



**EXPRESS PIPELINE LTD.**  
As the General Partner of  
**EXPRESS PIPELINE LIMITED PARTNERSHIP**

**RULES AND REGULATIONS**

**GOVERNING THE TRANSPORTATION OF  
CRUDE PETROLEUM**

**FROM**

**HARDISTY, ALBERTA**

**TO**

**HARDISTY, ALBERTA**

**AND**

**THE INTERNATIONAL BOUNDARY NEAR WILD HORSE, ALBERTA**

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## RULES AND REGULATIONS

### 1. DEFINITIONS

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Except where the context expressly states another meaning, the following terms, when used in these Rules and Regulations, or in any Contract or Petroleum Toll Schedule into which these Rules and Regulations are incorporated, shall be construed to have the following meanings:

- 1.1 "Affiliate"** means any Person:
- (i) that controls a Party;
  - (ii) that is controlled by a Party; or,
  - (iii) that is controlled by the same Person that controls a Party;
  - (iv) it being understood and agreed that for purposes of this definition the terms "controls" and "controlled by" shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the control of or by a corporation, the ownership of shares carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.
- 1.2 "API"** means American Petroleum Institute.
- 1.3 "ASTM"** means American Society for Testing and Materials.
- 1.4 "Banking Day"** means any day that the financial institutions designated by the Carrier for payment pursuant to Rule 8 herein, conduct business.
- 1.5 "CER"** means the Canada Energy Regulator or any regulatory or government authority hereafter having a similar jurisdiction in substitution therefor.
- 1.6 "Carrier"** means Express Pipeline Ltd. as General Partner of the Express Pipeline Limited Partnership.
- 1.7 "Commencement Date"** means the earlier of: the date upon which Petroleum is first Tendered to the Carrier at Hardisty, Alberta and the Carrier authorizes transportation service; or ten (10) Days following the Carrier's issuance of written notice to the Term Shipper that transportation service will be available.
- 1.8 "Contract"** means a Transportation Service Agreement executed by the Carrier and a Term Shipper.
- 1.9 "Contract Volume"** means the volume of Petroleum specified by a Term Shipper in Appendix "A" of a Contract.
- 1.10 "Contract Year"** means a period of 12 consecutive Months beginning on the Commencement Date or Initial Date.
- 1.11 "Cubic Meter" (m<sup>3</sup>)** means the volume of Petroleum which occupies one cubic meter when such Petroleum is at a temperature of fifteen degrees Celsius (15°C) and at a pressure of 101.325 kiloPascals and equals 264.1721 United States gallons and 6.2898108 barrels, under the same conditions.
- 1.12 "Day"** means a period of 24 consecutive hours, beginning and ending at 7:00 a.m. Mountain Time. The reference date for any Day shall be the calendar date upon which the 24 hour period shall commence.
- 1.13 "Delivery Point(s)"** means the International Boundary near Wild Horse, Alberta or elsewhere as the Tariff may designate.
- 1.14 "Deliver"** and any derivative thereof, means delivered by the Carrier to the Shipper at the Delivery Point.
- 1.15 "Express Pipeline"** means the Petroleum receipt, delivery, pipeline, pumping and ancillary facilities owned by the Carrier commencing at and traversing between Hardisty, Alberta and terminating at the International Boundary near Wild Horse, Alberta.

