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**ENBRIDGE PIPELINES (NORTH DAKOTA) LLC**

October 8, 2010

**Oil Pipeline Tariff Filing**

**RECEIVED**

OCT 11 2010

**PUBLIC SERVICE COMMISSION**

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

Tariff Department:

Enclosed for filing with the North Dakota Public Service Commission (NDPSC) are seven copies of the following tariff issued by Enbridge Pipelines (North Dakota) LLC (Enbridge North Dakota):

- N.D.P.S.C. Tariff No. 65, Rules and Regulations (cancels N.D.P.S.C. Tariff No. 64)

These tariffs bear an issuance date of October 8, 2010 and an effective date of October 1, 2010.

**Explanation of the Tariff Filing**

Enbridge North Dakota is making this tariff filing pursuant to the Commission's Order 132 FERC ¶ 61,274, issued September 30, 2010 pertaining to Docket No. IS10-614-000 (Commission Order). The FERC accepted in part FERC Tariff No. 71.1.0 (N.D.P.S.C. Tariff No. 64) subject to the following as per Commission Order:

*...we direct Enbridge North Dakota to change of wording of the definition of 'Average Monthly Volume' in Item 65(b) to be changed to 'the average of a Regular Shipper's monthly Actual Shipments during the Base Period with respect to the line segment or segments subject to prorating,' and to capitalize all other uses of the word 'tender' or 'tendered' in the new language to conform to the defined term in its tariff.*

Enbridge North Dakota submits that these are the only changes to this tariff.

**Notification**

I hereby certify that Enbridge North Dakota has, on or before this date, delivered copies of the above tariff to each person on Enbridge North Dakota's tariff subscriber list by U.S. postal service (First Class Mail) or by other means agreed upon.

1 **PU-10-604** Filed: 10/11/2010 Pages: 15  
NDPSC Tariff No. 65 cancelling NDPSC Tariff No. 64

A check in the amount of fifty dollars in payment of the filing fee has been sent via certified mail along with the paper copies of this tariff.

If you have any questions concerning this filing, please call Darren Hoeving at (403) 767-3709.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Fischer". The signature is fluid and cursive, with a large initial "R" and "F".

Ralph Fischer  
Director, Planning and Analysis

Enclosures

cc: Tariff Subscribers

N.D.P.S.C No. 65  
Cancels N.D.P.S.C. No. 64  
FERC ICA Oil Tariff

FERC No. 71.2.0  
Cancels FERC No. 71.1.0



# ENBRIDGE PIPELINES (NORTH DAKOTA) LLC

## LOCAL PROPORTIONAL TARIFF

### RULES AND REGULATIONS

GOVERNING THE GATHERING AND TRANSPORTATION OF

CRUDE PETROLEUM

BY PIPELINE

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#### GENERAL APPLICATION

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

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Note: For rates see Enbridge Pipelines (North Dakota) LLC Local Tariff applying on Crude Petroleum.

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[N] Enbridge Pipelines (North Dakota) LLC (Enbridge North Dakota) is filing FERC No. 71.2.0 in compliance with Order 132 FERC ¶ 61,274 in Docket No. IS10-614-000.

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[N] Issued on less than one day's notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a 30-day review period.

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**ISSUED: OCTOBER 8, 2010**

**EFFECTIVE: OCTOBER 1, 2010**

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**ISSUED BY:**

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## RULES AND REGULATIONS

### 5. APPLICATION

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The rates named in this tariff apply on the gathering and transportation of Crude Petroleum from the established receiving points of Enbridge Pipelines (North Dakota) LLC, hereinafter referred to as "Carrier", in the areas of Montana and North Dakota to established destination points of Carrier, in Minnesota, Montana and North Dakota, for the movement beyond to interstate destinations.

### 8. ACCEPTANCE OF DELIVERY

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The Carrier shall not be required to accept Delivery of Crude Petroleum from field batteries at intervals of less than 7 days, except in parcels of more than four hundred (400) Barrels each.

### 9. HEATING OF CRUDE PETROLEUM

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The Carrier may require Crude Petroleum Tendered hereunder to be heated prior to acceptance, and may refuse to accept Crude Petroleum Tendered at temperatures in excess of 120 degrees (120°) Fahrenheit.

### 10. DEFINITIONS

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As used in these rules and regulations, the following terms have the following meanings:

**"API gravity"** or **"gravity"** means gravity determined in accordance with the ASTM Designation D-287-82 or the latest revision thereof.

