

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

Enbridge Energy, Limited Partnership)

Docket No. IS13-17-000

**POST-TECHNICAL CONFERENCE COMMENTS OF
FLINT HILLS RESOURCES CANADA, LP**

Pursuant to the schedule established at the February 6, 2013 technical conference held in this proceeding, Flint Hills Resources Canada, LP (“FHR Canada”) hereby submits its post-technical conference comments, addressing the proposed tariff revisions filed by Enbridge Energy, Limited Partnership (“Enbridge Energy”) in the captioned proceeding.

I. Summary of Comments

FHR Canada submits that Enbridge Energy's proposed elimination of the historical-based caps on nominations and the ever-expanding capacity of connecting pipelines will cause runaway nominations. The end result will be the squeezing of historic shippers off of the mainline to make room for nominations for deliveries to points on new connecting pipelines, most of which are owned and operated by affiliates of Enbridge Energy.

FHR Canada submits that the Commission should reject Enbridge Energy's unlawful proposal and adopt in its place the Intervenor Group Proposal that is being simultaneously submitted as a just and reasonable procedure for verification of nominations for service on the Enbridge Energy mainline.

II. Background

Since its acquisition of the Lakehead System in September 5, 2001, Enbridge Energy has utilized a *pro rata* method of apportioning capacity. The *pro rata* method worked reasonably well until July 2010, when a release of crude oil from the Lakehead System near Marshall,

Michigan resulted in the imposition of mandatory pressure restrictions which caused a major reduction in the capacity of the Lakehead System to transport crude oil. The reduction in available capacity, in turn, caused a dramatic increase in inflated nominations or “air barrels.” The end result was a significant apportionment of shipper nominations. In fact, as stated by FHR Canada President Joseph Beattie, there was a 30% increase in nominations, resulting in a 43% apportionment on Line 6B.¹ This situation proved to be chaotic for all Lakehead shippers, prompting Enbridge Energy, with the agreement of shippers to cap nominations at peak deliveries to each delivery point during the 24-month period prior to July 2010. This historical-based cap on deliveries was effective in creating a ceiling on nominations to avoid runaway apportionment.² In an April 19, 2012 filing in Docket No. IS12-236-000, Enbridge Energy submitted revised tariff sheets reflecting the historical-based cap on nominations.

On October 22, 2012, Enbridge Energy initiated this proceeding by filing revised tariff sheets to eliminate the historical-based caps on nominations in favor of a new verification process that establishes a nomination cap that is equal to the capacity of facilities designated to receive shipments from Enbridge Energy. On December 20, 2012, the Commission issued an order accepting and suspending the tariff filing for the maximum seven-month period, subject to the outcome of technical conference proceedings.³

On February 6, 2013, the Commission Advisory Staff convened a Technical Conference to allow the parties and Advisory Staff an opportunity to explore all the issues raised in the filing. At the technical conference, shippers learned that Enbridge Energy is now interpreting Rule 6(c)2 of its tariff to apply historical-based caps only to nominations to delivery points on

¹ See Affidavit of Joseph Beattie attached hereto as Exhibit FHR-1 at 1. See Joint Complaint and Request for Fast Track Processing, Affidavit of Joseph Beattie, Exhibit JC-1, at 1-2, Docket No. OR13-15-000 (March 5, 2013) (“Joint Complaint”).

² See Exhibit FHR-1 at 2. See Joint Complaint, Affidavit of Joseph Beattie, Exhibit JC-1.

³ *Enbridge Energy, Ltd. P’ship*, 141 FERC ¶ 61,246 (2012).

the Lakehead System mainline, but not to nominations for delivery to connecting pipelines. Moreover, Enbridge Energy is interpreting Rule 6(c)3 of its tariff as capping nominations to levels verified by the connecting pipeline verification procedure up to the capacity of the connecting pipeline. In response, a Joint Complaint was filed by the Joint Complainants in Docket No. OR13-15-000 requesting the Commission to reject Enbridge Energy's interpretation of its tariff and to make clear that the historical-based caps apply not only to nominations for deliveries to points on the mainline, but also to points on connecting pipelines.

