

EXECUTION VERSION

Filed: 2017-11-13

EB-2017-0086

Exhibit I.D1.EGDI.TCPL.3

Attachment 2

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FIRST AMENDMENT TO RESTATED PRECEDENT AGREEMENT

This First Amendment (“Amendment”) to the Restated Precedent Agreement dated December 17, 2014 between Enbridge Gas Distribution Inc., an Ontario corporation, (hereafter referred to as “Customer”), and Spectra Energy Transmission, LLC, a Delaware limited liability company (“Spectra”) and DTE Pipeline Company, a Michigan corporation (“DTE”) (Spectra and DTE are collectively referred to herein as “Pipeline”) is effective June 3, 2015. Customer and Pipeline are sometimes referred to herein as a “Party” or collectively as the “Parties.” Capitalized terms used but not defined herein have the meanings given to them in the PA (as the same is defined below).

WHEREAS, the Parties entered into that certain Restated Precedent Agreement (“PA”) dated December 17, 2014 for the purpose of setting forth the terms and conditions according to which Customer would commit to, and Pipeline would provide to Customer, firm transportation service on the Project; and

WHEREAS, the Parties wish to amend the PA to reflect the terms and conditions for service on the Project to be provided by Pipeline to Customer.

NOW THEREFORE for good and valuable consideration, the receipt of which is acknowledged by all Parties hereto as sufficient and received, the Parties hereby agree that the PA shall be amended as follows, effective as of the date indicated above:

1. The phase “Phase II” and all references thereto shall be deleted in each place where it is found in the PA. For these purposes, the term “Project” or the term “transportation” shall be substituted where the context may require to maintain the continuity and meaning of the statement; otherwise, the term shall simply be deleted.
2. The references to the “NEB” in the following sections shall be deleted: Section 1(d); Section 5; Section 7(b)(i); and Section 7(f).
3. The first WHEREAS clause is amended by the following: deleting the phrase “two-phased” in the first line; adding the words “up to” after the word “provide” in the first line; striking the words “one (1) billion” and replacing them with “one and one half (1.5) billion”; striking the words “or more” in the second line; and, in the seventh, eighth and ninth lines, deleting the words from “In Phase I” through “In Phase II.”
4. The second WHEREAS clause is amended by deleting the words “in phases, with Phase I to commence on or about November 1, 2015 and Phase II targeted to commence”.
5. The third WHEREAS clause is amended by deleting the phrase beginning with “pursuant to which” and through the end of the clause.
6. Section 3(b) is amended by inserting the following at the end of the third to last sentence: “provided that, for clarity, the Rate Agreement shall not be revised by Pipeline other than for the sole purpose of conforming the terms of the same with the terms of the NEXUS FERC Gas Tariff (when approved by FERC) and, to the extent not materially adverse to Customer within the context of its participation as a shipper in the Project, with the terms agreed to in rate agreements of other anchor shippers for the Project.”

7. Section 3(d)(ii)(2) is deleted in its entirety and replaced with the following:

The estimated Reservation Rates and fuel rates for service under the Service Agreement shall be set forth in the Rate Agreement provided in accordance with Section 3(d)(ii)(3) below. The estimated capital costs associated with the construction of the facilities necessary for Pipeline to provide Project service for Customer and all other customers subscribing Project service in the U.S. (the "Project Facilities") will be reflected in an estimate to be provided by Pipeline to Customer in accordance with Section 3(d)(ii)(3) below.

8. Section 3(d)(ii)(3) is deleted in its entirety and replaced with the following:

Contemporaneously with the execution of the First Amendment to this Restated Precedent Agreement, Pipeline shall deliver to Customer the following: (a) the final rate agreement for the Service Agreement (the "Rate Agreement"), which shall include the final estimate of the Reservation Rate (the "Final Estimated Reservation Rate") (subject only to the Capital Cost Tracking Adjustment, as defined below) and estimated fuel rate; (b) a final breakdown of how Pipeline derived the Final Estimated Reservation Rate, including a breakdown of such portion of the Final Estimated Reservation Rate that is derived from the Final Capital Cost Estimate (as defined below) ("Rate Breakdown"); and (c) an estimate of the capital costs associated with the construction of the Project Facilities ("Final Capital Cost Estimate"). The Rate Agreement shall provide, consistent with Exhibit C, that the Final Estimated Reservation Rate shall be subject to an aggregate fifteen percent (+ / - 15%) capital cost tracking adjustment (as more particularly described in Exhibit C, the "Capital Cost Tracking Adjustment"). Pipeline and Customer shall hereafter execute the Rate Agreement as expeditiously as is practicable.

