

NATIONAL ENERGY BOARD

RHW-001-2015

ENBRIDGE PIPELINES INC.

LINE 9 TOLLS COMPLAINT

**EVIDENCE OF
SUNCOR ENERGY MARKETING INC.**

February 17, 2015

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1 **A. INTRODUCTION**

2 **Q1. Please provide the context for this evidence.**

3 A1. This evidence is being filed by Suncor Energy Marketing Inc. ("SEMI") in proceeding
4 RHW-001-2015 (Line 9 Tolls Complaint), convened by the National Energy Board ("NEB"
5 or "Board") to investigate complaints by SEMI and Valero Energy Inc. with respect to
6 Enbridge Pipeline Inc.'s ("Enbridge") July 31, 2014 Line 9 tolls application ("Tolls
7 Application").

8 **Q2. Please describe SEMI.**

9 A2. SEMI is a subsidiary of Suncor Energy Inc. ("Suncor") responsible for the marketing of
10 Suncor's upstream production, the administration of Suncor's energy trading activities
11 and the procurement of feedstock for Suncor's refining operations.

12 **Q3. What is the Line 9 Reversal Project?**

13 A3. Enbridge filed its pipeline facilities application entitled the "Line 9B Reversal and Line 9
14 Capacity Expansion Project" ("Project") with the NEB on November 29, 2012. The
15 Project was designed to re-reverse the flow on Enbridge's Line 9 from North Westover
16 to Montreal. The Project was reviewed in the course of the Board's OH-002-2013
17 proceeding and received facilities approval under Board Order XO-E101-003-2014 and
18 toll methodology approval under Board Order TO-002-2014. The Project will broaden
19 market access for Western Canadian Sedimentary Basin crude oil and for U.S. crude oil
20 production primarily from the Williston Basin. At the same time, the Project will provide
21 greater access to crude oil supplies from these producing basins for Quebec refiners.
22 While the Project was originally slated to go into service in 2013, and then 2014, it has
23 been delayed as Enbridge works to satisfy its approval conditions.

24 **Q4. Does the delay in the Project's in-service date affect the toll complaint that is the
25 subject of this evidence?**

26 A4. No. SEMI remains committed to obtaining the service contracted for under the TSA and
27 understands that Enbridge remains committed to the Project. In short, the toll
28 complaint is about how the service is to be tolled and not whether the service is
29 required. With Enbridge having recently filed with the NEB its final leave to open
30 application for the Project, SEMI looks forward to the Project going into service in the
31 near future.

32 **Q5. What is SEMI's interest in the Line 9 Reversal Project?**

33 A5. Suncor owns the last remaining refinery operating in Montreal. To ensure a continued
34 and competitive supply for its refinery, SEMI entered into a long-term transportation
35 services agreement dated September 12, 2012 (signed by Semi in June of 2012 as part of
36 the Open Season - "TSA") to ship crude oil by means of the Project.

1 **Q6. What is the nature of Suncor refinery operations impacted by the Project?**

2 A6. Suncor's Montreal refinery has a crude processing capability of upwards of 137,000 bpd
3 of crude oil. Suncor directly employs approximately 450 salaried and unionized workers
4 at the refinery. In addition to this, Suncor will typically have between 300 and 400
5 contractors working on site at the refinery. That number can reach as many as 1,000
6 when significant maintenance or specific projects are underway.

7 **Q7. Can you please comment generally on the nature of the competition Suncor faces for**
8 **the products produced at its Montreal refinery?**

9 A7. The Quebec and Eastern Canada markets represent the most competitive area for
10 refining in Canada. By virtue of its access to the St. Lawrence Seaway this market is, in
11 effect, a "tidewater" location. Competition is fierce and includes not only refineries in
12 Quebec, but also refineries across the U.S. Eastern seaboard, the Gulf of Mexico and
13 Europe. Finished products such as gasoline and diesel can be imported into Quebec
14 from all of these locations by land and by water. Although Suncor is very proud of the
15 place that the Montreal refinery holds in its business, the facility is no longer among the
16 largest refineries in North America. Based on the intense competition expected to
17 characterize this market into the future, as well as the expected changes in the
18 dynamics of supply and demand, Suncor expects refined product to be in ample supply
19 in Quebec for the foreseeable future. While refined product supply may be sourced
20 from outside the province of Quebec, these supply sources would not provide the jobs,
21 the spending nor provide the petrochemical feedstock that a Quebec refining operation
22 does.

23 This fierce competition is evident from the ongoing rationalization of refinery capacity
24 within Montreal. Suncor's Montreal refinery is the last operating refinery in the city,
25 which once had as many as six operating refineries. Most recently, Shell Canada shut
26 down its Montreal East Refinery in 2010 and converted it to a products terminal.
27 Refinery closures and/or conversions to terminals have also been prevalent in the
28 refining regions that are competitive with Suncor's Montreal refinery in Atlantic Canada
29 and the U.S. Eastern Seaboard. This includes, for example, the recent decision by
30 Imperial Oil to convert its Dartmouth, Nova Scotia refinery into a products terminal.

31 To remain viable, Suncor must continually adapt to, amongst other things, ensure the
32 most competitive sources of supply in order to meet the continued challenges from its
33 competitors, particularly as those refiners also innovate to secure more competitive
34 sources of oil supply. Suncor will continue to work hard on those parts of its business
35 that it can control: important business drivers such as refinery efficiency and reliability.
36 Suncor has made substantial progress in these categories in recent years and will

1 continue to do so in the future through efforts to ensure its refinery remains
2 competitive.

3 **Q8. Can you please comment upon Suncor's future investment plans for its Montreal**
4 **refinery?**

5 A8. The quest for competitiveness is met, among other things, by investments. Since 2004
6 Suncor has invested more than three quarters of a billion dollars in the Montreal
7 refinery, which includes specific changes to improve the ability to remove sulphur from
8 gasoline and diesel and to make overall enhancements to improve the refinery's
9 reliability and productivity.

10 As a result of the commitment and determination of its employees, management and
11 the company, the production capacity of Suncor's Montreal refinery has now reached
12 137,000 bpd and its reliability compares favourably with the best in the industry.

13 More importantly, Suncor continues to invest significant dollars every year to maintain
14 and enhance the plant's infrastructure. While the focus will always be on improving
15 refinery operations, it is also important to understand that these investments also
16 include such improvements as upgrading environmental protection equipment. In
17 recent years, for example, Suncor has made significant environmental improvements to
18 the refinery and recently spent more than \$20 million to complete a re-work and
19 modernization of the wastewater treatment unit, which is now state-of-the-art.

20 In 2014, as part of its Montreal refinery operations, Suncor purchased a sulphur
21 recovery facility in Montreal from Chemtrade Montreal Limited Partnership for \$121
22 million.

23 **Q9. What role does access to new sources of feedstock play in ensuring the refinery's**
24 **continued viability?**

25 A9. If a refinery is able to secure feedstock at competitive pricing, it is a significant positive
26 factor supporting operating margins, and therefore future operations as a going
27 concern. The re-reversal of Line 9 should provide a feedstock cost incentive for the
28 Quebec refineries. This was the primary rationale underpinning Suncor's decision to
29 incur the costs and risks associated with a long-term commitment to ship on the re-
30 reversed Line 9.

31 **Q10. Was toll certainty important to SEMI in making that long-term commitment?**

32 A10. Absolutely, it was critical. The TSA has a primary term of 10 years, which in the realm of
33 crude transportation represents a long-term horizon. Crude transportation contracts are
34 often based on shorter, month-to-month commitments. The 10 year term Enbridge
35 sought goes beyond the initial term of the Enbridge 2011 Competitive Tolling
36 Settlement ("CTS"), even more so now with the delay to the in-service date. In its

1 evidence in the OH-002-2013 proceeding, SEMI indicated in the long term, once the
2 broader crude market has re-equilibrated, that based on the IHS Global Canada Limited
3 forecast, commissioned by SEMI and Valero, the delivered cost of Alberta Mixed Sweet
4 ("MSW") to Montreal would be \$4.44 to \$6.44 per barrel lower than the delivered cost
5 of an offshore alternative crude. At that forecast delivered cost differential, SEMI was
6 sufficiently confident in the economics of Line 9 based crude oil supply to make the long
7 term commitment. If the forecast delivered cost to Montreal via Line 9 had been
8 significantly higher as a result of higher transportation costs, SEMI would likely not have
9 been willing to make the 10 year term commitment.

10 **Q11. What exactly do you mean by "toll certainty"?**

11 A11. When SEMI refers to toll certainty, it refers to the ability to quantify with precision the
12 toll not just in the next year or two, but over the life of the 10 year commitment.

13 **Q12. Did you contract for such toll certainty under the TSA?**

14 A12. Yes. While SEMI agreed to base the starting toll off the Enbridge Mainline toll as of
15 January 1, 2013, the toll thereafter would be adjusted "only" via: (i) a specific
16 inflationary index; and (ii) to accommodate any abandonment cost surcharge SEMI
17 knew the Board was in the process of implementing. Further details of the bargain SEMI
18 contracted for are provided in Sections B and C.

1 **B. DESCRIPTION OF THE TOLL COMPLAINT**

2 **Q13. What service has SEMI contracted for under the TSA?**

3 A13. SEMI has contracted for the transportation of crude petroleum from various Canadian
4 Mainline receipt points to Montreal.

5 **Q14. What are the tolls Enbridge proposes to charge SEMI?**

6 A14. A history of the Line 9 tolls Enbridge proposes to charge SEMI is presented below:

7 (i) On July 31, 2014, Enbridge filed the Tolls Application, Appendix A of which
8 contained the Line 9 tolls Enbridge proposed to charge SEMI, as set forth in NEB
9 Tariff No. 348 (FERC Tariff No. 1.0.0).

10 (ii) On August 18, 2014, by Order TOI-001-2014, the Board approved, effective
11 August 19, 2014, the Line 9 tolls per NEB Tariff No. 348, on an interim basis
12 pending a final order of the Board concerning the Line 9 tolls.

13 (iii) On December 1, 2014, Enbridge filed NEB Tariff No. 357 (FERC Tariff No. 1.1.0),
14 proposing to cancel the previous tariff effective January 1, 2015. This revised
15 tariff was filed to include an abandonment cost surcharge pursuant to NEB
16 Decision MH-001-2013 and NEB Order MO-030-2014.

17 (iv) On December 17, 2014, by Order AO-01-TOI-001-2014, the Board terminated the
18 then current Line 9 interim tolls, effective December 31, 2014, and approved the
19 revised tariff (NEB Tariff No. 357), effective January 1, 2015, on an interim basis.

20 A copy of NEB Tariff No. 357 (FERC Tariff No. 1.1.0) is provided in Attachment 1.

21 **Q15. What is the difference between "Committed Rates" and "Uncommitted Rates?"**

22 A15. "Committed Rates" apply to the contract volumes of shippers that have signed long-
23 term transportation agreements with Enbridge, including the TSA. "Uncommitted Rates"
24 apply to: (i) the volumes of shippers who are not Committed Shippers, but rather ship
25 on the pipeline on a month-to-month basis; and (ii) volumes of Committed Shippers that
26 exceed their contract volume.

27 **Q16. What is your dispute with respect to the toll Enbridge proposes to charge you under
28 Attachment 1?**

29 A16. SEMI's dispute with Enbridge is with respect to certain charges being imposed in
30 addition to the base toll. The base toll is identified in Appendix A of Attachment 1, page
31 1 of 2, under column (A) Escalated Transmission and Terminalling, while the additional
32 items that are the subject of the dispute appear under columns: (i) (B) CTS Section 20.1
33 Surcharge; (ii) (C) OAS True-up; and (iii) (D) Line 5 Claim True-up. These additional
34 charges are hereafter referred to as the "CTS Surcharges."

35 **Q17. Are you objecting to the item under column (E) - Abandonment Surcharge?**

36 A17. No. This charge is recognized under the TSA.

1 **Q18. Does not the item under column (C) - OAS True-up actually *reduce* your tolls in that it**
2 **is a credit?**

3 A18. Yes. However, the bargain between the parties was to address the uncertainty related
4 to prospective adjustments to the tolls. Accordingly, whether or not the effect is
5 positive or negative to the tolls, SEMI's tolls should not incorporate *any* adjustments
6 beyond those identified in the TSA, and none of the CTS Surcharges are identified in the
7 TSA.

8 **Q19. Is it only the CTS Surcharges you object to or does your objection extend to any future**
9 **surcharges of a similar nature?**

10 A19. The CTS Surcharges are the only ones applied for by Enbridge in the Tolls Application.
11 However, SEMI would object to any future surcharges of whatever nature as they would
12 be contrary to the terms of the TSA and the bargain struck between the parties, in
13 particular, the assurance of toll certainty for SEMI.

14 **Q20. How would you summarize the bargain you contracted for in the TSA?**

15 A20. Quite simply, Enbridge obtained the long-term volume commitment it required to
16 proceed with the Project while SEMI obtained the toll certainty it required to make such
17 a long-term commitment. This was summarized by Enbridge as follows in the course of
18 the OH-002-2013 proceeding:

19 The proposed tolling methodology for Line 9 as a result of the Project was
20 the result of commercial negotiations. The toll-making parameters
21 included:

22

- 23 • Toll certainty to shippers by indexing tolls and volume certainty to
24 Enbridge and committed shippers through firm service offering.¹

25 **Q21. Who bears the onus of proof with respect to the appropriateness of the applied-for**
26 **tolls?**

27 A21. Enbridge bears that onus, as the applicant in the Tolls Application.

¹ NEB OH-002-2013 Proceeding: Ex. B8-2, Enbridge Response to NEB IR 1.2.

C. TRANSPORTATION SERVICES AGREEMENT (TSA)

1 **Q22. Could you please provide a copy of the TSA?**

2 A22. A pro-forma of the TSA was provided in the Open Season around May, 2012 and was
3 also filed in the OH-002-2013 proceeding.² A copy is provided in Attachment 2. The TSA
4 executed by SEMI in June of 2012 contains these terms and conditions.

5 **Q23. Does the TSA represent a negotiated toll agreement acceptable to both parties?**

6 A23. Yes. Section 17.01 of the TSA provides:

7 17.01 Arm's Length Negotiations. Each of the Parties acknowledges and
8 agrees that this Agreement is the result of good faith, arm's
9 length negotiations which have resulted in an agreement that is
10 fair and equitable to Carrier and all shippers.

11 **Q24. What are the relevant provisions with respect to setting the tolls under the TSA?**

12 A24. Article 6 and Schedule B are the relevant provisions with respect to setting the tolls
13 under the TSA.

14 **Q25. Please summarize how the TSA sets the tolls.**

15 A25. The TSA provides for the initial tolls, as of January 1, 2013, to be equal to the
16 International Joint Toll pursuant to the CTS plus a distance and commodity adjusted
17 charge of \$0.21 to Montreal. After January 1, 2013, the tolls are *only* to be adjusted in
18 two ways: (i) annually, effective July 1 of each year, by 75% of the GDPP Index (a Gross
19 Domestic Product at Market Prices Index, as defined in the TSA); and (ii) an adjustment
20 to include any incremental tolls resulting from an NEB order in relation to its Land
21 Matters Consultation Initiative. This latter adjustment was incorporated into the Line 9
22 tolls via the abandonment surcharge ("Abandonment Surcharge") introduced in
23 Enbridge NEB Tariff No. 357, effective January 1, 2015.

24 **Q26. Why was January 1, 2013 chosen in Schedule B as the date after which tolls would
25 only be adjusted pursuant to the GDPP Index and the Abandonment Surcharge?**

26 A26. Early drafts of the TSA contemplated setting the initial or base toll "...as of the in-service
27 date" and used an estimate of CTS tolls at that time. Such drafts contemplated an in-
28 service date in the second quarter of 2013. January 1, 2013 was chosen as the point in
29 time to set the base tolls through negotiation between the parties. The base tolls were
30 to be adjusted for the CTS toll actuals.

31 **Q27. Are TSA actual tolls as of January 1, 2013 no longer subject to adjustment?**

32 A27. No. The Line 9 contract tolls are still subject to ongoing adjustment under the TSA, but
33 only via the GDPP Index and the Abandonment Surcharge. This is reflected in the Tolls

² NEB OH-002-2013 Proceeding: Ex. B8-3, Attachment 1 to Enbridge Response to NEB IR 1.1.

1 Application, where Enbridge first adjusted the TSA Schedule B tolls for the GDPP Index
2 for the years 2013 and 2014.

3 **Q28. Once actual tolls are determined, does the CTS have any ongoing relevance under the**
4 **TSA?**

5 A28. No. The CTS does have a provision with respect to Line 9. This provision laid the
6 framework by which Enbridge could offer service on Line 9, particularly with respect to
7 impacts, or more to the point, lack thereof, to the Mainline. This provision presumably
8 guided Enbridge's drafting of the TSA. The CTS also allows Enbridge to offer incentive
9 tolls to non-Mainline delivery points. The executed TSA now governs the provision of
10 service and rates for SEMI's service and not the CTS. In the OH-002-2013 proceeding, no
11 party raised any issues with respect to the TSA not conforming to the CTS.

12 What was agreed to in the TSA was that there would be a one-time adjustment as of
13 January 1, 2013, to the then applicable CTS toll, and thereafter the TSA tolls were only
14 to be adjusted in accordance with the GDPP Index and the Abandonment Surcharge.
15 Simply put, once the initial tolls are trued-up, they are indexed tolls. They are not cost-
16 of-service tolls, nor are they "index-plus" tolls that incorporate CTS Surcharges. They are
17 "index-only" tolls (subject to inclusion of the Abandonment Surcharge). Enbridge agreed
18 to such indexed tolls to achieve the toll certainty SEMI required to make the long-term
19 toll commitment under the TSA.

20 **Q29. Beyond the language of s. 17.01 of the TSA, is there any other evidence that Enbridge**
21 **considered the TSA indexed tolls to be fair and equitable?**

22 A29. Yes. Enbridge had clearly done its economic analysis of the TSA tolls and, as conveyed in
23 the Open Season, had concluded that such tolls would provide attractive returns for its
24 shareholders and substantial support for the company's future growth in earnings:

25 ...The associated aggregated investment [Eastern Access projects,
26 including Line 9 re-reversal project, and Gulf Coast Access projects] of
27 approximately \$8 billion at attractive returns provides substantial support
28 for the extension of our 10% plus growth rate in earnings per share
29 beyond the middle of this decade.³

30 (emphasis added)

31 **Q30. Have there been any discussions between SEMI and Enbridge at the senior leadership**
32 **level surrounding the applicability of surcharges to SEMI under the TSA?**

33 A30. Yes. SEMI and Enbridge have been and are in frequent contact regarding the TSA and
34 upcoming service on the reversed Line 9. With respect to proposed Mainline surcharges
35 related to Enbridge's Line 3 replacement project, a senior representative of Enbridge
36 inquired of a senior representative of SEMI as to whether SEMI would be agreeable to

³ Attachment 3, News Release, p. 2.

1 paying such surcharges. The Enbridge representative acknowledged that SEMI was not
2 obligated to pay such surcharges under the TSA, but was making the inquiry in the
3 context of reaching out to all shippers as part of Enbridge's Representative Shipper
4 Group ("RSG") consultations. SEMI advised the Enbridge representative that it was not
5 willing to pay such surcharges.

6 **Q31. Has SEMI agreed to pay *any* charges not included in the TSA?**

7 A31. Yes. As a result of the potential added costs Enbridge would incur in complying with the
8 conditions the Board imposed as part of its OH-002-2013 Decision, SEMI agreed to
9 amend the TSA to remunerate Enbridge for such added costs. To be clear, these costs
10 were only the *added* costs resulting from compliance with the Board's conditions and
11 were separate and apart from any CTS charges. While SEMI was not obligated to pay
12 such costs under the TSA, it nonetheless agreed to do so to support Enbridge in
13 achieving its Carrier Approvals under the TSA.

14 **Q32. Is the Tolls Application consistent with the terms of the TSA?**

15 A32. No. By including the CTS Surcharges in the tolls to be charged to SEMI, the Tolls
16 Application is inconsistent with the terms of the TSA. As noted above, the only two
17 adjustments to tolls allowed under the TSA after January 1, 2013 are the GDPP Index
18 and the Abandonment Surcharge. In filing the Tolls Application, Enbridge breached
19 Section 17.03 of the TSA, which stipulates:

20 17.03 No Tariff Toll Revisions Proceedings. ...each of the Parties hereby
21 agrees not to, directly or indirectly, commence or support any
22 application, motion or other proceeding (a "Toll Revision
23 Proceeding") before the NEB for the purpose of requesting the
24 NEB to set tolls applicable to the Pipeline which are inconsistent
25 with this Agreement.

1 **D. OH-002-2013**

2 **Q33. Was SEMI active in the OH-002-2013 Proceeding?**

3 A33. Yes. As one of the underpinning shippers for the Project, SEMI participated fully in the
4 OH-002-2013 proceeding, at some time and expense, to support Enbridge's application.
5 SEMI was happy to do so as it looked forward to receiving the bargained for service.

6 **Q34. Were you misled by Enbridge when Enbridge solicited your support for the OH-002-
7 2013 proceeding and then in the wake of that proceeding, following the receipt of
8 Project approval, Enbridge proceeded to set tolls for you in a manner inconsistent
9 with the TSA?**

10 A34. We would simply note our disappointment with the Tolls Application, as it negated the
11 bargain we had reached with Enbridge in the TSA.

12 **Q35. Weren't the SEMI tolls already approved in the OH-002-2013 proceeding?**

13 A35. No. While the Board reviewed the tolling methodology at a high level in the context of
14 approving the Project, the Board was clear that it was not approving Line 9 tolls at that
15 time:

16 In the List of Issues to be considered in this proceeding, the Board stated
17 that its consideration of the appropriateness of the tolling methodology for
18 Line 9 would be limited to consideration of the duties of a pipeline pursuant
19 to section 71 of the NEB Act, which describes the common carrier
20 obligations of an oil pipeline. This consideration includes the
21 appropriateness of the toll premium allocated to uncommitted shippers.⁴

22

23 Since Enbridge has not asked for approval of tolls at this time, the Board has
24 not considered the toll level Enbridge will charge when the Project is in
25 service. Enbridge is required to file the Line 9 toll with the Board prior to the
26 facilities being placed into service and, at that time, the Board will determine
27 if the tolls are just and reasonable and not unjustly discriminatory. The
28 Board's decision in this proceeding on the tolling methodology does not
29 predetermine Board approval of the Line 9 toll.⁵

⁴ NEB OH-002-2013 Reasons for Decision, p. 118.

