shea, IDOT Ex. 1, at 10). Within the Ultimate Footprint, Ms. Shea states, the proposed pipeline route will affect 33 parcels, which IDOT currently owns or intends to acquire. (Shea, IDOT Ex. 1, at 11). When asked to identify the SSA facilities that the proposed pipeline route would impact, Ms. Shea answered that the route would cross in the Inaugural Footprint “the primary access road for the SSA” and would cross in the Ultimate Footprint “three proposed runways to the north of the inaugural runway, as well as taxiways and various associated safety areas.” (Shea, IDOT Ex. 1, at 11-12).

Ms. Shea contends that constructing Line 78 along the proposed route through the SSA site would “very likely require modification or relocation” of the pipeline in the future “to accommodate the construction, operation, and maintenance of SSA facilities.” (Shea, IDOT Ex. 1, at 12). She explains that the portion of pipeline crossing under “the proposed SSA access road” in the Inaugural Footprint, and under any other roadways, “would likely need to be modified or relocated to avoid conflicts with the use of the land for roadway purposes.” (Shea, IDOT Ex. 1, at 12). Ms. Shea then notes that IDOT issues permits for pipelines that cross underneath “public ways used for vehicular travel” and has established “design guidelines for pipeline crossings under roadways.” (Shea, IDOT Ex. 1, at 12). Ms. Shea further testifies that IDOT is concerned about Line 78 crossing northern runways proposed for construction in “several years” in the Ultimate Footprint because “any pipeline facility running underneath the runways would have to be substantially modified or relocated to accommodate the construction and use of the runways.” (Shea, IDOT Ex. 1, at 13).

Lastly, Ms. Shea recites IDOT’s additional concerns about the impact of the proposed route as follows:

- constructing the SSA will include substantial earthwork and re-grading that will likely impact underground pipelines and other utilities;

- granting ground access to the pipeline within the airport security fencing, for instance, for routine maintenance “would require special coordination and sophisticated safety and security measures,” which would include “security procedures such as issuance of security badges and on-airport escorts”;
- closing “runways or taxiways and the issuance of a Notice to Airmen through the FAA” may occur pursuant to federal regulations depending on the location and nature of any work on the pipeline;
- engaging in “long-term or large-scale maintenance” or responding to a “pipeline-related emergency” could cause “prolonged closure of airfield facilities and create potential public safety risks”; and
- increasing the capacity to transport petroleum products through Line 78 will, in turn, increase the risk of “substantial disruption at the SSA” in the event of a pipeline emergency.

(Shea, IDOT Ex. 1, at 14). Ms. Shea concludes that, unless “the proposed route is altered to avoid conflict with the planned runways and other planned airfield facilities,” it would be “very difficult for the proposed pipeline and the SSA to co-exist.” (Shea, IDOT Ex. 1, at 14). She ends her testimony by requesting on behalf of IDOT that, “if the Commission grants Enbridge a certificate of good standing, it be granted subjected to re-routing the pipeline outside of the SSA site.” (Shea, IDOT Ex. 1, at 15).

John Fortmann, the Deputy Director of Region One of the Division of Highways of IDOT, testified regarding Line 78’s proposed route across the “Illiana Expressway Planning Corridor.” Mr. Fortmann is responsible for managing and overseeing the Illiana Expressway project, which is a new east-west interstate expressway connecting I-65 in Indiana with I-55 in Illinois. (Fortmann, IDOT Ex. 2, at 2). He testifies that on January 17, 2013, the Federal Highway Administration issued a Record of Decision identifying a preferred 2,000-foot-wide “planning corridor” for the development and construction of the Illiana Expressway. (Fortmann, IDOT Ex. 2, at 3). According to Mr. Fortmann, the Illiana project is entering the second-tier planning process, which covers issues such as “the exact expressway alignment, interchange types and locations, local road connectivity, overpass and underpass locations, and environmental protection issues.” (Fortmann, IDOT Ex. 2, at 4). Lastly, Mr. Fortmann states that the 2010 Illinois General Assembly enacted *Public Private Agreements for the Illiana Expressway Act*, 605 ILCS 130/1 *et seq.*, which authorizes IDOT to plan and develop the Illiana Expressway, enter public-private partnership agreements, and acquire land for the project through means such as “quick-take condemnation proceedings,” which was authorized by a 2012 amendment to the Act. (Fortmann, IDOT Ex. 2, at 4-5).

Mr. Fortmann testifies that Line 78's proposed route crosses the Illiana Planning Corridor, and he recites three ways to mitigate the risk of Line 78 having an adverse impact on the Illiana project:

- adjust the pipeline route so that it crosses the Illiana Planning Corridor at a perpendicular angle "in order to reduce the length of pipeline embedded under the proposed expressway right-of-way";
- design Line 78 so that no "above-ground pipeline-related facilities" are located within the Illiana Planning Corridor; and
- construct Line 78 "at a depth sufficient to accommodate future expressway construction, operation, and maintenance anywhere within the Corridor."

(Fortmann, IDOT Ex. 2, at 5-6).

