

Enbridge Pipelines Inc.  
3000 Fifth Avenue Place  
425 – 1<sup>st</sup> Street S.W.  
Calgary, AB T2P 3L8  
Canada

Ralph Fischer  
Director, Planning & Analysis  
Phone: (403) 266 8319  
Fax: (403) 231 5787  
ralph.fischer@enbridge.com

## CERTIFIED MAIL

October 17, 2008

North Dakota Public Service Commission  
State Capital – 12<sup>th</sup> Floor  
Bismarck, ND 58505-0480  
Attn: Public Utility Division

Oil Pipeline Tariff Filing  
Docket No. IS09-2-\_\_\_\_\_

RECEIVED

OCT 20 2008

PUBLIC SERVICE COMMISSION

**Re: Withdrawal of proposed tariff publication in accordance with 18 CFR Section 341.13(a)**

**Enbridge Pipelines (North Dakota) LLC N.D.P.S.C. No. 53**

Tariff Department:

In accordance with 18 CFR § 341.13(a), Enbridge Pipelines (North Dakota) LLC (“Enbridge North Dakota”) hereby withdraws N.D.P.S.C. No. 53, filed on October 1, 2008 with a proposed effective date of December 1, 2008.

The withdrawal is effective on October 17, 2008, the date of the filing of this withdrawal letter with the Commission.

We hereby certify that, on this date, copies of this filing have been sent, via First Class U.S. Postal Services, or by other means of transmission agreed upon by the subscriber, to all subscribers on Enbridge North Dakota’s subscribers list.

Please date stamp the enclosed extra copy of this withdrawal letter and return it to the messenger.

Questions concerning this can be directed to Feisal Gazie at (403) 231-5940.

Sincerely,



Ralph Fischer  
Director, Planning & Analysis

cc. Tariff Subscribers

**RULES AND REGULATIONS**

**60. PAYMENT OF TRANSPORTATION AND OTHER CHARGES (Concluded)**

If said charges or any part thereof shall remain unpaid five days, computed from the first seven o'clock a.m. after written notice is mailed to shipper of intention to enforce Carrier's lien as herein provided, or when there shall be failure to take the Crude Petroleum at the point of destination as provided in Item 55 within five days, computed from the first seven o'clock a.m. after expiration of the notice therein provided, Carrier shall have the right through an agent, to sell said Crude Petroleum at public auction for cash, between the hours of ten o'clock a.m. and four o'clock p.m. on any day not a legal holiday, and not less than twenty-four-hours after notice of the time and place of such sale and the quantity, general description, and location of the Crude Petroleum to be sold has been published in a daily newspaper of general circulation published in the town or city where the sale is to be held, and sent by [C] ~~telegraph~~ or telefax to the shipper. Carrier may be a bidder and purchaser at such sale. Out of the proceeds of said sale Carrier may pay itself all transportation, demurrage, and other lawful charges, expense of notice, advertisement, sale, and other necessary expense, and expense of caring for and maintaining the Crude Petroleum, and the balance shall be held for whomsoever may be lawfully entitled thereto.

(b) The Carrier may, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing the general lien described in this Rule.

Item 65C cancels Item 65B

**Item 65C. PRORATION OF PIPE LINE CAPACITY**

(a) When there shall be nominated to Carrier, for transportation, more crude petroleum than can be immediately transported on a line segment, the transportation furnished by Carrier shall be apportioned among Shippers on an equitable basis. Line segments will be prorated separately if necessary.

(b) Space in each segment will be allocated among "Regular Shippers" and any "New Shippers" as follows:

