

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Enbridge Pipelines (Illinois) L.L.C.

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

Docket No. 07-0446 (Reopen)

Turner Interveners' Reply to ICC Staff Response to Motion to Dismiss

The Turner Interveners, by their counsel, hereby respectfully file this Reply, and in Reply to the Response of the ICC Staff, state as follows:

To fully understand the extent of the harm done by the ICC Staff and Enbridge when they engaged in extensive and continuous ex parte communication, a review of the objective to be achieved by the ex parte communication must be considered. The objective of creating two corrupt decisions by the ICC was to deny the landowners a hearing on the material facts of the new Enbridge project, and thus block the landowners from raising pertinent considerations about the eligibility of the new Enbridge project for certification and eminent domain authority.

When the ex parte communications commenced, a decision with respect to eminent domain authority was about to be made, without any consideration of the new Enbridge project, based on Enbridge's decision to order 24" pipe on March 11, 2014. By agreeing that an order in case 13-0446 could be entered, based on incomplete disclosure, the landowners in Case 13-0446 were denied due process, because the factual underpinnings of that decision were based on evidence presented some 5-years earlier and no longer existed in April of 2014. The new

facts surrounding Enbridge's new project were hidden by Enbridge and the ICC Staff. This made the decision in Case 13-0446 corrupt.

Then the outcome in reopened Case 07-0446 was fixed by the scripting of Enbridge's case by the ICC Staff, without regard to the truth or without regard to the accuracy of the facts supporting the reopened case. This makes the decision in reopened Case 07-0446 a corrupt one, since there are many facts yet to be disclosed by Enbridge, in particular, what the arrangement is with co-owner, anchor shipper Marathon.

Even though Chicago has a well-deserved reputation for corruption in a vast range of governmental decision-making processes, there can be no assertion made at this point that the corruption discovered in discovery in the reopened Case 07-046 had a criminal implication. A criminal intent also cannot be ruled out either. However, what could have completely eliminated any potential for criminal intent would have been a solid effort by the ICC Staff and Enbridge to come clean, providing transparency, and disclosing completely what they discussed behind closed doors. But this has not occurred. All aspects of the ex parte communication will eventually be known, but that will take more time than has been set aside so far in this case. But whether it happens in this case or through some other proceeding, it is important to get to the bottom of what happened, so it is not repeated. No one can dispute that the public interest was disregarded when the outcome for two cases was the product of ex parte discussions, designed to block the landowners from asserting the truth.

Lawyers who represent fiduciaries know how valuable speedy and complete disclosure is, when a beneficiary expresses some concern about the activity of a fiduciary. When a beneficiary has concern, a fiduciary response, based on transparency and complete, speedy disclosure is an effective antidote to the negative opinions a beneficiary might express when

voicing a complaint about the performance of a fiduciary. Both the ICC Staff and Enbridge in this case have responsibilities similar to a fiduciary. Enbridge has a duty to present all relevant facts. The ICC Staff has a duty to search for all relevant facts, and then to test those facts against the legal requirements, in the name of the public.

With respect to the Common Carrier by Pipeline Law, the ICC is the guardian of the power of eminent domain. With respect to pipeline companies, this is a weighty obligation. The overriding purpose of Common Carrier by Pipeline Law is to provide a path to eminent domain. Otherwise, projects like the SAX would claim an Interstate Commerce exemption and totally ignore Illinois law.

The Canadian pipeline company involved in this case, via its USA shell entity affiliates, might consider the ICC procedures an irritating nuisance which must be satisfied with a significant deception and the major distrust of the process. On the other hand, for the landowners who are affected, the ICC procedures are all that separates Illinois from lawlessness seen in other places in the world. Two such examples with a consequential connection to fossil fuel transportation were when Venezuela expropriated the oil fields and facilities of ExxonMobil and others between 1999 and 2013 and when the Russian Federation recently seized Crimea. While it might seem that the events which occurred in this case at the end of Case 13-0446 and for reopened Case 07-0447 are long removed from what either Hugo Chavez or Vladimir Putin have done, it is important to reign in ex parte communication done for improper purposes, so that a single infection does not grow like the Ebola Fever. The vaccine is on the shelf. It is a Section 200.190 Motion to Dismiss, which will clear the air and create a just result.

