

# ENBRIDGE

Enbridge Pipelines Inc.  
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## CERTIFIED MAIL

Oil Pipeline Tariff Filing  
Docket No. IS09-\_\_\_\_\_

October 17, 2008

RECEIVED

OCT 20 2008

North Dakota Public Service Commission  
State Capital – 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480  
Attn: Public Utility Division

PUBLIC SERVICE COMMISSION

Tariff Department:

Enclosed for filing pursuant to the Interstate Commerce Act and the Commission's regulations are seven copies of the following tariff issued by Enbridge Pipelines (North Dakota) LLC ("Enbridge North Dakota"):

Supplement No. 2 to FERC Tariff No. 52.  
Supplement No. 2 to N.D.P.S.C. Tariff No. 50.

This tariff bears an issue date of October 17, 2008 and an effective date of November 1, 2008. Enbridge North Dakota seeks a waiver under 18 C.F.R. § 341.14 and § 6(3) of the ICA to allow the Supplement to go into effect on less than thirty days' notice, with an issue date of October 17, 2008 and an effective date of November 1, 2008. The Supplement is expected to be in effect until FERC No. 58, also filed today, goes into effect on December 1, 2008.

### Explanation of Tariff Filing:

Enbridge North Dakota's tariff includes a prorationing provision that allocates capacity to shippers when nominations exceed the available volume on the pipeline. The provision does not presently include a means by which a shipper's capacity allocation can be transferred to another entity.

Enbridge North Dakota has received a request that the capacity of a shipper now in bankruptcy be transferred to the shipper's affiliate. Enbridge North Dakota is adding this Supplement to its tariff in order to allow the transfer of capacity allocations (1) in the event of a bona fide sale of a shipper's business, or (2) to a successor to the shipper's business by the operation of law, such as an executor or trustee in bankruptcy. The transfer of allocations is permitted only in those two circumstances.

### Request for Waiver under 18 C.F.R. Section 341.14 and ICA Section 6(3)

1      **PU-08-911**      Filed: 10/20/2008      Pages: 7  
Supplement No. 2 to NDPSC Tariff No. 50; Supp. No.  
2 to FERC Tariff 52

The ICA allows the Commission to waive the requirement of 30 days' notice upon a showing of good cause. Section 341.14 of the Commission's regulations requires an application to state any unusual circumstances or emergency situations that support the waiver.

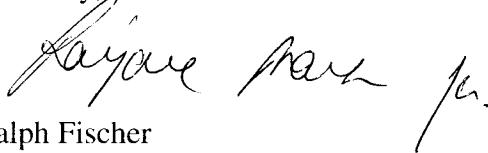
Good cause exists in these unusual circumstances to allow the Supplement to go into effect on less than 30 days' notice. As noted, the Supplement is brought to allow a transfer in the course of a shipper's bankruptcy. In the course of those bankruptcy proceedings, time is of the essence to protect the bankrupt shipper, and its creditors and debtors.

**Notification:**

I hereby certify that Enbridge North Dakota has, on or before this date, delivered copies of the above tariffs to each person on Enbridge North Dakota's subscriber list by the U.S. Postal Service (First Class Mail) and by other means agreed upon. Please date stamp the enclosed extra copy of this transmittal letter and the accompanying tariffs and return it to the messenger.

If you have any questions concerning this filing, please call Feisal Gazie at (403) 231-5940.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Fischer". The signature is written in a cursive style with a prominent flourish at the end.

Ralph Fischer  
Director, Planning & Analysis

Enclosures  
cc: Tariff Subscribers

# **ENBRIDGE PIPELINES (NORTH DAKOTA) LLC**

## **LOCAL PROPORTIONAL TARIFF**

### **RULES AND REGULATIONS**

#### **Governing the Gathering and Transportation of**

#### **CRUDE PETROLEUM BY PIPELINE**

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Note: For rates see Enbridge Pipelines (North Dakota) LLC Local Tariff applying on Crude Petroleum.

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ISSUED ON 15 DAYS 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 Rules and Regulations published herein apply only under tariffs making specific reference by F.E.R.C. 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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The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

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**ISSUED OCTOBER 17, 2008**

**ISSUED BY**  
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**EFFECTIVE NOVEMBER 1, 2008**

**COMPILED BY**  
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**RULES AND REGULATIONS**

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**Item 65A expired March 1, 2008.**

**Item 65B cancels Item 65.**

**Item 65B. PRORATION OF PIPE LINE CAPACITY**

(a) When there shall be nominated to Carrier, for transportation, more crude petroleum than can be immediately transported on a line segment, the transportation furnished by Carrier shall be apportioned among Shippers on an equitable basis. Line segments will be prorated separately if necessary.