III. Governing Legal Standard

Enbridge Energy has the burden of proving that its proposal to eliminate the existing historical-based caps on nominations is just and reasonable.⁴ In the context of proposed revisions to a pipeline's nomination verification procedures, the burden to prove that the proposed changes are just and reasonable requires Enbridge Energy to demonstrate that the result of eliminating historical-based caps in nominations will not be unduly preferential or unduly discriminating against any shippers or group of shippers. If Enbridge Energy fails to meet its burden of proof, the Commission must reject the proposed tariff revisions, and leave the existing tariff in place, or approve an alternative solution that produces just and reasonable results.⁵

IV. Comments

Enbridge Energy admits that the existing historical use-based nomination caps have achieved their intended purpose of eliminating inflated nominations commonly referred to as "air

⁴ *Dixie Pipeline Co.*, 140 FERC ¶ 61,127 at P 50 (2012) (finding that Dixie bore the burden of proof to demonstrate that its proposed revision to its current prorationing injection methodology was just and reasonable).

⁵ *See Suncor Energy Marketing, Inc. and Suncor Energy (U.S.A.) v. Platte Pipe Line Co., et al.*, 132 FERC ¶ 61,242 at P 23 (2010) (finding pipeline's proposal to be unjust and unreasonable and directing pipeline to adopt alternative shippers proposal).

barrels”.⁶ Notwithstanding, Enbridge Energy’s view that the historical-based caps on nominations have been “somewhat successful” in reducing inflated nominations of “air barrels,” Enbridge Energy indicates that the existing system was not designed to be a permanent solution to the verification issue, “particularly in light of the fact that Enbridge’s mainline system has continued to experience nominations in excess of capacity.”⁷ In this respect, Enbridge Energy has determined that the frozen 24-month period is no longer “appropriate” because it does not take into account changes in downstream refinery capacity or interconnecting pipeline facilities. According to Enbridge Energy, there are a number of recent and upcoming modifications to the physical capacity of downstream facilities and that the 24-month period is no longer relevant. Based on evaluation of these changes, Enbridge Energy believes it is appropriate to now move from a frozen historical base to a process that takes into account the current and ever-changing capabilities of destination facilities.⁸

Enbridge Energy’s explanation in support of its proposed capacity-based nomination caps, as fully described immediately above, falls far short of its burden of demonstrating that such change will produce a prorationing procedure that is just and reasonable and not unduly discriminatory.⁹ As a threshold matter, the Commission must analyze the lawfulness of Enbridge Energy’s decision to eliminate the historical-based verification procedure in light of the fact that Enbridge Energy has a financial incentive to propose a verification procedure that maximizes revenue from shipments on the new affiliated connecting pipelines, even if it squeezes out nominations for deliveries to points on the mainline. Because Enbridge Energy’s revenue from the mainline will be the same regardless of the verification or apportionment procedure, Enbridge Energy can enable its affiliated pipelines to maximize their revenues by

⁶ The term “air barrels” refers to nominations that have no connection to real barrels of crude oil.

⁷ October 22, 2012 Filing, Transmission Letter at 2.

⁸ *Id.* at 2.

⁹ *Dixie Pipeline Co.*, 140 FERC ¶ 61,127 at P 50; *Platte Pipe Line Co.*, 130 FERC ¶ 61,125, P13 (2010).

implementing a verification procedure that favors nominations to delivery points on these affiliates' systems. When viewed in this light, Enbridge Energy's proposal to eliminate the historical-based caps on nominations must be found unjust and unreasonable because it will result in unduly preferential verification of nominations to delivery points on oversized connecting pipelines affiliated with Enbridge Energy. The end result, stated in plain terms, is that Enbridge Energy is proposing to squeeze historic shippers off the mainline to make room for shipments to points on connecting pipelines which, for the most part, are owned and operated by affiliates of Enbridge Energy. The Commission has made clear that it is unjust and unreasonable for pipelines to implement apportionment of capacity for the purpose of improving the pipelines' competitive positions.¹⁰

