

BOE PIPELINE, LLC
LOCAL PIPELINE TARIFF
Applying to the Transportation of
CRUDE PETROLEUM

From
LL TERMINAL AT KILLDEER, DUNN COUNTY, NORTH DAKOTA
To
BOE TERMINAL AT DICKINSON, STARK COUNTY, NORTH DAKOTA

Containing

**RULES AND REGULATIONS GOVERNING
THE TRANSPORTATION OF CRUDE PETROLEUM BY PIPELINE**

RATES ARE FILED IN COMPLIANCE WITH 18 CFR 342.2(B)

The rules and regulations published herein apply only under tariffs making specific reference by F.E.R.C. or State Commission number to this tariff; such reference will include successive issues hereof.

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RULES AND REGULATIONS

These Rules and Regulations apply to all transactions pursuant to the Crude Petroleum Transportation Agreement, and are incorporated into and made a part of the Crude Petroleum Transportation Agreement. In the event of a conflict between the Crude Petroleum Transportation Agreement and the Rules and Regulations, the Crude Petroleum Transportation Agreement shall govern.

1. DEFINITIONS

- a. “**Affiliate**” means, in relation to a party, any entity that (i) directly or indirectly controls such party; (ii) is directly or indirectly controlled by such party; or (iii) is directly or indirectly controlled by an entity that directly or indirectly controls such party. The term “control”, including the terms “controlled by”, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.
- b. “**API**” means the American Petroleum Institute.
- c. “**Applicable Law**” shall mean the laws of the State of North Dakota, without regard to conflicts of laws principles that would result in the application of any other law.
- d. “**ASTM**” means American Society for Testing and Materials.
- e. “**Available Capacity**” means the quantity, stated in Barrels per Day that a Pipeline Segment is capable of transporting, as determined by Operator to reflect such considerations as scheduled maintenance, total Shipper Nominations and other relevant factors.
- f. “**Barrel**” means forty-two (42) United States gallons at a temperature of 60 degrees Fahrenheit.
- g. “**BOE Pipeline System**” means the 16”/20” pipeline of BOE Pipeline, LLC extending from the outlet valve of the storage tank of LL Terminals, LLC near Killdeer, ND to the block valve on the outlet of the flow meter skid at the rail loading facility of Bakken Oil Express, LLC near Dickinson, ND.
- h. “**Committed Capacity**” has the meaning set out in Section 12 below.
- i. “**Committed Shipper**” means a Shipper that executes a CPTA and commits a minimum volume of throughput to the BOE Pipeline System.
- j. “**Committed Volume**” means the throughput volume of Crude Petroleum committed under a CPTA.
- k. “**Consignee**” means a party operating as a sub-contractor of a Shipper under the agency of that Shipper that has been authorized by the Shipper to Tender or receive Crude Petroleum to or from Operator for transportation.
- l. “**Contract Quarter**” means each calendar quarter during the term of the CPTA.
- m. “**Crude Petroleum**” has the meaning set out in Section 2a below.
- n. “**Crude Petroleum Specifications**” has the meaning set out in Section 2b below.

