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## 5.0 COMMERCIAL TERMS AND TOLLS

This section describes the transportation arrangements underpinning the Canadian portion of the Keystone XL Pipeline (the “Project”) or the entire proposed pipeline from Hardisty, Alberta to Nederland, Texas (“Keystone XL Pipeline”) and tolls for transportation service. It includes information on the:

- open season for capacity on the Keystone XL Pipeline;
- contractual arrangements supporting the Project;
- access to the pipeline for parties without contractual arrangements;
- transportation tariff governing service;
- methodology used to establish tolls, both committed and uncommitted for the Project;
- risks assumed by TransCanada Keystone GP Ltd. (“Keystone”); and
- toll implications of the Keystone XL Pipeline on the tolls for the approved Keystone Pipeline to Wood River and Patoka, Illinois and Cushing, Oklahoma (“base Keystone”).

### 5.1 Open Season

Following the initial development of base Keystone, prospective shippers, including producers, marketers and refiners, expressed interest in expanding pipeline transportation services beyond the U.S. Petroleum Administration for Defence District (“PADD”) II markets into PADD III. The PADD III market, located in the U.S. Gulf Coast (“USGC”), is the largest refining market in the world and represents a market virtually untapped by Western Canadian crude oil producers.

Commercial discussions with prospective shippers took place through 2007 and 2008 respecting issues such as potential delivery points, timing, tolls and terms of service. As a result of these discussions, on July 16, 2008, TransCanada Corporation

1 announced plans by Keystone to expand the base Keystone system to provide  
2 additional capacity of up to 79,500 cubic metres per day (“m<sup>3</sup>/d”) or 500,000 barrels  
3 per day (“bbl/d”) from Western Canada to the USGC by 2012. An open season for  
4 transportation service to the USGC took place between July 16 and September 4,  
5 2008.

6 While the open season was ongoing, an information session for potential shippers was  
7 held in Calgary on July 29, 2008. The information session provided an overview of  
8 the Keystone XL Pipeline project and was a general forum for the producing and  
9 refining industries. Invitations to the information session were sent to over 100  
10 potential participants from approximately 50 companies, including:

- 11 • shippers on base Keystone;
- 12 • the Canadian Association of Petroleum Producers;
- 13 • producers;
- 14 • refiners; and
- 15 • marketers.

16 The information session was well attended with representation from over 20  
17 companies. A copy of the Keystone XL Pipeline project presentation to the  
18 information session is provided in Appendix 5-1. Keystone representatives continued  
19 to meet with interested parties throughout the open season to review project  
20 information and general commercial terms for the Keystone XL Pipeline and, for  
21 those interested parties which had executed confidentiality agreements, provide  
22 detailed information with respect to tolls and other matters.

## 23 **5.2 Transportation Service Agreements**

24 As a result of the open season, Keystone received shipping commitments on the  
25 Keystone XL Pipeline by way of executed Transportation Service Agreements

1 (“TSAs”). The commitments total 60,400 m<sup>3</sup>/d (380,000 bbl/d) and in aggregate have  
2 an average term of 17 years.

3 The toll design has been structured to provide an incentive for shippers to enter into  
4 longer term transportation commitments, which provide both toll certainty for  
5 shippers and a greater level of revenue certainty for Keystone. These shipping  
6 commitments, negotiated between sophisticated parties, are compelling evidence that  
7 the tolls proposed under the TSAs are acceptable in the marketplace and are therefore  
8 just and reasonable.

9 Canadian Natural Resources Limited and Valero Energy Corporation have publicly  
10 disclosed their status as committed shippers on the Keystone XL Pipeline. To date, no  
11 other committed shipper has publicly disclosed its status as a shipper.

12 The executed TSAs demonstrate a material endorsement of commercial support for  
13 the Project, as well as the need for incremental pipeline capacity and market access to  
14 the USGC for Canadian crude oil producers and USGC refiners.

15 The TSAs provide committed shippers with unapportioned or “priority” access on the  
16 Project for capacity up to their contract volumes, in recognition of the significant  
17 financial support those contracts provide to underpin the Project. Other key elements  
18 of the TSAs include:

- 19 • a negotiated toll that is fixed for the term of the contract and designed to recover  
20 the capital costs for the Project;
- 21 • a variable toll that recovers operating costs in Canada;
- 22 • makeup rights; and
- 23 • a level of capital cost risk sharing.

1 A pro forma TSA is provided in Appendix 5-2. The terms and conditions of the  
2 executed TSAs are identical to the pro forma TSAs except for:

- 3 • contracting entity;
- 4 • contract term; and
- 5 • contract volume.

### 6 **5.3 Uncommitted Capacity**

7 Following the open season, there remains 19,100 m<sup>3</sup>/d (120,000 bbl/d) of capacity  
8 that has not been committed on the Keystone XL Pipeline.

9 A portion of the uncommitted capacity has been reserved for uncommitted or spot  
10 volumes to accommodate shippers that do not have TSAs or are unwilling to make  
11 long-term commitments. This reservation is 7,200 m<sup>3</sup>/d (45,000 bbl/d), leaving a total  
12 capacity of 11,900 m<sup>3</sup>/d (75,000 bbl/d) uncommitted and not reserved for  
13 uncommitted shipments on the Keystone XL Pipeline. In the event that shipper  
14 demand for additional committed capacity materializes for deliveries to either  
15 Cushing or the USGC, Keystone may seek to market all or a portion of the remaining  
16 11,900 m<sup>3</sup>/d (75,000 bbl/d) of unsubscribed Keystone XL Pipeline capacity.

17 Taken together with the minimum uncommitted reservation on base Keystone of  
18 5,600 m<sup>3</sup>/d (35,000 bbl/d), the total minimum reservation on the integrated Keystone  
19 system would be 12,800 m<sup>3</sup>/d (80,000 bbl/d). The capacity available for uncommitted  
20 service could exceed the minimum reservation levels, depending on operating  
21 conditions and the existence and extent of future long-term contracts.

22 Reservation of capacity for uncommitted shipments on the integrated Keystone  
23 system is made in recognition of Keystone's status as a common carrier. The ability  
24 to ship on an uncommitted basis on the integrated Keystone system will provide

1 Canadian producers with flexibility to respond to market conditions in either PADD  
2 II or PADD III and create opportunities for Canadian producers to develop a broader  
3 range of U.S. customers and market opportunities.

#### 4 **5.4 Transportation Tariff**

5 As part of the commercial discussions that took place prior to the Keystone XL  
6 Pipeline open season process, tariff changes to the base Keystone transportation  
7 arrangements were proposed to both clarify the tariff language and to enhance certain  
8 substantive shipper rights relative to the base Keystone project terms.

9 As a result of the commercial negotiations and the resulting TSA that formed the  
10 basis for the Keystone XL open season, the pro forma tariff filed in this application  
11 differs from that filed in the base Keystone applications (OH-1-2007 and OH-1-  
12 2008). Clean and black lined copies of the revised tariff are provided in Appendix 5-3  
13 in order to facilitate comparison with the previously filed pro forma tariff for base  
14 Keystone.

15 In advance of the in-service date of the first phase of the base project, Keystone  
16 intends to file the form of tariff included in this application which will govern the  
17 terms and conditions of service, thereby extending the benefit of the amended  
18 Keystone XL Pipeline tariff provisions to all shippers. The form of tariff that will be  
19 filed prior to the in-service date of base Keystone will include the terms and  
20 conditions of access to contracted capacity on the Keystone pipeline in compliance  
21 with the Board's direction in the OH-1-2007 Reasons for Decision to include such a  
22 tariff provision prior to the commencement of operations.

1    **5.5        Negotiated Tolls**

2            The proposed toll design for the Keystone XL Pipeline was established through  
3            consultation and negotiation with potential shippers in the period leading up to the  
4            open season. The negotiated tolls have been designed to provide committed shippers  
5            with long-term price certainty and uncommitted shippers with a transparent toll that is  
6            based on the negotiated toll.

7    **5.5.1     Committed Transportation Service**

8    **5.5.1.1   Fixed Toll**

9            The committed tolls will have two components, fixed and variable. The fixed  
10           component of the toll is negotiated and has been levelized over the term of the  
11           contracts. The fixed portion of the toll will not change over the term of the TSA and  
12           is designed to recover invested capital. In the open season Keystone offered 10, 15  
13           and 20 year contracts, in which the fixed component of the toll decreased as the  
14           length of term increased. The toll differentiation between terms was structured to  
15           recognize the additional financial commitment provided by relatively longer term  
16           contracts.

17           The fixed component of the toll was levelized in an effort to provide toll  
18           predictability and stability over the term of the contracts. Committed shippers are  
19           obligated to pay the fixed component of the negotiated toll with respect to their  
20           individual contract volumes for the term of the TSA, whether or not crude oil is  
21           shipped.

22           A potential adjustment will be made to the fixed component of the negotiated toll, not  
23           more than two years following the commencement date of the Keystone XL Pipeline.  
24           Keystone will make a final determination of capital costs at that time and the fixed

1 toll will increase or decrease at a percentage rate equal to 75% of the percentage rate  
2 change between the estimated and final project costs. Keystone will bear the impact  
3 of the remaining 25% of the change, thereby assuming a portion of construction cost  
4 risks to offer additional toll certainty and align with shippers in a desire to minimize  
5 construction costs.

6 The TSAs provide committed shippers with an audit right with respect to the  
7 calculation of the final project costs.

#### 8 **5.5.1.2 Variable Toll**

9 The second component of the toll payable by committed shippers is the variable toll,  
10 through which operations, maintenance and administrative expenses (“OM&A”) for  
11 both base Keystone and the Keystone XL Pipeline (“total Keystone system”) are  
12 allocated each month on a barrel mile basis to volumes shipped as explained in  
13 Appendix B of the pro forma TSA. The variable toll to the USGC will be estimated  
14 prior to commissioning the Keystone XL Pipeline facilities and by December 1 of  
15 each subsequent year.

16 The forecast variable toll will have regard to the types of crude oil forecast to be  
17 transported, delivery points, estimated throughput, inflation rates, prior period rates  
18 and any other relevant factors. The variable toll will be calculated using throughput,  
19 nominations, crude types and OM&A costs for Canadian portion of the total  
20 Keystone system. The forecast variable costs for each month will then be allocated on  
21 a provisional or interim basis over the forecast throughput for the succeeding year.

22 After December 31 of each year, Keystone will determine the actual OM&A and  
23 volumes shipped and calculate a final variable toll. Any variance between the  
24 provisional variable toll and the final variable toll, positive or negative, will be  
25 recovered from or paid to committed shippers in the next succeeding year in 12 equal

1 monthly instalments. As part of the negotiated TSA, committed shippers will have  
2 audit rights with respect to the variable toll calculation.

3 The variable toll for heavy and light crude, as defined in the tariff, will differ in  
4 recognition of the differing costs to transport those crude types. The variable toll for  
5 light crude is 70% of that for heavy crude, in recognition of lower power  
6 requirements to transport light crude.

7 The variable toll will change over time depending on actual OM&A and throughput  
8 volumes and is intended to provide Keystone with a flow through recovery of actual  
9 operating costs for actual volume shipped.

### 10 **5.5.1.3 Illustrative Committed Tolls**

11 The Project's committed fixed toll is intended to recover Project costs and the  
12 variable toll will reflect blended OM&A costs for the Canadian portion of the total  
13 Keystone system. The blending of OM&A costs for the total Keystone system is  
14 discussed further in Section 5.7. The fixed toll has been leveled for the particular  
15 term of the contract. Illustrative committed tolls are presented in Table 5-1.



**Table 5-1: Illustrative Committed Aggregate Tolls from Hardisty to International Border for the Project (Canadian Dollars)**

Tolls	10 Year		15 Year		20 Year	
	\$/m <sup>3</sup>	\$/bbl	\$/m <sup>3</sup>	\$/bbl	\$/m <sup>3</sup>	\$/bbl
Fixed Toll	6.91	1.10	6.52	1.04	6.14	0.98
Variable Toll – Light	1.67	0.27	1.67	0.27	1.67	0.27
<b>Total Light Toll<sup>1</sup> (Fixed Toll + Variable Toll – Light)</b>	<b>8.58</b>	<b>1.36</b>	<b>8.20</b>	<b>1.30</b>	<b>7.81</b>	<b>1.24</b>
Variable Toll – Heavy	2.38	0.38	2.38	0.38	2.38	0.38
<b>Total Heavy Toll<sup>1</sup> (Fixed Toll + Variable Toll – Heavy)</b>	<b>9.29</b>	<b>1.48</b>	<b>8.91</b>	<b>1.42</b>	<b>8.52</b>	<b>1.35</b>
NOTE: <sup>1</sup> Totals may not add due to rounding						

1 The illustrative tolls and rates presented in Table 5-1 are based on:

- 2
- 3
- 4
- negotiations with prospective shippers;
  - Keystone’s estimated project costs; and
  - estimated variable costs.

#### 5 **5.5.1.4 Incentive Arrangement**

6 Keystone has agreed with the Keystone XL Pipeline committed shippers to seek to  
7 negotiate an OM&A incentive arrangement after the third anniversary of the  
8 commencement date of service to the USGC.

#### 9 **5.5.2 Uncommitted Service and Tolls**

10 Uncommitted capacity will be available to provide transportation service on a  
11 monthly basis for both uncommitted shippers and for committed shippers to the  
12 extent they wish to transport crude oil in excess of the contract volume supported by a

1 TSA. Keystone proposes to charge a maximum uncommitted toll to the USGC that is  
2 120% of the combined fixed and variable committed ten year toll for committed  
3 shippers to the USGC.

4 The uncommitted toll methodology and, in particular, the premium to the total ten-  
5 year committed toll recognizes the substantially different circumstances of the  
6 shippers that have made long term contractual commitments to the project and those  
7 that have not.

8 The circumstances and conditions of uncommitted shippers are not substantially  
9 similar to those of committed shippers, with a result that the differential uncommitted  
10 toll is just, reasonable and non-discriminatory. The committed shippers have made  
11 significant financial commitments to the project and have provided demonstrable  
12 market support for it.

13 In aggregate, committed shippers on the Keystone XL Pipeline have committed,  
14 based on the illustrative tolls, to pay fixed charges in the amount of US \$9.4 billion  
15 over the terms of their contracts. Those financial commitments are real costs to term  
16 shippers and it would not be just or reasonable for shippers who have not made  
17 similar long term commitments to receive the same toll treatment.

18 Failure to recognize the economic cost to shippers of providing support in the form of  
19 TSAs would discourage agreements in the future and would be expected to result in  
20 reduced facilities construction and consequent reduced market access for all shippers.  
21 Shippers that have entered into negotiated TSAs are sophisticated participants in the  
22 crude oil industry and would not have undertaken to pay tolls on the Keystone system  
23 in the long term in the absence of their belief that the committed tolls were just and  
24 reasonable, and with the expectation that those not making long-term commitments  
25 would not receive the same benefits.

1 As Keystone is at risk for underutilization, it has a strong economic incentive to set  
 2 the uncommitted toll at a level which encourages shipments. In order for Keystone to  
 3 manage the risk of underutilization, the uncommitted toll must be competitive in the  
 4 market.

5 Illustrative Project uncommitted tolls are shown in Table 5-2.

**Table 5-2: Illustrative Uncommitted Tolls from Hardisty to the International Border and  
 10-Year Committed Toll for the Keystone XL Pipeline  
 (Canadian Dollars)**

Crude Type	Uncommitted		10-Year Committed	
	\$/m <sup>3</sup>	\$/bbl	\$/m <sup>3</sup>	\$/bbl
Light	10.31	1.64	8.58	1.36
Heavy	11.15	1.77	9.29	1.48

6 The uncommitted toll will be adjusted to maintain a maximum 20% premium over the  
 7 combined fixed and variable ten year committed toll.

8 In order to remain competitive, Keystone may be required at times to offer  
 9 uncommitted capacity at a toll less than the maximum uncommitted toll should  
 10 market circumstances so warrant. In the event market conditions are such that the  
 11 uncommitted toll appears to Keystone to be uncompetitive at a 20% premium to the  
 12 ten year committed toll, Keystone will make the appropriate toll filing with the Board  
 13 at that time to reduce the level of the toll or to seek approval for a mechanism which  
 14 allows discounting from the maximum toll to take effect.

## 15 **5.6 Allocation of Financial Risk**

16 The Keystone XL Pipeline is a commercially at-risk project with a portion of that risk  
 17 being offset through the existence of negotiated long-term transportation contracts.

1           The majority of pipeline capacity is committed to long-term firm contracts at the  
2           negotiated rate for committed capacity. However, Keystone will be assuming many  
3           risks that a traditional cost-of-service pipeline would not. Specifically, Keystone is  
4           exposed to the risks of underutilization, capital cost escalation, contract non-renewal  
5           and market risk with respect to the level of its uncommitted toll.

### 6   **5.6.1   Underutilization**

7           In the event throughput in excess of the committed level does not materialize,  
8           Keystone is solely at risk for capital-related costs associated with the underutilized  
9           capacity. Unused capacity risk can arise as a result of the market forecasts not  
10          materializing, Western Canadian oil production being less than forecast, or as a result  
11          of alternative transportation systems capturing throughput that may otherwise move  
12          on the Keystone XL Pipeline. Unused capacity risk could materialize as a result of  
13          unforeseen events in oil market pricing, government action, technological change or  
14          other factors. In any of these circumstances, Keystone bears the realization of that  
15          risk.

16          Keystone is also at risk with respect to underutilization if its uncommitted toll is not  
17          competitive into end-use markets. Keystone will be required to evaluate whether it  
18          may be necessary to reduce the uncommitted toll from the proposed maximum 20%  
19          premium above the ten year committed toll to address underutilization.

### 20   **5.6.2   Other Risks**

21          Another risk to which Keystone is exposed is contract performance risk, as Keystone  
22          has no recourse to recover lost fixed toll revenue from other committed shippers or  
23          uncommitted shippers, in the event that any committed shippers fails to perform  
24          under its contract. In the event of contract performance default, Keystone will be  
25          required to re-market the defaulting shipper's capacity under the market conditions  
26          which exist at the time.

1           Keystone is at risk in the event committed shippers elect not to renew contracts or  
2           otherwise utilize the pipeline capacity at the end of their contract terms.

3           Keystone shares with shippers the risk of changes in construction cost or project  
4           execution with shippers bearing 75% of the risk through higher tolls and Keystone  
5           bearing 25% of the risk, as described in Part C to Appendix B of the TSA. In  
6           addition, under Article 4 of the TSA (Termination), Keystone will bear all the  
7           development cost risk if the project does not proceed.

## 8    **5.7       Base Keystone Toll Impacts**

9           Base Keystone committed shippers will face no change in the fixed component of the  
10          toll for service to Wood River and Patoka or Cushing. The capital costs of the  
11          Keystone XL Pipeline will be borne by Keystone XL shippers alone.

12          Base Keystone shippers' variable toll may vary as a result of the operation of the  
13          Keystone XL Pipeline. The OM&A costs for all phases of the integrated Keystone  
14          system will be blended. The variable toll, which reflects overall OM&A in Canada, is  
15          set by actual costs and allocated among all shippers without making any distinction  
16          between base Keystone and Keystone XL Pipeline shippers.

17          Tolls for uncommitted shippers on base Keystone will continue to be established at a  
18          maximum 120% premium to the combined base Keystone fixed toll and blended  
19          variable toll.

