

# ARROWHEAD NUECES BAY, LLC

## LOCAL TARIFF

CONTAINING

### RATES, ITEMS AND REGULATIONS

GOVERNING THE TRANSPORTATION AND HANDLING

OF

### CRUDE PETROLEUM

TRANSPORTED BY PIPELINE

FROM AND TO POINTS NAMED HEREIN

#### **[C] REQUEST FOR SPECIAL PERMISSION**

~~Issued on less than one (1) day's notice under authority of 18 C.F.R. § 341.14. This tariff publication is conditionally accepted subject to refund pending a thirty (30) day review period.~~

The rules and regulations published herein shall apply only to those tariffs that specifically incorporate this tariff by reference; such references will include successive reissues thereof.

[N] Filed under authority of 18 C.F.R. § 342.3 (Indexing).

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

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## SECTION I RULES AND REGULATIONS

### ITEM 5 – DEFINITIONS

“**Affiliate**” means with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, in the case of a Person that is a limited partnership, an “Affiliate” shall include any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the general partner of such limited partnership. For the purposes of this definition, “control” means the ownership, directly or indirectly, of more than fifty percent (50%) of the voting stock or other ownership interest of such Person; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**A.P.I.**” means American Petroleum Institute.

“**Available Capacity**” means the total capacity of the System, or a particular segment thereof, available to transport Crude Petroleum in a Proration Month, as determined by Carrier in its sole discretion.

“**Barrel**” means forty-two (42) United States gallons at sixty degrees (60°) Fahrenheit and zero P.S.I.G.

“**Base Period**” means the 12-calendar month period beginning 13-calendar months prior to the Proration Month.

“**Batch**” or “**Batches**” means a quantity of Crude Petroleum of like characteristics delivered by Shipper for transportation by Carrier as an identifiable unit.

“**Carrier**” means Arrowhead Nueces Bay, LLC.

“**Consignee**” means an entity that Shipper has authorized in writing to accept the delivery from Carrier of an amount of Crude Petroleum at the Delivery Point.

“**Crude Petroleum**” means the direct liquid product of oil or gas wells that meets Carrier’s product Quality Specifications set forth in Item 15.

“**Delivery Point**” means those point(s) of delivery on Carrier’s System, as specified in Section II of this tariff.

“**Encumbered Crude Petroleum**” shall have the meaning set forth in Item 45.

“**Fungible Batch**” shall mean a Batch of Crude Petroleum meeting Carrier’s quality specifications set forth in Item 15, which Carrier may commingle with other Batches of Crude Petroleum meeting the same specifications pursuant to Paragraph B(i) of Item 30.

“**Governmental Authority**” means (i) the United States of America, (ii) any state, county, parish, municipality or other governmental subdivision within the United States of America, and (iii) any court or any governmental department, commission, board, bureau, agency or other instrumentality of the United States of America or of any state, county, or municipality having applicable jurisdiction.

“**Law**” shall mean all applicable local, state and federal constitutions, laws (including common law), treaties, statutes, orders, decrees, rules, regulations, codes, and ordinances issued by any Governmental Authority, and including judicial or administrative orders, consents, decrees, and judgments, and determinations by, or interpretations of any of the foregoing by any Governmental Authority having jurisdiction over the matter in question.

“**New Shipper**” means a Shipper that is not a Regular Shipper. Once a Shipper is assigned New Shipper status, such Shipper must remain a New Shipper for a period of 12 consecutive calendar months before it will become eligible to qualify for Regular Shipper status.

“**New Shipper Capacity**” means ten percent (10%) of the total available capacity of Carrier’s system (or portion thereof, as applicable) for the Proration Month.

“**Nomination**” means a written offer (in form and context specified by Carrier) made by a Shipper to Carrier of a stated quantity of Crude Petroleum for transportation from a specified Receipt Point to a specified Delivery Point pursuant to the terms of this tariff.

“**Person**” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, or limited liability company.

“**Proration Month**” means the month for which capacity on Carrier’s System is subject to prorationing under Item 60 of this tariff.

“**Quality Specifications**” shall have the meaning set forth in Item 15 of this tariff.

“**Receipt Point**” means the point or points where Crude Petroleum is received into Carrier’s System, as specified in Section II of this tariff.

“**Regular Shipper**” means a Shipper that has shipped Crude Petroleum on Carrier’s system during each month of the Base Period.

“**Shipper**” means a party who contracts with Carrier for the transportation of Crude Petroleum pursuant to the terms of this tariff.

“**Specified Grade**” means Crude Petroleum meeting certain specifications designated by Carrier for such grade of Crude Petroleum.

“**System**” means Carrier’s pipeline system and all related facilities to which the rules and regulations stated herein apply.