Moreover, there have been no changes in the circumstances which led to the inflated nominations following the July 2010 release of crude oil. Limitations on operating pressures stemming from the July 2010 release remain in effect. Related reductions in capacity continue to require Enbridge Energy to apportion capacity, even with the historical-based caps on nominations. The only relevant changed circumstance since July 2010 - - the construction of additional capacity connecting pipelines by Enbridge Energy affiliates - - actually supports a *continuation* of historical-based verification procedures in order to avoid the chaos caused by runaway nominations. The construction of connecting pipeline capacity, combined with Enbridge Energy's interpretation that the existing historical-based caps do not apply to nominations for deliveries to points on connecting pipelines,¹¹ has already caused a dramatic increase in the apportionment of nominations for deliveries to points on the Enbridge Energy

¹⁰ See *Suncor Energy Marketing, Inc. and Suncor Energy (U.S.A.) v. Platte Pipe Line Co., et al.*, 132 FERC ¶ 61,242 at P 24 (2010).

¹¹ See Joint Complaint filed on March 5, 2013, in Docket No. OR13-15-000, wherein Joint Complainants challenge Enbridge Energy's interpretation that the existing historical-based caps apply only to nominations for deliveries to points on the mainline, but not to points on connecting pipelines.

mainline. As explained in the Affidavit of Rodney Wilson, attached to the Joint Complaint filed in Docket No. OR13-15-000, the apportionment on Line 6B has been increasing steadily, from 8% in November 2012, to 37% in March 2013. This situation must be addressed before it gets worse.

The scheduled in-service dates of expanded capacity on connecting pipelines will cause nominations to be inflated to levels far greater than experienced in 2010. As demonstrated by Mr. Beattie in his Affidavit:

Enbridge has planned for an unbalanced system whereby the proposed downstream expansions, largely comprised of new affiliate non-mainline pipelines, vastly outstrips proposed upstream expansions. Exhibit No. 3 outlines Enbridge's announced expansions including 1,685,000 bpd of affiliate, non-mainline expansions downstream; 1,305,000 bpd of which is immediately downstream of Flanagan (Flanagan South and Southern Access Extension pipelines). If all pipelines downstream of Flanagan are included, mainline and affiliate non-mainline, there is a total of 2,303,000 bpd capacity expected by mid-2015, an incremental 1,980,00 bpd of new capacity. These downstream expansions are to be fed by an upstream expansion into Flanagan, which is Line 61. Line 61 is proposed to be expanded from 400,000 bpd to 1,200,000 by mid-2015. This incremental 800,000 bpd of capacity is nowhere close to being sufficient to meet the downstream incremental demand of almost 1,980,000 bpd at Flanagan.¹²

The end result of Enbridge Energy's unbalanced system, caused by the construction of large amounts of capacity on downstream affiliated pipelines connecting to an upstream mainline that is already operating under severe apportionment, will be chaos and uncertainty. As explained by Mr. Beattie, the addition of the scheduled new connecting pipeline capacity could result in an approximate 50 percent apportionment of crude oil nominations to the Flanagan delivery point. The impact of the resulting apportionment on facilities served through mainline delivery points will be severe. Facilities served at these points will face the risk of underutilized crude oil processing capacity, or increased costs of finding alternate sources of crude oil.

¹² See Exhibit FHR-1 at 2.

In addition to the enormous amounts of expansion capacity that will inflate nominations, Enbridge Energy's proposed tariff revisions will provide the pipeline with broad discretion to interpret shippers' and connecting pipelines' competing representations of delivery-based capacity. These tariff revisions will likely result in the exercise of pipeline discretion in a manner unduly preferential to downstream affiliated pipelines and inflated nominations from shippers. Specifically, Enbridge Energy proposes to calculate capacity based on refinery capacity and peripheral assets such as tank farms, terminals (including rail and barge) along with the full inclusion of the nameplate capacity of connecting pipelines. The opportunities to inflate nominations by every available means will cause a return to the unjust and unreasonable problem of "air barrels" that the existing historical use-based system has successfully controlled.

Based on the foregoing, FHR Canada submits that Enbridge has failed to demonstrate that its proposal to eliminate the historical-based caps on nominations is just and reasonable and not unduly preferential or unduly discriminatory. To the contrary, the evidence submitted by FHR Canada demonstrates that the removal of historical-based caps will cause an unduly preferential verification of nominations for deliveries to points on connecting pipelines and an unduly discriminatory verification of nominations for deliveries to points on the mainline.

