

NATIONAL ENERGY BOARD

IN THE MATTER OF the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended, and the regulations made thereunder;

AND IN THE MATTER OF an Application by Enbridge Pipelines Inc. pursuant to Part IV of the *National Energy Board Act* for approval of a Competitive Toll Settlement in respect of tolls for the Canadian Mainline for July 1, 2011 through June 30, 2021;

AND IN THE MATTER OF an Application by Enbridge Pipelines Inc. pursuant to Part IV of the *National Energy Board Act* for approval of final tolls for 2010 and 2011.

ENBRIDGE PIPELINES INC.
COMPETITIVE TOLL SETTLEMENT APPLICATION
May 2, 2011

To: Ms. Anne-Marie Erickson
Secretary of the Board
National Energy Board
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I INTRODUCTION

1. Enbridge Pipelines Inc. ("Enbridge") is applying to the National Energy Board ("Board" or "NEB"), pursuant to Part IV of the *National Energy Board Act*¹ (the "Act") for approval of:
 - the 2011 Competitive Toll Settlement ("CTS") in respect of tolls on the Canadian Mainline, as defined in Schedule A of the CTS (the "Canadian Mainline"), from July 1, 2011 through June 30, 2021;
 - final tolls on the Canadian Mainline for each of 2010 and 2011; and
 - 2011 Canadian Local Tolls (the "CLT"), associated surcharges and receipt and delivery tankage tolls, under the CTS, as final tolls on the Canadian Mainline for the period of July 1, 2011 to June 30, 2012.
2. A copy of the CTS is attached as Appendix 1 to this Application.
3. The CTS is a product of an open negotiation process between Enbridge, various Enbridge Mainline shippers and the Canadian Association of Petroleum Producers ("CAPP") (participating Enbridge Mainline shippers and CAPP collectively the "2011 Negotiating Team"). The CTS negotiations were conducted in accordance with the Board's *Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*.²
4. The CTS establishes the CLT for all volumes shipped on the Canadian Mainline and an International Joint Tariff (the "IJT") for all volumes shipped from Western Canadian receipt points to delivery points on the Lakehead Pipeline System, as defined in Schedule B of the CTS (the "Lakehead System"), and delivery points on the Canadian Mainline located downstream of the Lakehead System. The Lakehead System is owned and operated by Enbridge Energy, Limited Partnership ("EELP"), an affiliate of Enbridge,

¹ R.S.C. 1985, c. N-7, as amended, and the regulations made thereunder.

² 12 June 2002, NEB File 4600-A000-3.

and is regulated by the United States ("U.S.") Federal Energy Regulatory Commission (the "FERC").

5. Enbridge requests that this Application be approved as a single, integrated application and that any single component of toll and settlement relief requested herein not be approved in the absence of any other component.

II BACKGROUND

6. Enbridge was incorporated in 1949 as Interprovincial Pipe Line Company and was continued under the *Canada Business Corporations Act*, as Interprovincial Pipe Line Limited, in 1980. The Enbridge name was adopted in 1998. Enbridge is a wholly-owned subsidiary of Enbridge Inc.
7. Enbridge is a "company" within the meaning of the Act. Enbridge owns and operates the Canadian Mainline, which is a "pipeline" within the meaning of the Act.

Part I: Description of Transportation Routes and Pipeline Assets Subject to the Competitive Toll Settlement

(a) Canadian Mainline

8. The Canadian Mainline encompasses and includes various pipelines, and associated facilities, that are operated as an integrated system in order to optimize service. Specifically, for the purposes of the CTS, the Canadian Mainline includes:
 - Lines 1, 2, 3, and 4 originating in Edmonton, Alberta; Line 67 originating in Hardisty, Alberta; and Line 65 originating in Cromer, Manitoba - all of these pipelines connect to the Lakehead System at the Canada/U.S. border near Gretna, Manitoba;

- the Canadian sections of Lines 5 and 6B both connecting to the Lakehead System at the Canada/U.S. border under the St. Clair River in Ontario and terminating at Sarnia, Ontario;
 - Line 7 originating at Sarnia, Ontario and terminating at Westover, Ontario where it connects with Lines 10 and 11;
 - Line 10 originating at Westover, Ontario and connecting to the Lakehead System at the Canada/U.S. border under the Niagara River near Chippawa, Ontario; and
 - Line 11 originating at Westover, Ontario and terminating at Nanticoke, Ontario.
9. Enbridge also owns and operates Line 9, which operates in a westbound configuration originating at Montreal, Quebec and terminating at Sarnia, Ontario and as such is not included in the Canadian Mainline. Line 9 tolls are currently set on a stand alone basis and will continue to be set on a stand alone basis under the CTS regardless of whether Line 9 is used for east to west service or west to east service or is used for partial east to west and partial west to east service during the term of the CTS.

