

NEB No. 100
(Cancels NEB No. 94)

Kingston Midstream Westspur Limited

TARIFF

RULES AND REGULATIONS

Governing the
TRANSPORTATION
of
Crude Petroleum

The rules and regulations published herein apply only under tariffs making specific reference by number to this tariff; such reference will include supplements hereto and successive issues hereof. Specific rules and regulations published in individual tariffs will take precedence over rules and regulations published herein.

EFFECTIVE October 1, 2019
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1. DEFINITIONS

As used in this tariff, the following terms have the following meanings:

“**A.P.I.**” means American Petroleum Institute.

“**A.S.T.M.**” means American Society for Testing and Materials.

“**Carrier**” means Kingston Midstream Westspur Limited.

“**Common Testing Procedure**” means the common testing procedure to be used by Carrier to assess quality specification requirements for Shipper tendered Crude Petroleum on the Carrier’s pipeline.

“**Crude Petroleum**” means the direct product of oil wells and indirect liquid products of oil or gas wells, or a mixture of such products.

“**Crude Equalization Methodology**” means the crude oil equalization methodology determined in accordance with the Equalization Procedures Guide and in particular, specifically as set forth in Attachment 7 and Attachment 8a of the Equalization Procedures Guide.

“**Delivery Point**” means a point on Carrier’s pipeline system at which Carrier is capable of delivering Crude Petroleum to Shippers or accepting transfer of ownership between Shipper accounts based on the Shippers’ Notice of Shipment or as otherwise set forth in the toll schedule tariff applicable to Carrier’s pipeline and includes the MIW Delivery Point.

“**Density**” means mass per unit volume at 15 degrees Celsius.

“**Enbridge Mainline**” means the Enbridge System (Canadian Mainline) connected to the Carrier’s pipeline at Cromer, currently owned and operated by Enbridge Inc., or one or more of its affiliates.

“**Equalization**” has the meaning given to it in the Equalization Procedures Guide.

“**Equalization Procedures Guide**” means the “Equalization Procedures Guide, developed by the Quality Equalization Steering Committee on behalf of the Canadian Crude and Condensate Shippers and Applied by the Equalized Terminals and Pipelines”, in effect as of January 1, 2019.

“**Financial Assurances**” means the financial assurances provided by the Shipper and accepted by the Carrier in accordance with Rule 21.

“**Force Majeure**” means an event, which is unforeseen, and beyond the control of the Shipper that either prevents the Shipper from delivering the affected volume to Carrier or prevents the Shipper from accepting delivery of the affected volume from Carrier. The following are the only instances that will be recognized as Force Majeure events: earthquakes; floods; landslides; civil disturbances; sabotage; the acts of public enemies; war; blockades; insurrections; riots; epidemics; the act of any government or other authority or statutory undertaking; the inability to obtain or the curtailment of electric power, water or fuel; strikes, lockouts or other labour disruptions; fire; explosions; breakdowns or failures of pipe, plant, machinery or equipment; and contamination or poisoning of catalyst and/or solvent or biological treatment facilities. For greater certainty, a lack of funds; the availability of a more attractive market; Shipper’s inability to purchase Crude Petroleum; or inefficiencies in operations do not constitute events of Force Majeure.

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“**Gross Standard Volume**” means volume corrected as to temperature from observed degrees Fahrenheit/Celsius to fifteen degrees (15°) Celsius.

“**M³**” means cubic metre at a temperature of fifteen degrees (15°) Celsius.

“**MIW**” means the facilities owned and operated by an affiliate of the Carrier immediately downstream of the MIW Delivery Point and located at 14-17-9-28-W1M.

“**MIW Delivery Point**” means the location immediately upstream of MIW where nominated Crude Petroleum is delivered from Carrier’s pipeline into MIW.

“**MIW Receipt Point**” means the location downstream of MIW where nominated Crude Petroleum is delivered back onto Westspur Pipeline.

“**NEB**” means National Energy Board.

“**Net Volume**” means the Gross Standard Volume minus the known S&W.

“**Notice of Shipment**” means the notice of shipment as described in Rule 12(a).

“**Quality Equalization Steering Committee**” means a committee, which consists of a minimum of six elected Shipper representatives from the oil industry, the mandate of which is to establish and govern an equalization process as established in the Equalization Procedures Guide.