⁵ NEB OH-002-2013 Reasons for Decision, p. 121.

1 **E. TOLL PRINCIPLES**

2 **Q36. What are the guiding criteria for setting tolls for an NEB regulated pipeline such as**
3 **Enbridge?**

4 A36. The principal provisions are found in Sections 62 and 67 of the *National Energy Board*
5 *Act*, which state:

6 **62.** All tolls shall be just and reasonable, and shall always, under
7 substantially similar circumstances and conditions with respect to all
8 traffic of the same description carried over the same route, be charged
9 equally to all persons at the same rate.

10

11 **67.** A company shall not make any unjust discrimination in tolls, service
12 or facilities against any person or locality.

13 **Q37. Are the TSA tolls just, reasonable and not unjustly discriminatory?**

14 A37. Yes. Enbridge agreed that the TSA Tolls are fair and equitable both for itself and *all*
15 shippers (TSA, s. 17.01). As noted above, Enbridge also acknowledged that the TSA Tolls
16 provide it with attractive returns and substantial support for future earnings growth.

17 **Q38. Besides Enbridge's agreement that the TSA tolls are fair and equitable for all shippers,**
18 **how do you conclude that they are not unjustly discriminatory?**

19 A38. One must distinguish between those SEMI volumes using the Mainline in conjunction
20 with Line 9 service and subject to the TSA tolls ("SEMI Line 9 Volumes") and those SEMI
21 volumes using the Mainline that are not connected with the TSA Line 9 service ("SEMI
22 Mainline Volumes"). The SEMI Line 9 Volumes are not subject to the CTS Surcharges
23 while the SEMI Mainline Volumes are.

24 **Q39. Is it not unjustly discriminatory to apply the CTS Surcharges to Mainline shippers,**
25 **including SEMI with respect to the SEMI Mainline Volumes, and not to apply the CTS**
26 **Surcharges to SEMI with respect to the SEMI Line 9 Volumes?**

27 A39. No. First of all, as discussed in Q/A 41, the CTS Surcharges should be calculated based on
28 *all* Mainline volumes. Any shortfall in Mainline revenues resulting from not collecting
29 the CTS Surcharges from SEMI with respect to the SEMI Line 9 Volumes, should be made
30 up by Enbridge, as part of the bargain it agreed to under the TSA.

31 Second, Enbridge has explicitly agreed that the TSA tolls are fair and equitable to all
32 shippers.

33 Third, the TSA terms and conditions were made available to all parties through a fair
34 open season process.

35 Fourth, the SEMI Line 9 Volumes are not transported under substantially similar
36 circumstances and conditions nor are they traffic of the same description carried over

1 the same route. The SEMI Line 9 Volumes are transported under a long-term (10 year)
2 contract, the TSA. The TSA commits SEMI to transport SEMI Line 9 Volumes on Line 9
3 every day for 10 years, or pay tolls in lieu thereof. In other words, the TSA represents a
4 long-term, guaranteed revenue stream to Enbridge and a concomitant long-term
5 financial obligation, and sharing of risk, on the part of SEMI.

6 The Mainline short-term shippers have optionality, which is very valuable. Should rates
7 get out of hand, they can decline to take service. SEMI does not have that luxury with its
8 10 year commitment on Line 9. The bargained for toll certainty was central to SEMI's
9 decision to make the long-term commitment that allowed the Project to proceed. To
10 now suggest that SEMI should essentially be in the same position as a short-term
11 Mainline shipper with respect to SEMI Line 9 Volumes is neither fair nor equitable. It
12 totally discounts the system commitment and risk assumed by SEMI under the TSA. It
13 makes no commercial sense, nor is it justified on the basis of toll principles.

14 Different toll treatment, including fixed toll arrangements, for shippers making different
15 system commitments and bearing different levels of risk has been recognized by the
16 Board as not constituting unjustly discriminatory treatment.⁶

17 **Q40. What about SEMI Mainline Volumes, should we understand that you do not object to**
18 **paying the CTS Surcharges with respect to these volumes?**

19 A40. Yes. With respect to SEMI Mainline Volumes, SEMI fully expects to pay the CTS tolls of
20 the day, including surcharges such as the CTS Surcharges.

21 **Q41. Are the Mainline volumes subsidizing SEMI with respect to the SEMI Line 9 Volumes?**

22 A41. That is within the control of Enbridge and should not be the case. Aside from the annual
23 GDPP Index adjustment and the Abandonment Surcharge, Enbridge contracted to take
24 on all of the cost risk associated with the transportation of crude oil from the various
25 Canadian receipt points for delivery to Montreal in exchange for the long-term volume
26 commitments from shippers such as SEMI. Enbridge can internally adjust the allocation
27 of the revenue it collects from the Line 9 tolls so as to keep the Mainline whole—i.e. so
28 that the Mainline is not subsidizing the transportation on the downstream affiliated
29 carrier. At a given Line 9 toll, if there is an increase in the Mainline surcharges Enbridge
30 would have to allocate more of the Line 9 revenue to the Mainline and less to Line 9. In
31 the end, Enbridge Line 9—not the Mainline—bears the risk Enbridge assumed under the
32 TSA. Line 9 is not the only non-Mainline asset on which Enbridge has offered
33 international joint tolls and SEMI, as a Mainline shipper, over and above its Line 9
34 obligations, would expect Enbridge to keep the Mainline whole in any and all of these
35 circumstances.

⁶ See, for example: NEB Reasons for Decision OH-1-95, p. 23; NEB Reasons for Decision OH-1-2007, p. 19; NEB
Reasons for Decision RH-003-2011, pp. 134-135.

1 **Q42. But how is the Mainline kept "whole" when certain volumes flowing on it are exempt**
2 **from the CTS Surcharges?**

3 A42. When SEMI speaks of Enbridge keeping the Mainline "whole", it refers to Enbridge
4 calculating the Mainline surcharges across *all* volumes flowing on the Mainline, and
5 Enbridge itself, not Mainline shippers, accounting for any revenue shortfall arising from
6 international joint tolls on the Mainline that are not subject to such surcharges, such as
7 the SEMI Line 9 Volumes. This may require some adjustment to Enbridge's projected
8 "attractive returns" for the Project.

9 **Q43. Did Enbridge agree that it was appropriate for parties such as SEMI to be given certain**
10 **benefits in return for making the minimum volume, long-term commitment under the**
11 **TSA?**

12 A43. Yes. Enbridge considered this to be the very purpose of the Open Season:

13 **B. Purpose of Open Season**

14 Through this open season, the Carrier, as sponsor, provides potential
15 shippers with the opportunity to secure certain benefits in exchange for
16 making long-term minimum volume commitments to the Project, thereby
17 becoming "Committed Shippers".⁷

⁷ Attachment 3, Open Season Features and Terms, p. 1.

1 **F. CONCLUSION**

2 **Q44. Please summarize your evidence.**

3 A44. Enbridge has breached the TSA by applying for tolls as outlined in Attachment 1.
4 Further, Enbridge has not discharged its onus with respect to proving that such tolls are
5 just and reasonable and not unjustly discriminatory. To the contrary, the evidence
6 demonstrates that such tolls:

7 (i) are inconsistent with the terms of the TSA, in that the CTS Surcharges included in
8 such tolls are not allowed under the TSA; and

9 (ii) are unjust and unreasonable in that they do not provide SEMI with the bargained
10 for toll certainty in light of SEMI's long-term commitment (which commitment
11 allowed the Project to be built) and the sharing of risk by SEMI inherent in such a
12 long-term commitment.

13 **Q45. What relief are you seeking from the Board in this proceeding?**

14 A45. We respectfully request that the Board:

15 (i) direct Enbridge to set TSA tolls for the SEMI contracted volumes that do not
16 include the CTS Surcharges, in accordance with the TSA and tolling principles;
17 and

18 (ii) rule that Enbridge not be able to apply any similar surcharges to the contracted
19 TSA tolls payable by SEMI in the future, with such tolls to be adjusted only in
20 accordance with the provisions of the TSA—that is, only allowing adjustments via
21 the GDPP Index and the Abandonment Surcharge.

22 **Q46. Does this conclude the SEMI evidence?**

23 A46. Yes.

NATIONAL ENERGY BOARD

RHW-001-2015

ENBRIDGE PIPELINES INC.

LINE 9 TOLLS COMPLAINT

**EVIDENCE OF
SUNCOR ENERGY MARKETING INC.**

ATTACHMENT 1

**ENBRIDGE NEB TARIFF NO. 357
(FERC TARIFF NO. 1.1.0)**



ENBRIDGE PIPELINES INC.
IN CONNECTION WITH
ENBRIDGE ENERGY, LIMITED PARTNERSHIP
INTERNATIONAL JOINT RATE TARIFF

APPLYING ON
CRUDE PETROLEUM,
FROM
POINTS IN THE PROVINCES OF ALBERTA, SASKATCHEWAN, MANITOBA,
TO
NANTICOKE, ONTARIO AND MONTREAL, QUEBEC
USING JOINT ROUTING AS DEPICTED ON PAGE 5 OF THIS TARIFF

The transportation rates listed in this tariff are subject to the Rules and Regulations published by:

Enbridge Pipelines Inc., National Energy Board (NEB) Tariffs No. 337 and No. 350, [C] ~~and supplements thereto~~ and reissues thereof, on file with the NEB, for transportation within Canada.

Enbridge Energy, Limited Partnership FERC Tariff No. [W] ~~41.6.0~~ 41.9.0, [C] ~~and supplements thereto~~ and reissues thereof, for transportation within the United States.

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

ISSUED: December 1, 2014

EFFECTIVE: January 1, 2015

ISSUED BY:

[W] ~~Shauna Bates~~ Dave Wudrick
[W] ~~Senior Director, Regulatory, Planning and Analysis~~
[W] ~~Strategic Planning, Regulatory and Analysis~~
Enbridge Pipelines Inc.
3000 Fifth Avenue Place, 425 – 1st Street S.W.
Calgary, AB Canada T2P 3L8

COMPILED BY:

[W] ~~Erin Niece~~ Farah Al Jammal
Regulatory Strategy and Compliance
Enbridge Pipelines Inc.
[W] ~~Tel: (403) 231-8329~~ 5950
[C] ~~Fax: (403) 508-3140~~

E-mail: Enbridge-Tariffs@enbridge.com

The rates listed in this tariff are payable in [W] ~~Canadian~~ United States currency and are applicable on the International movement of Crude Petroleum tendered to Enbridge Pipelines Inc. at established receiving points in Canada for delivery to established delivery points in Canada.

TRANSPORTATION RATES

Commodities shall be classified on the basis of the density and viscosity of such commodities at the time of receipt by Enbridge Pipelines Inc. and assessed a transportation rate as listed in the transportation rate tables below. Density shall be based on 15°C. Viscosity shall be based on Enbridge Pipelines Inc.'s reference line temperature at the time of receipt. Where the density of a commodity falls within the density range of one commodity classification and the viscosity of the commodity falls within the viscosity range of another commodity classification, then the commodity shall be deemed to be in the commodity classification with the higher transportation rate. [W] ~~Tolls~~ Rates shall be calculated as a percentage of the light petroleum transmission charge.

LIGHT CRUDE PETROLEUM (LIGHT) - A commodity having a density from 800 kg/m³ up to but not including 876 kg/m³ and a viscosity from 2 mm²/s up to but not including 20 mm²/s will be classified as **Light Crude Petroleum**.

MEDIUM CRUDE PETROLEUM (MEDIUM) - A commodity having a density from 876 kg/m³ up to but not including 904 kg/m³ and a viscosity from 20 mm²/s up to but not including 100 mm²/s will be classified as **Medium Crude Petroleum**.

HEAVY CRUDE PETROLEUM (HEAVY) - A commodity having a density from 904 kg/m³ to 940 kg/m³ inclusive and a viscosity from 100 up to and including 350 mm²/s will be classified as **Heavy Crude Petroleum**.

The following tables provide rates including Transmission Charges, Terminalling Charges, [N] the Abandonment Surcharges, and applicable surcharges. Tankage Charges and Oil Allowance are not included.

[I] All rates on this page have increased.

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
LIGHT CRUDE PETROLEUM**

DELIVERY TO: NANTICOKE, ONTARIO

From Canadian Origination Point	Committed Rates
Edmonton Terminal, Alberta	27.7890
Hardisty Terminal, Alberta	26.2818
Kerrobert Station, Saskatchewan	24.7663
Regina Terminal, Saskatchewan	21.7264
Cromer Terminal, Manitoba	19.5305

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
MEDIUM CRUDE PETROLEUM**

DELIVERY TO: NANTICOKE, ONTARIO

From Canadian Origination Point	Committed Rates
Edmonton Terminal, Alberta	29.8360
Hardisty Terminal, Alberta	28.2109
Cromer Terminal, Manitoba	20.9315

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
HEAVY CRUDE PETROLEUM**

DELIVERY TO: NANTICOKE, ONTARIO

From Canadian Origination Point	Committed Rates
Edmonton Terminal, Alberta	33.4162
Hardisty Terminal, Alberta	31.5850
Kerrobert Station, Saskatchewan	29.7433
Regina Terminal, Saskatchewan	26.0495
Cromer Terminal, Manitoba	23.3811

[I] All rates on this page have increased.

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
LIGHT CRUDE PETROLEUM**

DELIVERY TO: MONTREAL, QUEBEC

From Canadian Origination Point	Committed Rates	Uncommitted Rates
Edmonton Terminal, Alberta	34.0723	41.4305
Hardisty Terminal, Alberta	32.5088	39.5287
Kerrobert Station, Saskatchewan	30.8169	37.4703
Regina Terminal, Saskatchewan	27.5612	33.5098
Cromer Terminal, Manitoba	25.2169	30.6580

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
MEDIUM CRUDE PETROLEUM**

DELIVERY TO: MONTREAL, QUEBEC

From Canadian Origination Point	Committed Rates	Uncommitted Rates
Edmonton Terminal, Alberta	36.6473	44.5693
Hardisty Terminal, Alberta	34.8923	42.4338
Cromer Terminal, Manitoba	27.0903	32.9402

**JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER
HEAVY CRUDE PETROLEUM**

DELIVERY TO: MONTREAL, QUEBEC

From Canadian Origination Point	Committed Rates	Uncommitted Rates
Edmonton Terminal, Alberta	41.0894	49.9841
Hardisty Terminal, Alberta	39.0790	47.5367
Kerrobert Station, Saskatchewan	37.1324	45.1672
Regina Terminal, Saskatchewan	33.1753	40.3502
Cromer Terminal, Manitoba	30.2566	36.7972

NOTES:

TANKAGE: For the applicable Tankage charges in Canada refer to Enbridge Pipelines Inc's NEB Tariff No. [W] ~~345 354~~, and Enbridge Pipelines Inc's NEB RT Tariff No. [W] ~~14-2~~ 14-3.

[N] **ABANDONMENT SURCHARGE:** The transportation rates include Abandonment Surcharges for transmission and terminalling pursuant to National Energy Board Decision MH-001-2013 and Order MO-030-2014 for movements of all commodities. Movements to Nanticoke, Ontario incur both a receipt and delivery terminalling Abandonment Surcharge. Movements to Montreal, Quebec incur a receipt terminalling Abandonment Surcharge.

JOINT ROUTING:

Receipt Points in the provinces of Alberta, Saskatchewan, Manitoba to delivery points in the province of Quebec.

Enbridge Pipelines Inc. – Edmonton or Hardisty, Alberta; Kerrobert or Regina, Saskatchewan; or Cromer, Manitoba to the International Border near Gretna, Manitoba, connecting to;

Enbridge Pipelines Inc. – Nanticoke, Ontario or Montreal, Quebec.

EXCEPTIONS:

For exceptions to Enbridge Pipelines Inc., Rules and Regulations and Enbridge Energy, Limited Partnership, Rules and Regulations, see the following:

- 1) **Exception to Enbridge Energy, Limited Partnership's Rules and Regulations FERC No. [W] ~~41-6.0 41.9.0~~ Item 9 (h) and Line 9 Crude Petroleum Rules and Regulations NEB No. 350 Item 9 (i), and clarification to Canadian Local Tolls Tariff NEB No. [W] ~~345 354~~.** For the purposes of this international joint tariff, Enbridge Pipelines Inc. shall collect in kind a percentage, in the amount of 1/10th of 1 percent of all Crude Petroleum physically delivered to shippers at Nanticoke, Ontario and 3/20th of 1 percent of all Crude Petroleum physically delivered to shippers at Montreal, Quebec.
- 2) **Exception to Enbridge Energy, Limited Partnership's Rules and Regulations FERC No. [W] ~~41-6.0 41.9.0~~ Item 7 (a).** For the purposes of this international joint tariff, Enbridge Pipelines Inc. shall charge a shipper the rate for transportation of Crude Petroleum that is in effect on the date of delivery at the designated Regular Delivery Point for such Crude Petroleum.

SYMBOLS:

[C] – Cancel

[I] – Increase

[N] – New

[W] – Change in wording only

Enbridge Pipelines Inc. and Enbridge Energy, LP
IJT Joint Transportation Rates¹
Worksheet Supporting NEB Tariff No. 357 and FERC No. 1.1.0

JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER								
Committed Rates								
TO	FROM	Commodity	TOLL (\$/m3)					
			NEB 348 FERC No. 1.0.0 Escalated Transmission & Terminalling	CTS Section 20.1 Surcharge	OAS True-up	Line 5 Claim True-up	Abandonment Surcharge	Total NEB 357 FERC No. 1.1.0
			(A)	(B)	(C)	(D)	(E)	(F) = A+B+C+D+E
Nanticoke, Ontario	Edmonton, Alberta	LGT	27.3544	0.2044	(0.0724)	0.0065	0.2961	27.7890
	Hardisty, Alberta		25.8731	0.2044	(0.0641)	0.0057	0.2627	26.2818
	Kerrobert, Saskatchewan		24.3835	0.2044	(0.0557)	0.0050	0.2291	24.7663
	Regina, Saskatchewan		21.3957	0.2044	(0.0390)	0.0035	0.1618	21.7264
	Cromer, Manitoba		19.2374	0.2044	(0.0269)	0.0024	0.1132	19.5305
	Edmonton, Alberta	MED	29.3902	0.2208	(0.0781)	0.0070	0.2961	29.8360
	Hardisty, Alberta		27.7904	0.2208	(0.0692)	0.0062	0.2627	28.2109
	Cromer, Manitoba		20.6239	0.2208	(0.0290)	0.0026	0.1132	20.9315
	Edmonton, Alberta	HVY	32.9511	0.2494	(0.0883)	0.0079	0.2961	33.4162
	Hardisty, Alberta		31.1440	0.2494	(0.0781)	0.0070	0.2627	31.5850
	Kerrobert, Saskatchewan		29.3267	0.2494	(0.0680)	0.0061	0.2291	29.7433
	Regina, Saskatchewan		25.6815	0.2494	(0.0475)	0.0043	0.1618	26.0495
Cromer, Manitoba	23.0484		0.2494	(0.0328)	0.0029	0.1132	23.3811	
Montreal, Quebec	Edmonton, Alberta	LGT	33.4463	0.2044	(0.0596)	0.0053	0.4759	34.0723
	Hardisty, Alberta		31.9086	0.2044	(0.0513)	0.0046	0.4425	32.5088
	Kerrobert, Saskatchewan		30.2427	0.2044	(0.0430)	0.0039	0.4089	30.8169
	Regina, Saskatchewan		27.0390	0.2044	(0.0262)	0.0024	0.3416	27.5612
	Cromer, Manitoba		24.7324	0.2044	(0.0141)	0.0013	0.2929	25.2169
	Edmonton, Alberta	MED	36.0092	0.2208	(0.0644)	0.0058	0.4759	36.6473
	Hardisty, Alberta		34.2794	0.2208	(0.0554)	0.0050	0.4425	34.8923
	Cromer, Manitoba		26.5905	0.2208	(0.0153)	0.0014	0.2929	27.0903
	Edmonton, Alberta	HVY	40.4303	0.2494	(0.0727)	0.0065	0.4759	41.0894
	Hardisty, Alberta		38.4441	0.2494	(0.0626)	0.0056	0.4425	39.0790
	Kerrobert, Saskatchewan		36.5218	0.2494	(0.0524)	0.0047	0.4089	37.1324
	Regina, Saskatchewan		32.6134	0.2494	(0.0320)	0.0029	0.3416	33.1753
Cromer, Manitoba	29.7300		0.2494	(0.0172)	0.0015	0.2929	30.2566	

¹ International Joint Tolls in U.S. Dollars per Cubic Meter

JOINT TRANSPORTATION RATES IN US DOLLARS PER CUBIC METER								
Uncommitted Rates								
TO	FROM	Commodity	TOLL (\$/m3)					
			NEB 348 FERC No. 1.0.0 Escalated Transmission & Terminalling	CTS Section 20.1 Surcharge	OAS True-up	Line 5 Claim True-up	Abandonment Surcharge	Total NEB 357 FERC No. 1.1.0
			(A)	(B)	(C)	(D)	(E)	(F) = A+B+C+D+E
Montreal, Quebec	Edmonton, Alberta	LGT	40.8045	0.2044	(0.0596)	0.0053	0.4759	41.4305
	Hardisty, Alberta		38.9285	0.2044	(0.0513)	0.0046	0.4425	39.5287
	Kerrobert, Saskatchewan		36.8961	0.2044	(0.0430)	0.0039	0.4089	37.4703
	Regina, Saskatchewan		32.9876	0.2044	(0.0262)	0.0024	0.3416	33.5098
	Cromer, Manitoba		30.1735	0.2044	(0.0141)	0.0013	0.2929	30.6580
	Edmonton, Alberta	MED	43.9312	0.2208	(0.0644)	0.0058	0.4759	44.5693
	Hardisty, Alberta		41.8209	0.2208	(0.0554)	0.0050	0.4425	42.4338
	Cromer, Manitoba		32.4404	0.2208	(0.0153)	0.0014	0.2929	32.9402
	Edmonton, Alberta	HVY	49.3250	0.2494	(0.0727)	0.0065	0.4759	49.9841
	Hardisty, Alberta		46.9018	0.2494	(0.0626)	0.0056	0.4425	47.5367
	Kerrobert, Saskatchewan		44.5566	0.2494	(0.0524)	0.0047	0.4089	45.1672
	Regina, Saskatchewan		39.7883	0.2494	(0.0320)	0.0029	0.3416	40.3502
Cromer, Manitoba	36.2706		0.2494	(0.0172)	0.0015	0.2929	36.7972	

