

Dakota Energy Connection, LLC

DAKOTA ENERGY CONNECTION PIPELINE – MCKENZIE COUNTY, N.D.

RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF CRUDE PETROLEUM BY PIPELINE

Rules and regulations published herein apply only under tariffs making specific reference by number to this Tariff; such reference will include supplements hereto and reissues hereof. Specific rules and regulations published in individual tariffs will take precedence over the rules and regulations published herein.

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The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

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1. DEFINITIONS AND RULES OF CONSTRUCTION

(a) As used in this Tariff, the following terms have the following meanings:

“API” means the American Petroleum Institute.

“Accounting Period” means a period of one Month, commencing at 7:00 a.m. Central Standard Time (“CST”) on the first day of each Month, and ending at 7:00 a.m. CST on the first day of the succeeding Month. If the Initial Service In-Service Date commences on any day other than the first day of a Month, the first Accounting Period shall commence at 7:00 a.m. CST on the Initial Service In-Service Date and end at 7:00 a.m. CST on the first day of the succeeding Month.

“Actual Shipments” means volumes of Crude Petroleum that are received into the Dakota Energy Connection Pipeline Project at the Origination Point. All volumes shall be measured at the Origination Point.

“Additional Origination Points” means the following Origination Points (OP):

OP10 SE/Q of SW/Q of Section 10, T149N, R102W
OP12 SE/Q of SW/Q of Section 8, T149N, R102W
OP13 NE/Q of NW/Q of Section 25, T149N, R102W
OP14 SE/Q of SE/Q of Section 32, T149N, R102W
OP16 SE/Q of SW/Q of Section 8, T148N, R102W

“Area of Dedication” means the area specified in a Dedication Agreement from which an Anchor Shipper commits to ship, pursuant to a TSA with Transporter, all owned Crude Petroleum for the Initial Term of the TSA.

“Affiliate” with respect to any Party shall mean any other party that controls, is controlled by or is under common control with such Party (whether directly or through one or more intermediaries). For purposes of this definition, “control” of an entity includes the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.

“Allocable Available Capacity” with respect to the System or any line segment means the capacity, expressed in barrels per day, available for transport of Crude Petroleum in a Month after satisfaction of the –

(1) the Nominations of Committed Firm Shippers up to each such Shipper’s current Committed Volume pursuant to Item No. 15(c)(2); plus

(2) Anchor Shippers’ Dedicated Volumes pursuant to Item No. 15(c)(1).

“Anchor Shipper” means a Committed Firm Shipper who, prior to the Initial System In-Service Date, executes a TSA satisfying the requirements of Item No. 6(a) and a Dedication Agreement.

“Available Capacity” means the capacity of the System (or segment thereof), expressed in barrels per day, available to transport Crude Petroleum in a Month, given operating conditions in that Month.

“Barrel” (or Bbl) means forty-two (42) United States gallons at sixty degrees (60°) Fahrenheit and zero (0) gauge pressure if the vapor pressure of the Crude Petroleum is at or below atmospheric pressure, or at equilibrium pressure if the vapor pressure of the Crude Petroleum is above atmospheric pressure. Bbl/day means Barrels per day.

“Business Day” means any day other than a Saturday, Sunday, or state or federal legal holiday in Denver, Colorado.

“Central Standard Time” or “CST” means Central Standard Time throughout the year, not adjusted for Central Daylight Time.

“Committed Firm Service” means transportation service provided by Transporter under this Tariff with respect to each Committed Firm Shipper’s Actual Shipments that are exempt from apportionment under Item No. 15.

“Committed Firm Service Rate” means the Committed Rate charged to –

- (1) a Committed Firm Shipper (other than an Anchor Shipper) with respect to such Committed Shipper’s Committed Volume; and
- (2) an Anchor Shipper with respect to such Anchor Shipper’s Dedicated Volume.

Any Committed Firm Service Rate shall be greater than any Uncommitted Rate. For avoidance of doubt, the Committed Firm Service Rate shall apply to Shipper’s Committed Volume even if the Committed Volume is reduced below the minimum Committed Volume due to Temporary and/or Permanent Releases or Pre-In-Service Barrels.

“Committed Firm Shipper” means a Committed Shipper that has contracted to pay a Committed Firm Service Rate for service that is not subject to apportionment pursuant to Item No. 15(c)(2).

“Committed Rate” means the rate charged to a Committed Shipper for Committed Service relating to such Shipper’s Actual Shipments pursuant to Transporter’s Rate Tariff. Committed Rates include Committed Firm Service Rates.

“Committed Service” means Committed Firm Service.

“Committed Shipper” means a Shipper that has contracted to pay a Committed Rate for Actual Shipments on the System pursuant to the terms of a TSA entered into with Transporter.

“Committed Volume” means the minimum daily volume (in Barrels) of Crude Petroleum

to be received by Transporter set out in Shipper's TSA (for the period specified therein) and subject to any adjustment provided for in Shipper's TSA, minus –

- (1) during any Accounting Period in which a Temporary Release Period occurs, the total Temporary Release Barrels for such Accounting Period, and
- (2) for each Accounting Period remaining during the Term of Shipper's TSA following a Permanent Release, the Permanent Release Barrels produced from the Leases and Wells subject to the Permanent Release, and
- (3) any Pre-In-Service Barrels.

During any Extension Term, "Committed Volume" means the volume specified in Item No. 6(c).

"Consignor" means the entity from whom a Shipper has ordered the receipt of Crude Petroleum.

"Consignee" means the entity to which a Shipper has ordered the delivery of Crude Petroleum.

"Court-approved Assigned TSA" means any assignment of a TSA of an Anchor Shipper, entered into pursuant to the Open Season commenced January 2, 2015, or prior thereto, pursuant to a bankruptcy court approved transfer, assignment and assumption of such TSA in connection with a bankruptcy court approved transfer, assignment and assumption of assets committed to performance of such TSA.

"Credit Rating" means the rating then assigned to Shipper's unsecured, senior long-term debt obligations (not supported by third-party credit enhancements) by S&P, Moody's or any other rating agency agreed to by Transporter.

"Crude Petroleum" means the mixture of hydrocarbons that exist in natural underground reservoirs after passing through surface separation and Well site treatment facilities and remain liquid at atmospheric pressure, including mixtures as provided in Item No. 8.

"Dedicated Volume" means all of Anchor Shipper's working interest share of Crude Petroleum produced –

- (1) from wells operated by Anchor Shipper in the Area of Dedication, and
- (2) from wells in the Area of Dedication operated by third parties where Anchor Shipper takes its working interest share of Crude Petroleum in kind.

Dedicated Volumes shall be entitled to Priority Service and are subject to the applicable Committed Service Rate.

"Dedication Agreement" means a written commitment by an Anchor Shipper to ship pursuant to a TSA with Transporter all Crude Petroleum owned by Anchor Shipper from a

specified geographic area for the Initial Term of the TSA. For avoidance of doubt, such written commitment may be part of the TSA or part of a separate written agreement between Transporter and Shipper.

“Dedication Agreement Volumes” means (1) all Dedicated Volumes, plus (2) all volumes of Crude Petroleum that are owned by working interest owners other than an Anchor Shipper, overriding royalty owners or royalty owners in the wells or leases operated by Anchor Shipper in the Area of Dedication and are tendered by Anchor Shipper to Transporter for transportation pursuant to Anchor Shipper’s TSA (“Other Owner Volumes”). Dedication Agreement Volumes are taken into account in determining an Anchor Shipper’s Deficiency Volume for purposes of calculating Deficiency Payments. Dedication Agreement Volumes that are Other Owner Volumes do not qualify for Priority Service and are defined as Uncommitted Volumes for purposes of rates and apportionment under Item No. 15.

“Deficiency Rate” means the applicable rate determined in accordance with the Deficiency Rate schedule set forth in the Rates Tariff.

“Deficiency Volume” means, for any Accounting Period, the amount by which (i) the Required Monthly Volume for such Accounting Period exceeds (ii) the Actual Shipments by Shipper during the same Accounting Period. In the case of Anchor Shippers, “Deficiency Volume” means, for any Accounting Period, the amount by which (iii) such Anchor Shipper’s Required Monthly Volume for such Accounting Period exceeds (iv) such Anchor Shipper’s Actual Shipments of Dedication Agreement Volumes during the same Accounting Period. Transporter may negotiate, on a not unduly discriminatory or preferential basis, alternative formula for determination of a Shipper’s Deficiency Volume, and such Deficiency Volume shall be utilized for all purposes under this Tariff.

“Destination Point” means the point of interconnection between a delivery flange on the System and another facility at the locations provided for in the Rates Tariff, or identified as a Destination Point on Transporter’s web site pursuant to Item No. 18, to which Crude Petroleum may be delivered by Transporter.

“Excess Volumes” means Actual Shipments in any Accounting Period that are in excess of the product of Shipper’s Committed Volume times the number of days in such Accounting Period.

“Extension Term” means the period during which the Term of Shipper’s TSA is continued in effect on a year-to-year basis, in accordance with the procedures for extension thereof set forth in Shipper’s TSA, following the expiration of the initial Term of Shipper’s TSA.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means acts of God, strikes, lockouts or industrial disputes or disturbances, civil disturbances, arrest and restraint of rulers or people, interruptions imposed by any government or court orders, law, statute, ordinance or regulation promulgated by any governmental or regulatory authority having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, epidemics, landslides, lightning, earthquakes, fires, storm, floods,

washouts, explosions, unforeseeable failure of machinery or lines of pipe, freezing of wells or pipelines, the interruption or suspension of the receipt of Crude Petroleum deliveries hereunder by Transporter due to the declaration of Force Majeure by third-party transporters, delays in receiving, withdrawals or suspensions of necessary permits or approvals from governmental or regulatory authorities having proper jurisdiction, or any other cause whether of the kind herein enumerated or otherwise, not within the reasonable control of the Party claiming an event of Force Majeure. Neither Shipper nor Transporter shall be entitled to the benefit of the Force Majeure under either or both of the following circumstances: (1) to the extent that the failure was caused by the Party claiming suspension having failed to remedy the condition by taking all reasonable acts, short of litigation, if such remedy requires litigation, and having failed to resume performance of such commitments or obligations with reasonable dispatch; or (2) if the failure was caused by lack of funds, or with respect to the payment of any amount or amounts then due hereunder; provided, however, that Shipper shall not be obligated to make a Deficiency Payment as to any Deficiency Volume caused by a Shipper Force Majeure. Settlement of strikes and lockouts shall be entirely within the discretion of the Party affected, and the duty that any event of Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the parties directly or indirectly involved in such strikes or lockouts when such course is inadvisable in the discretion of the Party having such difficulty.

