

The Commission met on **Thursday, August 28, 2014**, with Chair Heydinger, and Commissioners Boyd, Lange, Lipschultz, and Wergin present.

The following matters were taken up by the Commission:

TELECOMMUNICATIONS AGENDA

P-421/AM-14-550

In the Matter of CenturyLink's Petition for Approval of Additions for 2014 to the Non-Impaired Wire Center List

Commissioner Lipschultz moved to approve CenturyLink's petition requesting to reclassify the Blaine wire center from a Tier 3 to a Tier 2 wire center.

The motion passed 5-0.

P-999/CI-14-470

In the Matter of the Telephone Assistance Plan

Commissioner Wergin moved to take the following actions;

1. Accept the telephone service providers' TAP Reports for calendar year 2013.
2. Retain the current levels of TAP benefit and surcharges at this time.

The motion passed 5-0.

ENERGY AGENDA

G-011/M-14-524

In the Matter of the Petition of the Minnesota Energy Resources Corporation for Approval of a Tariff Revision and a New Area Surcharge for the Ely Lake Project

Chair Heydinger moved that the Commission take the following actions:

1. Approve the Company's request to change the maximum term of its New Area Surcharge tariff from 15 to 30 years;
2. Approve the Company's proposed Ely Lake Project, with a surcharge of \$33.50 for residential and existing small business class customers for a period of 20 years. Should additional potential customers from the small business class or other customer classes seek to take service under the surcharge, the Company shall return to the Commission to determine the appropriate surcharge.

3. Require the Company to disclose to potential customers within the Ely Lake project area the following information, at a minimum:
 - The monthly surcharge rate and that the rate is in addition to the regular bill for gas service. The Company shall provide a pro forma gas bill for the month of January based on average customer use for that month in that area of Minnesota and also include the surcharge as a separate line item;
 - The annual cost of the surcharge; and
 - A statement that the surcharge is expected to be charged for 20 years and what the total cost of the surcharge would be for that period.

The motion passed 5-0.

PL-9/CN-13-153

In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project - Phase 2 in Kittson, Red Lake, Cass, and St. Louis Counties, Minnesota

Commissioner Lipschultz moved to remand the docket to the Office of Administrative Hearings' administrative law judge for 30 days to authorize additional discovery and take supplemental testimony regarding the topic of need, and then to refer the matter back to the Commission.

The motion failed 4 – 1; the Chair and Commissioners Boyd, Lange, and Wergin voted no.

Commissioner Wergin moved to do the following:

1. Acknowledge the motion and comments filed by MN350 requesting larger accommodations to better provide for the presence of large numbers of members of the public, and note that prior to the MN350 motion the Commission had already addressed the issue of space by installing video and audio equipment in a large room in the basement of the building where its offices are located.
2. Grant a certificate of need to Enbridge Energy Limited Partnership for the 67 Station Upgrade Project - Phase 2, and:
 - A. Find that the probable result of denial of the Line 67 Station Upgrade Project would adversely affect the future adequacy, reliability, or efficiency of the energy supply to the applicant, to the applicant's customers, and to the people of Minnesota and neighboring states.
 - B. Find that a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant.
 - C. Find that the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.

