


Staff Briefing Papers

Meeting Date	January 9, 2020	Agenda Item 8**
Company	Enbridge Energy, Limited Partnership	
Docket No.	PL-9/CN-13-153	
	In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Alberta Clipper (Line 67) Phase 2 Upgrade Project	
Issues	Should the Commission amend its August 18, 2017 Order Clarifying Neutral Footprint Objectives and Requiring Compliance Filing to modify the compliance filing system and schedule?	
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 Relevant Documents	Date
Order Granting Certificate of Need	November 7, 2014
Order Clarifying Neutral Footprint Objectives and Requiring Compliance Filing	August 18, 2017
Compliance Filing – Neutral Footprint (3 parts)	October 1, 2019
Notice of Comment Period	October 25, 2019
DOC DER Comments (Public & Trade Secret)	November 15, 2019
Enbridge Reply Comments	November 22, 2019

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. STATEMENT OF THE ISSUE

Should the Commission amend its August 18, 2017 Order Clarifying Neutral Footprint Objectives and Requiring Compliance Filing to modify the compliance filing system?

II. STATUTES AND RULES

Minnesota Statute §216B.25 Further Action on Previous Order.

The Commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the Commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason. Any order rescinding, altering, amending, or reopening a prior order shall have the same effect as an original order.

Petroleum pipeline certificates of need are processed under Minnesota Rules, chapter 7853. Minn. R. 7853.0800, Subpart 1 states that the issuance of a certificate of need may be made contingent upon modifications required by the Commission.

III. BACKGROUND AND POSITIONS OF THE PARTIES

Project Description, Initial Order and Construction (2013-2015)

Enbridge Energy, Limited Partnership (Enbridge) owns and operates the 999-mile Alberta Clipper Pipeline (Line 67). This pipeline transports heavy crude oil from Hardisty, Alberta, crosses the U.S. border into North Dakota, and travels diagonally across upper Minnesota to Superior, Wisconsin.

On November 7, 2014, the Commission issued its *Order Granting the Certificate of Need for Phase 2 of the Line 67 Upgrade*.¹ Approval of the Phase 2 upgrade project increased Line 67's throughput capacity from 570,000 to 800,000 barrels per day (bpd). Phase 2 entailed installation of new pumping stations near existing Enbridge facilities at Donaldson, Plummer, Cass Lake, and Floodwood, located in Kittson, Red Lake, Cass, and St. Louis Counties, respectively. Phase 2 also required modification to Enbridge's Viking, Clearbrook, and Deer River Pump Stations, located in Marshall, Clearwater, and Itasca Counties, respectively. All project work occurred on land owned by Enbridge.

¹ The Commission previously granted Enbridge a certificate of need to increase the average daily throughput of Line 67 from 450,000 bpd to 570,000 bpd, *Order Granting Certificate of Need*, Docket No. PL-9/12-590, e-Dockets Filing Number 20138-90205-01, August 12, 2013.

In its order the Commission established a Neutral Footprint Policy (NFP) to address environmental impacts associated with the project which included the following requirements:

Enbridge shall apply its neutral footprint objectives to the environmental impacts associated with Phase 2 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 2 energy operations consume. Within 90 days of the Phase 2 pumps becoming operational, Enbridge shall file a report stating –

- how Enbridge intends to implement its neutral footprint policy with respect to the Phase 2 project, and
- how it intends to document its compliance with this policy.

Operation and Order Clarifying Neutral Footprint Policy (2015-2018)

The Phase 2 project became operational on July 1, 2015.

On September 29, 2015, Enbridge filed its Neutral Footprint Plan and stated its intent to fulfill its commitments as soon as practically possible, but no later than 2020.

On October 23, 2015, the Minnesota Department of Commerce (Department) filed reply comments on Enbridge's filing. The Department supported Enbridge's proposals for demonstrating compliance with the tree-for-a-tree and acre-for-an-acre requirements, but objected to Enbridge's proposal for demonstrating compliance with the kWh-for-a-kWh requirement and requested that Enbridge's proposal be modified to require additional project electricity consumption filings on an annual basis and also submit additional documentation demonstrating that all RECs were not double counted.

In response to comments received from Enbridge and the Department, the Commission met on June 8, 2017 to consider when the kilowatt-for-a-kilowatt (kWh-for-kWh) requirement should apply, and how Enbridge should document that the energy used to fill the NFP requirement would not be double-counted as a regulatory requirement.

In its August 17, 2017 *Order Clarifying Neutral Footprint Objectives and Requiring Compliance Filing* (NFP Order), the Commission provided additional instructions for how Enbridge must demonstrate compliance with the NFP in the November 4, 2017 order, including the following order points:²

1. *To fulfill its kWh-for-a-kWh requirement, Enbridge Energy, Limited Partnership shall acquire renewable energy as defined in Minnesota Statutes section 216B.2422,*

² August 17, 2014 NFP Order at pages 5-6.

subdivision 1(c), to offset all the incremental increase in nonrenewable energy consumed by the Phase 2 project since the project became operational.