“Governmental Authority” means any government, any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal or judicial or arbitral body (federal, state, local, or tribal and, in the case of an arbitral body, whether governmental, public or private).

“Investment Grade Credit Rating” means a Credit Rating of at least BBB- by S&P or Baa3 by Moody’s, or any equivalent Credit Rating by any other rating agency agreed to by Transporter; *provided*, that if an entity has a Credit Rating from more than one such agency, such entity shall be deemed to have an Investment Grade Credit Rating only if all such Credit Ratings are Investment Grade Credit Ratings.

“Initial Destination Points” means the following Destination Points (DP):

DP 1: N/2 Section 16, T149N, R102W

DP 2: N/2 Section 30, T149N, R101W

“Initial Origination Points” means the following Origination Points (OP):

OP 1 NW/Q of NE/Q of Section 2, T149N, R102W

OP 2 NE/Q of NW/Q of Section 16, T149N, R102W

OP 3 NW/Q of NW/Q of Section 25, T149N, R102W

OP 4 SW/Q of SE/Q of Section 33, T149N, R102W

OP 5 NW/Q of NE/Q of Section 18, T148N, R102W

OP 6 NW/Q of SW/Q of Section 27, T149N, R102W

OP 7 SE/Q of SE/Q of Section 22, T149N, R102W

OP 8 NW/Q of NE/Q of Section 16, T149N, R102W

“Initial System” means the facilities of Transporter necessary to connect the Initial Origination Points with the Initial Destination Points, including tanks and pumps located at Initial Destination Points and Line Fill sufficient for the Initial System.

“Initial System In-Service Date” means the date on which the Initial System, in its entirety as to all of the Initial System In-Service Date Initial Wells, commences operations.

“Initial System Initial Wells” means the Initial System DSU Wells, as defined in the Dedication Agreements or TSAs of the Anchor Shipper(s) ready to flow Crude Petroleum into the Initial Origination Points.

“LACT Facilities” means lease automated custody transfer facilities.

“Letter of Credit” means an irrevocable, transferable standby letter of credit issued by a Qualified Institution.

“Month” means the period commencing at 07:00 CST on the In-Service Date and ending at 07:00 CST on the first day of the first full calendar month that follows the In-Service Date, and each successive calendar month thereafter.

“Monthly Committed Volume” means the product of the Committed Volume multiplied by the number of days in the relevant Accounting Period.

“Monthly Deficiency Payment” means, for any Month, the dollar amount equal to the product of the Deficiency Volume for such Month multiplied by the applicable Deficiency Rate.

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“Nomination” means an offer by a Shipper to the Transporter of a stated quantity of Crude Petroleum for transportation from specified Origination Point(s) to specified Destination Point(s) over a period of one Month in accordance with these rules and regulations.

“Non-Dedication Agreement Volumes” means the Actual Shipments of an Anchor Shipper that are not Dedication Agreement Volumes, *i.e.*, volumes of Crude Petroleum which were produced either –

- (1) from wells located outside the Area of Dedication; or
- (2) from wells located within the Area of Dedication operated by a third party (not Anchor Shipper) where the Crude Petroleum was not Anchor Shipper’s in-kind working interest share of the production.

Non-Dedication Agreement Volumes are Uncommitted Volumes for all purposes, including for rates and apportionment under Item No. 15.

“Origination Point” means the point of interconnection between a receipt flange on the System and another facility at the locations provided for in the Rates Tariff, or identified as an

Origin Point on Transporter's web site pursuant to Item No. 18, at which Crude Petroleum may be received by Transporter for transportation.

"Permanent Release" means Shipper's right to have Leases and Wells affected thereby permanently released from such Shipper's TSA if –

(1) following the initial six-month period commencing on the Initial System In-Service Date, Transporter has, for a continuous period of ninety (90) consecutive days or one hundred and twenty (120) days within a one hundred eighty (180) day period, not accepted delivery, for any reason whatsoever, including, without limitation, curtailment, Force Majeure or maintenance affecting Transporter's System or any downstream pipeline or transporter, of the entire quantity of Shipper's Crude Petroleum, up to Shipper's Committed Volume, made available by Shipper, and

(2) Shipper delivers written notice of such release to Transporter within thirty (30) days after the expiration of any such 90 day or 180 day period, as applicable.

"Permanent Release Barrels" means the Barrels of Shipper's Crude Petroleum produced during the applicable period of Permanent Release from the Leases and Wells subject to Permanent Release.

"Pipeline Loss Allowance" means the allowance for losses sustained on Transporter's Crude System due to evaporation, measurement and other losses in transit as defined in Item No. 14(e).

"Pre-In-Service Barrels" means Actual Shipments of a Committed Shipper prior to the Initial System In-Service Date.

"Priority Service" means the character of the transportation service provided with respect to volumes of an Anchor Shipper's Dedicated Volumes of Crude Petroleum that are exempt from apportionment pursuant to Item No. 15(c)(1).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with a Credit Rating of at least –

(1) "A -" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's, or

(2) "A -" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's, but not both, and having a capital surplus of at least \$1,000,000,000.

"Required Monthly Volume" for any Accounting Period means (i) the Shipper's Committed Volume times the number of days in such Accounting Period, reduced by any credit for Excess Volumes, or, if less, (ii) the capacity of the Dakota Energy Connection Pipeline Project apportioned to Shipper in such Accounting Period in accordance with apportionment procedures set forth in Item No. 15 of this Rules Tariff.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Shipper” means an entity that contracts with Transporter for transportation of Crude Petroleum under the terms of these rules and regulations.

“Security Amount” means an amount equal to the sum of the fees and charges, including potential Monthly Deficiency Payments related to Shipper’s Committed Volume under Shipper’s TSA for thirty-six (36) Months service, or such longer period set forth in Committed Shipper’s TSA entered into pursuant to the Open Season commenced on January 2, 2015, (rounded upwards to the nearest \$100,000) as calculated by Transporter.

“Security Period” means the period commencing with the execution of the TSA and ending on the first to occur of –

- (1) the early termination of the TSA prior to the Initial System In-Service Date, or
- (2) ninety (90) days after payment by Shipper of all amounts owing under the TSA following the termination, or expiration of the term, of the TSA.

“System” means the Dakota Energy Connection Pipeline and appurtenant facilities in McKenzie County, N.D., in which Transporter owns an interest and to which these rules and regulations apply.

“Temporary Release” means the adjustment of Committed Volume for Temporary Release Barrels during any Temporary Release Period. Within thirty (30) days after Transporter’s delivery of written notice to Shipper of Transporter’s ability to again accept delivery of the Released Barrels in whole or in part, the Temporary Release will terminate as to the quantity Transporter has specified in its written notice that it is able to receive and Shipper shall resume delivery of such Released Barrels to Transporter.

“Temporary Release Barrels” means the Barrels of Shipper’s Crude Petroleum which Transporter is unable to receive into the System during a Temporary Release Period.

“Temporary Release Period” means any period during which –

- (1) Transporter is unable or fails to –
 - (A) accept delivery of any of Shipper’s Crude Petroleum into Transporter’s System, or
 - (B) provide alternative trucking transportation for Shipper’s Crude Petroleum in accordance with the terms of Shipper’s TSA,

for any reason whatsoever, including, without limitation, curtailment, Force Majeure or maintenance affecting Transporter’s System or any downstream pipeline or transporter;

(2) there exists no uncured material breach of Shipper's TSA on the part of Shipper; and

(3) Shipper elects temporarily to deliver the Temporary Release Barrels to alternative facilities or transporters, or to provide its own trucking services, upon delivering written notice to Transporter of Shipper's intent to do so and receipt from Transporter of a written waiver. Failure of Transporter to respond (or accept delivery of the excess Barrels of Shipper's Crude Petroleum) within twenty-four (24) hours after a waiver request from Shipper shall be deemed to be a waiver.

"Term" means the Initial Term specified in Shipper's TSA plus the Extension Term, if any.

"Transporter" means Dakota Energy Connection, LLC.

"TSA" means a Transportation Services Agreement executed by Transporter and a Committed Shipper.

"Uncommitted Rate" means the rate charged to a Shipper for transportation of Uncommitted Volumes pursuant to Transporter's Rate Tariff. Any Uncommitted Rate shall be less than any Committed Firm Service Rate.

"Uncommitted Volume" means:

(1) the volume of Crude Petroleum received by Transporter for transportation for a Shipper that is not a Committed Shipper;

(2) except with respect to Anchor Shippers, during any Accounting Period within the period specified in Shipper's TSA during which a Committed Volume applies, the volume of Crude Petroleum received by Transporter for transportation for a Committed Shipper in excess of such Committed Shipper's Monthly Committed Volume;

(3) the volumes of Crude Petroleum received by Transporter for transportation prior to the Initial System In-Service Date; and

(4) in the case of Anchor Shippers,

(A) Non-Dedication Agreement Volumes, and

(B) the portion of Dedication Agreement Volumes that are Other Owner Volumes.

"Uncommitted Volumes" shall include, without limitation, Excess Volumes and Pre-In-Service Barrels.

