

135 FERC ¶ 61,096  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 29, 2011

In Reply Refer To:  
Enbridge Offshore Pipelines (UTOS) LLC  
Docket Nos. RP10-1393-000  
RP10-1393-001  
RP10-1393-002 and  
RP11-1946-000

Enbridge Offshore Pipelines (UTOS) LLC  
1001 Fannin Street, Suite 2500  
Houston, TX 77002

Attention: Kathleen C. Lake, Esq.  
Legal Counsel

Reference: Letter Order on Uncontested Settlement and Non-Conforming Negotiated  
Rate Service Agreements and Tariff Records Filing

Dear Ms. Lake:

1. On March 24, 2011, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) filed a Stipulation and Agreement (Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure<sup>1</sup> to comprehensively resolve all issues pending in its September 30, 2010 filing in Docket No. RP10-1393-000 and set for hearing and settlement judge procedures by Commission order issued October 29, 2010.<sup>2</sup> The

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<sup>1</sup> 18 C.F.R. § 385.602 (2010).

<sup>2</sup> See *Enbridge Offshore Pipelines (UTOS) LLC*, 133 FERC ¶ 61,106 (2010) (October 29, 2010 Order). Hunt Oil Company (Hunt) and Tana Exploration Company, LLC (Tana) sought rehearing of that Order. In light of the subject Settlement, the issues raised on rehearing have been resolved.

October 29, 2010 Order accepted and suspended, subject to refund, UTOS' filing for a general rate increase and changes in its terms and conditions of service.<sup>3</sup>

2. In compliance with the terms of the Settlement, UTOS included in the Transmittal to the Settlement a motion with the Chief Judge requesting him to authorize the settlement rates, to be effective April 1, 2011, on an interim basis pending Commission action on the Settlement. The motion also requested to withdraw a pending UTOS motion to place its as-filed rates into effect and to continue suspension of those rates pending Commission action on the Settlement, subject to UTOS' right to move to place the suspended rates into effect if the Settlement is not approved by the Commission. The Chief Judge granted both requests by order issued March 25, 2011.<sup>4</sup>

3. UTOS, Hunt and Tana, ENI USA Gas Marketing LLC (Eni), the Apache Corporation (Apache) and the Commission Trial Staff filed Initial Comments supporting the Settlement. On April 4, 2011, the Administrative Law Judge (ALJ) certified the Settlement to the Commission as uncontested.<sup>5</sup>

4. Consistent with the terms of the Settlement, on March 31, 2011, in Docket No. RP11-1946-000, UTOS submitted tariff records to implement tariff authority to charge negotiated rates and other matters, which it listed in Appendix A to the filing, to be effective January 1, 2011, and certain precedent letter agreements and negotiated rate service agreements for service under its Rate Schedule IT also to be effective January 1, 2011.<sup>6</sup> The negotiated rate agreements have certain material deviations from the pro forma service agreement of Enbridge's tariff in order to carry out the terms of the Settlement.

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<sup>3</sup> Specifically, UTOS proposed to increase its maximum tariff rates, propose an event surcharge mechanism, a transportation quantity adjustment mechanism, a free water charge and to make other miscellaneous tariff changes.

<sup>4</sup> *Enbridge Offshore Pipelines (UTOS) LLC*, 134 FERC ¶ 63,024 (2011).

<sup>5</sup> *Enbridge Offshore Pipelines (UTOS) LLC*, 135 FERC ¶ 63,001 (2011). Appendix A to the Settlement lists the following as Consenting Parties: UTOS, Apache, Chevron U.S.A., Inc. (Chevron), ExxonMobil Gas & Power Marketing Company, a Division of Exxon Mobil Corporation (ExxonMobil), Hunt, and Tana.

<sup>6</sup> UTOS filed these agreements as Original Volume No.1A of UTOS' FERC Gas Tariff, which is appended to UTOS' Sixth Revised Volume No. 1. UTOS also included a table of contents for Original Volume No. 1A in this filing.

5. As set forth below, the Commission approves the Settlement without modification and accepts the negotiated rate service agreements and tariff records listed in the Appendix, effective January 1, 2011, or April 1, 2011, as applicable, subject to the condition discussed herein.

6. Public notice of the March 31, 2011 filing in Docket No. RP11-1946-000 was issued on April 1, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>7</sup> Pursuant to Rule 214,<sup>8</sup> all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Eni and Apache filed comments in support of the March 31, 2011 filing. No comments opposing the filing or protests were filed.