According to Mr. Fortmann, unless the pipeline is constructed and laid out in this manner, the consequence will "very likely" be "costly and burdensome modifications or relocation in the future to accommodate the construction, operation, and maintenance of the Illiana Expressway." (Fortmann, IDOT Ex. 2, at 6). Mr. Fortmann concludes that the Illiana Expressway and Line 78 can coexist if the pipeline is constructed as he proposes, and he requests on behalf of IDOT that the Commission make any certificate of good standing subject to the condition that Enbridge Energy construct Line 78 as he proposes: at a perpendicular angle across the corridor, with no above-ground facilities, and at a sufficient depth. (Fortmann, IDOT Ex. 2, at 6).

3. The Illinois Attorney General's Position

Intervenor the Illinois Attorney General ("IAG") filed comments regarding "the adequacy and completeness of the information" included by Enbridge Energy in its Application for a Certificate in Good Standing from the ICC. (IAG, at 1). More specifically, basing its comments "on the Findings and Recommendations contained in the NTSB's report on the 2010 Marshall, Michigan release into the Kalamazoo River from an existing Enbridge pipeline ("NTSB Report")" (*id.*), the IAG states that it "seeks to ensure that Enbridge is required to take all steps necessary to construct and operate its pipeline in a manner that is protective of human health and the environment, consistent with the duties and obligations prescribed by the Illinois Constitution and the legislature." (IAG, at 2).

The IAG submitted its comments largely "in the form of questions." (IAG, at 1). The first question is "How will Enbridge implement adequate pipeline leak detection measures into its construction and operation of the proposed pipeline?" (IAG, at 2). On this question, the IAG notes that "[a]lthough Enbridge states in its Application that 'in the last two years, Enbridge has substantially expanded the resources devoted to pipeline

control, leak detection, and operator training[...]', it fails to identify what these resources are or what changes have been made to the way the company's employees are trained to respond to possible pipeline leaks." (IAG, at 3). Accordingly, the IAG "requests that the ICC seek further details from Enbridge regarding how its purportedly enhanced leak detection measures will work and why those measures would serve to prevent possible future leaks from the Proposed Pipeline." (*Id.*).

The second question posed by the IAG is "What federal, state, and local agency 'environmental protection standards' does Enbridge believe are applicable to the construction and institution of the proposed pipeline?" The IAG points out that Enbridge Energy's assertions that it will meet the environmental protection standards of federal, state, and local agencies having jurisdiction is vague and ambiguous regarding the term "environmental protection standards" and therefore "does not serve to inform either the ICC or the people of this State regarding what standards Enbridge will follow to protect the environment as it first constructs, and, later, operates the Proposed Pipeline." (IAG, at 3). The IAG particularly notes that Enbridge Energy's Exhibit E "fails to include any mention of the need to obtain coverage from the Illinois Environmental Protection Agency under its 'National Pollutant Discharge Elimination System General NPDES Permit for Storm Water Discharges from Construction Site Activities'." (IAG, at 4). The IAG requests that the ICC require Enbridge Energy specifically to list all environmental protection standards it has identified as being applicable to the project. (*Id.*).

The third question the IAG asks is "How will the regulators and public know that Enbridge's emergency response plans for the proposed pipeline are adequate?" The IAG complains that the Application does not indicate where emergency response service contractors are located "and whether they are located close enough to the Proposed Pipeline to avoid a repeat of the Marshall Release." (IAG, at 5). Thus, the IAG recommends that Enbridge Energy provide the Commission with "specific information regarding the availability of the emergency response personnel and equipment which it will rely upon to respond to any future pipeline release." (IAG, at 5).

The IAG's fourth question is "To what extent does Enbridge intend to incorporate and implement the NTSB's recommendations in its construction and operation of the proposed pipeline?" The IAG complains that it is unclear what Enbridge Energy's statement that it will follow the NTSB's recommendations with respect to pipeline control, leak detection, pipeline public awareness program and emergency response preparedness "would mean in practice." (IAG, at 5). Therefore the IAG asks for Enbridge Energy "to provide the ICC with specific information concerning how these recommendations will be implemented." (IAG, at 5).

The IAG's fifth and final question is "What measures will Enbridge employ to protect this State's natural resources during its construction and operation of the

proposed pipeline?" The IAG states that in its Application, Enbridge Energy fails to note that the point at which the Proposed Pipeline crosses the river (1) is located within the boundaries of the Kankakee River State Park; (2) is approximately 15 miles upstream from the Des Plaines Fish and Wildlife Area State Park; and (3) is in close proximity to ravine areas which have been classified by the Illinois Natural History Survey as hosting "unique" or "highly valued" species of fresh water mussels that are listed as either endangered or threatened by the State of Illinois. (IAG, at 6). The IAG asks that Enbridge Energy detail the measures it will employ to protect these natural resources during its construction and operation of the proposed pipeline.

The bottom line for the IAG is that it asks that the Commission "require Enbridge to address the issues raised herein before making a decision on the Application, in order to protect human health and the environment from the harmful effects of a potential release. . . ." (IAG, at 6).

4. Staff's Position

In his Direct Testimony, Staff witness Mr. Seagle states that no problems exist with the proposed route of Line 78. He notes that the "the chosen route passes mostly through rural, undeveloped land and minimizes the impact on major roadways, high density population areas, and environmentally sensitive areas." (Seagle, ICC Staff Ex. 1.0, at 16). Moreover, Mr. Seagle explains that Enbridge Energy has redesigned its route in multiple instances to accommodate landowner concerns. Similarly, Mr. Seagle states that Enbridge Energy evaluated at least four potential alternatives before settling on the proposed route presented in this docket precisely because it closely mirrors approximately seventy-five percent of the corridor of existing Line 62. This ensures that the right-of-ways for both pipelines abut each other rather than being spread out and crossing Illinois in multiple unique ways. (Seagle, ICC Staff Ex. 1.0, at 16).

