

OR12-14-002

**PUBLIC**

**DORSEY**

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**HAND DELIVERED**

**ORIGINAL**

May 11, 2012

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N. E.  
Washington, D. C. 20426

**FILED**  
**SECRETARY OF THE**  
**COMMISSION**  
**2012 MAY 11 P 2:28**  
**FEDERAL ENERGY**  
**REGULATORY COMMISSION**

**Re: PBF Holding Company LLC and Toledo Refining Company LLC  
v. Enbridge Energy, Limited Partnership**

Dear Secretary Bose:

Enclosed please find an original and 3 copies of the confidential version of Complaint of PBF Holding Company LLC and Toledo Refining Company LLC. Also enclosed are 11 copies of a public version of the complaint. An extra copy of each version is also enclosed to be stamped and returned to our messenger.

Please let us know if you have any questions.

Sincerely,

*M. Sisk*

Marcus W. Sisk, Jr.

Enclosures

**PUBLIC**

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATION COMMISSION**

PBF Holding Company LLC and  
Toledo Refining Company LLC,  
  
Complainants

v.

Enbridge Energy, Limited Partnership,  
  
Respondent

Docket No. OR12- 14-000

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FEDERAL ENERGY  
REGULATORY COMMISSION**

**COMPLAINT OF PBF HOLDING COMPANY LLC  
AND TOLEDO REFINING COMPANY LLC**

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Attorneys for PBF Holding Company LLC  
and Toledo Refining Company LLC

May 11, 2012

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**UNITED STATES OF AMERICA  
BEFORE THE  
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PBF Holding Company LLC and

Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership,

Respondent

**COMPLAINT OF PBF HOLDING COMPANY LLC  
AND TOLEDO REFINING COMPANY LLC**

1. Pursuant to sections 1(6), 3(1), 13(1), 15(1), and 16(1) of the Interstate Commerce Act (“ICA”), 49 U.S.C. App. §§ 1(6), 3(1), 9, 13(1), 15(1), and 16(1), Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.206, and section 343.1(a) of the Commission’s Procedural Rules Applicable to Oil Pipeline Proceedings, 18 C.F.R. § 343.1(a), PBF Holding Company LLC and its subsidiary Toledo Refining Company LLC (collectively “PBF”) hereby submit this Complaint against Enbridge Energy, Limited Partnership (“Enbridge Energy”). This Complaint demonstrates that the procedures and practices of Enbridge Energy in apportioning capacity on its “Mainline” crude oil pipeline system constitute an unjust and unreasonable classification and practice and result in an undue and unjust preference for shippers and users of heavy crude oil and undue and unjust discrimination against

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shippers and users of light crude oil in violation of the ICA, causing substantial ongoing injury to PBF.

**Addresses and Communications**

2. The principal place of business of PBF is 1 Sylvan Way, 2<sup>nd</sup> Floor, Parsippany, New Jersey 07054. Communications to PBF in this proceeding should be served upon and addressed to the following:

Jeffrey Dill\*  
Senior Vice President, General Counsel  
PBF Holding Company LLC  
One Sylvan Way  
2nd floor  
Parsippany, NJ 07054-3887  
jdill@pbfenergy.com

Marcus W. Sisk, Jr.\*  
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\* Persons to be served in accordance with 18 C.F.R. § 385.2010.

**Jurisdiction**

3. The Commission has jurisdiction over this Complaint pursuant to sections 9 and 13 of the ICA. In particular, the Commission has jurisdiction over the apportionment rules and practices of a pipeline to ensure that those rules and practices do not involve any unjust or unreasonable classification, regulation, or practice and do not grant any undue or unreasonable preference or advantage or cause any undue or unreasonable prejudice or disadvantage. ICA §§ 1(b) and 3(1).

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED****Standing**

4. PBF has standing to bring this Complaint. Under the ICA and the Commission's Procedural Rules, any person may bring a complaint seeking relief from an alleged legal violation over which the Commission may have jurisdiction. ICA § 13(1); Rule 206(a). Because this Complaint does not involve a protest against a proposed oil pipeline tariff, no verified statement of substantial economic interest is required under 18 C.F.R. § 343.2(b). Nevertheless, the attached Affidavit of Mr. Robert E. Foti shows that PBF has a substantial economic interest in the apportionment rules and practices of Enbridge which are challenged in this Complaint.

5. As the operator of a refinery which depends on crude oil supply via the Enbridge Mainline system and which is recognized by Enbridge as a facility entitled to an historical delivery volume, PBF falls within the broad category of entities protected by the ICA. The protection of the ICA against unjust and unreasonable pipeline practices is not limited to shippers or to parties in privity with the pipeline. *Oxy USA, Inc. v. F.E.R.C.*, 64 F.3d 679, 697 (D.C. Cir. 1995); *Gabbert et al. v. Atchison, T. & S.F. Ry. Co.*, 93 F.2d 562 (5<sup>th</sup> Cir. 1937); *Hinrichs v. Wells Fargo & Co.*, 53 I.C.C. 362, 364 (1919).

**The Enbridge Mainline System**

6. Enbridge Energy is a pipeline carrier of crude oil in interstate commerce. Enbridge Energy and its Canadian affiliate, Enbridge Pipelines Inc., (collectively "Enbridge") operate a crude oil pipeline system known as the "Mainline" system which begins at Edmonton, Alberta, and ends in Sarnia, Ontario, with intermediate receipt and

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delivery points in Canada and the United States. The Mainline system includes an upstream portion from Edmonton to Superior, Wisconsin, and a downstream system from Superior to various delivery points.

7. The attached Affidavit of Robert E. Foti describes the downstream portion of the Enbridge Mainline system. The downstream portion includes two lines, Line 5 and Line 6, which supply crude oil to petroleum refineries located in the mid-western United States and eastern Canada. Line 5 generally transports light crude oil and Line 6 generally transports heavy crude oil. Generally, three refineries receive only light crude oil via Line 5 and six refineries receive both light crude oil and heavy crude oil via both Line 5 and Line 6. Foti Affidavit at P 5.

**The PBF Toledo Refinery**

8. PBF operates a petroleum refinery near Toledo, Ohio, with a crude oil capacity of approximately 170,000 barrels per day (“B/D”). The refinery is designed to process light crude oil and PBF relies on Enbridge Line 5 to supply a substantial portion of the light crude oil required by the refinery. The Toledo refinery does not process heavy crude oil and does not receive any of its crude oil supply via Enbridge Line 6. The PBF refinery at Toledo competes directly in refined petroleum product markets with other refineries which are supplied by the Enbridge Mainline system, including six refineries which receive both light crude oil via Line 5 and heavy crude oil via Line 6. Foti Affidavit at P 6.

9. Mr. Foti describes a financing mechanism under which Morgan Stanley Capital Group Inc. (“Morgan Stanley”) acquires the crude oil needed to supply the

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Toledo refinery and re-sells the crude oil to PBF. Mr. Foti directs Morgan Stanley to acquire the specific grades and quantities of crude oil required by the Toledo refinery. For crude oil transported via the Enbridge Mainline system, PBF purchases the crude oil from Morgan Stanley using formula prices which include a logistics component to cover the transportation charges on Enbridge. Foti Affidavit at 7.

**Nomination and Apportionment**

10. Mr. Foti describes the nomination and apportionment procedure for service on the Enbridge Mainline system. Shippers nominate monthly by advising Enbridge of the origin point, delivery point, volume and grade of crude oil to be shipped during the month. For crude oil to be delivered on the downstream portion of the system, shippers do not specify whether Line 5 or Line 6 is to be used, and Enbridge unilaterally assigns nominations to Line 5 or Line 6. Foti Affidavit at P 8.

11. The apportionment procedure for the downstream portion of the Enbridge Mainline system is set forth in Rule 14 of the Rules and Regulations tariff for Enbridge Energy contained in FERC Tariff No. 41.1.0. If more crude oil is tendered than can be transported, Rule 14 provides that Enbridge shall apportion such tenders “on a pro rata basis” among all shippers “on the basis of such tenders and the current operating conditions of the facilities” of Enbridge. A copy of FERC Tariff No. 41.1.0 is attached to the Affidavit of Mr. Foti.

12. Beginning in January 2011, Enbridge applied a cap on Mainline nominations and a verification process which limited the nomination for each facility served by the system to the highest monthly volume delivered to that facility in any

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month during the 24-month period leading up to July 2010. Accordingly, since January 2011, nominations for the Toledo refinery on the Enbridge Mainline have been limited to [REDACTED]. Foti Affidavit at P 10.

13. In March 2011, PBF acquired the Toledo refinery and became the successor to the delivery history of the prior owner on the Enbridge Mainline system. Thus, nominations on the Enbridge Mainline system for delivery to the PBF Toledo refinery have been limited to [REDACTED]. Foti Affidavit at P 11.

14. Prior to April 19, 2012, the cap on nominations and the verification process adopted by Enbridge in January 2011 were not contained in the pipeline's Rules and Regulations tariff. Foti Affidavit at P 12. On April 19, 2012, Enbridge Energy filed a proposed new Rules and Regulations tariff, effective May 20, 2012. The proposed Rule 6 contains a cap and verification process which appears to codify the cap and verification process implemented in January 2011. The proposed rule limits the volume of nominations verified to each delivery facility to the highest volume delivered to that facility during the 24-month period leading up to July 2010. A copy of proposed FERC Tariff No. 41.2.0 is attached to the Affidavit of Mr. Foti.

15. As Mr. Foti explains, Enbridge applied apportionment to both Line 5 and Line 6 from January 2011 through November 2011. However, beginning in December 2011 through May 2012, Enbridge has applied apportionment only to Line 5 while Line 6 has not been apportioned. During that period the monthly apportionment of Line 5 ranged from 27 percent in March 2012 to 16 percent in May 2012. Copies of each



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monthly apportionment notice issued by Enbridge for the period December 2011 through May 2012 are attached to the Affidavit of Mr. Foti.

