

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**High Prairie Pipeline, LLC
Complainant,**

v.

**Enbridge Energy, Limited Partnership,
Respondent.**

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Docket No. OR12-17-000

**MOTION TO DISMISS AND ANSWER OF
ENBRIDGE ENERGY, LIMITED PARTNERSHIP
TO COMPLAINT OF HIGH PRAIRIE PIPELINE, LLC**

Pursuant to Rule 343.4 of the Procedural Rules Applicable to Oil Pipeline Proceeding, 18 C.F.R. § 343.4(a), Rules 206 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.206 & 385.213, and the Notice of Complaint issued on May 18, 2012, Enbridge Energy, Limited Partnership (“Enbridge Energy”) hereby responds to the complaint filed by High Prairie Pipeline, LLC (“High Prairie”) on May 17, 2012 (“Complaint”). For the reasons set forth below, Enbridge respectfully requests that the Commission dismiss the Complaint.

I. INTRODUCTION

The Complaint largely restates arguments made in High Prairie’s Protest in Docket No. IS12-236-000, including the claim that Enbridge Energy has “refused” to grant an interconnection in purported violation of the Interstate Commerce Act (the “ICA”). In fact, Enbridge Energy has never refused to grant High Prairie an interconnection. To the contrary, it has offered two reasonable options that would allow High Prairie’s proposed pipeline to connect with Enbridge Energy’s Lakehead System in a mutually acceptable manner. High Prairie apparently is unwilling to accept either option, as it has sought to circumvent the commercial negotiation process by filing first its Protest and now the Complaint.

As the Commission has explicitly held and recently reaffirmed, the ICA provides no authority to mandate an interconnection between common carrier pipelines. *See Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 FERC ¶ 61,271 (2003); *Enbridge Energy, Limited Partnership*, 139 FERC ¶ 61,134 (2012). In attempting to evade *Plantation*, High Prairie conflates anti-discrimination provisions of the ICA that are directed at preventing discrimination against *shippers* with the quite limited carrier-to-carrier provisions of the ICA that plainly do not impose these same anti-discrimination provisions nor create any statutory “right” to interconnection on whatever terms the requesting carrier dictates. In addition, High Prairie has failed to meet the requirements to bring a complaint under the Commission’s rules and precedent. In short, as detailed

further below, none of High Prairie's contentions has merit and its Complaint is therefore groundless and should be dismissed.

II. BACKGROUND

Enbridge Energy is a common carrier oil pipeline regulated under the ICA. It owns and operates the U.S. portion of the Enbridge System, the Canadian part of which is owned and operated by Enbridge Pipelines Inc. The U.S. portion of the system provides transportation of Western Canadian oil and U.S. oil produced in the Williston Basin area of Montana and North Dakota to the Midwest, Eastern Canada and New York State; it is commonly known as the Lakehead or Mainline System.

High Prairie states that it intends to construct a 450-mile pipeline ("HP Pipeline") capable of transporting approximately 150,000 barrels per day ("bpd") of light crude oil from the Bakken region of North Dakota to Clearbrook, Minnesota. Complaint at 3-4.¹ As described below, Enbridge Energy has had negotiations with High Prairie on its request to interconnect that project with the Lakehead System. *See* Affidavit of Laszlo Varsanyi at ¶ 5 ("Varsanyi Aff." Attached hereto as Appendix A).

In early February 2012, High Prairie had discussions with Enbridge Energy and its Mainline Business Development Group regarding the general project scope of the proposed HP Pipeline. *See id.* at ¶ 6. In the course of those high level discussions, representatives from the Mainline Business Development Group explained Enbridge Energy's business development process, which employs a multi-step procedure including

¹ High Prairie also states that it held an open season for the HP Pipeline from February 14 through April 5, 2012. *Id.*

project scoping and cost review, evaluation of financial feasibility and commercial negotiation of project metrics.² In accord with the Mainline Business Development Group’s normal practice, Enbridge Energy requested that High Prairie complete a New Service Request form, providing key project variables necessary to initiate the business development process. *See id.* at ¶ 6.

Enbridge Energy first received a formal request for interconnection on March 9, 2012, when High Prairie sent in its New Service Request. *See id.* at ¶ 7. Since then, Enbridge Energy has met with High Prairie several times in an effort to negotiate a mutually acceptable arrangement. *See id.* Negotiations have been hampered by the fact that High Prairie has changed what it says the HP Pipeline would deliver to Lakehead at Clearbrook, making it difficult for Enbridge Energy to determine exactly what the operational impact of the interconnection would entail. *See id.* at ¶ 8.³ Accordingly, those negotiations have necessarily remained at a preliminary screening evaluation stage, as none of the further required steps of the business development process—such as cost estimates and financial assessments—has been performed. *See id.*

² A typical timeframe for the business development process (excluding any necessary regulatory review) is anywhere from five to twelve months; regulatory review, if necessary, can add another six to nine months to that timeframe. *See id.* at ¶ 4.

³ High Prairie’s estimates of what the HP Pipeline would deliver into Lakehead have ranged from 225,000 bpd to 50,000 bpd. *See id.* The operational issues presented by a connection—including whether there will be sufficient capacity on existing Lakehead facilities, which already are experiencing prorationing—have had to be analyzed anew with each such change. *See id.*

From mid-April to early May, Enbridge Energy presented High Prairie with several reasonable alternatives that would allow the HP Pipeline to connect with the Lakehead System. *See id.* at ¶ 9. Enbridge Energy offered High Prairie an interconnection at Superior, Wisconsin, subject to construction of new tankage.⁴ Enbridge Energy also offered High Prairie an interconnection at Clearbrook, subject to commercially reasonable terms and necessary infrastructure development. *See id.*⁵

As Enbridge Energy explained to High Prairie in the course of negotiations, these alternatives are required because, given anticipated volumes from connecting lines, Enbridge Energy expects there will be significant capacity constraints for light crudes downstream of Clearbrook by the time High Prairie says it would begin operations in December 2013. *See id.* at ¶ 11. As such, the only way to accommodate High Prairie's requested interconnection without current (and future) shippers incurring significant prorationing is either to expand capacity downstream of Clearbrook or to establish an alternative interconnection point (*i.e.*, at Superior), which are the options Enbridge Energy suggested. *See id.* at ¶ 12.

⁴ Completion of the Superior interconnection would require the construction of new tankage facilities at an estimated cost of approximately \$200 million. *See id.*

⁵ An interconnection at Clearbrook would require construction of new tankage facilities at an estimated cost of approximately \$100 million. As discussed below, due to capacity constraints downstream of Clearbrook, it would also require the construction of a new 235-mile looped line from Clearbrook to Superior at an estimated cost of approximately \$1 billion. *See id.* at ¶ 10.

High Prairie has rejected both of the reasonable alternatives offered by Enbridge Energy. *See id.* at ¶ 13; Complaint at 4-7.⁶ High Prairie’s position is that its request for an interconnection at Clearbrook *must* be accepted subject only to the construction of the limited tankage facilities that High Prairie wrongly thinks would suffice. *See* Complaint at 4-5.⁷

Instead of continuing negotiations, High Prairie filed a protest against Enbridge Energy’s FERC Tariff No. 41.2.0 (“Tariff”), claiming that certain changes therein were designed to discriminate against High Prairie and its interconnection request. *See* Motion to Intervene and Protest of High Prairie Pipeline, LLC, Docket No. IS12-236-000 (filed May 4, 2012) (“Protest”). And on May 17, 2012, High Prairie filed the Complaint, reiterating many of the same claims of discrimination made in the Protest.⁸

On May 18, 2012, the Commission dismissed High Prairie’s Protest and accepted Enbridge Energy’s FERC Tariff No. 41.2.0, explaining that “it is not clear that Enbridge Energy has actually denied any request from High Prairie for an interconnection. . . . At

⁶ The most recent meeting between principals to discuss High Prairie’s request was on May 2, although email and telephonic discussions between executives of the parties continued until High Prairie filed its Complaint. *See id.* at ¶ 14.

⁷ High Prairie assails the \$100 million estimated cost of constructing the tankage necessary for a new 150,000 bpd connection at Clearbrook. That tankage is necessary to comply with Enbridge Energy’s four-day receipt rule, which is important to assure that a new connection does not reduce the flow rate of the system as a whole. *See* Complaint at 5, 11; *see also* Varsayni Aff. at ¶ 10. Given its statements, High Prairie apparently proposes to build substantially less tankage capacity.

⁸ *See Enbridge Energy*, 139 FERC ¶ 61,134, at P 18 & n. 20 (“High Prairie filed a complaint against Enbridge raising allegations akin to those set forth in its protest to Enbridge’s proposed tariff.”).

any rate, there is no statutory authority, or judicial or Commission precedent that gives the Commission jurisdiction to compel Enbridge Energy to interconnect.” *Enbridge Energy*, 139 FERC ¶ 61,134, at P 18. That same day, the Commission noticed High Prairie’s Complaint. *See High Prairie Pipeline, LLC v. Enbridge Energy, Limited Partnership*, Notice of Complaint, Docket No. OR12-17-000 (issued May 18, 2012).⁹

III. ARGUMENT

A. **High Prairie’s Claim that the Commission Can Order Enbridge Energy to Grant an Interconnection Request is Contrary to Settled Precedent and Finds No Support in the ICA or Other Statutes.**

High Prairie contends that Enbridge Energy is required to grant *carrier* interconnection on a non-discriminatory basis under the ICA, and that if it refuses, the Commission is “empowered” to order one. *See* Complaint at 7-16 (claiming that Section 3(1) of the ICA makes it unlawful for a common carrier oil pipeline to “discriminate” in considering interconnection requests). That claim is without merit. High Prairie has no claim for relief here, even assuming all facts it alleges were true.