Mr. Seagle describes meetings he had to discuss the route selection with Enbridge Energy employees Mike Murray, Curt Proud and Matt Comeaux. He notes that the group viewed electronic aerial maps of the entire proposed pipeline that highlighted every possible concern that Enbridge Energy considered in the routing process, including wetlands, archeological sites, roads, buildings, elevation changes and other items of concern. Mr. Seagle explains that the three employees provided very detailed explanations for each place at which the proposed line deviated from the route of the paralleling Line 62. In all such cases, the deviations were necessitated by a physical barrier or some other legitimate concern. (Seagle, ICC Ex. 1.0, at 15-17).

In light of the information provided by Enbridge Energy employees, Mr. Seagle supports the original route selection for Line 78. He notes that by largely paralleling existing Line 62, Enbridge Energy has chosen the most efficient route when considering

its impact on landowners. Mr. Seagle states that, “[w]hile there are sometimes multiple ways to reroute the pipeline, Enbridge Energy had given careful thought to its options and chose the one that it believed was the best considering aspects of safety, operations, cost, and land impact.” (Seagle, ICC Staff Ex. 1.0, at 17). He states that future discussions with landowners may require minor changes to the proposed route to accommodate existing landowner structures or personal or business uses of the land by said landowners. (Seagle, ICC Staff Ex. 1.0, at 17). Staff recommends, however, that all of IAG’s concerns also be addressed.

Finally, Mr. Seagle addresses the concerns raised in the direct testimony of the IDOT witnesses. Ms. Shea states that the proposed new pipeline may impact the planned airport facilities of the South Suburban Airport. Mr. Fortmann states that Enbridge Energy should adjust its proposed route for the proposed pipeline to cross the Illiana Planning Corridor. Mr. Seagle recommends that Enbridge Energy work with IDOT to establish a mutually beneficial agreement. Mr. Seagle explains that route alterations proposed by the IDOT witnesses could potentially cause Enbridge Energy to withdraw its request for a certificate of eminent domain authority and reapply after additional affected landowners are given proper notice. (Seagle, ICC Staff Ex. 3.0, at 14-15). He recommends that Enbridge Energy address the status of its negotiations with IDOT in Enbridge Energy’s surrebuttal testimony. (Seagle, ICC Staff Ex. 3.0, at 17).

5. Commission Analysis and Conclusion on Location and Routing-Related Issues

Enbridge Energy proposes to install a new maximum 36-inch (outside diameter) pipeline – Line 78 – that will originate at Enbridge’s existing Flanagan Station and Terminal Facility located north of Pontiac, Illinois in Livingston County, to interconnect with Enbridge terminals located in Griffith and Schererville, Indiana. The new pipeline will largely parallel an existing Enbridge pipeline route in which Enbridge has significant MLRs and will traverse portions of Livingston, Grundy, Kankakee, Will, and Cook Counties in Illinois and also part of Lake County, Indiana. The Project includes a new pumping station to be collocated with the Flanagan Terminal as well as site acquisition for mid-point flow monitoring instrumentation and future pumping-capacity additions required to reach full capacity. (Amended Application, at 1-2).

With regard to the location or routing of the proposed pipeline, Section 15-401(b) of the CCPL states in part:

In its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil and any

alternate locations for such proposed pipeline or facility, the Commission shall consider, but not be limited to, the following:

1. any evidence presented by the Illinois Environmental Protection Agency regarding the environmental impact of the proposed pipeline or other facility;
2. any evidence presented by the Illinois Department of Transportation regarding the impact of the proposed pipeline or facility on traffic safety, road construction, or other transportation issues;
3. any evidence presented by the Department of Natural Resources regarding the impact of the proposed pipeline or facility on any conservation areas, forest preserves, wildlife preserves, wetlands, or any other natural resource;
4. any evidence of the effect of the pipeline upon the economy, infrastructure, and public safety presented by local governmental units that will be affected by the proposed pipeline or facility;
5. any evidence of the effect of the pipeline upon property values presented by property owners who will be affected by the proposed pipeline or facility;
6. any evidence presented by the Department of Commerce and Economic Opportunity regarding the current and future economic effect of the proposed pipeline or facility including, but not limited to, property values, employment rates, and residential and business development; and
7. any evidence presented by any other State agency that participates in the proceeding.

(220 ILCS 5/15-401(b)).

Over one-third of the Line 78 right-of-way will be comprised of property where Enbridge Energy possesses MLRs. The right-of-way requirements for the Line 78 Pipeline Project include a 50-foot wide permanent pipeline right-of-way and acreage (10 acres \pm) in fee near the line's mid-point sufficient initially for flow-meter instrumentation and potentially for an additional pump station. (Amended Application, at 17-18).

