130 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Enbridge Pipelines (Toledo) Inc.	Docket No. IS10-137-000
CCPS Transportation, LLC	Docket No. IS10-138-000
Enbridge Energy, Limited Partnership	Docket No. IS10-139-000
Suncor Energy Marketing Inc.	Docket No. OR10-5-000

ORDER ON TARIFFS AND PETITION FOR DECLARATORY ORDER

(Issued March 31, 2010)

1. This order addresses four filings related to Enbridge Energy, Limited Partnership's (Enbridge Energy) Alberta Clipper Project, an expansion of its mainline capacity from the international border near Neche, North Dakota to Superior, Wisconsin. Each of the tariff filings in the IS dockets establish surcharges to recover costs incurred to complete the Alberta Clipper Project. Enbridge Energy and the Canadian Association of Petroleum Producers (CAPP), who represent almost all the producers that ship crude on this pipeline, agreed to establish the surcharges in a Facilities Surcharge Settlement discussed more fully below. The pipelines request the Commission to permit the tariffs to become effective April 1, 2010. In the petition for declaratory order in Docket No. OR10-5-000, submitted before the three tariff filings, Suncor Energy Marketing Inc. (Suncor) seeks a determination that, due to dramatically changed circumstances, the Commission-approved long-term rate methodology for the U.S. portion of the Alberta Clipper Project will not result in just and reasonable rates in the near term and urges the Commission to deny Enbridge Energy's filings to effectuate the surcharges. The Commission accepts the tariffs effective April 1, 2010, as proposed. The Commission also dismisses Suncor's petition for declaratory order as moot.

Background

2. In 1998 Enbridge Energy, successor of Lakehead Pipe Line Company, Limited Partnership, entered into a comprehensive settlement agreement with CAPP regarding the rate recovery of costs incurred for three specific projects to add more capacity and

broaden the pipeline's capability to transport heavier crude oil.[1] Two of these projects entailed facilities-based surcharges: the System Expansion Project II (SEP II) and the Terrace Expansion Project (Terrace). The Commission approved the 1998 settlement as an uncontested settlement and, pursuant to that approval, Enbridge Energy made annual tariff filings to implement the SEP II surcharge and periodic filings, as necessary, to update the Terrace surcharge. Those filings have all been made without protest or complaint.

3. In 2004, Enbridge Energy received a number of requests for enhancements or modifications to its system to permit greater flexibility in the types of crude handled or greater access by shippers to particular markets or crude types that on an aggregate basis resulted in significant incremental costs to the pipeline. These shipper requests led to the concept of a Facilities Surcharge as negotiated between Enbridge Energy and CAPP, whose members account for more than 98 percent of Canada's oil and gas production and the overwhelming majority of the crude oil transported on Enbridge Energy's system.

4. Enbridge Energy designed the Facilities Surcharge to permit its recovery of the costs associated with particular shipper-requested projects through an incremental surcharge layered on top of the existing base rates and other Commission-approved surcharges already in effect. Enbridge Energy intended the Facilities Surcharge to be a transparent, cost-of-service-based tariff mechanism that it can update annually as of April 1 to account for any new projects approved by the Commission. New project costs are then included and recovered by the surcharge and trued-up each year for any differences between estimated costs and throughput and actual costs and throughput.

5. On June 30, 2004, in Docket No. OR04-2-000, the Commission approved an uncontested offer of settlement negotiated between Enbridge Energy and CAPP (Facilities Surcharge Mechanism Settlement).[2] The purpose of the settlement was to: (1) approve the overall concept for implementing a Facilities Surcharge that is separate from the existing surcharges in its tariff rates but not subject to the Commission's indexing rules; (2) approve the inclusion of four specific projects in the Facilities Surcharge, effective July 1, 2004, in accordance with the terms of the four agreements with CAPP; and, (3) permit Enbridge Energy to submit to the Commission for approval future settlement agreements resulting from negotiations with CAPP where the parties agree that, from their perspective, recovery of the costs through the Facilities Surcharge is desirable and appropriate.

