

**ARROWHEAD GATHERING COMPANY, LLC**

**LOCAL PIPELINE TARIFF**

CONTAINING RULES AND REGULATIONS  
GOVERNING THE INTRASTATE TRANSPORTATION OF  
CRUDE PETROLEUM ON THE  
**MAVERICK PIPELINE SYSTEM**

LOCATED IN  
MAVERICK, ZAVALA AND FRIO COUNTIES, TEXAS

RECEIVED  
R.R.C. OF TEXAS

JUN 28 2017

GAS SERVICES DIVISION  
AUSTIN, TEXAS

**GENERAL APPLICATION**

This tariff shall apply only to those tariffs that specifically incorporate this tariff, supplements to this tariff and successive issues hereof, by reference.

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**EFFECTIVE: July 1, 2017**

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P-5 Operator ID: P-363118; T-4 Permit Information: 01276

Arrowhead Gathering Company, LLC is the owner of the pipeline providing service under this tariff.

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RECEIVED  
RRC OF TEXAS

JUN 28 2017

PIPELINE SAFETY DIVISION  
AUSTIN, TEXAS

**SECTION I**  
**RULES AND REGULATIONS OF RAILROAD COMMISSION OF TEXAS**  
**RULE 71. PIPELINE TARIFFS**

Carrier, as defined in Section II, incorporates by reference into this tariff the rules and regulations set forth in Title 16, Rule § 3.71 of the Texas Administrative Code.

**SECTION II  
RULES AND REGULATIONS**

The requirements of this Section II will be in addition to the requirements set forth in Section I. In case of discrepancies in the requirements between the Sections, the requirements in this Section II will take precedence and govern over the requirements in Section I to the extent permitted by Applicable Law.

**1. DEFINITIONS**

“API” means the American Petroleum Institute.

“Applicable Law” means all applicable: laws, statutes, directives, codes, ordinances, rules (including the rules of any securities exchange), regulations and municipal by-laws; and judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, consent orders, consent decrees and policies of any Governmental Authority.

“ASTM” means the American Society for Testing Materials.

“Barrel” means 42 United States at 60 degrees Fahrenheit and zero gauge pressure.

“Carrier” means Arrowhead Gathering Company, LLC.

“Consignee” means the Person to whom a Shipper has ordered the delivery of Petroleum.

“Consignor” means the Person from whom a Shipper has ordered the receipt of Petroleum.

“Destination Point” means the delivery points(s) on Carrier’s System where Petroleum is delivered to Shipper, as such points are specified in the applicable tariff making reference hereto.

“Encumbered Petroleum” has the meaning set forth in Item 14(B).

“Force Majeure” means any cause or causes not reasonably within the control of either Carrier or Shipper (each a “Party” for purposes of this definition) and which, by the exercise of reasonable diligence, the affected Party is unable to prevent or overcome. Examples of Force Majeure may include, but are not be limited to: Acts of God; acts, omissions to act and/or delays in action of federal, state or local government or any agency thereof; strikes, lockouts, work stoppages or other industrial disturbances; acts of the public enemy; acts of terrorism; wars; blockades; insurrections; sabotage; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests or restraint of governments, rulers or peoples; civil or criminal disturbances; interruptions by governmental or court orders; present and future valid orders of any regulatory body having jurisdiction; explosions; mechanical failures; breakage or accident to equipment, machinery or lines of pipe, compressors or plants (not due to the negligence or willful misconduct of the Party) and subsequent repairs; freezing or blockage of lines of pipe, partial or entire failure of production facilities or equipment, treating plants, or transportation facilities or separation facilities; governmental regulations; curtailment of, or other inability to obtain equipment, labor, materials or supplies and/or services and/or electric power used in making and/or receiving deliveries hereunder; the inability of either Party to acquire, or the delays on the part of a Party in

acquiring, at reasonable cost and after the exercise of reasonable diligence, approvals, permits, consents, easements and/or rights-of-way; and compliance with Applicable Law. Notwithstanding anything to the contrary set forth in this tariff none of the following shall, under any circumstance, constitute a Force Majeure event: (i) the lack of financial resources, or the inability of a Party to secure funds or make payments as required by this tariff, (ii) adverse market, financial or other economic conditions including changes in market conditions that either directly or indirectly affect the demand for or price of Petroleum, or (iii) availability of more attractive markets for Petroleum.

“Governmental Authority” or “Governmental Authorities” means any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal or judicial or arbitral body (whether national, federal, state or local or, in the case of an arbitral body, whether governmental, public or private), having jurisdiction over Carrier or Shipper.

“Line Fill” has the meaning set forth in Item 13(A).

