

**INCENTIVE TOLL PRINCIPLES OF SETTLEMENT  
For the Year 2011**

**Between**

**Enbridge Pipelines Inc.  
("Enbridge")**

**and**

**Canadian Association of Petroleum Producers  
("CAPP")**

# INCENTIVE TOLL SETTLEMENT For the Year 2011

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## **1. INTRODUCTION AND PRINCIPLES**

- 1.1 Enbridge Pipelines Inc. (“Enbridge”) and the Canadian Association of Petroleum Producers (“CAPP”) have negotiated an incentive toll settlement in relation to Enbridge’s system operations and tolls for 2011 (“the 2011 ITS”). This document provides the details that encompass the 2011 ITS.
- 1.2 Enbridge is a body corporate continued under the laws of Canada, having its registered office in the City of Calgary, in the Province of Alberta. Enbridge owns and operates an oil pipeline that is regulated by the National Energy Board (“Board” or “NEB”).
- 1.3 CAPP is a trade association representing member companies that explore for, develop and produce crude oil, natural gas and petroleum products throughout Canada. CAPP producer members account for approximately 90% of Canada’s oil and gas production and virtually all of the commodities transported by Enbridge.
- 1.4 In 1995, Interprovincial Pipe Line Inc. (now Enbridge) and CAPP reached a negotiated toll settlement (the "1995 Incentive Toll Settlement") which was approved by the NEB on March 22, 1995 pursuant to Order TO-1-95.
- 1.5 Between 1995 and 1999, Enbridge and CAPP negotiated two additional negotiated toll settlements for the expansion projects, Enbridge's System

Expansion Phase II ("SEP II") and the Terrace Expansion.<sup>1</sup> These toll settlements were subsequently approved by the Board pursuant to its OH-1-96 and OH-1-98 Reasons for Decision. This incentive toll settlement does not affect those two prior settlements.

- 1.6** In 2000 Enbridge and CAPP reached a further negotiated toll settlement, the Incentive Toll Principles of Settlement for the Years 2000 - 2004 (the "2000 ITS"). The 2000 ITS was approved by the NEB on June 15, 2000, pursuant to Order TO-3-2000 and expired on December 31, 2004.
- 1.7** In 2005 Enbridge and CAPP reached a new negotiated toll settlement, the Incentive Toll Principles of Settlement for the Years 2005 – 2009 (the "2005 ITS"). The 2005 ITS was approved by the NEB on January 27, 2006, pursuant to Order TO-01-2006 and had effect from January 1, 2005 until December 31, 2009.
- 1.8** In 2010 Enbridge and CAPP reached a new negotiation toll settlement, the 2010 Incentive Tolling Settlement ("2010 ITS") for the period from January 1, 2010 to December 31, 2010. The 2010 ITS was approved by the NEB on May 12, 2010 and had effect from January 1, 2010 to December 31, 2010.

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<sup>1</sup> A copy of the SEP II Toll Settlement is found at Schedule "D". The Terrace Toll Agreement Statement of Principles is contained at Schedule "E".

**1.9** This negotiated settlement, the 2011 Incentive Tolling Settlement (“2011 ITS”), is effectively an extension of the 2010 ITS. It is intended to have effect from January 1, 2011, until December 31, 2011 or until it is superseded by another settlement. With the 2011 ITS, Enbridge and CAPP expect benefits to accrue to Enbridge and the producers/shippers that use the system based on the incorporation of certain incentives and risk sharing mechanisms into a cost of service model.

**1.10** The 2011 ITS specifically provides benefits to producers/shippers through the following:

- a simplified revenue requirement setting arrangement;
- incentives to encourage operational and cost efficiencies through a mechanism where variances from an established operating cost threshold are to the account of Enbridge on a dollar-for-dollar after tax basis;
- sharing the net of Allowance Oil Revenues and Oil Loss Costs;
- a rebalancing of risk, including some Enbridge exposure to volumes on its system and oil prices for the allowance oil component of tolls;
- elimination of time and expense associated with a toll hearing.

**1.11** Enbridge and CAPP have reached the 2011 ITS on a negotiated basis based on all of the components reflected herein. Enbridge and CAPP agree that no

individual component of the 2010 ITS is to be construed as representing the position of either Enbridge or CAPP. Furthermore, no element of the 2011 ITS is to be considered as acceptable to either party in isolation from all other aspects of this settlement. The parties intend that the 2011 ITS be viewed as a whole and that there should be no prejudice to the positions of either party beyond the term of the 2011 ITS.

- 1.12** In particular, and without restricting the generality of the above, Enbridge and CAPP confirm that the selection of certain capital structures, interest rates, equity returns and operating costs, required for the purposes of implementing particular components of the 2011 ITS, do not in any way form a precedent for the future, nor do these represent the position of either Enbridge or CAPP as to the capital structure, interest expense, equity return and operating costs that would be appropriate absent this negotiated settlement.
- 1.13** Enbridge and CAPP intend that the 2011 ITS will be applicable solely to Enbridge and will have no application to or form a precedent for other NEB regulated pipelines.
- 1.14** Enbridge and CAPP intend that the 2011 ITS will establish a framework for ongoing discussion.

- 1.15** Where unanticipated matters of concern to either party arise, Enbridge and CAPP agree to discuss and attempt to resolve such matters in a fair, equitable and timely manner.
- 1.16** The Enbridge Board of Directors and the CAPP Board of Governors have approved the principles that comprise the 2011 ITS.
- 1.17** Enbridge, with CAPP's support, will seek National Energy Board approval of the 2011 ITS .