(b) Unless otherwise expressly specified herein,

(1) defined terms in the singular will also include the plural and vice versa,

- (2) the words “hereof”, “herein”, “hereunder” and other similar words refer to this Tariff as a whole,
- (3) references in this Tariff to an “Item” are to the Rules in this Tariff,
- (4) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders, and
- (5) unless the context otherwise requires, “including” means “including without limitation”.

“Upside Participation Fee” means a fee, payable by an Anchor Shipper under a Court-approved Assigned TSA, with respect to Committed Firm Service provided during any Month when the average price of West Texas Intermediate crude oil (“WTI”) as traded on the New York Mercantile Exchange (“NYMEX”) and as listed by the U.S. Department of Interior Office of Natural Resources Revenue (<http://www.onrr.gov/Valuation/NYMEX.htm>) for such Month (the “Average Crude Price”) exceeds (US) \$55.00/barrel. The amount of such Upside Participation Fee shall be set forth in the Rates Tariff. Such Upside Participation Fee shall be in addition to any Tariff Rates and any other applicable fees or charges under this Rules Tariff, the Rates Tariff, and such Court-approved Assigned TSA,

(c) The captions in this Tariff are for convenience only and will not in any way affect the meaning or construction of any provision of this Tariff.

2. NOMINATIONS

(a) Unless otherwise stated on a tariff making reference to these rules and regulations, Nominations for the transportation of Crude Petroleum for which Transporter has facilities will be accepted into Transporter’s System under these rules and regulations in quantities of not less than one thousand (1,000) Barrels aggregate from one or more Shippers as operations permit and provided such Crude Petroleum is of substantially the same quality and API gravity (*i.e.*, no commercially relevant differences in quality or gravity) as is being transported for Shipper from Origination Point to Destination Point; except that Transporter reserves the right to accept any quantity of Crude Petroleum from lease tanks or other facilities to which Transporter’s facilities are connected if such quantity is of similar quality and characteristics as is being transported from Origination Point to Destination Point and can be consolidated with other Crude Petroleum such that Transporter can make a single delivery of not less than one thousand (1,000) Barrels, and Transporter will not be obligated to make any single delivery of less than one thousand (1,000) Barrels, unless Transporter’s operations dictate otherwise. The term “single delivery” means a delivery of Crude Petroleum in one continuous

(b) operation to one or more Consignees into a single facility, furnished by such Consignee or Consignees, to which Transporter is connected.

(c) Crude Petroleum will be transported only under a Nomination accepted by the Transporter from Origination Points (or facilities connected to Transporter’s gathering System when gathering service is to be performed by the Transporter) to Destination Points when a tariff

covering the movement is lawfully in effect and on file with the FERC as to interstate traffic and, if a tariff is required, with the appropriate state commission covering intrastate traffic.

(d)(1) Any Shipper desiring to tender Crude Petroleum for transportation shall make a Nomination to the Transporter in writing before 12:00 noon Central Standard Time on the twenty-fifth Day of the Month preceding the movement. When the twenty-fifth Day of the Month falls on a weekend, nominations will be required prior to 12:00 noon Central Standard Time on the preceding workday. When the twenty-fifth Day of the Month falls on a holiday, nominations will be required prior to 12:00 noon Central Standard Time two (2) workdays prior to the holiday. Unless such notification is made, the Transporter will be under no obligation to accept Crude Petroleum for transportation.

(2) When Nominations submitted by Shippers to Transporter on or before the twenty-fifth Day of the Month preceding the operating Month do not exceed the capacity of the System or any line segment thereof, additional Nominations may be accepted by the Transporter to fill capacity. These additional Nominations will be accepted only if they do not impair the movement of Crude Petroleum nominated on or before the twenty-fifth Day of the preceding Month.

(3) Nominations of Anchor Shippers shall specify the number of Barrels which qualify as Dedicated Volumes, as Other Owner Volumes, and as Non-Dedication Agreement Volumes. Only Nominations of Dedicated Volumes shall qualify for Priority Service under Item No. 15(c)(1).

3. LINE FILL AND INVENTORY REQUIREMENTS

(a) Prior to Transporter delivering Barrels out of Transporter's System, each Shipper will be required to supply a pro rata share of Crude Petroleum necessary for pipeline and tankage fill to ensure efficient operation of Transporter's System. Crude Petroleum provided by Shippers for this purpose may be withdrawn only after:

(1) shipments have ceased and the Shipper has notified Transporter in writing of its intention to discontinue shipments in Transporter's System, and

(2) Shipper balances have been reconciled between Shipper and Transporter.

(b) Transporter may require advance payment of transportation charges on the volumes to be cleared from Transporter's System, and any unpaid accounts receivable, before final delivery will be made. Transporter shall have a reasonable period of time from the receipt of said notice, not to exceed six Months, to complete administrative and operational requirements incidental to Shipper withdrawal.

4. TITLE

(a) Except for the portion of Shipper's Crude Petroleum provided to Transporter as Pipeline Loss Allowance, for which title will transfer to and remain with Transporter at the

Receipt Points, as between Transporter and Shipper title to all of Shipper's Crude Petroleum shall at all times remain in Shipper.

(b) Shipper shall warrant title to Shipper's Crude Petroleum delivered hereunder, and the right of Shipper to deliver Shipper's Crude Petroleum (including any Other Owner Volumes) that it may tender for delivery to Transporter for the purposes of Shipper's TSA; and Shipper shall warrant that all such Crude Petroleum is owned by Shipper, or that Shipper has the right to market said Crude Petroleum, free from all liens and adverse claims of title ("Adverse Claims"), excluding liens to secure payments of production taxes, severance taxes, and other taxes. Shipper agrees to indemnify Transporter and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of Adverse Claims, whether meritorious or not, of any and all persons, firms, or corporations to said Crude Petroleum or to royalties, overriding royalties, severance taxes or other taxes levied against Shipper's Crude Petroleum, license fees, or charges thereon. Transporter shall be entitled to recover all reasonable costs and attorneys' fees incurred by it as a result of its involvement in any action or claim involving Adverse Claims. When it shall appear to Transporter by reason of receipt of written notice of claim or dispute that the ownership or title to all or part of the Leases, or Shipper's Crude Petroleum, may be in a party or parties other than Shipper, Shipper's Crude Purchaser, or the owners of the Other Owner Volumes, then Transporter may take such actions as required under applicable law.

(c) As between Transporter and Shipper, Shipper shall have the sole and exclusive obligation and liability for the payment of all persons due any proceeds derived from Shipper's Crude Petroleum delivered under this Tariff, including royalties, overriding royalties, and similar interests, in accordance with the provisions of the Leases or agreements creating those rights to proceeds. In no event will Transporter have any obligation to those persons due any of those proceeds of production attributable to Shipper's Crude Petroleum.

(d) As between Transporter and Shipper, Shipper shall pay and be responsible for all taxes levied against or with respect to Shipper's Crude Petroleum delivered under this Tariff. Transporter shall under no circumstances become liable for those taxes, unless designated to remit those taxes on behalf of Shipper by any duly constituted jurisdictional agency having authority to impose such obligations on Transporter, in which event the amount of those taxes remitted on Shipper's behalf shall be reimbursed by Shipper upon receipt of invoice, with corresponding documentation from Transporter setting forth such payments.

(e) The Transporter shall have the right to reject any Crude Petroleum, when nominated for transportation, which may be involved in litigation, or the title of which may be in dispute, or which may be encumbered by a lien or charge of any kind, unless Shipper provides satisfactory evidence of its perfected and unencumbered title or satisfactory indemnity bond to protect Transporter.

5. QUALITY SPECIFICATIONS

(a) Quantities, quality and gravities of Crude Petroleum shall be determined in accordance with generally accepted industry practices in effect at the time, using the latest

American Society for Testing and Materials (ASTM) or API test methods and the latest edition of API volume correction tables. Corrections shall be made for temperature to correct from actual observed temperatures to 60 degrees Fahrenheit; and to correct actual pressures to 14.696 psia.

(b) The measuring Party shall verify the calibration of its meters and make adjustments as necessary at least once a calendar quarter, or more frequently if required by Governmental Authorities having jurisdiction. With respect to any test made hereunder, a registration within 0.25% of the previous meter calibration shall be considered correct. However, the meter shall be adjusted to read as accurately as practicable. At any time, Transporter or Shipper may request a special test of any meter. Transporter or Shipper (as the case may be) shall notify the other at least three (3) days in advance of any testing, and each shall have the right to have a representative witness all tests and measurements. The expense of any special test requested by the non-measuring party shall be borne by the non-measuring party if the meter registration is found to be correct and by the measuring party if found to be incorrect. Settlement for any period during which the meter registration deviates by more than 0.25% shall be corrected at the rate of inaccuracy for any period of inaccuracy which is definitely known or agreed upon; but in case the period is not definitely known or agreed upon, then for a period of one-half of the time since the date of the last test.

(c) Transporter shall have no obligations with respect to, or liability for, the quality of Shipper's Crude Petroleum delivered at the Origination Points but shall be obligated to redeliver at the Destination Points Crude Petroleum of substantially the same quality and API gravity as Shipper delivered to Transporter. Shipper shall be fully responsible for analyzing the composition of Shipper's Crude Petroleum and ensuring that all of Shipper's Crude Petroleum may lawfully be gathered by Transporter and transported beyond the Destination Points. Shipper shall maintain all records required by applicable law, regulation or permit, or contractual or leasehold obligation on quantity and quality of Shipper's Crude Petroleum. Shipper shall provide Transporter with composition analyses of representative samples of Shipper's Crude Petroleum quarterly, or at such other frequency as Transporter and Shipper agree is appropriate.

