

PART 7 – GENERAL TERMS AND CONDITIONS

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1. DEFINITION OF TERMS

- 1.1 “Agreement” shall mean the Service Agreement executed by the Shipper and Transporter and any exhibits, attachments and/or amendments thereto
- 1.2 “Annual Billing Period” as used in Sections 4.9(d) and 10.3(e), shall have the meaning set forth in Section 4.9(d) of these General Terms and Conditions.
- 1.3 “Annual Firm Shipper” shall mean an FT or FTNN Shipper subject to the Year-Round Reservation Charge, pursuant to Section 3.5 of the FT or FTNN Rate Schedule.
- 1.4 “Backhaul” shall mean the receipt and delivery of Gas which is accomplished by the Transporter’s delivery of Gas at Point(s) of Delivery of Transporter which is or are upstream from its Point(s) of Receipt of such Gas, as determined by the Shipper’s transportation path.
- 1.5 “BTU” shall mean one (1) British thermal unit, the amount of heat required to raise the temperature of one (1) pound of water one degree (1) Fahrenheit at sixty degrees (60) Fahrenheit. (BTU is measured on a dry basis at 14.73 psia.)
- 1.6 “Business Day”, as specified in NAESB Standard 3.2.1, is defined as Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S., and similar holidays for transactions occurring in Canada and Mexico.
- 1.7 “Central Clock Time” shall mean the clock time, daylight savings or standard, as observed in Houston, Texas.
- 1.8 “Commission” shall mean the Federal Energy Regulatory Commission or any successor regulatory authority having jurisdiction.
- 1.9 “Compressor Fuel” shall mean Gas used in the operation of Transporter’s compressor station located in Oakfield, New York.
- 1.10 “Contract Maximum Daily Quantity” (or “CMDQ”) shall mean the greatest number of Dths that Transporter is obligated to (a) deliver on any day to or on behalf of a shipper under the FT or FTNN Rate Schedule at all primary Points of Delivery, in combination, or (b) receive on any day

from or on behalf of a shipper under the FT or FTNN Rate Schedule at all primary Points of Receipt, in combination, in addition to applicable Compressor Fuel.

- 1.11 “Cubic Foot” shall mean the volume of natural gas which occupies one cubic foot when such gas is at a temperature of 60 degrees Fahrenheit and at an absolute pressure.
- 1.12 “Day” shall mean a period of twenty-four (24) consecutive hours, beginning and ending with 9:00 a.m. Central Clock Time (10:00 a.m. Eastern Clock Time). As set forth in NAESB Standard 1.3.1, Standard time for the Gas Day should be 9:00 a.m. to 9:00 a.m. Central Clock Time (10:00 a.m. to 10:00 a.m. Eastern Clock Time).
- 1.13 “Dekatherm” (Dth) shall mean the quantity of heat energy which is equivalent to one (1) million (1,000,000) BTU, measured on a dry basis; thus the term MDth shall mean one (1) thousand Dth.
- 1.14 “Each Dth of Gas Which Is Delivered” shall mean actual deliveries measured by use of the meter at the Point of Delivery. The amount of Gas received from or on behalf of a Shipper in any day shall be Equivalent Quantities to the amount delivered to or for the account of such Shipper on such day.
- 1.15 “Elapsed Prorata Capacity”, as set forth in NAESB Standard 5.2.3, means that portion of the capacity that would have theoretically been available for use prior to the effective time of the intraday recall based upon a cumulative uniform hourly use of the capacity.
- 1.16 “Electronic Communication” shall mean the transmission of information via Transporter’s web site or other mutually agreed communication methodologies used to transmit and receive information, including communication by telephone, facsimile, or email.
- 1.17 “Electronic Delivery Mechanism” or “EDM” shall mean the Electronic Communication methodology used to transmit and receive data related to gas transactions. Transporter and Shippers shall designate an electronic “site” at which Shippers and Transporter may exchange data electronically. All data provided at such site shall be considered as being delivered to the appropriate party.

- 1.18 “Equivalent Quantity” shall mean the thermal equivalent of the volumes of gas received at the Point(s) of Receipt, less Compressor Fuel and Other Gas for Transporter’s Use.
- 1.19 “Existing Shipper”, as used in Section 12 of these General Terms and Conditions, shall mean a Shipper under Rate Schedule FT, FTNN or FSNN that wants to release any or all of its capacity.
- 1.20 “Forward-haul” shall mean the receipt and delivery of Gas which is accomplished by the Transporter’s delivery of Gas at Point(s) of Delivery of Transporter which is or are downstream from its Point(s) of Receipt of such Gas, as determined by the Shipper’s transportation path.
- 1.21 “Gas” shall mean natural gas, including casing head gas produced with crude oil, gas from gas wells and gas from condensate wells and synthetic natural gas.
- 1.22 “Heating Value” shall mean, when applied to a cubic foot of gas, the number of British thermal units produced by the complete combustion with air, at a constant pressure, of one anhydrous (dry) cubic foot of gas at an absolute pressure of 14.73 pounds per square inch and at a temperature of 60 degrees Fahrenheit, when the products of combustion are cooled to the initial temperature of the gas and air, and when water formed by combustion is condensed to a liquid state.
- 1.23 “Maximum Daily Injection Quantity” (or “MDIQ”) shall mean the greatest number of Dths that Transporter is obligated to inject into storage on any day on behalf of a shipper under the FSNN or ISS Rate Schedule.
- 1.24 “Maximum Daily Injection Transportation Quantity” (or “MDITQ”) shall mean the greatest number of Dths that Transporter is obligated to (a) deliver on any day to or on behalf of a shipper under the FTNN Rate Schedule following transportation for storage injection, or (b) receive on any day from or on behalf of a shipper under the FTNN Rate Schedule at all primary Points of Injection Receipt, in combination, in addition to applicable Compressor Fuel.
- 1.25 “Maximum Daily Quantity” (or “MDQ”) shall mean the greatest number of Dths that Transporter is obligated to (a) deliver on any day to or on behalf of a shipper under the IT Rate Schedule at all Points of Delivery, in combination, (b) deliver on any day to or on behalf of a shipper under the FT Rate Schedule at any primary Point of Delivery, or (c) receive on

any day from or on behalf of a shipper under the FT Rate Schedule at any primary Point of Receipt, in addition to applicable Compressor Fuel.

- 1.26 “Maximum Daily Transportation Quantity” (or “MDTQ”) shall mean the greatest number of Dths that Transporter is obligated to (a) deliver on any day to or on behalf of a shipper under the FTNN Rate Schedule at all primary Points of Transportation Delivery, in combination, or (b) receive on any day from or on behalf of a shipper under the FTNN Rate Schedule at all primary Points of Transportation Receipt, in combination, in addition to applicable Compressor Fuel.
- 1.27 “Maximum Daily Withdrawal Quantity” (or “MDWQ”) shall mean the greatest number of Dths that Transporter is obligated to withdraw from storage on any day on behalf of a shipper under the FSNN or ISS Rate Schedule.
- 1.28 “Maximum Daily Withdrawal Transportation Quantity” (or “MDWTQ”) shall mean the greatest number of Dths that Transporter is obligated to (a) deliver on any day to or on behalf of a shipper under the FTNN Rate Schedule at all primary Points of Withdrawal Delivery, in combination, or (b) receive on any day from or on behalf of a shipper under the FTNN Rate Schedule for transportation following storage withdrawal, in addition to applicable Compressor Fuel.
- 1.29 “Maximum Storage Quantity” (or “MSQ”) shall mean the greatest number of Dths that Transporter is obligated to store at any time on behalf of a shipper under the FSNN or ISS Rate Schedule.
- 1.30 “Mcf” shall mean 1,000 cubic feet of gas.
- 1.31 “Month” shall mean the period beginning at 9:00 a.m. Central Clock Time (10:00 a.m. Eastern Clock Time) on the first Day of a calendar month and ending at the same hour on the first Day of the next succeeding calendar month.
- 1.32 “NAESB Standards” shall mean those standardized procedures and mechanisms that have been adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (formerly the Gas Industry Standards Board) and incorporated by reference in the Commission’s regulations.

- 1.33 “Negotiated Rate Shipper” shall mean a Shipper under an agreement including a negotiated rate pursuant to Section 18.2 of these General Terms and Conditions.
- 1.34 “Original Empire Pipeline” shall mean Transporter’s pipeline facilities as of December 21, 2006, commencing at Grand Island, New York, and terminating at Phoenix, New York.
- 1.35 “Other Gas for Transporter’s Use” shall mean, Shipper’s allocable amount of Transporter’s total quantity of Gas used (except for Compressor Fuel), and lost and unaccounted for each Month, in dekatherms. Such allocable amount shall be that percentage of such total dekatherms that the dekatherms of Gas received by Transporter for the account of Shipper in the Month is of the total dekatherms of Gas received by Transporter from all Shippers in such Month.
- 1.36 “Potential Shipper”, as used in Section 12 of these General Terms and Conditions, shall mean an entity listed on Transporter’s approved bidder list that may bid or has bid on firm capacity rights through Transporter’s capacity release mechanism.
- 1.37 “Prearranged Shipper”, as used in Section 12 of these General Terms and Conditions, shall mean an entity on Transporter’s approved bidder list who is proposed by an Existing Shipper to obtain the Existing Shipper’s firm capacity rights through Transporter’s capacity release mechanism.
- 1.38 “Primary Delivery Point” (or “primary Point of Delivery”), “primary Transportation Delivery Point (or “primary Point of Transportation Delivery”), “primary Withdrawal Delivery Point” (or “primary Point of Withdrawal Delivery”) or “primary Injection Delivery Point” (or “primary Point of Injection Delivery”) shall mean the Point of Delivery, Point of Transportation Delivery, Point of Withdrawal Delivery, or Point of Injection Delivery specified in any Agreement pursuant to Rate Schedule FT or FTNN and, where such point is an interconnection between Transporter’s system and the facilities of another interstate pipeline, shall include the nomination point established by Transporter for nominations into the service agreement of another shipper of Transporter at such point.
- 1.39 “Primary Receipt Point” (or “primary Point of Receipt”), “primary Transportation Receipt Point” (or “primary Point of Transportation Receipt”), “primary Withdrawal Receipt Point” (or “primary Point of Withdrawal Receipt”) or “primary Injection Receipt Point” (or “primary

Point of Injection Receipt”) shall mean the Point of Receipt, Point of Transportation Receipt, Point of Withdrawal Receipt, or Point of Injection Receipt specified in any Agreement pursuant to Rate Schedule FT or FTNN shall mean the Point of receipt specified in any Agreement pursuant to Rate Schedule FT and, where such point is an interconnection between Transporter’s system and the facilities of another interstate pipeline, shall include the nomination point established by Transporter for nominations from the service agreement of another shipper of Transporter at such point.

- 1.40 “Quantity of Gas” shall mean a number of units of gas expressed in dekatherms, unless otherwise specified.
- 1.41 “Recourse Rate Shipper” shall mean a Shipper under an agreement that does not include a negotiated rate pursuant to Section 18.2 of these General Terms and Conditions.
- 1.42 “Replacement Shipper”, as used in Section 12 of these General Terms and Conditions, shall mean a Potential or Prearranged Shipper that has been awarded firm capacity rights for a specified period of time through Transporter’s capacity release mechanism.
- 1.43 “Seasonal Firm Shipper” shall mean an FT or FTNN Shipper subject to the Winter Reservation Charge and/or the Summer Reservation Charge, pursuant to Section 3.5 of the FT Rate Schedule.
- 1.44 “Secondary Delivery Point” shall mean any point other than the Point of Delivery specified in any Agreement pursuant to Rate Schedule FT or FTNN.
- 1.45 “Secondary Receipt Point” shall mean any point other than the Point of Receipt specified in any Agreement pursuant to Rate Schedule FT or FTNN.
- 1.46 “Shipper” shall mean any customer for service under one or more of the Rate Schedules of this tariff which executes Service Agreement(s), pursuant to such schedule, with Transporter.
- 1.47 “Summer Period” shall refer to the months of April, May, June, July, August, September, and October.