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[1] *Lakehead Pipe Line Co.*, 85 FERC ¶ 61,397 (1998).

[2] *Enbridge Energy, Limited Partnership*, 107 FERC ¶ 61,336 (2004).

6. On August 14, 2008, the Commission approved an uncontested amendment to the Facilities Surcharge Mechanism Settlement to allow Enbridge Energy to include in the Facilities Surcharge particular-shipper requested projects not yet in service as of April 1 of each year provided there is an annual true-up of throughput and cost estimates.[3]

7. On August 28, 2008, the Commission issued an order approving an uncontested settlement filed pursuant to Enbridge Energy's Facilities Surcharge Mechanism.[4] CAPP supported this settlement that was designed to implement an additional component of the Facilities Surcharge to permit the recovery of the costs of the Alberta Clipper Project. The terms of the cost-of-service calculation supporting the surcharge were agreed upon by CAPP and Enbridge Energy.

The Filings Related to the Alberta Clipper Project

8. On January 13, 2010, in Docket No. OR10-5-000, Suncor filed a petition for declaratory order. Suncor seeks a declaratory order determining that, due to dramatically changed circumstances, the Commission-approved long-term rate methodology for the U.S. portion of the Alberta Clipper Project will not result in just and reasonable rates in the near-term and cannot be put into effect. Suncor also seeks a Commission order that establishes a near-term rate treatment for Alberta Clipper costs that will become effective from the Alberta Clipper's in-service date until such time as (a) Enbridge Energy demonstrates to the Commission's satisfaction that the existing pipeline capacity on the Lakehead system (without the Alberta Clipper) is insufficient to transport oil from the U.S./Canadian border to Superior, Wisconsin and (b) the Commission determines the approved long-term rate methodology or other rate methodology is just and reasonable under the circumstances prevailing at the time.

9. Suncor asserts that, absent Commission action, implementation of the Alberta Clipper Surcharge will result in system charges that are unjust and unreasonable and therefore unlawful. Suncor argues that each of the benefits of the Alberta Clipper Project, which formed the foundation for the Commission's approval of the settlement, has been completely undermined by subsequent events. Suncor contends the increased capacity associated with the Alberta Clipper is not required, bottlenecks have not occurred, and new markets have not emerged. Suncor contends Enbridge Energy imprudently pursued the Alberta Clipper even as circumstances changed dramatically.

10. Suncor requests the Commission not allow Enbridge Energy to recover the costs of the Alberta Clipper Project in the Facilities Surcharge Mechanism. Suncor submits

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[3] *Enbridge Energy, Limited Partnership*, 124 FERC ¶ 61,159 (2008).

[4] *Enbridge Energy, Limited Partnership*, 124 FERC ¶ 61,200 (2008).

that until the shippers need the expansion capacity, Enbridge Energy would continue to collect indexed rates and other surcharges. Suncor states that Enbridge Energy would defer any under-recovery of Alberta Clipper costs until the Commission effectuated the Alberta Clipper Surcharge, at which point these costs would be amortized over the Alberta Clipper's useful life. Suncor states the deferred costs would not include interest or other return on investment. Suncor also asserts that shippers should not have any obligation to supply crude oil to Enbridge Energy for operational and scheduling purposes related to the Alberta Clipper until shippers need this capacity. Suncor therefore urges the Commission to defer any obligation shippers may have to deliver crude oil to Enbridge for such purposes.