**"Barrels"** means 42 United States gallons at sixty degrees (60°) Fahrenheit.

**"Crude Petroleum"** means either (1) the direct liquid products of oil or gas wells regardless of gravity, which are produced at the well head in liquid form, or (2) the indirect liquid products of oil or gas wells recovered or extracted from gas, at gas plants or refineries, known as natural gas liquids and consisting of ninety percent (90%) or more pentanes and heavier hydrocarbons, regardless of gravity, or (3) a mixture of the direct liquid products of oil or gas wells with the indirect liquid products of oil or gas wells, as provided in Item 16.

**"Deliver"** and any derivative thereof means Delivered by Carrier to Shipper or to account of Shipper, at the delivery point as identified within Carrier's Tariff.

**"Financial Assurances"** means the Financial Assurances provided by the Shippers and accepted by the Carrier in accordance with Rule 102.

**"Linefill"** means the static quantity of Crude Petroleum including Working Stock needed to occupy the physical space within the pipeline and any applicable facilities.

**"Receipt"** means the volume transferred from Shipper at origin as identified within Carrier's Tariff to Carrier for transportation.

**"Shipper"** means the party that contracts with the Carrier for the transportation of Crude Petroleum under the terms of this tariff, and that has satisfied the Carrier of that party's capacity to perform its financial obligations that may arise from the transportation of its Crude Petroleum under the terms of this tariff and includes a transferee of a Shipper's rights and obligations, as approved in accordance with Rule 71(f).

**"Tender"** means an offer by a Shipper to Carrier of a stated quantity of Crude Petroleum for transportation from a specified reception point or points to a specified delivery point or points in accordance with these rules and regulations.

**"Working Stock"** means the volume Crude Petroleum required by the Carrier for the efficient operation of the pipeline.

**16. MIXTURES**

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- (a) The indirect liquid products of oil or gas wells, hereinafter referred to as indirect products, may be accepted and transported as a mixture with the direct liquid products of oil and gas wells, hereinafter referred to as direct products, provided the following conditions are met: (1) the Carrier's facilities permit segregation of the mixture; (2) the mixture is segregated from other streams which do not contain indirect products; and (3) the vapor pressure of the mixture does not exceed that permitted by Carrier's facilities and operating conditions.
- (b) The indirect products portion of the mixture may be accepted for transportation at reception points other than the one at which the direct products portion of the same mixture is received, provided that the consignee and destination are the same, and that operating conditions and Carrier's facilities permit the indirect products portion to be mixed with the direct products of the same consignee. The rate to be assessed on each portion of the mixture shall be the rate applicable from the point at which each is received. The direct and indirect products shall be measured and tested separately, and must be shown separately on the Tender form.
- (c) Mixtures may be transported and Delivered as Crude Petroleum. Nothing in this item is to be construed to waive provisions of Item 35 or to require Carrier to receive, transport and Deliver unmixed indirect products, except that unmixed indirect products may be gathered for subsequent mixing with direct products in accordance with this rule where facilities exist for performing a gathering service for such products.

**20. DESTINATION FACILITIES REQUIRED**

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- (a) Crude Petroleum shall be received for transportation only at established receiving points and when consigned to the Shipper or consignee at one or more regular delivery points.
- (b) No duty to transport shall arise until evidence satisfactory to Carrier has been furnished that consignee has provided necessary facilities to which Carrier is connected and has made necessary arrangements for accepting Delivery of shipments promptly on arrival at destination, as provided in these rules and regulations.

