

**F.E.R.C. No. 1.3.0**  
**(Cancels F.E.R.C. No. 1.2.0)**

**FERC ICA OIL TARIFF**

**BIGHORN DEVCO LLC**  
**JOHNSON’S CORNER PIPELINE SYSTEM**  
**LOCAL TARIFF**  
**CONTAINING**  
**RULES AND REGULATIONS**  
**GOVERNING THE GATHERING AND/OR TRANSPORTATION**  
**OF**  
**CRUDE PETROLEUM**  
**BY PIPELINE**

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Rules and regulations published herein apply only under tariffs making specific reference by number to this tariff; such references will include subsequent reissues hereof.

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Filed in compliance with 18 C.F.R. § 341.3 (Form of Tariff).

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

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## 10. DEFINITIONS

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

“A.P.I. Gravity” means the gravity determined in accordance with the currently-applicable American Society for Testing Materials Designation.

“Applicable Law” Any law (including any Environmental Law), rule, regulation, ordinance, code, order, writ, judgment, decree or rule of common law or any judicial or administrative interpretation thereof or other legal or regulatory determination by a Governmental Authority of competent jurisdiction.

“Area Dedication” means a written commitment from a Committed Gathering Shipper to exclusively dedicate specified properties to Carrier for the performance of gathering services.

“Barrel” 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, if the vapor pressure of the Crude Petroleum is above atmospheric pressure.

“Base Period” is as defined in Item 150(d).

“Business Day” means Monday through Friday of each week, excluding banking holidays.

“Carrier” means Bighorn DevCo LLC.

“Committed Gathering Rate” means the rate charged to a Committed Gathering Shipper for gathering services for which the Committed Gathering Shipper has executed a binding Area Dedication.

“Committed Gathering Shipper” means a Shipper that has executed a binding Area Dedication.

“Committed Rate” means the rate charged to a Committed Shipper for services related to the Minimum Volume Commitment transported on the System.

“Committed Shipper” means a Shipper that has contracted for a Minimum Volume Commitment pursuant to the terms of a Transportation Services Agreement with Carrier.

“Committed Gathering Volumes” means, with respect to a Committed Gathering Shipper, the volumes of Crude Petroleum produced, nominated and Tendered by such Committed Gathering Shipper under an Area Dedication with Carrier.

“Committed Volumes” means, with respect to a Committed Shipper, the volumes of Crude Petroleum nominated and Tendered by such Committed Shipper under the applicable Transportation Services Agreement with Carrier.

“Consignee” means the party to whom a Shipper has ordered the delivery of Crude Petroleum.

“Consignor” means the party from whom a Shipper has ordered the receipt of Crude Petroleum.

“Crude Petroleum” or “Crude Oil” means any mixture of hydrocarbons that is produced from an oil and gas well as a liquid and remains liquid at atmospheric pressure.

“Day” means a period commencing at 7:00 a.m., Central Standard Time, on a calendar day and ending at 7:00 a.m., Central Standard Time, on the next succeeding calendar day.

“Delivery Point” means the outlet flange from the System where Carrier makes deliveries to third party facilities and where Crude Petroleum is delivered to or for the account of Shipper. [N] For purposes of Committed Gathering Shipper service, Delivery Point shall have the meaning set forth in the applicable Gathering Agreement.

“Environmental Law” means all Applicable Laws pertaining to the presence or release of environmental contaminants (including any hazardous materials), or relating to natural resources (including any protected species) or the environment (including the air, water, surface or subsurface of the ground) as same are in effect at any time and including the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended by Superfund Amendments and Reauthorization Act (“SARA”), 42 U.S.C. §§ 9601 et seq.; Resource Conservation and Recovery Act (“RCRA”), as amended by the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. §§6901 et seq.; Federal Water Pollution Control Act (“FWPCA”), as amended by the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 et seq.; Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; Clean Air Act (“CAA”), 42 U.S.C., §§ 7401 et seq.; and Toxic Substances Control Act (“TSCA”), 15 U.S.C., §§ 2601 et seq., as each are amended from time to time, and any similar state or local enactments by Governmental Authorities.”

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure” means any cause or causes not reasonably within the control of the Party claiming relief and which, by the exercise of reasonable diligence, such Party is unable to prevent or overcome, including acts of God; strikes, lockouts or other industrial disturbances; acts of the public enemy, acts of terror, sabotage, wars, blockades, military action, insurrections or riots; epidemics; landslides, subsidence, lightning, earthquakes, fires, storms or storm warnings; crevasses, floods or washouts; civil disturbances; explosions, breakage or accident to wells, machinery, equipment or lines of pipe; the necessity for testing or making repairs or alterations to wells, machinery, equipment or lines of pipe; freezing of wells, equipment or lines of pipe; inability of any Party hereto to obtain, after the exercise of reasonable diligence, necessary materials, supplies, rights of way or Permits; or any action or restraint by any governmental authority (so long as the Party claiming relief has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such action or restraint, and as long as such action or restraint is not the result of a failure by the claiming Party to comply with applicable law).