- 1.48 “Tender Gas” and “Tender of Gas” shall mean that the delivering party is able and willing, and offers, to deliver gas to the receiving party at the appropriate Point of Receipt or Delivery.
- 1.49 “Transportation” and “Transportation Service” shall mean transportation of Gas by either Forward-haul or Backhaul or any combination thereof.
- 1.50 “Transporter” shall mean Empire Pipeline, Inc.
- 1.51 “Volume” shall mean the number of units of gas expressed in cubic feet, unless otherwise specified.
- 1.52 “Web Site, website or web site” shall mean the World Wide Web Site established and maintained by Transporter in accordance with the NAESB Standards (referred to as “Customer Activities Web site” in NAESB Standards) and applicable regulations of the Commission requiring Transporter to display information on an Electronic Bulletin Board.
- 1.53 “Web Site User” shall mean a Shipper or other party who accesses Transporter’s web site.
- 1.54 “Winter Period” shall refer to the months of November, December, January, February, and March.
- 1.55 “Year” shall mean a period of 365 consecutive days provided, however, that any year which contains the date “February 29” shall consist of 366 consecutive days.

2. QUALIFICATION FOR SERVICE

2.1 Requests for Service

Shippers requesting new or additional service under any rate schedule must provide the information required by this Subsection 2.1 and on Transporter’s “Service Request Form” (available on Transporter’s web site). No service will be scheduled for receipt and delivery until a completed “Service Request Form” with respect to such service has been provided to Transporter. A “Service Request Form” shall be tendered no earlier than ninety days prior to the proposed commencement date of service, unless the construction of new facilities is required, unless the request is for capacity that will not be available until the proposed commencement date or unless the request is for capacity posted by Transporter pursuant to Section 14 of the General Terms and Conditions of this tariff. All completed “Service Request Forms” are to be sent to:

Empire Pipeline, Inc.
6363 Main Street, 1st Floor
Williamsville, New York 14221
Fax No. (716) 857-7648
Attention: Empire Contract Administration Department

Any modification of an existing service shall be requested by Shipper’s submission of a new “Service Request Form” with a notation on the Form that the service requested is a modification of an existing service.

Any request shall include the following:

- (a) Receipt/Delivery Points: The requested receipt and delivery points as set forth in the applicable rate schedule,
- (b) Quantities: The requested quantities, as set forth in the applicable rate schedule.
- (c) Term: The proposed commencement date and term of service.
- (d) Shipper Certification: A statement by the Shipper certifying that all necessary upstream and downstream arrangements will be in place on the date the transportation service is to commence, that Shipper will have good title or, where a waiver of the Commission’s shipper-must-have-title policy is applicable, the

right to deliver the gas to be delivered to Transporter, and if the transportation service is to be provided pursuant to Section Subpart 284B of the Commission's regulations, certification including sufficient information to verify that Shipper's transportation service qualifies under Section 311(a) of the Natural Gas Policy Act. Such certification shall include a statement by the intrastate pipeline or local distribution company on whose behalf such transportation service is to be performed that:

- (i) The intrastate pipeline or local distribution company has physical custody of and transports the natural gas at some point; or
 - (ii) The intrastate pipeline or local distribution company holds title to the natural gas at some point, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and function as an intrastate pipeline or a local distribution company; or
 - (iii) The gas is delivered at some point to a customer that either is located in a local distribution company's service area or is physically able to receive direct deliveries of gas from an intrastate pipeline, and that local distribution company or intrastate pipeline certifies that it is on its behalf that the interstate pipeline is providing transportation service.
- (e) Facilities: Identification and location of any facilities proposed to be constructed or installed by any party affected by the proposed transportation service, including, but not limited to, equipment sufficient to provide Transporter with real time measurement, communication and control capability.
- (f) Credit Evaluation: The information specified in Section 2.2, as requested by Transporter.

2.2 Credit Evaluation

(a) Credit and Financial Information

Upon Transporter's request, a Shipper seeking or utilizing service from Transporter must provide, to the extent such information is in Shipper's possession, the information required by this Subsection 2.2 and on Transporter's "credit application" (available on Transporter's web site):

- (i) a copy of Shipper's audited financial statements for the previous two (2) fiscal year ends with an attestation by the Chief Financial Officer or President of the Shipper (which attestation shall state that such financial statements fairly present the financial condition and results of operations of the Shipper for the period indicated therein) prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or for non-U.S. based Shippers, prepared in accordance with equivalent standards;
- (ii) interim financial statements for the most recent quarter end, if it is over one-hundred twenty (120) days since the Shipper's fiscal year end, which may be unaudited, but if unaudited, must be signed and attested by Shipper's Chief Financial Officer or President (which attestation shall state that such financial statements fairly present the financial condition and results of operations of the Shipper for the period indicated therein) prepared in accordance with GAAP or, for non-U.S. based Shippers, prepared in accordance with equivalent standards;
- (iii) a certificate of incorporation (or equivalent) and a statement of the legal composition of the business; i.e. corporation, limited partnership, limited liability company, etc.;
- (iv) a description of the business, including a statement as to the length of time the Shipper has been operating and its principal officers;
- (v) a list of owners and/or shareholders of Shipper, and their ownership interests, if privately held;

- (vi) a list of related entities including Shipper's affiliate(s), parent(s) and subsidiaries;
- (vii) bank references and at least two (2) trade references;
- (viii) a written statement confirming that Shipper is not operating under any chapter of the bankruptcy laws, subject to liquidation or debt reduction procedures under state laws, such as assignment for the benefit of creditors, or any informal creditors' committee agreement, or considering the possibility of bankruptcy protection (or for non-U.S. based Shippers, an equivalent proceeding);
- (ix) D-U-N-S® number, or in the case of a sole proprietorship or general partnership comprised of individuals, social security number(s) of principal(s);
- (x) any other information that is relevant to Shipper's current and future financial strength. Shipper shall have a continuing obligation to provide Transporter with updated information regarding any change to Shipper's organizational structure, such as, but not limited to, a change in its name, ownership, or legal composition, and any material adverse change to its financial condition.

(b) Criteria for Creditworthiness Determination

Acceptance of a Shipper's request for service and the continuation of service are contingent upon the Shipper satisfying, on an on-going basis, a credit evaluation by Transporter.

Transporter shall apply consistent evaluation practices to all similarly situated Shippers to determine the Shipper's financial ability to satisfy the payment obligations due to Transporter over the term of the requested service agreement.

Transporter's credit evaluation procedures will result in the establishment of a credit limit on a standardized nondiscriminatory basis for each Shipper. The total amount owed Transporter by Shipper for transportation, including without

limitation the value of imbalance gas shall not exceed the credit limit established for such Shipper.

A Shipper will be deemed creditworthy if (i) its lowest designated rating from three major credit reporting agencies remains at least two (2) levels above non-investment grade (i.e. Senior Unsecured credit rating is no lower than Baa2 as determined by Moody's Investor Service, Inc. ("Moody's"), Senior Unsecured credit rating is no lower than "BBB" as determined by Fitch, Inc. ("Fitch"), Long Term Local Issuer credit rating is no lower than BBB as determined by Standard & Poor's Corporation ("S&P"), and (ii) its long term Outlook opinion is no worse than "Stable" (from Moody's, Fitch or S&P) and (iii) the sum of three months of reservation charges, commodity charges and any other associated charges is less than seven percent (7%) of Shipper's tangible net worth; provided, however, that where the service request by Shipper would require the construction of facilities by Transporter, the sum of reservation charges, commodity charges and other associated charges for a term determined by Transporter on a non-discriminatory basis must be less than seven percent (7%) of Shipper's tangible net worth. As used herein, tangible net worth shall be the sum of the capital stock, paid-in capital in excess of par or stated value, and other free and clear equity reserve accounts less goodwill, patents, unamortized loan costs or restructuring costs and other intangible assets. If the Shipper has multiple service agreements with Transporter, then its obligations under all such service agreements shall be considered in determining creditworthiness.

If Shipper does not meet the criteria described above then Transporter may evaluate Shipper's creditworthiness based upon the following information and credit criteria:

- (i) any information furnished pursuant to Section 2.2(a) (i) - (x) above;
- (ii) S&P, Moody's, and Fitch's opinions, watch alerts, and rating actions, news reports, and industry publications;
- (iii) whether Shipper is operating under any chapter of the bankruptcy laws and/or subject to liquidation or debt reduction procedures under state laws;

- (iv) whether Shipper is subject to any lawsuits or judgments outstanding which would seriously reflect upon its ability to remain solvent;
- (v) whether the financial condition of any affiliate or subsidiary of Shipper or Shipper's parent could adversely affect Shipper's ability to pay for services;
- (vi) the amount of debt the Shipper or its parent, if the parent is guarantying its performance, has coming due within the term of the requested service agreement;
- (vii) Shipper's ongoing business relationship with Transporter, if any, consideration being given to delinquent balances being outstanding for services rendered, and payment of its prior invoices from Transporter according to Section 7 of Transporter's tariff;
- (viii) whether there have been any material changes in the Shipper's use of services or creation of imbalances;
- (ix) the nature of the Shipper's business and the effect on that business of general economic conditions and economic conditions specific to it, including Shipper's ability to recover the costs of Transporter's services through filings with regulatory agencies or otherwise to pass on such costs to its customers;
- (x) any other information obtained that is relevant to Shipper's current and future financial strength.
- (xi) Consistent financial statement analysis will be applied by Transporter to determine the acceptability of Shipper's current and future financial strength. Shipper's balance sheets, income statements, cash flow statements and auditor's notes will be analyzed along with key ratios and trends regarding liquidity, asset management, debt management, debt coverage, capital structure, operational efficiency and profitability.
- (xii) Results of bank and trade reference checks and credit reports must demonstrate that a Shipper is paying its obligations in a timely manner.

- (c) Transporter may, either upon the request for service or at any future time after initiation of service, as Transporter deems necessary, conduct ongoing credit evaluations of Shipper. Shipper shall furnish the information in Sections 2.1 and 2.2 above, within three (3) Business Days of Transporter's request.

If Transporter determines that a Shipper is non-creditworthy based upon Transporter's credit evaluation, Transporter will provide Shipper with written notification including the reason(s) for its determination. Transporter shall not be required to commence or to continue service under any rate schedule on behalf of any Shipper who is or has become non-creditworthy or who, at Transporter's request fails to demonstrate creditworthiness and loses its creditworthiness status, unless Shipper complies with Transporter's security requirements. A Shipper that loses its creditworthiness status may continue service by providing an advance payment of an amount equal to one month's charges for services, and satisfying the requirements of Section 2.2(e) within thirty (30) days of the date of the notice.

- (d) Transporter also reserves the right, on an on-going basis, to limit Shipper's service to a level that is commensurate with Shipper's credit limit.