“**Tender,**” “**Tenders,**” or “**Tendered**” shall mean the presentation by a Shipper to Carrier of a stated quantity of Crude Petroleum for transportation from a specified Receipt Point to a specified Delivery Point in accordance with this tariff.

**ITEM 10 – COMMODITY**

Carrier is engaged in the transportation of Crude Petroleum, as that term is defined herein, and therefore, will not accept any other commodity for transportation hereunder.

**ITEM 15 – QUALITY SPECIFICATIONS AND ACCEPTANCE OF CRUDE PETROLEUM**

- A. The specifications set forth in this Item 15 are the required specifications for all Crude Petroleum delivered to Carrier’s System and shall apply to each Barrel of Shipper’s Tender, and shall not be limited to the composite sample of the Tender.
- B. Shipper shall deliver Crude Petroleum to Carrier’s System that meets the following specifications:

Common Stream Specifications		ASTM Testing Method
API Gravity, API	≥36.0 and ≤ 44.0	ASTM D 1298
Sulfur Content, Weight %	0.40 or less	ASTM D 5504
H <sub>2</sub> S, ppm in vapor	10 PPM or less	ASTM D 5705, as modified for crude petroleum
Max Reid Vapor Pressure, psi	10.0	ASTM D 6377
Max True Vapor Pressure, psi	11.0	ASTM D 2879
Basic sediment, water, and other impurities	1% or less	ASTM D 4007

Shipper shall also ensure that Crude Petroleum delivered to Carrier’s System (i) is merchantable and properly settled; (ii) is not contaminated by the existence of or excess amounts of impure substances, including but not limited to, chlorinated or oxygenated hydrocarbons, arsenic, lead, or other metals; (iii) has a temperature less than or equal to one hundred and twenty degrees (120°) Fahrenheit; (iv) has a gravity, viscosity, pour point, and other characteristics that make it readily susceptible to transportation through Carrier’s System; (v) has a true vapor pressure that will not result in Carrier’s noncompliance with Federal, State, or local requirements regarding hydrocarbon emissions; (vi) will not materially affect the quality of other shipments on the System or cause disadvantage to other Shippers or Carrier; and (vii) will not, in Carrier’s sole judgment, expose Carrier’s

employees and/or its representatives or the System to an undue risk of harm or property damage. In addition, Carrier reserves the right to reject any shipment or portion of a shipment of Crude Petroleum for which Shipper or Consignee has failed to comply with applicable laws, rules, and regulations made by government authorities regulating shipment of Crude Petroleum.

If Crude Petroleum is accepted from tankage,

- i. settled bottoms in such tanks must not be above a point six inches (6") below the bottom of the pipeline connection with the tank from which it enters Carrier's System; and
- ii. such Crude Petroleum must not contain basic sediment, water or other impurities in excess of one percent (1%) average in suspension above the pipeline connection.

The requirements set forth in this Item 15(B) are collectively referred to herein as the "**Quality Specifications.**"

- C. If, upon investigation, Carrier determines that a Shipper has delivered Crude Petroleum to Carrier's System that does not comply with the Quality Specifications, Carrier may (i) require that Shipper transport such Crude Petroleum as a segregated Batch, separate and apart from the Fungible Batch then being transported by Carrier, in accordance with terms and conditions to be agreed upon by Carrier and Shipper; (ii) accept such delivery if Carrier determines that the quality of the Crude Petroleum, when commingled as a Fungible Batch, will nonetheless meet the Quality Specifications; (iii) exclude such Crude Petroleum and any future deliveries of Crude Petroleum from Shipper until such time as the Shipper returns the quality of its Crude Petroleum to a level satisfactory to Carrier in accordance with this tariff; and/or (iv) dispose of any Crude Petroleum delivered into its System that does not meet the Quality Specifications. Carrier may dispose of any Crude Petroleum not meeting the Quality Specifications in any reasonable commercial manner, and any liability associated with the contamination or disposal of any such Crude Petroleum shall be borne by the Shipper that introduced the contaminated Crude Petroleum into Carrier's System. Such Shipper's liability in such an event includes, but is not limited to, claims from other Shippers, carriers, or users of the contaminated Crude Petroleum and the costs of any regulatory or judicial proceeding. Upon determination that Shipper's Crude Petroleum does not conform to the Quality Specifications, Carrier shall notify the Shipper of such non-conformance to the Quality Specifications, including a reasonable description of such non-conformance.
- D. Where Crude Petroleum is delivered to Carrier's System through automatic custody transfer measurement facilities, Carrier may require use of a monitor that rejects Crude Petroleum containing in excess of one percent (1%) basic sediment and water.
- E. In addition to having the other rights set forth in this Item 15, if Crude Petroleum received by Carrier does not meet the Quality Specifications, Carrier reserves the right to charge the Shipper (i) the actual costs and expenses incurred by Carrier to treat, handle, or otherwise dispose of all such contaminated Crude Petroleum, and (ii) a one-hundred (100) cents per Barrel charge for the volume of contaminated Crude Petroleum transported by Carrier ("**Off-**

**Spec Penalty**”). The Off-Spec Penalty is a penalty intended to discourage deliveries of Crude Petroleum to Carrier’s System that violate Carrier’s Quality Specifications.