7. The Settlement comprehensively resolves all issues set for hearing and reflects the participants' unanimous view that the UTOS system is no longer economically viable or required by the public convenience and necessity. Accordingly, the Settlement generally establishes a mechanism by which UTOS will abandon its system, while maintaining transportation service (at discounted or negotiated rates) to shippers as they transition off of UTOS in anticipation of system abandonment. The Settlement also provides for lower increases in the pipeline's maximum recourse transportation rates than UTOS proposed in its rate case and eliminates certain proposed tariff provisions—including an event surcharge that would have permitted UTOS to recover storm damage repair, safety, environmental and security costs, as well as a transportation quantity adjustment that would permit UTOS to adjust its rates in response to significant throughput changes. The provisions of the Settlement are described below.<sup>9</sup>

8. Article I of the Settlement provides that the base settlement rates (Settlement Rates) (subject to any agreed upon discount or negotiated rate agreement pursuant to Articles II and III of the Settlement) are the base tariff rates set forth on the tariff record Sheet No. 4, Rate Sheets, 1.1.0, A (designated as Substitute Revised Sheet No. 4) in Appendix B of the Settlement, which were accepted by the Chief ALJ as interim rates, to become effective April 1, 2011. The Settlement Rates reflected on that tariff record, in turn, are to be sequentially effective April 1, May 1, June 1, and October 1, 2011,

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<sup>7</sup> 18 C.F.R. § 154.210 (2010).

<sup>8</sup> 18 C.F.R. § 385.214 (2010).

<sup>9</sup> The following is a general summary for informational purposes only. The actual provisions of the Settlement and associated tariff records and service agreements control.

respectively.<sup>10</sup> Article I further states that the Settlement's recourse rates result from a "black box" type of settlement respecting all cost-of-service and rate issues in this proceeding, although Article I contains agreed-to depreciation rates.

9. Article II of the Settlement provides that UTOS agrees to provide certain Consenting Parties<sup>11</sup> discounted rates effective April 1, 2011, as listed in Appendix C of the Settlement, and remaining in effect until the date the last shipper with a service agreement with UTOS described in Article III of the Settlement completes alternate transportation arrangements and terminates its agreement with UTOS as contemplated by Article III of the Settlement. Article II provides that nothing in the Settlement is intended to or does affect UTOS' obligation to provide not unduly discriminatory discounts to similarly situated shippers on UTOS who are not parties to this proceeding.

10. Article III of the Settlement provides that UTOS will enter into and file no later than March 31, 2011, negotiated rate agreements (included in Appendix D of the Settlement for informational purposes) for fixed rates under UTOS' Rate Schedule IT with four shippers on its system that have no current alternative to UTOS for transporting gas from certain receipt points,<sup>12</sup> to be effective as of January 1, 2011, and continuing through September 30, 2011. Following September 30, 2011, to the extent these shippers continue to receive transportation service on UTOS, Article III provides that the then maximum recourse rate applicable to each month shall apply to each service.<sup>13</sup>

11. Article IV of the Settlement provides that UTOS will withdraw its motion to place into effect certain proposed tariff sheets so that those proposed tariff sheets remain suspended pending Commission action on the Settlement. In place of those rates, Article IV provides that UTOS will move to place the Settlement Rates into effect on an interim basis as of April 1, 2011, pending Commission action on the Settlement.

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<sup>10</sup> Article I provides that the Settlement Rates continue in effect until the earlier of the time UTOS receives authorization from the Commission to abandon the UTOS system, the Agreement is withdrawn, or the effective date of proposed new recourse rates filed by UTOS pursuant to a general rate filing in the event UTOS' abandonment request is denied.

<sup>11</sup> Chevron, ExxonMobil, Eni, and Apache.

<sup>12</sup> Tana, Hunt, Eni, and Apache.

<sup>13</sup> Article III provides that these negotiated rate agreements also have certain non-conforming terms of service that are necessary in light of the fact that these agreements are part of the settlement of the issues in this proceeding raised by the affected shippers.

12. Article V of the Settlement provides that UTOS will file under section 7(b) of the Natural Gas Act (NGA) to abandon its system from natural gas transportation service to be effective no earlier than October 1, 2011, and specifies certain conditions to be reflected in that filing.