9. Section 3(d)(ii)(4) is deleted in its entirety.

10. Section 7(b)(i) is amended by replacing "2015" with "2016" in the first line.

11. Section 7(c)(ii) is deleted in its entirety and replaced with "*Intentionally left blank*".

12. Section 7(c)(iv) is deleted in its entirety and replaced with "*Intentionally left blank*".

13. Section 7(c)(v) is amended by adding the words "Subject to Section 7(d)" at the beginning of the section.

14. Add a new Section 7(c)(vii) stating as follows: "Subject to the other terms of this Restated Precedent Agreement, Customer acknowledges that it has received, prior to the Effective Date, the requisite internal corporate approvals for the performance of Customer's obligations under this Restated Precedent Agreement and other agreements related to the service contemplated hereunder."

15. Section 7(d) is amended by adding “7(c)(v)” after “7(c)(iii)” and by replacing the reference to “7(c)(iv)” with “7(c)(vi)”.
16. Section 8 is amended by adding the word “material” added after “its’ in the first line, and by adding the following after the sentence ending “or other remedies from Customer.” and prior to the sentence beginning “If this Restated Precedent Agreement is terminated”:

Pipeline represents that no work to be conducted in relation to Pre-Service Costs will be conducted in Canada. In the event that Pipeline issues to Customer an invoice in relation to Pre-Service Costs work conducted in Canada, Pipeline shall separate the invoice between work performed in Canada and outside of Canada, identify on the invoice the number of days performing work in Canada (including travel days to/from Canada) and the physical location, indicating city and province, where the Canadian work was performed. Customer shall request from Pipeline the relevant documentation necessary to determine the appropriate withholding amount, if any, for tax purposes. In the event that taxes are withheld from the Pre-Service Costs paid by Customer, then Customer shall remit such withheld taxes to the applicable taxing authority and the Customer will provide to Pipeline, after the applicable calendar year end, Pipeline’s U.S. Federal Form 1099, a comparable state form or Canadian Revenue Authority equivalent, if applicable, within the applicable statutory time frame. In the event that Customer is assessed for any non-resident withholding taxes payable, Pipeline agrees to forthwith reimburse Customer for such amount together with applicable interest and penalties, if any.”

17. Section 9(a) is amended by adding the word “direct” before the word “result” in the last sentence, and by adding the word “material” prior to the word “breach” in the last sentence.
18. Section 9(c) is amended by adding the following, beginning prior to the period at the end of the first sentence, and ending prior to the words “Notwithstanding the foregoing,”:

, provided that such Party claiming Force Majeure shall give written notice of the suspension of such performance for this reason as soon as reasonably possible to the other Party and stating the date and extent of such suspension and the cause thereof. The Party whose obligations have been suspended as aforesaid shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify, in writing, the other Party that the suspension has terminated.

19. Add a new Section 26, as follows: “Entire Agreement. This Restated Precedent Agreement and the other agreements contemplated herein to be executed and delivered by the Parties embody the complete agreement and understanding among the Parties with respect to the subject matter hereof and supersede and pre-empt any prior understandings, agreements (including, without limitation, the Original Precedent Agreement) or representations by or among the Parties, written or oral, which may have related to the subject matter hereof in any way.”
20. Exhibit C is deleted in its entirety and replaced with the language set forth on Exhibit 1 to this Amendment.

