

136 FERC ¶ 61,115  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Imperial Oil and  
ExxonMobil Oil Corporation

Docket No. OR11-9-000

v.

Enbridge Pipelines (Southern Lights) LLC

ORDER ON COMPLAINT

(Issued August 19, 2011)

1. On May 11, 2011, Imperial Oil (Imperial) and ExxonMobil Oil Corporation (ExxonMobil) (collectively Indicated Shippers) filed a complaint against Enbridge Pipelines (Southern Lights) LLC (Enbridge) in connection with the operation of the Southern Lights Pipeline under FERC Tariff Nos. 3.3.0, 4.1.0, and 4.3.0. Indicated Shippers allege that certain rates, terms and conditions of service and practices of Enbridge are unjust and unreasonable, unduly discriminatory and preferential, and anticompetitive. Indicated Shippers also filed a motion requesting that their complaint be consolidated with the ongoing rate proceeding in Docket No. IS10-399-000, *et al.* For the reasons discussed below, the Commission will dismiss Indicated Shippers' complaint and deny their motion to consolidate.

**Background**

2. Southern Lights Pipeline was designed to transport up to 180,000 barrels per day of diluent<sup>1</sup> from Chicago to points in Alberta, Canada. The Southern Lights Pipeline project involved the reversal of an existing crude oil pipeline and the construction of new pipeline facilities. Southern Lights Pipeline consists of U.S. and Canadian segments. Before undertaking construction of the Southern Lights Pipeline, Enbridge conducted a widely publicized open season in which potential shippers were given the opportunity to commit volumes to the pipeline for 15 years under terms embodied in a Transportation

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<sup>1</sup> Diluent is a light hydrocarbon used to reduce the density and lower the viscosity of the heavy oil produced from the Western Canadian oil sands.

Services Agreement (TSA). Shippers who committed to a 15-year contract were offered service at a 50 percent discount to the filed rates for uncommitted or spot shippers as an inducement to undertake the long-term financial obligation necessary to support the project. After two open seasons, Southern Lights Pipeline had commitments for 77,000 barrels per day from two shippers, BP Products North America (BP) and Statoil North America, Inc. (Statoil).

3. In 2007, Enbridge filed a petition for declaratory order seeking Commission approval of certain aspects of the proposed rate structure for the U.S. portion of the Southern Lights Pipeline. Enbridge sought approval that (1) the Committed Shippers would be required to pay the Committed Rates to which they agreed in the TSA; (2) the rate design by which the Uncommitted Rate is two times the Committed Rate would be upheld as not unduly discriminatory; and (3) Enbridge would be permitted to true-up the tariff rates at the end of the year to reflect various credits under the TSA, including the refund of uncommitted revenues to both Committed and Uncommitted Shippers. The Commission approved the proposed rate structure and found that the discount received by the Committed Shippers was not unduly discriminatory or preferential because it was offered to all interested shippers.<sup>2</sup> The Commission also stated when the actual rates were filed it would review them to ensure they were just and reasonable.

4. In 2008, Enbridge filed a request for clarification of the declaratory order confirming that terms of the TSAs will govern the rates for the Committed Shippers for the length of the contracts. The Commission granted the requested clarification.<sup>3</sup> The Commission also determined that if the Uncommitted Rate was protested, Enbridge would be required to support the rate with cost, revenue, and throughput data.

5. Construction of both the U.S. and Canadian segments of Southern Lights Pipeline was completed in 2010. On June 29, 2010, in Docket No. IS10-399-000, the Commission issued a suspension order accepting initial rates for Southern Lights Pipeline to be effective July 1, 2010, and setting them for hearing.<sup>4</sup> The Commission found that setting the rates for hearing was consistent with its declaratory order and clarification order because Uncommitted Shippers would be assured that the rates are just and reasonable and Committed Shippers would receive the discounted rates agreed to in the TSA after the Uncommitted Rate was derived. On January 31, 2011, in Docket No. IS11-146-000, the Commission issued a suspension order accepting a proposed rate increase on Southern Lights Pipeline to be effective February 1, 2011, and setting the

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<sup>2</sup> *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310 (2007).

<sup>3</sup> *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170 (2008).

<sup>4</sup> *Enbridge Pipelines (Southern Lights) LLC*, 131 FERC ¶ 61,288 (2010).

matter for hearing.<sup>5</sup> Because of the commonality of issues, the Commission also consolidated the rate increase filing with the ongoing proceeding on the initial rates in Docket No. IS10-399-000. The Commission stated that the issue in both proceedings was whether the rates for uncommitted shipments on Southern Lights Pipeline were just and reasonable.