13. Article VI of the Settlement provides that UTOS agrees to not move its filed rates into effect and to file to place the Settlement Rates into effect as interim rates and, in light of the agreements reached with Consenting Parties under the Settlement, no refunds are due as a result of the Settlement.

14. Article VII of the Settlement provides that the Settlement provisions are not severable and will be effective on the first day of the month following (a) the month that the Order approving the Settlement becomes final and non-appealable without modification(s), reservations(s) or condition(s) unless such is accepted under further provisions of Articles VII and VIII and (b) the Order approving the Settlement waived, if necessary, compliance by UTOS with the requirements of the Commission's rules and regulations in order to carry out the Settlement provisions. Article VII also sets forth the rights of the parties if the Commission modifies the Settlement or it is contested.

15. Further, Article VII provides that (a) the Settlement will terminate on the earliest of the date on which: (i) UTOS abandons service on its system pursuant to a final, non-appealable order granting abandonment authority (as long as the abandonment date does not occur before a date consistent with the terms provided in Article V); (ii) new base tariff rates become effective pursuant to a superseding general rate case filing under section 4 of the NGA; or (iii) a modification of any of UTOS' base tariff rates in a proceeding instituted pursuant to section 5 of the NGA. Article VII provides that the tariff sheets placed into effect pursuant to Articles I and IV of the Settlement shall remain in full force and effect unless and until changed pursuant to a termination of service resulting: (a) from a final non-appealable order granting UTOS authorization to abandon its natural gas service; (b) by UTOS making a tariff filing under NGA section 4; or (c) a modification ordered by the Commission pursuant to section 5 of the NGA. Article VII explains that UTOS has no obligation as a result of the Settlement to file an NGA section 4(e) general rate change application.

16. Article VIII of the Settlement provides that: (a) the Settlement will constitute all authority necessary for the Settlement Rates to become effective as of April 1, 2011, and to continue in effect for the Settlement's term; and (b) Commission approval will constitute (i) all authority necessary to place the tariff sheets attached to the Settlement into effect and (ii) any and all waivers of the Commission's rules and regulations that may be necessary to effectuate the Settlement.

17. Article IX of the Settlement describes certain reservation of rights concerning: (a) the Settlement remaining privileged and confidential until it becomes effective; (b) the Settlement being a negotiated resolution of all disputed facts and issues; (c) no party

being deemed to have waived any claim or right as to matters not addressed in the Settlement; (d) the Settlement representing the entire agreement of the parties; (e) the Commission's approval of the Settlement constitutes a finding that the Agreement is fair and reasonable and in the public interest but does not constitute a determination on the merits of the specific provisions of the Settlement; (f) no party being deemed to have approved, accepted, agreed to or consented to any rate making principle or methodology or any concept, policy or principle purported to underlie the provisions of the Settlement; (g) the settling parties having the same right under the NGA that they would have had absent approval of the Settlement and (h) nothing in the Settlement constituting a "settled practice." Article IX of the Settlement also states that the applicable standard of review for the supporting parties and the Commission is the "just and reasonable" standard.

18. Consistent with the terms of the Settlement, UTOS' March 31, 2011 filing in Docket No. RP11-1946-000 proposes to revise section 28 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Sixth Revised Volume No. 1 (tariff), in order to add negotiated rate authority to its tariff, to be effective January 1, 2011. UTOS asserts that its negotiated rate authority proposal is consistent with similar provisions approved by the Commission for other interstate pipelines, and is integral to the proposed Settlement that will benefit both the shippers and UTOS. UTOS asserts that the Commission has previously stated that the filing of such a tariff provision may be accomplished simultaneously with the filing of individual negotiated rate agreements. UTOS included proposed Original Sheet No. 5 to its tariff, which lists the four negotiated rate agreements, with a proposed effective date of January 1, 2011.

19. Proposed section 28.1(e) of the GT&C of UTOS' tariff requires UTOS to file a tariff sheet no later than the business day on which service at the negotiated rate commences. Proposed section 28.1(e) also states that UTOS will file a tariff sheet advising the Commission of such negotiated rate or negotiated rate formula, stating the name of the shipper, the type of service, the primary point(s) of receipt and point(s) of delivery applicable to the service, the volume of the gas to be transported, any other charges, and specifying either: (i) the specific negotiated rate included in such service agreement; or (ii) the negotiated rate formula included in such service agreement with sufficient specificity such that the rate in effect from time to time can be readily calculated.