(b) Lakehead System

10. Similar to the Canadian Mainline, the Lakehead System encompasses and includes various pipelines, and associated facilities, that are operated as an integrated system in order to optimize service. The Lakehead System includes:
- the U.S. sections of Lines 1, 2, 3, 4 and 67 connecting to the Canadian Mainline at the Canada/U.S. border near Neche, North Dakota and terminating at Superior, Wisconsin;
 - the U.S. section of Line 65 connecting to the Canadian Mainline at the Canada/U.S. border near Neche, North Dakota and terminating at Clearbrook, Minnesota;

- Line 5 originating in Superior, Wisconsin and connecting to the Canadian Mainline at the Canada/U.S. border under the St. Clair River near Marysville, Michigan;
- Lines 6A and 14/64 originating in Superior, Wisconsin and terminating at Griffith, Indiana;
- Line 6B originating at Griffith, Indiana and connecting to the Canadian Mainline at the Canada/U.S. border under the St. Clair River near Marysville, Michigan;
- Line 10 connecting to the Canadian Mainline at the Canada/U.S. border under the Niagara River near Grand Island, New York and terminating in the Buffalo, New York area;
- Line 61 originating at Superior, Wisconsin and terminating at Flanagan, Illinois; and
- Line 62 originating at Flanagan Illinois and terminating at Hartsdale, Indiana.

(c) Enbridge Mainline

11. The Canadian Mainline and the Lakehead System (collectively the "Enbridge Mainline"), together transport hydrocarbons eastbound for delivery primarily to markets in the U.S. Midwest and in Ontario. A schematic of the Enbridge Mainline, that depicts the various pipelines making up the Enbridge Mainline, is attached as Appendix 2 to this Application.
12. The map that is attached as Appendix 3 to this Application illustrates the routes of the Canadian Mainline and the Lakehead System.

Part II: Background to the Competitive Toll Settlement - Canadian Mainline Toll Settlements

(d) Base Toll Calculated in Accordance with Incentive Tolling Settlements

13. Over the past 16 years the Canadian Mainline³ has been subject to continuous toll settlements. The first such settlement was the 1995 Incentive Toll Settlement and the most recent settlement, prior to the CTS, was the 2011 Incentive Toll Settlement.
14. In 1995 Enbridge⁴ entered into a five year incentive tolling settlement (the "1995 ITS") with CAPP. The 1995 ITS addressed tolls on the Canadian Mainline for the years 1995 through 1999 and was approved by the Board under Order TO-1-95.
15. In 2000, on the expiry of the 1995 ITS, Enbridge and CAPP entered into new five year incentive tolling settlement (the "2000 ITS"). The 2000 ITS addressed tolls on the Canadian Mainline for the years 2000 through 2004 and was approved by the Board under Order TO-3-2000.
16. In 2005, on the expiry of the 2000 ITS, Enbridge and CAPP entered into a new five year incentive tolling settlement (the "2005 ITS"). The 2005 ITS addressed tolls on the Canadian Mainline for the years 2005 through 2009 and was approved by the Board under Order TO-01-2006.
17. In 2010, on the expiry of the 2005 ITS, Enbridge and CAPP entered into a new one year incentive tolling settlement (the "2010 ITS"). The 2010 ITS addressed tolls on the Canadian Mainline for 2010. The Board approved the 2010 ITS in May 2010⁵ and subsequently approved 2010 Canadian Mainline tolls as interim under Order TOI-01-2010.

³ In its then current form, as applicable.

⁴ Interprovincial Pipe Line Inc., as it then was.

⁵ 12 May 2010 NEB Letter File OF-Tolls-Group1-E101-2010-04 01.

18. In 2011, on the expiry of the 2010 ITS, Enbridge and CAPP entered into a new one year incentive tolling settlement (the "2011 ITS"). The 2011 ITS addressed tolls on the Canadian Mainline for 2011 and was approved by the Board under Order TOI-02-2011. Under that same order the Board approved the 2011 ITS tolls as interim (the "2011 Interim ITS Tolls").

(e) Canadian Mainline Expansion Components

19. During the course of the various incentive toll settlements, Enbridge undertook expansions to the Canadian Mainline and these expansions were subject to toll settlements that operated concurrently with the incentive toll settlements. Each of these Canadian agreements addresses tolling principles relating to specific expansion facilities on the Canadian Mainline that were approved by the Board. These settlements (collectively the "Canadian Agreements") have historically been considered as being one of two groups: the Mainline Expansion Toll ("MET") Mechanism⁶ settlements and the Terrace Surcharge.

