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NORTH DAKOTA PIPELINE COMPANY LLC

January 29, 2016

Oil Pipeline Tariff Filing

E-FILED



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

Tariff Department:

Enclosed for filing with the North Dakota Public Service Commission (NDPSC) is the following tariff issued by North Dakota Pipeline Company LLC (North Dakota Pipeline):

- NDPSC Tariff No. 26, canceling NDPSC Tariff No. 19

This tariff bears an issuance date of January 29, 2016 and an effective date of March 1, 2016.

Explanation of Tariff Filing

As described below, NDPSC Tariff No. 26 (the "Tariff") establishes an in transit parking option to allow crude oil to be temporarily parked in merchant tankage at Minot, North Dakota while the crude is in transit to its ultimate destination at Clearbrook, Minnesota.

I. Background

A. North Dakota Pipeline System

As shown on the map attached as Appendix A, the North Dakota Pipeline system originates in the Bakken oil fields in western North Dakota and eastern Montana (also referred to as the Williston Basin) and extends east to Clearbrook, Minnesota. As depicted on the map, tankage exists at various locations along the North Dakota Pipeline system for operational reasons.

1 **PU-16-61** Filed: 1/29/2016 Pages: 26
NDPSC Tariff No. 26, canceling NDPSC Tariff No. 19

North Dakota Pipeline Company, LLC
Feisal Gazie, Sr. Manager

However, a recent internal analysis identified that excess storage exists that is no longer required to operate the system. In particular, one of the three tanks at Minot historically used for operational purposes is no longer needed to operate the system. As a result, North Dakota Pipeline has the ability to remove one of the three tanks at Minot from operational service (Tank 6006 with working capacity of approximately 97,000 barrels of crude oil storage) as it has become redundant.¹

Because there are no local refineries in Minot and no connecting pipelines or other transportation facilities to transport oil out of Minot, North Dakota Pipeline's currently effective tariff does not include tariff rates for transportation to Minot. However, based on discussions with shippers, there is a demand for temporary commercial storage of crude oil at Minot to provide shippers with additional flexibility in responding to market conditions. North Dakota Pipeline has therefore been exploring ways to allow shippers to store barrels at Minot and then re-originate those barrels for transportation to Clearbrook.

B. Proceeding in Federal Energy Regulatory Commission ("FERC or Commission") Docket IS16-28-000

On October 19, 2015, North Dakota Pipeline filed NDPSC Tariff No. 21 to establish a new delivery point and rates for transportation of crude oil to Minot in order to provide shippers access to merchant storage at Minot. North Dakota Pipeline proposed to allow shippers to transport volumes to Minot for temporary storage, followed by transportation to Clearbrook. Under North Dakota Pipeline's proposal, shippers using the temporary storage at Minot would have paid aggregate rates comparable to the existing through rates to Clearbrook from the same origin points. However, the proposed rates to Minot unavoidably fell below some of the tariff rates from the same origin points to delivery points upstream of Minot. As a result, North Dakota Pipeline filed a request for relief from the provisions of Section 4 of the ICA, which generally prohibits charging a greater amount for a shorter distance than for a longer distance over the same line or route in the same direction.

On November 4, 2015, Suncor Energy Marketing Inc. ("SEMI") filed comments expressing concerns with North Dakota Pipeline's Section 4 waiver request. SEMI noted that the proposed discount for transportation from destinations upstream to Minot was substantial. In addition,

¹ In addition, North Dakota Pipeline recently deactivated a lateral pipeline that previously delivered crude oil into the North Dakota Pipeline mainline at Minot, which reduced even further the tankage needed to facilitate system operations at Minot. The lateral extended from gathering points in North Dakota to the north of Minot to connect with the mainline North Dakota Pipeline system at Minot. It was deactivated effective December 16, 2015 by the issuance of NDPSC Tariff No. 22, FERC Docket No. IS16-75-001.

SEMI pointed out that Enbridge has provided a similar service on other systems by a different method:

For example, Flanagan South shippers have the option to go into Cushing tankage, without the need for carrier relief from the provisions of the Interstate Commerce Act. In SEMI's view, the relief from the provisions of the ICA should only be granted after careful consideration and when no alternative is available. SEMI suggests alternatives are available [to North Dakota Pipeline].

On November 30, 2015, the Commission issued an order rejecting North Dakota Pipeline's tariff and denying the request for Section 4 relief. *North Dakota Pipeline Company LLC*, 153 FERC ¶ 61,250 (2015). The Commission noted that Section 4 relief is only granted in "special cases" and that North Dakota Pipeline did not "adequately explain[] the changes to the rates for the new Minot delivery point nor has it justified why relief under section 4 of the ICA is necessary." *Id.* at P 16. The Commission also noted that "the storage seems to be an integral, temporary part of the through-transportation-service to Clearbrook," which "raises questions as to whether there is a jurisdictional issue regarding the merchant tankage service." *Id.* at P 19.

In light of the Commission's order, North Dakota Pipeline reevaluated whether Section 4 relief was necessary to allow shippers to utilize the excess tank at Minot. North Dakota Pipeline also took into consideration SEMI's comment that Enbridge provides a similar parking service on its Flanagan South Pipeline at Cushing, Oklahoma without the need for Section 4 relief. North Dakota Pipeline determined that it could enable shippers' use of temporary storage at Minot by providing an in transit parking option as SEMI suggested (and many other pipelines do) without the need for a waiver of Section 4.