Commission precedent makes it clear, in circumstances as here, where new shippers cause nominations to greatly exceed available capacity to the point of squeezing out historical shippers, that it is not unduly preferential to set aside a fixed percentage of capacity for apportionment to historical shippers.¹³ Consistent with such precedent, many pipelines have implemented apportionment procedures that set aside 90 percent of capacity for historical

¹³ *Enbridge (North Dakota) LLC*, 230 FERC ¶ 61,197 (2007); *Enbridge Pipelines LLC*, 132 FERC ¶ 61,274 (2010); *Enbridge Pipeline (N.D.) LLC*, 140 FERC ¶ 61,193 (2012).

shippers.¹⁴ Rather than following the trend towards utilization of historical-based apportionment methodologies to *protect* service to facilities historically served from its mainline system, Enbridge Energy is proposing to *reduce* such service in order to make room for nominations to facilities served by new connecting carriers. But for the affiliation with the connecting pipelines, one would expect Enbridge Energy to utilize historical-based verification procedures similar to other pipelines. As indicated, the Commission has made clear that it is unjust and unreasonable for pipelines to implement apportionment of capacity for the purpose of improving the pipelines' competitive positions.¹⁵

Moreover, the end result of Enbridge Energy's proposal to eliminate the historical-based caps is unjust and unreasonable and unduly preferential. In *Dixie Pipeline Co.*, 140 FERC ¶ 61,127 (2012), the Commission rejected the carrier's capacity prorationing proposal because it was unduly preferential to long-haul shippers on the system and rejected arguments that it was unreasonable to allow a short-haul shipper to tie up capacity to long-haul destinations on the same *pipeline*. *Id.* at P 53. While the facts are not precisely on point, the underlying rationale that a pipeline cannot revise its prorationing policy by reducing allocations to short-haul shippers to make room for long-haul shippers because they contribute more revenue, applies with equal or *greater* force to the facts in this case. In this case, Enbridge Energy's Nomination Verification Procedure provides a preferential allocation to nominations for delivery to points on *separate* downstream pipelines. The resulting preference must be viewed as undue, particularly where the main beneficiaries are connecting pipelines affiliated with Enbridge Energy.

FHR Canada supports Commission approval of the Intervenor Group Alternative. This alternative which addresses the changed circumstances in a balanced manner by modifying the

¹⁴ *Platte Pipe Line Co.*, 117 FERC ¶ 61,296 (2006); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Enbridge Pipelines LLC*, 132 FERC ¶ 61,274 (2010).

¹⁵ See *Suncor Energy Marketing, Inc. and Suncor Energy (U.S.A.) v. Platte Pipe Line Co., et al.*, 132 FERC ¶ 61,242 at P 24 (2010).

existing historical-based verification procedure by setting aside ten percent of available mainline capacity to accommodate nominations for deliveries to new demand associated with new facilities and connecting carriers; a solution consistent with Commission precedent. For the reasons stated in more detail in the Joint Intervenor Group comments, FHR Canada requests the Commission to solve the inflated nominations problem on this pipeline by approving the Intervenor Group Alternative.

Based on the foregoing, FHR Canada requests the Commission to reject the proposed tariff revisions filed in this docket by Enbridge Energy and to approve the Intervenor Group alternative proposal.

Respectfully Submitted,

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

Enbridge Energy, Limited Partnership

Docket No. IS13-17-000

**AFFIDAVIT OF JOSEPH BEATTIE IN SUPPORT OF
POST-TECHNICAL CONFERENCE COMMENTS OF
FLINT HILLS RESOURCES CANADA, LP**

I, Joseph Beattie, state that the following facts are true and correct to the best of my knowledge and information.


