

**Appendix 3-4**

**Petroleum Tariff – Rules and Regulations**

NEB Tariff \_\_\_\_\_

# Energy East Pipeline System

## Petroleum Tariff

### Containing Rules and Regulations Applying to the Transportation of Petroleum

The rules and regulations herein apply only under tariffs making specific reference by NEB Tariff number to this tariff, such reference will include amendments and supplements hereto or successive issues hereof.

**Issued:** [date]

**Issued by:**

Energy East Pipeline Ltd.,  
as general partner on behalf of  
Energy East Pipeline Limited Partnership  
450 – 1<sup>st</sup> Street SW  
Calgary, Alberta  
T2P 5H1

**Effective:** [date]

**Compiled by:**

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**Rule 1**  
**DEFINITIONS**

**1.1 Definitions.** Except where the context expressly states another meaning, the following terms, when used in these Rules and Regulations, or in any Contract or Petroleum toll schedule into which these Rules and Regulations are incorporated, shall have the following meanings:

**“Adverse Encumbrance”** has the meaning set out in Rule 14.1.

**“Affiliate”** means any Person that, directly or indirectly:

- (i) controls a Party;
- (ii) is controlled by a Party; or
- (iii) is controlled by the same Person that controls a Party;

it being understood and agreed that for purposes of this definition the terms **“controls”** and **“controlled by”** shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact regardless of whether such ownership occurs directly or indirectly, and without restricting the generality of the foregoing includes, with respect to the control of or by a corporation or partnership, the ownership of shares or equity interests carrying not less than 50% of the voting rights.

**“Allocated Volume”** means, for any Month, that volume of Pipeline System capacity allocated to a Shipper pursuant to Rule 7.

**“Alternate Delivery Point”** has the meaning set out in Rule 3.5(ii).

**“Alternate Receipt Point”** has the meaning set out in Rule 3.5(i).

**“API”** means American Petroleum Institute.

**“Applicable Law”** means any applicable:

- (i) laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations and municipal by-laws of any Governmental Authority; and
- (ii) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Authority,

in each case to the extent having jurisdiction over the Pipeline System or the Parties.

**“ASTM”** means American Society for Testing and Materials.

**“Available Capacity”** has the meaning set out in Rule 7.2.

**“Business Day”** means any day from 8:00am to 5:00pm that the financial institution designated by Carrier for payment pursuant to Rule 8.2 is open to the general public for business, and specifically excludes Saturdays, Sundays and statutory holidays.

**“Carrier”** means Energy East Pipeline Limited Partnership and its successors and assigns.

**“Carrier Force Majeure”** means an event of Force Majeure declared by Carrier.

“**Carrier Liability Event**” means an event or circumstance directly caused by Carrier’s direct negligence, wilful misconduct or breach of a material provision of the Contract or these Rules and Regulations.

“**Commencement Date**” means (i) in the case of transportation service under a Contract with a Term Shipper, the “Commencement Date” as defined in the Contract between Carrier and such Term Shipper, and (ii) in the case of transportation service for all other Shippers, the date upon which Petroleum is first Tendered to Carrier at a Receipt Point and authorized by Carrier for transportation service hereunder.

“**Contract**” means a Petroleum Transportation Service Agreement between Carrier and a Shipper for the transportation and delivery of Petroleum on any portion of the Pipeline System, or for any related services.

“**Contract Delivery Point**” means any Delivery Point(s) specified by a Term Shipper in Appendix A of a Contract.

“**Contract Receipt Point**” means any Receipt Point(s) specified by a Term Shipper in Appendix A of a Contract.

“**Contract Volume**” means the daily volume of Petroleum specified by Term Shipper in Appendix A of a Contract, whereby Term Shipper commits to transportation and/or other services on the Pipeline System under the terms of such Contract.

“**Credit Support Provider**” means any Person or entity that has provided a guarantee (in accordance with the applicable Contract and these Rules and Regulations) supporting Shipper’s obligations under a Contract or the Tariff.

“**Creditworthy**” and any derivative thereof, has the meaning set out in Rule 17.2.

“**Cubic Metre**” ( $m^3$ ) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius ( $15^{\circ}C$ ) and at a pressure of 101.325 kiloPascals and equals 264.1721 United States gallons and 6.2898108 barrels, under the same conditions.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Standard Time. The reference date for any Day shall be the calendar date upon which the 24 hour period shall commence.

“**Default Notice**” has the meaning set out in Rule 11.1.

“**Default Period**” has the meaning set out in Rule 11.1.

“**Defaulting Party**” has the meaning set out in Rule 11.1.

“**Deliver**” and any derivative thereof, means the delivery of Petroleum by Carrier to a Shipper at a Delivery Point pursuant to the Tariff.

“**Delivery Point**” means a point on the Pipeline System recognized by Carrier as a Delivery Point, as set forth in any Petroleum toll schedule forming part of the Tariff.

“**Financial Assurances**” has the meaning set out in Rule 17.1.

“**Financial Information**” has the meaning set out in Rule 17.1.

“**Force Majeure**” means any event, cause, circumstance or occurrence beyond the reasonable control of the Party claiming force majeure (acting and having acted with due diligence and in a reasonable manner) which delays, hinders or prevents such Party from fulfilling any one or more of its obligations under these Rules and Regulations or a Contract. Events which constitute events of Force Majeure include any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, acts of protest or civil disobedience, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, seriously adverse weather conditions, storms, civil disturbances, the act, regulation, order, direction or requisition of any Governmental Authority (whether or not legally valid), breakdown or failures of pipe, plant, machinery or equipment, pipeline leaks, inability to obtain or the curtailment of electric power, water or fuel. Events listed in Rule 13.2 shall not constitute an event of Force Majeure.

“**Governmental Authority**” means any:

- (i) government, parliament or legislature, any regulatory or administrative authority, agency, commission or board and any other statute, rule or regulation making entity having jurisdiction over all or part of the Pipeline System or the Parties;
- (ii) Person acting under the authority of any of the foregoing or under a statute, rule or regulation thereof; and
- (iii) judicial, appellate, administrative or arbitral courts, authority, tribunal or commission having jurisdiction over all or part of the Pipeline System or the Parties.

“**Gross Standard Volume**” means the volume of Petroleum measured in Cubic Metres in accordance with the most current standards established by ASTM.

“**Insolvency Event**” means, in relation to any Person, the occurrence of one or more of the following events:

- (i) it ceases to meet its liabilities generally as they become due or gives notice to any of its creditors that it has suspended or is about to suspend payment of its debts generally;
- (ii) it institutes or has instituted against it any proceeding under bankruptcy or insolvency laws, including, the *Bankruptcy and Insolvency Act* (Canada), the *United States Bankruptcy Code*, and *Companies' Creditors' Arrangement Act* (Canada) and, in the case that such a proceeding is instituted against it, such proceeding is not dismissed, discharged or stayed within 30 days of being instituted;
- (iii) it seeks relief under any companies or corporations legislation respecting creditors' rights;
- (iv) it takes any steps for, or becomes the subject of any proceeding for, liquidation, dissolution, winding up or other termination of its existence; and, in the case that such a proceeding is instituted against it, such proceeding is not dismissed, discharged, or stayed within 15 days of being instituted; or
- (v) a receiver or receiver manager of all or any part of its assets is appointed by any of its creditors or by a court of competent jurisdiction and such receiver or receiver manager is not discharged or removed within 15 days.

“**kiloPascal**” (**kPa**) is equivalent to 0.1450377 pounds per square inch (psi).

“**Month**” means the period beginning at the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.

“**Monthly Nomination**” has the meaning set out in Rule 7.1.

“**Monthly Revenue Commitment**” means the product of the Monthly Volume multiplied by the fixed toll as described in Appendix B of a Contract, as such Monthly Revenue Commitment may be adjusted in accordance with Appendix B of a Contract.

“**Monthly Volume**” means the product of the Contract Volume multiplied by the number of Days in the applicable Month.

“**NEB**” means the National Energy Board of Canada or any Governmental Authority hereafter having a similar jurisdiction in substitution therefor.

