



# ENBRIDGE ENERGY, LIMITED PARTNERSHIP

## RULES AND REGULATIONS

### GOVERNING THE TRANSPORTATION OF CRUDE PETROLEUM BY PIPELINE

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#### GENERAL APPLICATION

The Rules and Regulations published herein apply only under tariffs making specific reference by FERC number to this tariff; such reference will include successive issues hereof. Specific rules and regulations published in individual tariffs will take precedence over Rules and Regulations published herein.

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

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## RULES AND REGULATIONS

### 1. DEFINITIONS

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As used in this tariff, the following terms have the following meanings:

**“Accepted Nomination”** means a Shipper’s Nomination less any reductions made to that Nomination in accordance with Rules 6 (c) and 14 of these Rules and Regulations.

**“API”** means American Petroleum Institute.

**“ASTM”** means American Society for Testing and Materials.

**“Carrier”** means Enbridge Energy, Limited Partnership.

**“Celsius”** (°C) is equivalent to the Fahrenheit Temperature minus 32 divided by the factor 1.8.

**“Condensate”** means Crude Petroleum that has a Density from 600 kilograms per cubic metre up to but not including 800 kilograms per cubic metre and a viscosity of 0.4 square millimetres per second up to but not including 2 square millimetres per second.

**“Crude Petroleum”** means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, oil sands, or a mixture of such products, but does not include Natural Gas Liquids or Refined Petroleum Products.

**“Cubic Metre”** means 264.1720 United States gallons and 6.289811 barrels at a temperature of 15 degrees Celsius.

**“Density”** means mass per unit volume at 15 degrees Celsius expressed in kilograms per cubic metre.

**“Facilities Surcharge”** means an incremental surcharge calculated in accordance with the Settlement approved in the Federal Energy Regulatory Commission (FERC) letter order dated June 30, 2004, in Docket No. OR04-2-000. The Facilities Surcharge has since been supplemented and approved by the FERC to include the recovery of costs associated with additional projects.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Financial Assurances”** means the financial assurances provided by the Shipper and accepted by the Carrier in accordance with Rule 18.

**“Force Majeure”** means an event which is unforeseen, and beyond the control of the Shipper, that either prevents the Shipper from delivering the affected volume to Carrier or prevents the Shipper from accepting delivery of the affected volume from Carrier. The following are the examples of Force Majeure events: earthquakes; floods; landslides; civil disturbances; sabotage; the acts of public enemies; war; blockades; insurrections; riots; epidemics; the act of any government or other authority or statutory undertaking; the inability to obtain or the curtailment of electric power; water or fuel; strikes; lockouts; or other labor disruptions; fires; explosions; breakdowns or failures of pipe; plant; machinery or equipment; and contamination or poisoning of catalyst and/or solvent or biological treatment facilities. For greater certainty, a lack of funds; the availability of a more attractive market; Shipper’s inability to purchase Crude Petroleum; inefficiencies in operations; and Supply Exceptions do not constitute events of Force Majeure.

“**Kilopascal**” is equivalent to 0.1450377 pounds per square inch.

“**Natural Gas Liquids**” means the indirect liquid petroleum products of oil or gas wells having an absolute vapor pressure in excess of 103 Kilopascals.

“**Nomination**” means an offer by a Shipper to the Carrier in accordance with this tariff for the transportation of a stated quantity of Crude Petroleum from a Regular Receiving Point to a Regular Delivery Point.

“**Nomination Accuracy Measure**” means the ratio of aggregate System-wide Supply to aggregate System-wide Accepted Nominations in a month.

“**Non-Performance Penalty**” means the charge and cost referred to in Rule 14.

“**Non-Performance Penalty Revenue**” means the amount collected from the Non-Performance Penalty calculated in accordance with Rule 14 (g).

“**Petroleum**” means Crude Petroleum, Natural Gas Liquids and Refined Petroleum Products.

“**Refined Petroleum Products**” means the products of a refinery tendered as motor gasoline, aviation fuels, kerosene, diesel fuel and domestic heating oil.

“**Regular Delivery Point**” means a location for the delivery of Crude Petroleum as provided for in the Carrier's Local Tariff Applying on Crude Petroleum and Natural Gas Liquids.