- 1.16 **"Gross Standard Volume"** means the volume of Petroleum measured in Cubic Meters in accordance with standards established by ASTM.
- 1.17 **"Initial Date"** means the wording or date stipulated in a Term Shipper's Contract.
- 1.18 **"kiloPascal" (kPa)** is equivalent to 0.1450377 pounds per square inch (psi).
- 1.19 **"Month"** means the period beginning at the first Day of the calendar month and ending at the same hour on the first Day of the next succeeding calendar month.
- 1.20 **"Monthly Nomination Date"** means no later than 7:00 a.m. Mountain Time on the dates set forth in the "Nominations Dates" section of Carrier's customer portal.
- 1.21 **"Monthly Volume"** means the product of Contract Volume and the number of days in that Month.
- 1.22 **"Net Standard Volume"** means the Gross Standard Volume minus the basic sediment, water component and other impurities.
- 1.23 **"Nomination"** and any derivative thereof, means the volume of Petroleum to be specified in the Monthly Notice of Shipment as described in Rule 6.1 herein.
- 1.24 **"Non-Term Shipper"** means a Shipper not Party to a Contract
- 1.25 **"Notice of Shipment"** means the form prescribed by the Carrier to be used by the Shipper in notifying the Carrier of proposed Tenders, as such form may be amended from time to time.
- 1.26 **"Oil"** as used in Rule 1.29 means condensate, bitumen blend or crude oil or a constituent bitumen blend, condensate or crude oil that is recovered in processing that is liquid at the conditions under which its volume is measured or estimated.
- 1.27 **"Parties"** means the Carrier and the Shipper(s) collectively, and "Party" means any one of them.
- 1.28 **"Payment Due Date"** means the 25<sup>th</sup> Day of a Month in which the Carrier issues an invoice pursuant to Rule 8.1. If the Payment Due Date is not a Banking Day, then payment must be received by the Carrier or by the financial institution or the automated banking facility so designated by the Carrier for payment in the Monthly Statement, on the Shipper's account on or before the first Banking Day immediately prior to the Payment Due Date.
- 1.29 **"Person"** means a natural person, firm, trust, partnership, corporation, government or governmental agency.
- 1.30 **"Petroleum"** means the direct liquid product of Oil wells, Oil processing plants, Oil sands, or a mixture of such products, but does not include natural gas or natural gas liquids.
- 1.31 **"Petroleum Toll Schedule"** means the schedules of tolls published by the Carrier from time to time.
- 1.32 **"Receipt Point(s)"** means the Carrier's inlet meter at Hardisty, Alberta or elsewhere as the Carrier's Tariff may designate.
- 1.33 **"Retention Stock"** means the working bottoms, working stock, station fill and line-fill required by the Carrier and assigned to the Shippers quarterly.
- 1.34 **"Shipper"** means a Person who uses the transportation service of the Carrier pursuant to the Tariff.
- 1.35 **"Short-Term Monthly Volume"** means for the purpose of allocating Available Capacity under Rule 13.1, a Contract Volume equal to 50,000 barrels per Month.
- 1.36 **"Subsidiary"** means a Person, in which more than fifty percent (50%) of the issued share capital units or other indicia of ownership (having full voting rights under all circumstances) is owned or controlled directly or indirectly by another Person, or by one or more subsidiaries of such other Person(s), or by such other Person(s), and one or more of its subsidiaries.
- 1.37 **"Tariff"** means the terms and conditions contained in these Rules and Regulations, the Petroleum Toll Schedules, and, in the case of a Term Shipper, a Contract, all as amended from time to time.
- 1.38 **"Tender"** and any derivative thereof, means the receipt by the Carrier from a Shipper at a Receipt Point of a stated quantity and type of Petroleum for transportation from a Receipt Point to a Delivery Point hereunder.
- 1.39 **"Term Shipper"** means a Shipper that is a Party to a Contract.
- 1.40 **"Uncommitted Volume"** means the volume of Petroleum nominated in a Month to the Carrier for

transportation on the Express Pipeline: (i) from any Non-Term Shipper; and (ii) from a Term Shipper that exceeds such Term Shipper's Monthly Volume and such Term Shipper's available make-up volumes.

- 1.41 "Year" means a period of 365 consecutive days; provided however, that any such year which contains a date of February 29 shall consist of 366 consecutive days.

## 2. COMMODITY

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- 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

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- 3.1 **Acceptance and Delivery** Petroleum will be accepted for transportation only when Tendered pursuant to Rule 6 at Receipt Points and Nominated for Delivery to the Shipper or a consignee at one or more Delivery Points.
- 3.2 **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 named Delivery Point for handling the Petroleum at the rate of flow at which the Carrier is then operating its system at such Delivery Point.

## 4. QUALITY

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- 4.1 **Specifications as to Quality** A Shipper shall not deliver to the Carrier and the Carrier shall not be obligated to accept Petroleum that, as determined by the Carrier, has on receipt:
- (i) vapor pressure in excess of **[W]** eighty five kiloPascals (85 kPa) ~~one hundred and three kiloPascals (103kPa)~~ for Light and Medium Petroleum **[N]** received during the period from May 1<sup>st</sup> through October 31<sup>st</sup> of the year, or a vapor pressure in excess of ninety five kiloPascals (95 kPa) for Light and Medium Crude Petroleum received during the period from November 1<sup>st</sup> through April 30<sup>th</sup> of the year; or a vapor pressure in excess of seventy kiloPascals (70 kPa) for Heavy and Super-Heavy Petroleum received during the period from May 1<sup>st</sup> through November 30<sup>th</sup> of the year, or a vapor pressure in excess of seventy six kiloPascals (76 kPa) for Heavy and Super-Heavy Petroleum received during the period from December 1<sup>st</sup> through April 30<sup>th</sup> of the year;
  - (ii) sediment, water and other impurities, in excess of one-half of one percent (0.5%) of volume as determined by the centrifuge method in accordance with ASTM D96/API 2542 standards or by any other tests as may be established by Carrier;
  - (iii) at the Receipt Point a temperature greater than thirty-eight degrees Celsius (38°C);
  - (iv) at the Receipt Point a density in excess of nine hundred and forty kilograms per Cubic Meter (940 kg/m<sup>3</sup>);
  - (v) a kinematic viscosity in excess of three hundred and fifty (350) square millimeters per second (mm<sup>2</sup>/s) determined at Carrier's reference line temperature;
  - (vi) any organic chlorides, sulphurs 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 commodities transported by the Carrier or that may otherwise cause disadvantage to the Carrier;
  - (vii) vapor pressure limits that exceed the allowable limits established in the Carrier's environmental permits governing those facilities (such determination varies by facility and will be confirmed by Carrier upon request).
- 4.2 **Specification Guidelines** Notwithstanding Rule 4.1 or any other provision to the contrary expressed or implied herein, the Carrier shall have the right to make any reasonable change to the specifications under Rule 4.1, from time to time, to ensure measurement accuracy and to

protect the Carrier, personnel, capacity and equipment by issuing revised specifications.

