generated by EEC when the Extension Pipeline operates above 340,000 bpd.[18] Thus, the 340,000 bpd stipulated volume figure is reasonable (and indeed beneficial to shippers) in the unique context of this Tariff Agreement because it ensures against over-recovery by EEC while providing a mechanism for the sharing of throughput risk between the Extension and Lakehead.

Given the deficit mechanism in the Tariff Agreement, there is no justification for changing the stipulated volume mechanism during the term of the Tariff Agreement. If the 340,000 bpd figure were reduced, the effect would be to increase the stand alone rate on the Extension, which could result in lower volumes and therefore greater deficits to be recovered from Lakehead. On the other hand, if the 340,000 bpd figure were increased, that would lower the stand alone rate on the Extension but increase the volume threshold for avoiding a deficit, thereby also potentially leading to greater deficit charges to Lakehead. While there is no inherent magic in the 340,000 bpd number, CAPP and Petitioners concluded it best reconciles the various interlocking provisions of the Tariff Agreement and, therefore, should be approved as a part of the overall arrangement.

The other provisions of the Tariff Agreement regarding the Extension Pipeline tariff rates are straightforward and readily warrant Commission approval. The goal of the Tariff Agreement is to move the Extension Pipeline to total self-sufficiency as quickly as possible. Once the Extension operates at a surplus for three consecutive years, it will no longer be eligible for any further "backstopping" from Lakehead. From that point forward, any surpluses generated by the

[18] The discussion in the text assumes that the estimated and actual cost of service in each year are the same. An additional complication is presented if the actual cost of service is higher or lower than the initial estimate. In that case, the difference between estimates and actuals is resolved as part of the deficit/surplus calculation. In that way, EEC cannot benefit from over-estimating its costs, since any mis-estimation is corrected automatically and flowed back to shippers. Schrage Aff. (Exh. 3) at ¶ 14 n.2; Affidavit of Peter Douvris at ¶ 8 n.2 (Exhibit 5 hereto).

Extension will be used first to repay past deficits (with interest) and then, when the balancing account is reduced to zero, to reduce future Extension rates through the term of the Tariff Agreement.[19] Once the term expires (subject to final adjustments rising in year 15 as provided in the Tariff Agreement), EEC will revert to the Commission's usual rate regulatory standards. These provisions, which were negotiated by CAPP on behalf of its members, are beneficial to shippers and should not present any significant issues regarding this Joint Petition. *See* CAPP Letter (Exh. 2).

C. The Commission Should Approve the Terms of the Temporary Lakehead Backstop Mechanism As Set Forth in the Tariff Agreement.

The other critical feature of the Tariff Agreement is the temporary deficit charge/surplus credit mechanism that provides the "backstop" for the Extension Pipeline in its early years. As described below, unlike the prior Offer of Settlement, this mechanism is not a traditional "roll-in" of the Extension costs into the mainline rates. Rather, the Extension rates are set on a stand alone basis during the term of the Tariff Agreement. The deficit/surplus mechanism is best described as a deferral arrangement in which Lakehead shippers temporarily share the throughput risk on the Extension Pipeline in return for (1) being repaid with interest out of future surpluses for any deficits charged to them and (2) essentially enjoying all of the upstream benefits of the Extension Pipeline at no net upstream cost.[20]

Petitioners recognize that the prior proposal (which constituted a modified roll-in of costs) generated substantial opposition and did not receive the Commission's approval as an

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[19] If the balancing account is not reduced to zero after all surpluses are credited as provided in the Tariff Agreement, the balancing account ceases to apply thereafter.

[20] To prevent any distortion of Page 700 in the EELP Form 6 reports, Petitioners request that EELP be permitted to treat any deficits recovered in the Lakehead rates as costs to EELP and any surpluses credited to Lakehead shippers as credits against cost. In that way, the deficit / surplus mechanism would have no net effect on EELP's Page 700 calculation.