“**Regular Receiving Point**” means a location for the receipt of Crude Petroleum as provided for in the Carrier's Local Tariff Applying on Crude Petroleum and Natural Gas Liquids.

“**Retention Stock**” means the volume of Petroleum required by the Carrier for operational and scheduling purposes as specified from time to time by the Carrier and includes working stock, tank bottoms and idle loopfill.

“**Shipper**” means the party that contracts with the Carrier for the transportation of Crude Petroleum under the terms of this tariff, and that has satisfied the Carrier of that party's capacity to perform its financial obligations that may arise from the transportation of its Crude Petroleum under the terms of this tariff, and includes a transferee of a Shipper's rights and obligations, as approved in accordance with Rule 15(c).

“**Supply**” means ticketed receipts from Supply Facilities net of pre-receipts and excludes receipts for which the Regular Receiving Point and the Regular Delivery Point are the same.

“**Supply Exception**” means the circumstance in which a Shipper, as a result of certain circumstances outside of its control, is unable to deliver Crude Petroleum to the Carrier. Whether or not a certain event qualifies as a Supply Exception will be determined in strict accordance with the Supply Exception Procedure as referred to in Rule 19.

“**Supply Facility**” means a third-party facility that interconnects with and delivers Petroleum to the System at a Regular Receiving Point.

“**System**” means the Enbridge Energy, Limited Partnership Lakehead pipeline system and the Enbridge Pipelines Inc. Canadian Mainline pipeline system.

“**WTI**” means, with regard to any month, the NYMEX calendar month average settlement price for West Texas Intermediate for that month in barrels multiplied by 6.289811 barrels per cubic metre.

## **2. COMMODITY**

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This tariff applies to the transportation of Crude Petroleum by the Carrier.

## **3. ORIGIN AND DESTINATION FACILITIES**

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- (a) Subject to the further provisions of this tariff, the Carrier will only accept Crude Petroleum for transportation:
  - (i) at Regular Receiving Points;
  - (ii) when the Crude Petroleum has been specified to be delivered to one or more Regular Delivery Points; and
  - (iii) when the party taking delivery of the Crude Petroleum has been specified in writing to the Carrier.
- (b) Except where the Carrier provides such facilities, the Carrier will only accept Crude Petroleum for transportation when the Shipper has provided the necessary facilities satisfactory to the Carrier at the specified Regular Delivery Point for such Crude Petroleum.

## **4. SPECIFICATIONS AS TO QUALITY**

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- (a) A Shipper shall not deliver to the Carrier and the Carrier shall not be obligated to accept Crude Petroleum that, as determined by the Carrier, has on receipt:
  - (i) a temperature greater than 38 degrees Celsius;
  - (ii) a vapor pressure in excess of 95 Kilopascals for Crude Petroleum or a vapor pressure in excess of 103 Kilopascals for Condensate;
  - (iii) sediment and water in excess of 0.5 percent by volume;
  - (iv) a density in excess of 940 kilograms per cubic metre at 15 degrees Celsius;
  - (v) a kinematic viscosity in excess of 350 square millimetres per second determined at the Carrier's reference line temperature;
  - (vi) any organic chlorides; or
  - (vii) physical or chemical characteristics that may render such Crude 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.
- (b) A Shipper shall, as required by the Carrier, provide to the Carrier a certificate with respect to the specifications of Crude 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 Crude Petroleum.
- (c) If the Carrier determines that a Shipper does not comply with the provisions of paragraph (a) of Rule 4 of this tariff, then such Shipper shall remove its Crude Petroleum from the facilities of the Carrier as directed by the Carrier.
- (d) If a Shipper fails to remove its Crude Petroleum from the facilities of the Carrier in accordance with the provisions of paragraph (c) of Rule 4 of this tariff, then the Carrier shall have the right to remove and sell such Crude 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 Crude 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. CHANGES IN QUALITY AND SEGREGATION**

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- (a) The Carrier shall endeavor to deliver substantially the same type of Crude Petroleum as that received from a Shipper; however, the Carrier shall not be obligated to make delivery of the identical Crude Petroleum received by the Carrier.