## **2. DEFINITIONS**

### **2.1 Defined Terms**

The following terms found in the 2011 ITS have the meanings set out below:

- (A) **13 Point Average** is the result obtained by summing a numerical value at January 1 of the current year along with the numerical values at each of the current year's month ends and dividing by the number of data points, i.e., 13.
- (B) **2000 ITS** means the Incentive Toll Principles of Settlement for the Years 2000-2004 that was filed with the NEB April 5, 2000 and was approved by the NEB pursuant to Order TO-3-2000.
- (C) **2005 ITS** means the Incentive Toll Principles of Settlement for the Years 2005–2009 that was filed with the NEB on December 19, 2005, and was approved by the NEB pursuant to Order TO-01-2006.
- (D) **2010 ITS** means the Incentive Toll Settlement for the year 2010 that was filed with the NEB on March 31, 2010, and was approved by the NEB on May 12, 2010.
- (F) **2011 ITS** means this Incentive Toll Settlement for the year 2011 including all schedules and appendices, all of which together form one settlement.

- (E) **Actual GWh or gigawatt hours**, means annual electric energy consumption by Enbridge for the Enbridge Mainline System as recorded on third party invoices for the calendar year, as verified by a qualified independent third party consultant acceptable to both Enbridge and CAPP.
  
- (F) **Actual Mill Rate** means the annual summed total of power costs for the Enbridge Mainline System divided by the annual summed total of Actual GWh consumed by the Enbridge Mainline System based on third party invoices.
  
- (G) **Actual Transportation Revenue** means transportation revenue generated in the year derived from tolls for the Enbridge Core System excluding revenue generated from facilities tolled on a stand-alone basis pursuant to Deficiency Agreements.
  
- (H) **Alberta Clipper** means those pipeline facilities which provide transportation services from Hardisty, Alberta to Gretna, Manitoba and were approved by the NEB pursuant to its Reasons for Decision OH-4-2007.
  
- (I) **Alberta Clipper Negotiated Settlement** means the Alberta Clipper Canada Settlement dated June 28, 2007, and approved by the NEB pursuant to its Reasons for Decision OH-4-2007.

- (J) **Allocated Overhead** means that portion of Enbridge Inc.'s allocable overhead costs which are attributable to Enbridge. This amount will be determined using a ratio that compares the original property, plant and equipment net book value of the Enbridge Mainline system to the combined original net book value of the property, plant and equipment of Enbridge Inc. and its affiliates as determined at the end of the preceding fiscal year for each of the entities as described in Schedule C of the 2011 ITS.
- (K) **Allowance Oil** means the percentage of all hydrocarbons tendered to the Enbridge Mainline System, which Enbridge is entitled to collect in kind as more fully described in Article 4.3.
- (L) **Allowance Oil Revenue** means the value of hydrocarbons collected by Enbridge through the provision of Allowance Oil.
- (M) **Allowance Oil Revenue Available For Sharing** has the meaning ascribed thereto in Article 4.3.5.
- (N) **Base Tolls** mean the base tolls determined pursuant to Article 3.2.
- (O) **CAPP** means the Canadian Association of Petroleum Producers.
- (P) **Deficiency Agreements** for the Enbridge Core System include, but are not limited to, agreements for the financial support of facilities which support may be provided through shipper revenue or throughput commitments as may be in place from time to time.

- (Q) **Deliveries at Terrace III Capacity** means the delivery forecast prepared by Enbridge reflecting the capacity of the Enbridge Core System at Terrace III capacity as reflected in Schedule “G”.
- (R) **Depreciation Expense** means the annual depreciation amount for the Enbridge Core System calculated by using the depreciation study in effect at the then current time reflecting a deduction for the amount of depreciation expense allocable to the Terrace Expansion at the rate prescribed in the Terrace Toll Agreement Statement of Principles.
- (S) **Depreciation Expense Variance** means the difference between the actual Depreciation Expense applicable to Enbridge for the year and the forecast Depreciation Expense included in the Net Revenue Requirement for the year.
- (T) **Dollar** or **\$** is a reference to the lawful currency of Canada unless otherwise specified.
- (U) **DRA** means drag reducing agent.
- (V) **Enbridge** means Enbridge Pipelines Inc.
- (W) **Enbridge Core System** means all of the Enbridge Mainline System excluding Line 4 Extension, Alberta Clipper and Southern Access, and as is described in Schedule “H”.

- (X) **Enbridge Mainline System** means all of the Enbridge NEB-regulated pipeline operations as of January 1, 2011, but not including Line 8 or Line 9, and as may be expanded or modified from time to time as a Non-Routine Adjustment or as agreed to by Enbridge and CAPP for inclusion in the definition of "Enbridge Mainline System", and as is described in Schedule "H".
- (Y) **Enbridge Older System** means all of the Core System excluding the Terrace Expansion facilities, and as is described in Schedule "H".
- (Z) **Fixed Fees** are Enbridge's charges, to its affiliates or lines of business that are distinct from the Enbridge Older System, for provision of a service at an established cost in accordance with Enbridge's cost allocation policy.
- (AA) **Forecast Deliveries** means the 2011 annual forecast of deliveries by delivery location prepared by Enbridge and reviewed by CAPP.
- (BB) **Forecast Elements** has the meaning ascribed thereto in Article 4.2 (b).
- (CC) **Forecast Mill Rate** is an estimate of the Actual Mill Rate for the year established by using as a proxy the previous year's Actual Mill Rate, except where the anticipated Mill Rate for the year is expected to vary significantly from the previous year's Actual Mill

Rate. In such instances Enbridge, in consultation with CAPP, will determine a Forecast Mill Rate based on information obtained from the following sources:

- (i) for regulated power rates Enbridge will obtain information from power utilities; and
- (ii) for de-regulated power rates Enbridge will obtain information from consultants or appropriate industrial associations.