- F. Shipper shall be liable for any contamination or damage to other Crude Petroleum in Carrier’s custody and/or to Carrier’s System and other facilities directly caused by failure of the Crude Petroleum Tendered to meet the Quality Specifications.

Carrier will from time to time give notice to Shippers establishing categories of Crude Petroleum and Specified Grade(s) therein that it will regularly transport as a common stream between each Receipt Point and each Delivery Point. For the avoidance of doubt, if a Specified Grade has crude quality specifications more restrictive than those generally applicable to Crude Petroleum in this Item 15, Carrier shall apply the more restrictive crude quality specifications for the Specified Grade to Barrels in the common stream for such Specified Grade, as well as the other crude quality specifications generally applicable to Crude Petroleum in this Item 15. Shipper shall, at the request of Carrier, make such Specified Grade(s) available in such quantities and at such times as may be necessary to permit such common stream movements. Carrier may from time to time, after reasonable notice to Shippers who have shipped a category of Crude Petroleum or a Specified Grade therein in the prior three months, cease to transport such category of Crude Petroleum or Specified Grade as a common stream or change the specifications of a particular category of Crude Petroleum or a Specified Grade transported as a common stream. In addition, the specifications for any Specified Grades are, without limitation, subject to modification from time to time in the event upstream connecting carriers modify their specifications for similar grades of Crude Petroleum.

- G. At the request of a Shipper, and subject to other provisions of these Rules and Regulations, Carrier may agree to accept for shipment other categories of Crude Petroleum or Specified Grades to be transported as a common stream pursuant to a rates tariff, subject to the operating conditions of the facilities. Such request must specify (1) a vapor pressure using ASTM D6377 methodology and/or an API (American Petroleum Institute) gravity range; and (2) a sulfur content weight % limitation. Crude Petroleum Tendered for transportation which differs in grade and general characteristics from that usually transported by Carrier will, at Carrier’s option, be transported only under terms agreed upon, in writing, by Shipper and Carrier.

## **ITEM 20 - TESTING AND MEASURING**

- A. All Crude Petroleum transported by Carrier shall be measured at the applicable Receipt Point and Delivery Point, and may also be measured at any other time deemed appropriate by Carrier, with such measurement made in accordance with applicable A.P.I. Manual of Petroleum Measurement Standards. All measurements and tests shall be performed by Carrier or Carrier’s designee, but Shipper or its representative may be present to witness such measurements and tests.
- B. Crude Petroleum received from Shipper and Crude Petroleum delivered to Shipper shall, in each instance, be evidenced by tickets, showing opening and closing meter readings or tank gauges, as applicable, temperature, pressure, and any other data essential to the determination

of quantity. Such tickets shall be jointly signed by representatives of Carrier and Shipper, and shall constitute full receipt for: (i) the Crude Petroleum received and (ii) the Crude Petroleum delivered.

- C. A representative of Carrier shall have the right to enter upon the premises where Shipper's Crude Petroleum is received or delivered and have access to any and all storage receptacles or meters for the purposes of measuring and testing and to make any examination, inspection, measurement or test required.

#### **ITEM 25 – DEDUCTIONS AND ADJUSTMENTS**

- A. In measuring the quantity of Crude Petroleum received and delivered, corrections shall be made from volumes at actual or observed temperature to volumes at 60 degrees Fahrenheit and for pressure to 14.696 psia. Quantities shall be corrected for this purpose by use of applicable API-ASTM volume correction factor tables.
- B. Subject to adjustments made pursuant to Paragraph (C) of this Item 25, the quantity available for delivery from Carrier to Shipper at the Delivery Point shall be the net balance of Shipper's Crude Petroleum received at the Receipt Point, less an adjustment for temperature and deduction for basic sediment, water, and other impurities.
- C. Crude Petroleum losses due to evaporation, interface mixtures and other routine shrinkage factors are inherent in pipeline operations. The total overage or shortage resulting from Carrier's operation will be allocated to each Shipper's account on an accrual basis calculated by the proportion of the Shipper's total delivered volumes to the total volumes delivered by Carrier during the same period. Carrier will account to each Shipper for all Crude Petroleum received and will settle for net Crude Petroleum gains and losses from normal operations based on prevailing prices in Carrier's areas of operations.