“**Receipt Point**” means a point on Carrier’s pipeline system at which Carrier has facilities to accept receipt of Crude Petroleum.

“**S&W**” means sediment, water or other impurities the percentage of which has been determined by use of A.S.T.M. procedure D96-88 (centrifuge test) for ascertaining the percentage of S&W in Crude Petroleum.

“**Shipper**” means the party, that contracts with Carrier for the transportation of Crude Petroleum under the terms of this tariff, provided that for the purpose of Rule 14(a)(i), “**Shipper**” means a party that has contracted with the Carrier for the transportation of Crude Petroleum within the last twelve (12) months on the Carrier’s pipeline.

“**Transportation Charges**” means, without limiting the generality of the charges and costs lawfully due to the Carrier relating to the transportation of the Shipper’s Crude Petroleum, whether in transit or delivered, and the Transportation Charges shall include tariff charges, equalization obligations, negative Shipper’s balance positions and Loss Allowance, together with any goods and services tax payable pursuant to the *Excise Tax Act* (Canada), provincial sales tax, or other applicable tax payable pursuant to similar federal or provincial legislation.

2. COMMODITY

These Rules and Regulations apply only to the transportation of Crude Petroleum by the Carrier and no commodity other than Crude Petroleum will be transported under these Rules and Regulations.

Receipt Points that are pipeline connected to Carrier’s pipeline where only a single commodity is transported shall be classified as that commodity. The Carrier shall classify all other Receipt Points on the basis of the last recorded monthly density (at fifteen degrees (15°) Celsius) and sulphur content present at

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the Receipt Point. A Receipt Point receiving Crude Petroleum having a density from 800.0 kilograms per cubic metre (KG/M³) to 871.0 KG/M³ inclusive will be classified as Light Sour Crude Petroleum. A Receipt Point receiving Crude Petroleum having a density 871.1 KG/M³ to 904 KG/M³ will be classified as Medium Crude Petroleum.

3. CRUDE PETROLEUM QUALITY SPECIFICATIONS

- (a) A Shipper shall not deliver to the Carrier and the Carrier shall not knowingly accept Crude Petroleum that, as determined by the Carrier, has on receipt:
 - (i) a vapour pressure in excess of 95 Kilopascals for Crude Petroleum.
 - (ii) S&W in excess of one-half of one percent;
 - (iii) a Density of less than 800.0 kilograms per cubic metre or greater than 904 kilograms per cubic metre;
 - (iv) a temperature greater than forty degrees (40°) Celsius or lower than zero degrees (0°) Celsius;
 - (v) been received from manually gauged locations, except where the Crude Petroleum is in parcels of more than sixty cubic metres each;
 - (vi) a kinematic viscosity in excess of 210 square millimetres per second (mm²/s) at zero degrees (0°) Celsius. Kinematic viscosity will be determined in accordance with the most current A.S.T.M. procedure D445 or in accordance with any other test deemed appropriate by the Carrier;
 - (vii) a pour point of minus six degrees (-6°) Celsius or greater (Pour point will be determined in accordance with the most current A.S.T.M. procedure D97 or in accordance with any other test deemed appropriate by the Carrier);
 - (viii) any organic chlorides; or
 - (ix) physical or chemical characteristics that may render such Crude Petroleum not readily transportable by the Carrier or that may materially affect the quality of other commodities transported by the Carrier or that may otherwise cause disadvantage to the Carrier.
- (b) Notwithstanding anything herein to the contrary, Carrier may make changes to Rule 3(a) above so that such quality specifications are consistent with those quality specifications governing transportation service on the Enbridge Mainline Rules and Regulations.
- (c) Where Shipper has failed to meet the quality specifications set forth in Rule 3a, and Carrier is nonetheless transporting such Crude Petroleum, Shipper shall be responsible for removal of this Crude Petroleum and be liable to Carrier for all costs and expenses in connection with the removal of such Crude Petroleum from the Carrier's pipeline. For certainty, Carrier shall not have any liability to Shippers for failing to prevent Crude

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Petroleum onto Carrier's pipeline that does not meet the quality specifications set forth in Rule 3a unless caused by Carrier's gross negligence or willful misconduct.