20. The MET settlements include:

- the 2007 Alberta Clipper Canada Settlement (the "Alberta Clipper Settlement") between Enbridge and CAPP, and approved by the Board in Decision OH-4-2007⁷, which relates to expansion facilities approved in Decision OH-4-2007;
- the 2007 Line 4 Extension Settlement between Enbridge and CAPP, and approved by the Board in OH-5-2007⁸, which relates to expansion facilities approved in Decision OH-5-2007; and

⁶ Approved by the Board 6 March 2008 Letter (File OF-Tolls-Group 1-E101-2008-01 01).

⁷ National Energy Board, *Reasons for Decision OH-4-2007: Enbridge Pipelines Inc., Alberta Clipper Expansion Project Facilities and Tolls and Tariffs*, February 2008.

⁸ National Energy Board, *Reasons for Decision OH-5-2007: Enbridge Pipelines Inc. Line 4 Extension Project Facilities*, April 2008.

- the 2008 Southern Access Settlement between Enbridge and CAPP, and approved by the Board⁹, which relates to expansion facilities approved under Orders XO-E101-04-2006 and XO-E101-01-2007.
21. The Terrace Surcharge arises under the 1998 Terrace Toll Agreement Statement of Principles (the "Terrace Toll Agreement") between Enbridge¹⁰ and CAPP, and approved by the Board in Decision OH-1-98¹¹, which relates to expansion facilities.
22. In calculating the 2011 interim tolls for the Canadian Mainline, Enbridge added together the base toll, which is calculated in accordance with the 2011 ITS, the MET Toll, which is calculated in accordance with the Canadian Agreements, and the Terrace Surcharge, which is calculated in accordance with the Terrace Settlement, all as set forth above.
23. The CTS provides a simplified toll structure. The new CLT will establish a single toll for transportation, receipt and delivery terminalling services on the Canadian Mainline, adjusted in accordance with the CTS, that replaces the cumulative toll structure of the 2011 ITS base toll, plus the MET Toll and the Terrace Surcharge.

III OVERVIEW OF COMPETITIVE TOLL SETTLEMENT

24. In contemplation of the expiration of the 2005 ITS, Enbridge met with Enbridge Mainline shippers and CAPP in the fall of 2008 to initiate re-negotiation of a new incentive tolling settlement agreement. CAPP and shippers indicated that they were not interested in repeating the traditional incentive settlement and requested that Enbridge develop a proposal that was competitive and ensured financial alignment between Enbridge's and shippers' risks and rewards. Negotiations commenced in 2008 and meetings were held between Enbridge and its shippers until July, 2010. In July 2010, the 2011 Negotiating

⁹ *Supra* note 6.

¹⁰ Interprovincial Pipe Line Inc., as it then was.

¹¹ National Energy Board, *Reasons for Decision OH-1-98: Interprovincial Pipe Line Inc., Facilities and Tolling Methodology*, June 1998.

Team was formed and negotiations on the details of the CTS agreement took place between July 2010 and April 2011.

25. In the interim, while negotiations relating to a competitive toll settlement were ongoing, Enbridge negotiated and entered into both the 2010 ITS and 2011 ITS.
26. In bringing its application for approval of the 2011 ITS before the Board, Enbridge indicated that it and a shipper group, inclusive of CAPP, would continue to negotiate a longer term incentive settlement agreement for the Canadian Mainline that could be applicable during the 2011 calendar year.¹² The CTS is the outcome of these open negotiations.

(a) Benefits of the Competitive Toll Settlement

27. In entering into the CTS, Enbridge and the 2011 Negotiating Team expect benefits to continue to accrue to Enbridge and Canadian Mainline shippers through a rebalancing of risks. The CTS is intended to afford Enbridge and its shippers the opportunity to preserve and enhance throughput on the Canadian Mainline and the Enbridge Mainline as a whole.
28. The CTS specifically provides benefits to shippers by:
 - incorporating the principles of cooperation and risk sharing initiated in 1995 in the 1995 ITS, which have continued for the past 16 years through successive incentive tolling settlements;
 - providing toll certainty and stability on the Canadian Mainline during the ten year settlement term;
 - establishing competitive long-term tolls on the Canadian Mainline;

¹² Enbridge Pipelines Inc. Application: Incentive Toll Principles of Settlement for the Year 2011 and Interim 2011 Tolls and Tariffs for the Enbridge Mainline System, March 3, 2011, at para. 2.3.

