UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

High Prairie Pipeline, LLC Complainant,	)	
v.	)	Docket No. OR12-___-000
Enbridge Energy, Limited Partnership Respondent.	)	

COMPLAINT OF HIGH PRAIRIE PIPELINE, LLC
REQUESTING FAST TRACK PROCESSING

Pursuant to Section 13(1) of the Interstate Commerce Act ("ICA") as applied to interstate common carrier oil pipelines,[1] Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[2] and Section 343.2(c)(3) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings,[3] High Prairie Pipeline, LLC ("High Prairie") hereby submits this complaint against Enbridge Energy, Limited Partnership ("Enbridge Energy") for violations of Sections 3(6), 1(6), 6(1), 1(4) and 6(7) of the ICA and Sections 341.0 and 341.8 of the Commission's regulations ("Complaint"). Pursuant to Rule 206(b)(11),[4] High Prairie is requesting fast track processing of this Complaint.

As discussed more fully herein, Enbridge Energy has violated and continues to violate these provisions of the ICA and the Commission's regulations by unduly discriminating against High Prairie and its shippers by denying them capacity on Enbridge Energy's common carrier

[1] 49 U.S.C. § 13(1).
[2] 18 C.F.R. § 385.206 (2011).
[3] 18 C.F.R. § 343.2(c)(3)(2011).
[4] 18 C.F.R. § 385.206(b)(11)(2011).

pipeline system extending downstream from Enbridge Energy's tariff origin point at Clearbrook, Minnesota. Enbridge Energy has allowed its affiliate to interconnect at Clearbrook and has confirmed that it has enough currently unutilized capacity on its pipelines moving downstream from Clearbrook to accept 150,000 barrels per day from High Prairie at Clearbrook, the capacity of the pipeline High Prairie is proposing to build. Yet Enbridge Energy has thus far refused to grant High Prairie an interconnection, except on proposed terms that are unjust, unreasonable, and unduly discriminatory. Enbridge Energy has provided no objective rationale for this unduly discriminatory denial of access. Nor has Enbridge Energy pointed to any statutory provision, regulation, or tariff provision that allows it to unduly discriminate against High Prairie and its shippers in denying such access.

I.

COMMUNICATIONS AND CORRESPONDENCE

All correspondence and other communications regarding this matter should be addressed to the following:

Greg A. Ward *
Vice President and General Counsel
High Prairie Pipeline, LLC
Saddle Butte Pipeline, LLC
858 Main Avenue, Suite 301
Durango, CO 81301
Phone: 970.828.2079
gward@sbpipeline.com

Pamela J. Anderson *
Perkins Coie LLP
10885 NE 4th Street
Suite 700
Bellevue, WA 98004-5579
Phone: (425) 635-1417
Email: Pjanderson@perkinscoie.com

Glenn S. Benson *
Perkins Coie LLP
700 13th Street NW
Suite 600
Washington, DC 20005-3960
Phone: (202) 654-6255
Email: GBenson@perkinscoie.com

- To be included on the official service list for this proceeding.

II.

STANDING

High Prairie is a limited liability company that will suffer severe economic harm due to the unduly discriminatory and preferential behavior of Enbridge Energy described herein. Under the Commission's regulations, any person can file a complaint challenging the operations or practices of an oil pipeline carrier subject to the ICA.[5] High Prairie is entitled to bring a complaint under ICA Section 13(1) against Enbridge Energy as a common carrier.

III.

BACKGROUND

High Prairie is a wholly-owned subsidiary of Saddle Butte Pipeline, LLC ("Saddle Butte"), a developer of gathering, processing and transportation infrastructure for crude oil and natural gas producers throughout the Mid-Continent and Rocky Mountain regions. High Prairie intends to construct a 450-mile pipeline system capable of transporting 150,000 barrels of crude oil per day from the Bakken in North Dakota to Clearbrook, Minnesota, including the development of significant operational storage facilities at or near Clearbrook. The High Prairie pipeline project ("HP Pipeline") would provide access for production-rich areas in McKenzie, Dunn, Mountrail, and other counties in North Dakota to transport crude oil supply in an otherwise capacity-constrained area to the market hub at Clearbrook. The HP Pipeline is intended to provide a pipeline interconnect with Enbridge Energy at Enbridge Energy's tariffed Clearbrook, Minnesota origin point.[6]

High Prairie held a binding open season to solicit capacity commitments from shippers on the HP Pipeline from February 14 through April 5, 2012. The open season resulted in

[5] 18 C.F.R. §§ 343.2(c)(3), 385.206(a).
[6] Rozga Affidavit at 3.

commitments from prospective shippers for a significant portion of High Prairie's proposed capacity. A number of those commitments are contingent on High Prairie establishing an interconnect with Enbridge Energy at Clearbrook.[7]

In early February 2012, High Prairie commenced discussions with Enbridge Energy regarding the interconnect HP Pipeline will need at Enbridge Energy's tariffed Clearbrook origin point.[8] Enbridge Energy subsequently requested that High Prairie complete and submit a New Service Request form in connection with its interconnection request. Although there is nothing in either Enbridge Energy's tariff or on its website that references the use of a New Service Request form in connection with an interconnection request, much less which requires the completion of such a form to formalize such a request, High Prairie completed the requested form and submitted it to Enbridge Energy on March 9. Since then, High Prairie has had multiple discussions with Enbridge Energy regarding the proposed interconnection.[9] During those discussions, High Prairie has made clear that it is willing to pay for the cost of all facilities needed for the interconnection, including but not limited to any tankage at Clearbrook to facilitate receipts and batching, notwithstanding the fact that Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling.[10] High Praire has also expressed its willingness to agree to any just, reasonable, and not unduly discriminatory conditions required by Enbridge Energy.[11]

Nevertheless, Enbridge Energy has not granted High Prairie's interconnection request to date. The only justification Enbridge Energy has offered relates to Enbridge Energy's desire to preserve its own competitive position and that of its affiliated upstream pipelines. Specifically,

[7] Rozga Affidavit at 4.
[8] Lytle Affidavit at 3.
[9] Lytle Affidavit at 4.
[10] Lytle Affidavit at 5.
[11] Lytle Affidavit at 6.

Enbridge Energy has expressed that although capacity exists today to accept up to 150,000 barrels of crude oil per day from the requested High Prairie interconnect,[12] Enbridge Energy expects that by 2016 or 2017 such capacity may become constrained due to increased volumes entering Enbridge Energy's or its affiliates' pipelines upstream of Clearbrook, largely originating from the Canadian oil sands region.[13]

In what appears to be an effort to address those competitive concerns, Enbridge Energy has indicated that it may be willing to grant an interconnect subject to certain conditions. First, Enbridge Energy would require High Prairie to pay for the facilities necessary to interconnect at Clearbrook, even though Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling.[14] High Prairie is willing to pay the reasonable costs of such facilities. However, Enbridge Energy has stated that the cost of such facilities would be approximately $100 million, an amount that is both unsubstantiated and clearly unreasonable.

Second, Enbridge Energy would require that the interconnect be conditioned on Enbridge Energy building new downstream expansion facilities between Clearbrook and Superior (*i.e.*, an approximately 200-mile loop line of existing pipelines) at an estimated cost of $1 billion. As a condition to High Prairie's interconnect, Enbridge Energy would require the High Prairie shippers to pay a discriminatory surcharge in order to recover the $1 billion.[15] As High Prairie understands it, Enbridge Energy intends to exempt its existing shippers from this surcharge.

[12] The 150,000 barrels per day is HP Pipeline's design capacity and therefore represents the maximum amount that HP Pipeline could physically deliver to Enbridge Energy at Clearbrook on any given day.
[13] Lytle Affidavit at 8. In fact, Enbridge Energy reiterated to High Prairie that it is a common carrier with no contracts for capacity, and thus the projected capacity constraint is dependent upon a significant increase in month-to-month shipper nominations.
[14] Lytle Affidavit at 9a.
[15] Lytle Affidavit at 9b.

Third, Enbridge Energy would require that the interconnect be conditioned upon Enbridge Energy receiving the consent of certain of its existing shippers to Enbridge Energy undertaking the $1 billion expansion project.[16]

Fourth, Enbridge Energy would require that the interconnect be conditioned on Enbridge Energy obtaining a declaratory order from FERC approving, as High Prairie understands it, a methodology for allocating its capacity and/or recovering the costs of the expansion project.[17]

Last, even though Enbridge Energy acknowledged it is a common carrier and cannot accept firm contracts for capacity on its pipelines, Enbridge Energy would require that the interconnect be conditioned on High Prairie agreeing to "backstop" the $1 billion expansion project by agreeing to pay Enbridge Energy for any revenue shortfalls that result in the event that High Prairie's deliveries of oil to Enbridge Energy at Clearbrook do not meet certain specified levels.[18]

Again, Enbridge Energy has stated that its pipeline facilities extending downstream from Clearbrook are not now capacity constrained, though it thinks they may become capacity constrained in 2016 or 2017.[19] In addition, Enbridge Energy has informed High Prairie that it has no contracts with shippers for any portion of the capacity on its pipeline facilities extending downstream from Clearbrook, and the tariff for its mainline does not allow for contractual arrangements providing preferential rights to capacity. Thus, all of Enbridge Energy shippers' capacity rights are determined month-to-month.