1. **High Prairie’s Claim that the ICA Empowers the Commission to Order Interconnection Is Contrary to Commission Precedent.**

The Commission has repeatedly made it clear that the ICA does not require oil pipelines to grant carrier-to-carrier interconnections. *See Plantation*, 104 FERC ¶ 61,271, at P 22 (“None of the statutory, judicial, or agency authorities cited by Plantation

⁹ On June 1, 2012, High Prairie also filed an unprecedented complaint with the U.S. Forest Service requesting that the agency require Enbridge Energy to establish a connection at Clearbrook.

empowers or requires the Commission to order Colonial to connect with Plantation.”); *Enbridge Energy*, 139 FERC ¶ 61,134, at P 18 (“At any rate, there is *no statutory authority, or judicial or Commission precedent* that gives the Commission jurisdiction to compel Enbridge Energy to interconnect.”) (emphasis added).¹⁰ The Commission also has held that an oil pipeline has *no* obligation to interconnect on terms dictated by another carrier and that the Commission has *no* authority to mandate such an interconnection if the carriers involved cannot agree on contractual terms. *See Plantation*, 104 FERC ¶ 61,271, at PP 22, 28; *Enbridge Energy*, 139 FERC ¶ 61,134, at PP 18-20.

High Prairie attempts to distinguish *Plantation* by arguing it did not involve a claim of discrimination. *See* Complaint at 13. However, the Commission’s holding in *Plantation* cannot be so narrowly construed. *See Plantation*, 104 FERC ¶ 61,271, at P 28. Indeed, the Commission cited *Plantation* as the basis for dismissing High Prairie’s Protest, which made the same discrimination claims. *See Enbridge Energy*, 139 FERC ¶ 61,134, at P 19 (“As a final matter the Commission in *Plantation* pointed out that it has no jurisdiction over abandonment of service by oil pipelines, and that ‘it would be illogical and inconsistent for the Commission to conclude here that it has the power to compel an interconnection that Colonial does not want and could abandon.’ The same holds true here.”) (quoting *Plantation*, 104 FERC ¶ 61,271, at P 28).

¹⁰ *See also Plantation*, 104 FERC ¶ 61,271, at P 23 (explaining that the ICA “does not grant a carrier the unilateral right to interconnect with another pipeline, and it does not afford the Commission power to order – or even to approve – an interconnection”).

High Prairie further attempts to distinguish *Plantation* by arguing that the instant proceeding involves a different factual scenario. *See* Complaint at 14 (claiming that this is a “situation in which a carrier is seeking to unduly discriminate in granting or denying access to shippers based on whether their volumes come to Clearbrook on an upstream pipeline with whom the pipeline chooses to interconnect”). High Prairie contends that here “(1) a common carrier has granted an interconnect to another carrier, its affiliate, and is denying the same right to interconnect to a similarly situated third party common carrier, High Prairie; [and] (2) that same common carrier has acknowledged it has capacity to accept shippers’ volumes at Clearbrook but that it is preserving such capacity for its and its affiliates’ upstream shippers.” *Id.*

Neither of those contentions has merit. As to the first, Enbridge Energy has not granted an interconnection to “affiliates” and in any event High Prairie is not similarly situated. Enbridge North Dakota’s connection at Clearbrook was *not* granted to an affiliate; it was granted to an unaffiliated carrier, Portal Pipeline, and was already in place when Portal was acquired by Enbridge many years later. *See Portal Pipeline Co.*, 328 I.C.C. 262 (1966). Nor has Enbridge Energy granted an interconnection to the proposed Sandpiper Pipeline.¹¹ Rather, Enbridge Energy has told Sandpiper representatives that

¹¹ The facts regarding Portal are discussed further below. As to the proposed Sandpiper project, if a connection is sought at Clearbrook it would be subject to the same anticipated light crude capacity constraints as High Prairie. However, at this juncture Clearbrook is only one of the potential terminus points that Sandpiper is considering. *See* Platts, “Enbridge considering additional Bakken crude pipeline capacity: shippers,” *available at* <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/3896567>.

they have the same options subject to the same conditions as required of High Prairie.

See Varsanyi Aff. at ¶ 9.

As to High Prairie’s second contention, Enbridge Energy has not “acknowledged [that] it . . . is preserving [available] capacity for its and its’ affiliate upstream shippers.” Complaint at 14. Rather, it explained to High Prairie in their May 2 meeting that, based on its analysis, there will be significant capacity constraints for light crudes downstream of Clearbrook by the time High Prairie says it would begin operations in December 2013. *See* Varsanyi Aff. at ¶ 11. Enbridge Energy further explained that it would be imprudent to grant an interconnection at Clearbrook with full knowledge that it could lead to major apportionment issues. *Id.* at ¶ 12. And Enbridge Energy offered High Prairie two reasonable alternatives to satisfy its interconnection request. *Id.* at ¶¶ 9-12. High Prairie’s claims that *Plantation* is distinguishable are completely without merit.¹² High Prairie consequently fails to state a claim on which relief can be granted.

¹² High Prairie asserts that the Commission has statutory authority under Section 15(1) of the ICA to require Enbridge Energy to grant an interconnection to High Prairie at Clearbrook. *See* Complaint at 27-28. High Prairie has cited no relevant authority to support that contention. High Prairie goes on to contend that the Commission has “ancillary” authority to order such an interconnection under *ICC v. American Trucking Ass’ns, Inc.*, 467 U.S. 354 (1984). However, nothing in that decision suggests that the Commission’s “ancillary” authority includes the power to order oil pipeline interconnections with other carriers.

2. High Prairie's Claim that Other Statutes Authorize the Commission to Order Interconnection Has No Merit.

High Prairie goes on to contend—notwithstanding *Plantation*—that two non-ICA lines of precedent require the Commission to mandate an interconnection. *See* Complaint at 14-15. That argument cannot survive scrutiny.

High Prairie claims that under *Bonito Pipe Line Co.*, 61 FERC ¶ 61,050 (1992), an oil pipeline carrier cannot “favor affiliated pipelines in the grant of interconnects over other pipelines that are similarly situated.” Complaint at 14. Its reliance on that decision is misplaced. *Bonito* arose under the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1331, *et seq.*, *see* Complaint at 14-15 & n.33, and the Commission’s analysis in *Bonito* focused on OCSLA’s specific open access provisions. *See Bonito*, 61 FERC ¶ 61,050, at 61,220-22. Moreover, although *Bonito* was affirmed in *Shell Oil Co. v. FERC*, 47 F.3d 1186 (D.C. Cir. 1995), the D.C. Circuit has subsequently held that the Commission does *not* have a general power to enforce OCSLA’s open access provisions. *See The Williams Companies v. FERC*, 345 F.3d 910 (D.C. Cir. 2003); *Williams Gas Processing v. FERC*, 373 F.3d 1355 (D.C. Cir. 2004).¹³ In any event, Enbridge Energy is

¹³ In *The Williams Companies*, the D.C. Circuit held that regulations requiring OCS operators to file information regarding their pricing and servicing exceeded the Commission’s authority under Sections 5(e) and (f) of OCSLA, 43 U.S.C. § 1334(e)-(f). The court also explained that Shell should be read narrowly, as “Sections 5(e) and (f) of OCSLA do not grant FERC general powers to create and enforce open access rules on the OCS, but merely assign it a few well-defined tasks.” 345 F.3d at 916. Finally, the court rejected an argument that Shell had “already upheld [the Commission’s] broad reading of §§ 1334(e) & (f).” *Id.* at 915. In fact, the proper reading of Shell was far narrower. *Id.* at 915-16 (explaining that while in Shell “the parties had not questioned FERC’s general authority to order open-access enhancing conduct on the OCS; here they have”).

not regulated under OCSLA nor has it “favor[ed] affiliated pipelines in the grant of interconnects.”

High Prairie also is wrong in claiming that “Enbridge is subject to further non-discriminatory access obligations” under the Mineral Leasing Act (“MLA”) that allow the Commission to order an interconnection. *See* Complaint at 15 & n.33 (arguing that the “Mineral Leasing Act expressly provides for FERC action to enforce these open access obligations”). The MLA provisions it cites, codified at 30 U.S.C. § 185 and also known as “Section 28,” state that “pipelines and related facilities” with rights-of-way through Federal lands must: (1) operate as common carriers; and (2) accept, convey, transport or purchase “without discrimination” all oil or gas *delivered* to the pipeline, whether produced on federal or non-federal lands. 30 U.S.C. § 185(r)(1)-(2).

The MLA thus mandates non-discriminatory access for *shippers*. The Department of the Interior has described the common carrier obligation as requiring “the holder of a right-of-way for a natural gas pipeline under section 28 . . . to carry gas for someone other than itself and regardless of whether the gas is produced from Government land.” *In re Richfield Oil Corp.*, 68 Interior Dec. 435, 440 (1961). Courts have held Section 28 embraces the “common law meaning” of a common carrier, which is consistent with the

Similarly, *Williams Gas Processing* reversed and remanded an order asserting “OCSLA jurisdiction” over the rates and services of a gas pipeline after finding that it had “violated the open access and nondiscrimination requirements of OCSLA.” 373 F.3d at 1341. The D.C. Circuit explained that *The Williams Companies* “would seem to doom both the Commission’s assertion of broad authority to enforce open access and nondiscrimination principles on the OCS and its OCSLA-based reclamation of jurisdiction over . . . rates. . . .” *Id.* at 1344. The court also rejected a claim that The Williams Companies was limited to rulemakings. *Id.*

conclusion that the MLA—like the ICA—requires non-discrimination among shippers and does not govern carrier interconnections.¹⁴

B. High Prairie’s Claim that Anti-Discrimination Provisions of the ICA Apply to Carrier Interconnections is Erroneous.

High Prairie contends that Enbridge Energy has violated various provisions of the ICA by “discriminating against High Prairie and its shippers” and refusing to grant “High Prairie an interconnection on reasonable and not unduly discriminatory terms.” *See* Complaint at 7-15 (claiming that Enbridge Energy has violated Section 3(1) of the ICA); *id.* at 19-20 (claiming that Enbridge Energy has violated Section 1(4) of the ICA). High Prairie also argues that Enbridge Energy has violated ICA bans against discrimination by “conditioning” its offer to interconnect at Clearbrook on certain contractual terms. *See* Complaint at 11-12 (claiming that Enbridge Energy has violated Section 3(1) of the ICA); *id.* at 16-17 (claiming that Enbridge Energy has violated Sections 1(6) and 6(1) of the ICA and Section 341.0 of the Commission’s regulations); *id.* at 20-21 (claiming that Enbridge Energy has violated Section 6(7) of the ICA). These contentions have no merit, and as a consequence High Prairie has failed to state a claim for which relief can be granted even if the facts in its Complaint were assumed to be true.