II. Proposed In Transit Parking Option

The Tariff proposes to add an in transit parking option ("the Parking Option") to allow shippers the choice to exit the North Dakota Pipeline system and temporarily store volumes of crude oil at Minot for subsequent re-injection and transportation to Clearbrook.² The Parking Option would be discretionary and available to any shipper that has storage arrangements at Minot. North Dakota Pipeline will remove the excess tank from jurisdictional service and lease it to an affiliated third party that will provide merchant storage service on a contract basis.³ Shippers

² Crude re-entering the North Dakota Pipeline system at Minot can only be delivered to Clearbrook because there are no terminals or other delivery points between Minot and Clearbrook.

³ The tank in question (Tank 6006) is fully depreciated and is no longer required for provision of transportation service on North Dakota Pipeline.

that elect to use the Parking Option will pay the entire transportation tariff rate to Clearbrook when the barrels are delivered at Minot. North Dakota Pipeline will not charge shippers a re-origination fee in connection with the Parking Option, since all barrels at Minot are currently moved through operational tankage at Minot and the temporarily stored barrels therefore will not incur any incremental cost that is not already included in the transportation rates. Shippers utilizing the Parking Option will be subject to all of North Dakota Pipeline's tariff rules, including the apportionment rules.

In contrast to North Dakota Pipeline's proposal in FERC Docket IS16-28-000, the Parking Option does not establish a delivery point at Minot, does not involve discounted rates to Minot, and does not require relief from Section 4 of the ICA. Instead, the proposal simply involves minor changes to North Dakota Pipeline's rules and regulations tariff to notify shippers of the terms of the Parking Option on North Dakota Pipeline. Shippers utilizing the Parking Option will pay the existing through rate to Clearbrook at the time the barrels are injected into commercial storage at Minot. Shippers will then be entitled to nominate the same barrels out of commercial storage for transportation to Clearbrook in a subsequent month without incurring any additional tariff charge.

The specific terms of the Parking Option are contained in a new Item 117 in the rules and regulations tariff, which reads as follows:

117. STORAGE IN TRANSIT

- (a) A Shipper may, by Nomination to Carrier, elect to park Crude Petroleum at the Minot Storage in Transit Site. Following such storage in transit, a Shipper shall be permitted, by Nomination to Carrier, to re-enter such Crude Petroleum for transportation to Clearbrook, Minnesota.
- (b) Nominations to the Minot Storage in Transit Site will be subject to the applicable tariff rate from the initial Receipt Point to Clearbrook, Minnesota, which will be invoiced at the time the Crude Petroleum is Delivered to the Minot Storage in Transit Site.
- (c) Carrier does not provide commercial storage at the Minot Storage in Transit Site. Shippers must make their own arrangements for commercial storage at Minot.
- (d) Upon Delivery of Crude Petroleum into storage at the Minot Storage in Transit Site, the custody and possession of the Crude Petroleum shall be that of the Shipper or

consignee and not that of the Carrier, and Carrier shall not be liable for loss and/or damage to such Crude Petroleum while in storage.⁴

Initially, Minot will be the only Storage in Transit Site. However, North Dakota Pipeline is open to widening this option to other sites on the system to the extent storage is reasonably available at such sites (either third-party storage or excess North Dakota Pipeline tankage that is not needed for operational purposes). In that event, North Dakota Pipeline would further amend its tariff to facilitate any such additional Storage in Transit Sites subject to the Commission's review and approval.

A. The Parking Option is reasonable and non-discriminatory.

The Parking Option is consistent with Commission precedent and industry practice. The Commission approved a similar in transit parking option in connection with the Flanagan South Pipeline. See *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148 at P 28 (2014) (approving proposal to allow certain shippers to park barrels at Cushing for commercial storage and then re-originate those barrels for final transportation downstream). In addition, the proposed Parking Option is similar to in transit parking services offered by other oil pipelines in the industry.⁵

⁴ The other minor changes to the rules and regulations reflected in this filing are:

- Amend Item 10 (Definitions) to specify that "Minot Storage in Transit Site" means Carrier's terminal at Minot, North Dakota.
- Modify the definitions of "Deliver," "Delivery Point" and "Receipt Point" in Item 10 to include the Minot Storage in Transit Site as a point where crude oil can be delivered or received.
- Modify Item 70 (Proration of Pipeline Capacity) such that the financial penalty provision in section 70(e)(ii) includes nominations to Minot, North Dakota.

⁵ See e.g., *Enbridge Pipelines (FSP) L.L.C.*, Tariff No. 1.2.0 at Item 23, FERC Docket No. IS16-95-000; *Total Petrochemicals Pipeline USA, Inc.*, Tariff No. 2.0.0 at Rule 20, FERC Docket No. IS11-343-000; *Explorer Pipeline Co.*, Tariff No. 101.10.0 at Item 100, FERC Docket No. IS15-524-000; *Explorer Pipeline Co.*, Tariff No. 100.49.1 at Item 95, FERC Docket No. IS16-106-001; *BreitBurn Operating L.P.*, Tariff No. 1.1.0 at Rule 21, FERC Docket No. IS14-510-000; *ExxonMobil Pipeline Co.*, Tariff No. 390.9.0 at Section II, FERC Docket No. IS15-508-000; *JBBR Pipeline LLC*, Tariff No. 1.0.0 at Item 100, FERC Docket No. IS15-222-000; *Mid-Valley Pipeline Co.*, Tariff No. 484.0.0 at page 2, FERC Docket No. IS11-183-000; *Mobil Pipe Line Co.*, Tariff No. 1206.0.0 at Rule 21, FERC Docket No. IS10-515-000; *Parkway Pipeline LLC*, Tariff No. 3.5.0 at Item 115, FERC Docket No. IS15-576-000; *Phillips 66 Pipeline LLC*, Tariff No. 16.10.0 at Item 10, FERC Docket No. IS15-319-000; *Plantation Pipe Line Co.*, Tariff No. 154.3.0 at Item 115.1, FERC Docket No. IS15-649-000; *Valero Partners Wynnewood, LLC*, Tariff No. 1.2.0 at Item 9, FERC Docket No. IS15-437-000; *West Shore Pipe Line Co.*, Tariff No. 71.14.0 at Item 18, FERC Docket No. IS16-93-000; *BP Oil Pipeline Co.*, Tariff No. 126.8.0 at Item 16, FERC Docket No. IS16-102-000.

