

107 FERC ¶61, 244
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 2, 2004

In Reply Refer To:
Enbridge Pipelines (KPC)
Docket No. RP04-36-000

Enbridge Pipelines (KPC)
1100 Louisiana, Suite 3300
Houston, TX 77002

Attention: Donald R. Whittington

Reference: Annual Revenue Refund Report

Ladies and Gentlemen:

1. On October 31, 2003, Enbridge Pipelines (KPC), filed its Annual Excess Interruptible Revenue Refund Report and supporting workpapers for the 12 months ending September 30, 2003, as required by section 24.5 of the General Terms and Conditions (GT&C) of its tariff. We deny KPC's request for waiver of the crediting provisions of section 24.5, for the reasons discussed below. We accept KPC's Revenue Refund Report subject to KPC providing additional information also discussed below. This order benefits the public because it assists in ensuring that the proposed rates accurately reflect cost of providing service.
2. Section 24.5 provides that KPC will file, within sixty days of October 1 of each year, a statement detailing how it will credit back to shippers the excess interruptible revenues it collects. Section 24.5 goes on to state that "[a]ll firm shippers served under Rates Schedules FT and FT-NN paying the maximum rate shall receive a pro-rata share of such credits based on their contract MDCQ." The only shippers taking FT or FT-NN service and subject to the maximum rate are Kansas Gas Service (KGS) and Missouri Gas Energy (MGE).
3. Additionally, although section 24.5 provides that KPC will credit such excess revenues against reservation charges, KPC requests a waiver of this provision to credit the portion due to MGE against the current balance of receivables from MGE. KPC states that as of October 27, 2003, MGE withheld payment of \$875,975.79 of the amount billed by KPC. If this amount is paid prior to the date of any Commission order approving this filing, KPC agrees to refund this amount in accordance with section 24.5 of the GT&C.

4. Lastly, section 24.5 of KPC's FERC Gas Tariff, permits it to retain twenty percent of KGS' share of any credits resulting from section 24.5. Therefore, KGS' allocable share of \$11,481.00 decreased by \$2,296.00 because KPC proposes to retain this portion of the credit.

5. Public notice of the filing was issued on November 5, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's Regulations, 18 C.F.R. § 385.210 (2002). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2002), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. On November 12, 2003, Kansas Corporation Commission (KCC) filed an intervention and request for technical conference. On November 13, 2003, MGE filed a protest. On November 12, 2003, the Missouri Public Service Commission (MoPSC) filed an intervention, and on November 21, 2003, MoPSC filed a protest.

6. MGE protests KPC's request for a waiver of section 24.5 of its tariff. MGE states that KPC is correct that MGE withheld payment of a portion of the amounts billed. However, MGE contends that KPC fails to note that MGE took such action pursuant to the terms of KPC's tariff. MGE contends that section 16.1(b)(i) of KPC's GT&C provides that if a shipper in good faith disputes a portion of the bill submitted by KPC, it may withhold payment of that portion of the bill. MGE argues that under these circumstances the tariff only requires shippers to pay the portion of the invoice that is not in dispute and to identify the basis for the dispute regarding the portion that is withheld.

7. KCC claims KPC does not provide an adequate explanation for several factors contained within its report. KCC requests a technical conference to explore the following concerns it has with KPC's report: (1) the occurrence of negative revenue credits in KPC's calculations for Zone 3; (2) the sources of "prior period adjustments" cited by KPC as justification for reductions of credited amounts to be refunded; and, (3) the basis for the interruptible transportation (IT) costs KPC claims it is allowed to retain for service rendered during November 9, 2002 through September 30, 2003.

8. MoPSC echoes the position of MGE regarding KPC's attempt at an "end run around" the requirements of section 16.1(b)(i). MoPSC also requests the Commission deny KPC's request to waive section 24.5's refund requirement. MoPSC states that KPC's request for waiver of the requirements of section 24.5 asks the Commission to find in favor of KPC in a billing dispute. MoPSC continues that the Commission has no record and no facts on which to base such a finding. Further, MoPSC claims the Commission should reject KPC's request because the issues of disputed bills and IT revenue refunds are separate and distinct, and the exchange of payments for these two discrete matters should also remain separate and distinct.