- (e) Security Requirements

- (i) A non-creditworthy Shipper may receive service if Shipper prepays for such service, pursuant to a pre-payment agreement, or provides Transporter, with adequate security

- A) in the form of:

- 1) a grant to Transporter of a security interest in the form of cash collateral; or
- 2) an irrevocable stand-by letter of credit, satisfactory in form and substance to Transporter, from a bank or other financial institution acceptable to Transporter; and

- B) for value equal to:

- 1) For firm service agreements, security shall be based upon an amount equal to the revenues for three (3) months of the full Maximum Daily Quantity; or
 - 2) For interruptible service contracts, security shall be based upon the Shipper's anticipated usage for a three (3) month period as determined by the Shipper and Transporter's marketing representative, which shall determine the Shipper's credit limit for purposes of Subsection 2.2(d);
 - 3) Transporter has the right to seek additional security to cover the value of any potential imbalance owed Transporter by a non-creditworthy Shipper. Such imbalances shall be valued at the sum of (A) the simple average of (i) the average price of gas at the Dawn, Ontario price point and (ii) the average price of gas at the Dominion, South Point price point as reported in the most recent issue of the Natural Gas Intelligence's Weekly Gas Price Index and (B) the difference obtained by subtracting (i) the NYMEX futures closing price for the current month, from (ii) the highest futures price reported by NYMEX for deliveries within any of the subsequent twelve (12) months. For a non-creditworthy new Shipper, the security shall be based upon an amount of two (2%) percent of the Shipper's maximum daily quantity for a three (3) month period. For a non-creditworthy existing Shipper, the security shall be based upon an amount equal to three (3) times the largest cumulative monthly imbalance owed to Transporter over the most recent twelve (12) month period; or
- C) as an alternative to (A) and (B), in a form and of a value mutually agreeable to Transporter and Shipper.

- (ii) Should a non-creditworthy Shipper desire to earn interest on cash collateral required pursuant to the terms and conditions hereof, a non-creditworthy Shipper shall provide written notice thereof to Transporter. Where Transporter receives such notice, Transporter will pay interest, less any bank fees, on the amount of cash collateral received. The interest rate shall be equal to the actual rate earned by Transporter for any time period that such cash collateral is on deposit. Shipper shall not be entitled to earn interest on advance payments.
- (iii) In the event that Shipper has failed to provide adequate security as provided herein or to pay any non-disputed obligations, the Transporter can take title, at no cost, to any payments owed Shipper by Transporter, up to the amount of any unpaid, non-disputed obligations the Shipper owes Transporter.
- (f) New Facilities. Notwithstanding anything to the contrary in this tariff, if the service requested by Shipper would require the construction of lateral or other non-mainline facilities by Transporter, Transporter may require (i) of a non-creditworthy Shipper, security for a value up to the cost of such facilities, with respect to Shipper's reimbursement obligations under Section 11.1 (if any) and, in addition to any security required by Subsection 2.2(e), Shipper's obligations under its service agreement, and (ii) of a creditworthy Shipper, a commitment to provide the security identified in clause (i) of this Subsection 2.2(f) in the event Shipper becomes non-creditworthy. In no event shall the amount of the security exceed the cost of the facilities, and in the event facilities are to be constructed to accommodate more than one shipper, such amount shall not exceed the cost of the facilities allocable to Shipper. This tariff does not govern the security requirements applicable to mainline facility projects.

2.3 Evaluation of Requests for Service

Upon Transporter's determination that Shipper's request for service is complete, Transporter will enter such request on a list of pending complete requests and so notify Shipper. Subject to Sections 12, 14 and 15 of these General Terms and Conditions, Transporter will evaluate its ability to satisfy complete requests for transportation in their order of entry on such list, provided, however, that Transporter shall have no obligation to evaluate a request for service that is contingent upon Transporter's agreement to a discounted rate unless and until such discount request is granted by Transporter. Transporter shall process requests for service within a reasonable period of time. If Transporter rejects a request for service which has been entered on Transporter's list of pending complete requests, Transporter will so notify Shipper within one (1) Business Day of such rejection. In such event, Shipper's request for service will not remain entered on such a list.

A Service Agreement (or, when tendered by Transporter in response to a request for firm service that requires the construction of facilities, a precedent agreement) shall be executed by Shipper and Transporter following Transporter's acceptance in writing of Shipper's request for service. Subject to Section 14 of the General Terms and Conditions of this tariff, in the event the Service Agreement or precedent agreement is not executed by Shipper and returned within thirty days after Transporter tendered the contract, Transporter shall consider the request for service invalid.

3. TRANSPORTATION SERVICE

3.1 Operating Tolerances. It is recognized that the parties will be unable to control exactly the quantities of Gas delivered and accepted hereunder on any Day, and that the actual quantities received by Transporter may vary above or below the actual quantities delivered on any Day. Such variations shall be considered imbalances, shall be kept to the minimum permitted by operating conditions and shall be balanced as soon as practicable but, unless otherwise agreed by Shipper and Transporter, shall not exceed a daily variation of two percent (2%) of the actual deliveries. When necessitated by adverse operating conditions, and to the extent necessary to alleviate such conditions, Transporter may require Shipper to provide or take delivery of Gas to rectify an imbalance, subject to the provisions of Section 16 of these General Terms and Conditions. Transporter may allow a greater variation, and/or may adjust receipts or deliveries of gas hereunder, if it determines that it can do so to achieve elimination of previous imbalances without adverse effect on Transporter's operations or its ability to meet all its other obligations, including lower priority service: provided, however, Transporter shall have the right to adjust flows to Shipper to keep actual flows within the two percent (2%) tolerance if Transporter deems such action necessary to protect the operational integrity of the system. Transporter shall notify Shipper (orally, followed by written confirmation to be delivered by facsimile or email) as promptly as feasible if Transporter is unable to allow a variation as described in this Section 3.1. Waiver of the two percent (2%) imbalance tolerance by Transporter pursuant to this paragraph shall be done on a not unduly discriminatory basis. If a monthly allocation statement provided by Transporter to Shipper shows an imbalance owed to or by Transporter as of the end of the prior month ("Activity Month"), the parties shall adjust the receipts and deliveries of Gas as soon as practicable, (but not later than the end of the month following the Activity Month), and without limitation to Transporter's rights set forth above, to balance any excess or delivery in order for Shipper to receive Equivalent Quantities.

If Shipper has caused an imbalance without the consent of Transporter pursuant to the preceding paragraph, penalty charges may be applicable to daily imbalances, pursuant to Section 4.7 of these General Terms and Conditions, in addition to other remedies under law. If Transporter adjusts flows to Shipper as described in the preceding paragraph or operational integrity is not otherwise threatened, then no penalty will be imposed. It shall be the responsibility of Shipper to monitor and adjust

deliveries of gas to Transporter and receipts of gas from Transporter, to match nominated volumes.

- 3.2 Treatment of Gas. Transporter may subject or permit the subjection of said Gas to compression, cooling, cleaning, or other processes to such extent as may be required for its transmission from the Point(s) of Receipt to the Point(s) of Delivery.

3.3 Limitation of Serving.

- (a) A Shipper which fails to comply with any of the terms of the Agreement, including the applicable rate schedule and these General Terms and Conditions, where such failure of compliance threatens the Integrity of Transporter's system, shall have transportation service suspended, upon written notice, (which may include notice by facsimile or email) for a period of up to thirty (30) days, during which the failure shall be corrected to the satisfaction of Transporter. If Shipper fails to correct such failure within that thirty (30) day period, Shipper shall be deemed to have consented to termination of such Agreement and abandonment of service. Written notice of any termination and abandonment shall be given to Shipper at least seventy-two (72) hours before such termination and abandonment, and shall include an adequate explanation.

- (b) A Shipper which otherwise fails to comply with any of the terms of the Agreement, including the applicable rate schedule and these General Terms and Conditions, shall be given written notice of its failure to comply and if, after 30 days from such notice fails to rectify its non compliance, shall be deemed to have consented to termination of such Agreement and abandonment of service. Written notice of any termination and abandonment shall be given to Shipper at least seventy-two (72) hours before such termination and abandonment and shall include an adequate explanation.

4. NOMINATIONS, SCHEDULING AND ALLOCATION

4.1 Nominations.

Upon Transporter's acceptance of Shipper's Service Request and Transporter's and Shipper's execution of a service agreement, or, upon the acceptance of a capacity release award by a Replacement Shipper pursuant to Section 12.6 of these General Terms and Conditions, Shipper shall be entitled to make nominations for transportation service, as provided herein.

No transportation service will commence unless and until Transporter has received a completed "Customer Nomination" and Shipper has been advised by Transporter that the service may commence. All timely and intraday nominations for transportation service shall be made via EDM, after executing a System License Agreement. Transporter shall not be required to accept any purported nomination received via mail, written notice, courier service, personal delivery, telephone, facsimile, or email.

The completed Customer Nomination shall include a notation indicating whether it is submitted as a timely or intraday nomination. The standard quantity for nominations, confirmations and scheduling shall be dekatherms per day. A nomination requesting modifications to an existing nomination need reflect only the proposed changes and the proposed effective date and time.

As set forth in NAESB Standard 1.3.4:

[a]ll parties should support a seven-day-a-week, twenty-four-hours-a-day nomination process. It is recognized that the success of seven days a week, twenty four-hour a day nominations process is dependent on the availability of affected parties' scheduling personnel on a similar basis. Party contacts need not be at their ordinary work sites, but should be available by telephone or other electronic means.

The timeline and other applicable procedures for the submission, validation and confirmation of timely and intraday nominations shall be as specified in the NAESB Nominations Related Standards.

- (a) Timely Nominations. A "timely nomination" is a nomination for transportation service beginning at the start of a day transmitted

and received within the Timely Nomination Cycle specified at NAESB Standard 1.3.2(i).

(i) NAESB Standard 1.3.2(i) provides as follows:

The Timely Nominations Cycle

On the day prior to gas flow:

- 1:00 p.m. Nominations leave control of the Service Requester (SR);
- 1:15 p.m. Nominations are received by the TSP (including from Title Tracking Transfer Service Providers (TTTSPs));
- 1:30 p.m. TSP sends the Quick Response to the SR;
- 4:30 p.m. TSP receives completed confirmations from Confirming Parties;
- 5:00 p.m. SR and Point Operator receive scheduled quantities from the TSP.

Scheduled quantities resulting from Timely Nominations should be effective at the start of the next Gas Day.

(ii) A timely nomination may be modified either by a superseding timely nomination or by an intraday nomination. A timely nomination which is superseded by an intraday nomination shall, at the conclusion of the day on which the intraday nomination was in effect, revert to the quantities, locations and end date submitted in the superseded timely nomination. A timely nomination which is superseded by a timely nomination shall, at the conclusion of the end date in the superseding timely nomination, revert to the quantities, locations and end date submitted in the superseded timely nomination.

(b) Intraday Nominations. An “intraday nomination” is a nomination for transportation service transmitted and received within the Evening Nomination Cycle specified at NAESB Standard 1.3.2(ii), the Intraday 1 Nomination Cycle specified at NAESB Standard 1.3.2(iii), the Intraday 2 Nomination Cycle specified at NAESB Standard 1.3.2(iv), or the Intraday 3 Nomination Cycle specified at NAESB Standard 1.3.2(v).