As an initial matter, the statutory sections High Prairie cites relate primarily to the ICA’s prohibition against discrimination among *shippers*, and do not govern (or even

¹⁴ *See Chapman v. El Paso Natural Gas Co.*, 204 F.2d 46, 51 (D.C. Cir. 1953) (“in the absence of more specific language by Congress, we regard the condition that pipe lines be constructed, operated, and maintained as ‘common carriers’ to embrace the common law meaning of that term.”); *Denver Petroleum Corp. v. Shell Oil Co.*, 306 F. Supp. 289, 303 (D. Colo. 1969) (same).

address) *carrier* interconnections.¹⁵ Indeed, the decisions on which High Prairie relies explicitly address shipper-related matters. As High Prairie itself states, the “Commission has rejected tariff provisions that grant long-haul *shippers* preferential access capacity to capacity over short-haul *shippers*,” and has “steadfastly required all oil pipelines to set aside a portion of capacity for new or uncommitted *shippers*.” See Complaint at 12-13 (emphasis added); see also *id.* at 19-20 (“The Commission has held that . . . competitive considerations are an invalid basis on which to discriminate in the *awarding of capacity . . .*”) (emphasis added).¹⁶

¹⁵ See, e.g., *Alton & S. R.R. v. U.S.*, 49 F.2d 414, 422 (N.D. Cal., 1931) (“The purpose of Congress in the enactment of section 6 of the Interstate Commerce Act . . . is obviously to provide for a system of tariff schedules, rates, fares, and charges which would be uniform and consistent and apply without discrimination or favoritism to all *shippers* similarly situated.”) (emphasis added); *Coastwise Rates Between Gulf Ports and Texas*, 234 I.C.C. 557, 560 (1939) (“Under Section 3(1) of the act, it is unlawful for any common carrier subject thereto to make or give any undue or unreasonable prejudice or disadvantage to any particular description of traffic in any respect whatsoever. Although this section is couched in broad and general terms, *the wrong which it prohibits has been found to be prejudice and preference between shippers.*”) (emphasis added); *Fort Smith & Western Ry. Co. v. A., T. & S. F. R. Co.*, 216 I.C.C. 411, 432 (1936) (“In commenting on the purpose of section 3(1) of the act, the Supreme Court has said that ‘the Act was passed for the protection of those who pay or bear the rates.’ The Commission, in following that ruling, has held that a situation of prejudice or preference between common carriers is *not* comprehended by the provisions of section 3(1).”) (emphasis added, internal citation omitted).

¹⁶ High Prairie cites *American Trucking v. A., T. & S. F. R. Co.*, 387 U.S. 397 (1967), in support of its assertion that Section 3(1) addresses carrier interconnections. See Complaint at 8 & n.22. However, that case involved the specific question whether the Interstate Commerce Commission had “authority to promulgate rules providing that (1) railroads which offer trailer-on-flatcar (TOFC) service to the public under open-tariff publications must make such service available on the same terms to motor and water common and contract carriers.” 387 U.S. at 399-400. In other words, the motor and water carriers in that case were seeking to use TOFC service in the same manner as other members of the public could, loading and unloading over the same existing facilities.

Perhaps recognizing that flaw in its arguments, High Prairie contends that Enbridge Energy is discriminating not only “against High Prairie [but also against] its shippers.” *See* Complaint at 8, 12. However, High Prairie has presented no evidence that its prospective—perhaps speculative—shippers have been or will suffer discrimination. Although High Prairie says it has held an open season for capacity, *see* Complaint at 3-4, it does not yet provide any transportation services and thus does not yet have any shippers. *See Enbridge Energy*, 139 FERC ¶ 61,134, at P 20 (“Simply put, High Prairie (as a potential connecting pipeline), is not a current or prospective shipper that would be protected by the anti-discrimination provisions of the ICA.”). Indeed, it has stated that its current shipper commitments were written to expire on June 4, 2012 (although High Prairie is seeking to extend them). *See* Complaint at 32.

High Prairie also is wrong in claiming that it was illegal for Enbridge Energy to “condition” its offer to interconnect at Clearbrook, Complaint at 11, 21, on certain contractual terms. To begin with, it starts from a fundamentally incorrect premise: that High Prairie can demand a connection on its own, unilaterally imposed terms. *See* Complaint at 8-9. As the Commission has made clear, the ICA requires no such thing. *See Enbridge Energy*, 139 FERC ¶ 61,134, at P 18; *Plantation*, 104 FERC ¶ 61,271, at P 22. To the contrary, the terms and conditions for a connection between carriers are within the discretion of the granting carrier, as is the decision whether or not to grant a

The Court simply held that they could not be foreclosed from that generally available service solely because of their status as carriers. *American Trucking* says nothing about requiring one carrier to provide a new connection solely for the benefit of another carrier, and it has no bearing on this case.

connection at all. *See Enbridge Energy*, 139 FERC ¶ 61,134, at PP 18-22; *Plantation*, 104 FERC ¶ 61,271, at P 22, 28.

In any event, the “conditions” High Prairie claims to violate the ICA, *see* Complaint at 11, 21, are reasonable as well as lawful. They are simply the terms necessary in order to add a new connection at Clearbrook without disrupting or degrading system operations in light of current and projected throughput. Infrastructure improvements would be required to avoid those problems, and financial commitments would be necessary if Enbridge Energy rather than High Prairie built them. *See Varsanyi Aff.* at ¶¶ 9-12. There is nothing in the ICA that prohibits an oil pipeline carrier from declining connections that would result in apportionment for shippers. Nor is there anything that requires a carrier to make large new capital investments without having contractual assurances that permit it to recover those costs.

In sum, High Prairie’s claim that Enbridge Energy has sought to impose “discriminatory conditions” that violate the ICA has no merit.

C. Enbridge Energy is Not Required to Publish a Carrier-to-Carrier Connection Policy in its Tariff.

High Prairie renews the argument, previously made in the Protest, that Enbridge Energy has violated 18 C.F.R. § 341.8 by failing to publish a carrier interconnection policy in its rules tariff. *See* Complaint at 21-22; Protest at 8-11, 15. To the extent High Prairie contends the tariff must address connections to other carriers, however, there is no such requirement in the Commission’s regulations or otherwise.

Section 341.8 requires oil pipeline tariffs to include rates governing certain matters that “increase or decrease the value of service *to the shipper*.” 18 C.F.R. § 341.8 (emphasis added). Indeed, High Prairie acknowledges that in promulgating that regulation, the Commission focused on the terms of connection policy in regard to shippers. *See* Order No. 561-A, *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Regs. Preambles 1991-1996 FERC Stats. & Regs. 31,000, at 31,110 (1994), 59 Fed. Reg. 40,243 (1994), *aff’d*, *Association of Oil Pipe Lines v. FERC*, 83 F.3d 1424 (1996); Complaint at 22 (“In Order No. 561-A, the Commission held that a carrier’s line connection policy “certainly affect[s] the value of services *to the shipper . . .*”) (emphasis added).¹⁷ Accordingly, there is no evidence to suggest that Section 341.8 requires oil pipelines to address interconnections to other carriers, and High Prairie’s Complaint should be dismissed. *See Enbridge Energy*, 139 FERC P 61,134, at P 18 (accepting the Tariff as filed).

D. The Complaint Provides No Grounds for Investigation.

1. The Complaint Mischaracterizes Relevant Facts.

While the Commission does not need to address the facts alleged by High Prairie because there is no legal basis for High Prairie’s claims, the Complaint does contain a number of mischaracterizations of relevant facts. High Prairie’s claims fail even under

¹⁷ *Cf. Arco Alaska, Inc. v. FERC*, 89 F.3d 878, 886 (D.C. Cir. 1996) (rejecting a requirement, based in part on Section 341.8, that an oil pipeline carrier publish in its tariff the terms of its agreement for sharing capacity with other carriers in an undivided interest line, explaining that carriers cannot be compelled to publish information “without some indication it makes a difference to shippers”).

the facts it alleges; the actual facts make its lack of any cognizable complaint even more clear.¹⁸

High Prairie contends that Enbridge Energy has “refused to grant High Prairie an interconnection,” except on certain terms that High Prairie deems unacceptable, which High Prairie claims to constitute a “discriminatory denial of access.” *See* Complaint at 2, 8, 10. As explained above, however, Enbridge Energy has *never* “refused” to grant High Prairie an interconnection. Indeed, at least until the Protest was filed, Enbridge Energy believed the negotiations were progressing, although no agreement had been reached. *See Enbridge Energy*, 139 FERC ¶ 61,134, at P 18 (“Negotiations between Enbridge Energy and High Prairie apparently are in the opening stages and *there has been no action on behalf of either party that would lead to any conclusion that there has been a denial of a connection.*”) (emphasis added).¹⁹ Thus, it is High Prairie—not Enbridge Energy—that has refused to continue (and attempted to circumvent) the commercial negotiation process by filing the Protest and now the Complaint.

Moreover, as described above, Enbridge Energy has presented High Prairie with at least two reasonable alternatives—an interconnection at Superior or an interconnection at Clearbrook with support for expanded downstream capacity. *See id.* at ¶ 9. High Prairie

¹⁸ In the event that the Commission rules in favor of Enbridge Energy on the merits in Sections (A)-(C), there is no need to resolve any of these factual questions.