21. Exhibit F is amended as follows:

- a. Delete the following defined terms: (i) "Class III Estimate"; (ii) "Estimated Phase II Rate"; (iii) "New Phase II Facilities"; (iv) "Phase I"; (v) "Phase II"; (vi) "Revised Phase II Rate".
- b. In respect of the defined term "Final Reservation Rate" add the words "Estimated" between "Final" and "Reservation Rate";
- c. Add the following defined term: "**Exhibit K**" has the meaning ascribed to that term in the FERC regulations in Title 18 of the Code of Federal Regulations;
- d. Add the following defined term: "**Final Reservation Rate**" has the meaning ascribed to that term in Exhibit C;
- e. Add the following defined term: "**Final Capital Cost**" has the meaning ascribed to that term in Exhibit C;
- f. Add the following defined term: "**Final Capital Cost Estimate**" has the meaning ascribed to that term in Section 3(d)(ii)(3);
- g. Add the following defined term: "**Project Facilities Rate Portion**" has the meaning ascribed to that term in Exhibit C;
- h. Add the following defined term: "**Updated Capital Cost**" has the meaning ascribed to such term in Exhibit C.
- i. Add the following defined term: "**Updated Reservation Rate**" has the meaning ascribed to that term in Exhibit C;

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IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Amendment, effective as of the date first above written.

ENBRIDGE GAS DISTRIBUTION INC.:

BY: (Original Signed)

NAME: Malini Giridhar

TITLE: Vice President, Gas Supply & Business Development

BY: (Original Signed)

NAME: Glen Beaumont

TITLE: President

SPECTRA ENERGY TRANSMISSION, LLC

BY: (Original Signed)

NAME: William T. Yardley

TITLE: President

DTE PIPELINE COMPANY

BY: (Original Signed)

NAME: David Slater

TITLE: President

Exhibit 1

REPLACEMENT EXHIBIT C TO RESTATED PRECEDENT AGREEMENT

Capital Cost Tracking Adjustment
for
Statement of Negotiated Rates

Project Facilities

Pipeline and Customer acknowledge that the capital costs attributable to the Project Facilities, which capital costs will underlie a portion of the Reservation Rate for firm transportation service for the Project, will be reflected in the Final Capital Cost Estimate to be provided to Customer by Pipeline in accordance with Sections 3(d)(ii)(2) and 3(d)(ii)(3).

Negotiated Reservation Rate Adjustment

The Final Estimated Reservation Rate will be adjusted, pursuant to the provisions set forth herein, to reflect any differences between the Final Capital Cost Estimate and the actual amount of capital costs attributable to the Project Facilities.

Pipeline will adjust the portion of the Final Estimated Reservation Rate attributable to the Project Facilities as set forth in the final Rate Breakdown (the "**Project Facilities Rate Portion**") at least thirty (30) days, but not more than sixty (60) days, prior to the Service Commencement Date. The adjustment to the Project Facilities Rate Portion will be based on a comparison between the Final Capital Cost Estimate and an updated cost report prepared by Pipeline and provided to Customer which updates the estimate of the capital costs for the Project Facilities, substantially in the form of an Exhibit K (the "**Updated Capital Cost**"). Pipeline will file such Updated Capital Cost report with the Federal Energy Regulatory Commission ("Commission") at least thirty (30) days, but not more than sixty (60) days, prior to the Service Commencement Date.

In making the adjustment described above, Pipeline will adjust the Project Facilities Rate Portion to reflect the percentage increase or decrease between the Updated Capital Cost and the Final Capital Cost Estimate. In the event that the Updated Capital Cost exceeds the Final Capital Cost Estimate, the Project Facilities Rate Portion of the Final Estimated Reservation Rate will be adjusted upward by multiplying it to the ratio of the Updated Capital Cost to the Final Capital Cost Estimate; provided that, notwithstanding any other provision contained herein, if the Updated Capital Cost exceeds the Final Capital Cost Estimate by more than 15%, then the multiplier to the Project Facilities Rate Portion will be 1.15. For the avoidance of doubt, in any event, the maximum upward adjustment to the Project Facilities Rate Portion shall be capped at 1.15 of what was set forth in the Rate Breakdown for the Project Facilities Rate Portion provided by Pipeline pursuant to Section 3(d)(ii)(3). In the event that the Updated Capital Cost is less than the Final Capital Cost Estimate, the Project Facilities Rate Portion of the Final Estimated Reservation Rate will be adjusted downward by multiplying it to the ratio of the Updated