(DD) **Forecast Transportation Revenue** means an amount equal to the final Base Tolls multiplied by Deliveries at Terrace III Capacity, which amount is used to calculate the Transportation Revenue Variance in accordance with Article 10.2.

(EE) **FSM** means the Facilities Surcharge Mechanism which allows Enbridge Energy, Limited Partnership to recover the costs associated with particular projects through a surcharge layered on top of the existing rates and other surcharges in effect, as approved by the US Federal Energy Regulatory Commission in Enbridge Energy, Limited Partnership, 107 FERC ¶ 61,336 (June 30, 2004).

(FF) **GDPP** for any year means the average annual Gross Domestic Product at Market Prices Index published by Statistics Canada in March (Catalogue No. 13-019-X "Implicit price indexes, gross domestic product") for the prior year, and the forecast GDPP will

use as a proxy the prior year's GDPP, including any amendments or replacements thereto.

- (GG) **GWh** means gigawatt hours.
- (HH) **Income Tax Allowance** will be based on the applicable earnings amount, statutory income tax rates, large corporations tax, the flow through methodology for accounting for income taxes and the applicable permanent and timing differences, appropriately adjusted to a before tax amount, on an actual or forecast basis, as applicable, all in a manner consistent with that previously approved by the NEB.
- (II) **Income Tax Allowance Variance** is the difference between the forecast Income Tax Allowance and the actual Income Tax Allowance.
- (JJ) **Income Taxes** will be based on the applicable earnings amount, statutory income tax rates, large corporations tax, the flow through methodology for accounting for income taxes and the applicable permanent and timing differences, all in a manner consistent with that previously approved by the NEB.
- (KK) **Independent Auditor** means a firm of Chartered Accountants.
- (LL) **kg/m<sup>3</sup>** means kilograms per cubic metre.

- (MM) **Line 4 Extension** means those pipeline facilities which provide transportation service from Edmonton, Alberta to Hardisty, Alberta and were approved by the NEB pursuant to its Reasons for Decision OH-5-2007.
- (NN) **Line 4 Extension Negotiated Settlement** means the Line 4 Extension Settlement dated June 28, 2007, and approved by the NEB pursuant to its Reasons for Decision OH-5-2007.
- (OO) **Line 8** means those pipeline facilities which provide transportation services from Enbridge's terminal at Sarnia, Ontario to Millgrove Junction, near Hamilton, Ontario and approved by the NEB pursuant to its Reasons for Decision OH-4-96.
- (PP) **Line 9** means those pipeline facilities which provide transportation service from Montreal, Quebec, to Westover and Sarnia, Ontario and approved by the NEB pursuant to its Reasons for Decision OH-2-97.
- (QQ) **Mainline Integrity Operating Cost** includes costs which relate to the monitoring, investigation and evaluation programs for managing pipeline defects which occur as metal loss (i.e., corrosion), cracks (i.e., stress corrosion cracking), and mechanical damage (i.e., dents) in Mainline Pipe. The cost of maintenance associated with tanks, valves, rotating equipment, manifolds, other ancillary equipment and transfer piping within terminals and stations, in

addition to Non-Routine Adjustments, are not considered part of the Mainline Integrity Operating Cost.

- (RR) **Mainline Pipe** refers to transmission pipe segments in Canada, including Lines 1, 2, 3, 4, 5, 6B, 7, 10, 11, 65 and 67, connected from launch traps at an initiating pump station to receipt traps at a downstream pump station.
- (SS) **MET** means the Mainline Expansion Toll, as more particularly described in Article 3.4.
- (TT) **MWh** means megawatt hours.
- (UU) **NEB** means the National Energy Board.
- (VV) **NEB Cost Recovery** means the Enbridge Core System's allocated share of any amounts charged to Enbridge by the NEB.
- (WW) **Negotiated Elements** has the meaning ascribed thereto in Article 4.2 (a).
- (XX) **Negotiated Elements Variance** is the difference between the actual Negotiated Elements for the year and the forecast Negotiated Elements included in the Net Revenue Requirement for the year, where such difference is solely attributable to differences in actual and forecast Enbridge Older System rate base.

- (YY) **Net Revenue Requirement** means the annual revenue requirement to be collected through tolls as set out in Articles 4.1 and 4.2.
- (ZZ) **NG** means natural gas.
- (AAA) **NGL** means natural gas liquids.
- (BBB) **Non-Material Non-Routine Adjustment** means facilities, services and/or legislative and regulatory compliance, including Generally Accepted Accounting Principles or other applicable accounting principles, with associated expenditures of less than \$1 million per item, which amounts otherwise qualify for treatment as a Non-Routine Adjustment.
- (CCC) **Non-Performance Penalty Charge** has the meaning ascribed thereto in Rule 18 of Enbridge NEB Tariff No. 282, or any successor thereto.
- (DDD) **Non-Routine Adjustment** means an adjustment to the Net Revenue Requirement made as a result of events described in Article 12.
- (EEE) **Non-Routine Adjustment Rate Base** will equal the 13 Point Average of the net book value for any calendar year of the Non-Routine Adjustment.