Enbridge Energy owns and operates its mainline which provides service from north to south from the Canadian border upstream of Clearbrook and continues downstream of

[16] Lytle Affidavit at 9c.
[17] Lytle Affidavit at 9d.
[18] Lytle Affidavit at 9e.
[19] Enbridge Energy specifically stated that they have not issued a pro-rationing order for this segment of pipeline based on the capacity of this segment.

Clearbrook. Enbridge Energy has allowed only one other pipeline to establish a delivery interconnect into Clearbrook – its affiliate, Enbridge Pipelines (North Dakota) LLC ("Enbridge ND"). In addition, Enbridge Energy recently announced plans for a new Enbridge Sandpiper Pipeline ("Enbridge Sandpiper Pipeline"). Enbridge Energy has stated that this new affiliated pipeline will interconnect with Enbridge Energy at Clearbrook.[20] Enbridge ND also recently applied for and received a declaratory order from the Commission for what it calls a "virtual expansion" of the Enbridge ND system that will allow it to deliver substantially more barrels of crude oil to Enbridge Energy's Clearbrook origin point.[21] Thus, Enbridge Energy clearly has no problems with accepting increased barrels of crude oil at Clearbrook, provided that those barrels come in from Enbridge-owned pipeline facilities.

IV.

GROUNDS FOR COMPLAINT

A. Enbridge Energy Has Violated, and Is Continuing to Violate, Section 3(1) of the ICA By Granting Undue Preferences to Both Itself and Its Shippers and to Its Affiliated Pipelines and Their Shippers, and By Unduly Discriminating Against High Prairie and Its Shippers.

Section 3(1) makes it unlawful for any common carrier oil pipeline to unduly discriminate against or in favor of shippers or any other entity in any respect whatsover:

> It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular

[20] *See* http://www.api-houston.org/presentations/claude-houston-api-20120410.pdf at p. 18; http://www.kfyrtv.com/News_Stories.asp?news=56293. Under Enbridge Energy's currently effective FERC tariffs, Enbridge Energy has an origin point at Clearbrook and commits to accept barrels tendered there for transportation. There is no requirement in the tariff that the barrels be tendered to Enbridge Energy through an interconnected pipeline.

[21] *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 (2010).

> description of traffic to any unreasonable prejudice or disadvantage in any respect whatsoever: Provided, however, That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.[22]

Enbridge Energy is a common carrier subject to the provisions of the ICA as applicable to oil pipelines, including Section 3(1). High Prairie is a person, company, firm, and corporation protected from discrimination under Section 3(1). High Prairie's shippers also are persons, companies, firms, and corporations protected from discrimination under Section 3(1). In addition, Enbridge Energy, its shippers, its affiliated pipelines, and the affiliated pipelines' shippers are persons, companies, firms, and corporations to whom Enbridge Energy is prohibited from granting an undue preference under Section 3(1).

By refusing to grant High Prairie an interconnection on reasonable and not unduly discriminatory terms, Enbridge Energy is discriminating against High Prairie and its shippers. By doing so, Enbridge Energy is also granting an undue preference to its shippers, its affiliated pipeline(s), and its affiliated pipelines' shippers.[23] The HP Pipeline is similarly situated to the

---

[22] 49 U.S.C. app. §3(1) (emphasis added). The Supreme Court has clarified that the concluding language in Section 3(1), "this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description," may not be interpreted as giving carriers license to discriminate against volumes tendered to a carrier by another carrier:

> This is language more notable for its awkwardness than for its clarity, but it certainly was not intended, as appellees urge, to grant license to discriminate against traffic *offered to the railroad* by another carrier. We have noted above that this Court has clearly held that such discrimination is not permissible. Moreover, there is an intelligible meaning which can be ascribed to the proviso and which is consistent with its history. The proviso means that the prohibition against 'undue or unreasonable preference or advantage' is not to be construed to forbid practices, otherwise lawful, solely because they operate to the prejudice of another carrier."

American Trucking v. A., T. & S. F. R. Co., 387 U.S. 397 (1967). Like the situation in *American Trucking*, undue discrimination in the granting or denying of oil pipeline interconnections is not licensed by the concluding language of Section 3(1) of the ICA. Such undue discrimination operates not just to the prejudice of the carrier seeking the interconnection but to that carrier's shippers. In the words of the Supreme Court, it is not a practice that is "otherwise lawful."

[23] Because Clearbrook is a tariffed origin point, Enbridge Energy also is effectively granting an undue preference to its own upstream lines in that those lines are being given preferential rights to deliver crude into Enbridge Energy's facilities extending downstream from Clearbrook. Stated another way, it is receiving and transporting barrels of crude oil in a manner that is unduly preferential to upstream lines owned by Enbridge Energy and its affiliates.

crude oil pipelines that are interconnected with Enbridge Energy at Clearbrook, namely Enbridge Energy's upstream pipelines and its affiliate, Enbridge ND. Shippers on HP Pipeline are similarly situated to shippers on these pipelines owned and operated by Enbridge Energy and its affiliates. Enbridge Energy has failed to provide High Prairie a just, reasonable, and not unduly discriminatory justification for denying High Prairie's interconnection request and thereby denying High Prairie's shippers access to Enbridge Energy's common carrier system extending downstream from Clearbrook. By contrast, Enbridge Energy has, not surprisingly, stated that it will allow its proposed Enbridge Sandpiper Pipeline to interconnect at Clearbrook.

The Commission has recognized that "[t]he lack of an objective reason for preventing particular types of shippers from having an equitable opportunity to obtain transportation on [a common carrier's] pipeline system could violate the ICA . . . section 3(1) prohibition against any undue or unreasonable preference or advantage."[24] There is no legally recognizable difference between the interconnection requested by High Prairie and the interconnection Enbridge Energy has granted to its affiliated upstream pipeline, Enbridge ND. High Prairie is requesting an interconnect at Clearbrook, the same tariffed origin point at which Enbridge Energy has connected Enbridge ND. In addition, High Prairie has offered to pay for the cost of all facilities needed for the interconnection, including but not limited to any tankage at Clearbrook to facilitate receipts and batching, notwithstanding the fact that Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling. High Prairie has also expressed its willingness to meet any just, reasonable, and not unduly discriminatory terms necessary for the interconnect.

There also is no legally recognizable difference between High Prairie's shippers and the shippers of Enbridge Energy and its affiliated upstream pipeline. In addition, the crude oil

[24] *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 117 (2010).

carried on Enbridge Energy's upstream lines is understood to be primarily heavy sour production from the Canadian oil sands. The crude oil carried on Enbridge Energy's affiliate, Enbridge ND, and delivered into Clearbrook is understood to be a combination of heavy sour Canadian crude oil and light sweet crude from North Dakota. The crude oil carried on High Prairie's system will be domestically produced light sweet crude oil, much of it from federal lands held in trust by the U.S. Department of the Interior on behalf of a federally-recognized Indian nation, the Three Affiliated Tribes, and its individual members.

Rather than provide a lawful justification for denying the interconnect, Enbridge Energy has admitted that it does not want the interconnect because it wishes to provide preferential access to shippers utilizing the upstream pipelines owned and operated by Enbridge Energy and its affiliates. Granting the interconnection would allow volumes to flow into Enbridge Energy's system from High Prairie at Clearbrook. Enbridge Energy has stated that at some point in the future it expects to be capacity constrained on the segment downstream of Clearbrook. At that time, volumes from all origins would need to be prorated on a not unduly discriminatory basis. Thus, the upstream pipelines owned by Enbridge Energy and its affiliates might lose throughput as a result of allowing High Prairie volumes to come on at Clearbrook. In an attempt to provide undue preference to its pipelines, its affiliates' pipelines, and each of their shippers, Enbridge Energy has thus far refused to allow High Prairie to interconnect.

In recent discussions, Enbridge Energy has expressed a potential willingness to grant the interconnect if High Prairie agrees to certain unlawful and unreasonable demands. This is nothing more than Enbridge Energy's transparent attempt to deny the interconnect by deferring and delaying the interconnect request indefinitely.

First, Enbridge Energy would require High Prairie to pay for the facilities necessary to interconnect at Clearbrook, even though Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling. High Prairie has expressed its willingness to pay for the reasonable costs of interconnection, but Enbridge Energy has stated that the cost will be approximately $100 million, an amount that is clearly unreasonable.

Second, Enbridge Energy would require that the interconnect be conditioned on Enbridge Energy building new downstream expansion facilities between Clearbrook and Superior (*i.e.*, an approximately 200-mile loop line of existing pipelines) at an estimated cost of $1 billion, and that High Prairie's be subjected to an unduly discriminatory surcharge to recover the $1 billion cost. Enbridge Energy's existing shippers would be exempt from this surcharge.