- o. **“Crude Petroleum Transportation Agreement,” or CPTA**, means the agreement entered into between Shipper and Operator governing the transportation of Crude Petroleum on the BOE Pipeline System.
- p. **“Day”** means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Time. The reference date for any Day shall be the calendar date upon which the 24 hour period commences.
- q. **“Density”** means mass per unit volume specified in °API.
- r. **“Dispute”** has the meaning set out in Section 16 below.
- s. **“Dollar(s)” or “\$”** or any derivation thereof shall mean the lawful currency of the United States of America.
- t. **“Force Majeure”** has the meaning set out in Section 15 below.
- u. **“Gross Standard Volume”** is volume corrected to a temperature of sixty degrees (60°) Fahrenheit, in accordance with the latest API/ASTM measurement standards, and at equilibrium vapor pressure.
- v. **“Month”** means the period beginning at the first Day of the calendar Month and ending at the same hour on the first Day of the next succeeding calendar Month.
- w. **“Nomination”** or any derivative thereof, means the volume of Crude Petroleum to be specified in a Monthly notice of shipment as described in Section 5.
- x. **“Nomination Form”** means the form(s) (including electronic forms) prescribed by Operator to be used by Shipper in notifying Operator of proposed Tenders; as such form(s) may be amended from time to time.
- y. **“Operator”** means BOE Pipeline, LLC.
- z. **“Pipeline Segment”** means all or part of any or all tanks, lines, valves, fittings, and appurtenant equipment required to transport Crude Petroleum from Receipt Point(s) to Redelivery Point(s).
- aa. **“Prime Rate”** means the prime rate of interest on corporate loans at large US money center commercial banks, found in the Wall Street Journal “Money Rates” table (or its successor) on the first date of publication for the calendar Month in which payment is due.
- bb. **“Receipt Point(s)”** means the outlet valve of the storage tank connecting the BOE Pipeline System to the LL Terminals storage facility located at Section 28. TWN. 145N. Range. 95N, approximately two (2) miles west of Killdeer, ND, or any other points established from time to time by Operator for the receipt of Crude Petroleum from Shipper.
- cc. **“Redelivery Point”** and any derivative thereof, means the block valve on the outlet of the flow meter skid connecting the BOE Pipeline System to the Bakken Oil Express oil terminal located in Section 11, T139N-R97W, near Dickinson, ND, or any other points established from time to time by Operator for the redelivery of Crude Petroleum back to Shipper.
- dd. **“Shipper”** means the party for whom Crude Petroleum is transported under the terms of the CPTA.

- ee. **“Tender”** and any derivative thereof means the delivery by a Shipper to Operator at a Receipt Point of a stated quantity and type of Crude Petroleum for transportation from a Receipt Point to a Redelivery Point.
- ff. **“Transportation Rate”** means the rate, in Dollars per Barrel, at which Operator has agreed to receive Shipper’s Crude Petroleum from each Receipt Point and transport and redeliver Crude Petroleum back to Shipper at each Redelivery Point as set forth in Operator’s current FERC tariff.
- gg. **“Uncommitted Capacity”** has the meaning set out in Section 12 below.
- hh. **“Uncommitted Shipper”** means a Shipper who has not committed volumes under a CPTA but receives transportation services under a CPTA on an interruptible basis.
- ii. **“Uncommitted Volume”** means the throughput volume of Crude Petroleum that is not or is in excess of throughput volume committed under a CPTA.

2. **CRUDE PETROLEUM SPECIFICATIONS**

- a. As used herein **“Crude Petroleum”** means hydrocarbons meeting the Crude Petroleum Specifications that are the direct liquid product of oil wells, oil processing plants, oil sands, or a mixture of such products and may include diluted bitumen, but does not include natural gas liquids, natural gasoline, reclaimed petroleum or indirect liquid products..
- b. Crude Petroleum must meet the following specifications using the prescribed ASTM and industry standard testing methods and procedures, and substantially distilled below seven hundred (700°) Fahrenheit (the **“Crude Petroleum Specifications”**):

QUALITY	UNIT	MIN	MAX	TEST METHODS
API Gravity	°API	36	45	ASTMD5002
Sulfur	wt %	0	0.2	ASTM D5453
Reid Vapor Pressure	psi	0	13	ASTM D323M
BS&W	vol %	0	0.5	ASTM D95
Organic Chlorides	ppm	0	1	ASTM D4929
Olefins	wt %	0	1	ASTM 6729
Total Suspended Solids	mg/L	0	200	ASTM D4807
Benzene	vol %	0	1.6	ASTM 6729
Oxvgenates	ppm	0	100	ASTM 6729
Mercurv	ppb	0	10	UOP 938
Mercaptans	ppm	0	175	UOP 1635623
H ₂	ppm	0	10	ASTM 5705M

- c. Shipper shall only Tender to Operator Crude Petroleum that meets the Crude Petroleum Specifications, and Shipper shall notify Operator immediately if it becomes aware of any anticipated non-compliance with this requirement. Except as provided in (d) below, Shipper shall be responsible to Operator for all losses incurred by Operator in respect to such non-compliance.