**26. SPECIFICATIONS AS TO QUALITY TRANSPORTED**

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- (a) Except as provided in Item 26(b), Carrier reserves the right to reject any Crude Petroleum offered for transportation other than good and merchantable Crude Petroleum of acceptable character which, when measured and tested by Carrier or Carrier's representative at the reception point, meets all of the following specifications:
  - (i) Readily susceptible to transportation through Carrier's existing facilities;
  - (ii) API gravity of between twenty three degrees (23°) and ninety degrees (90°) at sixty degrees (60°) Fahrenheit;
  - (iii) Reid vapor pressure which does not exceed 103 kilopascals;
  - (iv) Basic sediment, water and other impurities of one-half (1/2) of one (1) percent or less, with a maximum of three tenths (0.3) percent free water.
- (b) Carrier reserves the right to reject Crude Petroleum which does not meet the specifications set forth in Item 26(a) unless (1) it is Tendered for Delivery from a designated Shipper to a designated consignee, (2) Carrier's facilities and operating conditions permit the segregation of the off specification Crude Petroleum, and (3) the off specification Crude Petroleum is segregated from other Crude Petroleum which meets the specifications set forth in Item 26(a).
- (c) At Carrier's request, Shipper shall furnish Carrier with a certificate setting forth in detail the characteristics of each shipment offered for transportation and certifying that the shipment either (1) meets the specifications set forth in Item 26(a), or (2) the shipment is to be transported under Item 26(b). Carrier may, but shall not be required to, sample and/or test any shipment prior to or during Receipt of the shipment, for the purpose of verifying the characteristics of the shipment contained in a Shipper's certificate, and in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. Crude Petroleum which either (1) does not meet the specifications set forth in Item 26(a) or (2) is not being offered for transportation under Item 26(b), shall be deemed to be unmerchantable and a Shipper who offers unmerchantable Crude Petroleum shall be deemed to have breached the warranty and representation set forth in Item 40.

- (d) The presence of contaminants in Crude Petroleum including but not limited to chemicals such as chlorinated and/or oxygenated hydrocarbons and/or lead shall be reason for Carrier to reject any Crude Petroleum. Crude Petroleum containing such contaminants shall be deemed to be unmerchantable and a Shipper who offers contaminated Crude Petroleum shall be deemed to have breached the warranty and representation set forth in Item 40.
- (e) Carrier reserves the right to reject any Crude Petroleum offered or received for transportation when, in addition to the applicable specifications the sulfur content exceeds 0.5% by weight.

### **30. FACILITIES AT POINT OF ORIGIN REQUIRED**

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- (a) Shipper shall provide, at the origin station, adequate storage and other facilities for receiving, measuring, testing and collecting into minimum batch volumes.
- (b) Gathering services shall be performed only from established receiving points of Carrier to established origin stations of Carrier for movement beyond to established destinations.

### **35. SEGREGATION AND CHANGES IN QUALITY**

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- (a) Crude Petroleum offered for transportation shall be received by Carrier only on the condition that it shall be subject to such changes in gravity or quality while in transit as may result from the transportation thereof or the mixture of said Crude Petroleum with other Crude Petroleum in the pipe lines or facilities of Carrier.
- (b) Carrier shall be under no obligation to make Delivery of the identical Crude Petroleum received, and (1) in the case of any stream, other than a mixed stream, shall make Delivery out of its common stock of that stream, and (2) in the case of a mixed stream, shall make Delivery out of its common stock of that stream. Any revaluations deemed appropriate by reason of difference in grade and/or quality that occur, by reason of the mixing, between Receipt of the component parts and Delivery of the stream, shall be between and for the account of the Shipper and consignee. Carrier shall have no responsibility in or for such revaluations or settlements other than to furnish such data as it may have in its possession on the quality and gravity of the Crude Petroleum received into and Delivered out of the mixed stream.
- (c) Notwithstanding the provisions of sub-sections (a) and (b) of this item, if Crude Petroleum offered is of a kind or quality not being currently transported through Carrier's facilities, Carrier shall at the request of the Shipper and to the extent permitted by its existing facilities, endeavor to segregate such Crude Petroleum during the transportation and to make Delivery of substantially the same Crude Petroleum at destination; provided that in such instances Carrier may require the Shipper to make such Crude Petroleum available in such quantities and at such times as may be necessary to permit such segregated movements.
- (d) The Carrier shall not be liable for failure to Deliver the identical Crude Petroleum or for any variations in quality while in its custody, nor shall Carrier be liable for any consequential loss resulting from any variations in quality of Crude Petroleum while in its custody.
- (e) CARRIER MAKES NO WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT TO THE GRADE OR QUALITY OF CRUDE PETROLEUM TRANSPORTED UNDER THIS TARIFF.

### **40. TENDERS AND QUANTITIES ACCEPTED**

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- (a) Shippers desiring to offer Crude Petroleum for transportation shall make such offer to Carrier by submitting. On Carrier's prescribed Notice of Shipment form or other form acceptable to Carrier, a separate Tender for each calendar month on or before the 15th day of the preceding month. On or before December 31 of each year, Shipper's desiring to offer Crude Petroleum for transportation during the following year shall submit on Carrier's prescribed Notice of Shipment form a blanket Tender for the following year.
- (b) A monthly Tender shall be accepted only when the total quantity covered thereby shall be made available for transportation within said calendar month at a daily rate, or in quantities and at times, to be specified by Carrier. Except as hereunder provided, Carrier shall not specify a daily rate or a quantity of less than 5,000 Barrels.