“Gathering Agreement” means any gathering services agreement executed by and between the Carrier and a Committed Gathering Shipper.

“Gathering System” means the pipeline upstream of the interconnect facilities at the Transportation System located in the northwest corner of Section 10, T150N R97W, McKenzie County, North Dakota and the South Nesson Receipt Points.

“Governmental Authority” Any federal, state, local, municipal, tribal or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or

taxing authority or power; and any court or governmental tribunal, including any tribal authority having or asserting jurisdiction.

“Line Fill” means the amount of Crude Oil necessary for pipeline line fill and tankage fill required to ensure efficient operation of the System, as determined by Carrier acting as a Reasonable and Prudent Operator.

“Measurement Facilities” means facilities or equipment used to measure the volume of Crude Petroleum, which may include meters, valves, recording devices, communication equipment, buildings and barriers.

“Minimum Volume Commitment” means the minimum volumes contracted for by a Committed Shipper and set forth in a Transportation Services Agreement, which shall not be less than three thousand five hundred (3,500) Barrels per Day.

“Month” means a period commencing at 7:00 a.m., Central Standard Time, on the first Day of a calendar month and extending until 7:00 a.m., Central Standard Time, on the first Day of the next succeeding calendar month.

“Movement” means transportation on the System.

“New Shipper” is as defined in Item 150(d).

“Nomination” means an offer by a Shipper to the Carrier of a stated quantity of Crude Petroleum for transportation from a specified Receipt Point to a specified Delivery Point over a period of one operating Month in accordance with these rules and regulations.

“Nomination Deadline” is as defined in Item 60(c).

“Parties” means Carrier and Shipper, collectively.

“Party” means either Carrier or Shipper.

“Permits” Any permit, license (including seismic or geophysical licenses, where applicable), certification, concession, approval, consent, ratification, waiver, authorization, clearance, confirmation, exemption, franchise, designation, variance, qualification or accreditation issued, granted, given or otherwise made available by or under any Governmental Authority or pursuant to any Applicable Law.

“Pipeline Loss Allowance” or “PLA” means an amount of Crude Oil allocated as a deduction to Receipt Point volumes for the actual evaporation, interface losses, shrink and other normal losses during gathering, blending and storage of Crude Oil under a Gathering Agreement, as determined by Carrier acting as a Reasonable and Prudent Operator.

“Reasonable and Prudent Operator” means a person using reasonable efforts to perform its obligations under a Gathering Agreement exercising the degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced operator complying with all Applicable Laws and engaged in the same type of undertaking under the same or similar circumstances.

“Receipt Point” means the receipt point on the System where Crude Petroleum is received from Shipper.

“Regular Shipper” is as defined in Item 150(d).

“Shipper” means a party who contracts with Carrier for transportation or gathering of Crude Petroleum under the terms of these rules and regulations.

“System” means the Transportation System and Gathering System.

“Tariff” is as defined in Item 250(a).

“Tender” means the offering for shipment of Crude Petroleum presented by a Shipper to the Carrier for Movement by Carrier in accordance with these rules and regulations.

“Transportation Services Agreement” or “TSA” means any transportation services agreement executed by and between the Carrier and a Committed Shipper.

“Transportation System” means the 10” common carrier crude oil pipeline commencing at the Wild Basin Plant with delivery points at Johnson’s Corner, which interconnects to and excludes the Gathering System.

“Uncommitted Capacity” means, for purposes of the prorationing procedures in Item 150, ten percent (10%) of the then current capacity of the System which will be reserved for Uncommitted Shippers.

“Uncommitted Gathering Rate” means the rate charged to a Shipper for gathering pursuant to Carrier’s FERC tariff that is not subject to a Gathering Agreement.

“Uncommitted Rate” means the rate charged to a Shipper for transportation pursuant to Carrier’s FERC tariff that is not subject to a Transportation Services Agreement.

“Uncommitted Shipper” means a Shipper who has not entered into a Transportation Service Agreement with Carrier.

“Uncommitted Gathering Shipper” means a Shipper who has not entered into a Gathering Agreement with a Carrier.

“Uncommitted Volumes” means volumes of Crude Petroleum received by Carrier for transportation for a Shipper that is not a Committed Shipper or a Committed Gathering Shipper.