#### **ITEM 30 – VARIATIONS IN QUALITY AND GRAVITY**

- A. Crude Petroleum will be accepted for transportation only on condition that it shall be subject to normal changes in general characteristics while in transit as may result from the mixture of such Crude Petroleum with other Crude Petroleum in the Pipeline and/or tanks of Carrier.
- B. Carrier will not be liable for variations of gravity or quality of Crude Petroleum occurring while in its custody and is under no obligation to deliver the identical Crude Petroleum as received or Crude Petroleum of the same quality specifications; provided that if Crude Petroleum is designated by a Shipper as a Specified Grade to be shipped in a common stream and is received by Carrier as Crude Petroleum meeting such Specified Grade specifications, Carrier shall endeavor to deliver the same grade specifications of such Specified Grade as results, from time to time, from the volumes of the Specified Grade received from all Shippers transporting in the common stream of such Specified Grade.



- C. 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.

### **ITEM 35 – NOMINATIONS**

- A. Crude Petroleum for shipment through Carrier's System will be received only on properly executed Nominations from Shipper showing the point at which the Crude Petroleum is to be received, the point at which the Crude Petroleum is to be delivered, and the amount of Crude Petroleum to be transported. Carrier may refuse to accept Crude Petroleum for transportation if Shipper has not furnished documentation demonstrating that it has made provision for prompt receipt thereof at the Nominated Delivery Point.
- B. Any Shipper desiring to nominate Crude Petroleum for transportation shall make such Nomination to Carrier in writing on or before the twentieth (20th) day of the month preceding the month during which the transportation under the Nomination is to begin; except that, if space is available for current movement, Carrier shall accept changes to a Nomination from Shipper for transportation of Crude Petroleum submitted after the twentieth (20th) day of the month preceding the month during which the transportation under the Nomination is to begin. Carrier also shall accept changes to a Nomination during the shipping month, subject to capacity limitations.
- C. Carrier may refuse to accept Crude Petroleum for transportation if Shipper is not in compliance with other provisions of this tariff or where Shipper has failed to comply with all applicable Law regulating shipments of Crude Petroleum.

### **ITEM 40 – FINANCIAL ASSURANCES**

- A. Upon the request of Carrier, all prospective and existing Shippers must submit sufficient financial information to allow Carrier to enforce the terms of Carrier's tariff and/or 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 Carrier's tariff. If Carrier determines, at any time, that there are reasonable grounds for insecurity regarding Shipper's performance of any obligation under this tariff (whether or not then due) by a Shipper or prospective Shipper (including, without limitation, the occurrence of a material change in the creditworthiness of Shipper), Carrier may require such Shipper to provide financial assurances, and shall accept as assurance of payment any of the following: (a) prepayment of transportation charges; (b) a guaranty in a form and amount sufficient to ensure payment of transportation charges and in a form and from a third-party acceptable to Carrier; or (c) a letter of credit or surety bond from an appropriate financial institution in a form and amount acceptable to Carrier sufficient to ensure payment of transportation charges.
- B. If an existing Shipper or prospective Shipper fails to provide financial assurances within ten (10) days of Shipper's receipt of Carrier's written request for such assurances, Carrier shall

not be obligated to accept Crude Petroleum, or a Nomination, for transportation until such requirement is fully met.

#### **ITEM 45 – TITLE**

At the time of Nomination, Shipper shall inform Carrier if any Crude Petroleum Nominated and/or Tendered to Carrier for transportation may be (i) encumbered by a lien or charge of any kind, (ii) may be involved in litigation or, (iii) may be subject to a title dispute (“**Encumbered Crude Petroleum**”). When any Encumbered Crude Petroleum is Nominated for transportation, Carrier may require Shipper to provide one or more of the following: (i) satisfactory evidence of its perfected and unencumbered title, (ii) satisfactory indemnity bond to protect Carrier against any and all loss, (iii) pre-payment of transportation charges, or (iv) subordination agreement from the applicable lienholder. Carrier also has the right to refuse any shipment of Encumbered Crude Petroleum. By Nominating Crude Petroleum, Shipper warrants and guarantees that Shipper has good title thereto and agrees to hold Carrier harmless for any and all loss, cost, liability, damage and/or expense resulting from failure of title thereto; provided that acceptance for transportation shall not be deemed a representation by Carrier as to title.

In addition, Shipper shall not cause or permit any lien, security interest or other form of burden be filed or created with respect to Crude Petroleum in Carrier’s possession, except for the lien created in favor of Carrier under Item 85 of this tariff.

#### **ITEM 50 – MINIMUM NOMINATION**

- A. The minimum size of any Batch of a particular type of Crude Petroleum that will be accepted at an Origin Point by Carrier from one Shipper shall be 50,000 Barrels, provided that Carrier may accept Batches of less than 50,000 Barrels if operationally possible and acceptance may be done so in a non-discriminatory manner.
- B. Carrier may, at its sole discretion and in a non-discriminatory manner, revise the minimum Batch size set forth in this Item 50 when necessary to maintain efficient operation of its System.
- C. Carrier will not be obligated to make any single delivery that is less than the current minimum Batch size unless Carrier’s operations dictate otherwise. The term “single delivery” in this Item 50 means a delivery of Crude Petroleum, in one continuous operation to one Shipper or Consignee into a single facility, furnished by such Shipper or Consignee, to which Carrier is connected.