Enbridge Energy witness John McKay describes how the route proposed for the new pipeline largely follows and employs that of Enbridge's Line 62 pipeline. Mr. McKay states that the remaining segment of the pipeline follows a route which avoids residential properties and specialty land uses in heavily developed areas without significantly increasing the length of the proposed Line 78. Mr. McKay contends that the chosen route of the pipeline is the most effective means of minimizing the need for

new routing, is predominately located in rural areas used for agricultural purposes, and is the most feasible path for the new pipeline, thus comprising the most publicly effective and convenient way to provide the needed transportation service and capacity. (McKay, Enbridge Energy Ex. 3, at 5-6).

The principal issue of significance regarding the routing of Line 78 pertains to the plans for the SSA and IDOT's concerns about the originally proposed route of Line 78 through the anticipated footprint for the project, which largely tracked the path of the existing Line 62 through the project.

Mr. McKay explained that Enbridge Energy had not thought the initial route through the SSA project would be a problem for reasons that include the uncertain status of the SSA project, the fact that Line 78 as planned would parallel the already existing Line 62 through the proposed footprint of the project, the reality that the coexistence of airports and pipelines underneath them is indeed possible, and concerns about the effect on surrounding landowners of re-routing Line 78 to avoid the SSA project area. (McKay, Enbridge Energy Ex. 4, at 40-41).

Based, however, on the testimony of Ms. Shea for IDOT, as well as Enbridge Energy's negotiations with IDOT, Mr. McKay later testified that Enbridge Energy was modifying its route for Line 78 around the "Pipeline Exclusionary Zone" so that Line 78 will not conflict with the future runways and taxiways of the SSA. Thus, Mr. McKay stated, the reroute does what Ms. Shea, testifying for IDOT requested, namely, that "the pipeline at least be re-routed outside of the area depicted in yellow on Exhibit F [the Pipeline Exclusionary Zone]." Mr. McKay has also filed with the Commission a Verified Statement with an attached line list which represents the landowners and properties on the overall route as identified in response to ICC Staff Data Request 1.38. Mr. McKay also makes clear that Enbridge Energy is addressing IDOT's concern regarding the SSA's access road. Enbridge Energy represents that to the best of its knowledge, no party opposes this reroute of Line 78. (McKay, Enbridge Energy Ex. 6, at 14-16). The Commission accepts these as reasonable accommodations to IDOT's concerns.

John Fortmann testified on behalf of IDOT regarding three ways Line 78's proposed route across the "Illiana Expressway Planning Corridor" could be adjusted to mitigate the route of Line 78 having an adverse impact on the Illiana project. IDOT's principal concern seems to be to ensure that the Line 78 route across the Illiana Expressway corridor be at a perpendicular angle. (Fortmann, IDOT Ex. 2, 4-6). Mr. McKay has now made clear that the location of Line 78 will be modified and that modified route will be compatible with the IDOT request that the pipeline cross the expressway at a 90° angle. Enbridge Energy has indicated it will work closely with IDOT to ensure that above-ground structures and the burial depth of Line 78 in the Illiana Expressway Planning Corridor are acceptable to IDOT. (McKay, Enbridge

Energy Ex. 4, at 46-48). Again, the Commission regards Enbridge Energy's accommodations as satisfactory.

Finally, on October 8, 2013, the Illinois Attorney General ("IAG") filed comments, chiefly in the form of questions, about the policies and procedures Enbridge Energy will follow on its Line 78 project to prevent and detect releases and construct and operate the pipeline in a safe manner. (IAG, at 1). The Commission is satisfied that this will occur because Enbridge Energy has implemented the Company-related recommendations of the NTSB report on the Marshall Michigan release as well as all of the upgrades and changes ordered by the Commission in its Docket No. 12-0347 Order based on that report.

The Commission is also satisfied with Enbridge Energy's response to the remaining questions posed by the IAG. On compliance with environmental standards, Enbridge Energy will prepare permit applications required by federal, state, and local agencies for the Line 78 project that incorporate, among other requirements, the environmental protection standards specified by the agencies, and Enbridge Energy will adhere to these requirements. (McKay, Enbridge Energy Ex. 6, at 8-9). On emergency response plans, Enbridge Energy represents that its new Integrated Contingency Plan ("ICP") serves as the emergency response plan for U.S. Liquids Pipelines, and that that plan received a five-year approval from the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). (McKay, Enbridge Energy Ex. 6, at 11-12).

Finally, as to concerns about the measures Enbridge Energy will take to cross the Kankakee River, Enbridge Energy says that the location of the crossing is directly adjacent to the existing Line 62 and, moreover, a construction plan has been developed to avoid negatively impacting aquatic resources associated with the Kankakee River by installing this section of pipeline via a horizontal directional drill that spans the entire river channel, including the directly adjacent resource areas. Enbridge Energy represents that this plan will minimize impacts to the Kankakee River State Park and the aquatic habitat. In addition, Enbridge Energy will coordinate with the relevant U.S. and State environmental bodies to insure that the protection of natural resources within the State of Illinois is an integral component of the project. (McKay, Enbridge Energy Ex. 6, at 12-14). The Commission is satisfied that in this way, the IAG's environmental concerns are adequately addressed.

Based on the record of this proceeding and the other findings in this Order, the Commission finds that Enbridge Energy's proposed route for the pipeline is reasonable and it is hereby approved, subject to and conditioned on Enbridge Energy meeting the commitments made herein. The Commission notes that all routing-related evidence contemplated under Section 15-401 has been duly considered by the Commission, to the extent presented, and such evidence does not support a finding that the proposed

route should be rejected or that some alternate location is superior to the route approved herein.