Capital Cost to the Final Capital Cost Estimate; provided that, notwithstanding any other provision contained herein, if the Updated Capital Cost is less than the Final Capital Cost Estimate by more than 15%, then the multiplier to the Project Facilities Rate Portion will be .85. For the avoidance of doubt, in any event, the maximum downward adjustment to the Project Facilities Rate Portion shall be capped at .85 of what was set forth in the Rate Breakdown for the Project Facilities Rate Portion provided by Pipeline pursuant to Section 3(d)(ii)(3). The reservation rate resulting from the adjustment provided for in this paragraph shall be the “**Updated Reservation Rate**”.

Pipeline will make a final adjustment to the Project Facilities Rate Portion no later than 210 days after the Service Commencement Date. In making the final adjustment, Pipeline shall prepare and provide to Customer a final cost report which sets forth the actual capital costs for the Project Facilities, substantially in the form of an Exhibit K (“**Final Capital Cost**”). In the event the Final Capital Cost exceeds the Updated Capital Cost, then the Project Facilities Rate Portion of the Updated Reservation Rate will be adjusted by multiplying the Project Facilities Rate Portion of the Final Estimated Reservation Rate to the ratio of the Final Capital Cost to the Final Capital Cost Estimate; provided that, in any event, the maximum upward adjustment to the Project Facilities Rate Portion shall be capped at 1.15 of what was set forth in the Rate Breakdown for the Project Facilities Rate Portion provided by Pipeline pursuant to Section 3(d)(ii)(3). In the event the Final Capital Cost is less than the Updated Capital Cost, then the Project Facilities Rate Portion of the Updated Reservation Rate will be adjusted by multiplying the Project Facilities Rate Portion of the Final Estimated Reservation Rate to the ratio of the Final Capital Cost to the Final Capital Cost Estimate; provided that, in any event, the maximum downward adjustment to the Project Facilities Rate Portion shall be capped at .85 of what was set forth in the Rate Breakdown for the Project Facilities Rate Portion provided by Pipeline pursuant to Section 3(d)(ii)(3). The reservation rate resulting from the adjustment provided for in this paragraph shall be the “**Final Reservation Rate**”.

In the event that the adjusted Reservation Rate decreases because the Final Capital Cost is less than the Updated Capital Cost, Pipeline will refund Customer an amount (including interest at the Commission’s approved interest rate pursuant to 18 C.F.R. §154.501, hereafter the “**FERC Interest Rate**”) equal to the difference between the revenue received from Customer for the time period that Customer paid the Updated Reservation Rate and the revenue that Pipeline would receive for such time period had Customer paid the Final Reservation Rate. In the event that the adjusted Reservation Rate increases because the Final Capital Cost is more than the Updated Capital Cost, Customer will pay Pipeline an amount (including interest at the FERC Interest Rate) equal to the difference between the revenue received from Customer for the time period that Customer paid the Updated Reservation Rate and the revenue that Pipeline would have received for the time period had Customer paid the Final Reservation Rate.

Recourse Reservation Rate Adjustment

In the case of an upward adjustment to the Final Estimated Reservation Rate, Pipeline will file the Updated Capital Cost report, together with an adjusted recourse rate

applicable to transportation service for the Project, with the Commission at least thirty (30) days, but no more than sixty (60) days, prior to the Service Commencement Date. In the case of a downward adjustment to the Final Estimated Reservation Rate, Pipeline has the right, but not any obligation, to prepare and file such Updated Capital Cost report and/or an adjustment to the recourse rate applicable to transportation service for the Project with the Commission.

Cost Reports

Pipeline will prepare the Updated Capital Cost report in accordance with Section 157.14(a)(13) of Title 18 of the Code of Federal Regulations. Such report will reflect Pipeline's reasonable good faith estimate at the time of the total capital costs attributable to Project Facilities as constructed. Pipeline will prepare the Final Capital Cost report in accordance with Section 157.14(a)(13) of Title 18 of the Code of Federal Regulations. Such report will reflect Pipeline's actual capital costs attributable to the Project Facilities as constructed.