(b) Space in each segment will be allocated among "Regular Shippers" and any "New Shippers" as follows:

(i) For the purposes of this section, these terms are defined as follows:

**"Actual Shipments"** means volumes of Crude Petroleum that originate and are physically tendered at a Regular Receiving Point during a month. For greater certainty, volumes re-entering at intermediate points will not be considered to be Actual Shipments.

**"Available Capacity"** means the total capacity of the pipeline segment or segments thereof, available to transport crude petroleum.

**"Average Monthly Volume"** means the average of a Regular Shipper's monthly volumes of crude petroleum calculated as follows with respect to the line segment or segments:

- a. With respect to movements nominated during August 2007 for transportation in September 2007, the Average Monthly Volume of a Regular Shipper under Carrier's Tariff No. 47 will be calculated in accordance with Item 65 of Tariff No. 47. For clarity, the terms of Item 65 of Carrier's Tariff No. 47 will apply to movements nominated in August 2007, when such Tariff was in effect.
- b. With respect to movements nominated during September 2007 for transportation in October 2007, the Average Monthly Volume of a Regular Shipper as defined herein will be calculated based on the volumes allocated to such Shipper during the month of September 2007 under the terms of Item 65 of Carrier's Tariff No. 47.
- c. With respect to movements nominated during October 2007 for transportation in November 2007, and all subsequent months following the effective date of this Tariff:
  - i. November 2007 Average Monthly Volume will be calculated based on September 2007 actuals;
  - ii. December 2007 Average Monthly Volume will be calculated based on the average of September 2007 and October 2007 actuals;
  - iii. January 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including November 2007 actuals;
  - iv. February 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including December 2007 actuals;
  - v. March 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including January 2008 actuals;

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**RULES AND REGULATIONS**

**65B. PRORATION OF PIPE LINE CAPACITY (Continued)**

- vi. April 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including February 2008 actuals;
- vii. May 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including March 2008 actuals;
- viii. June 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including April 2008 actuals;
- ix. July 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including May 2008 actuals;
- x. August 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including June 2008 actuals;
- xi. September 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including July 2008 actuals;
- xii. October 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including August 2008 actuals;
- xiii. November 2008 Average Monthly Volume will be calculated based on the average of October 2007 to and including September 2008 actuals;
- xiv. December 2008 Average Monthly Volume will be calculated based on the average of November 2007 to and including October 2008 actuals;
- xv. And continued thereafter on a cumulative rolling basis.

**“Base Period”** means a cumulative rolling period up to and including 12 months as defined in subsections i. through xv. of (b)(i)c. hereof. For clarity, the Base Period under this Tariff commences in the first month in which this Tariff becomes effective (September 2007), and the Base Period applies whether or not any particular line segment is in proration in a given month.

**“Binding Nomination”** means the volume allocated to a Shipper during a period of apportionment.

**“Financial Penalty Revenue”** means revenue derived from the imposition of the Non-Performance Penalty.

**“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.

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**RULES AND REGULATIONS**

**65B. PRORATION OF PIPE LINE CAPACITY (Continued)**

“**New Shipper**” is any Shipper that is not a Regular Shipper.

“**Non-Performance Penalty**” means an amount equal to the product of the applicable tariff multiplied by the difference between that Shipper’s Binding Nomination and its Actual Shipments during said month.

“**Regular Shipper**” means (i) solely for transportation in September 2007, a shipper that was a Regular Shipper under Item 65 of Carrier’s Tariff No. 47 prior to September 1, 2007, and (ii) for transportation from October 2007-forward, a shipper that had Actual Shipments with respect to any line segment or segments prior to September 1, 2007. A Shipper that is not a Regular Shipper under the prior sentence becomes a Regular Shipper as soon as it has Actual Shipments in at least nine months of twelve months in the Base Period. The Average Monthly Volume of a Regular Shipper will be calculated over the entire Base Period including any months for which no movements are credited. A Regular Shipper ceases to be a Regular Shipper if it has no Actual Shipments for four or more months out of the Base Period. Thereafter, that shipper will be treated as a New Shipper unless and until it meets Regular Shipper criteria.