Offer of Settlement. Accordingly, Petitioners have worked diligently with CAPP to find a compromise proposal that they believe is acceptable to the vast majority of shippers and that avoids any credible claim of cross-subsidization. As described in the attached Affidavits, the Tariff Agreement provides benefits to all upstream shippers, including those who never move to Patoka (indeed, who never even move on Line 61). However, on the cost side, this is predominantly an incremental arrangement. Indeed, if throughput on the Extension Pipeline equals or exceeds 340,000 bpd in all years, this proposal is purely incremental, since all of the costs of the Extension will be recovered on a stand alone basis on the Flanagan-to-Patoka segment only. From the standpoint of upstream-only shippers, that would be the ideal arrangement, since they receive the benefits without the costs. However, it is possible in the early years that the throughput moving to Patoka on the Extension will be less than 340,000 bpd, resulting in a deficit in the Extension Pipeline. In that event, the Lakehead shippers are asked to absorb the deficits in those early years in order to "backstop" the Extension Pipeline against otherwise unrecoverable losses in the early years. However, this is not a true "roll-in" of the Extension costs because the Lakehead shippers are essentially made whole for any deficits as surpluses in later years develop. Moreover the benefits of the Extension Pipeline to upstream shippers justify the modest cost of the temporary surcharge in the early years, which will be repaid with interest in accordance with the terms of the Tariff Agreement (including the Qualifying Volume limitation).

As shown in the Affidavit of Neil Earnest, a Vice President and Director at Muse, Stancil & Co., a global consulting firm specializing in the downstream energy industry, attached as Exhibit 4 hereto, the projected throughput profile on the Extension strongly supports the view that any deficits under this arrangement will be temporary. Using a proprietary model developed for the clients of Muse, Mr. Earnest predicts future flows on the Extension. This model accounts for supply, using forecasts of the amount of western Canadian and Williston Basin crude that will be produced. It also accounts for demand, incorporating the capacity of refineries able to accept the grades of crude that will be moving on the system. And it considers the capacity of pipelines owned by Enbridge and other carriers. Based on these inputs, Mr. Earnest forecasts that the initial nine months of operation in 2009 will see a volume of 136,792 bpd on the Extension. Earnest Aff. (Exh. 4) Exhibit NKE-4. The forecast for 2010 is 91,809 bpd and the forecast for 2011 is 98,358. *Id.* Due to increases in crude supply and an expected new pipeline connection to the U.S. Gulf Coast from Patoka, the volume on the Extension is forecast to be 271,422 bpd in 2012. *Id.* In the following year, Mr. Earnest's forecast shows expected volumes passing the 340,000 threshold level, rising to 628,904 bpd. *Id.* Subsequent years show volumes consistently above 340,000, rising to the Extension Pipeline's ultimate capacity of 800,000 bpd in 2017 and beyond. *Id.*

In order to test his results, Mr. Earnest also conducted an analysis of a more conservative case. Even with this varied assumption,[21] the result was remarkably similar. The conservative case shows the volumes surpassing 340,000 bpd by 2014. Earnest Aff. (Exh. 4) Exhibit NKE-8.

The model also quantifies the increased volumes flowing on the Lakehead System due to the Extension.[22] On the basis of these increases, Mr. Schrage, Mr. Douvris and Mr. Earnest calculate various benefits to upstream shippers who never use the Extension itself.

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[21] The conservative case considered a lower western Canadian crude supply scenario. Earnest Aff. (Exh. 4) at ¶¶ 36.

[22] Mr. Earnest calculates the incremental Lakehead System volume generated by the Extension Pipeline through a comparison of his model with the Extension Pipeline in place and a separate run using the same inputs but without the Extension being available. Earnest Aff. (Exh. 4) at ¶ 40. The differential constitutes the incremental barrels that would not be able to move on the Lakehead System without the Extension. *See* Earnest Aff. (Exh. 4) Exhibit NKE-10.

The first benefit is due to the fact that there will be a reduced need for batch pigging on Line 61. The Schrage Affidavit demonstrates that, at a throughput of 321,000 bpd, Line 61 cannot be used to its maximum efficiency. Below 500,000 bpd, Line 61 will be in what hydraulic engineers call "laminar flow." Schrage Aff. (Exh. 3) at ¶ 26. In laminar flow, the intermixing between separate batches of crude oil is greatly aggravated, leading to a loss of integrity of batches and reduction of crude quality. To avoid those problems, EELP has committed to run "batch pigs" between batches when Line 61 is in laminar flow to maintain batch quality.[23] The cost of those batch pigs in future years is estimated to be between approximately $4 million and $8 million per year, which is recoverable from the Lakehead mainline shippers. *Id.* at ¶ 27 & Exhibit WRS-3. If Line 61 flows at throughputs above 500,000 bpd, it should be in "turbulent flow," which greatly decreases the intermixing of batches. In that event, EELP can discontinue the batch pigging, thereby saving its shippers all or a portion of the $4-8 million annual cost of that exercise. *See id.*