- 4.3** A Shipper shall, as required by the Carrier, provide to the Carrier a certificate with respect to the specifications of Petroleum to be received by the Carrier from such Shipper. If a Shipper fails to provide the Carrier with such certificate, then the Carrier shall not be obligated to accept the Shipper's Petroleum.
- 4.4** **Failure to Conform to Specifications** If the Carrier determines that a Shipper does not comply with the provisions of Rule 4.1 of this tariff, then such Shipper shall remove its Petroleum from the facilities of the Carrier as directed by the Carrier.
- 4.5** **Failure to Remove Objectionable Matter** If a Shipper fails to remove its Petroleum from the facilities of the Carrier as directed by the Carrier, then the Carrier shall have the right to remove and sell such Petroleum in such lawful manner as deemed appropriate by the Carrier. The Carrier shall pay from the proceeds of such sale all costs incurred by the Carrier with respect to the storage, removal and sale of such Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.

## **5. SEGREGATION AND CHANGES IN QUALITY**

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- 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; however, the Carrier shall not be obligated to make Delivery of identical Petroleum received by the Carrier.
- 5.2** **Alterations of Specifications** Petroleum Tendered for transportation will be received by the Carrier only on the condition that it shall be subject to such changes in density or quality while in transit as may result from the transportation thereof, or the mixture of said Petroleum with other Petroleum in the Carrier's system. The Carrier shall not be liable for any consequential loss or damage resulting from an alteration in density or other quality of Petroleum transported by the Carrier.
- 5.3** **Segregated Movement** Notwithstanding the provisions of Rule 5.2 hereof, if the Petroleum Tendered is of a type or quality not being currently transported through the Carrier's system, but subject to such Petroleum meeting the standards set out in Rule 4 of these Rules and Regulations, 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. Carrier's obligation to accept Tenders of Petroleum not currently being transported, and its obligations to accept specific grades of Petroleum will be subject to the availability of the Carrier's compatible tankage at Hardisty as determined by the Carrier in its sole discretion.

## **6. TENDERS AND QUANTITIES**

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- 6.1** **Monthly Nominations** On or before the Carrier's scheduled Monthly Nomination date, the Shipper shall provide the Carrier with a Monthly Nomination on the prescribed Notice of Shipment showing the volume of Petroleum to be shipped for the following Month, the Receipt Point, the Delivery Point and type(s) of Petroleum. If a Shipper fails to Nominate any volumes, the Shipper's Nomination will be deemed to be zero. When the Shipper's Tenders have been curtailed pursuant to Rule 19.1, the Shipper shall be deemed to have submitted a Monthly Nomination equal to its Monthly Volume reduced proportionately by the level of curtailment. The Shipper shall, upon notice from the Carrier, also provide written third party verification of the availability of its supply of Petroleum and of its capability to remove such Petroleum from the Delivery Point(s) as may be required by the Carrier in support of such Shipper's Nomination. The Carrier shall not be obligated to accept the Shipper's Nomination

where such verification is, in the sole discretion of the Carrier, unacceptable to the Carrier.

- 6.2 Tenders** A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with the Carrier's established Tender process. If a 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).
- 6.3 Batch Size** A Tender will be accepted only when the total quantity covered thereby will be delivered to the Carrier at a Receipt Point for transportation within said Month at a daily rate, or in quantities and at times to be specified or accepted by the Carrier. Except as hereunder provided, the Carrier will not accept a batch size of less than eight thousand cubic meters (8,000 m<sup>3</sup>).  
The Carrier may take delivery of Petroleum in batches of less than eight thousand cubic meters (8,000 m<sup>3</sup>) when operating circumstances permit and space is available. However, in no event will the Carrier undertake to make a single batch Delivery of less than four thousand cubic meters (4,000 m<sup>3</sup>). A single batch Delivery is a Delivery in one continuous operation into a single facility to which the Carrier's system is connected.
- 6.4 Late Nominations** If space is available and operating conditions permit, the Carrier may, at its discretion, accept Nominations, or revised Nominations after the Carrier's Monthly Nomination Date.
- 6.5 Retention Stock** The Shipper shall supply its proportionate share of Retention Stock by types and volumes as determined from time to time by the Carrier.
- 6.6 Term Shipper Nominations** In the event that a Term Shipper fails to Nominate and/or Tender a volume of Petroleum equal to its Monthly Volume, it shall nonetheless pay to the Carrier the amount determined pursuant to the provisions of the Contract.
- 6.7 Term Shipper Make Up Rights**
- (i) In the event that a Term Shipper is prevented from Tendering in any Month a volume of Petroleum equal to its Monthly Volume and said failure is due to operational or scheduling difficulties which are beyond such Term Shipper's reasonable control, as determined by the Carrier in its sole discretion, a Term Shipper shall, to the extent that operating conditions permit and capacity is available, be entitled to make-up such volumes in the next following twelve (12) Months provided that the Term Shipper has first Tendered its Monthly Volume in such Months.
  - (ii) In the event that a Term Shipper Tenders for shipment by the Carrier in any Month a volume less than the Monthly Volume, in circumstances where (i) above does not apply, the Term Shipper shall be entitled to the extent that operating conditions permit and capacity is available, to transport the make-up volume (being the difference between the Monthly Volume and the volumes Tendered for shipment in that Month), in any of the next following three (3) Months, provided that such make-up volume cannot exceed 5% of the Monthly Volume and the Term Shipper has first Tendered its Monthly Volume in such Months.
  - (iii) Subject to the tolls in effect as set out in the Petroleum Toll Schedules and adjustments for destination and actual types of Petroleum Tendered, no additional toll will be payable by the Term Shipper regarding the make-up volumes Tendered pursuant to (i) and (ii) above. Make-up volumes in (i) and (ii) shall be Nominated and ranked equally with all volumes Nominated by Shippers not parties to a Contract for the purpose of allocating available system capacity pursuant to Rule 13.
- 6.8 Uncommitted Volumes** Each Shipper that nominates Uncommitted Volume shall, in each Month,