16. It is Mr. Foti's understanding that the application of apportionment exclusively to Line 5 is caused primarily by the practice of Enbridge to transport all Light Sour Blend ("LSB") crude oil on Line 5 and to transport no LSB crude oil on Line 6. He further understands that both Line 5 and Line 6 are physically capable of transporting LSB crude oil and that both lines transported LSB crude oil in the past. Foti Affidavit at P 14. The web site of Enbridge indicates that light sour crude oil can be transported on both Line 5 and Line 6. An excerpt from the Enbridge web site is attached to the attached Affidavit of Thomas O. Miesner.

17. The Affidavit of Mr. Miesner explains the inconsistency between the use of Line 6 exclusively for heavy crude oil and the operating pattern for Line 6 published by Enbridge. On the Enbridge web site, Line 6 segments 6a and 6b are listed as capable of accommodating light sour, high sour, medium, and heavy crude oil grades for movement along the entire route. Miesner Affidavit at P 6. Thus, the current practice of moving only heavy crude oil is not consistent with the operating pattern depicted on the Enbridge web site. *Id.* at P 8. Mr. Miesner further observes that Enbridge has operated Line 5 and Line 6 in a combined fashion even though they follow different routes. *Id.* at P 7.

18. Mr. Foti has participated in recent discussions between PBF and Enbridge regarding the apportionment of Line 5. In those discussions, Enbridge advised PBF that it assigns all nominations of LSB crude oil to Line 5 because Line 6 is filled to capacity with heavy crude oil nominations. The only reason cited by Enbridge for assigning all

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LSB crude oil nominations to Line 5 is the fact that Line 6 is full and is designated as a heavy crude oil pipeline. Enbridge stated that it would assign nominations of LSB crude oil to Line 6 if nominations of heavy crude oil did not require all of the capacity on Line 6. Foti Affidavit at P 15.

**Unlawful Classification, Practice, Preference, and Discrimination**

19. The apportionment actions of Enbridge constitute an unjust and unreasonable classification and practice and cause an undue and unreasonable preference for shippers and users of heavy crude oil on Line 6 and an undue and unreasonable prejudice and disadvantage for shippers and users of light crude oil on Line 5, in violation of the ICA. Section 1(6) of the ICA prohibits any unjust or unreasonable classification, regulation, or practice. Section 3(1) of the ICA states as follows:

it shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to . . . any particular description of traffic, in any respect whatsoever, or to subject . . . any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever . . . .

20. The effect of the practice by Enbridge in assigning all nominations of LSB crude oil to Line 5 and none of the LSB nominations to Line 6 is to impose the full impact of apportionment on light crude oil refineries which receive light crude oil via Line 5 and to spare from apportionment the heavy crude oil refineries which receive heavy crude oil via Line 6. This amounts to a preferential reservation of capacity for a classification of refineries which use heavy crude oil and a discriminatory burden on a classification of light crude oil refineries, which are required to absorb the full impact of

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the apportionment on Line 5 to accommodate nominations of LSB crude oil. Foti Affidavit at P 16.

21. Mr. Foti and Mr. Miesner provide evidence that the assignment of all LSB shipments (and all apportionment) to Line 5 is not required by operational considerations. They explain that operating history and information provided by Enbridge indicate that Line 6 can accommodate LSB crude oil. Foti Affidavit at PP 14-15; Miesner Affidavit at PP 7-8. They also explain that Enbridge has operated Line 5 and Line 6 in a combined fashion, even though the lines follow different routes. *Id.* In fact, Enbridge has advised PBF that the pipeline would assign nominations of LSB to Line 6 if that line were not filled to capacity with heavy crude oil. Foti Affidavit at P 15.

22. The attached Affidavit of Robert C. Means explains why the apportionment of volumes by Enbridge is unduly and unreasonably preferential and discriminatory. While not all preferences are improper, here there appears to be no operational or financial reason why LSB could not be shipped on Line 6. Means Affidavit at P 6. Thus, the Enbridge action which apportions light crude oil shipments on Line 5 but does not apportion heavy crude oil shipments on Line 6 lacks justification and results in an unjust and unreasonable classification and practice and in an undue and unreasonable preference for heavy crude oil shippers which unduly and unreasonably disadvantages light crude oil shippers.

23. The preferential and discriminatory apportionment practice of Enbridge has an adverse competitive effect on PBF. As explained by Mr. Foti, the PBF refinery at Toledo competes directly in refined petroleum product markets with refineries which

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obtain and process heavy crude oil transported on Enbridge Line 6. Because nominations of heavy crude oil are not apportioned, those refineries avoid the economic penalty associated with reduced crude oil supplies. That provides a competitive advantage to the refineries which receive heavy oil via Line 6 over other refineries, such as PBF Toledo, which receive light crude oil via Line 5. Foti Affidavit at P 6. Thus, as Dr. Means explains, the preferential and discriminatory apportionment practice of Enbridge does not merely provide unequal treatment, it also distorts competition. Means Affidavit at P 7.

24. Under sections 1(6) and 3(1) of the ICA, an oil pipeline apportionment procedure may not be “structured to favor certain shippers or types of shippers over others if all have made ‘reasonable requests’ for transportation on the pipeline.” *Suncor Energy Marketing Inc., et al. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242 at P 14 (2010). Even if a carrier acts in good faith, it cannot give more favorable treatment to some shippers than to others under substantially similar conditions. *New York Hay Exch. Assn. v. New York Cent. R.R. Co.*, 43 I.C.C. 281 (1917). The ICA does not allow practices which refuse transportation services to some establishments while according such facilities to their competitors. *E.L. Rogers & Co. v. Philadelphia & Reading Ry. Co.*, 12 I.C.C. 308 (1907). In the case of natural gas pipelines, the Commission has rejected allocations of capacity as unjust and unreasonable where the allocation does not have a sound economic justification. *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208 at P 44 (2011); *Great-Lakes Gas Transmission Limited Partnership*, 136 FERC ¶ 61,070 at P 20 (2011).

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED****Injury to PBF**

25. The apportionment burden placed exclusively on Line 5 shippers of light crude oil has caused substantial injury to PBF's refinery operations at Toledo. The injury consists primarily of the economic penalty associated with the acquisition of generally higher-priced substitute crude oil supplies which do not have a refining value commensurate with their price. The injury also includes contract deficiency payments to the local pipeline which connects the PBF Toledo refinery with Enbridge Line 5. Foti Affidavit at P 17.

26. Attached to the Affidavit of Mr. Foti is an analysis which provides an approximate quantification of the financial effect of Line 5 apportionment on the PBF Toledo refinery for each month beginning December 2011. The analysis shows that the total financial injury to PBF through May 2012 has been approximately [REDACTED]. The substantial injury to PBF will continue until Enbridge modifies its apportionment practice to eliminate the preference for heavy crude oil shipments and the discrimination against light crude oil shipments.

**Relief Requested**

27. The Commission should find that the apportionment procedures of Enbridge which assign all nominations of LSB crude oil to Line 5 and which have resulted in apportionment of Line 5 and no apportionment of Line 6 involve an unjust classification and practice and are unjustly preferential, prejudicial, and discriminatory under sections 1(6), 3(1) and 15(1) of the ICA. To remedy those violations, the Commission should issue an order under section 15(1) of the ICA requiring Enbridge to

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cease and desist from its unlawful apportionment procedures and practices and to adopt and follow apportionment procedures and practices which distribute the burden of apportionment equitably between shippers and users of light crude oil and shippers and users of heavy crude oil. In addition, the Commission should award damages to PBF under section 16(1) of the ICA for the injury caused to PBF by the unlawful apportionment procedures and practices of Enbridge.

**Need for Investigation, Discovery, and Hearing**

28. If a party brings a complaint under section 13(1) of the ICA which alleges reasonable grounds for believing that action by a pipeline violates the ICA, the Commission will establish hearing procedures to investigate the allegations of the complaint. *Valero Marketing and Supply Co. v. Longhorn Partners Pipeline, L.P.*, 123 FERC ¶ 61,106 at P 23 (2008); *ARCO v. Calnev Pipe Line, L.L.C.*, 97 FERC ¶ 61,057, 61,311 (2001). The hearing process provides the complainant with the opportunity to obtain additional evidence through discovery. *Id.*

29. Based on available information, this Complaint presents *prima facie* evidence that the apportionment actions of Enbridge involve an unjust and unreasonable classification and practice and are unduly and unreasonably preferential and discriminatory. In order to obtain additional evidence to support this Complaint, PBF needs access to information in the custody and possession of Enbridge. That information includes any studies or analysis of the effects of Enbridge's apportionment processes, any technical or operational analysis or evaluations of the apportionment practices, and any communications with other shippers regarding apportionment of Line 5 and Line 6.

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Thus, the Commission should conduct a full investigation of the facts related to this Complaint and should set the Complaint for discovery and hearing before an Administrative Law Judge.

**Request for Expedited Action**

30. PBF requests the Commission to expedite action on this Complaint. The factual and legal issues raised by this Complaint are not complex, and this case is suitable for an expedited proceeding.

31. In addition, PBF faces continued injury if relief is not granted promptly. The longer Enbridge continues to apply its preferential and discriminatory apportionment practices, the greater will be the financial and competitive harm incurred by PBF. Accordingly, the Commission should promptly refer this complaint to an Administrative Law Judge with instructions to establish an expedited procedural schedule.

**Request for Privileged Treatment**

32. Pursuant to Rule 206(e) and 18 C.F.R. § 388.112, PBF requests privileged treatment of portions of this Complaint and the attachments hereto. The materials for which privileged treatment is requested contain competitively sensitive and proprietary information that would be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (2006), and include information about PBF's operations and costs. Public disclosure of this information would competitively harm PBF.