The Parking Option will be available on a non-discriminatory basis to any shipper that requests the service. Shippers utilizing the Parking Option will be responsible to arrange for merchant storage service at Minot with the operator of the tank. Over time, other parties could offer a similar merchant storage service if they have or choose to build storage facilities at Minot. As noted above, North Dakota Pipeline is currently offering the Parking Option only at Minot, but it could be expanded to other locations on the system where there is no delivery point but there is excess tankage that is not needed for operational service.

The commercial storage will benefit shippers by allowing them the flexibility to respond to changing market conditions. For instance, if the market is unfavorable, a shipper may decide to park barrels at Minot and then re-originate them for transportation on the system when the market improves. Temporary storage could also be used during refinery shutdowns and other events that temporarily reduce the market for crude at the ultimate destination.

North Dakota Pipeline confirms that it has notified committed shippers of the tariff filing as required by the applicable Transportation Service Agreements. Out of its ten committed shippers, only one committed shipper raised concerns. North Dakota Pipeline addressed some of those concerns by revising the proposed tariff language. However, the committed shipper indicated it believes that the proposed tariff provision would be discriminatory unless the Parking Option is made available at all terminals on the system, independent of ownership. North Dakota Pipeline does not agree that the proposed tariff language is discriminatory. As noted above, North Dakota Pipeline is open to providing the in transit parking option at other locations on its system to the extent third party storage or excess operational tankage is available at such locations. However, each location presents different circumstances that must be evaluated on a case-by-case basis. Therefore, although the Parking Option is only being offered at Minot at this time, North Dakota Pipeline will consider any requests from shippers for an in transit parking option at other sites if and when it receives them. Any future in transit parking option would be subject to a further tariff charge to be filed with the Commission.

B. The Parking Option will not harm Shippers who choose not to use it.

Existing North Dakota Pipeline shippers choosing not to utilize the Parking Option will be unaffected by this proposal. As explained above, removal of the excess tank at Minot from jurisdictional service will not affect operations or throughput on the North Dakota Pipeline system, since the two tanks that will remain in operational service at Minot will be sufficient to maintain North Dakota Pipeline's throughput capacity. In addition, North Dakota Pipeline shippers will not absorb any costs related to the Parking Option or third party storage service.

Shippers that choose to utilize the Parking Option will be subject to all of North Dakota Pipeline's tariff rules. Therefore, in order to re-originate volumes onto the system at Minot, a

shipper would be subject to North Dakota Pipeline's historical apportionment policy to the same extent as any other shipper. If the system was fully subscribed, in order to re-originate volumes out of storage at Minot for transportation on the system to Clearbrook, a shipper would need to use some or all of its shipper history (or its New Shipper allocation if it is not a Historical Shipper). Therefore, the Parking Option will have no impact on the allocations of shippers that do not choose to utilize that option. To illustrate, assume a shipper has 2,000 barrels (bbls) in storage at Minot and has accumulated a history of 5,000 bbls per month. In a month of apportionment, that shipper could decide to re-originate the 2,000 bbls for transportation to Clearbrook and also move 3,000 bbls from upstream origin points to Clearbrook. However, the shipper could not move 2,000 bbls from storage at Minot and also move 5,000 bbls to Clearbrook from an upstream origin in a single month, because that would exceed the shipper's available history. Thus, shippers that use the Parking Option will not displace or reduce the volumes available to other shippers. All shippers will be equally subject to North Dakota Pipeline's apportionment rules whether or not they elect to use the Parking Option.

C. Merchant storage provided by third party entities is non-jurisdictional.

Although North Dakota Pipeline is no longer requesting a waiver of Section 4 of the ICA, this section responds to the Commission's concern in FERC Docket IS16-28-000 that there may be a jurisdictional issue regarding the merchant tankage service. *North Dakota Pipeline Company LLC*, 153 FERC ¶ 61,250 at P 19 (2015). As explained below, the merchant storage service will not be used for pipeline operations but instead will be offered by a third party as a convenience to shippers and will therefore be non-jurisdictional.

The ICA broadly defines transportation to include "all instrumentalities and facilities of shipment and carriage . . . and all services in connection with the receipt, delivery, . . . transfer in transit, . . . storage, and handling of property transported." 49 U.S.C. § 1(3). However, not "all services performed by a common carrier engaged in interstate commerce in connection with property transported are subject to the provisions of the Act." *Thompson v. Chicago B. & Q. R.R.*, 157 I.C.C. 775, 777 (1929).