- (b) If Crude Petroleum tendered to the Carrier is of a kind or quality that is not currently being transported by the Carrier, then the Carrier shall, at the request of the Shipper of such Crude Petroleum and subject to the operating conditions of the facilities of the Carrier, endeavor to segregate such Crude Petroleum during transportation by the Carrier. In such circumstances, the Shipper shall, at the request of the Carrier, make such Crude Petroleum available in such quantities and at such times as may be necessary to permit such segregated movements.
- (c) Subject to paragraph (a) of Rule 12 of this tariff, Crude Petroleum tendered to the Carrier for transportation will be received by the Carrier on the condition that it shall be subject to such changes, which include but are not limited to, density, quantity, value and quality while in transit as may result from the transportation (and all services and procedures related thereto), commingling or intermixing thereof, including, without limiting the generality of the foregoing, the mixing of a Shipper's Crude Petroleum with other Petroleum in the facilities of the Carrier.

## 6. NOMINATIONS AND QUANTITIES

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- (a) Nominations shall be submitted to the Carrier or Enbridge Pipelines Inc., acting for the Carrier for such purpose, in accordance with the notice of shipment format prescribed by the Carrier no later than the time and date set out in the Carrier's monthly nomination schedule. The Carrier shall notify all shippers of the monthly nomination schedule applicable for the calendar year. Notice of any amendment to a monthly nomination date shall be provided by the Carrier to all shippers at minimum 24 hours in advance of the proposed change in nomination date. The Carrier may, subject to the availability of space and the operating conditions of the facilities of the Carrier, accept Nominations or revised Nominations after such time.
- (b) Upon receipt of Nominations from Shippers, the Carrier shall conduct upstream and destination verifications in accordance with the terms of the Mainline Nomination Verification Procedure, set forth in (c) below. To the extent that a Shipper's Nomination is not fully supported by application of the Mainline Nomination Verification Procedure, as determined by the Carrier in its sole discretion on a non-discriminating basis, the Shipper's Nomination will be limited in accordance with the Mainline Nomination Verification Procedure set forth in (c) below. **This verification process will apply prior to determining whether apportionment is required on the pipeline.**
- (c) **Mainline Nomination Verification Procedure:** Upon receipt of each month's Nominations, Enbridge will verify with: (1) each connected supply facility to ensure that the Shipper has adequate supply to meet the Shipper's Nomination; and (2) each Shipper's designated delivery point to verify adequate take-away capacity based on the lower of volumes nominated to it or the delivery point's maximum allowable volume as determined in accordance with the current Mainline Nomination Verification Procedure. The verification process for the Carrier shall be conducted as follows:
  - (i) Carrier shall request upstream connecting carriers or facilities to verify the Shipper's Nomination of volume to the Mainline.
  - (ii) With respect to Nominations for delivery to a specific destination facility, the Carrier will contact each destination facility and ask the destination facility to verify the volumes which have been nominated to its facility by each shipper. The total volumes verified to each destination facility will be limited to the capability of the destination facility to receive volumes from the Carrier. The procedures for establishing the capability of each destination facility and for conducting destination verification are set out in the Destination Verification Procedure.
  - (iii) Upon receipt of verifications, the Carrier will accept the Nominations of each shipper up to the volume verified by both the upstream and destination facilities (the "Verified Volume").
  - (iv) In the event that a connected carrier confirms that it has capacity in excess of the Verified Volumes and the total Shippers' Nominations to the Carrier for delivery to the connecting carrier exceed the total Verified Volumes then the Carrier will allocate the excess capacity on a pro-rata basis.

Note: In the interest of optimizing capacity available to shippers on Lines 6A, 14/64 and 62, the downstream portion of the Mainline Nomination Verification Procedure will be supplemented as follows:

- (i) After allocating the Verified Volumes (steps 1 through 4, above), the Carrier will determine if excess capacity exists on Lines 6A, 14/64 and 62 downstream of Superior.
  - (ii) If excess capacity exists on any of Lines 6A, 14/64 and/or 62, the Carrier will communicate with each delivery point on the relevant line(s) to determine its ability to accept volumes in addition to its Verified Volume.
  - (iii) If the total interest in additional capacity is equal to or less than the total excess capacity on the line(s), the Carrier will allocate additional volume to each of the delivery points, in addition to its Verified Volume.
  - (iv) If the total interest in additional capacity is greater than the total excess capacity on the line(s), the Carrier will allocate additional volume to each of the delivery points on a pro-rata basis, with each delivery point's proportionate share of the excess capacity determined based on the delivery point's Verified Volume. As per the current Mainline Nomination Verification Procedure, it is the responsibility of the delivery points to then verify with the Carrier which shipper(s) will be utilizing the excess capacity.
- (d) The Carrier shall not be obligated to accept a Shipper's Crude Petroleum if the volume of such Crude Petroleum is less than the minimum volume or if the receipt flow rate at which such Crude Petroleum is received by the Carrier is less than or greater than the receipt flow rates specified from time to time by the Carrier for each Regular Receiving Point.
- (e) The Carrier shall not be obligated to make a delivery of a Shipper's Crude Petroleum of less than the minimum volume or at a delivery flow rate less than or greater than the delivery flow rates specified from time to time by the Carrier for each Regular Delivery Point.
- (f) A Shipper shall supply its share of Retention Stock by types and volumes as determined from time to time by the Carrier.

## **7. APPLICATION OF RATES**

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- (a) The Carrier shall charge a Shipper the Carrier's rate for the transportation of Crude Petroleum that is in effect on the earlier date of receipt of such Crude Petroleum by the Carrier, or Enbridge Pipelines Inc.
- (b) Pursuant to FERC 18 C.F.R. 341.10, the existing rates between points named in the tariff will be applied to transportation movements from existing intermediate receiving points not named in the tariff to Regular Delivery Points, and from Regular Receiving Points to existing intermediate delivery points not named in the tariff.

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

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- (a) A Shipper shall pay all charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation or other handling of the Shipper's Crude Petroleum by the Carrier. The Shipper shall pay such charges and costs upon receipt of the Carrier's invoice respecting such charges and costs. If required by the Carrier, the Shipper shall pay such charges and costs before delivery, or before acceptance of a transfer, of the Shipper's Crude Petroleum by the Carrier.
- (b) The Carrier shall have a general lien on all of a Shipper's Crude Petroleum that is in the possession of the Carrier to secure the payment of all charges and costs accruing or due relating to the transportation or other handling of the Shipper's Petroleum by the Carrier. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract. The Carrier may withhold the Shipper's Crude Petroleum from delivery and may exercise any other rights and remedies provided at law or by contract, until all such charges and costs have been paid.

- (c) If charges for the transportation of a Shipper's Petroleum remain unpaid for ten days after notice of demand for payment of such charges is made to such Shipper by the Carrier, then the Carrier shall have the right to remove and sell any or all of such Shipper's Crude Petroleum that is in the possession of the Carrier in such lawful manner as deemed appropriate by the Carrier.
- (d) The Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the transportation of such Shipper's Petroleum by the Carrier and all costs incurred by the Carrier with respect to the storage, removal and sale of such Shipper's Crude 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.
- (e) When required, the Carrier shall, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing the general lien described in this Rule. The Carrier hereby advises that it has appointed Enbridge Pipelines Inc. as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing its general lien.

## **9. MEASURING, TESTING AND DEDUCTIONS**

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- (a) The Carrier shall gauge or meter, or cause to be gauged or metered, a Shipper's Crude Petroleum upon receipt and delivery by the Carrier. The Shipper or the designate of the Shipper may be present at such gauging or metering. If tank gauges are used, the volume of Crude Petroleum shall be computed from tank tables on a 100 percent volume basis. The Carrier shall have the right to enter the premises where Crude Petroleum is received or delivered by the Carrier and shall be granted access to all facilities for the purpose of gauging or metering and to make any examination, inspection, measurement or test as required by the Carrier to verify the accuracy of such facilities and the quality of such Shipper's Crude Petroleum.
- (b) The Carrier shall correct the density and volume of Crude Petroleum received and delivered by the Carrier from the actual temperature of such Crude Petroleum to 15 degrees Celsius by use of API 2540 Petroleum Measurement Standards or the latest revision to such Standards.
- (c) The Carrier shall correct the metered volume of Crude Petroleum for compressibility by the use of API Manual of Petroleum Measurement Standards, Chapters 11.2.1 M or 11.2.1 or the latest revision to such Chapters.
- (d) The Carrier shall determine the percentage of sediment and water in Crude Petroleum by the use of a centrifuge or other method agreed to by the Carrier and the Shipper. The Carrier shall deduct the amount of sediment and water from the corrected volume of such Crude Petroleum.
- (e) The Carrier shall, as deemed necessary by the Carrier, adjust the measured volume of Crude Petroleum for shrinkage in accordance with API Bulletin 2509 C or the latest revision to such Bulletin.
- (f) The Carrier shall, as deemed necessary by the Carrier, determine the kinematic viscosity of Crude Petroleum received by the Carrier in accordance with ASTM D 445 or the latest revision to such Standard or such other test as may be agreed to by the Carrier and the Shipper.
- (g) The results of all such gauging, metering and testing by the Carrier shall be final.
- (h) The Carrier shall deduct, as allowance oil, 1/20 of 1 percent of the volume of Crude Petroleum delivered to the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