Tender to the Carrier a volume of Petroleum equal to its Nomination of Uncommitted Volume for that Month. Such Shipper shall pay to the Carrier an amount equal to the product of the uncommitted toll contained in the Petroleum Toll Schedule and a volume equal to the greater of:

- (i) the Uncommitted Volume Tendered; or
- (ii) ninety-five percent (95%) of the Shipper's Nomination of Uncommitted Volume, as reduced pursuant to Rule 13, if applicable.

**6.9 Uniform Tenders** Each Shipper shall endeavor to Tender Petroleum to the Carrier in equal daily quantities over each Month to make up its Nominated monthly volume commitment and having such Petroleum specifications as will reasonably be compatible with the Carrier's operation of its system.

**6.10 Flow Rates and Volumes** The Carrier will normally take full stream receipts at Receipt Points and will make full stream Deliveries of Petroleum at Delivery Points at flow rates and volumes compatible with the Carrier's system operations.

## **7. APPLICATION OF TOLLS**

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**7.1 Effective Tolls** Petroleum accepted for transportation shall be subject to the tolls in effect on the date of receipt of such Petroleum by the Carrier, irrespective of the date of Nominations.

**7.2 Toll Attribution** The tolls charged to the Shipper shall be allocated as to volume of Petroleum and type of Petroleum in accordance with the Tariff.

**7.3 Classification of Petroleum** Where the density of the Petroleum falls within the density range of one Petroleum classification and the viscosity of Petroleum falls within the viscosity range of another classification, then the Petroleum shall be deemed to be in the classification with the higher transportation toll. Petroleum shall be classified by type as set forth by the density and viscosity ranges as follows:

- (i) **Light Petroleum** – Petroleum having a density up to but not including 876 kilograms per cubic meter (kg/m<sup>3</sup>) and viscosity up to but not including 20 square millimeters per second (mm<sup>2</sup>/s) will be classified as Light Petroleum. Light Petroleum will be assessed no surcharge.
- (ii) **Medium Petroleum** – Petroleum having a density from 876 kilograms per cubic meter (kg/m<sup>3</sup>) up to but not including 904 kg/m<sup>3</sup> and viscosity from 20 up to but not including 100 square millimeters per second (mm<sup>2</sup>/s) will be classified as Medium Petroleum. Medium Petroleum will be assessed a surcharge of 8%, which is incorporated in the applicable toll found in the toll section of the Tariff.
- (iii) **Heavy Petroleum** – Petroleum having a density from 904 kilograms per cubic meter (kg/m<sup>3</sup>) to 927 kg/m<sup>3</sup> and viscosity from 100 to 250 square millimeters per second (mm<sup>2</sup>/s) will be classified as Heavy Petroleum. Heavy Petroleum will be assessed a surcharge of 22%, which is incorporated in the applicable toll found in the toll section of the Tariff.
- (iv) **Super-Heavy Petroleum** – Petroleum having a density above 927 kilograms per cubic meter (kg/m<sup>3</sup>) up to and including 940 kg/m<sup>3</sup> and viscosity above 250 up to and including 350 square millimeters per second (mm<sup>2</sup>/s) will be classified as Super-Heavy Petroleum. Super-Heavy Petroleum will be assessed a surcharge of 27%, which is incorporated in the applicable toll found in the toll section of the Tariff.