Second, the flowing speed of oil in the Lakehead System will increase as the overall system throughput increases as a result of the Extension. This increased speed results in shorter transit times (*i.e.*, the amount of time a particular batch requires to move from origin to destination). These reduced transit times, in turn, benefit the shippers by lowering the carrying costs on the oil moving in the pipeline. At the higher throughputs attributable to the Extension, the financial savings to mainline shippers in carrying costs can range as high as $27 million per year, as calculated by Mr. Earnest. Earnest Aff. (Exh. 4) at ¶ 41 & Exhibit NKE-11.

Third, construction of the Extension Pipeline will facilitate dedication of certain existing lines to light crude service, which produces additional benefits to crude quality. As Mr. Schrage

[23] A "batch pig" is a device used in pipelines to provide mechanical separation between different grades of crude oil or petroleum products.

explains, a variety of crude oils are transported in batches through the Mustang and Lakehead Systems, resulting in some intermingling between crude batches. Schrage Aff. (Exh. 3) at ¶ 29. This results in contamination, which causes a significant downgrade for light crude and a negligible upgrade for heavy crude. However, when the Extension Pipeline is complete there will be two separate pipeline routes between Superior and Patoka – one down Line 14 and Mustang and the other down Line 61 and the Extension. The presence of a second route will make it more feasible for Mustang Pipeline (which flows roughly parallel to the Extension) to be converted to all-light crude service in the near future. *Id.* at ¶ 32.

The economic impact of this improvement in light crude quality can be measured by comparing the change in crude quality with and without converting Mustang to light service. *Id.* at ¶ 33. As explained by Mr. Schrage:

> In the first part of the analysis, the Extension is deemed completed but the quality optimization does not occur so that 70,000 bpd of synthetic sweet crude destined for Patoka flows through Line 61 from Superior to Flanagan and through the Extension from Flanagan to Patoka. Line 61 and the Extension are both in mixed (light and heavy) service in this scenario and the Extension is in start-stop operation. In the second part of the analysis, the Extension is also built but the crude quality optimization does occur so that 70,000 bpd of synthetic sweet crude moves on Line 14 from Superior to Chicago and on Mustang (140,000 bpd is the capacity of Mustang in light service) from Chicago to Patoka, which are both in light service. The analysis compares the sulfur content and density of the synthetic crude with and without conversion.

Id. As shown in Exhibit WRS-4, when Line 14 and Mustang are converted to light service the sulfur content of the synthetic crude is reduced, resulting in a financial benefit of $11 million per year. Similarly, the synthetic crude's density decrease results in a financial benefit of $10 million per year. Therefore, the total annual economic benefit to shippers of the improved light crude quality is estimated to be $21 million.

Fourth, there will be security benefits to shippers because of the increased flexibility of the pipeline system. Operational problems occur on pipelines, due to unscheduled maintenance or natural disaster. As explained by Mr. Schrage, there are "several proposed projects that, if completed, will add additional outbound pipeline capacity from western Canada, but the increasing western Canada crude production promises to absorb most of the additional capacity." Schrage Aff. (Exh. 3) at ¶ 34. Thus, "anything other than a very short-term outage on any one of the several high-capacity pipeline systems that leave western Canada will result in severe disruptions to the crude market...." *Id.* The ability of the Lakehead System to respond effectively to a pipeline outage elsewhere will be significantly improved by the presence of the Extension Pipeline, because the available capacity on the alternative routes out of Chicago (via Spearhead South and Line 6B) is less than the Extension Pipeline capacity. *Id.* Moreover, the Extension Pipeline also provides shippers with improved operational security because the temporary loss of Lakehead's Line 5, 6B or Spearhead South can be effectively mitigated via the Extension Pipeline. *Id.*