11. On February 19, 2010, in Docket No. IS10-139-000, Enbridge Energy filed FERC Tariff No. 38 to be effective April 1, 2010. FERC Tariff No. 38 reflects changes to Enbridge Energy's SEP II, Terrace and Facilities Surcharges currently in effect. Enbridge Energy adjusts the SEP II surcharge to true-up the differences between estimates and actual cost and throughput data, and establishes the Terrace surcharge based on the Terrace Agreement. With respect to the Facilities Surcharge, FERC Tariff No. 38 includes the costs associated with two new projects: the Alberta Clipper Project and the Line 3 Conversion Project.[5] Enbridge Energy calculated the initial Alberta Clipper surcharge based on projected costs and Lakehead System throughput, subject to an annual true-up to actual data. It also adjusts the SEP II surcharge pursuant to the 1998 Settlement Agreement between Enbridge Energy and CAPP. The SEP II surcharge included in FERC Tariff No. 38 reflects 2009 actual and 2010 projected SEP II costs and throughput. The Terrace surcharge was initially established at five cents (Canadian) per barrel, with the surcharge revenue shared between Enbridge Pipelines Inc., in Canada and Enbridge Energy in the U.S. Pursuant to the 1998 Settlement Agreement, when the prior year actual annual average throughput, excluding Clearbrook, is less than 224,999 cubic meters per day, Schedule C to the settlement permits an adjustment to the Terrace surcharge. Enbridge Energy's Terrace surcharge in 2010 amounts to $0.02 per barrel (Canadian) from US/Canadian Border to Griffith for a light crude oil barrel. From 2009 to 2010, this surcharge decreased from $0.04 to $0.02 (Canadian) per barrel (Canadian). Enbridge Energy states the total rate paid by shippers on the Enbridge Energy system will

[5] On February 19, 2010, in Docket No. OR10-7-000, Enbridge Energy filed a Supplement to the Facilities Surcharge Settlement to allow recovery of Line 3 Conversion Project costs. The project includes modification of existing mainline pump stations to convert Line 3 from mixed crude oil service to light crude oil service from Hardisty, Alberta to Superior, Wisconsin. The filing was supported by CAPP and is uncontested. Contemporaneously with this order, the Commission is issuing a letter order approving the supplement to the settlement.

equal the sum of the base index rate, the SEP II surcharge, the Terrace surcharge, and the Facilities Surcharge.

12. On February 19, 2010, Enbridge Pipelines (Toledo) Inc. (Enbridge Toledo) also filed FERC Tariff No. 32 to be effective April 1, 2010. FERC Tariff No. 32 is a joint tariff between Enbridge Toledo and Enbridge Energy facilitating movements that originate from the International Boundary near Neche, North Dakota and Clearbrook, Minnesota, destined for delivery to Samaria, Michigan and Oregon, Ohio. The changes proposed by Enbridge Energy in FERC Tariff No. 38 in Docket No. IS10-139-000 are reflected in the joint rates proposed in FERC Tariff No. 32. Enbridge Toledo states the sum of the local rates on file with the Commission is, in all cases, either greater than or equal to the proposed joint rates.

13. On February 19, 2010, CCPS Transportation, LLC (CCPS) filed FERC Tariff No. 33 to be effective April 1, 2010. FERC Tariff No. 33 is a joint tariff between CCPS and Enbridge Energy facilitating movements that originate from the International Boundary near Neche, North Dakota and Clearbrook, Minnesota, destined for delivery to Jacksonville, Missouri and Cushing, Oklahoma. The changes proposed by Enbridge Energy in FERC Tariff No. 38 in Docket No. IS10-139-000 are reflected in the joint rates proposed in FERC Tariff No. 33. CCPS states the sum of the local rates on file with the Commission is, in all cases, either greater than or equal to the proposed joint rates.

Responsive Pleadings

14. No protests were filed to Enbridge Toledo's filing in Docket No. IS10-137-000 or CCPS' filing in Docket No. IS10-138-000.

