



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

Shauna Bates
Director, Regulatory, Planning and Analysis
Phone: (403) 231 3963
Fax: (403) 508 3140
shauna.bates@enbridge.com

ENBRIDGE PIPELINES (NORTH DAKOTA) LLC

RECEIVED

August 15, 2012

AUG 16 2012

Oil Pipeline Tariff Filing

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

PUBLIC SERVICE COMMISSION

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”):

NDPSC Tariff No. 94, cancelling NDPSC Tariff No. 93

This tariff is issued August 15, 2012 and bears an effective date of September 15, 2012.

Background

The Enbridge North Dakota System is a 330-mile crude oil gathering and 620-mile interstate transportation system that gathers and transports crude oil from points in North Dakota and Montana for delivery at various points in North Dakota and Clearbrook, Minnesota.

Due to a substantial increase in crude production in the region, prorationing has occurred continuously on the Enbridge North Dakota system since February 2006. At that time, maximum system capacity was 80,000 bpd. Enbridge North Dakota has worked to alleviate apportionment by repeatedly increasing its capacity. In July 2012, pipeline capacity to Clearbrook, Minnesota was 210,000 bpd, an increase of over 160% from 2006. Despite the increases in capacity the system is vastly over-nominated, with shippers requesting over 45 million bpd each month (which equates to more than 200 times the capacity of the line to Clearbrook, Minnesota).

By October of 2010, the number of approved shippers on the system had grown rapidly, having increased from 10 in 2006 to 180 in 2010 (an annual growth rate of almost 80%). At that time, FERC Tariff No. 71.1.0 (Docket No. IS10-614) went into effect as a temporary measure to discourage shipper proliferation and mitigate the erosion of shipper allocations on the system. The tariff implemented a

twenty-four month temporary freeze on the creation of additional Regular Shippers. For the duration of the freeze, New Shippers continued to have access to the pipeline, but were limited to 10% of pipeline capacity. While the freeze was successful in preventing the erosion of Regular Shipper allocations, it only marginally slowed the growth of New Shippers. The number of approved shippers went from 180 in October 2010 to 256 in July 2012 (an annual growth rate of 37%).

Including FERC Tariff No. 71.1.0, Enbridge North Dakota has modified its rules and regulations on seven separate occasions in an effort to ensure that both Regular Shippers and New Shippers are treated as fairly and equitably as possible given the significant and prolonged apportionment on the system and subsequent shipper proliferation:

1. **FERC Tariff No. 46**

FERC Tariff No. 46 (Docket No. IS07-105), filed in January of 2007, included two modifications to the prorationing policy in an attempt to address excessive over-nominations on the system. The first modification prevented a shipper from submitting a nomination that exceeded the physical capacity of the pipeline. The second modification penalized shippers for failure to transport at least 90% of their binding nomination in any given month.

2. **FERC Tariff No. 52**

FERC Tariff No. 52 (Docket No. IS07-412), filed in August 2007, preserved the status of existing shippers as "Regular Shippers" going forward, but also reserved space for future "New Shippers" on the line with 90% of capacity allocated for use by Regular Shippers and 10% available for allocation to New Shippers.

3. **FERC Tariff No. 58**

The third set of revisions to the prorationing policy occurred in October 2008 with the filing of FERC Tariff No. 58 (Docket No. IS09-12). In response to concerns raised by shippers relating to the manner in which the revised policies in FERC No. 46 unexpectedly advantaged New Shippers over Regular Shippers in the allocation process, FERC No. 58 reduced the amount of the total available capacity accessible to each individual New Shipper during prorationing from 2.5% to 1%.

4. **FERC Tariff No. 71.1.0**

As discussed above, in October 2010 FERC Tariff No. 71.1.0 implemented a 24-month temporary freeze on the creation of additional Regular Shippers.

5. **FERC Tariff No. 71.5.0**

In early February 2011, Enbridge North Dakota advised its shippers at its quarterly shipper meeting that the shipper proliferation issue continued and, if left unchecked, would result in no New Shippers being allocated the minimum monthly tender amount. Operating under the tariff in effect at that time would

have resulted in no New Shippers being allocated space and the 10% of capacity reserved for New Shippers being allocated to Regular Shippers.

FERC Tariff No. 71.5.0 (Docket No. IS11-299) revised the prorationing policy to preserve the ability of New Shippers to access the pipeline while providing a fair and non-discriminatory method of allocating the available number of minimum batches among the New Shippers nominating in any given month. In the event that the number of New Shippers resulted in no individual New Shipper being allocated at least the minimum monthly tender amount, 9.5% of total capacity (i.e., 95% of the 10% set aside for new shippers) would continue to be allocated to New Shippers based on their historical shipments over the previous year. A lottery would be triggered for the remaining 0.5% of total capacity (i.e. 5% of the 10% set aside for New Shippers).

6. FERC Tariff No. 71.7.0

FERC Tariff No. 71.7.0 (Docket No. IS11-599), filed in September 2011, clarified how affiliated shippers would be treated during periods of apportionment by making explicit that shippers affiliated with each other could not obtain capacity in the same lottery.