- (FFF) **Non-Routine Adjustment Variance** means the difference between the forecast and actual revenue requirement associated with Non-Routine Adjustments.
- (GGG) **Oil Loss Costs** are comprised of the costs of the Enbridge Mainline System's physical losses, degradation losses, and sediment and water and similar crude oil inventory adjustments.
- (HHH) **Operating Cost Elements** is the aggregate of Mainline Integrity Operating Cost and NEB Cost Recovery.
- (III) **Operating Cost Elements Variance** is the difference between the actual Operating Cost Elements incurred by Enbridge for the year and the forecast Operating Cost Elements included in the Net Revenue Requirement.
- (JJJ) **Operating Cost Savings Tax Allowance** has the meaning ascribed thereto in Article 18.3.
- (KKK) **Power Cost** has the meaning ascribed thereto in Article 5.3.
- (LLL) **Power Variance** has the meaning ascribed thereto in Article 5.4.
- (MMM) **Prior Year Adjustments** has the meaning ascribed thereto in Article 4.2 (c).
- (NNN) **Reference Temperature Agreement** means the agreement titled "Statement of Agreement Amendments to the 350 Centistoke

Project Cost Recovery Methodology” dated September 27, 2004 among CAPP, Enbridge Energy Limited Partnership and Enbridge regarding changes to the reference temperature set by Enbridge from time to time and attached hereto as Schedule “F”.

- (OOO) **SEP I** or **System Expansion Phase I** means the pipeline facilities expansion program undertaken by Enbridge and approved by the NEB pursuant to Order XO-J1-1-96.
- (PPP) **SEP I Rate Base** will equal the 13 Point Average of the SEP I net book value for any calendar year.
- (QQQ) **SEP II** or **System Expansion Phase II** means the pipeline facilities expansion program undertaken by Enbridge and approved by the NEB pursuant to Certificate OC-41.
- (RRR) **SEP II Annual Capacity** means an annual delivery forecast reflecting a capacity of 259,100 m<sup>3</sup>/d as reflected in Schedule “E” to the Terrace Toll Agreement Statement of Principles.
- (SSS) **SEP II Power At Capacity** means 2726 GWh times the Forecast Mill Rate or Actual Mill Rate, as appropriate, plus the value of DRA and NG as further described in Articles 5.3 and 5.4.
- (TTT) **SEP II Rate Base** will equal the 13 Point Average of the SEP II net book value for any calendar year.

- (UUU) **SEP II Toll Settlement** means the agreement between CAPP and Enbridge which governs the tolling methodology for the SEP II expansion project and found as Schedule “D”.
- (VVV) **Service Levels** means levels of operational service described in Schedule “E” of the 2005 ITS.
- (WWW) **Service Metrics** means the criteria established to measure the level of service provided by Enbridge in the areas of quality and predictability.
- (XXX) **Southern Access** means those pipeline facilities which were approved by the NEB pursuant to Orders XO-E101-04-2006 and XO-E101-01-2007.
- (YYY) **Southern Access Negotiated Settlement** means the Southern Access Enbridge Pipeline Surcharge Terms as refined through the letter dated January 10, 2008, from CAPP to Enbridge regarding Implementation of the Southern Access Toll Methodology in Canada, both of which were approved by the NEB by letter dated March 6, 2008.
- (ZZZ) **Term** means the effective duration of the 2011 ITS, which is for the period January 1, 2011 to December 31, 2011 or earlier if it is superseded by another agreement.

- (AAAA) **Terrace Expansion** means the multi-phase pipeline facilities expansion program which is the subject matter of the Terrace Toll Agreement Statement of Principles.
- (BBBB) **Terrace Toll Agreement Statement of Principles** means the agreement reached between CAPP and Enbridge that governs the tolling methodology for the Terrace Expansion and found as Schedule “E” to this settlement.
- (CCCC) **Terrace III At Capacity Power Consumption** is equal to 2778 GWh.
- (DDDD) **Terrace III At Capacity Power Costs** for each year is the sum of Terrace III DRA & Fuel plus the product of multiplying the Actual Mill Rate by 2778 GWh, i.e., the Terrace III At Capacity Power Consumption.
- (EEEE) **Terrace III DRA and Fuel** for 2009 is equal to \$3.5 million and for 2010 and beyond is an amount equal to the previous year’s Terrace III DRA and Fuel inflated at the GDPP for the then current year.
- (FFFF) **Terrace Surcharge** means the amount more particularly described in Article 3.3.
- (GGGG) **Terrace Surcharge Revenue** means the revenue obtained from multiplying the Terrace Surcharge by actual deliveries for each year

associated with the Enbridge Mainline System, which amount is then used to calculate the Transportation Revenue Variance in accordance with Article 10.

(HHHH) **Transportation Revenue Variance** or **TRV** means the variance calculated in accordance with Article 10.

(III) **TRV Power Allowance** means an amount equal to the difference between Enbridge Mainline System actual power costs and Terrace III At Capacity Power Costs. The methodology used to determine this amount is further described in Schedule "B".

(JJJJ) **Unbudgeted Operating Upset** includes unusual operating events such as leaks or other similar catastrophic events which are not directly controllable by Enbridge.