15. However, both Suncor and Imperial Oil filed protests to Enbridge Energy's tariff filing in Docket No. IS10-139-000. They both assert they have standing to file a protest because they are shippers on the system and will be affected by the Facilities Surcharge. In its protest, Suncor reiterates arguments made in its petition for declaratory order. Suncor argues because of changed circumstances the benefits of the Alberta Clipper Project will no longer be realized and implementation of the Alberta Clipper Surcharge at this time will result in unjust and unreasonable rates. It also continues to assert that Enbridge Energy imprudently continued to pursue the Alberta Clipper Project long after changed circumstances became apparent. In addition, Suncor argues that Tariff No. 38 does not appear to apply Commission-approved rate methodologies correctly. Suncor asserts that Enbridge Energy: (1) improperly applied the fixed capital structure for each surcharge, (2) improperly calculated the return on equity for each surcharge, (3) failed to justify the cost of debt for each of the surcharges, (4) failed to justify tax calculations, (5) failed to justify its pipeline integrity costs, (6) failed to justify capital costs, and, (7) failed to justify the rate increase resulting the18 percent decrease in Lakehead system throughput from 2009 to 2010. Suncor requests the Commission reject Tariff No. 38 or suspend the rates for seven months and establish a hearing. If the Commission does not

reject this tariff, Suncor requests the Commission require Enbridge Energy to file cost, revenue and throughput data supporting its proposed rates as required by Part 346 of the Commission's regulations. Finally, Suncor argues that Enbridge Energy must defer shippers' requirement to contribute line fill volumes for the Alberta Clipper Project. Suncor contends this matter requires the Commission's expedited consideration and action because on March 4, 2010, Enbridge Energy delivered to Lakehead system shippers a letter setting forth its plan for assessing line fill charges to its customers.

16. In its protest, Imperial Oil made many of the same arguments as Suncor and therefore we will not repeat them here. In addition, Imperial Oil contends that Enbridge Energy bears the burden of proof under section 15 of the Interstate Commerce Act (ICA) to show that the facilities are used and useful and the proposed rates are just and reasonable. Imperial Oil asserts that challenging the rates here is not a collateral attack on the 2008 Alberta Clipper settlement. Imperial Oil argues that the original Facilities Surcharge Mechanism settlement in 2004 established how Enbridge would recover these costs but, not what costs would be eligible for recovery. Imperial Oil submits Enbridge Energy must demonstrate that it faithfully implemented the appropriate settlement rate methodology for each component of the facilities surcharge. Imperial Oil contends that, on their face, Enbridge Energy's calculations cannot be verified to ensure Enbridge Energy applied correctly the approved methodology for each component of the Facilities Surcharge. Imperial Oil asserts the filing contains insufficient support for several of the inputs used in the calculations.

17. In Docket No. OR10-5-000, Imperial Oil filed a motion to intervene and statement in support of Suncor's petition for declaratory order. Nova Chemicals (Canada) Ltd. filed a motion to intervene which had a heading stating the intervention was in support of Suncor's petition.

18. On February 19, 2010, in Docket No. OR10-5-000, Enbridge Energy filed a motion to intervene, protest and request for dismissal of Suncor's petition for declaratory order. Enbridge Energy asserts the Commission should dismiss the Suncor petition because it constitutes an unwarranted collateral attack on a prior and final order of this Commission approving a settlement between Enbridge Energy and CAPP relating to the Alberta Clipper expansion project. Enbridge Energy argues that the relief that Suncor requests - an order barring Enbridge Energy from putting the Alberta Clipper project into service and making a tariff filing to recover the costs of that project - is beyond the authority of the Commission to grant. Enbridge Energy categorically denies it acted imprudently in proceeding with construction of the Alberta Clipper project in accordance with the terms of the approved settlement.