1. I am Joseph Beattie, President, Flint Hills Resources Canada, L.P.
2. Flint Hills Resources Canada, L.P. is a large shipper on the crude oil pipeline owned and operated by Enbridge Energy, Limited Partnership in the United States known as the Lakehead System and on the related Enbridge System in Canada. Flint Hills Resources Canada, L.P. purchases, ships and sells a substantial volume of crude oil on a daily basis on the Lakehead System to a refinery owned by Flint Hills Resources, L.P. located in Pine Bend, Minnesota.
3. Enbridge Energy has utilized a *pro rata* method of apportioning capacity since its acquisition of the Lakehead System in September 5, 2001.
4. The *pro rata* method worked in a reasonable fashion until July of 2010, when a release of crude oil from the Lakehead System near Marshall, Michigan resulted in the imposition of mandatory pressure restrictions which caused a major reduction in the capacity of the Lakehead System to transport crude oil.
5. The reduction in capacity required Enbridge Energy to impose significant apportionment of shipper nominations which in turn, caused a dramatic increase in shipper nominations.
6. Exhibit No. 1 to this affidavit demonstrates that estimated shipper nominations and actual deliveries were fairly in balance on the Lakehead System from January 2009 through July of 2010.
7. Exhibit No. 1 further illustrates how estimated nominations inflated from approximately 1,350,000 bpd to 1,750,000 bpd; a 30% increase, which resulted in 43% apportionment on Line 6B. These nominations were inflated to such a degree that shippers commonly referred to such nominations as “air barrels”.

8. The situation was chaotic for all Lakehead shippers and ultimately was addressed, through a series of shipper meetings with Enbridge Energy, with an agreement to cap nominations at peak deliveries to each delivery point during the 24-month period prior to July of 2010.
9. This cap on deliveries has worked well by creating a ceiling on nominations to avoid runaway apportionment. As indicated by Exhibit No. 2, nominations and actual deliveries have been reasonably constant and without dramatically inflated nominations.
10. On April 12, 2012, Enbridge Energy filed revised tariff sheets in Docket No. IS12-236-000 reflecting the historical-based cap on nominations.
11. On October 22, 2012, Enbridge Energy filed revised tariff sheets eliminating the historical-based cap on nominations and instituting nominations capped only by the capacity to receive deliveries.
12. Enbridge has planned for an unbalanced system whereby the proposed downstream expansions, largely comprised of new affiliate non-mainline pipelines, vastly outstrips proposed upstream expansions. Exhibit No. 3 outlines Enbridge's announced expansions including 1,685,000 bpd of affiliate, non-mainline expansions downstream; 1,305,000 bpd of which is immediately downstream of Flanagan (Flanagan South and Southern Access Extension pipelines). If all pipelines downstream of Flanagan are included, mainline and affiliate non-mainline, there is a total of 2,303,000 bpd capacity expected by mid-2015, an incremental 1,980,00 bpd of new capacity. These downstream expansions are to be fed by an upstream expansion into Flanagan, which is Line 61. Line 61 is proposed to be expanded from 400,000 bpd to 1,200,000 by mid-2015. This incremental 800,000 bpd of capacity is nowhere close to being sufficient to meet the downstream incremental demand of almost 1,980,000 bpd at Flanagan.
13. New nominations up to the level of the total expanded capacity of connecting pipelines will be inflated to levels far greater than experienced in 2010.

14. The resulting apportionment of nominations to mainline delivery points will significantly squeeze historical shippers off the mainline to make room for new shippers.
15. The Shipper Intervenor Group alternate proposal in Docket No. IS13-17-000 will apply an historical-based methodology to all nominations that will result in a reasonable allocation of capacity to historic and new shippers.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 7th day of March, 2013.

Signature



Joseph Beattie

Exhibit No. 1 to Affidavit of Joseph Beattie

Demand “Capability” + Feeder Verification

Downstream Superior Shipments (Superior to Chicago and East)