“**Net Standard Volume**” means the Gross Standard Volume minus the basic sediment, water component and other impurities.

“**Nomination**” and any derivative thereof, means the volume of Petroleum specified by Shipper in the Notice of Shipment as described in Rule 7.1.

“**Non-Term Shipper**” means a Shipper that is not a Term Shipper.

“**Notice of Shipment**” means the form prescribed by Carrier from time to time to be used by Shipper to notify Carrier of proposed Tenders for the following Month, as such form may be amended by Carrier from time to time. A Notice of Shipment may include Shipper’s name, contact person and contact information, Month of shipment and volume of Petroleum to be Tendered in such Month, and the designated Receipt Point(s) and Delivery Point(s).

“**Party**” means Carrier or a Shipper, as applicable, and “**Parties**” means both Carrier and a Shipper.

“**Payment Due Date**” means the 25<sup>th</sup> day of each calendar month. If such day is not a Business Day, then the Payment Due Date shall be the first Business Day immediately after such day.

“**Person**” means an individual, company, corporation (including a non-profit corporation), sole proprietorship, general or limited partnership, limited liability company, joint venture, syndicate, estate, trust, association, organization, labour union, or other entity or Governmental Authority, and shall include any successor (by merger, amalgamation or otherwise) of such entity, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

“**Petroleum**” means the direct liquid product of oil wells, oil processing plants, oil sands, or a mixture of such products, but does not include natural gas, natural gas liquids, or refined petroleum products. For the purposes of this definition, “oil” includes crude oil, synthetic crude oil, condensate or a bitumen blend (consisting of bitumen blended with synthetic crude oil, condensate or both, that is recovered in processing) and that is in a liquid state at the conditions under which its volume is measured or estimated.

“**Pipeline System**” means the Petroleum receipt, terminalling, tankage, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned or controlled by Carrier, as such facilities may be modified, expanded or extended from time to time.

“**Position Settlement**” means the Monthly process used by Carrier to balance Shipper positions by financially settling individual Shipper overages and shortages (including losses for shrinkage and evaporation incident to Carrier transportation) on the Pipeline System for the preceding month, thereby resulting in the balancing of all Shipper positions from one Month to the next, as described in Rule 5.4(ii).

“**Position Settlement Cost Recovery**” means the *pro rata* allocation method used to distribute the aggregated financial gain or loss resulting from Position Settlement among all Shippers subject to Position Settlement for a Month, as described in Rule 5.4(ii).

“**Prime Rate**” means the variable annual rate of interest charged by the Royal Bank of Canada, Main Branch, Calgary, Alberta (or its successor), as its reference rate of interest for calculating interest on variable rate commercial loans made in Canadian dollars in Canada to its most creditworthy customers.

“**Receipt Point**” means a point on the Pipeline System recognized by Carrier as a Receipt Point, as set forth in any Petroleum toll schedule forming part of the Tariff, where facilities have been provided by Carrier to permit a Shipper to Tender Petroleum.

“**Remaining Available Capacity**” means the positive difference, if any, between Available Capacity and the aggregate of all volumes allocated to Term Shippers pursuant to Rule 7.2(i).

“**Shipper**” means any Person who uses the services of the Pipeline System pursuant to the Tariff.

“**Special Damages**” means, collectively, any consequential (including loss of revenue or loss of profit), incidental, punitive or exemplary damages, howsoever characterized, regardless of whether such damages or losses are direct or indirect. Notwithstanding the foregoing definition, Special Damages shall not include any payment obligations to Carrier as set forth in a Contract or the Tariff, including any accelerations thereof.

“**Tariff**” means the currently effective Rules and Regulations and any Petroleum toll schedule filed at the NEB by Carrier, all as may be amended from time to time.

“**Tender**” and any derivative thereof, means the delivery by a Shipper to Carrier at a Receipt Point of a stated quantity and commodity type of Petroleum for transportation from such Receipt Point to a Delivery Point pursuant to a Nomination.

“**Term Shipper**” means a Shipper that is a party to a Contract.

“**Uncommitted Toll**” means the tolls and other charges payable by Shippers for uncommitted volumes pursuant to the Tariff.

“**Working Stock**” means the volume and commodity type(s) of Petroleum required to be held by Carrier within the Pipeline System for operational and scheduling purposes, as determined and specified from time to time by Carrier. Working Stock shall include the volume and commodity type(s) of Petroleum required by Carrier, at locations where Carrier owns or controls tankage, to float tank roofs to working levels and to maintain that level.

“Year” means a period of 365 consecutive Days; provided however, that any year which contains the date February 29 shall consist of 366 consecutive Days.

- 1.2 Construction.** In construing these Rules and Regulations; (a) unless otherwise specified, references to Rules refer to Rules of these Rules and Regulations, (b) no consideration shall be given to the captions of any Rules, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, (c) where the word “including” or “includes” is used, it means “including (or includes) without limitation”, and (d) the singular shall be deemed to include the plural and *vice versa*.

## **Rule 2 COMMODITY AND STANDARD**

- 2.1 Commodity.** The Tariff applies to the transportation of Petroleum by Carrier and Carrier shall have no obligation to transport any commodity other than Petroleum.
- 2.2 Standard.** Carrier shall act as a reasonable and prudent operator in the discharge of Carrier’s duties hereunder.

## **Rule 3 ORIGIN, DESTINATION DELIVERY AND ACCEPTANCE**

- 3.1 Acceptance and Delivery.** Petroleum will be accepted for transportation only when Tendered at a Receipt Point and Nominated for Delivery to the Shipper or its consignee or designee at one or more Delivery Points pursuant to the Tariff.
- 3.2 Delivery Facilities.** Petroleum will be accepted for transportation only when the Shipper has provided or made arrangements for the necessary facilities and/or transportation service satisfactory to Carrier at the specified Receipt Point and Delivery Point for handling the Petroleum at the rate of flow or on other conditions at which Carrier is then operating the Pipeline System at such Receipt Point and Delivery Point.
- 3.3 Transportation and Removal.** Carrier will transport Petroleum with reasonable diligence and dispatch, and Shipper shall, with reasonable diligence and dispatch, accept and remove its Petroleum from the facilities of Carrier upon Delivery of the Petroleum at a Delivery Point.
- 3.4 Carrier Removal and Sale.** If Shipper fails to remove its Petroleum from the Pipeline System with reasonable diligence and dispatch upon Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Rule 8.6. Carrier may retain from the proceeds of such sale:
- (i) all costs and expenses incurred by Carrier with respect to the storage, transportation, removal and sale of such Petroleum; and
  - (ii) all tolls and other charges due and payable to Carrier under the applicable Contract or the Tariff.

The remainder of such proceeds, if any, shall be held by Carrier for the Shipper and any other Person lawfully entitled to such proceeds and may be commingled in any account or accounts maintained by Carrier from time to time, without any obligation to pay interest thereon. Where



determinable by Carrier, Carrier shall make prompt payment of such proceeds to Shipper or such other Person lawfully entitled to such proceeds.

**3.5 Alternate Receipt Points and Alternate Delivery Points.** Carrier may, at Carrier's discretion, upon written request of Shipper, subject to (a) operating conditions, and (b) Available Capacity:

- (i) allow a Term Shipper to Nominate an alternate Receipt Point in the Tariff other than its Contract Receipt Point (an "**Alternate Receipt Point**");
- (ii) (1) allow a Term Shipper to Nominate an alternate Delivery Point in the Tariff other than its Contract Delivery Point, or (2) allow a Shipper to change the Delivery Point designated in its Nomination to an alternate Delivery Point in the Tariff (either of which alternate Delivery Point is an "**Alternate Delivery Point**");

provided that in any such circumstance such Shipper will be responsible for any applicable tolls, rates and other charges payable for Petroleum accepted at such Alternate Receipt Point and/or delivered to such Alternate Delivery Point.