6. Imperial and ExxonMobil protested the filings in both Docket Nos. IS10-399-000 and IS11-146-000 and are parties in the current hearing. Settlement procedures were attempted before an Administrative Law Judge but failed. Because of a disagreement over the scope of the issues to be addressed at the hearing, briefs were filed before the Presiding Administrative Law Judge. Enbridge and other parties maintained that the only issue set for hearing was whether the Uncommitted Rate is just and reasonable. Indicated Shippers asserted that Southern Lights Pipeline's rate structure was discriminatory and anticompetitive and sought to examine various aspects of the TSA including the refund mechanism, right of first refusal provisions, the relationship of the U.S. and Canadian tariffs, and the annual rate filing requirement. On April 5, 2011, in an unpublished order, the Administrative Law Judge determined that only the justness and reasonableness of the Uncommitted Rate was at issue in the rate case proceedings.

7. On May 11, 2011, the Indicated Shippers filed the instant complaint and motion to consolidate. On May 31, 2011, Enbridge filed a motion to dismiss and answer to the Indicated Shippers' complaint and motion. On June 3, 2011, BP and Statoil, as the Committed Shippers, filed motions to intervene in the proceeding, and also on June 3, 2011, filed a joint motion to dismiss. On June 15, 2011, the Indicated Shippers filed an answer to the motions of Enbridge and the Committed Shippers. On June 24, 2011, Enbridge filed a reply to the answer of Indicated Shippers. On June 28, 2011, the Committed Shippers filed an answer supporting Enbridge's June 24, 2011 reply. On June 29, 2011, the Indicated Shippers filed an answer in opposition to Enbridge's June 24, 2011 reply. The issues raised by the complaint will be addressed below. Arguments made in the answers and other pleadings will be discussed where relevant.

### **Discussion**

8. Indicated Shippers are challenging the Southern Lights Pipeline tariffs and TSAs under which Enbridge is providing service to the Committed Shippers. Indicated Shippers assert that if the Southern Lights Pipeline rates and rate structure go forward without further review by the Commission, the end result will be unjust and unreasonable rates, unduly discriminatory and preferential practices, and significant anticompetitive impacts, including inordinate market power conferred upon the Committed Shippers and price distortion in the market for diluent. Indicated Shippers assert that they are

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<sup>5</sup> *Enbridge Pipelines (Southern Lights) LLC*, 134 FERC ¶ 61,067 (2011).

presenting evidence which was not available at the time the Commission was reviewing the petition for declaratory order. Indicated Shippers contend that their evidence demonstrates that the refund mechanism, the subordination of the U.S. tariff to the Canadian tariff, and the Committed Shippers' rights of first offer of new capacity cause unduly discriminatory, preferential and anticompetitive results contrary to the Interstate Commerce Act and Commission policy and precedent. Indicated Shippers request consolidation of the complaint with the ongoing rate proceeding because the overall rate design, including the refund and true-up mechanism, make the Committed Rates inextricably intertwined with the Uncommitted Rate.

9. In order to understand Indicated Shipper's complaint, it must be put in its proper context. In 2006, in order to determine the financial viability of its proposed Southern Lights Pipeline, Enbridge held a widely publicized open season. Imperial and ExxonMobil were among the potential shippers who received notices and attended meetings. Neither of the Indicated Shippers became a Committed Shipper on the proposed pipeline. When Enbridge filed its petition for declaratory order and subsequent request for clarification neither Imperial nor ExxonMobil filed a motion to intervene, protest, or comments in the proceeding. The Indicated Shippers did protest Southern Lights Pipeline's initial rates and subsequent rate increase, and as the Commission stated in the declaratory order proceeding, the issue of whether the Uncommitted Rate is just and reasonable was set for hearing. Thus, the Indicated Shippers' interests as potential Uncommitted Shippers are being addressed in the ongoing hearing. The Indicated Shippers' attempt to expand the hearing beyond the issue of the justness and reasonableness of the Uncommitted Rate was rejected by the Presiding Administrative Law Judge. The Commission is now faced with a complaint where Indicated Shippers have raised the same or similar issues that were already rejected by the Administrative Law Judge. As will be discussed below, the Indicated Shippers complaint against Southern Lights Pipeline's rate structure and methodology is an impermissible collateral attack on the declaratory order proceeding. The issues concerning access to the pipeline, such as prorationing and the Committed Shippers' rights of first offer on new pipeline capacity, are hypothetical and not ripe for Commission review.