VI. SECTION 8-503 OF THE PUA

Applicant also requests an order pursuant to Section 8-503 of the PUA. That section provides in part as follows:

Whenever the Commission . . . shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected

Having reviewed the record, the Commission finds that the necessary showings under Section 8-503 have been made and that the proposed pipeline project should be authorized. In addition, for the reasons discussed below, although the Commission believes that additional negotiations would be appropriate and should be conducted, if Applicant is unsuccessful in obtaining the land rights required to build the pipeline along the approved route, it should be authorized to exercise eminent domain authority.

VII. EMINENT DOMAIN

A. Enbridge Energy's Position

Applicant contends that the Commission should issue an Order under Section 8-509 of the Act authorizing Enbridge Energy to acquire property for the pipeline through the law of eminent domain when necessary. (Amended Application, at 38). Applicant states that it has no desire or intention to condemn the permanent and temporary workspace easements and other interests in land it requires for the pipeline, preferring instead to acquire the needed rights through good faith negotiations with landowners. Enbridge Energy already owns rights-of-way along the majority of the route because of its ownership of Line 62 and will use that right-of-way as necessary to build Line 78. Although some of the existing Line 62 right-of-way lacks a defined width, where defined it is generally thirty (30) to eighty (80) feet in width. Where necessary for the Line 78 pipeline, additional permanent easement space will be sought to allow for a fifty (50)

foot centerline-to-centerline offset between the two pipelines to allow for safe construction, operation, and maintenance activities on the two pipelines. Because the existing right-of-way varies in width, the combined right-of-way area will vary along the route (civil surveys will define the space requirements of each tract). Also, during construction, additional 85-foot temporary workspace easements will be needed alongside the permanent easement areas. Extra temporary workspace ranging from 100' x 200' to 200' x 200' will be required in some locations to accommodate crossings of roads, wetlands, railways, and waterbodies.

In addition, Enbridge Energy is instituting for the Line 78 pipeline a land-acquisition program similar to those found adequate and acceptable in Docket Nos. 06-0470, 07-0446, and 12-0347 where such land acquisition is necessary. (Application, at 39). Under such programs, Applicant explains, Enbridge Energy informs landowners and others (municipal and county officials, etc.) along the proposed route of Enbridge Energy's project and needs, solicits their input and participation in the route-planning process (at the time of Enbridge Energy's application, survey access had already been granted by over 84% of landowners on the route), and adjusts right-of-way locations and installations to accommodate landowner interests and concerns where possible. Further, Enbridge Energy compensates landowners for needed property interests at or above their fair market values, paying full fee value for both fee interests and for permanent easements used for the right-of-way as well as paying above-market rental-type values for temporary workspace easements which last only during construction. It is also Enbridge Energy's policy and practice to compensate landowners fully for any non-restorable incidental damages, such as loss of marketable trees; to pay via a generous formula for crop losses incurred during and after construction of a pipeline; and to restore any area affected by construction to reflect its pre-existing condition as fully as possible, as per, *e.g.*, the agricultural impact mitigation procedures agreed upon with the Illinois Department of Agriculture. Enbridge Energy bases its compensation offers on careful analysis of property values in the area of the route for comparable properties and employs written easement documentation that clearly defines the parties' respective rights, preserving to the landowner substantial control over and use of the land impressed with an easement. Enbridge Energy trains right-of-way agents to provide route information, secure survey consents, and negotiate fully and fairly with landowners, preferably face-to-face as often as necessary to reach accord, and it also employs information programs about project plans for landowners and interested persons, such as Farm Bureau members and local officials. Further, Enbridge Energy makes all offers in writing with appropriate legal descriptions, and for non-MLR tracts, plats identifying the extent and placement of the pipeline and temporary-workspace easements. Enbridge Energy adheres to the Commission's information and notice requirements under 83 Ill. Admin. Code Part 300 and supplements that data with materials of its own about such topics as the pipeline, pipeline construction, and

agricultural mitigation. Applicant is confident that, given Enbridge Energy's ownership of the Line 62 right-of-way, it can acquire most of the requisite property interests by good-faith negotiations. (Amended Application, at 39-41).

Applicant states that Enbridge Energy prefers to avoid condemnations because they are costly and inefficient and that Enbridge Energy would not resort to condemnation unless and until all reasonable offers and efforts had been refused or rejected. Nonetheless, as found in Docket No. 06-0470, Enbridge's experience suggests that authority to condemn may be essential to avoid having the most efficient and effective route blocked by refusals to enter into a contract and, more likely, refusals to negotiate reasonably or at all. Enbridge's past experience, however, also suggests that the need for condemnation will be fairly rare. For example, in connection with the construction of the Southern Access Expansion pipeline certificated in Docket No. 06-0470, fewer than a dozen condemnations were initiated as a "last resort" against landowners who would not meaningfully negotiate. Even in these circumstances, Enbridge continued to negotiate with the landowners and settled all such actions; none proceeded to a condemnation judgment. In this instance, due to Enbridge Energy's existing rights in the Line 62 right-of-way, Enbridge Energy anticipates that acquisition negotiations will be generally successful. (Amended Application, at 41).