7. FERC Tariff No. 71.9.0

FERC Tariff No. 71.9.0 (Docket No. IS12-42) established Enbridge North Dakota's right to use its Shipper Certificate Form to ask shippers for information required to accurately enforce the tariff, including the names of any affiliates of the shipper, the legal business name of the shipper, and the registered business address of the shipper.

Explanation of Tariff Filing

The temporary freeze implemented in FERC Tariff No. 71.1.0 will expire on October 1, 2012. Under the current tariff, approximately 104 New Shippers that have met the requirement to ship for 9 of the previous 12 months would graduate into the Regular Shipper class. At that time, the combined history of the existing Regular Shippers and the newly graduated Regular Shippers would exceed the 90% of capacity available to Regular Shippers and, therefore, would result in proration of the allocations of all of the Regular Shippers. In the case of the 104 newly graduated Regular Shippers, the proration of their history would bring their allocation below the minimum batch size on the system and result in them receiving a zero barrel allocation for the month, with that space then being re-allocated back to the existing Regular Shippers.

Enbridge North Dakota has explained the implications of, and sought feedback concerning, the freeze expiration at shipper meetings in November 2011, January 2012, April 2012, and July 2012. In

addition, Enbridge North Dakota met one-on-one with 10 different shippers, representing 29 companies in both the new and regular shipper categories, regarding possible modifications to the prorating policy. As a result of these consultations, Enbridge North Dakota is proposing the following modifications to Item 40 (Tenders and Quantities Accepted), Item 70 (Proration of Pipeline Capacity), Item 75 (Lottery Process) and related definitions in Item 10 (Definitions):

- All shippers who have shipped in 9 of the most recent 12 months will be considered “Historical Shippers,” rather than “Regular Shippers” and during periods of apportionment will be allocated capacity equal to their history. Adding up the combined history of all current shippers on the system who have achieved this status, including those shippers who are currently frozen out of the regular shipper pool, totals approximately 94% of pipeline capacity today and results in no Historical Shipper being allocated less than a batch size. [see Items 10 (Definitions) and 70(b) (Proration of Pipeline Capacity)]
- Any shippers who do not qualify as historical, i.e. who have shipped for less than 9 of the previous 12 months, will be considered “New Shippers” who will be allocated no more than a minimum batch. [See Items 10 (Definitions) and 70 (b)(ii) (Proration of Pipeline Capacity)]
- The definition of Affiliate now also includes Shippers affiliated by and through intermediaries. [See Item 10 (Definitions)]
- As of October 1, 2012, no affiliate of a Historical Shipper will be permitted to be a New Shipper. [See Item 10 (Definitions)]
- If there are more New Shippers than there are minimum batches available, a lottery will be held to allocate the available capacity amongst the New Shippers. [See Items 70(b)(ii) (Proration of Pipeline Capacity) and 75 (Lottery Process)]
- New Shippers will be allocated the percentage of space on the pipeline not utilized by Historical Shippers. In October 2012, it is estimated that Historical Shippers will require 94% of pipeline capacity, leaving 6%, or approximately 75 minimum batches, remaining for New Shippers. [See Item 70(b)(ii) (Proration of Pipeline Capacity)]
- As additional New Shippers achieve Historical Shipper status, the capacity allocated to Historical Shippers will increase. To allow for growth in the Historical Shipper pool while also ensuring that New Shippers will always have access to capacity on the system, the eligible capacity available to Historical Shippers will be capped at 95% of total capacity. [See Item 70(b)(i) (Proration of Pipeline Capacity)] In addition, Enbridge North Dakota commits that any future expansions of capacity to Clearbrook will first benefit New Shippers until such time as the space reserved for New Shippers reaches at least 10% of the available capacity from Minot to Clearbrook.

- No shipper will be allowed to roll into the Historical Shipper pool if doing so results in any Historical Shipper being allocated less than a minimum batch size. [See Item 10 (Definitions)]
- A Historical Shipper cannot increase its historical percentage through an acquisition, merger or other combination with a New Shipper. This prohibition does not prevent two Historical Shippers from combining their historical percentages through acquisition, merger consolidation, assignment, or combination or series of transactions with one another, nor does it prevent any party (including a New Shipper) from retaining the historical percentage of a Regular Shipper acquired by such party, provided that the historical percentage cannot be increased by such acquisition. [See Item 70 (c) (Proration of Pipeline Capacity)]
- Both the monthly minimum Tender amount and a shipper's history, or average monthly volume, are being converted to their equivalent percentage of capacity to provide sufficient flexibility in situations where system capacity fluctuates, so that no shippers will be excluded from receiving an allocation solely because they were prorated below the minimum tender volume. [See Items 10 (Definitions), Item 40 (Tenders and Quantities Accepted) and Item 70 (b)(i) (Proration of Pipeline Capacity)]

Finally, a typo was correct in the table of contents.