19. Enbridge Energy originally expected individual shippers would support the Alberta Clipper project through volume commitment contracts entered into through an open season process. Enbridge Energy states that, acting on behalf of its shipper members, however, CAPP urged Enbridge Energy to operate the Alberta Clipper as a

pure common carrier pipeline and recover the project costs through mainline tariff rates in Canada and the U.S. Enbridge Energy states that CAPP further emphasized the overriding need to build Alberta Clipper on an expedited schedule so that the new capacity would be available as soon as possible. Indeed, in January 2007, Enbridge Energy states that CAPP agreed that Enbridge should proceed with acquisition of pipe and other long lead time items even before the parties finalized the Alberta Clipper settlement agreement. Further, Enbridge Energy states the final agreement imposed substantial financial penalties if Enbridge Energy did not have Alberta Clipper able to accept crude oil by July 1, 2010.

20. Enbridge Energy states that construction of both the Canadian and U.S. portions of the Alberta Clipper pipeline is essentially complete and the pipeline can accept crude oil on April 1, 2010, consistent with the schedule established in the settlement and shared with the Commission when it approved that settlement. Enbridge Energy submits the costs of the project are in line with the original budget and the revenue requirement supporting the Alberta Clipper surcharge is within the range forecasted when the settlement was reached.

21. Enbridge Energy asserts that Suncor's petition threatens to undo a longstanding course of dealing between CAPP and Enbridge Energy that the Commission relied on and has brought great stability and consensus to the Enbridge Energy ratemaking process. Enbridge Energy argues that it invested billions of dollars in explicit reliance on agreements with CAPP that, once approved by the National Energy Board of Canada (NEB) and the Commission, have always been honored both by Enbridge Energy and its shippers. Enbridge Energy contends that Suncor's action in belatedly challenging the validity of the Commission's approval of the settlement threatens to undo the good will and predictability these agreements have fostered for more than a decade. Enbridge Energy asserts that such a result would have serious detrimental consequences for the ability to construct new infrastructure on a common carrier basis and for the national interest in providing access to secure supplies of crude oil for the United States.

22. Enbridge Energy argues that Suncor's petition poses a potentially mortal threat to any future oil pipeline project being built on a common carriage basis. Enbridge Energy states that while many pipelines require contracts from their shippers to support expansion of existing facilities or the construction of new projects, Enbridge Energy has been willing to undertake new projects based solely on recovering costs through its tariff rates, without requiring shippers to make long-term contractual volume commitments. Enbridge Energy submits that if oil pipelines like Enbridge Energy are exposed to the risk that settlement agreements will not be honored after billions of dollars have been invested in reliance on them, then they will have no choice but to structure any future projects on a contract carriage basis, with direct throughput agreements from major shippers in place to support the recovery of costs.

23. On March 8, 2010, Suncor filed an answer to Enbridge Energy. Suncor reiterates arguments made in its petition, as well as in its protest to Enbridge Energy's filing in Docket No. IS10-139-000. In addition, Suncor moves for partial summary disposition of its petition for declaratory order and requests the Commission set for hearing issues related to the development of a near-term rate methodology for the Alberta Clipper Project.

24. On March 15, 2010 Enbridge Energy filed an answer in response to the protests of Suncor and Imperial Oil in Docket No. IS10-139-000. Enbridge Energy asserts these protests are untimely collateral attacks on the 2008 Alberta Clipper Settlement and urges the Commission to deny their requests for rejection of the tariff or a seven-month suspension. Enbridge Energy disagrees that the Alberta Clipper Project is unnecessary and will not provide benefits in 2010. Enbridge Energy submits that Alberta Clipper will realize the numerous benefits contemplated in the 2008 CAPP Settlement, including delivery of new capacity in 2010, elimination of a light crude bottleneck of approximately 140,000 barrels per day (bpd) upstream of Superior, Wisconsin, and production of substantial operating efficiencies and increased flexibility to segregate products in different lines. Moreover, Enbridge Energy contends that Alberta Clipper is currently needed to assure that Enbridge Energy's Lakehead system can adequately serve its customers' requests for service. In addition, Enbridge Energy argues that line fill cannot be an issue in this tariff proceeding because Enbridge Energy has not proposed to change the line fill requirement in its rules tariff. Enbridge Energy concludes the scope of the Commission's review is defined by the formula in the settlement and is limited to the question of whether Enbridge Energy appropriately implemented the settlement.