- (d) A Shipper shall, as required by Carrier, provide to Carrier, a certificate with respect to the specifications of Crude Petroleum to be received by Carrier from such Shipper. If Shipper fails to provide Carrier with such certificate, then Carrier shall not be obligated to accept Shipper's Crude Petroleum. Shipper shall immediately notify Carrier if it becomes aware of Crude Petroleum tendered or to be tendered that does not comply with this Rule 3. The Shipper shall be liable to and indemnify the Carrier against any and all claims, demands, suits, actions, damages, costs, losses, expenses and other consequential damages or claims of whatsoever nature or kind, resulting directly or indirectly from the failure of such Shipper to comply with this Rule 3 and may result in Carrier suspending Shipper's ability to nominate and deliver Crude Petroleum to Carrier's pipeline.
- (e) Carrier reserves the right to take, or cause to have taken, at any time, a sample of any Crude Petroleum tendered by the Shipper to Carrier's pipeline and perform a quality analysis. In performing such quality analysis, Carrier shall use the Common Testing Procedure. The results of the quality analysis based on the application of the Common Testing Procedure shall be considered final and binding. If Crude Petroleum at a Receipt Point does not meet the quality specifications as described herein is tendered to Carrier's pipeline, Shipper shall pay to Carrier an amount equal to all of the costs and expenses incurred by Carrier in connection with the performance of the quality and component analysis on the Crude Petroleum relevant to the period of such analysis. Any payment pursuant to this Rule 3 shall be in addition to, and not in substitution of, any other rights or remedies of the Carrier set forth herein or in any contract or otherwise at law or equity.

4. REMOVAL, DELIVERY AND ACCEPTANCE

- (a) A Shipper or the designate of the Shipper shall accept such Shipper's Crude Petroleum upon arrival at the Shipper designated Delivery Point for such Crude Petroleum. If Carrier determines that a Shipper does not comply with the provisions of paragraph (a) of Rule 3, paragraph (c) of Rule 9, or paragraphs (a) or (b) of Rule 14 of these Rules and Regulations, then such Shipper shall remove its Crude Petroleum from the facilities of the Carrier as directed by the Carrier.
- (b) If a Shipper fails to remove its Crude Petroleum or associated substances from the facilities of the Carrier in accordance with the provisions of paragraph (a) of Rule 4 of this tariff, and a disruption of Carrier's operations results, Shipper shall be solely responsible for all reasonably incurred costs, and for losses and liabilities of Carrier associated with such disruption, including loss of revenue resulting therefrom, unless the non-removal of such Crude Petroleum is due to the direct negligence of Carrier.
- (c) If Shipper fails to remove its Crude Petroleum from the facilities of Carrier as directed by Carrier, then Carrier shall have the right to remove and sell such Crude Petroleum in such lawful manner as deemed appropriate by Carrier.
- (d) The Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the disruption of the Carrier's operations, all costs incurred by the Carrier with respect to the storage, removal and sale of such Shipper's Crude Petroleum and any

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outstanding Transportation Charges. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.

5. QUALITY EQUALIZATION

Equalization of Crude Petroleum tendered to and delivered from Carrier's pipeline shall be determined in accordance with the Crude Equalization Methodology.

6. CHANGES IN QUALITY AND SEGREGATION

- (a) Carrier shall use reasonable efforts to deliver substantially the same type of Crude Petroleum as that received from the Shipper subject to commingling as provided within these Rules and Regulations. Carrier shall not be obligated to make delivery of the identical Crude Petroleum received by Carrier and in the case of any stream shall make delivery out of its common stock.
- (b) If Crude Petroleum tendered to Carrier is of a kind or quality that is not currently being transported by Carrier, then Carrier shall, at the request of Shipper of such Crude Petroleum and subject to the operating conditions of the facilities of Carrier, make reasonable efforts to segregate such Crude Petroleum during transportation by Carrier. In such circumstances, Shipper shall, at the request of Carrier, make such Crude Petroleum available in such quantities and at such times as may be necessary to permit such segregated movements.
- (c) Carrier may, in its discretion, require payment of transportation charges in addition to regular rates for transportation of Crude Petroleum which is of a kind not currently transported through Carrier's facilities.
- (d) Subject to paragraph (a) of Rule 19 of these Rules and Regulations, Crude Petroleum tendered to the Carrier for transportation will be received by the Carrier on the condition that it shall be subject to such changes, which include but are not limited to, density, quantity, value and quality, while in transit as may result from the transportation (and all services and procedures related thereto), commingling or intermixing thereof, including, without limiting the generality of the foregoing, the mixing of a Shipper's Crude Petroleum with other Crude Petroleum in the facilities of the Carrier.