## **20. COMMODITY**

Carrier is engaged in the transportation and gathering on the System of Crude Petroleum only, and therefore will not accept any other commodity for transportation under Carrier’s applicable tariff.

## **30. QUALITY SPECIFICATIONS**

a. Except as provided in subsections (b) and (g) of this Item 30, Carrier will have no obligation to accept, gather, transport, or deliver any commodity other than merchantable Crude Petroleum that meets the quality specifications herein, and Shipper shall not Tender to Carrier

Crude Petroleum that does not meet such specifications without Carrier's written approval. Carrier will not be required to accept any Crude Petroleum offered for transportation other than merchantable Crude Petroleum of acceptable character which meets the following quality specifications subject to subsections (b) through (g) below:

- i. Not more than one half percent (0.5%) of basic sediment, water, and other impurities (*provided*, in no event, will water be allowed to exceed two tenths of one percent (0.2%)). If Crude Petroleum is accepted from tankage, settled bottoms in such tanks must not be above a point four inches (4") below the pipeline connection with the tank from which it enters Carrier's facilities;
- ii. Sulfur content less than two tenths of one percent (0.2%) by weight;
- iii. Hydrogen sulfide vapor phase content less than or equal to ten (10) ppm;
- iv. Maximum vapor pressure at 100°F not in excess of 13.7 psi;
- v. Temperature not in excess of one hundred and twenty degrees (120°) Fahrenheit;
- vi. A.P.I Gravity of greater than thirty-five (35) degrees A.P.I. and less than fifty (50) degrees A.P.I.; *provided* that Shipper shall utilize blending facilities or blend to ensure such Crude Oil meets the downstream pipeline specifications for A.P.I. and maximum vapor pressure;
- vii. Viscosity less than thirty (30) centistokes at sixty degrees (60°) Fahrenheit;
- viii. Crude Petroleum indigenous to the geographic area served by the System; and
- ix. Total dissolved solids of not more than one percent.

b. At its sole discretion, if a connecting carrier imposes a more restrictive specification for API gravity than stated in Item 30.a.vi., Carrier may provide a waiver and accept Crude Petroleum having an A.P.I. Gravity of forty-four degrees (44°) or above subject to a deduction to cover shrinkage and evaporation which may be based on actual gains or losses as stated in Item 110 or Carrier may charge an additional deduction in accordance with the following table:

<u>A.P.I Gravity (Degrees)</u>	<u>Deduction</u>
>44.0 through 54.9	0.5%
55.0 through 64.9	1.0%
65.0 through 74.9	1.5%
75.0 and above	2.0%

c. Quality specifications of a connecting carrier may be imposed by Carrier upon Shipper when such specifications are more restrictive than that of Carrier, in which case the quality specifications of the connecting carrier will be applied.

d. Crude Petroleum shall not contain sand, dust, dirt, gums, impurities or other objectionable substances that may be injurious to Carrier or the System, or which may otherwise interfere with the transportation of Crude Petroleum in the System.

e. If Carrier determines that a Shipper does not comply with the provisions of this Item 30, then, upon notice from Carrier, such Shipper shall, at Shipper's sole cost and expense, remove its off-specification Crude Petroleum from the System as and when directed by Carrier, acting reasonably.

f. If a Shipper fails to remove its off-specification Crude Petroleum from the System in accordance with subsection (e) of this Item 30, then, in addition to any other remedy available to Carrier under these rules and regulations, Carrier shall have the right to remove and sell such Crude Petroleum in any manner deemed appropriate by Carrier. Carrier shall remit to Shipper the value of Crude Petroleum sold less any costs incurred by Carrier. Carrier may take such further action and recourse as it deems appropriate to compensate, mitigate or reimburse Carrier for any adverse impact to Carrier or the System that is attributable to the presence of such off-specification Crude Petroleum.

g. In the event Shipper tenders off-specification Crude Petroleum, Carrier may accept such Crude Petroleum if Carrier determines, in its sole discretion, that the quality of the off-specification Crude Petroleum, when commingled in its common stream, will nonetheless meet the quality specifications set forth in this Item 30 or Carrier may provide a waiver of such specification at Carrier's sole discretion. If Carrier decides to not accept the off-specification Crude Petroleum, Carrier may exclude Shipper from further entry into the System until such time as Shipper returns the quality of its Crude Petroleum to a level satisfactory to Carrier in accordance with these rules and regulations.

#### **40. SHIPMENTS, MAINTENANCE OF IDENTITY**

a. Carrier shall not be liable to Shipper or Consignee for changes in gravity or quality of Shipper's Crude Petroleum which may occur from commingling or intermixing Shipper's Crude Petroleum with other Crude Petroleum in the same common stream while in transit. Carrier is not obligated to deliver to Shipper or Consignee the identical Crude Petroleum nominated by Shipper. Carrier will deliver the grade of Crude Petroleum it is regularly transporting as a common stream.