### **Refund Mechanism**

10. Indicated Shippers assert that Southern Lights Pipeline's refund mechanism results in similarly situated shippers paying different effective rates. Indicated Shippers contend that Uncommitted Shippers and Committed Shippers shipping volumes in excess of their commitment under the Uncommitted Rate are similarly situated. Indicated Shippers submit that because of the ship-or-pay obligation of the Committed Shippers and the structure of the refund mechanism, the economic parameters for Committed Shippers shipping uncommitted barrels deviates from those of Uncommitted Shippers shipping uncommitted barrels. Indicated Shippers assert that the ship-or-pay obligation causes some of the costs of shipping for a Committed Shipper to be what economists term sunk

costs. Indicated Shippers contend that the combined effect of the sunk costs and the refund mechanism means that the incremental cost to ship the same increment of uncommitted volumes differs between Committed and Uncommitted Shippers. Indicated Shippers assert that as a result of the rate differential caused by the refund mechanism Uncommitted Shippers are at a disadvantage in the diluent market. Indicated Shippers submit that because refunds are issued annually at the end of a full year, by initially paying the filed tariff rate a shipper gives Enbridge an interest free loan in the amount of the difference between the filed rate and the rate after the rebate. Indicated Shippers argue that this can act as a barrier to entry. Indicated Shippers also claim that a lack of rate certainty at the time a decision to ship must be made could act as a barrier to entry. Indicated Shippers assert that an economically rational shipper is forced to assume the worst case scenario that the effective rate will be the filed rate, which they assert is presently economical, less any refund based solely upon uncommitted shipments. Indicated Shippers assert that as a result some shippers may not ship at all and this decreases economic efficiency in the diluent transportation market.

11. The Commission finds that the Indicated Shippers' argument on the refund mechanism is deficient on both procedural and substantive grounds. The annual refund mechanism was part of the TSA available to all potential shippers, was discussed by Enbridge in its petition for declaratory order and was approved by the Commission. In its order on Enbridge's petition the Commission stated:

The Commission finds that this proposed mechanism will guarantee that Enbridge Southern Lights will not be overrecovering its costs and at the same time will ensure that Enbridge Southern Lights is appropriately compensated for its capital investment and associated risk. The Commission thus concludes that this mechanism will result in rates that are just and reasonable.<sup>6</sup>

The Indicated Shippers did not protest or comment on Enbridge's petition nor did they seek rehearing or reconsideration of the Commission's declaratory order.

12. In addition, there is no evidence that circumstances have changed which would indicate that the Commission's basis for approving the petition is no longer valid. As Enbridge states in its answer, the so-called new evidence submitted by the Indicated Shippers are affidavits asserting that the refund mechanism would cause adverse financial or economic impacts on the Indicated Shippers. Enbridge states that "[t]he conclusions and opinions in these affidavits are based entirely on the TSA and not any material new

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<sup>6</sup> *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at P 45 (2007).

information that was unavailable at the time of the prior proceeding.”<sup>7</sup> Therefore, the Indicated Shippers’ complaint on the refund mechanism is an impermissible collateral attack on the orders in the declaratory order proceeding.

13. In addition to being procedurally defective, the Indicated Shippers’ argument is also substantively defective. Indicated Shippers argue that the operation of the refund mechanism and economic factors cause Uncommitted Shippers and Committed Shippers shipping excess volumes under the Uncommitted Rate to pay different “effective” rates. Indicated Shippers assert that since these shippers are similarly situated this results in undue discrimination. It is instructive that Indicated Shippers uses the term “effective” rate based on its analysis of the economic factors impacting Committed and Uncommitted Shippers. However, the fact that Committed and Uncommitted Shippers are subject to different economic factors when shipping uncommitted volumes does not mean they are paying different rates. As Enbridge stated in its answer,

[T]he simple fact is that the Uncommitted Rate is charged the same way for both classes of shippers. That is, any uncommitted volumes (whether shipped by a Committed Shipper or an Uncommitted Shipper) are initially charged the posted Uncommitted Rate in the tariff at the time of the shipment. At the end of the year, the revenues from uncommitted shipments are then refunded to all shippers (Committed and Uncommitted) in such a way as to preserve the 2-to-1 ratio of Uncommitted to Committed Rates. All shippers are treated in the same way under the tariff and there is, therefore, no issue of discrimination.<sup>8</sup>