“Nomination,” “Nominate,” or “Nominated” means a written communication (in form and context specified by Carrier) made by a Shipper to Carrier of a quantity of Petroleum for transportation on the System from a specified Origin Point to a specified Destination Point in accordance with the terms of this tariff.

“Notification” has the meaning set forth in Item 13(C)(ii).

“Off-Spec Petroleum” has the meaning set forth in Item 3(F).

“Origin Point” means the receipt/inception point(s) where Petroleum is received into the System, as such points are specified in the applicable tariff making reference hereto.

“Person” means any individual, corporation, limited liability company, partnership, trust or other entity, or any Governmental Authority.

“Petroleum” means direct products, or a mixture of direct products with indirect products, that meets the Quality Specifications.

“Quality Specifications” has the meaning set forth in Item 3(A).

“Shipper” means any Person tendering and thereafter actually delivering Petroleum for transportation by Carrier in accordance with the terms of this tariff.

“System” means Carrier’s Maverick Pipeline transportation system located in Zavala, Maverick and Frio Counties, Texas, including all appurtenances thereto, related to the provision of transportation services provided by Carrier pursuant to this tariff.

“Tender” or “Tendered” means delivery by Shipper to Carrier of a stated quantity of Petroleum for transportation from a specified Origin Point to a specified Destination Point on the System in accordance with this tariff.

“Unremoved Petroleum” means Petroleum that Shipper fails to arrange for receipt of, or refuses

to receive, upon Carrier's delivery at the Nominated Destination Point.

**2. COMMODITY**

Carrier is engaged in the transportation on the System of Petroleum meeting the Quality Specifications set forth in Item 3 and will not accept any other commodity for transportation under this tariff.

**3. QUALITY SPECIFICATIONS**

- A. The quality specifications for Petroleum set forth below ("**Quality Specifications**") shall apply to each Barrel of Shipper's Tender and shall not be limited to the composite sample of the Petroleum received. Carrier reserves the right to reject Petroleum that:
- (i) Has a gravity of less than 20 degrees API;
  - (ii) Contains more than one percent of basic sediment, water, and other impurities;
  - (iii) Has a temperature in excess of 120 degrees Fahrenheit;
  - (iv) Contains more than one part per million of organic chlorides (total sample); and/or
  - (v) Has a Reid Vapor Pressure of more than 10 psia at a temperature of 100 degrees Fahrenheit.
  - (vi) Has a gravity, viscosity, pour point, and other characteristics are such that it will be readily susceptible to transportation through the Carrier's existing facilities, and will not materially affect the quality of other shipments or cause disadvantage to other Shippers and/or the Carrier
- B. If Petroleum is accepted from tankage, settled bottoms in such tanks must not be above a point four inches below the bottom of the pipeline connection with the tank from which it enters Carrier's System.
- C. Carrier shall have the right to change or modify the Quality Specifications provided in this Item 3 in order to conform Carrier's Quality Specifications to those of downstream connecting facilities. Carrier shall not be required to accept Petroleum from Shipper at the Origin Point that does not meeting the quality specifications of the downstream connecting carrier to which Shippers' Petroleum is scheduled to be delivered.
- D. Shipper shall perform applicable tests to ensure that the Petroleum it Tenders to Carrier for transportation on the System conforms to the Quality Specifications. Carrier may also require Shipper to furnish a certificate setting forth in detail the specifications of each shipment of Petroleum offered for transportation hereunder,

and Shipper shall be liable for any contamination or damage to other Petroleum in Carrier's custody or to Carrier's System or other facilities caused by failure of the Petroleum Tendered by Shipper to meet the specifications stated in Shipper's certification.