- (i) For the purposes of this section, these terms are defined as follows:
  - "**Actual Shipments**" means volumes of Crude Petroleum that originate and are physically tendered at a Regular Receiving Point during a month. For greater certainty, volumes re-entering at intermediate points will not be considered to be Actual Shipments.
  - "**Available Capacity**" means the total capacity of the pipeline segment or segments thereof, available to transport crude petroleum, less any Existing Lease Volume.
  - "**Average Monthly Volume**" means the average of a Regular Shipper's monthly volumes of crude petroleum calculated as follows with respect to the line segment or segments:
    - a. With respect to movements nominated during August 2007 for transportation in September 2007, the Average Monthly Volume of a Regular Shipper under Carrier's Tariff No. 47 will be calculated in accordance with Item 65 of Tariff No. 47. For clarity, the terms of Item 65 of Carrier's Tariff No. 47 will apply to movements nominated in August 2007, when such Tariff was in effect.
    - b. With respect to movements nominated during September 2007 for transportation in October 2007, the Average Monthly Volume of a Regular Shipper as defined herein will be calculated based on the volumes allocated to such Shipper during the month of September 2007 under the terms of Item 65 of Carrier's Tariff No. 47.
    - c. With respect to movements nominated during October 2007 for transportation in November 2007, and all subsequent months following the effective date of this Tariff:
      - i. November 2007 Average Monthly Volume will be calculated based on September 2007 actuals;
      - ii. December 2007 Average Monthly Volume will be calculated based on the average of September 2007 and October 2007 actuals;
      - iii. January 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including November 2007 actuals;
      - iv. February 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including December 2007 actuals;
      - v. March 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including January 2008 actuals;

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RULES AND REGULATIONS

**65C. PRORATION OF PIPE LINE CAPACITY (Continued)**

- vi. April 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including February 2008 actuals;
- vii. May 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including March 2008 actuals;
- viii. June 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including April 2008 actuals;
- ix. July 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including May 2008 actuals;
- x. August 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including June 2008 actuals;
- xi. September 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including July 2008 actuals;
- xii. October 2008 Average Monthly Volume will be calculated based on the average of September 2007 to and including August 2008 actuals;
- xiii. November 2008 Average Monthly Volume will be calculated based on the average of October 2007 to and including September 2008 actuals;
- xiv. December 2008 Average Monthly Volume will be calculated based on the average of November 2007 to and including October 2008 actuals;
- xv. And continued thereafter on a cumulative rolling basis.

**“Base Period”** means a cumulative rolling period up to and including 12 months as defined in subsections i. through xv. of (b)(i)c. hereof. For clarity, the Base Period under this Tariff commences in the first month in which this Tariff becomes effective (September 2007), and the Base Period applies whether or not any particular line segment is in proration in a given month.

**“Binding Nomination”** means the volume allocated to a Shipper during a period of apportionment.

**“Financial Penalty Revenue”** means revenue derived from the imposition of the Non-Performance Penalty.

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

**“New Shipper”** is any Shipper that is not a Regular Shipper.

**“Non-Performance Penalty”** means an amount equal to the product of the applicable tariff multiplied by the difference between that Shipper's Binding Nomination and its Actual Shipments during said month.

**“Regular Shipper”** means (i) solely for transportation in September 2007, a shipper that was a Regular Shipper under Item 65 of Carrier's Tariff No. 47 prior to September 1, 2007, and (ii) for transportation from October 2007-forward, a shipper that had Actual Shipments with respect to any line segment or segments prior to September 1, 2007. A Shipper that is not a Regular Shipper under the prior sentence becomes a Regular Shipper as soon as it has Actual Shipments in at least nine months of twelve months in the Base Period. The Average Monthly Volume of a Regular Shipper will be calculated over the entire Base Period including any months for which no movements are credited. A Regular Shipper ceases to be a Regular Shipper if it has no Actual Shipments for four or more months out of the Base Period. Thereafter, that shipper will be treated as a New Shipper unless and until it meets Regular Shipper criteria.