14. Finally, Indicated Shippers argue that waiting a year for refunds with no interest creates financial uncertainty for Uncommitted Shippers that is not faced by Committed Shippers, and reduces their economic incentive to ship creating economic inefficiency in the market. The fact that Committed and Uncommitted Shippers, or any particular shipper may be subject to different economic impacts when shipping does not constitute discrimination between these classes of shippers or particular shippers that is undue or unfair. Every potential shipper on Southern Lights Pipeline had an equal opportunity to become a Committed Shipper and presumably appropriately analyzed the costs and benefits, and relative economic and financial advantages and disadvantages of Committed Shipper status. Moreover, the Uncommitted Shippers’ interests will be protected in the ongoing rate case proceeding. As Enbridge correctly pointed out, the Indicated Shippers will be paying just and reasonable rates under its so-called worst case

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<sup>7</sup> Enbridge’s May 31, 2011 Answer at 20-21.

<sup>8</sup> *Id.* at 25.

scenario and those rates will be based on the cost-of-service and not whether the end result is advantageous economically to the shippers.<sup>9</sup>

### **Committed Rate**

15. Indicated Shippers assert that the Commission has a duty under the Interstate Commerce Act to review the Committed Rate and approve it in a Commission proceeding. Indicated Shippers assert that such review is important because of a conflict that has emerged from the Commission orders in the declaratory order proceeding over how the Committed Rates will be structured. Indicated Shippers contend that it is not clear how the Commission intended the Committed Rates to be established, namely, whether it should be based upon a TSA negotiated cost-of-service, or calculated simply by dividing the Uncommitted Rate by two. Indicated Shippers assert that the rate cannot be determined by using two mutually exclusive methods at the same time. Indicated Shippers submits that Enbridge and the Committed Shippers suggest that they will resolve the conflict concerning the derivation of the Committed Rates through arbitration. Indicated Shippers assert that this position, that a jurisdictional rate may be negotiated pursuant to a contract and determined outside the purview of the Commission, is contrary to the Interstate Commerce Act and case law. Indicated Shippers contend that the Committed Rates cannot be decoupled from the Uncommitted Rate. Indicated Shippers submit that the Committed and Uncommitted Rates are interrelated parts of the Southern Lights Pipeline's overall rate design involving a complex refund and true-up mechanism that applies to both Committed and Uncommitted Rates and results in the effective rates that shippers actually pay.

16. The Commission rejects Indicated Shippers' argument that the Commission has failed to appropriately review the Committed Rates pursuant to the Interstate Commerce Act. The Commission reviewed the TSA and the rate structure in the declaratory order proceeding and determined that the proposed rate design was just and reasonable and not unduly discriminatory because all potential shippers had the opportunity to become Committed Shippers. The Commission also stated in the clarification order that Uncommitted Shippers would be adequately protected because to the extent the Uncommitted Rate was protested, Enbridge would have to support it with cost-of-service information in a hearing. This protection is sufficient and adequate under the Interstate Commerce Act, and the Uncommitted Shippers are not entitled to be shielded from the consequences of their decision not to choose Committed Shipper status when the opportunity was presented to them.

17. The purpose of approving Enbridge's petition was to ensure that Enbridge and the Committed Shippers were given the financial certainty to go forward with constructing

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<sup>9</sup> *Id.* at 28.

the pipeline and contracting for capacity on the pipeline. Since the Indicated Shippers have chosen not to pay the Committed Rates, they have no standing or cognizable interest to support their opposing the determination of the Committed Rates. The interests of the Indicated Shippers are adequately protected in the ongoing hearing on the Uncommitted Rate, in that they can challenge the reasonableness of any cost proposed to be included in the Uncommitted Rate. Indicated Shippers' argument that the Committed Rates cannot be decoupled from the Uncommitted Rate is effectively an attempt to overturn the rate structure approved by the Commission in the declaratory order proceeding, and is an impermissible collateral attack on the Commission's prior orders.

18. Contrary to Indicated Shippers' argument, the Commission has retained review authority over the Committed Rates. Both the Committed and Uncommitted Rates were filed in tariffs with the Commission and those rates were accepted and suspended subject to the outcome of the hearing on the Uncommitted Rate. As the Commission stated in the Docket No. IS10-399-000 suspension order, "[w]hen a just and reasonable uncommitted rate is determined . . . Enbridge Southern Lights may derive its committed rate by applying the agreed upon terms of the TSA."<sup>10</sup> Thus, since the Committed Rates are subject to the outcome of the hearing on the Uncommitted Rate, they will be subject to further Commission review when final Committed and Uncommitted Rates are established.