**3.6 Information Pertaining to Source.** Each Shipper shall be responsible to maintain all information pertaining to source, including the country of origin, of Shipper's Petroleum or its respective components received by, transported through or stored in the Pipeline System in accordance with Applicable Law, including information pertaining to the origin of Shipper's Petroleum or its respective components for any purpose, including qualification for preferential tariff treatment under the North American Free Trade Agreement. At no time will Carrier be required to maintain or provide any such information.

#### **Rule 4 QUALITY**

**4.1 Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Rules 4.2 and, 4.3 will be permitted in the Pipeline System. Shipper will not Tender to Carrier, and Carrier will have no obligation to accept, transport or Deliver Petroleum which does not meet such specifications.

**4.2 Specifications of Petroleum.** For the purposes of Rule 4.1, the specifications of the Petroleum shall be as follows:

- (i) Crude Vapor Pressure shall not exceed 101.3kPa as tested by ASTM D6377;
- (ii) sediment, water and other impurities shall not exceed one-half of one percent (0.5%) of volume, as determined by the centrifuge method in accordance with current standards or by any other test as may be established by Carrier from time to time;
- (iii) the temperature at the Receipt Point shall not exceed thirty-eight degrees Celsius (38°C);
- (iv) the density at the Receipt Point shall not exceed nine hundred and forty kilograms per Cubic Metre (940 kg/m<sup>3</sup>);
- (v) the kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second (mm<sup>2</sup>/s) determined at Carrier's reference line temperature as posted on Carrier's website; and
- (vi) shall have no physical or chemical characteristics that may render such Petroleum not readily transportable by Carrier or that may materially affect the quality of other Petroleum transported by Carrier or that may otherwise cause disadvantage or harm to Carrier or the Pipeline System, or otherwise impair Carrier's ability to provide service on the Pipeline System.

Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Carrier, the Pipeline System, other Shippers or downstream facilities, or which may otherwise interfere with the transportation or terminalling of Petroleum in the Pipeline System.

- 4.3 Modifications to Specifications.** Notwithstanding Rules 4.1 and 4.2, or any other provision in these Rules and Regulations to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Rule 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel, or to ensure compliance with federal, provincial or local requirements.
- 4.4 Certificate of Specifications.** At the reasonable request of Carrier, Shipper shall provide to Carrier a certificate with respect to the specifications of Petroleum to be Tendered by Shipper for transportation on the Pipeline System. Such certificate shall identify the specifications for each commodity type of Petroleum to be Tendered by Shipper. In the event that Shipper fails to provide Carrier with such certificate prior to such Petroleum being Tendered by Shipper, Carrier shall have the right to refuse to accept Shipper's Petroleum for transportation on the Pipeline System.
- 4.5 Quality Determination.** Carrier shall have the right to perform quality and component analysis on any and all of the Petroleum that has been Tendered by Shipper in accordance with applicable API/ASTM standards (most recent version) and pipeline industry practice, on reasonable notice to Shipper where practicable. Carrier's determinations in this regard shall be final and binding on Shipper. The Shipper may have a representative present at the testing.
- 4.6 Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Rule 4.2 then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its off-specification Petroleum from the Pipeline System as and when directed by Carrier acting reasonably.
- 4.7 Failure to Remove Objectionable Matter.** If a Shipper fails to remove its non-specification Petroleum from the Pipeline System in accordance with the provisions of Rule 4.6, then, in addition to any other remedy available to Carrier under the Tariff, at law or in equity, Carrier shall have the right to remove and sell such Petroleum in any manner deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum and Carrier shall be entitled to retain a reasonable pre-estimate of any damages, losses, costs, expenses and other charges incurred or anticipated to be incurred by Carrier in respect of the presence of such objectionable matter. The remainder of such proceeds, if any, shall be promptly paid by Carrier to the Shipper or as directed in writing by Shipper. Carrier may take such further reasonable action and recourse as it deems appropriate to mitigate or otherwise deal with any adverse impact to Carrier, the Pipeline System or other Shippers that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Rule 9.1 and Rule 9.2 for any adverse impacts to other Shippers or to downstream facilities imposed on Carrier that are attributable to the presence of such objectionable matter.
- 4.8 Grades of Petroleum.** Carrier may establish the grades or commodity types of Petroleum it will regularly transport as on the Pipeline System in respect of any common stream between a Receipt Point and a Delivery Point. Carrier may from time to time, on reasonable grounds after providing reasonable notice to Persons who may be affected, cease to transport any such grades or commodity types of Petroleum.

**Rule 5**  
**MEASUREMENTS**

- 5.1 Measurement Base.** The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Metre.
- 5.2 Metering.** All Petroleum received by Carrier pursuant to the Tariff shall be gauged or metered and tested by a representative of Carrier prior to, during, or after its acceptance at the Receipt Point(s) and at the Delivery Point(s). A Shipper may have a representative present at the gauging, metering and testing. All measurement procedures are to be conducted in accordance with applicable API/ASTM standards (most current version) and Petroleum pipeline industry practice or such other tests as may be agreed upon by Carrier and Shippers. If tank calibration tables are used for such purpose, quantities will be computed from the most recent regularly compiled tank calibration tables showing 100% of the full capacity of the tanks. Such tank calibration tables shall be maintained in accordance with API 653. Carrier shall prove all custody transfer meters at least once each month (providing reasonable Shipper notification where practicable) and Shipper may have a representative present to witness such proving. In addition, Shipper shall have the right to request that a meter(s) be proven if it has reasonable grounds to believe that such meter is not functioning properly. Should any meter be determined by Carrier to be functioning improperly, Carrier shall promptly notify each Shipper affected thereby. Whenever there is substantial evidence of meter malfunction in a custody transfer measurement, the parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to 120 Days after the date that the affected Party discovers and advises the other Party of the meter malfunction.
- 5.3 Meter Tickets.** All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing, at minimum:
- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
  - (ii) kinematic viscosity and associated temperature;
  - (iii) weighted average density;
  - (iv) weighted average pressure; and
  - (v) basic sediment and water.
- 5.4 Accounting for Tender.**
- (i) **Overages and Shortages.** Carrier shall deliver and account to each Shipper for 100% of Petroleum Tendered for its account subject to any actual Pipeline System gains or losses due to evaporation or shrinkage due to normal pipeline operations on the Pipeline System. Adjustments for overages or shortages (including losses for shrinkage and evaporation incident to Carrier transportation or other Pipeline System services provided), will then be based on the proportion that such Shipper's total Deliveries from Carrier bears to the total Deliveries of all Shippers from Carrier. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis and settled in accordance with Carrier's procedures posted on Carrier's website.
  - (ii) **Position Settlement.** Shipper position imbalances will be settled using a two-step process in accordance with Carrier's procedures posted on Carrier's website, involving both

Position Settlement and Position Settlement Cost Recovery. Position Settlement will only involve settlement of commodity value, with charges based on volumes Tendered at the applicable Receipt Point in accordance with the Tariff. Pursuant to Carrier's Position Settlement Cost Recovery procedure, a Shipper subject to Position Settlement for a Month will be charged or credited in an amount equal to that Shipper's *pro rata* share of its deliveries off the Pipeline System for a given Month, multiplied by the total cost of settlement during the same Month. If conditions so require, Carrier may suspend Position Settlement or settle less than 100% of a Shipper's position in a non-discriminatory fashion as determined by Carrier.

- 5.5 Carrier Right of Access.** Subject to Applicable Laws applicable to Shipper's premises, Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's or its Affiliates' owned or controlled premises where (i) Petroleum is stored, or (ii) received or delivered by Carrier, and have access to any and all tankage situated therein for the purpose of making any examination, inspection, measurement or test provided for under the Tariff. Shipper shall not be liable to Carrier for any loss, injury or damage to or suffered by Carrier or Carrier's representative during such entry or access unless and to the extent caused by Shipper's (or its Affiliate's) negligence.