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

#### **50. ADDITIVES**

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



**60. NOMINATION, MINIMUM QUANTITY**

a. Nominations for gathering and transportation of Crude Petroleum for which Carrier has facilities will be accepted into the System under these rules and regulations in quantities of not less than five thousand (5,000) Barrels per Month, subject to the requirements of downstream Delivery Points.

b. Crude Petroleum will be transported or gathered only under a Nomination accepted by the Carrier from Receipt Point(s) to Delivery Point(s) when a tariff covering the Movement is lawfully in effect and on file with FERC.

c. Any Shipper desiring to Tender Crude Petroleum for transportation or gathering shall make a Nomination to the Carrier by 5:00 p.m. (Central Time) on or before the fifteenth (15<sup>th</sup>) Day of the Month preceding the Month during which the transportation under the Nomination is to begin or on or before the deadline established and posted on Carrier's website (the "Nomination Deadline"). If the Nomination Deadline falls on a non-Business Day, Nominations shall be due on the next Business Day.

d. When Nominations submitted by Shippers to Carrier on or before the Nomination Deadline do not cause Carrier to implement the prorationing procedures set forth in Item 150 for the System, additional Nominations will be accepted by the Carrier to fill capacity. These additional Nominations will be accepted only if they do not impair the Movement of Crude Petroleum nominated before the Nomination Deadline.

**70. RECEIPT AND DELIVERY FACILITIES REQUIRED**

No obligation to transport or gather will arise until evidence satisfactory to Carrier (i.e., a valid operator confirmation, downstream pipeline confirmation or other evidence acceptable to Carrier) has been furnished that Shipper or Consignee has provided necessary facilities to which Carrier is connected and has made necessary arrangements for accepting delivery of shipments promptly on arrival at the Delivery Point.

**80. STORAGE IN TRANSIT**

Carrier does not have facilities available for rendering, and does not hold itself out to provide, storage service.

**90. LINE FILL REQUIREMENTS**

Prior to delivering Barrels out of the System, each Shipper shall be required to supply a pro rata share of Crude Petroleum based on estimated volumes to be shipped as determined by Carrier, necessary for pipeline Line Fill to ensure efficient operation of the System. Line Fill requirements will be redetermined from time to time at Carrier's discretion. Each Shipper's estimated volume will be divided by the total System estimated volume and the resulting fraction multiplied times the total System pipe capacity plus any required working stock volumes. Crude Petroleum provided by Shippers for this purpose will be allowed to be withdrawn only after: (a) shipments have ceased and Shipper has notified Carrier in writing of its intention to discontinue shipments in the System, and (b) Shipper balances have been reconciled between Shipper and Carrier. Redelivery of Line Fill will not occur until all Shipper obligations have been met.

Unless otherwise specified in a Gathering Agreement, Carrier shall have a reasonable period of time from the receipt of said notice, not to exceed six (6) Months, to complete administrative and operational requirements incidental to Shipper withdrawal.

#### **100. MEASUREMENT AND TESTING**

a. Carrier shall install, own, operate, and maintain Measurement Facilities to measure Crude Petroleum at all Receipt Point(s) located on the System. Measurement Facilities at such Receipt Point(s) shall meet current industry standards for custody transfer measurement. Shipper shall have the right to install check Measurement Facilities upstream of all Receipt Point(s).

b. Each Party shall have the right, at its option, to have representatives present to observe any reading, inspecting, testing, calibrating, proving or adjusting of Measurement Facilities used in measuring or checking the measurement of receipts of Crude Petroleum under these rules and regulations. The data from such Measurement Facilities shall remain the property of the Measurement Facilities' owner, but copies of such records shall, upon written request, be submitted to the requesting Party for inspection and verification.

c. Carrier shall calibrate Receipt Point and Delivery Point meters once per Month or as often as required, as determined by Carrier in accordance with the standard industry practices to reasonably assure accurate measurement. The volume of Crude Petroleum measured at the Receipt Points and Delivery Points will be measured by meters (including calibration and proving meters) and sampled in accordance with appropriate A.P.I. Manual for Petroleum Measurement Standards, latest revision, and adjusted to base (reference standard) conditions.

d. Corrections shall be made for temperature from observed Fahrenheit to sixty degrees (60°) Fahrenheit and zero (0) gauge pressure. Carrier shall deduct the full amount of sediment, water and other impurities as the centrifugal or other testing shows.