As explained by Mr. Schrage, the Extension Pipeline, in certain situations, can also provide the upstream shippers with security benefits. For example, if the Minnesota Pipeline (which transports crude oil to the Minneapolis-St. Paul area from a connection with the Lakehead System at Clearbrook, Minnesota) incurs a temporary outage of one of its pipelines, the Canadian and U.S. crude that could not reach the area's refineries can be routed to Patoka via the Extension Pipeline. From Patoka, the crude can move via the Capwood System to Wood River, Illinois, and then via the Wood River Pipeline to Minneapolis-St. Paul. See Schrage Aff. (Exh. 3) at ¶ 35. The refineries in Chicago, Toledo, Detroit, Ontario, and western Pennsylvania are also potential upstream beneficiaries of the Extension Pipeline. In the event of an outage on either Lakehead's Line 6A or 14, the Extension Pipeline can be used to transport crude to Patoka, and then back up the ChiCap Pipeline to Chicago, thus supplying both the Chicago area refineries as well as (via Lakehead's Line 6B) the refineries located in Toledo, Detroit, Ontario, and western Pennsylvania. *Id.*

Fifth, there will be a benefit to upstream shippers because certain surcharges they pay to ship on the Lakehead System will be reduced on a per-barrel basis. Mr. Douvris calculates this benefit to be $3.4 million in the first year of service, increasing in 2012 and thereafter as additional volumes become possible because of the Extension. Douvris Aff. (Exh. 5) at ¶¶13-16.

No one can prove today, of course, that any particular volume of throughput will flow through the Extension Pipeline in future years. However, basic logic suggests that CAPP would not be supporting a proposal under which its members (who produce the vast majority of oil transported by Lakehead) would share the throughput risk on the Extension Pipeline unless CAPP were convinced that the Extension Pipeline would eventually be heavily utilized. Recent experience with the Spearhead Pipeline reversal supports the same conclusion. When originally placed into service, Spearhead had a capacity of 125,000 bpd but only transported an average of approximately 70,000 bpd for the first seven months. However, as Canadian oil sands production has ramped up, Spearhead throughput has increased and, since October 2006, Spearhead has been full and in prorationing in most months. Schrage Aff. (Exh. 3) at ¶ 16 n.4. As a result, Spearhead recently filed a Petition for Declaratory Order seeking approval for the tariff terms of an expansion from 125,000 bpd to 190,000 bpd. Petition for Declaratory Order of CCPS Transportation, LLC, Docket No. OR07-17-000 (filed August 13, 2007). Petitioners anticipate a similar pattern of development for the Extension.

Given all these considerations, Petitioners submit that it is fair to ask the upstream shippers on Lakehead to bear a small portion of the risk of the Extension project in the form of the backstopping provisions in the Tariff Agreement. As a total package, this arrangement is fair both to the Extension shippers and the upstream-only shippers because they each share, to some extent, in the costs and benefits of the project.

Dr. Tye, an economist with The Brattle Group, explains in his Affidavit that the two features of the Tariff Agreement – the stand alone local rate on a self-sufficient Extension Pipeline and the backstop provided by Lakehead shippers – respond to the concerns raised by the Commission in its *2006 Settlement Order*. He shows that the Tariff Agreement's stand alone rate for the Extension prevents cross-subsidization, while the upstream benefits from shipments on the Extension compensate upstream shippers for the risk they bear under the backstopping mechanism. Tye Aff. (Exh. 6) at ¶ 21.

D. The Tariff Agreement Does Not Contain the Perceived Flaws That Led to Rejection of the Earlier Offer of Settlement.

The primary reasons given in the *2006 Settlement Order* for the Commission's rejection of the prior Offer of Settlement were: (1) that the permanent recovery of 50-69 percent of the costs of the Extension Pipeline through a surcharge in the Lakehead mainline rates was an unjustified cross-subsidy; (2) that the benefits to upstream-only shippers posited by EELP were "speculative" and had not been quantified or associated with specific upstream segments; and (3) that the transfer of funds from EELP to an affiliate that would own and operate the Extension Pipeline strengthened the appearance of a cross-subsidy. 117 FERC ¶ 61,279 at PP 16, 27. As demonstrated below, these factors do not justify rejection of the Tariff Agreement. On the contrary, the terms proposed here should alleviate all of the concerns identified in the prior order.