**APPENDIX 5-1**

**INFORMATION SESSION PRESENTATION**



# Keystone XL Pipeline Project **Notice of Open Season**

Shipper Open House

July 29<sup>th</sup>, 2008



# Keystone Operational Build-up



## Keystone Operational

Paul Miller

- David Diakow  
Commercial Development
- Kevin Rossiter  
Financial Management
- Erik Tatarchuk  
Oil Movements

## Crude Business Development

Steve Becker

- Marty Heeg
- Lisa van Hemert
- Peter Bryan
- Peter Exall
- Amanda Jackson
- Oliver Youzwishen

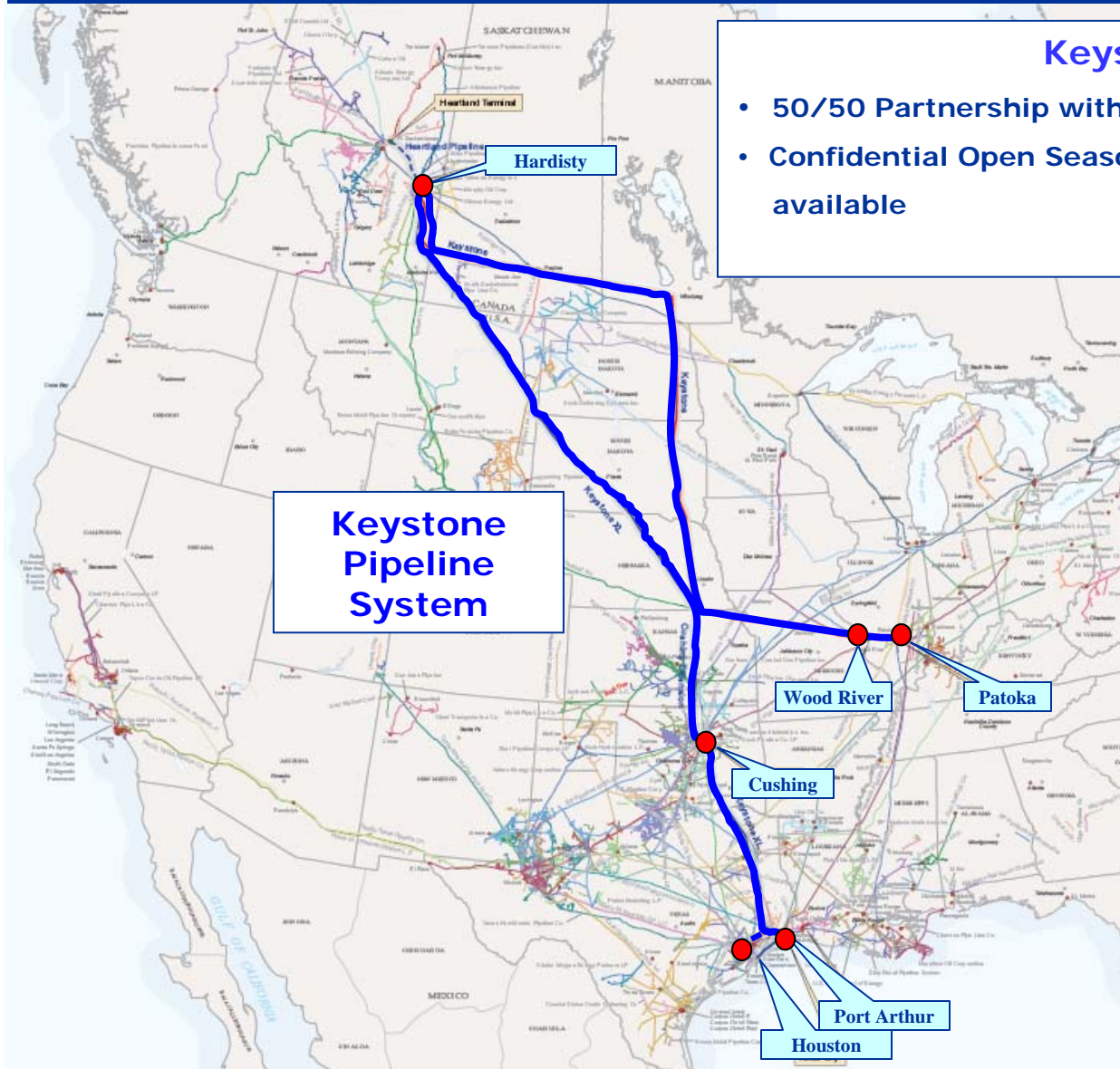
## Development & Implementation

Robert Jones

- Dean Cowling
- Neil Myers



# Keystone



- ### Keystone
- 50/50 Partnership with ConocoPhillips
  - Confidential Open Season binders for Keystone XL available

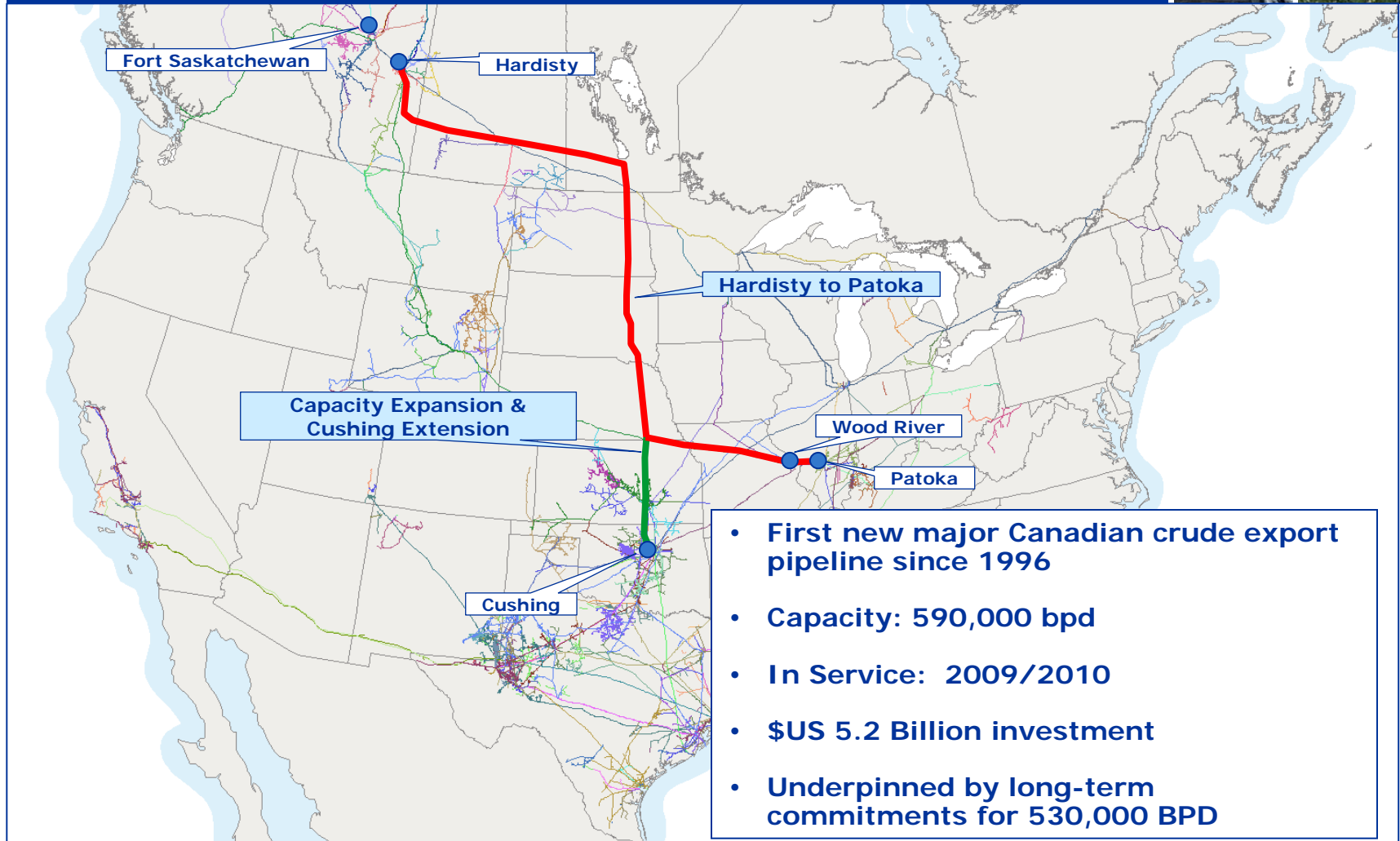


# Keystone XL Pipeline Overview

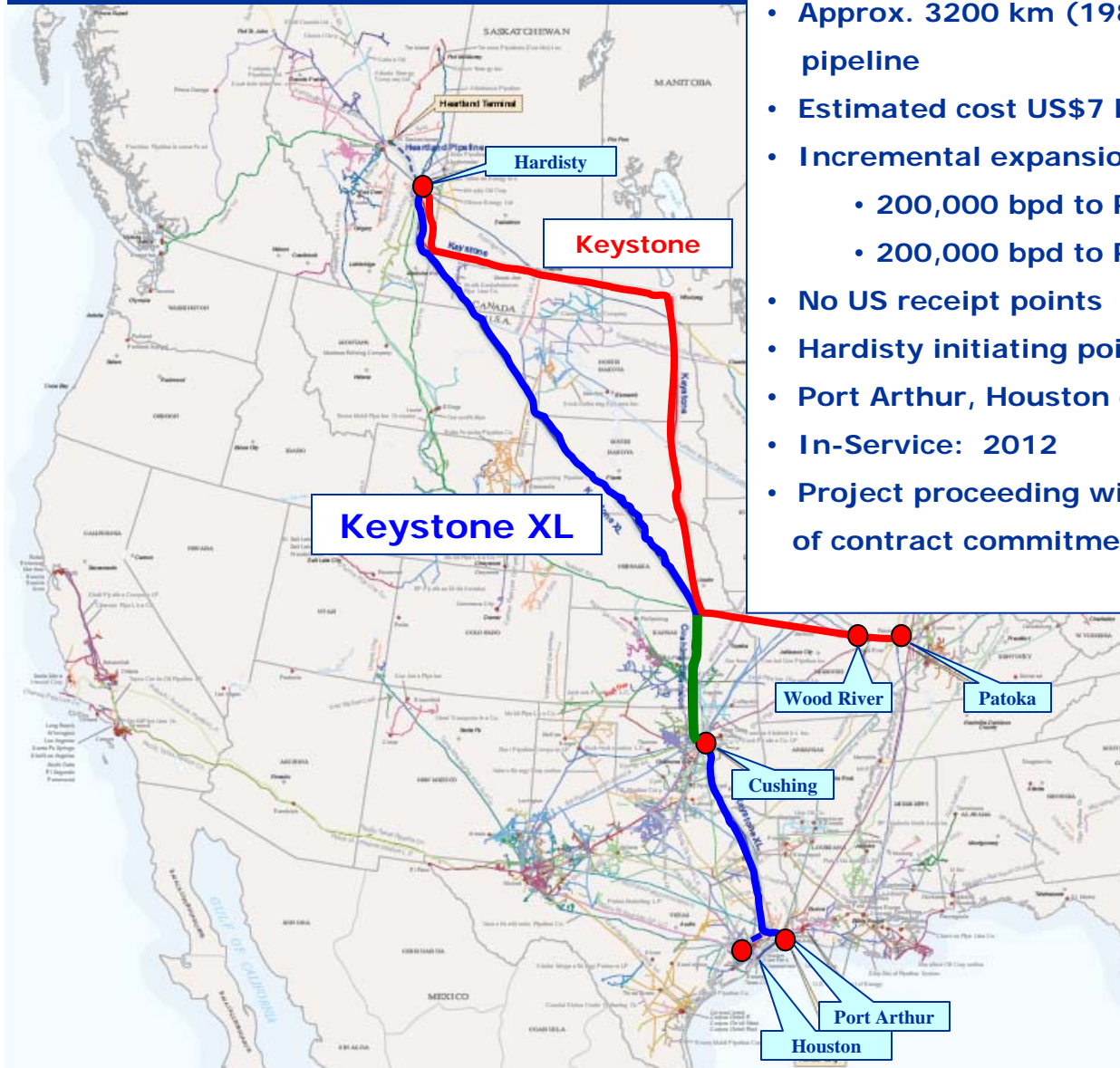


- Binding contract commitments of 300,000 bpd received in pre-open season process
- Open Season launched on July 16, 2008
  - Open house in Calgary on July 29, 2008 at 9:00 AM
  - Open Season closes Sept. 4, 2008
- Project is proceeding (regardless of Open Season results)
  - Regulatory filings underway in Canada and US
  - Material procurement initiated
  - Construction 2010 to 2012
  - In-service 2012

# Keystone Pipeline Project Update



# Keystone XL Project

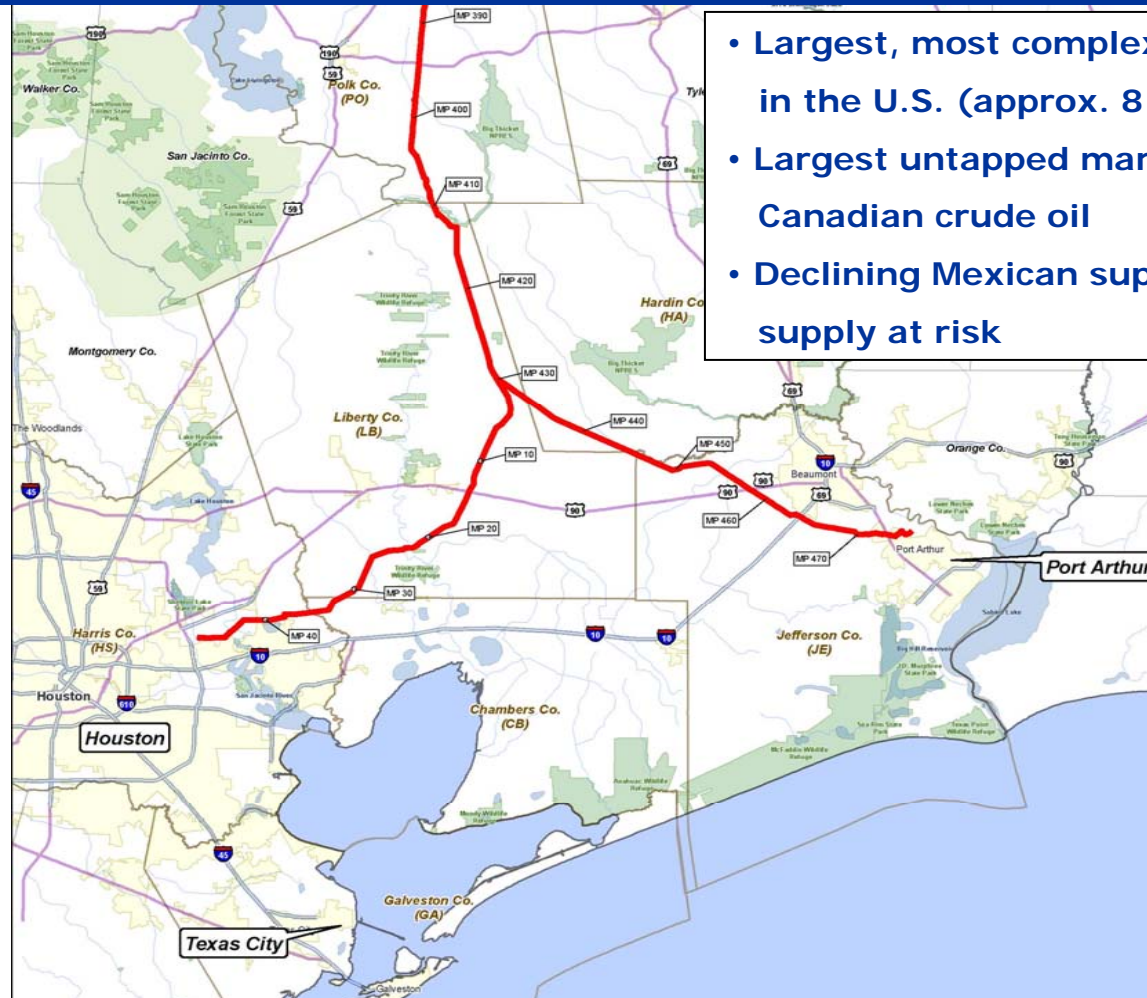


## Keystone XL

- 500,000 bpd initial contract capacity
- Approx. 3200 km (1980 mi) 36" diameter pipeline
- Estimated cost US\$7 billion
- Incremental expansion capacity
  - 200,000 bpd to Patoka/Wood River
  - 200,000 bpd to Port Arthur/Houston
- No US receipt points
- Hardisty initiating point
- Port Arthur, Houston delivery points
- In-Service: 2012
- Project proceeding with 300,000 b/d of contract commitments already received

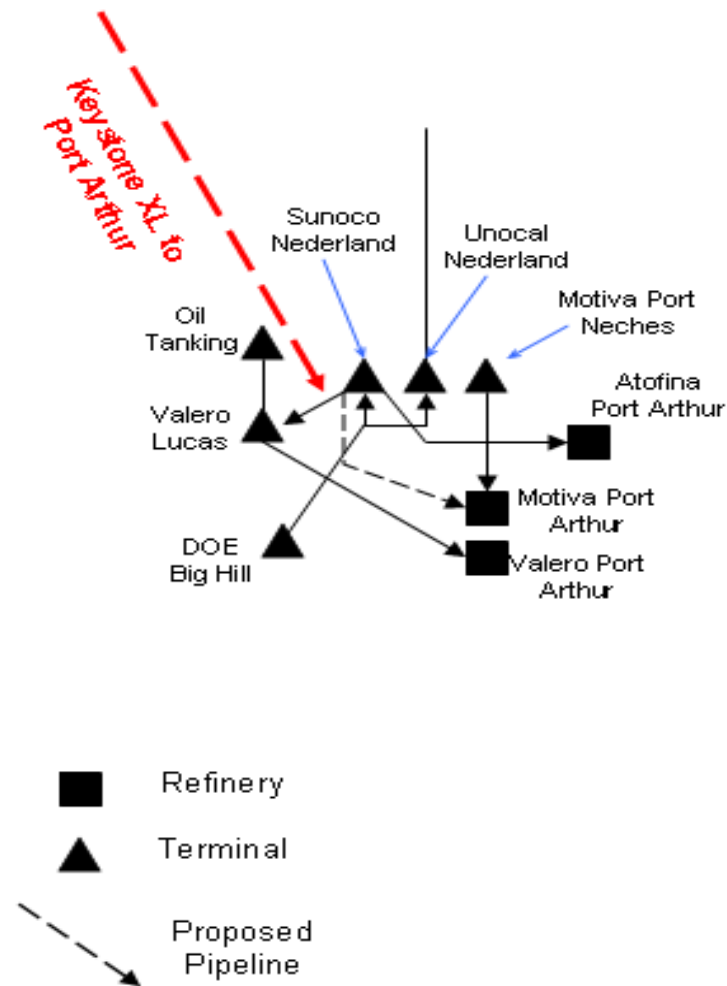


# Map of Keystone XL Gulf Coast Delivery Area

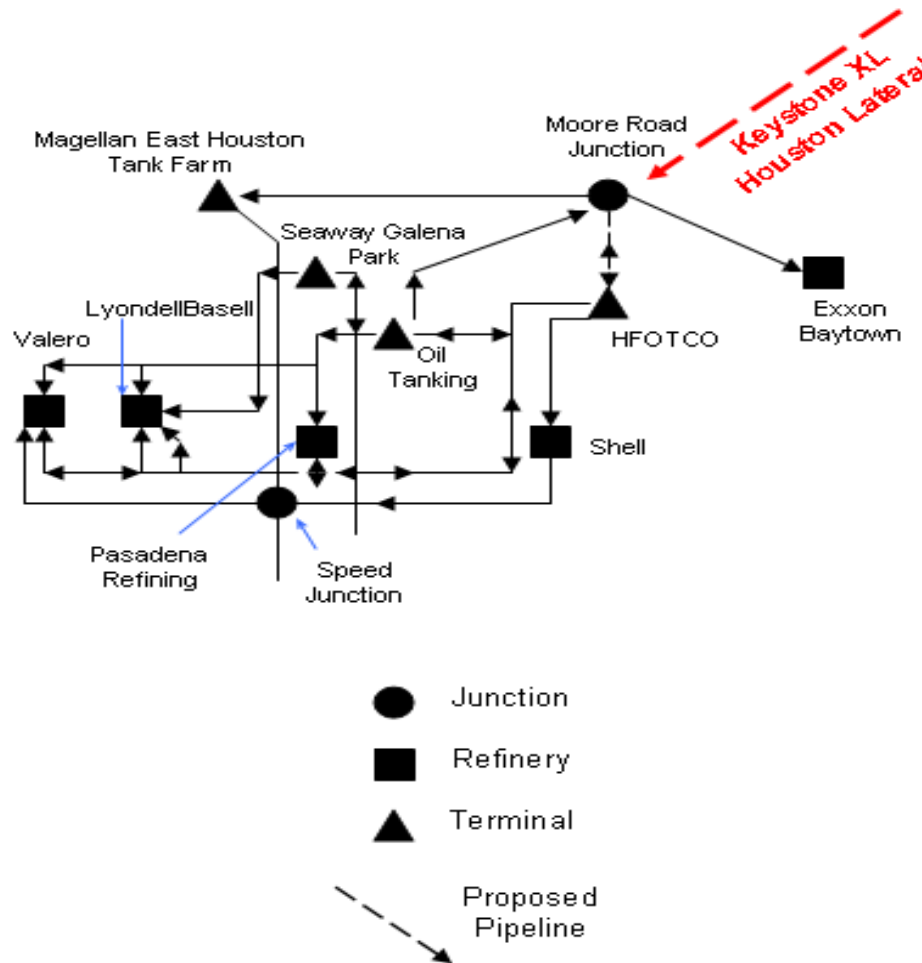


- Largest, most complex refining market in the U.S. (approx. 8 Million bpd)
- Largest untapped market for western Canadian crude oil
- Declining Mexican supply, Venezuelan supply at risk

