

TRANS MOUNTAIN PIPELINE ULC

Petroleum Tariff

Rules and Regulations

Governing the

Transportation

of Petroleum

Issued: August 31, 2018

Effective Date: October 1, 2018

Issued by:

Heather Mark

Director, Financial Planning and Regulatory
Kinder Morgan Canada Inc.
Suite 2700, 300 - 5th Avenue, SW
Calgary, Alberta T2P 5J2
(403) 514-6547

Compiled by

Wanjing Hu

Senior Analyst, Regulatory Affairs
Kinder Morgan Canada Inc.
Suite 2700, 300 - 5th Avenue, SW
Calgary, Alberta T2P 5J2
(403) 514-6455

1 DEFINITIONS

The following words and terms, when used in these Rules and Regulations or in any Contract or Toll Schedule into which these Rules and Regulations are incorporated, shall have the following meanings:

- 1.1 "API" means American Petroleum Institute.
- 1.2 "ASTM" means American Society for Testing and Materials.
- 1.3 "Advanced Dock Nominations" means Nominations received on or before the Monthly Dock Nomination Date for volumes to be exported over the Westridge Marine Terminal.
- 1.4 "Affiliate" means, with respect to a Shipper:
 - (a) an "affiliate" as defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as may be amended or replaced from time to time;
 - (b) a unit or division or any corporation referred to in Rule 1.4 (a);
 - (c) a Person in which the Shipper or any corporation referred to in Rule 1.4 (a) has a controlling interest;
 - (d) a Person that is the operator of the upstream facility from which the Shipper's Petroleum will be received at the Receipt Point, or that is the operator of the Land Destination, that is subject to the control of the Shipper or any corporation referred to in Rule 1.4 (a) pursuant to a commercial or operational arrangement with the Shipper or any corporation referred to in Rule 1.4 (a);
 - (e) a third party that is subject to the control of, or has been hired to Nominate or transport the Petroleum of, the operator of either an upstream facility from which the Petroleum will be received or a Land Destination;
 - (f) An agent or other Person acting on behalf of any Person referred to in Rule 1.4 (a) to (e).
- 1.5 "Allocated Volume" means the volume of Mainline System capacity allocated to a Shipper pursuant to Rule 6.4.
- 1.6 "Alternate Delivery Point" means (i) Nomination on the Monthly Nomination Date of Petroleum by a Term Shipper to a destination other than the Designated Delivery Point, or (ii) Delivery of Petroleum by the Carrier for an Uncommitted Shipper or a Term Shipper to a destination as a result of reallocation of Petroleum after the Monthly Nomination Date as contemplated in Rule 14.
- 1.7 "Available Capacity" means the Carrier's determined hydraulic capacity of the Mainline System available for the transportation of Petroleum for a Month as determined in Rule 14.
- 1.8 "Available Capacity for Land Destinations" means the Carrier determined remaining Available Capacity as determined pursuant to Rule 14.3 (d).
- 1.9 "Banking Day" means any day that the financial institutions designated by the Carrier for payment are open to the general public for business, and specifically excludes Saturdays, Sundays and statutory holidays.
- 1.10 "Barge" means a flatbottom vessel that is generally unpowered and towed or pushed by other craft.
- 1.11 "Bid Premium" means (i) for Tankers, the premium associated with the Bid Price for an Uncommitted Shipper Nomination to the Westridge Marine Terminal calculated by multiplying the Bid Price by the Vessel volume Nominated and (ii) for Barges, the premium associated with the Bid Price for an Uncommitted Shipper Nomination to the Westridge Marine Terminal calculated by multiplying the Bid Price by the volume Nominated, up to the Available Capacity determined pursuant to Rule 14.3(c)(ii) and loaded onto no more than two (2) Barges.
- 1.12 "Bid Price" means the price offered for an Uncommitted Shipper Nomination to the Westridge Marine Terminal expressed in dollars (\$) per cubic meter.
- 1.13 "Burnaby, British Columbia" means the Delivery Point where Petroleum is metered at the termination of the Mainline System in the Metro Vancouver area.
- 1.14 "Capability" and any derivative thereof, means with respect to a Shipper, its physical capacity to deliver the Nominated volumes and Petroleum types to the Carrier at the Receipt Point and, with respect to a Shipper to a Land Destination, the Land Destination's physical capacity to remove the Nominated volumes and Petroleum types from the point of physical delivery by the Carrier to the Shipper, as further described in the Officer's Certificate and/or the Officer's Affidavit, as applicable.
- 1.15 "Carrier" means Trans Mountain Pipeline ULC as General Partner of Trans Mountain Pipeline L.P.
- 1.16 "Commodity Approval Process" means the process by which the Carrier approves the transportation of Petroleum on the Carrier's Mainline System pursuant to the terms of the Service Standards Regarding the Transportation of Petroleum which is available on the Carrier's website.
- 1.17 "Contract" means the Term Service Transportation Service Agreement between the Carrier and a Term Shipper and any other agreement for firm service between the Carrier and a Term Shipper.
- 1.18 "Contract Volume" means the daily volume of Petroleum for which a Term Shipper has contracted for transportation under a Contract, as set forth in Schedule "A" of such Contract.
- 1.19 "Credit Issues" has the meaning set forth in Rule 19.1.
- 1.20 "Credit Rating" means, with respect to a Person, on any date of determination, the ratings of its senior unsecured, unsubordinated long-term debt (not supported by third party credit enhancement) issued by S&P, Moody's or DBRS, or if the Person does not have a rating for its senior unsecured, unsubordinated long-term debt (not supported by third party credit enhancement), then the ratings assigned to the Person's corporate or issuer rating by S&P, the issuer rating by Moody's or the corporate rating by DBRS.