7. TANKAGE AND FACILITIES

- (a) Shipper shall provide, or cause to be provided, adequate tankage and facilities commensurate with the quantities of Crude Petroleum tendered. Whether Shipper's tankage and other facilities are adequate will be determined by Carrier having regard to those factors it deems appropriate, which factors may include:
 - (i) Storage – Carrier recommends facilities have a minimum storage capability of three days.
 - (ii) Tankage – Tankage must meet minimum A.P.I. specifications and be capable of shipping a minimum of 60M3 per tank. A minimum stairway width of 66 centimeters for access to all clean oil shipping tanks shall be maintained. No internal elbows

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shall be used on tank shipping nozzles. Locations that require, or may require, to be manually gauged and have tanks that maintain a positive pressure must be equipped with a mechanism that enables the Carrier to bleed off the tank pressure before gauging.

- (iii) Receipt Point Facilities – Windssocks shall be located at each Receipt Point.
 - (iv) Overflow Lines – Overflow lines shall not be attached from water tanks to clean oil shipping tanks.
 - (v) Shipping Lines – The minimum distance between the centerline and the bottom of the tank shall be 40 centimeters. All shipping lines shall have full opening four-inch valves.
 - (vi) Valves – All shipping valves and valve handles shall be properly maintained.
- (b) The Carrier or its representative shall have the right to enter upon the premises where Crude Petroleum of a Shipper that is to be tendered to a Receipt Point is stored and be given access to all sales receipt tanks and/or meters for the purpose of making any examination, inspection, measurement or test necessary, in the discretion of Carrier, acting reasonably to determine the adequacy of the tankage and/or metering.

8. GAUGING, TESTING AND SEALS

- (a) Carrier shall gauge or meter, or cause to be gauged or metered a Shipper's Crude Petroleum upon receipt and delivery by the Carrier. Shipper or its representative may be present at such gauging or metering. If tank gauges are used, the volume of Crude Petroleum shall be computed from correctly compiled tank tables on a 100 percent volume basis. Carrier shall not be obligated to service tankage that does not comply with existing tank capacity tables on its pipeline system. If meters are used, they shall be calibrated at such intervals and to such accuracy as determined by Carrier, acting reasonably.
- (b) Carrier, acting reasonably, reserves the right to periodically test randomly selected samples of a Shipper's Crude Petroleum, upon its receipt and in accordance with the Common Testing Procedures. Such testing shall be for the purpose of determining the crude quality levels identified in Rule 3 of these Rules and Regulations and for the purpose of determining density and sulphur content of the sampled Crude Petroleum. The frequency of such testing of Shipper tendered volume shall be at the discretion of Carrier.
- (c) Carrier may, in its discretion, place seals on all quality and/or quantity control points related to the receipt, delivery or shipment of Crude Petroleum. Shipper shall not remove seals without prior approval of the Carrier.
- (d) The application by Carrier of the Common Testing Procedures for gauging, metering and testing samples of a Shipper's Crude Petroleum shall be final and binding.

9. TANK TRUCK DELIVERIES AND FACILITIES

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- (a) Crude Petroleum trucked to Carrier shall be unloaded at the Receipt Point of Carrier classified for the particular commodity trucked. Tank Trucks delivering Crude Petroleum to the facilities of Carrier shall be properly equipped to permit transfer of Crude Petroleum with a minimum of delay within the guidelines established by Carrier.
- (b) Carrier may, acting reasonably, require Shipper to provide the capacity calibration for each tank truck Shipper unloads into Carrier's storage tank or related facilities.
- (c) Carrier, in its discretion, may refuse to accept delivery of Crude Petroleum by tank truck in excess of its Notice of Shipment or in excess of facility volume forecasts determined pursuant to Rule 12, or for reasons of safety, mechanical limitations, operating condition in accordance with the Common Testing Procedure.
- (d) Carrier shall not be obligated to, but may in its discretion, accept for transportation Crude Petroleum trucked to Carrier in excess of its Notice of Shipment or in excess of facility volume forecasts determined pursuant to Rule 12.