A storage service is jurisdictional only if it is integral or necessary to the transportation function. *TE Products Pipeline Co., LLC*, 130 FERC ¶ 61,257 at P 13 (2010) ("A service is subject to the ICA and the Commission's jurisdiction only if it is 'integral' or 'necessary' to the pipeline transportation function."); *Guaranty Claim of the Central Elevator & Warehouse Co.*, 72 I.C.C. 169, 176 (1922) ("Storage of property transported is a transportation service only to the extent that storage is necessarily incidental to transporting such property . . ."). In contrast, "services provided by common carriers simply for the convenience of shippers do not constitute 'transportation.'" *Coastal States Trading, Inc. v. Shell Pipeline Corp.*, 573 F. Supp. 1415, 1421 (S.D. Tex., 1983).

The Commission has repeatedly distinguished between operational storage that is necessary and incidental to transportation, and non-jurisdictional merchant storage that is provided (often by third party commercial entities) as a convenience to shippers.⁶ Here, the third party merchant storage at Minot falls clearly within the latter class. As noted above, the two operational tanks at Minot are sufficient for North Dakota Pipeline to provide pipeline transportation service at its normal operating throughput, and the third tank is entirely redundant. Therefore, removal of the tank from operational service will have no impact on North Dakota Pipeline's operations or throughput. North Dakota Pipeline will lease the excess tank to an affiliated third party to provide merchant storage service at Minot.⁷ To the extent shippers desire to store barrels at Minot they will arrange for storage directly with the third party. Other third party entities may offer a similar merchant tankage service if they have or choose to build storage facilities at Minot. North Dakota Pipeline will not offer or be involved in the provision of the merchant storage at Minot, nor will North Dakota Pipeline shippers absorb any costs related to the storage service through their tariff rates. Shippers that choose to utilize the Parking Option may store barrels at Minot while awaiting favorable downstream market conditions. The optional parking arrangement is therefore provided only for the convenience of shippers and is not necessary or integral to transportation on North Dakota Pipeline. Indeed, the storage service here is no different from merchant storage provided by commercial entities throughout the industry. See *TE Products Pipeline Co., LLC*, 131 FERC ¶ 61,277 at P 12 (2010) (noting the fact that similar terminalling services were provided throughout the industry by non-

⁶ See e.g., *Lakehead Pipe Line Co., L.P.*, 71 FERC ¶ 61,338, 62,326 (1995) (break-out tankage facilities were jurisdictional where they were necessary and integral to operations by filling a gap between the pipeline's upstream and downstream systems), *reh'g denied*, 75 FERC ¶ 61,181, 61,601 (1996) (facilities were "the functional equivalent of missing pipe"); *TE Products Pipeline Co., LLC*, 130 FERC ¶ 61,257 at P 14 (2010) (terminalling services were non-jurisdictional because they were "neither necessary or integral to the transportation of . . . petroleum products" and were offered "as a convenience to shippers"), *reh'g denied*, 131 FERC ¶ 61,277 at P 12 (2010) ("The fact that storage tanks are also found at the terminal facilities shows that something other than jurisdictional transportation is occurring at these facilities."); *Buckley Produce Co. v. Penn. R.R. Co.*, 277 I.C.C. 319, 322 (1950) (storage service at a railroad terminal was not jurisdictional because "service in transportation had ceased" and the service was provided "for the convenience of complainant while seeking markets"); ; *Guaranty Claim of the Central Elevator & Warehouse Co.*, 72 I.C.C. 169, 176-177 (1922) (storage service provided by warehouse company was not necessarily incidental to rail transportation); see also, *Mid-America Pipeline Co., LLC*, 124 FERC ¶ 63,016 at P 923 (2008) ("As Mid-America's operational storage is offered as a necessary part of transportation, it is jurisdictional; while Mid-America's merchant storage is not jurisdictional because it is offered only for the convenience of shippers.").

⁷ The fact that the tankage is being leased to an affiliate of North Dakota Pipeline does not render the storage service jurisdictional. See *TE Products Pipeline Co., LLC*, 131 FERC ¶ 61,277 at P 12 (2010) ("The fact that the services were spun down to an affiliate of [the pipeline] . . . does not provide a basis for asserting jurisdiction over these services.").

jurisdictional entities without FERC tariffs on file "supports the conclusion that they are not integral or necessary for jurisdictional transportation.").

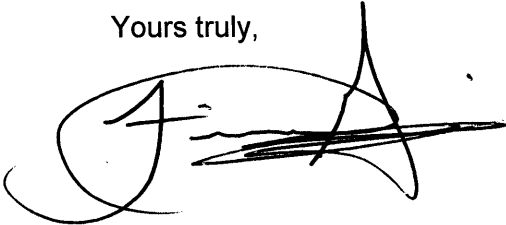
Notification

I hereby certify that North Dakota Pipeline has, on or before this date, delivered copies of the above letter to each person on the North Dakota Pipeline tariff subscriber list, by electronic means or by other means agreed upon.

Pursuant to 18 C.F.R. 343.3 of the Commission's regulations, it is requested that any protest related to this tariff filing be sent via email to Enbridge-Tariffs@enbridge.com.

If you have any questions concerning this filing, please contact the undersigned at (403) 231-5940.

Yours truly,

A handwritten signature in black ink, appearing to read 'Feisal Gazie', with a large, stylized flourish extending to the left.