Enbridge Energy witness John McKay testified that Enbridge Energy only requests eminent domain authority in the interests of efficiency and economy in the proceedings before the Commission. It is Enbridge Energy's practice and preference to acquire property through good-faith negotiations with landowners because, in Mr. McKay's experience, a willingness to accommodate legitimate landowner interests to the extent practical can generally achieve the objective and because eminent domain proceedings are difficult, costly, and time consuming for all parties. However, Mr. McKay explains, the authority to condemn may be essential to establishing the route that is most efficient and effective for all concerned when Enbridge Energy is blocked by a party that elects not to sell.. (McKay, Enbridge Energy Ex. 3, at 14-15).

Enbridge Energy contends that its concern over "holdouts" is particularly germane in this case and should be considered in any Commission analysis because much of the proposed path of the Line 78 Pipeline in Illinois parallels the route of the Line 62 pipeline and will partially use existing rights-of-way. Due to having MLRs in about 34% of the approximately 386 separate tracts on the proposed route in Illinois, sound pipeline practice dictates that the Line 78 route be collocated with the existing Line 62 pipeline to the maximum extent possible. But, as Mr. McKay observed, this reality potentially enhances the monopoly power of a "holdout" landowner because Enbridge Energy's ability to route around that landowner's property is considerably diminished by virtue of the significant benefits of using the existing right-of-way of Line 62. (Amended Application, at 41-42; McKay, Enbridge Energy Ex. 3, at 14). Enbridge

Energy maintains that under these circumstances, there cannot be serious question that a landowner, by virtue of a refusal to deal, has the ability to block or cause great difficulty and expense to the Line 78 Pipeline Project if eminent domain authority is not granted. Thus, Enbridge Energy argues, the grant of eminent domain authority will remove the incentive to holdout. (Amended Application, at 42; McKay, Enbridge Energy Ex. 3, at 15).

Additionally, Mr. McKay stressed that “[a]lthough Enbridge’s approach is always to acquire easements through genuine negotiations, the right to exercise condemnation authority is consistent with our duty as a common carrier to serve efficiently and without discrimination, which requires that the pipelines be constructed in the most cost-effective, environmentally preferable manner possible.” (McKay, Enbridge Energy Ex. 3, at 15). He also notes that if negotiations fail and an easement must be condemned, the owner is entitled to receive its “before less after” market value as “just compensation” for the interest taken, so having condemnation authority would not mean that Enbridge Energy could gain easements at less than fair market value. Mr. McKay emphasizes that where Enbridge has had to resort to condemnation actions, condemnation generally serves to create acquisition negotiations based on appraisals and based on realistic and rational evaluations rather than on emotions. (McKay, Enbridge Energy Ex. 3, at 15).

With the agreement of the parties to this proceeding, Mr. McKay filed a verified statement verifying that the list of landowners and their properties identified in response to ICC Staff Data Request 1.38 as being on the Line 78 route are the properties for which Enbridge Energy is seeking condemnation authority in this proceeding. Mr. McKay reiterates that Enbridge Energy anticipates that acquisition negotiations for these properties will generally be successful and that, based on experience, does not believe that a substantial number of condemnation actions will proceed to condemnation judgment. Indeed, using the Southern Access Expansion pipeline as an example, none of the fewer than a dozen condemnations filed in connection with that project proceeded to a condemnation judgment.

B. Staff’s Position

In his Direct Testimony, Mr. Seagle states that Enbridge Energy does not meet the requirements necessary to obtain eminent domain as established in Sections 8-509 and 8-503 of the Public Utilities Act. He notes that Enbridge Energy must first obtain a certificate in good standing under Section 15-401. Mr. Seagle argues that his concerns regarding good faith negotiations, discussed *supra*, means that the Company has not yet met the requirements under Section 15-401.

In Mr. Seagle's Rebuttal Testimony, he notes that Enbridge Energy's supplemental response summarizes Enbridge Energy's contacts with each landowner, the number and nature of those contacts, and the current status of negotiations. Enbridge Energy has made multiple contacts with all landowners, except those who have refused to allow Enbridge Energy on their property to complete a survey of the land. Mr. Seagle views this list as showing that Enbridge Energy has and continues to make a diligent effort to negotiate settlements with landowners. (Seagle, ICC Staff Ex. 3, at 12).

Mr. Seagle states that Enbridge Energy provided information on how it adjusts right-of-way locations and installations when possible to accommodate landowner interests and concerns and offers to landowners of the fair market fee value for easement rights based on land market studies performed by professional appraisers and consultants. Based on the information he reviewed, Mr. Seagle therefore stated that he has no reason to deny Enbridge Energy's request for eminent domain authority under Section 8-509 of the Act. (Seagle, ICC Staff Ex. 3, at 13).

C. Commission Analysis and Conclusions on Eminent Domain

The Commission accepts and agrees with the conclusions and recommendations of the Staff, as discussed above, with regard to the authorization under Section 8-509 of the Act for Applicant to enter upon, take, or damage private property under the law of eminent domain. It is clear, and the Commission so concludes, that Enbridge Energy has complied with the requirements of 83 Ill. Admin. Code Part 300 and is now negotiating in good faith for the acquisition of necessary property interests, as is evident from both its declared policy to secure easements and temporary work space agreements by negotiation and its willingness to pay at least fair-market fee values for such interests.