- (ii) Beginning with nominations in September 2007 for transportation in October 2007 (and for subsequent months while this provision is in effect), the provisions of subsections (ii), (iii) and (iv) shall apply to prorationing of volumes on all line segments of Carrier’s system. Each Regular Shipper shall be allocated an amount equal to one hundred (100) percent of its Average Monthly Volume for the line segment being prorated, with the total of all Regular Shippers’ allocations not exceeding ninety (90) percent of the total Available Capacity. If a Regular Shipper’s nomination for a month is less than its Average Monthly Volume, the Regular Shipper will be apportioned only the amount of its nomination. Should the total of all Regular Shippers’ allocations be greater than ninety (90) percent of Available Capacity, all Regular Shippers’ allocations will be adjusted on a prorata basis. The volume to be deducted from each Regular Shipper’s Average Monthly Volume allocation will be determined by dividing each Regular Shipper’s Average Monthly Volume by the total of all Regular Shippers’ Average Monthly Volumes, and multiplying it by the volume in excess of the ninety (90) percent Available Capacity.
- (iii) New Shippers shall be allocated up to ten (10) percent of the total Available Capacity for the line segment being prorated, but no more than 2.5 percent of the total Available Capacity for the line segment will be allocated to any New Shipper (including capacity allocated to any affiliate or subsidiary of such New Shipper). Each New Shipper’s allocation shall be determined by multiplying the lesser of such New Shipper’s nomination or 2.5 percent of total Available Capacity by the resultant fraction obtained by dividing the ten (10) percent available capacity by the total volume of New Shippers’ nominations (subject to the 2.5 percent cap). Should the total of all New Shippers’ allocations be greater than ten (10) percent of Available Capacity, all New Shippers’ allocations will be adjusted on a prorata basis.
- (iv) Any remaining unallocated Available Capacity shall be allocated to the Regular Shippers and New Shippers based on a proportionate share as determined by multiplying each shipper’s nomination (less any volume allocated in steps (ii) and (iii) above) by the resultant fraction obtained by dividing the remaining Available Capacity by the total volume of all Regular Shippers’ and New Shippers’ nominations (less any volume allocated in steps (ii) and (iii) above).

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## RULES AND REGULATIONS

### **65B. PRORATION OF PIPE LINE CAPACITY (Concluded)**

(c) In no event will any portion of allocated capacity to a New Shipper be used in such a manner that it will increase the allocated capacity of another Shipper beyond the allocated capacity that Shipper is entitled to under the provisions stated herein.

(d) No individual Shipper nomination shall be considered beyond the physical capacity of the pipeline segment(s) that the nominated Crude Petroleum will be transported on. Nominations in excess of these limits will be reduced accordingly.

(e) Except during a Force Majeure event, if a Shipper is unable to tender Crude Petroleum equal to the space allocated to it, Carrier will implement the following penalties:

- (i) Once Carrier has determined the capacity allocated to each Shipper for a given month under the provisions stated herein, it shall provide notice to each Shipper of its allocated capacity, i.e. its Binding Nomination for the month. If any Shipper fails to tender a volume of Crude Petroleum during the month equal to ninety percent (90%) of its Binding Nomination for that month, that Shipper shall pay to Carrier (in addition to the tariff charge for the volumes actually transported) the Non-Performance Penalty. If a shipper is subject to the Non-Performance Penalty, the volume of Crude Petroleum that will be accepted by the Carrier from such Shipper in each of the next three months will be limited to no more than the volume that the Shipper actually shipped during the month of prorationing.

For example, if a Shipper's Binding Nomination was 100,000 bbls/d in January and the Actual Shipment was 80,000 bbls/d the Shipper would be invoiced for 100,000 bbls per day for January and in March, April and May the Shipper would be allocated no more than 80,000 bbls/d.

- (ii) The Financial Penalty Revenue, plus interest calculated in accordance with the Commission's regulations (18 C.F.R. § 340.1 (c)), collected from imposition of the financial penalty will be accounted for in a separate account, and refunded to Shippers who did not incur the Non-Performance Penalty during a calendar quarter. The interest associated refund with interest will be made on a quarterly basis.
- (ii) The Binding Nomination will be determined at the mainline receipt points where multiple leases in the adjacent field area would be consolidated to enter the pipeline. Furthermore, if the Shipper has multiple receipt points that enable them to ship, the penalty would not be applied at each individual receipt point but only on a cumulative basis. If the volumes tendered are not equal to or in excess of 90% of the capacity allocated to the Shipper, then the Shipper will be penalized.

[N] (f) Prorated volumes allocated to a Shipper may not be assigned, conveyed, loaned, transferred to, or used in any manner by another Shipper. However, a Shipper's historical allocation rights may be transferred as an incident of the bona fide sale of the Shipper's business or to a successor to the Shipper's business by the operation of law, such as an executor or trustee in bankruptcy. In the event that the transferring Shipper chooses to become a Shipper on the system at some point in the future, they will be regarded as a New Shipper until such time as they meet the criteria to become a Regular Shipper.

### EXPLANATION OF ABBREVIATIONS

API	American Petroleum Institute
ASTM	American Society of Testing and Materials
No	Number
FERC	Federal Energy Regulatory Commission
NDPSC	North Dakota Public Service Commission

#### **Symbols:**

[N] – New. The new portion has been underlined.

[W] – Wording. Change in wording only.