#### **110. GAINS OR LOSSES**

Subject to the provisions of Item 210, Shippers shall be responsible for all pipeline operational gains or losses, which shall be calculated as the difference between Receipt Point and Delivery Point measured volumes. Shippers will also be responsible for losses related to evaporation. Gains or losses will be apportioned according to each Shipper's proportionate share of Receipt Point measurement. Shipper will use reasonable efforts to monitor measurement and pipeline operations as to minimize gains and losses in the System. PLA will be allocated to a Committed Gathering Shippers in the manner set forth in the applicable Gathering Agreement.

#### **120. TAMPERING**

a. Carrier shall have the right to install and monitor, to Carrier's satisfaction, sealing devices on the components of measuring devices for the purpose of discouraging tampering. Installation of sealing devices by Carrier shall not absolve the owner of Measurement Facilities of any responsibilities with respect to the security of its owned equipment.

b. In addition to any other remedies provided for herein or at law or equity, if any Shipper or Consignee, without permission from Carrier, tampers with any property owned or

used by Carrier to provide services, this shall constitute reason for Carrier to refuse acceptance of further Crude Petroleum from such Shipper, or to deliver further Crude Petroleum to such Consignee, or, at the option of Carrier, to impose additional terms and conditions prescribed by Carrier. As used herein, tamper means to rearrange, break, alter, interfere with, or otherwise to prevent Carrier from performing the normal or customary function(s).

### **130. TITLE**

The Carrier shall have, on a nondiscretionary basis, the right to reject any Crude Petroleum, when nominated for transportation or gathering, which is or is expected to be involved in litigation, or the title of which is or is expected to be in dispute, or which is or is expected to be encumbered by a lien or charge of any kind, and it will require of the Shipper satisfactory evidence of its perfected and unencumbered title or satisfactory indemnity bond to protect Carrier. By nominating Crude Petroleum, the Shipper warrants and guarantees that the Shipper has good unencumbered title thereto free and clear of all liens or charges of any kind and agrees to hold Carrier harmless for any and all such loss, cost, liability, damage and/or expense resulting from any breach or alleged breach of such warranty and guaranty; *provided* that acceptance for transportation shall not be deemed as a representation by the Carrier as to title.

### **140. NOTICE OF ARRIVAL, DELIVERY AT DELIVERY POINTS, DEMURRAGE**

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

b. Commencing after the expiration of said twenty-four (24) hour notice, Carrier shall have the option to 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 shall be \$0.02 per Barrel per Day for each Day or fractional part thereof.

c. If the Shipper, or Consignee, is unable or refuses to receive such Crude Petroleum as it arrives at the specified Delivery Point, the Carrier reserves the right to make whatever arrangements for disposition of the Crude Petroleum it deems appropriate in order to clear its pipeline. Any additional expenses incurred by the Carrier in making such arrangements shall be borne by the Shipper or Consignee. Carrier shall remit to Shipper any proceeds from the disposition less expenses incurred.

### **150. PRORATIONING OF PIPELINE SYSTEM CAPACITY**

a. All nominations will be confirmed when the System is not being curtailed. During periods of curtailment, the following procedures will be implemented and allocations for Committed Shippers, Committed Gathering Shippers, Regular Shippers and New Shippers will be limited to a maximum volume of Shipper's nomination.

b. Subject to retaining at least ten percent (10%) of available capacity for Uncommitted Shippers or Uncommitted Gathering Shippers as applicable, Committed Shipper

volumes will not be subject to prorationing to accommodate Uncommitted Shippers and Committed Gathering Shipper volumes will not be subject to prorationing to accommodate Uncommitted Gathering Shippers. If the capacity on the Transportation System is curtailed so that insufficient capacity is available for each Committed Shipper to be allocated its Minimum Volume Commitment, each Committed Shipper will be allocated its pro rata share of the available capacity based upon its Minimum Volume Commitment. If the capacity on the Gathering System is curtailed so that insufficient capacity is available for each Committed Gathering Shipper, each Committed Gathering Shipper will be allocated capacity based upon its actual shipments during the prior rolling 12 Month period.

c. Carrier will prorate Uncommitted Capacity during any Month when it determines, based upon Nominations submitted in a timely and proper manner by Shippers, that the total volume nominated by all Uncommitted Shippers utilizing Uncommitted Capacity during that Month exceeds the Uncommitted Capacity during periods of curtailment.