(d) Shipper acknowledges that Shipper is solely and wholly responsible for the quality of Shipper's Crude Petroleum and testing and accuracy of the quality of Shipper's Crude Petroleum at the Origination Points. If Shipper's Crude Petroleum does not conform to specifications, Shipper will be solely and wholly responsible for all liability and costs incurred by Transporter with respect to the non-conforming Crude Petroleum, including without limitation, costs to: (i) conform Shipper's Crude Petroleum to meet specifications; (ii) dispose of Shipper's non-conforming Crude Petroleum or any component thereof; (iii) remove any contamination from Transporter's System; and (iv) address damages of any kind to the facilities of downstream interconnecting parties or to pay any penalties or damages imposed by downstream interconnecting parties.

(e) No Crude Petroleum will be accepted for transportation except merchantable Crude Petroleum which is properly settled and –

- (1) Gravity of fifteen degrees (15°) API or higher;

(2) Basic sediment, water, and other impurities not greater than one-half of one percent (0.5%), no more than two-tenths of one percent (0.2%) of which may be water (measured above a point four inches (4") below the pipeline connection);

(3) Free from contaminants, including chlorinated or oxygenated hydrocarbons and/or lead;

(4) Sulfur content not exceeding two-tenths of one percent (0.2%) by weight; and

(5) Hydrogen sulfide (H₂S) not more than 10 ppm (ASTM D5705-12).

Notwithstanding the preceding sentence, Transporter may at its discretion accept Crude Petroleum from Shipper that does not meet the foregoing specifications due to unusual circumstances, emergencies, or events of Force Majeure. In such case, however, Shipper must notify Transporter fully in writing of the characteristics of such Crude Petroleum and Shipper shall then secure from the producer or connecting Transporter or shall provide itself, in writing, to Transporter an assumption of all liability and agree to hold Transporter harmless from and against any loss, cost or disadvantage to other Shippers, and other pipelines, or to Transporter arising from such transportation.

(f) In addition, Transporter reserves the right to reject Crude Petroleum where the Shipper or Consignee has failed to comply with applicable laws, rules, and regulations made by Government Authorities regulating shipment of Crude Petroleum.

(g) If Crude Petroleum is accepted from tankage, settled bottoms in such tanks must not be above a point four inches (4") below the bottom of the pipeline connection with the tank from which it enters Transporter's facilities.

(h) Transporter's System may receive and commingle Shipper's Crude Petroleum with third party Crude Petroleum, meeting the applicable Crude Petroleum quality specifications set forth in these Rules. Accordingly, the Crude Petroleum delivered to the Shipper or Shipper's Crude Purchaser or other Consignee at the Destination Points may not be the same Crude Petroleum received by Transporter at the Origination Points, but shall be of substantially the same quality and API gravity as Shipper delivered to Transporter.

(i) If, upon investigation, Transporter determines that a Shipper has delivered to Transporter's facilities Crude Petroleum that –

(1) has been contaminated by the existence and/or excess amounts of impure substances, including but not limited to, chlorinated and/or oxygenated hydrocarbons, arsenic, lead and/or other metals, or

(2) possesses non-conforming physical or chemical characteristics that may render such Crude Petroleum not readily transportable by Transporter, materially affect

the quality of other shipments transported by Transporter, or otherwise cause disadvantage to other Shippers and/or Transporter,

such Shipper will be excluded from delivering volumes of Crude Petroleum to the System until such time as quality specifications are met to the satisfaction of Transporter. Further, Transporter reserves the right to dispose of any such contaminated or non-conforming Crude Petroleum affecting its System. Disposal thereof, if necessary, may be made in any reasonable commercial manner, and any liability associated with the contamination or disposal of any such Crude Petroleum shall be borne by the Shipper introducing the contaminated or non-conforming Crude Petroleum into Transporter's System.

(j) Shipper shall indemnify Transporter for any damage, loss, costs or consequential loss incurred by Transporter or any other party as a result of such Shipper's failure to comply with this Item No. 6, excluding any damage, loss, costs or consequential loss caused by the direct negligence of Transporter.

(k) Unless stated otherwise in written notice provided by Transporter to all subscribers to tariffs for the System affected, Transporter will not accept Crude Petroleum of a kind and/or quality not currently transported through Transporter's facilities.

6. COMMITTED SERVICE

(a) The minimum Committed Volume to qualify as an Anchor Shipper is 8,000 Bbl/day for a minimum term of five (5) years. The minimum Committed Volume to retain qualification under a Court-approved Assigned TSA is 3,100 Bbl/day for a minimum term of sixty (60) months commencing on the date of commencement of service under such Court-approved Assigned TSA, provided that such Court-approved Assigned TSA is subject to the Upside Participation Fee.

(b) An Anchor Shipper may contract to increase its Committed Volume prospectively on an annual or other agreed-upon periodic basis, provided that Committed Volumes plus Dedicated Volumes in the aggregate does not exceed ninety percent (90%) of the Available Capacity of the System (and of any segment). Such subscription shall take priority over subsequent requests to subscribe Committed Service if the available Committed Capacity (exclusive of the prospectively subscribed Capacity) is inadequate to serve such later requests. The minimum amount by which an Anchor Shipper's Committed Volume may be increased annually (or on another agreed upon periodic basis) is 1,000 Bbl/day.

(c) Except in the case of Anchor Shippers (as to which no Committed Volume applies during any Extension Term), during any Extension Term Shipper's Committed Volume will be the average daily Barrels of Shipper's Crude Petroleum delivered to Transporter's System during the prior twelve (12) Month period.

7. SHIPMENTS, MAINTENANCE OF IDENTITY

(a) Shipper acknowledges and agrees that Crude Petroleum delivered to the System by all Shippers will be commingled and that the Crude Petroleum delivered to the Shipper or

Shipper's Crude Purchaser or other Consignee at the Destination Points may not be the same Crude Petroleum received by Transporter at the Origination Points, but shall be of substantially the same quality and API gravity as Shipper delivered to Transporter.

(b) Transporter shall have no responsibility in, or for, any revaluation or settlements which may be deemed appropriate by Shippers and/or Consignees because of mixing or commingling of Crude Petroleum shipments between the receipt and delivery of such shipments by Transporter within the same common stream.

(c) Transporter will balance and settle Shipper Crude Petroleum volume long/short positions on a Monthly basis.

8. MIXTURES

(a) The indirect liquid products of oil and gas wells, including natural gasoline and liquefied petroleum gases, hereinafter referred to as indirect products, will be accepted and transported as a mixture with the direct liquid products of oil wells, hereinafter referred to as direct products, provided that the vapor pressure of the resulting mixture does not exceed that permitted by Transporter's facilities and operating conditions.

(b) The indirect products portion of the mixture will be accepted for transportation at Origination Points other than the one at which the direct products portion of the same mixture is received, provided that the Shipper, Consignee, and destination are the same, and that operating conditions and the Transporter's facilities permit the indirect products portion to be mixed with the direct products of the same Shipper or Consignee.

(c) Mixtures will be transported and delivered as Crude Petroleum only. Nothing in this Item No. 8 is to be construed to waive provisions of Item No. 7 or to require the Transporter to receive, transport, and deliver unmixed indirect products. However, unmixed indirect products may be transported for subsequent mixing with direct products in accordance with this Item No. 8 where facilities and Available Capacity exist, and operations permit transporting such indirect products.

9. ADDITIVES

Transporter reserves the right to require, approve or reject the injection of corrosion inhibitors, viscosity or pour point depressants, drag reducing agent, or other such additives in Crude Petroleum to be transported.

10. DUTY OF TRANSPORTER

(a) Subject to the terms and conditions of this Tariff, Transporter shall receive at the Origination Points Crude Petroleum, and transport and redeliver to Shipper or its designee, at the Destination Points, Crude Petroleum of substantially the same quality and API gravity, *i.e.*, no commercially relevant differences in quality or gravity, in an amount equivalent to the volume received at the Origination Point, less the Pipeline Loss Allowance, in consideration of Shipper's payment of the applicable Crude Transportation Fees provided in Transporter's Rates Tariff and

Shipper's TSA.

(b) Except as provided otherwise in the Shipper's TSA or where caused by the direct negligence of Transporter, Transporter shall not be liable to a Shipper for any delay, damage, loss or consequential loss resulting from any cause while Transporter is in possession or control of such Shipper's Crude Petroleum, including, without limitation, the breakdown of the facilities of Transporter.

(c) Except as provided otherwise in the Shipper's TSA, if damage to or loss of Crude Petroleum results from any cause other than the direct negligence of Transporter while Transporter is in possession or control of such Crude Petroleum, then Transporter 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 Transporter based on the proportion of the volume of Shipper's Crude Petroleum in the possession of Transporter on the date of such loss to the total volume of Crude Petroleum in the possession of Transporter on such date.

11. FACILITIES FOR AUTOMATIC CUSTODY TRANSFER

(a) Unless otherwise agreed with Shipper, Transporter shall own, operate and maintain the LACT Facilities used for custody transfer measurement at the Origination Points. Transporter may, on a not unduly discriminatory or preferential basis agree to permit Shipper to own, operate and maintain LACT facilities subject to, and in accordance with, Transporter's specifications and procedures. Notwithstanding the foregoing, unless Transporter agrees to the contrary, Transporter retains the right to substitute Transporter's own LACT facilities for those of Shipper for any reason.

(b) Where Consignor (or Shipper) elects to deliver Crude Petroleum to the Transporter at a Origination Point through automatic custody transfer facilities (in lieu of tankage), the Consignor (or Shipper) shall furnish the required automatic measuring and sampling facilities and the design, construction, and calibration of such facilities must be approved by the Transporter and any appropriate regulatory body. If automatic custody transfer is made by meters, the Consignor (or Shipper) shall also furnish whatever pumping service is necessary to ensure that the Crude Petroleum being delivered to the meter is at a pressure in excess of the bubble point of the liquid.

12. RECEIPT AND DESTINATION FACILITIES REQUIRED

Transporter will accept Crude Petroleum for transportation only when –

(1) Shipper or Consignor has provided the necessary facilities for delivering Crude Petroleum into the System at the Origination Point, and

(2) Shipper or Consignee has made the necessary arrangements for shipment beyond or has provided the necessary facilities for receiving said Crude Petroleum as it arrives at the Destination Point.