**7.4 Allowance Oil** The Carrier shall deduct, as allowance oil, a defined percent of the volume of Crude Petroleum delivered to the Shipper to cover losses inherent in the transportation of Crude Petroleum by pipeline. The applicable percentages can be found in the Table of Loss Allowance Percentages, which is located on the Carrier's website at <https://www.enbridge.com/Projects-and-Infrastructure/For-Shippers/Tariffs/Express-Pipeline-Ltd-Express-Canada-Tariffs.aspx>.

## **8. PAYMENT OF TARIFF CHARGES AND LIEN FOR UNPAID CHARGES**

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- 8.1** The Shipper shall pay to the Carrier tolls in accordance with the Tariff on or before the Payment Due Date. The Carrier will provide the Shipper a Monthly invoice detailing:
- (i) the charges payable to the Carrier pursuant to the Tariff for the Shipper's Tenders and/or Nominations and Contract obligations if applicable, during the previous Month; and
  - (ii) any other charges for which the Shipper is liable under the Tariff or the Shipper's other obligations.
- 8.2** In addition to any other remedies available to the Carrier under the Tariff, 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 and unpaid by the Shipper, and the Carrier may withhold such Petroleum from Delivery until all unpaid charges have been paid.
- 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 accrues daily at a rate of interest per annum equal to the prime rate of interest of the Royal Bank of Canada (as it may vary from time to time) plus four percent (4%) and the principle and accrued interest to date shall be payable and due immediately upon demand. If such failure to pay continues for (10) days after the Payment Due Date, the Carrier, in addition to any other remedy it may have under the Tariff, at law, or in equity, may suspend further receipt of Petroleum until such amount is paid or terminate the Contract; provided however, that if the Shipper in good faith disputes the amount of any such invoice or part thereof and pays to the Carrier such amounts as it concedes to be correct and at any time thereafter within twenty (20) days of a demand made by the Carrier furnishes good and sufficient financial assurances guaranteeing payment to the Carrier of the amount ultimately found due upon such invoice after a final determination reached either by agreement, arbitration or judgment of the courts, as may be the case, then the Carrier shall not be entitled to suspend further receipt of Petroleum because of such non-payment unless and until default be made in the conditions of financial assurances.
- 8.4** If said charges remain unpaid ten (10) days after notice and demand therefor, 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 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 Day not a legal holiday, provided that the auction takes place not less than forty-eight (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 quantity and location of Petroleum to be sold. The Shipper covenants and agrees not to dispose of its Petroleum other than subject to the lien afforded to the Carrier hereby. 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 will pay itself the transportation and all other lawful charges, including reasonable storage charges pending sale and expenses incident to said sale, and the balance remaining, if any, shall be held in trust for whomever may be lawfully entitled thereto, without the obligation to pay interest thereon. Any such funds may be commingled in any other account or accounts maintained by the Carrier from time to time.

## **9. DELIVERY AND ACCEPTANCE**

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- 9.1** The Carrier will transport Petroleum with reasonable diligence and dispatch and the Shipper shall accept and remove its shipment from the facilities of the Carrier upon Delivery of the Petroleum.
- 9.2** If the Shipper fails to remove its Petroleum from the facilities or custody of the Carrier upon the Carrier's Delivery, then the Carrier shall have the right to remove and sell such Petroleum in

such lawful manner as deemed appropriate by the Carrier. The Carrier shall pay from the proceeds of such sale all costs incurred by the Carrier with respect to the storage, removal and sale of such Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for the Shipper and any other party lawfully entitled to such proceeds.

## **10. LIABILITY OF SHIPPER**

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- 10.1** If the Petroleum is not removed from the Carrier's facilities upon Delivery and a disruption of the Carrier's operations results, the Shipper shall be solely responsible for all costs or losses to the Carrier associated with such disruption, including loss of revenue resulting therefrom, unless the non-removal of such Petroleum is due to the direct negligence of the Carrier.
- 10.2** The Shipper shall indemnify the Carrier for any damage, loss, costs or consequential loss 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 the Shipper's failure to comply is due to the direct negligence of the Carrier.
- 10.3** 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 and save harmless the Carrier from any such taxes, duties, charges, levies or assessments so made or imposed.
- 10.4** **Default and Termination** Subject to the provisions of Rule 12 hereunder, if the Carrier or the Term Shipper ("Contracting Party") shall fail to perform any of the covenants or obligations imposed upon it under the Tariff, then in addition, to any other remedies the Contracting Party may have under the Tariff, at law or in equity, the other Contracting Party may, at its option, terminate its Contract by proceeding as follows: the Contracting Party not in default shall cause a written notice to be served on the Party in default stating specifically the default under the Contract, and declaring it to be the intention of the Contracting Party giving the notice to terminate such Contract; thereupon the Contracting Party in default shall have ten (10) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the default notice and if within the said ten (10) day period the Contracting Party in default does so remove and remedy said cause or causes and fully indemnifies the Contracting Party not in default for any and all consequences of such default, then such default notice shall be withdrawn and the Contract shall continue in full force and effect. In the event that the Contracting Party in default does not so remedy and remove the cause or causes or does not indemnify the Contracting Party giving the default notice for any and all consequences of such default within the said period of ten (10) days, then, at the option of the Contracting Party giving such default notice, the Contract shall terminate. Any termination of the Contract pursuant to the provisions of this Rule shall be without prejudice to the right of the Carrier to collect any amounts then due to it for transportation service provided prior to date of the termination and shall be without prejudice to the right of the Term Shipper to receive any Petroleum which has not been received but for which the charges for transportation service have been paid prior to the date of termination, and without waiver of any other remedy to which the Contracting Party not in default may be entitled for breaches of the Contract.
- 10.5** **Non Waiver and Future Default** No waiver by the Carrier or the Term Shipper of any one or more defaults by the other in the performance of any provisions of the Tariff and/or Contract shall operate or be construed as a waiver of any continuing or future default or defaults, whether of a like or different character.