- establishing, in conjunction with the CLT, an IJT for volumes shipped from Western Canadian receipt points on the Canadian Mainline to delivery points on the Lakehead System and the Canadian Mainline located downstream of the Lakehead System;
 - providing a simplified toll and tariff structure for the Canadian Mainline using tolls established under the 2011 ITS as a starting point while superseding all Canadian Agreements;
 - promoting and incenting operational and cost efficiencies;
 - rebalancing risk, including increasing volume risk to Enbridge; and
 - eliminating the time and expense associated with successive toll hearings for the Canadian Mainline during the term of the CTS.
29. Enbridge and the 2011 Negotiating Team have agreed to the terms of the CTS on a negotiated basis based on all of the components reflected therein. Enbridge and the 2011 Negotiating Team agree that the CTS, including the CTS tolling principles, are the result of good faith, arm's length negotiations which have resulted in an agreement that is fair and equitable to Enbridge and all shippers.
30. Under the CTS no single element(s) of the CTS is to be considered acceptable to either Enbridge or the 2011 Negotiating Team in isolation from all other aspects of the CTS. The CTS is to be viewed as a whole, reflecting the allocation of risks and rewards between Enbridge and its shippers over its entire term. Further, Enbridge and the 2011 Negotiating Team intend that the principles set forth in the CTS will be applicable solely to Enbridge and will have no application to or form a precedent for other NEB regulated pipelines.

31. Specifically, Enbridge and the 2011 Negotiating Team confirm that the selection of certain capital structures, interest rates, equity returns and operating costs, required for the purposes of implementing certain principles contained in the CTS, do not in any way form a precedent for the future, nor do these represent the position of either Enbridge or the 2011 Negotiating Team as to the capital structure, interest expense, equity return and operating costs that would be appropriate absent a negotiated settlement such as the CTS.
32. Enbridge and the 2011 Negotiating Team have acknowledged that it is in their respective best interest to resolve disputes regarding the CTS in an efficient and expedited manner. In keeping with that goal, the CTS contains a dispute resolution mechanism focused on resolving such disputes through negotiation. In the event that any dispute under the CTS is not resolved, the dispute may be referred to the Board.
33. The Enbridge Board of Directors and the CAPP Board of Governors have approved the principles that are reflected in and comprise the CTS.

(b) Tolling Under the Competitive Toll Settlement

34. Effective July 1, 2011, the CTS establishes the CLT for transportation of hydrocarbons, inclusive of receipt and delivery terminalling services, solely on the Canadian Mainline. The CLT are intended to replace the 2011 Interim Tolls on the Canadian Mainline as of July 1, 2011. The CLT will be adjusted for commodity type and distance as well as an outstanding amount surcharge, as outlined below. Under the CTS, tankage services will continue to be tolled separately.
35. Under the CTS, the 2011 Interim ITS Tolls were used as the starting point for calculating the 2011 CLT. Commencing July 1, 2012 and annually thereafter for the term of the CTS, the CLT will be adjusted, up or down, at a rate equal to 75% of the Canada Gross

Domestic Product at Market Prices Index (the "GDPP Index") in accordance with the tolling principles in the CTS.

36. With the Board approval of the CTS, Enbridge will also put into effect the IJT on July 1, 2011. The toll certainty associated with the IJT tolls is a benefit to shippers and designed to attract and retain volumes on the Enbridge Mainline.
37. The IJT establishes joint tolls for all hydrocarbons shipped from Western Canadian receipt points on the Canadian Mainline to delivery points on the Lakehead System and on the Canadian Mainline located downstream of the Lakehead System. The IJT toll for transportation, inclusive of receipt and delivery terminalling services, is adjusted for commodity type and distance. The IJT tolls will also be adjusted annually, effective on July 1 of each year, at a rate equal to 75% of the GDPP Index in accordance with the tolling principles in the CTS. Finally, in addition to the IJT toll, the shippers will be charged the outstanding amount surcharge, as outlined below.
38. Under the CTS, Canadian receipt and delivery tankage (the "RDT") services will continue to be tolled separately and in a manner consistent with the existing NEB approved methodology. The tankage revenue requirement used to determine receipt and tankage fees in effect on July 1, 2011, and annually during the term of the CTS, will be adjusted by 75% of the GDPP Index commencing July 1, 2012. An annual volume forecast will then be used to determine the average fees in effect on July 1 of each year for the term of the CTS. If there is over or under collection of amounts, those amounts will be used to adjust the next year's RDT revenue requirement. Notwithstanding the CTS, Enbridge may seek future Board approval for a different toll design and regulatory treatment of the RDT revenue requirement with the endorsement of shippers.