- d. If a Shipper tenders to Operator Crude Petroleum that fails to comply with the Crude Petroleum Specifications, Operator shall not be obligated to accept the Shipper's Crude Petroleum. If Operator accepts Crude Petroleum from Shipper that fails to comply with the Crude Petroleum Specifications, Shipper shall be responsible to Operator for all losses incurred by Operator in respect thereto unless waived in writing by Operator.
- e. Operator may reject Crude Petroleum which has been contaminated by any metals or chemicals including but not limited to, chlorinated or oxygenated hydrocarbons, arsenic or lead or other objectionable material which Operator determines are excessive. Operator may refuse topped crude mixtures, chemical plant by-products, and refinery residues.
- f. Shippers desiring to ship Crude Petroleum that is not in compliance with the Crude Petroleum Specifications must have prior approval from Operator for the non-compliant Crude Petroleum prior to Tendering for transportation. The Shipper must obtain and provide to Operator a certificate from a qualified, competent, independent laboratory setting forth, in detail, the specifications (named in Section 2b) of each shipment of non-compliant Crude Petroleum proposed for Tender.
- g. Operator may, in its reasonable discretion, accept non-compliant Crude Petroleum; provided, however, that such acceptance does not constitute an ongoing waiver of the Crude Petroleum Specifications or its right to recover losses incurred unless expressly indicated.

3. **RECEIPT AND REDELIVERY POINTS**

- a. This Section 3 is subject to Section 2.
- b. Operator may reject Crude Petroleum for transportation at Receipt Point(s) if capacity is not available at such Receipt Point or such Crude Petroleum is not confirmed by the downstream party for redelivery at one or more Redelivery Point(s).
- c. Operator may reject Crude Petroleum for transportation if Shipper has not made provision for the necessary receipt and transloading services at Receipt Point(s) and for storage or other downstream transportation at Redelivery Point(s).
- d. Operator shall not be responsible for Crude Petroleum that cannot be delivered as specified by the Shipper due to any regulatory intervention.
- e. As a condition of service, Shipper shall provide facilities at Shipper's Receipt Point to deliver crude petroleum to the Pipeline Segment at pressures and flow rates required by Operator.
- f. As a condition of service, Shipper shall provide facilities at the Shipper's Redelivery Point to receive Crude Petroleum from the Pipeline Segment at pressures and flow rates required by Operator and downstream operators.

- g. Facilities owned by Shipper downstream of Operator's Redelivery Point manifold but located on Operator's property shall be subject to approval by Operator of Shipper's engineering and operational procedures.

4. SEGREGATION AND CHANGES IN QUALITY

- a. Subject to Section 5 below, Operator shall endeavor to redeliver substantially the same type of Crude Petroleum as that accepted from a Shipper; however Operator shall not be obligated to redeliver the identical type of Crude Petroleum accepted by Operator.
- b. Crude Petroleum Tendered to Operator for transportation will be received by Operator on the condition that it shall be subject to such changes in Density or quality that may result from the comingling and mixing of Crude Petroleum of varying specifications in the pipeline while in transit. Operator shall not be liable for any damage, loss or consequential loss resulting from a change in the quality of a Shipper's Crude Petroleum as a result of Operator's operations unless due to Operator's direct negligence.
- c. When requested by one or more Shippers, and if operationally feasible in Operator's determination, Operator will endeavor to segregate a batch of Crude Petroleum of a certain kind and/or quality on the condition that requesting Shipper(s) supply buffers before and after the batch in proportion to Shipper's share of the batch. Shipper shall cause Consignee(s) to arrange for acceptance at the Redelivery Point(s) of such leading and trailing buffers as mixed in transit together with its batch. Operator shall not be liable for variation in the gravity and/or quality of crude in prior or subsequent batches.