# Schematic of Port Arthur Delivery Area and Potential Interconnections



# Schematic of Houston Delivery Area and Potential Interconnections



# Project Schedule



- Q3, 2008: Open Season
- Q4, 2008 - Q1, 2009: File Regulatory Applications
- Q1, 2010:
  - Regulatory Approvals
  - Commence Construction
- 2012: In-Service



# Keystone XL Advantages



- Competitive Toll
- Toll Certainty through:
  - Contract Design: Fixed/Variable toll
    - No change to fixed amount over term of contract
    - Variable toll is a flow through of actual costs
    - No impact of future roll-ins
  - Capital Cost Risk Sharing
- Lower Working Capital from lower transit time
  - 20 day transit time
- Priority access for term shippers
- Crude quality advantage (no breakout tankage)

# Keystone XL Commercial Advantages



- Toll Certainty
  - Price, Term Differentiation
  - Volume - Fixed toll independent of Open Season results
- Capital Cost Certainty
  - Aligned capital cost risk sharing mechanism
- Make-up Provisions
- MFN Provisions
  - Contract rate protection

## Keystone Toll Design Advantage – Fixed and Variable

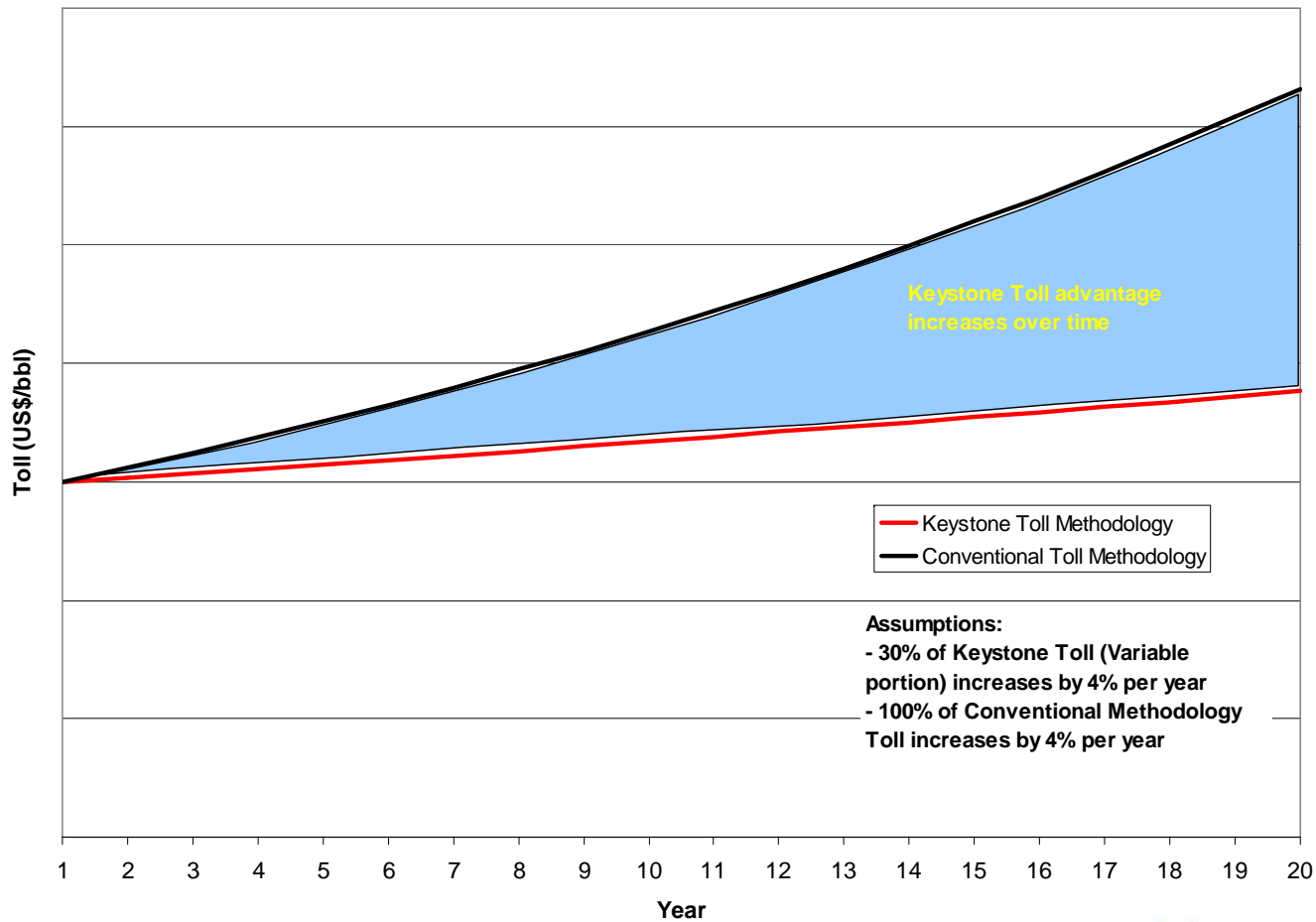


- Fixed or Committed:
  - Fixed for term of contract
  - Recovery of capital invested
  - Option of 10, 15 or 20 year contracts
  - No indexing
  
- Variable or flow through costs:
  - Power, property tax and O&M expenses
  - Adjusted annually to reflect actual costs
  - Reflect types and volumes of crude transported
  - No indexing

# Keystone Toll Advantage Illustration



Illustrative Toll Comparison



# Keystone XL Product Quality



- No breakout tankage
- No charges for mechanical batch separation (pigging)
- Reduced interface mixing
- High volume flow rates and Reynolds numbers
- Large batch size (100,000 bbl trains proposed)
- Ability to batch unique types of crude

## Open Season Information



- Open Season July 16<sup>th</sup> to September 4<sup>th</sup>, 2008
- Confidential Open Season binders available
  - Transportation Service Agreements (TSA's)
  - Tolls
  - Tariff Rules and Regulations
  - Requires Executed Confidentiality Agreement
- Questions, please contact:
  - David Diakow, 403-920-6019
  - Marty Heeg, 403-920-2101

**APPENDIX 5-2**

**PRO FORMA**

**TRANSPORTATION SERVICE AGREEMENT**

**KEYSTONE GULF COAST EXPANSION  
PETROLEUM TRANSPORTATION SERVICE AGREEMENT**

**THIS CONTRACT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2008.

**PARTIES:**

●, a corporation incorporated under the laws of ●  
("Shipper")

**AND**

**TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP**, a limited partnership  
registered under the laws of Alberta  
("Carrier");

**WHEREAS:**

- A. Carrier is proposing to construct, own and operate the Keystone Initial Facilities;
- B. Carrier is proposing to construct, own and operate an expansion and extension of the Keystone Initial Facilities, including the construction of additional pipeline facilities from at or near Hardisty, Alberta to the international boundary at or near Monchy, Saskatchewan;
- C. Shipper has requested, and subject to the satisfaction or waiver of the conditions precedent set forth in Article 3, Carrier has agreed, to transport the Contract Volume of Petroleum Tendered by Shipper or Shipper's agent pursuant to the terms and conditions of this Contract, and subject to the Tariff;
- D. Shipper wishes to make a firm commitment to Carrier regarding the transportation of Petroleum on the Pipeline System as set forth in this Contract, including all Appendices, and upon its execution of this Contract to become a Term Shipper; and
- E. In recognition of the support provided by Shipper for the KXL Expansion Facilities, Carrier is prepared to offer tolls and terms of service to Shipper subject to and in accordance with the provisions of this Contract and the Tariff.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth below, Carrier and Shipper agree as follows:

**ARTICLE 1  
INTERPRETATION**

- 1.1 Except as specifically provided in this Contract, the capitalized terms and phrases used but not defined in this Contract shall have the meaning ascribed to such terms and phrases in the Rules and Regulations. In addition, whenever used in this Contract, the following words and terms have the meanings set out below.



“**Advance Notice**” has the meaning given that term in Section 5.1.

“**Alternate Gulf Coast Price**” has the meaning given that term in Section 9.4(b).

“**Baseline Committed Price**” has the meaning given that term in Section 9.4(b).

“**business day**” has the meaning given that term in Section 11.1.

“**Carrier**” has the meaning given that term in the recitals.

“**Carrier Termination Notice**” has the meaning given that term in Section 4.1.

“**Commencement Date**” has the meaning given that term in Section 5.3.

“**Committed Price**” has the meaning given that term in Section 9.4(b).

“**Committed Volume**” means the sum of the Monthly Volumes of all Term Shippers.

“**Contract Financial Assurances**” has the meaning given that term in Article 7.

“**Final Project Costs**” means the “Final Project Costs” described in Part C of Appendix ‘B’.

“**Firm Transportation Service**” means transportation service on the Pipeline System using capacity that is reserved for and committed to Term Shippers for the priority transportation of the Committed Volume.

“**Fixed Toll**” means the “Fixed Toll” described in Part B of Appendix ‘B’.

“**Gulf Coast Expansion Contract**” means a contract between Carrier and a Term Shipper, on terms and conditions corresponding to this Contract.

“**Keystone Initial Facilities**” means that portion of the Pipeline System consisting of (i) Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at or near Hardisty, Alberta, and terminating at the international boundary at or near Haskett, Manitoba with a nominal transportation capacity of approximately 435,000 barrels per day of Petroleum, and (ii) associated facilities required to expand such facilities to a nominal transportation capacity of approximately 590,000 barrels per day of Petroleum.

“**KXL Expansion Facilities**” means that portion of the Pipeline System consisting of the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Monchy, Saskatchewan, having a nominal transportation capacity of approximately 700,000 barrels per day of Petroleum.

“**Line Fill**” means the volume of Petroleum determined by Carrier required to be delivered by Shipper to provide for the commissioning and start-up of the KXL Expansion Facilities.

“**Notice**” has the meaning given that term in Section 11.1.

“**Operating, Maintenance and Administration Costs**” has the meaning given in paragraph D.2 of Appendix ‘B’.

“**Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan, as such facilities may be modified, expanded or extended from time to time.

“**Rates**” has the meaning given that term in Section 12.2.

“**Regulatory Approvals**” has the meaning given that term in Section 2.1.

“**Rules and Regulations**” means the Rules and Regulations Governing the Transportation of Petroleum contained in the Tariff in effect at that time.

“**Shipper**” has the meaning given that term in the recitals.

“**Shipper Commitment Price**” has the meaning given that term in Section 9.4(b).

“**Shipper Information**” means all of the information and evidence to be provided by Shipper to Carrier pursuant to Section 2.3.

“**Shipper Termination Notice**” has the meaning given that term in Section 4.2.

“**Tariff**” means the Rules and Regulations and any other rate tariffs filed at the NEB, all as may be amended from time to time.

“**Term**” has the meaning given that term in Section 10.1.

“**Termination Date**” means the relevant termination date in Article 4.

“**Uncommitted Gulf Coast Price**” has the meaning given that term in Section 9.4(b).

“**US GC TSA**” means a petroleum transportation agreement, on terms and conditions corresponding to this Contract, for the transportation of Petroleum on the Keystone US Pipeline System.

“**Variable Toll**” means the “Variable Toll” described in Part D of Appendix ‘B’.

Additional terms used primarily in Appendix ‘B’ are defined in Appendix ‘B’.

1.2 Attached to and forming an integral part of this Contract are the following appendices:

- (a) Appendix ‘A’, comprising the Contract Term and Contract Volume;
- (b) Appendix ‘B’, comprising the schedule of tolls and tolling principles for Petroleum transportation service from Hardisty, Alberta to the point of interconnection with the pipeline facilities of Keystone US at the international boundary;

- (c) Appendix 'C', comprising a draft of the Rules and Regulations; and
- (d) Appendix 'D', comprising an illustrative example of the calculation set forth in Section 9.4(a).

1.3 In this Contract:

- (a) The headings used are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions hereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms;
- (b) Where the word "including" or "includes" is used, it means "including (or includes) without limitation";
- (c) A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation;
- (d) Time is of the essence in the performance of the Parties' respective obligations; and
- (e) If, in any jurisdiction, any provision of this Contract or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Contract and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

## ARTICLE 2 REGULATORY APPROVALS

- 2.1 Subject to the terms and conditions of this Contract, including such initial level of satisfaction of the conditions precedent in Sections 3.1(c), (d) and (e) for the purposes outlined in this Section 2.1, as may be determined to be desirable or necessary by each of Carrier and Keystone US in its sole discretion, Carrier, in conjunction with Keystone US, shall proceed with due diligence and in good faith to seek to obtain from all governmental, administrative and regulatory (including aboriginal and tribal, if applicable) authorities having jurisdiction in Canada and the United States such authorizations or exemptions, or both, and any necessary amendments or supplements thereto, that each of Carrier and Keystone US, in its sole discretion, determines are necessary for, and on terms satisfactory to, Carrier to construct, acquire, own and operate the Pipeline System (including the Keystone Initial Facilities and the KXL Expansion Facilities) and to provide Firm Transportation Service for Shipper, and for Keystone US to construct, acquire, own and operate the Keystone US Pipeline System (including the "Keystone Initial Facilities" and the "KXL Expansion Facilities" pursuant to the US GC TSA) as contemplated in the contractual arrangements entered into between Keystone US and its shippers, except for those that are, in the reasonable opinion of each of Carrier and Keystone US, not material or not customarily required by prudent pipeline operators prior to the commencement of on-site construction or pre-construction activities (collectively, the "**Regulatory Approvals**").

- 2.2 Shipper acknowledges and agrees that Carrier and Keystone US have exclusive control over the Regulatory Approvals filing and prosecution process. Neither Carrier nor Keystone US shall be obligated to appeal any decision of a regulatory, administrative, governmental or judicial authority that has the effect of (a) denying a Regulatory Approval, or (b) granting a Regulatory Approval on conditions that are determined by each of Carrier and Keystone US in its sole discretion, to be unsatisfactory to Carrier or Keystone US, as the case may be.
- 2.3 Shipper agrees to cooperate with Carrier to obtain the Regulatory Approvals and provide such reasonable support as may be necessary in connection with the applications for, and the processing of, the Regulatory Approvals. Such support and cooperation may, at Carrier's reasonable request, include providing any information reasonably requested by Carrier or Keystone US for use in applying for a Regulatory Approval and any information required by a regulatory, administrative, governmental or judicial authority in connection with its review of an application for a Regulatory Approval, including the provision of witnesses to speak to such information. Carrier shall, in considering whether to request any Shipper Information, consider the commercial sensitivity and confidentiality of such information on the part of Shipper and, where commercially reasonable to Carrier's applications for Regulatory Approvals, seek to limit such information to Shipper Information that is not commercially sensitive or confidential. Notwithstanding the foregoing, if any Shipper Information (which for these purposes shall include the information provided by Shipper in Appendix 'A') is commercially sensitive and confidential, Carrier will, if requested by Shipper, exercise commercially reasonable efforts to obtain confidential treatment of such information by the governmental, regulatory, administrative or judicial authority that has requested such information. Except as expressly contemplated by this Section 2.3 and applicable law, Carrier shall not disclose to third parties (other than to Keystone US, Carrier's Affiliates and their respective counsel, agents, directors, officers, employees and/or consultants who or which are on a need to know basis only) the specific Contract Volume of Shipper; provided that nothing in the foregoing shall restrict disclosure of the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis.
- 2.4 Shipper agrees not to:
- (a) oppose, intervene against, or seek to delay, whether directly or indirectly, any of Carrier's or Keystone US's applications for Regulatory Approvals before any of: (i) the NEB, (ii) the FERC, (iii) any state certificating authorities in the United States, (iv) any judicial authorities with respect to matters regulated by the bodies or entities enumerated in paragraphs (i), (ii) or (iii) above, or (v) any appellate bodies of any of the foregoing, provided that subject to the foregoing requirements of this Section 2.4, Shipper may otherwise participate in such applications; or
  - (b) make any statements, whether directly or indirectly, that indicate a lack of support for the Keystone Initial Facilities, the KXL Expansion Facilities or the Keystone US Pipeline System. For greater certainty, Carrier acknowledges that Shipper shall not be considered to have violated its obligations under this Section 2.4(b) in respect of statements made by industry associations or organizations not controlled by Shipper, where Shipper complied with such obligations for statements made within and to such industry association or organization.

**ARTICLE 3**  
**CONDITIONS PRECEDENT**

3.1 Subject to Section 2.1 and Article 4, Carrier's obligations under this Contract are subject to the satisfaction or waiver of the following conditions precedent:

- (a) Carrier and its Affiliates shall, by December 31, 2011: (i) have obtained all Canadian Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, on terms acceptable to Carrier in its sole discretion; or (ii) be able to demonstrate that Carrier and its Affiliates reasonably expect to obtain all Canadian Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, on terms acceptable to Carrier in its sole discretion.
- (b) Keystone U.S. and its Affiliates shall, by December 31, 2011: (i) have obtained all U.S. Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, on terms acceptable to Keystone U.S. in its sole discretion; or (ii) be able to demonstrate that Keystone U.S. and its Affiliates reasonably expect to obtain all U.S. Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, on terms acceptable to Keystone U.S. in its sole discretion.
- (c) Carrier, in its sole discretion, shall have determined that it has a minimum level of commitment from Term Shippers on the Pipeline System in respect of the KXL Expansion Facilities.
- (d) Keystone US, in its sole discretion, shall have determined that it has a minimum level of commitment from shippers who are parties to a US GC TSA.
- (e) Shipper or an Affiliate of Shipper shall have contemporaneously with the execution of this Contract, entered into a US GC TSA, which US GC TSA remains in full force and effect.
- (f) Carrier's satisfaction, in its sole discretion, that Shipper has obtained on or before the Commencement Date, all required regulatory and governmental approvals for Shipper to receive service from Carrier and Keystone US as contemplated under this Contract and any US GC TSA including approvals necessary to export Petroleum from Canada and to import Petroleum into the United States.

Carrier and Keystone US shall have no liability or obligation whatsoever to Shipper in the event either or both of them (i) declines to file for, withdraws from, or rejects any Regulatory Approval, or (ii) determines that there is not a sufficient commitment from Term Shippers on the Pipeline System to justify proceeding with the KXL Expansion Facilities.

3.2 Except as provided in Section 4.2(a), the conditions precedent stated in Section 3.1 are included for the sole benefit of Carrier and may only be waived by Carrier.