IV COMPETITIVE TOLL SETTLEMENT PROCESS

39. The terms of the CTS were initially negotiated between Enbridge and the 2011 Negotiating Team. Negotiations took place over a number of months between November 2008 and July 2010 with its shippers. In July 2010, the 2011 Negotiating Team was formed and negotiations on the terms of the CTS were conducted between July 2010 and April 2011. During this time period Enbridge met with the 2011 Negotiating Team approximately 50 times to discuss proposed terms for the CTS and for the 2010 ITS and 2011 ITS, interim agreements that were put in place to bridge to the finalization and filing of the CTS.
40. In developing the CTS, Enbridge also held a public open house for all interested parties on April 14, 2011, at the Calgary Chamber of Commerce in Calgary, Alberta. A letter of notification regarding the open house was e-mailed to all Enbridge Shippers on April 8, 2011. In addition, a notification for the open house was published in a number of major daily newspapers: April 8, 2011 in the Fort McMurray Today, and April 9, 2011 in the Calgary Herald, Edmonton Journal, Regina Leader Post and Winnipeg Free Press. At the open house, Enbridge presented a detailed overview of all the key terms of the proposed CTS and solicited questions, concerns and comments in relation to the settlement.¹³ Enbridge also discussed its proposed regulatory filing schedule in respect of the CTS. Finally, Enbridge has posted the CTS presentation on its web site to allow parties who did not attend an opportunity to review it. There was no opposition to Enbridge's proposals expressed by the attendees at the open house or by any other shipper or interested person to date.
41. Currently, Enbridge is not aware of any outstanding concerns or objections with respect to the CTS. Letters of support for the CTS from CAPP, Suncor Energy Marketing Inc. ("Suncor"), CITGO Petroleum Corporation ("CITGO"), and Imperial Oil ("Imperial") which

¹³ Copies of the letter announcing the open house; a press release providing notice of the open house; and the open house presentation are attached as Appendix 4.

will be filed with the Board are attached in Appendix 5. Concurrent with the filing of this Application Enbridge understands that each of Suncor, CITGO and IOL intend to file letters with the Board indicating that, subject to the Board approving the CTS, they are withdrawing their complaints¹⁴ that are the subject of the RH-2-2010 proceeding.

V TERMS OF THE COMPETITIVE TOLL SETTLEMENT

42. The CTS represents a negotiated settlement designed to provide shippers with a stable and competitive long-term toll agreement that in turn provides certainty with respect to tolls on the Canadian Mainline and Enbridge Mainline. It sets out the principles for determining the CLT and for adjusting both the CLT and the joint tolls set forth in the IJT. The principal terms of the CTS are outlined below.

(a) Term, Toll Adjustments and Renegotiation

43. The CTS commences on July 1, 2011 and will continue for a ten year term, terminating on June 30, 2021, unless terminated earlier. This initial term can be extended by agreement for a further period of at least one year.

44. If certain events occur during the term of the CTS then the CLT and IJT tolls in effect may be subject to adjustment for the remainder of its original term. The events that would trigger an adjustment to the reference CLT and IJT tolls are set forth in Section 13 of the CTS.

45. The CTS would be subject to renegotiation during the term if one of the three events occur as described in Sections 19, 20 and 21 of the CTS. In the event that renegotiations are not successful, the CTS may be terminated. The CLT in effect at the time the CTS terminates will remain in effect on an interim basis until a new toll application is approved by the Board.

¹⁴ National Energy Board Hearing Order RH-2-2010, Tolls and Tariffs on Alberta Clipper.

(b) Effect of CTS on the Canadian Agreements

46. During the term of the CTS, the CTS will supersede the 2011 ITS and each of the Canadian Agreements. Upon termination or expiry of the CTS, any of the Canadian Agreements that have not expired or terminated in normal course will come back into effect as of the date of termination or expiry of the CTS. As a result, any toll or adjustment that is permitted under any of the Canadian Agreements that come back into effect as of the date of the termination or expiry of the CTS would then continue to be in force for their respective then remaining terms.

(c) 2011 Canadian Local Tolls

47. Under the CTS, the 2011 Interim ITS Tolls were used, subject to certain agreed upon adjustments, as the starting point for the 2011 CLT. As a result, the 2011 CLT for heavy crude oil movement from Hardisty to the U.S. border near Gretna, Manitoba is \$1.893 per barrel. The CLT tariff is attached as Appendix 6 to this Application. A complete listing of 2011 CLT adjusted for distance and commodity type are attached in Schedule E of the CTS agreement (the "2011 CLT").
48. Commencing July 1, 2011 and ending June 30, 2013, an outstanding amount surcharge will be added to the CLT. The CTS provides that Enbridge may impose a surcharge to recover certain amounts that it is entitled to under past settlement agreements, and includes recovery of: 2010 ITS revenue shortfall included in the 2011 ITS; applicable tax loss carry forward; and 2011 ITS first quarter toll variance (collectively the "OA Surcharge"). The OA Surcharge for heavy crude oil movement from Hardisty, Alberta to the U.S. border near Gretna, Manitoba is \$0.067 per barrel. A complete listing of the OA Surcharge, adjusted for distance and commodity type, is attached as Schedule F to the CTS agreement.
49. The OA Surcharge will be collected over a 24 month period starting with the commencement of the CTS agreement in 2011. As a result, the CLT will have the OA

Surcharge incrementally added commencing July 1, 2011 until June 30, 2013. In the event that, as of June 30, 2013 there is an under or over collection of the amounts to be recovered via the OA Surcharge, the CLT will be adjusted through a one-time surcharge imposed as of July 1, 2014 to immediately recover or refund those amounts.

