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Regulator

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du Canada

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## LETTER DECISION

File 4637048  
4 March 2024

Kristi Millar  
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Law, Regulatory Law  
Enbridge Pipelines Inc.  
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Dear Kristi Millar:

**Enbridge Pipelines Inc.  
Application for Approval of the Mainline Tolling Settlement and Final Tolls  
Letter Decision**

On 15 December 2023, Enbridge Pipelines Inc. (**Enbridge**) filed an application (**Application**) with the Canada Energy Regulator for approval of the Mainline Tolling Settlement<sup>1</sup> (**Settlement**). Enbridge filed its Application pursuant to Parts 1, 3, and 9 of the *Canadian Energy Regulator Act*<sup>2</sup> (**CER Act**) and the *Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs*<sup>3</sup> (**Settlement Guidelines**).

The Settlement establishes how tolls will be determined on Enbridge's Canadian Mainline pipeline system during its term. There will be no priority access on the Enbridge Mainline during the Settlement's term. Tolls are cost informed and were negotiated based on the cost information found in Schedule "Q" of the Settlement. Tolls will be subject to annual cost escalators, and a true-up surcharge or sur-credit if the financial return for the Enbridge Mainline falls outside of, or is expected to fall outside of, agreed upon levels. Tolls will include several other surcharges and sur-credits, including for refunding revenues charged under interim tolls collected from 1 July 2021 to 30 June 2023<sup>4</sup>. The Settlement addresses tolls for the July 2021 to December 2028 period, and Enbridge requested that several currently charged interim tolls be finalized.

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<sup>1</sup> Enbridge Pipelines Inc., "Mainline Tolling Settlement and Final Toll Application", Filing ID [C27697](#), (15 December 2023).

<sup>2</sup> S.C. 2019, c. 28, s. 10

<sup>3</sup> National Energy Board, "Revised Guidelines for Negotiated Settlements of Traffic, Tolls and Tariffs", Filing ID [A02885](#), (12 June 2002).

<sup>4</sup> The IJT and CLT tolls in effect at the end of Enbridge's previous Competitive Toll Settlement became interim on 1 July 2021. Enbridge filed and received approval for revised interim tolls effective 1 July 2023 that reflected the negotiated Settlement tolls.

Enbridge submitted that the Settlement is the result of good faith, arm's length negotiations with a broad group of stakeholders including producers, refiners, integrated shippers, government entities, and industry associations. The Settlement was negotiated between Enbridge and a subcommittee of the Representative Shipper Group, later renamed the Representative Stakeholder Group. Numerous discussions between Enbridge and its stakeholders took place between December 2021 and December 2023, including meetings, open houses, and back-and-forth negotiations.

Enbridge submitted that it conducted negotiations in accordance with the Commission's Settlement Guidelines. As required by the Settlement Guidelines, all parties having an interest in Enbridge's traffic, tolls and tariffs had a fair opportunity to have their interests recognized and appropriately weighed during the negotiation process. On 14 December 2023, the Representative Stakeholder Group unanimously approved the Settlement. Enbridge stated that it is not aware of outstanding concerns or objections with respect to the Settlement.

Eleven letters of support from stakeholders were included as attachments to the Application with two more filed separately shortly after. The comment process initiated by the Commission on 3 January 2024 resulted in two letters supporting approval of the Settlement from parties that had also included letters with the Application. Letters in support of the Application<sup>5</sup> included the following themes:

- The Settlement is the result of a fair and equitable arms-length negotiation process.
- All interested parties had an opportunity to participate in the settlement process and have their interests recognized and appropriately weighed.
- The Settlement fairly allocates risks and rewards between Enbridge and its shippers.
- A key element is the financial return collar, with returns on the Enbridge Mainline to be calculated each year using a negotiated model based on actual throughputs, costs, and revenues.
- The Settlement provides toll certainty through the term.
- The Settlement appropriately provides for local tolls in Canadian dollars for Canadian operational expenses.
- The Settlement addresses interim tolls and a negotiated sur-credit for refunding a portion of those tolls.
- Parties believed no further regulatory process was required beyond the close of the public comment process. If further process is determined to be necessary, it should be as short as reasonably possible.
- The Application should be approved as soon as possible in order that the refund mechanism can be implemented promptly.

The Canada Energy Regulator did not receive any submissions that opposed or raised concerns with the Application.

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<sup>5</sup> Letters were filed by the Alberta Department of Energy and Minerals, BP Products North America Inc., Canadian Natural Resources Limited, the Canadian Association of Petroleum Producers, Cenovus Energy Inc., ConocoPhillips Canada Resources Corp., Federated Co-operatives Limited, Flint Hills Resources Canada, LP, Gibson Energy, the Government of Saskatchewan, Greenfire Resources Operating Corporation, Imperial Oil Limited, and Suncor Energy Marketing Inc.

## **Commission Analysis and Findings**

The Commission approves the Application as filed with no further process steps. The Settlement will result in tolls that are just and reasonable, and tolls and services that are not unjustly discriminatory, as required by sections 230 and 235 of the CER Act. The Commission gave significant weight in its decision to the unanimous Representative Stakeholder Group support for the Settlement and the absence of submissions opposing or raising concerns. As provided in the Settlement Guidelines, if a settlement is not opposed by any party, the Commission is normally able to conclude that the resultant tolls are just and reasonable and that a public hearing is not required.