- (c) Each monthly Tender by a Shipper shall contain either (1) a warranty in favor of Carrier that the Crude Petroleum identified in the Tender meets Carrier's specifications as set forth in Item 26(a), or (2) a statement that the Crude Petroleum identified in the Tender is being offered for transportation under Item 26(b).
- (d) If space is available and operating conditions permit Carrier may, at its discretion, accept monthly Tendents after the 15th of the month and take Delivery of Crude Petroleum in lots less than 5,000 Barrels. If Carrier approves a Shipper's proposed Tender pursuant to this section, Carrier is not obligated to accept Shipper's Tender until the business day following the day Carrier's approval is granted. However, in no event shall Carrier undertake to make a single Delivery of less than 5,000 Barrels. A single Delivery is a Delivery in one continuous operation into a single facility to which Carrier is connected.
- (e) All communications relating to a Shipper's nominations, Tendents, payment of invoices or other matters pertaining to the Shipper's business with Carrier shall be conducted solely by an officer or employee of the Shipper; provided that the Shipper may, in writing, designate to Carrier an agent to act on the Shipper's behalf in conducting such communications so long as the written designation states that: (i) the Shipper acknowledges that all Shippers using the same agent will be deemed to be affiliates of one another for purposes of Item 65(b); (ii) the Shipper consents to disclosure of any and all information regarding the Shipper's nominations, Tendents, payment of invoices, or other business with Carrier to such agent and releases Carrier and holds Carrier harmless from any and all liability relating to such disclosure, and; (iii) such designation shall be valid and binding on Shipper until Carrier receives written notice from Shipper expressly terminating such designation.

#### **45. GAUGING, TESTING AND DEDUCTIONS**

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- (a) Prior to or during Receipt of Crude Petroleum Tendered by a Shipper, and prior to or during release thereof for Delivery to a consignee, it shall be measured and tested by a representative of Carrier. At Carrier's option, the Crude Petroleum may be measured by metering or gauging. At Carrier's option, measurements and tests may be made on composite samples. The results of such gauging or metering and testing shall be final.

If tank gauges are used, quantities shall be computed from correctly compiled tank tables on a one hundred percent volume basis. The Shipper or consignee may be present or represented at such gauging or metering and testing. A representative of Carrier shall have the right to enter upon the premises where such Crude Petroleum is received or Delivered and have access to any and all tanks, storage receptacles or meters for the purpose of such gauging or metering and testing and to make any examination, inspection, measurement or test authorized by these regulations.

- (b) Crude Petroleum shall be received and Delivered with volume corrected as to temperature from observed degrees Fahrenheit to sixty degrees (60°) Fahrenheit. A centrifuge or other methods agreed upon shall be used for ascertaining the percentage of basic sediment, water or other impurities in the Crude Petroleum, and the full amount of basic sediment, water and other impurities shall be deducted from the corrected volume.
- (c) A further deduction of ONE QUARTER OF ONE PERCENT (.25%) as allowance oil shall be made by the Carrier upon Delivery to the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

#### **50. EVIDENCE OF RECEIPTS AND DELIVERIES**

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Crude Petroleum received from the Shipper and Delivered to the consignee shall, in each instance, be evidenced by a ticket, showing quantity received or Delivered as the case may be, temperature, basic sediment and water, and any other data essential to the determination of quantity. Unless otherwise agreed by the Carrier, Shipper and/or consignee, such tickets shall be signed by a representative of the Carrier, as appropriate, and shall constitute full receipt for the Crude Petroleum received or Delivered.

#### **51. LINE FILL AND STORAGE**

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- (a) Each Shipper shall supply its quantity of line fill and Working Stock as determined from time to time by Carrier.
- (b) Carrier has working tanks required in the process of transporting Crude Petroleum, but has no other tankage and, therefore, does not have facilities for rendering, nor does it offer a storage service.

**55. DELIVERY AND DEMURRAGE**

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- (a) Carrier shall transport and Deliver Crude Petroleum with reasonable diligence and dispatch but shall accept no Crude Petroleum to be transported in time for any particular market.
- (b) After any shipment has had time to arrive at destination, Carrier may begin Delivery at its current rate of pumping.
- (c) Inasmuch as Carrier has no facilities for rendering, nor does it offer, a storage service, time for accepting Delivery is of the essence, and upon failure to accept promptly any shipment, a demurrage charge four tenths of one cent (0.4¢) per barrel per day of twenty-four-hours shall accrue on any part of said shipment offered for Delivery and not taken as prescribed in paragraph (b) of this item. After expiration of said notice, Carrier's liability for loss, damage, or delay shall be that of warehouseman only.