The Commission is also persuaded that a grant of eminent domain authority is warranted in this case because so much of the proposed pipeline is collocated with the Line 62 Pipeline, and this collocation makes the route most efficient and effective. .

VIII. FINDINGS AND ORDERING PARAGRAPHS

1. Enbridge Energy Limited Partnership ("Enbridge Energy" or "Applicant"), is a Delaware limited liability company authorized to conduct business in the State of Illinois;
2. the Commission has jurisdiction over the parties hereto and the subject matter hereof;

3. the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
4. within the meaning of Section 15-401(c) of the Common Carrier By Pipeline Law, the Application was properly filed; a public need for the proposed service exists to the extent certificated herein; the Applicant is fit, willing, and able to provide service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity require issuance of a certificate in good standing to the extent approved herein; accordingly, a certificate in good standing authorizing Applicant to operate as a common carrier by pipeline should be granted;
5. the Commission's grant to Enbridge Energy of a certificate in good standing is on the condition that Enbridge Energy must implement all of the upgrades and changes for the Line 78 Pipeline Project discussed in pages 5-7 of Mr. McKay's Supplemental Rebuttal Testimony, Enbridge Energy Ex. 6, in pages 18-20 of the Commission's February 14, 2013 Order in Docket No. 12-0347, and at pages ___ of this Order, and must do so before it begins operating the proposed pipeline; and in addition, in the Verified Statement of John McKay, filed February __, 2014, Enbridge Energy pledges that in the construction, operation and maintenance of Line 78, Enbridge Energy will meet or exceed all applicable federal statutes including the Pipeline Safety Act of 2011 and 49 CFR Part 195, and further pledges that Enbridge Energy is committed to safely constructing, operating and maintaining Line 78 by also implementing its standards for inspection, pipeline coating, horizontal directional drilling, and overall construction oversight.
6. the Commission's grant of a certificate in good standing to Enbridge Energy is also on the condition that Enbridge Energy file a quarterly report with the Director of the Safety and Reliability Division of the Commission that gives the status of the pipeline construction project, similar in content and format to those provided in Docket 12-0347. These quarterly reports are to continue until Enbridge Energy has finished constructing the Illinois portion of the pipeline;
7. the area to be covered by the certificate generally should consist of (subject to approved deviations) a 50-foot centerline-to-centerline offset between the Line 62 pipeline and the Line 78 pipeline permanent pipeline right-of-way along the overall route of approximately 77 miles originally identified in Exhibits B and C to the Application in this proceeding but subsequently revised and attached as revised Exhibits B and C to the Verified Statement of John McKay, filed February __, 2014, reflecting Enbridge Energy's agreement to modify the route for Line 78 around the SSA "Pipeline Exclusionary Zone" (said revised Exhibits B and C are also attached to Enbridge Energy's Amended Application, filed March __, 2014); up to 85-feet of temporary work space area; and extra temporary

workspace areas beyond the typical 85-feet in some locations, such as road, wetland, and water-body crossings;

8. Enbridge Energy will be required to ensure that Line 78 will cross the "Illiana Expressway Corridor" at a 90 degree angle, and to work closely with IDOT to ensure that above-ground structures and the burial depth of Line 78 in the "Illiana Expressway Planning Corridor" are acceptable to IDOT;
9. in reaching its conclusions in this proceeding, the Commission has considered all evidence presented including that enumerated in Section 15-401(b) of Common Carrier By Pipeline Law;
10. the authority to construct the proposed pipeline shall be subject to the conditions imposed in the prefatory portion of this order;
11. Petitioner shall comply with Section 15-401(c) of the Common Carrier by Pipeline Law;
12. Petitioner should be required to file, within 90 days from the entry of this Order, a Compliance Filing in this docket providing the legal description of the area covered by the certificate granted herein to reflect any revisions resulting from the findings and conditions in this Order and any revisions resulting from the negotiation process upon agreement among all parties affected by the revision;
13. the proposed pipeline is necessary, and should be constructed, to promote the security or convenience of the public, pursuant to Section 8-503 of the Public Utilities Act;
14. any objections, motions, or petitions filed in this proceeding that remain unresolved should be deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Enbridge Energy, Limited Partnership, is hereby granted a Certificate in Good Standing pursuant to Section 15-401 of the Common Carrier By Pipeline Law to operate as a common carrier by pipeline and that said Certificate in Good Standing shall be the following:

CERTIFICATE IN GOOD STANDING

IT IS HEREBY CERTIFIED, subject to the conditions imposed in this order, that Enbridge Energy, Limited Partnership is authorized, pursuant to Section 15-401 of the Common Carrier By Pipeline Law, to construct, operate and maintain the proposed maximum 36-inch pipeline as described in this order and to operate as a

common carrier by pipeline within an area that is a 50 foot wide centerline to centerline offset between the Line 62 pipeline and the Line 78 pipeline and extending approximately 77 miles generally along the routes in Livingston, Kankakee, Grundy, Will and Cook Counties in the State of Illinois delineated in Attachments A and B hereto.

IT IS FURTHER ORDERED that the proposed pipeline is necessary and should be constructed, to promote the security or convenience of the public, pursuant to Section 8-503 of the Public Utilities Act.

IT IS FURTHER ORDERED that Petitioner's request under Section 8-509 of the PUA for authorization "to take or damage private property in the manner provided for by the law of eminent domain" is granted in this docket.