The Commission finds that the Settlement and the negotiation process used meet the requirements of the Settlement Guidelines. Specifically, as required by those guidelines, the Commission is satisfied that:

- the negotiation process was open, and all parties had a fair opportunity to participate in negotiations and have their interests recognized and appropriately weighed;
- the process was understood by all interested parties;
- the Commission's ability and discretion to take into account public interest considerations was not fettered;
- no provisions of the Settlement appear to be illegal or contrary to the CER Act or otherwise contrary to the public interest<sup>6</sup>; and
- adequate information was filed on the public record, including the Final Issue Resolution Sheet voted on by the Representative Stakeholder Group, which includes all matters agreed-upon and calculations for various settlement components.

The Commission acknowledges that Enbridge and its stakeholders seriously considered the guidance in the Commission's RH-001-2020 Reasons for Decision<sup>7</sup> that denied Enbridge's Mainline Contracting application. In that decision, the Commission stated its expectation that pipeline companies meaningfully engage and negotiate on key issues raised by stakeholders, as well as consult and share relevant information and updates throughout the process.<sup>8</sup> In this regard, the Commission is satisfied that Enbridge ran a fair and robust negotiation process that involved:

- negotiations with all impacted stakeholders, including producers, that included regular meetings, updates and adjustments to various terms based on feedback; and
- providing in-depth cost of service and throughput information requested during the negotiations, including responding to information requests, to support cost-informed negotiated toll levels.

The Settlement is not contested by any party. The Settlement Guidelines provide that only in unusual circumstances, such as concerns about a broader public interest consideration, would further evidence and evaluation be necessary. The Commission has reviewed the Settlement and finds that there are no apparent circumstances or terms that require the Commission to further assess the Application. The negotiating parties have reached a mutually agreeable balance between their respective interests. The fairness of the allocation of risks in the Settlement is evidenced by the unanimous support from the Representative

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<sup>6</sup> For example, the dispute resolution clause does not preclude parties from raising matters with the Commission.

<sup>7</sup> Canada Energy Regulator, "Reasons for Decision RH-001-2020 – Enbridge Pipelines Inc. – Canadian Mainline Contracting", Filing ID [C16317](#), (26 November 2021).

<sup>8</sup> *Ibid* at pg. 81 (PDF 94).

Stakeholder Group, and the Settlement does not raise concerns for the Commission on issues that may extend beyond the immediate interests of the negotiating parties.

The Commission acknowledges the significant time and effort invested by parties to negotiate and agree on tolling matters for the Canadian Mainline. The unanimous support achieved for the Settlement from all stakeholders is significant and the Commission appreciates the willingness of parties to collaborate and negotiate. As stated in the RH-001-2020 Reasons for Decision, Enbridge and its stakeholders are best positioned to develop market-sensitive solutions that will address the needs, challenges and opportunities associated with the Canadian Mainline.<sup>9</sup> The Commission finds that Enbridge and its stakeholders also designed and carried out a process to enable collaboration on subsequent tolling matters and notes that the dispute resolution process included in the Settlement provides an opportunity for parties to resolve issues prior to seeking involvement of the Commission.

For these reasons, the Commission approves the Application as filed, including:

- approval of the Settlement in respect of the Canadian Mainline;
- approval of the Base Canadian Local Tariff Tolls and the Base International Joint Tariff Tolls set forth respectively in Schedules “C” and “B” of the Settlement, and also in Appendix B to Interim Canadian Local Tariff CER No. 529 and Appendix A to Interim International Joint Tariff CER No. 530, respectively, as final tolls from 1 July 2021 to the effective date of the first toll filings under the Settlement following the Commission’s approval (**Effective Date of the New Settlement Tolls**)<sup>10</sup>;
- approval of the interim receipt and delivery tankage tolls as final tolls from 1 July 2021 to the Effective Date of the New Settlement Tolls;
- the Interim Line 3 Replacement surcharges charged between 1 July 2021 and 30 September 2021 as final tolls;
- the Line 3 Replacement surcharges charged between 1 October 2021 and the Effective Date of the New Settlement Tolls as final tolls; and
- approval to establish from 1 July 2021 through to 31 December 2028 tolls for the Canadian Mainline in accordance with the Settlement.

Toll Order TO-002-2024 gives effect to this decision.

Enbridge is directed to serve a copy of this Letter Decision on all Canadian Mainline shippers, all members of the Representative Stakeholder Group, and other interested persons.

Yours sincerely,

*Signed by*

Ramona Sladic  
Secretary of the Commission

Attachment

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<sup>9</sup> *Ibid* at pg 13 (PDF 26).

<sup>10</sup> The Effective Date of the New MTS Tolls will be no later than the first day of the month following the month after Commission approval of the Settlement.

c.c. Erin Rolstad, Director Regulatory Strategy & Compliance, Enbridge Pipelines Inc.,  
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