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RULES AND REGULATIONS

**65C. PRORATION OF PIPE LINE CAPACITY (Continued)**

- (ii) Beginning with nominations in September 2007 for transportation in October 2007 (and for subsequent months while this provision is in effect), the provisions of subsections (ii), (iii) and (iv) shall apply to prorationing of volumes on all line segments of Carrier's system. Each Regular Shipper shall be allocated an amount equal to one hundred (100) percent of its Average Monthly Volume for the line segment being prorated, with the total of all Regular Shippers' allocations not exceeding ninety (90) percent of the total Available Capacity. If a Regular Shipper's nomination for a month is less than its Average Monthly Volume, the Regular Shipper will be apportioned only the amount of its nomination. Should the total of all Regular Shippers' allocations be greater than ninety (90) percent of Available Capacity, all Regular Shippers' allocations will be adjusted on a prorata basis. The volume to be deducted from each Regular Shipper's Average Monthly Volume allocation will be determined by dividing each Regular Shipper's Average Monthly Volume by the total of all Regular Shippers' Average Monthly Volumes, and multiplying it by the volume in excess of the ninety (90) percent Available Capacity.
- (iii) New Shippers shall be allocated up to ten (10) percent of the total Available Capacity for the line segment being prorated, but no more than **[D] 1.0** percent of the total Available Capacity for the line segment will be allocated to any New Shipper (including capacity allocated to any affiliate or subsidiary of such New Shipper). Each New Shipper's allocation shall be determined by multiplying the lesser of such New Shipper's nomination or **[D] 1.0** percent of total Available Capacity by the resultant fraction obtained by dividing the ten (10) percent available capacity by the total volume of New Shippers' nominations (subject to the **[D] 1.0** percent cap). Should the total of all New Shippers' allocations be greater than ten (10) percent of Available Capacity, all New Shippers' allocations will be adjusted on a prorata basis.
- (iv) Any remaining unallocated Available Capacity shall be allocated to the Regular Shippers **[C] and New Shippers** based on a proportionate share as determined by multiplying each **[N] Regular [W] Shipper's** nomination (less any volume allocated in **[W] step (ii) [C] and (iii)** above) by the resultant fraction obtained by dividing the remaining Available Capacity by the total volume of all Regular Shippers' **[C] and New Shippers'** nominations (less any volume allocated in **[W] step (ii) [C] and (iii)** above).
- (v) **[N] Following the completion of the allocation process as outlined in Items 65(i) through (iv) above, should there be any unallocated Available Capacity, such remaining Available Capacity will be allocated to Shippers on a proportionate basis by multiplying such Shipper's nomination (less any volume allocated in steps (ii), (iii) and (iv) above) by the resultant fraction obtained by dividing the remaining Available Capacity by the total volume of all Shippers' nominations (less any volume allocated in steps (ii), (iii) and (iv) above).**
- (c) In no event will any portion of allocated capacity to a New Shipper be used in such a manner that it will increase the allocated capacity of another Shipper beyond the allocated capacity that Shipper is entitled to under the provisions stated herein.
- (d) No individual Shipper nomination shall be considered beyond the physical capacity of the pipeline segment(s) that the nominated Crude Petroleum will be transported on. Nominations in excess of these limits will be reduced accordingly.
- (e) Except during a Force Majeure event, if a Shipper is unable to tender Crude Petroleum equal to the space allocated to it, Carrier will implement the following penalties:
- (i) Once Carrier has determined the capacity allocated to each Shipper for a given month under the provisions stated herein, it shall provide notice to each Shipper of its allocated capacity, i.e. its Binding Nomination for the month. If any Shipper fails to tender a volume of Crude Petroleum during the month equal to ninety percent (90%) of its Binding Nomination for that month, that Shipper shall pay to Carrier (in addition to the tariff charge for the volumes actually transported) the Non-Performance Penalty. If a shipper is subject to the Non-Performance Penalty, the volume of Crude Petroleum that will be accepted by the Carrier from such Shipper in each of the next three months will be limited to no more than the volume that the Shipper actually shipped during the month of prorationing.
- For example, if a Shipper's Binding Nomination was 100,000 bbls/d in January and the Actual Shipment was 80,000 bbls/d the Shipper would be invoiced for 100,000 bbls per day for January and in March, April and May the Shipper would be allocated no more than 80,000 bbls/d.

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## RULES AND REGULATIONS

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### 65C. PRORATION OF PIPE LINE CAPACITY (Concluded)