10. EVIDENCE OF RECEIPTS AND DELIVERIES

The Carrier shall evidence the receipt and delivery of Crude Petroleum by ticket signed by the Carrier showing the date, place of receipt or delivery and data essential for the determination of the quality and quantity of Crude Petroleum within 3 business days and will promptly notify Shipper of any measurements that indicate Crude Petroleum does not meet specifications.

11. LOSS ALLOWANCE

A deduction of **ONE-QUARTER OF ONE PERCENT** will be made by the Carrier to cover losses inherent in the transportation of Crude Petroleum by pipeline.

12. NOTIFICATION OF SHIPMENT

- (a) Shipper shall notify Carrier in writing of the volume of Crude Petroleum to be shipped and the final destination of the Crude Petroleum on downstream connected Carriers to which the Shipper intends to make delivery for that month (the "Notice of Shipment"). Notices of Shipment are due on the dates and times specified in the annual Crude Oil Logistics Committee Forecast Reporting Calendar.
- (b) Carrier has the right to verify volumes submitted by Shipper in the Notice of Shipment. Where necessary Shipper shall submit a revised Notice of Shipment based on Carrier verification.
- (c) If space is available, and operating conditions permit, the Carrier may, in its discretion, accept Notices of Shipment, and may, in its discretion accept revised Notices of Shipment after the time specified in paragraph (a) of Rule 12 of these Rules and Regulations.

13. CRUDE PETROLEUM TRANSFERS

- (a) Subject to the approval of the Carrier, not to be unreasonably withheld, a Shipper may transfer and assign, in such manner as may be specified by Carrier, such Shipper's Crude

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Petroleum and its rights and obligations under these Rules and Regulations respecting its Crude Petroleum, to another Shipper.

- (b) A transfer of a Shipper's rights and obligations under Rule 13(a) of this tariff respecting its Crude Petroleum will not be binding or effective on the Carrier if the Carrier has provided a notice of non-acceptance to the transferor and transferee within three (3) days of receiving notice of the transfer. The Carrier will be deemed to have disapproved a transfer until such time as the transferee has satisfied the Carrier of its capacity to undertake the transferor's obligations and has provided any Financial Assurances requested by the Carrier in accordance with Rule 21 of this tariff.

14. APPORTIONMENT

- (a) If more Crude Petroleum is nominated than can be transported by the Carrier or delivered at a Delivery Point, then the Carrier shall allocate the available capacity amongst the Shippers as follows:
 - (i) Capacity will be allocated to Shippers by allocating to each Shipper a pro rata share of the capacity of the pipeline based on the Notice of Shipment or current facility volume forecasts determined pursuant to Rule 12.
 - (ii) Carrier may also suspend or apportion Crude Petroleum, without claim for damages, if requested or required to suspend delivery, or if Carrier suffers restricted delivery quotas, to any connecting carriers.
- (b) Carrier shall have the right, acting reasonably, to manage the tenders of Crude Petroleum from Shippers to Carrier at Receipt Points and Delivery Points, in order to manage the capacity across the pipeline system, at Receipt Points or at Delivery Points and Carrier may demand that a Shipper revise its Notice of Shipment.

15. ADVERSE CLAIMS AGAINST CRUDE PETROLEUM

- (a) A Shipper shall not tender or deliver to the Carrier Crude Petroleum which is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind unless the Shipper provides written notification to the Carrier of such litigation, dispute, lien or charge not less than 20 days before such tender is made to the Carrier.
- (b) The Carrier shall not be obligated to accept Crude Petroleum that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.
- (c) A Shipper shall advise the Carrier in writing if, at any time while the Shipper's Crude Petroleum is in the possession of the Carrier, such Crude Petroleum becomes involved in litigation, the ownership of such Crude Petroleum becomes in dispute or such Crude Petroleum becomes encumbered by a lien or charge of any kind.
- (d) A Shipper shall, upon demand from the Carrier, provide a bond or other form of indemnity satisfactory to the Carrier protecting the Carrier against any liability or loss that may arise

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as a result of such Shipper's Crude Petroleum being involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.