9. While MoPSC states that it has many of the same concerns as those expressed by KCC regarding KPC's calculations, it does not believe that a technical conference is necessary to understand the adjustments. Instead MoPSC argues that section 24.5 does not allow KPC to apply any adjustments. MoPSC states this section specifically provides that "KPC shall file a statement with the Commission comparing (1) the total revenues collected pursuant to Rate Schedule IT during the 12 month period ending September 30, against (2) the total cost of service allocated to be recovered from Rate Schedule IT." MoPSC states that the section further details that "[o]ne hundred percent of such excess revenues, less applicable surcharges, penalties and variable costs incurred to provide the service shall be credited. . . ." MoPSC claims this is very clear, specific language that does not allow KPC to include prior period adjustments in the calculations. MoPSC contends that while its position may be somewhat inflexible, and some adjustments may be legitimate, it is not possible to ascertain the nature or reason for KPC's adjustments. MoPSC contends that at the very least, the Commission should require KPC to provide details regarding the nature and specifics of the prior period adjustments noted in its calculations in its original filing in order to ascertain the appropriateness of such adjustments.

10. MoPSC also states that it could not determine the origins of the annual fixed cost of service in Docket No. RP99-485-000, et al., for IT service of \$265,126 claimed by KPC. MoPSC disagrees with the \$237,140 prorated cost of service KPC is allowed to retain for November 9, 2002 through September 30, 2003, and requests the Commission require KPC to refund an additional \$19,390 of revenues to its customers. Using information from KPC's October 10, 2002, compliance filing in Docket No. RP99-485-001, MoPSC calculates the annual fixed costs allocated to IT service per in Docket No. RP99-485-000 to be \$244,369, or \$670 per day ($\$244,369 / 365$ days). As a result, MoPSC contends that the revenues the Commission should allow KPC to retain for November 9, 2002 through September 30, 2003 are \$217,750 ($\670×325 days) not \$237,140 as KPC claims.

11. Section 16.1(b) of the GT&C provides that if a shipper disputes in writing the amount of a bill, or parts thereof, and pays to KPC such amounts as it concedes to be correct, and at anytime thereafter within 30 days of demand made by KPC furnishes a good and sufficient surety bond guaranteeing payment to KPC of the amount ultimately found due upon such bills after a final determination, KPC shall not be entitled to suspend further service unless and until default be made in the condition of such bond.

12. The section 16.1 tariff language clearly gives a shipper the right to withhold payment in the case of a good faith dispute. It is also clear that this provision gives KPC the right to require a surety bond guaranteeing payment to KPC, otherwise KPC can suspend service to the shipper. The tariff provides KPC sufficient protection in the case of a dispute. To grant a waiver to offset refunds due MGE against disputed amounts that MGE owes KPC would circumvent MGE's right under section 16.1 to withhold payment

of disputed amounts. As a result, we deny KPC's request for waiver and require KPC to refund the owed amounts to MGE.

13. The Commission agrees with KCC that it is not evident how KPC arrives at a negative IT revenue credit of <\$625> for its qualifying zone 3 customers. Further, as pointed out by both KCC and MoPSC, KPC's supporting workpapers contain footnotes indicating that all the negative numbers, which have the effect of reducing the credit that it would otherwise owe firm shippers, are attributed to prior period adjustments. KPC fails to provide any explanation for the basis for these adjustments or any reason why the Commission should permit such prior period adjustments to reduce the IT revenue credit to which shippers would otherwise be entitled. Accordingly, we will require KPC to provide a detailed explanation and supporting workpapers regarding the negative credit amount for Zone 3, the prior period adjustments which resulted in negative amounts noted in KCC's calculation of revenue credits.

14. MoPSC requests the Commission: (1) deny KPC's request for waiver of section 24.5 requirements to make payment of refunds to MGE; (2) require KPC to recalculate the refund amounts without adjustments from prior periods or file detailed explanations of the nature and specifics of the prior period adjustments; and, (3) require KPC to recalculate the refunds using allocated costs of \$217,750 as justified by the record in Docket No. RP99-485-000, *et al.* More information regarding these matters will allow MoPSC and other parties to more fully understand and thoroughly analyze KPC's filing.

15. The Commission directs KPC to file a detailed response, with adequate support, to address the concerns of KCC and MoPSC within 20 days of the date of this order issues. Within 15 days after KPC submits its response, parties may file comments. Accordingly, the Commission denies KCC's request to convene a technical conference.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: All Parties