Justification of Tariff Changes

1. Historical/New Shipper Classes

As noted above, this tariff creates two shipper classes, which are similar but not identical to those that exist today. All shippers who, as of October 1, 2012, have shipped in 9 of the most recent 12 months will be considered "Historical Shippers," which will include all current Regular Shippers and a substantial number of the current New Shippers (approximately 104). This change provides relief for all New Shippers who have been frozen in the New Shipper class but have otherwise developed sufficient history on the pipeline to have qualified for Regular Shipper status in the absence of the freeze.

Any shippers who do not qualify as historical, i.e. who, as of October 1, 2012, have shipped in fewer than 9 months of the applicable base period, will be considered "New Shippers". At present, because of the number of New Shippers on the system, each New Shipper receives an allocation equivalent to the minimum tender volume. That principle is carried over into the new tariff by allocating all New Shipper capacity in lots equal to the minimum tender volume (which prevents a situation in which a future New Shipper would receive a greater allocation than a newly graduated Regular Shipper that carries over its minimum tender volume allocation to the Regular Shipper pool).

2. **5% Capacity Reservation for New Shippers**

An immediate effect of the tariff provisions defining Historical Shippers and New Shippers is that the combined history of the larger class of Historical Shippers totals approximately 94% of pipeline capacity today. In order to accommodate all of the Historical Shippers and prevent erosion of the Regular Shippers' capacity allocations, Enbridge North Dakota submits that the unique circumstances of this situation (including the pressing need to permit New Shippers that have been waiting for up to two years under the shipper freeze to obtain Regular Shipper status) justify a change to reserving less than 10% of the pipeline's capacity for New Shippers. As of October 1, 2012, Enbridge North Dakota will still have approximately 6% of its capacity available for New Shippers, which should accommodate up to approximately 75 New Shippers receiving the allocation of a minimum tender volume amount. Further, because the volume allocated to Historical Shippers under the new tariff is capped at 95% of available pipeline capacity, the New Shippers will never receive less than 5% of the pipeline's capacity (and will only go down to 5% to the extent some New Shippers have graduated to Regular Shipper status in the meantime). Finally, as described further below, Enbridge North Dakota is proposing to prevent Affiliates of existing Regular Shippers from becoming New Shippers (so that the New Shipper category will be reserved in the future for companies that are truly new to the pipeline). To the extent that measure succeeds in reducing the proliferation of New Shippers on the system, the 5% should be more than adequate to accommodate the New Shippers that need service.

Enbridge North Dakota has also communicated to its shippers – and repeats that assurance here – that any future expansions of capacity to Clearbrook, Minnesota would solely benefit New Shippers until such time as their access to space totals at least 10% of total available capacity to Clearbrook.

3. **Apportionment**

This tariff provides that, during periods of apportionment, each Historical Shipper will be allocated capacity equal to its history. Further, this tariff provides that no New Shipper will be allowed to become a Historical Shipper if doing so results in any Historical Shipper being allocated less than a minimum batch size. These changes prevent Historical Shippers from being squeezed off the system if the number of graduating New Shippers in the future would result in either an existing Historical Shipper or a newly graduated Historical Shipper failing to receive the minimum tender volume as an allocation. In other words, this provision prevents the system from creating an environment where shippers with larger histories slowly gain capacity and history to the detriment of smaller shippers.

With respect to the New Shipper allocations, this tariff provides that, if there are more New Shippers than there are minimum batches available, a lottery will be held to allocate the available capacity amongst the New Shippers. Further, if there are not enough New Shippers to utilize the entire 5% of the reserved allocation, Historical Shippers will be allocated the remaining space on the basis of their

historical percentage allocation. (However, in subsequent periods, if more New Shippers enter the system, they would always have access to at least 5% of the total available capacity.) These changes ensure that the pipeline's capacity is efficiently utilized without impairing the ability of any New Shipper to receive service in the future.

4. Affiliate Restrictions

As noted above, this tariff prevents any Affiliate of a Historical Shipper from becoming a New Shipper. This change is tailored to address the proliferation of New Shippers who are affiliated with Historical Shippers. In addition, as noted above, a Historical Shipper cannot increase its historical percentage through an acquisition, merger, consolidation, assignment, or other corporate combination or series of transactions with a New Shipper. This provision, which still permits existing Historical Shippers to merge with or acquire one another and combine their historical percentages, is necessary to prevent a situation in which acquisition of New Shippers by Historical Shippers would either erode existing Historical Shippers' historical percentages or erode the 5% of capacity set aside for New Shippers. Finally, the definition of Affiliate now also includes shippers affiliated by and through intermediaries.

5. Indexed Capacity and Minimum Batch Size

In addition to the changes above, and in an effort to ensure that shippers do not receive a zero barrel allocation because they have been prorated below the minimum tender volume, this tariff converts the minimum tender volume on the system from a barrel per month amount to a percentage (0.08%) of available capacity to Clearbrook. This percentage is roughly equivalent to the existing minimum batch of 5,000 barrels per month on the existing capacity (210,000 bpd) of the system.

Shipper's history or "average monthly volume" in Item 10 (Definitions) has also been changed from a barrel amount to its current equivalent percent of historical shipper capacity. These changes are being proposed to provide sufficient flexibility in situations where system capacity fluctuates, so that Historical and New Shippers cannot be excluded from receiving an allocation solely because they were prorated below the minimum tender volume.