With respect to the Commission's comments regarding alleged cross-subsidization, the discussion in Section III.C shows that this proposal does not constitute a cross-subsidy in any meaningful sense. First, over the life of the Tariff Agreement, the Extension rates will be set on a stand alone basis, which avoids any cross-subsidization. Contributions by Lakehead shippers in the early years are repaid with interest in accordance with the Tariff Agreement's terms. Second, to the extent there is any net cost to upstream shippers incurred under the Tariff Agreement, that cost is offset by the other benefits to upstream shippers resulting from the Extension. Those benefits are not speculative, but are specifically supported by quantifiable, objective calculations. Schrage Aff. (Exh. 3) at ¶¶ 34-35 & Exhibits WRS-3 & WRS-4; Earnest Aff. (Exh. 4) Exhibit NKE-11; Douvris Aff. (Exh. 5) Exhibit PD-3.

Finally, the presence of EEC as the owner of the Extension Pipeline should not constitute any impediment to approval of the arrangement. The prior Offer of Settlement was largely silent on the terms for setting the rates on the Extension, possibly leaving the impression that EEC would have an opportunity to profit unduly from the roll-in of costs to the Lakehead System. By comparison, the new Tariff Agreement is quite explicit about the tariff terms for the Extension. Indeed, not only does the Tariff Agreement dictate the cost of service terms for the stand alone rate on the Extension, but through various true-up mechanisms, it assures that EEC cannot recover more than the agreed-upon cost of service (with its stipulated 9% real return on equity) during the term of the Agreement. Given that, the opportunity for EEC to benefit from any "cross-subsidy" is effectively nonexistent. Thus, whether it is EELP or EEC that actually builds and operates the Extension, the result should be both invisible and irrelevant to shippers. The presence of EEC in the transaction, under these circumstances, should not be a concern.

V. COMMUNICATIONS

The following persons are authorized to receive service and communications in this proceeding on behalf of Petitioners: [24]

Helene Long
Associate General Counsel
Liquids Pipelines Regulatory Law
Enbridge Pipelines Inc.
3000, 425 - 1st Street, SW
Calgary, Alberta T2P 3L8
403 231 5774 (o)
403 231 7380 (f)
Helene.Long@enbridge.com

Steven Reed
Cynthia L. Quarterman
Aric A. Anderson
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
T: 202 429 3000
F: 202 429 3902
sreed@steptoe.com
cquarterman@steptoe.com
aanderson@steptoe.com

VI. CONCLUSION

For the reasons stated above, the Commission should issue a declaratory order providing the assurances listed in Section IV of this Petition.

Respectfully submitted,

Steven Reed
Cynthia L. Quarterman
Aric A. Anderson
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Counsel for Enbridge Energy Company, Inc.
and Enbridge Energy, Limited Partnership

Of Counsel:
Helene C. Long
Associate General Counsel, Liquids Pipelines
Regulatory Law
Enbridge Pipelines Inc.
3000 425 1st Street, SW
Calgary, Alberta T2P 3L8

October 18, 2007

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[24] Petitioners request, to the extent necessary, a waiver of Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), limiting to two names the persons upon whom service is to be made.

Exhibit 1

Date: SEPT 12, 2007

Southern Access Extension Tariff Agreement

1. Background and Purpose.

In the event that, in Enbridge's sole discretion, Enbridge constructs the Southern Access Extension, it is the long-term objective of Enbridge and CAPP to have the Southern Access Extension operate as a pipeline with tariff rates set to reflect a stand-alone operation. It is anticipated that the construction of the Southern Access Extension will, among other things, lead to higher upstream volumes resulting in lower tariff rates for upstream shippers. The Parties recognize that interim rate arrangements are needed until the Southern Access Extension reaches self-sufficiency and that after the Southern Access Extension reaches self-sufficiency sustained toll increases could discourage use of the pipeline. Accordingly, the Parties have agreed to certain terms to address these matters, as set forth in this Tariff Agreement.

2. Definitions.

The following capitalized terms shall have the following meanings when used in this Tariff Agreement:

"Account" shall have the meaning set forth in Paragraph 6 hereof.