3.3 The execution and delivery by Shipper of this Contract in connection with open season procedures initiated by Carrier for the KXL Expansion Facilities (as such procedures may be

replaced or amended from time to time) constitutes an irrevocable binding offer by Shipper that shall not be binding on Carrier unless and until this Contract is executed and delivered by Carrier, subject always to the other provisions of this Article 3, provided that if this Contract is not executed by Carrier on or before the date which is 45 days following the completion of the open season procedures initiated by Carrier for the KXL Expansion Facilities, Shipper's offer shall, at Shipper's option, expire and be of no further force and effect, and upon the expiry of such offer in accordance with this Section 3.3, Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

#### **ARTICLE 4 TERMINATION**

- 4.1 If:
- (a) the conditions precedent set forth in Sections 3.1(a) and (b) are not satisfied or waived by Carrier on or before December 31, 2011 or in Sections 3.1(e) and (f) are not satisfied or waived by Carrier on or before the Commencement Date;
  - (b) the conditions precedent set forth in Sections 3.1(c) and (d) are not satisfied or waived by Carrier on or before October 31, 2008;
  - (c) at any time during the period prior to the Commencement Date, Shipper fails to observe and perform any material agreement, term or condition contained in this Contract;
  - (d) on or before the Commencement Date, Shipper becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Shipper or any of its assets, or if Shipper files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
  - (e) the US GC TSA is terminated in accordance with section 4.1 thereof,

Carrier may terminate this Contract on thirty (30) Days prior written notice to Shipper specifying full particulars thereof, including particulars of any default (a "**Carrier Termination Notice**"); provided however, in respect of Section 4.1(c), if Shipper performs such material agreement, term or condition described in the Carrier Termination Notice within such thirty (30) day period, this Contract shall not terminate but shall continue in force and effect. If the right to terminate this Contract is exercised by Carrier pursuant to Section 4.1(c) or (d), or from termination pursuant to Section 4.1(e) which results from section 4.1(c) or (d) of the US GC TSA, Shipper shall, to the extent permitted by applicable law and subject to Carrier's obligation to mitigate, pay to Carrier the net present value of the aggregate of: (1) the Monthly Revenue Commitment payable under this Contract for the unexpired term of this 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 Shipper is obligated to pay Carrier pursuant to the Rules and Regulations. Upon termination of this Contract by Carrier pursuant to Section 4.1(a) or (b), or from termination pursuant to Section 4.1(e) which results from section 4.1(a), (b) or (e) of the US GC TSA, Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

4.2 If:

- (a) the conditions precedent set forth in Sections 3.1(a) and (b) are not satisfied by Carrier on or before December 31, 2011;
- (b) at any time during the period prior to the Commencement Date, Carrier fails to observe and perform any material agreement, term or condition contained in this Contract;
- (c) on or before the Commencement Date, Carrier becomes insolvent or makes an assignment or arrangement for the benefit of its creditors, or a receiver is appointed for Carrier or any of its assets, or if Carrier files a petition or proposal for bankruptcy or is petitioned or adjudicated a bankrupt; or
- (d) the US GC TSA is terminated in accordance with section 4.2 thereof,

Shipper may terminate this Contract on thirty (30) Days prior written notice to Carrier specifying full particulars thereof, including particulars of any default (a “**Shipper Termination Notice**”), provided however:

- (i) in respect of Section 4.2(a), in the event there is a dispute regarding Carrier’s or Keystone U.S.’s ability to demonstrate its reasonable expectations under Sections 2.1, 3.1(a)(ii) and (b)(ii), such dispute shall be immediately referred to final and binding arbitration for resolution before a panel of three neutral arbitrators, one arbitrator to be selected by Carrier, one arbitrator to be selected by Shipper, and the final arbitrator to be selected jointly by the first two arbitrators, with such arbitration to be held in Calgary, Alberta, pursuant to the provisions of the *International Commercial Arbitration Act* (Alberta). The arbitrators appointed shall to the extent possible have approximately 15 years experience resolving commercial disputes in the petroleum industry and shall have experience resolving disputes reasonably similar to the dispute which they are called upon to resolve. If the arbitration panel finds that Carrier or Keystone U.S. cannot reasonably expect to receive all Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, then Shipper may terminate this Contract pursuant to Section 4.2(a). If the arbitration panel finds that Carrier or Keystone U.S. does reasonably expect to receive all Regulatory Approvals required to meet a Commencement Date for the KXL Expansion Facilities not later than December 31, 2013, then this Contract shall not terminate but shall continue in full force and effect; and
- (ii) in respect of Section 4.2(b), if Carrier performs such material agreement, term or condition described in the Shipper Termination Notice within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.

Upon termination of this Contract by Shipper pursuant to Section 4.2(a), (b) or (c) or from termination of the US GC TSA pursuant to Section 4.2(d) which is exercised by Shipper pursuant to section 4.2(a), (b), (c), (d) or (e) of the US GC TSA, Shipper shall not be liable for any costs,

expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System.

- 4.3 If the Commencement Date has not occurred on or before December 31, 2013, either Carrier or Shipper may terminate this Contract on thirty (30) Days prior written notice to the other Party (by delivery of a Carrier Termination Notice or a Shipper Termination Notice, as the case may be) and upon such termination Shipper shall not be liable for any costs, expenses or other liabilities incurred by Carrier or its Affiliates associated with the Pipeline System, provided however, if the Commencement Date occurs within such thirty (30) Day period, this Contract shall not terminate but shall continue in full force and effect.
- 4.4 If Shipper fails to provide Carrier with the Contract Financial Assurances as required under Article 7 within ten (10) Banking Days of Carrier's written demand therefor, Carrier may terminate this Contract by providing further written notice to Shipper.

## ARTICLE 5 COMMENCEMENT OF SERVICE

- 5.1 (a) Carrier shall provide Shipper with prior written notice (the "**Advance Notice**") of:
- (i) Carrier's schedule of Line Fill procedures requiring Shipper to deliver, over a period beginning approximately ninety (90) Days and ending approximately one hundred eighty (180) Days, following Shipper's receipt of the Advance Notice, its proportionate share of Line Fill necessary for the KXL Expansion Facilities; and
  - (ii) Carrier's intention to commence Working Stock acquisition activities.
- Volumes of Line Fill and Working Stock shall be as determined by Carrier, acting reasonably. The Type of Line Fill and Working Stock shall be as determined by Shipper, acting reasonably in consultation with Carrier.
- (b) Carrier shall use reasonable efforts to provide Shipper with periodic updates as to Carrier's expected commencement of Line Fill procedures.
- (c) If, following Shipper's receipt of the Advance Notice, Carrier alters the schedule of Line Fill procedures from that set forth in the Advance Notice, Carrier shall be solely liable for and shall indemnify Shipper from and against any and all damages, losses, expenses and costs incurred or suffered by Shipper as a result of Carrier's alteration of the schedule of Line Fill procedures from that set forth in the Advance Notice, unless such damages, losses, expenses or costs are due to Shipper's negligence, provided however that Carrier shall not be liable for or indemnify Shipper from and against any Special Damages.
- 5.2 Shipper agrees to cooperate with Carrier and provide reasonable commercial support to Carrier in Carrier's Working Stock acquisition, Line Fill and commissioning activities in respect of the KXL Expansion Facilities.



- 5.3 Upon completion of construction, commissioning, Line Fill and Working Stock acquisition activities with respect to the KXL Expansion Facilities pursuant to Section 5.2, Carrier shall provide Shipper with at least thirty (30) Days prior written notice of the date on which Firm Transportation Service under this Contract in respect of the Term is to commence (the “**Commencement Date**”). At least ten (10) Days prior to the Commencement Date, Shipper shall provide Carrier with Shipper’s Monthly Nomination for the next ensuing Month on a Notice of Shipment as prescribed in the Rules and Regulations.
- 5.4 Unless otherwise precluded by regulatory requirements, Carrier shall return to Shipper substantially all of Shipper’s Working Stock or in-transit batches of Petroleum which shall be of substantially the same type and quality as that which was delivered to Carrier commencing not later than sixty (60) days following the expiration or termination of this Contract, subject to operational constraints.

## **ARTICLE 6 TRANSPORTATION SERVICE**

- 6.1 Subject to Section 9.2, from and after the Commencement Date and during the Term:
- (a) Shipper shall Tender (or otherwise pay for, as contemplated by Appendix ‘B’ and the Rules and Regulations, consistent with Section 9.1) at least the Monthly Volume at the Receipt Point, and
  - (b) Carrier shall provide Firm Transportation Service hereunder for Shipper, as a Term Shipper, in accordance with the provisions of this Contract and the Tariff.
- 6.2 Carrier will only provide transportation service for Petroleum, as described in this Contract and the Tariff.
- 6.3 If Carrier has not received a Monthly Nomination by the time and date specified in Section 7.1 of the Rules and Regulations, Carrier shall use reasonable efforts to contact Shipper to confirm the failure was not inadvertent.

## **ARTICLE 7 CONTRACT FINANCIAL ASSURANCE**

- 7.1 Shipper shall, if and when reasonably requested by Carrier at any time prior to the Commencement Date (with the reasonableness of such request considered in a manner consistent with Section 20.2 of the Rules and Regulations), provide to Carrier financial assurances on terms and from an issuer satisfactory to Carrier, acting reasonably (the “**Contract Financial Assurances**”), which may include a financial guarantee, irrevocable standby letter of credit or other form of financial assurance to secure all obligations or potential obligations of Shipper under this Contract.

**ARTICLE 8  
MAKE-UP RIGHTS AND BALANCING**

- 8.1 In the event that, during the Term, (a) Shipper Tenders for shipment by Carrier in any Month a volume less than its Monthly Volume, or (b) Carrier does not accept Shipper's Tender, in whole or in part, of its Monthly Volume by reason of Force Majeure declared by Carrier, Shipper shall, to the extent that, in Carrier's discretion, operating conditions permit and capacity is available, be entitled to transport a make-up volume of the difference between its Monthly Volume and volumes actually Tended for shipment in that Month in any of the next following thirty-six (36) Months, provided that Shipper has first Tended its Monthly Volume in such Months before making use of any make-up volumes. Provided further that if such Force Majeure event continues beyond three (3) consecutive months Shipper shall not be entitled to accrue any make-up rights beyond such three (3) month period.
- 8.2 Where Shipper's Monthly Nomination equals its Monthly Volume for a Month, and Carrier, solely for purposes of maintaining Carrier's batching schedule, accepts Tenders from Shipper of a volume less than or in excess of the Monthly Volume in such Month, Carrier and Shipper agree to use reasonable commercial efforts to reconcile such lesser or excess volume with the Monthly Volume transportable on the Pipeline System in the subsequent Month. In no event will Shipper be considered to fail to Nominate or Tender its Monthly Volume in any Month solely due to Carrier's batching or balancing requirements.
- 8.3 Only the Variable Toll will be payable by Shipper regarding make-up volumes Tended in accordance with Section 8.1.
- 8.4 Shipper shall use reasonable efforts to provide Carrier with a minimum of one Month written notice of any planned reduction of volume to be Tended for any Month where the Shipper reasonably anticipates that the reduction will be in excess of 5% of the Monthly Volume.
- 8.5 Any make-up rights of Shipper arising out the operation of this Article 8 shall cease and shall be forfeited by Shipper at the expiration of the date that is 36 months following the last day of the Term.

**ARTICLE 9  
TOLLS**

- 9.1 On each Payment Due Date, Shipper shall pay for transportation service in accordance with this Contract, including Appendix 'B' and the Tariff.
- 9.2 In the event of interruption, curtailment or reduction of Firm Transportation Service pursuant to an outage by Carrier either as described in Section 13.1 of the Rules and Regulations or for any other reason not attributable to Shipper but except for Carrier Force Majeure in accordance with Article 15 of the Rules and Regulations, Shipper shall not, for the period of such interruption, curtailment or reduction only, be required to pay the Fixed Toll hereunder regarding such portion of interrupted, curtailed or reduced Firm Transportation Service.
- 9.3 In any Month that Shipper's Allocated Volume exceeds its Monthly Volume in accordance with the Tariff, not including any make-up volumes pursuant to Article 8 (such excess volume being

the “**Excess Volume**”), Shipper shall pay to Carrier on the Payment Due Date an amount equal to the product obtained by multiplying the Uncommitted Toll times the Excess Volume.

9.4 If Shipper has a Contract Volume of at least 7,950 m<sup>3</sup>/Day (50,000bbl/Day) and Shipper or its Affiliate has specified a Port Arthur Delivery Point as its delivery point in Appendix ‘B’ of its US GC TSA (and to the extent of the volumes allocated by Shipper or its Affiliate to the Port Arthur Delivery Point), then:

- (a) provided that neither Shipper nor its Affiliate that is a party to a US GC TSA is then in default of any material obligation under this Contract or the US GC TSA, Carrier agrees that, if Carrier and Keystone US transport volumes on the Pipeline System and the Keystone US Pipeline System with a Port Arthur Delivery Point on the Keystone US Pipeline System and for the same Type of Petroleum for one or more third party shippers, whether or not such shippers are Affiliates of Shipper at an Uncommitted Gulf Coast Price or an Alternate Gulf Coast Price lower than the Baseline Committed Price, then:
  - (i) for so long as such volumes are transported at such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price, Carrier and Keystone US shall collectively reduce the Shipper Commitment Price by an amount per Cubic Meter equal to the difference between such Uncommitted Gulf Coast Price or Alternate Gulf Coast Price (as applicable) and the Baseline Committed Price; and
  - (ii) each of Carrier and Keystone US shall have sole discretion as to the allocation of any such reduction between the Pipeline System and the Keystone US Pipeline System.
- (b) For the purposes of this Section 9.4, the following interpretative principles shall apply:
  - (i) “**Alternate Gulf Coast Price**” shall mean, at any time, the sum of:
    - (1) the fixed toll payable by a shipper under a contract for delivery to the point of interconnection with the pipeline facilities of Keystone U.S. at the international boundary that is not a Gulf Coast Expansion Contract; plus
    - (2) the commitment rate payable by a shipper under the corresponding contract in respect of the Keystone US Pipeline System for delivery to a Port Arthur Delivery Point that is not a US GC TSA; plus
    - (3) the Variable Toll; plus
    - (4) the Variable Rate under the corresponding contract in respect of the Keystone US Pipeline System;
  - (ii) “**Committed Price**” shall mean, at any time, the sum of:
    - (1) the relevant Base Toll outlined in Part B of Appendix ‘B’, as adjusted for capital variance and Final Project Costs; plus

- (2) the relevant Base Rate outlined in Part B of Appendix ‘B’ of the corresponding US GC TSA, as adjusted for capital variance and Final Project Costs of the Keystone US Pipeline System; plus
  - (3) the Variable Toll; plus
  - (4) the Variable Rate under the corresponding US GC TSA;
  - (iii) “**Baseline Committed Price**” shall mean, at any time, the Committed Price adjusted by the Term Discount for the shortest contract term outlined in Appendix ‘A’ then remaining in effect.
  - (iv) “**Port Arthur Delivery Point**” shall have the meaning given to such term in the US GC TSA;
  - (v) “**Shipper Commitment Price**” shall mean the sum of: (1) the Fixed Toll payable by Shipper under this Contract plus (2) the Term Shipper Commitment Rate payable by Shipper or its Affiliate under the US GC TSA;
  - (vi) “**Uncommitted Gulf Coast Price**” shall mean the sum of: (1) the Uncommitted Toll plus (2) the Uncommitted Rate for the Port Arthur Delivery Point on the Keystone US Pipeline System; and
  - (vii) all calculations of tolls and rates for the Pipeline System and the Keystone US Pipeline System will be made on a per Cubic Meter basis in Canadian dollars, with currency exchange calculations performed at the Bank of Canada noon day rate applicable on the date that is two business days immediately preceding the Monthly Nomination date.
- (c) An illustrative example of the calculation set forth in Section 9.4(a) is attached to this Contract as Appendix ‘D’.

## ARTICLE 10 TERM OF CONTRACT

- 10.1 This Contract shall be effective as of the date it is signed by Shipper and Carrier, and unless terminated earlier in accordance with its terms, the initial term of this Contract shall commence on the Commencement Date and shall continue until the anniversary of said Commencement Date in accordance with the contract term specified by Shipper in Appendix ‘A’, subject to adjustment pursuant to Section 8.5 or 10.2 of this Contract (such period being the “**Term**”).
- 10.2 So long as Shipper is not otherwise in default of this Contract or the Rules and Regulations, Shipper shall have the single option, exercisable by written notice to Carrier and received by Carrier not later than twenty-four (24) Months prior to the expiry of the Term, to extend the Term of this Contract:
- (a) where the initial Term is less than twenty (20) Years, for a single additional five (5) Year period; or

- (b) where the initial Term is twenty (20) Years, for a single additional (i) five (5) Year period or (ii) ten (10) Year period, as exercised by Shipper in its option notice,

provided that Shipper or an Affiliate of Shipper shall have contemporaneously exercised the equivalent option for the Keystone US Pipeline System pursuant to and in accordance with its US GC TSA with Keystone US. Such extension shall be on the same terms and conditions of this Contract, provided that the Fixed Toll for such extended Term shall be calculated in the manner described in paragraph B.3 of Appendix 'B'. Carrier shall provide Shipper with the Fixed Toll, subject to regulatory approval, for such extended Term no later than twenty-seven (27) Months prior to the expiry of the initial Term.

**ARTICLE 11  
NOTICES**

11.1 Any notice, request or demand (“Notice”) to or upon the Parties shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally, by courier or facsimile to the address set forth below:

**In the case of Carrier:** **TransCanada Keystone Pipeline GP Ltd.**

Mailing Address: 450 1st Street S.W.  
Calgary, Alberta T2P 5H1

Delivery Address: 450 1st Street S.W.  
Calgary, Alberta T2P 5H1  
Attention: Contracts Administrator  
Fax: (403) 920-2451

**In the case of Shipper:** ●  
Mailing Address: ●  
●  
Delivery Address: ●  
●  
Attention: ●  
Fax: (403) ●

Notice may be given by facsimile or other telecommunication device and any such Notice shall be deemed to be given four (4) hours after transmission except for any such transmission sent after 2:00 pm local time at the location at which the delivery is made, then such Notice shall be deemed received as of 8:00 am on the next business day. Notice may also be given by personal delivery or by courier and any such Notice shall be deemed to be given at the time of delivery; provided that any Notice delivered between the hours of 5:00 p.m. and 8:00 a.m., local time at the location at which the delivery is made, shall be deemed to have been received at 8:00 a.m., local time at the location at which the delivery is made, of the business day immediately following

actual delivery. Any Notice may also be given by prepaid mail and any such Notice shall be deemed to be given four (4) business days after mailing. For the purposes of this Section 11.1, a “**business day**” is any day from 8:00 a.m. to 5:00 p.m., excepting Saturdays, Sundays and statutory holidays at the place of receipt. In the event regular mail service, courier service, facsimile or other telecommunication service shall be interrupted by a cause beyond the control of the Parties, then the Party sending the Notice shall utilize any service that has not been so interrupted to deliver such Notice. Each Party shall provide Notice to the other of any change of address for the purposes hereof. Any Notice may also be given by telephone followed immediately by personal delivery, courier, prepaid mail, facsimile or other telecommunication, and any Notice so given shall be deemed to be given as of the date and time of the telephone notice.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

- 12.1 Where this Contract provides for audit rights, the auditing Party and its representatives shall have the right to audit the relevant books and records during regular business hours and in a manner that does not unreasonably interfere with the other Party’s business or operations (upon reasonable and timely notice and at the auditing Party’s expense). In recognition of the likelihood that certain portions of those records may be considered highly confidential, the audit rights set forth in this Section 12.1 may, in those instances, be exercised through an independent auditor retained by, and at the expense of, the auditing Party. Such independent auditor shall not disclose the confidential information to the auditing Party, but may only provide its conclusion as to the accuracy of the information subject to the audit.
- 12.2 The Rules and Regulations and the rates as calculated under this Contract will be set out in the Tariff (the “**Rates**”) as initially filed, and as each may be amended and approved from time to time by Carrier or the NEB, are all by reference made a part of and incorporated into this Contract and operations hereunder shall, in addition to the terms and conditions set out in this Contract, be subject to the provisions thereof. The Parties further expressly recognize that it is reasonable for Shipper to support the actual construction of the KXL Expansion Facilities and to want to obtain capacity on the Pipeline System and to also have legitimate issues concerning the Rates, Rules and Regulations and terms of service that need to be addressed by FERC, NEB or other governmental, regulatory, administrative or judicial bodies. Accordingly, except as expressly provided in Section 2.4, nothing in this Contract or in the Tariff shall be deemed to restrict, waive or otherwise limit Shipper’s right to initiate or participate in any governmental, regulatory, administrative or judicial proceedings (including appeals) that may affect Rates or the terms and conditions of service under this Contract or the Tariff. Carrier shall notify Shipper at any time that Carrier proposes to amend the Rules and Regulations, the Tariff or the Rates, and shall provide Shipper with notice of such revisions. The Rules and Regulations filed prior to the Commencement Date shall be substantially the same as those set forth in Appendix ‘C’ and shall be consistent with this Contract, subject to changes that may be required by the NEB. During the Term of this Contract Carrier shall not initiate any changes to the Rules and Regulations, the Tariff or the Rates that adversely impact Shipper’s rights under this Contract, excluding Appendix ‘C’.