Third, Enbridge Energy would require that the interconnect be conditioned upon Enbridge Energy receiving the consent of certain of its existing shippers to Enbridge Energy undertaking the $1 billion expansion project. In other words, Enbridge Energy wants to give its existing shippers the privilege of determining whether or not High Prairie is granted an interconnect. If the existing shippers wish to preserve their current preferential or exclusive access to Enbridge Energy's facilities extending downstream of Clearbrook, they could simply decline to consent to the expansion.

Fourth, Enbridge Energy would require that the interconnect be conditioned on Enbridge Energy first obtaining a declaratory order from FERC approving, as High Prairie understands it, a methodology for allocating its capacity and/or recovering the costs of the expansion project.

Last, Enbridge Energy would require that the interconnect be conditioned on High Prairie agreeing to "backstop" the $1 billion expansion project by agreeing to pay Enbridge Energy for

any revenue shortfalls that result in the event that High Prairie's deliveries of crude oil to Enbridge Energy at Clearbrook do not meet certain specified levels.

These conditions are unjust, unreasonable, and unduly discriminatory terms and conditions and are stated nowhere in Enbridge Energy's tariff. Such requirements would unlawfully discriminate against High Prairie and grant an undue preference to Enbridge Energy's existing shippers (*i.e.*, those coming to Clearbrook from Enbridge Energy and its affiliated upstream pipelines). Under Section 3(1) of the ICA, High Prairie and its shippers are legally entitled to access Enbridge Energy's common carrier system on the same terms accorded to the Enbridge pipelines and their shippers.

Enbridge Energy's actions clearly violate its common carrier obligations under Section 3(1) of the ICA to not unduly discriminate against or in favor of any shipper or entity whatsoever. Enbridge Energy is unabashedly granting preferential access to certain upstream pipelines and shippers while denying access to others. The Commission has recognized that a common carrier oil pipeline may not allocate capacity based on impacts to the pipeline's competitive position.[25] Thus, the Commission has rejected tariff provisions that grant long-haul shippers preferential access to capacity over short-haul shippers,[26] and has set for investigation allegations that an oil pipeline is granting preferential access to pipeline affiliates.[27] In addition, while the Commission has not prescribed a uniform methodology for allocating oil pipeline

[25] *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 22, 24, 97 (2010) (holding that claims about the impact on a pipeline's competitive position are irrelevant to how the pipeline must allocate its capacity and finding that basing the allocation on such claims violates Section 3(1) of the ICA).
[26] *See Suncor*, 132 FERC at P 64-65, 97, 107, 109-13, 116-17; *see also A. L. Mechling Barge Lines, Inc. v. United States*, 376 U.S. 375, 382 (1964).
[27] *Bell Fourche Pipeline Co.*, 126 FERC ¶ 61,054, at P 24 (2009)(the case settled before the Commission completed its investigation with the pipeline agreeing to provide "certain interconnection agreements", *see*, Joint Explanatory Statement, filed Aug. 25, 2010, Docket No. IS09-92-000; Letter Order dated Oct. 1, 2010, 133 FERC ¶ 61,001 (2010)).

capacity, it has steadfastly required all oil pipelines to set aside a portion of capacity for new or uncommitted shippers.[28]

Enbridge Energy will undoubtedly rely on *Plantation Pipe Line Co. v. Colonial Pipeline Co.*, 104 FERC ¶ 61,271 (2003) in an attempt to justify its undue preference and discrimination, but this reliance is unfounded. In the *Plantation* case, the Commission denied a complaint alleging that Colonial violated ICA Section 3(4) by refusing to allow an interconnection between the Plantation and Colonial pipeline systems. It does not appear that Plantation was seeking an interconnection at a tariffed origin point nor was there a claim of undue discrimination in that case, however, and the Commission held that it did not have the authority to compel the requested interconnection.[29] In support of its holding, the Commission stated that given its lack of authority over the abandonment of oil pipeline facilities, it would be illogical to order an interconnect that Colonial could abandon.[30]

High Prairie is not asserting that the Commission has general authority to compel oil pipeline interconnections based on public interest or public convenience and necessity

[28] *See, e.g.*, *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 46-49 (2008); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 31-37 (2008); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *reh'g denied*, 122 FERC ¶ 61,123 (2008); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 42-48 (2006).

[29] The Commission did not address whether it has authority to order an interconnection where, as here, it is necessary to remedy undue discrimination. However, the Commission based its decision on the Supreme Court's decision in *Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co.*, 271 U.S. 244 (1926). There, the sole issue was whether the ICA gave the ICC exclusive jurisdiction to permit or order the construction of connection facilities between common carriers, thereby preempting an action to exercise eminent domain authority in state court. The Supreme Court did not hold that the ICC lacked jurisdiction to compel the construction of a connection, much less that it lacked such authority when necessary to remedy undue discrimination. It simply held that there was no preemption of the State eminent domain proceedings because it was not until the Transportation Act of 1920 that Congress conferred to the ICC "full power" over connections between interstate carriers.

[30] The situation here is different and more like an *Amoco Pipeline Company* case where Amoco claimed the Commission had no jurisdiction over its proposal to cancel certain services. *Amoco Pipeline Co.*, 83 FERC ¶ 61,156 (1998)("*Amoco*"). There, the pipeline claimed its cancellation of service from only certain origin points on its mainline was outside the Commission's jurisdiction because it constituted an abandonment of service over which the Commission had no jurisdiction. The Commission disagreed, holding that it had jurisdiction because Amoco was not proposing total abandonment of service on its mainline system. *Id.* at p. 61,673. Under the Commission's holding in *Amoco*, Enbridge Energy would not be allowed to cancel service from the Clearbrook origin for High Prairie's shippers while continuing to provide service to shippers that enter at Clearbrook on Enbridge ND, an affiliated pipeline.

considerations. Here, the Commission is confronted with 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 carrier chooses to interconnect. More specifically, this is a situation where: (1) a common carrier has granted an interconnect to another common carrier, its affiliate, and is denying the same right to interconnect to a similarly situated third party common carrier, High Prairie; (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; and (3) all of the barrels moving through the interconnect would be tendered at one of the receiving pipeline's tariffed origin points. The Commission is fully empowered to ensure that the carrier's decision whether to interconnect or not with an upstream pipeline is made on a basis that is just, reasonable, and not unduly discriminatory or preferential, as the Commission held in Order No. 561-A.[31]

The Commission has also held that a common carrier pipeline cannot favor affiliated pipelines in the grant of interconnects over other pipelines that are similarly situated. In *Bonito Pipe Line Company*,[32] the Commission (i) denied a petition for declaratory order filed by Bonito seeking a determination that it was not required to grant an interconnection to Shell Pipe Line Corporation under the ICA and Outer Continental Shelf Lands Act ("OCSLA"), and (ii) determined that Bonito was legally required to grant Shell's request for an interconnection. Bonito sought to deny Shell Pipe Line an interconnection on grounds that the oil to be tendered

[31] *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Regs. Preambles 1991-1996 ¶31,000, *Order on Reh'g*, Order No. 561-A at p. 31,111 (July 28, 1994)("Order No. 561-A")(the new items added to oil pipeline tariffs, including a line connection policy, were required to diminish the possibility of discrimination). *See also Western Pac. Ry Co. v. United States*, 382 U.S. 237, 242-45 (1965) (holding that the Commission has the power to remedy a carrier's discrimination against another carrier even if there is no physical connection between them). In this case, Enbridge Energy has an interconnect at Clearbrook with a pipeline owned by its affiliate but has denied an interconnect request by High Prairie.

[32] 61 FERC ¶ 61,050 (1992).

through the interconnect would have such a high sulfur content that the commingled stream on Bonito's system would fail to meet the requirements of the downstream Ship Shoal system.

The Commission rejected Bonito's position, noting that it had been receiving oil with a similarly high sulfur content from other shippers for years and had, in fact, recently granted an interconnection to Chevron, one of the Bonito owners, despite the fact that Chevron was seeking to ship high sulfur crude oil on Bonito. The Commission held that the Bonito owners had a "statutory duty to transport crude oil on Bonito's system in a nondiscriminatory fashion,"[33] and that Bonito's refusal to permit the interconnection and transport Shell's volumes constituted discrimination. As the Commission concluded, "[I]t is Shell's effort to obtain transportation for crude oil comparable to that already being shipped on Bonito and Shell's desire to interconnect with Bonito as Chevron previously has done that causes us to find that Bonito's refusal to permit the interconnection and transport the volumes constitutes discrimination." Accordingly, the Commission determined that Shell must be permitted to interconnect with Bonito's system.