The Legal Framework Surrounding Reopened Case 07-0446

Landowner rights are protected in ICC proceedings. The landowners are truly innocent parties. A landowner in the case has ownership of farmland in the wrong place at the wrong time in history. The US and Illinois Constitution recognize that this situation will occur over time, which has resulted in a set of procedures which were designed to give them a fair result when an involuntary taking is approved by government action.

Therefore, the constitutional protection of the landowner with respect to the Common Carrier by Pipeline Law begins by a notice being sent the affected landowners pursuant to 220 ILCS 5/15-401(d). To focus attention on the point, it will be repeated. Parties who have a property interest affected by a Section 15-401 proceeding are given notice, so that their private property rights can be protected. Further detail of the law hereinafter presented is well known by the Chicago lawyers, the ICC Staff, and the ALJ like the back of their hand, but listed so that pertinent provisions are not omitted when considering how the Enbridge and ICC Staff ex parte agreements created substantial prejudice for the landowners.

Landowner participation is then authorized in 220 ILCS 5/15-401(b)(5) and (7). The landowner participation is not limited to any one set of topics, and includes all of the 220 ILCS 5/15-401(b)(1)-(9) factors and “other relevant factors”.

Authority for eminent domain cannot be created for a crude oil pipeline project other than by beginning it under this procedure. This procedure was initiated in the instant case in 2007 and continued 6 years later in Case 13-0446, which resulted in an order being issued providing, among other things, the following:

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that subject to the conditions set forth above, Enbridge Pipelines (Illinois) L.L.C. is hereby authorized, pursuant to Section 8-509 of the Act, to seek, in accordance

with the Eminent Domain Act, easement rights along the pipeline that was certificated in Docket No. 07-0446.

The instant case was then initiated under Section 8-503 within the case initiated in 2007, and seeks an amendment to the Certificate of Good Standing issued 5-years ago in 07-0446. The major factual support for the amendment is a downsized project, a change in the focus of shipping demand to light crude, and the shipping interest of co-owner, anchor shipper Marathon Petroleum Company.

Both Enbridge and the ICC during the reopened 07-0446 have asserted that the scope of reopened Case 07-0446 is narrow, and open only for consideration of whether the pipeline diameter may be reduced from 36” to 24”, despite the extraordinary failure of Enbridge to disclose facts about its new project, and is doing what little disclosure it is making because of interveners, not the ICC Staff. However, the narrowness of the proceeding has never been defined, other than by the single word “limited”, contained in the order reopening the case, which mysteriously required several drafts before it was finalized.

Since Section 503 does not provide an absolute right to Enbridge to downsize, Enbridge has raised factual issues to support the reduction. The ICC Staff has neither taken any action to strike consideration of those factual issues nor contended that those factual issues are irrelevant. The basis then available to set the proper scope in reopened 07-0446 is what has been asserted by Enbridge as the factual basis for the downsizing, coupled with the factors contained in 220 ILCS 5/15-401 and 220 ILCS 5/8-503 since:

1. The reopened case is a Section 15-401 proceeding, and
2. Section 8-503 is asserted by Enbridge as the basis for its amendment.

Section 15-401 provides that Enbridge “shall begin ... construction of a pipeline” only after it has a relevant Certificate and provides for a consideration of:

- a. whether “a public need for the service exists”;
- b. whether “the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders”;
- c. whether the public convenience and necessity requires issuance of the certificate;
- d. 9 broadly worded factors; and
- e. “other relevant factors”.

5/15-401(b) provides that ICC may grant an application for a certificate authorizing operations as a common carrier by pipeline, in whole or in part. It is this certificate which Enbridge needs to commence construction. This is also the basis for the ICC to deny eminent domain authority to Enbridge in this case. Section 8-503 provides that when “a new structure ... is ... necessary” for the “the security or convenience of ... the public ... or in any other way to secure adequate service or facilities, the Commission shall ... order ... such... .