**60. PAYMENT OF TRANSPORTATION AND OTHER CHARGES**

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- (a) The Shipper shall be responsible for payment of transportation and all other charges as provided for in this tariff or otherwise lawfully due to the Carrier applicable to the shipment, and if required, shall prepay such charges or furnish Financial Assurances satisfactory to Carrier. Carrier shall have a lien on all of a Shipper's Crude Petroleum accepted for transportation to secure the payment of all charges, including demurrage charges, and may refuse to Deliver Crude Petroleum, may refuse to accept a transfer of Crude Petroleum, and may exercise any other rights and remedies provided at law or by contract, until all charges have been paid. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract.

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 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.

**65. PRORATION OF PIPE LINE CAPACITY**

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- (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.

**"Allocated Receipt Volume"** means the volume allotted to a Shipper in accordance with this section and received by Carrier at origin.

**"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 [~~C] volumes of Crude Petroleum tendered [N] Actual Shipments~~ during the Base Period with respect to the line segment or segments subject to prorationing.

**“Base Period”** means a cumulative rolling period of 12 months ending one month prior to the month of prorationing.

**“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; rejection of Shipper's Crude Petroleum due to nonconforming quality specifications; actions taken by Carrier due to off specification Crude Petroleum; or inefficiencies in operations do not constitute events of Force Majeure.

**“New Shipper”** is any Shipper that is not a Regular Shipper. Effective October 1, 2010, and for a period of twenty-four (24) months thereafter, New Shippers will not be able to obtain Regular Shipper status until the later of the date on which the New Shipper has had Actual Shipments in at least nine months of twelve months in the Base Period, or when the system is no longer subject to prorationing as identified within Item 65.

**“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.

**“Penalty Calculation”** means the financial penalty resulting from the Non-Performance Penalty plus interest calculated in accordance with 18 C.F.R. § 340.1 (c).

**“Regular Shipper”** means a Shipper that had Actual Shipments with respect to any line segment or segments prior to September 1, 2007 or that became a Regular Shipper prior to October 1, 2010 under the tariff rules then in effect. 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.

(ii) 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 Shipper's 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 pro rata 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 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 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 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 pro rata basis.

(iv) Any remaining unallocated Available Capacity shall be allocated to the Regular Shippers based on a proportionate share as determined by multiplying each Regular Shipper's nomination (less any volume allocated in step (ii) above) by the resultant fraction obtained by dividing the remaining Available Capacity by the total volume of all Regular Shippers' nominations (less any volume allocated in step (ii) above).

(v) 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.
- (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 the calendar year. The associated refund with interest will be made on an annual 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) 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) In case of operational necessity, or any other extraordinary circumstance beyond the control of Carrier that substantially affects the ability of Carrier to deliver the volumes Tendered by all Regular and New Shippers for a given month, as determined by Carrier in its sole discretion, Carrier may curtail deliveries to Regular and New Shippers to the extent operationally required. In implementing such curtailments, Carrier will first curtail

Deliveries for Regular and New Shippers that have, at the time of curtailment, failed to [W] tender ~~Tender~~ a volume of Crude Petroleum equal to or greater than their respective Binding Nominations for the month of curtailment. If the volume of Deliveries for such Shippers is not sufficient to meet the operational necessity, Carrier will curtail Deliveries of all other Regular and New Shippers on a pro rata basis to the extent operationally required.

- (g) If the circumstances described in Item 65(f) occur, Carrier may, by written designation, issued in Carrier's sole discretion, exclude such month from the Base Period under this Item 65 for purposes of determining the average monthly volume of any Shipper. Exclusion of a month from the Base Period as provided herein shall not affect Carrier's enforcement of the Non-Performance Penalty provided in Item 65(e) in the absence of a Force Majeure event affecting Shippers subject to such Non-Performance Penalty.

## **70. APPLICATION OF RATES**

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- (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.

## **71. INTRASYSTEM CHANGE IN OWNERSHIP**

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- (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 one-quarter cent (0.25¢) 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.
- (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 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**

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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**

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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**

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- (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**

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

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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**

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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**

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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**

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- (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 favor 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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**EXPLANATION OF ABBREVIATIONS**

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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

[N] – New

[W] – Change in wording only