- 1.21 "**Credit Support Provider**" means, with respect to a Shipper, a Person who has provided a guarantee of a Shipper's obligations in respect of the provision of service to the Shipper by the Carrier, where such guarantee is in form and substance acceptable to the Carrier acting reasonably.
- 1.22 "**Crude Petroleum**" means "oil" as defined in the *National Energy Board Act* (Canada) ("Oil"), other than Refined Petroleum; provided that Refined Petroleum shall be deemed to be Crude Petroleum where it is (i) intermixed with Oil (other than Refined Petroleum) prior to receipt by the Carrier; (ii) delivered to the Carrier but subsequently intermixed with Oil including Refined Petroleum; or (iii) Tendered for transportation as Crude Petroleum under the provisions of these Rules and Regulations.
- 1.23 "**cSt**" means centiStoke, a measurement of viscosity equivalent to one square millimetre per second.
- 1.24 "**Cubic Meter**" or "**m³**" means the volume of Petroleum which occupies one (1) cubic meter and equals 264.1721 United States gallons and 6.2898108 barrels.
- 1.25 "**DBRS**" means Dominion Bond Rating Service Limited, or any successor thereof.
- 1.26 "**Deliver**" and any derivative thereof, means delivered by the Carrier to the Shipper or to Trans Mountain Pipeline (Puget Sound) LLC at the Delivery Point.
- 1.27 "**Delivery Point(s)**" means Edmonton, Alberta, Kamloops, British Columbia, Sumas, British Columbia, Burnaby, British Columbia and Westridge Marine Terminal, British Columbia or elsewhere as the Tariff may designate.
- 1.28 "**Demurrage Charge**" has the meaning set forth in Rule 7.5.
- 1.29 "**Density**" and any derivative thereof, means mass per unit volume at 15 degrees Celsius, expressed in kilograms per cubic meter.
- 1.30 "**Designated Delivery Point**" means, in respect of a Term Shipper, the Westridge Marine Terminal.
- 1.31 "**Designated Receipt Point**" means, in respect of a Term Shipper, the Carrier's Edmonton Terminal.
- 1.32 "**Edmonton Nominations**" has the meaning set forth in Rule 14.1.
- 1.33 "**Export Destination(s)**" means export markets in Washington State via the connected facilities of Trans Mountain Pipeline (Puget Sound) LLC.
- 1.34 "**Financial Assurance**" has the meaning set forth in Rule 19.
- 1.35 "**Firm Service Fee**" means the fee payable by a Term Shipper pursuant to its Contract, as set forth in Schedule "A" of such Contract.
- 1.36 "**Firm Service Toll**" means the toll payable by a Term Shipper pursuant to its Contract, which is the sum of the Firm Service Fee plus the net toll applicable in accordance with the Toll Schedule.
- 1.37 "**Force Majeure**" has the meaning set forth in Rule 13.
- 1.38 "**Gross Standard Volume**" means a volume of Petroleum measured in Cubic Meters in accordance with standards established by ASTM in the API Manual of Petroleum Measurement Standards, Chapter 12, Section 2, Part 2, or the latest revision to such Standards.
- 1.39 "**Intent**" and any derivative thereof, means the Shipper has in its mind a purpose to Tender its Nominated volumes and Petroleum types and with respect to a Shipper to a Land Destination, that the Shipper has in its mind the removal of Nominated volumes and Petroleum types from the point at which Carrier Delivers the Petroleum to Shipper, as further described in the Officer's Certificate and/or the Officer's Affidavit, as applicable.
- 1.40 "**Kamloops Excess Nominations**" has the meaning set forth in Rule 14.1.
- 1.41 "**Kamloops Nominations**" means the Nominations designating Kamloops, British Columbia as the Receipt Point.
- 1.42 "**Kamloops Receipt Window(s)**" has the meaning set forth in Rule 6.12.
- 1.43 "**kiloPascal**" or "**kPa**" is equivalent to 0.1450377 pounds per square inch.
- 1.44 "**Land Capacity**" means the Available Capacity allocated to Land Destinations in accordance with Rule 14.
- 1.45 "**Land Destinations**" means refineries or terminals that receive Petroleum transported by the Carrier and are connected at Burnaby, British Columbia, Kamloops, British Columbia, and Export Destinations.
- 1.46 "**Letter of Credit**" means an irrevocable, transferable, standby letter of credit issued by a Schedule "1" *Bank Act* (Canada) bank having a Credit Rating of at least A- from S&P, A3 from Moody's or A(low) from DBRS.
- 1.47 "**Mainline System**" means the Carrier's pipeline system for the transportation of Petroleum from Receipt Point(s) in the Provinces of Alberta and British Columbia to Delivery Point(s) in the Province of British Columbia.
- 1.48 "**Month**" means the period beginning at 7:00 a.m. Mountain Time on the first day of any calendar month and ending at 7:00 a.m. Mountain Time on the first day of the next calendar month.
- 1.49 "**Monthly Nomination Date**" means, with respect to a Month, at or before 7:00 a.m. Mountain Time on the date published by the Carrier for Nominations for such Month and posted on the Carrier's website.
- 1.50 "**Monthly Dock Nomination Date**" means, with respect to a Month, at or before 7:00 a.m. Mountain Time on the date published by the Carrier for Advanced Dock Nominations for such Month and posted on the Carrier's website.
- 1.51 "**Monthly Volume**" means, for any Term Shipper in respect of a Month, the product of the Contract Volume for that Term Shipper and the number of days in that Month.
- 1.52 "**Moody's**" means Moody's Investors Service, Inc. or any successor thereof.
- 1.53 "**Net Standard Volume**" means the Gross Standard Volume minus the sediment, water and other impurities.

- 1.54 "**Nomination**" and any derivative thereof, means the volume of Petroleum, the Receipt Point(s), the Delivery Point(s), the type(s) of Petroleum and the loading window(s) if the Delivery Point is the Westridge Marine Terminal, specified in the Notice of Shipment in respect of a Month.
- 1.55 "**Non-Performance Penalty**" means the charge and cost referred to in Rule 7.6.
- 1.56 "**Notice of Preparedness**" means a written notice from the Carrier provided to a Shipper for removal of its Petroleum from the Mainline System or from the custody of the Carrier on the specified date and time.
- 1.57 "**Notice of Shipment**" means the form(s) (including electronic forms) prescribed by the Carrier to be used by the Shipper in notifying the Carrier of proposed Tenders, as such form(s) may be amended from time to time.
- 1.58 "**Officer's Affidavit**" means an affidavit, in a form prescribed by Carrier and posted on Carrier's website, that must be sworn by an officer of a Shipper attesting that Shipper has the Capability and the Intent to Tender, and with respect to a Land Destination that the Affiliated Land Destination has the Capability and Intent to remove or have removed, its Nominated volume of each Petroleum type and that Shipper's Supply as defined in the Affidavit is sufficient to satisfy its Nominated volume of each Petroleum type.
- 1.59 "**Officer's Certificate**" means a certificate, in a form prescribed by Carrier and posted on Carrier's website, that must be signed by an officer of a Shipper certifying that Shipper has the Capability and the Intent to Tender, and with respect to a Land Destination that the Affiliated Land Destination has the Capability and Intent to remove or have removed, its Nominated volume of each Petroleum type and that Shipper's Supply as defined in the Certificate is sufficient to satisfy its Nominated volume of each Petroleum type.
- 1.60 "**Parties**" means the Carrier and the Shipper(s) collectively, and "**Party**" means any one of them.
- 1.61 "**Payment Due Date**" means the day which is 14 days from the date on which the Carrier issues an invoice pursuant to Rule 8.1; provided that if the Payment Due Date is not a Banking Day, the Payment Due Date will be on the Banking Day immediately prior to the date which would otherwise be the Payment Due Date.
- 1.62 "**Person**" means a natural person, corporation, partnership, limited partnership, joint venture, association, trust, limited liability company or any other entity or organization, including a government agency.
- 1.63 "**Petroleum**" means Crude Petroleum, Refined Petroleum and any other petroleum product approved for transportation in accordance with the Commodity Approval Process.
- 1.64 "**Priority Destination**", or any derivative thereof, means a refinery, marketing terminal or other facility connected to and capable of receiving Petroleum from facilities of the Carrier or those of Trans Mountain Pipeline (Puget Sound) LLC, and so designated by the National Energy Board by reason that it is not capable of being supplied economically from alternative sources.
- 1.65 "**Receipt Point(s)**" means Edmonton, Alberta; and Kamloops, British Columbia or elsewhere as the Tariff may designate.
- 1.66 "**Reference Line Temperature**" means the temperature used to determine the viscosity of Petroleum when Tendered to the Mainline System. The Reference Line Temperature varies throughout the year; the schedule for which is published on the Carrier's website. Changes to the Reference Line Temperature shall be agreed upon by the Carrier and the Shippers.
- 1.67 "**Refined Petroleum**" means (i) motor gasoline, diesel fuel, and other distillate products; and (ii) any product resulting from the partial or incomplete refining of Crude Petroleum, but not including synthetic crude oil.
- 1.68 "**Rolling Average Percentage**" means, for a Land Destination, the percentage determined in accordance with Rule 6.3.
- 1.69 "**S&P**" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., or any successor thereof.
- 1.70 "**Shipper**" means a Person that Tenders Petroleum pursuant to the Tariff.
- 1.71 "**Sumas, British Columbia**" means the point near the International Boundary south of Sumas, British Columbia where the custody of Petroleum is transferred from Trans Mountain Pipeline ULC to Trans Mountain Pipeline (Puget Sound) LLC.
- 1.72 "**Super Light**", "**Light**", "**Medium**", "**Heavy**", and "**Super Heavy**" have the meanings set forth in Rule 7.7.
- 1.73 "**Tanker**" means any vessel that is not a Barge.
- 1.74 "**Tariff**" means these Rules and Regulations, and the Toll Schedule, all as amended, supplemented, modified or replaced from time to time.
- 1.75 "**Tender**" and any derivative thereof, means the delivery by a Shipper to the Carrier at a Receipt Point of a stated volume and type of Petroleum for transportation from a Receipt Point to a Delivery Point.
- 1.76 "**Term Shipper**" means a Shipper that is a Party to a Contract.
- 1.77 "**Toll Schedule**" means the schedule of tolls for the transportation of Petroleum published by the Carrier from time to time.
- 1.78 "**Uncommitted Shipper**" means (i) a Shipper that is not a Term Shipper; and (ii) a Term Shipper in respect of any volumes of Petroleum Nominated by that Term Shipper in excess of its Monthly Volume.
- 1.79 "**Verification Limit**" means, for a Nomination to a Land Destination, the maximum volume verified by the Carrier in accordance with Rule 6.3.
- 1.80 "**Verified Nomination**" means a Nomination that has been verified in accordance with Rule 6.2.
- 1.81 "**Vessel**" means a marine Tanker or Barge capable of transporting Petroleum.
- 1.82 "**Vessel Proposal Form**" means the form of document prescribed by the Carrier and required to be provided by the Shipper to the Carrier in accordance with Rule 21.1.
- 1.83 "**Westridge Capacity**" has the meaning set forth in Rule 14.