20. Proposed section 28.2(a) states that any shipper paying the recourse rate(s) has the same right to capacity as a shipper willing to pay an equal or higher negotiated rate(s) or rate(s) under a negotiated rate formula.

21. Proposed section 28.3 provides that UTOS will maintain separate records of negotiated rate and negotiated rate formula transactions for each billing period. These records shall include the volumes transported, the billing determinants (contract maximum daily quantity), the rates charged and the revenue received associated with such transactions. Proposed section 28.3 also provides that UTOS will separately

identify such transactions in Statements G, I and J (or their equivalent) filed in any general rate proceeding.

22. Proposed section 28.5 provides that the capacity release provisions contained within UTOS' tariff shall not apply to a shipper receiving firm transportation service with a negotiated rate(s) or negotiated rate formula that does not contain a reservation rate.

23. UTOS' negotiated rate proposal is consistent with Commission policy as articulated in the Alternative Rate Policy Statement and, therefore, the Commission will accept UTOS' negotiated rate authority proposal and grant UTOS the authority to enter into negotiated rate agreements with its shippers.

24. UTOS also included in its March 31, 2011 filing revised tariff records to include the non-conforming negotiated rate service agreements with four shippers as a new Volume No. 1A appended to Sixth Revised Volume No. 1 of its tariff. The agreements provide for a January 1, 2011 effective date, with a primary term ending October 1, 2011, and month-to-month thereafter, subject to termination provisions that reflect the pendency of UTOS' application to abandon service.

25. UTOS filed its service agreements using Whole Document Format and submitted the tariff record for each agreement as a Portable Document Format (PDF). When submitting an agreement in Whole Document Format, the *Implementation Guide* requires that a title page be included with each separate tariff record that contains the following information: (a) Tariff Submitter; (b) FERC Tariff Program name; (c) Tariff Title; (d) Tariff Record Proposed Effective Date; (e) Tariff Record Title; (f) Option Code; and (g) Other information as the Commission may require by notice or order.<sup>14</sup> Therefore, within 15 days of the date of this order, UTOS is required to file a revised tariff record for each of the service agreements included in its March 31, 2011 filing in Docket No. RP11-1946-000 which includes the necessary title page information.

26. The Commission finds the Settlement is fair, reasonable and in the public interest and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in this proceeding. The Commission also accepts the tariff records listed in the Appendix, effective January 1, and April 1, 2011, as indicated, subject to the refiling requirement discussed

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<sup>14</sup> See the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (October 8, 2010) (*Implementation Guide*) pages 7 and 8, available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

above and accepts the non-conforming negotiated rate agreements filed in Docket No. RP11-1946-000 to be effective January 1, 2011, as proposed, because they reflect implementation of the Settlement.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

## **Appendix**

### **Enbridge Offshore Pipelines (UTOS) LLC FERC NGA Gas Tariff, Sixth Revised Volume No. 1**

Records Accepted to be Effective January 1, 2011, subject to condition

Sheet No. 1, Table of Contents, 2.0.0  
Sheet No. 1A, Table of Contents, 1.0.0  
Sheet No. 5, Negotiated Rate Agreements, 0.0.0  
Sheet No. 100, General Terms and Conditions, 2.0.0  
Sheet No. 103, 1 Definitions, 1.0.0  
Sheet No. 104, 1 Definitions, 1.0.0  
Sheet No. 165, 25 Non-Conforming Agreements, 1.0.0  
Sheet No. 174, 28 Negotiated Rates, 0.0.0  
Sheet No. 175, 28 Negotiated Rates, 0.0.0  
Sheet No. 176, 28 Negotiated Rates, 0.0.0  
Sheet No. 177, 28 Negotiated Rates, 0.0.0  
Sheet No. 500, Volume 1A Title Page, 0.0.0  
Sheet No. 501, Volume 1A Table of Contents, 0.0.0  
Sheet No. 505, Negotiated Rates and Non-Conforming Agreements, 0.0.0  
Sheet No. 506, Apache UTOS Executed Contract, 0.0.0  
Sheet No. 507, ENI UTOS Executed Contract, 0.0.0  
Sheet No. 508, Hunt Oil UTOS Executed Contract, 0.0.0  
Sheet No. 509, Tana Exp UTOS Executed Contract, 0.0.0

Records Accepted to be Effective April 1, 2011

Sheet No. 4, Rate Sheets, 1.1.0, A