¹⁹ *See also* Varsanyi Aff. at ¶ 8 (explaining that negotiations have necessarily remained at a preliminary screening evaluation stage, as none of the further required steps of the business development process have been performed).

makes no mention of the first alternative, nor of the fact that it has explicitly rejected that option and has refused to discuss it further. *See id.* at ¶ 13.

In regard to new facilities required for an interconnection at Clearbrook, High Prairie claims that “Enbridge Energy has stated that the cost of such facilities would be approximately \$100 million, an amount that is both unsubstantiated and clearly unreasonable.” *See* Complaint at 5, 11. Enbridge explained that interconnection at Clearbrook, exclusive of support for any downstream expansion, would require additional tankage at a total cost of approximately \$100 million. *See* Varsanyi Aff. at ¶ 10. That figure has two components: two 333,000 barrel tanks, which is the tankage required to meet Enbridge Energy’s four-day receipt rule, and custody transfer metering. *See id.* The amount projected by Enbridge Energy as necessary to construct the needed tankage at Clearbrook is neither “unsubstantiated” nor “unreasonable,” nor has High Prairie actually offered to pay for the cost of the required tankage, its claims to the contrary notwithstanding. *See* Complaint at 4; Varsanyi Aff. at ¶ 13.²⁰

High Prairie also asserts that Enbridge Energy will not be constrained by a lack of available capacity downstream of Clearbrook until 2016 or 2017. *See* Complaint at 5-6, 10. However, Enbridge Energy has told High Prairie that, based on its analysis, it

²⁰ High Prairie states that it is “willing to pay for all facilities needed for the interconnection, including but not limited to any tankage at Clearbrook . . . notwithstanding the fact that Enbridge Energy’s tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling.” Complaint at 4. Enbridge Energy’s current rate tariff does include a charge for receipt point tankage and terminalling at Clearbrook. *See* FERC Tariff No. 43.9.0 at p. 6. That does not imply, however, that the cost of construction for incremental tankage would be included in that rate.

expects to utilize available light crude oil capacity downstream of Clearbrook fully by the time High Prairie would commence operations in late 2013. *See* Varsanyi Aff. at ¶ 11. Enbridge Energy determines its capacity rights on a month-to-month basis and does not “reserve” space on the system for certain customers or projects. But knowing that capacity will be constrained before High Prairie even starts operations, it would be imprudent to grant High Prairie an interconnection at Clearbrook with full knowledge that doing so could lead to apportionment for both current shippers and High Prairie’s own potential shippers as well. *See id.* at ¶ 12.

High Prairie claims that “Enbridge Energy has allowed only one other pipeline to establish a delivery interconnect into Clearbrook – its affiliate, Enbridge Pipelines (North Dakota) LLC.” Complaint at 7, 9, 14. While there is nothing wrong with an oil pipeline carrier connecting to an affiliate, that is not what happened here.

IPL Energy Inc. (the predecessor company of Enbridge Inc.) purchased Portal Pipeline Co—a preexisting carrier unaffiliated with any Enbridge entity—in 1995.²¹ At that time, Portal already had an interconnection at Clearbrook, established many years earlier under very different crude oil transportation market conditions. *See Portal Pipeline Co.*, 328 I.C.C. 262 (1966) (explaining that Portal Pipeline operates trunklines transporting crude oil from various points in North Dakota to “Clearbrook, Minn., where

²¹ *See* Business Wire, Inc., “IPL Energy purchases Portal Pipe Line,” (Nov. 14, 1995) (Attached hereto as Appendix B). IPL Energy Inc. changed its name to Enbridge Inc. in October of 1998. *See* Pipeline & Gas Journal, “Enbridge finds plenty of profit staying with its pipeline niche; Growing force in North America,” (May 1, 2004) (Attached hereto as Appendix C). The Portal Pipeline subsequently became Enbridge Pipelines (North Dakota) LLC (“Enbridge North Dakota”).

it connects with the Minnesota and Lakehead Pipe Line Companies”). Thus, the “virtual expansion” High Prairie refers to involved the established connection of Portal Pipeline, not a new connection. *See* Complaint at 7; *see also Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 4 (2010).²²

These misstatements of the facts make High Prairie’s claims untenable. However, even accepting High Prairie’s erroneous facts it would have no valid claims, because the Commission has explicitly held it does not have jurisdiction to order carrier interconnections. *See Plantation*, 104 FERC ¶ 61,271 (2003); *Enbridge Energy*, 139 FERC ¶ 61,134.

2. High Prairie Has Failed to Satisfy the Requirements of the Commission’s Regulations Governing Oil Pipeline Complaints.

Section 13(1) of the ICA requires the Commission to investigate a carrier’s existing practices only if there is a “reasonable ground” to do so. 49 U.S.C. app. § 13(1) (1988); *see also* 18 C.F.R. § 343.2(c)(3). Challenges to *non-rate* matters, whether protests or complaints, “must allege reasonable grounds for asserting that the operations or practices violate a provision of the [ICA], or of the Commission’s regulations.” 18 C.F.R. § 343.2(c)(3). Such challenges must also be “shipper-specific” and not simply

²² High Prairie also claims that “Enbridge Energy has stated that the [Sandpiper Pipeline] will interconnect with Enbridge Energy at Clearbrook.” Complaint at 7, 9. However, the Sandpiper Pipeline, which is still in the planning stages and has not yet held an open season, has only identified a potential connection at Clearbrook as one of its “scope options.” *See* Platts, “Enbridge considering additional Bakken crude pipeline capacity: shippers,” *available at* <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/3896567>. In any event, no such interconnection has been established and if one is sought it would be subject to the same capacity and new infrastructure issues as High Prairie.

“rely on general assertions of injury.” *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081, at P 7 (2008). A challenge that does not meet these requirements “will be dismissed.” *See* 18 C.F.R. 343.2(c)(4); *see also Bridger Pipeline*, 123 FERC ¶ 61,081, at P 7 (dismissing challenge that failed to “show any definitive harm to shippers”).

High Prairie claims to have sufficient economic interest to file the Complaint based on the allegation that it will “suffer economic harm due to the unduly discriminatory and preferential behavior of Enbridge Energy.” Complaint at 3. However, in its Order rejecting the Protest the Commission found to the contrary, explaining that because High Prairie was not a current or prospective shipper, the ICA’s anti-discrimination provisions are inapplicable:

Simply put, High Prairie (as a potential connecting pipeline), is *not a current or prospective shipper that would be protected by the anti-discrimination provisions of the ICA*. Therefore, it is unnecessary for the Commission to address arguments of High Prairie, including (a) the possible denial of nominations for shipments on upstream pipelines, (b) whether High Prairie has a substantial economic interest, and (c) whether Enbridge Energy has acted in a manner that is unjust, unreasonable, or unduly preferential. Accordingly, High Prairie’s protest is dismissed.

Enbridge Energy, 139 FERC ¶ 61,134, at P 20.

Although High Prairie’s arguments are couched in multiple asserted statutory and regulatory violations, they can be distilled down to one primary contention: that Enbridge Energy’s “refusal” to grant an interconnection on the terms mandated by High Prairie constitutes “preferential and discriminatory” behavior. *See* Complaint at 1. High Prairie further contends that in the event it suffers damages “as a result of Enbridge Energy’s

unduly discriminatory refusal to grant, or delay in granting, the requested interconnect,” the FERC has the “statutory power and duty to award High Prairie the full amount of any damages it sustains,” including consequential damages. *See* Complaint at 29-30. But High Prairie’s discrimination claims, even if true, would be relevant only in regard to current or prospective shippers—not to interconnection requests made by a “potential connecting pipeline.” 139 FERC ¶ 61,134, at P 20; *see also id.* at n.20 (explaining that the Complaint raises “allegations akin to those set forth in its protest to Enbridge’s proposed tariff”).

Because High Prairie is not protected by the anti-discrimination provisions it cites, it is not entitled to the recovery of damages.²³ As such, High Prairie itself has no cognizable economic interest in this instance, and the Complaint should be dismissed.

IV. ADMISSIONS AND DENIALS

The following paragraphs set forth Enbridge Energy’s answer to the allegations in Part IV of High Prairie’s Complaint (the headings in the document indicated that Part IV is the “Complaint” portion of the document).²⁴ To the extent that the Complaint contains allegations not otherwise addressed below, those allegations are denied.

²³ In any event, there would be significant disputed issues of fact relating to whether High Prairie had been damaged (if at all) and to what amount. The burden of going forward as well as the ultimate burden of proof – both as to the merits and as to proof of damages – is on the complainant. *See SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,059 (1999); *see also Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 812 (1973); *Louisville & Nashville R.R. v. United States*, 238 U.S. 1, 11 (1915).

²⁴ The Complaint contains two headings labeled Part IV—the first subtitled “Grounds For Complaint,” *see* Complaint at 7, and the second “Compliance With Other

Part A of the Grounds For Complaint

1. Enbridge Energy denies that it has refused to grant an interconnection to High Prairie on reasonable and not unduly discriminatory terms.
2. Enbridge Energy denies that it has granted an interconnection request to its affiliates Enbridge North Dakota or the Sandpiper Pipeline.
3. Enbridge Energy denies that High Prairie has offered to pay for the cost of all facilities that are in fact necessary for the proposed interconnection at Clearbrook.
4. Enbridge Energy denies that it has admitted that it does not want the interconnection because it wishes to provide preferential access to shippers utilizing the upstream pipelines owned and operated by Enbridge Energy and its affiliates.
5. Enbridge Energy denies that its estimated cost to build additional tankage facilities at Clearbrook is unreasonable.
6. Enbridge Energy denies that requiring High Prairie to pay a surcharge to recover the cost of building new downstream expansion facilities between Clearbrook and Superior would be unduly discriminatory.
7. Enbridge Energy denies that consultation with its existing shippers regarding the viability of an expansion project would be unduly discriminatory, or that it wants to give its existing shippers the privilege of determining whether or not High Prairie is granted an interconnection.

Procedural Regulations,” *see* Complaint at 22. To avoid confusion, the two sections are addressed sequentially. High Prairie also does not include a Section E under its Grounds for Complaint.