ICC decisions are also required to recognize property rights. The property rights of Enbridge have been asserted with respect to its 5-year-old Certificate of Good Standing originally granted for a project long abandoned by Enbridge. Enbridge describes itself as a certificate owner in its pleadings. Enbridge does not desire to lose any accomplishment still existing in the decision made in the 2007 case, even though the Certificate it owns is something like a bad check, since the project it describes has been abandoned. On the other hand, the landowners are also the holders of property rights, which seems forgotten in the rush created by the forceful manner of Enbridge when pushing through its requests. It is fair to say that both sides cannot have their property right affected by an ICC action without prior notice.

When an ICC hearing affects property rights, due process, created by a notice, must exist. The absence of due process, i.e.) no notice or a defective notice, causes the decision to be invalid. *Quantum Pipeline Co. v. Illinois Commerce Com'n*, 709 N.E.2d 950, 304 Ill.App.3d 310 (3rd Dist. 1999). The rights of the landowner in this case would be substantially prejudiced,

if the outcome of the instant case is approval of the diameter reduction, and attached to the newly issued Certificate is eminent domain authority. Considering how the public interest was abandoned in Case 13-0446, and how ex parte communications have constrained the scope of reopened 07-0446, an extraordinary injustice would be created if Enbridge gets away with its prize, eminent domain authority for a 24" pipeline.

Initial Disregard of the Landowner Property Rights

A trail exists to explain what the ICC Staff and Enbridge conspired to accomplish in the backroom. In the last two weeks of April, 2014, in the balance was an ICC decision regarding eminent domain. Without eminent domain, Enbridge would have nothing. In that situation, Enbridge would possess the set of rights which private parties possess in the USA, which is, when considering the purchase of land rights, the right to make arm's length offers to purchase. Enbridge would be required to do what occurred when it constructed its pipeline some 14-years ago around the greater Chicagoland area for its Lakehead system. So, rather than suffer the indignity of the ordinary US citizen, in this case, it must not allow history to repeat itself. Therefore, all the stops were pulled.

One of Enbridge's strategies is to prematurely file with the ICC. This happened with the 2007 case, when the allegedly immutable, overwhelming public shipping demand vanished before the proceeding was completed, a fact now admitted by Enbridge. Neither the ICC Staff nor the interveners had anything to do with the shipping demand existing when Case 07-0446 was filed or how it disappeared. Enbridge then prematurely filed in Case 13-0446, when it sought eminent domain a second time before it had even determined what its project was about. Having three failed Open Seasons and catching only a tiny shipper for a downsized project, seems to make an amended Certificate and eminent domain authority anything but necessary.

While inherent in all business decisions is a degree of risk, which obviously Enbridge is willing to assume, what should not happen is for Enbridge to make the flaws of a premature filing with the ICC, a problem for others to solve. And while all Enbridge wanted to debate in Case 13-0446 was its newly found skills at good faith negotiation, not a single landowner in the Turner Intervener group was told that it was possible that only Marathon would ship on the proposed pipeline, and that the proposed line might be only 24", because the common carrier shipping demand could be put in a thimble.

Knowing full well what was provided for in its then existing Certificate of Good Standing, approval of a project abandoned long ago, it never-the-less submitted an order to the ICC for entry providing for eminent domain authority, after it had ordered the 24" pipe. When it got caught red-handed, some scrambling was necessary.

What has not been disclosed yet is who made the first call. Was it someone from the Chicago law firm, when the Carlyle Kelley affidavit was read, to contain the astonishment of the ICC Staff, or, was it the ICC Staff which could not continue to support an eminent domain decision without the Certificate of Good Standing being amended? Either way, the backroom deal was made that Enbridge must amend its Certificate of Good Standing, without ICC Staff investigation or obstruction. While it could be said that the overall effect of this backroom deal was substantially similar to expanding the scope of Case 13-0446, which should have occurred, if Case 13-0446 was not dismissed, there is a difference of consequence. What the unwary ICC Staff had not been told yet was that there was no demand for common carrier shipping. Enbridge was intending to make the SAX a private line. However, when outrage over the suggestion of yet another public hearing was voiced in Chicago, a now emboldened ICC Staff, feeling the confidence of extensive backroom deal-making with Jerry, exchanging email with

Jerry, and participation in three telephone conference calls without Jerry, agreed to make it as easy as possible for Enbridge.