## **10. EVIDENCE OF RECEIPTS AND DELIVERIES**

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The Carrier shall evidence the receipt and delivery of Crude Petroleum by tickets showing the volume, type, temperature, density, sediment and water and any other data with respect to such Crude Petroleum as may be specified from time to time by the Carrier.



## **11. REMOVAL, DELIVERY AND ACCEPTANCE**

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- (a) A Shipper or the designate of the Shipper shall accept such Shipper's Crude Petroleum upon arrival at the designated Regular Delivery Point for such Crude Petroleum, or as otherwise directed by the Carrier.
- (b) If a Shipper fails to remove its Crude Petroleum from the facilities of the Carrier in accordance with the provisions of paragraph (a) of Rule 11 of this tariff, and a disruption of Carrier's operations results, Shipper shall be solely responsible for all costs or losses to Carrier associated with such disruption, including loss of revenue resulting there from, unless the non-removal of such Crude Petroleum is due to the direct negligence of Carrier.
- (c) If the Crude Petroleum is not removed from Carrier's facilities and the Carrier determines, in its sole discretion, that a disruption of Carrier's operations may result, Carrier shall provide Shipper with twenty-four (24) hours' notice to remove specified Crude Petroleum of the Shipper from the Carrier's facilities. Should Shipper not remove the specified Crude Petroleum from the Carrier's facilities within said notice period, then the Carrier shall have the right to remove and sell any or all of such Shipper's Crude Petroleum that is in the possession of the Carrier in such lawful manner as deemed appropriate by the Carrier.
- (d) The Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the disruption of the Carrier's operations and all costs incurred by the Carrier with respect to the storage, removal and sale of such Shipper's Crude 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.
- (e) When required, the Carrier shall, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing this Rule. The Carrier hereby advises that it has appointed Enbridge Pipelines Inc. as one agent appointed to hold possession of the Shipper's Crude Petroleum for the purpose of enforcing this Rule.

## **12. LIABILITY OF THE CARRIER**

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- (a) Except where caused by the direct negligence of the Carrier, the Carrier shall not be liable to a Shipper for any delays, damages, or losses experienced as a result of the Carrier's transportation (and all services and procedures related thereto), commingling, or intermixing of such Crude Petroleum in the facilities of the Carrier. Notwithstanding anything to the contrary contained in this tariff, unless caused by the gross negligence or willful misconduct of the Carrier, the Carrier's liability, if any, shall not extend to any indirect, consequential, incidental, or punitive damages, or to any loss of profits or revenues incurred by such Shipper that may result from the transportation (and all services and procedures related thereto), commingling or intermixing of Crude Petroleum with other Petroleum under this tariff, regardless of whether such claim arises under or results from contract, tort, or strict liability. In no event shall this tariff create any liability for damages on behalf of any third party (whether or not affiliated with the Shipper).
- (b) If damage or loss to 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 Crude 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. Carrier shall be obligated to deliver only that portion of the Crude Petroleum remaining after such deduction.

## **13. INDEMNIFICATION BY THE SHIPPER**

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A 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 this tariff.

