

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

ISSUE DATE: August 18, 2017

DOCKET NO. PL-9/CN-13-153

ORDER CLARIFYING NEUTRAL FOOTPRINT OBJECTIVES AND REQUIRING COMPLIANCE FILING

PROCEDURAL HISTORY

On June 28, 2013, Enbridge Energy, Limited Partnership (Enbridge) petitioned the Commission to grant the required Certificate of Need for Phase 2 of its investment in Pipeline 67 (also known as the Alberta Clipper), installing pumps and related facilities to increase the heavy crude oil capacity from 570,000 barrels per day (bpd) to 800,000 bpd (the Phase 2 project).

On November 7, 2014, the Commission issued its Order Granting the Certificate of Need, including the following condition:

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 [kWh] of renewable energy [as defined at Minnesota Statutes section 216B.2422, subdivision 1(c)] 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.

On July 1, 2015, the Phase 2 project became operational.

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. 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.

The parties filed a series of responsive comments thereafter.

The matter came before the Commission on June 8, 2017.

FINDINGS AND CONCLUSIONS

I. Summary

In this order the Commission provides additional instructions for how Enbridge must demonstrate compliance with the November 7, 2014 order to implement the Phase 2 project in a manner that maintains a neutral footprint. In particular, the Commission directs Enbridge to calculate the incremental amount of nonrenewable energy consumed by the Phase 2 project dating to the operational date of that project. But the Commission defers until 2020 Enbridge's duty to document that the company has acquired sufficient renewable energy credits to offset this consumption. Finally, the Commission directs Enbridge to make annual compliance filings.

II. Positions of the Parties

Enbridge and the Department reached substantial agreement about how Enbridge could demonstrate compliance with the tree-for-a-tree and acre-for-an-acre requirements, but disagree about the appropriate means to implement the kWh-for-a-kWh requirement.

A. Initiation of Renewable Energy Offsets

First, the parties disagree about when the kWh-for-a-kWh requirement should begin to apply. The Department argues that the obligation to comply with the requirement began when the Phase 2 project became operational—that is, on July 1, 2015.

In contrast, Enbridge asks for greater flexibility in implementing the kWh-for-a-kWh requirement. While Enbridge already operates a variety of generators powered by renewable sources of energy, Enbridge explained that it is seeking to fulfill the Commission's mandate by acquiring a renewable source of energy in Minnesota specifically—but that it has not yet found an appropriate partner for that project. To better accommodate this process, Enbridge asks the Commission to defer the need to demonstrate compliance with the kWh-for-a-kWh requirement until 2020.

B. Documentation of Renewable Energy Offsets

In addition to disagreeing about when the kWh-for-a-kWh requirement should begin, the parties disagree about how to document that the energy that Enbridge would use to fulfill the

requirement has not been double-counted—that is, that the kWhs have not also been identified as fulfilling some other regulatory obligation.

The Department notes that the Commission has previously addressed the double-counting problem in the context of implementing Minnesota’s Renewable Energy Standard (RES).¹ That statute directs Minnesota’s public electric utilities to acquire a growing share of their electricity from renewable sources. Rather than require each utility to generate its own supply of renewable electricity, the RES contemplates that utilities and other parties could buy or sell the right to claim credit for renewably generated electricity.² The Commission authorized Minnesota’s utilities to rely on the Midwest Renewable Energy Tracking System (M-RETS) for such transactions.³ Under M-RETS rules, participating utilities acquire Renewable Energy Credits (RECs) for generating electricity from renewable sources, and M-RETS provides a forum in which utilities may track, trade, and ultimately retire RECs as utilities use them to fulfill the RES or similar mandates.

To avoid the possibility of double-counting, therefore, the Department recommends that, as an alternative to acquiring a Minnesota renewable energy source, Enbridge either participate in a tracking system such as M-RETS, or contract with a party that does.

Enbridge argues that the Department’s proposal to require credit-tracking via M-RETS or a similar system exceeds the scope of the Commission’s November 7, 2014 order and is not otherwise required by law. Nevertheless, Enbridge acknowledged that it is sympathetic with the purposes of the RES and the need for tracking RECs in general. So as a compromise, Enbridge proposes to begin in 2020 to generate sufficient renewable energy to offset the incremental increase in nonrenewable energy consumed by the Phase 2 project—or to retire an equivalent amount of RECs, whether from Enbridge’s own generators or a third party.

C. Quantification of the Amount of Energy to be Offset

To measure the energy that the Phase 2 project consumes, the parties generally agree that Enbridge should compare its rate of energy consumption prior to July 1, 2015, when Phase 2 became fully operational, to its rate of consumption afterwards. But Enbridge proposed two additional details that went beyond the Department’s position.