- (i) NAESB Standard 1.3.2(ii) provides as follows:

The Evening Nomination Cycle

On the day prior to gas flow:

- 6:00 p.m. Nominations leave control of the SR;
- 6:15 p.m. Nominations are received by the TSP (including from TTTSPs);
- 6:30 p.m. TSP sends the Quick Response to the SR;
- 8:30 p.m. TSP receives completed confirmations from Confirming Parties;
- 9:00 p.m. TSP provides scheduled quantities to the affected SR and Point Operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from Evening Nominations should be effective at the start of the next Gas Day.

- (ii) NAESB Standard 1.3.2(iii) provides as follows:

The Intraday 1 Nomination Cycle

On the current Gas Day:

- 10:00 a.m. Nominations leave control of the SR;
- 10:15 a.m. Nominations are received by TSP (including from TTTSPs);
- 10:30 a.m. TSP sends the Quick Response to the SR;
- 12:30 p.m. TSP receives completed confirmations from Confirming Parties;
- 1:00 p.m. TSP provides scheduled quantities to the affected SR and Point Operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from Intraday 1 Nominations should be effective at 2:00 p.m. on the current Gas Day.

(iii) NAESB Standard 1.3.2(iv) provides as follows:

The Intraday 2 Nomination Cycle

On the current Gas Day:

- 2:30 p.m. Nominations leave control of the SR;
- 2:45 p.m. Nominations are received by the TSP (including from TTTSPs);
- 3:00 p.m. TSP to send the Quick Response to the SR;
- 5:00 p.m. TSP receives completed confirmations from Confirming Parties;
- 5:30 p.m. TSP provides scheduled quantities to the affected SR and Point Operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from Intraday 2 Nominations should be effective at 6:00 p.m. on the current Gas Day.

(iv) NAESB Standard 1.3.2(v) provides as follows:

The Intraday 3 Nomination Cycle

On the current Gas Day:

- 7:00 p.m. Nominations leave control of the SR;
- 7:15 p.m. Nominations are received by the TSP (including from TTTSPs);
- 7:30 p.m. TSP sends the Quick Response to the SR;
- 9:30 p.m. TSP receives completed confirmations from Confirming Parties;
- 10:00 p.m. TSP provides scheduled quantities to the affected SR and Point Operator.

Scheduled quantities resulting from Intraday 3 Nominations should be effective at 10:00 p.m. on the current Gas Day. Bumping is not allowed during the Intraday 3 Nomination Cycle.

- (v) An intraday nomination shall span only a single day, terminating at the conclusion of the day on which the intraday nomination is effective. Intraday nominations will be processed after timely nominations have been scheduled.
- (vi) Transporter shall not be required to accept an intraday nomination whose effect would be to reschedule quantities of gas flowing for other Shippers under timely nominations or intraday nominations from an earlier cycle for that day, subject to the following sentence. An intraday nomination for firm service utilizing primary firm capacity submitted during the Evening Nomination Cycle or Intraday 1 Nomination Cycle or Intraday 2 Nomination Cycle will be accepted to the extent that it would not require a rescheduling of quantities of gas flowing for other firm shippers (utilizing primary or secondary firm capacity) under timely nominations or intraday nominations from an earlier cycle for that day. No intraday nomination during the shall be for a quantity that is less than the quantity of gas that has been scheduled to flow on such day prior to the effective time of such intraday nomination.
- (vii) Transporter will provide direct notice of bumping (as defined in the NAESB Standards) by one of the following means, to be designated by Shipper: telephone, facsimile, email or direct notification to a Shipper's Internet URL address.
- (viii) NAESB Standard 1.3.2(vi) provides as follows:

For purposes of NAESB Standards 1.3.2(ii), (iii), (iv) and (v), the word "provides" shall mean, for transmittals pursuant to NAESB WGQ Standards 1.4.x, receipt at the designated site, and for purposes of other forms of transmittal, it shall mean send or post.
- (c) Other Nominations. At its option, Transporter may accept nominations which are submitted and received outside the timelines applicable to timely or intraday nominations, or are not transmitted via EDM, but Transporter shall not be required to comply with the NAESB Nominations Related Standards with respect to such nominations. As set forth in NAESB Standard 1.3.6, "[n]ominations received after nomination

deadlines should be scheduled after the nominations received before the nomination deadline.”

- (d) Pooling at Pipeline Interconnections. A Shipper who is delivering gas into Transporter’s system from more than one contract on an interconnecting pipeline at a single receipt point may request the creation of a pool of gas at that point by submitting to Transporter in writing on or before 9:00 a.m. central clock time on the 20th day of the month preceding the desired effective date, a Pool Operator Confirmation signed by Shipper and, if different, by the proposed pool operator. Pools will be established for a month and shall continue from month-to-month thereafter until terminated by the pool operator or by Transporter by notice at least ten days before the effective date of termination. Shippers shall nominate from the pool instead of from the individual upstream contracts within the pool. The pool operator shall confirm nominations to and from the pool with Transporter.

- (e) Title Transfer Nominations.
 - (i) Subject to the provisions of this Section 4.1, including but not limited to the provisions of this Subsection 4.1(e), and the NAESB Nominations Related Standards, Transporter shall accept and process nominations from Title Tracking Parties for title transfer tracking (“TTT Noms”) related to transportation nominations with Transporter at physical points of receipt into Transporter’s system and pooling points established under Subsections 4.1(d). To become a Title Transfer Party, a party must request and execute a Title Transfer Tracking Nominations Processing Agreement which appears as Form 9.020 in Part 9 of this tariff. Any Title Transfer Tracking Service Provider, as defined in the NAESB Standards (“TTTSP”), or any party with an effective transportation agreement, Operational Balancing Agreement, or Interconnection Agreement with Transporter may request a Title Transfer Tracking Nominations Processing Agreement for execution. If a Title Transfer Party wishes to designate an agent (for example, a TTTSP) for the purpose of processing TTT Noms on its behalf, it must execute the agent designation form available on Transporter’s web site. Transporter will, on a non-discriminatory basis, negotiate and enter into agreements with TTTSP’s which define the terms and conditions applicable to the processing of TTT Noms submitted by the TTTSP.

- (ii) Each TTT Nom must be made using Transporter’s standard nomination form incorporating NAESB approved data sets, and shall include the following information:
 - (1) Identity of the party transferring title (“Title Transferor”);
 - (2) Identity of the party receiving title (“Title Transferee”);
 - (3) The date and time of the transfer;
 - (4) The receipt point or pool on Transporter’s system to be utilized as the location of the transfer;
 - (5) The quantity to be transferred; and
 - (6) Upstream and downstream contract information required for confirmation.
- (iii) By submitting a TTT Nom to Transporter, Title Transfer Party represents that Transporter may assume, for purposes of processing the nomination(s) for the transportation of the quantity of gas covered by the TTT Nom, that title to such quantity of gas, or such lesser quantity as is consistent with the related nominations and the confirmations received by Transporter, will be transferred from the Title Transferor to the Title Transferee at the time of the flow of the related transportation nomination(s).
- (iv) A TTT Nom will be acknowledged by Transporter only if each related transportation nomination is confirmed by all Confirming Parties and scheduled by Transporter for the quantity of gas so nominated or such lesser quantity as is confirmed by all Confirming Parties and by all corresponding TTT Noms.
- (v) By communicating its acknowledgment of a TTT Nom, Transporter represents only that it has processed the related transportation nomination(s) upon the assumption that title to the quantity of gas specified in the TTT Nom, or such lesser quantity as is confirmed by all parties identified in Subsection 4.1(e)(iv) and indicated to Title Transferor in such acknowledgment, will be transferred by the Title Transferor to the Title Transferee set forth in the TTT Nom at the time of the flow of such related transportation nomination(s). Transporter shall have no duty of

inquiry, and makes no warranties or representations and assumes no obligations, regarding the ownership of the gas covered by a TTT Nom, the creditworthiness of any Title Transferor or Title Transferee, the existence or terms of any agreement between any Title Transferor or Title Transferee, compliance by any Title Transferor or Title Transferee with applicable laws and regulations, or otherwise.

- (vi) Regardless of the acknowledgment by Transporter of any TTT Nom related to a transportation nomination confirmed by Transporter, the Shipper making such transportation nomination shall remain responsible for all its obligations under its service agreement(s) and this tariff, including, without limitation:
 - (1) the resolution of all imbalances arising under its service agreement(s), including, without limitation, imbalances resulting from differences between the scheduled and actual flows of gas at the receipt point(s) for which related TTT Noms were acknowledged;
 - (2) the payment of any imbalance penalties under Section 4.7 or penalties under Section 10 of these General Terms and Conditions or overrun charges under the applicable rate schedule(s);
 - (3) warranty of title and indemnification obligations set forth in Section 30 of these General Terms and Conditions; and
 - (4) gas quality provisions set forth at Section 6 of these General Terms and Conditions.
- (vii) Receipts of gas at a receipt point for which TTT Noms have been acknowledged by Transporter will be allocated among shippers pro rata based upon confirmed nominations in the absence of a single Pre-Determined Allocation Methodology applicable to all shippers delivering gas to Transporter at such receipt point.
- (viii) The processing of TTT Noms as set forth herein shall be performed at no charge by Transporter.

- (ix) With respect to title transfer transactions, the provisions of Section 30 of these General Terms and Conditions, applicable to “Shipper” or to a “party” shall be applicable to Title Transfer Parties, and the provisions therein applicable to “Transporter” or to a “party” shall be applicable to Transporter.

- (f) Central Delivery and Receipt Points
 - (i) Available for nomination are point(s) which Transporter has designated as a “Central Delivery Point” (CDP) and a “Central Receipt Point” (CRP). A CDP or CRP may be established by mutual agreement between Transporter and point operator, and is composed of the delivery or receipt points between Transporter and an individual local distribution company (LDC) or an individual pipeline on Transporter’s system covered by an Operational Balancing Agreement (OBA). Such delivery or receipt points must be within close geographical proximity as determined by Transporter with regard to the operational constraints of its system or other operational considerations. CDPs and CRPs may also be developed for other entities or groups on a case-by-case basis. Once a CDP or CRP has been established, Shippers must nominate deliveries under both firm and interruptible agreements to the CDP or CRP in lieu of the individual delivery or receipt points that make up the CDP or CRP. The location of the CDP or CRP will be used to determine capacity allocations, and the location of the CDP or CRP may be modified or terminated based on operating conditions as determined by Transporter. Except as described in subsection (ii) hereof, all physical deliveries to the individual delivery or receipt points which make up the CDP or CRP and all scheduled deliveries to the CDP or CRP will be aggregated for purposes of determining the daily and monthly imbalance pursuant to the OBA. Nothing herein shall exempt a party from compliance with all other provisions of the OBA.

 - (ii) A CDP or CRP may not be designated as a Primary Delivery Point or Primary Receipt Point, respectively, on a Transportation Service Agreement, and the establishment of a CDP or CRP shall not alter the individual delivery or receipt point(s) and corresponding individual MDQ(s) at such point(s) as specified in any Transportation Service Agreement. Unless such deliveries are nominated by Shipper and confirmed and scheduled by Transporter, Transporter has no obligation to deliver on any day under any such agreement any quantities in excess of

the individual MDQ specified in that firm agreement at a given point. Whenever Transporter determines that operating conditions only permit deliveries at any individual point(s) equal to Transporter's obligations, Transporter shall notify the affected Shippers under such firm agreements.