13. NOTICE OF ARRIVAL, DELIVERY AT DESTINATION

(a) The obligation of the Transporter is to deliver the quantity of Crude Petroleum to be transported, less deductions, at the specified destination. Such delivery may be made upon twenty-four (24) hours' notice to the Shipper or Consignee who shall accept and receive said Crude Petroleum from the Transporter with all possible dispatch into tanks or receptacles arranged for or provided by the Shipper or Consignee.

(b) Commencing after the first seven o'clock a.m., after expiration of said 24-hour notice, Transporter shall assess a demurrage charge on any part of said Crude Petroleum shipment offered for delivery and not taken by Shipper or Consignee; the demurrage charge will be \$0.01 cents per Barrel per day for each day of twenty-four (24) hours or fractional part thereof. After expiration of said 24-hour notice, Transporter's liability for loss, damage or delay with respect to Crude Petroleum offered for delivery but not taken by Shipper or Consignee shall be that of a warehouseman only.

(c) If the Shipper, or Consignee, is unable or refuses to receive said Crude Petroleum as it arrives at the specified destination, the Transporter reserves the right to make whatever arrangements for disposition of the Crude Petroleum it deems appropriate in order to clear its

(d) pipeline. Any additional expenses incurred by the Transporter in making such arrangements shall be borne by the Shipper or Consignee.

14. GAUGING, TESTING AND DEDUCTIONS

(a) Crude Petroleum shipped hereunder shall be measured and tested by representatives of the Transporter or by automatic equipment approved by the Transporter. Quantities shall be determined by dynamic or static measurement methods in accordance with appropriate API standards, latest revision, and adjusted to base (reference or standard) conditions.

(b) For all measurement equipment operated by Shipper and all measurement performed by Shipper as the measuring Party, Transporter shall have the right to inspect, witness the proving and obtain any data from the LACTs at any time.

(c) When, in Transporter's opinion, a lease operator or connecting Transporter's tanks are unsafe or unsuitable for use in custody transfer because of improper connections, high bottom accumulations of any extraneous matter, incrustations on the inside of the tank walls, or any other conditions unacceptable to Transporter, Transporter may reject the use of such tank until the unacceptable conditions have been corrected. Alternatively, in the case of incrustation inside any tank, Transporter may determine and apply a correction factor to ascertain the correct tank capacity.

(d) Corrections will be made for temperature from observed degrees Fahrenheit to 60 degrees Fahrenheit and for pressure to 14.696 psia. Transporter will deduct the full amount of sediment, water and other impurities as the centrifugal or other test may show.

(e) The difference between the Barrels of Producer's Crude as measured at the Origination Points and the summation of the measurements provided by the interconnecting parties at the Destination Points shall be considered as a pipeline loss allowance for all losses sustained on Transporter's Crude System due to evaporation, measurement and other losses in transit ("Pipeline Loss Allowance"). The Pipeline Loss Allowance shall be allocated on a pro-rata basis to each Shipper of Crude Petroleum on Transporter's System. The Pipeline Loss Allowance shall be redetermined periodically based upon Transporter's experience during the preceding twelve months. Transporter shall not be responsible to Shipper for the Pipeline Loss Allowance. Notwithstanding anything to the contrary herein, Shipper's pro rata share of Pipeline Loss Allowance for any Accounting Period, shall not exceed one percent (1.0%) of Shipper's Crude Petroleum delivered to Transporter's for such Accounting Period.

(f) After consideration of all of the factors set forth in this Item No. 14, a net balance will be determined as the quantity deliverable by Transporter, and transportation charges will be assessed on this net balance.

15. APPORTIONMENT

(a) **General Rule.** When there shall be nominated to Transporter, for transportation during any Month, more Crude Petroleum than the Available Capacity on the System or any line segment during that Month, the transportation furnished by Transporter shall be apportioned among Shippers in accordance with this Item No. 15. Line segments will be apportioned separately if necessary.

(b) **Definitions.** For purposes of this Item No. 15, the following terms will be given the following meanings:

"Apportionment Month" is the Month for which Transporter has determined that Nominated volumes exceed Available Capacity.

"Average Monthly Historical Flow" means, with respect to any segment of the System, the aggregate Barrels of Crude Petroleum transported in such segment during the Base Period divided by the lesser of (i) the number of months in which the segment of the System has been in operation, or (ii) twelve (12). Average Monthly Historical Flow shall be determined on a segment-by-segment basis.

"Base Period" is the 12 Month period immediately preceding the Calculation Month.

"Calculation Month" is the Month immediately preceding the Apportionment Month for which capacity is being allocated.

"Historical Uncommitted Shipper" is any Uncommitted Shipper who had a record of movements of Crude Petroleum in any ten (10) of the twelve (12) months in the Base Period.

"New Shipper" is any Shipper who is not a Committed Shipper or an Historical Uncommitted Shipper.

“Nominated” or “Nomination” means Crude Petroleum validly nominated for movement in Transporter’s System in accordance with Transporter’s nomination procedures set forth Item No. 2.

“Shipment History” means the volume of Crude Petroleum moved through an applicable segment of Transporter’s System by each Historical Uncommitted Shipper during the applicable Base Period.

“Shipper Monthly Historical Flow” means, with respect to any segment of the System,

(A) in the case of the portion of any Nominations of a Committed Firm Shipper for any Apportionment Month in excess of such Shipper’s Committed Volume, the aggregate Barrels of Crude Petroleum transported for such Committed Firm Shipper in such segment during the Base Period in excess of such Committed Firm Shipper’s Monthly Committed Volume divided by the lesser of –

(i) the number of months in which the segment of the System has been in operation, or

(ii) twelve (12); and

(B) in the case of each Historical Uncommitted Shipper, the aggregate Barrels of Crude Petroleum transported for such Historical Uncommitted Shipper in such segment during the Base Period divided by the lesser of –

(i) the number of months in which the segment of the System has been in operation, or

(ii) twelve (12).

Shipper Monthly Historical Flow shall be determined on a segment-by-segment basis.

(c) **Committed Service And Priority Service of Anchor Shippers.**

(1) **Nominations of Anchor Shippers.**

(A) **Dedicated Volumes.** Nominations pursuant to Item No. 2 by an Anchor Shipper of Dedicated Volumes shall be allocated capacity pursuant to this paragraph (1) equal to such Anchor Shipper’s Nominated Dedicated Volume (“Priority Service”), subject to the limitation that the aggregate quantity of such Nominated Dedicated Volumes entitled to Priority Service shall not exceed ninety percent (90%) of the Available Capacity of the System. For avoidance of doubt, Priority Service under this subparagraph (A) of this paragraph (1) shall take priority over allocation of firm capacity under paragraph (2) of this subsection (c).

(B) **Nominations Other Than Dedicated Volumes.** Nominations pursuant to Item No. 2 by an Anchor Shipper of Barrels of Crude Petroleum that

are not Dedicated Volumes shall be subject to apportionment under Item No. 15(d)(2) to the same extent as Nominations of Historical Uncommitted Shippers. For avoidance of doubt, such apportionment shall apply to any Non-Dedication Agreement Volumes Nominated by such Anchor Shipper and to Other Owner Volumes Nominated by such Anchor Shipper.

(2) Committed Firm Shippers. Each Committed Firm Shipper (other than Anchor Shippers) that Nominates Crude Petroleum for transport during any Apportionment Month shall be allocated capacity pursuant to this paragraph (2). Priority Service under paragraph (1) of this subsection (c) shall take priority over allocation of firm capacity under this paragraph (2).

(A) If the sum of (i) the aggregate Nominations of Committed Firm Shippers that Nominate Crude Petroleum for transport during any Apportionment Month up to each such Shipper's Monthly Committed Volume for such Apportionment Month plus (ii) the aggregate Nominated Dedicated Volumes of Anchor Shippers for such Apportionment Month exceeds the Available Capacity, then the Available Capacity shall be reduced by the aggregate amount of Anchor Shippers' Nominated Dedicated Volumes allocated Priority Service capacity under paragraph (1) of this subsection (c), such reduced amount hereinafter referred to as the "Adjusted Available Capacity." Thereafter, each Committed Firm Shipper shall be allocated capacity equal to each such Shipper's respective Monthly Committed Volume divided by the aggregate of all Committed Firm Shippers' Monthly Committed Volume multiplied by the Adjusted Available Capacity. For avoidance of doubt, allocation of Adjusted Available Capacity under this subparagraph (A) shall take priority over allocation of capacity under subparagraph (B) of this paragraph (2).

(B) Subject to the Priority Service allocation of capacity to Nominated Dedicated Volumes of Anchor Shippers under paragraph (1) of this subsection (c), and the allocation of Adjusted Available Capacity under subparagraph (A) of this paragraph (2), Nominations during any Apportionment Month by a Committed Firm Shipper (other than an Anchor Shipper) up to such Shipper's Monthly Committed Volume shall be allocated capacity equal to the lesser of (i) one hundred percent (100%) of such Shipper's Monthly Committed Volume, and (ii) such Shipper's Nominated Barrels.

(C) The portion of Nominations by a Committed Firm Shipper (other than an Anchor Shipper) during any Apportionment Month in excess of such Committed Firm Shipper's Committed Volume shall be subject to apportionment under Item No. 15(d)(2) to the same extent as Nominations of Historical Uncommitted Shippers.

(3) Limitation on Committed Volumes. Transporter shall not contract Committed Volumes plus Dedicated Volumes in the aggregate in excess of ninety percent (90%) of the Available Capacity of the System (and of any segment).

(d) Apportionment. During any Apportionment Month, Allocable Available Capacity in each segment will be apportioned among the Nominations of (i) Committed Firm Shippers (other than Anchor Shippers) in excess of such Shipper's Committed Volume, (ii) Historical Uncommitted Shippers, (iii) Anchor Shippers for volumes that are not Dedicated Volumes, and (iv) New Shippers in accordance with this Item No. 15(d).