33. The proposed protective order attached to this Complaint is a modified version of the Commission's Model Protective Order. The definition of Reviewing Representative contained in Paragraph 3(d)(6) has been altered to restrict receipt of

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Protected Materials to only those employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket whose duties do not include responsibility for the marketing or refining of petroleum. The other categories of Reviewing Representatives contained in the Model Protective Order have not been altered. Additionally, paragraph 8(a) has been altered to substitute the phrase “marketing or refining of petroleum” for “marketing of energy.” The proposed Protective Order is in all other respects substantively identical to the Commission’s Model Protective Order.

34. The non-public materials are marked **“PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER”** and **“DO NOT RELEASE.”** PBF will provide the non-public version of this Complaint to eligible “Reviewing Representatives” (as defined in paragraph 3 of the proposed Protective Order) for Enbridge or to any person who has filed a motion to intervene or a notice of intervention after receiving a written request that includes executed non-disclosure certificates for each such Reviewing Representative. Such written requests should be directed to Marcus Sisk ([sisk.marcus@dorsey.com](mailto:sisk.marcus@dorsey.com)).

**Compliance with Procedural Rules**

35. In accordance with Rule 206(b)(1), the action which is alleged to violate applicable statutory standards is identified above in this Complaint.

36. In accordance with Rule 206(b)(2), the foregoing allegations of this Complaint explain how the action will violate applicable statutory standards.



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37. In accordance with Rule 206(b)(3), the foregoing allegations of this Complaint set forth the business, commercial, and other issues presented by this action which will violate applicable statutory standards as such action relates to PBF.

38. In accordance with Rule 206(b)(4), a good faith quantification of the financial impact of Enbridge's actions on PBF is contained in the foregoing section of this Complaint entitled "Injury to PBF."

39. In accordance with Rule 206(b)(5), the foregoing allegations of this Complaint indicate the practical, operational, and other nonfinancial impacts to PBF as a result of action by Enbridge.

40. In accordance with Rule 206(b)(6), the issues presented by this Complaint are not pending in an existing Commission proceeding or a proceeding in any other forum in which PBF is a party.

41. In accordance with Rule 206(b)(7), the specific relief and remedies requested by PBF are set forth above in the section entitled "Relief Requested" and the basis for that relief is stated in the foregoing allegations of this Complaint.

42. In accordance with Rule 206(b)(8), all documents that support the facts in this Complaint which are in the possession of PBF or are otherwise attainable by PBF are attached to this Complaint.

43. In accordance with Rule 206(b)(9), (i) the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures have not been used; (ii) PBF does not know whether alternative dispute resolution ("ADR") under the Commission's supervision could successfully

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resolve this Complaint, (iii) PBF does not propose the use of any specific ADR procedure, and (iv) no process has been agreed upon for resolving this Complaint.

44. In accordance with Rule 206(b)(10), a form notice of this Complaint suitable for publication in the Federal Register under Rule 203(d) is attached to this Complaint.

**Conclusion**

45. For the foregoing reasons, the Commission should expedite action on this Complaint. The Commission should promptly accept this Complaint and refer this Complaint to an Administrative Law Judge for discovery and hearing with instructions to establish an expedited procedural schedule.

Respectfully submitted,

Jeffrey Dill  
Senior Vice President, General Counsel  
PBF Holding Company LLC  
One Sylvan Way  
2nd floor  
Parsippany, NJ 07054-3887  
973 455-7500  
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/s/Marcus W. Sisk, Jr.  
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Frederick G. Jauss IV  
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May 11, 2012

Attorneys for PBF Holding Company LLC  
and Toledo Refining Company LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 11th day of May, 2012, served the foregoing Complaint of PBF Holding Company LLC and Toledo Refining Company LLC by email on the corporate officials listed on the Commission's web site for Enbridge Pipelines Toledo, Inc., on the Assistant General Counsel for Enbridge Pipelines, Inc., and on regular outside counsel for Enbridge Energy, Limited Partnership. I found no corporate official listed on the Commission's web site for Enbridge Energy, Limited Partnership.

/s/ Frederick G. Jauss IV  
Frederick G. Jauss IV

**AFFIDAVIT OF**  
**ROBERT E. FOTI**

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**UNITED STATES OF AMERICA  
BEFORE THE  
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PBF Holding Company LLC and  
Toledo Refining Company LLC,

Docket No. OR12-\_\_\_\_\_

Complainants

v.

Enbridge Energy, Limited Partnership,

Respondent

**AFFIDAVIT OF ROBERT E. FOTI**

1. My name is Robert E. Foti. I serve as Manager – Domestic Crude Oil Supply for PBF Holding Company LLC. My business address is One Sylvan Way, 2<sup>nd</sup> Floor, Parsippany, New Jersey 07054.
2. I am submitting this affidavit on behalf of PBF Holding Company LLC and its subsidiary Toledo Refining Company LLC (collectively “PBF”) in support of their complaint against Enbridge Energy Limited Partnership (“Enbridge Energy”) challenging the procedures, practices, and actions of Enbridge Energy in apportioning capacity on the downstream portion of its “Mainline” crude oil pipeline system.
3. I have more than 30 years of experience in the petroleum industry. In my current role I am the person primarily responsible for the supply and transportation of crude oil for the petroleum refinery operated by PBF near Toledo, Ohio.

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED****The Enbridge Mainline System**

4. Enbridge Energy and its Canadian affiliate Enbridge Pipelines Inc. (collectively “Enbridge”) operate a crude oil pipeline system known as the “Mainline” system which begins at Edmonton, Alberta, and ends in Sarnia, Ontario, with intermediate receipt and delivery points in Canada and the United States. The Mainline system includes an upstream portion from Edmonton to Superior, Wisconsin, and a downstream system from Superior to various delivery points.

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**The PBF Toledo Refinery**

6. PBF operates a petroleum refinery near Toledo, Ohio, with a crude oil capacity of approximately 170,000 barrels per day (“B/D”). The refinery is designed to process light crude oil and PBF relies on Enbridge Line 5 to supply a substantial portion of the light crude oil required by the refinery. The Toledo refinery does not process heavy crude oil and does not receive any of its crude oil supply via Enbridge Line 6. The PBF refinery at Toledo competes directly in refined petroleum product markets with

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other refineries that are supplied by the Enbridge Mainline system, including six refineries that receive both light crude oil via Line 5 and heavy crude oil via Line 6.

7. As a financing mechanism, Morgan Stanley Capital Group Inc. (“Morgan Stanley”) acquires the crude oil needed to supply the Toledo refinery and re-sells the crude oil to PBF. I direct Morgan Stanley to acquire the specific grades and quantities of crude oil required by the Toledo refinery. For crude oil transported via the Enbridge Mainline system, PBF purchases the crude oil from Morgan Stanley using formula prices that include a logistics component to cover the transportation charges on Enbridge.

**Nominations and Apportionment**

8. Nominations for service on the Enbridge Mainline system are made monthly. Shippers nominate by advising Enbridge of the origin point, delivery point, volume, and grade of crude oil to be shipped during the month. For crude oil to be delivered on the downstream portion of the system, shippers do not specify whether Line 5 or Line 6 is to be used, and Enbridge unilaterally assigns nominations to Line 5 or Line 6.

9. The apportionment procedure for the downstream portion of the Enbridge Mainline system is set forth in Rule 14 of the Rules and Regulations tariff for Enbridge Energy contained in FERC Tariff No. 41.1.0. If more crude oil is tendered than can be transported, Rule 14 provides that Enbridge shall apportion such tenders “on a pro rata basis” among all shippers “on the basis of such tenders and the current operating

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

conditions of the facilities” of Enbridge. A copy of FERC Tariff No. 41.1.0 is attached to this Affidavit.

10. Beginning in January 2011, Enbridge applied a cap on Mainline nominations and a verification process that limited the nomination for each facility served by the system to the highest monthly volume delivered to that facility in any month during the 24-month period leading up to July 2010. Accordingly, since January 2011, nominations for the Toledo refinery on the Enbridge Mainline have been limited to **REDACTED**.

11. In March 2011, PBF acquired the Toledo refinery and became the successor to the delivery history of the prior owner on the Enbridge Mainline system. Thus, nominations on the Enbridge Mainline system for delivery to the PBF Toledo Refinery have been limited to **REDACTED**.

12. Prior to April 19, 2012, the cap on nominations and the verification process adopted by Enbridge in January 2011 were not contained in the pipeline’s Rules and Regulations tariff. On April 19, 2012, Enbridge Energy filed a proposed new Rules and Regulations tariff, effective May 20, 2012. The proposed Rule 6 contains a cap and verification process which appears to codify the cap and verification process implemented in January 2011. The proposed rule limits the volume of nominations verified to each delivery facility to the highest volume delivered to that facility during the 24-month period leading up to July 2010. A copy of proposed FERC Tariff No. 41.2.0 is attached to this Affidavit.



**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

13. From January 2011 through November 2011, Enbridge applied apportionment to both Line 5 and Line 6. However, beginning in December 2011 through May 2012, Enbridge has applied apportionment only to Line 5 while Line 6 has not been apportioned. During that period the monthly apportionment of Line 5 ranged from 27 percent in March 2012 to 16 percent in May 2012. Copies of each monthly apportionment notice issued by Enbridge for the period December 2011 through May 2012 are attached to this Affidavit.

14. It is my understanding that the application of apportionment exclusively to Line 5 is caused primarily by the practice of Enbridge to transport all Light Sour Blend ("LSB") crude oil on Line 5 and to transport no LSB crude oil on Line 6. It is my further understanding that both Line 5 and Line 6 are physically capable of transporting LSB crude oil and that both lines transported LSB crude oil in the past. The web site of Enbridge indicates that light sour crude oil can be transported on both Line 5 and Line 6. An excerpt from the Enbridge web site is attached to the accompanying Affidavit of Thomas O. Miesner.

15. I have participated in recent discussions between PBF and Enbridge regarding the apportionment of Line 5. In those discussions, Enbridge advised PBF that it assigns all nominations of LSB crude oil to Line 5 because Line 6 is filled to capacity with heavy crude oil nominations. The only reason cited by Enbridge for assigning all LSB crude oil nominations to Line 5 is the fact that Line 6 is full and is designated as a heavy crude oil pipeline. Enbridge stated that it would assign nominations of LSB crude

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

oil to Line 6 if nominations of heavy crude oil did not require all of the capacity on Line 6.