"Applicable Deficits" shall have the meaning set forth in Paragraph 6 hereof.

"Base Year" shall have the meaning set forth in Paragraph 3 hereof.

"bpd" means barrels per day.

"CAPP" means the Canadian Association of Petroleum Producers.

"Enbridge" means Enbridge Energy Company Inc. or the other owner for the time being of the Southern Access Extension.

"FERC" means the U.S. Federal Energy Regulatory Commission.

"In-Service Date" means the date upon which the Southern Access Extension is able to accept oil.

"Lakehead" means Enbridge Energy, Limited Partnership in its capacity as owner of the Lakehead System.

"Lakehead System" means the crude oil and liquid petroleum pipeline, commonly known as the Lakehead System, that extends from the international border near Neche, North Dakota to the international border near Marysville, Michigan with an extension across the Niagara River into the Buffalo, New York area, owned by Lakehead and regulated by the FERC, as such pipeline may be expanded or modified from time to time.

"Negative Balance" means a negative notional balance in the Account after crediting all surpluses and debiting all Applicable Deficits, including accrued interest, through the date upon which the Negative Balance is determined.

"Parties" means CAPP, Enbridge and Lakehead collectively; "Party" means any one of CAPP, Enbridge or Lakehead.

"Positive Balance" means a positive notional balance in the Account after crediting all surpluses and debiting all Applicable Deficits, including accrued interest, through the date upon which the Positive Balance is determined.

"Pre-Sufficiency Period" means the period commencing on the In-Service Date and continuing until the earlier of (i) the last day of the Term, or (ii) the day immediately preceding the Self-Sufficiency Date.

"Qualifying Volume" means the Southern Access Mainline Expansion Qualifying Volume as defined in the Offer of Settlement in FERC Docket No. OR06-3-000, and as set forth in Attachment B hereto.

"Self-Sufficiency Date" shall mean January 1 of the year in which the Southern Access Extension shall have been in service for three (3) consecutive full calendar years with annual surpluses in each year.

"Self-Sufficiency Period" means the period commencing on the Self-Sufficiency Date and ending on the last day of the Term.

"Southern Access Extension" means the pipeline known as "Southern Access Extension" that will transport crude oil from Flanagan, Illinois to Patoka, Illinois, as more particularly described in Attachment A attached hereto.

"Tariff Agreement" means this Tariff Agreement, as it may be amended, modified or supplemented from time to time by written agreement of the Parties.

"Term" shall have the meaning set forth in Paragraph 7 hereof.

"Zero Balance Date" shall mean the date during the Self-Sufficiency Period on which the notional balance of the Account, including accrued interest, shall reach zero or a positive number.

"Zero Balance Period" shall mean the period commencing on the Zero Balance Date and continuing through the end of the Term.

Certain other terms are defined elsewhere in this Tariff Agreement. In addition, words used in the singular include the plural and words used in the plural include the singular, and the word "hereof" refers to this Tariff Agreement as a whole.

3. <u>Calculation of Local Rates.</u>

(a) Prior to the In-Service Date, Enbridge will calculate and file the local rates for the Southern Access Extension based on a forecast revenue requirement using the parameters set forth in <u>Attachment C</u> hereto and a forecast throughput equal to 340,000 bpd.

(b) Subject to Paragraph 3(c) hereof, at the beginning of each calendar year during the Term, Enbridge will recalculate and re-file the local rates for the Southern Access Extension using the parameters in <u>Attachment C</u> hereto and a forecast throughput equal to 340,000 bpd. During the Self-Sufficiency Period, in recalculating such local rates, Enbridge shall adjust such rates to reflect any under-collections resulting from actual throughput volumes in the immediately preceding year being less than 340,000 bpd or actual costs in the immediately preceding year being more than projected costs for such year. During the Zero Balance Period, in recalculating such local rates, Enbridge shall adjust such rates to reflect any under-collections or over-collections resulting from actual throughput volumes in the immediately preceding year being less or more than 340,000 bpd or actual costs in the immediately preceding year being more or less than projected costs for such year. Any under-collections prior to the Self-Sufficiency Period, and any over-collections prior to the Zero Balance Period, shall be subject to the provisions of Paragraph 5 hereof.