(1) New Shippers. New Shippers shall be included in the allocation of Allocable Available Capacity. Total Allocable Available Capacity available for allocation to New Shippers will not exceed ten percent (10%) of the Allocable Available Capacity. Each New Shipper will be granted an equal initial allocated capacity for the Apportionment Month, provided that such initial allocation of capacity shall not be made to more than one of any Affiliates.

(A) The Allocable Available Capacity of the line segment being apportioned shall be divided by the total of all volumes nominated by (i) Committed Firm Shippers (other than Anchor Shippers) in excess of such Shipper's Committed Volume, (ii) Historical Uncommitted Shippers, (iii) Anchor Shippers for volumes that are not Dedicated Volumes, plus (iv) the volumes nominated by New Shippers. The resultant fraction will be the "Apportionment Factor".

(B) The Allocable Available Capacity reserved for New Shippers under Item No. 15(d)(1) shall be apportioned among new shippers by multiplying each new Shipper's nominated volume by the Apportionment Factor.

(i) If the aggregate of the volumes allocated to New Shippers does not exceed the total Allocable Available Capacity reserved for New Shippers under Item No. 15(d)(1), the remaining Allocable Available Capacity shall be allocated under Item No. 15(d)(2).

(ii) If the aggregate of the volumes allocated to New Shippers exceeds the total Allocable Available Capacity reserved for New Shippers under Item No. 15(d)(1), the allocation of capacity to each New Shipper shall be reduced proportionately.

(2) Apportionment to Historical Shippers. The Allocable Available Capacity remaining after the allocation of capacity to New Shippers under Item No. 15(d)(1) shall be apportioned among the Nominations of (i) Committed Firm Shippers (other than Anchor Shippers) in excess of such Shipper's Committed Volume, (ii) Anchor Shippers for volumes that are not Dedicated Volumes, and (iii) Historical Uncommitted Shippers in proportion to their Base Period shipments as set forth herein.

(A) The total Allocable Available Capacity for each segment of the System allocated to each Shipper under this paragraph (2) will be the product of –

(i) the quotient of –

(I) the Shipper's Monthly Historical Flow divided by

(II) the Average Monthly Historical Flow

multiplied by

(ii) the Allocable Available Capacity allocated under this paragraph (2).

(B) The capacity allocated to any Shipper under this Item No. 15(d)(2) shall be the lower of (i) such Shipper's Nominated Volume or (ii) the capacity allocated under Item No. 15(d)(2)(A). Any Allocable Available Capacity remaining after the apportionment under Item No. 15(d)(2)(A) shall be further apportioned under this Item No. 15(d)(2) among the Nominations of (i) Committed Firm Shippers (other than Anchor Shippers) in excess of such Shipper's Committed Volume, (ii) Anchor Shippers for volumes that are not Dedicated Volumes, and (iii) Historical Uncommitted Shippers in proportion to their Base Period shipments.

(e) **Notification.** Transporter shall notify each Shipper of its allocated capacity within two (2) Business Days after the date specified for Nominations under Item No. 2(c) of this Rules Tariff. Following Transporter's notification of each Shipper's allocated capacity, Shippers shall have three days to submit revisions to their initial Nominations so as to distribute their allocated capacity among the Origination and Destination Points then served by Transporter.

(f) **Good Faith Tenders.** Transporter will accept only good faith Nominations from Shippers, and Transporter shall use whatever reasonable means necessary to determine whether Nominations are made in good faith. Good faith means the non-contingent ability of Shipper to deliver to Transporter at the Origination Point(s), or to receive from Transporter at the Destination Points(s) specified in the Nomination, all of the volume of Crude Petroleum Nominated during the time period for which the Nomination is made. Transporter may request reasonable documentation from Shipper indicating Shipper's ability to deliver and/or receive the quantity of Crude Petroleum Nominated.

(g) **Failure to Use Allocated Capacity.** Except for Anchor Shippers and Committed Shippers with respect to such latter Shipper's Required Monthly Volume for any Month, during any Apportionment Month if a Shipper fails to deliver at the Origination Point(s) or fails to remove at the Destination Points(s) specified in its Nomination, Crude Petroleum equal to at least ninety-five percent (95%) of its allocated capacity (and such failure has not been caused by Force Majeure, as substantiated in a manner satisfactory to Transporter), Shipper shall pay the transportation rate under Transporter's published tariff for Uncommitted Service for such unused allocated capacity. Transporter shall also have the right, in a non-discriminatory manner, to reduce such Shipper's allocated capacity for the next Apportionment Month in which such Shipper Nominates Crude Petroleum by an amount equal to such unused allocated capacity.

(h) Multiple Shipper Accounts. Unless otherwise instructed by Shipper, Transporter will consolidate the movement history and Nominations of all the Shipper's accounts for Shippers who have multiple Shipper accounts. Total allocated capacity will automatically be distributed among such Shipper's accounts; any excess capacity allotment to any one of a Shipper's accounts shall be apportioned among any other accounts of such Shipper for which Nominated volume exceeds the capacity otherwise allocable to that account. Nothing in this Item 15(h) will allow such Shipper to receive a capacity allocation greater than the total allocated capacity that such Shipper would be entitled to if all of its movement history were consolidated in one Shipper account.

(i) No Enhancement of Allocation. In no event will a capacity allocation to Shipper be used in such a manner as to enhance the allocated capacity of another Shipper beyond the allocated capacity to which such Shipper would be entitled under Item No. 15(d). Transporter may require written assurances from a responsible officer of Shipper regarding its use of its allocated capacity stating that Shipper has not violated this prohibition.

(j) Transfer of Allocated Capacity and Shipment History. Capacity allocated to a Shipper under this Item No. 15 may not be assigned to another Shipper. Upon request of Transporter, a responsible official of a Shipper may be required to provide reasonable assurances to Transporter that this prohibition has not been violated. If this Item No. 15(j) is violated, the allocated capacity of all Shippers involved in the violation shall be reduced by the amount of the unauthorized space obtained, the reduction being effective for the remainder of the current Apportionment Month as well as for the next Apportionment Month for which pipeline capacity has not yet been allocated. Transporter may reallocate the capacity so withdrawn.

16. REQUIRED SHIPPER INFORMATION

(a) At any time, upon written request of the Transporter, on a non-discriminatory basis, any prospective or existing Shipper shall provide to the Transporter information that will enable the Transporter to enforce the terms of this Tariff. Such information may include, but is not limited to, the names of any Affiliates of the Shipper or prospective Shipper, the legal business name of the shipper or prospective Shipper and the registered business address of the Shipper or prospective Shipper.

(b) The Transporter shall not be obliged to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to provide to the Transporter any information requested in accordance with Item No. 16(a) within ten (10) days of the Transporter's written request, or if the Transporter reasonably determines that any of the information provided pursuant to Item No. 16(a) is false.

17. APPLICATION OF RATES & CHARGES

(a) Crude Petroleum accepted for transportation shall be subject to the rates and charges in effect on the date of receipt of such Crude Petroleum by the Transporter, irrespective of the date of Nomination. Unless otherwise stated in an individual tariff making reference to these rules and regulations, all charges will be collected on the basis of the net quantities of

Crude Petroleum delivered. All net quantities will be determined in the manner provided in Item No. 14.

(b) Shipper shall pay all charges and costs as provided for in this Tariff or otherwise lawfully due to Transporter relating to the transportation of Shipper's Crude Petroleum by Transporter.

(c) The tariff rates for all volumes of Crude Petroleum transported by Shipper on the Dakota Energy Connection Pipeline Project are set forth in the Rates Tariff.

(d) Subject to Shipper's Force Majeure, if a Committed Shipper fails to nominate and/or tender a volume of Crude Petroleum equal or greater than the Required Monthly Volume, the Committed Shipper shall pay the Monthly Deficiency Payment to Transporter. Whether nominations and tenders meet Required Monthly Volume will be based upon receipts at the Origination Point. No Deficiency Payment shall be owed with respect to any volumes tendered by Shipper at the Origination Point but which Transporter declines, refuses or fails to accept and transport for any reason, including an event of Force Majeure.

(e) The Base Rates for Committed Volumes payable by a Shipper at any time shall be based on the Shipper's then current Committed Volume (*e.g.*, if the Shipper has a ten-year Initial Term, an initial Committed Volume less than 8,000 Bbl/day, and a subsequently increased Committed Volume equal to or greater than 8,000 Bbl/day, the Base Rates will be those applicable to a ten-year Initial Term for Committed Volumes less than 8,000 Bbl/day, until such time as the Committed Volume increases to equal to or greater than 8,000 Bbl/day, after which the Base Rates will be those applicable to a ten-year Initial Term for a Committed Volume equal to or greater than 8,000 Bbl/day).

(f) Statement of Monthly Deficiency Payment. Any required Monthly Deficiency Payment will be included as an additional statement to standard transportation charges billed by Transporter, with payment to be made pursuant to the Rules Tariff. Transporter shall include information with the billing statement sufficient to calculate the Monthly Deficiency Payment.

(g) With respect to any Deficiency Payment made by Shipper, if during the one year period following such payment and ending on the next anniversary date of the Initial System In-Service Date, the aggregate volume of Shipper's Actual Shipments during such period exceeds the aggregate of the Committed Volumes of the Accounting Periods within such period, such Deficiency Payment shall be credited against Crude Petroleum Transportation Fees incurred by Shipper beginning with the next Accounting Period following such one (1) year period. For the avoidance of doubt, such credit against Crude Petroleum Transportation Fees applies only to actual transportation fees paid for transportation of Crude Petroleum hereunder and not to any Deficiency Payment. Transporter may, on a not unduly discriminatory or preferential basis, negotiate alternative crediting mechanisms related to all or part of a Shipper's Monthly Deficiency Payments.