First, Enbridge argued that there is no systemic reason to expect the incremental amount of electricity consumed by its Phase 2 project to grow or shrink over time. Consequently Enbridge proposes to forgo the need to re-calculate Phase 2’s incremental energy consumption each year, and instead assume that the incremental increase in the first year will be the same as the increase in all subsequent years.

¹ Minn. Stat. § 216B.1691.

² *Id.*, subp. 4.

³ *In the Matter of a Commission Investigation into a Multi-State Tracking and Trading System for Renewable Energy Credits*, Docket No. E-999/CI-04-1616, Third Order Detailing Criteria and Standards for Determining Compliance under Minn. Stat. § 216B.1691 and Setting Procedures for Retiring Renewable Energy Credits (December 3, 2008).

Second, Enbridge understands that the purpose of the Commission's November 7, 2014 order was to require Enbridge to offset the incremental consumption of energy from nonrenewable sources. Yet, as previously discussed, Minnesota's electric utilities acquire a substantial amount of electricity from *renewable* sources. So if Enbridge were served by a utility that generated, say, 25 percent of its electricity from renewable sources, then Enbridge argues that it should have to offset only the nonrenewable portion of the incremental energy consumption—that is, 75 percent of the increase. Moreover, Enbridge argues that if the utility were later to increase its reliance on renewable energy to 30 percent, Enbridge should be allowed to reduce the amount of its offset to 70 percent of the increase to reflect this change.

III. Commission Action

The Commission appreciates the extent to which Enbridge and the Department were able to reach agreement about how to implement and document Enbridge's neutral footprint objectives, especially regarding the tree-for-a-tree and acre-for-an-acre requirements.

Having considered the arguments of the parties interpreting the kWh-for-a-kWh requirement, the Commission clarifies its November 7, 2014 order as follows.

In accepting Enbridge's pledge to implement its Phase 2 project in a manner that maintained a carbon-neutral footprint, the Commission understood this pledge to apply to the Phase 2 project from the very start of its operations—that is, from July 1, 2015. Nothing in this proceeding prompts the Commission to alter this understanding.

That said, the indeterminacy of Enbridge's current strategy for meeting the kWh-for-a-kWh requirement clearly complicates Enbridge's ability to demonstrate compliance in the short term. Enbridge seeks to preserve the option of acquiring its own renewable generator in Minnesota and using the electricity from that generator to—retroactively—fulfill its kWh-for-a-kWh requirement. Requiring Enbridge to demonstrate that it is currently in full compliance with the requirement would frustrate this plan.

The Commission concludes that the kWh-for-a-kWh requirement can accommodate this contingency. Accordingly, the Commission will direct Enbridge to track the Phase 2 project's incremental increase in the consumption of nonrenewable energy starting from July 1, 2015. But the Commission will extend to November 1, 2020, the date by which Enbridge must demonstrate that it has actually offset that energy consumption with renewable energy. At that time, and annually thereafter, Enbridge may demonstrate compliance with the kWh-for-a-kWh requirement by—

- showing that it has generated sufficient renewable energy to fulfill its obligations, or
- acquiring and retiring the appropriate amount of renewable energy credits from M-RETS or a substantially equivalent entity, or

- engaging in some combination of these strategies.⁴

Finally, the Commission agrees with Enbridge's interpretation of the November 7, 2014 order that Enbridge must acquire renewable energy or RECs to offset the Phase 2 project's consumption of *nonrenewable* energy. Enbridge need not offset the share of the energy it consumes from renewable sources. And if over time a utility increases the share of electricity it acquires from renewable sources, then Enbridge may take that change into account in calculating the amount of renewable energy it must acquire as offsets.

By the same reasoning, the Commission will also direct Enbridge to measure and document in its annual filing the amount of energy consumed by the Phase 2 project. The record of this proceeding does not demonstrate how the energy consumed by the Phase 2 project will change over time as the physical plant ages and demand for pipeline transmission capacity changes, so the Commission will make no presumption on that question.

Instead the Commission will direct Enbridge, beginning in October, to make annual filings reporting its progress in implementing all of its three neutral footprint objectives. And where the kWh-for-a-kWh requirement is concerned, this filing will provide a yearly opportunity for Enbridge to incorporate any changes in the amount of energy consumed and the percentage of that energy that came from renewable sources.

The Commission will so order.

ORDER

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, 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. Verification shall be from

⁴ However Enbridge demonstrates compliance, it must do so in a manner that precludes double-counting. Enbridge may provide this verification via M-RETS. But if Enbridge intends to rely on some other REC-tracking entity, Enbridge must first petition the Commission to determine that the substitute entity is substantially equivalent to M-RETS.

the Minnesota Renewable Energy Trading System or another entity the Commission determines to be substantially equivalent to M-RETS.

4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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