#### **ITEM 55 – LEASING OF SYSTEM CAPACITY**

- A. Carrier leases its capacity from an affiliate of Carrier (“Lessor”). As a result, Carrier is only able to perform transportation services during certain periods each day. All services provided under this tariff are subject to such limitation.
- B. If any capacity remains available for transportation services on the System in a month following Carrier’s fulfillment of all of the timely Nominations submitted by Shippers in

accordance with the provisions of this tariff, Carrier shall be entitled to release such available capacity, on a monthly basis only, back to Lessor, in order to allow Lessor to fulfill any unmet nominations for service on its pipeline system. Carrier shall not undertake such a release of capacity if Carrier is unable to completely fulfill all of the timely Nominations for service on the System submitted by Shippers in accordance with the provisions of this tariff and Carrier shall incur no liability to any Shippers on the System in the event of such a release of unused capacity.

- C. Conversely, if any capacity remains available for transportation services on Lessor's pipeline system in a month following Lessor's fulfillment of all of the timely nominations submitted by its shippers in accordance with the provisions of its tariff, Carrier may request that Lessor lease such available capacity, on a monthly basis only, to Carrier in order to allow Carrier to fulfill any unmet Nominations for service on the System. In the event Carrier does lease additional capacity from Lessor, Carrier shall allocate such capacity among Shippers in accordance with the provisions of Item No. 55 of this tariff and the rates set forth in Section II of this tariff shall apply to transportation services made using such leased capacity.

#### **ITEM 60 – PRORATIONING OF CAPACITY**

- A. **When capacity will be prorated.** When Carrier receives more Nominations in a month for transportation of Crude Petroleum on a line segment of the System than Carrier is able to transport, Carrier shall allocate the Available Capacity of the line segment under the provisions of this Item 60.
- B. **Division of capacity between Shipper classes.** Available capacity for a Proration Month shall be divided between Regular Shippers as a class and New Shippers as a class.
- C. **Availability of capacity to New Shippers.** Carrier shall first allocate the New Shipper Capacity among all New Shippers who have submitted a proper nomination for the Proration Month. Each such New Shipper shall be allocated a volume of the New Shipper Capacity for the Proration Month that is equal to:
- i. its nomination, if the total volume nominated by all New Shippers for the Proration Month is less than or equal to ten percent (10%) of the total available capacity of Carrier's system (or portion thereof, as applicable) for the month; provided, however, that no New Shipper shall be allocated more than 2.50 percent of the available system capacity (or portion thereof, as applicable) for a Proration Month; or
  - ii. its pro rata share, in accordance with its nomination, of ten percent (10%) of the New Shipper Capacity, if the total volume nominated by all New Shippers is greater than 10 percent (10%) of the available capacity of Carrier's system (or portion thereof, as applicable); provided, however, that no New Shipper shall be allocated more than 2.50 percent of the available system capacity (or portion thereof, as applicable) for a Proration Month.

- D. **Availability of capacity to Regular Shippers.** After the allocation of the New Shipper Capacity to New Shippers, Carrier shall allocate the remaining available system capacity among all Regular Shippers who have properly submitted a nomination for the Proration Month. Each such Regular Shipper shall be allocated a volume of capacity each Proration Month that is equal to the lesser of (i) its nomination for the Proration Month, or (ii) a fraction of the capacity available to Regular Shippers during the Proration Month, where the numerator of such fraction shall equal the total shipments by the Regular Shipper on Carrier's system during the Base Period, and the denominator of which shall equal the total shipments by all Regular Shippers on Carrier's system during the Base Period.
- E. **Remaining Capacity.** Any remaining capacity that is not allocated through the application of Paragraphs C and D shall be allocated first among all Regular Shippers having unmet Nominations on a pro rata basis, according to the level of each Regular Shipper's initial capacity allocation, and then to New Shippers having unmet Nominations on a pro rata basis, according to the level of the initial capacity allocation
- F. **Basis for allocation; notification.** During periods when Carrier applies the provisions of this Item 60:
- i. The capacity allocated to a Shipper will be provided as a daily or monthly value, at Carrier's discretion, and will be calculated for the Proration Month; and
  - ii. Carrier will use its reasonable efforts to notify each Shipper of its allocation not later than three (3) days prior to the first (1st) day of the Proration Month.
- G. **Failure to use allocated capacity.**
- i. If a Shipper does not use the capacity allocated to it under this Item 60 at the times and in the amounts designated by Carrier, Carrier shall have the right to use Shipper's unused capacity to fulfill the unmet Nominations of other Shippers.
  - ii. If a Shipper does not use at least ninety-five percent (95%) of the capacity allocated to it under this Proration Policy in a Proration Month, such Shipper shall pay Carrier a per Barrel penalty equal to the then-current transportation rate on the System for each Barrel of capacity that the Shipper was allocated but did not use in the Proration Month. Notwithstanding the foregoing, Carrier has the discretion to waive or modify application of this Paragraph G (ii) when Carrier determines that the Shipper's failure to use such allocated capacity was due to factors beyond the Shipper's control
- H. **Transfers of Capacity and Shipment History.** A Shipper may not assign, convey, loan, transfer, or allow another Shipper to use in any manner (i) the capacity allocated to Shipper under this Item 60, or (ii) the shipment history accumulated by a Shipper, which is used by Carrier for purposes of administering this Item 60; provided, however, that a Shipper's allocation of capacity or shipment history may be transferred as an incident of the bona fide sale of the Shipper's business or to a successor to the Shipper's business by the operation of law, such as an executor or trustee in bankruptcy.