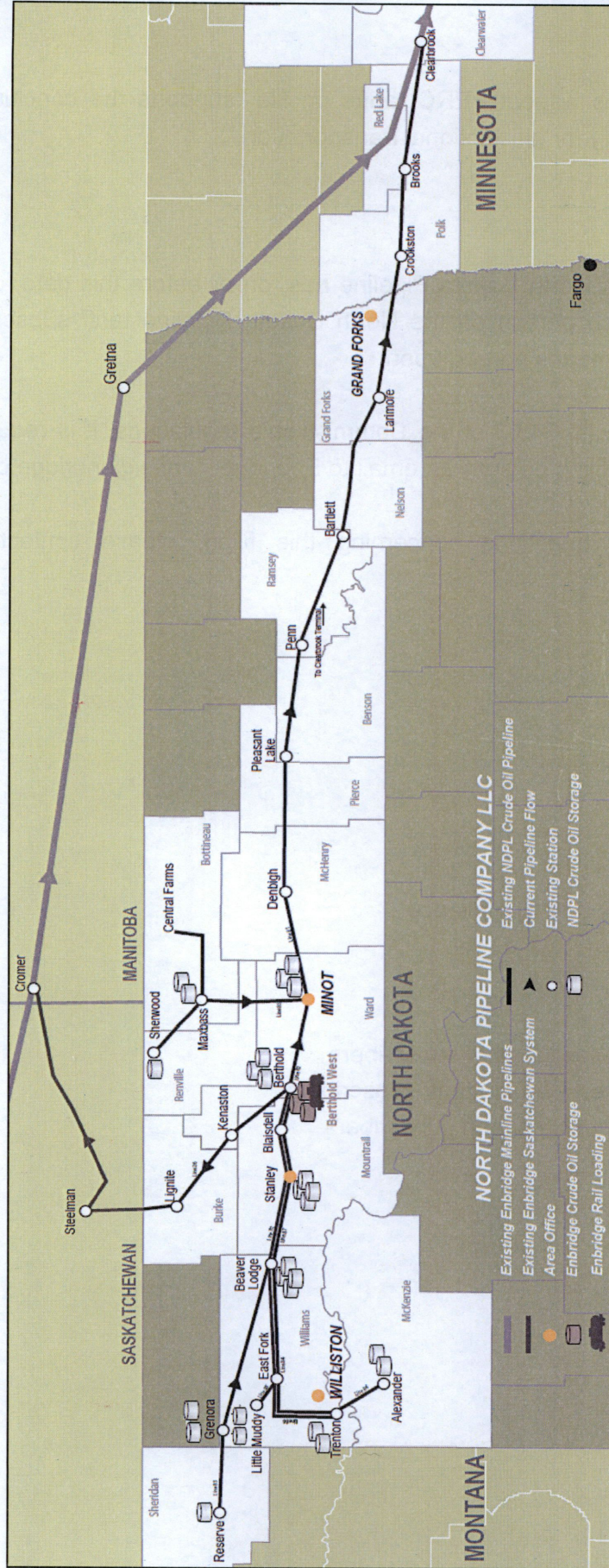
Feisal Gazie
Senior Manager
Regulatory Strategy and Compliance

Enclosures

cc: North Dakota Pipeline tariff subscribers
Enbridge Bakken Canada tariff subscribers
Bakken U.S. Pipelines tariff subscribers

Appendix A

Map of North Dakota Pipeline



NDPSC No. 26
Cancels NDPSC No. 19
FERC ICA Oil Tariff

FERC No. 2.6.0
(Issued in lieu of FERC No. 2.5.0 which was withdrawn)
Cancels FERC No. 2.4.0

NORTH DAKOTA PIPELINE COMPANY 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 North Dakota Pipeline Company 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: January 29, 2016

EFFECTIVE: March 1, 2016

ISSUED BY:

Dave Wudrick
Senior Director

Strategic Planning, Regulatory and Analysis
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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 North Dakota Pipeline Company 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;
- 3) is controlled by the same entity that controls a Shipper; or,
- 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 125(b)(ii), 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.

"ASTM" means American Society for Testing and Materials.

"ASTM D5705" means the standard test method for measurement of hydrogen sulfide (H₂S) in the vapor phase above residual fuel oils.

"ASTM D6377" means the standard test method for determination of vapor pressure of crude oil: VPCR_x (Expansion Method).

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

"Average Monthly Volume Percentage" means the total of a Historical Shipper's monthly Actual Shipments during the Base Period divided by the total of all Historical Shippers Actual Shipments during the Base Period with respect to the line segment or segments subject to prorationing. 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. The Actual Shipments of a Committed Shipper will be treated as a Historical Shipper's Actual Shipments during the months and to the extent that such Actual Shipments are tendered by such Committed Shipper to a Receipt Point that is downstream of the Receipt Point selected by it in its TSA.

"Bakken Pipeline Specifications" means the specifications as to quality set out in Item 5 of the Bakken U.S. Pipeline Rules and Regulations and in Item 4 of the Enbridge Bakken Canada Pipeline Rules and Regulations.

"Bakken U.S. Pipeline" means Bakken Pipeline Company LP's pipeline system for the transportation of Crude Petroleum from Berthold, North Dakota to the Canada/U.S. border near Portal, North Dakota.

“Bakken U.S. Pipeline Rules and Regulations” means the rules and regulations tariff for the Bakken U.S. Pipeline on file and in effect with the FERC.

“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.

“Business Day” means any day other than Saturday, Sunday, or any other day when banks are closed for business in North Dakota.

“Capacity Available to Historical Shippers” means the sum of all Historical Shippers’ Actual Shipments during the Base Period divided by the total Available Capacity (net of any capacity allocated to Committed Shippers under steps (i) through (iii) of Item 70(b)) during the Base Period multiplied by the Available Capacity (net of any capacity allocated to Committed Shippers under steps (i) through (iii) of Item 70(b)) during the month of prorationing, rounded to the nearest Barrel.