- 1.84 "Westridge Marine Terminal" means the dock and other facilities located at the Carrier's Delivery Point on the Burrard Inlet, BC.
- 1.85 "Working Stock and Line Fill" means the volume of Petroleum required by the Carrier for operational and scheduling purposes, as determined by and specified from time to time by the Carrier.

2 COMMODITY

- 2.1 The Tariff covers the transportation of Petroleum by the Carrier and no commodity other than Petroleum will be transported under the Tariff.

3 ORIGIN AND DESTINATION

- 3.1 **Acceptance and Delivery.** Petroleum will be accepted for transportation on the Mainline System only when Tendered pursuant to Rule 6 at a Receipt Point and Nominated for Delivery to one or more Delivery Points.
- 3.2 **Receipt and Delivery Facilities.** Petroleum will be accepted for transportation only when the Shipper has provided or made arrangements for the necessary facilities and/or transportation service satisfactory to the Carrier at the Receipt Point and Delivery Point for handling the Petroleum at the rate of flow at which the Carrier is then operating the Mainline System at such Receipt Point and Delivery Point.

4 QUALITY

- 4.1 **Permitted Petroleum.** Only Petroleum having properties which are compatible with the specifications of Petroleum set forth in Rule 4.2 will be accepted by the Carrier for transportation on the Mainline System. The Shipper shall not Tender to the Carrier and the Carrier has no obligation to receive and transport Petroleum that is not compatible with the specifications of Petroleum set forth in Rule 4.2.
- 4.2 **Specifications of Petroleum.** Petroleum having the following specifications shall not be accepted by the Carrier for transportation on the Mainline System:
- (a) Reid vapour pressure in excess of one hundred and three kiloPascals (103 kPa);
 - (b) containing sand, dust, gums, sediment, water or other impurities totalling, in aggregate, in excess of one-half of one percent (0.5%) of volume as measured by an acceptable API or ASTM test method;
 - (c) having at the Receipt Point a temperature greater than thirty-eight degrees Celsius (38°C);
 - (d) having at the Receipt Point a Density in excess of nine hundred and forty kilograms per Cubic Meter (940 kg/m³);
 - (e) having a kinematic viscosity in excess of three hundred and fifty (350) cSt determined at Reference Line Temperature; or
 - (f) having any organic chlorides or other compounds with physical or chemical characteristics that may render such Petroleum not readily transportable by the Carrier or that may materially affect the quality of other substances transported by the Carrier or otherwise cause disadvantage to the Carrier.
- 4.3 **Specification Guidelines.** Notwithstanding Rule 4.2 or any other provision to the contrary expressed or implied in the Tariff, the Carrier, acting reasonably, shall have the right to change the specifications set forth in Rule 4.2 from time to time. The Carrier shall provide the Shippers with written notice of the change of the specifications in Rule 4.2 at least 30 days prior to the Monthly Nomination Date of the Month for which the change(s) would take effect.
- 4.4 **Failure to Conform to Specifications.** If the Carrier determines that Petroleum Tendered by a Shipper does not comply with the specifications set forth in Rule 4.2, then such Shipper shall at its sole cost and expense remove such Petroleum from the Mainline System as directed by the Carrier.
- 4.5 **Failure to Remove Objectionable Matter.** If a Shipper fails to remove its Petroleum from the Mainline System in accordance with Rule 4.4, then the Carrier shall have the right to remove and sell such Petroleum in a lawful manner as deemed appropriate by the Carrier. The Carrier shall pay from the proceeds of such sale all costs and expenses incurred by the Carrier with respect to the removal and sale of such Petroleum. The remainder of such proceeds, if any, shall be paid by the Carrier to the Shipper or at the Shipper's direction. The Carrier may take such further action and remedies as it deems appropriate to lessen or mitigate any adverse impact to the Mainline System.

5 DELIVERED QUALITY AND SEGREGATION

- 5.1 **Delivery of Types of Petroleum.** The Carrier shall endeavour to Deliver substantially the same type and quality of Petroleum as that received from the Shipper; provided, however, the Carrier shall not be obligated to make Delivery of identical Petroleum received by the Carrier.
- 5.2 **Responsibility for Quality Delivered.** Petroleum will be accepted for transportation only on the condition that it shall be subject to such changes in Density, quality or characteristics while in transit as may result from normal pipeline transportation through the Carrier's then existing facilities. The Carrier will use reasonable diligence to transport Petroleum to the Delivery Point with a minimum amount of contamination. Subject to Rule 12, the Carrier shall not be liable for any variations in Density, quality, characteristics or damages of any kind (including consequential damages) as a result thereof while such Petroleum is in the Carrier's custody. Any revaluations deemed appropriate by reason of difference in grade or quality that may occur between receipt and Delivery by the Carrier of Petroleum shall be between and for the account of the Shippers concerned. The Carrier shall have no responsibility in or for such revaluations or settlements other than to furnish data on quantities and Densities of the Petroleum so received and Delivered. Each Shipper must accept its proportionate share of the interface or commingled mixtures associated with a batch shipped on the Mainline System.
- 5.3 **Segregated Movement / Special Handling Provisions.** If Petroleum requires segregated movement so as not to contaminate the other Petroleum being transported:
- (a) The Carrier may, as operating conditions permit, at the request of the Shipper, attempt to make Delivery of substantially the same type and quality of Petroleum at the Delivery Point. The Carrier's obligation to accept specific grades of Petroleum will be subject to the availability of the Carrier's compatible tankage at the Receipt Point as determined by the Carrier acting reasonably.

(b) If requested, the Shipper shall arrange for a Petroleum buffer required for the segregation, of a type and volume specified by the Carrier. The buffer and the associated Petroleum requiring segregation shall be transported by the Carrier in accordance with the Tariff. The Carrier shall, working with the Shipper and acting reasonably, make cuts between Petroleum and the buffer such that impact to the Shipper is minimized.

5.4 **Routing.** Petroleum received from the Shipper by the Carrier at Edmonton, Alberta, or Kamloops, British Columbia shall be for immediate transportation by direct injection into the Mainline System or for accumulation in tankage for subsequent transportation on the Mainline System. Refined Petroleum to be Delivered to the Shipper at Kamloops, British Columbia shall be Delivered into the facilities of the Shipper. Refined Petroleum to be Delivered to the Shipper at Burnaby, British Columbia may be made through the Carrier's delivery lines without first entering the Carrier's Burnaby, British Columbia tankage.