(KKKK) **U.S.** means the United States of America.

### **3. TOLL CALCULATION**

#### **3.1 Enbridge Mainline System Tolls**

For 2011, tolls charged for transportation services on the Enbridge Mainline System shall be calculated as follows:

Enbridge Mainline System tolls = Base Tolls + Terrace Surcharge + MET

#### **3.2 Base Tolls Calculation**

Base Tolls shall be based on:

- (a) the applicable Net Revenue Requirement calculated in accordance with Article 4;
- (b) a delivery forecast as described in (AA); and
- (c) the toll design approved by the NEB and used during the term of the 2005 ITS.

#### **3.3 Terrace Surcharge**

The Terrace Surcharge shall be \$0.03 per barrel which is Enbridge's share of the \$0.05 per barrel for light crude transportation from the Edmonton, Alberta receipt point to the Griffith, Indiana delivery point, as more particularly described in the Terrace Toll Agreement Statement of Principles, and shall be adjusted for distance and transmission surcharges.

**3.4 MET**

The MET shall be the Mainline Expansion Toll calculated in accordance with the Mainline Expansion Toll mechanism approved by the NEB by letter dated March 6, 2008.

## **4. REVENUE REQUIREMENT**

### **4.1 Annual Revenue Requirement**

For 2011, the annual revenue requirement shall be the Net Revenue Requirement as described in Article 4.2.

### **4.2 Net Revenue Requirement**

The Net Revenue Requirement (as illustrated in Schedule 1) will contain elements included on a forecast basis, which are reconciled to actual amounts in the following year through prior year adjustments.

The annual Net Revenue Requirement shall be determined as follows:

Net Revenue Requirement = Negotiated Elements + Forecast Elements +  
Prior Year Adjustments

Where:

- (a) Negotiated Elements include negotiated amounts for certain operating costs, interest rate, equity return and capital structure.
- (b) The Forecast Elements include a forecast value for each of the following:
  - i. Power Cost as described in Article 5.3.
  - ii. Operating Cost Elements
  - iii. Depreciation Expense

- iv. Income Tax Allowance
  - v. Non-Routine Adjustments as described in Article 12.
  - vi. Net base toll revenue shortfall with forecast volumes, as applicable.
- (c) Prior Year Adjustments
- i. Prior Year Adjustments included in the Net Revenue Requirement for 2011 will be calculated in accordance with Article 4.2 (c)(ii) of the 2010 ITS.
  - ii. Prior Year Adjustments included in the revenue requirement for 2012 will include a value for each of the following:
    - a. Power Variance (as illustrated in Statement 201)
    - b. Operating Cost Elements Variance (as illustrated in Statement 202)
    - c. Depreciation Expense Variance (as illustrated in Statement 203)
    - d. Negotiated Elements Variance (as illustrated in Statement 204)
    - e. Income Tax Allowance Variance (as illustrated in Statement 205)

- f. Non-Routine Adjustments Variance (as illustrated in Statement 206)
- g. Transportation Revenue Variance (as illustrated in Statement 207)
- h. Operating Cost Savings Tax Allowance (as illustrated in Statement 208)
- i. The shippers share of Allowance Oil Revenue Available For Sharing (as illustrated in Statement 209)
- j. Refund equal to the Non-Performance Penalty Charge
- k. Carrying charges calculated on balances of the items described in Article 4.2 (c) a through j as of December 31 using the average of the 12 monthly Bank Rates for the prior year published as Series V122530 by the Bank of Canada on its website, or any successor thereto.

### **4.3 Allowance Oil and Allowance Oil Sharing**

4.3.1 Enbridge shall collect in kind a percentage of all hydrocarbons tendered to the Enbridge Mainline System, in the amount of 1/20 of 1 percent of the volume of hydrocarbons physically tendered. Enbridge shall be permitted, at its discretion, to resell to shippers the Allowance Oil hydrocarbons collected at a price determined in accordance with the method currently used by Enbridge, described in the following Articles.

- 4.3.2 Each month, every shipper shall furnish to Enbridge a unit price for each crude and NGL stream tendered by that shipper to the Enbridge pipeline. For each refined product stream Enbridge will utilize the prices it receives from refined product shippers for the purpose of balancing delivery of product batches. Except as provided in the Articles below, the prices for crude, NGL, and refined product streams so furnished shall be the prices at which shippers' Allowance Oil for each hydrocarbon stream tendered to Enbridge by each shipper shall be resold to each shipper by Enbridge.
- 4.3.3 In the event a shipper does not provide a price for any crude or NGL stream, the Allowance Oil value for that shipper will be deemed to be the simple average of the prices for that crude or NGL stream received by Enbridge from all other shippers of that crude or NGL stream for the previous month whose transaction prices have been accepted by Enbridge as reasonable.
- 4.3.4 Notwithstanding the provisions of Article 4.3.2 if the price furnished to Enbridge by any shipper for any crude or NGL stream is, in the sole opinion of Enbridge, unreasonable, the Allowance Oil resale value for that shipper for the crude or NGL stream in question shall be the simple average of the prices for that crude or NGL stream received by all other shippers of that crude or NGL stream for the month whose transaction prices have been accepted by Enbridge as reasonable. Alternatively, Enbridge may choose to use the average of the four month-end prices posted for light sweet crude at Edmonton by Imperial Oil Limited, Shell Canada Ltd. and Suncor Energy Inc.,

or their respective successors, adjusted for quality, pursuant to industry information determined by Enbridge.