Discussion

25. The tariff filings under review and the petition for declaratory order all relate to Enbridge Energy's recovery of the costs of the Alberta Clipper Project in its Facilities Surcharge Mechanism. The Commission is faced with opposing positions. Enbridge Energy states it filed the Alberta Clipper Project costs pursuant to the 2008 uncontested settlement with CAPP and that various parties' opposition to the recovery attempts to undo a settlement. Suncor and Imperial Oil claim the parties based the settlement on certain project benefits and since they have not materialized, the resulting rates are unjust and unreasonable. They request the Commission direct Enbridge Energy to redo the rates for the Alberta Clipper Project in the near term and consequently, defer the obligations of shippers to provide line fill volumes.

26. At the outset, as a procedural matter, the Commission will dismiss Suncor's petition for declaratory order as moot. Whether to consider providing declaratory relief is discretionary with the Commission.[6] Further, the purpose of a declaratory order is to

[6] *See e.g. Express Pipeline Partnership,* 75 FERC ¶ 61,303, at 61,967 (1996).

remove uncertainty or terminate a controversy. While a declaratory order may have been appropriate in the absence of an actual tariff filing by Enbridge Energy, that is no longer the case and any issues concerning the recovery of the costs of the Alberta Clipper Project are properly addressed in the tariff filing proceeding in Docket No. IS10-139-000. Since Suncor raises the same issues in its protest to Enbridge Energy's tariff filing as in its petition for declaratory order and has the additional benefit of commenting on the actual Alberta Clipper Project costs contained in the Facilities Surcharge Mechanism, it is not prejudiced by this decision.

27. The Commission reviewed the arguments of the various parties and accepts Enbridge Energy's Tariff No. 38 in Docket No. IS10-139-000, effective April 1, 2010, as proposed. Suncor and Imperial Oil asserted the Alberta Clipper Project costs may not have been calculated in accordance with the approved methodology and Enbridge Energy should address those issues. In its answer to the protests, Enbridge Energy addressed specific cost elements in the tariff filing that the protesters averred it failed to address. These items are discussed below. Suncor and Imperial Oil also requested cost support for other cost elements. The Commission rejects such requests for further cost support. As Enbridge Energy stated in its answer, Enbridge was not required to include such justifications or additional data in its tariff filing, which included precisely the same level of detail as similar settlement implementation filings going back for many years. The Commission finds that generalized assertions by Suncor and Imperial Oil are not enough to require further cost support, let alone formal discovery.

28. Suncor argues Enbridge Energy improperly applied its capital structure for each surcharge, because it allegedly failed to use the capital structure of 55 percent equity and 45 percent debt included in the settlements. Enbridge Energy states it appropriately applied the stipulated capital structure as an input to the deferred return methodology set forth in Opinion No. 154-B. Enbridge Energy states the Opinion 154-B methodology starts with the capital structure ascribed to the regulated pipeline as an input. Enbridge Energy states that the 2008 CAPP Settlement (like prior settlements) adopted a stipulated capital structure to avoid the need to redetermine the actual capital structure on an annual basis. Enbridge Energy states that for purposes of implementing the Opinion 154-B methodology (which explicitly governs the cost-of-service based surcharges), it is necessary to adjust the weighted average cost of capital to assure that the pipeline's deferred earnings receive an equity rate of return (since deferred earnings constitute deferred equity return from prior periods). Enbridge Energy states it appropriately made that adjustment in all of its cost-of-service surcharge calculations, just as it has done going back for more than a decade without objection from CAPP, which carefully monitors both the settlements and Enbridge Energy's compliance with them.