One way which the ICC Staff has compounded its dishonesty was to falsely say that it had no idea whether Enbridge would file to make the change. This was not a possibility. If Enbridge did not seek an amendment, the 24” pipeline could not be built.

A second way which the ICC Staff has compounded its dishonesty was to falsely say that the Staff required that the landowners be sent a notice for the reopened 07-0446 case. But including the landowners in the case was a requirement of a Section 5/15-401 proceeding. Instead of protecting the landowners, what the ICC Staff was doing was protecting Enbridge. Enbridge was tired of public hearings and was insisting that it could downsize its project through a private hearing, and exclude the landowners. A false concern about property rights of the landowners was also staged, if any concern existed at all, by scripting Enbridge’s testimony to include comments regarding whether a 24” diameter pipeline would affect the land differently than a 36” diameter pipeline, or violate any of the signed easements.

Circumvention of Landowner Property Rights

The real injustice of the backroom deal, and the only reason for corruption to ever occur, was to deny the landowners a right to participate in a hearing where the full extent of the new project could be debated. The landowner’s primary property right, which must be protected under the Constitution of the USA and Illinois, is the right to not lose property involuntarily. By inaction, the ICC caused a corrupt decision to be made in Case 13-0446. Then the corruption was extended into the reopened Case 07-0446. By agreeing to constrain the scope of the hearing so that the full extent of the project could be withheld, the landowners would be denied the right

to fully defend the case and point out why the SAX had become a private line, ineligible for both certification and eminent domain.

Surely the property rights of a landowner are not less than those of the owners of a Certificate of Good Standing. Both require notice before their property rights can be impaired.

Prejudice from the ex parte communication

While throughout the Motion to Dismiss, the Reply to Enbridge, and this Reply, the prejudice to the Turner Interveners has been explained, a review of pertinent precedent is informative. *Waste Management of Illinois, Inc. v. Pollution Control Board*, 530 N.E.2d 682, 175 Ill.App.3d 1023 (1st Dist. 1988) describes the relevant considerations, as follows:

Initially, we address the question of whether these various communications, which occurred outside the hearings and the presence of Waste Management, constituted ex parte contacts. Black's Law Dictionary defines ex parte as something "done for, in behalf of, or on the application of, one party only." (Black's Law Dictionary 517 (5th ed.1979).) Furthermore, ex parte proceedings are proceedings brought for the benefit of one party only and without notice to the other party. (*Gallagher v. Swiatek* (1982), 106 Ill.App.3d 417, 420, 62 Ill.Dec. 315, 435 N.E.2d 1287; *Wilson-Jump Co. v. McCarthy-Hundrieser & Associates* (1980), 85 Ill.App.3d 179, 185, 40 Ill.Dec. 230, 405 N.E.2d 1322.) Because the various communications between citizens of Lake County and certain LCB members were outside the presence of Waste Management and were clearly in support of the position held by various objectors who were parties to the application proceeding, they were ex parte contacts.

...

A court will not reverse an agency's decision because of ex parte contacts with members of that agency absent a showing that prejudice to the complaining party resulted from these contacts. (*E & E Hauling, Inc. v. Pollution Control Board* (1983), 116 Ill.App.3d 586, 607, 71 Ill.Dec. 587, 451 N.E.2d 555, aff'd (1985), 107 Ill.2d 33, 89 Ill.Dec. 821, 481 N.E.2d 664.) Here, the record does not indicate that Waste Management suffered any prejudice as a result of the contacts between citizens of Lake County and LCB members.