- 4.3.5 Allowance Oil Revenue Available For Sharing is the balance resulting from netting Enbridge's Oil Loss Costs from Enbridge's Allowance Oil Revenue. Enbridge will share 50% of the 2011 Allowance Oil Revenue Available For Sharing with shippers. Enbridge will bear the Income Taxes associated with its share of the Allowance Oil Revenue Available For Sharing. The shippers' share will be a credit in the 2012 tolls.

## **5. POWER**

### **5.1 Power Savings Incentive and Guarantee**

The 2011 ITS contains no power savings incentive or guarantee.

### **5.2 Flow-Through Basis**

Power will be charged on a flow-through basis.

### **5.3 Power Cost in the Net Revenue Requirement**

Power Cost in the Net Revenue Requirement reflects the cost of SEP II Power At Capacity, which is agreed to be 2726 GWh times the Forecast Mill Rate plus the inflated value of DRA and NG. The 2010 value of DRA and NG is \$9.1 million.

### **5.4 Prior Year Adjustment for Power Variance**

The Power Variance is the difference between:

the power cost calculated using SEP II Power at Capacity and Actual Mill Rates, and with respect to the inflated value of DRA and NG, the actual GDPP; and

Power Cost determined in Article 5.3.

Additionally, the Net Revenue Requirement will include any income tax allowance associated with any timing differences inherent in the reconciliations as described in this Article 5.4.

**6. SERVICE METRICS**

**6.1 Service Metrics**

Enbridge will continue to report Service Metrics results. Enbridge and CAPP will meet to review the reporting associated with Service Metrics in 2011.

**6.2 Service Metrics Bonus/Penalty**

The 2011 ITS contains no service metrics bonus/penalty.

**7. RELIABILITY METRIC**

The 2011 ITS contains no reliability metrics.

**8. FLEXIBILITY**

The 2011 ITS contains no flexibility measures.

**9. MAINLINE INTEGRITY ALLOWANCE**

The 2011 ITS contains no mainline integrity allowance.

## **10. TRANSPORTATION REVENUE VARIANCE**

### **10.1 Transportation Revenue Variance**

Transportation Revenue Variance will represent the net revenue that has not been generated in 2011 from the Base Toll because of unused capacity on the Enbridge Core System, similar to the methodology set forth in the 2005 ITS and the toll design approved by the NEB in RHW-1-89 and reflecting the use of Actual Mill Rates, or because of any difference between (a) the Base Toll in effect between January 1, 2011 and the date that final tolls go into effect and (b) the final Base Toll for 2011.

### **10.2 Calculation of Transportation Revenue Variance**

The Transportation Revenue Variance shall be calculated annually as follows:

$$\text{TRV} = \text{Forecast Transportation Revenue} - (\text{Actual Transportation Revenue} - \text{Terrace Surcharge Revenue}) - \text{TRV Power Allowance}$$

### **10.3 Description and Examples**

Schedule “B” provides a further description and examples of the Transportation Revenue Variance calculation.

## **11. COST PERFORMANCE SHARING**

The 2011 ITS contains no cost performance sharing.

## **12. NON-ROUTINE ADJUSTMENTS TO ANNUAL REVENUE REQUIREMENT**

### **12.1 Non-Routine Adjustments**

Circumstances may arise which necessitate adjustment to the annual Net Revenue Requirement and resulting tolls. Enbridge will provide notice to CAPP of all Non-Routine Adjustments and Non-Material Non-Routine Adjustments before seeking any requisite approvals from the NEB. Any portion of costs determined by the NEB to be recovered through tolls on a rolled-in basis will be added to the Net Revenue Requirement in accordance with this Article 12. Costs and resulting revenue for items tolled on a stand alone basis will be to the account of Enbridge.

For greater certainty, the following elements no longer result in Non-Routine Adjustments in the 2011 ITS:

- (a) the Reference Temperature Agreement;
- (b) the failure of Enbridge to receive a minimum return on equity; and
- (c) changes in the annual NEB published multi-pipeline rate of return on equity outside of a specified equity band.

### **12.2 Events Resulting in Non-Routine Adjustments**

Events resulting in Non-Routine Adjustments shall be:

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- (a) all costs of the SEP I and SEP II expansion programs except related power costs (including DRA and NG);
- (b) increases to costs resulting from programs requested by any producer/shipper and agreed to by Enbridge and CAPP, which include but are not limited to, operating costs and capital programs related to quality initiatives, or new services;
- (c) increases in costs (other than those costs which are Non-Material Non-Routine Adjustments) where Enbridge becomes subject to an NEB order or directive that Enbridge was not subject to prior to January 1, 2011;
- (d) incremental costs (other than those costs which are Non-Material Non-Routine Adjustments) resulting from legislation, regulations, orders or directions by any government authority, which result in changes to safety or environmental requirements, practices, or procedures for Enbridge. Costs associated with any non-mandatory guidelines, best practices or procedures will be reviewed and approved by CAPP before claiming a Non-Routine Adjustment;
- (e) incremental costs (other than those costs which are Non-Material Non-Routine Adjustments) resulting from changes in the Canadian Generally Accepted Accounting Principles, or the introduction of new accounting principles, or the application thereof to the Enbridge Mainline System,

