

144 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

ExxonMobil Canada Energy, Flint Hills Resources Canada, LP, Imperial Oil, NOVA Chemicals (Canada) Ltd., PBF Holding Company LLC and Toledo Refining Company LLC, Pennzoil-Quaker State Canada, Inc., (operating as Shell Trading Canada), Phillips 66 Canada ULC, St. Paul Park Refining Co., LLC, Suncor Energy Marketing, Inc., and United Refining Company

Docket No. OR13-15-000

v.

Enbridge Energy, Limited Partnership

ORDER ON COMPLAINT

(Issued July 18, 2013)

1. On March 5, 2013, Joint Complainants¹ filed a complaint pursuant to the Interstate Commerce Act (ICA) against Enbridge Energy, Limited Partnership (Enbridge) concerning Enbridge's application of the Mainline Nomination Verification Procedure set forth in its FERC Tariff No. 41.3.0. On March 7, 2013, the Joint Complainants filed a motion to consolidate the complaint in this proceeding with the ongoing proceedings in Docket No. IS13-17-000. As discussed below, the Commission denies the motion to consolidate and dismisses the complaint.

¹ ExxonMobil Canada Energy, Flint Hills Resources Canada, LP, Imperial Oil, NOVA Chemicals (Canada) Ltd., PBF Holding Company LLC and Toledo Refining Company LLC, Pennzoil-Quaker State Canada, Inc., (operating as Shell Trading Canada), Phillips 66 Canada ULC, St. Paul Park Refining Co., LLC, Suncor Energy Marketing, Inc., and United Refining Company (collectively, Joint Complainants).

I. Background

2. Section 6(c) of Enbridge's FERC Tariff No. 41.2.0 sets forth Enbridge's Mainline Nomination Verification procedures. Section 6(c)(2) states:

With respect to nominations for delivery to a specific delivery facility, the Carrier will contact the delivery facility and ask the delivery facility to verify the volumes which have been nominated to its facility by each shipper. The total volumes verified to each delivery facility will be limited to the highest volume delivered to that facility during the 24 month period leading up to July 2010.

Section 6(c)(3) provides:

With respect to nominations for delivery to a specific connecting carrier, the Carrier will contact the downstream carrier and request verification of each shipper's volume nominated for delivery to its facility. Downstream connecting carriers will follow their own procedure for verifying volumes to the carrier.

Once the nominations are verified under section 6, if the pipeline has more nominations than available capacity, nominations are allocated on a pro rata basis.

3. At the time that the complaint was filed, the Commission was considering a proposal by Enbridge to change its Mainline Nomination Verification Procedure in Docket No. IS13-17-000.²

II. Complaint and Answer

A. Complaint

4. Joint Complainants state the Commission should direct Enbridge to limit all verified volumes to specified destinations to the "highest volume delivered to that facility during the 24-month period leading up to July 2010." Joint Complainants object that Enbridge is applying the historical limit set forth in section 6(c)(2) only to nominations with destinations on Enbridge's mainline system and not to nominations with destinations on connecting carrier pipelines. Joint Complainants state that Enbridge's decision not to apply the historical cap to connecting carriers is contrary to the unambiguous terms of Enbridge's tariff. Joint Complainants contend that neither sections 6(c)(2) nor 6(c)(3) limit the historical caps on verified volumes to mainline delivery facilities. For additional

² *Enbridge Energy, Limited Partnership*, 141 FERC ¶ 61,246 (2012).

support for their position, Joint Complainants cite evidence relating to Enbridge's performance under the tariff and communication from Enbridge personnel.³

5. In the alternative, to the extent that the Commission upholds Enbridge's application of its verification procedures, Joint Complainants assert the Commission should direct Enbridge to modify its tariff. Joint Complainants contend it is discriminatory for Enbridge to impose the cap only on shippers with destinations on the mainline and not to shippers with destinations on connecting carriers. The Joint Complainants urge the adoption of an alternative verification methodology. They propose to verify 90 percent of the capacity on Enbridge's mainline system based upon historical peak demand for existing facilities and connecting carriers. Under this proposal, new demand associated with new facilities and interconnections may access the remaining 10 percent of available capacity.