5 ILCS 100/10-35 (c) provides that "(f)indings of fact shall be based exclusively on the evidence and on matters officially noticed." Without a complete disclosure of the ex parte communications, it will be impossible to tell what portion of the ICC Staff testimony was based

on information from ex parte discussions and what portion came from the record in this case. Since the ICC Staff has so little to go on in the record, the opinions expressed in Staff testimony must have been based on the ex parte communications. While the ICC Staff might not be required to disclose the basis of its testimony, it certainly makes it difficult to question a staff decision, when the basis of the decision is hidden. Prejudice to the landowners would exist, if the Staff witnesses based opinions on ex parte decision-making not shared with the landowners, especially if Staff opinions were created from an incomplete disclosure by Enbridge, allowed to occur by the ICC Staff, because of its unwillingness to investigate this case and seek a full disclosure. This is an ample basis for this conclusion from the facts which have been disclosed.

For Enbridge to end up with a Certificate amended for a 24” pipeline, coupled with eminent domain authority, without ever being required to disclose in a meaningful way case deciding facts, results in extraordinary prejudice to the landowners, because they are then required to defend themselves in state court condemnation proceedings, in a situation where eminent domain should not have been granted in the first place. The award of eminent domain can be withheld in this case for the amended Certificate for the 24” pipeline under 15-401(b), which provides that ICC may grant relief in a Section 15-401 hearing, in whole or in part.

In the instant case, the ex parte communication was done for the purpose of prejudicing the landowners’ right to a hearing on the material facts related to the new project being proposed by Enbridge, based on Enbridge’s decision on March 11, 2014 to downsize its project with an emphasis on light crude, a 24” pipeline diameter, and co-owner, anchor shipper Marathon. There is a substantial factual basis which has been outed but more investigation is warranted, so that the complete picture can be known. It is undisputed that the SAX can be operated to throttle back pump pressure, so that the capacity being shipped by Marathon is equal to 100%

of the capacity of the pipeline. A tiny shipper has remained nameless, but it would make sense to determine whether the tiny shipping contract is illusory. At least the Turner Interveners would like to make this inquiry. However, because the ICC Staff prejudged the case in backroom discussions, the ICC Staff was unwilling to inquire into what Marathon's role was. No one knows if Marathon has an option to buy the entire SAX line, but it is known that Marathon has agreed to invest nearly \$300,000,000.00 in the SAX project. It seems logical that Marathon will have extraordinary control over the future use the SAX., if it is getting a benefit for its bargain. \$300,000,000.00 buys a hefty benefit.

Therefore, prejudice has occurred for several reasons. The ICC Staff has chilled the opportunity for the interveners to make meaningful inquiry, by conduct suggesting that there are no issues to consider. By constraining the scope of the proceedings, both Enbridge and the ICC Staff have made it nearly impossible for the interveners to learn the extent of Marathon's role. By allowing Case 13-0446 to be decided without consideration of material, case controlling facts being considered by the ICC voting board, a corrupt decision was made in Case 13-0446. Here is what the ICC voting board was given to makes its decision:

Docket No.: 13-0446
Meeting Date: 04/29/14
Deadline: N/A

MEMORANDUM

TO: The Commission
FROM: Larry Jones, Administrative Law Judge
DATE: April 22, 2014
SUBJECT: Enbridge Pipelines (Illinois) L.L.C. ("Enbridge")

Petition Pursuant to Section 8-509 of the Public Utilities Act to Take Private Property as Provided by the Law of Eminent Domain.

RECOMMENDATION: Entry of the attached post-exceptions order authorizing Enbridge to proceed with eminent domain before the courts with respect to parcels for which easement rights have not yet been acquired on the previously certificated pipeline route.

In Docket No. 07-0446, the Commission entered an Order granting a Certificate of Good Standing whereby Enbridge was authorized, pursuant to Section 15-401 of the Common Carrier by Pipeline Law, to construct, operate and maintain a proposed pipeline along a route approximately 170 miles in length. The route runs from the Enbridge terminal at Flanagan in Livingston County to a point of termination at a pipeline hub near Patoka, Illinois in Marion County.