8. Enbridge Energy denies that its proposal to seek a declaratory order approving a methodology for allocating its capacity and/or recovering the costs of the expansion project is evidence of unduly discriminatory behavior.

9. Enbridge Energy denies that a requirement to “backstop” the expansion project is evidence of unduly discriminatory behavior.

10. Enbridge Energy denies that it is granting preferential access to certain upstream pipelines and shippers while denying access to others.

11. Enbridge Energy denies that it has acknowledged it has capacity to accept shippers’ volumes at Clearbrook but that it is preserving such capacity for its and its affiliates’ upstream shippers.

12. Enbridge Energy denies that High Prairie or its potential shippers would be denied any opportunity to “get the same deal that Enbridge Energy has given to itself, its shippers, and its affiliated upstream pipelines and their shippers.”

Part B of the Grounds for Complaint

13. Enbridge Energy denies that it has refused to grant High Prairie or its potential shippers access to Enbridge Energy at its tariffed Clearbrook origin point.

14. Enbridge Energy denies that it will continue to have excess capacity for the next few years, and that it is preserving such capacity for volumes moving over its own or its affiliates’ upstream lines.

15. Enbridge Energy denies that it is unreasonable to require High Prairie to backstop an expansion of Enbridge Energy’s system downstream from Clearbrook.

Part C of the Grounds for Complaint

16. Enbridge Energy denies that the only justification it has provided for not accepting High Prairie's interconnection request on the terms proffered by High Prairie is to "protect the capacity rights (as well as revenues) of its shippers and its affiliated upstream pipeline's shippers."

17. Enbridge Energy denies that it is attempting to "avoid having to share line space downstream of Clearbrook with High Prairie's shippers."

Part D of the Grounds for Complaint

18. Enbridge Energy denies that it is "extending to its existing shippers privileges in the transportation of crude oil that are not specified in its tariffs."

Part F of the Grounds for Complaint

19. Enbridge Energy denies that it is required to provide an interconnection policy addressing interconnections with other carriers in its tariff.

Part A of the Compliance With Other Procedural Regulations

20. Enbridge Energy denies that it has refused prospective shippers on the HP Pipeline access to its mainline and to the refineries it serves and the other pipelines with which it is interconnected downstream of Clearbrook.

21. Enbridge Energy denies that it has refused to grant High Prairie's request for an interconnection or that such action "has a negative impact on prospective shippers on the HP Pipeline and crude oil production in North Dakota."

Part B of the Compliance With Other Procedural Regulations

22. Enbridge Energy denies the characterizations that High Prairie sets forth in regard to the proceeding in Docket No. IS12-236-000. Enbridge Energy believes that the Commission's order in *Enbridge Energy, Limited Partnership*, 139 FERC ¶ 61,134 (2012) speaks for itself and contains the correct characterizations of the parties' positions in Docket No. IS12-236-000. Enbridge Energy denies that the remedies requested in that docket substantially differ from the remedies requested in the Complaint. Enbridge Energy denies that High Prairie has suffered any loss or damages as a consequence of Enbridge Energy's alleged actions or inactions and further denies that High Prairie is entitled to the recovery of any damages in this matter.

Part C of the Compliance With Other Procedural Regulations

23. Enbridge Energy denies that it has engaged in any discriminatory practices and that the Commission has the jurisdiction to order an oil pipeline interconnection.

24. Enbridge Energy denies that receipts at Clearbrook are being made on terms that are unduly discriminatory and preferential.

25. Enbridge Energy denies that transportation downstream from Clearbrook is being performed on terms that are unduly discriminatory and preferential.

26. Enbridge Energy denies that it is required to publish an interconnection policy in its tariff in regard to interconnections with other carriers.

27. Enbridge Energy denies that it has failed to grant High Prairie's interconnection request, that it has unlawfully delayed granting such a request, and that it

has failed to publish and “adhere to a just, reasonable, and not unduly discriminatory or preferential interconnection policy.” Enbridge Energy denies that High Prairie is entitled to the collection of damages of any kind for any actions taken or not taken by Enbridge Energy in the course of its commercial negotiations with High Prairie. Enbridge Energy denies that High Prairie has suffered any loss or damages as a consequence of Enbridge Energy’s alleged actions or inactions and further denies that High Prairie is entitled to the recovery of any damages in this matter.

Part D of the Compliance With Other Procedural Regulations

28. This section does not contain any allegations for which an admission or denial are required.

Part E of the Compliance With Other Procedural Regulations

29. Enbridge Energy denies that High Prairie was “compelled” to file the Complaint. The rest of this section does not contain any allegations for which an admission or denial are required.

Part F of the Compliance With Other Procedural Regulations

30. This section does not contain any allegations for which an admission or denial are required.

Part G of the Compliance With Other Procedural Regulations

31. Enbridge Energy denies that Fast Track Processing is warranted in this proceeding due to any representations made by High Prairie to its shippers or any contractual negotiations that High Prairie has entered into with regard to its shippers.

IV. AFFIRMATIVE DEFENSES

Enbridge Energy relies on the following affirmative defenses:

1. The Complaint fails to establish any “reasonable ground” to investigate

Enbridge Energy’s practices pursuant to Section 13(1) of the ICA.

2. High Prairie bears the burden of proof with respect to all claims raised in its Complaint against Enbridge Energy.

3. The Complaint is unsupported by substantial evidence.

4. The Complaint fails to state a claim upon which relief can be granted.

Enbridge Energy reserves the right to raise any additional legal or factual defenses that arise during the course of any proceedings instituted by the Commission with respect to the Complaint.

V. RULE 213(4) STATEMENTS

Enbridge Energy is not aware of specific documents that support this answer other than those documents cited herein or in the Complaint.

VI. SERVICE, COMMUNICATIONS AND CORRESPONDENCE

Enbridge Energy requests that the persons listed below be included on the official service list for this proceeding, and that any communications and correspondence regarding this proceeding be sent to the following persons:

Helene C. Long
Associate General Counsel
Major Projects Law & Regulatory Affairs
Enbridge Pipelines Inc.
3000, 425 – 1st Street, S.W.
Calgary, Alberta T2P 3L8
(403) 231-5774
helene.long@enbridge.com

Steven Reed
Timothy M. Walsh
Step toe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036-1795
(202) 429-6232
sreed@step toe.com
twalsh@step toe.com

VI. CONCLUSION

For the foregoing reasons, Enbridge Energy denies the allegations in the Complaint and respectfully requests that the Commission dismiss the Complaint.

Respectfully submitted,

Of Counsel:

Helene C. Long
Associate General Counsel
Major Projects Law & Regulatory Affairs
Enbridge Pipelines Inc.
3000, 425 – 1st Street, S.W.
Calgary, Alberta T2P 3L8
(403) 231-5774

/s/ Steven Reed
Steven Reed
Timothy M. Walsh
William E. Flynn
Joseph R. Hicks
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(202) 429-6250

*Counsel for Enbridge Energy, Limited
Partnership*

June 6, 2012

APPENDIX A

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

High Prairie Pipeline, LLC)
)
 v.) **Docket No. OR12-17-000**
)
Enbridge Energy, Limited Partnership)

**AFFIDAVIT OF LASZLO VARSANYI
ON BEHALF OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP**

1. My name is Laszlo Varsanyi. I am the Director, Mainline Development of Enbridge Energy, Limited Partnership (“Enbridge Energy”). My business address is 3000, 425 – 1st Street S.W. Calgary, AB T2P 3L8.

2. I am providing this affidavit on behalf of Enbridge Energy in response to the complaint filed by High Prairie Pipeline, LLC (“High Prairie”) in the above-referenced docket (“Complaint”).

3. Enbridge Energy owns and operates the U.S. portion of the Enbridge System, which is a major crude oil pipeline system providing transportation of Western Canadian oil and U.S. oil produced in the Williston Basin area of Montana and North Dakota to the Midwest and points in Eastern Canada and New York State. The U.S. portion of the system is commonly referred to as the Lakehead or Mainline System.

4. In my role as Director of Mainline Development, I oversee the Mainline Business Development group that manages the business development process for the Lakehead System. This process is a multi-step procedure involving project scoping and cost review, evaluation of financial feasibility and commercial negotiation of project metrics. A typical timeframe for the business development process, excluding any regulatory review, is anywhere from five to twelve months, as internal review of the project typically involves at least six departments. Regulatory review, if necessary, can add another six to nine months to that timeframe.

5. In the instant matter, Enbridge Energy has had ongoing commercial negotiations with High Prairie concerning the latter's request to interconnect with the Lakehead System at Clearbrook, Minnesota. High Prairie has stated that it intends to construct a crude oil pipeline ("HP Pipeline") transporting approximately 150,000 barrels per day ("bpd") from the Bakken region of North Dakota to Clearbrook.

6. In early February 2012, High Prairie had discussions with Enbridge Energy and its Mainline Business Development Group to discuss the general project scope of the HP Pipeline. The subsequent discussions centered on the necessary elements of the business development process identified above. Also at that time, the Mainline Business Development Group representatives requested that High Prairie complete and submit a New Service Request form, which provides key variables necessary to initiate the business development process.

7. Enbridge Energy first received a formal request for interconnection on March 9, 2012, when High Prairie sent in its New Service Request. Since that time,

Enbridge Energy has met several times with High Prairie in an effort to negotiate a mutually acceptable agreement.

8. Negotiations have been hampered by the fact that High Prairie has changed what it says the HP Pipeline would deliver to Lakehead at Clearbrook, making it difficult for Enbridge Energy to determine exactly what the operational impact of the interconnection would entail. High Prairie's estimates of what the HP Pipeline would deliver into Lakehead have ranged from 225,000 bpd to 50,000 bpd. The operational issues presented by a connection—including whether there will be sufficient capacity on existing Lakehead facilities, which already are experiencing prorationing—have had to be analyzed anew with each such change. Accordingly, negotiations with High Prairie have necessarily remained at a preliminary screening evaluation stage, as none of the further required steps of the business development process—such as cost estimates and financial assessments—have been performed.