50. Commencing July 1, 2012 and annually thereafter for the term of the CTS, the CLT will be adjusted, up or down, at a rate equal to 75% of the GDPP Index for the prior calendar year.
51. During the term of the CTS, in the event that the sum of the CLT and Lakehead System local tolls is less than the IJT tolls in effect in any given year, the CLT from Hardisty, Alberta to the Canada/U.S. border near Gretna, Manitoba will be increased. Enbridge will bring an application before the Board seeking approval of any related increase to the CLT specific to that purpose.
52. Subject to the approval of this Application, and for the term of the CTS, Enbridge intends to file annual CLT with the Board.

(d) International Joint Tariff

53. The IJT will provide a simplified tolling structure to cover transportation services provided on the Enbridge Mainline when the scope of that service crosses the Canada/U.S. border. In accordance with the terms of the CTS, Enbridge will establish a joint toll from receipt points in Canada to delivery points on the Lakehead System and in Ontario on the Canadian Mainline. The joint toll will be equal to or less than the sum of the two local tolls (i.e. the CLT and the Lakehead System tolls on file and in effect).
54. The IJT is attached as Appendix 7 to this Application. A complete listing of the 2011 IJT tolls adjusted for distance and commodity type are attached as Schedule D to the CTS agreement (the "2011 IJT Tolls"). Under the IJT the 2011 IJT Toll for heavy crude oil

from Hardisty, Alberta to delivery points in the Chicago, Illinois area is U.S. \$3.85 per barrel.

55. Commencing July 1, 2011 and ending June 30, 2013, an OA Surcharge will be added to the IJT tolls. The OA Surcharge for heavy crude oil movement from Hardisty, Alberta to the U.S. border near Gretna, Manitoba is \$0.067 per barrel. A complete listing of the OA Surcharge, adjusted for distance and commodity type, is attached as Schedule F to the CTS agreement.
56. The outstanding amount surcharge will be collected over a 24 month period starting with the commencement of the CTS agreement in 2011. In the event that, as of June 30, 2013 there is an under or over collection of the amounts to be recovered via the OA Surcharge, the IJT Tolls will be adjusted through a one-time surcharge imposed as of July 1, 2014 to immediately recover or refund those amounts.
57. Commencing July 1, 2012 and annually thereafter for the term of the CTS, the IJT tolls will be adjusted, up or down, at a rate equal to 75% of the GDPP Index for the prior calendar year.
58. Subject to the approval of this Application, and for the term of the CTS, Enbridge intends to file an annual IJT with the Board.

(e) Allowance Oil

59. For transportation service under the CLT, Enbridge shall collect in kind or deduct as allowance oil a percentage of all hydrocarbons delivered off the Enbridge Mainline, in the amount of $1/20^{\text{th}}$ of 1 percent of the volume of hydrocarbons delivered.
60. For transportation service under the IJT, Enbridge shall collect in kind or deduct as allowance oil a percentage of all hydrocarbons delivered off the Enbridge Mainline, in the amount of $1/10^{\text{th}}$ of 1 percent of volume of hydrocarbons delivered. The allowance

oil which is collected under the IJT will be divided between the Canadian Mainline and the Lakehead System as 1/20th of one percent to each carrier.

(f) Toll Incentives

61. Under the CTS, Enbridge may offer toll incentives to attract incremental volumes to the Enbridge Mainline, provided such toll incentives are offered equally to all Enbridge Mainline shippers. The IJT tolls charged for deliveries to the Enbridge Mainline shall be the same, irrespective of the specific facilities or path used to effect such deliveries.

(g) Land Matters Consultation Initiative

62. The Board is currently undertaking the Land Matters Consultation Initiative ("LMCI").¹⁵ The CLT and IJT tolls will be adjusted to reflect the results of the LMCI process as discussed in Section 15 of the CTS.

(h) Future Capital Expenditures

63. During the term of the CTS, Enbridge will not adjust the CLT or IJT tolls to recover capital expenditures on the Canadian Mainline unless agreed to by Enbridge and the representative shipper group. Enbridge may require a backstopping agreement prior to undertaking expansion projects in accordance with Section 16 of the CTS.

(i) Line 5 Claim

64. Enbridge is currently pursuing a claim on its behalf and on behalf of both the Canadian Mainline and Lakehead System shippers. Following final resolution of the Line 5 claim, the portion of any amounts paid to Enbridge associated with the Canadian Mainline will be shared equally between Enbridge and Canadian Mainline shippers in accordance with the requirements of prior settlement agreements. Enbridge will credit the shippers' portion against the CLT and the IJT tolls as applicable.

¹⁵ Including, but not limited to National Energy Board Hearing Order RH-2-2008.