6 TENDERS AND QUANTITIES

6.1 **Monthly Nominations.** On or before the Monthly Nomination Date, the Shipper shall provide the Carrier with a Nomination on the Notice of Shipment for the following Month, and for Uncommitted Shipper Nominations to the Westridge Marine Terminal, the Bid Price.

6.2 **Nomination Verification.** When the Pipeline is in apportionment, or upon notice from Carrier, the Carrier shall obtain written third party verification that Shipper has the Capability to Tender Petroleum to satisfy the Nominated volume of each Petroleum type at the Receipt Point and has the Capability to remove, or have removed, such Petroleum. The verification shall be provided by a third party that is not an Affiliate of the Shipper. If each of the third party verifications required above cannot be provided by a non-affiliate of Shipper, then Shipper shall provide written verification that Shipper has the Capability and Intent to Tender Petroleum to satisfy its Nominated volume of each Petroleum type at the Receipt Point and the Land Destination indicated on the Nomination has the Capability and Intent to remove, or have removed, such Petroleum, and such verification shall be in the Carrier's prescribed form of Officer's Certificate, as may be amended from time to time. If Shipper cannot provide third party verification and Carrier requires an Officer's Certificate, the Carrier may, upon written notice, request such verification be further supported by the Carrier's prescribed form of Officer's Affidavit. The Carrier shall not be obliged to accept the Shipper's Nomination where such verification is unacceptable to the Carrier acting reasonably.

6.3 **Verification Limits for Land Destinations.** If, pursuant to Rule 6.2, the Carrier requests a verification from any Shipper Nominating to a Land Destination and Rule 14 is in effect, then the Carrier will limit the volume that can be verified by Land Destinations to the greater of:

- (a) three percent (3%); or
- (b) the Rolling Average Percentage of Petroleum Delivered to the Land Destination

multiplied by the Available Capacity for Land Destinations.

The Rolling Average Percentage shall be determined by the Carrier for each Land Destination as follows:

- (i) for each of the twenty-four (24) Months which immediately precede the Monthly Nomination Date, Carrier shall determine the volume of Petroleum delivered to a Land Destination, and divide such Monthly volume by the total volume Delivered to all Land Destinations for the Month to determine the percentage share of volume delivered to each Land Destination for such Month;
- (ii) Carrier shall determine the Rolling Average Percentage for a Land Destination by taking the sum of the eighteen (18) highest Monthly percentages as calculated in (i) and dividing the result by eighteen (18).

If, after taking into account the Verification Limits calculated in accordance with Rule 6.3 (a) and (b) above, there remains Available Capacity for Land Destinations then the Verification Limits for Land Destinations with unsatisfied Verified Nominations will be increased prorata based on the Land Destination's Verification Limit compared to the sum of the Verification Limits of all remaining Land Destinations that have unsatisfied Verified Nominations. Such adjustments to the Verification Limits will continue until either all the Available Capacity for Land Destinations is taken up by Verified Nominations or the unsatisfied Verified Nominations for Land Destinations are fully satisfied.

Carrier will provide each Land Destination with the Verification Limit for that Land Destination and will provide each Land Destination with the Nominations made for that particular Land Destination. Carrier will request that each Land Destination verify each Nomination within the Verification Limit provided by the Carrier. If the combined Verified Nominations to a single Land Destination exceed the Verification Limit for that Land Destination then such Verified Nominations will be reduced prorata among all Shippers with Verified Nominations to the Land Destination based on their respective Verified Nominations to such Land Destination.

6.4 **Apportioned Nominations.** When the Shippers' Verified Nominations, as adjusted pursuant to Rule 6.3, have been apportioned pursuant to Rule 14, the Shipper shall be deemed to have submitted a Nomination equal to the Verified Nomination, as adjusted pursuant to Rule 6.3, reduced by the level of apportionment (the Allocated Volume). Except as expressly provided in a Contract, if a Shipper fails to Nominate any volume, the Shipper's monthly Nomination will be deemed to be zero.

6.5 **Tenders.** A Shipper desiring to Tender Petroleum shall make such Tender in accordance with the Notice of Shipment provided to the Carrier in accordance with Rule 6.1. If the Shipper is unable to remove from the Delivery Point(s) the volume of Petroleum to be Tendered, the Carrier may reduce the amount of Petroleum accepted from the Shipper for transportation to the amount which the Shipper has verified it will be able to remove from the Delivery Point(s).

6.6 **Batch Size.** A Tender will be accepted only when the total volume covered thereby will be delivered to the Carrier at a Receipt Point for transportation within the applicable Month at a daily rate, in volumes and at times to be specified or accepted by the Carrier. Except as provided herein, the Carrier will not be required to accept a batch size of less than eight thousand Cubic Meters (8,000 m³ or 50,000 barrels). The Carrier may, acting reasonably, take delivery of Petroleum in batches of less than eight thousand Cubic Meters (8,000 m³ or 50,000 barrels) when operating circumstances permit and capacity is available on the Mainline System. However, in no event will the Carrier be obligated to undertake to make a single batch Delivery of less than eight thousand Cubic Meters (8,000 m³ or 50,000 barrels). A single batch Delivery is a Delivery in one continuous operation into a single facility to which the Mainline System is connected.

6.7 **Late Nominations.** Subject to Rule 13, and Rule 14, if capacity is available and operating conditions permit, the Carrier may, acting reasonably, accept new Nominations or accept revised Nominations after the applicable Monthly Nomination Date.

6.8 **Working Stock.** The Shipper shall supply its proportionate share of Working Stock and Line Fill by types and volumes as determined from time to time by the Carrier.

- 6.9 **Uniform Tenders.** Except as requested by the Carrier, each Shipper shall endeavour to Tender Petroleum rateably. The Shipper may be required to accumulate a batch over a defined period of time to accommodate Vessel loadings or batch movements subject to Rule 5.3.
- 6.10 **Flow Rates and Volumes.**
- (a) The Carrier shall endeavour to take full stream receipts of Petroleum at Receipt Points and shall make full stream Deliveries of Petroleum at Delivery Points at flow rates and volumes compatible with the Mainline System rate at that time.
 - (b) The Shipper shall make full stream deliveries of Petroleum at Receipt Points and shall take full stream receipts at Delivery Points at flow rates and volumes compatible with the Mainline System rate at that time.
 - (c) In the event the Carrier's flow rate increases due to expansion, the Carrier shall, as soon as practicable, provide written notice to the Shipper giving the expected peak rate the Shipper is required to meet and the Month for which the change will take effect. The Carrier will act reasonably to allow sufficient time for the Shippers affected to make necessary adjustments.
 - (d) Where a Shipper does not meet the requirements of Rule 6.10(b), the Shipper will be subject to curtailed Nominations as deemed appropriate by the Carrier.
 - (e) Written verification of the Shipper's delivery and receipt rate capability will be provided by the Shipper at the request of the Carrier.
- 6.11 **Commodity Limitations.** Due to tankage restrictions, the Carrier reserves the right to limit Crude Petroleum types accepted in each Month for Delivery to the Westridge Marine Terminal, by the following procedure: if four or more Tanker bids are Nominated for Delivery to the Westridge Marine Terminal by either Term Shippers or Uncommitted Shippers, or any combination thereof, then the Crude Petroleum types accepted may be limited to two (2) Crude Petroleum types. The Crude Petroleum types to be accepted will be determined in sequence by, first, the Term Shipper(s) who have Nominated a volume for the applicable Month based upon the priority ranking of Term Shippers according to the Contracts, and second, if two Crude Petroleum types have not yet already been determined by the Term Shippers, by the Uncommitted Shipper(s), ranked based on the highest priority bids in accordance with Rule 14. Successive Shippers with Nominations for Delivery to the Westridge Marine Terminal may be required to Tender the same Petroleum type as one of the two (2) Crude Petroleum types determined by the preceding process, provided however that an Uncommitted Shipper shall be permitted to withdraw a Nomination without penalty where such Nomination does not contemplate the Crude Petroleum types accepted for such Month.
- 6.12 **Kamloops Receipt Windows.** The Mainline System capacity available for Kamloops Petroleum receipts is determined by Petroleum Delivered to Kamloops ("Kamloops Receipt Window(s)").
- (a) If Tenders at Kamloops are less than the Shipper Nominations accepted by the Carrier for a given Kamloops Receipt Window, the Carrier will, on a best efforts basis, accept this differential outside of the given Kamloops Receipt Window, or in a subsequent Kamloops Receipt Window, provided operating conditions permit.
 - (b) If during apportionment:
 - (i) tenders at Kamloops are less than the Shipper Nominations accepted by the Carrier in Rule 14.1 for a given Kamloops Receipt Window; or
 - (ii) tenders at Kamloops are less than apportioned Kamloops Excess Nominations for a given Kamloops Receipt Window;
 these differentials will not be accepted outside of the given Kamloops Receipt Window, or in a subsequent Kamloops Receipt Window, and Rule 7.6 shall apply.
- 6.13 **Term Shipper Make-Up Rights.**
- (a) In the event that a Term Shipper Nominates in any Month a volume less than the Monthly Volume, that Term Shipper shall be entitled to transport the make-up volume (being the difference between the Monthly Volume and the volume Nominated for shipment in that Month) in any of the next following twelve (12) Months; provided that the Term Shipper has first Tendered its Monthly Volume in the Month in which the make-up volume (or any portion thereof) is to be Tendered.
 - (b) In the event that a Term Shipper Tenders less than its Nomination, the Term Shipper shall not be afforded make-up rights with respect to such untendered volumes.
 - (c) Nominations for make-up volumes will be accepted based upon the priority ranking of Term Shippers according to the Contracts.
 - (d) Subject to Rule 14, each Term Shipper may Nominate any or all of its make-up volumes in subsequent Months as set out in Rule 6.13 (a).