2. *Beginning no later than October 1, 2017, Enbridge shall make annual filings regarding its compliance with its neutral footprint objectives. Regarding Enbridge's kWh-for-a-kWh requirement, these filings shall include a calculation of (a) the incremental increase in Enbridge's energy consumption due to the Phase 2 project and (b) the share of that energy that comes from nonrenewable sources.*

3. *By November 1, 2020, and annually thereafter, Enbridge shall document—in a manner that precludes double-counting—that it has complied with the kWh-for-a-kWh requirement. Enbridge may rely on renewable energy credits from its own generators, or from a third party offering verifiable renewable energy credits (RECs). Verification shall be from the Minnesota Renewable Energy Trading System or another entity the Commission determines to be substantially equivalent to M-RETS.*

On October 16, 2017, Enbridge filed an update on the Tree for Tree and Acre for Acre programs. Enbridge also provided the Commission with the incremental energy consumption due to the Phase 2 Project and the amount of that incremental energy that originated from nonrenewable sources for its kWh-for-kWh requirement. Enbridge stated it would provide an update to the Commission for the Project's third year in-service by October 5, 2018, using the same methods unless instructed otherwise. Enbridge indicated the next update would include the incremental increase in Enbridge's energy consumption due to the Project, and the share of that energy that comes from nonrenewable sources as updated by Minnesota Power and Ottertail Power.

On August 13, 2018, the Department filed comments on Enbridge's previous compliance filing recommending the Commission reject Enbridge's calculations in its NFP compliance filing because it only utilized two of the ten available monthly data points in its calculations. The Department requested the Commission direct Enbridge to use the Department's corrected calculations of incremental energy use for Fiscal Years 2016 and 2017.

Enbridge's 2019 NFP Compliance Filing

On October 1, 2019, Enbridge submitted an update on its NFP compliance for Phase 2 of the Line 67 project. Enbridge stated the project was fully constructed and it had demonstrated compliance with the Tree for Tree and Acre for Acre requirement in 2017.

Enbridge noted that compliance with the kWh-for-kWh requirement remained an ongoing obligation and asserted its use of the two-month baseline calculation was appropriate for calculating the Phase 2 incremental non-renewable power. Enbridge used renewable energy production data from its two Minnesota electric utilities (Otter Tail Power Company and Minnesota) to calculate the non-renewable share of incremental energy use, so that the portion of renewable energy consumed would be removed from the NFP requirements. Enbridge stated its plans to purchase RECs to fulfill the kWh-for-kWh requirement from the M-RETS, the North American Renewables Registry (NAR), or the Electric Reliability Council of Texas (ERCOT). Enbridge asserted that all three systems require each REC to have an individual serial

number to facilitate tracking from generation through retirement, thereby eliminating any risk of dual-counting. Enbridge also stated that allowing it to utilize three REC marketplaces would provide it with flexibility to economical access a large pool RECs to meet the NFP requirements.

Enbridge proposed a revised compliance filing system to make the reporting process more efficient whereby it would jointly file an update on compliance with the NFP requirements along with documentation of its compliance with the kWh-for-kWh requirement by March 15, 2021, and annually thereafter.

Department of Commerce Comments on Enbridge's 2019 NFP Compliance Filing

In its November 15, 2019 filing, the Department noted that Enbridge did not comply with Ordering Point 2 of the Neutral Footprint Order as it did not file an NFP compliance document by November 2018 as required. The Department also indicated Enbridge's October 1, 2019 NFP compliance filing utilized the same method for determination incremental consumption as its October 16, 2017 filing. The Department recommended that the Commission reject Enbridge's calculations in its October 1, 2019 NFP filing and require Enbridge to use the Department's corrected calculation methodology for determining incremental energy use. The Department concluded that Enbridge's figures of Renewable Energy Standard (RES) data for Otter Tail and Minnesota Power are reasonable.

Regarding Enbridge's proposed compliance filing system, the Department suggested Enbridge may have misinterpreted the requirements of the Commission's Order because the Commission does not require, or necessarily envision, two annual filings. The Department indicated it did not support changing the compliance filing date to March 15, 2021 noting that the Commission's schedule correspond with reporting data for the fiscal year which aligns with the 12- month periods after which Phase 2 entered service. According to the Department, Enbridge's proposal is not appropriate and further prolongs Enbridge's requirement to procure RECs to offset incremental non-renewable generation for the Project. The Department concluded that the Commission's order points are only prescription in terms of when the objective must be met (no later than October 2017 and November 1, 2020, and annually thereafter), and that nothing prevents Enbridge from filing its proof that it procured the RECs required in Ordering Point 3 prior to November 1, 2020.