IJT Joint Rate versus Combination of Local Rates for Light Crude Petroleum
 Enbridge Pipelines Inc. and Enbridge Energy, LP International Joint Rates
NEB Tariff No. 354 + FERC Tariff No. 43.14.0 + NEB Tariff No. 356 versus FERC Tariff No. 1.1.0
 Effective: January 1, 2015

Line No.	From	To	Canadian Local Toll per NEB No. 354 (US\$/M ³)	Proposed US Local Rate per FERC 43.14.0 (US\$/M ³)	Line 9 Local Toll per NEB No. 356 (US\$/M ³)	Total of Local Rates (US\$/M ³)	Uncommitted IJT per NEB No. 357/FERC No. 1.1.0 (US\$/M ³)	Discount Resulting from Joint Rate (US\$/M ³)
(a)	(b)	(c)	(d)	(e)	(f)	(g) = (d) +(e) +(f)	(h)	(i) = (h) - (g)
1	Edmonton	Montreal	13.7400	15.3537	15.9606	45.0543	41.4305	(3.6238)
2	Hardisty	Montreal	12.1870	15.3537	15.9606	43.5013	39.5287	(3.9726)
3	Kerrobert	Montreal	10.6230	15.3537	15.9606	41.9373	37.4703	(4.4670)
4	Regina	Montreal	7.4860	15.3537	15.9606	38.8003	33.5098	(5.2905)
5	Cromer	Montreal	5.2200	15.3537	15.9606	36.5343	30.6580	(5.8763)

IJT Joint Rate versus Combination of Local Rates for Medium Crude Petroleum
 Enbridge Pipelines Inc. and Enbridge Energy, LP International Joint Rates
NEB Tariff No. 354 + FERC Tariff No. 43.14.0 + NEB Tariff No. 356 versus FERC Tariff No. 1.1.0
 Effective: January 1, 2015

Line No.	From	To	Canadian Local Toll per NEB No. 354 (US\$/M ³)	Proposed US Local Rate per FERC 43.14.0 (US\$/M ³)	Line 9 Local Toll per NEB No. 356 (US\$/M ³)	Total of Local Rates (US\$/M ³)	Uncommitted IJT per NEB No. 357/FERC No. 1.1.0 (US\$/M ³)	Discount Resulting from Joint Rate (US\$/M ³)
(a)	(b)	(c)	(d)	(e)	(f)	(g) = (d) +(e) +(f)	(h)	(i) = (h) - (g)
1	Edmonton	Montreal	14.7350	16.5496	17.2186	48.5032	44.5693	(3.9339)
2	Hardisty	Montreal	13.0600	16.5496	17.2186	46.8282	42.4338	(4.3944)
3	Cromer	Montreal	5.5480	16.5496	17.2186	39.3162	32.9402	(6.3760)

IJT Joint Rate versus Combination of Local Rates for Heavy Crude Petroleum
 Enbridge Pipelines Inc. and Enbridge Energy, LP International Joint Rates
NEB Tariff No. 354 + FERC Tariff No. 43.14.0 + NEB Tariff No. 356 versus FERC Tariff No. 1.1.0
 Effective: January 1, 2015

Line No.	From	To	Canadian Local Toll per NEB No. 354 (US\$/M ³)	Proposed US Local Rate per FERC 43.14.0 (US\$/M ³)	Line 9 Local Toll per NEB No. 356 (US\$/M ³)	Total of Local Rates (US\$/M ³)	Uncommitted IJT per NEB No. 357/FERC No. 1.1.0 (US\$/M ³)	Discount Resulting from Joint Rate (US\$/M ³)
(a)	(b)	(c)	(d)	(e)	(f)	(g) = (d) +(e) +(f)	(h)	(i) = (h) - (g)
1	Edmonton	Montreal	16.4780	18.6405	19.4206	54.5391	49.9841	(4.5550)
2	Hardisty	Montreal	14.5880	18.6405	19.4206	52.6491	47.5367	(5.1124)
3	Kerrobert	Montreal	12.6890	18.6405	19.4206	50.7501	45.1672	(5.5829)
4	Regina	Montreal	8.8800	18.6405	19.4206	46.9411	40.3502	(6.5909)
5	Cromer	Montreal	6.1270	18.6405	19.4206	44.1881	36.7972	(7.3909)

Enbridge Pipelines Inc. and Enbridge Energy, LP
Breakdown of Abandonment Surcharge¹
Worksheet Supporting NEB Tariff No. 357 and FERC No. 1.1.0

ABANDONMENT SURCHARGE IN US DOLLARS PER CUBIC METER					
Committed Rates					
TO	FROM	Commodity	TOLL (\$/m3)		
			Abandonment Surcharge Transmission	Abandonment Surcharge Terminalling	Total Abandonment Surcharge
			(A)	(B)	(C)=A+B
Nanticoke, Ontario	Edmonton, Alberta	LGT	0.2911	0.0050	0.2961
	Hardisty, Alberta		0.2577	0.0050	0.2627
	Kerrobert, Saskatchewan		0.2241	0.0050	0.2291
	Regina, Saskatchewan		0.1568	0.0050	0.1618
	Cromer, Manitoba		0.1082	0.0050	0.1132
	Edmonton, Alberta	MED	0.2911	0.0050	0.2961
	Hardisty, Alberta		0.2577	0.0050	0.2627
	Cromer, Manitoba		0.1082	0.0050	0.1132
	Edmonton, Alberta	HVY	0.2911	0.0050	0.2961
	Hardisty, Alberta		0.2577	0.0050	0.2627
	Kerrobert, Saskatchewan		0.2241	0.0050	0.2291
	Regina, Saskatchewan		0.1568	0.0050	0.1618
Cromer, Manitoba	0.1082		0.0050	0.1132	
Montreal, Quebec	Edmonton, Alberta	LGT	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Kerrobert, Saskatchewan		0.4064	0.0025	0.4089
	Regina, Saskatchewan		0.3391	0.0025	0.3416
	Cromer, Manitoba		0.2904	0.0025	0.2929
	Edmonton, Alberta	MED	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Cromer, Manitoba		0.2904	0.0025	0.2929
	Edmonton, Alberta	HVY	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Kerrobert, Saskatchewan		0.4064	0.0025	0.4089
	Regina, Saskatchewan		0.3391	0.0025	0.3416
Cromer, Manitoba	0.2904		0.0025	0.2929	

¹ International Joint Tolls in U.S. Dollars per Cubic Meter

ABANDONMENT SURCHARGE IN US DOLLARS PER CUBIC METER
Uncommitted Rates

TO	FROM	Commodity	TOLL (\$/m3)		
			Abandonment Surcharge Transmission	Abandonment Surcharge Terminalling	Total Abandonment Surcharge
			(A)	(B)	(C)=A+B
Montreal, Quebec	Edmonton, Alberta	LGT	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Kerrobert, Saskatchewan		0.4064	0.0025	0.4089
	Regina, Saskatchewan		0.3391	0.0025	0.3416
	Cromer, Manitoba		0.2904	0.0025	0.2929
	Edmonton, Alberta	MED	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Cromer, Manitoba		0.2904	0.0025	0.2929
	Edmonton, Alberta	HVY	0.4734	0.0025	0.4759
	Hardisty, Alberta		0.4400	0.0025	0.4425
	Kerrobert, Saskatchewan		0.4064	0.0025	0.4089
	Regina, Saskatchewan		0.3391	0.0025	0.3416
	Cromer, Manitoba		0.2904	0.0025	0.2929

NATIONAL ENERGY BOARD

RHW-001-2015

ENBRIDGE PIPELINES INC.

LINE 9 TOLLS COMPLAINT

**EVIDENCE OF
SUNCOR ENERGY MARKETING INC.**

ATTACHMENT 2

TRANSPORTATION SERVICES AGREEMENT (TSA)

LINE 9B REVERSAL PROJECT
TRANSPORTATION SERVICES AGREEMENT

THIS TRANSPORTATION SERVICES AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2012 (the "Effective Date"), by and between ENBRIDGE PIPELINES INC., a corporation under the laws of Canada ("Carrier") and _____, a _____ ("Shipper"). Carrier and Shipper are sometimes collectively referred to in this Agreement as the "Parties" or individually referred to as a "Party".

WITNESSETH:

WHEREAS, Carrier proposes to reverse the flow of its existing Line 9 Pipeline so that it flows from Sarnia, Ontario, via Westover, Ontario, to Montreal, Québec (as reversed, the "Pipeline");

WHEREAS, Shipper desires to commit to transport a specified volume of Crude Petroleum on the Pipeline commencing on the In-Service Date, subject to and upon the terms and conditions of this Agreement; and

WHEREAS, in exchange for the commitment by Shipper and other Committed Shippers to transport a specified volume of Crude Petroleum on the Pipeline or pay a deficiency payment for failure to transport, Carrier is willing to arrange for the provision of service on the Pipeline, subject to and upon the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

- 1.01 For the purposes of this Agreement and the Schedules hereto, the following terms shall have the meanings ascribed to them below:

"Actual Shipments" means volumes of Crude Petroleum that originate on the Pipeline at the Interconnection Point and are ultimately delivered at the Selected Delivery Point. All volumes shall be measured at the Selected Delivery Point;

"Affiliate" means, with respect to a Party, any other Person directly or indirectly controlling, controlled by, or under common control with such Party. For the purposes of this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and

policies of any Person whether through the ownership of voting securities or by contract or otherwise;

"Agreement" means this Transportation Services Agreement made between Carrier and Shipper, including the Schedules hereto;

"Aggregate Committed Volumes" means, collectively, the aggregate volume of commitments (including the Committed Volume), measured in bpd, by all Committed Shippers, pursuant to TSAs executed between such shippers and Carrier, as such volume commitments may be modified in accordance with the Open Season Terms;

"Applicable Law" means all applicable laws, statutes, directives, codes, ordinances, rules, regulations, municipal by-laws, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees and policies of any Governmental Authority;

"Applied Carrier Force Majeure Extended Volumes" has the meaning given to it in Section 7.05.3;

"Applied Carrier Force Majeure Initial Volumes" has the meaning given to it in Section 7.05.3;

"Arbitration Act" means the *Arbitration Act* (Alberta) c. A-43, R.S.A. 2000, as amended;

"Available Monthly Capacity" means the capacity of the Pipeline available to transport Crude Petroleum in a given Month, as determined by Carrier;

"bpd" means barrels of Crude Petroleum per day;

"Business Day" means any day other than Saturday, Sunday and any other day when banks are closed for business in Alberta;

"Canadian Origination Point" means: Edmonton, Alberta; Hardisty, Alberta; Kerrobert, Saskatchewan; Regina, Saskatchewan; or Cromer, Manitoba;

"Carrier" has the meaning given to it in the preamble to this Agreement;

"Carrier Approvals" means all governmental and regulatory authorizations, orders, certificates, licenses, permits and approvals, required or, in the sole discretion of Carrier acting reasonably, desirable in connection with the Pipeline or ownership or operation thereof;

"Carrier Default" has the meaning given to it in Section 9.03;

"Carrier Default Notice" has the meaning given to it in Section 9.04;

"Carrier Force Majeure" means an event of Force Majeure that prevents Carrier from providing all or part of the Services;

"Carrier Force Majeure Extended Volumes" has the meaning given to it in Section 7.05.2;

"Carrier Force Majeure Initial Volumes" has the meaning given to it in Section 7.05.2;

"Carrier Force Majeure Period" means any period when an event of Carrier Force Majeure prevents Carrier from providing all or a portion of the Services to Shipper.

"Charges" means all of the financial and other obligations that could reasonably become payable or arise under the terms of this Agreement, the Toll Tariffs and the Rules Tariff, including the payment of transportation charges, Monthly Deficiency Payments, deficient Linefill, equalization obligations, the value of Shipper's balance positions and all performance obligations of Shipper under this Agreement or the Rules Tariff;

"Committed Shippers" means shippers (including Shipper) that have entered into TSAs;

"Committed Toll" means the tolls payable for Services relating to Committed Volumes pursuant to the Toll Tariffs in effect;

"Committed Volume" means Shipper's bpd volume commitment set forth in Schedule A attached hereto, subject to adjustment in accordance with Section 21.11. The volume commitment shall not be less than 10,000 bpd;

"Credit Rating" means, in respect of the Shipper or its Guarantor, a credit rating assigned by one of the Rating Agencies to its senior unsecured long term debt that is not supported by third party credit enhancement. In the event the Shipper or its Guarantor is assigned a credit rating by two (2) or more Rating Agencies, then the lowest credit rating assigned by the Rating Agencies will be used in determining the "Credit Rating". If a credit rating for senior unsecured long term debt is not available in respect of the Shipper or its Guarantor, the Carrier may, in its sole discretion, use an issuer rating assigned by one or more of the Rating Agencies for the purposes of determining the Credit Rating. Or if Shipper or its Guarantor is not rated by one or more of the Rating Agencies, the credit rating assigned by Carrier, as determined by Carrier in its sole discretion, based on Carrier's review of the Shipper or its Guarantor's Financial Information.

"Crude Petroleum" has the meaning given to it in the Rules Tariff;

"Default Capacity" has the meaning given to it in Section 9.02.3;

"Deficiency Toll" has the meaning given to it in Section 7.02;

"Delivery Points" means the delivery points at Westover, Ontario and Montreal, Québec provided for in the Toll Tariffs;

"Dispute Notice" has the meaning given to it in Section 13.01;

"Effective Date" has the meaning given to it in the preamble to this Agreement;

"Enbridge Mainline" has the meaning given to it in the Competitive Toll Settlement dated July 1, 2011;

"Enbridge Tariff" has the meaning given to it in the Competitive Toll Settlement dated July 1, 2011;

"ETA" means *Excise Tax Act* (Canada);

"Extended Term" has the meaning given to it in Section 5.03;

"Financial Assurance Period" means the lesser of sixty (60) Months or the then remaining Term of this Agreement;

"Financial Assurances" means any Guaranty, letter of credit, amendment or supplement thereto or other credit enhancement provided for in Article 14;

"Financial Information" means audited annual financial statements and accountant's prepared quarterly financial statements provided no less than annually by Shipper or its Guarantor that will allow Carrier to determine Shipper's capacity to perform its Obligations during the Financial Assurances Period or its Guarantor's ability to guarantee the Shipper's Obligations;

"Force Majeure" means any of the following events: (a) good faith compliance with acts, orders, regulations, or requests of any Governmental Authority having jurisdiction over the subject matter in question or any Person purporting to act therefor that directly affects the ability of a Party to perform an obligation hereunder; (b) delays in obtaining Carrier Approvals; (c) insurrections, wars, rebellions, civil disturbances, sabotage, the acts of public enemies, blockades, epidemics, riots, strikes, lockouts or labor difficulties; (d) severe, unusual or unexpected weather conditions and actions of the elements, including earthquakes, floods, or landslides; (e) accidental disruption or breakdown of a Person's transportation facilities, including the inability to obtain electric power, water or fuel directly associated with any such disruption and breakdown; (f)

fires; (g) explosions; (h) breakdowns or failure of pipe, plant, machinery or equipment; and (i) any other cause that is beyond the reasonable control of a Party, whether or not of the same class or kind, that prevents a Party from performing its obligations;

"GDPP" means the annual average Canada Gross Domestic Product at Market Prices Index, published by Statistics Canada on or about February 28th of each year (Catalogue No. 13-019-X "Implicit price indexes, gross domestic product") for the prior year;

"GDPP Index" in any Year means the ratio of the annual change in GDPP over the GDPP for the prior year, expressed as a percentage. For example, the GDPP Index applicable for 2015 would be $(\text{GDPP for 2014} - \text{GDPP for 2013}) / \text{GDPP for 2013}$;

"Governmental Authority" means any government, any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body (federal, provincial or local or, in the case of an arbitral body, whether governmental, public or private);

"GST" means the federal Goods and Services Tax and any fully harmonized federal/provincial sales tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada);

"Guarantor" has the meaning given to it in Article 14;

"Guaranty" has the meaning given to it in Article 14;

"Heavy Crude Petroleum" has the meaning given to it in the Enbridge Tariff;

"Import and Export Law" means all Applicable Law concerning economic sanctions, trade embargoes, export and imports, and similar matters;

"Initial Term" has the meaning given to it in Section 5.01;

"In-Service Date" has the meaning given to it in Section 5.02;

"Insolvency Event" means, in relation to any Party, the occurrence of one or more of the following events: (a) Party ceases to meet its liabilities generally as they become due or gives notice to any of its creditors that it has suspended or is about to suspend payment of its debts generally; (b) a Party institutes or has instituted against it any proceeding under bankruptcy or insolvency laws, including, the *Bankruptcy and Insolvency Act* (Canada), the United States Bankruptcy Code, and the *Companies' Creditors' Arrangement Act* (Canada) and, in the case that such a proceeding is instituted against it, such proceeding is not dismissed, discharged or

stayed within thirty (30) days of being instituted; (c) a Party seeks relief under any companies or corporations legislation respecting creditor's rights, including, the *Canada Business Corporations Act* or similar provincial legislation; (d) a Party takes any steps for, or becomes the subject of any proceeding for, liquidation, dissolution, winding up or other termination of its existence (other than in its regular course of business where a successor receives substantially all of its assets and agrees to be bound by this Agreement); and, in the case that such a proceeding is instituted against it, such proceeding is not dismissed, discharged, or stayed within fifteen (15) days of being instituted; or (e) a receiver or receiver manager of all or any part of the assets of a Party is appointed by any of its creditors or by a court of competent jurisdiction and such receiver or receiver manager is not discharged or removed within fifteen (15) days;

"Interconnection Point" means the interconnection point between the Pipeline and the Enbridge Mainline terminal, at Sarnia, Ontario;

"Letter of Credit" means an irrevocable non-transferable standby letter of credit issued by a banking, financial or other similar institution, which has a Senior unsecured debt rating of at least "A-" by Standard & Poor's Rating Group, a division of McGraw Hill, Inc., or "A3" by Moody's Investors Service, Inc., or "A (low)" by Dominion Bond Rating Service Limited in a form and substance acceptable to the Carrier, in its sole discretion, unless Carrier and Shipper have entered into an agreement as to the form and substance of the Letter of Credit in which such agreement shall control. For greater certainty, where such banking, financial or other similar institution is rated by more than one agency, the lowest credit rating will apply;

"Light Crude Petroleum" has the meaning given to it in the Enbridge Tariff;

"Line 9 International Joint Tariff" has the meaning given to it in Section 6.02;

"Linefill" means the total quantity of Crude Petroleum, including the volume of Crude Petroleum required by Carrier for the efficient operation of the Pipeline, needed to occupy the physical space within the Pipeline and any applicable facilities;

"LMCI" means the NEB Land Matters Consultation Initiative (including, but not limited to RH-2-2008 and MH-001-2012) and the decisions, directions and orders issued in those proceedings, and any proceeding established or NEB decisions made in connection with the RH-2-2008 or MH-001-2012 hearings;

"Make-up Volumes" has the meaning given to it in Section 7.04;

"Medium Crude Petroleum" has the meaning given to it in the Enbridge Tariff;

"Minimum Credit Ratings" means:

<u>Rating Agency</u>	<u>Minimum Credit Rating</u>
Moody's Investor Services	Baa3
Standard & Poor's	BBB-
Dominion Bond Rating Service	BBB (low)

"Month" means the period commencing at 07:00 MST on the In-Service Date and ending at 07:00 MST on the first day of the full calendar month that next follows the In-Service Date, and each successive month thereafter;

"Monthly Deficiency Payment" has the meaning given to it in Section 7.02;

"Monthly Deficiency Quantity" has the meaning given to it in Section 7.01;

"MST" means Mountain Standard Time;

"NEB" means the Canadian National Energy Board and any lawful successor agency thereto;

"Open Season Terms" means the Open Season Features and Terms for the Line 9 Phase II Reversal Project dated May 17, 2012, as amended or supplemented from time to time;

"Origination Point" means a Canadian Origination Point or any receipt point which Carrier may designate in the future;

"Party" or "Parties" has the meaning given to such terms in the preamble to this Agreement;

"Person" means an individual, partnership, limited liability company, corporation, trust, estate, unincorporated association, nominee, joint venture, or other entity;

"Pipeline" has the meaning given to it in the Whereas clauses;

"Prime Rate" means the rate of interest used by Royal Bank of Canada, Main Branch, Calgary, Alberta as a reference for purposes of determining rates of interest charges by it on Canadian Dollar commercial demand loans made by it to its preferred customers in Canada which is quoted by such bank, from time to time, as its "prime rate";

"Proportionate Share" means a percentage equal to (a) the Committed Volume divided by (b) the Aggregate Committed Volumes (including the Committed Volume);

"Rating Agencies" means Moody's Investor Services, Inc., Standard & Poor's Rating Services (a division of McGraw-Hill, Inc.) and Dominion Bond Rating Service;

"Rules Tariff" means Carrier's rules and regulations tariff(s) for the Pipeline on file with the NEB and in effect, as such rules and regulations tariff(s) may be amended or supplemented by Carrier from time to time in accordance with Part IV of the *National Energy Board Act*. The Rules Tariffs may include joint tariff rules or international joint tariff rules;

"Selected Delivery Point" means a Delivery Point selected by Shipper in Schedule A attached hereto;

"Services" means the transportation on the Pipeline of Crude Petroleum for a shipper's account from the Interconnection Point or Uncommitted Volume Receipt Point, as applicable, and delivery of such Crude Petroleum to the Delivery Points specified in shipper's nomination;

"Shipper" has the meaning given to it in the preamble to this Agreement;

"Shipper Default" has the meaning given to it in Section 9.01;

"Shipper Default Notice" has the meaning given to it in Section 9.02.1;

"QST" means the Quebec sales tax imposed pursuant to *An Act Respecting the Quebec Sales Tax*;

"QSTA" means *An Act Respecting the Quebec Sales Tax*;

"Taxes" means GST, QST and any similar sales or value-added tax which may be imposed now or in the future by any Governmental Authority but shall not include income taxes;

"Term" has the meaning given to it in Section 5.03;

"Toll Revision Proceeding" has the meaning given to it in Section 17.03;

"Toll Tariffs" means Carrier's toll tariff(s) for the Pipeline, on file and in effect with the NEB, as such toll tariff(s) may be amended or supplemented from time to time. The Toll Tariffs may include international joint tariffs or joint tariffs;

"TSA" means a transportation services agreement executed by a Committed Shipper with Carrier with respect to the Pipeline pursuant to the open season described in the Open Season Terms that commenced on May 17, 2012;

"Uncommitted Tolls" means the tolls payable for Services relating to Uncommitted Volumes pursuant to the Toll Tariffs in effect;

"Uncommitted Volume Receipt Point" means the receipt point for Uncommitted Volumes at Sarnia, Ontario provided for in the Toll Tariffs;

"Uncommitted Volumes" means volumes of Crude Petroleum received in a Month by Carrier for transportation on the Pipeline (a) for any shipper that is not a Committed Shipper, (b) for a Committed Shipper, that are nominated for delivery to the Selected Delivery Point, but that are in excess of the product of Committed Shipper's Committed Volume for that Selected Delivery Point and the number of days in the Month and that are not Make-up Volumes, and (c) for a Committed Shipper, that are nominated to a Delivery Point that is not the Selected Delivery Point;

"Year" means, as the context requires:

- (a) the period commencing at 07:00 MST on January 1 and ending at 07:00 MST on January 1 of the following calendar year;
- (b) the period beginning on the In-Service Date and ending at 07:00 MST on the January 1 that next follows the In-Service Date; or
- (c) the period beginning at 07:00 MST on January 1 of the calendar year in which the Term ends and ending on the last day of the Term.