- 12.3 If as a result of a final, non-appealable ruling by any regulatory, administrative, governmental or judicial authority having jurisdiction during the Term, Carrier or Shipper is unable to perform any obligation under this Contract, excluding Appendix 'C', then Carrier and Shipper will diligently and in good faith seek to renegotiate the terms of this Contract to comply with such ruling and in accordance with the initial expectations of the Parties under this Contract.
- 12.4 This Contract, and any claims against Carrier arising directly or indirectly out of or in connection with this Contract, may be assigned, in whole or in part, by Shipper only:
- (a) (i) with the prior written consent of Carrier, which consent shall not be unreasonably withheld or delayed, and (ii) when the proposed assignee has provided to Carrier either (A) such Contract Financial Assurances as Carrier may reasonably demand in accordance with this Contract, or (B) such Financial Assurances as Carrier may reasonably demand in accordance with the Rules and Regulations, as applicable; or
  - (b) to its Affiliate, upon 30 Days' prior written notice to Carrier, provided that, until and unless the provisions of Section 12.4(a) are complied with, Shipper and its Affiliate shall remain jointly and severally liable for any and all obligations arising under or out of this Contract.
- 12.5 Carrier may assign this Contract and/or any rights arising hereunder without restriction to: (a) any other Person upon the merger, amalgamation, consolidation or reorganization of Carrier with such Person, (b) an Affiliate of Carrier, or (c) any other Person in connection with the sale of all or substantially all of the assets of Carrier to such Person, provided that the rating given to such assignee's senior unsecured long term debt is not lower than any of the following at the time of such assignment: (i) "BBB" from Standard & Poor's, a division of The McGraw Hill Companies Inc. (including its successors), and (ii) "Baa3" from Moody's Investors Services Inc. (including its successors), and provided further that contemporaneously with such assignment in connection with such sale, Affiliate of Carrier shall have similarly assigned the US GC TSA or its rights thereunder to any such assignee or an Affiliate of such assignee.
- 12.6 This Contract shall be construed and applied and be subject to the laws of the Province of Alberta, Canada and the laws of Canada applicable therein, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction including the NEB. The Parties hereby consent and attorn to the courts of the Province of Alberta in respect of any action, suit or other judicial procedures in respect of this Contract. **EACH PARTY SPECIFICALLY AND KNOWINGLY WAIVES ANY TRIAL BY JURY.**
- 12.7 The failure by any Party to insist on the strict performance of any of the provisions of this Contract or to take advantage of any of the rights hereunder, shall not be construed as a waiver of any such provisions or relinquishment of any such rights, but the same will continue in full force and effect.
- 12.8 This Contract shall be binding upon and enure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.9 This Contract may be executed by the Parties in counterparts and all such counterparts shall together constitute one and the same agreement.

12.10 Carrier will maintain the confidentiality of information provided and identified by Shipper as confidential or commercially sensitive. Notwithstanding the foregoing, nothing shall restrict disclosure by Carrier of: (a) the total Contract Volumes of all Term Shippers or the individual Contract Volume of Shipper on an unattributed basis; or (b) any information requested or required by applicable law or regulatory authority to be disclosed.

12.11 The Parties shall execute their obligations under this Contract in good faith.

**IN WITNESS OF WHICH** the Parties have executed and delivered this Contract as of the date first above written.

**TRANSCANADA KEYSTONE PIPELINE GP LTD.** in its capacity as general partner for and on behalf of **TRANSCANADA KEYSTONE PIPELINE LIMITED PARTNERSHIP** ●

By: \_\_\_\_\_  
Name:  
Title:  
By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
By: \_\_\_\_\_  
Name:  
Title:



**APPENDIX 'A'**  
**to the**  
**KEYSTONE GULF COAST EXPANSION**  
**PETROLEUM TRANSPORTATION SERVICE AGREEMENT**

***CONTRACT TERM AND CONTRACT VOLUME***

**Shipper to Complete:**

Contract Volume to be a minimum of 795 m<sup>3</sup>/Day (5,000 bbl/Day), in increments of 795 m<sup>3</sup>/Day (5,000 bbl/Day).

<b>Contract Term</b>	<b>Contract Volume</b>
____ <b>Years</b> (10, 15 or 20 Years)	_____ m <sup>3</sup> /Day ( _____ bbl/Day)

**APPENDIX 'B'**  
**to the**  
**KEYSTONE GULF COAST EXPANSION PETROLEUM**  
**TRANSPORTATION SERVICE AGREEMENT**

**SCHEDULE OF TOLLS AND TOLLING PRINCIPLES**  
**FOR TRANSPORTATION FROM:**  
**HARDISTY, ALBERTA TO THE INTERCONNECTION**  
**WITH THE KEYSTONE US PIPELINE SYSTEM**  
**AT THE INTERNATIONAL BOUNDARY**

**A. TRANSPORTATION TOLLS**

1. **Term of the Contract:** Every Month during the Term of the Contract Shipper shall pay to Carrier on the Payment Due Date, consistent with Article 9 of the Contract, the tolls and other charges set forth in this Appendix 'B' and incorporated into the Tariff.

**B. MONTHLY REVENUE COMMITMENT**

1. **Calculation of Monthly Revenue Commitment:** Every Month during the Term of the Contract, Shipper shall pay a “**Monthly Revenue Commitment**” in respect of its Monthly Volume. Shipper’s Monthly Revenue Commitment charges for any Month shall be the product obtained by multiplying the applicable Fixed Toll calculated below, times the Monthly Volume. For greater certainty, the same Fixed Toll shall apply for the entire Term.

$$\text{Fixed Toll} = \text{Base Toll} - \text{Term Discount}$$

Where:

**Base Toll** in CAD\$ Per m<sup>3</sup> (bbl ) shall be Cdn.\$6.908 (Cdn.\$1.098) (Base Toll based on Estimated Project Costs and to be adjusted for capital variance per Part C);

**Term Discount** equals the amount set out in the table below that corresponds to the Term of the Contract specified by Shipper in Appendix 'A';

<i>Term of Contract</i>	<i>Term Discount in \$Cdn Per m<sup>3</sup> (bbl )</i>
10 Year	\$0.000 (\$0.000)
15 Year	\$0.385 (\$0.061)
20 Year	\$0.771 (\$0.123)

2. **Capital Variance:** The Fixed Toll during the Term will be adjusted to reflect capital variance, in the manner described in Part C below; provided, however, Shipper shall not be responsible under this Contract for any capital costs associated with any future expansions of the Pipeline System.
3. **Fixed Toll Applicable to Extension Term:** In the event that Shipper exercises its option to extend the Term of the Contract in the manner described in either Section 10.2(a) or Section 10.2(b) of the Contract, the Fixed Toll applicable and payable for such extension Term

shall be such Fixed Toll as is established by Carrier at the time of renewal for 5-year contract terms.

4. **Suspension due to Force Majeure:** In the event that Carrier declares a Force Majeure event pursuant to Article 15 of the Rules and Regulations and the term of the Force Majeure event continues beyond three (3) consecutive months, no Fixed Toll in respect of the Contract Volume will be payable by Shipper during the remaining period of the Force Majeure event.

**C. CAPITAL VARIANCE**

1. Definitions: In this Part C, the following terms have the following meanings:

**“Capital Variance”** means the sum of the following items:

- (a) three quarters (3/4) of the difference between the Final Project Costs and the Estimated Project Costs; and
- (b) interest carrying charges on (a) above, calculated at the Prime Rate, from the Commencement Date to the date of the Capital Variance Notice.

**“Estimated Project Costs”** means the sum of Cdn.\$1,646 million, representing Carrier’s estimate, as of the time of the Contract, of the development, construction and acquisition costs of the KXL Expansion Facilities.

**“Final Project Costs”** means the sum of the actual development, construction and acquisition costs of the KXL Expansion Facilities, expressed in Canadian dollars.

2. **Final Project Costs and Fixed Toll:**

- (a) Not later than two (2) Years following the Commencement Date, Carrier shall make a determination of the Final Project Costs. Upon such determination, if there is a difference between the Estimated Project Costs and the Final Project Costs, Carrier will deliver a notice (the **“Capital Variance Notice”**) to Shipper. The Capital Variance Notice will set out the Final Project Costs, the resulting Capital Variance and the required adjustment to the Fixed Toll. For such purposes, the Fixed Toll shall be adjusted by a percentage decrease or increase, as the case may be, equal to the percentage difference between (i) the Estimated Project Costs, and (ii) the Estimated Project Costs plus the Capital Variance.
- (b) The Fixed Toll, adjusted to reflect the Capital Variance, will take effect for transportation services provided by Carrier in the first Month following the issuance of the Capital Variance Notice by Carrier. Accordingly, the first invoice issued by Carrier for transportation service provided in the first Month after the issuance of the Capital Variance Notice will charge the Fixed Toll adjusted to reflect the Capital Variance as set out in such Capital Variance Notice.

3. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the Capital Variance Notice within twelve (12) Months of the date of the Capital Variance Notice, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially

reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US GC TSA.

**D. VARIABLE TOLL**

1. **Payment of Variable Toll:** In addition to paying the Monthly Revenue Commitment each Month calculated on the Monthly Volume, Shipper shall pay on the Payment Due Date an amount equal to the product of (i) the Variable Toll (as calculated below) for the relevant Type(s) of Petroleum and the relevant Delivery Point, times (ii) the number of kilometres to such Delivery Point, times (iii) (subject to Section 9.1 of the Contract) the Monthly Volume actually Tendered by the Shipper for such Month.

$$\text{Variable Toll} = \frac{\text{Operating, Maintenance and Administration Costs for that Month}}{\text{Weighted Barrel Kilometres for that Month}}$$

Where:

**Weighted Barrel Kilometres** equals Light Barrel Kilometres + Heavy Barrel Kilometres;

**Light Barrel Kilometres** equals the sum for each Receipt Point of the product of the volume of Light Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by (i) the number of kilometres to the relevant Delivery Point, and (ii) 0.70; and

**Heavy Barrel Kilometres** equals the sum for each Receipt Point of the product of the volume of Heavy Crude Tendered in a Month by all Shippers at such Receipt Point, multiplied by the number of kilometres to the relevant Delivery Point.

The Variable Toll in respect of Heavy Crude shall be the amount as calculated above, and the Variable Toll in respect of Light Crude shall be such amount multiplied by 0.70.

2. **Estimate of Variable Toll:** On an annual basis during the Term of the Contract, Carrier will estimate the “**Operating, Maintenance and Administration Costs**” that Carrier will incur in operating, maintaining and administering the Pipeline System for the upcoming Year (on a Monthly basis), and allocate such costs over estimated volumes, to estimate the “**Variable Toll**” for each Month in the Year. In estimating the Variable Toll, Carrier shall consider the average actual costs incurred by Carrier over prior Monthly periods as well as Carrier’s forecast of prices, Types of Petroleum, input costs, load factor on the Pipeline System, inflation, consumption patterns and any other relevant factors.

For the purposes of calculating the Variable Toll, “**Operating, Maintenance and Administration Costs**” shall include all operating, maintenance and administration costs and expenses incurred by or on behalf of Carrier in respect of the Pipeline System, including:

- (a) operating, maintenance, administrative and general costs and expenses (including pipeline inspection and pipeline repairs) and other overhead costs or expenses directly allocable to the Pipeline System;

- (b) property taxes;
  - (c) capital taxes;
  - (d) insurance;
  - (e) power;
  - (f) regulatory costs;
  - (g) costs attributable to changes in laws and regulations (including income taxes based on changes in income tax rates or taxing methodology) that apply to Carrier or the Pipeline System; and
  - (h) all other costs and expenses similar in nature to any of the foregoing.
3. **Maintenance Capital Items (“MCI”):** Where maintenance costs and expenses associated with any single expenditure or expenditures in respect of the same or a common matter or project exceed Cdn\$2,000,000, such amounts will be treated as an MCI. Carrier will provide prompt notice to Shipper of any MCI and consult with the Term Shippers as to a reasonable allocation of such MCI into the Variable Toll. All MCIs will be amortized in accordance with good accounting practice and (i) added to the Variable Toll in each Year following the inclusion of the related adjustment into the Operating, Maintenance and Administration Costs, and (ii) allocated into the Variable Toll for each Month in such Year and any subsequent Years for so long as, and to the extent that, such maintenance costs and expenses have not been fully recovered by Carrier through the Variable Toll.
4. **Notice of Estimated Variable Toll:** Carrier shall provide Shipper with its estimate of the Variable Toll for each Month (based on the Type(s) of Petroleum) for the upcoming Year in the notice of the Commencement Date contemplated in Section 5.3 of the Contract. Thereafter, Carrier will revise the estimated Variable Toll annually and provide Shipper with such revised toll, together with details of its calculation and explanation for any adjustments from the previous Variable Toll, on or before December 1 of each Year during the Term. Such estimated Variable Toll shall take effect as of January 1 of the succeeding Year.
5. **Final Variable Toll:** After the end of each Year, Carrier will determine the actual Operating, Maintenance and Administration Costs incurred by Carrier in operating the Pipeline System for such Year, as recorded in Carrier’s financial records. Such actual costs shall be allocated over the volumes Tendered by all shippers in such Year to determine the final Variable Toll. Carrier will provide Shipper with notice of the final Variable Toll, together with details of its calculation and explanation for any adjustments from the estimated Variable Toll. If the final Variable Toll for the applicable Year is greater than or less than the estimated Variable Toll charged to Shipper for such Year, Carrier shall apportion the difference in 12 equal Monthly instalments for the upcoming Year and credit (if the difference is negative) or charge (if the difference is positive), as the case may be, Shipper an amount equal to the difference between the estimated Variable Toll and the final Variable Toll and the aggregate of Shipper’s Nominations, up to a maximum of Shipper’s Monthly Volume for such Year. Additional amounts to be charged to Shipper or credited to Shipper shall incur an interest carrying charge on the outstanding balance at the Prime Rate, from the Month the relevant Operating, Maintenance and Administration Costs were

incurred, until (i) in the case of a charge, the relevant charge has been paid in full by Shipper in the manner contemplated in this paragraph D.5, or (ii) in the case of a credit, the date such credit is issued by Carrier.

6. **Audit Right:** Shipper shall have the right to conduct one (1) audit of the calculations underlying the final Variable Toll within twelve (12) Months of the date of Carrier's notice of the final Variable Toll pursuant to paragraph D.5, in accordance with the audit procedure in Section 12.1. Shipper shall use commercially reasonable efforts to coordinate the conduct of any such audit with the other Term Shippers and with any equivalent audit carried out under the provisions of the US GC TSA. In conjunction with the right to conduct an audit of the calculations underlying the final Variable Toll, Shipper shall have the right to conduct an audit of the calculations provided by Carrier of any actual gains or actual losses due to evaporation or shrinkage and any other line losses due to normal pipeline operations. Such audit will be conducted in accordance with the audit procedures in section 12.1 and for greater certainty will not include any information attributable to individual shippers.
7. **Incentive Tolling Arrangements:** After the third anniversary of the Commencement Date, Carrier shall seek to negotiate an incentive tolling agreement with the Term Shippers whereby Term Shippers and Carrier would be entitled to share in any cost savings realized as a result of any reductions in the Operating, Maintenance and Administration Costs.

**APPENDIX 'C'**  
**to the**  
**KEYSTONE GULF COAST EXPANSION**  
**PETROLEUM TRANSPORTATION SERVICE AGREEMENT**  
**DRAFT RULES AND REGULATIONS**

See attached.

**APPENDIX 'D'**  
**to the**  
**KEYSTONE GULF COAST EXPANSION**  
**PETROLEUM TRANSPORTATION SERVICE AGREEMENT**

***ILLUSTRATIVE EXAMPLE OF THE CALCULATION SET FORTH IN SECTION 9.4(a)***

This illustrative example is calculated in U.S. \$/barrel and actual calculations are performed in Cdn. \$/m<sup>3</sup> in accordance with Section 9.4(b)(vii).

**General Assumptions:**

No Capital Variance adjustment

No inflation in variable toll (assumed \$1.77 total variable and 75/25 split US/Canada)

All tolls are in US\$ per bbl (foreign exchange factor of 0.90 \$US/\$Cdn assumed for Canadian tolls)

**Alternate Gulf Coast Price to Port Arthur = US\$ 6.00**

**Spot Price (Uncommitted Gulf Coast Price) to Port Arthur = US\$6.00**

**Example A - Year of analysis: 2020 (8 years after Commencement)**

**Baseline Committed Price:** Shortest term remaining in effect = 10 year term

**Note:** Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

Base Rate - US:	3.492	
Base Toll - Canada:	0.988	
	Subtotal	4.48
Estimated Variable Rate – US:	1.3275	
Estimated Variable Toll – Canada:	0.4425	
	Subtotal	1.77
	Total	\$6.25

**Calculation:**

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

**Example:** Shipper Commitment Price - Assume 20 Year, Volume Discount

Term Shipper Commitment Rate:	2.852	(Base – term discount – volume discount)
Canadian Fixed Toll:	0.878	(Base – term discount)
Subtotal	\$3.73	
Uncommitted Gulf Coast Price	6.000	
– Baseline Committed Price	6.250	
Adjustment amount	\$0.25	
New Term Shipper Commitment Rate	\$3.48	

**Summary Table of New Term Shipper Commitment Rate for US and Canada:**

<b><i>20 Year, 120,000 bpd</i></b>	<b><i>3.73 – 0.25 = \$3.48</i></b>
<b><i>20 Year</i></b>	<b><i>3.98 – 0.25 = \$3.73</i></b>
<b><i>15 Year</i></b>	<b><i>4.23 – 0.25 = \$3.98</i></b>
<b><i>10 year</i></b>	<b><i>4.48 – 0.25 = \$4.23</i></b>



**Example B - Year of analysis: 2025 (13 years after Commencement)**

**Baseline Committed Price:** Shortest term remaining in effect = 15 year term

**Note:** Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

Base Rate - US:	3.297	
Base Toll - Canada:	0.933	
	<u>          </u>	
Subtotal		4.23
Estimated Variable Rate – US:	1.3275	
Estimated Variable Toll – Canada:	0.4425	
	<u>          </u>	
Subtotal		<u>1.77</u>
Total		\$6.00

**Calculation:**

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

**Example:** Shipper Commitment Price - Assume 20 Year, Volume Discount

Term Shipper Commitment Rate:	2.852	(Base – term discount – volume discount)
Canadian Fixed Toll:	0.878	(Base – term discount)
	<u>          </u>	
Subtotal		\$3.73
Uncommitted Gulf Coast Price	6.000	
<u>– Baseline Committed Price</u>	<u>6.000</u>	
Adjustment amount		<u>\$0.00</u>
New Term Shipper Commitment Rate		\$3.73

**Summary Table of New Term Shipper Commitment Rate for US and Canada:**

<b><i>20 Year, 120,000 bpd</i></b>	<b><i>3.73 – 0.00 = \$3.73</i></b>
<b><i>20 Year</i></b>	<b><i>3.98 – 0.00 = \$3.98</i></b>
<b><i>15 Year</i></b>	<b><i>4.23 – 0.00 = \$4.23</i></b>
<b><i>10 year</i></b>	<b><i>4.48 – 0.00 = \$4.48</i></b>

**Example C - Year of analysis: 2030 (18 years after Commencement)**

**Baseline Committed Price:** Shortest term remaining in effect = 20 year term

**Note:** Committed Price has been adjusted for applicable Term Discount in Base Rate and Base Toll

Base Rate - US:	3.102	
Base Toll - Canada:	<u>0.878</u>	
	Subtotal	3.98
Estimated Variable Rate – US:	1.3275	
Estimated Variable Toll – Canada:	<u>0.4425</u>	
	Subtotal	<u>1.77</u>
	Total	\$5.75

**Calculation:**

Reduce subject Shipper Commitment Price by the difference between the Uncommitted Gulf Coast Price and/or Alternate Gulf coast Price and the Baseline Committed Price

**Example: Shipper Commitment Price - Assume 20 Year, Volume Discount**

Term Shipper Commitment Rate:	2.852	(Base – term discount – volume discount)
Canadian Fixed Toll:	<u>0.878</u>	(Base – term discount)
Subtotal		\$3.73
Uncommitted Gulf Coast Price	6.000	
<u>– Baseline Committed Price</u>	<u>5.750</u>	
Adjustment amount		*

\* No calculation required per 9.4 a) since Uncommitted Gulf Coast Price is higher than Baseline Committed Price.