As per Enbridge North Dakota's existing process, Shippers are advised of the operational capacity of each line segment once a month when nominations are requested.

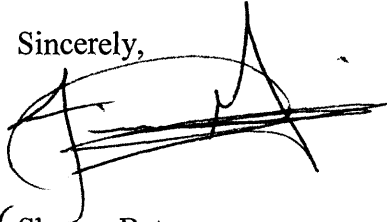
Notification

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 subscriber list by U.S. postal service (First Class Mail) or by other means agreed upon.

Pursuant to 18 CFR 343.3 of the Commission's regulations, it is requested that any protest related to this tariff filing be sent via facsimile to Shauna Bates at (403) 508-3140.

If you have any questions regarding this filing, please call Feisal Gazie at (403) 231-5940.

Sincerely,

A handwritten signature in black ink, appearing to be 'Shauna Bates', written over a horizontal line.

for Shauna Bates

Director, Regulatory, Planning and Analysis

Enclosures

cc: Enbridge North Dakota tariff subscribers

N.D.P.S.C No. 94
Cancels N.D.P.S.C. No. 93
FERC ICA Oil Tariff

FERC No. 71.13.0
Cancels FERC No. 71.12.0

ENBRIDGE

ENBRIDGE PIPELINES (NORTH DAKOTA) LLC

LOCAL PROPORTIONAL TARIFF

RULES AND REGULATIONS

GOVERNING THE GATHERING AND TRANSPORTATION OF

CRUDE PETROLEUM

BY PIPELINE

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.

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

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

ISSUED: August 15, 2012

EFFECTIVE: September 15, 2012

ISSUED BY:
Shauna Bates
Director, Regulatory, Planning and Analysis
Enbridge Pipelines Inc.
3000 Fifth Avenue Place
425 – 1st Street SW
Calgary, AB Canada T2P 3L8

COMPILED BY:
Stephanie Brown
Regulatory Strategy and Compliance
Enbridge Pipelines Inc.
Tel. (403) 663-6627
Fax (403) 508-3140

E-mail: Enbridge-Tariffs@enbridge.com

TABLE OF CONTENTS

ITEM No.	SUBJECT
5.	APPLICATION
10.	DEFINITIONS
15.	DESTINATION FACILITIES REQUIRED
20.	SPECIFICATIONS AS TO QUALITY TRANSPORTED
25.	FACILITIES AT POINT OF ORIGIN REQUIRED
30.	SEGREGATION AND CHANGES IN QUALITY
35.	REQUIRED SHIPPER INFORMATION
40.	TENDERS AND QUANTITIES ACCEPTED
45.	GAUGING, TESTING AND DEDUCTIONS
50.	EVIDENCE OF RECEIPTS AND DELIVERIES
55.	LINEFILL AND STORAGE
60.	DELIVERY AND DEMURRAGE
65.	PAYMENT OF TRANSPORTATION AND OTHER CHARGES
70.	PRORATION OF PIPELINE CAPACITY
75.	LOTTERY PROCESS
80.	APPLICATION OF RATES
85.	INTRASYSTEM CHANGE IN OWNERSHIP
90.	DIVERSION AND RECONSIGNMENT
[W] 95. 90.	TITLE AND LEGALITY OF SHIPMENT
[W] 100. 95.	LIABILITY OF CARRIER
[W] 105. 100.	LIABILITY OF SHIPPER
[W] 110. 105.	CLAIMS, SUITS AND TIME FOR FILING
[W] 115. 110.	PIPEAGE OR OTHER CONTRACTS REQUIRED
[W] 120. 115.	DUTY OF CARRIER
[W] 125. 120.	FINANCIAL ASSURANCES

RULES AND REGULATIONS

5. APPLICATION

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

10. DEFINITIONS

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

"Actual Shipments" means volumes of Crude Petroleum that originate and are physically Tendered at a Receipt Point during a month.

"Affiliate" means any entity that is under direct or indirect common control, or directly or indirectly:

- 1) controls a Shipper;
- 2) is controlled by another Shipper; [C] or
- 3) is controlled by the same entity that controls a Shipper; [N] or,

[N] 4) is controlled by and through one or more intermediaries that controls another Shipper;

for purposes of this definition the terms "controls" and "controlled by" shall mean the use of shared mailing or business addresses, the use of shared business telephone numbers, the use of common bank account(s) in relation to Carrier's requirements set forth in Item 65 (a) or Item [W] ~~125 120~~ (b)(ii), [N] substantially the same management or general partner, one Shipper directing or conducting business on behalf of another Shipper as detailed in Item 40(f), the power to direct or cause the direction of the management and policies of another entity whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact, but notwithstanding the foregoing includes with respect to the control of or by a corporation the ownership of shares or equity interests carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly.

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

"Available Berthold Volumes" means volumes that a PREP Shipper has available to be delivered to the inlet of the PREP Segment at Berthold during a month (including Receipts at the Berthold truck station as well as Receipts upstream of Berthold) exclusive of any such volumes that were nominated by such Shipper to Clearbrook and apportioned capacity to Clearbrook.