(c) If Enbridge shall, as of the beginning of any calendar year during the Self-Sufficiency Period, determine that: (i) the annual average throughput volumes for the Southern Access Extension were less than 340,000 bpd for at least two (2) consecutive calendar years prior to the date of determination (whether or not such two (2) consecutive calendar years immediately preceded the date of determination); and (ii) the local rates for the Southern Access Extension for the then-current calendar year calculated in accordance with Paragraph 3(b) hereof would be at least 140% of the local rates for the Base Year, then, subject to applicable law, Enbridge shall have complete flexibility and discretion to reduce local rates for the then-current calendar year and subsequent year(s) below the levels provided for in Paragraph 3(b), and in connection with such a reduction may implement a requirement for ship or pay commitments from shippers or take such other actions or measures as Enbridge shall select to enhance the long term viability and continued operation of the Southern Access Extension. For purposes of this Paragraph 3(c), the term "<u>Base Year</u>" shall mean, as of a particular calendar year, the most recent calendar year in which (A) throughput volumes on the Southern Access Extension exceeded an average of 340,000 bpd and (B) the Southern Access Extension had a surplus pursuant to Paragraph 4 hereof. Illustrations of the application of this Paragraph 3(c) are attached hereto as <u>Attachment D</u>.

(d) Following the expiration of the Term, the Southern Access Extension's local rates will no longer be subject to any constraints under this Tariff Agreement except as outlined in Paragraph 4(c) hereof.

4. **Calculation of Deficits and Surpluses.**

(a) At the beginning of each calendar year following the In-Service Date and continuing through the calendar year immediately following the last year of the Term, Enbridge will calculate the difference (positive or negative) for the immediately preceding calendar year between (i) the annual tariff revenue actually collected on the Southern Access Extension, and (ii) the actual revenue requirement of the Southern Access Extension using the parameters set forth in Attachment C hereto and the actual costs for the actual throughput transported on the Southern Access Extension. If in any year the annual tariff revenue is less than the annual actual revenue requirement, the difference will constitute a deficit for that year. If in any year the annual tariff revenue is greater than the annual actual revenue requirement, the difference will constitute a surplus for that year.

(b) If a surplus is generated in the final year of the Term, the final year's surplus will be used to reduce the Southern Access Extension local rates in the year immediately following the expiration of the Term.

(c) Any Negative Balance or, except as set forth in Paragraph 4(b), Positive Balance at the end of the Term will not be recovered or credited in the local rates, the Lakehead System rates or otherwise.

(d) This Paragraph 4 shall survive the termination of this Tariff Agreement.

5. **Lakehead System Rates.**

(a) Pursuant to a separate agreement between Lakehead and Enbridge, Lakehead and Enbridge have agreed that, subject to applicable law and Paragraphs 5(c) and (d) hereof:

(i) Lakehead will recover any annual deficit incurred by the Southern Access Extension by a surcharge in the annual Lakehead System rates. For the avoidance of doubt, Lakehead will recover the full amount of the deficit even though only the Applicable Deficit will be debited to the Account pursuant to Paragraph 6 hereof;

(ii) Enbridge will pay to Lakehead any annual surplus of the Southern Access Extension to be applied as a surcredit in the annual Lakehead System rates; and

(iii) If (i) an annual surplus is generated in each of the first three (3) consecutive full calendar years of the Term, and (ii) there shall be a Positive Balance on the Self-Sufficiency Date, Enbridge will fund to Lakehead an amount equal to the Positive Balance on the

Self-Sufficiency Date to be applied as a surcredit in the annual Lakehead System rates.

(b) To effectuate the agreement referenced in Paragraph 5(a) hereof, subject to applicable law and Paragraphs 5(c) and (d) hereof, on April 1 of each year after the first full or partial calendar year of operation of the Southern Access Extension, (i) if the Southern Access Extension incurs a deficit for the prior calendar year, Lakehead shall be entitled to implement a surcharge in the annual Lakehead System rates to recover such deficit, and (ii) if the Southern Access Extension has a surplus for the prior calendar year, Lakehead shall implement a surcredit in the annual Lakehead System rates to utilize the surplus paid by Enbridge.

(c) From and after the Self-Sufficiency Date, no further revenue deficits will be recovered through a surcharge in the annual Lakehead System rates.