7 APPLICATION OF TOLLS AND CHARGES

- 7.1 **Effective Tolls.** Petroleum accepted for transportation shall be subject to the tolls in effect on the date of Delivery of such Petroleum by the Carrier after transportation on the Mainline System.
- 7.2 **Term Shipper Nominations.** In the event that a Term Shipper Tenders a volume of Petroleum less than its Monthly Volume, the Term Shipper shall pay to the Carrier on such differential, the sum of (a) the Burnaby Tank Metered Light Toll and (b) the Firm Service Fee.
- 7.3 **Term Shipper Make Up Volumes.** The amount payable for transportation of make-up volumes will be an amount equal to the difference between the applicable Firm Service Toll on the date of Delivery and the amount paid pursuant to Rule 7.2.
- 7.4 **Toll Attribution.** The tolls charged to the Shipper shall be allocated as to volume of Petroleum and type(s) of Petroleum in accordance with the Toll Schedule.
- 7.5 **Demurrage Charge.** A Demurrage charge of \$0.25 / m³ per day shall be charged commencing 24 hours after Notice of Preparedness has been provided to the Shipper and thereafter on every full or partial 24 hour period on such Petroleum and shall be owing by the Shipper to the Carrier.
- 7.6 **Non-Performance Penalty for Uncommitted Shippers.** A penalty of \$17.00 / m³ will be charged to all Uncommitted Shippers as follows:

- (a) In Months in which volumes Nominated to Land Destinations are subject to apportionment under Rule 14 all Nominations to Land Destinations shall have the Non-Performance Penalty applied to that portion of any shortfall in Tenders from a Shipper that are in excess of five (5%) percent of such Shipper's Allocated Volume. However, the Non-Performance Penalty will not be applied to that portion of shortfalls caused by Force Majeure events or Carrier imposed restrictions on feeder pipeline deliveries into the Carrier, except those set forth in Rule 6, other than by reason of non-compliance of the Tariff.
- (b) In Months in which the Carrier determines apportionment under Rule 14, all Uncommitted Shipper Nominations to the Westridge Marine Terminal shall have the Non-Performance Penalty applied to that portion of any shortfall in Tenders from a Shipper that are in excess of five (5%) percent of such Shipper's Allocated Volume. However, the Non-Performance Penalty will not be applied to that portion of shortfalls caused by Force Majeure events or Carrier imposed restrictions on feeder pipeline deliveries into the Carrier, except those set forth in Rule 6, other than by reason of non-compliance of the Tariff.

7.7 Where the Density of the Petroleum falls within the Density range of one Petroleum type and the viscosity of Petroleum falls within the viscosity range of another Petroleum type, then the Petroleum shall be deemed to be of the type with the higher transportation toll. Petroleum shall be classified by type as set forth by the Density and viscosity ranges as follows:

- (a) "Super Light" means all Petroleum with a Density up to but not including 800 kilograms per m³ or a viscosity up to but not including 2 cSt as measured at the Carrier's Reference Line Temperature.
- (b) "Light" means all Petroleum or blended Petroleum with a Density from 800 kilograms per m³ up to but not including 880 kilograms per m³ or a viscosity from 2 cSt up to but not including 30 cSt as measured at the Carrier's Reference Line Temperature.
- (c) "Medium" means all Petroleum or blended Petroleum with a Density from 880 kilograms per m³ up to but not including 904 kilograms per m³ or a viscosity from 30 cSt up to but not including 100 cSt as measured at the Carrier's Reference Line Temperature.
- (d) "Heavy" means all Petroleum or blended Petroleum with a Density from 904 kilograms per m³ up to but not including 927 kilograms per m³ or a viscosity from 100 cSt up to but not including 250 cSt as measured at the Carrier's Reference Line Temperature.
- (e) "Super Heavy" means all Petroleum or blended Petroleum with a Density from 927 kilograms per m³ up to 940 kilograms per m³ or a viscosity from 250 cSt up to 350 cSt as measured at the Carrier's Reference Line Temperature.

7.8 **Bid Premium.** During Months of apportionment, pursuant to Rule 14, Shippers receiving an allocation by the Carrier for the Westridge Marine Terminal in accordance with Rule 14 will be liable for the full value of their Bid Premium, if any, regardless of the Vessel's loading date.

7.9 **Alternate Delivery Point Fee.** Term Shippers and Uncommitted Shippers shall pay a fee of \$1.572 / m³ (\$0.25 per barrel) for redirecting Deliveries to an Alternate Delivery Point.