“Carrier” means North Dakota Pipeline Company LLC.

“Committed Capacity” means the Barrel per day capacity equal to the aggregate Committed Volumes pursuant to all TSAs in effect during the month of prorationing.

“Committed Shipper” means a Shipper that has committed to transporting, or paying for the transportation of, a specified minimum volume of Crude Petroleum pursuant to a TSA, provided that a Shipper will only be a Committed Shipper to the extent of its Committed Volume. A Committed Shipper will be treated as a New Shipper or Historical Shipper, as applicable under Item 70, for any nominations in excess of its Committed Volume and its Make-up Volumes. A Committed Shipper will also be treated as a New Shipper or Historical Shipper, as applicable under Item 70, for any portion of its Committed Volume that it tenders to a Receipt Point that is downstream of the Receipt Point selected by it in its TSA.

“Committed Volume” means, with respect to a Committed Shipper, the minimum daily volume of Crude Petroleum set out in Schedule A to the Committed Shipper’s TSA from the receipt point set forth in such Schedule A to Berthold.

“Consignee” means anyone to whom custody is to be given at the specific instructions of a Shipper when Crude Petroleum is delivered at a Delivery Point.

“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 [N] or the Minot Storage in Transit Site.

“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 [N] or the Minot Storage in Transit Site.

“Enbridge Bakken Canada Pipeline” means Enbridge Bakken Pipeline Limited Partnership’s pipeline system for the transportation of Crude Petroleum from the Canada/U.S. border near North Portal, Saskatchewan to Cromer, Manitoba.

“Enbridge Bakken Canada Pipeline Rules and Regulations” means the rules and regulations tariff for the Enbridge Bakken Canada Pipeline on file and in effect with the Canadian National Energy Board.

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

“Financial Penalty” means an amount equal to the product of the Financial Penalty Tariff Rate multiplied by the difference between that Shipper’s Binding Nomination and its Actual Shipments during said month.

“Financial Penalty Revenue” means revenue derived from the imposition of the Financial Penalty.

“Financial Penalty Tariff Rate” means the applicable tariff rate used to calculate a Financial 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.

“Historical Shipper” means for a line segment a Shipper, other than a Committed Shipper, that had Actual Shipments on that line segment 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 on a line segment 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(e)(i) and 70(f), 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 from time to time by Carrier including Working Stock needed to occupy the physical space within the pipeline and any applicable facilities.

“Make-up Volumes” means Barrels for which a Monthly Deficiency Payment has been paid and which are nominated by a Committed Shipper for transportation in a subsequent month in accordance with Item 67(c) of this tariff.

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

“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 ndshipperservices@enbridge.com.

[N] **“Minot Storage in Transit Site”** means Carrier's terminal at Minot, North Dakota.

“Monthly Deficiency Payment” means a payment to be made by a Committed Shipper as determined in accordance with the applicable TSA.

“Monthly Volume” means the product of the Committed Volume multiplied by the number of days in the relevant month.

“New Shipper” is any Shipper that is not a Historical Shipper and not a Committed Shipper. Effective October 1, 2012, Affiliates of an existing Historical Shipper are not eligible to be New Shippers.

“**Nomination**” means a 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 the Financial Penalty and the Volumetric Penalty, when applicable.

“**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).

“**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 [N] or the Minot Storage in Transit Site.

“**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).

“**TSA**” means a Transportation Service Agreement executed by the Carrier and a Shipper pursuant to one of the open seasons conducted by the Carrier.

“**Tender**” (including its correlatives) 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.

“**Vapor Pressure**” means the pressure above the surface of a liquid relative to zero pressure (absolute). Also called true vapor pressure.

“**Volumetric Penalty**” means the Nomination that will be accepted by the Carrier from such Shipper in each of the next three months, beginning two months after the month of non-performance, that is limited to no more than the Shipper’s Actual Shipments during said month, provided that the impacted segment is in apportionment during each of the three months.

“**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 Delivery Points.
- (b) No duty to transport on any 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.

20. SPECIFICATIONS AS TO QUALITY TRANSPORTED

- (a) Except as provided in Item 20(d), 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 thirty degrees (30°) and fifty (50°) at sixty degrees (60°) Fahrenheit;
 - (iii) Vapor Pressure by current version of ASTM D6377 which does not exceed 13.7 pounds per square inch absolute (psia);
 - (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; and,
- (v) hydrogen sulfide (H₂S) vapor phase content of 5 parts per million or less. The method used to test H₂S levels will be the current version of ASTM D5705 methodology, run at the maximum test temperature determined by the testing lab to be safe for use in crude oil applications.
 - (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) Except as provided in Item 20(d), Carrier reserves the right, in addition to the right reserved in Item 20(a), to reject any Crude Petroleum offered for transportation and nominated for delivery to the Bakken U.S. Pipeline which, when measured and tested by Carrier or Carrier's representative at the Receipt Point, does not meet all of the Bakken Pipeline Specifications.
 - (d) Carrier reserves the right to reject Crude Petroleum which does not meet the specifications set forth in Item 20(a) and, for Crude Petroleum nominated for delivery to the Bakken U.S. Pipeline, does not meet the Bakken Pipeline Specifications, 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).
 - (e) 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), and, for Crude Petroleum nominated for delivery to the Bakken U.S. Pipeline, meets the Bakken Pipeline Specifications, or (2) the shipment is to be transported under Item 20(d). 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), and, for Crude Petroleum nominated for delivery to the Bakken U.S. Pipeline, does not also meet the Bakken Pipeline Specifications, or (2) is not being offered for transportation under Item 20(d), 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(c).
 - (f) 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(c).
 - (g) 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 ndshipperservices@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 the Minimum Tender Volume.
- (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 the Minimum Tender Volume. 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 the Minimum Tender Volume. 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 for 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.