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- excluding costs associated with a new or modified accounting software system;
- (f) third party costs associated with conducting and participating in a CAPP audit;
  - (g) if annual Non-Material Non-Routine Adjustments exceed \$2 million in aggregate then such expenditures in excess of \$2 million will be treated as a Non-Routine Adjustment as determined in Article 12.3;
  - (h) sabotage;
  - (i) annual pipe replacement in excess of 8 kilometers (5 miles) where repair methods (such as sleeve repair) cannot be suitably implemented;
  - (j) increases in costs where CAPP, on behalf of producers/shippers, has requested a Non-Routine Adjustment, which Enbridge will not unreasonably deny implementation thereof, subject to the conditions that such Non-Routine Adjustment is not likely to cause harm to Enbridge or lessen its competitive position as a pipeline, and the total increase to the Net Revenue Requirement of such Non-Routine Adjustments will not exceed \$2.0 million annually; and
  - (k) costs of Unbudgeted Operating Upsets as further described in Article 18.4.

**12.3 Adjustment of the Net Revenue Requirement**

The Net Revenue Requirement will be adjusted for Non-Routine Adjustments equal to the sum of the following components:

- (a) operating costs for the Non-Routine Adjustment; and
- (b) capital related costs for the Non-Routine Adjustment including:
  - i. depreciation expense at rates approved by the NEB from time to time;
  - ii. annual interest expense based on the Enbridge Older System's actual cost of debt and the following applicable debt component:
    - A. 55% of the Non-Routine Adjustment Rate Base (other than SEP I and SEP II);
    - B. 56.37% of the SEP I Rate Base; or
    - C. 58.10% of the SEP II Rate Base;
  - iii. annual earnings based on the Non-Routine Adjustment Rate Base, and
    - A. 45% equity ratio and a negotiated rate of return on equity, other than SEP I and SEP II;

- B. an equity ratio of 43.63% for SEP I and a rate of return on equity calculated using the methodology that is specified in the NEB Reasons for Decision RH-2-94; or
  - C. an equity ratio of 41.9% for SEP II and a rate of return determined by the SEP II Toll Settlement; and.
- iv. annual Income Tax Allowance calculated using the annual earnings in Article 12.3 (b) iii.

**12.4 Allowance for Funds**

An allowance for funds used during construction (“AFUDC”) rate shall be calculated based on the capitalization ratio of 55% debt and 45% equity using Enbridge's Older System weighted average cost of long term and short term debt and the common equity rate of return determined in Article 12.3 (b) (iii) (A).

**12.5 Addition of Non-Routine Adjustments**

Non-Routine Adjustments shall be added to the Net Revenue Requirement.

**13. GUIDELINES FOR TRANSACTIONS WITH AFFILIATES**

Enbridge agrees to abide by the Enbridge Canadian Affiliate Relationship Code which was developed in collaboration with CAPP and is posted on Enbridge's website at [http://www.enbridge.com/investor/corporate Governance/key-documents.php](http://www.enbridge.com/investor/corporate-governance/key-documents.php), as may be amended from time to time.

**14. TERM OF SETTLEMENT AND CONTINUATION BEYOND 2010  
AND SUBSEQUENT TOLL SETTLEMENT**

**14.1 Term**

The term of the 2011 ITS will be one year, commencing January 1, 2011 and terminating on December 31, 2011 (the “Term”) or until it is superseded by another agreement. Any Prior Year Adjustments determined with respect to the year 2011 will be included in tolls in 2012.

## **15. REPORTING AND FILING REQUIREMENTS**

### **15.1 Draft Form**

Enbridge will provide to CAPP a draft of the form and content of the information to be filed with the NEB described in Article 15.2 fifteen (15) days prior to making such filing with the NEB, or as otherwise agreed by CAPP.

### **15.2 Filing with NEB**

Enbridge shall file with the NEB and make available to interested parties information including tolls and tariffs for the year based upon the 2011 ITS. The filing will be supported by calculations in reasonable detail to permit confirmation of compliance with the methodology set out in the 2011 ITS.

### **15.3 Interim Tolls**

Unless otherwise directed by the NEB, the annual Enbridge Mainline System tolls in effect on December 31, 2011, will be interim effective January 1, 2012 pending the approval of either revised interim or final tolls for 2012.

### **15.4 Exemption from Requirement**

Enbridge will seek and CAPP will support Enbridge's request for NEB exemption from the requirement for Enbridge to file financial forecasts and Financial Surveillance Reports, consistent with the relief granted pursuant to Board Order TO-3-2000, as amended.

## **16. AUDIT**

### **16.1 Auditors' Report**

Enbridge shall provide the auditors' report for the Enbridge Core System to the NEB and CAPP but will only provide such auditor's report to all other interested parties on request.

### **16.2 Financial Statements**

The annual actual financial results as reflected on statements 201 to 210 will be audited by an Independent Auditor and reported in a manner consistent with section 5805 of the Canadian Institute of Chartered Accountants Handbook, or similar guidelines as amended by the Canadian Institute of Chartered Accountants from time to time. The purpose of this audit is to confirm that the financial results as reflected on statements 201 to 210 are in accordance with the provisions of the 2011 ITS, including the completeness and accuracy of the deferral account calculations.