d. Uncommitted Capacity will be divided between Regular Shippers as a class and New Shippers as a class. A "Regular Shipper" is any Shipper having transported volumes in the line segment or the System being prorated during ten (10) of the twelve (12) Months within the Base Period and does not include volumes confirmed or shipped as Committed Shipper or Committed Gathering Shipper volumes. A Committed Shipper or Committed Gathering Shipper will also be entitled to treatment as a Regular Shipper or New Shipper, as applicable, during the timeframes when the Committed Shipper nominates volumes other than pursuant to its TSA or the Committed Gathering Shipper tenders volumes not subject to its Area Dedication. In addition, upon termination of the TSA or Gathering Agreement, such Committed Shipper or Committed Gathering Shipper shall become a Regular Shipper based on such Shipper having transported volumes in the line segment or the System during ten (10) of the twelve (12) Months within the immediately preceding Base Period. If the line segment or the System being prorated has been in service less than twelve (12) Months, a Regular Shipper is any Shipper having transported volumes in at least eighty percent (80%) of all Months during which the line segment or the System has been active. A "New Shipper" is a Shipper that is not a Regular Shipper or Committed Shipper. The "Base Period" is a timeframe of twelve (12) consecutive Months prior to the Month of prorationing. Space in each line segment or on the System will be allocated among Regular Shippers and New Shippers as follows:

- i. New Shipper: Not more than twenty-five percent (25%) of the Uncommitted Capacity shall be made available to New Shippers. Each New Shipper shall be allocated a volume of the Uncommitted Capacity available to all New Shippers which is equal to the lesser of: (a) twenty-five percent (25%) of the total Uncommitted Capacity divided by the number of New Shippers who nominated volumes during the Month for which the allocation is being calculated, or (b) twelve and one half percent (12.5%) of the total Uncommitted Capacity for that Month.

Carrier, at its sole discretion, may waive the minimum quantity for Nominations in Item 60 from New Shippers during periods of prorationing.

- ii. Regular Shippers: After the allocation of Uncommitted Capacity to New Shippers, all remaining Uncommitted Capacity will be available to Regular Shippers who have nominated volumes for the Month. Each Regular Shipper will be allocated a volume of Uncommitted Capacity in proportion to their Base Period shipments. Such allocation shall equal the product of the remaining Uncommitted Capacity available to all Regular Shippers for transportation service times a fraction, the numerator of which is the Regular Shipper's Base Period shipments and the denominator is the total of all Regular Shippers' Base Period shipments, all as applicable to the line segment, Delivery Point or the System.
- iii. Remaining Capacity: Any remaining capacity after initial allocations to Committed Shippers, Regular Shippers, and New Shippers on the System shall be allocated based on unallocated Nominations first to Committed Shippers based on Minimum Volume Commitments or Committed Gathering Shippers based upon its actual shipments during the prior rolling 12 Month period as per the methodology in Item 150(b), as applicable; second to Regular Shippers based on Base Period shipments as per the methodology in Item 150(d)(2); and third to New Shippers based on the remaining available capacity for New Shippers divided by the number of New Shippers.

e. No Nominations shall be considered beyond the amount that the nominating Shipper or Consignee has readily available for shipment. If a Shipper or Consignee is unable to Tender Crude Petroleum equal to the space allocated to it, Carrier shall reduce that Shipper's volumes for the succeeding Month by the amount of allocated capacity not utilized during the preceding Month if apportionment is necessary. Carrier may require, on a nondiscriminatory basis, written assurances from Shippers regarding readily available supply for shipment stating that this requirement has not been violated.

## **160. FINANCIAL ASSURANCES**

a. Carrier may at any time and from time to time request, and Shipper shall provide promptly if Carrier so requests, financial security for the payment of charges to be paid by Shipper to Carrier for services provided. If requested by Carrier, Shipper's financial assurances must be provided to Carrier prior to Carrier accepting Shipper's initial Nomination for transportation of Crude Petroleum. Carrier shall thereafter have the option to refuse Nominations, in whole or in part, from Shipper, and to suspend further receipts and deliveries, until adequate financial assurances are provided. Shipper shall provide notice of any change in its financial situation that would adversely affect Shipper's ability to pay Carrier for services provided.

b. The financial assurances that Carrier may request from Shipper shall include, but not be limited to, the following: (i) prepayment of the charges applicable to such volumes nominated by Shipper; or (ii) an irrevocable letter of credit or such other financial guarantees satisfactory to Carrier, which financial assurances shall remain in effect until payment in full for

all service has been received by Carrier, at which time Carrier shall, upon request, return and/or cancel such financial guarantee forthwith.