(h) During any Accounting Period following the Initial System In-Service Date, any Excess Volumes during such Accounting Period shall be carried forward as a credit against

satisfaction of the Required Monthly Volume in calculating any Monthly Deficiency Payment for the next subsequent Accounting Period.

18. POSTAGE STAMP RATES

Except as may be provided to the contrary in Transporter's Rates Tariff, the rates set forth in Transporter's Rates Tariff are postage stamp rates applicable to Crude Petroleum accepted for transportation from any Origination Point on Transporter's System (whether or not named in the Rates Tariff) to any Destination Point on Transporter's System. Transporter may add intermediate Origination Points and intermediate Destination Points, located between any designated Origination Point and any designated Destination Point on Transporter's System, by publishing the identification and location of such Point(s) on Transporter's web site. Transporter shall make capacity available at such intermediate Origination and Destination Points available to all shippers on a nondiscriminatory basis consistent with each such shipper's entitlement to pipeline capacity on Transporter's System under Item No. 15 (Apportionment) of this Rules Tariff. Unless otherwise provided in the Rates Tariff, the rate applicable to transportation service (a) from (i) the designated Origination Point closest to the intermediate Origination Point to (ii) a designated Destination Point, or (b) from (i) a designated Origination Point to (ii) the designated Destination Point closest to the intermediate Destination Point shall apply to transportation service from such intermediate Origination Point or to such intermediate Destination Point.

19. ADDITIONAL CHARGES INCURRED BY TRANSPORTER

(a) **Power Charge.** In addition to all other charges accruing on Crude Petroleum accepted for transportation through Transporter's facilities, to the extent authorized in Shipper's TSA, a per Barrel Power Charge will be assessed and collected to recover Transporter's Power Costs.

(1) Transporter shall calculate the per Barrel Power Charge for each calendar year or partial calendar year for Services to each Destination Point as follows.

(A) Transporter shall forecast the Power Costs and total throughput volumes (including Committed Volumes, and Uncommitted Volumes) to each Destination Point.

(B) Transporter shall allocate the forecast Power Costs across such forecast total throughput volumes.

(C) Following the end of the calendar year (or partial calendar year), Transporter shall true-up the forecast Power Costs and forecast total throughput volumes to the actual Power Costs and actual total throughput volumes to each Destination Point for such year. The net difference (positive or negative) shall be included in the calculation of the Power Charge for the applicable Destination Point to take effect on July 1 of the following calendar year (or partial calendar year), except that, for the true-up for the last calendar year (or partial calendar year) of the Term of each Shipper's TSA, such difference shall, as applicable, be

refunded by Transporter to Shipper, in cash, or paid by Shipper, in cash, within ninety (90) Business Days following the end of the Term of the TSA.

(2) Notwithstanding paragraph (1), Transporter shall have the right to file a new Power Charge Tariff effective as of a date other than July 1 if it determines that actual Power Costs vary from forecasted Power Costs by more than ten percent (10%) in any year.

(3) “Power Costs” means all non-capital costs associated with drag reducing agent, natural gas, diesel and other fuels, electrical power, utility ratchet charges, demand or infrastructure charges and any and all other energy or flow enhancement costs incurred to transport commodities through each line segment of the Dakota Energy Connection Pipeline Project.

(4) Transporter may, on a not unduly discriminatory or preferential basis, waive collection of the Power Charge in connection with negotiated rates based, *inter alia*, on the term, timing, and volume commitment.

(b) Taxes.

(1) All tariff rates, surcharges, Monthly Deficiency Payments and other payments, and charges are exclusive of applicable Federal, state and local excise, sales, use or similar taxes (collectively, “Taxes”). In addition to all other charges accruing on Crude Petroleum accepted for transportation through Transporter’s facilities, to the extent authorized in Shipper’s TSA, Shipper shall be responsible for and shall pay its pro rata share of all Taxes arising from the provision of Services hereunder.

(2) Transporter may, on a not unduly discriminatory or preferential basis, waive collection of Taxes in connection with negotiated rates based, *inter alia*, on the term, timing, and volume commitment.

(c) Oil Pipeline Compensation Fund.

(1) In addition to all other charges accruing on Crude Petroleum accepted for transportation through Transporter’s facilities, to the extent authorized in Shipper’s TSA, a per Barrel charge will be assessed and collected in the amount of any tax, fee, or other charge levied against Transporter by any Federal, State or local agency for the purpose of creating a fund for the reimbursement of parties who sustain costs or losses resulting from oil pipeline industry operations. If a per Barrel charge is assessed, the amount of such charge will be stated in a FERC tariff.

(2) Transporter may, on a not unduly discriminatory or preferential basis, waive collection of charges authorized under this Section 19(c) in connection with negotiated rates based, *inter alia*, on the term, timing, and volume commitment.

20. TRUCK AND RAIL CAR LOADING AND UNLOADING

(a) Shipments unloaded from tank trucks or rail cars into Transporter's facilities may be subject to a per-barrel charge, if specified on individual tariffs making reference to these rules and regulations. Such charge will be in addition to all other charges.

(b) Transporter will receive or deliver Crude Petroleum from/to both tank trucks and rail cars where the System's facilities are equipped to handle tank trucks or rail cars. Shippers shall indemnify and hold Transporter harmless against any and all claims (whether made by the tank truck or rail car owner or any other party) for demurrage or any other charges arising out of any delay of tank truck or rail car not caused by Transporter's negligence.

21. PAYMENT OF TRANSPORTATION AND OTHER CHARGES

Shipper shall be responsible for payment of transportation and all other charges applicable to the shipment. Payments not received by Transporter in accordance with invoice terms shall be subject to a late charge equivalent to 125% of the prime rate as quoted by a major New York bank, or the maximum rate allowed by law, whichever is less, or such other rate as may be set forth in the TSA between Transporter and Shipper. If said charges, or any part thereof, shall remain unpaid for thirty days after notice of readiness to deliver, the Transporter may sell the Crude Petroleum at public auction. Transporter shall have the right to sell said Crude Petroleum at public auction, for cash. The auction will be held between the hours of ten o'clock a.m. and four o'clock p.m. on any day not a weekend or legal holiday, and not less than twenty-four hours after the Shipper has been officially notified of the time and place of such sale and the quantity, general description, and location of the Crude Petroleum to be sold. Transporter may be a bidder and purchaser at such sale. Out of the proceeds of said sale, Transporter shall pay itself for all transportation, demurrage, and other lawful charges, expenses of notice, advertisement, sale and other necessary expenses, and expenses of caring for and maintaining the Crude Petroleum, and the balance shall be held for whomsoever may be lawfully entitled thereto after the auction. If the proceeds of said sale do not cover all expenses incurred by Transporter, the Shipper and/or Consignee are liable to Transporter for any deficiency.

22. BILLING PROCEDURES

(a) After delivery of Shipper's Crude Petroleum has commenced on Transporter's Crude Petroleum System, Transporter shall mail a settlement statement to Shipper, or Shipper's Crude Petroleum Purchaser if directed by Shipper, on or before the tenth (10th) day of the Month following the Month of deliveries hereunder. Such statement shall include but is not limited to:

(1) The Barrels of Shipper's Crude Petroleum delivered to the Origination Points, the Barrels of Shipper's Crude Petroleum redelivered to the Destination Points, net of the Pipeline Loss Allowance, and the Barrels of Shipper's Crude Petroleum in tanks awaiting redelivery at the Destination Points.

(2) An itemization of all fees due (and the credits applied against such fees, if applicable) under Shipper's TSA for such Month, including without limitation, the Crude Petroleum Transportation Fees and any Monthly Deficiency Payment.

(b) Transporter shall provide Shipper an invoice of the settlement statement by the tenth (10th) day of the month following service. Shipper shall pay, or cause to be paid, the settlement statement amount in full within thirty (30) days of receipt of the settlement statement. Past due amounts shall accrue interest in accordance with Item No. 21. In addition to Transporter's rights under Item No. 21, if any undisputed past due amounts remain unpaid for thirty (30) days after notice to Shipper, Transporter shall have the right to suspend redeliveries of Shipper's Crude Petroleum at the Destination Points; and, if such undisputed past due amounts remain unpaid for thirty (30) days after further notice to Shipper, Transporter shall have the right to suspend its obligations under Shipper's TSA until such time as Shipper is no longer in payment arrears as to undisputed past due amounts.

(c) Transporter and Shipper shall bear separately and be individually responsible for any and all Taxes imposed upon and/or attributable to each Party's properties, facilities and/or operations hereunder. These Taxes shall include, but not be limited to, all state severance taxes, ad valorem taxes, franchise taxes, sales and use taxes, and state and federal income taxes.

23. LIABILITY OF TRANSPORTER

(a) Except as provided otherwise in the Shipper's TSA, while in possession of any of the Crude Petroleum, Transporter shall not be liable for any loss thereof, damage thereto, or delay, caused by an event of Force Majeure or from any other cause not due to the negligence of Transporter, and in no event shall Transporter be liable to Shipper for consequential, incidental or exemplary damages to Shipper except in cases of Transporter's gross negligence and/or intentional wrongdoing. Except as provided otherwise in the Shipper's TSA, in case of loss of Crude Petroleum in a segregated shipment, then the Shipper and Consignee thereof shall bear the entire loss, damage, or delay that occurs. Except as provided otherwise in the Shipper's TSA, in case of loss of Crude Petroleum that is not in a segregated shipment, then each Shipper of the grade of Crude Petroleum so lost via the segment of the System in which the loss occurs shall share such loss in the proportion that the amount of such grade of Crude Petroleum then in the custody of Transporter for the account of such Shipper in such segment of the System bears to the total amount of such grade of Crude Petroleum then in the custody of Transporter in such segment of the System.

(b) Transporter will be obligated to deliver only that portion of a Crude Petroleum shipment remaining after deducting such loss. Transportation charges will be made only on quantities of Crude Petroleum delivered.