5. NOMINATIONS, SCHEDULING, TENDERS, AND QUANTITIES

- a. Shipper shall nominate and confirm all transportation hereunder in accordance with this Section 5.
- b. By the twentieth (20th) Day of each Month, Shipper shall provide Operator, by written notice using the Nomination Form, the information required by Operator to schedule volumes for the following Month. Such written notice shall include the Receipt Point(s), quantity and quality of the Crude Petroleum it expects to Tender from each Receipt Point, Redelivery Point(s), receiving party at each Redelivery Point, and other information required by Operator.
- c. Shipper shall make a separate Nomination for each Month. Nominations shall not carry forward from Month to Month.
- d. Operator may, subject to Available Capacity and the operating conditions of the BOE Pipeline System, accept Nominations or revised Nominations that are received by Operator after the Nomination deadline set out in Section 5b.
- e. By the twenty-fifth (25th) Day of the Month in which the Nomination is made, Operator will reject or confirm each Nomination in accordance herewith, including any reduced level of service due to Available Capacity and over-nomination on any Pipeline Segment. Operator will not confirm a Nomination until the redelivery has been confirmed by the receiving party and facility at the Redelivery Point.

- f. Operator will normally take full stream receipts at the Receipt Point(s) and will make full stream deliveries of Crude Petroleum at the Delivery Point(s) at flow rates and volumes compatible with Operator's operations. Operator may take less than full stream receipts at the Receipt Point(s) provided that, in Operator's reasonable discretion, such Crude Petroleum can be received into Operator's facilities without disrupting Operator's operations. Shipper shall provide, or arrange for, the facilities necessary to immediately remove the Crude Petroleum at the Redelivery Point(s) at flow rates, volumes, and pressure designated by Operator.
- g. Operator will not be required to receive for transportation a quantity of less than 10,000 Barrels per Month.

6. **BILLING AND PAYMENT**

- a. Charges for services will be assessed and collected by Operator in accordance with each CPTA. The Transportation Rates will be applied to the metered Gross Standard Volume at the Receipt Point(s) after making adjustments provided for in Section 8.
- b. For each Month, Operator shall invoice Shipper for Committed Volume and Uncommitted Volume transported that Month, and Shipper shall pay such invoice in accordance with the terms herein. All payments due shall be made on the Day due which shall be five (5) Days from the date of the invoice (or if any such Day is not a Day on which banks are open for business in New York, NY, then on the next succeeding banking Day) by electronic wire transfer of immediately available Dollars to such bank and account as Operator shall have designated from time to time in writing to Shipper. Operator shall have a lien on all Crude Petroleum Tendered to secure the payment of all charges, including demurrage charges. Operator shall have the right to file all such documents as it deems appropriate to record and perfect its security interest hereunder and Shipper shall cooperate and execute all such documents as may be reasonable requested by Operator.
- c. In the event that Shipper disputes any portion of an invoice, Shipper shall pay the undisputed portion of the invoice when it is due, and shall then promptly notify Operator of the disputed matters, and provide reasonable detail for the disputed matters as part of the notification. Shipper and Operator will endeavor to resolve the disputed matters as soon as practicable. If Shipper and Operator are unable to resolve the disputed matters within sixty (60) days, then the disputed matters will be resolved pursuant to the Dispute Resolution procedure set forth in Section 16 below.
- d. All amounts owed which are not timely paid shall accrue interest from the date due until the date paid at an annual rate equal to the lesser of the following: (a) three percent (3%) per annum greater than the Prime Rate, or (b) the maximum lawful amount of interest allowed. The interest unpaid at the end of each Month shall be added to the amount due hereunder for the purposes of the calculation of interest due the next Month.
- e. In addition, if Shipper owes any amounts which are past due in excess of 45 days, Operator, at its election, may, to the extent permitted under Applicable Law, (i) refuse to accept Crude Petroleum from Shipper for handling or transporting, (ii) refuse to deliver Crude Petroleum to Shipper at the Redelivery point, (iii) require Shipper to pre-pay prior to further acceptance of Crude Petroleum for shipment or (iv) any combination of (i), (ii) and (iii).