- E. Carrier or its representative may test all Petroleum Tendered for transportation on Carrier's System for compliance with the Quality Specifications. All such tests shall be performed by Carrier, but Shipper, Consignor, or Consignee may be present or represented at the testing provided such witnessing does not unreasonably interfere with Carrier's operation of the System. Carrier shall provide reasonable advance notice of any such testing (other than the continuous monitoring of the System) to Shipper. Quantities shall be tested in accordance with applicable API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shipper. All tests performed by Carrier shall be determinative unless Shipper, Consignor, or Consignee submits to Carrier, within 60 days of the date of the test, appropriate documentation contesting the test. In the event of variance between Carrier's test results and Shipper's test results or the specifications contained in a certificate provided by Shipper pursuant to Item 3(D), Carrier's test results shall prevail (absent error demonstrated by Shipper or fraud).
- F. Carrier reserves the right to reject all Tenders of Petroleum and refuse transportation if Carrier determines that Shipper has delivered Petroleum that (i) does not conform to the Quality Specifications, (ii) is not merchantable, (iii) is not readily acceptable for transportation through Carrier's System, (iv) would otherwise adversely affect the System or other Petroleum on the System and/or (v) would expose any Person or property (including the System) to an undue risk of harm or property damage ("**Off-Spec Petroleum**"), all of which shall be determined by Carrier, in Carrier's reasonable discretion.
- G. In the event Shipper Tenders Off-Spec Petroleum to the System: (i) Carrier may accept such Shipper's delivery if Carrier determines, in its sole discretion, that the quality of the Off-Spec Petroleum, when commingled as a common stream, will nonetheless meet the Quality Specifications; or (ii) if Carrier does not accept such Off-Spec Petroleum as provided in (i) of this Item 3(G), Carrier may exclude such Shipper from further entry into Carrier's System until such time as Shipper returns the quality of its Petroleum to a level satisfactory to Carrier in accordance with this tariff. Nothing contained in this tariff, any other tariff filing, any pipeage contract or transportation services agreement or any other document, nor any receipt by Carrier of Off-Spec Petroleum (either unknowingly, as a temporary accommodation, or in its sole discretion), shall be construed to affect Carrier's right, at any time and from time to time, to reject Tenders of Off-Spec Petroleum and to refuse or suspend receipt of such Off-Spec Petroleum until it is established to Carrier's reasonable satisfaction that subsequent deliveries of Petroleum will conform to the applicable Quality Specifications.

- H. Carrier may monitor, but is not responsible for monitoring, receipts or deliveries for contaminants. Further, Carrier reserves the right to dispose of any Off-Spec Petroleum (other than such Petroleum accepted pursuant to Item 3(G)(i)) blocking Carrier's System. Disposal thereof may be made in any reasonable manner, including, but not limited to, commercial sales. Shipper shall be liable for and shall defend, indemnify and hold Carrier harmless from and against any and all claims, actions, suits, losses, demands, costs and expenses (including attorney's fees and costs of repairing, inspecting, cleaning and decontaminating Carrier's System or the facilities of third parties) of every kind, nature or description to the extent caused by Off-Spec Petroleum (other than such Petroleum accepted pursuant to Item 3(G)(i)) that Shipper has delivered into Carrier's System.
- I. In addition to any other remedies available to Carrier, if Petroleum received by Carrier into Carrier's System does not meet the Quality Specifications, Carrier reserves the right to charge the Shipper the actual costs and expenses incurred by Carrier to treat, handle, or otherwise dispose of all such Off-Spec Petroleum. In the event that, based upon Carrier's own testing, it is determined that Shippers are or have been delivering Petroleum into Carrier's System at the Origin Point that does not meet Carrier's Quality Specifications, then Carrier may add an off-spec penalty provision to this tariff in order to discourage deliveries of Petroleum to Carrier's System that violate Carrier's Quality Specifications.
- J. Carrier reserves the right to inject and to approve or reject the injection of corrosion inhibitors, viscosity or pour point suppressants or other such additives in Petroleum to be transported on Carrier's System.

**4. VARIATIONS IN QUALITY AND GRAVITY**

- A. Carrier shall not be liable to Shipper for changes in gravity or quality of Shipper's Petroleum that may occur from commingling or intermixing Shipper's Petroleum with other Petroleum in the same common stream while in transit. Carrier is not obligated to deliver to Shipper the identical Petroleum Nominated and Tendered by Shipper; Carrier will deliver to Shipper substantially like Petroleum from its common stream.
- B. Carrier shall have no responsibility in, or for, any revaluation or settlements which may be deemed appropriate by Shippers and/or Consignees because of the mixing or commingling of Petroleum shipments between the receipt and delivery of such shipments by Carrier within the same common stream.
- C. Carrier shall not be required to transport Petroleum except with reasonable diligence, considering the quality of the Petroleum, the distance of transportation and other material elements. Carrier cannot commit to delivering Petroleum to a particular destination, at a particular time.

**5. MINIMUM TENDER**

Petroleum must be Nominated and Tendered for transportation in quantities of not less than 500 Barrels to be accepted by Carrier at the applicable Origin Point. However, Carrier may, in its sole discretion, decide to accept Nominations below the minimum requirements set forth in this Item 5, provided that space is available and operating conditions permit such acceptance.