(c) If Crude Petroleum is lost in transit, while in the custody of Transporter, due to causes other than those described in Item No. 23(a), Transporter may obtain and deliver to Shipper other Crude Petroleum of the same quantity and grade as that which was lost, but Transporter shall not be obligated to do so. In the alternative, Transporter may compensate Shipper for such loss in money. If Transporter compensates Shipper for such loss in money, the price per barrel shall be determined as of the date of the loss based on the value of the lost Crude Petroleum.

24. CLAIMS, SUITS, AND TIME FOR FILING

As a condition precedent to recovery for loss, damage, or delay to shipments, claims must be filed in writing with the Transporter within nine (9) Months after delivery of the Crude Petroleum, or, in case of failure to make delivery, then within nine (9) Months after a reasonable time for delivery has elapsed; and suits arising out of such claims shall be instituted against the Transporter only within two (2) years and one (1) day from the day when notice in writing is given by the Transporter to the claimant that the Transporter has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, Transporter will not be liable and such claims will not be paid.

25. CONTRACTS

Separate contracts may be required of a Shipper, in accordance with the applicable tariff and these rules and regulations, before any duty of transportation by the Transporter shall arise.

26. STORAGE IN TRANSIT

The Transporter has working tanks required in the process of transporting Crude Petroleum but no other available tankage and therefore, unless otherwise specifically stated in a tariff making reference to these rules and regulations, Transporter does not have facilities for rendering, nor does it offer, a storage service. Provisions for storage in transit in facilities furnished by Shipper at points on Transporter's System will be permitted to the extent authorized under individual tariffs lawfully on file with the FERC.

27. RESERVED**28. COMMODITY**

Transporter is engaged primarily in the transportation of Crude Petroleum and will not accept any other commodity for transportation under tariffs making reference hereto.

29. CONNECTION POLICY

Connections to Transporter's System will only be considered if made by formal written notification to Transporter. All connections will be subject to design requirements necessary to protect the safety, security, integrity and efficient operation of Transporter's pipeline(s) in accordance with generally accepted industry standards. Acceptance of any request for connection will be subject to compliance with governmental regulations. In no event shall Transporter be required to accept any connection request which would obligate Transporter to modify its existing facilities or incur any unreimbursed expense or cost in connection with the connection.

30. FINANCIAL ASSURANCE

(a) If Transporter has reasonable grounds for insecurity regarding the performance by a Committed Shipper (including any Anchor Shipper) of any obligation under such Shipper's TSA for Committed Service (whether or not then due), including, without limitation, the occurrence of a material change in Committed Shipper's creditworthiness, Transporter may demand Adequate Assurance. In the event the Committed Shipper fails to give Adequate Assurance of its ability to perform its further payment obligations under its Committed Service Agreement within three (3) Business Days of a reasonable request therefore, Transporter may suspend its obligations under its TSA with such Committed Shipper until such time as such Shipper provides such Assurance. "Adequate Assurance" may include, but is not limited to, providing an irrevocable letter of credit or prepayment in an amount equal to ninety (90) Days of average payment obligation incurred under Committed Shipper's TSA, or a guarantee from a creditworthy entity. No course of dealing between Transporter and Shipper will modify or act as a waiver of Transporter's continuing right to demand Adequate Assurances.

(b) Uncommitted Shippers must satisfy the requirements specified in this Item No. 30 (the "Creditworthiness Requirements") until the end of the Security Period. Uncommitted Shippers shall satisfy the Creditworthiness Requirements if –

(1) Uncommitted Shipper maintains an Investment Grade Credit Rating, and

(2) the sum of the fees and charges for thirty-six (36) Months is less than fifteen percent (15%) of Uncommitted Shipper's tangible net worth, as calculated by Transporter.

(c) If Uncommitted Shipper does not satisfy the requirements of Item No. 30(b) at the time of executing the TSA or at any time during the Security Period, or if any guarantor ceases to satisfy the requirements of Item No. 30(b) during the Security Period (each a "Downgrade Event"), then Uncommitted Shipper shall satisfy the Creditworthiness Requirements by delivering to Transporter within one (1) Month after the occurrence of the Downgrade Event any one or more of the financial assurances set forth in Item No. 30(d) (the "Financial Assurances"), as selected by Uncommitted Shipper, for payment of all charges and costs as provided for in this Tariff or otherwise lawfully due to Transporter.

(d) The Financial Assurances include the following:

(1) an irrevocable, transferable unconditional guaranty of payment and performance of all obligations of Uncommitted Shipper for the full Security Period, in form and substance reasonably acceptable to Transporter, issued in favor of Transporter by –

(A) a Qualified Institution;

(B) an unaffiliated entity (a "Third Party Guarantor") that maintains an Investment Grade Credit Rating or that is unrated but is nevertheless determined by Transporter to be creditworthy in Transporter's sole discretion, provided that

the sum of the fees and charges for thirty-six (36) Months of service (rounded upwards to the nearest \$100,000) is less than 15 percent (15%) of Third Party Guarantor's tangible net worth, as calculated by Transporter; or

(C) Shipper's ultimate parent company ("Parent Guarantor"), provided Parent Guarantor has a Credit Rating of either –

(i) at least B+ by S&P or

(ii) at least B1 by Moody's,

but without any requirement that Parent Guarantor satisfy both such Credit Ratings; or

(2) one or more Letters of Credit in a total amount not less than the Security Amount, issued for the benefit of Transporter by a Qualified Institution, in form and substance, including drawing conditions, reasonably acceptable to Transporter; or

(3) cash in an amount not less than the Security Amount.

(e) Uncommitted Shipper may, at any time, substitute one form of Financial Assurance ("Substitute Assurance") for the then outstanding Financial Assurance ("Original Assurance"), and Transporter shall return to Shipper the Original Assurance within two (2) Business Days of Transporter's receipt of the Substitute Assurance. Uncommitted Shipper hereby grants to Transporter a present and continuing security interest in and to, and a general first lien upon and right of set off against, any and all Financial Assurance which has been or may in the future be transferred to, or received by, Transporter and/or a Qualified Institution (in the case of cash deposited pursuant to Item No. 30(f), and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing, and Uncommitted Shipper agrees to take such action as Transporter reasonably requests in order to perfect Transporter's continuing security interest in, and lien on (and right of setoff against), such Financial Assurance.

(f) If Uncommitted Shipper chooses at any time to satisfy the Creditworthiness Requirements by delivering cash, such cash shall be deposited and held in escrow in a segregated, safekeeping or custody account (the "Collateral Account") established and owned by Uncommitted Shipper at a Qualified Institution selected by Transporter and approved by Shipper (which approval shall not be unreasonably withheld). The terms of control of such account and other agreements as are necessary or appropriate to perfect and protect the security interest of Transporter in such Financial Assurance pursuant to Section 9-314 of the Uniform Commercial Code ("U.C.C.") or otherwise shall be subject to the reasonable approval of Transporter. The Qualified Institution shall serve as custodian with respect to the cash and other property in the Collateral Account, and shall hold such cash in accordance with the terms of this Item No. 30 and the applicable account control agreements. The Qualified Institution holding the cash will pay interest to Shipper after the end of each calendar quarter in accordance with such agreements. Transporter shall have no responsibility for any losses resulting from such Collateral Account in accordance with such agreements.

(g) All costs of any Letter of Credit provided on behalf of Uncommitted Shipper

hereunder shall be borne by Shipper. Uncommitted Shipper shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit. If the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, Uncommitted Shipper shall provide substitute Financial Assurances for the benefit of Transporter in accordance with Item No. 30(c) at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit. If a Qualified Institution issuing a Letter of Credit shall fail to honor Transporter's properly documented request to draw on such Letter of Credit, Shipper shall, as soon as practical and in no event later than two (2) Business Days after such refusal, provide substitute Financial Assurances for the benefit of Transporter in accordance with Item No. 30(c).

(h) Upon or at any time after the occurrence and continuation of a Default (which shall include Uncommitted Shipper's failure to timely provide or replace Security hereunder), and without limiting Shipper's obligations to Transporter or Transporter's rights and remedies hereunder, Transporter may draw on the entire, undrawn portion of any outstanding guaranty, Letter of Credit, or Collateral Account by submitting to the entity issuing such guaranty or Letter of Credit or the institution at which such Collateral Account is maintained, as applicable, one or more certificates specifying that such Default has occurred and is continuing. Cash proceeds received from drawing upon a guaranty, Letter of Credit or Collateral Account shall be deemed security for Uncommitted Shipper's obligations to Transporter, and Transporter shall have –

(1) all rights and remedies available to a secured party pursuant to Section 9-314 of the U.C.C. in New York, and other applicable laws with respect to Security held by or for the benefit of Transporter; and

(2) the right to set off any Security held by or for the benefit of Transporter against and in satisfaction of any amount payable by Uncommitted Shipper in respect of any its obligations under the TSA.

(i) Within five (5) Business Days after termination of the Security Period, Transporter shall return to Uncommitted Shipper the amount of any Security then remaining hereunder.

(j) If Item No. 30(b) is not satisfied, or required Financial Assurances are not provided in accordance with Item No. 30(c), upon the request of Transporter any prospective or existing Uncommitted Shipper that is not a publicly held company shall provide information to Transporter that will allow Transporter to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation of that Uncommitted Shipper's Crude Petroleum under the terms of this Tariff, including the payment of transportation charges and the value of the negative Shipper's balance positions. Transporter shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Uncommitted Shipper that is not a publicly held company if Shipper or prospective Shipper fails to provide the requested information to Transporter within ten (10) Business Days of Transporter's written request, or if Transporter's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform the financial obligations that could arise from the transportation of Shipper's Uncommitted Volumes of Crude

Petroleum under the terms of this Tariff, including the payment of transportation charges and negative Shipper's balance positions.

(k) Transporter may, on a not unduly discriminatory and not unduly preferential basis, waive the applicability of this Item 30 or any provision hereof.

Explanation of Letter Designations

[C] Cancel

[N] New