- f. All prospective shippers shall, prior to making their first Nomination, provide information to Operator that will allow Operator to determine the prospective shipper's capacity to perform any financial obligations that could arise from the transportation of that prospective shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations, the value of any loss allowance, and any negative balance positions. At any time, upon the request of Operator, Shipper shall, within five (5) Days of such request, provide information to Operator that will allow Operator to determine Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations, the value of any loss allowance, and any negative Shipper balance positions. Operator shall not be obligated to accept Crude Petroleum for transportation from any Shipper or prospective shipper if such Shipper or prospective shipper fails to provide the requested information to Operator within the time periods set forth herein, or if Operator's review of the requested information reveals that such Shipper or prospective shipper does not have the capacity to perform all or some of the financial obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations, the reasonably determined value of any loss allowance, and any negative balance positions.
- g. In the event that Operator reasonably determines that: (i) any Shipper's financial condition is or has become impaired or unsatisfactory; (ii) any financial assurances previously provided by Shipper no longer provide adequate security for the performance of such Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or (iii) Operator otherwise determines that it is necessary to obtain financial assurances from any Shipper or prospective shipper, then such Shipper or prospective shipper shall provide financial assurances as set forth in subsection h. below, for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to Operator relating to the transportation of such Shipper's or prospective shipper's Crude Petroleum by Operator. For the purpose of this tariff, and without limiting the generality of the charges and costs lawfully due to Operator relating to the transportation of Shipper's Crude Petroleum, those charges and costs shall include transportation charges, equalization obligations, any negative Shipper balance positions, and any loss allowance.
- h. Operator, upon notice to Shipper or prospective shipper, may require one or more of the following financial assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to Operator to be provided at the expense of such Shipper or prospective shipper: (i) payment security by wire transfer in an amount equal to two and a half Months of transportation charges based on Shipper's or prospective shipper's likely actual shipments for the Month (for purposes of this subsection (i), a prospective shipper's likely actual shipments will be based on the anticipated shipments listed in such prospective shipper's application); (ii) a letter of credit in favor of Operator in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Operator in a form and from an institution acceptable to Operator; or (iii) a guaranty in any amount sufficient to ensure payment of all such charges, and in a form, and from a third party acceptable to Operator.
- i. Any payment security received by Operator in accordance with subsection h.(i) above shall be retained by Operator in a non-interest-bearing escrow account until such time as Operator determines that the Shipper or prospective shipper that provided such financial assurance is capable of performing its financial obligations to Operator. Within ten (10) business days of such a determination by Operator, the financial assurance provided in accordance with subsection h.(i) shall be returned to such Shipper or prospective shipper.

- j. In the event Shipper fails to comply with any such requirement to provide security to Operator on or before the date supplied by Operator's notice to Shipper, Operator may refuse to deliver such Crude Petroleum until all charges and obligations (including finance charges) have been paid. If charges remain unpaid 5 Days after the due date stated on the invoice, Operator may apply any open credits or collect such charges by selling Shipper's Crude Petroleum directly or through an agent at a public or private sale in a commercially reasonable manner. Out of the proceeds of said sale, Operator may also pay itself for expenses of notice, advertising, sale, and care and maintenance of the Crude Petroleum. Any remaining balance will be remitted to the Shipper.

7. **TESTING**

- a. Operator shall have the right to test the specifications of the Crude Petroleum nominated for transportation as Operator deems appropriate.
- b. Shipper shall allow Operator to collect and retain a sample of the Crude Petroleum from the Receipt Point as a condition of service.