- I. **Use of Affiliates.** A Shipper may not use an Affiliated Shipper or any other cooperating entity to increase its allocation of capacity under this Item 60.

#### **ITEM 65 – STORAGE; RECEIPT AND DELIVERY FACILITIES**

- A. Carrier only provides working tankage that is incidental and necessary to the transportation of Crude Petroleum, but does not provide or offer storage service, whether in transit or/at points of Receipt Point or the Delivery Point.
- B. Carrier shall accept Crude Petroleum only when Shipper has provided the necessary equipment and facilities for receipt of Crude Petroleum into Carrier's System and delivery of Crude Petroleum from Carrier's System at pressures and pumping rates required by Carrier. The cost of such facilities shall be provided at the sole cost of Shipper seeking access to Carrier's System. Carrier may require evidence showing that the necessary facilities are available for delivering shipments onto Carrier's System at the Receipt Point(s) and receiving shipments from Carrier's System at the Delivery Point(s) before any obligation to furnish transportation service shall arise.

#### **ITEM 70 – PIPEAGE OR OTHER CONTRACTS**

Separate agreements in association with pipeline connections or other facilities ancillary to Carrier's System and in accordance with this tariff shall be required of any Shipper before any obligation to provide transportation shall arise. A pipeage contract may include additional charges for reimbursement for facilities necessary to receive/or deliver Shipper's shipments.

#### **ITEM 75 – DELIVERY**

- A. In the event Carrier has accepted Crude Petroleum for transportation in reliance upon Shipper's representations as to acceptance at the Delivery Point, and there is failure to promptly accept such Crude Petroleum as scheduled at Delivery Point, then and in such event Carrier shall have the right to divert, reassign, or make whatever arrangements for disposition of the Crude Petroleum it deems appropriate to clear its pipeline facilities.
- B. If the Shipper cannot accept the scheduled delivery and Shipper makes timely arrangements for delivery at another local or more distant delivery point, Carrier will permit such diversion or reassignment consistent with the provisions of Item No. 75 of this tariff. Carrier will consider all such diversion or reassignment arrangements to be timely if notice of these alternate arrangements is received by Carrier in sufficient time to avoid shutting down operation of the affected pipeline segment or facilities. If suitable diversion or reassignment arrangements are made by the Shipper but Carrier is not notified in time sufficient to avoid a shutdown of the affected pipeline segment or facilities, then an assessment of five thousand dollars (\$5,000.00) for each hour of lost operation or fraction thereof will be made on the Shipper.

- C. If the Shipper fails to make suitable arrangements for diversion or reconsignment of the Crude Petroleum, and Carrier does not have available intermediate or local storage facilities that will permit Carrier to promptly divert the Crude Petroleum, Carrier will seek the most expeditious means to divert or dispose of the Crude Petroleum. Such disposition includes the right to sell the Crude Petroleum at private or public sale. Carrier may be a purchaser at such public sale. From the proceeds of any such sale, Carrier may pay itself all transportation and other charges and expenses in caring for and maintaining the Crude Petroleum and the costs of sale, and the balance shall be held for whomsoever may be lawfully entitled thereto.
- D. In the event that physical limitations or any other factors prevent Carrier from arranging for the prompt disposal of the Crude Petroleum and Carrier is forced to shut down operation of the pipeline facilities, the Shipper will be assessed penalties and fees as follows:
- a. Shipper will be responsible for the prompt payment of any and all claims that may be brought against Carrier from other Shippers or affected Parties as a result of the extended interruption of scheduled pipeline service.
  - b. Shipper will also be responsible for the prompt payment of any and all costs incurred by the pipeline to provide alternative service to its other Shippers whose Crude Petroleum are blocked in the pipeline facilities by the shutdown. Such costs may include expenses for trucking said products and any related charges for loading and/or unloading the Crude Petroleum.
  - c. Shipper will be assessed fees of five thousand dollars (\$5,000.00) for each hour of lost operation or fraction thereof to compensate Carrier for revenues lost during the time the pipeline facilities were forced to shut down.