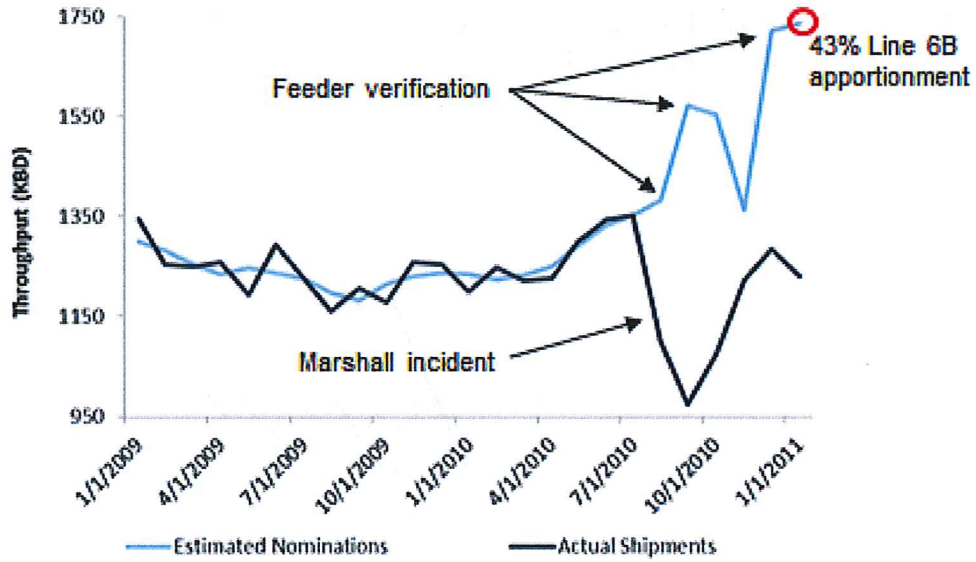


Exhibit No. 2 to Affidavit of Joseph Beattie

Historical Peak Demand + Feeder Verification

Downstream Superior Shipments (Superior to Chicago and East)