16. PAYMENT OF TARIFF CHARGES AND LIEN FOR UNPAID CHARGES

- (a) Shipper shall pay all Transportation Charges as provided for in the most current posted tariff or otherwise lawfully due to the Carrier relating to the transportation or other handling of the Shipper's Crude Petroleum by the Carrier. The Shipper shall pay such Transportation Charges upon receipt of the Carrier's invoice respecting such charges and costs. If required by the Carrier, the Shipper shall pay or settle such Transportation Charges before delivery, or before acceptance of a transfer, of the Shipper's Crude Petroleum by the Carrier. If Shipper fails to pay such rates and charges within 10 days of the date of Carrier's invoice, such rates and charges shall thereafter be subject to interest, accruing day to day, at the rate of 12% per annum until such invoice is paid.
- (b) Carrier shall have a general lien on all of a Shipper's Crude Petroleum that is in the possession of the Carrier to secure the payment of all Transportation Charges accruing or due relating to the transportation or other handling of the Shipper's Petroleum by the Carrier. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract. The Carrier may withhold the Shipper's Crude Petroleum from delivery and may exercise any other rights and remedies provided at law or by contract, until all Transportation Charges have been paid.
- (c) If rates and charges for the transportation of Shipper's Crude Petroleum remain unpaid for ten days after notice of demand for payment of such charges is made to such Shipper by the Carrier, then the Carrier shall have the right to remove and sell any or all of such Shipper's Crude Petroleum that is in the possession of the Carrier in such lawful manner as deemed appropriate by the Carrier.
- (d) Carrier shall pay from the proceeds of such sale of Crude Petroleum, all Transportation Charges accruing or due relating to the transportation of such Shipper's Crude Petroleum by the Carrier and all costs incurred by the Carrier with respect to the storage, removal and sale of such Shipper's Crude Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.
- (e) When required, the Carrier shall, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing these Rules and Regulations. The Carrier hereby advises that it has appointed Enbridge Pipelines Inc. as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing these Rules and Regulations.

17. REGULATION ON A COMPLAINT BASIS

The tolls of Carrier are regulated by the NEB on a complaint basis. Carrier shall make copies of tariffs and supporting financial information readily available to interested persons. Shippers who cannot resolve toll and tariff issues with Carrier may file a complaint with the NEB. In the absence of a complaint, the NEB does not normally undertake a detailed examination of Carrier's tolls.

18. CLAIMS, SUITS AND TIME FOR FILING

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- (a) Shipper shall advise Carrier, in writing, of any claim for delay, damage or loss resulting from the transportation of such Shipper's Crude Petroleum by Carrier within 30 days of delivery of such Crude Petroleum by Carrier or, in the case of a failure to make delivery, then within 30 days after a reasonable time for delivery has elapsed.
- (b) A Shipper shall initiate any action arising out of any claim against Carrier within 180 days from the date that Carrier gives written notice to such Shipper that Carrier has disallowed such claim or any part of such claim.
- (c) If Shipper fails to comply with the provisions of paragraph (a) or paragraph (b) of this Rule 18, then such Shipper waives all rights it has to bring an action against Carrier with respect to such claim.

19. LIABILITY OF CARRIER

- (a) Except where caused by the direct negligence of the Carrier, the Carrier shall not be liable to a Shipper for any delays, damages, or losses experienced as a result of the Carrier's transportation (and all services and procedures related thereto), commingling, or intermixing of such Crude Petroleum in the facilities of the Carrier. Notwithstanding anything to the contrary contained in this tariff, unless caused by the gross negligence or willful misconduct of the Carrier, the Carrier's liability, if any, shall not extend to any indirect, consequential, incidental, or punitive damages, or to any loss of profits or revenues incurred by such Shipper that may result from the transportation (and all services and procedures related thereto), commingling or intermixing of Crude Petroleum with other Crude Petroleum under this tariff, regardless of whether such claim arises under or results from contract, tort, or strict liability. In no event shall this tariff create any liability for damages on behalf of any third party (whether or not affiliated with the Shipper).
- (b) If damage or loss to Crude Petroleum results from any cause other than from the direct negligence of the Carrier while the Carrier is in possession or control of such Crude Petroleum, then the Carrier may apportion the cost of such damage or loss on a pro rata basis among all Shippers. Each Shipper's share of such cost shall be determined by the Carrier based on the proportion of the volume of the Shipper's Crude Petroleum in the possession of the Carrier on the date of such loss to the total volume of Crude Petroleum in the possession of the Carrier on the date of such loss and each Shipper shall be entitled to have delivered only such portion of its shipment as may remain after the deduction of its proportion of such loss.