## **11. LIABILITY OF CARRIER**

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- 11.1** The Carrier shall not be liable to the Shipper for any loss, damage, consequential loss or damage,

or delay caused by an event of Force Majeure, except caused by its own direct negligence.

- 11.2** 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 pro rata 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.

## **12. FORCE MAJEURE**

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- 12.1** If either the Carrier or the Shipper fails to perform any obligations under the Tariff and/or Contract due to an event of Force Majeure, then such failure shall be deemed not to be a breach of such obligations.
- 12.2** The term "Force Majeure," as employed herein and for all purposes relating hereto, shall mean any act of God, war, civil insurrection or disobedience, acts of public enemy, strikes, lockouts or other industrial disturbances, accidents, blockades, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, floods, civil disturbances, the act, regulation, order, direction or requisition of any governmental or other authority having jurisdiction, or other cause whether of the kind enumerated or otherwise which is beyond the control of the applicable Party and which by the exercise of due diligence such Party is unable to prevent or overcome.
- 12.3** Notwithstanding Rules 12.1 and 12.2, the following shall not be events of Force Majeure:
- (i) insufficiency of the Shipper's Petroleum supplies; or
  - (ii) lack of funds.
- 12.4** A Party that fails to perform any obligations under the Tariff where such failure is caused by an event of Force Majeure shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so, provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the Party claiming suspension of its obligations hereunder by reason thereof.
- 12.5** Notwithstanding the above provisions, no event of Force Majeure shall:
- (i) relieve any Party from any obligation or obligations pursuant to the Tariff unless such Party gives notice with reasonable promptness of such event to the other Party; or
  - (ii) relieve any Party from any obligation or obligations 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.
- 12.6** No event of Force Majeure shall relieve any Shipper from its obligations pursuant to the Tariff to make payments to the Carrier unless the event of Force Majeure occurs on the Carrier's system.

## **13. APPORTIONMENT**

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- 13.1** Following the receipt by the Carrier of Nominations for a Month, the Carrier shall determine the capacity available in that Month ("Available Capacity"). In the event Nominations for the Month exceed Available Capacity, then, having regard to the operating conditions of the Carrier, the Available Capacity shall be allocated by the Carrier:
- (i) Firstly, among the Term Shippers on a pro rata share of capacity basis calculated for each Term Shipper as follows:
  - (ii) Available Capacity multiplied by a fraction, the numerator of which is the volume Nominated in the Month by the Term Shipper up to a maximum level of its Monthly Volume or Short-Term Monthly Volume (the "Term Shipper Volume") and the

- denominator of which is the total Term Shipper Volumes in the Month. The product resulting from this calculation will be known as the "Term Shipper Allocation".
- (iii) In the event that the allocation of Available Capacity in (ii) results in an allocation to Short-Term Monthly Volume(s) less than 50,000 barrels, such capacity will not be assigned and Short-Term Monthly Volume(s) will instead be allocated by means of a lottery in order to meet the reduced level of Available Capacity as follows:
- (a) Carrier shall determine the total number of Short-Term Monthly Volumes for such Month based on the sum of the pro rata allocations under 13.1(ii) for such Short-Term Monthly Volumes;
  - (b) Carrier shall utilize a random number generating system to assign each applicable Term Shipper a number; and
  - (c) Carrier shall allocate one Short-Term Monthly Volume at a time to such Term Shippers from lowest assigned number to highest assigned number until the total number of Short-Term Monthly Volumes for the Month are fully allocated.
  - (d) The inability to allocate a Short-Term Monthly Volume to a Term Shipper pursuant to this process will relieve the Term Shipper of any ship or pay obligations under the Contract.
  - (e) Any Available Capacity remaining following the application of the lottery will be allocated to unsatisfied Monthly Volumes, if any, on a pro rata basis.
- (iv) The extent to which the Available Capacity exceeds the total Term Shipper Allocations in the Month will be known as the "Remaining Available Capacity"; and
- (v) To the extent there is any Remaining Available Capacity, then among the Term Shippers and Non-Term Shippers on a pro rata share of capacity basis calculated for each as follows:
- Remaining Available Capacity multiplied by a fraction, the numerator which is, in the case of a Term Shipper, the portion (if any) of that Term Shipper's Nomination in the Month which exceeds its respective Monthly Volume, and, in the case of a Non-Term Shipper, its Nomination for the Month, and the denominator of which is the sum of:
- (a) the total by which all Term Shipper Nominations in the Month exceed their respective Monthly Volumes; and
  - (b) the total Nominations in the Month by Non-Term Shippers
- (vi) Lottery Process: In the event the pro rata allocation does not satisfy the minimum batch size requirements set forth in Rule 6.4, then Carrier will administer a lottery process in order to reallocate such portion of unallocated Remaining Available Capacity as follows:
- (a) Carrier shall determine the total number of minimum batches available for such Month based on the sum of the pro rata allocations under 13.1(v) which did not satisfy the minimum batch size requirements; and
  - (b) Carrier will utilize a random number generating system to assign each such Shipper a number; and
  - (c) Carrier will allocate one minimum batch at a time to such Shippers sequentially, from lowest assigned number to highest assigned number, until the total number of minimum batches available to such Shippers for such Month is fully allocated.
- (vii) Any capacity remaining following the application of (v) and (vi) above will be equally distributed among all Shippers having remaining Nominations.