## **Rule 6 CHANGES IN QUALITY, SEGREGATION**

- 6.1 Delivery of Petroleum.** Carrier shall endeavour to Deliver substantially the same quality and commodity type of Petroleum as that received by Carrier from Shipper. Notwithstanding the foregoing, Carrier shall not be obligated to make Delivery of Petroleum of identical quality or specification Tendered by Shipper.
- 6.2 Alterations of Specifications.** Shipper acknowledges and accepts that any Petroleum Tendered for transportation will be received by Carrier only on the condition that such Petroleum shall be subject to such changes in density, specification, quality and characteristics as may result from the transportation thereof or from other services utilizing the Pipeline System, including the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Rule 4.2) in the Pipeline System. Carrier shall not be liable for any Special Damages resulting from any alteration in density, specification or other quality or characteristic of Petroleum transported by Carrier, or the provision of services otherwise provided by Carrier. Carrier shall not be liable for any direct damages resulting from any such alteration, except to the extent such direct damages arise from a Carrier Liability Event.
- 6.3 Segregated Movement.** If the Petroleum Nominated by a Shipper is of a commodity type or quality not then being transported through the Pipeline System but otherwise meets the specifications set out in Rule 4, Carrier may, in its reasonable discretion and as operating conditions permit, at the request of Shipper, attempt to make Delivery of substantially the same commodity type and quality of Petroleum at the Delivery Point Nominated by Shipper. Notwithstanding the foregoing, Carrier's efforts under this Rule 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Rules 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Rule 6.3. To the extent the transportation of such Petroleum or provision of other services provided by Carrier causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other commodity types or quality of Petroleum typically transported through the Pipeline System, such Shipper shall be liable for, and shall indemnify Carrier for, all such costs.

**Rule 7**  
**NOMINATIONS, TENDERS AND APPORTIONMENT**

**7.1 Monthly Nominations.** Each Month, in respect of transportation service for the following Month, Shippers shall submit their respective Nominations (each a “**Monthly Nomination**”) to Carrier on a Notice of Shipment delivered no later than 7:00 a.m., Mountain Standard Time on Carrier’s designated Monthly Nomination date in accordance with Carrier’s procedures for submission and acceptance of Nominations as posted on Carrier’s website, subject to the following:

- (i) Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper’s Monthly Nomination will be deemed to be zero.
- (ii) If Shipper’s Tenders have been curtailed pursuant to Rule 12, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment.
- (iii) In support of a Shipper’s Monthly Nomination:
  - (A) Carrier may, at its discretion and at its own behest where Carrier has reasonable grounds, seek to verify; or
  - (B) upon notice from Carrier, Shipper shall provide written third party verification of, Shipper’s ability to (1) Tender Petroleum at the Receipt Point, and (2) remove or have removed such Petroleum at the Delivery Point(s). Carrier shall not be obligated to accept Shipper’s Monthly Nomination where such verification is, in the reasonable discretion of Carrier, unacceptable to Carrier.

**7.2 Allocation of Available Capacity.** Following the receipt by Carrier of Monthly Nominations, Carrier shall, in its sole discretion, determine the capacity available on the Pipeline System from each Receipt Point to each Delivery Point for transportation service in that Month (“**Available Capacity**”). In the event Monthly Nominations exceed Available Capacity, then, having regard to the operating conditions of the Pipeline System as determined by Carrier, the Available Capacity shall be allocated by Carrier as follows:

- (i) ***Term Shippers’ Priority Allocation:*** Each Term Shipper shall be allocated all of its Monthly Nominations from its Contract Receipt Point to its Contract Delivery Point up to a maximum level of its Monthly Volume. If there is not sufficient Available Capacity to accommodate the Monthly Nomination of each Term Shipper, then each Term Shipper shall receive its *pro rata* share of Available Capacity relative to other Term Shippers based on the lesser of (1) its Monthly Volume, or (2) submitted or deemed (in accordance with these Rules and Regulations) Monthly Nominations from its Contract Receipt Point to its Contract Delivery Point up to a maximum level of its Monthly Volume.
- (ii) ***Allocation of Remaining Available Capacity:*** Remaining Available Capacity shall be allocated among Term Shippers and Non-Term Shippers on a *pro rata* basis calculated for each Shipper as follows: Remaining Available Capacity multiplied by a fraction, the numerator which is:
  - (A) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which (1) exceeds its Monthly Volume, or (2) is from an Alternate Receipt Point, or to an Alternate Delivery Point downstream of the Contract Delivery Point (or both (1) and (2), if applicable); and

(B) in the case of a Non-Term Shipper, its Monthly Nomination,

and the denominator of which is the sum of the numerators outlined above in this Rule 7.2(ii).

For greater certainty, the portion (if any) of at Term Shipper's Monthly Nomination which is to an Alternate Delivery Point upstream of the Contract Delivery Point shall be treated in the same priority as though it were a Nomination to the Contract Delivery Point pursuant to Rule 7.2(i).

- 7.3 Batch Size.** A Shipper's Tender will be accepted for transportation only when the total quantity covered thereby will be Tendered to Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by Carrier. Except as hereunder provided, Carrier will not accept a batch size of less than twenty-four thousand Cubic Metres (24,000 m<sup>3</sup>) (150,000 bbls) or a batch size of greater than thirty-two thousand Cubic Metres (32,000 m<sup>3</sup>) (200,000 bbls). Carrier may, in its sole discretion, (i) agree to accept Tenders of Petroleum in smaller or larger batch sizes, and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in such batch sizes.
- 7.4 Tenders.** A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier's established Tender process, which process shall be posted on Carrier's website. If Carrier is unable to verify (in accordance with Rule 7.1(iii)) Shipper's ability to remove from a Delivery Point the volume of Petroleum to be Tendered, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount verified in accordance with Rule 7.1(iii).
- 7.5 Late Nominations.** If capacity is available and operating conditions permit, as determined by Carrier in its sole discretion, Carrier may accept Nominations or revised Nominations after Carrier's designated Monthly Nomination date. Carrier's procedures for acceptance of Nominations after the designated Monthly Nomination date shall be posted on Carrier's website. Acceptance by Carrier of any such Nomination in one or more instances shall under no circumstances oblige or otherwise require Carrier to accept future nominations after Carrier's designated Monthly Nomination date.
- 7.6 Working Stock.** Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier and as posted on Carrier's website. In the case a Term Shipper, that Term Shipper's obligations in respect of Working Stock shall be as specified in the Contract.
- 7.7 Term Shipper Nominations.** Except as provided in Rule 7.1 or otherwise in a Contract, in the event that a Term Shipper fails to Nominate or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the Monthly Revenue Commitment and all other tolls and charges set forth in the Contract.
- 7.8 Term Shipper Make Up Rights.** Term Shippers who fail to meet their Monthly Volume requirements in a Month will be subject to non-discriminatory provisions with respect to their ability to make up those volumes in subsequent Months in the manner described in the applicable Contract. Any make-up volumes to be Tendered by Term Shippers pursuant to the Contract shall be Nominated and ranked equally with all volumes Nominated by Non-Term Shippers for the purpose of allocating Remaining Available Capacity on the Pipeline System pursuant to Rule 7.2.

**7.9 Non-Term Shippers.** Each Non-Term Shipper shall in each Month Tender to Carrier a volume of Petroleum equal to its Allocated Volume. Each Month, such Non-Term Shipper shall pay to Carrier an amount equal to the product of the Uncommitted Toll, multiplied by the greater of:

- (i) Non-Term Shipper's Tendered Petroleum, or
- (ii) 95% of Non-Term Shipper's Allocated Volume.

The transportation of Petroleum or provision of any other Petroleum services by Carrier for Non-Term Shippers shall be in accordance with and subject to the terms and conditions of the Tariff.

**7.10 Uniform Tenders.** Each Shipper shall endeavour to Tender Petroleum to Carrier in each Month in accordance with Carrier's batch schedule to make up its Allocated Volume. Carrier may, in its sole discretion, curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender in excess of volumes equal to its Allocated Volume in accordance with Carrier's batch schedule.

**7.11 Flow Rates and Volumes.** Carrier will normally take full stream receipts at Receipt Points and will make full stream Deliveries of Petroleum at Delivery Point(s) at flow rates and volumes compatible with Pipeline System operations.