"Available Capacity" means the total capacity of the pipeline segment or segments thereof, available to transport Crude Petroleum.

"Average Monthly Volume [N] Percentage" means the [W] total average of a [W] Historical Regular Shipper's monthly Actual Shipments during the Base Period [N] divided by the total of all Historical Shipper's Actual Shipments during the Base Period with respect to the line segment or segments subject to prorationing. [N] The Average Monthly Volume Percentage of a Historical Shipper will be calculated over the entire Base Period including any months for which no movements are credited.

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

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

"Binding Nomination" means the Delivery capacity allocated to a Shipper during a period of prorationing.

[N] “Capacity Available to Historical Shippers” means the sum of all Historical Shippers’ Actual Shipments during the Base Period divided by the total Available Capacity during the Base Period multiplied by the Available Capacity during the month of prorationing, rounded to the nearest barrel.

“Carrier” means Enbridge Pipelines (North Dakota) LLC.

“Crude Petroleum” means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, or a mixture of such products, but does not include natural gas liquids or refined petroleum products.

“Deliver” and any derivative thereof means delivered by Carrier to Shipper or to account of Shipper, at the Delivery Point.

“Delivery Point” means a location for the Delivery of Crude Petroleum from Carrier to Shipper or to account of Shipper as identified in Carrier’s Rate Tariff.

“Financial Assurances” means the Financial Assurances provided by the Shippers and accepted by the Carrier in accordance with Item 125.

“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 providing 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.

[N] “Historical Shipper” means a Shipper that had Actual Shipments with respect to any line segment or segments in nine months during the Base Period. No New Shipper will be able to obtain Historical Shipper status if doing so results in the proration of any Historical Shipper’s allocation to below that of the Minimum Tender Volume. If in any given month more New Shippers qualify to be Historical Shippers than will satisfy the foregoing condition, a queue will be established to determine which New Shippers will become Historical Shippers that month. The order of the queue will be based upon the number of months that each New Shipper has Tendered volumes, with those Tendering in the most months being at the top of the queue. If there are multiple New Shippers who have Tendered in the same number of months, then the relative rank of such Shippers will be based upon the volume each has Tendered during the Base period, with those Tendering greater volumes receiving a higher rank. In the event that there are multiple New Shippers who have Tendered in the same number of months and the same volume over the Base Period, a software generated random process will be used to further determine rank in the queue. A Historical Shipper ceases to be a Historical Shipper if it has no Actual Shipments for four (4) or more months out of the Base Period. Thereafter, that Shipper will be treated as a New Shipper unless and until it meets Historical Shipper criteria. Subject to Items 70(f)(i) and 70(g), a Historical Shipper’s allocation will not be less than the Minimum Tender Volume.

“International Boundary” means the United States/Canada boundary near Portal, North Dakota.

“Linefill” means the volume of Crude Petroleum required by Carrier for operational purposes as specified by time to time by Carrier including Working Stock needed to occupy the physical space within the pipeline and any applicable facilities.

[C] “Lottery New Shippers” means a subcategory of New Shippers that are eligible to receive a monthly minimum Tender pursuant to Item 70(b)(iii)(a).

[C] “Lottery New Shipper Capacity” means five (5) percent of the ten (10) percent of the total Available Capacity reserved for New Shippers.

“Mid-Month Shipper” has the meaning set forth in Item 40(e).

~~[C] “Minimum Tender New Shipper” means a subcategory of New Shippers that receives a monthly minimum Tender pursuant to Item 70(b)(iii)(a).~~

~~[C] “Minimum Tender New Shipper Capacity” means ninety-five (95) percent of the ten (10) percent of the total Available Capacity reserved for New Shippers.~~

[N] “Minimum Tender Volume” means 0.08 percent of the Available Capacity of the line segment from Minot, North Dakota, to Clearbrook, Minnesota during any month, rounded to the nearest barrel. Current information on Available Capacity is provided to all Shippers on or about the 10th of each month by Carrier prior to nominations being submitted on or about the 15th of the month. Normal operating capacity is available at <http://www.enbridge.com/DeliveringEnergy/OurPipelines/LiquidsPipelines.aspx>. Current information on Available Capacity may also be obtained by emailing epndshipperservices@enbridge.com.