- D. Find that it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.
 - E. Find that the public hearing held on the project in St. Paul achieved the objective under Minn. Stat. § 216B.243, subd. 4, to facilitate public participation and to obtain the public's opinion on the need for the proposed facilities.
 - F. Find that the contested case process was fair and impartial, provided the parties and the public an opportunity for meaningful participation and resulted in a substantial record supporting granting a certificate of need for the proposed project.
 - G. Condition the certificate of need upon Enbridge's receipt of each of the required permits listed in Table 7853.0230-2 of the Revised Application.
 - H. Find that Enbridge provided substantially more information on the accuracy of its forecast in its rebuttal testimony, including information on current pipeline capacity shortages, negative implications of Enbridge's apportionment policies for Line 67 on Minnesota refineries, evidence supporting higher heavy crude oil volumes or inputs on Enbridge's Mainline system.
 - I. Find that, given the provision in Federal Energy Regulatory Commission tariffs that apply to Line 67, Enbridge has provided evidence sufficient to meet its burden to show that the proposed Project is needed in Minnesota, neighboring states, and the region and that denial of the requested Project would have a negative effect on the adequacy, reliability, or efficiency of existing heavy crude oil supplies.
3. Find that Minn. R. 7853.0200, subp. 7, requires an application be substantially complete to be accepted. The Department recommended finding the application complete upon the filing of additional information, which then occurred on August 16, 2013. The Commission found the application to be substantially complete in the Commission's Notice and Order for Hearing (September 17, 2013).
 4. Find that the Administrative Law Judge's 8th Prehearing Order dated April 1, 2014, set out the procedures to be followed at the public hearing in St. Paul.
 5. Find that on March 20, 2014, the Department filed a motion seeking the administrative law judge's permission to file surrebuttal Testimony. On March 21, 2014, the Environmental Intervenors similarly moved for leave to file surrebuttal testimony and also sought to reschedule the evidentiary hearing originally scheduled for April 1, 2014. Enbridge opposed rescheduling the evidentiary hearing, but did not oppose surrebuttal testimony. The Department, MN350, and Enbridge filed surrebuttal testimony on April 3, 2014.
 6. Find that the Department concluded that Enbridge has met its burden to demonstrate that the proposed project is needed.

7. Find that the Department stated that avoiding apportionment is important because such apportionment would force refiners to either reduce production of refined products or to import heavy crude oil through other means and both of these alternatives would be unreasonably inferior to the proposed Project. DOC Ex. 37 at 6 (Otis Surrebuttal)

The motion passed 4 – 1; Commissioner Lipschultz voted no.

Commissioner Wergin moved to adopt and incorporate the Administrative Law Judge's Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation (June 12, 2014) with the following changes to the finding:

25. Enbridge dedicates two pipelines in Minnesota to transportation of heavy crude oil: Lines 4 and 67. With the project, Currently, the total permitted capacity of Lines 4 and 67 is ~~1,596,000~~ approximately 1,336,000 bpd. With the addition of the Phase 2 capacity, this figure is approximately 1,596,000 bpd.¹

77. A public hearing was held in St. Paul, Minnesota, on April 3, 2014. Over the course of four hours of public testimony, the Administrative Law Judge heard from 58 witnesses, received 19 exhibits and dozens of handwritten comments. Public speakers were scheduled such that ~~importantly,~~ the presentations during the public hearing were equally divided between proponents of the project and opponents of the project.²

87. At the time of its application, Enbridge ~~predicted~~s that Line 67 will reach its current permitted capacity of 570,000 bpd on an annual basis by mid-2014. It further asserts that the volumes of crude oil that are nominated for shipment after that date will continue to increase.³

~~95. In 2012, Marathon Petroleum completed a \$2.2 billion upgrade and expansion project at its Detroit refinery.~~⁴

96. In February 2013, a \$400 million upgrade to the BP-Husky Refining LLC Toledo refinery ~~was complete~~ went online.⁵

104. In addition to considerable "downstream demand" for heavy crude oil within PADD II, and beyond, the hearing record makes clear that there will be significant new stocks of Canadian crude oil available for transport by Enbridge and other potential transportation service providers.⁶

¹ Ex. 15, at 6 (Earnest Rebuttal).

² *Id.*; ST. PAUL PUBLIC HEARING TRANSCRIPT, at 3-6 and 223-24.

³ Ex. 4, at 3 (Revised Section 7853.0520).

⁴ Ex. 1, § 7853.0250, at 5.

⁵ *Id.*

⁶ *See, e.g.,* Ex. 7, at 31 (Muse Stancil Benefits Analysis).