#### 14. APPORTIONMENT

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- (a) If more Crude Petroleum is nominated than can be transported by the Carrier, then the Carrier shall apportion such Nominations on a pro rata basis among all Shippers on the basis of such current Nominations and the current operating conditions of the facilities of the Carrier applicable to the transportation of Crude Petroleum.
- (b) Where blending of Crude Petroleum can achieve an increase in the capacity of the facilities of the Carrier, such increase in capacity shall be apportioned on a pro rata basis first to Shippers nominating such blends with any remaining increase in capacity apportioned on a pro rata basis to all other Nominations.
- (c) In months of apportionment, all Accepted Nominations that are directed to apportioned lines shall have the Non-Performance Penalty applied to that portion of the shortfall in receipts by a Shipper that exceeds five (5) percent of that Shipper's apportioned volume that is directed to the apportioned lines. However, the Non-Performance Penalty will not be applied to that portion of shortfalls caused by: Force Majeure events; Carrier imposed restrictions on feeder pipeline deliveries into the Carrier; Supply Exceptions; or any carry over volumes.
- (d) The Shipper shall provide the Carrier with written notice of the Force Majeure event within four business days of the event. Such notice shall state the nature of the event, the estimated duration of the event, and the estimated volume affected. The Shipper shall use reasonable diligence to remedy the Force Majeure event as quickly as reasonably practicable and shall keep the Carrier informed as to the progress in the efforts to remedy the event; provided the Shipper shall not be required to settle strikes, lockouts or other labor disruptions contrary to its wishes.
- (e) At any time up to thirty (30) calendar days following the receipt of the notice referred to in Rule 14 (d), 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. If the Carrier issues such notice, the Carrier shall invoice the Shipper for the amount of the Non-Performance Penalty calculated in accordance with Rules 14 (c) and 14 (g) and the Shipper shall be obligated to make payment of the invoiced amount.
- (f) Unless and until a Supply Exception is approved in accordance with the Supply Exception Procedure, the Carrier shall invoice the Shipper for the amount of the Non-Performance Penalty calculated in accordance with Rules 14 (c) and 14 (g) and the Shipper shall be obligated to make payment of the invoiced amount in accordance with Rule 8.
- (g) The Non-Performance Penalty shall initially be \$17 per cubic metre. If the Nomination Accuracy Measure is less than 0.95 for any three months during a six month period after April 1, 2014, then the Non-Performance Penalty shall increase to 4% of WTI if 4% of WTI is greater than \$17 per cubic metre. If, thereafter, the Non-Performance Penalty is 4% of WTI and the Nomination Accuracy Measure is less than 0.95 for any three months during any six month period, then the Non-Performance Penalty shall increase to the greater of 7% of WTI or \$17 per cubic metre. If the Non-Performance Penalty is 7% of WTI and the Nomination Accuracy Measure is greater than or equal to 0.95 for six consecutive months, then the Non-Performance Penalty shall decrease to the greater of 4% of WTI or \$17 per cubic metre. If the Non-Performance Penalty is 4% of WTI and the Nomination Accuracy Measure is greater than or equal to 0.95 for six consecutive months, then the Non-Performance Penalty shall decrease to \$17 per cubic metre if \$17 per cubic metre is less than 4% of WTI. Under no circumstances will the Non-Performance Penalty be less than \$17 per cubic metre.
- (h) The Non-Performance Penalty Revenue will be refunded annually to all shippers effective April 1<sup>st</sup> of the year following collection as a credit to the revenue requirement of the Facilities Surcharge.

#### 15. REQUESTED CHANGES BY THE SHIPPER

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- (a) Subject to the operating conditions of the facilities of the Carrier, the Carrier may, upon the written request of a Shipper, allow a Shipper to change:
  - (i) the designated Regular Receiving Point for its Crude Petroleum;

- (ii) the designated volume and type of its Crude Petroleum to be received at a designated Regular Receiving Point;
  - (iii) the designated Regular Delivery Point for its Crude Petroleum;
  - (iv) the designated volume and type of its Crude Petroleum to be delivered to a designated Regular Delivery Point;
  - (v) the party designated to take delivery of its Crude Petroleum.
- (b) The Carrier may allow a Shipper to transfer, in such a manner as may be specified by the Carrier from time to time, such Shipper's rights and obligations under this tariff respecting its Crude Petroleum to another Shipper.
- (c) A transfer of a Shipper's rights and obligations under Rule 15(b) of this tariff respecting its Crude Petroleum will not be binding or effective on the Carrier until the Carrier has provided a notice of acceptance to the transferor and transferee. The Carrier will not provide a notice of acceptance of a transfer until such time as the transferee has satisfied the Carrier of its capacity to undertake the transferor's obligations and has provided any Financial Assurances requested by the Carrier in accordance with Rule 18 of this tariff.