The Order in Docket No. 07-0446 was appealed to the Illinois Appellate Court by some of the Intervenor in the case. The Order was upheld on appeal. *Pliura Intervenor v. Illinois Commerce Commission*, 405 Ill. App. 3d 199 (2010).

In the current case, Enbridge seeks relief under Section 8-509 with respect to those parcels, listed in Attachment A to the petition, for which it still lacks easement rights. If granted, such relief would allow Enbridge to proceed with eminent domain in the courts pursuant to the Eminent Domain Act. At the time of the hearing, it still lacked easements for 127 of the 679 tracts on the route

Pliura Intervenor, who own 19 tracts, oppose the relief sought by Enbridge. Five of them filed testimony.

In assessing Enbridge's efforts to acquire easements through the negotiation process, Staff focused on the factors set forth in the Commission's Order in Docket No. 13-0456. Staff's position is that Enbridge has met the requirements of Section 8-509 of the Act and that the Commission should approve Enbridge's request for authority to proceed with eminent domain in the courts.

Subject to conditions, the attached order would authorize Enbridge to proceed with eminent domain before the courts, pursuant to the Eminent Domain Act, with respect to those parcels listed in Attachment A to the petition that have not yet been acquired.

LMJ/lw

Here are the minutes of the vote:

7 Item 45 is Docket No. 13-0446. This is
8 Enbridge Pipelines' petition to take private property as
9 provided by the Law of Eminent Domain pursuant to
10 Section 8-509 of the Public Utilities Act. ALJ Jones
11 recommends entry of an Order authorizing Enbridge to
12 proceed with eminent domain before the courts with

Reply to ICC Staff

13 respect to parcels for which easement rights have not
14 yet been acquired on the previously certificated route.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Order is
20 entered.

What if the ICC voters, before their vote, had been told that Enbridge had made a decision to downsize? What if the ICC voters, before their vote, had been told that Enbridge has one significant contract shipper, a tiny contract shipper, and no evidence of a demand for common carriage? What if the ICC voters, before their vote, had been told that the proposed order submitted by Enbridge refers to the original Certificate, issued for a 36" pipeline, which was not going to be built? What if the ICC voters, before their vote, had been told that the ICC Staff and Enbridge engaged in ex parte communication about Case 13-0446, not disclosed in the e-Docket of Case 13-0446 in an ex parte report? What if the ICC voters had been told that the ICC Staff and Enbridge agreed in ex parte communication that Enbridge was going to move to reopen Case 07-0446, but not to worry, because the ICC Staff would lay down and give Enbridge an easy route to a favorable decision? What if the ICC voters, before their vote, had been told that the ICC Staff had prejudged the merits of Enbridge's new project, and concluded that it was worthy of a Certificate amendment, notwithstanding Enbridge's failure to disclose in detail what the role of Marathon was, including Marathon's right to purchase at least 35% of the SAX, if not more?

Obviously some of these facts were not discovered until after the ICC vote in Case 13-0446. But many of these facts were known by Enbridge, who was content to sit back and let the case proceed to a decision without any concern over its obligation to make a full disclosure.

While it might be argued that Case 13-0446 has no relationship to reopened Case 07-0446, the facts say otherwise. The genesis of the reopened case began during the disclosure in Case 13-0446 that the pipeline diameter was 24". The corruption existed in two cases. These cases are related because the landowners are the same for both cases with respect to eminent domain.

Dismissal is appropriate because the corruption occurred in two related ICC cases. It would also be appropriate for the ICC to rule that Enbridge now has no eminent domain authority for its proposed 24" project. The misconduct was too pervasive for eminent domain authority to survive.

Additional Relief in the Motion to Dismiss

It would be appropriate for the two disclosures from the ICC Staff, which are attached hereto, be admitted into the evidence. They are hereby so offered. Furthermore, should the ICC decide that the landowners are given more time to conduct discovery, the Turner Interveners would approach this opportunity with dispatch. There are obviously many facts not yet disclose, the most critical of which is the contractual arrangement between Enbridge and Marathon, and especially whether this contract grants Marathon the right to purchase the entire SAX line.