#### **14. PETROLEUM INVOLVED IN LEGAL DISPUTES**

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- 14.1** Petroleum which is in any way subject to litigation, or the ownership of which may be in dispute, or which is subject to a lien or charge of any kind, may not be accepted for transportation unless and until the Shipper shall furnish a bond or other form of indemnity satisfactory to the Carrier protecting the Carrier against any liability or loss arising as a result of such litigation, dispute, lien or charge.

## 15. CLAIMS, SUITS AND TIME FOR FILING

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- 15.1** As a condition precedent to recovery, claims for loss, damage or delay in connection with the transportation of Petroleum Tendered for shipment under the Tariff must be submitted in writing to the Carrier within ninety (90) Days after Delivery of the Petroleum, or, in the case of failure to make Delivery, then within ninety (90) Days after a reasonable time for Delivery has elapsed; and suits arising out of such claims must be instituted against the Carrier within two (2) years 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 two (2) year 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 this clause and waive any rights which it might otherwise have, at common law, equity or otherwise, to make a claim after the expiration of said period of ninety (90) days or to bring an action after the expiration of the said period of two (2) years.

## 16. MEASUREMENTS

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- 16.1** The volumetric measurement base of all Petroleum referred to in the Tariff shall be one (1) Cubic Meter.
- 16.2** All 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 or metering and testing. If tank tables are used, quantities will be computed from regularly compiled tank tables showing one hundred percent (100%) of the full capacity of the tanks. Whenever there is substantial evidence of meter malfunctions in 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 ninety (90) Days after the date of the meter malfunction. Failing a negotiated agreement of an appropriate adjustment, the matter shall be referred to arbitration for final determination pursuant to the Arbitration Act of Alberta.
- All Petroleum shall be received and Delivered with documented meter tickets or the accepted electronic equivalent, showing:
- (i) Gross Standard Volume and Net Standard Volume received and Delivered;
  - (ii) kinematic viscosity, based on the lower of the temperature of the Petroleum at the time of receipt or the Carrier's line temperature at the time of receipt;
  - (iii) weighted average density;
  - (iv) weighted average pressure;
  - (v) weighted average temperature; and
  - (vi) deductions for basic sediment, water and other impurities.

All measurement procedures are to be conducted in accordance with API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by the Carrier and the Shippers.

- 16.4** The Carrier shall account to each Shipper for one hundred percent (100%) of Petroleum received for its account. Adjustments for shortages, including losses for shrinkage and evaporation incident to Carrier transportation, will then be based on the proportion that such Shipper's total Deliveries from the Carrier by stream bears to the total Deliveries of all Shippers from the Carrier by stream. Overages or shortages will be calculated and prorated to Net Standard Volumes for each type of Petroleum shipped on a Monthly basis.
- 16.5** The Carrier's representative, upon reasonable notice to the Shipper, shall have the right to enter

upon the Shipper's premises where Petroleum is stored and have access to any and all tankage for the purpose of making any examination, inspection, measurement or test provided for under these Rules and Regulations.

## 17. REPRESENTATIONS AND WARRANTIES

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- 17.1 The Carrier represents and warrants that it shall operate its system on a common carrier basis, providing transportation for remuneration without undue discrimination among its Shippers, and that the Carrier shall operate its pipeline facilities in accordance with all applicable laws, orders, directions, rules, regulations and Tariffs as may be made or approved by the CER or such other body having jurisdiction over the Carrier. The Carrier does not offer a storage service.
- 17.2 The Shipper represents and warrants that:
- (i) it has in place for all Tendered Petroleum all required approvals, permits and authorizations for the removal and transportation of Petroleum hereunder;
  - (ii) that it owns or controls, has the right to deliver or have delivered for its account, the Petroleum that is delivered to the Carrier;
  - (iii) shall indemnify and hold harmless the Carrier against all claims, actions or damages arising from any adverse claims by third parties claiming ownership or an interest in the Petroleum delivered for transport to the Carrier;
  - (iv) that it will pay the Carrier the Monthly toll as derived herein by the Payment Due Date;
  - (v) that the execution, delivery and performance by the Term Shipper of the Contract has been duly authorized by all necessary corporate action on the part of the Term Shipper and does not require any approval or consent of any other Person or entity; and
  - (vi) that the Contract is in full force and effect, has been duly executed and delivered on behalf of the Term Shipper and constitutes the legal, valid and binding obligation of the Term Shipper, enforceable against the Term Shipper in accordance with its terms.