## **APPENDIX 5-3**

### **PRO FORMA TRANSPORTATION TARRIFF**

- 1. Clean Version**
- 2. Black-Lined Version**

# Keystone Pipeline System

## Petroleum Tariff

### Rules and Regulations Governing the Transportation of Petroleum

from  
Hardisty, Alberta  
to the international boundary at or near  
Haskett, Manitoba and Monchy, Saskatchewan

**Issued by:**  
TRANSCANADA KEYSTONE PIPELINE  
LIMITED PARTNERSHIP  
by its general partner  
TRANSCANADA KEYSTONE PIPELINE GP LTD.,  
450 – 1st Street SW  
Calgary, Alberta T2P 5H1

**Compiled by:**  
[Name]  
[Title]  
450 – 1st Street SW  
Calgary, Alberta T2P 5H1  
Phone: (403) 920 – [ ]  
E-mail: [Name]@transcanada.com

**Effective:** [DATE]

## **ARTICLE 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 Section 16.1.

“**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, but notwithstanding 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 regardless of whether such ownership occurs directly or indirectly, as contemplated above.

“**Allocated Volume**” means that monthly volume of Pipeline System capacity allocated to a Shipper pursuant to Article 7.

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

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

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

“**Banking Day**” means any day that the financial institution designated by Carrier for payment pursuant to Section 9.1 conducts business.

“**Carrier**” means TransCanada Keystone Pipeline Limited Partnership and its successors or assigns.

“**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 each 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 for any portion of the Pipeline System.

**“Contract Volume”** means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, which Term Shipper commits to ship on the Pipeline System under the terms of such Contract.

**“Cubic Meter”** (m<sup>3</sup>) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius (15C) 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 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 Section 12.1.

**“Default Period”** has the meaning set out in Section 12.1.

**“Defaulting Party”** has the meaning set out in Section 12.1.

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

**“Delivery Point”** means the point at which the facilities of Carrier interconnect with the facilities of Keystone US at either of the international boundary (a) at or near Haskett, Manitoba, or (b) at or near Monchy, Saskatchewan.

**“Financial Assurances”** has the meaning set out in Section 20.1.

**“Financial Information”** has the meaning set out in Section 20.1.

**“FERC”** means the Federal Energy Regulatory Commission or any regulatory or governmental authority having similar jurisdiction in substitution therefor.

**“Force Majeure”** has the meaning set out in Section 15.2.

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

**“Heavy Crude”** means Petroleum having a density from and including 876 kilograms per Cubic Meter (kg/m<sup>3</sup>) up to and including 940 kg/m<sup>3</sup>, and a viscosity from and including 20 square millimetres per second (mm<sup>2</sup>/s) up to and including 350 mm<sup>2</sup>/s.

**“Keystone US”** means TransCanada Keystone Pipeline, LP and its successors and assigns.

**“Keystone US Pipeline System”** means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone US which connect to the Pipeline System at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan and terminating at or near Patoka, Illinois, and at or near Port Arthur, Texas, as such facilities may be modified, expanded or extended from time to time.

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

**“Light Crude”** means Petroleum having a density up to but not including 876 kilograms per Cubic Meter (kg/m<sup>3</sup>), and a viscosity up to but not including 20 square millimetres per second (mm<sup>2</sup>/s).

**“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 Section 7.1.

**“Monthly Term Shipper Allocation”** has the meaning set out in Section 7.2(i).

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

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

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

**“Nomination”** and any derivative thereof, means the volume of Petroleum specified by Shipper in the Notice of Shipment as described in Section 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, without limitation, Shipper’s name, contact person and contact information, Month of shipment, volume and Type 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 date that is ten (10) Days after the date that Carrier issues an invoice pursuant to Section 9.1. If such Day is not a Banking Day, then the Payment Due Date shall be the first Banking Day immediately after the 10th Day after Carrier issues such invoice.

**“Person”** means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, government, governmental agency or other entity.

**“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 or natural gas liquids. 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, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier commencing at or near Hardisty, Alberta and terminating at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan, which are connected to the Keystone US Pipeline System, as such facilities may be modified, expanded or extended from time to time.

“**Prime Rate**” means the variable annual rate of interest charged by the Royal Bank of Canada, Main Branch, Calgary, Alberta, 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(s)**” means the inlet flange of Carrier’s receipt meter at Hardisty, Alberta or elsewhere in Canada as the Tariff may designate from time to time.

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

“**Special Damages**” means, collectively, any indirect, consequential (including loss of revenue or loss of profit), incidental, punitive or exemplary damages.

“**Tariff**” means these 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 Type of Petroleum for transportation from a Receipt Point to a Delivery Point pursuant to a Nomination.

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

“**Type**” in relation to Petroleum, means Light Crude or Heavy Crude, as applicable.

“**Uncommitted Toll**” means the tolls and charges charged to a Shipper pursuant to the tariffs filed at the NEB by Carrier.

“**Working Stock**” means the volume of Petroleum required to be held by Carrier within the Pipeline System for operational and scheduling purposes as determined by and specified from time to time by Carrier.

“**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 Articles and Sections refer to Articles and Sections of these Rules and Regulations, (b) no consideration shall be given to the captions of any Articles or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, and (c) the singular shall be deemed to include the plural and vice versa.



**ARTICLE 2  
COMMODITY AND STANDARD**

- 2.1 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 Carrier shall act as a reasonable and prudent operator in the discharge of Carrier's duties hereunder.

**ARTICLE 3  
ORIGIN AND DESTINATION**

- 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 a Delivery Point 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 Delivery Point for handling the Petroleum at the rate of flow at which Carrier is then operating the Pipeline System at such Delivery Point.

**ARTICLE 4  
QUALITY**

- 4.1 **Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 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 said specifications.
- 4.2 **Specifications of Petroleum.** For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows: (i) Reid Vapor Pressure shall not exceed ninety-three kiloPascals (93kPa); (ii) sediment and water shall not exceed one-half of one percent (0.5%) of volume, as determined by the centrifuge method in accordance with ASTM D4007 standards (most current version) or by any other test that is generally accepted in the petroleum industry as may be implemented 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 Meter (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 the Carrier's reference line temperature as posted on Carrier's electronic bulletin board; 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.
- 4.3 **Modifications to Specifications.** Notwithstanding Sections 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 Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel, provided that Carrier shall give Shipper reasonable notice of such changes prior to filing.

- 4.4 **Freedom from Objectionable Matter.** Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances in quantities that may be injurious to Carrier, the Pipeline System or downstream facilities, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.
- 4.5 **Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, 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.
- 4.6 **Failure to Remove Objectionable Matter.** If a Shipper fails to remove its off-specification Petroleum from the Pipeline System in accordance with the provision of Section 4.5, 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 action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse impact to Carrier or the Pipeline System that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Section 11.2 of these Rules and Regulations for any adverse impact to downstream facilities imposed on Carrier that is attributable to the presence of such objectionable matter.

## ARTICLE 5 MEASUREMENTS

- 5.1 The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.
- 5.2 All Petroleum received by Carrier for transportation shall be gauged, metered and tested by a representative of Carrier prior to its acceptance at Hardisty. The Shipper may have a representative present at the gauging, metering and testing. If tank calibration tables are used for such purpose, quantities will be computed from the most recent regularly compiled tank calibration tables showing one hundred percent (100%) of the full capacity of the tanks. Such tank calibration tables shall be maintained in accordance with API 653. Carrier shall prove all meters situated at Hardisty at least once each month 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 malfunctions 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 one hundred twenty (120) Days after the date that the affected Party discovers and advises the other Party of the meter malfunction.

- 5.3 All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (i) Gross Standard Volume and Net Standard Volume received and Delivered (stated in both Cubic Metres and barrels);
  - (ii) kinematic viscosity, based on Carrier's reference line temperature at the time of receipt;
  - (iii) weighted average density;
  - (iv) weighted average pressure; and
  - (v) deductions for basic sediment and water.

All measurement procedures are to be conducted in accordance with applicable API/ASTM standards (most current version) and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shippers.

- 5.4 Carrier shall deliver and account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account subject to any actual gains or actual 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), will then be based on the proportion that such Shipper's total Deliveries from the Carrier by Type bears to the total Deliveries of all Shippers from the Carrier by Type. Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis.
- 5.5 Subject to applicable laws and government regulations applicable to Shipper's premises. Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored 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; provided, however, 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 negligence.
- 5.6 Petroleum shall be classified by Type by Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of the Petroleum falls within the viscosity range of another Type, then the Petroleum shall be deemed to be of the Type with the higher transportation toll.

## **ARTICLE 6**

### **SEGREGATION AND CHANGES IN QUALITY**

- 6.1 **Delivery of Types of Petroleum.** Carrier shall endeavour to Deliver substantially the same Type and quality 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 while in transit as

may result from the transportation thereof in the Pipeline System, including, without limitation, the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Section 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, and shall not be liable for any direct damages resulting from any such alteration, except where such direct damages are directly caused by the negligence or wilful misconduct of Carrier.

- 6.3 **Segregated Movement.** If the Petroleum Nominated by a Shipper is of a Type or quality not then being transported through the Pipeline System but meets the specifications set out in Article 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 Type and quality of Petroleum at the Delivery Point. Notwithstanding the foregoing, Carrier's efforts under this Section 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Sections 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Section 6.3. To the extent the transportation of such Petroleum causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other 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.

## ARTICLE 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 Time on Carrier's designated Monthly Nomination date. 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. If Shipper's Tenders have been curtailed pursuant to Article 13 of these Rules and Regulations, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment. Shipper shall not be responsible for any payments on that curtailed portion of Monthly Nomination. In support of a Shipper's Monthly Nomination, upon notice from Carrier, Shipper shall provide written third party verification of the availability of its supply of Petroleum and of its ability to remove or have removed such Petroleum at the Delivery Point. 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 determine the capacity available to each Delivery Point on the Pipeline System 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 first be allocated all of its Monthly Nominations to the 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 based on its Monthly Nominations. The sum of all such allocations to all Term Shippers is the "**Monthly Term Shipper Allocation.**"

**“Remaining Available Capacity”** means the positive difference, if any, between Available Capacity and the Monthly Term Shipper Allocation.

- (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 of which is, (a) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which exceeds its Monthly Volume, and, (b) in the case of a Non-Term Shipper, its Monthly Nomination, and the denominator of which is the sum of; (A) the total by which all Term Shipper Monthly Nominations exceed their Monthly Volumes and (B) the total Monthly Nominations by Non-Term Shippers.

- 7.3 **Batch Size.** A Shipper’s Tender will be accepted 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 sixteen thousand Cubic Meters (16,000 m<sup>3</sup>) (100,000 bbls). Carrier may, in its sole discretion, (i) agree to accept Tenders of Petroleum in smaller batches, and (ii) outline procedures or criteria under which it may accept Tenders of Petroleum in smaller batches.
- 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 electronic bulletin board. Upon Carrier’s request, if Shipper is unable to provide Carrier with reasonable evidence of 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 determined by Carrier which Shipper has verified it will be able to remove at the Delivery Point.
- 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 revise 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 electronic bulletin board.
- 7.6 **Working Stock.** Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier or, for Term Shippers as specified in the Contract and as posted on Carrier’s electronic bulletin board.
- 7.7 **Term Shipper Nominations.** Except as provided in Section 7.1, in the event that a Term Shipper fails to Nominate and/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 uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the 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 for the purpose of allocating Remaining Available Capacity on the Pipeline System pursuant to Section 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 (i) the Uncommitted Toll, times (ii) Non-Term Shipper's Allocated Volume. The transportation of Petroleum 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 rateable batch schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may 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 rateable 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 the Pipeline System operations.

## **ARTICLE 8 APPLICATION OF TOLLS**

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

## **ARTICLE 9 PAYMENT OF TARIFF TOLLS AND OTHER CHARGES AND LIEN FOR UNPAID CHARGES**

- 9.1 Shipper shall pay to Carrier the tolls and other charges payable in accordance with the Tariff on or before the Payment Due Date. Each Month Carrier will electronically issue to Shipper on a pre-established, industry standard, consistent date an invoice detailing (i) the tolls payable to Carrier pursuant to the Tariff for service provided during the previous Month, and (ii) any other charges for which Shipper is liable under the Tariff (including, without limitation, 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.
- 9.2 Carrier shall have a lien, 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 without limitation, the payment of any and all unpaid tolls and other charges that are due Carrier 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. The lien and other remedies contained in this Section 9.2 are in addition to any other remedies available to Carrier at law, in equity or under a Contract and/or the Tariff.
- 9.3 Should Shipper fail to pay the full amount of any invoice described in this Article 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under a Contract and/or 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; and
- (ii) Carrier may, upon five (5) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to 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 two (2) Banking 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 and/or the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, (a) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Section 9.4, and/or (b) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract in accordance with the Tariff, Term 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 within five (5) Banking Days of such termination pursuant to Carrier's invoice, the net present value of the aggregate of: (A) the monthly charges payable under the Contract for the unexpired term of such Contract (including, without limitation, the Monthly Revenue Commitment), such amount equal to the Monthly Volume multiplied by the number of unexpired Months in the Contract, which product in turn shall be multiplied by the rate set forth in the Contract, (B) all applicable taxes, (C) 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 (D) all other amounts for which Term Shipper is obligated to pay Carrier pursuant to the Tariff.

9.4 Pursuant to Sections 9.3, 10.2 and 12.2, 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 the Carrier by the Shipper and then in the possession of Carrier or its agent, or otherwise traceable and lienable by Carrier. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than forty-eight (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, 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 the tolls, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. 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.

9.5 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, except in the case of manifest error, in which case Shipper shall notify Carrier of such manifest error before the Payment Due

Date and Carrier shall issue a corrected invoice. 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.

## **ARTICLE 10 DELIVERY AND ACCEPTANCE**

- 10.1 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.
- 10.2 If Shipper fails to remove its Petroleum from the Pipeline System with reasonable diligence and dispatch upon Carrier's Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (i) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (ii) all tolls and other charges due and payable to Carrier under 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.

## **ARTICLE 11 LIABILITY OF SHIPPER**

- 11.1 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 Carrier's negligence or wilful misconduct.
- 11.2 Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier and any other Person as a result of such Shipper's failure to comply with any material provision of the Tariff, unless Shipper's failure to comply is due to Carrier's negligence or wilful misconduct.
- 11.3 Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any governmental or regulatory 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.

## **ARTICLE 12 DEFAULT, SUSPENSION AND TERMINATION**

- 12.1 Subject to Article 15, if Carrier or Shipper (a "**Defaulting Party**") shall fail to perform any of the material covenants or obligations imposed upon it under a Contract and/or the Tariff, other than Shipper's failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Article 9), then in addition, to any other remedies the non-Defaulting Party may



have under a Contract and/or 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 it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have (i) in the case of a default of a monetary nature (which includes, without limitation, a default pursuant to Article 20), ten (10) Days after receipt of the Default Notice, or (ii) in the case of a default of a non-monetary nature, thirty (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, 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.

12.2 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 within the Default Period referred to in Section 12.1, then the non-Defaulting Party may terminate the Contract. Any termination of the Contract pursuant to the provisions of this Section 12.2 shall be without prejudice to the right of Carrier to collect any amounts then due to it for transportation service 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 breaches of the Contract. If Carrier terminates a Contract pursuant to this Section 12.2:

- (i) Term 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 within five (5) Banking Days of such termination, pursuant to Carrier’s invoice, the net present value of the aggregate of: (a) the Monthly Revenue Commitment payable under the Contract for the unexpired term of such Contract, (b) all applicable taxes, (c) all amounts owing under the Contract in respect of Petroleum Delivered but for which tolls are not yet paid, and (d) all other amounts for which Shipper is obligated to pay Carrier pursuant to these Rules and Regulations; and
- (ii) Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale (a) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and (b) all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the Defaulting Party 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.

12.3 If a Shipper is the Defaulting Party, Carrier may, in addition to any other remedy it may have under a Contract and/or Tariff (including, without limitation, under Section 20.1), at law or in equity, upon three (3) Banking 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, 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 and/or Tariff. If, at any time during such suspension, Shipper remedies the default or otherwise indemnifies or secures Carrier for any and all consequences of such default as contemplated in this Section 12.3, Carrier shall, within two (2) Banking Days of Shipper delivering written notice to Carrier confirming that the default has been remedied, or Carrier receiving such indemnity or other form of security satisfactory to Carrier, recommence receipt and Delivery of Shipper's Petroleum.

- 12.4 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 five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-Term Shipper pursuant to the Tariff.
- 12.5 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.

### **ARTICLE 13 INTERRUPTION AND CURTAILMENT**

- 13.1 Carrier may interrupt, curtail or reduce transportation service 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 Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall give 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.
- 13.2 During periods of interruption pursuant to Section 13.1, Carrier shall curtail transportation service and allocate Available Capacity in accordance with Article 7.

### **ARTICLE 14 LIABILITY OF CARRIER**

- 14.1 Notwithstanding anything in the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses or delay incurred or suffered by Shipper unless caused by Carrier's breach, negligence or willful misconduct and in any event Carrier shall have no liability whatsoever to Shipper for Special Damages.
- 14.2 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 on a pro rata basis among all Shippers provided such damage or loss is not caused by the breach, negligence or wilful misconduct of Carrier. 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.

- 14.3 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.

## **ARTICLE 15 FORCE MAJEURE**

- 15.1 If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract and/or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 15.2 The term “**Force Majeure**”, as used herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms, civil disturbances, the act, regulation, order, direction or requisition of any governmental or other legal authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other event, cause or occurrence whether of the kind enumerated or otherwise which in all cases are not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Person is unable to prevent or overcome.
- 15.3 The following shall not, under any circumstance, constitute an event of Force Majeure:
- (i) Shipper’s inability to purchase Petroleum;
  - (ii) lack of funds;
  - (iii) availability of more attractive markets for Petroleum;
  - (iv) absence of a market for Petroleum; or
  - (v) availability of alternative Petroleum transportation systems.
- 15.4 A Person that fails to perform any obligation under a Contract and/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.
- 15.5 Notwithstanding the above provisions, no event of Force Majeure shall:
- (i) relieve any Person from any obligation under a Contract and/or the Tariff unless such Person gives notice with reasonable promptness of such event to the other Person; or
  - (ii) relieve any Person from any obligation under a Contract and/or the Tariff 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.

- 15.6 Except as otherwise expressly provided in a Contract and notwithstanding anything in this Article 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract and/or the Tariff to make payments pursuant to Article 9 or to provide Financial Assurances pursuant to Article 20 to Carrier under the Tariff during the continuance of such Force Majeure event.

#### **ARTICLE 16 ADVERSE CLAIMS AGAINST PETROLEUM**

- 16.1 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 of Carrier pursuant to the Tariff) (each an “**Adverse Encumbrance**”) unless Shipper provides written notification to Carrier of such Adverse Encumbrance not less than twenty (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. 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 a bond or other form of indemnity satisfactory to Carrier that fully protects and indemnifies Carrier against any liability, loss, cost or expense 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 Tariff if Carrier were to transport such Petroleum.

#### **ARTICLE 17 CLAIMS, SUITS AND TIME FOR FILING**

- 17.1 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 of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within one hundred eighty (180) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within one hundred eighty (180) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within two (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 two (2) Year period shall be null and void as between Shipper and Carrier. In Tendering Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this Section 17.1 and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration of said period of one hundred eighty (180) Days or to bring an action after the expiration of the said period of two (2) Years. Nothing contained in this Section 17.1 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.
- 17.2 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, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favour of Persons that are not a Party or an Affiliate of a Party.