~~“New Shipper” is any Shipper that is not a [N] Historical Shipper. Effective October 1, 2012, Affiliates of an existing Historical Shipper are not eligible to be New Shippers. [C] 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 70.~~

~~“Nomination” means request by a Shipper to Carrier, to accept a stated quantity and grade of Crude Petroleum for transportation from a specified Receipt Point to a specified Delivery Point in accordance with these rules and regulations.~~

~~“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).~~

~~“PREP Segment” means the line segment from Berthold, North Dakota to the International Boundary near Portal, North Dakota.~~

~~“PREP Shipper” means a Shipper that nominates volumes of Crude Petroleum for Delivery to the International Boundary through the PREP Segment.~~

~~“Rate Tariff” means Carrier’s Local Proportional Tariff Rates applying on the transportation of Crude Petroleum.~~

~~“Receipt” means the volume transferred from Shipper to Carrier at a Receipt Point for transportation.~~

~~“Receipt Point” means a location for the receipt of Crude Petroleum by the Carrier from Shipper as identified in the Carrier’s Rate Tariff.~~

~~[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.~~

~~“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 Item 85 (f).~~

~~“Tender” means a delivery by a Shipper to Carrier of a stated quantity and grade of Crude Petroleum, under a Nomination accepted by Carrier, for transportation in accordance with these rules and regulations.~~

~~“Working Stock” means the volume of Crude Petroleum required by the Carrier for the efficient operation of the pipeline.~~

15. DESTINATION FACILITIES REQUIRED

(a) Crude Petroleum shall be received for transportation only at established Receipt Points and when consigned to

the Shipper or consignee at one or more regular Delivery Points. The only exception to this is for the PREP Segment, Crude Petroleum shall be consigned at the International Boundary only to the Shipper from whom the Crude Petroleum was received.

- (b) No duty to transport on any segment other than the PREP Segment shall arise until evidence satisfactory to Carrier has been furnished that the Shipper or consignee has provided necessary facilities to which Carrier is connected and has made necessary arrangements for accepting Delivery of shipments promptly on arrival at destination, as provided in these rules and regulations.
- (c) No duty to transport on the PREP Segment shall arise until evidence satisfactory to Carrier has been furnished that the Shipper has been qualified for and allocated capacity on Enbridge Pipelines (Westspur) Inc.

20. SPECIFICATIONS AS TO QUALITY TRANSPORTED

- (a) Except as provided in Item 20(c), 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 Receipt 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) 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.
- (c) Carrier reserves the right to reject Crude Petroleum which does not meet the specifications set forth in Item 20 (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 20 (a).
- (d) 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 20 (a), or (2) the shipment is to be transported under Item 20(c). 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 20 (a) or (2) is not being offered for transportation under Item 20(c), 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.
- (e) 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.
- (f) 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.

25. FACILITIES AT POINT OF ORIGIN REQUIRED

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

30. SEGREGATION AND CHANGES IN QUALITY

- (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 pipelines or facilities of Carrier.
- (b) Carrier shall be under no obligation to make Delivery of the identical Crude Petroleum received. 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 common stream.
- (c) 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.
- (d) 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.

35. REQUIRED SHIPPER INFORMATION

- (a) At any time, upon written request of the Carrier, on a non-discriminatory basis, any prospective or existing Shipper shall provide to the Carrier information that will enable the Carrier to enforce the terms of this tariff. Such information may include, but will not be limited to, the names of any Affiliates of the Shipper or prospective Shipper, the legal business name of the Shipper or prospective Shipper and the registered business address of the Shipper or prospective Shipper. Such information shall be provided in the Carrier's shipper certificate form that can be obtained from the Carrier by emailing epndshipperservices@enbridge.com.
- (b) 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 to the Carrier any information requested in accordance with Item 35 (a) within ten (10) days of the Carrier's written request, or if the Carrier reasonably determines that any of the information provided pursuant to Item 35 (a) is false.

40. TENDERS AND QUANTITIES ACCEPTED

- (a) Shippers desiring to offer Crude Petroleum for transportation shall submit on Carrier's monthly Shipper nomination form a separate Nomination for each calendar month on or before the 15th day of the preceding month.
- (b) A monthly Nomination and a corresponding 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 [N] the Minimum Tender Volume [C] ~~5,000 Barrels~~.
- (c) Each monthly Nomination by a Shipper shall contain a warranty in favor of Carrier that the Crude Petroleum identified in the Nomination meets Carrier's specifications as set forth in Item 20.
- (d) If space is available and operating conditions permit, Carrier may, at its discretion, accept monthly Nominations after the 15th of the month and take receipt of Crude Petroleum in lots less than [N] the Minimum Tender Volume [C] ~~5,000 Barrels~~. If Carrier approves a Shipper's proposed Nomination 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 [N] the Minimum Tender Volume [C] ~~5,000 Barrels~~. A single Delivery is a Delivery in one continuous operation into a single facility to which Carrier is connected.
- (e) If space becomes available after Binding Nominations have been set and operating conditions permit, Carrier may, at its discretion, request Nominations in batches of not less than 10,000 barrels. If the total amount of

Nominations received exceeds the available space, such space will be allocated to Shippers that submit such Nominations ("Mid-Month Shippers") on a pro rata basis, provided that, if such allocation results in any Mid-Month Shipper being allocated a mid-month batch of less than 10,000 barrels, available space will instead be allocated to Mid-Month Shippers by way of a lottery using a software-generated random process as described in Item 75.

- (f) All communications relating to a Shipper's Nominations, Tenders, 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 70 (b);
 - (ii) the Shipper consents to disclosure of any and all information regarding the Shipper's Nominations, Tenders, 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.