ARTICLE 2 CARRIER OBLIGATIONS

- 2.01 Carrier's Obligations for In-Service Date. Carrier shall use commercially reasonable efforts to cause the In-Service Date for the Pipeline to occur during the first quarter of 2014. Carrier shall also use commercially reasonable efforts to establish and maintain sufficient capacity on the Enbridge Mainline, as required, to deliver the Aggregate Committed Volumes to the Interconnection Point in addition to other existing and forecast volumes to be transported on the Enbridge Mainline to other delivery points.
- 2.02 Provision of Services. Subject to the provisions of this Agreement, Carrier shall provide Services for the Committed Volume in accordance with, and subject to, the Toll Tariffs and the Rules Tariff, which are incorporated herein by reference and constitute part of this Agreement. This Section 2.02 shall not apply during any

period when Shipper is in breach of its material obligations under this Agreement, the Toll Tariffs or the Rules Tariff.

- 2.03 Terminalling and Tankage. Carrier will provide tankage at the Interconnection Point for the purpose of aggregation, sequencing and/or staging of batches for operational purposes but will provide no other terminalling or tankage facilities at the Uncommitted Volume Receipt Point, the Interconnection Point, the Delivery Points or any intermediate interconnection point as part of the Services.

ARTICLE 3 SHIPPER OBLIGATIONS AND REPRESENTATIONS

- 3.01 Ship or Pay Obligation.

3.01.1 Shipper agrees that, from the In-Service Date through the end of the Term, it shall ship on the Pipeline from the Interconnection Point to the Selected Delivery Point at the applicable Committed Toll, or otherwise pay the applicable Monthly Deficiency Payments for, at least the Committed Volume set forth in Schedule A.

3.01.2 To the extent Shipper selects a grade of Crude Petroleum for its Committed Volume in Schedule A, Shipper may ship another grade of Crude Petroleum in satisfaction of its obligation in Section 3.01.1 (and shall pay the applicable Committed Toll for the grade of Crude Petroleum actually shipped), subject to the terms of this Agreement, the Toll Tariffs and the Rules Tariff.

- 3.02 Rules Tariff. Shipper shall comply with the Rules Tariff. A pro forma of the Rules Tariff, materially in the form expected to be filed by Carrier with the NEB, is attached hereto as Schedule C. The Rules Tariff is subject to amendment by Carrier in accordance with Section 21.11.

- 3.03 Linefill. Regardless of whether or not Shipper makes Actual Shipments, Shipper shall provide (a) prior to the In-Service Date, its Proportionate Share of Linefill, in amounts (which may be in one or more installments), and at times, as determined by Carrier and specified in a written notice given by Carrier to Shipper at least ninety (90) days prior to the due date for the delivery of such Linefill, and (b) from and after the In-Service Date, its share of Linefill as required by the Rules Tariff. Carrier will consult with Committed Shippers prior to providing the written notice regarding the provision of Linefill under clause (a) above. If Shipper fails to comply with any of its obligations under this Section 3.03, in addition to Carrier's other rights and remedies in connection with such failure, Carrier shall be entitled to supply such Linefill and Shipper shall reimburse Carrier for the cost thereof on demand. Carrier shall return to Shipper all of Shipper's Linefill which was delivered to Carrier pursuant to this Section 3.03 or the Rule Tariff not later than

sixty (60) days following the expiration of the Term or any earlier termination of this Agreement.

3.04 Shipper Permits.

3.04.1 Shipper shall be responsible for obtaining and maintaining all required Shipper permits in connection with shipments on the Pipeline and it shall not, without limitation, be a defense to any or all of Shipper's obligations and liabilities hereunder that it does not have, or is unable to obtain or maintain, all such Shipper permits.

3.04.2 Shipper shall indemnify, hold harmless and reimburse Carrier for any and all duties, taxes, penalties, fines interest, costs and/or other amounts incurred by or which become payable by Carrier as a result of Shipper's failure to comply with its obligations under this Section 3.04.

3.05 Shipper Representations and Warranties. Shipper hereby represents and warrants to Carrier as follows, and acknowledges that Carrier is relying upon these representations and warranties in connection with entering into this Agreement:

- (a) Existence and Power: Shipper is a corporation, limited liability company or partnership incorporated or formed in accordance with, and is subsisting under, the laws of the jurisdiction of its incorporation or formation, and has all requisite corporate, limited liability company or partnership power and capacity to enter into and deliver this Agreement and to perform all of its obligations hereunder;
- (b) Authorizations: Shipper has taken all corporate, limited liability company or partnership action necessary to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered by Shipper; and
- (c) Enforceability: This Agreement constitutes a legal, valid and binding obligation of Shipper enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other laws of general application relating to or affecting creditors' rights generally and to general principles of equity.

ARTICLE 4
CONDITIONS PRECEDENT

4.01 Carrier Conditions Precedent. Notwithstanding anything in this Agreement to the contrary, Sections 4.01.1 and 4.01.2 set forth conditions precedent to Carrier's agreements and obligations under this Agreement. If any of these conditions precedent are not satisfied to the satisfaction of Carrier or waived by Carrier, in its

sole discretion, Carrier shall have the right to terminate this Agreement by written notice to Shipper. If this Agreement is terminated pursuant to this Section 4.01, i) Carrier and Shipper shall be released from any and all obligations under this Agreement, other than each Party's obligations in Article 16 hereof, which shall survive such termination, and ii) Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline or this Agreement.

4.01.1 Acceptable Commitments. Receipt of TSAs by Carrier, after any and all adjustments to committed volumes pursuant to: i) the Open Season Terms; ii) this Agreement; and iii) the TSAs, executed by prospective Committed Shippers, committing to ship on the Pipeline, or otherwise pay for the shipment of, such minimum volumes of Crude Petroleum as Carrier shall deem sufficient to support the long-term need and use of the Pipeline. Such determination shall be made by Carrier on or before ninety (90) days following the close of the Open Season or within such time as may be agreed to by all prospective Committed Shippers and Carrier.

4.01.2 Carrier Approvals. Receipt and acceptance by Carrier of all Carrier Approvals, each in form and substance acceptable to Carrier in its sole discretion on or before October 31, 2013.

4.02 Shipper Condition Precedent. It shall be a condition precedent to Shipper's obligations under Section 3.01 and Article 7 that the In-Service Date shall have occurred by October 31, 2014. If this condition precedent is not fulfilled to the satisfaction of Shipper or waived by Shipper, in its sole discretion, then provided Shipper is not in breach of Section 3.03 hereof, Shipper shall have the right to terminate this Agreement by providing written notice to Carrier by November 15, 2014. If this Agreement is terminated pursuant to this Section 4.02, i) Carrier and Shipper shall be released from any and all obligations under this Agreement, and ii) Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline or this Agreement.

ARTICLE 5 TERM

5.01 Initial Term. This Agreement will take effect and become binding on the Parties as of the Effective Date, subject to Article 4. All of Shipper's obligations and liabilities under this Agreement shall apply and be effective as of the Effective Date, except that Shipper's obligations under Section 3.01 and Article 7 shall not commence until the In-Service Date. Subject to extension in accordance with Section 5.03, all of Shipper's obligations and liabilities under this Agreement shall continue through the last day of the calendar month in which the In-Service Date falls and thereafter for one hundred-twenty (120) Months (the "Initial Term").

5.02 In-Service Date. The Parties agree that the "In-Service Date" will be the date specified in a written notice given by Carrier to Shipper, provided that Carrier has

obtained all necessary Carrier Approvals for the operation of the Pipeline and the Pipeline is capable of shipping the Committed Volume. Carrier shall provide an estimate of the In-Service Date at least six (6) months prior to, and final confirmation of the In-Service Date at least 30 days prior to, the In-Service Date. As of the Effective Date, it is estimated that the In-Service Date will occur in the first quarter of 2014. Each of the Parties acknowledges and agrees that there are a number of contingencies that may affect the actual In-Service Date. Accordingly, subject to Section 2.01 and 4.02, neither Party will have any right or remedy against the other Party if the In-Service Date occur earlier or later than the estimated In-Service Date.

- 5.03 Extended Term. Provided a Shipper Default shall not have occurred and be continuing as of the date of giving notice of extension, Shipper shall have a single right to extend the term of this Agreement for sixty (60) Months (the "Extended Term") on the terms and conditions of this Agreement (excluding this Section 5.03). The Committed Tolls and Uncommitted Tolls shall continue to be adjusted in accordance with Article 6 during such extension period. Shipper shall exercise such right solely by giving to Carrier written notice of such exercise by no later than two (2) Years prior to the last day of its Initial Term, time being of the essence. "Term" shall mean the Initial Term, as extended pursuant to this Section 5.03.

ARTICLE 6 TOLLS

- 6.01 Tolls. Shipper shall pay tolls for all volumes of Crude Petroleum transported by Shipper on the Pipeline in accordance with the Toll Tariffs and the Rules Tariff, which shall, to the extent permitted by Applicable Law, conform to this Article 6.
- 6.02 Tolls for Committed Volumes. To the extent permitted by Applicable Law, for Actual Shipments of Committed Volumes, Shipper shall pay the per barrel Committed Toll under a Line 9 international joint tariff for Committed Volumes (the "Line 9 International Joint Tariff"). The applicable initial committed tolls are set forth in Schedule B attached hereto. Starting after January 1, 2013, and except as provided in Section 6.04, the Committed Tolls shall only be adjusted annually, effective July 1 of each Year, by 75% of the GDPP Index multiplied by the Committed Tolls in effect immediately prior to such change.
- 6.03 Toll for Uncommitted Volumes. To the extent permitted by Applicable Law, the per barrel Uncommitted Toll payable by shippers for Actual Shipments of Uncommitted Volumes on the Pipeline shall be the applicable per barrel toll set forth in the Toll Tariffs. Starting after January 1, 2013, and except as provided in Section 6.04, the Uncommitted Tolls shall only be adjusted annually, effective July 1 of each Year, by 75% of the GDPP Index multiplied by the Uncommitted Tolls in effect immediately prior to such change. Uncommitted Tolls will be calculated to provide a premium such that the total Uncommitted Toll from any Canadian Origination Point to Montreal is no more than 22% over the estimated Line 9

International Joint Tariff to Montreal as set forth in Schedule B. Shipper acknowledges that the differential between the Uncommitted Toll and the Committed Toll may change during the Term.

- 6.04 LMCI. All Canadian pipeline assets owned by Enbridge that are regulated by the NEB will be addressed in the LMCI process. The LMCI process will determine the methodology by which costs for abandonment should be collected by a pipeline. Through the LMCI process, whatever abandonment costs the NEB approves for pre-collection from shippers on Line 9, or on other pipelines that may constitute part of an international joint tariff or joint tariffs in connection with the services offered on Line 9, will form part of the standalone costs of Line 9 or such international joint tariff or joint tariffs, if any. The Committed Toll and Uncommitted Toll will be adjusted to include any incremental tolls resulting from an NEB order in relation to LMCI.
- 6.05 Taxes. All tolls, Monthly Deficiency Payments and other payments, Charges and amounts provided for in this Agreement are exclusive of applicable taxes. Each Party shall be responsible for the payment of all Taxes that are due in respect of all amounts payable by it under this Agreement, and any such Tax shall be paid by such Party when and as it is due to be paid under Applicable Law now existing or hereinafter imposed by Applicable Laws. Each Party represents and warrants to the other that it is a registrant and will continue to be a registrant in accordance with the provisions of the ETA and QSTA for the Term. The Parties' respective GST and QST registration numbers, unless changed by notice from a Party which has changed its number to the other Party, are as follows: Carrier GST - 10250 5641RT, QST - 1000870915TQ; Shipper as set forth on Schedule A. All invoices issued by Carrier to the Shipper shall include Carrier's GST and QST registration number and shall separately state applicable GST and QST and any other information required to enable the recovery of such GST and QST as an input tax credit and input tax refund, respectively. Any payments payable under this Agreement to Carrier that are otherwise subject to the deeming rule in section 182 of the ETA and/or in section 318 of QSTA shall be increased by an amount equal to the amount determined by multiplying any such payments by the applicable rate of GST and/or QST.
- 6.06 Invoicing. Carrier shall make reasonable efforts to, on or prior to the 10th Business Day of each Month following the Month in which the In-Service Date occurs, forward to Shipper an invoice for the Charges hereunder for the previous Month. Each such invoice shall be payable by the Shipper not later than the 25th day of the Month in which it was received by the Shipper if received by the Shipper on or before the 10th Business Day of that Month, and otherwise not later than 15 days following Shipper's receipt of the invoice. Failure to pay any amount included in an invoice by the payment due date will result in interest being charged on the unpaid amount at the Prime Rate plus 2%. Such interest shall be calculated and accrue on any outstanding amounts from its payment due date until it is paid in full. When any amount due under any invoice is the subject of a bona fide dispute, Shipper or Carrier (as the case may be) shall immediately provide Dispute Notice

to the other Party of the amount in dispute and the reasons thereof. Shipper shall pay the entire amount due by the payment date. If after settlement of the dispute (either by agreement between the Parties or Dispute Resolution pursuant to Article 13) any amount agreed, adjudged or determined to be repaid shall be deducted from or added to the next invoice together with interest thereon calculated at the Prime Rate, from the date of such payment to the date of repayment or credit.

- 6.07 Governmental Modifications. Notwithstanding any other provision of this Agreement to the contrary, the Parties acknowledge that the tolls payable for all Services are subject to the approval of and modification by the NEB or any other Governmental Authority having jurisdiction.
- 6.08 Most Favoured Nations. Provided a Shipper Default shall not have occurred and be continuing, to the extent permitted by Applicable Law, during the Initial Term, the Carrier shall not offer transportation service on the Pipeline on either a committed or uncommitted basis for an aggregate toll from an Origination Point to the Delivery Point that is less than the then applicable Committed Toll. Alternatively, the Carrier may do so but only if the applicable Committed Toll is reduced commensurately.
- 6.09 Origination Point. For greater certainty, nothing in this Agreement shall prevent Carrier from including additional Origination Points in the future. In the event of such an addition, Carrier shall file the necessary tariffs to provide for transportation from such Origination Points.

ARTICLE 7 DEFICIENCY PAYMENTS

- 7.01 Monthly Deficiency Quantity. For the purposes of this Article 7, the term "Monthly Deficiency Quantity" shall mean the amount by which (a) the Committed Volume, multiplied by (b) the number of days in any given Month, exceeds the Actual Shipments by Shipper on the Pipeline during the same Month.
- 7.02 Monthly Deficiency Payments. Commencing on the applicable In-Service Date, if the Actual Shipments of Shipper in any Month total less than one hundred percent (100%) of (a) the Committed Volume, multiplied by (b) the number of days in that Month other than by reason of a Carrier Default, Shipper shall make a payment to Carrier equal to the Monthly Deficiency Quantity, multiplied by the Deficiency Toll (the "Monthly Deficiency Payment"), in accordance with this Article 7. To the extent permitted by Applicable Law, the "Deficiency Toll" shall mean \$1.35US/bbl initially; provided that after the In-Service Date, Carrier will have the right to increase the Deficiency Toll annually, effective July 1 of each Year, by 75% of the GDPP Index multiplied by the Deficiency Toll in effect immediately prior to such increase; provided, further, that if, in any year of the Term, there is a decrease in the GDPP Index, the Deficiency Toll will not be reduced below \$1.35US/bbl.

- 7.03 Statement of Monthly Deficiency Payment. At the end of any Month when a Monthly Deficiency Payment is owed by Shipper to Carrier pursuant to this Article 7, such Monthly Deficiency Payment will be included as an additional statement to standard transportation Charges billed by Carrier, with payment to be made pursuant to the Rules Tariff. Carrier shall include information with the billing statement sufficient to calculate the Monthly Deficiency Payment.
- 7.04 Make-up Volumes. "Make-up Volumes" shall mean Shipper's Actual Shipments in excess of Committed Volume for which a Monthly Deficiency Payment has been paid.
- 7.04.1 Subject to the last sentence of this Section 7.04, any Monthly Deficiency Payment made by Shipper pursuant to this Article 7 may be applied against the then-applicable Committed Toll for the transportation of Make-up Volumes during the thirty-six (36) Months immediately following the expiration of the applicable Month during which the deficiency occurred (or until any earlier date on which Carrier shall give notice under Section 9.02.2 hereof or the Term shall expire or be earlier terminated).
- 7.04.2 Make-up Volumes shall be accepted for transportation by Carrier in accordance with the prorationing provisions in the Rules Tariff; provided that, notwithstanding anything in the foregoing to the contrary, Shipper shall not be entitled to utilize Make-up Volumes during the continuance of a Shipper Default.
- 7.04.3 Shipper shall pay the then-applicable Committed Toll, less the Deficiency Toll paid, at the time it ships Make-up Volumes. Shipper shall identify in its nomination whether its nominations for volumes in excess of its Committed Volume are Make-up Volumes (and absent such identification such excess volumes shall be deemed not to be Make-up Volumes).
- 7.05 Impact of Carrier Force Majeure.
- 7.05.1 The thirty-six (36) Month period referenced in Section 7.04 shall be extended by any Carrier Force Majeure Period that prevents Carrier from providing all or part of the Services during such thirty-six (36) Month period.
- 7.05.2 If an event of Carrier Force Majeure prevents Carrier from providing all or part of the Services to Shipper, then, commencing on the first day of the Carrier Force Majeure Period and continuing through the earlier of the date the Carrier Force Majeure ends and the ninetieth (90th) day thereof, Shipper shall pay Monthly Deficiency Payments under Section 7.02 even if Carrier was unable to accept all or part of Shipper's Committed Volumes as a result of such Carrier Force Majeure (the volumes not accepted by Carrier as aforesaid for which Shipper is obligated to pay

Monthly Deficiency Payments, the "Carrier Force Majeure Initial Volumes"). Commencing on the ninety-first (91st) continuous day and continuing until the Carrier Force Majeure Period ends, the obligation of Shipper to make Monthly Deficiency Payments under this Agreement shall be suspended in proportion to the percentage of Services that are not provided (the volumes for which Shipper's obligation to pay Monthly Deficiency Payments is suspended as aforesaid, the "Carrier Force Majeure Extended Volumes").

- 7.05.3 In any Month during the Term when there is capacity available on the pipeline, taking into account the terms of the Rules Tariff governing priority of service and apportionment, Shipper shall have the right to make Actual Shipments of volumes in excess of Shipper's Committed Volume during such Month and apply such excess volumes, (a) first to the Carrier Force Majeure Initial Volumes and then (b) to the Carrier Force Majeure Extended Volumes. These excess volumes shall be accepted for transportation by Carrier in accordance with the prorationing provisions in the Rules Tariff. With respect to any such excess volumes applied to the Carrier Force Majeure Initial Volumes, Shipper shall be obligated to pay the then applicable Committed Toll, less the Deficiency Toll paid with respect to such Carrier Force Majeure Initial Volumes, at the time it ships such volumes (such excess volumes, the "Applied Carrier Force Majeure Initial Volumes"). With respect to any such excess volumes applied to the Carrier Force Majeure Extended Volumes, Shipper shall be obligated to pay the then applicable Committed Toll (such excess volumes, the "Applied Carrier Force Majeure Extended Volumes"). Shipper shall identify in its nomination whether its nominations for volumes in excess of its Committed Volume are to be so applied (and absent such identification such excess volumes shall not be so applied).
- 7.05.4 If an event of Carrier Force Majeure prevents Carrier from providing all or part of the Services to Shipper, and Shipper shall not have exercised rights under Section 7.05.3 equal to one hundred percent (100%) of the Carrier Force Majeure Extended Volumes and the Carrier Force Majeure Initial Volumes, the Term of this Agreement shall be extended by the number of days that is equal to the sum of any remaining Carrier Force Majeure Initial Volumes and Carrier Force Majeure Extended Volumes divided by the Committed Volume.
- 7.05.5 During the extension period provided for in Section 7.05.4, Shipper shall be obligated to pay on its Actual Shipments of Committed Volumes (i) the then applicable Committed Toll, less the Deficiency Toll paid on any Carrier Force Majeure Initial Volumes, to the extent such Carrier Force Majeure Initial Volumes shall not have been applied in accordance with Section 7.05.3, and (ii) the then applicable Committed Toll to the extent any Carrier Force Majeure Extended Volumes shall not have been applied in accordance with Section 7.05.3.