8 PAYMENT OF TARIFF CHARGES AND LIEN FOR UNPAID CHARGES

- 8.1 The Carrier shall provide the Shipper semi monthly invoices by electronic means detailing:
 - (a) the charges payable to the Carrier pursuant to the Tariff for Shippers' volumes Delivered since the date of the last invoice; and
 - (b) any other charges for which the Shipper is liable, including, but not limited to the Bid Premium, the Firm Service Fee, toll surcharges, Alternate Delivery Point Fees, Non-Performance Penalties and any other charges or costs incurred under a Contract.
- 8.2 The Shipper shall pay all charges and costs as provided for in the Tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Petroleum by the Carrier. The Shipper shall pay such charges and costs upon receipt of the Carrier's invoice respecting such charges and costs on or before the Payment Due Date.
- 8.3 Should the Shipper fail to pay all of the amount of any invoice as herein provided on or before the Payment Due Date, interest on the unpaid portion of the invoice will accrue daily at a rate of interest per annum equal to the lesser of (i) the prime rate of interest of the Toronto-Dominion Bank of Canada (as it may vary from time to time) plus two percent (2%); and (ii) the maximum lawful interest rate. The principal and accrued interest shall be payable and due immediately upon demand. If such failure to pay continues for ten (10) days after the Payment Due Date, the Carrier, in addition to any other remedy it may have under the Tariff, a Contract, at law, or in equity, may suspend further receipt of Petroleum until such amount is paid or terminate the Contract, if applicable, in accordance with the terms thereof. If said charges remain unpaid ten (10) days after notice and demand therefore, the Carrier shall have the right, through an agent, to sell any Petroleum delivered to the Carrier by the Shipper and then in the custody or control of the Carrier or its agent or otherwise traceable and lienable by the Carrier, at public auction from any office of the Carrier on any Banking Day; provided that the auction takes place not less than 48 hours after publication of notice of such sale in a daily newspaper of general circulation published in the area of the proposed sale, stating the time, place of sale and volume and location of Petroleum to be sold. At said sale the Carrier shall have the right to bid and, if the highest bidder, to become the purchaser. From the proceeds of said sale the Carrier is entitled to and shall pay itself the transportation and all other lawful charges then owed to the Carrier, including interest charges, pending sale and costs and expenses incident to said sale, and the balance remaining, if any, shall be paid to the Shipper without interest. Any such funds may be commingled in any other account or accounts maintained by the Carrier from time to time.
- 8.4 In addition to any other remedies available to the Carrier under the Tariff, a Contract, at law, or in equity, the Carrier shall have a lien on all Petroleum in its possession belonging to the Shipper to secure the payment of any and all unpaid transportation or other lawful charges that are due to the Carrier (including interest) and unpaid by the Shipper hereunder, and the Carrier may withhold such Petroleum from Delivery until all unpaid charges have been paid in full. The lien provided herein shall be in addition to any lien or security interest otherwise provided by law, equity or contract.

9 EVIDENCE OF RECEIPTS AND DELIVERIES

9.1 The Carrier shall evidence the receipt and Delivery of Petroleum hereunder by records showing the volume, type(s) and any other specifications with respect to such Petroleum as specified by the Carrier from time to time.

10 DELIVERY AND ACCEPTANCE

10.1 The Carrier shall transport Petroleum with reasonable diligence and dispatch and the Shipper shall accept and remove its Petroleum from the Mainline System upon Delivery of the Petroleum.

- 10.2** If the Shipper fails to remove its Petroleum from the Mainline System or custody of the Carrier, then:
- (a) The Demurrage Charge shall be owing by the Shipper to the Carrier; and
 - (b) The Carrier shall have the right to remove and sell such Petroleum in accordance with the applicable provisions set forth in Rule 8.3.

11 LIABILITY OF THE SHIPPER

- 11.1** If Petroleum is not removed from the Mainline System upon Delivery and a disruption of the Carrier's operations results, the Shipper shall be solely responsible for all losses, damages, costs and expenses (excluding consequential losses) of the Carrier associated with such disruption unless the non-removal of such Petroleum is due to the direct negligence of the Carrier.
- 11.2** The Shipper shall indemnify the Carrier for any losses, damages, costs and expenses (excluding consequential losses) incurred by the Carrier or any other Party as a result of such Shipper's failure to comply with any provision of the Tariff, unless such Shipper's failure to comply is due to the direct negligence of the Carrier.
- 11.3** The Shipper shall pay or cause to be paid any and all taxes, duties, charges, levies or any other assessments made or imposed by any government or regulatory authority having jurisdiction with respect to the Petroleum to be transported by the Carrier and shall indemnify the Carrier from any such taxes, duties, charges, levies or assessments so made or imposed.
- 11.4** All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal pipeline operations including line losses and shrinkage. Carrier will apply separate Petroleum loss allowance percentages for: i) Mainline System Crude Petroleum; ii) non Mainline System Petroleum; and iii) Mainline System Refined Petroleum to all Delivered volumes. Carrier will publish the Petroleum loss allowance percentages in its Toll schedules. Carrier's Inventory Settlement and Refined Petroleum Reconciliation Procedures are located on its website.

12 LIABILITY OF THE CARRIER

- 12.1** The Carrier shall not be liable to the Shipper for any delay, loss, damage, cost or expense (including consequential loss) while the Carrier is in possession or control of the Shipper's Petroleum, except as caused by the direct negligence of the Carrier.
- 12.2** If damage to or loss of Petroleum results from any cause other than the direct negligence of the Carrier, while the Carrier is in possession or control of such Petroleum, then the Carrier may apportion the cost of such damage or loss on a prorata basis among all Shippers. Each Shipper's share of such cost shall be determined by the Carrier based on the proportion of the volume of the Shipper's Petroleum in the possession of the Carrier on the date of such loss to the total volume of Petroleum in the possession of the Carrier on the date of such loss.

13 FORCE MAJEURE

- 13.1** If either the Carrier or a Shipper fail to perform any of its covenants or obligations under the Tariff and such failure occurs as a consequence of Force Majeure then such failure shall be deemed not to be a breach of such covenants or obligations.
- 13.2** The term "Force Majeure" shall mean any cause not reasonably within the control of the Party claiming suspension of its obligations hereunder and, which by the exercise of due diligence such Party is unable to prevent or overcome, including, but without limiting the generality of the foregoing:
- (a) lightning, storms, earthquakes, landslides, floods, washouts, tsunamis and natural occurrences;
 - (b) fires, explosions, ruptures;
 - (c) freezing of pipelines or pumps or obstructions of pipelines or appurtenances thereto;
 - (d) strikes, lockouts or other industrial disturbances;
 - (e) civil disturbances, sabotage, acts of public enemies, war, blockades, insurrections, vandalism, riots, epidemics;
 - (f) arrests and restraint of governments and people;
 - (g) the order of any court, government body or regulatory body;
 - (h) inability to obtain or curtailment of supplies of electric power, water, fuel or other utilities or services;
 - (i) inability to obtain or curtailment of supplies of any other materials or equipment; and
 - (j) inability to obtain or revocation or amendment of any permit, licence, certificate or authorization of any governmental or regulatory body, unless the revocation or amendment of such permit, licence, certificate or authorization was caused by the violation of the terms thereof or consented to by the Party holding the same.
- 13.3** Notwithstanding Rule 13.2, the following shall not be events of Force Majeure:
- (a) With respect to the Westridge Marine Terminal, failure of the Shipper to obtain a Vessel or failure of a Vessel to meet Westridge Marine Terminal loading standards;
 - (b) lack of funds or other financial circumstance;
 - (c) insufficiency of a Term Shipper's Petroleum supplies; or
 - (d) failure, for any reason, to obtain any provincial or federal export or other regulatory authorization required for the Shipper to be entitled to remove Petroleum from a province or export Petroleum from Canada.
- 13.4** The Party declaring a Force Majeure shall provide to the Carrier and the other Parties written notice of the Force Majeure event within four (4) business days of the event. Such notice shall state the nature of the event, the estimated duration of the event, and the volume affected. The Party declaring Force Majeure shall use reasonable due diligence to remedy the Force Majeure event as quickly and safely as reasonably practicable and shall keep the other Parties informed as to the progress in the efforts to remedy the event; provided no Party shall be required to settle strikes, lockouts or other labour disruptions contrary to its wishes.