## **Rule 8 TOLLS, PAYMENT AND LIEN FOR UNPAID CHARGES**

**8.1 Effective Tolls.** Petroleum accepted for transportation shall be subject to the tolls, charges and interest if applicable, in effect for the Month such Petroleum is Nominated for Tender to Carrier at the Receipt Point(s), irrespective of the date of Nomination, the date of Tender or date of Delivery at the Delivery Point(s).

**8.2 Invoicing & Payment.** Shipper shall pay to Carrier the applicable Monthly Revenue Commitment and all other tolls and charges payable in accordance with the Tariff on or before the Payment Due Date. On or before the 15<sup>th</sup> day of each calendar month, Carrier will electronically issue to Shipper an invoice detailing:

- (i) the tolls payable to Carrier for service provided during the previous Month, and
- (ii) any other charges for which Shipper is liable under a Contract or the Tariff (including any applicable taxes).

Invoice payments shall be made on or before the Payment Due Date to the account of Carrier at the Royal Bank of Canada, Main Branch, Calgary, Alberta, or such other bank or financial institution as Carrier may designate in writing.

**8.3 Taxes.** Shipper shall pay any goods and services tax imposed on Shipper pursuant to the *Excise Tax Act* (Canada), or any similar federal or provincial legislation or other applicable tax, in respect of all charges for services payable by Shipper pursuant to a Contract or these Rules and Regulations.

**8.4 Carrier's Lien.** Carrier shall have a lien as bailee in possession, charge and security interest on all Petroleum in its possession Tendered by or on behalf of Shipper, and on all proceeds of such Petroleum, to secure the performance of all obligations of Shipper under the Tariff, including the payment of any and all unpaid tolls and other charges that are due Carrier pursuant to a Contract or

the Tariff and unpaid by Shipper. Carrier may withhold such Petroleum from Delivery until all such unperformed obligations or unpaid tolls and charges have been performed or paid in full, as the case may be. In addition to, and not in substitution for, the general lien set forth in this Rule 8.4 or otherwise provided by law, equity or contract, Shipper hereby pledges, hypothecates, charges, conveys, transfers, sets over and assigns unto Carrier a continuing and first priority security interest in, and a secured charge on, all of Shipper's Petroleum in its custody from time to time to secure the payment and performance of all obligations of Shipper pursuant to the Tariff. The lien and other remedies contained in this Rule 8.4 and in Rule 8.5 are in addition to any other remedies available to Carrier at law, in equity or under a Contract or the Tariff.

**8.5 Carrier Remedies.** Should Shipper fail to pay the full amount of any invoice described in this Rule 8 by the Payment Due Date, in addition to any other remedy Carrier may have under a Contract, the Tariff, at law or in equity:

- (i) interest on the unpaid portion of the invoice shall accrue daily, commencing on the Day immediately following the Payment Due Date, at a rate of interest per annum equal to the Prime Rate plus 2%; and
- (ii) Carrier may, upon 5 Business Days' written notice to Shipper, suspend further receipt and Delivery of Petroleum of Shipper until such amount is paid in full, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under the Tariff. If, at any time during such suspension, Shipper pays the full amount payable to Carrier, Carrier shall, within 2 Business Days of receipt of payment, recommence receipt and Delivery of Shipper's Petroleum. If Shipper fails to pay the full amount payable to Carrier after such suspension, Carrier may, at its option at any time, in addition to any other remedy that may be available to it under a Contract, the Tariff, at law or in equity, upon 3 Business Days' written notice to Shipper:
  - (A) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Rule 8.6, and/or
  - (B) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract, Term Shipper shall remain liable for and shall, to the extent permitted by Applicable Law, pay to Carrier (as liquidated damages and not as a penalty) within 5 Business Days of such termination, pursuant to Carrier's invoice, the net present value of the aggregate of:
    - (1) the monthly charges payable under the Contract or the Tariff (including the Monthly Revenue Commitment) for the unexpired term(s) of such Contract,
    - (2) all applicable taxes,
    - (3) all amounts owing under the Contract in respect of Petroleum Delivered but for which all tolls and any other charges are not yet paid, and
    - (4) all other amounts for which Term Shipper is obligated to pay Carrier pursuant to the Contract and the Tariff.

**8.6 Seizure and Sale by Carrier.** Pursuant to Rules 3.4, 4.7, 8.4, 8.5, and 11.2, Carrier shall have the right itself or through an agent, to seize and sell at public auction or, if not permitted by Applicable Law, by such other lawful means available to Carrier in its discretion, any Petroleum delivered to



Carrier by the Shipper and then in the possession of Carrier or its agent. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than 48 hours after publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale. Such notice shall state the time, place of sale and quantity, commodity type, and location of Petroleum to be sold. Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien, charge and security interest granted to Carrier hereby. At such sale, Carrier shall have the right to bid and, if the highest bidder, to become the purchaser of the Petroleum. From the proceeds of the sale of the Petroleum, Carrier will pay itself (i) all tolls, charges, and other amounts payable to Carrier under the Tariff, (ii) reasonable storage expenses pending sale of such Petroleum, and (iii) all costs and expenses incident to the sale (including in respect of the removal and transportation of such Petroleum), and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. Where determinable by Carrier, Carrier shall make prompt payment of such balance to Shipper or such other Person lawfully entitled thereto. Any such funds may be commingled in any account or accounts maintained by Carrier from time to time. Carrier is authorized by Shipper to retain possession of Petroleum Tendered by Shipper or to take Delivery of Petroleum at a Delivery Point for the purpose of enforcing its rights under and pursuant to the Tariff.

**8.7 Rejection of Nomination.** Carrier may, in its sole discretion and without limiting any other remedy that may be available to it under the Tariff, at law or in equity, reject a Nomination from and deny service to any Non-Term Shipper if such Non-Term Shipper has failed to pay within 5 Business Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.

**8.8 Disputed Invoices.** If Shipper disputes any amount payable under an invoice, Shipper shall nonetheless pay to Carrier the full amount of such invoice on or before the Payment Due Date. If it is finally determined that Shipper's invoice was incorrect and that an overpayment has been made, Carrier shall reimburse Shipper for such overpayment, together with interest calculated from the date such overpayment was made until the date of reimbursement at the Prime Rate.

## **Rule 9 LIABILITY OF SHIPPER**

**9.1 Liability of Shipper.** Subject to Rule 15.2, Shipper shall:

- (i) be liable to Carrier for all losses, costs, damages and expenses whatsoever which Carrier may suffer, sustain, pay or incur; and
- (ii) indemnify and hold harmless Carrier from and against any and all actions, proceedings, claims, demands, losses, costs, liens, damages and expenses whatsoever which may be brought by a third party against, or suffered, sustained, paid or incurred by, Carrier,

as a result of the breach of a material provision of a Contract or the Rules and Regulations by Shipper or as a result of the direct negligence or wilful misconduct of Shipper in connection with, or relating to, or arising out of, Shipper's performance, purported performance or non-performance of the applicable Contract or these Rules and Regulations except and to the extent that such losses, costs, damages and expenses arise out of a Carrier Liability Event.

**9.2 Disruption by Shipper.** Without limiting the generality of Rule 9.1, if Shipper fails to remove its Petroleum from Carrier's facilities upon Delivery and a disruption of Carrier's operations or the operation of downstream facilities results, Shipper shall be solely responsible and liable if and to the extent that any and all expenses, costs, damages and losses whatsoever are incurred or suffered

by Carrier in connection with such disruption, unless the non-removal of such Petroleum is due to a Carrier Liability Event.

- 9.3 Taxes.** Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any Governmental Authority having jurisdiction with respect to the Petroleum to be transported by Carrier for such Shipper's account and shall indemnify and save harmless Carrier from any such taxes, duties, charges, levies and assessments so made or imposed.