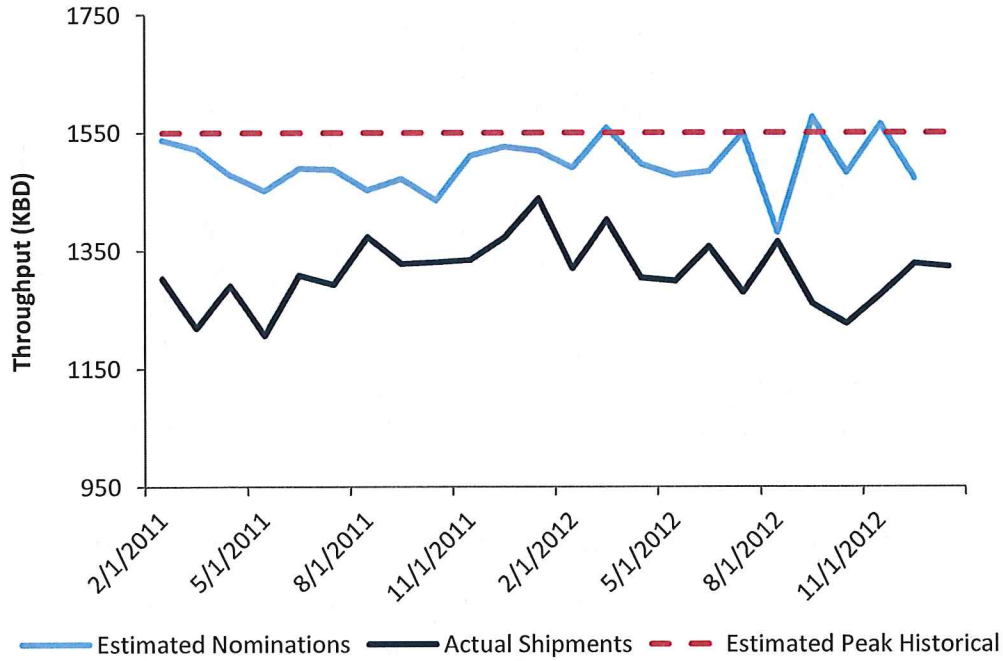


Exhibit No. 3 to Affidavit of Joseph Beattie

Pipeline Capacities Upstream and Downstream of Superior

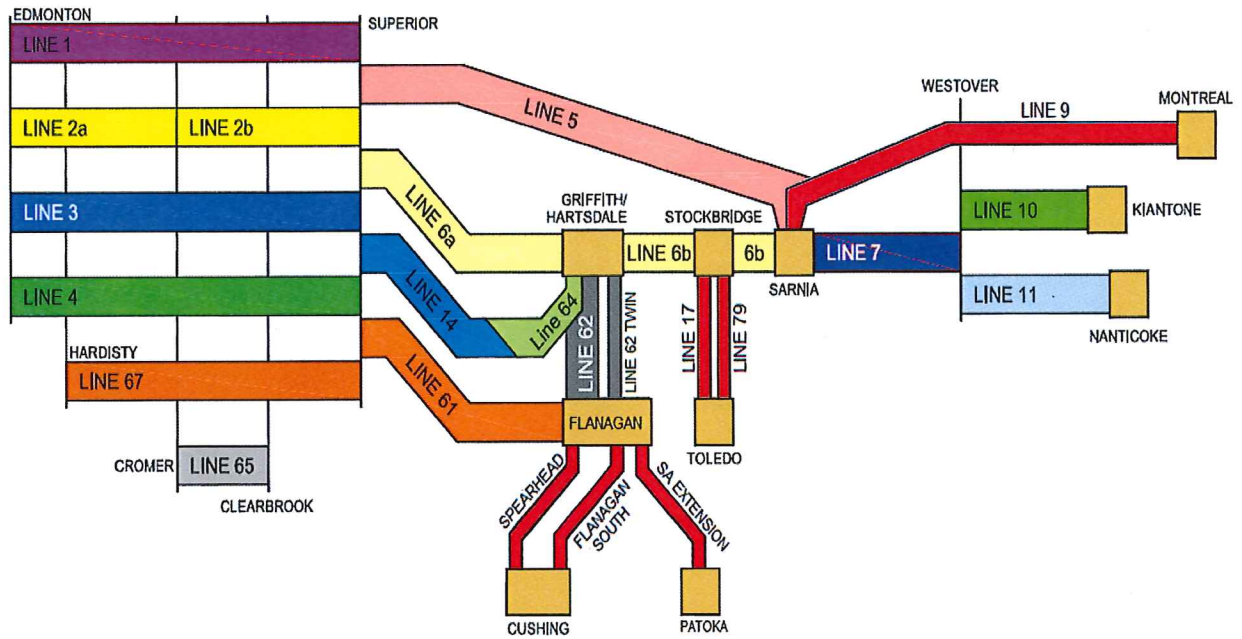
Line	Q1 2013	Mid-2015	Status
<i>Line 1</i>	237	237	Mainline
<i>Line 2</i>	442	442	Mainline
<i>Line 3</i>	390	390	Mainline
<i>Line 4</i>	796	796	Mainline
<i>Line 67</i>	450	570	Mainline
<i>Estimated Net Deliveries</i>	<i>(365)</i>	<i>(365)</i>	-
Total Upstream Capacity	1,950	2,070	
<i>Line 5</i>	491	540	Mainline
<i>Line 6A</i>	609	667	Mainline
<i>Line 14</i>	318	318	Mainline
<i>Line 61</i>	400	1,200	Mainline
Total Downstream Capacity	1,818	2,725	
Imbalance at Superior	132	(655)	(mbpd)

Pipeline Capacities Upstream and Downstream of Flanagan

Line	Q1 2013	Mid-2015	Status
<i>Line 61</i>	400	1,200	Mainline
Total Upstream Capacity	400	1,200	
<i>Spearhead</i>	193	193	Affiliate Non-Mainline
<i>Southern Access Ext.</i>	0	720	Affiliate Non-Mainline
<i>Flanagan South</i>	0	585	Affiliate Non-Mainline
<i>Line 62</i>	130	805	Mainline
<i>Subtotal - Affiliate Non-Mainline</i>	193	1498	Affiliate Non-Mainline
<i>Subtotal - Mainline</i>	130	805	Mainline
Total Downstream Capacity	323	2,303	
Imbalance at Flanagan	77	(1,103)	(mbpd)

New Affiliate Non-Mainline Expansions:	
Flanagan South	585
Southern Access Extension	720
Line 9	300
Line 79	80
Total (mbpd)	1,685

Enbridge System Configuration: Mainline and Affiliate Non-Mainline Pipes



Note: Red Lines indicate Enbridge affiliate non-mainline pipes

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document electronically upon each party on the official service list compiled by the Secretary in these proceedings.

Dated this 8th day of March, 2013 at Washington, D.C.

/s/ M. Denyse Zosa

Document Content(s)

FHR Canada Post Tech Conference Comments.PDF.....1-17