- 13.5 At any time up to 30 calendar days following the receipt from a Shipper of a notice referred to in Rule 13.4 the Carrier will issue written notice to the Shipper informing the Shipper in the event the Carrier disputes all or a portion of the Shipper's claim of Force Majeure. The Carrier shall invoice the Shipper for the amount of the Non-Performance Penalty calculated in accordance with Rule 7.6, and the Shipper shall be obligated to make payment of the invoiced amount.
- 13.6 The Carrier shall publish, on at least a monthly basis, a summary of all Force Majeure notices issued pursuant to Rule 13.4 and disputed pursuant to Rule 13.5, which summary shall contain only the name of the Party claiming Force Majeure, volume affected, the amount if any of the Non-Performance Penalty disputed and/or undisputed, and the status of all disputed claims.
- 13.7 Notwithstanding Rule 13.4, no event of Force Majeure shall relieve any Party from any covenant or obligation pursuant to the Tariff after the expiration of a reasonable period of time within which, by the use of its due diligence, such Party could have remedied or overcome the consequences of such event of Force Majeure.
- 13.8 No event of Force Majeure shall relieve any Shipper from its obligations pursuant to the Tariff to make payments to the Carrier except as a direct consequence of Force Majeure.

14 MAINLINE ALLOCATION, ASSIGNMENT AND APPORTIONMENT

- 14.1 Subject first to the Nomination Verification requirements pursuant to Rule 6, Edmonton Receipt Point Nominations ("Edmonton Nominations") and Kamloops Excess Nominations shall be apportioned under Rule 14.
- (a) Kamloops Nominations less than or equal to Petroleum Delivered to Kamloops will be accepted by the Carrier.
- (b) Kamloops Nominations greater than Petroleum Delivered to Kamloops ("Kamloops Excess Nominations") shall be added to Edmonton Nominations and apportioned in accordance with Rule 14.
- 14.2 **Determination of Available Capacity.**
- (a) As soon as practical following receipt of Advanced Dock Nominations, Carrier will determine Available Capacity taking into account:
- (i) the characteristics of the Petroleum Nominated for Advanced Dock Nominations;
- (ii) planned maintenance; and
- (iii) carry-over of volumes initially scheduled for Delivery or injection in the prior Month.
- 14.3 **Allocation of Available Capacity.**
- The Carrier will allocate Available Capacity in accordance with the following procedure:
- (a) First, among all Term Shippers Nominating Petroleum for transportation to a Designated Delivery Point, up to a maximum of each such Term Shippers' Monthly Volume;
- (b) Second, among Uncommitted Shipper Nominations to Priority Destinations, as approved by Order of the National Energy Board;
- (c) Third, among Uncommitted Shipper Nominations to Westridge Marine Terminal ("Westridge Capacity") pursuant to Rule 14.4 as follows:
- (i) up to eight (8%) percent of remaining Available Capacity after allocations under Rule 14.3(a) and (b) shall be allocated among Nominations for Tankers, and
- (ii) up to 850 m³/day shall be allocated to Nominations for Barges;
- (d) Fourth, the remaining Available Capacity after allocation under Rules 14.3 (a) through (c) will be allocated among Uncommitted Shippers with Nominations to Land Destinations;
- (e) Fifth, among Term Shippers Nominating volumes to Alternate Delivery Points based on one or both the availability of capacity to the requested Alternative Delivery Point and priority ranking according to Contracts;
- (f) Sixth, among Term Shippers Nominating make-up volumes pursuant to Rule 6.13; and
- (g) In the case of an event of Force Majeure affecting the Carrier's pipeline system, any resulting reduction in Mainline System capacity will be allocated prorata to each of the designated capacity categories defined in this Rule 14.3.
- 14.4 **Allocation of Available Capacity Among Uncommitted Shippers Nominating to the Westridge Marine Terminal.**
- (a) Uncommitted Shipper Nominations will be ranked by the Carrier from highest to lowest priority based on the Bid Premium;
- (b) If the combined Nominations of two or more Uncommitted Shippers with the same ranking exceed the Westridge Capacity, the Carrier will allocate such capacity among Uncommitted Shippers by drawing lots;
- (c) No Uncommitted Shipper will be required to accept an allocation of Westridge Capacity that is less than ninety-two and one-half percent (92.5%) of the volume of Petroleum specified in such Uncommitted Shipper's original Nomination; and
- (d) Uncommitted Shippers Nominating Barges may not reallocate such capacity to other Westridge Capacity categories or to Land Destinations.
- 14.5 **Allocation of Available Capacity Among Uncommitted Shippers Nominating to Land Destinations.**
- (a) Nominations for Delivery to Land Destinations will be apportioned by reducing the requested volumes prorata within all Nominations to Land Destinations.
- (b) If following the allocation of Land Capacity pursuant to Rule 14.5(a), Nominations for Delivery to Export Destinations exceed the capacity of the connected facilities of Trans Mountain Pipeline (Puget Sound) LLC, such Nominations will be further apportioned prorata to Export Destinations, and any excess volumes will then be allocated to Land Destinations as required;
- (c) During an event of Force Majeure, a Shipper may reallocate its Nominations from Land Destinations to the Westridge Marine Terminal, provided that any such reallocation does not materially adversely affect the Nominations of any other Shipper; and

(d) Other than as set out in Rule 14.5(c) at any time while the provisions of Rule 14 apply, no volumes may be reallocated from Land Destinations to the Westridge Marine Terminal.

14.6 Allocation of Unutilized Available Capacity.

If following the allocation of Available Capacity pursuant to Rule 14.3, there is unused Available Capacity, such capacity shall be offered to unsatisfied Nominations for Uncommitted Shippers Nominating to Westridge Marine Terminal in accordance with Rule 14.4.

14.7 Shippers to Westridge Marine Terminal

Subject to Rule 7.9, all Shippers Nominating to Westridge Marine Terminal, except those Nominating to Barges, may redirect their Nominations, after the Nomination Date, from the Westridge Marine Terminal to an Alternate Delivery Point, provided that any such reallocation does not materially adversely affect the Nominations of any other Shipper.

15 PETROLEUM INVOLVED IN LEGAL DISPUTES

- 15.1 The Shipper represents and warrants that it owns or controls and has the right to deliver to the Carrier or have Delivered for its account, the Petroleum that it has delivered to the Carrier.
- 15.2 The Shipper shall not Tender to the Carrier Petroleum which is in any way subject to litigation, the ownership of which may be in dispute, or which is subject to a lien or charge of any kind whatsoever, unless the Shipper provides to the Carrier written notice of such litigation, dispute, lien or charge at least 30 days prior to Tendering such Petroleum to the Carrier, and the Shipper furnishes a bond or other form of indemnity satisfactory to the Carrier, acting reasonably, protecting the Carrier against any liability or loss (including consequential loss and lost profits) as a result of such litigation, dispute, lien or charge.
- 15.3 The Shipper shall notify the Carrier in writing if, at any time while the Shipper's Petroleum is in the possession or control of the Carrier, such Petroleum becomes involved in litigation, the ownership of such Petroleum becomes in dispute or such Petroleum becomes subject to a lien or charge of any kind whatsoever. The Shipper will, on demand in writing from the Carrier, furnish as soon as reasonably practical a bond or other form of indemnity satisfactory to the Carrier, acting reasonably, protecting the Carrier against any liability or loss (including consequential loss and lost profits) as a result of such litigation, dispute, lien or charge.

16 CLAIMS, SUITS AND TIME FOR FILING

- 16.1 As a condition precedent to recovery, claims for loss, damage or delay in connection with the transportation of Petroleum Tendered under the Tariff must be submitted in writing to the Carrier within 45 days after Delivery of the Petroleum, or, in the case of failure to make Delivery, then within 90 days after a reasonable time for Delivery has elapsed. Lawsuits arising out of such claims must be instituted against the Carrier within 180 days from the date when notice in writing is given by the Carrier to the claimant that the Carrier has disallowed the claim or any part or parts thereof specified in the notice. Claims advanced beyond such 180 day period shall be null and void as between the Shipper and the Carrier. In causing Petroleum to be transported under the Tariff, the Shipper agrees to be bound by the provisions of Rule 16.1 and waive any rights which it might otherwise have at law, equity or otherwise to make a claim after the expiration of said period of 90 days or to bring an action after the expiration of said period of 180 days.