8. **MEASUREMENT AND ADJUSTMENTS**

- a. All Crude Petroleum Tendered for transportation may be tested, gauged or metered by Operator prior to or at the time of Tender to Operator.
- b. All measurement procedures are to be conducted in accordance with API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by Operator and Shipper
- c. Operator shall account to each Shipper for one hundred percent (100%) of Crude Petroleum Tendered for its account at the Receipt Point(s) less 0.2% (two tenths of one percent) as stipulated payment to Operator for shrinkage, evaporation and other customary losses incident to shipment through the BOE Pipeline System. In the event Operator experiences greater losses (excluding losses due to Operator's direct negligence), Operator may adjust this percentage from time to time upon notice to Shipper by an amount equal to the reasonably estimated amount of such losses as realized by Operator. Quantities will be corrected to the temperature of sixty degrees (60°) Fahrenheit and pressure adjusted. Deductions will be made for the full amount of basic sediment, water and other impurities as ascertained by centrifuge or other tests. In the case of unweathered Crude Petroleum, Operator may determine a further reduction factor to reflect the additional amount of shrinkage Operator estimates will occur because of the lack of weathering.
- d. The net balance, after deductions specified in Section 8c, will be the quantity deliverable by Operator. Operator will furnish to each Shipper a Monthly statement of (1) volumes received by Operator for the account of that Shipper, (2) volumes delivered for Shipper's account to each Consignee, (3) volumes in inventory (limited to acceptable variations in line fill volumes unless and until break-out storage is available on the BOE Pipeline System), and (4) volume adjustments for batch interfaces occurring as a result of pipeline operations.

9. **EVIDENCE OF RECEIPTS AND REDELIVERIES**

- a. Crude Petroleum received from and redelivered to Shipper shall, in each instance, be evidenced by receipt and delivery tickets containing a record of the volume, type, producing well identification, temperature, Density, sediment and water and any other data with respect to such Crude Petroleum as may be specified from time to time by Operator.

- b. Operator will issue receipt and delivery tickets by automatic record printing equipment including conversion of gross volume to net volume. This report shall constitute full receipt for the Crude Petroleum received or redelivered.

10. DELIVERY AND ACCEPTANCE

- a. Operator will transport Crude Petroleum with reasonable diligence and dispatch. Shipper shall immediately accept and take delivery of quantities from Redelivery Point(s) as scheduled and confirmed by Operator.
- b. Operator does not offer storage service. Shipper will be required to supply adequate storage at the Receipt Point(s) and Redelivery Point(s) or make other arrangements at the Receipt Point(s) to Tender its Crude Petroleum and at the Redelivery Point(s) to receive its redeliveries in accordance with Section 10(a) as a condition of service.
- c. Operator will assess a demurrage charge of one cent U.S. (\$0.01) per Barrel for each Day (or fractional part thereof) plus any third party transportation and storage costs incurred by Operator for Shipper's failure to act in accordance with this Section 10, and Operator's liability for loss, damage or delay with respect to Crude Petroleum offered for delivery, but not taken by Shipper, shall be in cases of direct negligence only.
- d. If a Shipper fails to take delivery of Crude Petroleum from Operator's Pipeline Segment in accordance with the provisions of Section 10(a) above, then Operator shall also have the right to remove and sell such Crude Petroleum in a manner conforming to the conditions and procedures described in Section 6 above.

11. ADDITIVES

Any additives including but not limited to corrosion inhibitors, viscosity depressants, pour point depressants, drag reducing additives, or other such additives in the Crude Petroleum shall require written approval by Operator thirty (30) Days prior to acceptance of Crude Petroleum into BOE Pipeline System.

12. ALLOCATION AND PRORATION.

- a. If the total volume of Crude Petroleum nominated exceeds the Available Capacity, Operator shall allocate Available Capacity as follows:
 - i. 90 % of Available Capacity shall be reserved for Committed Shippers (“**Committed Capacity**”);
 - ii. 10% of Available Capacity shall be reserved for Uncommitted Shippers (“**Uncommitted Capacity**”);
 - iii. Committed Capacity and Uncommitted Capacity shall be allocated and prorated as follows:

1. First, Committed Capacity will be allocated to each Committed Shipper an amount equal to the lesser of each Committed Shipper's confirmed Nomination, or the maximum of each Committed Shipper's Committed Volume under their CPTA. In the event of a pipeline capacity limitation or reduction, Committed Capacity will be prorated based on Committed Volume.
 2. Second, if any Committed Capacity remains after all Committed Shipper confirmed Nominations have been satisfied as set forth above, such remaining Committed Capacity shall be considered Uncommitted Capacity until such time that Committed Shipper Nominations increase.
 3. Uncommitted Capacity, including any unused Committed Capacity as determined above, shall be allocated to Uncommitted Shippers based on each Uncommitted Shipper's confirmed Nomination.
 4. Available Capacity remaining after allocation to Uncommitted Shippers as set forth above shall be allocated to Committed Shippers. Such remaining Available Capacity shall be prorated based on Committed Volume.
- b. Use of Committed Capacity by the Uncommitted Shippers shall in no way relieve a Committed Shipper of any of its obligations for making deficiency payments to Operator or in any way create or represent a credit for deficiency payments owed to Operator by a Committed Shipper.
- c. To penalize inflation of Shipper's Nominations, in the event Shipper does not use all the capacity allocated to Shipper during a proration Month, (a) Shipper shall pay a fee for each Barrel of unused capacity equal to 100% of the current tariff, and (b) Shipper's capacity allocation for the next proration Month shall be reduced by the amount of such unused capacity.

13. **PRODUCTS INVOLVED IN LITIGATION AND LEGALITY OF SHIPMENT**

Shipper warrants that it owns or controls and has the right to deliver or have delivered for its account, all crude petroleum delivered to Operator and shall indemnify and hold Operator and its contractors harmless from and against any claims or liabilities (including attorney fees and costs) regarding such ownership, control or right to deliver. Crude petroleum which is in any way involved in litigation, or the ownership of which may be in dispute, or which is encumbered by a lien or charge of any kind, will not be accepted for shipment unless and until the Shipper shall furnish a bond or other form of indemnity satisfactory to Operator protecting it and its contractors against any liability or loss arising as a result of such litigation, dispute, lien or charge. Operator may agree to accept crude petroleum which is subject to a lien in favor of a lender of Shipper; provided, Shipper, Operator and the lender enter into an agreement in form reasonably acceptable to Operator whereby lender subordinates its rights under that lien to those of Operator, its contractors and persons indemnified by Shipper hereunder.

14. **FORCE MAJEURE**

- a. "Force Majeure" means any act, event, condition or occurrence that (i) prevents Operator from performing its obligations; (ii) is beyond the reasonable control of Operator; and (iii) Operator is unable to overcome by the exercise of due diligence.

- b. **“Enumerated Circumstance”** means any of the following acts, events, conditions and occurrences in respect to Operator:
- i. act of God, fire, lightning, landslide, earthquake, storm, hurricane, flood, washout, natural disaster or explosion;
 - ii. act of war, act of terrorism, blockade, insurrection, riot, order or act of civil or military authority;
 - iii. breakage, damage, or destruction of or accident or damage to machinery, equipment, or lines of pipe, necessity to make unscheduled or unexpected replacements, repairs, tests, or alterations to machinery, equipment or lines of pipe, or line freeze-up; or
 - iv. act, order, determination, or requisition of any Governmental Authority.
- c. Operator shall not be liable for damages or in any other remedy, legal or equitable, to Shipper for nonperformance or delay in performing Operator’s obligations to the extent such nonperformance or delay is due to or results from a Force Majeure or Enumerated Circumstance, and Operator shall not be required to perform hereunder to the extent of and for the duration of any Force Majeure or Enumerated Circumstance.

15. **INDEMNITY**

- a. OPERATOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SHIPPER, ITS PARENT AND AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES FROM AND AGAINST ANY CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, COSTS, DAMAGES, FINES, PENALTIES AND EXPENSES (COLLECTIVELY **“LIABILITIES”**) TO THE EXTENT ARISING IN CONNECTION WITH THIS AGREEMENT FROM: (A) THE DIRECT NEGLIGENCE OR WILLFUL MISCONDUCT OF OPERATOR, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES; OR (B) THE FAILURE OF OPERATOR TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THESE RULES AND REGULATIONS OR THE CPTA.
- b. SHIPPER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OPERATOR, ITS PARENT AND AFFILIATES, AND ITS AND THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES, FROM AND AGAINST ANY LIABILITIES TO THE EXTENT ARISING IN CONNECTION WITH THIS AGREEMENT FROM: (A) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SHIPPER, ITS EMPLOYEES, AGENTS, CONTRACTORS, AND OTHER REPRESENTATIVES; OR (B) THE FAILURE OF SHIPPER TO COMPLY WITH THE MATERIAL TERMS AND CONDITIONS OF THESE RULES AND REGULATIONS OR THE CPTA.
- c. THE INDEMNITIES EXPRESSED HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. WITHOUT LIMITATION OF THE DISPUTE RESOLUTION PROVISIONS OF SECTION 16 HEREOF, THE PARTIES HEREBY WAIVE AND RELINQUISH ALL RIGHTS AND REMEDIES INCONSISTENT WITH THE INDEMNITIES SET FORTH HEREIN.