## 18. GOVERNING LAW

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- 18.1 The Tariff is subject to the provisions of the *Canadian Energy Regulator Act* or any other legislation passed in amendment thereto or substitution therefor.
- 18.2 The Tariff shall be construed and applied in accordance with and be subject to the laws of the Province of Alberta, and, where applicable, the laws of Canada, and shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein. Neither Party will institute any action, suit or other proceeding with respect to Contracts, the Petroleum Toll Schedule or the Rules and Regulations or any matter relating to the Carrier other than in the Alberta Court of Queen's Bench in the judicial district of Calgary, or, if that court for any reason lacks subject matter jurisdiction, the appropriate court for the Province of Alberta or Canada, as applicable. In that regard, each Party hereby irrevocably attorns to the jurisdiction of such courts in Alberta or Canada in the event of any such action, suit or other proceeding by the other Party. BOTH PARTIES SPECIFICALLY AND KNOWINGLY WAIVE A TRIAL BY JURY AND ANY SUCH CONTROVERSY SHALL BE LITIGATED BEFORE A TRIAL JUDGE.

## 19. FINANCIAL ASSURANCES

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- 19.1 The Carrier may at any time, request and the Shipper shall provide if the Carrier so requests, financial security for the payment of the charges to be paid by the Shipper to the Carrier for transportation service ("Financial Assurances"). If the Shipper's Financial Assurances are not provided to the Carrier within thirty (30) days of the Shipper's receipt of the Carrier's written request for such Financial Assurances, the Shipper shall thereupon be deemed to be in default under the Tariff and the Carrier shall thereafter have the option to curtail Tenders from the Shipper until adequate Financial Assurances are provided or as applicable to terminate the Contract.

- 19.2** The Financial Assurances that the Carrier may request from the Shipper pursuant to the Tariff shall be limited to the following:
- (i) for Term Shippers an irrevocable letter of credit issued by a financial institution or such other equivalent financial guarantees in an amount equal to twelve (12) Months of charges based on Monthly Volume, which letter of credit shall remain in effect for no less than seventy (70) days beyond the termination of the Contract; provided that, if payment in full for the service for the entire Contract term has been received by the Carrier, the Carrier shall return and/or cancel such financial guarantee forthwith; and,
  - (ii) for volumes transported by a Shipper not a party to a Contract at the option of the Shipper, either prepayment of the tolls applicable to such volumes Nominated by the Shipper or an irrevocable letter of credit or such other equivalent financial guarantees in an amount equal to sixty (60) days of Petroleum tolls based on the Shipper's Nomination, which Financial Assurances shall remain in effect for not less than seventy (70) days beyond the termination of the service or of the period for which volumes are Tendered, as the case may be; provided that, if payment in full for all service has been received by the Carrier, the Carrier shall return and/or cancel such financial guarantee forthwith. The following must be acceptable to the Carrier:
    - (a) the terms of any letter of credit;
    - (b) the adequacy of any equivalent financial guarantees; and
    - (c) the identity of the issuing institution of any letter of credit or equivalent financial guarantee.

## **20. REQUESTED CHANGES BY SHIPPER**

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- 20.1** The Carrier may, upon written request of the Shipper following the Shipper's Tender, allow the Shipper to transfer its control over a shipment to another Shipper provided that the successor Shipper:
- (i) satisfies the Financial Assurances requirement specified in Rule 19 herein; and
  - (ii) assumes all obligations under the Tariff as of the time the Carrier approves the transfer.
- All in-line transfers will be deemed to take place immediately south of the International Boundary near Wild Horse, Alberta.

## **21. INCORPORATION OF PRACTICES**

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In addition to these Rules and Regulations, Express Pipeline Ltd. (as General Partner of the Express Pipeline Limited Partnership)'s Crude Petroleum Tariff incorporates the following practice(s):

- 21.1 Practice Applicable to Automatic Balancing:** All Shippers shall be responsible for their proportionate share of physical losses of Petroleum resulting from normal pipeline operations including line losses and shrinkage pursuant to the Practice Applicable to Automatic Balancing, effective April 1, 2019, which is located on the Carrier's website at <https://www.enbridge.com/Projects-and-Infrastructure/For-Shippers/Tariffs/Express-Pipeline-Ltd-Express-Canada-Tariffs.aspx>

### **SYMBOLS:**

**[N]** – New

**[W]** – Change in wording only