**ARTICLE 18**  
**REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS**

- 18.1 Shipper represents and warrants that: (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the removal, transportation and Delivery of Petroleum hereunder; (ii) that 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, (iii) that 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; and (v) that, 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.

**ARTICLE 19**  
**GOVERNING LAW**

- 19.1 The Contract and 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 regulatory or legislative authority having jurisdiction over the matters contained herein including, without limitation, 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 Tariff 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 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 CONTRACT OR THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

**ARTICLE 20**  
**FINANCIAL INFORMATION AND ASSURANCES**

- 20.1 Except as provided in a contract, Shipper shall provide to Carrier, at any time:
- (i) upon Carrier's request, information ("**Financial Information**") that will allow the Carrier to evaluate (or re-evaluate) and establish 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 reasonable request, financial security for the payment of the tolls and other 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 four (4) Banking 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 and Carrier may, in

addition to any other remedy it may have under a Contract and/or Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Financial Information or Financial Assurances are provided by Shipper to Carrier; provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, tolls, charges or other amounts payable (including taxes) to Carrier under the Tariff. If, at any time during such suspension, Shipper provides the requested Financial Information or Financial Assurances to Carrier, Carrier shall, within two (2) Banking Days of receipt of such Financial Information or Financial Assurances, recommence receipt and Delivery of Shipper's Petroleum.

20.2 For the purposes of Section 20.1(ii), Carrier may make a reasonable request for Financial Assurances on the following grounds:

- (i) Carrier has reasonable grounds for insecurity regarding the performance of any obligation under the Contract or the Tariff;
- (ii) the rating given to Shipper's senior unsecured long term debt, excluding any third party enhancement, is lower than any of the following as applicable: (a) "BBB-" from Standard & Poor's, a division of The McGraw Hill Companies, Inc.; (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; or
- (iii) any Financial Assurances previously provided by Shipper no longer provide adequate support for the performance of Shipper's obligations that could arise under the Tariff.

20.3 The Financial Assurances that Carrier may request from Shipper pursuant to the Tariff shall be limited to the following:

- (i) for Term Shippers, an irrevocable standby letter of credit or other form of financial assurance (which assurance could include without limitation, a financial guarantee), in an amount no greater than twelve (12) Months 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 sixty (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 ninety (90) Days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be.

20.4 The following aspects of any Financial Assurances must be acceptable to Carrier, acting reasonably:

- (i) the terms of any letter of credit;
- (ii) the adequacy (including terms) of any proposed financial assurance; and
- (iii) the creditworthiness of the issuer of any letter of credit or other financial assurance.

# Keystone Pipeline System Petroleum Tariff

## Rules and Regulations Governing the Transportation of Petroleum

from  
Hardisty, Alberta  
to the ~~International Boundary~~international boundary at or near  
Haskett, Manitoba and Monchy, Saskatchewan

**Issued by:** \_\_\_\_\_ **Compiled by:** \_\_\_\_\_

TRANSCANADA KEYSTONE PIPELINE GP LTD., \_\_\_\_\_ [Name]

as general partner on behalf of \_\_\_\_\_ [Title]

TRANSCANADA KEYSTONE PIPELINE \_\_\_\_\_ 450 1<sup>st</sup> Street SW  
LIMITED PARTNERSHIP \_\_\_\_\_ Calgary, Alberta T2P 5H1

450 1<sup>st</sup> Street SW \_\_\_\_\_ Phone: (403) 920 [ ]

Calgary, Alberta T2P 5H1 \_\_\_\_\_ E-mail: [Name]@tranSCANADA.com

**Effective:** \_\_\_\_\_ [DATE]

**Issued by:**

TRANSCANADA KEYSTONE PIPELINE  
LIMITED PARTNERSHIP  
by its general partner  
TRANSCANADA KEYSTONE PIPELINE GP LTD.,  
450 – 1st Street SW  
Calgary, Alberta T2P 5H1

**Compiled by:**

[Name]  
[Title]  
450 – 1st Street SW  
Calgary, Alberta T2P 5H1  
Phone: (403) 920 – [ ]  
E-mail: [Name]@transcanada.com

**Effective:** [DATE]



~~ARTICLE 1~~  
~~ARTICLE 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~~toll schedule into which these Rules and Regulations are incorporated, shall have the following meanings:

“**Adverse Encumbrance**” has the meaning set out in Section 16.1.

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

(i) controls a Party;

(ii) is controlled by a Party; or

(iii) 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 ~~and without restricting the generality of, but notwithstanding~~ 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 regardless of whether such ownership occurs directly or indirectly, as contemplated above.

“**Allocated Volume**” means that ~~Monthly~~monthly volume of Pipeline System capacity allocated to a Shipper pursuant to Article 7.

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

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

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

“**Banking Day**” means any day that the financial institution designated by Carrier for payment pursuant to Section 9.1 conducts business.

“**Carrier**” means TransCanada Keystone Pipeline ~~GP Ltd., as general partner on behalf of TransCanada Keystone Pipeline~~ Limited Partnership, and ~~their respective~~its successors or assigns.

“**Commencement Date**” means (i) in the case of transportation service ~~for Uncommitted Capacity under a Contract with a Term Shipper, the~~ “Commencement Date” as defined in the Contract between Carrier and each 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, ~~and (ii) in the case of~~

~~transportation service for Contract Volumes, the “Commencement Date” as defined in the Contract between Carrier and each Term Shipper.~~

~~“Committed Capacity” means that capacity on the Pipeline System equal to the sum of the Monthly Volumes of all Term Shippers.~~

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

“Contract Volume” means the daily volume of Petroleum specified by Term Shipper in Appendix ‘A’ of a Contract, which **Term Shipper** commits to ship on the Pipeline System under the terms of such Contract.

~~“Contract Year” means a period of 12 consecutive Months beginning on the Commencement Date.~~ “Cubic Meter” (m<sup>3</sup>) means the volume of Petroleum which occupies one cubic metre when such Petroleum is at a temperature of fifteen degrees Celsius (15°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 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 Section 12.1.

“Default Period” has the meaning set out in Section 12.1.

“Defaulting Party” has the meaning set out in Section 12.1.

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

“Delivery Point” means the point at which the facilities of Carrier interconnect with the facilities of Keystone US at ~~the International Boundary~~ either of the international boundary (a) at or near Haskett, Manitoba, or (b) at or near Monchy, Saskatchewan.

“Financial Assurances” has the meaning set out in Section 20.1.

“Financial Information” has the meaning set out in Section 20.1.

“FERC” means the Federal Energy Regulatory Commission or any regulatory or governmental authority having similar jurisdiction in substitution therefor.

“Force Majeure” has the meaning set out in Section 15.2.

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

“Heavy Crude” means Petroleum having a density from and including 876 kilograms per Cubic Meter (kg/m<sup>3</sup>) up to and including 940 kg/m<sup>3</sup>, and a viscosity from and including 20 square millimetres per second (mm<sup>2</sup>/s) up to and including 350 mm<sup>2</sup>/s.

“**Keystone US**” means TransCanada Keystone Pipeline, LP and its successors and assigns.

“**Keystone US Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Keystone US ~~commencing at the International Boundary~~which connect to the Pipeline System at the international boundary at or near Haskett, Manitoba and at or near Monchy, Saskatchewan and terminating at or near ~~Wood River~~/Patoka, Illinois, and at or near Port Arthur, Texas, as such facilities may be modified, expanded or extended from time to time.

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

“**Light Crude**” means Petroleum having a density up to but not including 876 kilograms per Cubic Meter (kg/m<sup>3</sup>), and a viscosity up to but not including 20 square millimetres per second (mm<sup>2</sup>/s).

~~“**Line Fill**” means the volume of Petroleum in transit in the Pipeline System between the Receipt Point and the Delivery Point.~~

“**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 Section 7.1.

“**Monthly Term Shipper Allocation**” has the meaning set out in Section ~~7.2.7.2(i)~~.

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

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

“**Net Standard Volume**” means the Gross Standard Volume minus the basic sediment, and 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 Section 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, without limitation, Shipper’s name, contact person and contact information, Month of shipment, ~~Volume~~volume and Type 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 date that is ten (10) Days after the date that Carrier issues an invoice pursuant to Section 9.1. If such Day is not a Banking Day, then the Payment Due Date

shall be the first Banking Day immediately ~~prior to~~after the 10th Day after Carrier issues such invoice.

“**Person**” means any natural person, firm, trust, partnership, corporation, limited liability company, joint venture, association, joint stock company, enterprise, unincorporated entity, government, governmental agency or other entity.

“**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 or natural gas liquids. 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.

~~“**Petroleum Toll Schedule — Uncommitted Volumes**” means the schedule of tolls for the transportation of Uncommitted Capacity as modified and published by Carrier from time to time.~~

“**Pipeline System**” means the Petroleum receipt, delivery, pipeline, pumping, monitoring, control and ancillary facilities owned by Carrier commencing at or near Hardisty, Alberta and terminating at the ~~International Boundary~~international boundary at or near Haskett, Manitoba ~~and at or near Monchy, Saskatchewan, which are connected to the Keystone US Pipeline System~~, as such facilities may be modified, expanded or extended from time to time.

“**Prime Rate**” means the variable annual rate of interest charged by the Royal Bank of Canada, Main Branch, Calgary, Alberta, 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(s)**” means the inlet flange of Carrier’s receipt meter at Hardisty, Alberta or elsewhere in Canada as the Tariff may designate from time to time.

~~“**Remaining Available Capacity**” has the meaning set out in Section 7.2.~~ “**Shipper**” means any Person who ~~contracts with Carrier for~~uses the transportation ~~of Petroleum~~service of the Pipeline System pursuant to the Tariff.

“**Special Damages**” means, collectively, any indirect, consequential (including loss of revenue or loss of profit), incidental, punitive or exemplary damages.

“**Tariff**” means ~~the terms and conditions contained in~~ these Rules and Regulations, and ~~the Petroleum Toll Schedule — Uncommitted Volumes, and, in the case of a Term Shipper, a Contract~~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 Type of Petroleum for transportation from a Receipt Point to a Delivery Point pursuant to a Nomination.

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

“**Type**” in relation to Petroleum, means Light Crude or Heavy Crude, as applicable.

~~“Uncommitted Capacity” means that volume of capacity on the Pipeline System determined each Month by Carrier, in its sole discretion, that is available after Term Shippers’ Nominations in respect of the Committed Capacity have been provided for.~~

~~“Uncommitted Toll” means the tolls and other charges contained in the Petroleum Toll Schedule —Uncommitted Volume~~charges charged to a Shipper pursuant to the tariffs filed at the NEB by Carrier.

~~“Working Stock” means the volume of Petroleum required to be held by Carrier~~ within the Pipeline System for operational and scheduling purposes as determined by and specified from time to time by Carrier.

~~“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)~~(a) unless otherwise specified, references to Articles and Sections refer to Articles and Sections of these Rules and Regulations, ~~(b)~~(b) no consideration shall be given to the captions of any Articles or Sections, which are inserted for convenience in locating the provisions of these Rules and Regulations and not as an aid in their construction, and ~~(c)~~(c) the singular shall be deemed to include the plural and ~~vis~~vice versa.

## ~~ARTICLE 2~~ARTICLE 2 — COMMODITY AND STANDARD

- 2.1 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 Carrier shall act as a reasonable and prudent operator in the discharge of Carrier’s duties hereunder.

## ~~ARTICLE 3~~ARTICLE 3 — ORIGIN AND DESTINATION

- 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 a Delivery Point pursuant to the Tariff.
- 3.2 **Delivery Facilities.** Petroleum will be ~~acceptable~~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 Delivery Point for handling the Petroleum at the rate of flow at which Carrier is then operating the Pipeline System at such Delivery Point.

## ~~ARTICLE 4~~ARTICLE 4 — QUALITY

- 4.1 **Permitted Petroleum.** Only that Petroleum having properties that conform to the specifications of Petroleum described in Sections 4.2, 4.3 and 4.4 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 said specifications.

- 4.2 **Specifications of Petroleum.** For the purposes of Section 4.1, the specifications of the Petroleum shall be as follows: ~~(i)~~ (i) Reid Vapor Pressure shall not exceed ~~one hundred and ninety-three~~ one hundred and ninety-three kiloPascals (~~10393~~ 10393 kPa); ~~(ii)~~ (ii) sediment, and 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 ASTM D~~96/API 2542~~ 4007 standards (most current version) or by any other test that is generally accepted in the petroleum industry as may be ~~established by Carrier~~ implemented from time to time; ~~(iii)~~ (iii) the temperature at the Receipt Point shall not exceed thirty ~~eight~~ eight degrees Celsius (38°C); ~~(iv)~~ (iv) the density at the Receipt Point shall not exceed nine hundred and forty kilograms per Cubic Meter (940 kg/m<sup>3</sup>); ~~(v)~~ (v) the kinematic viscosity shall not exceed three hundred and fifty (350) square millimetres per second (mm<sup>2</sup>/s) determined at the Carrier's reference line temperature as posted on Carrier's electronic bulletin board; and ~~(vi)~~ (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.
- 4.3 **Modifications to Specifications.** Notwithstanding Sections 4.1 and 4.2, or any other provision in ~~the Tariff~~ these Rules and Regulations to the contrary, Carrier shall have the right to make any reasonable changes to the specifications under Section 4.2 from time to time to ensure measurement accuracy and to protect Carrier, the Pipeline System or Carrier's personnel, provided that Carrier shall give Shipper reasonable notice of such changes prior to filing.
- 4.4 **Freedom from Objectionable Matter.** Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances ~~which~~ in quantities that may be injurious to Carrier ~~or~~ the Pipeline System or downstream facilities, or which may otherwise interfere with the transportation of Petroleum in the Pipeline System.
- 4.5 **Failure to Conform to Specifications.** If Carrier determines that a Shipper does not comply with the provisions of Section 4.2, 4.3 or 4.4 of these Rules and Regulations, 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.
- 4.6 **Failure to Remove Objectionable Matter.** If a Shipper fails to remove its off-specification Petroleum from the Pipeline System in accordance with the provision of Section 4.5, 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~~ 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 action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse impact to Carrier or the Pipeline System that is attributable to the presence of such objectionable matter. Shipper shall indemnify and save harmless Carrier in accordance with Section 11.2 of these Rules and Regulations for any adverse impact to downstream facilities imposed on Carrier that is attributable to the presence of such objectionable matter.

~~ARTICLE 5~~  
ARTICLE 5  
**MEASUREMENTS**

- 5.1 The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.
- 5.2 All Petroleum received by Carrier for transportation shall be gauged, metered and tested by a representative of Carrier prior to its acceptance at Hardisty. The Shipper may have a representative present at the gauging, metering and testing. If tank calibration tables are used for such purpose, quantities will be computed from the most recent regularly compiled tank calibration tables showing one hundred percent (100%) of the full capacity of the tanks. Such tank calibration tables shall be maintained in accordance with API 653. Carrier shall prove all meters situated at Hardisty at least once each month 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 malfunctions 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 ~~ninety (90) Days after the date~~ one hundred twenty (120) Days after the date that the affected Party discovers and advises the other Party of the meter malfunction. ~~If the Parties fail to reach a negotiated agreement of an appropriate adjustment, the matter shall be referred to arbitration for final determination pursuant to the Arbitration Act of Alberta.~~
- 5.3 All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (i) ~~(i)~~ — Gross Standard Volume and Net Standard Volume received and Delivered (stated in both Cubic Metres and barrels);
  - (ii) ~~(ii)~~ — kinematic viscosity, based on ~~the lower of the temperature of the Petroleum at the time of receipt or~~ Carrier's reference line temperature at the time of receipt;
  - (iii) ~~(iii)~~ — weighted average density;
  - (iv) ~~(iv)~~ — weighted average pressure; and
  - (v) ~~(v)~~ — deductions for basic sediment; and water ~~and other impurities~~.
- All measurement procedures are to be conducted in accordance with applicable API/ASTM standards (most current version) and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shippers.
- 5.4 Carrier shall deliver and account to each Shipper for one hundred percent (100%) of Petroleum Tendered for its account subject to any actual gains or actual 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), will then be based on the proportion that such Shipper's total Deliveries from the Carrier by streamType bears to the total Deliveries of all Shippers from the Carrier by streamType.



Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis.

- 5.5 Subject to applicable laws and government regulations applicable to Shipper's premises, Carrier's representative, upon reasonable notice to Shipper, shall have the right to enter upon the Shipper's premises where Petroleum is stored 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, provided, however, 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 negligence.
- 5.6 Petroleum shall be classified by Type by ~~the~~ Carrier on the basis of measured density and viscosity at the time of Tender. Where the density of the Petroleum falls within the density range of one Petroleum Type and the viscosity of the Petroleum falls within the viscosity range of another Type, then the Petroleum shall be deemed to be ~~in~~of the Type with the higher transportation toll.

#### ~~ARTICLE 6~~ **ARTICLE 6 — SEGREGATION AND CHANGES IN QUALITY**

- 6.1 **Delivery of Types of Petroleum.** Carrier shall endeavour to ~~deliver~~Deliver substantially the same ~~type~~Type and quality 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 while in transit as may result from the transportation thereof in the Pipeline System, including, without limitation, the mixture of said Petroleum with other Petroleum (meeting the specifications set forth in Section 4.2) in the Pipeline System. Carrier shall not be liable for any Special Damages resulting from ~~an~~any alteration in density, specification or other quality or characteristic of Petroleum transported by Carrier, and shall not be liable for any direct damages resulting from any such alteration, except where such direct damages are directly caused by the ~~gross~~-negligence or wilful misconduct of Carrier.
- 6.3 **Segregated Movement.** If the Petroleum Nominated by a Shipper is of a ~~type~~Type or quality not then being transported through the Pipeline System but meets the specifications set out in Article 4, Carrier may, in its ~~sole~~reasonable discretion and as operating conditions permit, at the request of Shipper, attempt to make Delivery of substantially the same ~~type~~Type and quality of Petroleum at the Delivery Point. Notwithstanding the foregoing, Carrier's efforts under this Section 6.3 shall not constitute a waiver, release or amendment of the provisions set forth in Sections 6.1 and 6.2, which provisions shall nonetheless apply to the transportation and Delivery of Petroleum by Carrier under this Section 6.3. To the extent the transportation of such Petroleum causes the Pipeline System or Carrier to incur extraordinary costs not normally incurred for other ~~types~~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.



~~ARTICLE 7~~  
~~ARTICLE 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 ~~am~~a.m., Mountain Time on Carrier’s designated Monthly Nomination date. ~~If~~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. If Shipper’s Tenders have been curtailed pursuant to ~~any provision of the Tariff~~Article 13 of these Rules and Regulations, Shipper shall be deemed to have submitted a Nomination equal to its Monthly Nomination reduced by the level of curtailment. Shipper shall not be responsible for any payments on that curtailed portion of Monthly Nomination. In support of a Shipper’s Monthly Nomination, upon notice from Carrier, Shipper shall provide written third party verification of the availability of its supply of Petroleum and of its ability to remove or have removed such Petroleum at the Delivery Point. Carrier shall not be obligated to accept Shipper’s Monthly Nomination where such verification is, in the ~~sole~~reasonable discretion of Carrier, unacceptable to Carrier.
- 7.2 ~~Apportionment~~Allocation of Available Capacity. Following the receipt by Carrier of Monthly Nominations, Carrier shall, ~~in its sole discretion~~, determine the capacity available to each Delivery Point on the Pipeline System 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 ~~in its sole discretion~~, the Available Capacity shall be allocated by Carrier as follows:
- (i) ~~(i) — Firstly, among Term Shippers as follows’ Priority Allocation:~~ Each Term Shipper shall first be allocated all of its Monthly ~~Nomination~~Nominations to the Delivery Point up to a maximum level of its Monthly Volume ~~(the~~ 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 based on its Monthly Nominations. The sum of all such allocations to all Term Shippers is ~~referred to as~~ the “**Monthly Term Shipper Allocation**”, and “Remaining Available Capacity” means the positive difference, if any, between Available Capacity and the Monthly Term Shipper Allocation ~~is referred to as the “Remaining Available Capacity”); and~~.
- (ii) ~~Secondly, if there is any~~Allocation of Remaining Available Capacity: Remaining Available Capacity ~~then 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 of which is, (a)(a) in the case of a Term Shipper, the portion (if any) of that Term Shipper’s Monthly Nomination which exceeds its Monthly Volume, and, (b)(b) in the case of a Non- Term Shipper, its Monthly Nomination, and the denominator of which is the sum of; (A)(A) the total by which all Term Shipper Monthly Nominations exceed their Monthly Volumes and (B)(B) the total Monthly Nominations by Non- Term Shippers.
- 7.3 **Batch Size.** A Shipper’s Tender will be accepted only when the total quantity covered thereby will be ~~Delivered~~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 ~~thirty-two~~sixteen thousand Cubic Meters (~~32,000~~16,000 m<sup>3</sup>) (~~200,000~~100,000 bbls). Carrier may, in its sole discretion, ~~(i)~~(i) agree to

accept Tenders of Petroleum in smaller batches, and ~~(ii)~~(ii) outline procedures or criteria under which it may accept Tenders of Petroleum in smaller batches.