29. Suncor asserts Enbridge Energy improperly calculated the return on equity for the SEP II surcharge. It states Enbridge Energy applied a rate of 11.88 percent, when it should have used a rate of 11.52 percent. Enbridge responds that Suncor failed to

consider that the nominal equity rate of return for SEP II must be adjusted for inflation in the prior year as has been consistently done since 1998. Enbridge Energy states that, in this case, the prior year's inflation was negative, which slightly increased the real return on equity. Enbridge Energy states it made a corresponding adjustment to reduce deferred earnings by the same negative inflation percentage, so the net effect over time is a wash. Suncor alleges that the SEP II Surcharge settlement requires Enbridge Energy to adjust the return on equity depending on volumes, and that it is unclear whether Enbridge Energy adjusted the return on equity correctly. Enbridge Energy states that it expects to fully utilize the SEP II capacity in 2010. Therefore, the nominal rate of return is the NEB multi-pipeline rate plus 3.00 percent. With respect to the Southern Access Expansion component of the Facilities Surcharge, Suncor argues that Enbridge Energy is entitled to a fixed return on equity of 9 percent, plus the inflation rate. It claims Enbridge Energy should reduce the 9 percent real return on equity by 0.361 percent to account for a negative inflation rate in the prior year. Enbridge Energy counters that the applicable settlement does not provide for a reduction below the stipulated 9 percent return on equity, but only for upward adjustments for inflation. Therefore, Enbridge Energy states it correctly calculated the return on equity. Finally, Suncor argues the total return on equity for the Alberta Clipper component of the Facilities Surcharge should be 10.77 percent, but that Enbridge only used 9.07 percent in its calculations. Enbridge Energy states Suncor again failed to take inflation into account; the 9.07 percent return on equity is a real rate of return after deduction of the forecast inflation rate for 2010, the first year of operation of Alberta Clipper.

30. Suncor argues that Enbridge claims a return for pipeline integrity work on non-SEP II facilities under the SEP II surcharge. Since Enbridge has been incorporating such costs under the SEP II surcharge since 1996, Enbridge Energy is unclear why Suncor is only now challenging this practice. Enbridge Energy states that CAPP approved these integrity cost charges for years, and Suncor, as a member of CAPP presumably has long been aware of them.

31. Suncor asserts FERC Tariff No. 38 filing indicates that there has been a drop in throughput of approximately 18 percent from 2009 to 2010. Suncor argues this decrease in throughput accounts for significant rate increases under the tariff, and supports Suncor's argument that Alberta Clipper is unnecessary. Enbridge Energy asserts that, again, Suncor fails to understand the facts. Enbridge Energy notes that in 2009, it based its throughput numbers on a full year's data for all projects. However, in 2010, it adjusted the throughput numbers to take into account that Alberta Clipper would not be in service for the full year (but only the last three quarters). Enbridge Energy states that it similarly reduced its projected costs in 2010 to match the period of time that Alberta

Clipper will be in service, so that the cost and throughput projections match and the resulting rate is the same as it would be for a full year. As a result, Enbridge Energy states that comparing the raw throughput figures in the 2009 and 2010 filings produces a spurious result. Enbridge Energy states that Suncor's calculation relies on a light crude equivalent (LCE) measurement, which is a complex calculation that takes into account not only volume but type of crude and distance traveled. Enbridge Energy states that as such, LCE is meaningful in a tariff calculation, but not in addressing capacity usage on the Lakehead System. For capacity purposes, one must look at actual volumes (the number of barrels), not distance, since the pipeline's capacity is constrained by the number of barrels that can be accommodated at the bottleneck location (i.e., the point where nominated volumes are highest relative to the Lakehead System capacity at that point). Enbridge Energy states that when one compares the 2010 forecast to 2009 actual volumes, the forecast decline is only about 2 percent on average, while Lakehead System capacity (exclusive of Alberta Clipper) declines by 6 percent in 2010 because Line 13's reversal. Thus, contrary to Suncor's allegations, Enbridge Energy states these throughput numbers do not call into question the need for Alberta Clipper, nor do they drive a substantial part of the tariff increase in 2010.