**Preference and Discrimination**

16. The effect of the practice by Enbridge to assign all nominations of LSB crude oil to Line 5 and none of the LSB nominations to Line 6 is to impose the full impact of apportionment on nominations of light crude oil for refineries that receive light crude oil via Line 5 and to spare from apportionment nominations of heavy crude oil for refineries that receive heavy crude oil via Line 6. This amounts to a preferential reservation of capacity on Line 6 for heavy crude oil refineries and a discriminatory burden on the light oil refineries, which are required to absorb the full impact of the apportionment on Line 5 to accommodate nominations of LSB crude oil.

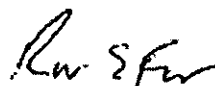
**Injury to PBF**

17. The apportionment burden placed exclusively on Line 5 shippers of light crude oil has caused substantial injury to PBF's refinery operations at Toledo. The injury consists primarily of the economic penalty associated with the acquisition of generally higher-priced crude oil supplies that do not have a refining value commensurate with their price. The injury also includes contract deficiency payments to the local pipeline that connects the PBF Toledo refinery with Enbridge Line 5.

18. Attached to this Affidavit is an analysis which provides an approximate quantification of the financial effect of Line 5 apportionment on the PBF Toledo refinery for each month beginning December 2011. The analysis shows that the total financial

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

injury to PBF through May 2012 has been approximately REDACTED . I have not attempted to estimate the amount of injury to PBF that would have resulted from alternative apportionment practices which do not apply the full burden of apportionment to Line 5. The substantial injury to PBF will continue until Enbridge modifies its apportionment practice to eliminate the preference for heavy crude oil shipments and the discrimination against light crude oil shipments.



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Robert E. Foti

**PUBLIC VERSION – PROTECTED MATERIALS HAVE BEEN REDACTED**

**VERIFICATION**

State of New Jersey ss:

County of Morris

Before me, Robert E. Foti, a notary public, on this day personally appeared Robert E. Foti, known to me as the person whose name is subscribed to the foregoing Affidavit, and known to me as Manager – Domestic Crude Oil Supply for PBF Holding Company LLC, and stated to me that the facts contained in such Affidavit are true and correct to the best of his knowledge and belief.

Given my hand and seal this 10<sup>th</sup> day of May, 2012.

Evelyn Verdon

Notary Public  
State of New Jersey

My Commission expires:

EVELYN VERDON A Notary Public of New Jersey My Commission Expires 3/3/2013
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# **CURRENT ENBRIDGE RULES AND REGULATIONS**

## **Tariff FERC No. 41.1.0**

FERC ICA Oil Tariff

FERC No. 41.1.0  
(Issued in lieu of FERC No. 41.0.0 which was withdrawn)  
Cancels FERC No. 33



## ENBRIDGE ENERGY, LIMITED PARTNERSHIP

### RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF

CRUDE PETROLEUM

BY PIPELINE

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#### GENERAL APPLICATION

The Rules and Regulations published herein apply only under tariffs making specific reference by FERC number to this tariff; such reference will include supplements hereto and successive issues hereof. Specific rules and regulations published in individual tariffs will take precedence over Rules and Regulations published herein.

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~~[C] Issued on 14 days notice under authority of 18 C.F.R. 341.14. This tariff is conditionally accepted subject to refund pending a 30 day review period.~~

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[N] This is a baseline tariff filed in compliance with FERC Order 714, 124 FERC ¶ 61,270 (2008).

---

[N] Issued on less than one day's notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a 30-day review period.

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

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**ISSUED: AUGUST 2, 2010**

**EFFECTIVE: AUGUST 2, 2010**

---

**ISSUED BY:**

Ralph Fischer

[W] Director, Planning & Analysis

Enbridge Pipelines Inc.

[W] Suite 3000 Fifth Avenue Place

425 - 1<sup>st</sup> Street SW

Calgary, AB Canada T2P 3L8

**COMPILED BY:**

[W] ~~Gandee Tracey~~ Darren Hoeving

[W] Regulatory Strategy & Compliance

Enbridge Pipelines Inc.

[W] Tel. (403) 663-6677 767-3709

Fax: (403) 508-3140

[N] E-mail: Enbridge-Tariffs@enbridge.com

## RULES AND REGULATIONS

### 1. DEFINITIONS

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

**"API"** means American Petroleum Institute.

**"ASTM"** means American Society for Testing and Materials.

**"Carrier"** means Enbridge Energy, Limited Partnership.

**"Celsius"** (°C) is equivalent to the Fahrenheit Temperature minus 32 divided by the factor 1.8.

**"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.

**"Cubic Metre"** means 264.172 0 United States gallons and 6.289 811 barrels at a temperature of 15 degrees Celsius.

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

**"FERC"** means the Federal Energy Regulatory Commission.

**"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 examples of 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 labor 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.

**"Financial Assurances"** means the financial assurances provided by the Shipper and accepted by the Carrier in accordance with Rule 18.

**"Kilopascal"** is equivalent to 0.145 037 7 pounds per square inch.

**"Natural Gas Liquids"** means the indirect liquid petroleum products of oil or gas wells having an absolute vapor pressure in excess of 103 kilopascals.

**"Non-Performance Penalty Revenue"** means the amount collected in excess of the transportation tariff revenue that otherwise would have been collected if the Shipper had transported 100% of its binding nomination.

**"Petroleum"** means Crude Petroleum, Natural Gas Liquids and Refined Petroleum Products.

**"Refined Petroleum Products"** means the products of a refinery tendered as motor gasoline, aviation fuels, kerosene, diesel fuel and domestic heating oil.

**"Regular Delivery Point"** means a location for the delivery of Crude Petroleum as provided for in the Carrier's Local Tariff Applying On Crude Petroleum And Natural Gas Liquids.

**"Regular Receiving Point"** means a location for the receipt of Crude Petroleum as provided for in the Carrier's Local Tariff Applying On Crude Petroleum And Natural Gas Liquids.

**"Retention Stock"** means the volume of 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 loopfill.

**"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.

### 2. COMMODITY

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

### 3. ORIGIN AND DESTINATION FACILITIES

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- (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

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- (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 vapor 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 in accordance with the provisions of paragraph (c) of Rule 4 of this tariff, 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

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- (a) The Carrier shall endeavor 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, endeavor 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 AND QUANTITIES**

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- (a) Tenders shall be submitted to the Carrier or Enbridge Pipelines Inc., acting for the Carrier for such purpose, 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. 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.
- (b) 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.
- (c) 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 receipt flow rate at which such Crude Petroleum is received by the Carrier is less than or greater than the receipt flow rates specified from time to time by the Carrier for each Regular Receiving Point.
- (d) 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 delivery flow rate less than or greater than the delivery flow rates specified from time to time by the Carrier for each Regular Delivery Point.
- (e) 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 RATES**

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- (a) The Carrier shall charge a Shipper the Carrier's rate for the transportation of Crude Petroleum that is in effect on the earlier date of receipt of such Crude Petroleum by the Carrier, or Enbridge Pipelines Inc.
- (b) Pursuant to FERC 18 C.F.R. 341.10, the existing rates between points named in the tariff will be applied to transportation movements from existing intermediate receiving points not named in the tariff to Regular Delivery Points, and from Regular Receiving Points to existing intermediate delivery points not named in the tariff.

## **8. PAYMENT OF RATES AND LIEN FOR UNPAID CHARGES**

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- (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 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 a Shipper's 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 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 Pipelines Inc. 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**

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- (a) The Carrier shall gauge or meter, or cause to be gauged or metered, a Shipper's Crude Petroleum upon receipt and 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. The Carrier shall have the right to enter the premises where Crude Petroleum is received or delivered by the Carrier and shall be granted access to all facilities for the purpose of gauging or metering and 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.
- (b) 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.
- (c) The Carrier shall correct the metered volume of Crude Petroleum for compressibility by the use of API Manual of Petroleum Measurement Standards, Chapters 11.2.1 M or 11.2.1 or the latest revision to such Chapters.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The results of all such gauging, metering and testing by the Carrier shall be final.
- (h) The Carrier shall deduct, as allowance oil, 1/20 of 1 percent of the volume of Crude Petroleum delivered to the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

## **10. EVIDENCE OF RECEIPTS AND DELIVERIES**

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The Carrier shall evidence the receipt and 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**

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- (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 there from, unless the non-removal of such Crude Petroleum is due to the direct negligence of Carrier.
- (c) If the Crude Petroleum is not removed from Carrier's facilities and the Carrier determines, in its sole discretion, that a disruption of Carrier's operations may result, Carrier shall provide Shipper with twenty-four (24) hours'

notice to remove specified Crude Petroleum of the Shipper from the Carrier's facilities. Should Shipper not remove the specified Crude Petroleum from the Carrier's facilities within said notice period, 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 disruption of the Carrier's operations 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 this Rule. The Carrier hereby advises that it has appointed Enbridge Pipelines Inc. as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing this Rule.

## **12. LIABILITY OF THE CARRIER**

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- (a) Except where caused by the direct negligence 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 Petroleum results from any cause other than the direct negligence of the Carrier while the Carrier is in possession or control of such 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 Petroleum in the possession of the Carrier on the date of such loss.

## **13. IDEMNIFICATION BY THE SHIPPER**

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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. APPORTIONMENT**

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- (a) If more Crude Petroleum is tendered than can be transported by the Carrier, then the Carrier shall apportion such tenders on a pro rata basis among all such Shippers on the basis of such current tenders and the current operating conditions of the facilities of the Carrier applicable to the transportation of Crude Petroleum.
- (b) Where blending of Crude Petroleum can achieve an increase in the capacity of the facilities of the Carrier, such increase in capacity shall be apportioned on a pro rata basis first to Shippers tendering such blends with any remaining increase in capacity apportioned on a pro rata basis to all other tenders.
- (c) In months of apportionment, all 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 to that portion of shortfalls caused by Force Majeure events; Carrier imposed restrictions on feeder pipeline deliveries into the Carrier; or any carry over volumes.
- (d) 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.
- (e) At any time up to thirty (30) calendar days following the receipt of the notice referred to in Rule 14(e) 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 14(d) and the Shipper shall be obligated to make payment of the invoiced amount.