- 7.06 Impact of Shipper Force Majeure. If an event of Force Majeure prevents Shipper in whole or in part from delivering or receiving Crude Petroleum, but Carrier's ability to provide Services, or receive and/or deliver Crude Petroleum hereunder is not impaired, the Shipper shall nevertheless be responsible for any and all Monthly Deficiency Payments otherwise payable, provided that the Initial Term or any Renewal Term shall be extended by the lesser of the amount of time that allows Shipper to ship the volume of Crude Petroleum which was not shipped as a result of Shipper Force Majeure or thirty-six (36) Months immediately following the expiration of the Term. Shipper may ship such volumes as Make-Up Volumes, pursuant to Section 7.04 hereof; however, no other rights or privileges with respect to this Agreement shall apply to such extension of the Term.
- 7.07 Under-Nominations. Shipper agrees that in the event that nominations by Shipper and all other Committed Shippers in any Month to the Pipeline total less than the Aggregate Committed Volumes, Carrier shall be entitled to use the unutilized capacity of the Pipeline for volumes nominated by other shippers without any reduction in the Monthly Deficiency Payment payable by Shipper.
- 7.08 Impact of Apportionment. Other than during an event of Carrier Force Majeure, if, in any Month when the Pipeline is not operating at its annual average capacity, the Pipeline shall be in apportionment and the Available Monthly Capacity apportioned to Shipper in accordance with the Rules Tariff, shall be less than its Committed Volume for that Month, and, solely as a result of such prorationing, the Shipper's Actual Shipments are less than its Committed Volume for that Month, the Monthly Deficiency Payment otherwise payable by Shipper for that Month will be waived to the extent of such prorationing.
- 7.09 Impact of Enbridge Mainline Apportionment. If, in any Month (a) Shipper has made a nomination on the Enbridge Mainline to a Delivery Point equal to or greater than its Committed Volumes and Shipper evidences to Carrier's reasonable satisfaction that Shipper is prepared to deliver the nominated volume to the Enbridge Mainline, but (b) Shipper is allocated capacity on the Enbridge Mainline that is less than its Committed Volume as a result of apportionment or for any other reason, then, the Monthly Deficiency Payment otherwise payable by Shipper for that Month will be waived to the extent of the difference between the Committed Volume and the capacity allocated to Shipper on the Enbridge Mainline to the Delivery Points.
- 7.10 Impact of Shipper Defaults. Shipper acknowledges and agrees that it shall be obligated to pay the Monthly Deficiency Payment during any period when Carrier does not provide Services because of a default by Shipper.
- 7.11 Delivery to downstream Delivery Point. In the event the Shipper's selected Delivery Point for its Committed Volume in a Month is upstream of Montreal, and a Shipper Force Majeure or a shutdown at a refinery that is directly connected to the Pipeline or that receives or processes Crude Petroleum shipped through the Pipeline is occurring which prevents Shipper in whole or in part from receiving

Crude Petroleum at its selected Delivery Point, Shipper may, for that Month, elect to ship (subject to available capacity) a volume of Crude Petroleum up to its Committed Volume to a Delivery Point that is downstream of the selected Delivery Point. Shipper shall pay to the Carrier the then applicable Committed Toll for Actual Shipments to such downstream Delivery Point. For clarity, the Shipper shall remain obligated to pay the Monthly Deficiency Payment on any shortfall between (i) the product of its Committed Volume and the number of days in such Month; and (ii) the Actual Shipments in such Month.

ARTICLE 8 APPORTIONMENT AND PRIORITY SERVICE

- 8.01 Apportionment. To the extent permitted by Applicable Law, the Carrier shall provide for priority service for Committed Volumes. The terms of the Rules Tariff governing priority of service and apportionment shall apply to Shipper's Committed Volume under this Agreement and any other transportation service provided to Shipper notwithstanding any other provision of this Agreement to the contrary.

ARTICLE 9 DEFAULTS AND REMEDIES

- 9.01 Shipper Defaults. Any of the following events shall be a "Shipper Default":
- (a) the occurrence and continuation of a material breach by Shipper of any of its payment obligations under this Agreement or any of its payment or material performance obligations under the Rules Tariff, unless and to the extent such breach occurs as a result of a breach by Carrier of its obligations under this Agreement;
 - (b) the occurrence and continuation of a breach under Article 14 by Shipper or any Guarantor described in Article 14; or
 - (c) the occurrence and continuation of an Insolvency Event in relation to the Shipper or any Guarantor.

- 9.02 Remedies on Shipper Default.

9.02.1 Upon the occurrence of a Shipper Default, Carrier may provide written notice to Shipper describing the Shipper Default in reasonable detail and requiring Shipper to cure the Shipper Default (the "Shipper Default Notice"). If (a) a Shipper Default described in Section 9.01(a) has not been cured within ten (10) Business Days following receipt by Shipper of a Shipper Default Notice, or (b) the Shipper Default comprises a default described in Section 9.01(b) or 9.01(c), then, in any such case, and in addition to Carrier's right to enforce the Financial Assurances (including

exercising and enforcing its rights and remedies under any Guaranty and calling on any letter of credit), Carrier shall not be obligated to accept Shipper's Crude Petroleum for transportation and may suspend the provision of other Services to Shipper.

9.02.2 If (a) a Shipper Default described in Section 9.01(a) has not been cured within ninety (90) Business Days following receipt by Shipper of a Shipper Default Notice, or (b) the Shipper Default comprises a default described in Section 9.01(b) or 9.01(c), then, Carrier shall be entitled, by notice in writing to Shipper, to

- (a) convert permanently (even if Shipper thereafter cures the default) Shipper's Committed Volume into Uncommitted Volumes, effective as of the date specified in the applicable notice, solely for purposes of the apportionment rule of the Rules Tariff. Shipper's obligations under Section 3.01 and Article 7 hereof shall remain in full force and effect after the date of any such conversion, except that, from and after the date of such conversion, Shipper shall have no right to Make-up Volumes under Section 7.04 hereof or to any extension of the Term pursuant to Section 5.03 hereof; or
- (b) terminate this Agreement, any such termination to be effective upon receipt of the applicable notice by Shipper, in which event Shipper shall be liable to Carrier for (i) all of its accrued obligations up to and including the effective date of termination in accordance with Section 21.10, and (ii) pay to Carrier, in cash and within five (5) Business Days after written demand therefor, an amount equal to (a) the applicable Committed Toll as of the date of the written demand, multiplied by (b) Shipper's Committed Volume, multiplied by (c) the number of days remaining in the unexpired term of the Agreement as of the date of the written demand, discounted at the rate of ten percent (10%).

9.02.3 If Carrier exercises its rights under Section 9.02.2, Carrier shall use reasonable commercial efforts to find a replacement shipper for Shipper's Committed Volume and such efforts may include the holding of an open season with respect to a number of bpd equal to Shipper's Committed Volume (the "Default Capacity"). If, as a result of any such efforts, Carrier enters into one or more new transportation services agreements with respect to some or all of the Default Capacity, then:

- (a) If Carrier exercises its rights under clause (a) of Section 9.02.2, then, following payment by a new shipper under the new transportation services agreement, Carrier shall credit to Shipper's obligation under Section 7.02 hereof a portion of the transportation Charges or monthly deficiency payments for committed volumes equal to the Monthly Deficiency Payment; provided that Shipper

shall not be entitled to any such credit for revenues that may accrue to the extent any committed toll payable under such new transportation services agreement exceeds the applicable then-escalated Committed Toll or the deficiency payment payable by the new shipper exceeds the then escalated Deficiency Toll hereunder.

- (b) If Carrier exercises its rights under clause (b) of Section 9.02.2, Carrier will credit to Shipper's obligations referenced in clause (b)(ii) of Section 9.02.2, the revenues received by Carrier from such new shipper(s) as transportation Charges or monthly deficiency payments for committed volumes to the extent Carrier has not previously credited such revenues to Shipper's obligation under Section 7.02 hereof in accordance with clause (a) of this Section 9.02.3. Carrier shall credit such revenues in a lump sum based on Carrier's estimate of all of the revenues to be received pursuant to such new transportation agreement.
- (c) Shipper expressly acknowledges and agrees that:
 - (i) Shipper shall have no right to challenge or dispute the terms and conditions of any new transportation services agreements entered into by Carrier as a result of such efforts and that, without limitation, such new transportation services agreement(s) may expire before the last day of this Agreement and the committed toll payable under such new transportation services agreements may be less than the applicable Committed Toll and the deficiency toll under the new transportation services agreements may be less than the Deficiency Toll.
 - (ii) In the event that Carrier is seeking a replacement shipper for the committed volumes of more than one defaulting Committed Shipper, Carrier shall allocate the applicable portion of any revenues described in clause (a) of Section 9.02.3 between such defaulting Committed Shippers on an equitable basis.
 - (iii) Carrier shall not be liable to Shipper in any way whatsoever for (A) not holding a new open season, (B) the failure of any such open season or other commercial efforts to elicit new commitments for some or all of the Default Capacity, (C) the terms of any new transportation services agreements entered into as a result of any such open season, (D) the failure to collect transportation Charges or deficiency payments under any new transportation services agreements, or (E) any claim or loss of any other nature

resulting from or arising out of any open season or lack thereof, and none of the circumstances described in clauses (A) through (E) above shall release or affect any of Shipper's obligations under this Agreement.

9.02.4 If Carrier exercises its right of termination under clause (b) of Section 9.02.2, and draws on any letter of credit provided by Shipper pursuant to Article 14, Carrier shall be entitled to apply the proceeds of such letter of credit to Shipper's obligations and Carrier's losses and damages referenced in clause (b) of 9.02.2, and, if any proceeds remain after all of Carrier's losses and damages have been paid in full, Carrier shall refund such remaining proceeds to Shipper. In all other circumstances in which Carrier calls on any letter of credit provided by Shipper pursuant to Article 14 following a Shipper Default, Carrier shall be entitled to apply the proceeds to cure such Shipper Default, and to hold the remaining proceeds as additional security for the payment and performance of Shipper's obligations under this Agreement, including Shipper's obligations under the Toll Tariffs and the Rules Tariff.

9.02.5 The rights and remedies under this Section 9.02 shall be in addition to, but not duplicative of, all of Carrier's other rights and remedies under this Agreement, the Rules Tariff or which Carrier may otherwise have at law, in equity or by statute or regulation, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise by Carrier of other rights or remedies.

9.03 Carrier Defaults. "Carrier Default" means (a) the occurrence and continuation of a material breach or default by Carrier of any of its obligations under this Agreement, unless and to the extent such material breach or default occurs as a result of a breach or default by Shipper of its obligations under this Agreement, or (b) the occurrence and continuation of an Insolvency Event in relation to the Carrier.

9.04 Remedies on Carrier Default.

9.04.1 Upon the occurrence of a Carrier Default, Shipper may provide written notice to Carrier, describing the Carrier Default in reasonable detail and requiring Carrier to cure the Carrier Default (the "Carrier Default Notice").

9.04.2 If (a) a Carrier Default comprising Carrier's failure to make any payment due hereunder has not been cured within ten (10) Business Days following receipt by Carrier of a Carrier Default Notice, or (b) a Carrier Default comprising Carrier's failure to comply with any obligation under this Agreement, other than a payment obligation, has not been cured within thirty (30) days after receipt by Carrier of a Carrier Default Notice, or, if such failure is not reasonably capable of being cured within a thirty (30) day period, but Carrier expeditiously commences to cure same following

its receipt of a Carrier Default Notice and diligently proceeds with such cure, within such longer period of time as shall be reasonably necessary to cure such failure, then in any such case, Shipper may, by written notice to Carrier, inform Carrier of its intention to terminate this Agreement if such Carrier Default is not cured within a further ten (10) day period, and if any such Carrier Default has not been cured within such further period of ten (10) days, Shipper may, by written notice to Carrier, terminate this Agreement, any such termination to be effective upon receipt of such termination notice by Carrier. In the event of such termination by Shipper, Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline or this Agreement, other than charges and fees accrued hereunder between the In-Service Date and the date of termination.

- 9.04.3 If an event of Carrier Default prevents Carrier from providing all or part of the Services to Shipper, then, provided Shipper has provided Carrier Default Notice pursuant to Section 9.04.1, the obligation of Shipper to make Monthly Deficiency Payments under this Agreement shall be suspended effective the date that all or part of the Services are not provided, in proportion to the percentage of Services that are not provided.

ARTICLE 10 LIMITATIONS ON LIABILITY

- 10.01 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER PARTY WILL BE LIABLE OR RESPONSIBLE TO THE OTHER PARTY HERETO OR SUCH OTHER PARTY'S AFFILIATES FOR ANY CONSEQUENTIAL, MULTIPLE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES, OR FOR LOSS OF PROFITS OR REVENUES INCURRED BY SUCH PARTY OR ITS AFFILIATES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM ARISES UNDER OR RESULTS FROM CONTRACT, TORT OR STRICT LIABILITY.

ARTICLE 11 COMMON CARRIER AND COMPLIANCE WITH APPLICABLE LAWS

- 11.01 Common Carrier Pipeline. The Pipeline will be operated as a common carrier pipeline and Shipper's rights hereunder will be subject to all Applicable Law related to common carrier pipelines. The terms and provisions of the Rules Tariff and the Toll Tariffs shall apply to the Services provided hereunder.
- 11.02 Compliance with Law. Shipper will, in carrying out the terms and conditions hereof, abide by all present and future Applicable Law.

ARTICLE 12 FORCE MAJEURE

- 12.01 Carrier Force Majeure. If Carrier is unable to perform any obligations due to an event of Force Majeure, such failure will be deemed not to be a breach of such obligations, to the extent that Carrier's performance is prevented, curtailed, impeded or hindered by such event of Force Majeure, for the duration of such event of Force Majeure, and any period immediately thereafter when Carrier remains unable to perform such obligations as a result of such event of Force Majeure.
- 12.02 Force Majeure Events. Each Party will make reasonable attempts to remedy an event of Force Majeure (it being agreed, without limitation, that the terms of settlement of any strike, lockout, or other industrial disturbance will be wholly in the discretion of the Party). Each Party will promptly notify the other Party in writing of any event of Force Majeure affecting the Party's ability to perform its obligations and will provide a non-binding, written estimate of the anticipated duration of such Force Majeure event.
- 12.03 Termination Based on Force Majeure. If an event of Force Majeure of the Carrier continues for twenty-four (24) continuous months, either Party shall be entitled to terminate this Agreement on three (3) days prior written notice to the other Party given at any time after the expiration of such twenty-four (24) month period, unless the applicable event of Force Majeure has been cured or remedied by Carrier before the date of such termination notice.
- 12.04 Shipper Rights and Obligations. It is expressly agreed that, except as provided in Section 9.04.2 and Section 12.03, no cause or event whatsoever, including an event of Force Majeure will permit or provide a basis for Shipper to terminate this Agreement or excuse or suspend Shipper's obligation to perform its obligations under this Agreement, including its obligations in Article 7. Shipper shall not be entitled to any reimbursement or credit for any Monthly Deficiency Payments that have not been applied to the transportation of Make-up Volumes that have not been applied as of the date this Agreement is terminated pursuant to Section 12.03.

ARTICLE 13 DISPUTE RESOLUTION

- 13.01 Dispute Notice. If any dispute arises out of or relating to this Agreement, either Party shall be entitled to provide the other Party with written notice of such dispute, including a reasonably detailed statement of the nature of the dispute and remedy(ies) being sought (the "Dispute Notice"). The Parties agree to attempt in good faith to resolve any such dispute through consultation and negotiation between executives who have authority to settle controversies and who are at a higher level of authority than the persons with direct responsibility for administration of this Agreement. All negotiations pursuant to this Section 13.01 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

- 13.02 Exclusive Dispute Resolution Procedure. If the Parties are not able to reach a negotiated resolution of any dispute that is the subject of a Dispute Notice within thirty (30) days after one Party first receives a Dispute Notice from the other, such dispute shall be resolved either in accordance with the provisions of Schedule D attached hereto or in a proceeding before the NEB. Except for matters within the jurisdiction of the NEB, the provisions of Schedule D shall be the Parties' exclusive remedy for all disputes arising out of or relating to this Agreement.

ARTICLE 14 FINANCIAL ASSURANCES

- 14.01 In the event Shipper does not maintain a Credit Rating that is no lower than any applicable Minimum Credit Ratings, Carrier may request that Shipper deliver to Carrier a guaranty in favor of Carrier for all Charges (the "Guaranty"). The Guaranty shall be: (i) substantially in form and substance acceptable to Carrier in its sole discretion, unless Carrier and Shipper have entered into an agreement as to the form and substance of the Guaranty in which case the form in such agreement shall control; and (ii) from a guarantor (the "Guarantor") that has a Credit Rating that is not lower than any applicable Minimum Credit Ratings. Shipper shall deliver or cause to be delivered to Carrier the Guaranty no later than 5 Business Days following such request by Carrier.
- 14.02 In the event that Shipper does not either (a) maintain a Credit Rating that is no lower than any applicable Minimum Credit Ratings; or (b) maintain a Guaranty, then Carrier may give written notice thereof to Shipper, and Carrier may request and Shipper shall deliver to Carrier within five (5) Business Days of having received such written notice, a Letter of Credit issued in favor of Carrier in an amount equal to the Charges that could reasonably become payable or arise during the applicable the Financial Assurance Period. The Letter of Credit shall, without limitation, allow Carrier to demand full or partial payment thereunder in the event:
- (a) of a Shipper Default;
 - (b) Carrier experiences losses or is entitled to damages in connection with or arising out of the Agreement or the termination of the Agreement; or
 - (c) Shipper does not deliver to Carrier a new letter of credit or extension satisfying the requirements of this clause at least forty-five days (45) prior to the expiration of such Letter of Credit.
- 14.03 If at any time Carrier reasonably determines that the amount of any Letter of Credit previously issued no longer provides adequate security for payment by Shipper of the Charges during the applicable Financial Assurances Period, Carrier may request and Shipper shall deliver to Carrier, within five (5) Business Days after written notice from Carrier: (a) an amendment to such Letter of Credit increasing the amount thereof, or (b) supplemental third party Financial

Assurances acceptable to Carrier. Any such amendment or supplemental Financial Assurances shall be in an amount that is sufficient, when summed with any existing Financial Assurances, to provide adequate security for payment by Shipper of the Charges during the applicable Financial Assurances Period, and shall be in form and substance, and from an issuer, acceptable to Carrier.

- 14.04 If Shipper delivers to Carrier a Letter of Credit issued in favor of Carrier in an amount equal to the Charges that could reasonably become payable or arise during the applicable the Financial Assurance Period, Shipper shall not be in default under this Article 14.
- 14.05 If at any time after a Letter or Credit has been provided to Carrier by Shipper, Shipper's or Guarantor's (as applicable) Credit Rating meets the Minimum Credit Ratings, Shipper may give written notice thereof to Carrier, and Carrier shall return the Letter of Credit within five (5) Business Days of Carrier having received such written notice, provided however that if the requirements of Section 14.02 are subsequently not met, Carrier shall be entitled to request and Shipper shall be required to deliver a new Letter of Credit in accordance with Section 14.02.
- 14.06 In addition to the provisions of this Article 14, Financial Assurances may be applied by Carrier against any losses suffered by Carrier in connection with this Agreement or damages to which Carrier is entitled in connection with this Agreement or breach thereof by Shipper (including a breach arising out of the termination or rejection of this Agreement under applicable insolvency laws). The use, application or retention of the Financial Assurances, or any portion thereof, by Carrier shall not prevent Carrier from exercising any other right or remedy provided by this Agreement, the Rules Tariff or which Carrier may otherwise have at law, in equity or by statute or regulation and shall not operate as a limitation on any recovery to which Carrier may otherwise be entitled.

ARTICLE 15 EXPANSION

- 15.01 Expansion Rights; Committed Toll. Carrier shall have the right, in its sole discretion, to expand the capacity of the Pipeline from time to time. In the event Carrier elects, in its sole discretion, to offer committed capacity on any expansion capacity of the Pipeline during the Initial Term, then the committed toll for committed capacity on such expansion capacity will not be less than the Committed Toll for the same service unless the Carrier reduces the Committed Toll to equal any lower committed toll for such expansion capacity for the same service.

ARTICLE 16 RESTRICTIONS ON PUBLICITY; CONFIDENTIALITY

- 16.01 Restrictions on Shipper Disclosures. Shipper hereby agrees that, except as required by Applicable Law, it shall not disclose or cause or permit to be disclosed

to third parties, or directly or indirectly, use in any manner detrimental to Carrier or its Affiliates (a) until Carrier files the Toll Tariffs with the NEB, the information set forth in Schedule B or (b) the terms and conditions of this Agreement. This Article 16 shall not prevent disclosure on a need-to-know basis to Shipper's employees, accountants, lawyers and other advisers for bona fide purposes in the ordinary course of business so long as Shipper shall be responsible for assuring that such employees, accountants, lawyers and other advisers strictly comply with the terms of this confidentiality provision.