Enbridge Reply Comments

In their November 22, 2019 comments, Enbridge reiterated its request for its proposed reporting structure and addressed each of the Department's concerns.

Regarding the kWh-for-kWh calculations, Enbridge argued that the Department seeks to expand the scope of the Commission's order by requiring the purchase of RECs to offset power consumed at volumes below 570,000 bpd. Enbridge emphasized that it shipped less than the full capacity of the Phase 1 upgrade during the 10 months leading up to the Phase 2 in-service date. According to Enbridge, the Commission's orders only applies to the energy needed to transport the capacity permitted for the Phase 2 project (the power to operate the pipeline at capacities above 570,000 barrels per day). According to Enbridge, the Department claims that

Enbridge must calculate all offsets based on whatever power Enbridge consumed prior to the Phase 2 entering service. Enbridge expressed its commitment to offsetting the power needed to transport the capacity permitted for the Phase 2 project.

Enbridge reiterated its assertion that ERCOT, NAR and M-RETS all have tracking procedures in place to prevent double counting. Enbridge stated that the Commission's Order does not require consolidation of RECs into one tracking system, but rather to demonstrate that double-reporting is not possible between the marketplaces.

Enbridge reiterated its request to simplify the reporting schedule and agreed to comply with whatever reporting schedule the Commission prefers going forward.

IV. Staff Analysis

As a preliminary matter, because the docket record does not include a 2018 NFP compliance filing by Enbridge, the Commission may conclude that Enbridge is not in compliance with its November 7, 2014 and August 18, 2017 orders.

Regarding the kWh-for-kWh NFP requirement, staff notes that Enbridge's commitment to generate a kilowatt hour of renewable energy for every kilowatt hour of energy it consumed was predicated upon its argument that there is no reason to expect the incremental amount of electricity consumed by its Phase 2 project to grow or shrink over time and instead assume that the incremental increase in the first year will be the same as the increase in all subsequent years³. Given this language, it appears consistent to apply a baseline utilizing the available 10 monthly data points for quantifying the amount of energy to be offset. It is also unclear to staff whether the frequency of data collection is sufficiently granular to capture any incremental increases of transport levels greater than those approved in Phase 1 of the upgrade.

Staff notes that, while Enbridge indicated its intent to utilize NAR and ERCOT along with M-RETS for tracking RECs unless told otherwise, it did not affirmatively seek the Commission's approval as required by the NFP Order. Staff recommends the Commission evaluate the question based upon the record developed and consider whether the information supplied by Enbridge supports a decision to allow the use of multiple markets. In the interim, it would be consistent with its previous orders to direct the use of M-RETS for obtaining RECs (or develop a renewable facility in Minnesota as originally contemplated) until it determines the record is sufficiently developed to support such a decision.

Staff believes Enbridge did not provide sufficiently justify further delay of date for REC acquisition and agrees with the Department's position regarding the existing reporting requirements based on the fact that much of the supporting documentation was provided in Enbridge's reply comments.

³ NFP Order at pages 3-4.

V. Decision Options

- A. Energy Calculations for the Kilowatt-Hour for Kilowatt-Hour Requirement
 - 1. Approve Enbridge's proposed methodology for calculation of its incremental non-renewable energy consumption as described in its October 1, 2019 filing
 - 2. Require Enbridge to utilize the Department's November 15, 2019 calculation methodology for purposed of complying with the NFP kWh-for-kWh requirements (Department, Staff)
 - 3. Take some other action deemed appropriate

- B. Renewable Energy Credit Treatment
 - 1. Accept Enbridge's proposal to utilize M-RETS, NAR and ERCOT marketplaces to obtain and retire RECs (Enbridge)
 - 2. Require Enbridge to transfer or consolidate its RECs into the M-Rets system before they are retired (Department, Staff)
 - 3. Direct Enbridge and the Department to provide additional information to the Commission within 60 days whether to approve the use of the NAR and ERCOT REC marketplaces for NFP compliance purposes

- C. Reporting Schedule and Compliance Filing Process
 - 1. Direct Enbridge jointly file an update on compliance with the NFP requirements along with documentation of its compliance with the kWh-for-kWh requirement by March 15, 2021, and annually thereafter (Enbridge)
 - 2. Take no action on the reporting schedule and compliance filing process and maintain a schedule that corresponds with reporting data for the fiscal year (e.g., July to June), which aligns with the 12- month periods after which Phase 2 entered service (Department, Staff)
 - 3. Take some other action deemed appropriate

Staff Recommendation: A2, B2 and C2