Wherefore, the Turner Interveners respectfully request that this matter be dismissed. Alternatively, the Turner Interveners respectfully request that a new discovery schedule be created and that additional hearings be scheduled thereafter for the newly discovered evidence. Lastly, the Turner Interveners request that Attachment One and Two hereto be admitted in the evidence in this case.

October 6, 2014

Reply to ICC Staff

Respectfully submitted,

TURNER INTERVENORS

By: /s/ Mercer Turner

Mercer Turner, their counsel

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CERTIFICATE OF SERVICE

I certify that I caused copies of this Reply to be served on the ICC service list attached hereto for this case by email or US postal delivery on this 6th day of October, 2014.

/s/ Mercer Turner

Mercer Turner

Feeley, John

From: Feeley, John
Sent: Wednesday, April 30, 2014 10:57 AM
To: @ Ambrose, Gerald; @ Reed, G. Darryl; @ Thomas, Dale
Cc: Olivero, James
Subject: 13-0446/07-0446, Enbridge Pipeline

Attachment One Motion to Dismiss

Jerry, Dale and Darryl

Set forth below are topics which Staff believes Enbridge needs to address in testimony regarding Enbridge's plan to amend its original certificate. As we mentioned to Jerry, Staff would like a preview of the filing.

Also, Staff believes all landowners along the route should be served with the filing(s).

John and Jim.

LIST OF TOPICS TO BE ADDRESSED BY ENBRIDGE

- Specify the exact size and characteristics of the pipe (24" diameter)
- Explain why a 36" pipe is now too large.
- Explain why a 24" pipe is the correct size.
- Explain why a pipe smaller than 24" would not be suitable.
- Explain the benefits of building a smaller pipe as opposed to over sizing it for future expansion.
- Will the 24" line transport less product? If so, how does that affect Enbridge's demand study?
- Will Enbridge have to change any of its other permits from other agencies? What about the AIMA?
- Has Enbridge lost shippers since the '07 order was issued? If so, how many and are the remaining shippers firm?
- Compare shipping commitments from 2007 case to current request (volumes not names)
- Does changing the pipe size affect any of the easements currently obtained or do they have more flexible language?
- Does changing the pipe size affect any of the payouts to landowners?
- Will the smaller pipe be constructed, operated, or maintained in a different fashion than the original 36" line?
- Explain if the number or sizes of compressors are affected by the pipe size change.

- Explain if the product being shipped changed (more Bakken versus oil sands) and any operational issues with this change.
- Explain if operating pressure of pipeline has changed due to use of smaller diameter pipe.
- Discuss or commit to safety enhancements originally discussed in Docket No. 12-0347.

Attachment Two Motion to Dismiss

Turner-Staff On the Record Request 2:

Staff's understanding of the Turner Interveners' on the Record Request 2 to Staff is that the Turner Interveners request that Staff provide the date of two conference calls between Enbridge Illinois and Staff.

Response:

The conference calls occurred prior to the Illinois Commerce Commission's vote on June 26, 2014 to reopen Docket No. 07-0446. There were actually three conference calls between Staff and Enbridge Illinois. The dates of the conference calls were: April 24, May 13, and May 16, 2014.

To the best of Staff's recollection present on all three calls for Staff were counsel for Staff (Mr. Feeley and Mr. Olivero) and Mr. Maple. Mr. Lounsberry who is Mr. Maple's supervisor was on the call which took place on April 24, 2014.

To the best of Staff's recollection and belief present on all three calls for Enbridge Illinois were counsel for Enbridge Illinois, Mr. Reed and Mr. Thomas. Staff also believes that technical personnel for Enbridge Illinois may have also been on the first call which took place on April 24, 2014.

Finally, during the May 16, 2014 conference call, Staff asked Enbridge Illinois to update/supplement some of its data requests. Following that conference call, via email on the same day, Staff counsel identified the specific data requests (ENG 1.9 and ENG 1.24) to counsel for Enbridge Illinois.

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