#### **ITEM 80 – RATES APPLICABLE**

Crude Petroleum accepted for transportation shall be subject to the rates in effect on the date of receipt by Carrier, irrespective of the date of delivery or Nomination.

#### **ITEM 85 – PAYMENT OF CHARGES**

- A. Carrier will invoice Shipper for transportation rates, fees, and charges and all other amounts accruing on Crude Petroleum accepted in accordance with Carrier's then current invoicing and payment policies and procedures. Transportation and all other lawful charges will be assessed on the net balance of Shipper's Crude Petroleum received at the Receipt Point in a month that remains after the deductions and adjustments set forth in Paragraph B of Item 25.
- B. Shipper shall pay all applicable transportation and other charges as set forth in this Local Tariff accruing on Crude Petroleum related to transportation of such Crude Petroleum by Carrier.

- C. Shipper shall be responsible for the payment of all royalties, overriding royalties, production payments, and other similar amounts due in respect of such Crude Petroleum.
- D. Carrier shall have a self-executing lien on all Crude Petroleum delivered to Carrier to secure the payment of any and all transportation and Treating Services or any other charges that are owed Carrier. Such lien shall survive delivery of Crude Petroleum to Shipper. Such lien shall extend to all Crude Petroleum, including Shipper's Line Fill, in Carrier's possession beginning with Shipper's first receipt of transportation or other services from Carrier. Shipper agrees to execute such additional documents as may be reasonably necessary to perfect or evidence such lien. If a bill of lading is required under applicable law for such a lien to arise, acceptance of the Nomination will be deemed to be the bill of lading for all Crude Oil, including Shipper's line fill, subject to such Nomination. The lien provided herein shall be in addition to any lien or security interest provided by this tariff or applicable law.
- E. If any charge remains unpaid after the due date specified in Carrier's invoice, then such amount shall bear interest from the day after the date of the invoice until paid, calculated at an annual rate of the lesser of (i) 125% of the prime rate of interest, as of the date of Carrier's invoice, charged by the Citibank N.A. of New York, New York, for ninety (90) day loans made to substantial and responsible commercial borrowers or (ii) the maximum rate allowed by law, whichever is the lower.
- F. In the event Shipper fails to pay any charges when due, Carrier shall have the right, until such payments, including interest thereon, are made in full, to: (i) refuse to provide Shipper access to Carrier's System or provide services pursuant to this tariff, (ii) offset the current and future amounts owed by Shipper against any amounts Carrier owes to Shipper, and (iii) exercise any other rights and remedies granted under this tariff or existing under applicable Law.
- G. If any charges owed to Carrier remain unpaid five (5) days after the due date specified in the invoice for such charges, Carrier may, by an agent, sell said Crude Petroleum at public auction for cash on any day not a Sunday or legal holiday, and not less than 48 hours after publication of notice, in a daily newspaper, of the time and place of such sale and the quantity of Crude Petroleum to be sold. Carrier may be a bidder and purchaser at such sale. Out of the proceeds of said sale, Carrier may pay itself all transportation and any other lawful charges, expense of notice, advertisement, sale, and other necessary expense, and of caring for and maintaining the Crude Petroleum, and the net balance shall be held without interest for whomsoever may be lawfully entitled thereto; if the proceeds of said sale do not cover all expenses incurred by Carrier, Shipper and/or Consignee are liable to Carrier for any deficiency.

#### **ITEM 90 – CHARGES FOR SPILL COMPENSATION ACT**

In addition to the transportation charges and all other charges accruing on Crude Petroleum accepted for transportation, a per barrel charge will be assessed and collected in the amount of any tax, fee, or other charge levied against Carrier in connection with such a commodity, pursuant to any change in

application of existing Federal, State or local act or regulations or the implementation of any new Federal, State or local act or regulation which levies a tax, fee or other charge on the receipt, delivery, transfer or transportation of such commodities within their jurisdiction for the purpose of creating a fund for the prevention, containment, cleanup and/or removal of spills and/or the reimbursement of persons sustaining loss therefrom. If such a tax, fee, or other charge is levied against Carrier, Carrier shall file with the Federal Energy Regulatory Commission to place into effect a per barrel rate to recover such tax, fee, or other charge. Carrier shall be under no obligation to contest or protest on behalf of Shipper or its Consignee the legality of such tax, fee, levy or other charges

#### **ITEM 95 – DUTY OF CARRIER**

Carrier shall transport and deliver the quantity of Crude Petroleum accepted for transportation (less the appropriate deductions), with reasonable diligence, considering the quantity of Crude Petroleum, the distance of transportation, the safety of operation, and other material factors.