To be sure, the Commission has allowed oil pipelines to grant preferential rates to certain shippers who committed to take or pay for a certain percentage of the pipeline's capacity in an open season. However, in such orders, the Commission has also been steadfast in pointing out that the preferential rate was not unduly preferential because all shippers had an equal

[33] Because the Commission found that Bonito was an offshore pipeline exempt from the ICA, it relied on the antidiscrimination language from Section 1334(e) and (f) of the OCSLA. Although Enbridge Energy is not subject to the anti-discrimination provisions of the OCSLA, it is subject to the ICA and its anti-discrimination provisions. In addition, Enbridge is subject to further non-discriminatory access obligations under the Mineral Leasing Act, which applies to oil pipelines crossing onshore federal lands. 30 U.S.C. § 185(r)(1) (requiring that such pipelines be operated as common carriers); 30 U.S.C. § 185(r)(2) (requiring that such pipelines "accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands"). Much of the oil to be carried by High Prairie will be produced on Federal lands, and Section 185(r)(5) of the Mineral Leasing Act expressly provides for FERC action to enforce these open access obligations. 30 U.S.C. § 185(r)(5).

opportunity to make a similar commitment and obtain the same rate.[34] Here, by contrast, High Prairie and shippers on High Prairie would be denied any opportunity to get the same deal Enbridge Energy has given to itself, its shippers, and its affiliated upstream pipelines and their shippers.

B. Enbridge Energy Has Violated, and Is Continuing to Violate, Sections 1(6) and 6(1) of the ICA and Section 341.0 of the Commission's Regulations by Imposing Unjust and Unreasonable Terms and Conditions of Service on High Prairie and Its Shippers.

By refusing to grant High Prairie an interconnect at Clearbrook on just and reasonable terms, Enbridge Energy is violating Sections 1(6) and 6(1) of the ICA. Section 1(3) of the ICA defines transportation to include "…all services in connection with the receipt, delivery, elevation, and transfer in transit … storage and handling of property transported.[35] Section 1(6) of the ICA requires that the terms and conditions of service on an oil pipeline, including the terms governing receipt of oil, be just and reasonable requiring all carriers to

> establish, observe, and enforce . . . just and reasonable regulations and practices affecting classifications, rates, or tariffs, . . . the facilities for transportation, . . . and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property. . . .[36]

Section 6(1) of the ICA requires that carrier tariffs contain all of the terms and conditions of service that in any way affect the value of service, including stating the places between which property will be carried and stating

> . . .separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change,

[34] *See, e.g., Imperial Oil v. Enbridge Pipelines (Southern Lights) LLC*, 136 FERC ¶ 61,115 at P 14, 16 (2011) (holding that rate preference for Committed shippers was not unduly preferential because every potential shipper on the line had an "equal opportunity to become a committed shipper"); *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025 at P 22 (2008) (same).
[35] 49 U.S.C. app. § 1(3)(emphasis added).
[36] 49 U.S.C. app. § 1(6) (emphasis added).

> affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the . . . shipper.[37]

Likewise, Section 341.0 of the Commission's regulations requires that each oil pipeline include in its published tariffs all of the rules and regulations governing the rates and charges for services performed in accordance with the tariff.[38]

The terms and conditions under which Enbridge Energy would grant an interconnection to High Prairie at Clearbrook are clearly regulations and practices affecting classifications, rates, or tariffs, the facilities for transportation, and the receiving of property. As the Commission stated in Order No. 561-A, these items, including a carrier's line connection policy, "not only affect the value to the shipper of the service offered by the carrier, but also can have a direct effect on access to transportation."[39] Enbridge Energy has failed to provide a legally valid, just and reasonable basis for refusing to grant High Prairie and its shippers access to Enbridge Energy at its tariffed Clearbrook origin point. The refusal to grant an interconnect on just and reasonable terms violates Sections 1(6) of the ICA.[40]

Enbridge Energy is likewise violating Section 6(1) of the ICA and Section 341.0 of the Commission's regulations by adopting a requirement stated nowhere in its tariff that any interconnection with High Prairie be conditioned on (i) High Prairie paying for the facilities necessary to interconnect at Clearbrook even though Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling, (ii) Enbridge Energy building new downstream expansion facilities between Clearbrook and Superior (i.e., an approximate 200-mile loop line of existing pipelines) estimated

[37] 49 U.S.C. app. § 6(1) (emphasis added).
[38] 18 C.F.R. § 341.0.
[39] Order No. 561-A at p. 31,111 (emphasis added).
[40] *See Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 117 (2010) (holding that "[t]he lack of an objective reason for preventing particular types of shippers from having an equitable opportunity to obtain transportation on [a common carrier's] pipeline system could violate the ICA section 1(6) prohibition against any unjust and unreasonable, classification, regulation and practice").

at a cost of $1 billion, (iii) Enbridge Energy's existing shippers consenting to the $1 billion expansion, (iv) the Commission issuing a declaratory order approving a methodology for allocating its capacity and/or recovering the costs of the expansion project, and (v) High Prairie agreeing to backstop the $1 billion expansion of Enbridge Energy's downstream facilities. These are not just and reasonable terms and conditions.[41]

Enbridge Energy is a common carrier pipeline and is required to grant access to its existing facilities on terms that are just, reasonable, not unduly discriminatory and stated in its tariff. It is unjust and unreasonable to condition access to the pipeline's existing system on completion of an expansion project. Such a condition unduly discriminates against new shippers, and grants existing shippers preferential access to the existing system that is unjust, unreasonable, and unduly preferential. This is particularly true in this case where the carrier has acknowledged it has unused capacity today, and will continue to have excess capacity for the next few years, but is preserving such capacity for volumes moving over its own or its affiliates' upstream lines. Enbridge Energy is clearly discriminating against High Prairie and granting preferential access to volumes moving over its and its affiliates' upstream pipelines and their shippers. The Commission has repeatedly held that pipelines cannot exclude new or uncommitted shippers from obtaining access.[42]

[41] *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 97 (2010) (holding that claims about the impact on a pipeline's competitive position are irrelevant to how the pipeline must allocate its capacity and holding that basing the allocation on such claims violates Section 1(6) and "would frustrate the clear mandates of the ICA").

[42] *See, e.g.,Texaco Pipeline Inc.*, 74 FERC 61,071 (1996) (rejecting as unduly preferential a proposed tariff provision that would essentially lock uncommitted shippers out of 80 percent of the pipeline's capacity); *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 25 (2010), *citing Platte Pipe Line Co.*, 117 FERC 61,296 at P 56 (2006); *see also Enbridge Pipelines (North Dakota) LLC*, 132 FERC 61,274 at P (2010) (permitting preferential proration policy because New Shippers were assured of access to 10 percent of the pipeline's capacity, the New Shippers would have the ability to establish the historical shipments necessary to become a Regular Shipper, and the proration policy would be limited to a 24-month period); *Platte Pipe Line Co.*, 115 FERC 61,215 (2006) (finding that proration policy that did not allow new shippers to establish historical shipments created an undue preference for historical shippers).

It also is unjust and unreasonable to condition the interconnect on High Prairie agreeing to backstop an expansion of Enbridge Energy's downstream system.[43] High Prairie is not requesting that Enbridge Energy expand its downstream system and Enbridge Energy has stated that at this time it has capacity available to accommodate the HP Pipeline volumes. Moreover, Enbridge Energy is under no obligation to expand the capacity of its system downstream of Clearbrook. To the extent it believes that granting High Prairie's interconnect as well as other interconnects at or upstream of Clearbrook will at some point in the future lead to prorationing on its existing facilities downstream of Clearbrook, Enbridge Energy can seek to obtain financial commitments from its shippers to support an expansion of its downstream facilities. But it cannot condition access to its existing system on shippers or their interconnecting pipeline providing Enbridge Energy with volume or revenue guarantees.

C. Enbridge Energy Has Violated, and Is Continuing to Violate, Section 1(4) of the ICA by Failing to Provide Transportation Upon Reasonable Request Therefore, Failing to Establish Reasonable Through Routes With Another Carrier, and Failing to Provide Reasonable Facilities for Operating Such Through Routes.

By refusing to grant High Prairie an interconnect, Enbridge Energy is violating Section 1(4) of the ICA. One of the statutory duties of a common carrier under Section 1(4) of the ICA is to "establish reasonable through routes with other such carriers", provide reasonable facilities for operating such routes, and make reasonable rules and regulations with respect to their operation.[44] As explained above, Section 1(3) of the ICA defines transportation to include ". . . all services in connection with the receipt, delivery,

[43] *See Enbridge Energy Co., Inc.*, 123 FERC SEC 61,130 at PP 9, 34, 35, 36 (2008)(Commission denied a petition for declaratory order which included a "backstop" mechanism that would have required shippers on a different pipeline system to subsidize expansion facilities on another pipeline; Enbridge Energy is attempting to do the same thing here by requiring High Prairie to subsidize and bear the risk of the expansion facilities and effectively placing that subsidization burden on High Prairie and its shippers).

[44] 49 U.S.C. app. § 1(4).

elevation, and transfer in transit . . . storage, and handling of property transported."[45] Thus, in Order No. 561-A, the Commission held that a pipeline must include a just and reasonable line connection policy in its tariff.