## **16. ADVERSE CLAIMS AGAINST CRUDE PETROLEUM**

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- (a) A Shipper shall not Nominate or deliver to the Carrier Crude Petroleum which is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind unless the Shipper provides written notification to the Carrier of such litigation, dispute, lien or charge not less than 20 days before such Nomination is made to the Carrier.
- (b) The Carrier shall not be obligated to accept Crude Petroleum that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.
- (c) A Shipper shall advise the Carrier in writing if, at any time while the Shipper's Crude Petroleum is in the possession of the Carrier, such Crude Petroleum becomes involved in litigation, the ownership of such Crude Petroleum becomes in dispute or such Crude Petroleum becomes encumbered by a lien or charge of any kind.
- (d) A Shipper shall, upon demand from the Carrier, provide a bond or other form of indemnity satisfactory to the Carrier protecting the Carrier against any liability or loss that may arise as a result of such Shipper's Crude Petroleum that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.

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

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- (a) A Shipper shall advise the Carrier in writing of any claim for delay, damage or loss resulting from the transportation of such Shipper's Crude Petroleum by the Carrier within nine months of delivery of such Crude Petroleum by the Carrier or, in the case of a failure to make delivery, then within nine months after a reasonable time for delivery has elapsed.
- (b) A Shipper shall institute any action arising out of any claim against the Carrier within two years from the date that written notice is given by the Carrier to such Shipper that the Carrier has disallowed such claim or any part of such claim.
- (c) If a Shipper fails to comply with the provisions of paragraph (a) or paragraph (b) of Rule 17 of this tariff, then such Shipper waives all rights it has to bring an action against the Carrier with respect to such claim.

## **18. FINANCIAL ASSURANCES**

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- (a) At any time, upon the request of the Carrier, any prospective or existing Shipper shall provide information to the Carrier that will allow the Carrier to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation or other handling of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation or other handling charges, equalization obligations and the value of the allowance oil

and negative Shipper's balance positions. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to provide the requested information to the Carrier within ten (10) days of the Carrier's written request, or if the Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations and the reasonably determined value of the allowance oil and negative Shipper's balance positions.

- (b) Subject to the provisions of Rule 18(c), the Carrier, upon notice to the Shipper, may require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier, to be provided at the expense of the Shipper:
- (i) prepayment;
  - (ii) a letter of credit in favour of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier, in a form and from an institution acceptable to Carrier;
  - (iii) a guaranty in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or
  - (iv) such other enforceable collateral security, including but not limited to security agreements over assets of the Shipper, in a form acceptable to the Carrier ("the Financial Assurances").
- (c) In the event that the Carrier reasonably determines that:
- (i) the existing or prospective Shipper's financial condition is or has become impaired or unsatisfactory
  - (ii) any Financial Assurances previously provided by a Shipper no longer provide adequate security for the performance of the Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or
  - (iii) the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper, then the Shipper shall provide Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum by the Carrier. For the purpose of this tariff, and without limiting the generality of the charges and costs lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum, those charges and costs shall include transportation charges, equalization obligations, negative Shipper's balance positions and the allowance oil. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) days of Shipper's receipt of Carrier's written request for such Financial Assurances.

## 19. PRACTICES AND PROCEDURES

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In addition to these Rules and Regulations, Enbridge Energy, Limited Partnership's Crude Petroleum Tariff also incorporates the following Practices and Procedures:

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| (a) Practice Applicable to Automatic Balancing | Effective Date: <del>[W] April 1, 2019</del> <del>March 1, 2018</del> |
| (b) Practice Governing In-Line Transfers       | Effective Date: January 1, 2004                                       |
| (c) Destination Verification Procedure         | Effective Date: <del>[W] July 24, 2013</del>                          |
| (d) Supply Exception Procedure                 | Effective Date: April 1, 2014   |

Copies of Carrier's Practices and Procedures and supporting documents are available on-line at:

<https://www.enbridge.com/Projects-and-Infrastructure/For-Shippers/Tariffs/Enbridge-Energy-Limited-Partnership-Lakehead-Tariffs.aspx>

**SYMBOL:**

**[W]** – Change in wording only