ARTICLE 17 REGULATORY SUPPORT

- 17.01 Arm's Length Negotiations. Each of the Parties acknowledges and agrees that this Agreement is the result of good faith, arm's length negotiations which have resulted in an agreement that is fair and equitable to Carrier and all shippers.
- 17.02 Shipper Support. Shipper hereby agrees at its own cost to use reasonable efforts to support: (a) Carrier's applications for necessary certificates, orders, approvals, authorizations and permits of the NEB, and other Governmental Authorities in relation to the Pipeline; (b) the tolls calculated in accordance with the terms of this Agreement, and not take any action that could be interpreted as evidence of Shipper's lack of support for such tolls; and (c) the pro forma Rules Tariff materially in the form attached as Schedule C in any and all regulatory proceedings relating thereto and not take any action that could be interpreted as evidence of Shipper's lack of support for such pro forma Rules Tariff; provided that nothing in the foregoing shall obligate Shipper to support future changes to the tolls that are not consistent with this Agreement or changes to the Rules Tariff or Toll Tariff.
- 17.03 No Tariff Toll Revision Proceedings. Each of the Parties further acknowledges that the setting of tolls for the Pipeline is subject to the approval of, and potential modification by, the NEB from time to time, and each of the Parties hereby agrees not to, directly or indirectly, commence or support any application, motion or other proceeding (a "Toll Revision Proceeding") before the NEB for the purpose of requesting the NEB to set tolls applicable to the Pipeline which are inconsistent with this Agreement.
- 17.04 Participation in Proceedings. Except as expressly provided in this Article 17, nothing in this Agreement, the Toll Tariffs and the Rules Tariff shall be deemed to restrict, waive or otherwise limit Shipper's right to initiate or participate in any governmental, regulatory, administrative or judicial proceedings (including appeals) that may affect the terms and conditions of service under this Agreement, the Toll Tariffs and the Rules Tariff.
- 17.05 No Support of Third Party Tariff Toll Revision Proceedings. In the event of any Toll Revision Proceeding being commenced by a third party or by the NEB itself, and in the event of any other proceedings pursuant to which the tolls for the Pipeline may be reviewed by the NEB or other Governmental Authority having

jurisdiction, Shipper agrees to support or defend the setting of tolls applicable to the Pipeline that are consistent with this Agreement.

ARTICLE 18 FURTHER ASSURANCES

- 18.01 From time to time, as and when reasonably requested by either Party, the other Party will execute and deliver or cause to be executed and delivered all such documents and instruments and will take or cause to be taken further or other actions to implement or give effect to this Agreement, provided such documents, instruments or actions are consistent with the provisions of this Agreement and accepted industry practice. All such further documents, instruments or actions will be delivered or taken at no additional consideration other than reimbursement of any expenses reasonably incurred by the Party providing such further documents or instruments or performing such further acts, by the Party at whose request such documents or instruments were delivered or acts performed.

ARTICLE 19 ASSIGNMENT

- 19.01 Shipper Assignment. Shipper shall not be entitled to assign or transfer Shipper's rights and obligations with respect to all or any portion of the Committed Volume to a party who is not an Affiliate of the Shipper without the prior written consent of Carrier, which consent shall not be unreasonably withheld provided however, that if Shipper or its Affiliate sells all or part of its operations that are directly connected to the Pipeline or that receive or process Crude Petroleum shipped through the Pipeline, to any Person, Shipper shall be entitled to assign or transfer Shipper's rights and obligations with respect to this Agreement and all or any portion of the Committed Volume to any Person that purchases such operations and meets the provisions of Article 14 without the prior written consent of Carrier. Carrier shall, without limitation, be deemed reasonable in refusing its consent to an assignment if the assignee or transferee fails to satisfy the provisions of Article 14 or if a Shipper Default has occurred and is continuing. For greater clarity, Shipper may transfer Shipper's rights and obligations with respect to all or any portion of the Committed Volume to an Affiliate of the Shipper, if the Affiliate satisfies the provisions of Article 14, except that if a Shipper Default has occurred and is continuing, the prior written consent of Carrier shall be required, which consent shall not be unreasonably withheld.
- 19.02 Carrier Assignment. Carrier shall be entitled to assign this Agreement or any or all of its rights and obligations hereunder to any Person, including a subsidiary or other Affiliate of Carrier, without restriction.
- 19.03 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon each of the Parties and its successors and permitted assigns.

ARTICLE 20

OFFER

- 20.01 Effect of Unsigned Copy. The submission of an unsigned copy of this Agreement to Shipper shall not constitute an offer.
- 20.02 Irrevocable Offer by Shipper. Shipper acknowledges that, upon closing of the open season described in the Open Season Terms, Carrier will undertake significant work and incur significant expense in connection with the Pipeline. Further, Carrier may be required to allocate capacity among potential Committed Shippers in accordance with the procedures set forth in the Open Season Terms and will do so based on the binding commitments received during such open season. In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Shipper, Shipper agrees that the submission of a signed copy of this Agreement by Shipper to Carrier shall constitute an offer by Shipper that shall be irrevocable prior to the Outside Execution Date (as defined in the Open Season Terms), subject only to the withdrawal rights of Shipper expressly provided for in the Open Season Terms.

ARTICLE 21 MISCELLANEOUS

- 21.01 Waiver. The waiver by any Party of a breach or violation of any provision of this Agreement will not operate as or be construed as a waiver of any subsequent breach or violation hereof.
- 21.02 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Province of Alberta without giving effect to the conflict of law rules thereof.
- 21.03 No Drafting Presumption. No presumption will operate in favor of or against any Party as a result of any responsibility that any Party may have had for drafting this Agreement.
- 21.04 Severability. If any of the provisions of this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein will not be affected or impaired in any way. With respect to any provision found to be invalid, illegal or unenforceable, the Parties will expeditiously negotiate in good faith to replace such invalid, illegal or unenforceable provision with the valid, legal and enforceable provision that most closely reflects the intentions of the Parties as set forth herein.
- 21.05 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.

- 21.06 Independent Contractor Status. Should either Party perform work for the other pursuant to this Agreement, it will perform such work as an independent contractor and will not be deemed to be an agent of the other.
- 21.07 No Third Party Beneficiaries. It is expressly understood that the provisions of this Agreement do not impart enforceable rights in anyone who is not a Party or a successor or permitted assign of a Party hereto.
- 21.08 No Set-Off. Except as provided in the Rules Tariff, the obligations and liabilities of Shipper to pay any amounts to Carrier established under this Agreement, the Rules Tariff or the Toll Tariffs shall not be subject to any counterclaim, setoff, reduction or defense based on any claim that Shipper may have against Carrier.
- 21.09 Notices. All demands, notices and other communications provided for in this Agreement shall, unless otherwise specifically provided herein, (a) be in writing addressed to the Party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other Party, and (b) sent by personal service, prepaid registered post, prepaid courier service or by facsimile and will be deemed received when delivery or reception of the transmission is complete except that, if such delivery or transmission is on any day other than a Business Day, or on or after 4:00 pm MST, such notice will be deemed to be received on the next Business Day:

If to Carrier:

Enbridge Pipelines Inc.
3000, 425 – 1 St SW
Calgary, Alberta

Attention: VP, Market Development
Telephone: (403) 231-3900
Fax No.: (403) 231-5979

If to Shipper:

As set forth in Schedule A.

- 21.10 Survival. Notwithstanding the termination of this Agreement for any reason, (a) Article 1, Article 9, Article 10, Article 13, Article 16 and this Article 21 shall survive the termination of this Agreement, and (b) each Party this will be liable for all of its accrued obligations hereunder up to and including the date on which the termination becomes effective.
- 21.11 Entire Agreement; Amendment. This Agreement and its Schedules constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and thereof, supersede all prior agreements and understandings with respect thereto, and may be amended, restated or supplemented only by written

agreement of the Parties. Notwithstanding the foregoing or any other provision of this Agreement, (a) the Toll Tariffs and Rules Tariff are subject to amendment by Carrier from time to time subject to Applicable Law, provided that Carrier shall not seek to amend the Toll Tariffs or Rules Tariff in any manner inconsistent with this Agreement during the Term unless directed by a court or tribunal of competent jurisdiction or as otherwise required by law or regulation; and (b) Carrier is hereby authorized to amend Schedule A to reflect any adjustment to the Committed Volume made in accordance with the provisions of the Open Season Terms.

21.12 Interpretation and Construction.

21.12.1 Unless otherwise expressly specified herein, (a) defined terms in the singular will also include the plural and vice versa, (b) the words "hereof", "herein", "hereunder" and other similar words refer to this Agreement as a whole, and (c) unless referring to a specific act of Parliament or the Legislature, Article, Section and Schedule references in this Agreement are to Articles and Sections of or Schedules to this Agreement, and all such Articles, Sections, and Schedules are incorporated into this Agreement by reference and all references to this Agreement include all such Articles, Sections and Schedules with equal force and effect.

21.12.2 The captions in this Agreement are for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement.

21.12.3 Unless the context otherwise requires, "including" means "including without limitation."

21.12.4 Should there be any conflict between a term or provision in this Agreement and the Rules, this Agreement shall prevail. The existence or non-existence of any such conflict is a matter which either Party may submit to Dispute Resolution.

IN WITNESS WHEREOF, this Agreement is executed on the dates set forth below the respective execution lines, but effective as of the Effective Date.

SHIPPER:

[NAME]

By: _____

Name: _____

Title: _____

Date: _____

Carrier:

ENBRIDGE PIPELINES INC.

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Schedules

Schedule A: Committed Volume

Schedule B: Estimated 2013 Committed Tolls pursuant to Line 9 International Joint Tariff

Schedule C: Pro Forma Rules Tariff

Schedule D: Dispute Resolution

Schedule A
Committed Volume

A. Name of Shipper:

B. Shipper's Committed Volume (in bpd):

<u>Intended Enbridge Mainline Origination Point¹</u>	<u>Selected Delivery Point</u>	<u>Grade of Crude Petroleum²</u>	<u>Committed Volume (in bpd)</u>
	Westover	Light Crude Petroleum	
		Medium Crude Petroleum	
		Heavy Crude Petroleum	
	Montreal	Light Crude Petroleum	
		Medium Crude Petroleum	
		Heavy Crude Petroleum	
		<u>Total</u>	

¹ For use solely for the purpose of allocating capacity under the Open Season.

² Light, Medium and Heavy Crude Petroleum have the density and viscosity parameters specified in the Toll Tariffs.

C. Shipper's Contact Information:

Address: _____

Contact: _____

Telephone: _____

Fax: _____

Email Address: _____

GST Number: _____

QST Number: _____

Schedule B
Committed Tolls as of January 1st, 2013
Pursuant to Line 9 International Joint Tariff

Note: All tolls are in US dollars

From	Light Crude Petroleum			Medium Crude Petroleum			Heavy Crude Petroleum		
	Initial Committed Toll(s)/bbl*			Initial Committed Toll(s)/bbl*			Initial Committed Toll(s)/bbl*		
From Canadian Origination Point	To Nanticoke	To West Seneca	To Montreal	To Nanticoke	To West Seneca	To Montreal	To Nanticoke	To West Seneca	To Montreal
Edmonton	\$4.27	\$4.32	\$5.22	\$4.59	\$4.65	\$5.62	\$5.14	\$5.21	\$6.31
Hardisty	\$4.04	\$4.09	\$4.98	\$4.34	\$4.40	\$5.35	\$4.86	\$4.93	\$6.00
Kerrobert	\$3.81	\$3.86	\$4.72	-	-	-	\$4.58	\$4.65	\$5.70
Regina	\$3.34	\$3.39	\$4.22	-	-	-	\$4.01	\$4.08	\$5.09
Cromer	\$3.00	\$3.05	\$3.86	\$3.22	\$3.28	\$4.15	\$3.60	\$3.67	\$4.64

* Actual Committed Tolls will be adjusted accordingly to equal the International Joint Toll pursuant to the 2011 Competitive Tolling Settlement, on a distance-adjusted basis, from the respective Canadian Origination Point to Sarnia. In addition, a distance and commodity adjusted charge of \$.21 to Montreal is reflected in the table above.

To the extent permitted by Applicable Law, starting after January 1, 2013, Carrier will have the right to adjust the Committed Tolls annually, effective July 1 of each year, including 2013, by 75% of the GDPP Index multiplied by the Committed Tolls in effect immediately prior to such increase.

Schedule C
Pro Forma Rules Tariff

ENBRIDGE PIPELINES INC.
LINE 9
CRUDE PETROLEUM TARIFF
DRAFT PRO FORMA RULES AND REGULATIONS

1. DEFINITIONS

As used in this tariff, the following terms have the following meanings:

"Aggregate Committed Volumes" means, collectively, the aggregate volume of commitments (including the Committed Volume), measured in bpd, by all Committed Shippers, pursuant to TSAs executed between such shippers and Carrier, as such volume commitments may be modified in accordance with the Open Season Terms.

"API" means American Petroleum Institute.

"ASTM" means American Society for Testing and Materials.

"Carrier" means Enbridge Pipelines Inc.

"Carrier Force Majeure Initial Volumes" means volumes not accepted by Carrier for the first 90 days of a force majeure period (as defined in the TSA) as set out in section 7.05.2 of the TSA.

"Carrier Force Majeure Extended Volumes" means volumes not accepted by Carrier after the first 90 days of a force majeure period (as defined in the TSA) as set out in section 7.05.2 of the TSA.

"Committed Shipper" means a Shipper that has contracted for transporting or paying for a Committed Volume pursuant to the terms of a TSA entered into with Carrier during the open season that commenced on **Month day, 201X**.

"Committed Volume" means with respect to a Committed Shipper, the minimum daily volume of Crude Petroleum set out in Schedule A to the Committed Shipper's TSA during the term of such TSA.

"Crude Petroleum" means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, oil sands, or a mixture of such products, but does not include natural gas liquids or refined petroleum products.

"Density" means mass per unit volume at 15 degrees Celsius expressed in kilograms per cubic metre.

"**Enbridge Tariff**" has the meaning given to it in the Competitive Toll Settlement dated July 1, 2011.

"**Financial Assurances**" means the financial assurances provided by the Shipper and accepted by the Carrier in accordance with Rule 19.

"**Force Majeure**" means an event, which is unforeseen, and beyond the control of the Shipper that either prevents the Shipper from delivering the affected volume to Carrier or prevents the Shipper from accepting delivery of the affected volume from Carrier. The following are the only instances that will be recognized as Force Majeure events: earthquakes; floods; landslides; civil disturbances; sabotage; the acts of public enemies; war; blockades; insurrections; riots; epidemics; the act of any government or other authority or statutory undertaking; the inability to obtain or the curtailment of electric power, water or fuel; strikes, lockouts or other labour disruptions; fires; explosions; breakdowns or failures of pipe, plant, machinery or equipment; and contamination or poisoning of catalyst and/or solvent or biological treatment facilities. For greater certainty, a lack of funds; the availability of a more attractive market; Shipper's inability to purchase Crude Petroleum; or inefficiencies in operations do not constitute events of Force Majeure.

"**Heavy Crude Petroleum**" has the meaning given to it in the Enbridge Tariff.

"**Kilopascal**" is equivalent to 0.1450377 pounds per square inch.

"**Light Crude Petroleum**" has the meaning given to it in the Enbridge Tariff.

"**Make-up Volumes**" means volumes shipped by a Committed Shipper in excess of Committed Volume, for which a Monthly Deficiency Payment, as defined in section 7.04 of the TSA, has been paid.

"**Medium Crude Petroleum**" has the meaning given to it in the Enbridge Tariff.

"**Monthly Volume**" means the product of the Committed Volume multiplied by the number of days in the relevant month (or partial month).

"**NEB**" means the National Energy Board.

"**Non-Performance Penalty**" means the charge and cost referred to in Rule 18(e).

"**Pipeline**" means the Carrier's pipeline from Sarnia, Ontario, via Westover, Ontario, to Montreal, Québec.

"**Regular Delivery Point**" means a location for the delivery of Crude Petroleum as provided for in the Carrier's tariff for tolls applying on Crude Petroleum.

"Regular Receiving Point" means a location for the receipt of Crude Petroleum as provided for in the Carrier's tariff for tolls applying on Crude Petroleum.

"Retention Stock" means the volume of Crude Petroleum required by the Carrier for operational and scheduling purposes as specified from time to time by the Carrier and includes working stock, tank bottoms and idle loop fill.

"Selected Delivery Point" means a Delivery Point selected by Shipper in Schedule A of the TSA.

"Shipper" means the party that contracts with the Carrier for the transportation of Crude Petroleum under the terms of this tariff, and that has satisfied the Carrier of that party's capacity to perform its financial obligations that may arise from the transportation of its Crude Petroleum under the terms of this tariff, and includes a transferee of a Shipper's rights and obligations, as approved in accordance with Rule 15(c).

"Tender" means an offer by a Shipper to the Carrier in accordance with this tariff for the transportation of a stated quantity of Crude Petroleum from a Regular Receiving Point to a Regular Delivery Point.

"TSA" means a transportation services agreement executed by a Committed Shipper with Carrier with respect to the Pipeline pursuant to the open season that commenced on May 17, 2012.

"Uncommitted Volumes" means volumes of Crude Petroleum received in a month by Carrier for transportation on the Pipeline: (a) for any Shipper that is not a Committed Shipper, (b) for a Committed Shipper, that are nominated for delivery to the Selected Delivery Point, but that are in excess of the product of Committed Shipper's Committed Volume for that Selected Delivery Point and the number of days in the month and that are not Make-up Volumes, Carrier Force Majeure Initial Volumes or Carrier Force Majeure Extended Volumes, and (c) for a Committed Shipper, that are nominated to a delivery point that is not the Selected Delivery Point.

"Unused Committed Capacity" means, for any month, the amount, if any, by which the Aggregate Committed Volumes exceed the aggregate nominations of Committed Volumes (excluding nominations of Make-up Volumes, Carrier Force Majeure Initial Volumes or Carrier Force Majeure Extended Volumes) by Committed Shippers;

2. COMMODITY

This tariff applies to the transportation of Crude Petroleum by the Carrier.

3. ORIGIN AND DESTINATION FACILITIES

- a. Subject to the further provisions of this tariff, the Carrier will only accept Crude Petroleum for transportation:

- i. at Regular Receiving Points;
 - ii. when the Crude Petroleum has been specified to be delivered to one or more Regular Delivery Points; and
 - iii. when the party taking delivery of the Crude Petroleum has been specified in writing to the Carrier.
- b. Except where the Carrier provides such facilities, the Carrier will only accept Crude Petroleum for transportation when the Shipper has provided the necessary facilities satisfactory to the Carrier at the specified Regular Delivery Point for such Crude Petroleum.

4. SPECIFICATIONS AS TO QUALITY

- a. A Shipper shall not deliver to the Carrier and the Carrier shall not be obligated to accept Crude Petroleum that, as determined by the Carrier, has on receipt:
- i. a temperature greater than 38 degrees celsius;
 - ii. a Reid vapour pressure in excess of 103 Kilopascals;
 - iii. sediment and water in excess of 0.5 percent by volume;
 - iv. a Density in excess of 940 kilograms per cubic metre at 15 degrees celsius;
 - v. a kinematic viscosity in excess of 350 square millimetres per second determined at the Carrier's reference line temperature;
 - vi. any organic chlorides; or
 - vii. physical or chemical characteristics that may render such Crude Petroleum not readily transportable by the Carrier or that may materially affect the quality of other commodities transported by the Carrier or that may otherwise cause disadvantage to the Carrier.
- b. A Shipper shall, as required by the Carrier, provide to the Carrier a certificate with respect to the specifications of Crude Petroleum to be received by the Carrier from such Shipper. If a Shipper fails to provide the Carrier with such certificate, then the Carrier shall not be obligated to accept the Shipper's Crude Petroleum.
- c. If the Carrier determines that a Shipper does not comply with the provisions of paragraph (a) of Rule 4 of this tariff, then such Shipper shall remove its Crude Petroleum from the facilities of the Carrier as directed by the Carrier.
- d. If a Shipper fails to remove its Crude Petroleum from the facilities of the Carrier as directed by the Carrier, then the Carrier shall have the right to remove and sell such Crude Petroleum in such lawful manner as deemed appropriate by the Carrier. The Carrier shall pay from the

proceeds of such sale all costs incurred by the Carrier with respect to the storage, removal and sale of such Crude Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.

5. CHANGES IN QUALITY AND SEGREGATION

- a. The Carrier shall endeavour to deliver substantially the same type of Crude Petroleum as that received from a Shipper, however the Carrier shall not be obligated to make delivery of the identical Crude Petroleum received by the Carrier.
- b. If Crude Petroleum Tendered to the Carrier is of a kind or quality that is not currently being transported by the Carrier, then the Carrier shall, at the request of the Shipper of such Crude Petroleum and subject to the operating conditions of the facilities of the Carrier, endeavour to segregate such Crude Petroleum during transportation by the Carrier. In such circumstances, the Shipper shall, at the request of the Carrier, make such Crude Petroleum available in such quantities and at such times as may be necessary to permit such segregated movements.
- c. Subject to paragraph (a) of Rule 12 of this tariff, the Carrier shall not be liable for any damage, loss or consequential loss resulting from a change in the Density or other quality of a Shipper's Crude Petroleum as a result of the Carrier's transportation of such Crude Petroleum, including without limitation the mixing of Crude Petroleum with other petroleum in the facilities of the Carrier.

6. TENDERS, RATES, VOLUMES AND TENDER DISCLOSURE

- a. Tenders shall be submitted to the Carrier in accordance with the notice of shipment format prescribed by the Carrier no later than the time and date set out in the Carrier's monthly nomination schedule. The Carrier shall notify all Shippers of the monthly nomination schedule applicable for the calendar year. Notice of any amendment to a monthly nomination date shall be provided by the Carrier to all Shippers at minimum 24 hours in advance of the proposed change in nomination date.
- b. The Carrier may, subject to the availability of space and the operating conditions of the facilities of the Carrier, accept Tenders or revised Tenders after such time. The Carrier may publicly disclose the volume of Crude Petroleum tendered to the Carrier by the categories of:
 - i. Light Crude Petroleum;
 - ii. Medium Crude Petroleum; and
 - iii. Heavy Crude Petroleum,on a consolidated basis, so long as each category is comprised of volumes from at least three Shippers.