IT IS FURTHER ORDERED that Enbridge Energy, Limited Partnership is required to comply with Findings (5), (6), (9) and (10) above, and other conditions set forth in this Order.

IT IS FURTHER ORDERED that all petitions for leave to intervene are granted, to the extent not yet ruled upon, and that any other petitions, objections or motions filed in this proceeding that remain unresolved are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this ____ day of _____, 2014.

Attachment A



Legend

- Line 78
- Other Lines
- County Boundaries
- State Boundaries
- Water
- Other

Scale

0 1 2 3 4 5 6 7 8 9 10 Miles

0 1 2 3 4 5 6 7 8 9 10 Kilometers

CONFIDENTIAL

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LINE 78



Attachment B

Project Description

Enbridge proposes to install a new underground liquid petroleum pipeline up to 36-inches in outer-diameter referred to as the “Line 78 Pipeline Project”. This pipeline will be approximately 79.7 miles in length, beginning at the Enbridge Flanagan pump station, terminal and tank facility near Pontiac, Livingston County, Illinois and extending generally in a northeasterly direction to interconnect with Enbridge terminals located in Griffith and Schererville, Lake County, Indiana. The project has approximately 75.7 miles located in the state of Illinois and 4.0 miles located in the state of Indiana.

Right-of-Way

In areas where Enbridge does not currently have multiple line right easements or sufficient easement areas along Line 62, the right of way requirements for the Line 78 Project will include a 50-foot wide permanent easement and 85-feet of temporary workspace area running from the Flanagan Terminal through parts of Livingston, Kankakee, Grundy, Will, and Cook Counties in the State of Illinois, and Lake County in the State of Indiana. Additional temporary workspace will be needed in areas such as the points of crossing of roads, railroads, water bodies and underground utilities and pipelines. This right-of-way configuration will also be utilized in areas of “green-field” construction. In locations where Enbridge does have multiple line right easements and sufficient easement areas, new easements and temporary workspace are not required. The Project will generally require a 135-ft wide construction footprint. Also extra temporary workspace areas beyond the typical 135-feet will be required in some locations, such as road crossings, railroad crossings, crossings of pipelines and utilities, wetland approaches, and water-body crossings. Extra temporary work space may also be required in areas of minor route alignment changes needed to accommodate current railroad and highway design requirements and areas that require additional pipeline appurtenances. For the entirety of the project, approximately eighty percent of the right-of-way will be either located adjacent to or collocated entirely or partially within existing pipeline rights-of-way, including a major portion utilizing right-of-way of Enbridge’s Line 62. Other portions of the route will parallel existing power line and railroad corridors.

The proposed pipeline will begin at Enbridge’s Flanagan Terminal facility in Section 33, Township 29 North, Range 5 East of Livingston County, then proceed in a generally northeasterly direction to traverse Sections, 34, 27, 26, 23 and 24 of Township 29 North, Range 5 East; Sections 19, 18, 17, 16, 15, 10, 11 and 12 of Township 29 North, Range 6 East; Sections 7, 6, and 5 of Township 29 North, Range 7 East; Sections 32, 33, 34, 27, 26, 25 and 24 of Township 30 North, Range 7 East; Sections 19, 18, 17, 16, 9,10, 11, and 2 and 1 of Township 30 North, Range 8 East; all being located in Livingston County.

At the entry point of the Kankakee County line, the pipeline will then continue in a generally northeasterly direction to traverse Section 6 of Township 30 North, Range 9 East; all being located in Kankakee County.

At the entry point of the Grundy County line, the pipeline will then continue in a generally northeasterly direction to traverse Section 36 of Township 31 North, Range 8 East; all being located in Grundy County.

At the entry point of the Kankakee County line, the pipeline will then continue in a generally northeasterly direction to traverse Sections 31, 30, 29, 28, 21, 22, 23, 14, 13 and 12 of Township 31 North, Range 9 East; Sections 7, 6, 5 and 4 of Township 31 North, Range 10 East; all being located in Kankakee County.

At the entry point of the Will County line, the pipeline will then continue in a generally northeasterly direction to traverse Sections 33, 34, 35, 26, 25 and 24 of Township 32 North, Range 10 East; all being located in Will County.

At the entry point of the Kankakee County line, the pipeline will then continue in a generally northeasterly direction to traverse Sections 19, 20, 17, 16, 9, 10, 11, 2 and 1 of Township 32 North, Range 11 East; all being located in Kankakee County.

At the entry point of the Will County line, the pipeline will then continue in a generally northeasterly direction to traverse Section 36 of Township 33 North, Range 11 East; Sections 31, 32, 29, 28, 21, 22, 23, 14 and 13 of Township 33 North, Range 12 East; Sections 18, 7, 8, 5 and 4 of Township 33 North, Range 13 East; Sections 33, 34, 27, 26 and 25 of Township 34 North, Range 13 East; Sections 30, 29, 20, 21, 16, 15, 14, 11 and 2 of Township 34 North, Range 14 East; all being located in Will County.

At the entry point of the Cook County line, the pipeline will then continue in a generally northeasterly direction to traverse Section 35, 26 and 25 of Township 35 North, Range 14 East; Sections 30 and 29 of Township 35 North, Range 15 East; all being located in Cook County.