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FERC Finds Problems in Enbridge Audit

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On May 9, 2016, the Director of the Office of Enforcement, under delegated authority from the Federal Energy Regulatory Commission (FERC), issued a final audit report of Enbridge Energy Partners, L.P. (EEP) and its crude oil pipeline, the North Dakota Pipeline Company (NDPL). This is the third oil pipeline audit that FERC has issued over the past year. *See* Colonial Pipeline Company, Docket No. FA14-4, and Enterprise Products Partners L.P., Docket No FA-14. The NDPL audit was conducted by the Division of Audits and it covered the period from January 1, 2012 through December 31, 2015. The report contained 12 findings and 30 recommendations. Among the key findings were:

- NDPL charged shippers for service that was not authorized by its tariff and did not correct the violation in a timely manner causing FERC audit staff to question whether NDPL had a culture of compliance;

- NDPL billed shippers for oil transportation not nominated by shippers in violation of NDPL's tariff. This violation resulted in an over collection of $536,555. NDPL corrected the over collections;

- The pipeline overstated interstate barrels and barrel miles on Form 6 from 2009 to 2013 contravening Commission instructions. These errors could create a false impression of rate data to shippers; and

- NDPL lacked sufficient internal controls.

NDPL transports crude oil from points in Montana and North Dakota to destinations in Minnesota and North Dakota. NDPL is a common stream carrier and as such only transports oil of similar quality. On November 12, 2014, FERC announced an audit of NDPL. Staff implemented its standard audit approach to evaluate NDPL's compliance with the Commission's rules, regulations and NDPL's tariff. Staff issued data requests, met with and interviewed company executives and other personnel and conducted site visits. Audit staff also reviewed, among other things, NDPL's transportation rates, nominations, Forms 6 and 700 and its compliance with the Uniform Systems of Accounts. In addition, staff reviewed NDPL's compliance procedures and controls and whether instances of non-compliance could have been avoided with adequate procedures and controls.

Although EEP did not contest any of the findings in the audit, it did take issue with staff's concern with a lack of a culture of compliance. EEP has begun to implement the recommendations. The audit report requires EEP to submit a plan to complete all corrective actions within 30 days and to submit quarterly progress reports.

Key Audit Findings

Audit staff found that NDPL amended its tariff in 2012 to preclude charging rates for intermediate points not explicitly named in its tariff. However, when NDPL expanded its system in early 2013, it began transporting to three points not named in the tariff. FERC audit staff concluded that NDPL violated its tariff by providing a service that was not authorized by its tariff. In addition, FERC found that NDPL did not make the required tariff filing for the service in a timely manner as required by the Commission's regulations. This lack of taking corrective action led staff to question whether NDPL had a culture of compliance. Staff stated though that no harm resulted from this violation because NDPL did eventually bill shippers what would have been the appropriate rate. NDPL, however, did not make the required tariff filing until May of 2013.

NDPL invoiced shippers based on oil injected into the pipeline system and oil actually delivered as nominated. In response to a shipper complaint, NDPL changed its billing process to match invoices with nomination amounts. As a result of charging rates inconsistent with its tariff, NDPL over collected $1.4 million from certain shippers while under collecting over $890,000 from other shippers resulting in an over collection of approximately $500,000. NDPL repaid the shippers with interest.

NDPL failed to remove intrastate amounts when reporting certain line items on Form 6 contravening Commission instruction. NDPL overstated interstate barrels and barrel miles from 2009 through 2013. This error resulted in incorrect information to shippers on existing rates and the Commission's calculation of the five year index adjustment.

As a consequence of these errors, as well as those involving untimely filing of cash management agreements and improperly releasing confidential pipeline shipper information, FERC staff concluded that NDPL lacks sufficient internal controls and recommended that NDPL establish written policies and procedures and develop a training program of shared employees that are responsible for preparing filings at FERC.

NDPL accepted all of the audit findings even though it disagreed with FERC staff's characterization of the company's alleged lack of a compliance culture. NDPL has either implemented or agreed to implement all of FERC's recommendations.

FERC Message

The three oil pipeline final audit reports were the first FERC audits of oil pipelines in many years. In the two previously released audit reports, FERC found mainly minor errors. FERC found more significant problems in this audit than it did in the other audits. In this case, FERC's message may be both that FERC now understands oil pipeline operations better than before and that FERC's expectations are higher as to compliance by oil pipelines, expecting them to not only be in conformance with the rules but also to have a robust culture of compliance.