19. Finally, to the extent any "conflicts arise, as asserted by the Indicated Shippers, they will be subject to the dispute resolution mechanism in the TSA and, if necessary, Commission review. Article 15.01 of the TSA states "any dispute that is subject to the jurisdiction of the FERC will be referred to the FERC with a request that such dispute be dealt with on an expedited basis." The article also states that "[w]hen a disagreement arises concerning whether a dispute is subject to the jurisdiction of the FERC, such matter will be referred to the FERC for resolution." Clearly, any disputes concerning the derivation of the Committed Rates would be subject to the Commission's jurisdiction, and it is incorrect for Indicated Shippers to assert that the TSA is being used to evade Commission jurisdiction.

### **Access Issues – Prorationing and Rights of First Offer**

20. Indicated Shippers assert that the TSA unreasonably restricts Uncommitted Shippers' access to Southern Lights Pipeline in violation of the Interstate Commerce Act and Commission precedent. Indicated Shippers argue that the combined effect of the U.S. tariff and the TSA, and the Canadian tariff and TSA is to provide firm service for

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<sup>10</sup> *Enbridge Pipelines (Southern Lights) LLC*, 131 FERC ¶ 61,288, at P 16 (2010).

Committed Shippers at a discounted rate with no ability for Uncommitted Shippers to become Committed Shippers. Indicated Shippers contend that Enbridge is able to provide firm service to shippers without Commission approval simply by subordinating the U.S. tariff to the Canadian tariff. Indicated Shippers submit that a U.S. shipper may not be apportioned a volume of capacity that exceeds its rights on the Canadian segment of the pipeline. Indicated Shippers argue that the Canadian tariff states that in the event of prorationing Enbridge will apportion services such that the aggregated uncommitted volumes is equal to excess capacity, which is the difference between design capacity and committed volumes. Indicated Shippers assert that construed in tandem these provisions work together such that Committed Shippers are entitled to firm service on both sides of the border while Uncommitted Shippers are subject to pro rata apportionment. Indicated Shippers argue that providing firm service at a discounted rate is impermissible.

21. Indicated Shippers assert that entwined with the right of firm service are the various rights of first offer granted to the Committed Shippers under the TSA. Indicated Shippers submit that the extension right, the open season right of first offer, and the expansion right of first offer all give the Committed Shippers a first right to expand their capacity potentially up to the design capacity of the pipeline. Indicated Shippers contend that the TSA does not specify how much of the pipeline is committed capacity nor does the TSA require that a certain portion of the capacity be set aside for Uncommitted Shippers. Thus, Indicated Shippers argue that the additional committed capacity under the right of first offer could be the remainder of the capacity available on the pipeline. Indicated Shippers also assert that the rights of first offer were not reviewed in the declaratory order proceeding. Indicated Shippers argue that the exercise of the right of first offer can make any future open season illusory because the Committed Shippers can either reduce or tie up the capacity that otherwise would be available in an open season. Finally, Indicated Shippers contend that the right of first offer will result in anticompetitive market impacts. Indicated Shippers assert that the growing demand for diluent will be met through U.S. sources and will require access to the Southern Lights Pipeline. Indicated Shippers contend that this will provide a strong financial incentive for Committed Shippers to exercise their rights of first offer to increase their committed capacity. Indicated Shippers submit that controlling access to Southern Lights Pipeline will permit them to extract monopoly profits because the shippers who cannot gain access must move their diluent supply by alternative means including buy-sell agreements with the Committed Shippers.

22. Contrary to the assertions of the Indicated Shippers, the Committed Shippers on the Southern Lights Pipeline are not receiving firm service in the event of prorationing thus restricting the access of the Uncommitted Shippers. The current throughput on Southern Lights Pipeline is far below the total capacity of 180,000 barrels per day. The committed volumes are 77,000 barrels per day representing 43 percent of the pipeline capacity. There is no prospect of prorationing being applied now or in the foreseeable future. The Commission finds that the Indicated Shippers, who have not even shipped

pursuant to the Uncommitted Rate, have not presented any claim that is ripe for adjudication. If the Southern Lights Pipeline faces a prorationing situation in the future, the Commission can address any issues based on the circumstances at that time.