### **16.3 Audit of Financial Results**

Upon 60 days notice to Enbridge by CAPP, and subject to Enbridge's confidentiality obligations to third parties, CAPP may elect, prior to October 1, 2012, to engage an independent auditor to conduct its own audit of the Enbridge financial results and of all data and information related to and necessary to establish compliance with the 2011 ITS. Enbridge agrees to undertake all reasonable commercial efforts in assisting the completion of the

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audit on a timely basis, during normal business hours. As per Article 12.2 (f), shippers shall bear all third party costs associated with such audit.

## **17. MISCELLANEOUS PROVISIONS**

### **17.1 Toll Design**

Toll design is not addressed by the 2011 ITS.

### **17.2 Disputes**

Enbridge and CAPP acknowledge that the NEB has exclusive jurisdiction over the establishment of Enbridge's tolls. Additionally, Enbridge and CAPP acknowledge that it is in each party's best interest to resolve any disputes surrounding the 2011 ITS in an efficient and expedited manner. Any dispute ("Dispute") between Enbridge and CAPP respecting the 2011 ITS will be resolved in accordance with the following dispute resolution mechanism:

- (a) In the event of a Dispute, the party wishing to initiate dispute resolution shall give written notice (the "Dispute Notice") to the other party of a Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within fourteen (14) days following receipt of the Dispute Notice, Enbridge and CAPP will each appoint representatives to meet to discuss and attempt to resolve the Dispute. Such representatives shall be individuals that are technically qualified to appreciate and assess the Dispute and have authority to negotiate the Dispute. If the Dispute is not settled within ninety (90) days of receipt of the Dispute Notice, the negotiation will be deemed to have failed.

(b) If the Dispute is not resolved pursuant to the process in (a) above, the Dispute may be referred to the NEB by either Enbridge or CAPP, to be resolved on an expedited basis.

**17.3 Items Excluded from Revenue Requirement**

Enbridge and CAPP acknowledge that the Net Revenue Requirement specifically excludes any provision for asset retirement obligations.

**17.4 Review of Enbridge's Cost Allocation Procedures**

The 2011 ITS contains no provision for review of Enbridge's cost allocation procedures.

**17.5 Enbridge Mainline System Depreciation Expense**

The portion of the depreciation expense allocable to the Terrace Expansion shall be calculated at the rate prescribed in the Terrace Toll Agreement Statement of Principles.

**17.6 Service Levels**

Enbridge will use its reasonable commercial efforts to operate its system, where appropriate, to achieve the service levels described in Schedule "E" of the 2005 ITS. Enbridge will provide CAPP with an update to the service levels during 2011, which update will supersede the service levels described in Schedule "E" of the 2005 ITS.

**17.7 Lapsing of References**

Should Statistics Canada cease to exist or cease to publish the documents referred to in the 2011 ITS, Enbridge and CAPP will, within 60 days of learning of such an event, meet and agree upon an alternate reference.

**17.8 Approval in Whole by NEB**

If the 2011 ITS described herein is not approved in its entirety by the NEB or if it is materially varied by subsequent NEB Order, this 2011 ITS will be terminated.

**17.9 Transfer to Income Trust**

The 2011 ITS contains no provision related to transfer to income trust.

## **18. FURTHER PROVISIONS**

### **18.1 Effect of 2011 ITS on Line 4 Extension, Alberta Clipper and Southern Access Negotiated Settlements**

Enbridge and CAPP agree that the 2011 ITS will not constitute a “2011 Incentive Tolling Settlement” for the purposes of the Alberta Clipper Negotiated Settlement and the Line 4 Extension Negotiated Settlement and will not constitute a “2011 ITS” for the purpose of the Southern Access Negotiated Settlement. The non-capital revenue requirement (“NCRR”), with the exception of power and integrity operating costs, and the capital revenue requirement (“CRR”) of Alberta Clipper, the Line 4 Extension and Southern Access will continue to be included in the Mainline Expansion Toll (“MET”).

### **18.2 Fixed Fee Allocation Limit**

For 2011, Enbridge may allocate a total of no more than \$15.0 million in Fixed Fees to the MET and the FSM in relation to the Southern Access, Line 4 Extension and Alberta Clipper projects. The fixed fee will be determined in accordance with the allocation methodology in place as of December 31, 2010.

### **18.3 Operating Costs**

A negotiated amount for operating costs is included in the Negotiated Elements. Any variance between the negotiated operating costs and the actual operating costs for 2011 will be to the account of Enbridge. However, the tax effect of any such variance will be to the account of the shippers and

will be included in the calculation of the Operating Cost Savings Tax Allowance.

**18.4 Treatment of Unbudgeted Operating Upsets**

For each Unbudgeted Operating Upset, Enbridge shall pay the first \$10 million of net third party costs. Net third party costs means the aggregate third party costs for an Unbudgeted Operating Upset less any applicable insurance proceeds or other third party recoveries. For greater clarity third party costs do not include Enbridge internal costs, which are considered part of Enbridge's operating costs described in Article 18.3.

All net third party costs connected with each Unbudgeted Operating Upset which exceed the \$10.0 million ceiling on Enbridge's contribution will be treated as a Non-Routine Adjustment and the related tax effect will accrue to the shippers through an adjustment to the Income Tax Allowance.

**18.5 Year End Review with CAPP**

Enbridge agrees to undertake with CAPP, at an appropriate time prior to the filing of tolls for 2012, a review of the variances and variance calculations. Upon the mutually satisfactory discharge of this obligation, CAPP agrees to provide Enbridge a letter, to be included in Enbridge's 2012 toll filing, stating its concurrence with the variance amounts.