(j) Commodity Surcharge

65. The current commodity surcharge implicit in the Enbridge Mainline toll methodology is under review by CAPP and Enbridge. Any proposed changes to the commodity surcharge as a result of the review that is mutually agreeable to Enbridge and the representative shipper group will be implemented through a toll adjustment during the term of the CTS. The basis of any potential adjustment is that the proposed change is revenue neutral.

(k) Representative Shipper Group

66. Enbridge will work with its Shippers, CAPP and Western Canadian Producers to develop, by July 3, 2012, and thereafter file with the NEB, a transparent process, in compliance with current regulatory requirements, to review and administer issues related to the CTS and the formation of the Representative Shipper Group. The representative shipper group will have representation from CAPP, CAPP members and other Enbridge Mainline shippers and interested parties.

(l) Reporting and Filing Requirements

67. As outlined in Section 26.1 of the CTS, Enbridge will provide shippers with information relating to the rate base, including a summary of capital additions for the prior calendar year and a forecast of capital additions for the current calendar year. In addition, Enbridge will continue to meet with shippers and review the Enbridge Mainline integrity plan, metrics and overall operating plan.
68. Consistent with the incentive tolling settlements that preceded the CTS, under the CTS Enbridge will again seek Board approval to continue to be relieved of the requirement to comply with all the reporting and filing requirements set forth in the National Energy

Board Filing Manual¹⁶ (the "NEB Filing Manual"), Guide BB entitled Financial Surveillance Reports, but shall file the applicable tolls and audited consolidated financial statements of Enbridge.

VI REASONABLENESS OF THE COMPETITIVE TOLL SETTLEMENT

69. Enbridge seeks approval of the CTS on the basis that it is reasonable and that the process followed in reaching the settlement satisfies the Board's *Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*.¹⁷
70. All parties, including Enbridge Mainline shippers and CAPP, having an interest in Enbridge's traffic, tolls and tariffs have had a fair opportunity to have their interests recognized and appropriately weighed during the course of the CTS process. This opportunity was provided through numerous negotiating sessions with the 2011 Negotiating Team and the open house as described in paragraphs 39 through 41 of this Application.
71. The CTS contains no provisions that are illegal or contrary to the Act.
72. The CTS is in the public interest since:
- It is an arm's length settlement concluded by Enbridge, Enbridge Mainline shippers and CAPP after extensive negotiation. The Enbridge Mainline shippers that participated in the negotiations represent the majority of volumes of hydrocarbons delivered on the Enbridge Mainline in 2010. CAPP has been a principal intervenor on behalf of shipper interests before the NEB in Enbridge toll matters.
 - Copies of the CTS, this application and the resulting tariffs have been served on all shippers of record, interested parties and to others upon request. Enbridge is

¹⁶ *National Energy Board Filing Manual*, February 2008, as amended to 2009.

¹⁷ *Supra* note 2.

proposing a 10 business day comment period in the accompanying transmittal letter to afford parties with sufficient time to review and provide comments, if any, on the application and CTS.

- It is consistent with the Board's efforts to streamline the regulatory process and, to the extent possible, minimize the degree of oversight and burden associated with regulation of companies under its jurisdiction.
- It provides a simplified toll and tariff structure and establishes competitive long-term tolls while also providing certainty with respect to tolls on the Canadian Mainline.

73. For these reasons, Enbridge respectfully requests approval of the CTS and the toll design methodology outlined in the CTS and upon which the CLT and IJT are based.

VII 2010 AND 2011 FINAL TOLLS AND TARIFFS

74. In accordance with this Application and the CTS, Enbridge seeks Board approval of the following interim tolls as final tolls:

- interim tolls approved under Board Order TOI-01-2010 and in effect between April 1, 2010 through to March 31, 2011 for transportation service on the Canadian Mainline;¹⁸
- interim tolls approved under Board Order TOI-01-2011 and in effect between April 1, 2011 through to June 30, 2011 for transportation service on the Canadian Mainline;¹⁹

¹⁸ Collected under Enbridge Tariff NEB No. 307.

¹⁹ Collected under Enbridge Tariff NEB No. 313.

- interim tolls approved under Board Order TOI-01-2011 and in effect between April 1, 2011 through to April 14, 2011 for receipt tankage service on the Canadian Mainline;²⁰ and
- interim tolls approved under Board Order AO-1-TOI-02-2011 and in effect between April 15, 2011 through to June 30, 2011 for receipt tankage service on the Canadian Mainline.²¹

75. In accordance with the CTS Enbridge seeks Board approval of:

- the 2011 CLT and associated OA Surcharge, both adjusted on a commodity and distance basis as detailed in Schedule E of Appendix 1, for the period of July 1, 2011 to June 30, 2012; and
- the RDT tolls detailed in Appendix 8 for the period of July 1, 2011 to June 30, 2012.