23. In addition, Rule 17 of Southern Lights Pipeline's tariff states that all volumes are apportioned on a pro rata basis. Thus, Indicated Shippers claim that the Committed Shippers receive firm service in the event of apportionment is incorrect. As Enbridge states in its answer, the provision that the Indicated Shippers are challenging merely states that a shipper on the U.S. segment of the pipeline cannot be allocated more capacity that it has the ability to use on the downstream Canadian segment of the pipeline.<sup>11</sup> As Enbridge states, this is a necessary operational requirement that pipelines use when there is no delivery point or storage at the point of interconnection to allow differing volumes for each shipper to be accommodated. Since the U.S. and Canadian segments represent one continuous pipeline, it makes sense that a shipper's volumes must match on both segments.

24. Indicated Shippers argue that Southern Lights Pipeline's Canadian tariff guarantees Committed Shippers firm service when prorationing occurs and because of the requirement that volumes match on both sides of the border, Committed Shippers are essentially given firm service at a discount on the U.S. segment. Enbridge's prorationing policy provides for pro rata apportionment in the event of nominations in excess of the available capacity consistent with Commission precedent. Since there has not been any prorationing on Southern Lights Pipeline and it is not likely in the future, there is no reason to resolve any issues in the event of a conflict between the U.S. and Canadian tariffs. In the future, to the extent the prorationing policies of the U.S. and Canadian tariffs operate together to result in a violation of Commission policy or precedent, the Commission will address such issues when they arise based on the facts and circumstances at that time.

25. The Commission finds that there is no reason to investigate the Committed Shippers' rights of first offer because there is no evidence that the exercise of those rights is imminent. As Enbridge states in its answer, the right of Committed Shippers to extend the terms of their TSAs will not come into play (if at all) until 2020. Enbridge states that the two other rights of first offer may never be utilized. Enbridge states that it has not expressed any intention to increase the capacity on Southern Lights Pipeline or to hold another open season in the immediate future. Further, as Enbridge states, there is no way to know what the specific terms of any exercise of a right of first offer would be, whether the Committed Shippers would exercise such rights, or what the effect of such exercise would be on any Uncommitted Shipper seeking space on the pipeline.<sup>12</sup> Further, as the

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<sup>11</sup> Enbridge's May 31, 2011 Answer at 33.

<sup>12</sup> Enbridge's May 31, 2011 Answer at 31.

Committed Shippers state in their motion to dismiss, even if a right of first offer were triggered in the future, there is no reason to presume that it would apply to the total capacity of the pipeline. The Committed Shippers state that the TSA does not grant rights of first offer on an unlimited amount of pipeline capacity. Instead, the volume of capacity to which a right of first offer would apply could be no greater than the amount legally allowable at the time the right of first offer is exercised.<sup>13</sup> The Commission finds that it would be premature and wasteful of administrative resources to address these hypothetical issues raised by the Indicated Shippers. Since only 77,000 barrels per day of the 180,000 barrel per day capacity is allocated to the Committed Shippers, there is ample capacity for any potential shippers who want to ship pursuant to the Uncommitted Rate. If, in the future, it appears that the exercise of a Committed Shipper's rights of first offer will unreasonably foreclose potential Uncommitted Shippers from obtaining any capacity on the Southern Lights Pipeline, the Commission will address such issues when they arise based on the known facts and circumstances.

### **Future Rate Filings**

26. Indicated Shippers assert that in order to avoid having to litigate the same issue over again each and every year, it would be both fair and administratively efficient for Enbridge's future rate filings to be made subject to the ultimate outcome of the Rate Case proceedings and this complaint proceeding, if consolidated. Indicated Shippers request that the Commission require that whatever rate design principle or rate structure ultimately is determined in the Southern Lights Pipeline rate proceeding and/or here in the complaint proceeding be applied on a going forward basis to Enbridge's future annual rate filings, such that the Commission's rulings are not limited solely to the 2010 and 2011 rates that Enbridge has already filed and that are subject to dispute.

27. The Commission denies Indicated Shippers' request that future rate filings be made subject to the outcome of the rate case proceeding and this proceeding. Since Indicated Shippers' complaint is being dismissed, this order makes no changes to the existing rate structure or rate design principles. To the extent any changes to Southern Lights Pipeline's rate design principles or rate structure are made in the ongoing rate proceeding, the Commission will address the impact of such changes on future rate filings after the hearing before the ALJ is concluded, and the initial decision is before the Commission for review. Any decision now would be premature.

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<sup>13</sup> Committed Shippers' June 3, 2011 Motion at 19.

The Commission orders:

Indicated Shippers' May 11, 2001 complaint is dismissed and the contemporaneous motion to consolidate is denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.