- (ii) The Financial Penalty Revenue, plus interest calculated in accordance with the Commission's regulations (18 C.F.R. § 340.1 (c)), collected from imposition of the financial penalty will be accounted for in a separate account, and refunded to Shippers who did not incur the Non-Performance Penalty during a calendar quarter. The interest associated refund with interest will be made on a quarterly basis.
  - (iii) The Binding Nomination will be determined at the mainline receipt points where multiple leases in the adjacent field area would be consolidated to enter the pipeline. Furthermore, if the Shipper has multiple receipt points that enable them to ship, the penalty would not be applied at each individual receipt point but only on a cumulative basis. If the volumes tendered are not equal to or in excess of 90% of the capacity allocated to the Shipper, then the Shipper will be penalized.
  - (iv) [N] For the purposes of calculating the Non-Performance Penalty, Carrier will rely on information as provided by the operator of a connecting facility to determine whether sufficient volume has been tendered to Carrier to meet a Shipper's binding nomination. If there is a dispute between Carrier's information and a Shipper's information, the Shipper is required to resolve the discrepancy with the operator of the connecting facility within thirty (30) days of the last day of the month in which transportation occurred.
- (f) Prorated volumes allocated to a Shipper may not be assigned, conveyed, loaned, transferred to, or used in any manner by another Shipper. However, a Shipper's historical allocation rights may be transferred as an incident of the bona fide sale of the Shipper's business or to a successor to the Shipper's business by the operation of law, such as an executor or trustee in bankruptcy. In the event that the transferring Shipper chooses to become a Shipper on the system at some point in the future, they will be regarded as a New Shipper until such time as they meet the criteria to become a Regular Shipper.
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### 70. APPLICATION OF RATES

- (a) Crude Petroleum received for transportation shall be subject to the rates in effect on the date of receipt of such Crude Petroleum by Carrier, irrespective of the date of the tender.
  - (b) From any point not named in this tariff which is intermediate to a point from which rates are published herein, through such unnamed point, Carrier shall apply from such unnamed point, the rate published herein from the next more distant point.
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### 71. INTRASYSTEM CHANGE IN OWNERSHIP

(a) Notice of change in ownership of Crude Petroleum shall be recognized and recorded only where such Crude Petroleum entered Carrier's system and only on a monthly basis. Statements denoting ownership transactions shall be provided to the applicable transferors and transferees. Carrier shall not provide any information as to the quality of the Crude Petroleum subject to changes in ownership except for gravity on current receipts when requested. Each transferor shall be charged [U] one-quarter cent (.25¢) per barrel for recognizing and recording the change in ownership and, if required, shall pay said charge prior to the recognizing and recording of such change. The transferor, at Carrier's option, shall provide an irrevocable letter of credit satisfactory to Carrier prior to such recognizing and recording. The recognition by Carrier of a change in ownership of Crude Petroleum requires the recording thereof, and Carrier is entitled to a lien for all such charges and fees.

(b) Carrier shall not be obligated to recognize and record changes in ownership of Crude Petroleum during any operating month unless the transferor and transferee requesting Carrier to recognize and record the change in ownership shall, each, on or before the 15th day of the preceding calendar month provide written notice to Carrier containing like data relative to the kind, quantity, source, location, transferor and transferee of the Crude Petroleum. Carrier shall not be obligated to accept any modification in said notice unless confirmed in writing by the transferor and transferee on or before the last day of the calendar month preceding the operating month.

(c) When the quantity of the Crude Petroleum received during the operating month is not equivalent to the quantity of the Crude Petroleum subject to the notice of change in ownership, Carrier shall not be required to recognize and record the change in ownership beyond the extent of the quantity received.

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**RULES AND REGULATIONS**

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**71. INTRASYSTEM CHANGE IN OWNERSHIP (Concluded)**

(d) A notice of change in ownership of Crude Petroleum shall be deemed: (1) a warranty that the transferor has unencumbered title to the Crude Petroleum identified in its notice at the time of change in ownership, and (2) a representation that the change in ownership is effective as of 8:00 o'clock a.m. (Central Standard Time) on the first day of the operating month.

(e) Carrier may, in the absence of adequate security, decline to recognize and record any change in ownership of Crude Petroleum.

(f) A transfer of a Shipper's rights and obligations under [W] Rule 71 respecting its Crude Petroleum will not be binding or effective on the Carrier until the Carrier has provided a notice of acceptance to the transferor and transferee. The Carrier will not provide a notice of acceptance of a transfer until such time as the transferee has satisfied the Carrier of its capacity to undertake the transferor's obligations and has provided any Financial Assurances requested by the Carrier in accordance with Rule 102 of this tariff.

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**75. DIVERSION AND RECONSIGNMENT**

Diversion or reconsignment may be made without charge if requested in writing by the shipper prior to delivery at original destination, subject to the rates, rules and regulations applicable from original reception point to final delivery point, upon condition that no out-of-line or backhaul movement will be made.