## **Rule 10 LIABILITY OF CARRIER**

- 10.1 Limitation of Liability.** Subject to Rule 15.2 and notwithstanding anything in the applicable Contract or the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses whatsoever or delay incurred or suffered by Shipper whatsoever (including Special Damages) except to the extent arising from a Carrier Liability Event.
- 10.2 Physical Losses to Petroleum.** If damage to or loss of Petroleum occurs while Carrier is in possession of such Petroleum, then Carrier may apportion the cost of such damage or loss (not reimbursed by insurance) on a *pro rata* basis among all Shippers, provided that such damage or loss does not arise as a result of a Carrier Liability Event, and then only to the extent of such Carrier Liability Event. Each Shipper's share of such cost shall be determined by Carrier based on the proportion of the volume of the Shipper's Petroleum in the possession of Carrier on the date of such loss to the total volume of all Shippers' Petroleum in the possession of Carrier on the date of such loss.
- 10.3 Shipper Responsibility for Losses.** All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal Pipeline System operations, including line losses and shrinkage.

## **Rule 11 DEFAULT, SUSPENSION AND TERMINATION**

- 11.1 Default.** Subject to Rule 13, if Carrier or Shipper shall fail to perform any of the material covenants or obligations imposed upon it under a Contract or the Tariff, other than Shipper's failure to pay an invoice by the Payment Due Date (which circumstance is addressed in Rule 8) (a "**Defaulting Party**"), then in addition, to any other remedies the non-Defaulting Party may have under a Contract, the Tariff, at law or in equity, the non-Defaulting Party may terminate the Contract in the following manner: The non-Defaulting Party shall deliver a written notice (a "**Default Notice**") to the Defaulting Party, stating the relevant default, and declaring its intention to terminate such Contract. The Defaulting Party shall have:
- (i) in the case of a default of a monetary nature (including a default pursuant to Rule 17), 10 Days after receipt of the Default Notice, or
  - (ii) in the case of a default of a non-monetary nature, 30 Days after receipt of the Default Notice,

(in either case, the "**Default Period**") in which to remedy or remove the cause or causes of the default stated in the Default Notice.

If such default is remedied within the Default Period, or if the Defaulting Party fully indemnifies by payment to the non-Defaulting Party or otherwise secures the non-Defaulting Party (in form and substance satisfactory to the non-Defaulting Party) for any and all consequences of such default (subject to Rule 15.2), then the Default Notice shall be withdrawn and the Contract shall continue in full force and effect provided that such indemnity or security remains in place.

**11.2 Remedies.** If the Defaulting Party does not remedy the default or does not indemnify by payment to the non-Defaulting Party or otherwise secure the non-Defaulting Party for any and all consequences of such default (subject to Rule 15.2) within the Default Period referred to in Rule 11.1, then the non-Defaulting Party may terminate the Contract. Any termination of the Contract pursuant to the provisions of this Rule 11.2 shall be without prejudice to the right of Carrier to collect any amounts then due to it for services in respect of the Pipeline System provided up to and including the date of the termination and shall be without prejudice to the right of Shipper to receive any Petroleum which has not been received but for which the tolls and charges for transportation service have been paid prior to the date of termination, and without waiver of any other remedy to which the non-Defaulting Party may be entitled for any breach of the Contract. If Carrier terminates a Contract pursuant to this Rule 11.2, Shipper shall remain liable for and shall, to the extent permitted by Applicable Law, and subject to Carrier's obligation to mitigate, pay to Carrier (as liquidated damages and not as a penalty) within 5 Business Days of such termination, pursuant to Carrier's invoice, the net present value of the aggregate of:

- (i) the Monthly Revenue Commitment payable under the Contract or the Tariff for the unexpired term(s) of such Contract,
- (ii) all applicable taxes,
- (iii) all amounts owing under the Contract in respect of Petroleum Delivered but for which tolls are not yet paid, and
- (iv) all other amounts for which Shipper is obligated to pay Carrier pursuant to the Tariff.

Any such payment shall be in addition to any rights or remedies of Carrier pursuant to Rule 8.6 or otherwise pursuant to the Tariff, without double-recovery of any amounts owing pursuant to the foregoing.

**11.3 Carrier Additional Remedies.** If a Shipper is the Defaulting Party, Carrier may, in addition to any other remedy it may have under a Contract, the Tariff (including under Rule 17.1), at law or in equity, upon 3 Business Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Shipper remedies the default or otherwise indemnifies by payment to Carrier or otherwise secures Carrier for any and all consequences of such default (subject to Rule 15.2), provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further tolls, charges or other amounts payable to Carrier under a Contract or the Tariff. If, at any time during such suspension, Shipper remedies the default to Carrier's satisfaction or otherwise indemnifies or secures Carrier as contemplated in this Rule 11.3, Carrier shall, within 2 Business Days of Shipper delivering written notice to Carrier confirming that the default has been remedied (subject to Carrier's verification thereof), or Carrier receiving such indemnity or other form of security satisfactory to Carrier, recommence receipt and Delivery of Shipper's Petroleum.

**11.4 No Waiver.** No waiver by Carrier or Shipper of any one or more defaults by the other Party in the performance of any provisions of the Tariff shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

- 11.5 Insolvency of Shipper.** Receipt and Delivery by Carrier of Shipper's Petroleum shall be automatically suspended as of the time immediately preceding the occurrence of an Insolvency Event in respect of a Shipper or a Shipper's Credit Support Provider.

**Rule 12  
INTERRUPTION AND CURTAILMENT**

- 12.1 Interruption.** Carrier may interrupt, curtail or reduce services to Shippers for such periods of time as it may reasonably require for the purpose of effecting or allowing any repairs, maintenance, replacement, upgrading or other work related to the Pipeline System, Carrier's other facilities or downstream facilities in circumstances which do not constitute Carrier Force Majeure. If such interruption is due to a planned outage, Carrier shall provide Shippers prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall provide Shippers notice of such interruption and curtailment as soon as reasonably possible. Carrier shall use reasonable commercial efforts to minimize the extent and duration of any interruption and the impact of such interruption on the operation of the Pipeline System.
- 12.2 Curtailment.** During periods of interruption pursuant to Rule 12.1, Carrier shall curtail transportation service and allocate Available Capacity in accordance with Rule 7.
- 12.3 Shipper Obligation to Pay.** Except as otherwise expressly provided in a Contract, no interruption, curtailment or reduction of Pipeline System services pursuant to this Rule 12 shall suspend or relieve Shippers of the obligation to pay the tolls, charges and other amounts payable to Carrier under the Tariff, or to provide Financial Assurances pursuant to Rule 17.

**Rule 13  
FORCE MAJEURE**

- 13.1 Performance Excused.** If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 13.2 Excluded Items.** Notwithstanding Rule 13.1, the following shall not, under any circumstance, constitute an event of Force Majeure:
- (i) insufficiency of Shipper's supplies of Petroleum;
  - (ii) Shipper's inability to purchase Petroleum;
  - (iii) lack of funds or financial circumstance;
  - (iv) availability of more attractive markets for Petroleum;
  - (v) absence of a market for Petroleum;
  - (vi) availability of alternative Petroleum transportation systems; or
  - (vii) failure, or any reason, to obtain any state, provincial or federal export or other regulatory authorization required for Shipper to remove, export or import Petroleum (or any other product derived therefrom) from or to a state, province or to or from Canada.

- 13.3 Remedy of Force Majeure.** A Person that fails to perform any obligation under a Contract or the Tariff where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so, provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Person claiming suspension of its obligations hereunder by reason thereof.
- 13.4 Limitations.** Notwithstanding the above provisions, no event of Force Majeure shall relieve any Person from any obligation under a Contract or the Tariff:
- (i) unless such Person gives notice with reasonable promptness of such event to the other Person; or
  - (ii) after the expiration of a reasonable period of time within which, by the use of its due diligence, such Person could have remedied or overcome the consequences of such event of Force Majeure.
- 13.5 Scope of Service and Capacity Allocation.**
- (i) In the event that Carrier's provision of services in accordance with this Tariff is curtailed or interrupted by reason of Carrier Force Majeure, Carrier may, during the continuance of such Carrier Force Majeure provide such level of service as it determines is appropriate.
  - (ii) Notwithstanding an event of Force Majeure, if Carrier in its sole discretion determines there is Available Capacity, Carrier may allocate such Available Capacity in accordance with Rule 7.
- 13.6 No Payment Relief.** Except as otherwise expressly provided in a Contract and notwithstanding anything in this Rule 13 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract or the Tariff to make payments pursuant to Rule 8 or to provide Financial Assurances pursuant to Rule 17 to Carrier under the Tariff during the continuance of such Force Majeure event.