**6. NOMINATIONS REQUIRED**

- A. Petroleum for shipment through the System will be received only on a properly executed Nomination from Shipper identifying the month for which transportation is desired, the Origin Point at which the Petroleum is to be received by Carrier, the Destination Point of the shipment, Consignee (if any), and the amount of Petroleum to be transported. Carrier may refuse to accept Petroleum for transportation unless satisfactory evidence is furnished that Shipper or Consignee has made adequate provisions for prompt receipt of all volumes at the Destination Point.
- B. Any Shipper desiring to Nominate Petroleum for transportation shall make such Nomination to Carrier in writing on or before the 25th day of the calendar month preceding the month during which the transportation of Petroleum under the Nomination is to begin; provided, however, that if operating conditions permit, Carrier, in its sole discretion, may consider and accept Nominations submitted after the date specified above.
- C. Carrier may refuse to accept Petroleum for transportation under this tariff (i) where Shipper, Consignor, or Consignee is not in compliance with this tariff, or (ii) where Shipper, Consignor, or Consignee is not in material compliance with all Applicable Law regulating shipments of Petroleum.
- D. All Petroleum accepted for transportation will be transported at such time and in such quantity as scheduled by Carrier.

**7. PRORATIONING PROCEDURES**

- A. Definitions. Except where the context requires another meaning, the following terms have the below meanings for purposes of this Item 7:

“Base Period” is the 12-calendar month period just preceding the Calculation Month.

“Calculation Month” is the calendar month preceding the Proration Month.

“New Shipper” is any Shipper who is not a Regular Shipper. A Shipper’s status as a New Shipper as to a particular line segment does not result in that Shipper being a New Shipper for any other line segment.

“Proration Month” is the calendar month for which capacity is being allocated under this Item 7.

“Regular Shipper” is any Shipper that shipped Petroleum on the particular line segment of Carrier’s System during each consecutive month of the Base Period. A Shipper’s status as a Regular Shipper as to a particular line segment does not result in that Shipper being a Regular Shipper for any other line segment.

“System Capacity” means the operational capacity of the System, or a line segment thereof, at any applicable point in time.

- B. When System Capacity will be prorated. When Carrier receives more Nominations in a month for transportation of Petroleum on Carrier’s System than Carrier is able to transport, Carrier shall allocate the System Capacity under the provisions of this Item 7.
- C. Division of System Capacity between Shipper classes. System Capacity will be allocated among New Shippers as a class and Regular Shippers as a class; any remaining System Capacity will be allocated in accordance with the provisions of Item 7(F).
- D. Allocation to New Shippers. Each New Shipper shall be allocated an amount of capacity on the prorated line segment in the Proration Month that is equal to:
  - (i) its Nomination, if the total volume Nominated by all New Shippers is less than or equal to 10 percent of the System Capacity of the prorated line segment, or
  - (ii) its pro rata share, in accordance with its Nomination, of 10 percent of the capacity of the prorated line segment, if the total volume Nominated by all New Shippers is greater than 10 percent of the System Capacity of the prorated line segment.
- E. Allocation to Regular Shippers. Following the allocation of capacity to New Shippers under Item 7(D), Carrier shall next allocate capacity on the prorated line segment to Regular Shippers that have Nominated volumes for the Proration Month. Each Regular Shipper shall be allocated an amount of capacity during the Proration Month that is equal to the lesser of (i) the number of Barrels shipped by the Regular Shipper on the prorated line segment during the Base Period, divided by the total number of Barrels shipped by all Regular Shippers during the Base Period, which resulting percentage shall be multiplied by the available capacity for Regular Shippers, or (ii) its Nomination.
- F. Remaining System Capacity. Any remaining System Capacity not allocated through the application of Items 7(D) or 7(E) shall be allocated among all Shippers, including Regular Shippers and New Shippers, based on their proportion of allocated capacity on the prorated line segment for the Proration Month. If an allocation to any Shipper pursuant to this Item 7(F) exceeds such

Shipper's remaining Nomination, then the excess capacity will be allocated among all other Shippers having unmet Nominations until the remaining System Capacity is fully allocated or all of the remaining Nominations have been fulfilled.

- G. Basis for Allocation; Notification. When prorationing of System Capacity is in effect:
- (i) Carrier shall allocate System Capacity on a monthly basis; and
  - (ii) Carrier will use reasonable efforts to notify each Shipper of its allocation not later than the first working day of the Proration Month.
- H. Reallocation of Unused Allocated System Capacity. If a Shipper does not use the portion of System Capacity allocated to it under this Item 7 at the times and in the amounts designated by Carrier, Carrier shall have the right to use Shipper's unused portion of System Capacity to fulfill the unmet Nominations of other Shippers.
- I. Failure of Shipper to Use Allocated System Capacity.
- (i) Except as provided in Item 7(I)(ii) below, a Shipper that fails to use all of its allocated System Capacity during a Proration Month shall have its allocation of System Capacity reduced in each subsequent Proration Month until the total reductions equal the amount of the deficiency. The amount of any such reduction shall be treated as unused allocated System Capacity and shall be reallocated among other Shippers in accordance with Item 7(H).
  - (ii) Reduction of a Shipper's allocation for failure to use its allocated System Capacity during a Proration Month may be waived, in whole or in part, if Carrier determines that Shipper's failure to use all or some of its allocated System Capacity was due to a Force Majeure.
- J. Transfer of Allocated System Capacity. Shipper's allocation of System Capacity 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.