#### **ITEM 100 – LIABILITY OF CARRIER**

- A. Custody of Crude Petroleum by Carrier shall begin when the Crude Petroleum enters the System and shall cease when it passes from the System.
- B. Carrier, while in possession of Crude Petroleum herein described, shall not be liable for, and Shipper hereby waives any claims against Carrier for, any loss, damage, or delay caused by an act of God, the public enemy, the public authority, an event of Force Majeure, an act of Shipper himself, or resulting from any other cause, unless such loss, damage, or delay is due to the gross negligence or willful misconduct of Carrier. Carrier shall not be liable for, and Shipper hereby waives any claims against Carrier for, any loss or damage to Crude Petroleum prior to the delivery of Crude Petroleum to Carrier at the Receipt Points and after delivery of Crude Petroleum to Shipper at the Delivery Points.
- C. In case of loss or damage of any Crude Petroleum from any such causes that are not due to the gross negligence or willful misconduct of Carrier, after it has been received for transportation at the Receipt Point and before the same has been delivered to Shipper at the Delivery Points, such loss will 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 the custody of Carrier for transportation via the lines or other facilities in which the loss occurs. Carrier will be obligated to deliver only that portion of such Crude Petroleum remaining after deducting Shipper's proportion of such loss determined as aforesaid. In the aforementioned instance, transportation charges will be assessed only on the quantity delivered to Shipper.
- D. Carrier will not be liable for discoloration, contamination, or deterioration of the Crude Petroleum transported hereunder unless and to the extent such discoloration, contamination, or deterioration of Crude Petroleum transported results from the gross negligence of Carrier.



- E. Notwithstanding anything to the contrary in this tariff and except in instances of Carrier's gross negligence or willful misconduct, in no event shall Carrier be liable or responsible to any Shippers, its affiliates, successors in interest, beneficiaries or assignees, for any consequential, incidental, indirect, special or punitive damages, or for loss of profits or revenues, 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.

#### **ITEM 105 – LIABILITY OF SHIPPER**

As a condition to Carrier's acceptance of Crude Petroleum for transportation on Carrier's System, Shipper agrees to protect and indemnify Carrier against claims or actions for injury and/or death of any and all persons whomever and for damage to property of or any other loss sustained by Carrier, Shipper, Consignee and/or any third party, resulting from or arising out of (i) any breach of or failure to adhere to any provision of Carrier's tariff(s) by Shipper, Consignee, their agents, employees or representatives and (ii) the negligent act(s) or failure(s) to act of Shipper, Consignee, their agents, employees or representatives in connection with delivery or receipt of Crude Petroleum.

#### **ITEM 110 -- CLAIMS, TIME FOR FILING**

As a condition precedent to recovery by Shipper for loss, damage or delay in receipt or delivery of Shipper's Crude Petroleum for which Carrier may be responsible, Shipper's claim must be filed in writing with Carrier within nine (9) months after delivery of the affected Crude Petroleum, or, in case of Carrier's failure to make delivery of Shipper's Crude Petroleum, then within nine (9) months after a reasonable time for delivery has elapsed. Suit against Carrier shall be instituted only within two (2) years and one (1) day from the day when notice in writing is given by Carrier to Shipper 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 by Shipper on such claims in accordance with the foregoing provisions, such claims will not be paid and Carrier shall not be liable.

#### **ITEM 115 – APPLICATION OF RATES TO INTERMEDIATE POINTS**

- A. Carrier will receive Crude Petroleum for transportation only from and to established Receipt Points and Delivery Points.
- B. For shipments of Crude Petroleum accepted for transportation from any point on Carrier's System not named in this tariff, but which is intermediate to an Receipt Point from which rates are published in this tariff, through such unnamed origin, will be assessed the rate in effect from the next more distant Receipt Point published in this tariff.
- C. For shipments accepted for transportation to any point on Carrier's System not named in this tariff, but which is intermediate o a Delivery Point to which rates are published in this tariff, through such unnamed delivery point, will be assessed the rate in effect to the next more distant Delivery Point published in this tariff.

**SECTION II  
 TABLE OF RATES**

**RATES ARE LISTED IN DOLLARS PER BARREL OF 42 U.S. GALLONS**

<b>Receipt Point</b>	<b>Delivery Point</b>	<b>Rate (Per Barrel)</b>
EPIC Pipeline, Midway Junction Interconnect	NuStar 100 Series Tank Farm [W] <del>(fka Martin Midstream Terminal)</del> Corpus Christi, Nueces County, TX	[I] <u>\$0.2550</u>

**Explanation of Reference Marks**

- [C] Canceled.
- [I] Increased Rate.
- [N] New.
- [W] Change in wording only