In submitting its request to Enbridge Energy for an interconnection at Clearbrook, High Prairie has made a reasonable request. The only justification Enbridge Energy has provided for declining the interconnection request is to protect the capacity rights (as well as revenues) of its shippers and its affiliated upstream pipelines' shippers, and thus, avoid having to share line space downstream of Clearbrook with High Prairie's shippers. The Commission has held that such competitive considerations are an invalid basis on which to discriminate in the awarding of capacity and has held that denying access on such a basis violates Section 1(4) of the ICA.[46]

D. Enbridge Energy Has Violated, and Is Continuing to Violate, Section 6(7) of the ICA by Extending to Itself and Its Shippers, and to Its Affiliated Pipelines and Their Shippers, the Untariffed Privilege of Exclusive Or Preferential Access to Its Capacity Extending Downstream of Clearbrook.

Enbridge Energy's refusal to grant High Prairie an interconnect violates Section 6(7) of the ICA. Section 6(7) of the ICA prohibits carriers from extending "to any shipper or person any privileges or facilities in the transportation of . . . property, except such as are specified in [the carrier's] tariffs."[47] In violation of this provision of the ICA, Enbridge Energy is extending to its existing shippers privileges in the transportation of crude oil that are not specified in its tariffs.

Enbridge Energy's currently effective tariff does not provide its existing shippers with exclusive or preferential access to its existing pipeline system extending downstream from

[45] 49 U.S.C. app. § 1(3) (emphasis added).
[46] *Suncor Energy Marketing Inc. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 22, 24, 97 (2010) (holding that claims about the impact on a pipeline's competitive position are irrelevant to how the pipeline must allocate its capacity and finding that basing the allocation on such claims violates Section 1(4) of the ICA).
[47] 49 U.S.C. app. § 6(7).

Clearbrook. Nor does Enbridge Energy's tariff give its existing shippers the privilege of determining whether or not an interconnection is granted. Yet, Enbridge Energy is insisting that any connection with High Prairie be conditioned on (i) High Prairie agreeing to pay approximately $100 million for tankage facilities; (ii) an expansion of Enbridge Energy's facilities extending downstream from Clearbrook that is estimated to cost $1 billion, which amount would be recovered through an unduly discriminatory surcharge that would be assessed on High Prairie's shippers but not Enbridge Energy's existing shippers; (iii) the approval by Enbridge Energy's existing shippers of the expansion of its facilities extending downstream from Clearbrook; (iv) the issuance of a FERC declaratory order; and (v) High Prairie committing to backstop the downstream expansion. The refusal to grant High Prairie an interconnect, coupled with Enbridge Energy's demand that any interconnect be conditioned on these terms, demonstrates that Enbridge Energy is extending to its existing shippers privileges that are not stated in Enbridge Energy's tariff in violation of Section 6(7) of the ICA.

F. Enbridge Energy has Violated, and Is Continuing to Violate Section 341.8 of FERC's Regulations by Failing to State Its Connection Policy in its Tariff.

Enbridge Energy's FERC tariff violates the Commission's regulations because it does not contain an interconnection policy. Section 341.8 of the Commission's regulations expressly requires, in pertinent part, that each carrier publish a connection policy in its tariff:

> Carriers must publish in their tariffs rules governing such matters as prorationing of capacity . . ., loading and unloading, gathering, terminalling, batching, blending, commingling, and connection policy, and all other charges, services, allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper.[48]

[48] 18 C.F.R. § 341.8 (emphasis added).

In order No. 561-A, the Commission held that a carrier's line connection policy "certainly affect[s] the value of service to the shipper..." and is "required to diminish the possibility of discrimination."[49] Thus, the terms and conditions on which a pipeline will grant an interconnect are required to be published in the carrier's tariff, "open for public inspection," so that they can be reviewed by the Commission and interested persons, and challenged if unjust, unreasonable, or unduly discriminatory or preferential.

Despite this clear regulatory requirement, Enbridge Energy's tariff provides no interconnection policy and states no terms and conditions on which interconnection requests will be processed or granted. By failing to include an interconnection policy in its tariff, Enbridge Energy has violated and is continuing to violate Section 341.8 of the Commission's regulations.

IV.

COMPLIANCE WITH OTHER PROCEDURAL REGULATIONS

In support of its Complaint as set forth in the Commission's regulations at 18 C.F.R § 385.206, High Prairie states as follows:

A. Enbridge's Refusal to Grant the Interconnection Presents Business, Commercial, Economic and Other Issues Affecting Complainant and Its Prospective Shippers [18 C.F.R. § 385.206(b)(3) - (5)]

As described above, many of the commitments High Prairie received in response to its open season are conditioned on HP Pipeline establishing an interconnect with Enbridge Energy at Clearbrook. By refusing to grant the interconnect requested by High Prairie, Enbridge Energy is denying 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. This denial of access significantly diminishes the optionality HP Pipeline can offer to shippers.

[49] Order No. 561-A at p. 31,111.

If it is unable to offer the option of providing interconnecting service with Enbridge Energy, High Prairie will not be able to execute transportation service agreements with a number of shippers that made conditional commitments to the HP Pipeline. The loss of shippers that made conditional commitments to HP Pipeline will result in a significant devaluation of the project's economics and termination of the project. Termination of the project or a significant devaluation of the project's economics will have a substantial negative impact on the economic and commercial interests of High Prairie.

High Prairie has estimated the financial impact of Enbridge Energy's refusal to grant the interconnection to be approximately $123.42 million.[50] This estimate is based on a calculation of the net present value ("NPV") of the net revenues High Prairie would have received over the life of the transportation service agreements for HP Pipeline. The basis of this calculation is more fully described in the affidavit of Mr. Levi Rozga which is included herein as Exhibit A.

In addition, Enbridge Energy's refusal to grant High Prairie's request for an interconnect also has a negative impact on prospective shippers on the HP Pipeline and crude oil production in North Dakota. In the absence of an interconnect between the HP Pipeline and Enbridge Energy at Clearbrook, it is likely there will be insufficient pipeline capacity for all North Dakota crude oil production to leave North Dakota by pipeline. In that situation, High Prairie believes the barrels for which there is insufficient pipeline capacity will be transported, if they move at all, on a less economic alternative – rail. High Prairie believes the increased cost to the producer to move barrels by rail is in the range of eight to ten dollars per barrel.[51] The basis for this estimate is more fully described in the affidavit of Mr. Levi Rozga which is included herein as Exhibit A.

[50] Rozga Affidavit at 8.
[51] Rozga Affidavit at 10.

B. Related Proceedings [18 C.F.R. § 305.206(b)(6)]

High Prairie submitted an intervention and protest of an Enbridge Energy tariff filing in Docket No. IS12-236. In the tariff filing at issue in Docket No. IS12-236, Enbridge Energy stated that it was clarifying its existing Nomination Verification Procedure by providing in its tariff certain details regarding its existing procedures. As part of the tariff filing, Enbridge Energy proposed to, among other things, revise its tariff to require shippers to nominate barrels on "upstream connecting carriers or facilities" rather than at a tariffed origin point as required by the current tariff. In addition, Enbridge Energy proposed to limit the volumes to be delivered to a delivery facility to the highest volume delivered to that facility during the 24 month period prior to July 2010.

In its protest, High Prairie pointed out that the existing Enbridge Energy tariff is in violation of the Commission's rules which require that an oil pipeline publish a connection policy in its tariff.[52] High Prairie stated that absent a published line connection policy, the effect of revising the tariff to require that shippers nominate their volumes on upstream connecting carriers would be to allow Enbridge Energy almost unlimited discretion as to whether to grant a shipper access and would provide no protection against unjust, unreasonable or unduly discriminatory denials of access.[53] High Prairie also stated that Enbridge Energy may use the proposal to limit delivered volumes to block new shippers from its system.[54] High Prairie explained further that allowing Enbridge Energy to limit shipper nominations to a connecting carrier and not requiring it to publish its line connection policy would significantly increase the potential for discrimination and preferential treatment among shippers and allow Enbridge Energy to unduly discriminate and refuse to grant any additional interconnects, even at tariffed

[52] Protest at p. 15.
[53] Id.
[54] Protest at p. 16.

origin points where Enbridge Energy has already granted interconnects to other carriers (in this case, its affiliate).[55] Therefore, High Prairie requested that the Commission reject Enbridge Energy's tariff filing and require Enbridge Energy to file a just, reasonable and not unduly discriminatory interconnection policy within fifteen days.[56]

The issue of Enbridge Energy not publishing an interconnection policy in its tariff and the possibility of Enbridge Energy granting interconnect requests on an unduly discriminatory basis were raised in Docket No. IS12-236-000. However, the remedies requested in that docket differ from the remedies requested in this Complaint. The issue of the Commission requiring Enbridge Energy to grant High Prairie's request for an interconnect or for damages due to unduly discriminatory treatment in responding to the request is not pending in that docket. Indeed, even if the Commission were to grant the requests made in High Prairie's protest and reject the Enbridge Energy tariff filing and require it to file a just, reasonable and not unduly discriminatory interconnect policy, that in and of itself would not require Enbridge Energy to grant High Prairie's interconnect request or pay damages – the remedies High Prairie is seeking here. High Prairie believes that if the Commission requires Enbridge Energy to file an interconnect policy it is possible and even likely that Enbridge Energy will either delay action on its interconnection request until enough time has passed that High Prairie loses its conditional shipper commitments or deny the request and put High Prairie in the position of having to litigate implementation of the policy, effectively creating enough delay that High Prairie loses its conditional shipper commitments. Therefore, resolution of the protest in Docket No. IS12-236-000 on terms consistent with High Prairie's protest would not provide timely resolution of High Prairie's request herein that the Commission order Enbridge Energy to grant its interconnect

[55] Protest at p. 18.
[56] Protest at pp. 19-20.

request or pay damages to High Prairie for its unduly discriminatory action with regard to the interconnect request.