20. INDEMNIFICATION BY THE SHIPPER

Shipper shall indemnify the Carrier for any damage, loss, costs or consequential loss incurred by the Carrier or any other party as a result of such Shipper's failure to comply with any provision of this tariff.

21. FINANCIAL ASSURANCES

- (a) At any time, upon the request of the Carrier, any prospective or existing Shipper shall provide information to the Carrier that will allow the Carrier to, acting reasonably, determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation or other handling of that Shipper's Crude Petroleum under the

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terms of this tariff, including the payment of transportation or other handling charges, equalization obligations and the value of the allowance oil and negative Shipper's balance positions. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to provide the requested information to the Carrier within ten (10) days of the Carrier's written request, or if the Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations and the reasonably determined value of the allowance oil and negative Shipper's balance positions.

- (b) Subject to the provisions of Rule 21(c), the Carrier, upon notice to the Shipper, may require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier, to be provided at the expense of the Shipper:
- (i) a letter of credit in favour of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier, in a form and from an institution acceptable to Carrier;
 - (ii) a guarantee in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or
 - (iii) such other enforceable collateral security, including but not limited to security agreements over assets of the Shipper, in a form acceptable to the Carrier (the "Financial Assurances").
- (c) In the event that the Carrier reasonably determines that:
- (i) the existing or prospective Shipper's financial condition is or has become impaired or unsatisfactory;
 - (ii) any Financial Assurances previously provided by a Shipper no longer provide adequate security for the performance of the Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or
 - (iii) the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper, then the Shipper shall provide Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum by the Carrier. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) days of Shipper's receipt of Carrier's written request for such Financial Assurances.

22. INTRA-SYSTEM TRANSFERS

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- (a) Other than with respect to batches of Crude Petroleum, Carrier shall, upon written request of a Shipper (the “**Transferor**”) following the Transferor’s tender and prior to delivery in respect of such tender, permit the Transferor to transfer all or any portion of its rights and obligations under the Tariff in respect of such tender to another Shipper (the “**Transferee**”); provided that (i) the transferee satisfies the Financial Assurance requirements set forth in Rule 21, (ii) the Transferee assumes in writing all obligations and liabilities whatsoever in respect of the tender or portion thereof, as applicable, under the Tariff from and after the time Carrier approves such transfer, and (iii) the Transferor has tendered a volume of Crude Petroleum equal to or greater than the volume of Crude Petroleum to be transferred to the Transferee. The Transferee and the Transferor shall confirm in writing to Carrier the transfer volume, transfer timing, Delivery Point, swing instructions (which swing instructions are intended to facilitate the balancing of intra-system transfers) and provide to Carrier any other information or documentation required by Carrier, in its sole discretion. In the event that the Transferor and Transferee do not provide swing instructions, Carrier shall use commercially reasonable efforts to balance the intra-system transfer request with the Transferor’s tendered volumes, and any determinations made by Carrier in this regard shall be final and binding on the Transferor and the Transferee. Carrier shall have no liability whatsoever to the Transferee and the Transferor in respect of an intra-system transfer.
- (b) Each of the Transferor and Transferee shall pay to Carrier an intra-system transfer fee set out in the most current posted tariff of the Carrier.

23. NON-PERFORMANCE

During periods of apportionment, if the volume of Crude Petroleum tendered by Shipper on any Day is less than Shipper’s apportioned volume by more than 5% of the apportioned volume, Shipper shall pay to Carrier a per Cubic Meter charge (the “**Non-Performance Charge**”) for each Cubic Meter of the difference between that Shipper’s apportioned volume for such Day and the volume tendered by Shipper on that Day. For greater certainty, the Non-Performance Charge shall not apply to that portion of shortfalls caused by an event of Force Majeure. The Non-Performance Charge in effect from time to time shall be set forth in the most current posted tariff of the Carrier.