16. **DISPUTE RESOLUTION**

- a. Any controversy or claim arising out of or relating to these Rules and Regulations or the CPTA, or the breach hereof or thereof (“**Dispute**”), shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrators will be selected from a panel of persons having experience with and knowledge of the oil pipeline business. The place of arbitration shall be Denver, Colorado. The number of arbitrators shall be one (1), except that if the amount of any party’s claim exceeds \$1 million, exclusive of interest and attorneys’ fees, the dispute shall be heard and determined by three arbitrators.
 - b. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator(s), all reasonable pre-award expenses for the arbitration, including the arbitrators’ fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys’ fees.
 - c. The arbitrator(s) shall determine the Dispute of the parties and render a final award in accordance with Applicable Law, and subject to the limitation of liability provisions hereof. The arbitrator shall set forth the reasons for the award in writing. The terms hereof shall not limit any obligation of a party to defend, indemnify or hold harmless another party against court proceedings or other claims, losses, damages, or expenses. In the event such ancillary dispute between the applicable parties arises out of the Dispute, it may be resolved in the arbitration proceedings. The decision of the arbitrator shall be final and binding upon the Parties without appeal to the courts. The arbitrator is not empowered to render any award other than monetary damages or to award damages inconsistent with the provisions of these Rules and Regulations or the CPTA in excess of compensatory damages, and each party waives its right, if any, to recover any damages in excess of those provided for under these Rules and Regulations or the CPTA. The parties shall share equally the costs of the arbitrator and any hearing expenses. In determining any matter submitted to arbitration, the arbitrators will apply the law controlling the CPTA, as specified therein.
- a. BY AGREEING TO BINDING ARBITRATION, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ARBITRATION CLAIM. FURTHERMORE, WITHOUT INTENDING IN ANY WAY TO LIMIT THE AGREEMENT TO ARBITRATE, TO THE EXTENT ANY ARBITRATION CLAIM IS NOT ARBITRATED, THE PARTIES IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF SUCH ARBITRATION CLAIM. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE AGREEMENT TO ARBITRATE.
 - b. THIS DISPUTE RESOLUTION PROVISION DOES NOT LIMIT THE RIGHT OF EITHER PARTY TO: (1) EXERCISE SELF-HELP REMEDIES, SUCH AS SETOFF AND EXECUTION OF LIEN RIGHTS; (2) INITIATE JUDICIAL OR NONJUDICIAL FORECLOSURE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL; (3) EXERCISE ANY JUDICIAL OR POWER OF SALE RIGHTS, OR (4) ACT IN A COURT OF LAW TO OBTAIN AN INTERIM REMEDY, SUCH AS BUT NOT LIMITED TO, INJUNCTIVE RELIEF, WRIT OF POSSESSION OR APPOINTMENT OF A RECEIVER, OR ADDITIONAL OR SUPPLEMENTARY REMEDIES.

- c. As a condition precedent to recovery, claims for loss, damage or delay by Shipper must be filed in writing with Operator within six (6) months after the delivery of the Crude Petroleum or in case of failure to make delivery, within six (6) months after a reasonable time for delivery has elapsed; and the Dispute Resolution process must be commenced by Shipper within twelve (12) months thereafter. If claims are not filed and the Dispute Resolution process timely commenced, Operator shall not be liable and such claims will not be paid.

17. OTHER CONTRACTS REQUIRED

Separate contracts in accordance with these Rules and Regulations covering further details may be required by Operator before any duty for transportation shall arise.

END