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United States Department of State

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Department of Defense

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Associate Deputy Attorney
General
Department of Justice

Ms. Lisa Farmer
Acting Director, Executive Secretariat
Room W93-414
Department of Transportation

Mr. Christopher Button
Acting Executive Secretary
Department of Homeland Security

Ms. Fay Iudicello
Director
Office of the Executive Secretariat
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Department of the Interior

Ms. Tene A. Dolphin
Director, Executive Secretariat
Room 5516
Department of Commerce

Mr. Scott Fulton
Acting Assistant Administrator for
International Affairs
Ronald Reagan Building, Room 31207
Environmental Protection Agency

Mr. Eric Nicoll
Director
Office of the Executive Secretariat
Room 7E-054
Department of Energy

SUBJECT: Proposed Determination Regarding Issuance of Presidential Permit to Enbridge Energy for the Alberta Clipper Pipeline

On May 15, 2007, Enbridge Energy, Limited Partnership (Enbridge) submitted an application to the U.S. Department of State (DOS) for construction, connection, operation, and maintenance of an oil pipeline and associated facilities at the U.S.-Canada border to enable Enbridge to import heavy crude oil from Canada (the Alberta Clipper Project). Enbridge is a limited partnership duly organized under the laws of the State of Delaware. Enbridge is a wholly owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners"); which is a Delaware master limited partnership headquartered at 1100 Louisiana, Suite 3300, Houston, Texas 77002. The United States portion of the Alberta Clipper pipeline

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would consist of approximately 326.9 miles of new 36-inch-diameter pipeline and associated facilities that would be installed primarily within or adjacent to the existing Enbridge pipeline corridor from the U.S.-Canada border to the existing Enbridge terminal in Superior, Wisconsin. The Project also would require new construction at existing pump stations and construction of delivery facilities and mainline valves. To meet anticipated demand, the proposed Alberta Clipper Project would provide approximately 450,000 bpd of heavy crude oil capacity.

Executive Order 13337 of April 30, 2004, as amended, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities, including pipelines, for the exportation or importation of petroleum, petroleum products, coal, or other fuels at the border of the United States and to issue or deny such Presidential permits upon a national interest determination. The Executive Order directs the Secretary of State to refer the application and pertinent information to, and to request the views of, the heads of certain agencies before issuing a permit and authorizes the Secretary to consult with other interested federal and state officials, as appropriate. (The functions assigned to the Secretary have been further delegated within the Department of State.)

Consistent with the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 - 4370f, the Council of Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 C.F.R. Parts 1500-1508, and the Department's regulations for the implementation of NEPA, 22 C.F.R. Part 161, an environmental impact statement (EIS) for the issuance of a Presidential Permit for the construction, connection, operation, and maintenance of the United States portion of the pipeline was prepared by Entrix, Inc., a contractor selected by the Department of State.

Accordingly, the Enbridge pipeline application and a draft environmental impact statement were transmitted to your agencies on December 12, 2008, for your views. The Department of State (the "Department") wishes to thank each of your agencies for your responses to our memo requesting your views on the application. We have received no objections from your agencies regarding the issuance of a permit.

DOS published in the Federal Register a Notification of Receipt of the Enbridge Application for a permit on May 25, 2007 (72 FR 29360). That

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notification solicited public comment on the application for a 30-day period. Thereafter, the Department published in the Federal Register a Notification of Intent to Prepare an Environmental Assessment on July 27, 2007 (72 FR 41381). On March 31, 2008, the DOS issued a second NOI to announce its intention to prepare an Environmental Impact Statement (EIS) in order to address reasonably foreseeable impacts from the proposed action and alternatives (73 FR 16920). The Department's Notice of Availability of the Draft EIS and request for public comment was published in the Federal Register on December 5, 2008 (73 FR 74221), seeking comments by January 30, 2009. The Department received over 900 public comments in response to its notice and has taken them into account in making its determination on the Enbridge application. The Department's Notice of Availability of the Final EIS and request for public comments was published in the Federal Register on June 8, 2009 (74 FR 108), seeking comments by July 3, 2009. The Department received four comments in response to this notice; none contained any new substantial or substantive arguments regarding the proposed project.

Further, consistent with section 7 of the Endangered Species Act (ESA), and its implementing regulations, the Department served as the lead agency for purposes of evaluating the anticipated effects of the proposed Alberta Clipper pipeline project on federally listed species or their critical habitat. Enbridge (on behalf of the Department) engaged in correspondence, surveys, and consultations with the U.S. Fish and Wildlife Service (USFWS) and state agencies to identify species and habitats of concern. The Department prepared a draft Biological Assessment (BA) for the project, received and incorporated comments from the USFWS, and has concluded a final BA. Further, the Department, the applicant, and other federal agencies have entered into a Letter of Intent by the parties to continue consultations as they may be required by section 7.

Consistent with its authority under Executive Order 13337, the Department has reviewed all of the available information and documentation, including comments submitted by your agencies, and the Secretary's delegate has determined that issuance of the permit would serve the national interest. Accordingly, the Department proposes to issue the Presidential Permit to Enbridge for the Alberta Clipper Pipeline Project subject to certain terms and conditions.

Executive Order 13337 requires that Secretaries or Heads of certain agencies be notified of the Department's proposed determination concerning issuance of the Presidential Permit. Any agency required to be consulted under Section 1(g) of the

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Order that disagrees with the proposed determination may notify the Secretary of State, within fifteen days of this notice, that it disagrees with the determination and request that the Secretary refer the application to the President. If no disagreement and request for referral is registered within the prescribed period, the attached proposed permit will be signed and issued. Should you need any further information, please contact Mr. J. Brian Duggan in the Office of International Energy and Commodity Policy at (202) 647-1291.



Daniel B. Smith *for*
Executive Secretary

Attachments:

1. E.O. 13337
2. Proposed Enbridge Permit for the Alberta Clipper Pipeline Project

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