To the extent the Carrier receives a communication from a third party or from Shipper indicating that such third party is conducting business with the Carrier on behalf of Shipper, Carrier will deem Shipper to be an Affiliate [for purposes of Item 70 (b)] of such third party and of any other Shippers on behalf of which such third party is conducting business with Carrier as agent.

45. GAUGING, TESTING AND DEDUCTIONS

- (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 on each barrel received from the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

50. EVIDENCE OF RECEIPTS AND DELIVERIES

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, 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.

55. LINEFILL AND STORAGE

- (a) Each Shipper shall supply its quantity of Linefill 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.

60. DELIVERY AND DEMURRAGE

- (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) 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 of 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. After expiration of said notice, Carrier's liability for loss, damage, or delay shall be that of warehouseman only.

65. PAYMENT OF TRANSPORTATION AND OTHER CHARGES

- (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 60 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.

70. PRORATION OF PIPELINE 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, except for the PREP Segment, will be allocated among "[W] Historical Regular Shippers" and any "New Shippers" as follows:
 - (i) Each [W] Historical-Regular Shipper shall be allocated an amount equal to one hundred (100) percent of its Average Monthly Volume [N] Percentage multiplied by the Capacity Available to Historical Shippers, rounded to the nearest barrel, for the line segment being prorated, with the total of all [W] Historical Regular Shippers' allocations not exceeding [I] ninety-five (95) ninety (90) percent of the total Available Capacity. If a [W] Historical-Regular Shipper's Nomination for a month is less than its Average Monthly

Volume [N] Percentage, the [W] ~~Historical~~ Regular Shipper will be [W] ~~allocated~~ apportioned only the amount of its Nomination. [C] ~~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 Shippers' Average Monthly Volumes, and multiplying it by the volume in excess of the ninety (90) percent Available Capacity.~~

- (ii) New Shippers shall be allocated [N] volume equal to the Minimum Tender Volume of any remaining space not allocated to Historical Shippers. If the total number of New Shippers Nominating for the month exceeds the number of Minimum Tender Volume lots available, space will be allocated to New Shippers by way of a software-generated random process as described in Item 75. New Shippers obtaining capacity via the lottery process must not be Affiliated with any other winner in the lottery process for a given month. [C] 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 of such New Shipper). Subject to Item 70(iii) 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.
- (iii) [N] Any capacity remaining after initial allocations have been made to Historical and New Shippers in accordance with Items 70(b)(i) and (ii) above will be allocated to those Historical Shippers who were not allocated their full Nomination in proportion to their Average Monthly Volume Percentage. [C] In the event that the number of New Shippers submitting Nominations for the prorated line segment(s) delivering downstream of the furthest bottleneck point on the system, as identified by the Carrier, precludes any individual New Shipper from being allocated at least the minimum monthly Tender amount (as identified within Item 40(b), Carrier will allocate the Minimum Tender New Shipper Capacity to Minimum Tender New Shippers as provided in Item 70(b)(iii)(a) below:

[C] (a) ~~The Minimum Tender New Shipper Capacity shall be allocated to Minimum Tender New Shippers by awarding the monthly minimum Tender amount [as determined under Item 40(b)] to each Minimum Tender New Shipper. The number of allowable Minimum Tender New Shippers will be calculated as the Minimum Tender New Shipper Capacity divided by the minimum monthly Tender amount [as determined under Item 40(b)]. To determine which New Shippers are deemed to be Minimum Tender New Shippers in any month of apportionment, Carrier will determine a queue based on which New Shippers have shipped on the line segment being prorated for the greatest number of months in the Base Period. New Shippers will be designated as Minimum Tender New Shippers in order from the queue (starting with those having the greatest number of months during the Base Period and working downwards) until all of the available Minimum Tender New Shipper Capacity has been filled for that month. If a New Shipper fails to nominate volumes for any month, it will lose its place in the queue and drop to the end of the queue. If there are multiple New Shippers with the same shipment history, a method based on greatest volume shipped in the Base Period will be used to assign a rank in the queue as among those New Shippers. In the event that there are multiple New Shippers with identical volumes shipped over the same shipment history, a software-generated random process will be used to further assign rank in the queue. Once the Minimum Tender New Shipper Capacity is fully allocated for the month, the remaining New Shippers will be eligible to participate in the lottery system as Lottery New Shippers.~~

[C] (b) ~~The Lottery New Shipper Capacity will be allocated on a lottery basis to Lottery New Shippers. If a New Shipper is not allocated a monthly minimum Tender pursuant to Item 70(b)(iii)(a) above in a given month, such New Shipper will be eligible to participate in the lottery process. Affiliates of an existing Regular or Minimum Tender New Shipper or Lottery New Shipper are not eligible to receive an allocation in the lottery process. Shippers obtaining~~

~~Lottery New Shipper Capacity in a lottery process must not be Affiliated with any other winner in the lottery process for a given month.~~

~~Carrier will administer a lottery using a software generated random process for the total number of monthly minimum Tender allocations available to Lottery New Shippers. Following the lottery, Carrier will notify Shippers as to whether or not they were successful in receiving an allocation as per their Notice of Shipment form submitted to Carrier. Detailed procedures regarding Carrier's lottery process are outlined in Item 75 entitled Lottery Process.~~