- 4.2 Scheduling and Allocation of Capacity. When deemed necessary by Transporter, Transporter may require confirmation from any upstream or downstream party that scheduled receipts and deliveries will occur prior to scheduling receipts and deliveries on its system. Transporter may decline to schedule receipts and deliveries through segments of its system if such action is required in Transporter’s judgment by weather or the necessity to conduct maintenance, repair or replacement activities with regard to its facilities, to schedule Department of Transportation compliance activities, to install taps, to test operational equipment, compressors or compressor station equipment, or similar activities affecting capacity and operations of portions of its system, or as a result of conditions of force majeure, as described at Section 28.6 of these General Terms and Conditions.

If, for any timely or intraday nomination cycle, Transporter determines that the capacity of its pipeline system, or any portion of its system, including receipt and delivery points, is insufficient to serve all requests for transportation for that nomination cycle, then, subject to Section 4.1 of these General Terms and Conditions, Transporter will schedule transportation in accordance with the sequencing procedures set forth below until all available capacity at the constrained location is allocated. As set forth in NAESB Standard 1.3.23, “Ranking should be included in the list of data elements. Transportation service providers should use service requester provided rankings when making reductions during the scheduling process when this does not conflict with tariff-based rules.” Therefore, unless otherwise provided, allocation of capacity among multiple nominations under the same contract and within the same scheduling priority category shall be pro rata or in accordance with the rankings provided by Shipper in its nomination.

(a) Allocation of capacity through constrained transportation paths

When it is necessary for Transporter to allocate available capacity through a constrained transportation path, nominations for service that would require the flow of gas through the constraint and in the constrained direction of flow will be scheduled in the following sequence:

- (i) first, to quantities within contract quantities nominated by FT or FTNN shippers from a Primary Point of Receipt to a Primary Point of Delivery;

- (ii) second, to quantities scheduled within contract quantities not addressed above, nominated by FT or FTNN shippers to the extent of their firm capacity through the constraint, as determined by the transportation path of each shipper, where the direction of the gas flow is the same as the direction gas would flow from Shipper's Primary Point of Receipt to its Primary Point of Delivery;
- (iii) third, to other quantities scheduled within contract quantities nominated by FT or FTNN shippers, to or from Secondary Point(s) of Receipt or Delivery;
- (iv) fourth to overrun quantities nominated by FT or FTNN shippers and quantities nominated by IT shippers, except as provided in Subsection (a)(v); and
- (v) last, to overrun quantities nominated by FT or FTNN shippers and quantities nominated by IT shippers, where the Shipper's service agreement is subject to a discounted commodity or overrun rate, beginning with the agreement(s) subject to the smallest discount(s) and proceeding in order according to the amount of the discount(s), capacity to be allocated pro-rata among equally discounted services.

Unless otherwise provided above, available capacity will be allocated to quantities within each category in proportion to the quantities nominated by each shipper.

(b) Allocation of capacity at constrained receipt or delivery points

When it is necessary for Transporter to allocate available capacity at a constrained receipt or delivery point, nominations for service that would require the flow of gas at the constrained point and in the constrained direction of flow will be scheduled in the following sequence:

- (i) first, to quantities within contract quantities nominated by FT or FTNN shippers for receipt at a Primary Point of Receipt or for delivery at a Primary Point of Delivery;
- (ii) second, to quantities within contract quantities not addressed above nominated by FT or FTNN shippers at a Secondary

Point of Receipt or Secondary Point of Delivery located within Shipper's transportation path, where the direction Shipper's nominated gas flow is the same as the direction gas would flow from its Primary Point of Receipt to its Primary Point of Delivery;

- (iii) third, to other quantities within contract quantities nominated by FT or FTNN shippers, at a Secondary Point of Receipt or Secondary Point of Delivery; and
- (iv) fourth to overrun quantities nominated by FT or FTNN shippers and quantities nominated by IT shippers, except as provided in Subsection (b)(v); and
- (v) last, to overrun quantities nominated by FT or FTNN shippers and quantities nominated by IT shippers, where the Shipper's service agreement is subject to a discounted commodity or overrun rate, beginning with the agreement(s) subject to the smallest discount(s) and proceeding in order according to the amount of the discount(s), capacity to be allocated pro-rata among equally discounted services.

Unless otherwise provided above, available capacity will be allocated to quantities within each category in proportion to the quantities nominated by each shipper.

(c) Allocation of constrained injection or withdrawal capacity

When it is necessary for Transporter to allocate available injection or withdrawal capacity, nominations for storage injections or withdrawals will be scheduled in the following sequence:

- (i) first, to quantities within contract quantities nominated by storage customers under the FSNN or other firm storage service rate schedules;
- (ii) second, to quantities nominated by ISS shippers, and authorized overruns under the FSNN Rate Schedule, except as provided in Subsection (c)(iii); and
- (iii) third, to overrun quantities nominated by firm storage customers and quantities nominated by ISS shippers, where the shipper's service agreement is subject to a discounted

injection rate, beginning with the agreement(s) subject to the smallest discount(s) and proceeding in order according to the amount of the discount(s), capacity to be allocated pro-rata among equally discounted services.

Unless otherwise provided above, available capacity will be allocated to quantities within each category in proportion to the quantities nominated by each shipper.

(d) Allocation of Storage Capacity

When it is necessary for Transporter to allocate available storage capacity, nominations for storage injections or withdrawals will be scheduled in the following sequence:

- (i) first, to quantities within contract quantities nominated by customers under the FSNN or other firm storage service rate schedules;
- (ii) second, to quantities nominated by ISS shippers, except as provided in Subsection (d) (iii); and
- (iii) third, to quantities nominated by ISS shippers where shipper's service agreement is subject to a discounted storage capacity rate, beginning with the agreement(s) subject to the smallest discount(s) and proceeding in order according to the amount of the discount(s), capacity to be allocated pro-rata among equally discounted services,

Unless otherwise provided above, available capacity will be allocated to quantities within each category in proportion to the quantities nominated by each shipper.

- 4.3 Delivery of Gas. Transporter, subject to the other provisions hereof, shall make daily delivery, to the extent practicable, of Equivalent Quantities of Gas at the Point(s) of Delivery after making adjustment for any prior imbalances in deliveries.

- 4.4 Allocation to Agreements. Unless otherwise agreed to by Transporter, Shipper, and the person to which Transporter physically delivers the Gas, when Gas is delivered on any day at a single Point of Delivery, or received on any Day at a single Point of Receipt, pursuant to more than one agreement, such deliveries shall be allocated to the various Agreements pro rata based on Confirmed Nominations for such services performed under all service classifications.

4.5 Hourly Variation. Receipts and deliveries shall be made at uniform hourly rates to the extent practicable, or as required by Transporter to protect the integrity of its system, provided, however, that Shipper shall not, without Transporter's consent, take delivery of such gas at an hourly rate in excess of five percent (5%) of Shipper's Maximum Daily Quantity, and provided further that the hourly deliveries during any Day shall be subject to each of the following limitations:

- (i) Deliveries during any period of three (3) consecutive hours shall not exceed 14.47% of Shipper's Maximum Daily Quantity;
- (ii) Deliveries during any period of five (5) consecutive hours shall not exceed 23.45% of Shipper's Maximum Daily Quantity;
- (iii) Deliveries during any period of twelve (12) consecutive hours shall not exceed 52.08% of Shipper's Maximum Daily Quantity;
and
- (iv) Deliveries during any hour shall not exceed 100% of Shipper's Confirmed Nomination.

- 4.6 Limitation on Obligation. Should the quantities of gas received from Shipper(s) by Transporter at the Point(s) of Receipt exceed the Confirmed Nomination, Transporter shall notify Shipper of such fact, a reasonable time after such becomes known, and Shipper shall seek to reduce deliveries to Transporter forthwith to the extent necessary to avoid or eliminate any resulting imbalance. Transporter may attempt to transport the gas received, as provided in the applicable Service Classification. In the event any such excess delivery would jeopardize the safety of Transporter's operations and/or its ability to meet its contract commitments to others, such decisions being within the reasonable judgment and discretion of Transporter, Transporter shall have the right to refuse to accept, without any liability to Shipper or any other person, all or such part of said excess delivery as Transporter deems necessary, and shall notify Shipper accordingly as soon as feasible.

4.7 Daily Imbalance Penalty: Daily Imbalance Penalties shall be paid for each Dth of Gas by which the aggregate quantity of Gas scheduled for delivery by Transporter to Shipper in a Day exceeds by two percent (2%), or is less by two percent (2%) than, the total of Dths delivered to Shipper during such Day, after eliminating any portion of such difference which is caused by action of Transporter. Such penalty charges shall be:

variations	> 2%	≤ 4%	\$ 5.00 per Dth
variations	> 4%	≤ 5%	\$10.00 per Dth
variations	> 5%		\$15.00 per Dth

Transporter shall not charge a Daily Imbalance Penalty if Transporter has allowed the imbalance to occur pursuant to Section 3.1 of these General Terms and Conditions.

Transporter will waive the Daily Imbalance Charge if in Transporter's reasonable judgment, Shipper's actions have not jeopardized Transporter's ability to operate its system or impaired Transporter's ability to meet its other service obligations. Penalties or waivers of penalties will be applied in a not unduly discriminatory basis.

4.8 Imbalance Resolution.

- (a) A Shipper may elect to resolve imbalances either “in kind” or by “cash-out”. This election must be made by submitting a completed and signed “Imbalance Resolution Methodology Form”, in the form appearing on Transporter’s web site. Any Shipper not submitting that form will be deemed to have elected to resolve imbalances via cash-out. All imbalances on all of Shipper’s contracts must be resolved using the same methodology. The election of methodologies must be made at or before the earliest time a nomination is required to be submitted under any of Shipper’s contracts for the first day of the month. Such election will remain in effect until revised by Shipper with the submission of a new Imbalance Resolution Methodology Form, effective the first day of the following month. A Shipper may change its election as often as once a month; provided that a change in methodology will have no effect on the resolution of imbalances that arise prior to its effective date. If a Shipper does not submit a nomination for the transportation of gas during a calendar month, its imbalance as of the end of the month shall be subject to “cash-out” resolution, whether it elected “in kind” or “cash-out” resolution of imbalances. A shipper may use the Park and Loan services of third-parties to resolve imbalances hereunder. For purposes of imbalance resolution, imbalances under all service agreements in effect for a single shipper will be set off against each other to arrive at a single cumulative imbalance.
- (b) Shipper Imbalance Exchange. Shippers who agree to all the terms of Transporter’s Imbalance Exchange, will be allowed to exchange imbalances with other such Shippers on such exchange. Transporter will post a participating Shipper’s imbalance information on the Shipper Imbalance Exchange portion of Transporter’s web site or, upon receipt of a written request, will make the information available to a participant in written form. Transporter will have applicable information posted by the tenth Business Day of the month following the activity month. Shippers desiring to trade imbalances must present Transporter with a request for transfer (via E-mail or in writing). A request must be received by Transporter from all Shippers involved in an imbalance exchange, either via Transporter’s E-mail or otherwise in writing. No Shipper may accumulate balances for the purpose

of resolving other Shippers' imbalances. For purposes of determining the applicable quantities subject to cash-out under Section 4.9 hereof, imbalance trades that are evidenced by requests received by Transporter on or before the end of the calendar month following the activity month shall be recognized in the calculation of the Cumulative Monthly Imbalance for the activity month.

4.9 Cash-Out of Imbalances. If a Shipper that has elected or is otherwise subject to “cash-out” resolution of imbalances has a cumulative imbalance as of the end of a month, and such imbalance has not been eliminated by the shipper by the end of the following month, that Shipper’s entire cumulative imbalance shall be cashed-out as described in this Section 4.9.