**8. GAUGING, TESTING AND DEDUCTIONS**

- A. Petroleum shipped on Carrier’s System shall be measured and tested by representatives of Carrier or by automatic equipment approved by Carrier. Quantities will be determined from correctly compiled tank tables or Carrier-approved automatic equipment and adjusted to the temperature of 60 degrees Fahrenheit. Deductions will be made for the actual amount of suspended basic sediment, water and other impurities as ascertained by centrifuge or other tests, if other tests are agreed upon by Carrier and Shipper. Petroleum will not be accepted from pressurized vessels.
- B. Carrier shall deduct 0.2 percent of the volume of all Petroleum shipped on Carrier’s System to cover evaporation and loss during transportation.
- C. Carrier shall further deduct a percentage of the volume of all Petroleum that has a gravity that equals or exceeds 60 degrees API in accordance with the following table:

<u>Degrees API Gravity</u>	<u>Percentage Deduction</u>
60 to 74.9	1
75 to 84.9	5
85 and above [with approval]	20.

- D. From the net quantities so determined the balance will be the net quantities deliverable.

**9. ORINATION FACILITIES**

Carrier will receive Petroleum from Shippers at the Origin Points on Carrier’s System. Petroleum will be received only from pipelines, tanks or other facilities that are provided by Shipper or Consignor, or a connecting carrier. Carrier will not accept a Nomination unless such facilities have been provided and conform to the operating requirements of Carrier, in Carrier’s sole discretion. Where Shipper elects to deliver Petroleum to Carrier at an Origin Point through automatic measuring and sampling facilities (in lieu of tankage), Shipper shall furnish the required automatic measuring and sampling facilities, and the design, construction, and calibration of such facilities must be approved by Carrier and any appropriate Governmental Authority. In the event automatic custody transfer is made by meters, Shipper shall also furnish whatever pumping is necessary to ensure that the Petroleum being delivered to the meter is at a pressure in excess of the bubble point of the liquid.

**10. STORAGE OF CRUDE PETROLEUM**

Carrier does not provide storage for Petroleum, except storage incidental to transportation on Carrier’s System. Carrier has the right to coordinate with downstream connecting facilities to ensure that Shipper has arranged for receipt of its Petroleum at the Nominated Destination Point. By Nominating Petroleum for transportation on the System, Shipper agrees to permit such coordination.

**11. DESTINATION FACILITIES**

Carrier will accept Petroleum for transportation only when Shipper or Consignee has provided the necessary facilities for taking delivery of the shipment as it arrives at the Destination Point. Carrier will not accept a Nomination unless such facilities have been provided and conform to the operating requirements of Carrier, in Carrier's reasonable discretion. The cost of such facilities shall be provided at the sole cost of Shipper seeking access to Carrier's System, unless otherwise agreed to by Carrier and Shipper.

**12. NOTICE OF ARRIVAL, DELIVERY AT DESTINATION**

- A. After a shipment of Petroleum has had time to arrive at Shipper's Nominated Destination Point and on 24 hours' notice to Shipper or Consignee, Carrier may begin delivery of such Petroleum to Shipper or Consignee at Carrier's current rate of pumping. Shipper shall timely remove its Petroleum, or cause such Petroleum to be removed, from the System following transportation to a Nominated Destination Point. If Shipper or Consignee is unable or refuses to receive said shipment, Carrier will assess a demurrage charge of 5.00 cents per Barrel for each day (or fractional part thereof) commencing 24 hours following Carrier's notification described above and Shipper's failure to promptly accept such Unremoved Petroleum. In addition to such demurrage charge, Carrier shall also have the right to curtail the amount of Petroleum it will accept from Shipper until such Unremoved Petroleum is removed.
  