9. From mid-April to early May, Enbridge Energy presented High Prairie with several reasonable alternatives which would allow the HP Pipeline to connect with the Lakehead System. Enbridge Energy offered High Prairie an interconnection at Superior, Wisconsin, subject to construction of new required tankage at an estimated cost of approximately \$200 million. Enbridge Energy also offered High Prairie a connection at Clearbrook, subject to certain reasonable infrastructure and financial commitments that would be required of any common carrier pipeline (or for that matter any party) seeking to add an interconnect at Clearbrook. For example, Enbridge Energy has told

representatives from the Sandpiper Pipeline that they have the same options subject to the same conditions as required of High Prairie.

10. In the course of negotiations, Enbridge Energy explained that interconnection at Clearbrook, exclusive of support for any downstream expansion, would require additional tankage at an estimated cost of approximately \$100 million. That figure has two components: two 333,000 barrel tanks, the tankage required to meet Enbridge Energy's four-day receipt rule, which is important to assure that a new connection does not reduce the flow rate of the system as a whole, and custody transfer metering. Enbridge Energy also explained that due to capacity constraints at Clearbrook, an interconnection at Clearbrook would also require the construction of a new 235-mile pipeline from Clearbrook to Superior at an estimated cost of approximately \$1 billion. Unless and until Enbridge Energy has an approved mechanism for recovering those costs, High Prairie would need to backstop the downstream facilities (as is typical under Enbridge Energy's business development process) by compensating Enbridge Energy for any revenue shortfalls.

11. Enbridge Energy explained to High Prairie in their most recent meeting that these alternatives are necessary because Enbridge Energy has significant constraints on its Lakehead capacity downstream of Clearbrook. Given anticipated volumes from connecting lines, Enbridge Energy expects that there will be significant capacity constraints for light crudes downstream of Clearbrook by the time High Prairie says it would begin operations in December 2013.

12. Enbridge Energy explained that the only way to accommodate High Prairie's requested interconnection without current (and future) shippers incurring significant prorationing is either to expand capacity downstream of Clearbrook or to establish an alternative interconnection point (*i.e.*, at Superior). Enbridge Energy further explained that although it does determine its capacity rights on a month-to-month basis (and thus does not "reserve" space on the system for certain customers or projects), it would be imprudent to grant High Prairie an interconnection with full knowledge that could lead to major apportionment for both current shippers and High Prairie's own potential shippers as well.

13. High Prairie has rejected both of the reasonable alternatives offered by Enbridge Energy. In regard to the offered interconnection point at Superior, High Prairie has rejected that option outright and refused to discuss it further. In regard to the offered interconnection point at Clearbrook, High Prairie has not offered to pay for the cost of the required tankage, despite its claims to the contrary. High Prairie has also claimed that both the costs of required tankage and necessary downstream capacity are "unsubstantiated" and "unreasonable," despite Enbridge Energy's detailed explanation of the underlying factors driving these requirements.

14. The most recent meeting between principals to discuss High Prairie's request was on May 2, 2012, although email and telephonic discussions between executives of the parties continued until High Prairie filed its Complaint.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 6th day of June, 2012.



László Varsányi

APPENDIX B



3 of 9 DOCUMENTS

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Business Wire

November 14, 1995, Tuesday

DISTRIBUTION: Business Editors

LENGTH: 623 words

HEADLINE: IPL Energy purchases **Portal Pipe Line**

DATELINE: CALGARY, Alberta

BODY:

Nov. 14, 1995--IPL Energy Inc. (NASDAQ: IPPIF; TSE, ME: IPL) IPL Energy Inc. today announced it has purchased the **Portal Pipe Line** Company of Minot, North Dakota, for U.S. \$ 27 million.

Portal, owned equally by Hunt Oil Company and Meridian Oil Inc., operates a 900 mile crude oil pipeline system with a capacity of 80,000 barrels per day that extends from northeast Montana, across North Dakota, to Clearbrook, Minnesota, where it connects with the Lakehead pipe line system owned by Lakehead Pipeline Partners, L.P., another IPL Energy affiliated company.

Brian F. MacNeill, President and Chief Executive Officer of IPL Energy, said the proposed acquisition is consistent with IPL Energy's objectives to expand into areas of business compatible with the company's strengths and capabilities.

"The Portal system enhances our ability to serve Canadian and United States customers and complements the proposed expansion of the IPL/Lakehead pipeline system," MacNeill said.

On August 17, 1995, IPL Energy announced a proposal to expand the capacity of the IPL/LPL crude oil pipeline system by 120,000 barrels per day at an approximate cost of \$ 170 million. Given timely approval by regulatory authorities, the program will be in service by the end of 1996.

The program includes pump unit additions on lines 2 and 13 between Edmonton and Superior, Wis., and intermediate stations on line 6 between Superior and Chicago. The IPL program is complemented by the planned construction of a new 27 mile line to connect the Westspur Pipe Line system in southern Saskatchewan, also owned by IPL Energy, with the Portal system at Lignite, N.D.

The connection will enable crude production from the Midale area of Saskatchewan normally delivered to the IPL system at Cromer, Man., to be delivered to Portal, providing needed capacity on the Westspur system. The Midale crude will then be able to re-enter the IPL system at Clearbrook, Minn., thereby alleviating a bottleneck at Cromer and effectively increasing the capacity of the IPL system.

IPL Energy purchases Portal Pipe Line Business Wire November 14, 1995, Tuesday

IPL Energy Inc. of Calgary is engaged in the transportation of liquid hydrocarbons, and the distribution of natural gas. The crude oil transportation business is conducted through wholly-owned Interprovincial Pipe Line Inc. in Canada and affiliate Lakehead Pipe Line Partners, L.P. in the United States which together operate the world's longest crude oil and liquids pipeline system, extending across North America from western Canada to marketing and refining centres in the midwestern United States and eastern Canada. The natural gas distribution business is conducted through the 85 percent owned subsidiary, The Consumers' Gas Company Ltd. of Toronto, which serves approximately 1.2 million residential, commercial and industrial customers in south central and eastern Ontario and northern New York State. International activities are conducted through wholly-owned IPL International Inc. With assets of \$ 5 billion and 4,800 employees, IPL Energy is a widely-held, publicly-traded corporation. Its shares trade on the Toronto and Montreal stock exchanges in Canada and on the NASDAQ-NMS in the United States.

CONTACT: IPL Energy Inc., Calgary
Frank Ternan
Business: 403/231-3906
Toll Free: 800/481-2804
Facsimile: 403/231-3920
Residence: 403/686-3268
Internet: frank_ternan@notes.ipl.ca

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APPENDIX C



FOCUS - 4 of 98 DOCUMENTS

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Pipeline & Gas Journal

May 1, 2004

SECTION: Pg. 14(8) Vol. 231 No. 5 ISSN: 0032-0188

ACC-NO: 117987906

LENGTH: 4564 words

HEADLINE: Enbridge finds plenty of profit staying with its pipeline niche;
Growing Force In North America;
Cover Story

BYLINE: Share, Jeff

BODY:

Patrick D. Daniel runs a company that is as vertically integrated as a pipeline company can be. Enbridge Inc. boasts of many valuable assets spread over three continents and a chief executive who continues to carefully guide his company in its quest to grow and remain profitable.

Enbridge has quietly expanded from a single crude oil pipeline into a North American energy powerhouse with a natural gas transmission portfolio that includes two key North American systems, Alliance and Vector. It also owns and operates one of the fastest growing local distribution companies in North America.

Backed by a stellar earnings report for 2003 certain to please stakeholders, Enbridge is well-positioned on all fronts to continue building itself into one of the leading energy companies in North America, Daniel said in an interview at Enbridge's Calgary offices.

But first some financials: On Jan. 27, Enbridge Inc. announced earnings of \$667Cdn.2 million for 2003, or \$4.03 per share, compared with \$576.5 million, or \$3.60 per share, for 2002. Crude oil pipeline expansion, higher ownership interest in the Alliance Pipeline, higher earnings at Enbridge Gas Distribution due to colder than normal weather were the main reasons. Daniel forecast a range of \$3-3.10 for adjusted earnings per share 2004. This indicates continued growth as 2003 EPS on an adjusted basis was \$2.84.

Earlier, **Enbridge Energy Partners, L.P.**, which owns the U.S. assets of Enbridge and was formerly known as Lakehead Pipe Line Partners, L.P., reported net income of \$111.7 million, or \$1.93 per unit, compared to \$78.1 million,

Enbridge finds plenty of profit staying with its pipeline niche; Growing Force In North America; Cover Story Pipeline & Gas Journal May 1, 2004

or \$1.76 per unit for 2002. This marked the second year in a row of significantly increased earnings. Dan Tutchter, president of the partnership's management company and general partner, credited the improved performance to a full year's contribution from the natural gas systems acquired late in 2002, reflecting a strategy to diversify income through a conservative acquisition program. Enbridge Inc. owns 12% of EEP and manages the MLP through wholly owned subsidiaries.

Tutchter was president/CEO of Midcoast Energy, a Houston-based pipeline with assets in the Mid-continent, and directed its sale to Enbridge in 2001 for \$362US million. He also credited the results on the growth of the Lakehead system caused by increased crude production from the Alberta oil sands. After years of stagnation, a long-anticipated rise in Lakehead volumes reached its highest level since 1998.

Strategic Positioning

Enbridge prefers to grow from within through expansion or what it refers to as "organic growth" because that forms the basis of real shareholder value, Daniel said. Acquisitions provide vital stepping stones that help position the company for further organic growth, he said. It's a strategy at variant from many other companies which rely on costly acquisitions to power their growth. They tend to strip out the profits from their acquisitions and throw away the leftovers.

"We don't use the acquisitions as the end themselves, but as a means to an end--more as a strategic positioner," Daniel explained. The company's first significant deal was the LDC deal in 1994. That \$1.2 billion deal became a defining moment.