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**80. TITLE AND LEGALITY OF SHIPMENT**

A tender of Crude Petroleum shall be deemed a warranty of title by the party tendering, but acceptance shall not be deemed a representation by the Carrier as to title. The Carrier may, in the absence of adequate security, decline to receive any Crude Petroleum which is in litigation, or as to which a dispute over title may exist or which is encumbered by any lien of which the Carrier has notice.

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**85. LIABILITY OF CARRIER**

(a) Carrier, while in possession of any Crude Petroleum, shall not be liable for any loss thereof, or damage thereto, or delay, caused by act of God, the public enemy, quarantine, the authority of law, or of public authority, strikes, riots, insurrection, inherent nature of the goods, or the act or default of the shipper or consignee.

(b) Any losses of Crude Petroleum shall be charged proportionately to each shipper in the ratio that its Crude Petroleum or portion thereof, received and undelivered at the time the loss occurs, bears to the total of all Crude Petroleum then in Carrier's possession for transportation via the lines or other facilities in which the loss occurs, and Carrier shall be obligated to deliver only that portion of such Crude Petroleum remaining after deducting shipper's proportion of such loss determined as aforesaid. Transportation charges will be assessed only on the quantity delivered.

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**86. LIABILITY OF SHIPPER**

(a) Shipper shall indemnify and save Carrier harmless from any and all personal injuries, property damage (including full or partial loss of use of property), damages, claims, suits, costs and recoveries of every name and nature which may in any manner arise or grow out of breach of warranty or representation of the shipper with respect to any shipment tendered by such shipper and transported by Carrier, whether due to the negligence of Carrier, its contractors, officers, agents and employees; and in the event any suit or action shall be brought against Carrier to recover on account of such loss, damage, injury or destruction agreed to be borne by shipper, shipper shall appear and defend any such suit or action and pay any judgment that may be obtained against Carrier.

(b) Shipper shall also be liable to Carrier for property damage, including damages for loss of use of any of its facilities, which may in any manner arise or grow out of shipper's breach of warranty or representation with respect to any shipment tendered by it and transported by Carrier.

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**RULES AND REGULATIONS**

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**90. CLAIMS SUITS AND TIME FOR FILING**

As a condition precedent to recovery, claims must be filed in writing with Carrier within nine (9) months and one (1) day after delivery of the property, or, in case of failure to make delivery, then within nine (9) months and one (1) day after a reasonable time for delivery has elapsed; and suits shall be instituted against Carrier only within two (2) years and one (1) day from the day when notice in writing is given by Carrier to the claimant that 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.

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**96. PIPEAGE OR OTHER CONTRACTS REQUIRED**

Separate pipeage and other contracts in accord with this tariff and these regulations covering further details may be required by the Carrier before any duty of transportation shall arise.

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**101. DUTY OF CARRIER**

Carrier shall not be required to transport Crude Petroleum except with reasonable diligence, considering the quantity of Crude Petroleum, the distance of transportation, the safety of operation, and other material factors.

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**102. FINANCIAL ASSURANCES**

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

(b) Subject to the provisions of Rule 102 (c), the Carrier, upon notice to the Shipper, may only require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier, to be provided at the expense of the Shipper:

(i) prepayment; (ii) a letter of credit in favour of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier, in a form and from an institution acceptable to Carrier; (iii) a guaranty in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or (iv) such other enforceable collateral security, including but not limited to security agreements over assets of the Shipper, in a form acceptable to the Carrier ("the Financial Assurances").

(c) In the event that the Carrier reasonably determines that:

(i) the existing or prospective Shipper's financial condition is or has become impaired or unsatisfactory; (ii) any Financial Assurances previously provided by a Shipper no longer provide adequate security for the performance of the Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or (iii) the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper, then the Shipper shall provide Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum by the Carrier. For the purpose of this tariff, and without limiting the generality of the charges and costs lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum, those charges and costs shall include transportation charges, equalization obligations, negative Shipper's balance positions and the allowance oil. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) days of Shipper's receipt of Carrier's written request for such Financial Assurances.

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**RULES AND REGULATIONS**

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**EXPLANATION OF ABBREVIATIONS**

API	American Petroleum Institute
ASTM	American Society of Testing and Materials
No	Number
FERC	Federal Energy Regulatory Commission
NDPSC	North Dakota Public Service Commission

**Symbols:**

[C] – Cancel.

[D] – Decrease.

[N] – New.

[W] – Change in wording only.

[U] – Unchanged.