- B. In addition to such demurrage charge, Carrier also reserves the right to make whatever arrangements necessary for disposition of the Unremoved Petroleum that are appropriate, which includes selling the Unremoved Petroleum at a private sale for the best price reasonably obtainable. The Carrier may be a purchaser at such sale. The proceeds of any sale shall be applied in the following order: (i) to the reasonable expenses of holding, preparing for sale, selling, and transporting the Unremoved Petroleum, and to the extent allowed by Applicable Law reasonable attorneys' fees and legal expenses incurred by Carrier; and (ii) to the satisfaction of Shipper's indebtedness including interest herein provided from the date payment is due. The balance of the proceeds of the sale remaining, if any, shall be paid to Shipper or, if there is a dispute or claim as to entitlement, held for whoever may be lawfully entitled thereto. Carrier will have a claim for and against Shipper with respect to any deficiency arising from the debt due to Carrier from Shipper and the proceeds of any sale after reduction as set forth above. Shipper shall indemnify Carrier for all losses associated with Unremoved Petroleum and Carrier's disposition of the Unremoved Petroleum. Carrier shall have no liability to Shipper associated with Shipper's Unremoved Petroleum or Carrier's disposition of Unremoved Petroleum except as set forth herein.

**13. LINE FILL REQUIREMENTS**

- A. Each Shipper will supply its pro rata share of Petroleum for line fill necessary to maintain effective operations of Carrier's System ("**Line Fill**").

- B. In the event a Shipper's Line Fill balance drops below its pro rata share of the volume of Petroleum necessary for operation of Carrier's System, Carrier will notify Shipper of the amount of Line Fill that Shipper owes and Shipper shall supply such Line Fill to Carrier before Carrier is obligated to accept Shipper's Nominations or Tenders or make deliveries or shipments on behalf of Shipper.
- C. Line Fill furnished by a Shipper may be withdrawn from Carrier's System only pursuant to the terms of this Item 13(C). Subject to the provisions of Item 17, Line Fill furnished by Shipper may be withdrawn from Carrier's System if Shipper intends to discontinue shipments on Carrier's System for the foreseeable future.
- (i) If Shipper intends to discontinue shipments on Carrier's System for the foreseeable future, Shipper shall provide written notification to Carrier that it intends to discontinue shipments on the System. Carrier will then provide written notice to Shipper as provided for in Item 13(C)(ii).
  - (ii) If a Shipper makes no shipments on the System over a continuous six-month period, Carrier will issue written notice (the "Notification") to Shipper that according to Carrier's books, Carrier is holding a certain volume of Petroleum on its books in Shipper's name. Shipper will be advised in such letter that Shipper will have 30 days effective with the date of the Notification to provide written direction regarding the disposal of Shipper's Petroleum. If at the end of this 30-day period, Carrier has received no written direction, Carrier will assume title to the Petroleum being held on its books in Shipper's name, free and clear of any and all liens, claims or encumbrances, and Shipper expressly agrees and consents to transfer title to Carrier as set forth herein.
    - (1) If Carrier has been contacted by Shipper within 30 days of the Notification described in Item 13(C)(ii), Carrier will grant Shipper an additional 30 days without charge to facilitate the disposal of Shipper's inventory Petroleum. If at the end of this 60-day period, Shipper has not disposed of this Petroleum, Carrier retains the right to charge a liquidated damage fee of \$0.10 per Barrel, per month, retroactive to the date of the Notification, plus any other fees as allowed in accordance with this tariff; such fees will be required to be paid before the Petroleum will be released. In addition, if Shipper has not disposed of such Petroleum within 60 days from the date of Notification, Carrier will assume title to such Petroleum free and clear of any and all liens, claims or encumbrances, and Shipper expressly agrees and consents to transfer title to Carrier as set forth herein. If Shipper provides a written request to Carrier after title to Petroleum has been assumed by Carrier but before Carrier has otherwise disposed of the Petroleum, Carrier agrees to transfer title back to Shipper for a fee of \$5.00 per Barrel. Such fees will be required to be paid before the Petroleum will be

released. Upon transfer of title back to Shipper, Shipper will then be responsible for disposing of Petroleum within 30 days therefrom. Failure of Shipper to dispose of said Petroleum within 30 days of the transfer of title back to Shipper will result in title being vested back in Carrier without recourse.

- (iii) Carrier's return of Line Fill is contingent upon Shipper's inventory balances and all outstanding amounts due having been reconciled between Shipper and Carrier and Shipper having paid in full any amounts owed to Carrier following such reconciliation. Carrier shall have a reasonable period of time to complete administrative and operational requirements incident to Shipper's withdrawal of Line Fill.