- (a) Clearing of negative imbalances. Should such imbalance be negative, the imbalance shall be subject to Negative Imbalance Cash-Out.

The Negative Imbalance Cash-Out Price is a price per Dth which is applied to the amount of the Shipper’s negative imbalance. Shipper’s regular invoice for transportation services will include the money owed by Shipper under this Negative Imbalance Cash-Out, which will be subject to all payment and collection requirements applicable to that bill. Upon receipt of payment, Transporter will make gas accounting entries reducing the amount of Shipper’s negative imbalance accordingly.

Transporter shall post the Negative Imbalance Cash-Out Price for each month on its Web Site. The Negative Imbalance Cash-Out Price shall be equal to one hundred ten percent (110%) of the following index (the “Index”), computed for the month in which the imbalance arose:

The simple average of (1) the average price of gas at the Dawn, Ontario price point and (2) the average price of gas at the Dominion, South Point price point, as such prices are reported in Natural Gas Intelligence’s Weekly Gas Price Index.

- (b) Clearing of Positive Imbalances. Should such imbalance be positive, the imbalance shall be subject to Positive Imbalance Cash-Out.

The Positive Imbalance Cash-Out Price is a price per Dth which is applied to the amount of the Shipper's positive imbalance. Transporter will refund, credit or otherwise pay to Shipper the Positive Imbalance Cash-Out Price in return for Transporter's retaining the positive imbalance quantities at no further cost to Transporter, free and clear of any claims by any adverse party including Shipper. Shipper's regular invoice for transportation services will include a credit or refund for the money owed to Shipper under this Positive Imbalance Cash-Out. Upon sending that invoice, Transporter will make gas accounting entries reducing the amount of Shipper's positive imbalance accordingly. Transporter shall post the Positive Imbalance Cash-Out Price for each month on its Web Site.

The Positive Imbalance Cash-Out Price shall be equal to ninety percent (90%) of the Index as defined in Section 4.9 (a) hereof.

- (c) Transporter may, from time to time, purchase gas for receipt into its system or sell Gas for delivery out of its system in order to balance or maintain the operational integrity of its system. These transactions ("Operational Transactions") may be conducted on a first-come, first-served basis at posted prices, or pursuant to an open auction or electronic gas trading system, or negotiated directly with third parties. The receipt or delivery point for Operational Transactions shall be (1) the interconnection between Transporter's system and the facilities of TransCanada Gas Pipelines, Ltd., at Chippawa, Ontario, (2) the interconnection between Transporter's system and the facilities of Millennium Pipeline Company, L.L.C. at Corning, New York, or (3) a producer interconnection in Jackson, Pennsylvania.
- (d) Crediting of Cash-Out and Operational Transaction Revenues in Excess of Costs. For purposes of this Subsection 4.9 (d), an "Annual Billing Period" shall be the twelve month period commencing each April and ending the following March 31. Subsequent to the end of each Annual Billing Period, Transporter shall compare (i) the revenues received by Transporter under the cash-out procedures and revenues from Operational Transactions

with (ii) the costs incurred by Transporter under such cash-out procedures, and costs incurred in Operational Transactions. If the revenues received exceed the costs incurred, then Transporter shall credit, within 60 days of the end of the Annual Billing Period, the net overrecoveries to FT and FTNN Shippers on a pro rata basis in accordance with the transportation volumes Transporter has delivered to each such Shipper during the Annual Billing Period. Such refund may be accomplished by a credit payment or a credit against any amounts owed by Shipper to Transporter and in either case shall be accompanied by an accounting showing the basis for the credit. If the revenues received are less than the costs incurred, then Transporter shall carry forward the net underrecoveries to the subsequent Annual Billing Period and may offset such net underrecoveries against any future net overrecoveries that may occur in a subsequent Annual Billing Period.

4.10 Balancing at Contract Termination

- (a) **Transportation Service:** Following the termination of one or more transportation service agreements, and unless one or more other service agreements remain in effect following such termination, Shipper shall be required to resolve any cumulative imbalance within thirty (30) days after the effective date of termination, or within such longer period of time mutually agreed upon by Shipper and Transporter.

If after such balancing period, Transporter determines that a negative imbalance remains, such imbalance shall be cleared in accordance with Section 4.9(a) of these General Terms and Conditions.

If after such balancing period, Transporter determines that a positive imbalance remains, such imbalance shall be cleared in accordance with Section 4.9(b) of these General Terms and Conditions.

- (b) **Storage Service:** If, upon the effective date of termination of storage service under the FSNN or ISS Rate Schedule, Shipper's Storage Balance is positive, then the Shipper will withdraw such quantities or transfer such quantities to another shipper pursuant to Section 29 of the General Terms and Conditions within thirty (30) days of such effective date, or within such longer period of time mutually agreed upon by Shipper and Transporter. During such time period, Shipper's use of Transporter's storage capacity shall be subject to limitation under Section 9.3 of the General Terms and Conditions as if it were scheduled pursuant to the ISS Rate Schedule. Consequently, Shipper may be required to withdraw or transfer its Storage Balance prior to the end of such time period if necessary to free storage capacity for use by firm storage customers. Any quantities remaining in Shipper's Storage Balance at the conclusion of such time period shall be cleared as a positive imbalance as set forth at Section 4.9(b) of the General Terms and Conditions. If, upon the effective date of termination of storage service, Shipper's Storage Balance is negative, then the Shipper will within thirty (30) days of such effective date, or within such longer period of time mutually agreed upon by Shipper and Transporter, deliver sufficient quantities of gas to make up the negative balance. If the Shipper does not deliver

sufficient quantities of gas within that time period, the Shipper shall pay Transporter the Negative Imbalance Cash-Out Price, as set forth in Section 4.9(a) of the General Terms and Conditions, for any remaining negative imbalance.

4.11 Service Agreement Administration. In the event that Shipper does not nominate or utilize its Service Agreement under Rate Schedule IT for a period of six (6) Months, Transporter may contact shipper for the purposes of determining Shipper's intent to keep the agreement in place.

If after four (4) such six Month periods during which Shipper has not nominated or utilized its Service Agreement, Transporter may terminate such agreement effective on the first Day of the second Month following the Month in which Transporter gives Shipper notice of such termination.

4.12 Agency Arrangements

A Web Site User may delegate to a third party (“Web Site User’s Agent”) authority to exercise certain or all rights and perform certain or all obligations set forth in one or more of the agreements entered into between Web Site User and Transporter or to perform tasks as such Web Site User has otherwise determined and agreed with such third party (“Web Site User Agreements”), subject to the following conditions. A Web Site User may delegate to as many third parties as it deems necessary, the specific rights and obligations set forth above, pursuant to the terms and conditions of the respective Agency Agreement and the terms and conditions of the underlying Web Site User Agreements. A Web Site User may not delegate to more than one third party the same rights and/or obligations for a Web Site User Agreement(s), pursuant to the terms and conditions of the applicable Agency Agreement.

- (a) Web Site User and Web Site User’s Agent to whom Web Site User is delegating its responsibilities must enter into an Agency Agreement a form of which is available on Transporter’s website or such agreement provided by the Web Site User to Transporter, and which shall include language that requires the Agent abide by the terms and conditions of this tariff. Web Site User’s Agent shall have all rights and obligations under the Delegated Agreements as set forth in the Agency Agreement. Web Site User’s delegation to its Agent(s) pursuant to this Section 13.3 shall not confer to either Web Site User or Web Site User’s Agent(s) rights outside of or in contravention of the Terms and Conditions of the Delegated Agreements.
- (b) Transporter may rely on communications and actions of Web Site User’s Agent that are within the scope of the applicable Agency Agreement. Such communications with, and actions by, the Web Site User’s Agent shall be deemed communications with or actions by Web Site User. Web Site User shall indemnify and hold Transporter harmless from suits, actions, costs, losses and expenses (including, without limitation, attorney’s fees) arising from claims associated with Transporter’s reliance on such communications and actions of Web Site User’s Agent. If Web Site User’s Agent fails to meet such obligations under the Delegated Agreements, then, without Transporter being obligated to proceed against Web Site User’s Agent, Web Site User shall be liable for all obligations under the Delegated Agreements.

- (c) A third party may administer and aggregate rights under multiple Delegated Agreements as the designated agent for one or more Web Site Users; provided however, that such agent (1) shall separately administer and account for each such Delegated Agreement, including without limitation submitting nominations and calculating any imbalances, and (2) shall utilize such Delegated Agreements for the transportation, storage, supply aggregation, or balancing of gas for only those Web Site Users that have delegated the rights and obligations under their Delegated Agreements.

5. MEASUREMENT AND MEASUREMENT EQUIPMENT

- 5.1 (a) The Volume of Gas delivered at the Point(s) of Receipt and at the Point(s) of Delivery shall be measured by one or more of the following:
- (i) An orifice meter, designed, installed, maintained and operated as recommended in the latest issue of American National Standard ANSI/API 2530 (American Gas Association Gas measurement; Report No. 3), entitled “Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids”, as such publication may be revised from time to time (hereinafter referred to as “AGA Report No. 3”); or
 - (ii) A turbine meter, designed, installed, maintained and operated as recommended in the latest issue of American Gas Association Transmission Measurement Committee Report No. 7, entitled “Measurement of Gas by Turbine Meters”, as such publication may be revised from time to time (hereinafter referred to as “AGA Report No. 7”);
 - (iii) A positive displacement meter, installed and operated in accordance with generally accepted industry practices; or
 - (iv) An ultrasonic meter, installed and operated in accordance with American Gas Association Transmission Measurement Committee Report No. 9, “Measurement of Gas by Multipath Ultrasonic Meters”.
- (b) Auxiliary measuring equipment shall be installed, maintained and operated in accordance with generally accepted industry practices.
- 5.2 (a) The volume of Gas delivered hereunder at each Point of Receipt and Point of Delivery shall be calculated by means of an electronic flow computer located at, or by the processing of meter charts recorded at, each Point of Receipt

or each Point of Delivery, in either case in the following manner:

- (i) When the measuring equipment is an orifice meter, the flow of Gas through the meter shall be computed in the manner recommended In AGA Report No. 3, properly using all factors set forth therein.
 - (ii) When the measuring equipment is a turbine meter, the volume of Gas delivered through the meter shall be computed in the manner recommended in AGA Report No. 7, properly using all factors set forth therein.
 - (iii) When the measuring equipment is a positive displacement meter, the volume of Gas delivered through the meter shall be computed by properly applying, to the volume delivered at flowing gas pressures and temperatures, correction factors for (1) absolute static pressure, (2) flowing Gas temperature, and (3) compressibility ratio.
- (b) The volume of Gas delivered hereunder shall be computed using the standards and factors determined as follows:
- (i) The unit of volume for the purpose of measurement shall be an Mcf of sixty (60) degrees Fahrenheit and a pressure of 14.73 pounds per square inch absolute. For the purpose of determination of equivalent quantities hereunder, the dekatherm equivalent of such unit of volume shall be determined by multiplying each such unit of volume by the total heating content of the Gas delivered hereunder (adjusted to a common temperature and pressure base) and by dividing the result by one thousand (1,000).
 - (ii) The average absolute atmospheric (barometric) pressure at each Point of Receipt and each Point of Delivery shall be assumed to be fourteen and four-tenth (14.4) pounds per square inch, irrespective of the actual the actual location or elevation above sea level of the Point of Receipt or Point of Delivery or

of variations in actual atmospheric pressure from time to time.