(d) Except as set forth in Paragraph 5(a)(iii), from and after the Zero Balance Date, no further surpluses will be paid to Lakehead to be applied as a surcredit in the annual Lakehead System rates.

(e) This Paragraph 5 shall survive the termination of this Tariff Agreement.

6. Account.

(a) In order to track and reconcile accumulated deficits and surpluses of the Southern Access Extension, Enbridge will establish a notional account (the "Account"). Annual Applicable Deficits and surpluses on the Southern Access Extension will be notionally debited and credited, as applicable, to the Account and will accumulate from year to year. Interest on any Negative Balances and Positive Balances, at the FERC refund interest rate calculated in accordance with 18 C.F.R. § 340.1(c)(2), will be notionally debited and credited, as applicable, to the Account on an annual basis.

(b) Notwithstanding anything in Paragraph 6 to the contrary, from and after the Self-Sufficiency Date:

(i) no Applicable Deficits will be debited to the Account, and

(ii) any annual surpluses will continue to be credited to the Account until the earlier of (A) the last day of the Term, or (B) the Zero Balance Date.

(c) For purposes of this Tariff Agreement, "Applicable Deficits" shall mean:

(i) If the deficit on the Southern Access Extension relates to a calendar year in which the Qualifying Volume averaged 400,000 bpd or less, then 100% of the deficit for that year.

(ii) If the deficit on the Southern Access Extension relates to a calendar year in which the Qualifying Volume exceeded an average of 400,000 bpd, then a prorata share of the deficit corresponding to the ratio that 400,000 bpd bears to the average daily Qualifying Volume during such calendar year.

7. **Term.**

The term of this Tariff Agreement (the "Term") shall commence on the date on which this Tariff Agreement is signed on behalf of CAPP and shall continue (i) through December 31 of the year in which the In-Service Date falls and (ii) thereafter for fifteen (15) calendar years.

8. **Dispute Resolution.**

(a) In the event of a dispute arising out of or relating to this Tariff Agreement (a "Dispute"), the Party wishing to initiate dispute resolution shall give written notice (the "Dispute Notice") to the other Party to the Dispute and outline in reasonable detail the relevant information concerning the Dispute. Within 14 days following receipt of the Dispute Notice, the Parties will each appoint representatives to meet to discuss and attempt to resolve the Dispute. Such representatives shall be individuals that are technically qualified to appreciate and assess the Dispute and have authority to negotiate the Dispute. If the Dispute is not settled within 90 days of receipt of the Dispute Notice, the negotiations will be deemed to have failed.

(b) If the Dispute is not resolved pursuant to the process in (a) above, the Dispute may be referred to the FERC by either Party, for binding resolution on an expedited basis.

9. **Interpretation.**

The Parties have concluded this Tariff Agreement on a negotiated basis based on all of the components reflected herein. The Parties have agreed that no individual components(s) of this Tariff Agreement is to be construed as representing the position of either Party. No element of this Tariff Agreement is to be considered acceptable to either Party in isolation from all other aspects of this Tariff Agreement. The Parties' intent is that this Tariff Agreement is to be viewed as a whole and that there should be no prejudice to the positions of either Party in the future when the Term expires.

ENBRIDGE ENERGY COMPANY INC.

By: ______________________
Name: J. RICHARD BIRD
Title: EXECUTIVE VICE PRESIDENT LIQUIDS PIPELINES
Date: SEPT 12, 2007

Agreed and Accepted

THE CANADIAN ASSOCIATION OF PIPELINE PRODUCERS

By: ______________________
Greg Stringham
Vice President, Markets and Fiscal Policy
Date: Oct 15, 2007

Attachment A

Southern Access Extension

Project Description:

The Southern Access Extension involves the construction of 175 miles of 36-inch diameter pipeline from Flanagan, IL to Patoka, IL. The Southern Access Extension is expected to be in service Q1, 2009 at an initial capacity of 400,000 bpd. Further expansions to 600,000 bpd and 800,000 bpd and will be timed as required by industry

Project Scope

- 175 miles of 36-inch pipe from Flanagan to Patoka
- 2 new pump stations between Flanagan and Patoka
- Allowance for 2 connections at Patoka
- New power infrastructure