B. Enbridge's Answer

6. On March 25, 2013, Enbridge filed an answer. Enbridge states that sections 6(c)(2) and 6(c)(3) are not ambiguous and clearly support Enbridge's interpretation that the historic limits do not apply to nominations to connecting carriers. Enbridge asserts the cap based upon a shipper's history appears in section 6(c)(2). Enbridge states section 6(c)(2) applies only to "nominations for delivery to a specific delivery facility" and does not apply to deliveries to connecting carriers. Enbridge states another section of its tariff, section 6(c)(3), governs nominations for delivery to connecting carriers. Enbridge states that if there is no ambiguity in the tariff, parol evidence may not be considered.⁴ Enbridge further asserts its application of sections 6(c)(2) and 6(c)(3) does not result in undue discrimination. Enbridge also contends that Joint Complainants have not shown that shippers using connecting carriers are similarly situated to shipper's using delivery facilities on the mainline system.

7. Enbridge requests the Commission hold the complaint in abeyance pending resolution of the proceedings in Docket No. IS13-17-000 addressing Enbridge's proposed changes to sections 6(c)(2) and 6(c)(3). Enbridge states that acceptance of these provisions by the Commission would render the complaint moot.

C. Comments and Interventions

8. Notice of the complaint issued March 7, 2013. Interventions were due as provided in Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Pursuant to

³ Joint Complainants Complaint at 15-16, Attachment 1, and Attachment 3.

⁴ Enbridge Answer at 13 (citing *Arena Energy, LP v. Sea Robin Pipeline Co., LLC*, 133 FERC ¶ 61,140, at P 53 (2010)).

Rule 214, all timely-filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. BP Products North America Inc., and BP Canada Energy Group ULC (BP) filed comments, and MEG Energy Corp (MEG) filed late comments. Both BP and MEG oppose the tariff change advocated by the Intervenor Group, stating that it is unsupported and could hurt their access to crude oil supplies.

D. Motion to Consolidate

9. Joint Complainants filed a request on March 7, 2013, to consolidate the complaint in this proceeding with Enbridge's filing in Docket No. IS13-17-000. Joint Complainants contend that Enbridge's practices regarding its existing tariff mechanism and Enbridge's proposed tariff changes in Docket No. IS13-17-000 involve related issues of fact and common questions of law.

10. Enbridge and the Supporting Shipper Group⁵ urge the Commission to deny the Joint Complainant's motion to consolidate the two proceedings. Enbridge and the Supporting Shipper Group state the proceeding in Docket No. IS13-17-000 concern proposed changes to the nomination verification procedure whereas the Complaint in this proceeding concerns the existing provisions of Enbridge's tariff.

E. Discussion

11. The Commission declines to consolidate the proceedings. This complaint involves the lawfulness of Enbridge's application of its existing tariff mechanism, whereas the proceedings in Docket No. IS13-17-000 relate to whether Enbridge's new tariff mechanism is just and reasonable. These two proceedings involve different questions of law and fact, and, accordingly, consolidation is not warranted.

12. The Commission dismisses the complaint. The issues raised by the complaint are moot. After the Joint Complainants filed the complaint, the Commission accepted Enbridge's filing in Docket No. IS13-17-000 which (a) eliminates the 24-month historical period as a limitation on verified volumes and (b) creates a new procedure that applies to all destination facilities – refineries, connecting carriers, and storage. These changes remove the tariff provisions that form the basis of the dispute in this proceeding. Given that the Complainants seek prospective relief only and do not seek damages for any

⁵ The Supporting Shippers Group includes: BP Canada Energy Group ULC, BP Products North America Inc., Canadian Oil Sands Partnership #1, Cenovus Energy Marketing Services Ltd., ConocoPhillips Company, Marathon Petroleum Trading Canada LLC, Total E&P Canada Ltd., Ultramar Ltd., and Valero Marketing and Supply Company.

alleged past violations, the tariff changes render the complaint moot. Accordingly, the complaint is dismissed.

The Commission orders:

As discussed above, the Commission dismisses the complaint and denies the motion to consolidate.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.