**14. TITLE**

- A. Carrier may require of Shipper satisfactory evidence of its perfected and unencumbered title of any Petroleum Tendered for shipment on the System. Carrier shall have the right to reject any Petroleum, when Tendered for transportation, that constitutes Encumbered Petroleum (as defined below).
- B. At the time of Nomination, Shipper shall inform Carrier if any Petroleum Nominated and/or to be Tendered to Carrier for transportation (i) may be involved in litigation, (ii) may be subject to a title dispute, or (iii) may be encumbered by a lien or charge of any kind at the time of delivery of such Petroleum to Carrier at an Origin Point (other than the lien created hereunder in favor of Carrier) ("**Encumbered Petroleum**"). In the event Carrier receives such Shipper notice of Encumbered Petroleum or otherwise learns that Shipper has or will Nominate or Tender Encumbered Petroleum, Carrier, in its reasonable discretion, 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.
- C. By Nominating Petroleum, Shipper warrants and guarantees that Shipper has good title (or right to ship or control) thereto and agrees to hold Carrier harmless for any and all loss, cost, liability, damage and/or expense resulting from failure of title (or right to ship or control) thereto. Carrier's acceptance of Petroleum for transportation shall not be deemed a representation by Carrier as to title (or right to ship or control). Shipper shall not cause or permit any lien, security interest or other form of burden to be filed or created with respect to Petroleum in Carrier's possession, except for the lien created hereunder in favor of Carrier.

**15. RATES APPLICABLE**

Petroleum accepted for transportation shall be subject to the rates and charges in effect on the date of receipt of such Petroleum by Carrier, irrespective of the date of the Nomination. Transportation and all other lawful charges shall be collected on the basis of net quantities of

Petroleum delivered to Shipper at the applicable Destination Point, and said net quantities will be determined in the manner provided in Item 8.

**16. RATES APPLICABLE FROM INTERMEDIATE POINTS**

Shipments accepted for transportation from or to any point on Carrier's System not named in this tariff, but which is intermediate to a point for which a rate is published, will be assessed the rate in effect from or to the next more distant point published in this tariff.

**17. PAYMENT OF CHARGES**

- A. Shipper shall pay all applicable transportation and other lawful charges accruing on Petroleum delivered to and accepted by Carrier for shipment on the System, and if required, shall pay or furnish guaranty of payment of same satisfactory to Carrier before acceptance of shipment. Carrier will invoice Shipper for all applicable transportation and other lawful charges accruing on Petroleum transported by Carrier in accordance with Carrier's then-current invoicing and payment policies and procedures.
- B. All payments are due within 10 days from the date of Carrier's invoice. Invoices falling due on a weekend or holiday need not be paid until the following regular workday and no interest shall accrue under Item 17(C) until after such regular workday. If Shipper, in good faith, disputes the amount of any such invoice or any part thereof, Shipper shall pay such amount as it concedes to be correct. If Shipper disputes the amount due, it must provide supporting documentation to support the amount disputed within 10 days of the date of such invoice.
- C. If any charge remains unpaid after the due date, then such amounts shall from the date of delivery until paid, bear interest calculated at an annual rate equivalent to 125 percent of the prime rate of interest as of the date of delivery charged by Citibank N.A. of New York, New York, on 90 day loans to substantial and responsible commercial borrowers.
- D. If any charges remain unpaid five days after notice and demand therefore, Carrier, or its representatives, shall have the right to sell such Petroleum at public auction at the office of Carrier in Houston, Texas, on any day not a legal holiday, and not less than 48 hours after notice stating the time and place of such sale and the quantity, general description, and location of the Petroleum to be sold has been published in a daily newspaper of general circulation published in the city where the sale is to be held, and notice sent by U.S. mail to Shipper. Carrier may be a bidder and purchaser at such sale. The proceeds of any sale shall be applied in the following order: (i) to the reasonable expenses of holding, preparing for sale, selling, and transporting the Petroleum and to the extent allowed by Applicable Law reasonable attorneys' fees and legal expenses incurred by Carrier; and (ii) to the satisfaction of Shipper's indebtedness including interest herein provided from the date payment is due. The balance of the proceeds of the sale remaining, if any, shall be paid to Shipper or, if there is a dispute or claim as to entitlement, held for whoever may be lawfully entitled thereto. Carrier will have a claim for

and against Shipper with respect to any deficiency arising from the debt due to Carrier from Shipper and the proceeds of any sale after reduction as set forth above. In addition, if Shipper fails to pay charges owed to Carrier when due, Carrier shall have the right, until such payments, including interest thereon, are paid in full to refuse to provide Shipper access to the System or provide services pursuant to this Tariff, including delivery of any of Shipper's Petroleum in Carrier's possession to Shipper. Carrier may also exercise any other rights and remedies granted under this tariff or existing under Applicable Law.

- E. Carrier shall have a lien on all Petroleum delivered to and in the possession of Carrier to secure the payment of any and all charges and fees owed to Carrier by Shipper, whether under this tariff or any other agreement, including but not limited to, transportation fees, penalties, interest and late payment charges. Such lien shall extend to all Petroleum 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 Petroleum 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.