"It gave us an all-new growth platform of natural gas versus what had just been a crude oil pipeline company, and it levered us into Alliance and Vector and a lot of gas transmission, gathering and processing systems. While Alliance and Vector are Enbridge's two major gas transmission systems, the company has much more pipe through EEP in the U.S., mostly gathering and processing./ So even though it was a good financial deal, it was more of a strategic leveraging event in that it provided us with another growth platform." he recalled.

Three years ago came the deal to acquire Tutchter's Midcoast Energy. By then, Midcoast was already growing through acquisition, consolidating many smaller pipeline systems in and around Texas. Daniel pulled the trigger on that deal after studying his own company's shortcomings.

"We felt we didn't have a strong enough position in the U.S. Gulf and through the Mid-Continent into the U.S. We didn't understand the issues and didn't have the option of getting involved in a lot of projects because we didn't have the knowledge and people," Daniel said. Midcoast added assets from Kansas to South Texas and east from Mississippi to the Texas Panhandle, providing a prime platform to the key producing basins and transportation centers of the Midwest and Gulf Coast.

Enbridge does not own a direct link along the Gulf Coast-to Chicago corridor. But that could happen if the right deal comes along, Daniel said. With Midcoast, he knows he added an experienced staff adept at making deals, if and when the price is right.

"When I think strategically, that link is an important one for us. Most natural gas producers are looking to get their gas to as liquid and diverse a trading point as they can. If you operate infrastructure that will allow them to access markets either through direct delivery or exchange everywhere from the Gulf Coast through to Chicago, you really offer them a lot of optionality," he said.

Looking ahead, Daniel expressed satisfaction with Enbridge's direction in terms of its pipeline growth on all fronts.

Crude Oil

Enbridge finds plenty of profit staying with its pipeline niche; Growing Force In North America; Cover Story Pipeline & Gas Journal May 1, 2004

Enbridge was originally structured by producers in 1949 as a crudeoil pipeline to take their product to market from western Canada. Formerly known as Interprovincial Pipeline, it is the world's longest liquid Detroleum pipeline. When the company was rebranded in October 1998, the name of the company was changed from **IPL Energy** to Enbridge.

Now known as the Enbridge System, it, along with the company's Lakehead System in the U.S., is the main transporter of crude oil from Canada to the U.S. where it is the major supplier to the Great Lakes region. The system contains 5,600 miles of mainline pipe in Canada and 3,300 miles in the U.S. Last year, Enbridge pumped about 2.2 million bpd through its liquids pipelines. The entire system is inspected by intelligent pigs every five years, more frequently if problems are suspected.

Daniel noted that the heavy oil reserve from the Alberta oil sands is the only North American basin continuing to grow production. In fact, the U.S. Energy Information Administration estimates the sands contain about 180 billion barrels of crude oil reserves. By the end of the decade, oil sands production is expected to increase from today's 1 million bpd to more than 1.8 million bpd and should more than offset declining conventional supplies.

"We're hotwired into that with the world's longest crude oil pipeline system which moves about two-thirds of the liquids from there to U.S. markets where we're tied into the right markets, including the Chicago area. So now, we're very able to push those markets further to carry that crude oil to new markets," Daniel said.

Enbridge needs to push further south from Chicago because the market is well-saturated with Canadian heavy crude. Last fall, Enbridge completed acquiring a 90% interest in the Cushing, OK-to-Chicago Pipeline System, paying BP \$122 million. This added a 650-mile system with capacity of 300,000 bpd. Subject to shippers' approval of a tolling structure and regulatory OKs, Enbridge plans to reverse the flow of the pipeline to go from north to south in order to ship crude oil from Chicago to the Cushing, OK hub. Upon completion at year's end, the system will be renamed Spearhead Pipeline.

Helping to bring that crude oil to Spearhead for the trip south will be a new pipeline that Enbridge will build from an existing terminal at Superior, WI to the Wood River hub near the Patoka River in southern Illinois. To be known as the Southern Access Pipeline, the 630-mile pipeline will cost an estimated \$550 million and have an initial capacity of 250,000 bpd. It will be part of the Lakehead System and is expected to be in service in three years.

On March 1, EEP completed a \$115 million deal with Shell for the Mid-Continent Liquids System which serves refineries in the U.S. Mid-continent. The assets include the 433-mile Ozark pipeline that transports 170,000 bpd from Cushing to Wood River, IL; the 47-mile West Tulsa pipeline that transports 55,000 bpd to two Oklahoma refineries; and the Shell storage terminal at Cushing which is one of the largest terminal facilities in North America with 8.3 million barrels of capacity, and the El Dorado Tank Farm which provides 1.2 million barrels of working storage for pipelines and refiners in Kansas.

Enbridge is looking to acquire a controlling interest in the Woodpat Pipeline in Illinois from Wood River to Patoka and a 500,000-barrel terminal at Patoka. The pipeline complements the Spearhead and Southern Access Pipelines with another connection to Patoka. This is also a potential jumping-off point for alternative paths to new markets on the Gulf Coast, to which Enbridge plans to develop access, Daniel said.

Enbridge is not just eyeing U.S. Midwest markets for Canadian crude. Also on tap is the proposed Gateway Pipeline which would stretch from the Athabasca oil sands region to the British Columbia coast for marine tanker access to California and Asia-Pacific markets, Daniel said.

"That's where the big need is going to be on the oil side," he said. If it goes through, the system could be in operation by 2009.

Distribution

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For the past 10 years, Enbridge has owned Enbridge Gas Distribution Inc., formerly known as The Consumers Gas Company Ltd. It is Canada's largest local distribution franchise serving the Toronto area which is that nation's fastest-growing metropolitan area with about 4 million people and is the hub for new immigrants entering the country.

The utility serves about 1.7 million customers and has added an average of about 60,000 new meters for each of the last six years. Nearly everyone in the region has been converted to natural gas. In addition to Ontario, the company serves customers in Quebec and upstate New York. In business for more than 150 years, Enbridge Gas Distribution provides about 1 Bcf/d.

Does adding so many new customers put undue strain on the system?

"I don't think so," Daniel said. "Believe it or not, we can acid those 60,000 customers pretty efficiently and have gotten pretty good at that through the years. That's about a 3% growth and quite an efficient system for new builders and developers tying into the existing infrastructure we've got. The system of mains and the communications systems that we have in place allow that to occur very efficiently."

Daniel said Enbridge executives regularly conduct a "full fundamentals review" of its positions for the three pipeline businesses, studying supply, demand, and where infrastructure is needed to sustain that growth. Their results indicate that Enbridge is very well-positioned, he said. It plans to boost its distribution system further by building an LDC in the province of New Brunswick that could serve up to 15,000 customers by 2007.

Natural Gas Transmission

With natural gas, Enbridge has also established an increasingly strong competitive position, largely based around its 50% interest in Alliance Pipeline, the 1,857-mile line which carries about 1.3 Bcf/d from Fort St. John in northeast British Columbia to the Chicago area. Enbridge also has a 43% interest in the Aux Sable NGL plant in Joliet, IL that was built as a component of Alliance. Last fall, Enbridge raised its stake to 60% in the 344-mile, 1 Bcf/d Vector Pipeline, which moves gas from Chicago to the Dawn hub in Ontario.

Although western Canada now has excess capacity, Alliance is 99% contracted for, Daniel said. That means Enbridge has 13 years of remaining life on the contracts designed to keep Alliance full. By then, expectations are that arctic gas will lye online and needing transit through Alliance, which can be economically expanded to 1.9 Bcf/d should that need arise.

Canada supplies about 15% of the natural gas consumed in the U.S. Everyone agrees its producers will soon be hard pressed to keep that production up because of the rapid decline rates in the Western Canadian Sedimentary Basin (WCSB).

"The upstream is having to battle awfully hard just to stay even," Daniel said. The industry plans to drill over 13,000 new wells this year in western Canada yet will not be adding much in the way of new reserves.

Beyond ultimately accommodating northern gas from the arctic and/or the Mackenzie Valley, there is a much more immediate need to move gas out of the U.S. Rockies. Enbridge looked at a \$1 billion "bullet" pipeline that would have moved gas from the Cheyenne hub to Chicago. However, the project is on hold after producers showed little support.

Elsewhere, Enbridge is now a big player in Texas following the Midcoast acquisition. Daniel points to three areas of development in which it plans to build pipelines to help producers move their gas to market. One is the Bossier gas play in east Texas where Enbridge has proposed a new pipeline to transport gas from the Carthage hub. A second is proposed in the Barnett Shale region near Dallas-Fort Worth and the third would serve the Anadarko Basin. All three show "good long-term fundamentals," Daniel said.

The Barnett Shale expansion centers around EEP's \$247 million acquisition of the North Texas System. That deal

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improved its portfolio of gathering and processing systems with access to long-life natural gas reserves in the Mid-Continent and Gulf Coast regions. The North Texas System primarily serves the Fort Worth Basin, including growing natural gas production from the Barnett Shale zone. Throughput averages 170 MMcf/d and facilities include more than 2,000 miles of gathering pipeline and five active processing plants with aggregate processing capacity of 217 MMcf/d.

To further boost its Mid-Continent gas gathering and processing profile, Enbridge Partners recently spent \$13 million to buy natural gas transmission and gathering pipelines from Palo Duro Pipeline Co., a subsidiary of ONEOK. It includes 400 miles of pipelines originating in Hemphill County, TX and flowing south to Coke County. They transport 18,000 MMcf/d with capacity to transport up to 75,000 MMcf/d.

LNG

Enbridge has no plans to be left out of the burgeoning LNG business, which some experts say could supply up to 20% of U.S. demand over the next decade. "We're already looking at several projects to bring LNG in where we would be involved in the regasification facility and then the link to existing pipelines."

LNG development is going to be centered in the U.S. Gulf Coast where it will be relatively easy to connect to the multitude of pipelines that run northward through the central U.S. into the Northeast. Another area that seems logical for LNG is the northeast coast--anywhere from Quebec down through Massachusetts and into New York, Daniel said.