- c. A Shipper shall, upon notice from the Carrier, provide written third party verification as required by the Carrier in support of such Shipper's Tender. The Carrier shall not be obligated to accept a Shipper's Crude Petroleum where such verification is, in the sole discretion of the Carrier, unacceptable to the Carrier.
- d. The Carrier shall not be obligated to accept a Shipper's Crude Petroleum if the volume of such Crude Petroleum is less than the minimum volume or if the rate at which such Crude Petroleum is received by the Carrier is less than or greater than the rates specified from time to time by the Carrier for each Regular Receiving Point.
- e. The Carrier shall not be obligated to make a delivery of a Shipper's Crude Petroleum of less than the minimum volume or at a rate less than or greater than the rates specified from time to time by the Carrier for each Regular Delivery Point.
- f. A Shipper shall supply its share of Retention Stock by types and volumes as determined from time to time by the Carrier.

7. APPLICATION OF TOLLS

The Carrier shall charge a Shipper the Carrier's toll for the transportation of Crude Petroleum that is in effect on the date of delivery of such Crude Petroleum by the Carrier.

8. PAYMENT OF TOLLS AND LIEN FOR UNPAID CHARGES

- a. A Shipper shall pay all charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation or other handling of the Shipper's Crude Petroleum by the Carrier. The Shipper shall pay such charges and costs upon receipt of the Carrier's invoice respecting such charges and costs. If required by the Carrier, the Shipper shall pay such charges and costs before delivery, or before acceptance of a transfer, of the Shipper's Crude Petroleum by the Carrier.
- b. The Carrier shall have a general lien on all of a Shipper's Crude Petroleum that is in the possession of the Carrier to secure the payment of all charges and costs accruing or due relating to the transportation or other handling of the Shipper's Crude Petroleum by the Carrier. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract. The Carrier may withhold the Shipper's Crude Petroleum from delivery and may exercise any other rights and remedies provided at law or by contract, until all such charges and costs have been paid.
- c. If charges for the transportation of Shipper's Crude Petroleum remain unpaid for ten days after notice of demand for payment of such charges is made to such Shipper by the Carrier, then the Carrier shall have the right to remove and sell any or all of such Shipper's Crude Petroleum that is in the possession of the Carrier in such lawful manner as deemed appropriate by the Carrier.

- d. The Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the transportation of such Shipper's Crude Petroleum by the Carrier and all costs incurred by the Carrier with respect to the storage, removal and sale of such Shipper's Crude Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.
- e. When required, the Carrier shall, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing the general lien described in this Rule. The Carrier hereby advises that it has appointed Enbridge Energy, Limited Partnership as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing its general lien.

9. MEASURING, TESTING AND DEDUCTIONS

- a. The Carrier shall gauge or meter, or cause to be gauged or metered, a Shipper's Crude Petroleum upon delivery by the Carrier. The Shipper or the designate of the Shipper may be present at such gauging or metering. If tank gauges are used, the volume of Crude Petroleum shall be computed from tank tables on a 100 percent volume basis.
- b. The Carrier shall not be obligated to receive or deliver a Shipper's Crude Petroleum from or to a connecting carrier which is conducting the measurement unless the connecting carrier measures such Crude Petroleum using custody transfer equipment approved of by the Carrier and conducts measurement in accordance with the Carrier's measurement manual, and unless the Carrier or its representative has been provided the right to enter upon the premises where and when Crude Petroleum is being measured and is granted access to all tanks, storage receptacles, or other facilities used for the purpose of gauging or metering to make any examination, inspection, measurement or test as required by the Carrier to verify the accuracy of such facilities and the quality of such Shipper's Crude Petroleum.
- c. The Carrier shall correct the Density and volume of Crude Petroleum received and delivered by the Carrier from the actual temperature of such Crude Petroleum to 15 degrees celsius by use of API 2540 Petroleum Measurement Standards or the latest revision to such Standards.
- d. The Carrier shall correct the metered volume of Crude Petroleum for compressibility by the use of API Manual of Petroleum Measurement Standards, Chapter 11.2.1 M or the latest revision to such Chapter.
- e. The Carrier shall determine the percentage of sediment and water in Crude Petroleum by the use of a centrifuge or other method agreed to by the Carrier and the Shipper. The Carrier shall deduct the amount of sediment and water from the corrected volume of such Crude Petroleum.
- f. The Carrier shall, as deemed necessary by the Carrier, adjust the measured volume of Crude Petroleum for shrinkage in accordance with API Bulletin 2509 C or the latest revision to such Bulletin.

- g. The Carrier shall, as deemed necessary by the Carrier, determine the kinematic viscosity of Crude Petroleum received by the Carrier in accordance with ASTM D 445 or the latest revision to such Standard or such other test as may be agreed to by the Carrier and the Shipper.
- h. The results of all such gauging, metering and testing by the Carrier shall be final.
- i. The Carrier shall deduct, as allowance oil, 1/20th of 1 percent of the volume of Crude Petroleum delivered to the Shipper at Montreal to cover losses inherent in the transportation of Crude Petroleum in the Pipeline.

10. EVIDENCE OF RECEIPTS AND DELIVERIES

The Carrier shall evidence the delivery of Crude Petroleum by tickets showing the volume, type, temperature, Density, sediment and water and any other data with respect to such Crude Petroleum as may be specified from time to time by the Carrier. Such tickets shall be signed by the Shipper, or the designate of the Shipper, and the Carrier.

11. REMOVAL, DELIVERY AND ACCEPTANCE

- a. A Shipper or the designate of the Shipper shall accept such Shipper's Crude Petroleum upon arrival at the designated Regular Delivery Point for such Crude Petroleum, or as otherwise directed by the Carrier.
- b. If a Shipper fails to remove its Crude Petroleum from the facilities of the Carrier in accordance with the provisions of paragraph (a) of Rule 11 of this tariff, and a disruption of Carrier's operations results, Shipper shall be solely responsible for all costs or losses to Carrier associated with such disruption, including loss of revenue resulting therefrom, unless the non-removal of such Crude Petroleum is due to the direct negligence or wilful misconduct of Carrier.

12. LIABILITY OF THE CARRIER

- a. Except where caused by the direct negligence or wilful misconduct of the Carrier, the Carrier shall not be liable to a Shipper for any delay, damage, loss or consequential loss resulting from any cause while the Carrier is in possession or control of such Shipper's Crude Petroleum, including without limitation the breakdown of the facilities of the Carrier.
- b. If damage or loss to Crude Petroleum results from any cause other than the direct negligence or wilful misconduct of the Carrier while the Carrier is in possession or control of such Crude Petroleum, then the Carrier may apportion the cost of such damage or loss on a pro rata basis among all Shippers. Each Shipper's share of such cost shall be determined by the Carrier based on the proportion of the volume of the Shipper's Crude Petroleum in the possession of the Carrier on the date of such loss to the total volume of Crude Petroleum in the possession of the Carrier on the date of such loss.

13. INDEMNIFICATION BY THE SHIPPER

A Shipper shall indemnify the Carrier for any damage, loss, costs or consequential loss incurred by the Carrier or any other party as a result of such Shipper's failure to comply with any provision of this tariff.

14. PRIORITY SERVICE AND APPORTIONMENT

- a. For the purposes of this article,
 - i. **"Available Monthly Capacity"** means the capacity of the Pipeline available to transport, as determined by Carrier, but shall not exceed the ability of Carrier to deliver, Crude Petroleum in a given month; and
 - ii. **"Uncommitted Capacity"** means the Available Monthly Capacity less the lesser of (i) the Aggregate Committed Volumes, or (ii) the total of nominations by all Committed Shippers for Committed Volumes, Make-up Volumes, Carrier Force Majeure Initial Volumes and Carrier Force Majeure Extended Volumes.
- b. Make-up Volumes shall be accepted for shipment in accordance with Section 7.04 of the TSA.
- c. Carrier Force Majeure Initial Volumes and Carrier Force Majeure Extended Volumes shall be accepted for shipment in accordance with Section 7.05 of the TSA.
- d. Subject to Rule 14(e) and (f), Carrier shall allocate Available Monthly Capacity to transport Crude Petroleum in the following order of priority:
 - i. Committed Volumes, excluding Make-up Volumes, to the level of Aggregate Committed Volumes;
 - ii. Committed Shippers' Make-up Volumes to the extent there is Unused Committed Capacity;
 - iii. Carrier Force Majeure Initial Volumes to the extent there is Unused Committed Capacity;
 - iv. Carrier Force Majeure Extended Volumes to the extent there is Unused Committed Capacity;
 - v. Uncommitted Volumes;
 - vi. Make-up Volumes in excess of Unused Committed Capacity;
 - vii. Carrier Force Majeure Initial Volumes in excess of Unused Committed Capacity;
 - viii. Carrier Force Majeure Extended Volumes in excess of Unused Committed Capacity.

- e. If, in a month, nominations exceed Available Monthly Capacity, as determined by Carrier, Carrier shall apportion capacity in the following order and manner:
- i. where the total amount of Heavy Crude Petroleum nominated, other than as Uncommitted Volumes, exceeds the aggregate of Heavy Crude Petroleum specified in all TSAs, each Committed Shipper shall be allocated:
 - (A) such Shipper's nominations for Heavy Crude Petroleum up to the amount designated in their TSA, and
 - (B) a pro rata share of any capacity for the aggregate of Heavy Crude Petroleum specified in all TSAs in the proportion that the Shipper's nomination of Heavy Crude Petroleum bears to the aggregate nominations for Heavy Crude Petroleum;
 - ii. where the total of Carrier Force Majeure Initial Volumes and Carrier Force Majeure Extended Volumes nominated by Committed Shippers exceeds the sum of Unused Committed Capacity, nominations for Uncommitted Volumes and nominations for Make-up Volumes in excess of Unused Committed Capacity, each Committed Shipper shall be allocated:
 - (A) a pro rata share of any available capacity for Carrier Force Majeure Initial Volumes in the proportion that such Shippers' Committed Volume bears to the aggregate of Committed Volumes of Committed Shippers nominating Carrier Force Majeure Initial Volumes, and
 - (B) to the extent any available capacity remains, a pro rata share of such available capacity for Carrier Force Majeure Extended Volumes in the proportion that such Shippers' Committed Volume bears to the aggregate of Committed Volumes of Committed Shippers nominating Carrier Force Majeure Extended Volumes;
 - iii. where the total of Make-up Volumes nominated by Committed Shippers exceeds the Unused Committed Capacity, each Committed Shipper shall be allocated:
 - (A) a pro rata share of the Unused Committed Capacity in the proportion that such Shippers' Committed Volume bears to the aggregate of Committed Volumes of Committed Shippers nominating Make-up Volumes, and
 - (B) a pro rata share of the Available Monthly Capacity that exceeds the total of the Aggregate Committed Volumes and the nominated Uncommitted Volumes in the proportion that such Shippers' Committed Volume bears to the aggregate of Committed Volumes of Committed Shippers nominating Make-up Volumes;
 - iv. where the total of Uncommitted Volumes nominated exceeds Uncommitted Capacity, each shipper shall be allocated a pro rata share of the Uncommitted Capacity in the

proportion that its nomination of Uncommitted Volumes bears to the aggregate nominations for Uncommitted Volumes; and

- v. where the Available Monthly Capacity is less than the Aggregate Committed Volumes and the total of Committed Volumes nominated exceeds the Available Monthly Capacity, Carrier shall allocate to each Committed Shipper a pro rata share of the available capacity in the proportion that its nomination of Committed Volumes bears to the aggregate of nominations for Committed Volumes.
- f. All volumes, including Committed Volumes and Make-up Volumes, nominated by a Committed Shipper to whom notice has been given pursuant to Section 9.02.2 of the TSA shall be deemed to be Uncommitted Volumes for the purposes of this Rule 14.

15. REQUESTED CHANGE BY THE SHIPPER

- a. Subject to the operating conditions of the facilities of the Carrier, and Shippers' commitments under a TSA, the Carrier may, upon the written request of a Shipper, allow a Shipper to change:
 - i. the designated volume and type of its Crude Petroleum to be received at a designated Regular Receiving Point;
 - ii. the designated Regular Delivery Point for its Crude Petroleum;
 - iii. the designated volume and type of its Crude Petroleum to be delivered to a designated Regular Delivery Point; and
 - iv. the party designated to take delivery of its Crude Petroleum.
- b. The Carrier may allow a Shipper to transfer, in such manner as may be specified by the Carrier from time to time, such Shipper's rights and obligations under this tariff respecting its Crude Petroleum to another Shipper.
- c. A transfer of a Shipper's rights and obligations under Rule 15(b) under this tariff respecting its Crude Petroleum will not be binding or effective on the Carrier until the Carrier has provided a notice of acceptance to the transferor and transferee. The Carrier will not provide a notice of acceptance of a transfer until such time as the transferee has satisfied the Carrier of its capacity to undertake the transferor's obligations and has provided any Financial Assurances requested by the Carrier in accordance with Rule 19 of this tariff.

16. ADVERSE CLAIMS AGAINST CRUDE PETROLEUM

- a. A Shipper shall not Tender or deliver to the Carrier Crude Petroleum which is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind unless the Shipper provides written notification to the Carrier of such

litigation, dispute, lien or charge not less than 20 days before such Tender is made to the Carrier.

- b. The Carrier shall not be obligated to accept Crude Petroleum that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.
- c. A Shipper shall advise the Carrier in writing if, at any time while the Shipper's Crude Petroleum is in the possession of the Carrier, such Crude Petroleum becomes involved in litigation, the ownership of such Crude Petroleum becomes in dispute or such Crude Petroleum becomes encumbered by a lien or charge of any kind.
- d. A Shipper shall, upon demand from the Carrier, provide a bond or other form of indemnity satisfactory to the Carrier protecting the Carrier against any liability or loss that may arise as a result of such Shipper's Crude Petroleum that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.

17. CLAIMS, SUITS AND TIME FOR FILING

- a. A Shipper shall advise the Carrier in writing of any claim for delay, damage or loss resulting from the transportation of such Shipper's Crude Petroleum by the Carrier within 30 days of delivery of such Crude Petroleum by the Carrier or, in the case of a failure to make delivery, then within 30 days after a reasonable time for delivery has elapsed.
- b. A Shipper shall institute any action arising out of any claim against the Carrier within 180 days from the date that written notice is given by the Carrier to such Shipper that the Carrier has disallowed such claim or any part of such claim.
- c. If a Shipper fails to comply with the provisions of paragraph (a) or paragraph (b) of Rule 17 of this tariff, then such Shipper waives all rights it has to bring an action against the Carrier with respect to such claim.

18. NON-PERFORMANCE FOR UNCOMMITTED VOLUMES

- a. In periods of apportionment, all Uncommitted Volume nominations which are apportioned, shall have the Non-Performance Penalty applied to that portion of shortfall in receipts by a Shipper that exceeds five (5) percent of that Shipper's apportioned volume. However, the Non-Performance Penalty will not be applied in respect of a Line 9 nomination where a Non-Performance Penalty has already been applied to that nomination by Enbridge Pipelines Inc. upstream of the Pipeline, nor will it be applied to that portion of shortfalls caused by Force Majeure events; Carrier imposed restrictions on pipeline deliveries to the Interconnection Point; or any carry over volumes.
- b. The Shipper shall provide the Carrier with written notice of the Force Majeure event within four business days of the event. Such notice shall state the nature of the event, the estimated duration of the event, and the volume affected. The Shipper shall use reasonable diligence to

remedy the Force Majeure event as quickly as reasonably practicable and shall keep Carrier informed as to the progress in the efforts to remedy the event; provided the Shipper shall not be required to settle strikes, lockouts or other labour disruptions contrary to its wishes.

- c. At any time up to thirty (30) calendar days following the receipt of the notice referred to in Rule 18(b) the Carrier will issue written notice to the Shipper informing the Shipper in the event the Carrier disputes all or a portion of the Shipper's claim of Force Majeure. The Carrier shall invoice the Shipper for the amount of the Non-Performance Penalty calculated in accordance with Rule 18(a) and the Shipper shall be obligated to make payment of the invoiced amount.
- d. The Carrier shall publish, on at least a monthly basis, a summary of all Force Majeure notices issued pursuant to Rule 18(b) and 18(c), which shall contain only the name of the Shipper claiming Force Majeure, volume affected, the amount of the Non-Performance Penalty disputed and/or undisputed, and the status of all disputed claims.
- e. The Non-Performance Penalty of \$17.00 per cubic metre will be charged in accordance with the provisions of paragraph (a) of Rules 18 and 19 of this tariff.
- f. For Committed Volumes, the penalty for non-performance will be determined pursuant to the TSA.

19. FINANCIAL ASSURANCES

- a. At any time, upon the request of the Carrier, any prospective or existing Shipper shall provide information to the Carrier that will allow the Carrier to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation or other handling of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation or other handling charges, equalization obligations and the value of the allowance oil and negative Shipper's balance positions. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to provide the requested information to the Carrier within ten (10) days of the Carrier's written request, or if the Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations and the reasonably determined value of the allowance oil and negative Shipper's balance positions and has not provided the Carrier with a Financial Assurance in accordance with Rule 19 (b), if so requested by the Carrier.
- b. Subject to the provisions of Rule 19(c), the Carrier, upon notice to the Shipper, may require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier, to be provided at the expense of the Shipper:

- i. prepayment;
 - ii. a letter of credit in favour of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier, in a form and from an institution acceptable to Carrier;
 - iii. a guarantee in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or
 - iv. such other enforceable collateral security, including but not limited to security agreements over assets of the Shipper, in a form acceptable to the Carrier (the “Financial Assurances”).
- c. In the event that the Carrier reasonably determines that:
- i. the existing or prospective Shipper’s financial condition is or has become impaired or is unsatisfactory;
 - ii. any Financial Assurances previously provided by the Shipper no longer provide adequate security for the performance of the Shipper’s obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or
 - iii. the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper,

then the Shipper shall provide Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper’s Crude Petroleum by the Carrier. For the purpose of this tariff, and without limiting the generality of the charges and costs lawfully due to the Carrier relating to the transportation of the Shipper’s Crude Petroleum, those charges and costs shall include transportation charges, equalization obligations, negative Shipper’s balance positions and the allowance oil. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) days of Shipper's receipt of Carrier's written request for such Financial Assurances.

20. PRACTICES

In addition to these Rules & Regulations, Enbridge Pipelines Inc. Line 9 Crude Petroleum Tariff also incorporates the following practices:

- a. Practice applicable to automatic balancing
- b. Practice applicable to in-line transfers

Copies of Carrier's Practices and supporting documents are available on-line at:
<http://www.enbridge.com/DeliveringEnergy/Shippers/TariffsandTolls.aspx> or
through the Carrier's Shipper Services group, located at:

#3000, 425 – 1st Street, SW
Calgary, AB T2P 3L8
Canada
Phone number: (403) 508-3135

Schedule D **Dispute Resolution**

1. Any dispute that is subject to the jurisdiction of the NEB shall be referred to the NEB with a request that such dispute be dealt with on an expedited basis. Where a disagreement arises concerning whether a dispute is subject to the jurisdiction of the NEB, such matter shall be referred to the NEB for resolution. Subject to Article 13 of the Agreement, either Party may refer any dispute that is not subject to the jurisdiction of the NEB to dispute resolution by providing written notice to the other Party of its intention to refer the dispute to arbitration ("Arbitration Initiation Notice"). Except for (a) any dispute that is subject to the jurisdiction of the NEB, and (b) as provided in Paragraph 9 below, arbitration pursuant to this Schedule D shall be the exclusive remedy for all disputes arising under or relating to the Agreement. Notwithstanding anything in this Schedule D to the contrary, within fourteen (14) days after a Party receives an Arbitration Initiation Notice, it may give written notice to the initiating Party stating its belief that such dispute or any portion thereof is subject to the jurisdiction of the NEB. In that event, the Parties agree that such dispute or applicable portion thereof shall be referred to NEB for resolution as to whether it is subject to NEB jurisdiction. The arbitration may proceed (and the arbitrator(s) will have authority) with respect to such dispute or applicable portion thereof only if the NEB determines that such dispute or applicable portion thereof is not subject to NEB jurisdiction.
2. All arbitrations conducted hereunder will take place before an arbitrator in Calgary, Alberta. Arbitration will be conducted in accordance with the *Arbitration Act* except to the extent that the *Arbitration Act* is inconsistent with or in conflict with any terms of this Schedule D. Any other statute that applies to the Dispute Resolution will apply only to the extent that it is not inconsistent with this Schedule D.
3. Unless otherwise agreed by the Parties, the arbitration shall be conducted by three (3) arbitrators. Within thirty (30) days after the date of the Arbitration Initiation Notice, each Party shall select one person to act as arbitrator and the two (2) persons so selected shall jointly select a third arbitrator within twenty (20) days of their appointment. The Parties' appointed arbitrators may consult with the Parties in selecting the third arbitrator. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within such twenty (20) day period, the third arbitrator shall be selected pursuant to the National Arbitration Rules of the ADR Institute of Canada, which shall endeavor to nominate such third arbitrator within twenty (20) days thereafter.
4. Prior to participating in the arbitration or receiving any information or documents concerning the dispute in question, each arbitrator will sign a declaration attesting as to his or her impartiality with respect to the Parties to the dispute and to the dispute. Any person serving as an arbitrator will have training or experience in serving as an arbitrator, and will have legal training if the dispute involves substantive legal issues and will, in any event, be qualified by education and no less than fifteen (15) years' experience in the oil pipeline industry in order to rule on the matters raised by the dispute. Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator will be appointed in accordance with this Paragraph 4.

5. The Parties to the dispute will agree in advance as to the manner in which the arbitrators will hear witnesses and arguments, produce, disclose, and review documents and otherwise conduct the arbitration procedure. Failing agreement between the Parties to the dispute the arbitrators will set the procedure and promptly commence and expeditiously conduct the arbitration proceedings.

6. To the extent permitted by Applicable Law, the decision of the arbitrators will be final and binding on the Parties, will not be subject to any appeal and will deal with the question of the costs of the arbitration and all other related matters.

7. Judgment upon any award(s) rendered by the arbitrators may be entered in any court having jurisdiction thereof.

8. The arbitrators may take whatever interim measures they deem necessary, including injunctive relief and measures for the protection or conservation of property. Such interim measures may, without limitation, take the form of an interim award and the arbitrators may require security for the costs of such measures. A request for interim measures addressed by a Party to a judicial authority shall not be deemed incompatible with this Schedule D.

