

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*

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Meeting Date: June 8, 2017 .....Agenda Item \*\*4

Company: Enbridge Energy, Limited Partnership

Docket No. PL-9/CN-13-153

**In the Matter of the Application of Enbridge Energy, Limited Partnership  
for a Certificate of Need for the Alberta Clipper (Line 67) Phase 2 Upgrade  
Project**

Issue(s): What action, if any, should the Commission take regarding the Neutral Footprint requirements from its November 7, 2014 Order Granting Certificate of Need?

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**Relevant Documents**

Order Granting Certificate of Need ..... November 7, 2014  
Enbridge Compliance Filing – Neutral Footprint (4 parts).....September 29, 2015  
Department of Commerce Letter ..... October 6, 2015  
Department of Commerce Comments ..... October 23, 2015  
Enbridge Reply Comments..... November 17, 2015  
Department of Commerce Letter .....March 13, 2017  
Enbridge Compliance Filing – Neutral Footprint (4 parts).....March 28, 2017  
Enbridge Compliance Letter (2 parts).....April 12, 2017

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

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## Statement of the Issues

What action, if any, should the Commission take regarding the Neutral Footprint requirements from its November 7, 2014 Order Granting Certificate of Need?

## Project Overview

Enbridge Energy, Limited Partnership (Enbridge) is a common carrier engaged in interstate commerce, and its rates for shipping oil are regulated by the Federal Energy Regulatory Commission (FERC). It does not extract, own, or control the uses of the oil it ships.

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

The Line 67 Phase 2 upgrade project increased Line 67's throughput capacity from 570,000 to 800,000 barrels per day (bpd).<sup>1</sup> Phase 2 did not involve building any new pipelines, but entailed installing new pump stations near existing Enbridge facilities at Donaldson, Plummer, Cass Lake, and Floodwood, located in Kittson, Red Lake, Cass, and St. Louis Counties, respectively. Phase 2 also required modification to Enbridge's Viking, Clearbrook, and Deer River Pump Stations, located in Marshall, Clearwater, and Itasca Counties, respectively. All project work occurred on land owned by Enbridge.

## Statutes and Rules

Minnesota Statute §216B.25 FURTHER ACTION ON PREVIOUS ORDER.

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

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

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<sup>1</sup> The Commission previously granted Enbridge a certificate of need to increase the average daily throughput of Line 67 from 450,000 bpd to 570,000 bpd, *Order Granting Certificate of Need*, In the Matter of the Application of Enbridge Energy, Limited Partnership for a Certificate of Need for the Line 67 Station Upgrade Project in Marshall, Clearwater, and Itasca Counties, Commission Docket No. PL-9/12-590, e-Dockets Filing Number 20138-90205-01, August 12, 2013.

## Procedural History

On August 28, 2014, the Commission met to hear oral arguments and consider granting a certificate of need for the project. The Commission received comments from the parties present, as well as from 27 members of the public. The Commission concluded that the consequences to society of granting the certificate of need are more beneficial than the consequences of denying the certificate, and that Enbridge's neutral footprint policy would further enhance those benefits.

On November 7, 2014, the Commission issued its Order Granting the Certificate of Need. To ensure compliance with the neutral footprint policy provisions, the Commission directed Enbridge to file a report documenting its compliance with the provisions within 90 days of when the Phase 2 pumps become operational:

*Enbridge shall apply its "neutral footprint" objectives to the environmental impacts associated with Phase 2 of Line 67, including conserving an acre for every acre of natural habitat impacted, planting a tree for every tree that must be removed to build new facilities, and generating a kilowatt-hour of renewable energy for every kilowatt-hour the Phase 2 energy operations consume. Within 90 days of the Phase 2 pumps becoming operational, Enbridge shall file a report stating –*

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

(Commission's November 7, 2014 Order)

On September 29, 2015, Enbridge submitted its neutral footprint plan compliance filing. In this filing, Enbridge noted that its neutral footprint policy was not specific to any one project. Enbridge provided an evaluation of its neutral footprint policy objectives. Enbridge stated that it intended to fulfill its commitments as soon as practically possible, but no later than five years after the in-service date of the projects making the impacts.

On October 6, 2015, the Department of Commerce Division of Energy Resources (Department) filed a letter in response to Enbridge's filing. The Department noted that Enbridge's filing was ordered to be submitted within 90 days of the date when the Phase 3 pumps became operational and that the Department would also file a response to the compliance filing by October 23, 2015.

On October 23, 2015, the Department filed its Comments on Enbridge's September 29, 2015 filing. The Department agreed that Enbridge had met the requirements for the Tree for a Tree and Acre for Acre policy objectives but that it was unable to verify Enbridge's compliance with the Kilowatt-Hour for Kilowatt-Hour policy objective. The Department recommended that Enbridge be required

to file additional project electricity consumption compliance filings on a year by year basis; and that, in addition to the documentation it has already proposed to submit, Enbridge be required to provide documentation showing that all renewable energy used to satisfy the neutral footprint policy was not double counted. Such documentation should include Renewable Energy Credit retirements in the Midwest Energy Tracking System (M-RETS) or a similar system. In the alternative, Enbridge could enter into an agreement to purchase or trade RECs from electric supplies that currently retire RECs in order to obtain sufficient documentation.