- [C] ~~(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).~~
- [C] ~~(v) Following the completion of the allocation process as outlined in Items 70 (b)(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 (i),(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 (i),(ii),(iii), and (iv) above).~~
- (c) [N] A Historical Shipper may not increase its Average Monthly Volume Percentage through an acquisition, merger, consolidation assignment or other corporate combination or series of transactions with a New Shipper. One or more Historical Shippers may combine their Average Monthly Volume Percentages through an acquisition, merger, consolidation, assignment or other corporate combination or series of transactions with one another, provided that only the surviving Historical Shipper may use the combined Average Monthly Volume Percentage. Any party that is not a Historical Shipper (including a New Shipper) that acquires a Historical Shipper may retain that Historical Shipper's Average Monthly Volume Percentage, but may not increase that Average Monthly Volume Percentage by virtue of such acquiring party's own previous history. [C] In no event will any portion of allocated capacity to a New Shipper pursuant to Item 70 (b) 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) Space in the PREP Segment will be allocated among all nominating PREP Shippers on a pro rata basis; provided that a nominating PREP Shipper's pro rata share of space will be reduced to the lesser of its Available Berthold Volumes or the volume of capacity such Shipper has the right to use in Enbridge Pipelines (Westspur) Inc. for the month if the pro rata share exceeds either of those quantities. Any remaining space in the PREP Segment that would otherwise go unused will be allocated, on a pro rata basis, among all other nominating PREP Shippers to the extent the total allocation to each such shipper does not exceed (i) its Available Berthold Volumes, or (ii) its Nomination to the PREP Segment for the month, or (iii) the volume of capacity such shipper has the right to use in Enbridge Pipelines (Westspur) Inc. for the month.
- (e) 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.
- (f) 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 Delivery 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 at least 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 prorating.
- (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 Non-Performance 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) If the Shipper uses multiple Receipt Points to transport Crude Petroleum, the applicability of the Non-Performance Penalty will be assessed on an aggregate basis by comparing the Shipper's Binding Nomination to the sum of its Tenders at all Receipt Points. In the case of an in-line transfer at a Receipt Point, the transferee (and not the transferor) will be credited with the transferred volume for the purpose of calculating the Non-Performance Penalty.
- (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 Tended 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.
- (g) 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 Tended by all [W] ~~Historical Regular~~ and New Shippers and PREP Shippers for a given month, as determined by Carrier in its sole discretion, Carrier may curtail Deliveries to [W] ~~Historical Regular~~ and New Shippers and PREP Shippers to the extent operationally required. In implementing such curtailments, Carrier will first curtail Deliveries for [W] ~~Historical Regular~~ and New Shippers and PREP Shippers that have, at the time of curtailment, failed to 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 [W] ~~Historical Regular~~ and New Shippers and PREP Shippers on a pro rata basis to the extent operationally required.
- (h) If the circumstances described in Item 70 (g) occur, Carrier may, by written designation, issued in Carrier's sole discretion, exclude such month from the Base Period under this Item 70 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 70 (f) in the absence of a Force Majeure event affecting Shippers subject to such Non-Performance Penalty.

75. LOTTERY PROCESS

Carrier will administer a lottery process, outlined within Item 40(e) and Item 70 [W] ~~(b) (ii) (b) (iv) (b)~~, as follows:

- (a) Carrier will use a random number generating software to randomly assign each [C] ~~Lottery~~ New Shipper or Mid-Month Shipper, as applicable, a number from one to the number representing the total number of participants in the lottery (i.e., if there are thirty participants, numbers one through thirty will be assigned).
- (b) The lottery entrant with the number closest to one will receive the first monthly [W] ~~Minimum Tender Volume~~ ~~minimum Tender~~ allocation under Item 70 [W] ~~(b) (ii) (b) (iii) (b)~~ or mid-month batch under Item 40(e), as applicable. This process of assigning monthly [W] ~~Minimum Tender Volume~~ ~~minimum Tender~~ allocations or mid-month batches, as applicable, to the lottery entrant with the number closest to one will continue until all of the monthly [W] ~~Minimum Tender Volume~~ ~~minimum Tender~~ allocations or mid-month batches have been assigned.

80. APPLICATION OF RATES

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.

85. 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 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 proceeding 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 Item 85 respecting its Crude Petroleum will not be binding or effective on the Carrier until the Carrier has accepted the transaction. The Carrier will not accept 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 Item 125 of this tariff.
- (g) Notwithstanding the foregoing, intrasystem changes in ownership of Crude Petroleum shall not be permitted on the PREP Segment, and any intrasystem change in ownership in violation of this Item 85 (g) will not be recognized or recorded by the Carrier.

90. DIVERSION AND RECONSIGNMENT

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

95. 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.

100. 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.

105. 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.

110. 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.

115. PIPEAGE OR OTHER CONTRACTS REQUIRED

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

120. 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.

125. 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 Item 125 (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;

- (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; or
 - (v) 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.

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:

- [N] - New
- [C] - Cancel
- [W] - Change in wording only
- [I] - Increase