#### **Rule 14 OWNERSHIP OF PETROLEUM**

- 14.1 Adverse Claims Against Petroleum.** Shipper shall not Tender Petroleum which is in any way subject to litigation, the ownership of which may be in dispute, or which is subject to a security interest, lien or charge of any kind (other than the lien or security interest of Carrier pursuant to the Tariff) (each an "**Adverse Encumbrance**") unless Shipper provides written notification to Carrier of such Adverse Encumbrance not less than 20 Days before such Tender is made to Carrier. Shipper shall provide written notice to Carrier if at any time while its Petroleum is in the possession of Carrier, such Petroleum becomes subject to an Adverse Encumbrance. Subject to its rights pursuant to Rule 8, nothing in this Tariff or a Contract grants to Carrier any legal or beneficial ownership in Petroleum in the possession of Carrier while in the Pipeline System.
- 14.2 Legal Disputes.** Carrier shall not be obligated to accept receipt from Shipper of any Petroleum that is subject to an Adverse Encumbrance. Upon demand by Carrier, Shipper shall provide Financial Assurances and an indemnity satisfactory to Carrier in its sole discretion that fully protects and indemnifies Carrier against any liability, loss, cost or expense whatsoever (including Special Damages or in relation to the enforcement of any security interest) that may arise as a result of such Adverse Encumbrance and secures the payment to Carrier of all tolls and other charges which

would become payable under the applicable Contract or the Tariff if Carrier were to transport such Petroleum or otherwise provide Pipeline System service.

**Rule 15**  
**CLAIMS, SUITS AND TIME FOR FILING**

- 15.1 Condition Precedent.** As a condition precedent to the payment by Carrier of any claims for loss, damage or delay asserted by Shipper in connection with the transportation or provision of other services in respect of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within 180 Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within 180 Days after a reasonable time for Delivery has elapsed. Any suits or legal actions arising out of such claims must be instituted against Carrier within 2 Years from the date when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof as specified in the notice. Claims advanced beyond such 2-Year period shall be null and void as between Shipper and Carrier. In Tendering Petroleum under the Tariff, Shipper agrees to be bound by the provisions of this Rule 15.1 and waive any rights which it might otherwise have at law, in equity or otherwise, to make a claim after the expiration of said period of 180 Days or to bring an action after the expiration of the said period of 2 Years. Nothing contained in this Rule 15.1 shall be construed as constituting a waiver or release of any rights or defences which Carrier may have at law, in equity or pursuant to the Tariff, in respect of any claim or demand asserted by Shipper.
- 15.2 No Special Damages.** Except as expressly provided in this Tariff, neither Party nor its respective Affiliates shall have any liability or responsibility to the other Party or the other Party's Affiliates for any Special Damages incurred by such Person that arise out of or otherwise relate to this Tariff or the subject matter of this Tariff or any Contract, regardless of whether such claim arises under or results from contract, tort or strict liability; provided that such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed on Carrier in favour of Persons that are not a Party or an Affiliate of a Party.

**Rule 16**  
**REPRESENTATIONS AND WARRANTIES**

- 16.1 Shipper Representations.** Shipper represents and warrants that:
- (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the removal, receipt, transportation and Delivery of Petroleum hereunder (including in respect of any import or export of Petroleum);
  - (ii) it owns, controls or otherwise has the right to Tender and deliver or have Tendered and delivered for its account, the Petroleum that is Tendered to Carrier for the purpose of transportation pursuant to the Tariff (and Contract, if a Term Shipper),
  - (iii) the performance by Shipper of its obligations under the Tariff (and Contract, if a Term Shipper) has been duly authorized by all necessary corporate action and does not require any approval or consent of any other Person or entity;
  - (iv) Petroleum Tendered to Carrier will not be subject to any Adverse Encumbrance (subject to any notification in accordance with Rule 14.1 and any indemnification pursuant to Rule 14.2);

- (v) in respect of Term Shippers, the Contract is in full force and effect, has been duly executed and delivered on behalf of Term Shipper and constitutes the legal, valid and binding obligation of Term Shipper, enforceable against Term Shipper in accordance with its terms; and
- (vi) in respect of Non-Term Shippers, the obligations of the Shipper under this Tariff constitute legal, valid and binding obligations of such Non-Term Shipper upon acceptance by Carrier of a Monthly Nomination, enforceable against Non-Term Shipper in accordance with the terms hereof.

**Rule 17**  
**FINANCIAL INFORMATION AND ASSURANCES**

**17.1 Financial Information.** Shipper shall provide to Carrier, at any time:

- (i) upon Carrier's request, information ("**Financial Information**") that will allow Carrier to assess (or reassess) and establish Creditworthiness and Shipper's capacity to perform any financial obligations that could arise from the transportation of Shipper's Petroleum on the Pipeline System; and
- (ii) upon Carrier's determination of non-Creditworthiness, Carrier may request, financial assurance or security for the payment of any Fixed Toll, Variable Toll, Uncommitted Toll and any other tolls and charges to be paid by Shipper to Carrier in respect of transportation or other service ("**Financial Assurances**").

If Shipper fails to provide Financial Information or Financial Assurances to Carrier within 4 Business Days of Shipper's receipt of Carrier's written request for such Financial Information or Financial Assurances, Shipper shall thereupon be deemed to be in default pursuant to Rule 11.

**17.2 Creditworthiness.** Subject to Rule 17.3, Shipper and/or its Credit Support Provider (as applicable) must satisfy the following criteria (as determined by Carrier) to be considered "**Creditworthy**":

- (i) Carrier has no reasonable grounds for insecurity regarding the performance of any obligation under a Contract or the Tariff, including in respect of any Financial Assurances provided by any Credit Support Provider;
- (ii) the rating given to Shipper's or its Credit Support Provider's senior unsecured long term debt, excluding any third party enhancement, is no lower than any of the following as applicable: (a) "BBB-" from Standard & Poor's Financial Services LLC; (b) "Baa3" from Moody's Investors Service, Inc.; or (c) "BBB (low)" from Dominion Bond Rating Service Limited, or any of such rating agencies' respective successors in interest; and
- (iii) any Financial Assurances previously provided by Shipper or its Credit Support Provider provide adequate support for the performance of Shipper's obligations that could arise under a Contract or the Tariff.

**17.3 Alternate Creditworthiness.** If Shipper and/or its Credit Support Provider (as applicable) is determined by Carrier to not be Creditworthy pursuant to Rule 17.2, Carrier may elect to evaluate Shipper or its Credit Support Provider's Creditworthiness based upon the level of service requested relative to Shipper's and its Credit Support Provider's current and future ability to meet its obligations under the applicable TSA and the Pipeline Rules. After Carrier's assessment of Shipper or its Credit Support Provider's Creditworthiness pursuant to the foregoing, and subject to

change at any time in Carrier's sole discretion, Carrier may deem Shipper or its Credit Support Provider Creditworthy. Such Creditworthiness assessment shall be based upon Carrier's evaluation, in its sole discretion consistent with Carrier's credit practices, of the Financial Information provided by Shipper pursuant to Rule 17.1.