- (f) The Non-Performance Penalty shall be US \$2.70 per barrel; which is equivalent to US \$17.00 per cubic meter.
- (g) The Non-Performance Penalty Revenue, plus interest calculated in accordance with the Commission's regulations (18 C.F.R. § 340.1 (c)), shall be accounted for in a separate account.
- (h) The Non-Performance Penalty Revenue plus interest shall be refunded on a quarterly basis to those Shippers who did not incur the Non-Performance Penalty in the previous calendar quarter.

#### **15. REQUESTED CHANGES BY THE SHIPPER**

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- (a) Subject to the operating conditions of the facilities of the Carrier, the Carrier may, upon the written request of a Shipper, allow a Shipper to change:
  - (i) the designated Regular Receiving Point for its Crude Petroleum;
  - (ii) the designated volume and type of its Crude Petroleum to be received at a designated Regular Receiving Point;
  - (iii) the designated Regular Delivery Point for its Crude Petroleum;
  - (iv) the designated volume and type of its Crude Petroleum to be delivered to a designated Regular Delivery Point;
  - (v) the party designated to take delivery of its Crude Petroleum.
- (b) The Carrier may allow a Shipper to transfer, in such a 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) of 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 18 of this tariff.

#### **16. ADVERSE CLAIMS AGAINST CRUDE PETROLEUM**

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- (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 nine months of delivery of such Crude Petroleum by the Carrier or, in the case of a failure to make delivery, then within nine months after a reasonable time for delivery has elapsed.
- (b) A Shipper shall institute any action arising out of any claim against the Carrier within two years 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. 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.
- (b) Subject to the provisions of Rule 18(c), the Carrier, upon notice to the Shipper, may only 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 guaranty 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 unsatisfactory
  - (ii) any Financial Assurances previously provided by a 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.

19. In addition to these Rules & Regulations, Enbridge Energy Inc., Limited Partnership Crude Petroleum Tariff also incorporates the following practices:

- |  |                                  |
|--|----------------------------------|
| (a) Practice applicable to automatic balancing | Effective Date: January 6, 2006. |
| (b) Practice applicable to in-line transfers   | Effective Date: January 1, 2004. |

Copies of Carrier's Practices and supporting documents are available on-line at:

[W] [www.enbridgepartners.com/AboutUs/PipelineTariffsAndTolls.asp](http://www.enbridgepartners.com/AboutUs/PipelineTariffsAndTolls.asp)  
<http://www.enbridgeus.com/Main.aspx?id=1116&tmi=210&tmt=1>

Or through the Carrier's Shipper Services group: phone number: [W] (403) ~~508-3435~~ 231-5721.

**Symbols:**

[C] – Cancel

[N] – New

[W] – Change in wording only

# **PROPOSED ENBRIDGE RULES AND REGULATIONS**

## **Tariff FERC No. 41.2.0**

FERC ICA Oil Tariff

FERC No. 41.2.0  
Cancels FERC No. 41.1.0



# ENBRIDGE ENERGY, LIMITED PARTNERSHIP

## RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF

CRUDE PETROLEUM

BY PIPELINE

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### GENERAL APPLICATION

The Rules and Regulations published herein apply only under tariffs making specific reference by FERC number to this tariff; such reference will include supplements hereto and successive issues hereof. Specific rules and regulations published in individual tariffs will take precedence over Rules and Regulations published herein.

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~~[C] This is a baseline tariff filed in compliance with FERC Order 714, 124 FERC ¶ 61,270 (2008).~~

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~~[C] Issued on less than one day's notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a 30-day review period.~~

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

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**ISSUED: APRIL 19, 2012**

**EFFECTIVE: MAY 20, 2012**

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**ISSUED BY:**

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## RULES AND REGULATIONS

### 1. DEFINITIONS

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

**"API"** means American Petroleum Institute.

**"ASTM"** means American Society for Testing and Materials.

**"Carrier"** means Enbridge Energy, Limited Partnership.

**"Celsius"** (°C) is equivalent to the Fahrenheit Temperature minus 32 divided by the factor 1.8.

**"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.

**"Cubic Metre"** means 264.172 0 United States gallons and 6.289 811 barrels at a temperature of 15 degrees Celsius.

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

**"FERC"** means the Federal Energy Regulatory Commission.

**"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 examples of 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 labor 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.

**"Financial Assurances"** means the financial assurances provided by the Shipper and accepted by the Carrier in accordance with Rule 18.

**"Kilopascal"** is equivalent to 0.145 037 7 pounds per square inch.

**"Natural Gas Liquids"** means the indirect liquid petroleum products of oil or gas wells having an absolute vapor pressure in excess of 103 kilopascals.

**"Non-Performance Penalty Revenue"** means the amount collected in excess of the transportation tariff revenue that otherwise would have been collected if the Shipper had transported 100% of its binding nomination.

**"Petroleum"** means Crude Petroleum, Natural Gas Liquids and Refined Petroleum Products.

**"Refined Petroleum Products"** means the products of a refinery tendered as motor gasoline, aviation fuels, kerosene, diesel fuel and domestic heating oil.

**"Regular Delivery Point"** means a location for the delivery of Crude Petroleum as provided for in the Carrier's Local Tariff Applying On Crude Petroleum And Natural Gas Liquids.

**"Regular Receiving Point"** means a location for the receipt of Crude Petroleum as provided for in the Carrier's Local Tariff Applying On Crude Petroleum And Natural Gas Liquids.

**"Retention Stock"** means the volume of 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 loopfill.

**"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).

[W] **"Nomination"** **"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.

### 2. COMMODITY

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

### 3. ORIGIN AND DESTINATION FACILITIES

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- (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

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- (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 vapor 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 in accordance with the provisions of paragraph (c) of Rule 4 of this tariff, 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

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- (a) The Carrier shall endeavor 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, endeavor 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. [W] NOMINATIONS TENDERS AND QUANTITIES

- (a) [W] Nominations Tenders shall be submitted to the Carrier or Enbridge Pipelines Inc., acting for the Carrier for such purpose, 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. The Carrier may, subject to the availability of space and the operating conditions of the facilities of the Carrier, accept [W] Nominations Tenders or revised [W] Nominations Tenders after such time.
- [C] ~~(b) A Shipper shall, upon notice from the Carrier, provide written third party verification as required by the Carrier in support of such Shipper's Tenders. 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.~~
- [N] (b) Upon receipt of Nominations from Shippers, the Carrier shall conduct upstream and downstream verifications in accordance with the terms of the Mainline Nomination Verification Procedure, set forth in (c) below. To the extent that a Shipper's Nomination is not fully supported by application of the Mainline Nomination Verification Procedure, as determined by the Carrier in its sole discretion on a non-discriminating basis, the Shipper's Nomination will be limited in accordance with the Mainline Nomination Verification Procedure set forth in (c) below. This verification process will apply prior to determining whether apportionment is required on the pipeline.
- [N] (c) Mainline Nomination Verification Procedure: Upon receipt of each month's nominations, Enbridge will verify with: (1) each connected supply facility to ensure that the Shipper has adequate supply to meet the Shipper's Nomination; and (2) each Shipper's designated delivery point to verify adequate take away capacity based on the lower of volumes nominated to it or the delivery point's maximum allowable volume as determined in accordance with the current Mainline Nomination Verification Procedure (the "Verified Volume"). The verification process for the Carrier shall be conducted as follows:
1. Carrier shall request upstream connecting carriers or facilities to verify the Shipper's nomination of volume to the Mainline.
  2. With respect to nominations for delivery to a specific delivery facility, the Carrier will contact the delivery facility and ask the delivery facility to verify the volumes which have been nominated to its facility by each shipper. The total volumes verified to each delivery facility will be limited to the highest volume delivered to that facility during the 24 month period leading up to July 2010.
  3. With respect to nominations for delivery to a specific connecting carrier, the Carrier will contact the downstream carrier and request verification of each shipper's volume nominated for delivery to its facility. Downstream connecting carriers will follow their own procedure for verifying volumes to the Carrier.
  4. Upon receipt of verifications, the Carrier will accept the nominations of each shipper up to the volume verified by both the upstream and downstream facilities (the "Verified Volume").
  5. In the event that a connected carrier confirms that it has capacity in excess of the Verified Volumes and the total Shippers' Nominations to the Carrier for delivery to the connecting carrier exceed the total Verified Volumes then the Carrier will allocate the excess capacity on a pro-rata basis.

Note: In the interest of optimizing capacity available to shippers on Lines 6A, 14/64 and 62 the downstream portion of the Mainline Nomination Verification Procedure will be supplemented as follows:

1. After allocating the Verified Volumes (steps 1 through 5, above), the Carrier will determine if excess capacity exists on Lines 6A, 14/64 and 62 downstream of Superior.

2. If excess capacity exists on any of Lines 6A, 14/64 and/or 62, the Carrier will communicate with each delivery point on the relevant line(s) to determine its ability to accept volumes in addition to its Verified Volume.
3. If the total interest in additional capacity is equal to or less than the total excess capacity on the line(s), the Carrier will allocate additional volume to each of the delivery points, in addition to its Verified Volume.
4. If the total interest in additional capacity is greater than the total excess capacity on the line(s), the Carrier will allocate additional volume to each of the delivery points on a pro-rata basis, with each delivery points proportionate share of the excess capacity determined based on the delivery point's Verified Volume. As per the current Mainline Nomination Verification Procedure, it is the responsibility of the delivery points to then verify with the Carrier which shipper(s) will be utilizing the excess capacity.