- (iii) The flowing temperature of the Gas shall be determined by means of an instrument of standard manufacture accepted in the industry for this purpose.
- (iv) The supercompressibility factor used in computing the volume of Gas delivered through an orifice meter shall be determined in a manner consistent with the procedure presented in the American Gas Association Transmission Measurement Committee Report No. 8 entitled “Compressibility factors of Natural Gas and Other Related Hydrocarbon Gases.”
- (v) The specific gravity of the Gas used in computing the volume of Gas delivered through a meter shall be determined by means of an instrument of standard manufacture accepted in the industry for this purpose installed at a point to measure the specific gravity of the Gas stream from which Gas is being delivered at the Point of Receipt or Point of Delivery.
- (vi) The compressibility ratio factor “s” used in computing the volume of Gas delivered through a turbine meter or a positive displacement meter shall be determined by the equation $s = (F_{pv})^2$, in which “(F_{pv})” is the supercompressibility factor determined as described in subparagraph (iv) of this subsection (b).
- (vii) In determining the flowing temperature factor, supercompressibility factor, and compressibility ratio factor “s” for use in computing the volume of Gas delivered through a meter, the flowing gas temperature for only the period(s) of time that Gas was flowing through the meter shall be used.

5.3 All flow, measuring, testing and related equipment shall be of standard manufacture and type approved by Transporter. If

applicable, Transporter or Shipper may install check measuring equipment, provided that such equipment shall be so installed as not to interfere with the operations of the operator. Shipper, in the presence of Transporter, shall have access to measuring equipment of Transporter at all reasonable times, and Transporter shall have such access to any measuring equipment of Shipper, in the presence of Shipper, but the reading, calibrating, and adjusting thereof and the changing of charts, if any, shall be done by the operator of the facilities. Transporter or Shipper shall have the right to be present at the time of the installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done by the operator of the measuring equipment. The records from such measuring equipment shall remain the property of the operator, but upon request, the other party may request records, including charts, if any, together with calculations therefrom for inspection, subject to return within thirty (30) Days after receipt thereof. Reasonable care shall be exercised in the installation, maintenance and operation of the measuring equipment so as to avoid any inaccuracy in the determination of the volume of Gas received and delivered.

The accuracy of all measuring equipment shall be verified by operator at reasonable intervals, and if requested, in the presence of representatives of the other party, but neither Transporter nor Shipper shall be required to verify the accuracy of such equipment more frequently than once in any thirty (30) Day period. If the operator agrees to verification and test of measuring equipment and fails to perform such verification and testing, then the other party shall have the right to cease or temporarily discontinue service under this Agreement relative to such measuring equipment. If either party at any time desires a special test of any measuring equipment, it will promptly notify the other party and the parties shall then cooperate to secure a prompt verification of the accuracy of such equipment. Transportation and related expenses involved in the testing of meters shall be borne by the party incurring such expenses.

The operator, for purposes of this section, shall be the owner of the equipment referenced herein, or the agent of such owner, or such other person as the parties may agree in writing.

If, upon any test, any measuring equipment is found to be in error, such errors shall be taken into account in a practical manner in

computing the deliveries. If the resultant aggregate error in the computed receipts or deliveries is not more than two percent (2%), then previous receipts or deliveries shall be considered accurate. All equipment shall, in any case, be adjusted at the time of test to record correctly. If, however, the resultant aggregate error in computing receipts or deliveries exceeds two percent (2%), at a recording corresponding to the average hourly rate, of Gas flow rate for the period since the last preceding test, the previous recordings of such equipment shall be corrected to zero error for any period which known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of the last test.

- 5.4 In the event any measuring equipment is out of service, or is found registering inaccurately and the error is not determinable by test, previous recordings of receipts or deliveries through such equipment shall be determined as follows; provided, however, that the correction period shall not exceed one (1) year:
- (a) by using the registration of any check meter or meters if installed and accurately registering, or in the absence of (a);
 - (b) by correcting the error if the percentage of error is ascertainable by calibration, special test or mathematical calculation, or in the absence of both (a) and (b) then;
 - (c) by estimating the quantity of receipt or delivery based on receipts or deliveries during preceding periods under similar conditions when the meter was registering accurately.
- 5.5 If at any time during the term hereof, a new method or technique is developed with respect to Gas measurement or the determination of the factors used in such Gas measurement, such new method or technique may be substituted so long as it meets applicable American Gas Association standards or is otherwise acceptable to both parties.

- 5.6 The parties agree to preserve for a period of at least three (3) years or such longer period as may be required by public authority, all test data, charts, if any, and other similar records.

6. QUALITY

6.1 Heat Content. Heat content shall mean the gross heating value per cubic foot of Gas delivered at each Point of Receipt and Point of Delivery. The Gas at each Point of Receipt shall have a heat content not greater than 1,200 BTU's per cubic foot nor less than 950 BTU's per. Transporter shall have the right to waive such BTU content limits if Transporter is able to accept Gas with a BTU content outside such limits without affecting Transporter's operations. The total heating value per cubic foot of Gas shall be determined at each Point of receipt and each Point of Delivery by one of the following methods:

- (a) use of an instrument of standard manufacture installed to measure the heating value of the Gas being delivered at the Point of Receipt or the Point of Delivery.
- (b) other methods mutually agreed upon by both parties.

For the purpose of calculating receipts and deliveries, the heat content of the Gas so determined at each such point shall be deemed to remain constant at such point until the next determination. The unit of quantity for the purpose of determining total heating value shall be one (1) cubic foot of Gas on a dry basis at a temperature of sixty degrees (60) Fahrenheit and an absolute pressure of 14.73 psia.

6.2 Freedom from Objectionable Matter. The Gas received and delivered hereunder shall conform to the following criteria:

- (a) shall be commercially free from dust or other solid or liquid or gaseous matter which might interfere with its merchantability or cause injury to or interference with proper operation of the lines, regulators, meters and other equipment of Transporter;
- (b) shall not contain more than one (1) grain of hydrogen sulfide per one hundred (100) cubic feet of Gas, as determined by methods prescribed in Standards of Gas Service, Circular of the National Bureau of Standards, No. 405, page 134 (1934 edition), and shall be considered free

from hydrogen sulfide if a strip of white filter paper, moistened with a solution containing five percent (5%) by weight of lead acetate, is not distinctly darker than a second paper freshly moistened with the same solution, after the first paper has been exposed to the Gas for one and one-half (1 1/2) minutes in an apparatus of approved form, through which the Gas is flowing at the rate of approximately five (5) cubic feet per hour, the Gas from the jet not impinging directly upon the test paper; or the H₂S content may be determined by an instrument or approved type and by approved methods agreeable to the parties;

- (c) shall not contain more than twenty (20) grains of total sulfur (including the sulfur in any hydrogen sulfide and mercaptans) per one hundred (100) cubic feet of Gas;
- (d) shall not at any time have an oxygen content in excess of one percent (1%) by volume and the parties hereto shall made every reasonable effort to keep the Gas free of oxygen;
- (e) shall not contain as nearly as practicable any free water nor contain more than seven (7) pounds of water vapor per million cubic feet of Gas;
- (f) shall not contain more than two percent (2%) by volume of carbon dioxide;
- (g) shall be delivered at a temperature not in excess of one hundred twenty degrees (120) Fahrenheit or less than forty degrees (40) Fahrenheit.

6.3 Failure to Meet Specifications. Should any Gas tendered for delivery hereunder fail at any time to conform to any of the specifications of this Article, the affected Party shall notify the other party of any such failure and the affected party may at its option suspend all or a portion of the receipt of any such Gas, and shall be relieved of obligations hereunder for the duration of such time as the Gas does not meet such specifications.

- 6.4 Commingling. It is recognized that Gas delivered by Shipper will be commingled with other Gas transported hereunder by Transporter. Accordingly, the Gas of Shipper shall be subject to such changes in heat content as may result from such commingling and Transporter shall, notwithstanding any other provision herein, be under no obligation to redeliver for Shipper's account, Gas of a heat content identical to that caused to be delivered by Shipper to Transporter.

7. BILLING AND PAYMENT

- 7.1 Billing. On or before the ninth (9th) Business Day of each Month, Transporter shall render to Shipper a statement of the amount due for the preceding Month under the applicable Rate Schedule(s). In computing the amounts due, Transporter may utilize estimates of the quantity of Gas received from or delivered to Shipper during a Month, in place of actual quantities when actual quantities are not reasonably available; provided that adjustments shall be made in later statement for differences between such estimated and actual quantities.

When information necessary for billing purposes is in the control of Shipper, Shipper shall furnish such information to Transporter on or before the third (3rd) Day of the Month. Both Transporter and Shipper have the right to examine at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions hereof.

- 7.2 Payment. Shipper shall pay Transporter by wire transfer of Federal Funds which are made immediately available to Transporter at such bank account as Transporter shall designate, on or before the twenty-fifth (25th) day of the month in which the invoice is received, for all services rendered by Transporter during the preceding billing period, as shown by the invoice, except when the twenty-fifth (25th) day of the month is a Saturday or Sunday or federal bank holiday, in which case payment is due on the following business day. Provided, however, a Shipper whose monthly invoice total amount due is less than \$50,000.00 may elect to make payment by check to be received by Transporter on or before the twenty-fifth (25th). Shipper shall identify each payment with the invoice number specified by Transporter on the invoice to which the payment relates. Transporter, in its sole discretion, reserves the right to waive Shipper's underpayment on a final invoice of an inactive account if the underpayment amount is trivial.

If presentation of an invoice to Shipper is delayed after the ninth (9th) business day of the month, the time of payment shall be extended accordingly by Transporter, unless Shipper is responsible for such delay.

Should Shipper fail to pay all of the amount of any invoice, as herein provided, when such amount is due, interest on the unpaid portion of the invoice shall accrue at the then effective prime interest rate or rate charged by Citibank, N.A. New York, New York, to responsible commercial and industrial borrowers, plus two percentage points. Transporter may suspend service to any Shipper which is delinquent in payments, provided that Transporter shall give Shipper written notice of the delinquency and of Transporter's intent to suspend if the delinquency is not remedied within fifteen (15) days of the date of the notice. During a suspension of service, Shipper shall have no right to submit nominations for transportation service pursuant to Section 4, but a firm shipper may release capacity pursuant to Section 12. A suspended shipper shall be responsible for all charges due under the service agreement; provided however, that for time periods where no release of a suspended Firm Recourse Rate Shipper's capacity is effective, the reservation charge applicable to such shipper shall be reduced by the applicable percentage shown on the table appearing as Part 4 of this tariff.

Transporter may terminate service to any Shipper which is delinquent in payments, provided Transporter shall give Shipper written notice of the delinquency and of Transporter's intent to curtail or terminate if the delinquency is not rendered within thirty (30) days of the notice and then only upon written notice to the Commission and, if required by the Commission's regulations, authorization by the Commission.

However, if Shipper in good faith shall dispute the amount of any such invoice or part thereof and shall pay to Transporter such amounts as it concedes to be correct, accompanied by documentation identifying the basis for the dispute, and at any time within thirty (30) days after a demand made by Transporter, shall furnish good and sufficient surety bond, guaranteeing payment to Transporter of the amount ultimately found due upon such bills after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Transporter shall not be entitled to suspend or terminate service on account of such disputed claim while so secured, until default be made in the conditions of such bond. Transporter, in its sole discretion, reserves the right to waive trivial interest upon receipt of payment for all outstanding balances, excluding such interest.