C. Relief Requested [18 C.F.R. § 305.206(b)(7)]

1. The Commission Should Order Enbridge Energy to Cease Its Unduly Discriminatory and Preferential Actions.

The Commission has full authority under the ICA to require Enbridge to cease unduly discriminatory or preferential practices. Where a carrier is engaging in undue discrimination or undue preference, the Commission has express statutory authority to require the carrier to cease such discrimination:

> Whenever, after full hearing, upon a complaint made as provided in section 13 of this Appendix, . . . the Commission shall be of opinion that . . . any individual or joint classification, regulation, or practice whatsoever of such carrier . . . is or will be unjust or unreasonable or unduly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what . . . classification, regulation or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier . . . shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist . . . and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.[57]

As the Supreme Court has held, the Commission is not limited to the specific powers enumerated in the ICA when it fashions a remedy for a violation of the ICA, as applicable to oil pipelines:

---

[57] 15 U.S.C. app. § 15(1) (emphasis added); *see also* 49 U.S.C. app. § 13(2) (granting the Commission the "full authority and power" to enforce the provisions of the ICA); *Northern Pac. Ry. Co. v. United States*, 316 U.S. 346, 349 (1942)(affirming Interstate Commerce Commission decision (a) finding unduly discriminatory railroad's practice of absorbing connecting-line switching charges in markets in which it faced competition and refusing to absorb such charges in captive markets and (b) requiring that the railroad absorb such charges in all markets); *Houston E. W.T.R. Co. v. United States*, 234 U.S. 342, 355, 360 (1914)(affirming ICC decision requiring carrier to either lower discriminatory rate or increase preferential rate because doing so was "necessary and appropriate" to remedy undue discrimination); *American Express Co. v. State of South Dakota, Ex Rel. Clarence C. Caldwell*, 244 U.S. 617, 624 (1917)(same); *State of California v. United States*, 320 U.S. 577, 584 (1944) (finding that the Commission has broad authority to fashion a remedy for unjust, unreasonable, or unduly discriminatory practices and that such authority includes exercising powers that were specifically not given to it in the statute).

> The Commission's authority under the Interstate Commerce Act is not bounded by the powers expressly enumerated in the Act. As we have held in the past, the Commission also has discretion to take actions that are "'legitimate, reasonable, and direct[ly] adjunct to the Commission's explicit statutory power.'" We have recognized that the Commission may elaborate upon its express statutory remedies when necessary to achieve specific statutory goals. . . .
>
> The doctrine of ICC discretion arose out of a recognition that, since drafters of complex ratemaking statutes like the ICA neither can nor do "include specific consideration of every evil sought to be corrected," the absence of express remedial authority should not force the Commission "to sit idly by and wink at practices that lead to violations of [ICA] provisions." The doctrine originated in cases in which we accorded the Commission latitude to interpret its statutory powers in a reasonable manner. . . .
>
> In *Trans Alaska Pipeline Rate Cases, supra,* this Court again addressed the Commission's discretionary authority to condition tariff approval in a manner reasonably tied to statutory objectives. In that case, the Commission had extracted from pipeline owners, in exchange for approval of a tentative tariff schedule, the owners' promise to refund whatever portion of the tentative rates the Commission subsequently found to be unreasonable. Claiming this action was unauthorized under the ICA, the pipeline owners argued that the Commission was required to choose between either suspending the proposed tariffs for an investigation into their reasonableness or approving the tariffs subject to prospective modification at some future date. Even though we agreed that the Commission lacks explicit authority to order refunds on tariffs that have gone into effect, we declined to interpret the ICA as placing the Commission in the dilemma posited by the pipeline owners. Suspension would have delayed the opening of the Alaska pipeline, whereas unconditional approval of the proposed rates might have unjustly enriched the pipeline owners. Since both alternatives were inconsistent with the policies underlying the ICA, we concluded that the Commission was justified in transcending its explicit remedial authorities and conditioning the approval of the Alaska-pipeline tariffs on a commitment to refund unreasonably high rates.[58]

Consistent with the language in ICA Section 15(1) and the Supreme Court holding in *American Trucking*, the Commission should direct Enbridge Energy to grant High Prairie the requested interconnection, subject to such just, reasonable, and not unduly discriminatory conditions that Enbridge Energy might adopt through a tariff publication.[59]

---

[58] *I.C.C. v. American Trucking Associations, Inc.*, 467 U.S. 354, 364-65 (1984)("*American Trucking*").

[59] *See Western Pac. Ry Co. v. United States*, 382 U.S. 237, 242-45 (1965) (holding that the Commission has the power to remedy a carrier's discrimination against another carrier even if there is no physical connection between

Alternatively, the Commission should remedy the continuing undue discrimination here by ordering Enbridge Energy to choose among a limited set of options that would resolve the undue discrimination with out dictating a particular result. Here, the Commission could reasonably require that Enbridge Energy choose among the following three options: (1) grant High Prairie an interconnection at Clearbrook on terms that are just, reasonable, and not unduly discriminatory; (2) cease receipts at Clearbrook from all of the upstream pipelines owned by Enbridge Energy and its affiliated pipelines because such receipts are being made on terms that are unduly discriminatory and preferential, and deny an interconnection at Clearbrook for the Enbridge Sandpiper Pipeline; or (3) cease transportation on its pipeline facilities extending downstream from Clearbrook because such transportation is being performed on terms that are unduly discriminatory and preferential.[60]

2. The Commission Should Order Enbridge Energy to File a Revised Tariff Setting Forth a Just, Reasonable, and Not Unduly Discriminatory Interconnection Policy.

As explained above, Enbridge Energy's failure to include a connection policy in its FERC tariff violates the ICA, the Commission's regulations, and FERC Order No. 561-A. The Commission should remedy this violation by requiring Enbridge Energy to file a revised tariff setting forth a just, reasonable, and not unduly discriminatory or preferential interconnection policy.

---

them). The Commission is fully empowered to require that the carrier's decision whether to interconnect or not with an upstream pipeline is made on a basis that is just, reasonable, and not unduly discriminatory, as the Commission held in Order No. 561-A.

[60] The Commission's authority to require either of the latter two actions is clear under Section 15(1) of the ICA, which expressly authorizes the Commission to order a carrier to "cease and desist" actions that violate the ICA. For example, where a rate charged to certain shippers is so low as to be unduly preferential, the Commission can order the carrier to remove the forbidden discrimination by either (i) increasing the rate charged to those shippers—something the ICC has no express statutory authority to require; or (ii) reducing the higher rate charged to the other shippers. *See, e.g., Houston E. W.T.R. Co. v. United States*, 234 U.S. 342, 355, 360 (affirming ICC decision requiring carrier to either lower discriminatory rate or increase preferential rate because doing so was "necessary and appropriate" to remedy undue discrimination).

3. To the Extent High Prairie Suffers Damages as a Result of Enbridge Energy's Unlawful Delay Or Denial of an Interconnection, the Commission Should Order Enbridge Energy to Fully Compensate High Prairie for Its Damages.

In the event that High Prairie suffers damages as a result of Enbridge Energy's unduly discriminatory refusal to grant, or delay in granting, the requested interconnect (or its failure to file and adhere to a revised tariff setting forth an interconnection policy that is just, reasonable, and not unduly discriminatory), Enbridge Energy must be held liable for the full amount of those damages, including consequential damages. Section 8 of the ICA is unambiguous on this point:

> In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter . . .[61]

Thus, the Commission has not just the authority, but the duty under the ICA, to award consequential damages to a complainant for a violation of the ICA. As the Courts have long-recognized,

> The Interstate Commerce Commission had jurisdiction to award damages as reparation for actual loss sustained by reason of an unlawful preference. On this point we need but quote from the opinion in *Interstate Commerce Commission v. United States*, 289 U. S. 385, 388, 53 S. Ct. 607, 609, 77 L. Ed. 1273, where the Supreme Court said: 'The Interstate Commerce Act makes it unlawful for a carrier to give any undue or unreasonable preference to a person or locality, or to subject any person or locality to an undue disadvantage, and charges the offender with liability for the full amount of damages resulting from the unlawful act. Upon the hearing of a complaint, the Commission is empowered to ascertain the damages and award them.
>
> The phrase 'full amount of damages,' referred to in the above opinion, is sufficiently broad in scope to include damages for injury to one's business, including shrinkage of normal business profits.[62]

[61] 49 U.S.C. app. 8 (emphasis added); see also 49 U.S.C. app. § 16(1) (providing that if the Commission determines that a complainant is entitled to an award of damages, "the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.") (emphasis added).