- [W] (d) (e) 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 receipt flow rate at which such Crude Petroleum is received by the Carrier is less than or greater than the receipt flow rates specified from time to time by the Carrier for each Regular Receiving Point.
- [W] (e) (d) 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 delivery flow rate less than or greater than the delivery flow rates specified from time to time by the Carrier for each Regular Delivery Point.
- [W] (f) (e) 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 RATES**

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- (a) The Carrier shall charge a Shipper the Carrier's rate for the transportation of Crude Petroleum that is in effect on the earlier date of receipt of such Crude Petroleum by the Carrier, or Enbridge Pipelines Inc.
- (b) Pursuant to FERC 18 C.F.R. 341.10, the existing rates between points named in the tariff will be applied to transportation movements from existing intermediate receiving points not named in the tariff to Regular Delivery Points, and from Regular Receiving Points to existing intermediate delivery points not named in the tariff.

## **8. PAYMENT OF RATES AND LIEN FOR UNPAID CHARGES**

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- (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 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 a Shipper's 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 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 Pipelines Inc. 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**

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- (a) The Carrier shall gauge or meter, or cause to be gauged or metered, a Shipper's Crude Petroleum upon receipt and 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. The Carrier shall have the right to enter the premises where Crude Petroleum is received or delivered by the Carrier and shall be granted access to all facilities for the purpose of gauging or metering and 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.
- (b) 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.
- (c) The Carrier shall correct the metered volume of Crude Petroleum for compressibility by the use of API Manual of Petroleum Measurement Standards, Chapters 11.2.1 M or 11.2.1 or the latest revision to such Chapters.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The results of all such gauging, metering and testing by the Carrier shall be final.
- (h) The Carrier shall deduct, as allowance oil, 1/20 of 1 percent of the volume of Crude Petroleum delivered to the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

## **10. EVIDENCE OF RECEIPTS AND DELIVERIES**

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The Carrier shall evidence the receipt and 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**

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- (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 there from, unless the non-removal of such Crude Petroleum is due to the direct negligence of Carrier.
- (c) If the Crude Petroleum is not removed from Carrier's facilities and the Carrier determines, in its sole discretion, that a disruption of Carrier's operations may result, Carrier shall provide Shipper with twenty-four (24) hours'

notice to remove specified Crude Petroleum of the Shipper from the Carrier's facilities. Should Shipper not remove the specified Crude Petroleum from the Carrier's facilities within said notice period, 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 disruption of the Carrier's operations 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 this Rule. The Carrier hereby advises that it has appointed Enbridge Pipelines Inc. as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing this Rule.

## **12. LIABILITY OF THE CARRIER**

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- (a) Except where caused by the direct negligence 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 Petroleum results from any cause other than the direct negligence of the Carrier while the Carrier is in possession or control of such 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 Petroleum in the possession of the Carrier on the date of such loss.

## **13. IDEMNIFICATION BY THE SHIPPER**

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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. APPORTIONMENT**

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- (a) If more Crude Petroleum is tenders than can be transported by the Carrier, then the Carrier shall apportion such tenders on a pro rata basis among all such Shippers on the basis of such current tenders and the current operating conditions of the facilities of the Carrier applicable to the transportation of Crude Petroleum.
- (b) Where blending of Crude Petroleum can achieve an increase in the capacity of the facilities of the Carrier, such increase in capacity shall be apportioned on a pro rata basis first to Shippers tendering such blends with any remaining increase in capacity apportioned on a pro rata basis to all other tenders.
- (c) In months of apportionment, all 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 to that portion of shortfalls caused by Force Majeure events; Carrier imposed restrictions on feeder pipeline deliveries into the Carrier; or any carry over volumes.
- (d) 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.
- (e) At any time up to thirty (30) calendar days following the receipt of the notice referred to in Rule 14(e) 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 14(d) and the Shipper shall be obligated to make payment of the invoiced amount.

- (f) The Non-Performance Penalty shall be US \$2.70 per barrel; which is equivalent to US \$17.00 per cubic meter.
- (g) The Non-Performance Penalty Revenue, plus interest calculated in accordance with the Commission's regulations (18 C.F.R. § 340.1 (c)), shall be accounted for in a separate account.
- (h) The Non-Performance Penalty Revenue plus interest shall be refunded on a quarterly basis to those Shippers who did not incur the Non-Performance Penalty in the previous calendar quarter.

## **15. REQUESTED CHANGES BY THE SHIPPER**

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- (a) Subject to the operating conditions of the facilities of the Carrier, the Carrier may, upon the written request of a Shipper, allow a Shipper to change:
  - (i) the designated Regular Receiving Point for its Crude Petroleum;
  - (ii) the designated volume and type of its Crude Petroleum to be received at a designated Regular Receiving Point;
  - (iii) the designated Regular Delivery Point for its Crude Petroleum;
  - (iv) the designated volume and type of its Crude Petroleum to be delivered to a designated Regular Delivery Point;
  - (v) the party designated to take delivery of its Crude Petroleum.
- (b) The Carrier may allow a Shipper to transfer, in such a 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) of 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 18 of this tariff.

## **16. ADVERSE CLAIMS AGAINST CRUDE PETROLEUM**

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- (a) A Shipper shall not [W] ~~NominateTenders~~ 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 [W] Nomination ~~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**

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- (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 nine months of delivery of such Crude Petroleum by the Carrier or, in the case of a failure to make delivery, then within nine months after a reasonable time for delivery has elapsed.
- (b) A Shipper shall institute any action arising out of any claim against the Carrier within two years 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. FINANCIAL ASSURANCES

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- (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.
- (b) Subject to the provisions of Rule 18(c), the Carrier, upon notice to the Shipper, may only 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 guaranty 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 unsatisfactory
  - (ii) any Financial Assurances previously provided by a 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.

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19. In addition to these Rules & Regulations, Enbridge Energy Inc., Limited Partnership Crude Petroleum Tariff also incorporates the following practices:

- |  |                                  |
|--|----------------------------------|
| (a) Practice applicable to automatic balancing | Effective Date: January 6, 2006. |
| (b) Practice applicable to in-line transfers   | Effective Date: January 1, 2004. |

Copies of Carrier's Practices and supporting documents are available on-line at:

<http://www.enbridgeus.com/Main.aspx?id=1116&tmi=210&tmt=1>

Or through the Carrier's Shipper Services group: phone number: (403) 231-5721.



**Symbols:**

[C] – Cancel

[N] – New

[W] – Change in wording only

# **ENBRIDGE APPORTIONMENT ANNOUNCEMENTS**

**December 2011 – May 2012**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
Calgary, AB  
T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

November 22, 2011

To: All Shippers, Feeders and Connecting Pipelines

**Re: December 2011 Apportionment Announcement – Line 5**

Please be advised for December 2011 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 23%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 15:30 MST on Wednesday November 23, 2011.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine'.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.

Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 22-NOV-2011 15:28

Filename: cdcr2000.pdf

Parameters:

Pipeline: ENBRIDGEPL

NOS Month: DEC-2011

Declared Date: 23-NOV-2011

22-NOV-2011 15:28

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
December 2011

We have compiled and reviewed the Dec-2011 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 23% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

## LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

## LINE 65

Apportioned Percentage: 0%

22-NOV-2011 15:28

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
December 2011

## LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 65

## LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT for Line 66

## LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 67

## LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 6

## LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH for Line 6

## LINE 9

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including MONTREAL for Line 9

## LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE for Line 17

## Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
Calgary, AB  
T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

December 19, 2011

To: All Shippers, Feeders and Connecting Pipelines

**Re: January 2012 Apportionment Announcement – Line 5**

Please be advised for January 2012 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 22%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 17:00 MST on Tuesday December 20, 2011.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine'.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.



Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 19-DEC-2011 16:43

Filename: cdcr2000.pdf

Parameters:

Pipeline: ENBRIDGEPL

NOS Month: JAN-2012

Declared Date: 20-DEC-2011

19-DEC-2011 16:43

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
January 2012

We have compiled and reviewed the Jan-2012 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CLEARBROOK for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 22% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

## LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

## LINE 65

Apportioned Percentage: 0%

19-DEC-2011 16:43

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
January 2012

## LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER  
for Line 65

## LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT  
for Line 66

## LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY  
for Line 67

## LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S  
for Line 6

## LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH  
for Line 6

## LINE 9

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including MONTREAL  
for Line 9

## LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE  
for Line 17

## Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
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T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

January 20, 2012

To: All Shippers, Feeders and Connecting Pipelines

**Re: February 2012 Apportionment Announcement – Line 5**

Please be advised for February 2012 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 18%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 17:00 MST on Monday January 23, 2012.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine'.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.

Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 20-JAN-2012 17:49

Filename: cdcr2000.pdf

Parameters:

Pipeline: ENBRIDGEPL

NOS Month: FEB-2012

Declared Date: 23-JAN-2012

20-JAN-2012 17:49

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
February 2012

We have compiled and reviewed the Feb-2012 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 10

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 10

## LINE 11

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 11

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CLEARBROOK for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 18% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%

20-JAN-2012 17:49

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
February 2012

LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 65

LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT for Line 66

LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 67

LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 6

LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH for Line 6

LINE 7

Apportioned Percentage: %

This percentage was calculated using nominations tendered up to and including SARNIA for Line 7

LINE 9

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including MONTREAL for Line 9

LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE for Line 17



20-JAN-2012 17:49

Enbridge Pipelines Inc.

CDCR2000

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Notice of Shipment Summary  
February 2012

Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
Calgary, AB  
T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

February 21, 2012

To: All Shippers, Feeders and Connecting Pipelines

**Re: March 2012 Apportionment Announcement – Line 5**

Please be advised for March 2012 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 27%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 17:00 MST on Wednesday February 22, 2012.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine', with a stylized flourish at the end.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.

Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 21-FEB-2012 19:21

Filename: cdcr2000.pdf

Parameters:

Pipeline: ENBRIDGEPL

NOS Month: MAR-2012

Declared Date: 22-FEB-2012

21-FEB-2012 19:21

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary

March 2012

We have compiled and reviewed the Mar-2012 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CLEARBROOK for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 27% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

## LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

## LINE 65

Apportioned Percentage: 0%

21-FEB-2012 19:21

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
March 2012

## LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 65

## LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT for Line 66

## LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 67

## LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 6

## LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH for Line 6

## LINE 9

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including MONTREAL for Line 9

## LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE for Line 17

## Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
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T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

March 21, 2012

To: All Shippers, Feeders and Connecting Pipelines

**Re: April 2012 Apportionment Announcement – Line 5**

Please be advised for April 2012 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 19%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 17:00 MDT on Thursday March 22, 2012.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine'.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.



Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 21-MAR-2012 17:59

Filename: cdcr2000.pdf

Parameters:

Pipeline: ENBRIDGEPL

NOS Month: APR-2012

Declared Date: 22-MAR-2012

21-MAR-2012 17:59

Enbridge Pipelines Inc.

CDCR2000

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Notice of Shipment Summary

April 2012

We have compiled and reviewed the Apr-2012 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 10

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 10

## LINE 11

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 11

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CLEARBROOK for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 19% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%

21-MAR-2012 17:59

## Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary

April 2012

LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 65

LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT for Line 66

LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 67

LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 6

LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH for Line 6

LINE 7

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SARNIA for Line 7

LINE 9

Apportioned Percentage: 0%

.....This percentage was calculated using nominations tendered up to and including MONTREAL for Line 9

LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE for Line 17

21-MAR-2012 17:59

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary

April 2012

Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**



Enbridge Pipelines Inc.  
3000, 425 – 1<sup>st</sup> Street SW  
Calgary, AB  
T2P 3L8  
Canada  
www.enbridge.com

Holly Valentine  
Supply Management Coordinator  
Ph. (403) 508-3124  
Fax (403) 508-3143  
email: holly.valentine@enbridge.com

April 20, 2012

To: All Shippers, Feeders and Connecting Pipelines

**Re: May 2012 Apportionment Announcement – Line 5**

Please be advised for April 2012 nominations Enbridge announces the following apportionment. Line 5 is apportioned by 16%.

**\*\* Note: No redirections will be accepted and no commodity substitutions or increases due to Feeder and Downstream Verification processes being complete. \*\***

**Apportioned Notices of Shipment reflecting volume detailed in the Maximum Allowable Letters are due by 17:00 MDT on Monday April 23, 2012.**

If you have any questions or concerns, please contact me at (403) 508-3124.

Regards,

A handwritten signature in black ink, appearing to read 'H. Valentine'.

Holly Valentine  
Supply Management Coordinator  
Enbridge Pipelines Inc.

Enbridge Pipelines Inc.

## SHIPPER SERVICES SYSTEM

### Notice of Shipment Summary

CDCR2000

Run by: Holly Valentine

Report Date: 20-APR-2012 16:34

Filename: cdcr2000.pdf

**Parameters:**

Pipeline: ENBRIDGEPL

NOS Month: MAY-2012

Declared Date: 23-APR-2012

20-APR-2012 16:34

Enbridge Pipelines Inc.

CDCR2000

---

Notice of Shipment Summary  
May 2012

We have compiled and reviewed the May-2012 nominations submitted to Enbridge Pipeline Inc., and hereby announce the following:

## LINE 1

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 1

## LINE 10

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 10

## LINE 11

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including WESTOVER for Line 11

## LINE 14

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 14

## LINE 2

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CLEARBROOK for Line 2

## LINE 3

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 3

## LINE 4

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including KERROBERT for Line 4

## LINE 5

Apportioned Percentage: 16% (NPP applied)

This percentage was calculated using nominations tendered up to and including LEWISTON for Line 5

## LINE 61

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 61

## LINE 62

Apportioned Percentage: 0%



20-APR-2012 16:34

Enbridge Pipelines Inc.

CDCR2000

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Notice of Shipment Summary  
May 2012

## LINE 62

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including FLANAGAN for Line 62

## LINE 64

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIF LAT for Line 64

## LINE 65

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including CROMER for Line 65

## LINE 66

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including LOCKPORT for Line 66

## LINE 67

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including HARDISTY for Line 67

## LINE 6A

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SUPERIOR S for Line 6

## LINE 6B

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including GRIFFITH for Line 6

## LINE 7

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including SARNIA for Line 7

## LINE 9

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including MONTREAL for Line 9

## LINE 17

Apportioned Percentage: 0%

This percentage was calculated using nominations tendered up to and including STOCKBRIDGE for Line 17

20-APR-2012 16:34

Enbridge Pipelines Inc.

CDCR2000

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Notice of Shipment Summary  
May 2012

Note:

Please note that in accordance with Rules 6b and 15a of the Enbridge Pipelines Inc. Crude Petroleum Tariff, Rules and Regulations, should operational conditions warrant, the carrier may not accept all change requests for revisions to nominations subsequent to the publication of the monthly Notice of Shipment Summary Report.

**Enbridge Pipelines Inc.**

**Notice of Shipment Summary**

**End of Report**

**PUBLIC VERSION – PROTECTED MATERIALS HAVE  
BEEN REDACTED**

**ESTIMATED INJURY TO  
PBF TOLEDO REFINERY**

**DECEMBER 2011 –  
MAY 2012**

**PUBLIC VERSION**

**PROTECTED  
MATERIALS HAVE  
BEEN REDACTED**

**AFFIDAVIT OF**  
**THOMAS O. MIESNER**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATION COMMISSION**

PBF Holding Company LLC and

Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership,

Respondent

**AFFIDAVIT OF THOMAS O. MIESNER**

1. My name is Thomas O. Miesner. My business address is 725 Cheltenham Drive, Katy, Texas 77450.

2. I have nearly 25 years experience operating and maintaining oil pipelines with Conoco Pipe Line Company (CPL), and an additional nine years as a private consultant in the operation and maintenance of oil and natural gas pipelines. I have also served on the executive committee of the Association of Oil Pipelines (AOPL) including servicing as Chairman of AOPL in 2001. I authored the popular book Oil and Gas Pipelines in NonTechnical Language as well as other texts, and I developed and teach Oil and Gas Pipeline Fundamentals as well as other classes.

3. I am submitting this affidavit on behalf of PBF Holding Company LLC and Toledo Refining Company LLC in support of their complaint against Enbridge Energy Limited Partnership ("Enbridge") challenging the procedures, practices, and actions of

Enbridge in apportioning capacity on the downstream portion of its “Mainline” crude oil pipeline system.

4. Enbridge’s Mainline system and its current practice of apportioning capacity in the downstream portion of that system are described in Mr. Foti’s Affidavit. In brief, the system’s downstream portion includes two lines, Line 5 and Line 6. The portion of Enbridge’s apportionment practice that is relevant to this Affidavit involves the apportionment of three categories of crude shipments between those lines: heavy crude, light sour blend, and other light crude.

5. I understand from the Quarter 1, 2012 Pipeline Configuration, shown on the Enbridge web site, a copy of which is attached to this Affidavit, that Line 5 which extends from Superior, Wisconsin, to Sarnia, Ontario has a capacity of 78,100 m<sup>3</sup>/d (491.2 kbpd) and is capable of accommodating NGL, condensates, light synthetic, sweet, and light sour.

6. I further understand from the same document that Line 6a extends from Superior, Wisconsin, to Griffith/Hartsdale, Indiana, and has a capacity of 96,800 m<sup>3</sup>/d (608.8 kbpd) and that Line 6b extends from Griffith/Hartsdale, Indiana, to Sarnia, Ontario and has a capacity of 36,800 m<sup>3</sup>/d (231.4 kbpd). Line 6a and 6b are listed as capable of accommodating light synthetics and sweet but only from Superior to Lockport, and accommodating light sour, high sour, medium and heavy for movement along the entire route.



7. From Mr. Foti, I understand Enbridge receives nominations from each shipper for crude oil for movement on Line 5 and/or Line 6, and that Enbridge historically has unilaterally assigned these shipper nominations to either Line 5 or Line 6. In other words, even though Line 5 and Line 6 follow different routes, Enbridge has historically operated them in a combined fashion with respect to allocating shipper nominations and movements.

8. I further understand from Mr. Foti, that in spite of what is shown on the Enbridge web site Enbridge now says Line 6 only moves heavy crude oil. If that is indeed the current practice of Enbridge, such practice is not consistent with the operating pattern depicted on the pipeline's web site.

  
Thomas G. Miesner

**VERIFICATION**

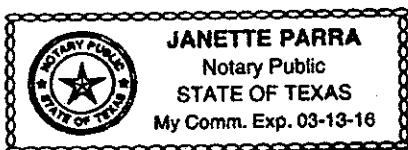
State of Texas:

County of Harris

Before me, Janette Parra, a notary public, on this day

personally appeared Thomas O. Miesner, known to me as the person whose name is subscribed to the foregoing Affidavit, and known to me as an independent pipeline consultant, and stated to me that the facts contained in such Affidavit are true and correct to the best of his knowledge and belief.

Given my hand and seal this 4 day of May, 2012.



[Signature]  
Notary Public  
State of Texas

My Commission expires:

**AFFIDAVIT OF**  
**ROBERT C. MEANS**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATION COMMISSION**

PBF Holding Company LLC and

Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership.

Respondent

**AFFIDAVIT OF ROBERT C. MEANS**

1. My name is Robert C. Means. My business address is 2606 South Hayes Street, Arlington, Virginia 22202.

2. I have more than 40 years of experience in dealing with issues of energy policy and regulation as a regulator, consultant, academic and expert witness in proceedings before the Federal Energy Regulatory Commission and other administrative and judicial forums. I currently am an independent consultant and an adjunct member of the faculties of the Johns Hopkins University Advanced Academic Programs and the University of Maryland School of Law Environmental Legal Studies Program.