17 MEASUREMENTS

- 17.1 The volumetric measurement unit of Petroleum shall be one (1) Cubic Meter at 15°C at standard pressure. All measurement procedures are to be conducted in accordance with API/ASTM standards and Measurement Canada and / or such other tests as may be agreed upon by the Carrier and the Shippers.
- 17.2 Petroleum received by the Carrier for transportation shall be gauged, metered and tested by a representative of the Carrier prior to its acceptance. The Shipper may have a representative present at the gauging, metering and testing. If tank tables are used, volumes will be computed from regularly compiled tank tables showing one hundred percent (100%) of the full capacity of the tanks. Whenever there is evidence of meter malfunctions at a custody transfer measurement, the Parties involved in the custody transfer shall negotiate an appropriate adjustment on the basis of the most reliable and accurate information available. Such adjustments may only be claimed for a period of up to 90 days after the date of the meter malfunction. Failing a negotiated agreement of an adjustment, the matter shall be referred to arbitration for final determination pursuant to the *Arbitration Act* (Alberta).
- 17.3 Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (a) Gross Standard Volume and Net Standard Volume received and Delivered;
 - (b) weighted average temperature;
 - (c) weighted average Density;
 - (d) weighted average pressure; and
 - (e) deductions for sediment, water and other impurities.
- 17.4 In the event of a meter failure, or similar circumstance, the Shipper shall grant the Carrier reasonable access to enter the Shipper's premises for the purpose of making any examination, inspection, measurement or test provided for under these Rules and Regulations.

18 GOVERNING LAW

- 18.1 The Tariff shall be governed by, construed and interpreted in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Except as provided for in this Rule, each Party accepts the jurisdiction of the courts of the Province of Alberta and all courts of appeal therefrom.

19 FINANCIAL ASSURANCES

- 19.1 If at any time the Credit Rating for a Shipper, or the Credit Rating for its Credit Support Provider, is below BBB- by S&P, Baa3 by Moody's or BBB(low) by DBRS, or if a Shipper does not have a Credit Rating or a Credit Support Provider, or the Carrier otherwise has

reasonable grounds for insecurity regarding the payment or performance of any covenant or obligation of the Shipper pursuant to the Tariff (any of which circumstances are hereafter referred to as "Credit Issues"), as applicable, the Carrier may request, and the Shipper shall provide to the Carrier the following ("Financial Assurance"):

- (a) with respect to Term Shippers (i) a Letter of Credit in an amount equal to twelve (12) Months of the Firm Service Toll set forth in the Contract based on the Monthly Volume; or (ii) such other security acceptable to the Carrier, acting reasonably; and
- (b) with respect to Uncommitted Shippers (i) a prepayment of the tolls applicable to such volumes Nominated by the Shipper; or a Letter of Credit in an amount equal to 60 days of the tolls applicable to such volumes Nominated by the Shipper.

The Shipper shall renew or cause the renewal of the Letter of Credit no later than 30 days prior to the expiry thereof, failing which the Carrier shall be entitled to draw down the entirety of the Letter of Credit. If the financial institution that issued the Letter of Credit has indicated its intention not to renew the Letter of Credit, the Shipper shall provide to the Carrier either a substitute Letter of Credit in the amount determined in accordance with this Rule 19.1 or such other security acceptable to the Carrier, acting reasonably, in each case 30 days prior to the expiration of the Letter of Credit, failing which the Carrier shall be entitled to draw down the entirety of the Letter of Credit. If the Shipper fails to provide Financial Assurance to the Carrier within seven (7) Banking Days of the Carrier's written request thereof, the Shipper shall be deemed to be in default under the Tariff and the Carrier may, in addition to any other remedy it may have under the Tariff, a Contract, at law, or in equity, suspend further Delivery of Petroleum until such Financial Assurance is provided to the Carrier or terminate the contract.

- 19.2 The Shipper shall furnish to the Carrier, as soon as available, and, in any event, within 120 days after the end of each fiscal year of the Shipper, its audited consolidated financial statements (or if the Shipper has a Credit Support Provider, the audited consolidated financial statements of its Credit Support Provider) setting forth in comparative form the corresponding figures of the preceding fiscal year together with an auditors report thereon. In addition, the Shipper shall, at the Carrier's request, furnish to the Carrier, as soon as available, and, in any event, within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Shipper or, its Credit Support Provider, as applicable, the unaudited consolidated financial statements of the Shipper or its Credit Support Provider, as applicable, prepared on a basis consistent with the corresponding period of the preceding fiscal year. Notwithstanding the foregoing, where the applicable financial statements are made available on an internet site available to the public (such as www.sedar.com), the Shipper shall be deemed to have provided those financial statements to the Carrier when such statements are posted to that internet site. The Shipper shall furnish to the Carrier any other information regarding the business affairs, operations, assets and financial condition of the Shipper or its Credit Support Provider, as applicable, as the Carrier may reasonably request from time to time.
- 19.3 Any Shipper making a Nomination who has not made a Nomination in the previous 12 Month period and which has, or its Credit Support Provider has Credit Issues, must provide Financial Assurance to the Carrier one (1) Month prior to making a Nomination.

20 REQUESTED CHANGES BY SHIPPER

- 20.1 The Carrier may, upon written request of the Shipper following that Shipper's Tender, allow that Shipper to transfer its rights and obligations under the Tariff in respect of a Tender to another Shipper; provided that the successor Shipper (i) satisfies the Financial Assurances requirements set forth in Rule 19; and (ii) assumes all covenants and obligations of the Shipper under the Tariff as of the time the Carrier approves the transfer.

21 WESTRIDGE MARINE TERMINAL

- 21.1 **Proposal of Vessel.** A Shipper Tendering Petroleum for Delivery to the Westridge Marine Terminal shall submit a Vessel Proposal Form to the Carrier prior to the Shipper's first batch leaving the Receipt Point.
- 21.2 **Approval of Vessel.** The Carrier shall have the right to reject any Vessel proposed by the Shipper that does not meet the safety, odour recovery, dimension or other standards and criteria as set from time to time by the Harbour Master of Vancouver, British Columbia and/or the Carrier.
- 21.3 **Loading Windows.** Shippers desiring to lift Crude Petroleum from the Westridge Marine Terminal shall be designated loading windows by the Carrier, acting reasonably, in accordance with the following priority: (i) first, the Term Shipper(s) who have Nominated a volume for the applicable Month based upon the priority ranking of Term Shippers according to the Contracts, and (ii) second, by the Uncommitted Shipper(s), ranked based on the highest priority bids in accordance with Rule 14.4. Prior to the Month of Delivery, the Carrier shall designate and confirm with the Shipper a three (3) day loading window commencing at 7:00 a.m. Mountain Time on the first day of such loading window and ending 72 hours later, taking into account the Shipper's preferential loading window to the extent practicable. Changes to loading windows will be considered by the Carrier provided they do not impact other Shippers unless such other Shippers agree, in writing, to such change.
- 21.4 **Loading of Vessel.** If the Shipper's Vessel has not finished loading by the end of the three (3) day loading window, Rule 7.5 shall apply provided that the delay was not due to the inability of the Carrier to Deliver Petroleum to the Delivery Point.
- 21.5 **Early Lifting.** The Carrier may, acting reasonably and provided supply is available, allow another Vessel to lift prior to its designated loading window should the prior Vessel be late in arrival (to be determined by when the Vessel submits its notice of readiness) and will not finish lifting within its designated window.

22 EXPORT OF PETROLEUM

- 22.1 **Export Volumes.** Shippers of Petroleum destined for export via Sumas or Westridge Marine Terminal shall make all necessary arrangements with concerned government authorities to accommodate such export. The Carrier shall permit government representatives to witness the testing and measurement of Deliveries into a Vessel.