#### **170. RATES APPLICABLE**

Crude Petroleum transported shall be subject to the applicable tariff rates and charges in effect on the date of receipt of such Crude Petroleum by Carrier, regardless of the date of Tender. Carrier shall charge the applicable tariff rate for Crude Petroleum based on the total quantities received by Carrier from Shipper at the Receipt Point in a Month. Payment for volumes received from a Committed Shipper or Committed Gathering Shipper shall be equal to the Committed Volumes received multiplied by the applicable Committed Rate for Committed Shippers or Committed Gathering Rate for Committed Gathering Shippers. Payment for volumes received from Uncommitted Shippers shall be equal to the Uncommitted Volumes received multiplied by the applicable Uncommitted Rate for Uncommitted Shippers. Payment for volumes received from Uncommitted Gathering Shippers shall be equal to the Uncommitted Volumes received multiplied by the applicable Uncommitted Gathering Rate for Uncommitted Gathering Shippers.

#### **180. PAYMENT OF CHARGES**

a. Shipper shall be responsible for payment of all charges applicable to the Tender. Not later than the twentieth (20th) Business Day following the end of each Month, Carrier shall provide Shipper with a detailed statement setting forth the quantity of Crude Petroleum received by Carrier at the Receipt Point(s) in such Month, the Committed Rate and/or Uncommitted Rate or Committed Gathering Rate and/or Uncommitted Gathering Rate (as applicable) and the Minimum Volume Commitment calculation (if applicable), together with measurement summaries and all relevant supporting documentation, to the extent available on such twentieth (20th) Business Day (with Carrier being obligated to deliver any such supporting documentation that is not available on such twentieth (20th) Business Day as soon as it becomes available). Shipper shall make payment to Carrier by the later of: (i) the last Business Day of the Month in which such invoice is received or (ii) thirty (30) Days after receipt of invoice. Such payment shall be made by wire transfer pursuant to wire transfer instructions delivered by Shipper to carrier in writing from time to time or other means as mutually agreeable by the Parties. If any overcharge or undercharge in any form whatsoever shall at any time be found and the invoice therefor has been paid, Carrier shall refund any amount of overcharge, and Shipper shall pay any amount of undercharge, within thirty (30) Days after final determination thereof; *provided, however*, that no retroactive adjustment will be made beyond a period of twenty-four (24) Months from the date of a statement hereunder.

b. If any undisputed amount due hereunder remains unpaid for sixty (60) Days after the due date, Carrier shall have the right to suspend or discontinue Services hereunder until any such past due amount is paid.

c. In the event of any dispute with respect to any payment hereunder, Shipper shall make timely payment of all undisputed amounts, and Carrier and Shipper will use good faith efforts to resolve the disputed amounts within sixty (60) Days following the original due date. Any amounts subsequently resolved shall be due and payable within ten (10) Days of such resolution.

d. Carrier shall have a lien and security interest on all Crude Petroleum accepted for transportation to cover payment of all charges, including demurrage and late charges and Carrier may refuse to make delivery of Crude Petroleum until all charges have been paid. Carrier shall have a lien and security interest on Crude Petroleum when there shall be failure to take the Crude Petroleum at the Delivery Point as provided in Item 140. If said charges, or any part thereof, shall remain unpaid for sixty (60) Days after notice of readiness to deliver, the Carrier may sell the Crude Petroleum in any manner deemed appropriate by Carrier. Carrier shall remit to Shipper value of Crude Petroleum sold less any costs to Carrier. If the proceeds of the said sale do not cover all expenses incurred by Carrier, the Shipper and/or Consignee are liable for any deficiency. Carrier's rights under this Item 180(d) are not exclusive but shall be in addition to any other rights or remedies available hereunder or under applicable law.

#### **190. MINIMUM VOLUME COMMITMENT**

The Minimum Volume Commitment provisions and calculations applicable to Committed Shippers are set forth in the Transportation Services Agreements.

#### **200. CHARGE FOR COMPENSATION FUND FEES INCURRED BY CARRIER**

In addition to all other charges being incurred on Crude Petroleum accepted for transportation through the System, a per Barrel charge shall be assessed and collected in the amount of any tax, fee, or other charge levied against Carrier 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. Such operations shall include, without limitation, for the prevention, containment, clean-up and/or removal of spills, the reimbursement of persons sustaining loss therefrom or any other lawful purpose. Carrier shall be under no obligation to contest or protest on behalf of Shipper or Consignee the legality of such tax, fee or other charge. If a per Barrel charge is assessed, the amount of such charge shall be stated in Carrier's FERC tariff.