On November 17, 2015, Enbridge filed reply comments in response to the Department. Enbridge stated that the kilowatt-hour for kilowatt-hour portion of the neutral footprint policy is not a carbon offset or carbon neutral program. Instead, it is a program that balances additional consumption versus renewable energy production.

Enbridge stated that it would continue working to meet with the Department to discuss resolution of the matter. Enbridge indicated it wished to avoid additional proceedings, however the law does not support the Commission acting on the Department's request to alter its original order without developing a record.

On March 13, 2017, the Department filed a letter stating that it had met several times with Enbridge representatives to discuss possible solutions to the disagreement over compliance with the kilowatt-for-kilowatt provision of the neutral footprint policy. The Department stated that the discussions resulted in useful dialogue between the parties but no resolution was reached and the matter remained unresolved. The Department requested that the Commission require Enbridge provide the updated electricity usage data that it had previously proposed to provide by October 1, 2016. The Department also requested Enbridge be required to provide an update on the steps it has taken to provide adequate documentation of its compliance with the kilowatt-hour-for-kilowatt-hour provision of the neutral footprint program.

On March 28, 2017, Enbridge filed a letter providing updated data for its 2015 energy consumption and generation. Enbridge filed data as trade secret and noted that it would provide the Commission twelve settlement statements for two renewable generation sites for verification purposes upon request.

On April 12, 2017, Enbridge filed a letter in response to the Department's March 13, 2017 filing. Enbridge reiterated that the Department's position is not supported by applicable laws, Commission precedent, or the record in the docket. Enbridge noted that its neutral footprint program has been successful and referenced its renewable energy portfolio. Enbridge stated that it was not successful in forming a local partnership for renewable energy generation but would agree to the following provisions without waiving its objections raised in its November 17, 2015 letter:

- a. To provide time for Enbridge to explore acquisition of a Minnesota renewable project from which Enbridge can retire RECs, Enbridge respectfully requests that the Commission accept Enbridge's NFP without requiring a REC offset until January 1, 2020;
- b. After January 1, 2020, if so ordered, Enbridge will retire RECs equal to the actual carbon-based energy consumed by the Project on an annual basis;
- c. Enbridge only be required to offset incremental energy from a carbon-producing source used by the Project. That is, if a utility that Enbridge receives energy from is 25% carbon-free, then only 75% of the energy consumed by Enbridge from that utility needs to be offset. Moreover, as the utilities' portfolios become less carbon-based, Enbridge's requirements shift accordingly.
- d. Enbridge be allowed to offset the Project's consumption of carbon-based energy with RECs from an Enbridge-owned project in Minnesota or elsewhere, or from a third party renewable provider offering green credits.

## **Staff Discussion**

### **Clarification of the Commission's Order regarding the applicability of the Neutral Footprint Requirements**

The Commission's November 7, 2014 Order language directed Enbridge to demonstrate compliance with the neutral footprint policy objectives "with respect to the Phase 2 Upgrade, and how it intends to document its compliance with this policy" within 90 days of the time when the Phase 2 pumps become operational.

Staff recommends that the Commission evaluate the record of the proceedings clarify its position with respect to compliance documentation requirements. Specifically, the Commission should clarify whether its approval contemplated requiring Enbridge to provide verifiable energy consumption and renewable energy generation data specifically for the Phase 2 project and not solely for Enbridge's Liquid Pipeline business segment's operations.

Staff also recommends that the Commission clarify whether it intended for Enbridge to demonstrate that the renewable energy offset is not double-counted.

### **Clarification of Enbridge's Post-Construction Compliance Requirements**

The Commission's Order did not mandate a specific compliance method for the kilowatt-hour for

kilowatt-hour neutral footprint requirements. Enbridge's recent filings do not demonstrated compliance with the kilowatt-hour for kilowatt-hour neutral footprint objectives from the July 1, 2015 in-service date to the present.

In its April 2017 letter, Enbridge proposed four separate options which may be used to comply with the kilowatt-hour for kilowatt-hour requirements. Staff does not object to Enbridge's four proposed compliance methods identified in the April 11, 2017 letter. However, because these methods were not specifically identified in the Commission's Order, and that the schedule for finalized implementation has changed, the Commission may wish to clarify its expectations to Enbridge regarding the timeframe for demonstrating compliance. Staff recommends that Enbridge be directed to provide updates on the neutral footprint requirements on an annual basis.

## **Commission Decision Alternatives**

### **A. Applicability of Neutral Footprint Requirements**

1. Affirm that the Commission's Order granting the certificate of need for the project required Enbridge to provide verifiable documentation specific to Phase 2 of the project and not solely for its Liquid Pipeline business segment operations and to provide verification that the renewable energy used to offset the incremental increase of energy consumed by the pump stations is not double-counted in any way.
2. Take no action at this time.

### **B. Post-Construction Compliance Requirements**

1. Approve Enbridge's proposed timeline for developing compliance options for the kilowatt-hour for kilowatt-hour requirements.
2. Require Enbridge to file compliance updates on the neutral footprint objectives annually beginning not later than October 1, 2017 that identify the amount of incremental energy consumed by the project, the compliance options available and the status of each option pursued.
3. Take some other action.

**Staff Recommendation: A1, and B1 and B2.**