3. I am submitting this affidavit on behalf of PBF Holding Company LLC and Toledo Refining Company LLC in support of their complaint against Enbridge Energy, Limited Partnership ("Enbridge") challenging the procedures, practices, and actions of

Enbridge in apportioning capacity on the downstream portion of its "Mainline" crude oil pipeline system.

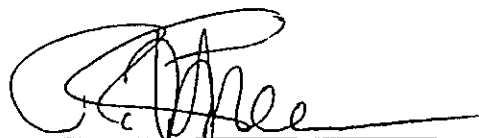
4. Enbridge's Mainline system and its current practice of apportioning capacity in the downstream portion of that system are described in the Affidavits of Robert E. Foti and Thomas O. Miesner. In brief, the system's downstream portion includes two lines, Line 5 and Line 6. The portion of Enbridge's apportionment practice that is relevant to this affidavit involves the apportionment of three categories of crude shipments between those lines: heavy crude, light sour blend and other light crude. Heavy crude is shipped only on Line 6; light sour blend and other light crudes are currently shipped only on Line 5. Foti Affidavit at PP 4-5; Miesner Affidavit at PP 5-6.

5. This shipping pattern might have few if any practical consequences if both lines had sufficient capacity to accommodate all shipper nominations, and whatever its practical consequences, it might have no legal or policy significance if the two lines had the same relative capacity shortfall. In fact, while Line 6 does have sufficient capacity to accommodate all nominations for heavy crude shipments, nominations for light sour blend and other light crude regularly exceed the capacity of Line 5. As a result, heavy crude shippers are routinely able to ship their full nomination while shippers of light crude blend and other light crudes are limited to shipping as little as 73 percent of their nomination. Foti Affidavit at P 16.

6. The apportionment of volumes by Enbridge thus results in a preference for heavy crude shippers over shippers of light sour blend and other light crudes. Not all

preferences are improper, either as a matter of law or as a matter of policy. A preference may simply reflect operational or economic differences between two classes of service. In this case, light sour blend and other light crudes might be apportioned only to Line 5 because it is not feasible to move them on Line 6 or because doing so would carry an operational or financial penalty. However, the Enbridge website states that light sour blend can be shipped on either line, and it cites no penalty it would incur by shipping it on Line 6. Foti Affidavit at P 14; Miesner Affidavit at PP 5-6.

7. On the face of the information contained in the Affidavits of Mr. Foti and Mr. Miesner, Enbridge has created a preference for one category of shippers – shippers of heavy crude – that has no operational or economic justification. This is, moreover, not merely a matter of unequal treatment. Shippers and refiners of heavy crude compete with shippers and refiners of light sour blend and light crude. This competition is distorted by the preference that Enbridge gives to heavy crude in the apportionment of volumes between the two lines.

A handwritten signature in black ink, appearing to read 'R. Means', is written over a horizontal line.

Robert C. Means

## VERIFICATION

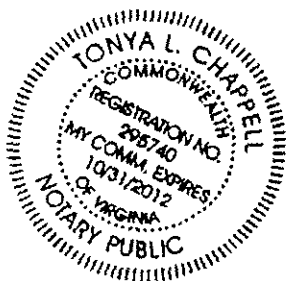
Commonwealth of Virginia:  
County of Arlington

Before me, Tonya Chappell, a notary public, on this day personally appeared Robert C. Means, known to me as the person whose name is subscribed to the foregoing Affidavit, and known to me as an independent consultant, and stated to me that the facts contained in such Affidavit are true and correct to the best of his knowledge and belief.

Given my hand and seal this 8<sup>th</sup> day of May, 2012.

Tonya Chappell  
Notary Public  
Commonwealth of Virginia

My Commission expires: 10/31/2012



# **PROPOSED PROTECTIVE ORDER**



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PBF Holding Company LLC and

Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership,

Respondent

PROTECTIVE ORDER

(Issued )

1. This Protective Order shall govern the use of all Protected Materials produced by, or on behalf of, any Participant. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Presiding Administrative Law Judge (Presiding Judge) (which includes the Chief Administrative Law Judge) or the Federal Energy Regulatory Commission (Commission).
2. This Protective Order applies to the following two categories of materials: (A) A Participant may designate as protected those materials which customarily are treated by that Participant as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury; and (B) A Participant shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 CFR§ 388.113(c)(1) ("Critical Energy Infrastructure Information").
3. Definitions -- For purposes of this Order:
  - (a) The term "Participant" shall mean a Participant as defined in 18 CFR § 385.102(b).

(b) (1) The term "Protected Materials" means (A) materials (including depositions) provided by a Participant in response to discovery requests and designated by such Participant as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Presiding Judge, by the Commission, by any court or other body having appropriate authority, or by agreement of the Participants; (D) notes of Protected Materials; and (E) copies of Protected Materials. The Participant producing the Protected Materials shall physically mark them on each page as "PROTECTED MATERIALS" or with words of similar import as long as the term "Protected Materials" is included in that designation to indicate that they are Protected Materials. If the Protected Materials contain Critical Energy Infrastructure Information, the Participant producing such information shall additionally mark on each page containing such information the words "Contains Critical Energy Infrastructure Information B Do Not Release".

(2) The term "Notes of Protected Materials" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order. Protected Materials do include any information or document contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information.

(c) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on all parties on the official service list maintained by the Secretary in this proceeding.

(d) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:

- (1) Commission Trial Staff designated as such in this proceeding;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in Subparagraph (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
- (5) a person designated as a Reviewing Representative by order of the Presiding Judge or the Commission; or
- (6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for this docket whose duties do not include responsibility for the marketing or refining of petroleum.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7-9.

5. Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected Material is concluded and no longer subject to judicial review. If requested to do so in writing after that date, the Participants shall, within fifteen days of such request, return the Protected Materials (excluding Notes of Protected Materials) to the Participant that produced them, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, and Notes of Protected Material may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant, if requested to do so, shall also submit to the producing Participant an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8-9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file.

By placing such documents in a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities. For documents submitted to Commission Trial Staff ("Staff"), Staff shall follow the notification procedures of 18 CFR § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials if they disclose the contents of Protected Materials.

8. (a) If a Reviewing Representative's scope of employment includes the marketing or refining of petroleum, the direct supervision of any employee or employees whose duties include the marketing or refining of petroleum, the provision of consulting services to any person whose duties include the marketing or refining of petroleum, or the direct supervision of any employee or employees whose duties include the marketing or refining of petroleum, such Reviewing Representative may not use information contained in any Protected Materials obtained through this proceeding to give any Participant or any competitor of any Participant a commercial advantage.

(b) In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3 (d) above, the Participant shall seek agreement from the Participant providing the Protected Materials. If an agreement is reached that person shall be a Reviewing Representative pursuant to Paragraphs 3(d) above with respect to those materials. If no agreement is reached, the Participant shall submit the disputed designation to the Presiding Judge for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided, that if an attorney qualified as a Reviewing Representative has executed such a certificate, the

paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraph 3(d), access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 18, the Presiding Administrative Law Judge shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Presiding Administrative Law Judge, the parties to the dispute shall use their best efforts to resolve it. Any participant that contests the designation of materials as protected shall notify the party that provided the protected materials by specifying in writing the materials the designation of which is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is made unless the designator, within said 5-day period, files a motion with the Presiding Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on the participant seeking protection. If the Presiding Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Paragraph 18 shall apply. The procedures described above shall not apply to protected materials designated by a Participant as Critical Energy Infrastructure Information. Materials so designated shall remain protected and subject to the provisions of this Protective Order, unless a Participant requests and obtains a determination from the Commission's Critical Energy Infrastructure Information Coordinator that such materials need not remain protected.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents

which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Presiding Judge and all Reviewing Representatives who are on the service list. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information B Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list and the Presiding Judge. Counsel for the producing Participant shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearing in these proceedings in such a manner that might require disclosure of such material to persons other than reviewing representatives, such participant shall first notify both counsel for the disclosing participant and the Presiding Judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Presiding Judge.

14. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

15. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Presiding Judge may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

16. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Presiding Judge or the Commission.

17. All Protected Materials filed with the Commission, the Presiding Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order. Such documents containing Critical Energy Infrastructure Information shall be

additionally marked "Contains Critical Energy Infrastructure Information – Do Not Release."

18. If the Presiding Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for three (3) business days from the date of issuance of the Presiding Judge's determination, and if the Participant seeking protection files an interlocutory appeal or requests that the issue be certified to the Commission, for an additional seven (7) business days. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Presiding Judge's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 CFR §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act. (5 U.S.C. § 552) for Protected Materials in the files of the Commission.

19. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

20. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

21. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this (these) proceeding(s). Any violation of this Protective Order and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

PBF Holding Company LLC and  
Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership,

Respondent

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Representing: \_\_\_\_\_  
Date: \_\_\_\_\_



# **FORM OF NOTICE OF COMPLAINT**

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

PBF Holding Company LLC and

Toledo Refining Company LLC,

Complainants

v.

Docket No. OR12-\_\_\_\_\_

Enbridge Energy, Limited Partnership,

Respondent

**NOTICE OF COMPLAINT**

(May \_\_, 2012)

Take notice that on May \_\_, 2012, PBF Holding Company LLC and its subsidiary Toledo Refining Company LLC (collectively "PBF") tendered for filing with the Federal Energy Regulatory Commission a complaint against Enbridge Energy, Limited Partnership ("Enbridge") challenging the procedures and practices of Enbridge in apportioning capacity on its "Mainline" crude oil pipeline system on the ground that the apportionment constitutes an unjust and unreasonable classification and practice and results in an undue and unreasonable preference and undue and unreasonable discrimination in violation of the Interstate Commerce Act.

PBF states that copies of the complaint were served on Enbridge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests, must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N. E., Washington, D. C. 20426.

This filing is accessible on-line at <http://www.ferc.gov> using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(a). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on \_\_\_\_\_.

Kimberly D. Bose,

Secretary

Document Content(s)

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