[62] *Pennsylvania R. Co. v. Terminal Warehouse Co.*, 78 F.2d 591, 593-94 (3rd Cir. 1935), citing *Interstate Commerce Commission v. United States*, 289 U.S. 385, 388 (1933); *Keogh v. C. & N. W. Ry. Co.*, 260 U. S. 156; *Pennsylvania R. Co. v. Minds*, 250 U. S. 368 (1919); *Louisville & N. R. Co. v. Ohio Valley Tie Co.*, 242 U. S. 288; *Pennsylvania*

As the successor to the Interstate Commerce Commission with respect to the regulation of oil pipelines under the ICA, the FERC has the statutory power and duty to award High Prairie the full amount of any damages its sustains in consequence of Enbridge Energy's unlawful failure to grant High Prairie's interconnection request, its unlawful delay in granting such request, or its unlawful failure to file and adhere to a just, reasonable, and not unduly discriminatory or preferential interconnection policy.

D. Documents in Support of this Complaint 18 C.F.R. § 385.206(b)(8)

High Prairie has included all documents in its possession that support this Complaint as Exhibits to this filing. Included as Exhibit A is an affidavit of Levi Rozga, the Vice President of Finance for Saddle Butte Pipeline, LLC, the parent company of High Prairie which sets forth the calculations of the financial impact on High Prairie of Enbridge's refusal to grant the interconnect as well as the negative impact such refusal is likely to have on the HP Pipeline prospective shippers and crude oil production in North Dakota. Included as Exhibit B is an affidavit of David Lytle, the Senior Vice President of Business Development for Saddle Butte, LLC, which sets forth certain details and information from High Prairie's negotiations with Enbridge Energy regarding High Prairie's interconnect request.

E. Potential Other Processes for Resolving this Complaint [18 C.F.R. § 385.206(b)(9)]

On April 25, 2012, counsel for High Prairie made an initial call to the FERC Enforcement Hotline but did not identify either of the parties involved in the inquiry. On April

---

R. Co. v. W. F. Jacoby & Co., 242 U. S. 89; *Pennsylvania R. Co. v. International Coal Co.*, 230 U. S. 184; *see also, e.g.*, *Baltimore & O.R. Co. v. Brady*, 288 U.S. 448 (1933) (leaving in place ICC damage award that included amount for lost profits); *In the Matter of Investigation into the Lawfulness of Interchange Agreements*, 356 I.C.C. 749, 780 (1977) (holding that the Commission clearly has the power under Section 16(1) of the ICA to award damages for lost revenues), *affr'd*, *Bangor & A. R. Co. v. I.C.C.*, 574 F.2d 1096, 1108-11 (1st Cir. 1978) (affirming ICC award of consequential damages for undue discrimination against a connecting carrier), *Consolo v. Federal Maritime Commission*, 383 U.S. 607 (1966) (sustaining damage award by Commission for loss of expected profits under the Shipping Act, which the Court noted is modeled after the ICA); *Pennsylvania R. Co. v. Weber*, 257 U.S. 85 (1921).

30, counsel for High Prairie had a second call with the FERC Enforcement Hotline in which it confidentially disclosed the names of the parties involved in its inquiry. The Enforcement Hotline stated that it would assemble a team with the appropriate experience and get back to counsel. On May 4, the Enforcement Hotline contacted High Prairie counsel and counsel informed them that High Prairie had filed the protest in Docket No. IS12-236. The Enforcement Hotline stated that it would review the pleadings in that docket and respond to counsel regarding whether the Hotline inquiry could go forward given the contested proceeding.

As described above, High Prairie has been in negotiations with Enbridge Energy regarding resolution of its interconnect request. These negotiations have not produced results and High Prairie was compelled to file this Complaint. High Prairie is interested in an expedited resolution of the issues raised herein but does not know whether alternative dispute resolution under the Commission's supervision could successfully and expeditiously resolve the Complaint. No process has been agreed to between High Prairie and Enbridge Energy for the resolution of this Complaint.

F. Form of Notice [18 C.F.R. § 385.206(b)(10)]

A form of notice of the Complaint suitable for publication in the Federal Register in accordance with the specifications of 18 C.F.R. § 385.203(d) is attached. The form of notice is also provided on electronic media.

G. Fast Track Processing [18 C.F.R. § 385.206(b)(11)]

High Prairie is requesting Fast Track Processing of this Complaint as provided in the Commission's regulations at 18 C.F.R. § 385.206(h) either through assignment to a settlement judge or expedited action by the Commission on the pleadings. High Prairie also is requesting that the Commission shorten the period for filing answers to this Complaint to five (5) business

days in accordance with Rule 206(h)(3). As described above, time is of the essence for resolving High Prairie's request for an interconnect with Enbridge Energy at Clearbrook. The open season for the HP Project closed on April 5th and High Prairie has until June 4th to negotiate transportation service agreements with prospective shippers.[63] A number of prospective shippers submitted commitments that are conditioned on the High Prairie Project having an interconnect with Enbridge Energy at Clearbrook. In order to successfully complete negotiations and execute transportation service agreements with many of its prospective shippers, High Prairie must be able to assure those shippers that it is going to have an interconnect with Enbridge Energy at Clearbrook. As described in the affidavit of Mr. Rozga, if High Prairie is not able to execute transportation service agreements with the shippers that made conditional commitments, it will be forced to terminate the HP Project. Therefore, the standard processes will not be adequate for expeditiously resolving this Complaint.

V.

CONCLUSION

WHEREFORE, for the foregoing reasons, High Prairie respectfully requests that the Commission:

(1) require Enbridge Energy to remedy its unlawful actions by electing to: (a) grant High Prairie the requested interconnection on terms and conditions that are just, reasonable, and not unduly discriminatory; (b) cease and desist from accepting receipts at Clearbrook from upstream pipelines owned by Enbridge Energy and its affiliates and deny an interconnection for

[63] High Prairie is currently seeking an extension of the date for negotiating transportation service agreements with its prospective shippers. There is no guarantee that High Prairie will be successful in extending the date, and even if an extension is agreed to, Fast Track Processing will be needed since the interconnect issue needs to be resolved before the transportation service agreements will be executed.

the Enbridge Sandpiper Pipeline, or (c) cease and desist from transporting crude oil on its jurisdictional facilities extending downstream from Clearbrook;

(2) require Enbridge to file a revised tariff setting forth a just, reasonable, and not unduly discriminatory interconnection policy;

(3) to the extent High Prairie suffers damages as a result of Enbridge Energy's unlawful delay or denial of an interconnection, order Enbridge Energy to fully compensate High Prairie for its damages;

(4) grant Fast Track Processing of this Complaint; and

(5) shorten the period for filing responses to this Complaint to five (5) business days.

Respectfully submitted,

HIGH PRAIRIE PIPELINE, LLC

/s/ ***Pamela J. Anderson***

Glenn S. Benson
Perkins Coie LLP
701 Thirteenth Street, NW
Suite 600
Washington, DC 20005-3960
Tel: (202) 654-6255
Fax: (202) 654-9145
GBenson@perkinscoie.com

Pamela J. Anderson
Perkins Coie LLP
The PSE Building
10885 N.E. Fourth Street, Suite 700
Bellevue, WA 98004-5579
Telephone: 425-635-1400
Fax: 425-635-2400
PAnderson@perkinscoie.com

Attorneys for
High Prairie Pipeline, LLC

DATED: May 17, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2012, I have served the foregoing document by electronic mail and/or first-class mail on the respondent, affected regulatory agencies, and others that may be affected by the complaint in accordance with Rule 206(c) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission.

/s/ *Glenn S. Benson*
Glenn S. Benson

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

High Prairie Pipeline, LLC Complainant,	)	
v.	)	Docket No. OR12-_____
Enbridge Energy, Limited Partnership Respondent.	)	

AFFIDAVIT OF LEVI ROZGA
IN SUPPORT OF COMPLAINT OF HIGH PRAIRIE PIPELINE, LLC

I, Levi Rozga, having been first duly sworn according to law, state that the following facts, provided under oath, are true and correct to the best of my knowledge and information.

1. I am the Vice President of Finance for Saddle Butte Pipeline, LLC, the parent company of High Prairie Pipeline, LLC (High Prairie). My business address is 858 Main Avenue, Suite 301, Durango, CO 81301.

2. High Prairie is a wholly-owned subsidiary of Saddle Butte Pipeline, LLC, a developer of gathering, processing and transportation infrastructure for crude oil and natural gas producers throughout the Mid-Continent and Rocky Mountain regions. High Prairie does not have separate officers at this time.