**17.4 Financial Assurances.** Except as otherwise provided in a Contract, the Financial Assurances that Carrier may request for the purposes of Rule 17.1(ii) shall be limited to the following:

- (i) for Term Shippers, at the sole discretion of Carrier:
  - (a) a guarantee from a Creditworthy Credit Support Provider sufficient in amount to cover Term Shipper's obligations to Carrier in form and substance satisfactory to Carrier. If a Credit Support Provider is not Creditworthy, or the Creditworthiness of such Credit Support Provider is insufficient to cover Term Shipper's obligations, Carrier may request additional Financial Assurances as described in Rule 17.4(i)(b); or
  - (b) an irrevocable standby letter of credit or other collateral or assurance acceptable to Carrier, in an amount no greater than 1 Year of tolls and other charges based on the Monthly Volume, plus all applicable taxes; and
- (ii) for Non-Term Shippers, at the sole discretion of Carrier, either prepayment of the tolls and other charges and taxes applicable to Shipper's Allocated Volume or an irrevocable standby letter of credit or such other financial assurance in an amount no greater than 60 Days of tolls and other charges based on Shipper's Allocated Volume, plus all applicable taxes, which Financial Assurances shall remain in effect for not less than 90 Days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be.

**17.5 Required Elements.** The following aspects of any Financial Assurances must be acceptable to Carrier:

- (i) the terms of any irrevocable standby letter of credit;
- (ii) the adequacy (including terms and domicile of the Credit Support Provider or other financial assurance provider) of any proposed financial assurance; and
- (iii) the Creditworthiness of the issuer of any guarantee, irrevocable standby letter of credit or other financial assurance.

## **Rule 18 MARINE TERMINAL**

**[NTD: Matters dealing with the operation of a Marine Terminal under development by Carrier and will either be incorporated into Rules and Regulations filed with the NEB or as separate marine terminal operating procedures, including applicable provisions and charges dealing with matters such as demurrage, as such matters are determined by Carrier. Any such provisions will be consistent with the provisions of the Contracts and the other provisions of the Rules and Regulations, applicable marine terminal practice and Applicable Law.]**



**Rule 19**  
**TERMS AND CONDITIONS OF ACCESS TO**  
**CONTRACTED TRANSPORTATION CAPACITY**

**19.1 Definitions.** The following terms when used in this Rule 19, shall have the following meanings:

“**Acceptance Deadline**” means the date by which Carrier shall deliver fully executed Governing Documents to Proposed Shipper following the close of an Open Season.

“**Available Uncommitted Capacity**” means capacity available on the Pipeline System for Petroleum transportation service, which capacity specifically excludes Reserved Spot Capacity.

“**CA Deadline**” means the time and date by which a Person must deliver an executed Confidentiality Agreement to Carrier.

“**Confidentiality Agreement**” means Carrier’s form of confidentiality agreement which must be executed by a Person in order to receive confidential documents relating to the Open Season

“**Financial Assurances Deadline**” means the date by which applicable Proposed Shipper shall deliver Financial Assurances to Carrier.

“**Governing Documents**” means Carrier’s form of Contract and any other type of agreement or document to be executed by a Person interested in obtaining Open Season Capacity.

“**Notice of Open Season**” has the meaning set out in Rule 19.2.

“**Open Season**” means a bid tender process which Carrier intends to commence whereby bids for Open Season Capacity may be submitted to Carrier.

“**Open Season Capacity**” means the volume of Available Uncommitted Capacity available for bid during an Open Season.

“**Open Season Documents**” has the meaning set out in Rule 19.3.

“**Proposed Shippers**” means Persons who execute and deliver a Confidentiality Agreement to Carrier prior to the CA Deadline.

“**Reserved Spot Capacity**” means the volume of Available Capacity reserved for Non-Term Shippers on the Pipeline System in accordance with any directions of the NEB which may be in effect as of the date Carrier posts on Carrier’s website the Notice of Open Season.

**19.2 Open Season.** Carrier may, in its sole discretion, hold an Open Season to provide Persons with non-discriminatory access to Open Season Capacity. If Carrier wishes to hold an Open Season, Carrier shall post a notice (“**Notice of Open Season**”) on Carrier’s website. The Notice of Open Season shall include the following information:

- (i) the Open Season commencement and closing dates, the Financial Assurances Deadline and the Acceptance Deadline;
- (ii) the volume of Open Season Capacity; and

- (iii) the availability on Carrier's website to the Open Season Documents, the Confidentiality Agreement and the CA Deadline.

**19.3 Open Season Documents.** Persons who execute and deliver to Carrier a Confidentiality Agreement prior to the CA Deadline shall be provided access to documentation ("**Open Season Documents**") by Carrier in respect of the Open Season Capacity during the Open Season. Open Season Documents include:

- (i) information describing the proposed commercial terms relating to the particular Open Season; and
- (ii) forms of Governing Documents.

**19.4 Bid Submission Criteria.** Proposed Shippers shall be required to comply with the following bid submission criteria:

- (i) complete the Governing Documents in accordance with instructions contained in the Open Season Documents;
- (ii) execute two (2) copies of the Governing Documents and deliver same to Carrier in accordance with instructions contained in the Open Season Documents prior to the Open Season closing date; and
- (iii) prior to the Financial Assurances Deadline:
  - (a) subject to Rule 19.4(iii)(b), be considered Creditworthy by Carrier or provide financial assurances satisfactory to Carrier, to a maximum amount as indicated in Rule 17.3; or
  - (b) be considered Creditworthy by Carrier or provide financial assurances satisfactory to Carrier in an amount up to the full Contract term of tolls and other charges plus all applicable taxes based on the Proposed Shipper's Monthly Volume associated with the Open Season Capacity in the event capital expenditures are to be incurred by Carrier to expand the Pipeline System and Open Season Capacity results therefrom.

**19.5 Allocation of Open Season Capacity.** If aggregate volumes committed to by Proposed Shippers in the Governing Documents exceed the Open Season Capacity:

- (i) Open Season Capacity shall be allocated, based on the capacity requested in each bid, on the basis specified in the Open Season Documents, rounded in increments as specified in the Open Season documents among those Proposed Shippers that satisfy Carrier's Creditworthiness requirements and deliver executed Governing Documents on or prior to the Open Season closing date; and
- (ii) by submitting executed Governing Documents in accordance with the Open Season, a Proposed Shipper authorizes Carrier to amend the Proposed Shipper's contract volume initially specified by such Proposed Shipper in its submitted Governing Documents to reflect the reduced allocation of capacity and such amendment shall be binding on the Proposed Shipper.

- 19.6 Bids Irrevocable.** Bids received by Carrier in accordance with Carrier's Open Season shall be irrevocable until the Acceptance Deadline.
- 19.7 Issuance of Governing Document.** Subject to the receipt by Carrier of the Governing Documents in accordance with Rule 19.4 and Proposed Shipper meeting the applicable creditworthiness requirements set forth therein, if following the Open Season closing date, and in the sole discretion of Carrier, a decision is made to proceed in awarding Open Season Capacity pursuant to the Open Season, on or before the Acceptance Deadline and subject to Rule 19.5, Carrier will execute and deliver a fully executed Governing Document to those Proposed Shippers who are to be awarded all or a portion of the Open Season Capacity.
- 19.8 Reservation of Carrier Rights.** Carrier reserves the right to cancel, at any time, any Open Season in its sole discretion. If Carrier cancels an Open Season described in a Notice of Open Season, then Carrier will notify Proposed Shippers by way of an additional cancellation notice posted to Carrier's website and neither a Proposed Shipper nor Carrier will have any further obligations to each other in regards to the Open Season or any of the Open Season documents.

## **Rule 20 GOVERNING LAW**

- 20.1 Governing Law.** The Tariff shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and the laws of Canada applicable therein, but shall be subject to the rules, regulations, decisions and orders of any Governmental Authority having jurisdiction over the matters contained herein, including the NEB. Other than matters falling within the jurisdiction of the NEB, no Person will institute any action, suit or other proceeding with respect to the Contract or the Tariff or any matter relating to Carrier other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta or Canada, as applicable. In that regard, each Person subject to the Contract and the Tariff hereby irrevocably attorns to the jurisdiction of such courts in Alberta or Canada in the event of any such action, suit or other proceeding by the other Party. All persons subject to the Tariff specifically and knowingly waive any trial by jury and any such controversy shall be litigated before a trial judge.