## **18. FINANCIAL ASSURANCES**

- A. Thirty days prior to making its first Nomination, each prospective Shipper shall provide information to Carrier that will allow Carrier to determine the prospective Shipper's ability to pay any financial obligations that could arise from the transportation of the prospective Shipper's Petroleum under the terms of this tariff. If, in the reasonable opinion of Carrier, such prospective Shipper is not creditworthy, Carrier shall require such prospective Shipper to prepay all transportation and other fees and lawful charges accruing on Petroleum delivered and accepted by Carrier or supply an irrevocable letter of credit from a bank acceptable to Carrier, with terms in a form acceptable to Carrier and such prepayment must be received within five days of the Shipper's first Nomination.
- B. If Carrier determines that a Shipper's creditworthiness is at any time unsatisfactory, Carrier may require Shipper to provide adequate assurance of performance. As adequate assurance, Carrier may require Shipper to provide one of the following (at Carrier's election): (i) cash (in U.S. dollars), as collateral held for security, (ii) a guaranty from a creditworthy person reasonably acceptable to Carrier and otherwise in form and substance reasonably acceptable to Carrier, (iii) a prepayment, and/or (iv) an irrevocable standby letter of credit issued by a banking institution reasonably acceptable to Carrier, in an amount equal to the amount estimated by Carrier in good faith to be owed by Shipper to Carrier hereunder for the following three months, and otherwise in form and substance reasonably acceptable to Carrier. In the event Carrier requests that a Shipper to provide adequate assurance of performance pursuant to this Item 18(B), Shipper shall provide such assurance within 10 business days following Carrier's written demand.

- C. If a prospective Shipper fails to comply with any obligation in Item 18(A) or a Shipper fails to comply with any obligation in Item 18(B), Carrier shall not be obligated to provide such prospective Shipper or Shipper, as applicable, with access to Carrier's System or to provide transportation services pursuant to this tariff until such requirement is fully met.

**19. CHARGE FOR FUND COMPENSATION**

In addition to all other charges to Shipper accruing on Petroleum accepted for transportation, a per Barrel charge will be assessed and collected by Carrier in the amount of any tax, fee, or other charge levied against Carrier in connection with such Petroleum by any Governmental Authority for the purpose of creating a fund for the prevention, containment, clean up, and/or removal of spills and/or the reimbursement of Persons sustaining a loss therefrom or for any program where Carrier is acting as a collecting agent. Such charge will be included in the appropriate tariff filed with the Railroad Commission of Texas.

**20. 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.

**21. LIABILITY OF CARRIER**

- A. Carrier shall not be liable for, and Shipper hereby waives any claims against Carrier for, any loss or damage to Petroleum prior to the delivery of Petroleum at the Origin Point and after delivery of Petroleum at the Destination Point. Additionally, Carrier shall not be liable to Shipper for any delay in delivery or for any loss of Petroleum caused by an act of God, the public enemy, the public authority, the inherent vice or nature of the goods, an event of Force Majeure, an act of Shipper himself, or resulting from any other cause. In no event shall Carrier be liable for any consequential or special damages sustained by Shipper. Any losses of Petroleum shall be charged proportionately to each Shipper in the ratio that its Petroleum or portion thereof, received and undelivered at the time the loss occurs, bears to the total of all Petroleum then in Carrier's possession for transportation via the lines or other facilities in which the loss occurs, and Carrier shall be obligated to deliver only that portion of such Petroleum remaining after deducting Shipper's proportion of such loss determined as aforesaid. Carrier shall prepare and submit a statement to Shipper and consignee, if any, showing the apportionment of any such loss.

- B. Carrier will not be liable for discoloration, contamination, or deterioration of the Petroleum transported hereunder unless and to the extent such discoloration, contamination, or deterioration of Petroleum transported results from the negligence or willful misconduct of Carrier. Carrier's liability to Shipper, Consignor, or Consignee for any claim of negligence, willful misconduct or other loss shall be limited to the value of the Petroleum transported and related transportation charges.
- C. Carrier operates under this tariff solely as a common carrier and not as an owner, manufacturer, or seller of the Petroleum transported or stored hereunder, and Carrier expressly disclaims any liability for any express or implied warranty for Petroleum transported hereunder including any warranties of merchantability or fitness for intended use.

## **22. CLAIMS, SUITS, AND TIME FOR FILING**

As a condition precedent to recovery by Shipper for loss, damage, or delay in receipt or delivery of Shipper's 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 Petroleum, or in case of Carrier's failure to make delivery of Shipper's Petroleum, then within nine (9) months 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 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 will not be liable.

## **23. CARRIER DISCRETION**

Carrier will operate its System and implement the rules and regulations contained in this tariff, including those provisions providing for Carrier's discretion, in a manner that is not unduly discriminatory or unduly preferential.