3. High Prairie intends to construct a 450-mile pipeline system capable of transporting 150,000 barrels of crude oil per day from the Bakken region to Clearbrook, Minnesota (the HP Project). The HP Project is intended to, among other things, provide a pipeline interconnect with Enbridge Energy Partners, L.P. (Enbridge) near Clearbrook, Minnesota.

4. High Prairie held a binding open season to solicit capacity commitments from shippers on the HP Project from February 14 through April 5, 2012. High Prairie received commitments from prospective shippers for a significant portion of the proposed capacity, a number of which are contingent on High Prairie establishing an interconnect with Enbridge at Clearbrook, Minnesota.

5. In February, 2012, High Prairie began discussions with Enbridge regarding its need for an interconnect with Enbridge at Clearbrook; at this point in time, its request has not been granted.

6. If High Prairie is unable to secure an interconnect with Enbridge at Clearbrook, the transportation service agreements with a number of shippers that made conditional commitments to the HP Project shall terminate.

7. If High Prairie loses the commitments those shippers made to the HP Project, it will result in devaluation of the economics such that High Prairie will no longer have a project that is both commercially and economically acceptable. High Prairie would lose its financing options and therefore terminate the HP Project altogether.

8. Termination of the HP Project would result in a loss to High Prairie of the entire net revenues of the HP Project which, at 150,000 barrels per day, are equal to approximately six hundred million seven hundred thousand dollars ($600.7MM) or a net present value of one hundred twenty three million forty-two thousand dollars ($123.42MM).

9. In the absence of an interconnect between the HP Pipeline and Enbridge at Clearbrook, it is likely there will be insufficient pipeline capacity for all North Dakota crude oil production to leave North Dakota by pipeline. In that situation, if the barrels for which there is insufficient pipeline capacity move at all they will likely be transported by rail.

10. Transportation by rail is a much less economic alternative. For example, the cost for barrels moving from North Dakota to the Gulf Coast by rail is approximately fifteen to nineteen dollars per barrel ($15-$19/barrel). The cost to get to the Gulf Coast by pipeline is approximately seven to nine dollars per barrel ($7-$9/barrel). The additional cost for a producer or marketer to move its barrels to the Gulf Coast by rail is approximately eight to ten dollars per barrel ($8-$10/barrel). The increased cost to the producer to move barrels by rail is in the eight to ten dollars per barrel range ($8-$10/barrel).

Levi Rozga, Vice President of Finance
Saddle Butte Pipeline, LLC

VERIFICATION

State of Colorado:
County of LA PLATA

Before me, PAMELA THOMAS a notary public, on this day personally appeared Levi Rozga, known to me as the person whose name is subscribed to the foregoing Affidavit, and known to me as the Vice President of Finance of Saddle Butte Pipeline, LLC, and stated to me the facts contained in such Affidavit are true and correct to the best of his knowledge and belief.

Given my hand and seal this 15th day of May, 2012.

Pamela R Thomas
Notary Public
State of Colorado

My Commission expires: 1/5/2015

PAMELA L. THOMAS NOTARY PUBLIC STATE OF COLORADO My Commission Expires 1/5/2015

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

High Prairie Pipeline, LLC Complainant,	)	
v.	)	Docket No. OR12-_____
Enbridge Energy, Limited Partnership Respondent.	)	

AFFIDAVIT OF DAVID LYTLE
IN SUPPORT OF COMPLAINT OF HIGH PRAIRIE PIPELINE, LLC

I, David A. Lytle, having been first duly sworn according to law, state that the following facts, provided under oath, are true and correct to the best of my knowledge and information.

1. I am the Senior Vice President of Business Development for Saddle Butte Pipeline, LLC, the parent company of High Prairie Pipeline, LLC (High Prairie). My business address is 858 Main Avenue, Suite 301, Durango, CO 81301.

2. High Prairie is a wholly-owned subsidiary of Saddle Butte Pipeline, LLC, a developer of gathering, processing and transportation infrastructure for crude oil and natural gas producers throughout the Mid-Continent and Rocky Mountain regions. High Prairie does not have separate officers at this time.

3. I have been in discussions since early February 2012 with Enbridge Energy, Limited Partnership (Enbridge Energy) on behalf of High Prairie regarding High Prairie's request for a pipeline interconnect with Enbridge Energy at or near Clearbrook, Minnesota.

4. I submitted a New Service Request to Enbridge Energy on behalf of High Prairie on March 9, 2012. I have been in numerous discussions and meetings with representatives of Enbridge Energy since submitting the New Service Request.

5. High Prairie has told Enbridge Energy that it is willing to pay for the cost of all reasonable facilities needed for the interconnection, including but not limited to any tankage at Clearbrook to facilitate receipts and batching, notwithstanding the fact that Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling.

6. High Prairie has expressed to Enbridge Energy its willingness to agree to any just, reasonable, and not unduly discriminatory conditions required by Enbridge Energy.

7. Enbridge Energy has not granted High Prairie's interconnection request to date.

8. Enbridge Energy has expressed to High Prairie that although capacity exists today to accept the High Prairie interconnect, Enbridge Energy expects that in 2016 or 2017 such capacity may become constrained due to increased volumes entering Enbridge Energy's or its affiliates' pipelines upstream of Clearbrook, largely originating from the Canadian oil sands region.

9. Enbridge Energy has indicated that it may be willing to grant an interconnect subject to the following conditions:
   a. High Prairie would be required to pay for the facilities necessary to interconnect at Clearbrook, even though Enbridge Energy's tariff rates for transportation from Clearbrook expressly include the costs of receipt point tankage and terminalling. High Prairie is willing to pay the reasonable costs of such facilities. However, Enbridge Energy has stated that the cost of such facilities would cost approximately $100 million.
   b. The new interconnect would be conditioned on Enbridge Energy building new downstream expansion facilities between Clearbrook and Superior (i.e., an approximate 200-mile loop line of existing pipelines) estimated at a cost of $1 billion and High Prairie's shippers would pay a surcharge in order to pay for the $1 billion of downstream expansion facilities.
   c. The interconnect would be conditioned upon Enbridge Energy receiving the consent of certain of its existing shippers to Enbridge Energy undertaking the $1 billion expansion project.
   d. The interconnect would be conditioned on Enbridge Energy obtaining a declaratory order from FERC approving, as High Prairie understands it, a methodology for allocating its capacity and/or recovering the costs of the expansion project.
   e. High Prairie would be required to "backstop" the $1 billion expansion project by agreeing to pay Enbridge Energy for any revenue shortfalls

that result in the event that High Prairie's deliveries of oil to Enbridge Energy at Clearbrook do not meet certain specified levels.

10. Enbridge Energy has informed High Prairie that it has no contracts with shippers for any portion of the capacity on its pipeline facilities extending downstream from Clearbrook.

David A. Lytle, Senior Vice President
Business Development
Saddle Butte Pipeline, LLC

VERIFICATION

State of Texas:
County of Harris

Before me, Carolyn Reed, a notary public, on this day personally appeared David Lytle, known to me as the person whose name is subscribed to the foregoing Affidavit, and known to me as the Senior Vice President of Business Development of Saddle Butte Pipeline, LLC, and stated to me the facts contained in such Affidavit are true and correct to the best of his knowledge and belief.

Given my hand and seal this 14 day of May, 2012.

CAROLYN J. REED
MY COMMISSION EXPIRES
September 30, 2014

Carolyn J Reed
Notary Public
State of Texas

My Commission expires: _____

FORM OF NOTICE

OF COMPLAINT REQUESTING FAST TRACK PROCESSING

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

High Prairie Pipeline, LLC

v. Docket No. OR12- -000

Enbridge Energy, Limited Partnership

NOTICE OF COMPLAINT

(May , 2012)

Take notice that on May __, 2012, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR §385.206 (2012), and section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR §343.2 (2012), section 13(1) of the Interstate Commerce Act (ICA), and 49 USC App. 13(1), High Prairie Pipeline, LLP (Complainant) filed a complaint requesting fast track processing against Enbridge Energy, Limited Partnership (Respondent), challenging the lawfulness of Respondent's attempt to condition the grant of Complainant's request for an interconnect at an active origin point listed in Respondent's currently effective tariff and alleging that Respondent has failed to include a just and reasonable interconnect policy in its tariff which together result in undue discrimination against Complainant and its shippers all in violation of Sections 3(6), 1(3), 1(6), 6(1), 1(4) and 6(7) of the ICA and Sections 341.0 and 341.8 of the Commission's regulations (18 CFR §§ 341.0 and 341.8). Complainant seeks Fast Track Processing of its complaint and a shortening to five (5) business days of the period for filing answers pursuant to Rule 206(b)(11) of the Commission's Rules of Practice and Procedure (18 CFR §385.206(b)(11).

The Complainant certifies that copies of the complaint were served on the contacts for Enbridge Energy, Limited Partnership as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions

to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at http://www.ferc.gov, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on _____.

Kimberly D. Bose,
Secretary.

Document Content(s)