- 7.4 **Tenders.** A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier's established Tender process. ~~If which process shall be posted on Carrier's electronic bulletin board. Upon Carrier's request, if~~ Shipper is unable to provide Carrier with ~~satisfactory~~reasonable evidence of Shipper's ability to remove from a Delivery Point the volume of Petroleum to be Tended, Carrier may reduce the amount of Petroleum received from Shipper at a Receipt Point to the amount determined by Carrier which Shipper has verified it will be able to remove at ~~that~~the Delivery Point.
- 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 revise 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 electronic bulletin board.
- 7.6 **Working Stock.** Shipper shall supply its proportionate share of Working Stock as determined from time to time by Carrier or, for Term Shippers as specified in the Contract and as posted on Carrier's electronic bulletin board.
- 7.7 **Term Shipper Nominations.** ~~In Except as provided in Section 7.1, in~~ the event that a Term Shipper fails to Nominate and/or Tender a volume of Petroleum equal to the Monthly Volume, it shall nonetheless pay to Carrier the ~~tolls determined pursuant to the Contract. Whether Nominations and Tenders meet Monthly Volume requirements will be assessed relative to receipts at the Receipt Point.~~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 uniform provisions with respect to their ability to make up those volumes in subsequent Months, in the manner described in the Contract. Any make-up volumes to be Tended 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 ~~available capacity~~Remaining Available Capacity on the Pipeline System pursuant to Section 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. ~~Such~~Each Month, such Non-Term Shipper shall pay to Carrier an amount equal to the product of ~~(i)~~(i) the Uncommitted Toll, times ~~(ii)~~(ii) Non-Term Shipper's Allocated Volume. The transportation of Petroleum 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 ~~equal daily quantities in~~ each Month in accordance with Carrier's ~~batching~~rateable batch schedule to make up its Allocated Volume and having such Petroleum specifications as will reasonably be compatible with Pipeline System operations. Carrier may, ~~in its sole discretion,~~ curtail receipts of Petroleum from a Shipper if such Shipper attempts to Tender ~~a daily volume~~ in excess of volumes equal to its Allocated Volume in accordance with Carrier's ~~batching~~rateable 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 the Pipeline System operations.

~~ARTICLE 8~~  
ARTICLE 8  
**APPLICATION OF TOLLS**

- 8.1 **Effective Tolls.** Petroleum accepted for transportation shall be subject to the tolls and ~~other charges~~interest if applicable, in effect on the date of receipt of such Petroleum by Carrier at the Receipt Point(s), irrespective of the date of Nomination or date of Delivery at the Delivery Point(s).

- ~~8.2 **Toll Attribution.** The tolls charged to Shipper shall be allocated as to volume of Petroleum and Type of Petroleum in accordance with the Tariff.~~

~~ARTICLE 9~~  
ARTICLE 9  
**PAYMENT OF TARIFF TOLLS AND OTHER CHARGES AND LIEN FOR UNPAID CHARGES**

- 9.1 Shipper shall pay to Carrier the tolls and other charges payable in accordance with the Tariff on or before the Payment Due Date. Each Month Carrier will electronically issue to Shipper on a pre-established, industry standard, consistent date an invoice detailing ~~(i)~~(i) the tolls payable to Carrier pursuant to the Tariff for service provided during the previous Month, and ~~(ii)~~(ii) any other charges for which Shipper is liable under the Tariff (including, without limitation, 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.
- 9.2 Carrier shall have a lien, 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 without limitation, the payment of any and all unpaid tolls and other charges that are due Carrier 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. The lien and other remedies contained in this Section 9.2 are in addition to any other remedies available to Carrier at law, in equity or under a Contract and/or the Tariff.
- 9.3 Should Shipper fail to pay the full amount of any invoice described in this Article 9 on or before the Payment Due Date, in addition to any other remedy Carrier may have under a Contract and/or 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 two percent (2%)~~; and
  - (ii) Carrier may, upon five (5) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to 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 two (2) Banking 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 and/or the Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, ~~(a)~~(a) seize and sell any of Shipper's Petroleum then in Carrier's possession pursuant to Section 9.4, and/or ~~(b)~~(b) for a Term Shipper, terminate the Contract with such Term Shipper, provided however, if Carrier terminates the Contract in accordance with the Tariff, Term 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 within five (5) Banking Days of such termination pursuant to Carrier's invoice, the net present value of the aggregate of: ~~(A)~~(A) the ~~Fixed Toll~~monthly charges payable under the Contract for the unexpired term of such Contract; ~~with~~ (including, without limitation, the Monthly Revenue Commitment), such amount equal to the Monthly Volume multiplied by the number of unexpired Months in the Contract, which product in turn shall be multiplied by the ~~Fixed Toll~~rate set forth in the Contract, ~~(B)~~(B) all applicable taxes, ~~(C)~~(C) 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 ~~(D)~~(D) all other amounts for which Term Shipper is obligated to pay Carrier pursuant to the Tariff.

- 9.4 Pursuant to Sections 9.3, 10.2 and 12.2, 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 the Carrier by the Shipper and then in the possession of Carrier or its agent, or otherwise traceable and lienable by Carrier. Such sale may occur on any Day not a legal holiday, provided that the sale takes place not less than ~~forty-eight~~ (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, 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 the tolls, charges, damages and other amounts payable to Carrier under the Tariff, including, without limitation, reasonable storage expenses pending sale of such Petroleum, and all costs and expenses incident to the sale, and the balance remaining, if any, shall be held for whomever may be lawfully entitled thereto, without any obligation to pay interest thereon. 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.
- 9.5 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, except in the case of manifest error, in which case Shipper shall notify Carrier of such manifest error before the Payment Due Date and Carrier shall issue a corrected invoice. 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 ~~plus two percent (2%)~~.

~~ARTICLE 10~~  
ARTICLE 10  
**DELIVERY AND ACCEPTANCE**

- 10.1 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.
- 10.2 If Shipper fails to remove its Petroleum from the Pipeline System with reasonable diligence and dispatch upon Carrier's Delivery, then Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale ~~(i)~~(i) all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and ~~(ii)~~(ii) all tolls and other charges due and payable to Carrier under 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.

~~ARTICLE 11~~  
ARTICLE 11  
**LIABILITY OF SHIPPER**

- 11.1 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 ~~for 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, ~~including loss of revenue and loss of profit resulting therefrom,~~ unless the non-removal of such Petroleum is due to Carrier's ~~direct~~ negligence or wilful misconduct.
- 11.2 Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier and any other Person as a result of such Shipper's failure to comply with any material provision of the Tariff, unless Shipper's failure to comply is due to Carrier's ~~direct~~ negligence or wilful misconduct.
- 11.3 Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies and other assessments made or imposed by any governmental or regulatory 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.

~~ARTICLE 12~~  
ARTICLE 12  
**DEFAULT, SUSPENSION AND TERMINATION**

- 12.1 Subject to Article 15, if Carrier or Shipper (a "**Defaulting Party**") shall fail to perform any of the material covenants or obligations imposed upon it under a Contract and/or the Tariff, other than Shipper's failure to pay an invoice on or before the Payment Due Date (which circumstance is addressed in Article 9), then in addition, to any other remedies the non-Defaulting Party may have under a Contract and/or 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 it to be the intention of the non-Defaulting Party giving the Default Notice to terminate such Contract. The Defaulting Party shall have ~~(i)~~(i) in the case of a default of a monetary nature



(which includes, without limitation, a default pursuant to Article 20), ten (10) Days after receipt of the Default Notice, or ~~(ii)~~(ii) in the case of a default of a non-monetary nature, thirty (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-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, 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.

12.2 If the Defaulting Party does not remedy the default or does not indemnify by payment to the ~~Non-non-~~Defaulting Party or otherwise secure the non-Defaulting Party for any and all consequences of such default within the Default Period referred to in Section 12.1, then the non-Defaulting Party may terminate the Contract. Any termination of the Contract pursuant to the provisions of this Section 12.2 shall be without prejudice to the right of Carrier to collect any amounts then due to it for transportation service provided up to and including the date of the termination and shall be without prejudice to the right of ~~Term-~~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 breaches of the Contract. If Carrier terminates a Contract pursuant to this Section 12.2:

- (i) Term 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 within five (5) Banking Days of such termination, pursuant to Carrier’s invoice, the net present value of the aggregate of: ~~(a)(a) the fixed toll~~Monthly Revenue Commitment payable under the Contract for the unexpired term of such Contract, ~~such amount equal to the Monthly Volume multiplied by the number of unexpired Months in the Contract, which product in turn shall be multiplied by the fixed toll set forth in the Contract,~~ ~~(b)(b)~~ all applicable taxes, ~~(c)(c)~~ all amounts owing under the Contract in respect of Petroleum Delivered but for which tolls are not yet paid, and ~~(d)(d)~~ all other amounts for which Shipper is obligated to pay Carrier pursuant to ~~the Tariff~~these Rules and Regulations; and
- (ii) Carrier, or its agent, shall have the right to remove and sell such Petroleum pursuant to Section 9.4. Carrier may retain from the proceeds of such sale ~~(a)(a)~~ all costs and expenses incurred by Carrier with respect to the storage, removal and sale of such Petroleum, and ~~(b)(b)~~ all tolls and other charges due and payable to Carrier under the Tariff. The remainder of such proceeds, if any, shall be held by Carrier for the ~~Shipper~~Defaulting Party 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.

12.3 If a Shipper is the Defaulting Party, Carrier may, in addition to any other remedy it may have under ~~the~~a Contract and/or Tariff (including, without limitation, under Section 20.1), at law or in equity, upon three (3) Banking 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, 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~~a Contract and/or Tariff. If, at any time during such suspension, Shipper remedies the default or otherwise indemnifies or secures Carrier for any and all consequences of such default as

contemplated in this Section, ~~12.3~~. Carrier shall, within two (2) Banking Days of Shipper delivering written notice to Carrier confirming that the default has been remedied, or Carrier receiving such indemnity or other form of security satisfactory to Carrier, recommence receipt and Delivery of Shipper's Petroleum.

- 12.4 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 five (5) Banking Days of the Payment Due Date, any invoice issued by Carrier to such Non-~~Term~~ Shipper pursuant to the Tariff.
- 12.5 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.

### ~~ARTICLE 13~~ **ARTICLE 13** **INTERRUPTION AND CURTAILMENT**

- 13.1 Carrier may interrupt, curtail or reduce transportation service 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 ~~or~~ Carrier's other facilities, or downstream facilities in circumstances which do not constitute Force Majeure. If such interruption is due to a planned outage, Carrier shall give Shippers ~~at least forty eight (48) hours~~ prior notice of such interruption and curtailment as soon as reasonably possible. If such interruption is unforeseen, Carrier shall give 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 ~~planned~~-interruption and the impact of such interruption on the operation of the Pipeline System.
- 13.2 During periods of interruption pursuant to Section 13.1, Carrier ~~may~~ shall curtail transportation service ~~as follows: (i) firstly, service in respect of Uncommitted Capacity on a pro rata basis until such service has been reduced to zero; and (ii) secondly, service to Term Shippers on a pro rata basis; and allocate Available Capacity in accordance with Article 7.~~
- ~~13.3 Notwithstanding any interruption and curtailment pursuant to this Article 13, no such interruption and curtailment shall suspend or relieve Shippers of the obligation to pay the tolls, charges and other amounts payable to Carrier under the Tariff.~~

### ~~ARTICLE 14~~ **ARTICLE 14** **LIABILITY OF CARRIER**

- 14.1 Notwithstanding anything in the Tariff to the contrary, Carrier shall not be liable to Shipper for any losses, damages, claims, costs, expenses or delay incurred or suffered by Shipper unless ~~directly~~ caused by Carrier's ~~direct~~ breach, negligence or willful misconduct and in any event Carrier shall have no liability whatsoever to Shipper for Special Damages.
- 14.2 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 on a pro rata basis among all Shippers provided such damage or loss is not caused by the breach, negligence or wilful misconduct of

Carrier. 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.

- 14.3 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.

~~ARTICLE 15~~  
~~ARTICLE 15~~  
**FORCE MAJEURE**

- 15.1 If either Carrier or Shipper fails to perform, in whole or in part, its obligations under a Contract and/or the Tariff due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.

- 15.2 The term "**Force Majeure**", as used herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of the public enemy, sabotage, acts of terrorism, strikes, lockouts or other industrial disturbances, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, storms, civil disturbances, the act, regulation, order, direction or requisition of any governmental or other legal authority having jurisdiction, breakdown or failures of pipe, plant, machinery or equipment, inability to obtain or the curtailment of electric power, water or fuel, or other event, cause or occurrence whether of the kind enumerated or otherwise which ~~is beyond the~~ in all cases are not within the reasonable control of the applicable Person Party claiming suspension, and which by the exercise of due diligence such Person is unable to prevent or overcome.

- 15.3 ~~Notwithstanding Sections 15.1 and 15.2, the~~ The following shall not, under any circumstance, constitute an event of Force Majeure:

- (i) ~~(i)~~ ~~insufficiency of~~ Shipper's inability to purchase Petroleum ~~supplies~~;
- (ii) ~~(ii)~~ lack of funds;
- (iii) ~~(iii)~~ availability of more attractive markets for Petroleum;
- (iv) ~~(iv)~~ absence of a market for Petroleum; or
- (v) ~~(v)~~ availability of alternative Petroleum transportation systems.

- 15.4 A Person that fails to perform any obligation under a Contract and/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.

- 15.5 Notwithstanding the above provisions, no event of Force Majeure shall:

- (i) relieve any Person from any obligation under a Contract and/or the Tariff unless such Person gives notice with reasonable promptness of such event to the other Person; or



(ii) relieve any Person from any obligation under a Contract and/or the Tariff 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.

15.6 ~~Notwithstanding~~Except as otherwise expressly provided in a Contract and notwithstanding anything in this Article 15 to the contrary, no event of Force Majeure shall relieve any Shipper from its obligations under a Contract and/or the Tariff to make payments pursuant to Article 9 or to provide Financial Assurances pursuant to Article 20 to Carrier under the Tariff during the continuance of such Force Majeure event.

~~15.7 In respect of Term Shippers, where the event of Force Majeure is declared by Carrier as a result of such event occurring on the Pipeline System, then the term then in effect for the relevant Contract will be extended by the aggregate amount of time the Carrier has declared each such Force Majeure event, for the period required to transport, at the Contract Volume, a volume equivalent to the aggregate volumes forming part of the Monthly Volumes as were excused by such relevant events of Force Majeure.~~

#### ARTICLE 16~~ARTICLE 16~~

### ADVERSE CLAIMS AGAINST PETROLEUM

16.1 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 of Carrier pursuant to the Tariff) (each an “**Adverse Encumbrance**”) unless Shipper provides written notification to Carrier of such Adverse Encumbrance not less than twenty (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. 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 a bond or other form of indemnity satisfactory to Carrier that fully protects and indemnifies Carrier against any liability, loss, cost or expense 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 Tariff if Carrier were to transport such Petroleum.

#### ARTICLE 17~~ARTICLE 17~~

### CLAIMS, SUITS AND TIME FOR FILING

17.1 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 of Petroleum Tendered for shipment under the Tariff, Shipper must submit such claim in writing to Carrier within ~~ninety (90)~~one hundred eighty (180) Days after Delivery of the Petroleum involved in such claim, or, in the case of failure to make Delivery, then within ~~ninety (90)~~one hundred eighty (180) Days after a reasonable time for Delivery has elapsed. Any suits arising out of such claims must be instituted against Carrier within ~~six two (62) Months~~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 ~~six two (62) Month~~Year period shall be null and void as between Shipper and Carrier. In Tendering Petroleum to be transported under the Tariff, Shipper agrees to be bound by the provisions of this ~~elause~~Section 17.1 and waive any rights which it might otherwise have at common law, in equity or otherwise, to make a claim after the expiration

of said period of ~~ninety (90)~~ one hundred eighty (180) Days or to bring an action after the expiration of the said period of ~~sixtwo (62)~~ Months~~Years~~. Nothing contained in this Section 17.1 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.

- 17.2 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, subject to Sections 6.2 and 14.1, such limitation is not intended, nor shall it affect or limit liability for, Special Damages imposed in favour of Persons that are not a Party or an Affiliate of a Party.

~~ARTICLE 18~~  
**ARTICLE 18**  
**REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS**

- 18.1 Shipper represents and warrants that: ~~(i)~~ (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the removal, transportation and Delivery of Petroleum hereunder; ~~(ii)~~ (ii) that 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, ~~(iii)~~ (iii) that 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)~~ (iv) Petroleum Tendered to Carrier will not be subject to any Adverse Encumbrance; and ~~(v)~~ (v) that, 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.

~~ARTICLE 19~~  
**ARTICLE 19**  
**GOVERNING LAW**

- 19.1 The Contract and 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, ~~and~~ but shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein. ~~No including, without limitation, 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 ~~Contracts, the Petroleum Toll Schedule or the Rules and Regulations or any matter relating to Carrier~~ the Contract or Tariff 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 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 CONTRACT OR THE TARIFF SPECIFICALLY AND KNOWINGLY WAIVE ANY TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.**

~~ARTICLE 20~~  
ARTICLE 20  
**FINANCIAL INFORMATION AND ASSURANCES**

20.1 Except as provided in a contract, Shipper shall provide to Carrier, at any time:

- (i) upon Carrier's request, information ("**Financial Information**") that will allow the Carrier to evaluate (or re-evaluate) and establish 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 reasonable request, financial security for the payment of the tolls and other 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 four (4) Banking 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 ~~under the Tariff~~ and Carrier may, in addition to any other remedy it may have under ~~the Contract and/or~~ Tariff, at law or in equity, upon three (3) Banking Days written notice to Shipper, suspend further receipt and Delivery of Petroleum from and to Shipper until such Financial Information or Financial Assurances are provided by Shipper to Carrier; provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, tolls, charges or other amounts payable (including taxes) to Carrier under the Tariff. If, at any time during such suspension, Shipper provides the requested Financial Information or Financial Assurances to Carrier, Carrier shall, within two (2) Banking Days of receipt of such Financial Information or Financial Assurances, recommence receipt and Delivery of Shipper's Petroleum.

20.2 For the purposes of Section 20.1(ii), Carrier may make a reasonable request for Financial Assurances on the following grounds:

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

20.3 The Financial Assurances that Carrier may request from Shipper pursuant to the Tariff shall be limited to the following:

- (i) ~~(i)~~—for Term Shippers, an irrevocable standby letter of credit or other form of financial assurance (which assurance could include without limitation, a financial guarantee), in an amount no greater than twelve (12) Months of tolls and other charges based on the Monthly Volume, plus all applicable taxes; and

(ii) ~~(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 sixty (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 ninety (90) Days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be.

20.4 The following aspects of any Financial Assurances must be acceptable to Carrier, acting reasonably:

(i) ~~(i)~~—the terms of any letter of credit;

(ii) ~~(ii)~~—the adequacy (including terms) of any proposed financial assurance; and

(iii) ~~(iii)~~—the creditworthiness of the issuer of any letter of credit or other financial assurance.