67. COMMITTED SHIPPERS

- (a) To the extent a Committed Shipper fails to nominate and/or Tender a volume of Crude Petroleum equal to the Monthly Volume under its TSA, then, such Committed Shipper shall nevertheless pay to the Carrier the Monthly Deficiency Payment in accordance with the TSA.
- (b) Whether Nominations and Tenders meet Monthly Volume requirements will be assessed relative to Receipts.
- (c) Committed Shippers who fail to meet their Committed Volume requirements in a month will be subject to uniform provisions with respect to their ability to ship Make-up Volumes in subsequent months. The ability of a Committed Shipper to ship Make-up Volumes may be terminated pursuant to its TSA.

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, will be allocated among "Committed Shippers", "Historical Shippers" and any "New Shippers" as follows:

- (i) With respect to a line segment that is subject to prorationing, each Committed Shipper that has a Committed Volume for such line segment shall be allocated an amount equal to one hundred (100) percent of its Monthly Volume for that line segment, subject to Items 70(b)(ii), (iii) and (ix).
 - (ii) If a Committed Shipper's Nomination for a month is less than its Monthly Volume, the Committed Shipper will be allocated only the amount of its Nomination. If the total of all Committed Shippers' aggregate Nominations is less than the Committed Capacity, then a Committed Shipper's Make-up Volumes will be accepted up to the remaining Committed Capacity during the term of such Committed Shipper's TSA; provided that, in the event the total Nominations by Committed Shippers of Make-up Volumes exceed the remaining Committed Capacity, Carrier will adjust the Nominations of Make-up Volumes on a pro rata basis.
 - (iii) Except under normal operating conditions, when the Available Capacity of a line segment between Beaver Lodge and Berthold is reduced, the allocation of such Available Capacity to Committed Shippers pursuant to Item 70(b)(i) shall be reduced by the same percentage as the reduction in the Available Capacity of such line segment.
 - (iv) Items 70(b)(iv), (v) and (vii) shall apply to prorationing of Nominations by Historical Shippers and New Shippers on all line segments of Carrier's system. Each Historical Shipper shall be allocated an amount equal to one hundred (100) percent of its Average Monthly Volume 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 Historical Shippers' allocations not exceeding ninety-five (95) percent of the total Available Capacity not allocated through the application of Items 70(b)(i), (ii) and (iii) for the line segment being prorated. If a Historical Shipper's Nomination for a month is less than its Average Monthly Volume Percentage, the Historical Shipper will be allocated only the amount of its Nomination.
 - (v) New Shippers shall be allocated volume equal to the Minimum Tender Volume of any remaining space not allocated to Historical Shippers or Committed 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 an Affiliate of any other winner in the lottery process for a given month.
 - (vi) Any capacity remaining after completion of Items 70(b)(i) through (v) shall be allocated to the Make-up Volumes of Committed Shippers in proportion to their respective Nominations of Make-up Volumes.
 - (vii) Any capacity remaining after initial allocations have been made to Committed Shippers, Historical Shippers, and New Shippers in accordance with Items 70(b)(i) through (vi) will be allocated:
 - first to those Historical Shippers who were not allocated their full Nomination, in proportion to their Average Monthly Volume Percentage; and,
 - second to New Shippers who were not allocated their full Nomination, in equal increments up to their Nomination.
 - (viii) Any capacity remaining after completion of Items 70(b)(i) through (vii) shall be allocated to Committed Shippers who were not allocated their full Nomination in proportion to their respective Nominations.
 - (ix) A Committed Shipper to whom notice has been given pursuant to Section 12.02.2 of the TSA shall be deemed a New Shipper for the purposes of Item 70, and all volumes nominated by any such Committed Shipper, including its Committed Volume and Make-up Volumes, shall be subject to Item 70(b)(iv), (v) and (vii) and not subject to Item 70(b)(i), (ii), (iii) and (vi).
- (c) 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.