Though Enbridge has no experience with LNG per se, Daniel sees that as no handicap for providing service. "A regasification facility is fairly straight forward to operate and then there is pipeline takeaway. We've got a lot of experience in terms of tanker and marine terminal facilities so we're not scared with regard to the marine part of it.

"We consider ourselves to really be asset managers anyways so we'll be involved in operating the infrastructure, which is our expertise. We won't be involved in finding markets for the gas or marketing the gas."

Northern Pipeline Strategy

With Canadian producers moving forward on a proposed natural gas pipeline from the Mackenzie Valley in the Northwest Territories to Alberta, Enbridge would like to build a complementary line that would take the liquids into its Norman Wells pipeline in northern Alberta. Current indications, however, suggest that the producers want to control this as well as the gas pipeline. However, any liquids from the Delta would still enter Enbridge's existing liquids line that begins at Norman Wells, NWT.

With word that MidAmerican Energy Holdings Co. apparently has dropped its bid to build an Alaska Highway Pipeline Project, Enbridge has entered the picture and told Alaska that it wants to participate in the project as an equity partner in a consortium to build and operate the pipeline. Enbridge suggested that it could also help develop the pipeline from the Alaskan border to markets in Canada and the U.S.

Daniel is confident that Alaska and Mackenzie will both proceed because of the demand for natural gas. He sees Mackenzie in service by 2009 and Alaska by 2011-12.

Daniel said there are several technical challenges involved in building these pipelines, but all are manageable. First, he said it must be a low-temperature operation in order to protect the permafrost. Enbridge has extensive experience building and operating pipelines in the permafrost.

Another challenge is resolving issues such as the right-of-way around slope stability. "When you've built the line through permafrost, you must take steps to ensure that you properly re-establish the right-of-way and ensure slope stability in the areas that you've gone through," Daniel said.

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Then there is the issue of "discontinuous permafrost" that occurs when part of the pipeline is buried in land that is frozen year-round while other parts are not.

"You also have to be concerned about the temperature effect on steel pipe in some areas where it expands and contracts, according to the weather conditions, and in some cases doesn't exist in permafrost. This creates some real challenges, but we've got extensive experience in running gee-pigs through the line that look at the deflection caused by seasonal changes in weather," he said.

Perhaps the biggest challenge will be the construction logistics as they will be confined to winter roads or barging on the Mackenzie River. As they move into the valley, most of the material will have to be moved during summer and positioned so that contractors can barge pipe downriver to various spread. The actual construction must be done in the harsh winter because of the soft terrain they'll be working in.

Technology Leads To International Growth

Another curious aspect of growth emanates from the development of Enbridge Technology Inc. In maintaining its own vast network of pipelines, the company became a major user of technology revolving SCADA applications, pipeline integrity, operator training, and various other technical support services. So why not market that technology to other companies worldwide? It earned some cash, but more importantly, the operation opened up another business development front for Enbridge because, as its engineers were hired to do audits on a number of foreign pipelines, they had a chance to check out the infrastructure.

"We realized that we had an opportunity to build the profile of the company by going out to sell that technology and show that we are a world leader in those areas," Daniel recalled. Enbridge Technology has worked in Mexico, Malaysia, Brazil, Venezuela, South Korea, China, India, the U.S. and Colombia. It's now part of a consortium hired to operate and maintain the Oman Gas Company's transmission system. The company has been especially active as an LDC consultant, having completed more than 500 projects over the past 30 years worldwide.

"At the same time, we felt we didn't necessarily want to turn that into another business unit because it would distract us from what we do best in operating assets. This allows us to go into the nation where we're selling the technology and take a look at whether there are pipeline opportunities for investment," he said.

This has led to successful investments in Spain and Colombia, which was Enbridge's first international investment in 1994. It owns 25% of the OCEANSA pipeline, the largest crude oil system in Colombia which pumps oil from the interior Cusiana and Cupiagua oilfields to the Caribbean coast port of Covenas. Enbridge operates the \$2.3 billion facility.

The investment arose from a class being taught at the University of Alberta in Edmonton where a number of Colombians were studying petroleum engineering. When the talk focused on operator qualification training and pipeline integrity, Enbridge was listed as a good example.

The Colombians toured Enbridge's facilities, liked what they saw and asked the Canadians to engage in pipeline work in their nation. In January 2002, Enbridge acquired 25% of CLH, Spain's largest refined products transportation and storage business, for \$514 Cdn million.

Although many energy companies cite security problems caused by rebels in Colombia, Daniel said the situation is not as serious for Enbridge because it doesn't operate through those same areas of conflict. In addition, the company's technologically advanced systems provide excellent SCADA surveillance that has limited incidents in Colombia as well as Spain, the U.S. and Canada.

Daniel said Enbridge has its eyes open for more international projects.

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"We're interested in expanding internationally because we've had such good success with the two projects that we're involved with. However, we're very disciplined there and realize that investors don't like international failures. So, if we do a third project, we have to make sure it's a success and have got to do our homework.

"We tend to try to keep our international earnings in the range of 15-20% of our total earnings," he added. "If it got much bigger than that, I think the investors would get concerned. But we've got a little bit of room to move if we found a good international project today."

Bottom Line

Enbridge is enjoying its strongest balance sheet in a decade. Not only is it an "A" rated company, but total shareholder return has been in the order of 15% compounded over the past ten years, leading Daniel to justifiably boast "that's pretty hard to beat." Earnings-per-share growth has been double digits in excess of 10%, which again, over a 10-12 year period, is very hard to match, he said.

Daniel credited "operational excellence" among his 4,000 employees for Enbridge's success. "That means making sure that you've got a system that is properly inspected and maintained and a very good emergency response system. Good pipeline control is a big part of it because people lose faith in a hurry if you have problems or incidents."

Yet at the same time employees are trained to be cost-conscious, they know better than to take any risks.

"In no way do we give up any of the safety of the operation or in any way endanger the environment in which we operate. It is within those constraints that employees have been very cost-efficient," Daniel said.

Enbridge, which has shied away from the risks of marketing and trading activity, remains generally immune to price volatility. Longer term, it could be a different story if there is a serious downturn in crude oil prices--say \$10 a barrel for two or three years--heavy oil development now under way in Canada would begin to slow down as would natural gas. Management has set a maximum of 5% of earnings that can be at risk due to commodity price fluctuations.

With its growing stake in Alliance Pipeline, Enbridge acquired a stake in the Aux Sable facility in Joliet, IL that strips out the liquids from the natural gas. This can create financial volatility, but Enbridge plans to add risk management tools to minimize that problem.

One business where Daniel would like to see profits grow is the gas distribution operation. That will require some regulatory assistance.

"We're somewhat limited there by a regulatory environment that allows us about a 9.6% return on equity right now, whereas our U.S. peers realize a couple hundred basis-points better return than we do. We haven't had the same relationship with the regulator that will allow us--through incentive mechanisms--to realize a return better than that so-called allowed return.

"We'd like to get on a footing with our interveners and regulator whereby if we're able to go in and significantly reduce costs, that we share the benefit of that with the ratepayers, and we also have an opportunity to improve our return on investments.

"It's also a challenge in that we're already the lowest-cost natural gas distributor in North America. So we're starting from a very tough base, but we've been able to work wonders in this company. When you provide the proper incentive for employees to get out there and be efficient and cut costs, we think we can do even better under an incentive mechanism."

Daniel could foresee ownership of an LDC in the U.S. under the right circumstances.

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"We feel we've got something to offer in terms of our operating experience in this low-cost operation. The big challenge there is that if you go in and pay any kind of a premium to book value in acquiring a heavily regulated asset like a distribution company, you have trouble ever recovering that premium in your rates because you're really only earning on the book value of the company.

"It's tough for a deal like that to make good financial sense and get a good return on investment. You'd have to be able to recognize very significant synergies, and that's a bit of challenge if you pay any kind of premium."

Perspective Of U.S. Industry

Daniel views a U.S. industry that has endured traumatic times and remains in a fair bit of trouble, especially those pipe companies that moved into trading activities which caused significant balance sheet problems that will take them years to repair.

"But fundamentally, it is a good asset management business. That's why we've seen very few assets come up for sale because the companies that own them realize those are the real jewels. What they're doing instead is eliminating a lot of the trading activity and keeping their cash-generating pipeline assets. I think it's a very solid business; I don't think, though, that it has a lot of growth associated with it.

"I believe we're going to see 2, 3 to maybe 4% growth in pipeline infrastructure in the lower 48 over the next decade. That's not enough to satisfy many shareholders, and of course, that's the reason why so many of those companies got involved in marketing and trading, because that's where they can really realize the growth.

"This is why Enbridge's positioning is so important," Daniel continued. "We're more involved in the Northern Tier and tied into Canadian assets which are still a little more on the frontier where there's greater organic growth potential. So we're forecasting 5-6% organic growth in our assets vs. that 2-3-4% in the U.S.," he said.

Conclusion

Daniel foresees a day in the not-so-distant future when natural gas will be connected from the bitterly cold hinterlands of Alaska to the balmy Gulf Coast. Along the way, the pipeline will most likely connect in Alberta to Alliance Pipeline and from there, move to a system such as Northern Natural Gas. Daniel said he is "absolutely" certain this will be a reality because this will not only provide a "manifold" for gas to enter, but also represent a North American backbone for transporters, producers and consumers alike.

"Our desire is to be more involved from the Gulf Coast to the Midwest. The real opportunity is that if you have that manifold sitting there, then all the producer needs to worry about is getting his gas into that. He knows that he's got access to a huge market and therefore great liquidity so he doesn't end up trapped as producers in the Rockies are right now. It's ensuring that you get a good market price for your natural gas," he said.

LOAD-DATE: February 5, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on each person designated on the official service list compiled by the Secretary for this proceeding.

Dated at Washington, D.C. on this 6th day of June, 2012.

/s/ William E. Flynn

William E. Flynn
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-8061