#### **210. LIABILITY OF CARRIER**

a. The Carrier while in possession of any of the Crude Petroleum herein described shall not be liable for any loss thereof, damage thereto, or delay, caused by a Force Majeure event. In no event shall Carrier be liable to Shipper, Consignor or Consignee for consequential, incidental, indirect, special or exemplary damages. In case of loss of Crude Petroleum (other than losses provided for in Item 110) for which Carrier is not liable, each Shipper of the grade of Crude Petroleum so lost via 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 Carrier for the account of such Shipper in such System bears to the total amount of such grade of Crude Petroleum then in the custody of Carrier in such System. Statements of quantities ascertained and computed from records in the usual manner by Carrier shall be accepted as prima facie correct in the distribution of losses under this Item 210.

b. Carrier will be obligated to deliver only that portion of a Crude Petroleum shipment remaining after deducting such loss. In such event, applicable tariff rates will be charged only on quantities of Crude Petroleum delivered at the Delivery Points.

c. If Crude Petroleum is lost in transit, while in the custody of Carrier, due to Carrier's negligence, Carrier, at its discretion, will obtain and deliver to Shipper other Crude Petroleum of the same quantity and grade as that which was lost or Carrier will compensate Shipper for such loss in money. If Carrier compensates Shipper for such loss in money, the price per Barrel of Crude Petroleum shall be determined as of the date of the loss based on Shipper's weighted average spot sales price for the Month. Carrier's liability to Shipper, Consignor or Consignee for any claim of negligence shall be collectively limited to the value of the Crude Petroleum transported and related delivery charges.

## **220. LIABILITY OF SHIPPER**

a. If Shipper fails to remove its Crude Petroleum from Carrier's facilities upon delivery and a disruption of Carrier's operations or the operation of downstream facilities results, Shipper shall be solely responsible and liable if and to the extent that any expenses, costs, damages and losses whatsoever are incurred and suffered by Carrier in connection with such disruption unless the non-removal of such Crude Petroleum is due to Carrier's negligence or willful misconduct.

b. Shipper shall indemnify Carrier for any and all damages, losses, expenses and costs incurred or suffered by Carrier as a result of Shipper's failure to comply with any provision of Carrier's FERC tariff, unless Shipper's failure to comply is due to Carrier's negligence or willful misconduct.

## **230. FORCE MAJEURE**

The Carrier and Shipper(s) shall be excused from the performance of their obligations under Carrier's FERC tariff when and to the extent that such performance is delayed or prevented by Force Majeure; *provided* that Carrier or Shipper(s) shall give notice to the other party, stating particulars of such event, as soon as reasonably possible after the occurrence thereof, and shall as far as possible, remedy such situation with all reasonable dispatch. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party affected thereby, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the sole discretion of the Party affected thereby. Notwithstanding the foregoing, it is specifically understood and agreed by the Parties that an event of Force Majeure will in no way affect or terminate Shipper's obligation to make payment for quantities of Crude Petroleum delivered to a Receipt Point hereunder.

## **240. CLAIMS, SUITS, AND TIME FOR FILING**

As a condition precedent to recovery, claims must be filed in writing with the Carrier within twelve (12) Months after delivery has elapsed; and suits arising out of such claims shall be instituted against the Carrier within two (2) years and one (1) Day from the Day when notice in writing is given by the Carrier to the claimant that the Carrier 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, Carrier shall not be liable and such claims shall not be paid.



**250. LAW AND VENUE**

a. Carrier's FERC tariff and these rules and regulations (collectively, this "Tariff") are subject to all applicable laws. If either Carrier or Shipper is required to do any act inconsistent with the provisions of this Tariff, then this Tariff will continue nevertheless and will be deemed modified to conform with the requirements of the applicable laws.

b. To the extent FERC does not possess, claim, assert, or otherwise exercise jurisdiction over any dispute or proceeding arising out of or relating to this Tariff or any contract entered into covering the transactions contemplated by this Tariff, then this Tariff will be construed, enforced, and interpreted according to the laws of the State of Texas, without regard to the conflicts of law rules thereof. Except as provided for in the previous sentence, the Parties agree that the appropriate, exclusive and convenient forum for any disputes between the Parties arising out of this Tariff or the transactions contemplated by this Tariff shall be in any state or federal court in Harris County, Texas, and each of the Parties irrevocably submits to the jurisdiction of such courts solely in respect of any proceeding arising out of or related to this Tariff. The Parties further agree that the Parties shall not bring suit with respect to any disputes arising out of this Tariff or the transactions contemplated by this Tariff in any court or jurisdiction other than the above specified courts. **EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS TARIFF, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF, OR ANY CONTRACT ENTERED INTO COVERING THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF BROUGHT IN SUCH COURT OR ANY DEFENSE OF INCONVENIENT FORUM FOR THE MAINTENANCE OF THE DISPUTE OR ACTION.**

c. **EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS TARIFF, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF, OR ANY CONTRACT ENTERED INTO COVERING THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

**EXPLANATION OF REFERENCE MARKS:**

[W] Change in Wording Only

[C] Cancel

[N] New