105. Laura Otis, a Rates Analyst with the Minnesota Department of Commerce, testified credibly that an additional 1.4 million bpd of Canadian crude oil will be available for transportation between 2012 and 2020. If one subtracts 120,000 bpd that can be carried as a result of the Phase I capacity upgrades to Line 67, and subtract another 730,000 bpd that could be transported by the Keystone XL pipeline, there remains over 500,000 bpd of heavy crude oil that would potentially be available for transport.⁷

107. The record contains significant and credible forecasts of increased, near-term production of heavy crude oil by Canadian oil producers and that all or some portion of this oil will be available for transport along Enbridge's Mainline System.⁸

109. When Midwestern demand for heavy crude oil increases, alongside increasing supplies oil in Western Canada, the market pressures upon Enbridge's limited transportation services are likely to increase. Increasing the capacity of Line 67 would forestall the rate and frequency of apportioned shipments along Line 67.⁹

110. Given the regional and global demands for heavy crude oil, it is unlikely that conservation programs in Minnesota could reduce the demand for this type of oil by 230,000 bpd.¹⁰

179. ~~Moreover, Mr. Dr.~~ Abraham's pre-filed testimony suggests that, on average, the transportation of Canadian heavy crude oil to refineries results in the release of ~~far~~ fewer greenhouse gases (GHGs) than oil transportation operations in most other oil producing nations – such as Angola, Ecuador or Saudi Arabia. The GHG Emissions Profiles for the extraction, production and consumption of Canadian tar sands are among the highest of all oil producing countries.¹¹

182. While the Commission could decide not to grant a Certificate of Need for this project on the grounds that Minnesota should not permit the transportation of heavy crude oil, there is real doubt that withholding approval for an expanded Line 67 will result in Canadian oil supplies "remaining in the ground." ~~This is because the price impact of denying the Certificate of Need will add approximately \$11 to the cost of a barrel of oil. As Dr. Cicchetti persuasively testified, however, Canadian oil producers will very likely continue to extract oil from Alberta so long as the Gulf Coast price point for a barrel of oil is at least \$50 per barrel – a level that is half the rate at which Canadian oil regularly trades now. Accordingly, while an \$11 price change on a \$100 barrel of oil may be very unwelcome to certain companies in the oil business~~

⁷ Ex. 37, at 17 (Otis Surrebuttal).

⁸ Ex. 7, at 30 – 35 (Muse Stancil Benefits Analysis).

⁹ Ex. 13 at 6 and Attachment A; Ex. 14 (Response to Department of Commerce Information Request 21A - Trade Secret Version); Ex. 15 at ~~19-20~~ 13-23 (Earnest Rebuttal).

¹⁰ HEARING TRANSCRIPT, Volume 2, at 239-41 (Cicchetti Testimony); Ex. 15 at 13-23 (Earnest Rebuttal).

¹¹ See, Ex. 51, Attachment 7, at 7.00062 and 7.00063 (Abraham Surrebuttal).

~~such a spike is not likely to dissuade oil producers from extracting oil from Alberta or refiners from processing Canadian petroleum.~~¹²

Chair Heydinger proposed omitting Finding 95 from the motion. Commissioner Wergin accepted the proposal.

The amended motion passed 5 – 0.

Commissioner Lange moved to do the following:

8. Find that Enbridge must apply its neutral environmental footprint objectives to the environmental impacts associated with Phase II of Line 67, including conserving an acre for every acre of natural habitat impacted, planting a tree for every tree that must be removed to build new facilities, and generating a kilowatt-hour of renewable energy for every kilowatt-hour the Phase II energy operations consume.
9. Direct Enbridge to report within 90 days of when the pumps become operational what they have done for the renewable energy portion of their making a carbon-neutral footprint, demonstrating how they intend to comply and how they will verify compliance.

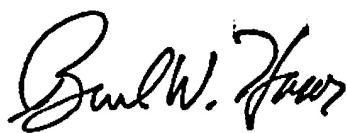
The motion passed 5 – 0.

Commissioner Wergin moved to conform the citation in Finding 95 to the record.

The motion passed 5 – 0.

There being no further business, the meeting was adjourned.

APPROVED BY THE COMMISSION: November 5, 2014



Burl W. Haar, Executive Secretary

¹² Compare, Ex. 16, Attachment C with HEARING TRANSCRIPT, Volume 2 at 121 and 245-46 (Cicchetti Testimony).