- (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 Historical Shipper or New 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 Historical Shipper or New 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 will incur a Non-Performance Penalty. Any Shipper that incurs a Non-Performance Penalty will be subject to penalties as follows:
- a. If the Shipper incurs a Non-Performance Penalty at one or more Delivery Points during the first month of a rolling 12-month period (a cumulative rolling period of 12 months beginning the month in which the Shipper incurs its first Non-Performance Penalty), all Non-Performance Penalties incurred in that month will be subject to the Financial Penalty.
- b. If the Shipper incurs a Non-Performance Penalty at one or more Delivery Points in any subsequent month during the rolling 12-month period, as defined above, all Non-Performance Penalties incurred in subsequent months will be subject to both the Financial Penalty and the Volumetric Penalty.
- (ii) The Financial Penalty Tariff Rate for each Delivery Point shall equal the transportation rate in effect at the time of non-performance as follows:
- Any Binding Nomination to Clearbrook, Clearwater County, MN [N] or Minot (Ward County), ND
 - Tioga (Ramberg/Beaver Lodge Stations), (Williams County), ND to Clearbrook, Clearwater County, MN
 - Any Binding Nomination to Berthold (Ward County), ND
 - Stanley (Mountrail County), ND to Berthold (Ward County), ND
 - Any Binding Nomination to Stanley (Mountrail County), ND
 - Tioga (Ramberg/Beaver Lodge Stations), (Williams County), ND to Stanley (Mountrail County), ND
 - Any Binding Nomination to Tioga (Ramberg/Beaver Lodge Stations), (Williams County), ND
 - Trenton (Williams County), ND to Tioga (Ramberg/Beaver Lodge Stations), (Williams County), ND
- (iii) 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 Historical Shippers or New Shippers who did not incur the Financial Penalty during the calendar year. The associated refund with interest will be made on an annual basis.
- (iv) If a Historical Shipper or New 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(s) 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.
- (v) 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 Shippers for a given month, as determined by Carrier in its sole discretion, Carrier may curtail Deliveries to Shippers to the extent operationally required. In implementing such curtailments, Carrier will first curtail Deliveries for 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 Shippers on a pro rata basis to the extent operationally required.
- (g) If the circumstances described in Item 70(f) 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 Percentage of any Historical 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(e) in the absence of a Force Majeure event affecting Shippers subject to such Non-Performance Penalty.
- (h) Carrier reserves the right to enter into transportation services agreements pursuant to open seasons, which agreements provide that the committed shippers thereunder have the right to prorationing under steps (i), (ii) and (iii) of Rule 70(b); provided that the total committed volumes entitled to prorationing under such steps (i), (ii) and (iii) do not exceed 115,000 Barrels per day. After the date upon which any such rights of such future committed shippers take effect, the allocation of Available Monthly Capacity to Historical Shippers and New Shippers shall be subject to such rights even if, prior to such date, such Historical Shippers or New Shippers were allocated some of the Available Monthly Capacity that is used to allocate capacity to such future committed shippers pursuant to steps (i), (ii) and (iii) of Rule 70(b).

75. LOTTERY PROCESS

Carrier will administer a lottery process, outlined within Item 40(e) and Item 70(b)(v), as follows:

- (a) Carrier will use a random number generating software to randomly assign each 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 Minimum Tender Volume allocation under Item 70(b)(v) or mid-month batch under Item 40(e), as applicable. This process of assigning monthly Minimum Tender Volume allocations or mid-month batches, as applicable, to the lottery entrant with the number closest to one will continue until all of the monthly Minimum Tender Volume allocations or mid-month batches have been assigned.

80. APPLICATION OF RATES

- (a) Crude Petroleum received for transportation shall be subject to the rates in effect on the date of receipt of such Crude Petroleum by Carrier, irrespective of the date of the Tender.
- (b) As per 18 C.F.R. § 341.10, from any point not named in the local proportional rates 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. If the intermediate point is to be used on a continuous basis for more than 30 days, Carrier shall file a tariff publication applicable to the transportation movements within 30 days of the start of service.

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.

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) Except where caused by the direct negligence of Carrier, Carrier shall not be liable to a Shipper for any delay, damage or loss resulting from any cause while Carrier is in possession or control of such Shipper's Crude Petroleum, including the breakdown of the facilities of Carrier. Notwithstanding anything to the contrary contained herein, Carrier shall not be liable or responsible to any Shipper or such Shipper's affiliates for any indirect, consequential, incidental, or punitive damages, or for loss of profits or revenues incurred by such Shipper or its affiliates that arise in relation to the transportation of Crude Petroleum under this tariff, regardless of whether such claim arises under or results from contract, tort or strict liability.
- (b) If damage or loss to Crude Petroleum results from any cause other than the direct negligence of Carrier while Carrier is in possession or control of such Crude Petroleum, then Carrier may apportion the cost of such damage

or loss on a pro rata basis among all Shippers. Each Shipper's share of such cost shall be determined by Carrier based on the proportion of the volume of Shipper's Crude Petroleum in the possession of Carrier on the date of such loss to the total volume of Crude Petroleum in the possession of Carrier on the date of such loss. Carrier shall be obligated to deliver only that portion of the Crude Petroleum remaining after such deduction.

105. LIABILITY OF SHIPPER

To the fullest extent permitted by applicable law and except as otherwise specified in this tariff, Shipper shall indemnify, defend, and hold Carrier harmless from claims, demands, and causes of action asserted against Carrier by any other person for personal injury, for physical loss of or physical damage to property, or for violations of law resulting from Shipper's failure to comply with the provisions of this tariff and the willful or negligent acts or omissions of the Shipper. Where personal injury, death, or physical loss of or physical damage to property is the result of the joint negligence or misconduct of the parties hereto, the parties expressly agree to indemnify each other in proportion to their respective share of such joint negligence or misconduct.

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.

[N] 117. STORAGE IN TRANSIT

- (a) A Shipper may, by Nomination to Carrier, elect to park Crude Petroleum at the Minot Storage in Transit Site. Following such storage in transit, a Shipper shall be permitted, by Nomination to Carrier, to re-enter such Crude Petroleum for transportation to Clearbrook, Minnesota.
- (b) Nominations to the Minot Storage in Transit Site will be subject to the applicable tariff rate from the initial Receipt Point to Clearbrook, Minnesota, which will be invoiced at the time the Crude Petroleum is Delivered to the Minot Storage in Transit Site.
- (c) Carrier does not provide commercial storage at the Minot Storage in Transit Site. Shippers must make their own arrangements for commercial storage at Minot.
- (d) Upon Delivery of Crude Petroleum into storage at the Minot Storage in Transit Site, the custody and possession of the Crude Petroleum shall be that of the Shipper or consignee and not that of the Carrier, and Carrier shall not be liable for loss and/or damage to such Crude Petroleum while in storage.

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

[W] – Change in wording only