76. In keeping with the simplified nature of the toll and tariff structure under the CLT the Canadian tariffs for the Canadian Mainline that Enbridge intends to implement on Board approval of this Application are attached as Appendices 6 and 8.

77. On approval of this Application and based on the tolling design methodology contained in the CTS, and for the term of the CTS, Enbridge will file for effect on July 1st of each year, annual CLT and RDT tolls with the Board.

78. On approval of this Application and based on the tolling principles contained in the CTS, and for the term of the CTS, Enbridge will file for effect on July 1st of each year, a new IJT.

²⁰ Collected under Enbridge Tariff NEB No. RT 11.

²¹ Collected under Enbridge Tariff NEB No. RT 11-1.

VIII EXEMPTIONS

79. In keeping with the CTS, and consistent with past Board approvals of incentive tolling settlements and Enbridge's practice for the past 16 years, Enbridge seeks exemptions from the following:

- the requirement to keep the system of accounts described by the *Oil Pipeline Uniform Accounting Regulations*²² (the "OPUAR"); and
- the filing requirements specified in the NEB Filing Manual²³, Guide BB entitled Financial Surveillance Reports.

80. Enbridge, as a Group 1 pipeline company, is required under the OPUAR to:²⁴

- keep separate books of account in a manner consistent with generally accepted accounting principles;
- unless otherwise instructed by the Board, keep accounts in the manner set out in the OPUAR; and
- keep the system of accounts prescribed by the OPUAR.

81. Enbridge complies with these requirements with the exception that it does not keep its general ledger according to the system of accounts prescribed by the OPUAR. Instead, Enbridge keeps its general ledger according to its own chart of accounts. Enbridge does however maintain a mapping of accounts from its general ledger to the prescribed system of accounts, which enables it, if the Board were to require it, to recast its general ledger according to the system of accounts prescribed by the OPUAR.

²² C.R.C., c. 1058, as amended.

²³ *Supra* note 16.

²⁴ *Supra* note 22 at section 5.

82. The NEB Filing Manual, Guide BB, requires Group 1 pipeline companies to file quarterly financial surveillance reports in a prescribed form. Consistent with Board Orders: TO-1-95, TO-3-2000 and TO-01-2006 Enbridge seeks to be exempted from filing quarterly financial surveillance reports and in lieu of such reports intends to file with the Board audited annual consolidated financial statements. Enbridge submits the requested exemption is consistent with its practice during the past 16 years under Board approved incentive settlements and the CTS since:

- The CTS is a product of extensive negotiations resulting in significant alignment between Enbridge and stakeholder interests through the development of competitive toll settlement that ensures financial alignment between Enbridge's and shippers' risks and rewards. The integrated and complex nature of the risk reward regime in the CTS is more consistent with reporting by way of audited annual consolidated financial statements then by filing the detailed financial information required under NEB Filing Manual, Guide BB.
- The CTS is subject to NEB and representative shipper external audits.
- The filing of audited annual consolidated financial statements combined with the NEB audit provisions will provide the Board with the information required to evaluate and monitor the CTS over its term.

IX RELIEF REQUESTED

83. Based on the foregoing, Enbridge respectfully requests the Board issue an order or orders approving:

- the CTS in accordance with this Application, pursuant to Part IV of the Act;

- the 2011 CLT, associated OA Surcharge and the RDT tolls as final tolls on the Canadian Mainline for the period of July 1, 2011 to June 30, 2012, pursuant to subsection 60(1)(b) of the Act;
 - the interim 2010 tolls under Order TOI-01-2010 as final tolls on the Canadian Mainline for the period of April 1, 2010 to March 31, 2011, pursuant to subsection 60(1)(b) and section 64 of the Act;
 - the interim 2011 tolls under Order TOI-02-2011 and AO-1-TOI-02-2011 as final tolls on the Canadian Mainline for the period of April 1 to June 30, 2011, pursuant to subsection 60(1)(b) and section 64 of the Act;
 - the Canadian Mainline toll in effect on the termination of the CTS as interim effective the date of termination pending approval of either revised interim or final tolls, pursuant to subsection 60(1)(b) of the Act;
 - the proposed exemptions for Enbridge from meeting requirements to keep the system of accounts as prescribed by the OPUAR, pursuant to subsection 129(1.1) of the Act;
 - exempting Enbridge from the filing requirements specified in Guide BB of the NEB Filing Manual, pursuant to section 20 of the Act; and
 - granting such further and other relief as Enbridge may request or as the Board may grant, pursuant to section 20 of the Act.
84. Enbridge requests that this relief be approved as a whole and that any single component of toll and settlement relief requested herein not be approved in absence of any other component.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this
2nd day of May, 2011.**

ENBRIDGE PIPELINES INC.

Per: 
Cynthia Hansen
Vice President Canadian Operations

Communications in respect of this Application may be directed to:

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APPENDICES