32. The Commission finds that Enbridge Energy has adequately responded to the protests in Docket No. IS10-139-000 and has shown that its tariff filing conforms to the methodology contained in the Alberta Clipper settlement as well as the other relevant settlements with CAPP on the Facilities Surcharge Mechanism. The Commission finds that no further review is necessary.[7]

33. The Commission will not reject Enbridge Energy's tariff, delay implementation of the surcharge, or defer shippers' obligations to provide the Enbridge Energy system with line fill based on arguments that Enbridge Energy's proposed rates are unjust and unreasonable because certain parties assert the benefits of the Alberta Clipper Project will not be realized. The protesters' speculative arguments concerning the benefits of the project are not sufficient to abrogate the settlement or find that the proposed rates are unjust and unreasonable. Any such actions would indeed undo the uncontested

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[7] Imperial Oil and Suncor filed answers to Enbridge Energy's response essentially reiterating many arguments that they have already made. Suncor continues to challenge Enbridge Energy's throughput volumes for the Alberta Clipper and asserts that Enbridge Energy is incorrectly linking the Line 13 reversal to the Alberta Clipper project. While these arguments are cast as problems with Enbridge Energy's compliance with the settlement methodology, they are in fact further collateral attacks on the settlements and will not be addressed. In fact, in its answer Suncor continues to assert that the primary benefit of the Alberta Clipper Project will not occur. *See*, March 22, 2010 Suncor Answer at 5.

settlement that Enbridge Energy implements here through its rate filing. Further, the rate mechanism for recovering these costs was agreed upon by CAPP, an association representing the protesting parties here. The Commission will not undo a settlement because certain parties now argue that the deal turned out differently than they thought.[8] This would fly in the face of the settlement which contained no contingencies for changed circumstances and in fact placed a stiff monetary penalty on Enbridge Energy if the Alberta Clipper Project was not in service by July 1, 2010.

34. The filings by Enbridge Toledo in Docket No. IS10-137-000 and CCPS in Docket No. IS10-138-000 are not protested. Those filings contain joint rates that incorporate the rates filed by Enbridge Energy in Docket No. IS10-139-000 reflecting the costs of the Alberta Clipper Project in the Facilities Surcharge Mechanism. Since the Commission accepts the tariffs in Docket No. IS10-139-000, effective April 1, 2010, the Commission will also accept the tariffs in Docket Nos. IS10-137-000 and IS10-138-000 to also become effective April 1, 2010, without conditions.

The Commission orders:

(A) Enbridge Energy's Tariff No. 38 in Docket No. IS10-139-000 is accepted effective April 1, 2010.

(B) Enbridge Toledo's Tariff No. 32 in Docket No. IS10-137-000 is accepted effective April 1, 2010.

(C) CCPS' Tariff No. 33 in IS10-138-000 is accepted effective April 1, 2010.

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[8] The Commission will not relieve customers from what those customers claim to be unfavorable contractual bargains merely because they turn out to be unfavorable. *See, e.g., PPL University Park, LLC v. Commonwealth Edison Co.,* 109 FERC ¶ 61,190 at P 20 (2004), *reh'g denied,* 110 FERC ¶ 61,117 (2005); *Pontook Operating Limited Partnership v. Public Service Co. of New Hampshire,* 94 FERC ¶ 61,144 at 61,551-52 (2001) (*Pontook*); *Southern Company Services, Inc.,* 43 FERC ¶ 61,003 at 61,014, *reh'g denied,* 43 FERC ¶ 61,394 (1988), *aff'd mem. sub nom. Gulf States Utilities Co. v. FERC,* 886 F.2d 442 (D.C. Cir. 1989); *accord Potomac Electric Power Co. v. FERC,* 210 F.3d 403, 409 (D.C. Cir. 2000).

(D) Suncor's Petition for declaratory order in Docket No. OR10-5-000 is dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.