9. The arbitrators are not empowered to award consequential, incidental, exemplary, special or punitive damages or loss of profits or revenues.

10. Each Party to the dispute will bear its respective costs incurred in connection with the negotiation and arbitration procedures set out in this Schedule D. The fees and expenses of the arbitrators and the costs of the facilities required for the arbitration will be awarded at the discretion of the arbitrators.

11. All information disclosed by a Party in the course of negotiation or arbitration will be treated as confidential and neither the delivery nor disclosure thereof will represent any waiver of privilege by a Party disclosing the same. Each Party agrees to not disclose information provided by the other Party for purposes of this Schedule D to any other Person for any other purpose, and such information cannot be used in any subsequent proceedings without the consent of the Party who has made disclosure of the same hereunder. Nothing in this Paragraph 11 will cause or require a Party to disclose information that is subject to a confidentiality obligation to any third party. Notwithstanding anything in the foregoing to the contrary: (a) a Party shall be permitted to disclose confidential information disclosed to it as aforesaid (i) as required by Applicable Law, (ii) in compliance with applicable securities laws or stock exchange rules or regulations, (iii) on a confidential basis, to its counsel, professional advisors, directors, officers and employees and (iv) to the extent required by an arbitrator or as reasonably required for enforcement or interpretation of any provision of this Agreement by the NEB to the extent any dispute under this Agreement is brought to the NEB; and (b) the following shall not be subject to the restrictions provided for in this Paragraph 11: (i) any information which is within the public domain at the time of its disclosure to the recipient or which thereafter enters the public domain through no fault of the recipient, but only after such information becomes part of the public domain; (ii) any information (other than the provisions of the Agreement and any Guaranty) which the recipient can show was in its possession prior to receipt or acquisition thereof from the

other Party and which is not subject to an obligation of confidence; and (iii) any information (other than the provisions of the Agreement and any Guaranty) which, following its disclosure by the other Party to the recipient is received by the recipient without obligation of confidence from a third party who the recipient had no reason to believe was not properly or lawfully in possession of such information free from any obligation of confidence.

NATIONAL ENERGY BOARD

RHW-001-2015

ENBRIDGE PIPELINES INC.

LINE 9 TOLLS COMPLAINT

**EVIDENCE OF
SUNCOR ENERGY MARKETING INC.**

ATTACHMENT 3

OPEN SEASON DOCUMENTS



NEWS RELEASE

Enbridge Proceeding with \$2.6 Billion of Additional Eastern Access Projects

CALGARY, ALBERTA and HOUSTON, TEXAS May 16, 2012 - Enbridge Inc. (TSX, NYSE: ENB) today announced that it has secured commercial support to proceed with additional Eastern Access projects. Enbridge and Enbridge Energy Partners, L.P. (EEP) (NYSE: EEP) also expect to proceed with supporting expansions of the U.S. mainline system between Flanagan, Illinois and Sarnia, Ontario. The additional Eastern Access Projects include an 80,000 barrel per day (bpd) expansion of Enbridge's Toledo Pipeline (Line 17), which connects with the Enbridge mainline at Stockbridge, Michigan and serves refineries at Toledo, Ohio and Detroit, Michigan; and a re-reversal of Enbridge's 240,000 bpd Line 9B from Westover, Ontario to Montreal, Quebec to serve refineries in Quebec. Re-reversal of Line 9A from Sarnia, Ontario to Westover to supply Imperial Oil's Nanticoke refinery was previously announced. Sufficient capacity has been subscribed for by refineries seeking to secure access to ample crude oil supplies from western Canada and the Bakken region in North Dakota to warrant proceeding with the project. The Eastern Access Line 9 re-reversal remains subject to National Energy Board regulatory approval and a portion of the mainline expansion remains subject to approval by shippers.

The Toledo Pipeline expansion is expected to be available for service in early 2013 at a cost of approximately \$0.2 billion. The Line 9B reversal is expected to be available for service in early 2014 at a cost of approximately \$0.1 billion.

The supporting mainline expansions include expansion of the Spearhead North pipeline (Line 62) between Flanagan and Griffith, Indiana, an additional 330,000 barrel tank at Griffith, and the replacement of additional sections of Line 6B in Indiana and Michigan not already scheduled for replacement as previously announced. The capacity of Spearhead North will increase by 105,000 bpd and the capacity of Line 6B will increase by 260,000 bpd. The expected cost of the mainline expansions is \$2.2 billion, including the \$0.1 billion cost of the previously announced Line 5 expansion. The expansions are expected to be fully available for service in early 2014. Spearhead North, Line 6B and Line 5 are held by Enbridge Energy, Limited Partnership (EELP) which will be funded jointly by Enbridge, as to 60% of the costs of the expansions (approximately \$1.3 billion), and by EEP as to 40% (approximately \$0.9 billion) with EEP having the option to increase its funding portion by up to 15% for 12 months following the in service date of Line 6B expansion. The expansions will be undertaken by EELP on a cost-of-service basis that would absorb 50% of any cost overruns.

An open season will be held immediately to provide any additional shippers with an opportunity to secure capacity on Line 9 on the same terms as the current committed shippers.

"Securement of capacity commitments for both the Toledo Pipeline expansion and Line 9 re-reversal represents a major step forward for our overall market access strategy," said Stephen J. Wuori, President, Liquids Pipelines, Enbridge Inc. "These projects and the supporting

mainline expansions are attractive investment opportunities for Enbridge and EEP. They will also provide substantial economic benefits to our shippers and the local economies in western Canada and the Bakken region in North Dakota where the crude oil is produced and in the midwestern U.S. and eastern Canada where it will be refined. Communities along the routes of these pipelines will also benefit from increased economic activity. In particular, refineries in Ontario and Quebec are paying premiums of \$20 per barrel or more to obtain crude oil from the foreign sources they are currently largely dependent on. Access to Canadian and U.S. Bakken production will help level the playing field for these refineries, protecting their long term viability and safeguarding jobs.”

Mr. Wuori continued, “Securement of the shipper capacity commitments for our Eastern Access projects follows the securement of substantial commitments on our Gulf Coast Access projects which we recently announced. These two large programs have both come to fruition in the last six months, achieving the strategy of expanding access to new markets in North America for growing production from western Canada and the Bakken which we embarked on several years ago. Importantly, these initiatives utilize existing pipeline infrastructure that minimizes our construction footprint. The associated aggregate investment of approximately \$8 billion at attractive returns provides substantial support for the extension of our 10% plus growth rate in earnings per share beyond the middle of this decade.”

A map of Enbridge Inc. and Enbridge Energy Partners’ expansion projects is available at www.enbridge.com

About Enbridge Inc.

Enbridge Inc. is a North American leader in delivering energy and one of the Global 100 Most Sustainable Corporations. As a transporter of energy, Enbridge operates, in Canada and the U.S., the world's longest crude oil and liquids transportation system. The Company also has a significant and growing involvement in natural gas gathering, transmission and midstream businesses, and an increasing involvement in power transmission. As a distributor of energy, Enbridge owns and operates Canada's largest natural gas distribution company, and provides distribution services in Ontario, Quebec, New Brunswick and New York State. As a generator of energy, Enbridge has interests in close to 1,000 megawatts of renewable and alternative energy generating capacity and is expanding its interests in wind and solar energy, geothermal and hybrid fuel cells. Enbridge employs more than 7,000 people, primarily in Canada and the U.S. and is ranked as one of Canada's Greenest Employers, and one of the Top 100 Companies to Work for in Canada. Enbridge's common shares trade on the Toronto and New York stock exchanges under the symbol ENB. For more information, visit www.enbridge.com.

About Enbridge Energy Partners, L.P.

Enbridge Energy Partners, L.P. owns and operates a diversified portfolio of crude oil and natural gas transportation systems in the United States. Its principal crude oil system is the largest transporter of growing oil production from western Canada. The system's deliveries to refining centers and connected carriers in the United States account for approximately 13 percent of total U.S. oil imports; while deliveries to Ontario, Canada satisfy approximately 70 percent of refinery demand in that region. EEP's natural gas gathering, treating, processing and transmission assets, which are principally located onshore in the active U.S. Mid-Continent and Gulf Coast area, deliver approximately 2.5 billion cubic feet of natural gas daily.

Enbridge Energy Management, L.L.C. (NYSE: EEQ) manages the business and affairs of EEP and its sole asset is an approximate 14 percent interest in EEP. Enbridge Energy Company, Inc., an indirect

wholly owned subsidiary of Enbridge Inc. of Calgary, Alberta, (NYSE: ENB) (TSX: ENB) is the general partner and holds an approximate 23 percent interest in EEP .

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Certain information provided in this news release constitutes forward-looking statements. The words "anticipate", "expect", "project", "estimate", "forecast" and similar expressions are intended to identify such forward-looking statements. Although Enbridge and its affiliate EEP believe that these statements are based on information and assumptions which are current, reasonable and complete, these statements are necessarily subject to a variety of risks and uncertainties pertaining to operating performance, regulatory parameters, weather, economic conditions and commodity prices. You can find a discussion of those risks and uncertainties in the Canadian securities filings for ENB, and American SEC filings for ENB and EEP. While Enbridge and EEP make these forward-looking statements in good faith, should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary significantly from those expected. Except as may be required by applicable securities laws, Enbridge and EEP assume no obligation to publicly update or revise any forward-looking statements made herein or otherwise, whether as a result of new information, future events or otherwise.

FOR FURTHER INFORMATION PLEASE CONTACT:

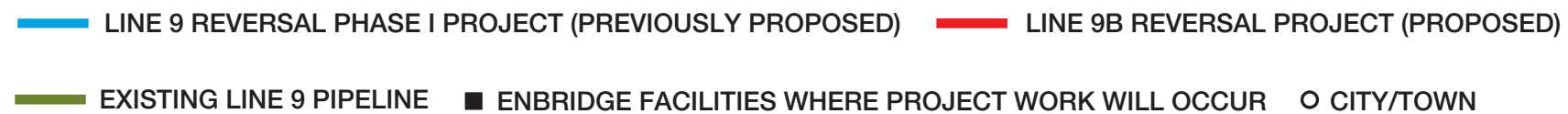
Jennifer Varey/Graham White
Media
(403) 508-6563 or Toll Free: (888) 992-0997
Email: jennifer.varey@enbridge.com
graham.white@enbridge.com

Jody Balko
Investment Community
(403) 231-5720
Email: jody.balko@enbridge.com

Lorraine Little
Media
(715) 398-4677
Email: usmedia@enbridge.com

Sanjay Lad
Investment Community
Toll-free: (866) EEP INFO or (866) 337-4636
E-mail: eep@enbridge.com

Line 9B Reversal Project



OPEN SEASON FEATURES AND TERMS

ENBRIDGE PIPELINES INC.

LINE 9B REVERSAL TO MONTREAL

A. Overview of the Line 9B Reversal Project

The Line 9B Reversal Project responds to industry demand for additional pipeline capacity from Sarnia, Ontario to Montreal, Québec to facilitate deliveries of Western Canadian crude petroleum to Eastern Canadian refineries and beyond.

Enbridge Pipelines Inc. (“Carrier”) would reverse the flow of its existing Line 9 pipeline so that it would flow from Sarnia to Montreal (Line 9, as reversed, the “Project”). The capacity of the reversed Line 9 would be approximately 240,000 bpd (depending on crude slate). Of this, 215,000 bpd is being made available for volume commitments in this Open Season, 180,000 bpd of which will be for Montreal destined commitments with the balance of capacity available for commitments to Westover. The Carrier will allocate up to an aggregate total of 50,000 bpd to heavy crude petroleum if requested through the Open Season with the balance of capacity being allocated to Light Crude Oil. Carrier may elect to increase the amount of capacity allocated to heavy crude petroleum at its sole discretion.

The Project would have an interconnection point at Sarnia for volumes that originate upstream of Sarnia.

It is currently expected that the in-service date of the Project could occur as early as the first quarter of 2014.

B. Purpose of Open Season

Through this open season, the Carrier, as sponsor, provides potential shippers with the opportunity to secure certain benefits in exchange for making long-term minimum volume commitments to the Project, thereby becoming “Committed Shippers”.

C. Commercial Terms

A summary of key terms and conditions of the proposed TSA (as defined in Part E.2 below) for the Project is attached as Exhibit A. Exhibit A is, however, neither a complete summary of the terms of the TSA nor a complete summary of the provisions described. Accordingly, potential shippers that are interested in participating in this Open Season should read the TSA and its

schedules in their entirety. In the event of any discrepancy between the summary contained in Exhibit A and the TSA, the TSA will control.

D. Information Requests

Potential shippers should direct any questions to the individual(s) indicated below before returning a completed and executed TSA:

Steve Elliott
Manager, Market Development
Liquids Pipelines
3000, 425 1st Street SW
Calgary, Alberta
T2P 3L8
403 663-6640
steve.elliott@enbridge.com

Vince Paradis
Director, Market Development
Liquids Pipelines
3000, 425 1st Street SW
Calgary, Alberta
T2P 3L8
403 231-5991
vincent.paradis@enbridge.com

E. Additional Open Season Terms

The terms set forth below in this Part E are supplemental to, and should be read in conjunction with, the Notice of Open Season dated May 16, 2012, as amended from time to time (the "Notice of Open Season").

1. Open Season Process.

The Open Season will be conducted in a single phase.

2. Open Season Documents.

The "Open Season Documents" comprise:

- (a) Notice of Open Season
- (b) These Open Season Features and Terms
- (c) Transportation Services Agreement, including a pro forma Rules and Regulations Tariff attached as an Exhibit ("TSA")

The provision of access to the Open Season Documents does not constitute an offer by Carrier to provide transportation service, but will enable potential shippers to review and, if a potential shipper so desires, complete, execute and return copies of the TSA to Carrier so as to be

eligible to receive transportation service at the applicable committed rate if the Project proceeds and the Carrier executes the TSA.

Potential shippers should note that any changes to the Open Season process and any extension(s) of the closing date for this Open Season will be posted directly to the following Website: <http://line9.enbridge.com/> (the “Website”) and no further notice may be given except as explicitly provided elsewhere in these Open Season Features and Terms. Copies of changes to the Open Season Documents will be sent directly to potential shippers who have timely signed and delivered Confidentiality Agreements, and will also be posted to the Website.

3. Execution of TSA by Offering Shippers.

A potential shipper that desires to make a volume commitment (an “Offering Shipper”) must complete, execute and deliver to Carrier, by 12:00 p.m. MST on or before June 15, 2012 (a) two undated copies of the TSA, by courier or hand delivery, or (b) one undated copy of the TSA to Carrier, by fax or email, in each case, to the following person and address:

Steve Elliott
Manager, Market Development
Liquids Pipelines
3000, 425 1st Street SW
Calgary, Alberta
T2P 3L8
Fax: 403-231-5979

If an Offering Shipper submits a completed and executed copy of the TSA by fax or email, the Offering Shipper must also deliver two original executed, undated copies to the person and address listed above by no later than five (5) business days after submission of the fax/email copy.

If a potential shipper does not execute and deliver the TSA by the date and time specified, then, in the event the Project proceeds, that potential shipper will not be eligible for service as a Committed Shipper, regardless of whether that potential shipper eventually delivers the executed TSA.

A TSA that has been altered or amended in any way by the Offering Shipper, other than by the insertion of the Offering Shipper's name, place of organization, incorporation or formation, address and contact information, GST number, intended origination point of crude petroleum, and committed volume may not be executed by the Carrier and in the event the Project proceeds, that Offering Shipper will not be eligible for service as a Committed Shipper.

The Open Season will be considered closed at 12:00 p.m. MST on June 15, 2012.

4. Over-Subscription.

If the aggregate volumes committed to in TSAs exceed the proposed capacity that is being made available for committed volumes to each destination point, as described in Part A above, such capacity will be allocated among the Offering Shippers to each over-subscribed destination point that meet Carrier's creditworthiness requirements in the order, highest to lowest, of the Offering Shippers' Cumulative Revenues. For the purposes of this Part E.4, "Cumulative Revenues" means the sum of the product of the committed volume for light, medium and heavy crude of each Offering Shipper under the TSA multiplied by the applicable forecast toll for the first calendar year after the in-service date of the Project for transportation from the intended origination point of crude petroleum to the selected delivery point. If one of the delivery points is under-subscribed carrier shall reserve the right to transfer such unused capacity to the over-subscribed delivery point prior to allocating capacity as described above.

In the event the capacity allocated to an Offering Shipper is below the minimum volume commitment, that is, 10,000 bpd, then Carrier shall have the option, at its sole discretion, to

- a. offer that volume to those Offering Shippers already allocated capacity above, who meet Carrier's creditworthiness requirements, on a proportionate basis (rounded as appropriate) of Offering Shippers' Cumulative Revenues, and if that volume is accepted, reject the TSA which was allocated capacity below the minimum volume commitment, or;
- b. allocate such lower capacity to the Offering Shipper.

If the cumulative revenues of more than one Offering Shipper are equal and as a result the capacity allocated to those Offering Shippers is below the minimum volume commitment, then the TSA of the Offering Shipper that was received last will be deemed to have the lower allocated capacity.

Carrier will give written notice to each Offering Shipper of any reduced capacity allocated to it. Such notice will attach a revised copy of Schedule A to the TSA reflecting the reduced volume commitment and such revised Schedule A shall replace the Schedule A attached to the TSA submitted by the Offering Shipper. By signing and submitting a TSA, each Offering Shipper authorizes Carrier to modify Schedule A to such Offering Shipper's TSA to reflect any adjustments to its committed volume pursuant to this Part E.4. Notwithstanding any other provision in this Part, an Offering Shipper may rescind its offer within 10 days of receiving written notice of any reduced capacity, should the reduced capacity allocated to it be less than ninety percent (90%) of the volume indicated in the TSA submitted to Carrier. Carrier will re-allocate that volume to the remaining Offering Shippers as provided above.

5. Execution of TSAs by Carrier

After (a) the close of the Open Season and (b) Carrier has completed any applicable adjustments in accordance with Part E.4 above, Carrier will decide, in its sole and absolute discretion, whether to proceed with the Project. If Carrier decides to proceed, Carrier will indicate its acceptance by executing both copies of the TSA submitted by the Offering Shippers, with a revised Schedule A if applicable, and returning one copy of such TSA to such Offering Shippers. Each TSA, once executed and delivered by both parties thereto shall constitute a binding agreement, subject to its terms and conditions. Carrier is, however, in no way bound to execute any TSAs.

If a TSA has not been executed and returned to shippers by Carrier on or before ninety (90) days after the close of this Open Season, as this Open Season may be extended from time to time (the "Outside Execution Date"), it will become ineffective with no further obligations relating to the Project on the part of Carrier or the Offering Shipper.

An Offering Shipper may not, prior to the Outside Execution Date, withdraw or cancel the TSA executed and delivered by it.

Carrier reserves the right to terminate this Open Season, in its sole and absolute discretion, at any time up until all of the TSAs have been fully executed by both Offering Shippers and Carrier. Offering Shippers should take note of the conditions precedent in the TSA.

6. Credit Qualification

At Carrier's request, during the Open Season or at any time prior to the date when Carrier executes the TSA, an Offering Shipper may be required to provide to Carrier evidence that such Offering Shipper satisfies the minimum credit ratings required by the financial assurance provisions of the TSA or to deliver, or provide evidence acceptable to Carrier that it will deliver, the guaranty or other financial assurances required by the TSA.

Regardless of whether an Offering Shipper has executed and returned a TSA, if it is unable to satisfy the requirements in the immediately preceding paragraph, it will not be eligible for service as a Committed Shipper if the Project proceeds, and will only be eligible for service as a shipper of uncommitted volumes subject to the applicable Rules and Regulations Tariffs.

A Committed Shipper whose credit is initially approved pursuant to the procedures in these Open Season Features and Terms will remain subject to the financial assurances provisions of the TSA.

7. Regulatory Matters

These Open Season Features and Terms are intended to be used solely for the services discussed herein and are not intended to be in lieu of the requirements of the National Energy Board, or any other applicable federal or provincial laws.

Exhibit A

Summary of Key Terms and Conditions

1. Apportionment. Subject to the approval of the National Energy Board, the committed volumes of Committed Shippers would not be apportioned to accommodate uncommitted volumes.
2. Term. The term of the TSA shall be ten years. Committed Shippers would have the right to extend the term for one (1) five (5) year extension.
3. Tolls. Subject to applicable law, the tariff tolls would be:
 - a) International joint tariff (“IJT”) tolls for committed service on the Reversed Line 9 will be payable for Committed Shippers’ committed volumes that originate in Edmonton, Hardisty, Kerrobert, Regina, or Cromer and deliver at Montreal, Quebec, Nanticoke, Ontario or West Seneca, New York (the “Committed Tolls”). Committed Tolls for deliveries to Nanticoke or West Seneca will equal the published Competitive Toll Settlement (“CTS”) IJT toll to Nanticoke or West Seneca, respectively, and will be adjusted annually by 75% of the annual change in the Canada Gross Domestic Product at Market Prices Index (“GDPP Index”). Final tolls will be dependent upon the actual GDPP Index in the period up to the Project in-service date.
 - b) Local uncommitted tariff tolls (the “Uncommitted Local Tolls”) would be available for deliveries to Montreal or Westover and would be adjusted annually by 75% of the GDPP Index.
 - c) Shippers would also be liable for any sales, excise and use taxes and any other tariffs or charges provided for in the tolls tariff.
4. Minimum Commitments. The minimum TSA commitment that may be submitted by a shipper pursuant to this Open Season is 10,000 bpd for each crude type and delivery point selected by such shipper.
5. Deficiency Payments and Make-Up Rights.

(a) Subject to paragraph 5(c), monthly deficiency payments will be payable if a Committed shipper does not ship its committed volume in any month. To the extent that monthly deficiency payments are made, such deficiency credits can be applied as prepaid transportation for up to thirty-six (36) months, subject to available capacity.

(b) The TSA provides for extended make-up rights in the case of an event of Carrier force majeure.

(c) Deficiency payments will not be required in the case of apportionment of the Enbridge Mainline in certain circumstances, or Carrier force majeure of more than 90 days.