- 7.3 Verification and Correction of Errors. Both Transporter and Shipper shall have the right to examine, at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of the underlying transportation service agreement. As set forth in NAESB Standard 3.3.15, “Prior period adjustment time limits should be 6 months from the date of the initial transportation invoice and 7 months from date of initial sales invoice with a 3-month rebuttal period, excluding government-required rate changes. This standard shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Parties’ other statutory or contractual rights shall not otherwise be diminished by this standard. Mutual agreement between parties, legal decisions, and regulatory guidance may be necessary to determine if the event qualifies for an extension of the above time periods.”

8. LIABILITY IN DAMAGES

Except as otherwise provided in these General Terms and Conditions or Shipper's service agreement, in no event shall Shipper or Transporter be liable to the other for special, indirect, consequential (including loss of profits), incidental or punitive damages, whether or not such damages arise out of breach of contract, negligence, tort, or strict liability; provided, however, unless otherwise agreed to by Transporter and Shipper, the foregoing shall not limit Transporter's liability, if any, to Shipper, nor Shipper's liability, if any, to Transporter, arising out of gross negligence, willful misconduct, or bad faith actions. Nothing in this provision will limit Transporter's liability, if any, to Shipper, nor Shipper's liability, if any, to Transporter, for direct damages.

9. CURTAILMENT

Following the scheduling of services, Transporter shall have the right to curtail services on a system-wide basis or segment-by-segment basis (i) as a result of conditions of force majeure, as described at Section 30.6 of these General Terms and Conditions, (ii) when necessary, in Transporter’s reasonable judgment, to avert a material threat to the integrity of its system or to remedy an unexpected loss of capacity, or (iii) when continuation of service would impair Transporter’s ability to render a service of a higher priority, as set forth in this Section 9. The allocation procedures and priorities set forth in this Section 9 shall apply to both system-wide and segment-by-segment limitations or curtailments, insofar as is possible.

Transporter will allocate capacity in the manner set forth in this Section 9 only to the extent it is reasonably practical to do so.

It is recognized that the allocation of Transporter’s capacity may be affected by the capabilities of Transporter’s measurement, control and communication equipment, as it exists from time to time, the operational requirements of Transporter or by factors beyond the control of Transporter, including but not limited to variations in the requirements or markets served by Transporter.

In the event of a curtailment of service under this provision, Transporter shall provide such notice as is reasonable under the circumstances.

For purposes of this Section 9, a “discounted rate” shall include a negotiated rate that is less than the maximum rate at the time in question, and for such negotiated rates, a “discount” shall mean the difference between the maximum rate and the negotiated rate at such time.

If, on any day, Transporter determines that the capacity of its system, or any portion thereof, including the points at which gas is tendered for transportation or delivered by Transporter, is insufficient to serve all transportation requirements which are otherwise scheduled for such day, and curtailment of service under this Section 9 is applicable, capacity which requires allocation shall be allocated in a manner which results in curtailment of capacity, to zero (0) if necessary, sequentially in reverse order of Section 4.2(a), 4.2(b), 4.2(c) or 4.2(d), as applicable, except that capacity scheduled under any of Subsections 4.2(a)(i)-(iii) or Subsections 4.2(b)(i)-(iii) shall be combined into a single category. Within each category, capacity shall be curtailed on a pro rata basis based upon the quantities of gas scheduled by Transporter, or if a shipper makes multiple nominations under the

same contract, in accordance with the rankings provided by Shipper in its nomination.

10. UNAUTHORIZED TENDERS AND RECEIPTS

10.1 Definition

Unauthorized tenders and receipts are amounts of gas delivered to Transporter or taken by Shipper from Transporter:

- (a) in the absence of a transportation service agreement and submission of a nomination pursuant to Section 4.1 of these General Terms and Conditions,
- (b) following an interruption of service by Transporter pursuant to Rate Schedule IT or ISS,
- (c) in violation of an Operational Flow Order issued by Transporter to Shipper pursuant to Section 16 of these General Terms and Conditions,
- (d) following a suspension of service pursuant to Section 3.3 or Section 7 of these General Terms and Conditions,
- (e) following a discontinuance or curtailment of service pursuant to Section 9 of these General Terms and Conditions, or
- (f) following a discontinuance, curtailment or termination of service authorized by any other provision of this tariff or agreement executed thereunder.

Unauthorized tenders and receipts also include the following:

- (g) a Shipper's failure to provide Gas to Transporter to rectify an imbalance when required by operating conditions shall constitute an unauthorized receipt of the quantities specified in Transporter's notice pursuant to Section 3.1 of these General Terms and Conditions;
- (h) a Shipper's failure to take delivery of Gas to rectify an imbalance when required by operating conditions shall constitute an unauthorized tender of the quantities specified in Transporter's notice pursuant to Section 3.1 of these General Terms and Conditions;

- (i) receipts of gas that constitute unscheduled overruns of the contract quantities under the service agreement(s) between Shipper and Transporter during the effectiveness of an Operational Flow Order prohibiting such overruns shall constitute an unauthorized receipt of such quantities; and
- (j) the incurrence or aggravation of a daily imbalance subject to a daily imbalance penalty under Section 4.7 while an OFO applicable to Shipper is in effect.

Transporter will provide its Shippers with reasonable notice of any interruption, discontinuance, curtailment or termination of service or of any Operational Flow Orders and Shipper shall be permitted twenty-four (24) hours, or such lesser time as is required to protect the integrity of Transporter's system, to reduce its tenders or receipts in compliance with such notice.

10.2 Disposition of Unauthorized Tenders and Receipts

Transporter shall retain any unauthorized tenders at no cost and free and clear of any adverse claims of any party. Unauthorized receipts by a Shipper shall be treated as an imbalance for purposes of Section 4 of these General Terms and Conditions until such imbalance is cleared.

10.3 Charges Associated with Unauthorized Tenders and Receipts

- (a) If the unauthorized tender or receipt occurs during the effectiveness of a Level 2 OFO, as defined at Section 16.5 of these General Terms and Conditions, and aggravates the condition resulting in the issuance of such OFO, it shall be subject to a charge equal to \$20 per Dth plus the Cost of Gas, as defined below.
- (b) If the unauthorized tender or receipt occurs during the effectiveness of a Level 3 OFO, as defined at Section 16.5 of these General Terms and Conditions, and aggravates the condition resulting in the issuance of such OFO, it shall be subject to a charge equal to \$25 per Dth plus the Cost of Gas, as defined below.

- (c) Otherwise, the unauthorized tender or receipt shall be subject to a charge equal to \$10 per Dth plus the Cost of Gas, as defined below.
- (d) Charges for unauthorized tenders and receipts shall not be assessed if Shipper adjusts its tenders or receipts within the time period applicable to Transporter notice; or if the unauthorized tenders or receipts occurred at an interconnection identified on Transporter's Web Site as a point where Transporter has complete and unrestricted control of gas deliveries.
- (e) Subsequent to each Annual Billing Period, Transporter shall compare the Creditable Penalties, as defined below, attributable to such period, with the Incremental Costs, as defined below, attributable to such period. If such Creditable Penalties exceed such Incremental Costs, Transporter shall credit the difference (hereinafter "Net Creditable Penalties") to its FT and FTNN shippers in accordance with the following methodology. First, the Net Creditable Penalties will be allocated to each month during the Annual Billing Period in proportion to the Creditable Penalties received by Transporter during such month. Second, for each month during the Annual Billing Period, Net Creditable Penalties allocated to each month shall be credited to FT and FTNN shippers on a pro rata basis in accordance with the transportation quantities Transporter has delivered to or for the account of each such Shipper during the month, provided, however, in such allocation deliveries to or for the account of any shipper that incurred an Imbalance Penalty under Section 4.7 of these General Terms and Conditions or a Charge for Unauthorized Tenders or Receipts under Section 10.3 hereof within such month shall be deemed to be zero (0) Dth. Transporter shall make credit payments or shall otherwise provide the credit hereunder within 60 days of the end of the Annual Billing Period. Such credit may be accomplished by a credit against any amounts owed by Shipper to Transporter. If Incremental Costs exceed Creditable Penalties with respect to any Annual Billing Period, Transporter shall carry forward the net underrecoveries to the subsequent Annual Billing Period and may offset such net underrecoveries against any future Net Creditable Penalties that may occur in a subsequent Annual Billing Period. For purposes of this section, the term "Creditable Penalties" shall include the sum of (A) Imbalance Penalties collected by Transporter under Section 4.7 of these General Terms and Conditions; (B) Charges for unauthorized tenders and

receipts collected by Transporter under Section 10.3 hereof, and (C) interest on the amounts described in (A) and (B) above accrued on a monthly basis at the then effective prime interest rate (Citibank, N.A., New York, New York). For purposes of this section, the term “Incremental Costs” shall include reasonable costs incurred with respect to transactions with other parties to replace gas or otherwise to respond to operational consequences of the imbalances or events giving rise to Creditable Penalties that are not offset against cash-out revenues under Section 4.9(d) of these General Terms and Conditions, together with interest thereon accrued on a monthly basis at the then effective prime interest rate (Citibank, N.A., New York, New York).

Types of costs that may constitute Incremental Costs hereunder include, but are not limited to, the cost of replacement gas and the cost of services or penalties incurred with respect to other transporters of gas in response to the operational consequences set forth above. Incremental Costs shall not include any allocation of a portion of regular, ongoing expenses of Transporter that would have been incurred irrespective of the imbalances or events giving rise to Creditable Penalties. For purposes of this section, “Annual Billing Period” shall be the period commencing November 1, 2008 and ending March 31, 2009, and thereafter the twelve month period commencing each April 1 and ending the following March 31.

- (f) The payment of a charge for unauthorized tenders or receipts shall not under any circumstances be considered as giving such party the right to make unauthorized tenders or receipts; nor shall such payment foreclose Transporter or any other party from pursuing any available remedy against the offending party for making such unauthorized tenders or receipts.
- (g) The penalty applicable to a shipper for an unauthorized tender or receipt within the scope of Subsection 10.1(j) shall be reduced by the amount of the daily imbalance penalty assessed to such shipper under Section 4.7 with respect to the imbalance penalized under Subsection 10.1(j).
- (h) For purposes of this Subsection 10.3, the “Cost of Gas” shall mean the sum of (i) the simple average of the average gas prices at the Dawn, Ontario and Dominion, South Point price points, as such prices are reported in Natural Gas Intelligence’s Weekly Gas

Price Index for the week that includes the day in question and (ii) any penalties billed to Transporter by another pipeline in consequence of the daily imbalance caused by Shipper; provided, however, that if Transporter makes a purchase of gas in direct response to one or more particular daily imbalances, the price at which such gas is purchased, if higher than the index price set forth in clause (i) above, shall apply in lieu of such index price.

10.4 Indemnification and Waiver

Shipper (or Operator, as the case may be) shall indemnify Transporter against, hold it harmless from, and undertake and defense of Transporter with respect to any and all claims, losses, damages, expenses and injuries arising from its unauthorized tender or receipt. Shipper waives any and all claims and demands against Transporter arising from an unauthorized tender or receipt by another Shipper, other than claims based on a Shipper's loss of gas supply due to Transporter's negligence or willful misconduct.

11. POLICY WITH RESPECT TO CONSTRUCTION OF FACILITIES

- 11.1 Except as provided in Section 11.2 herein, Shipper shall reimburse Transporter (a) for the costs of any facilities installed by Transporter with Shipper's consent to receive, measure, transport or deliver natural gas for Shipper's account and (b) for any and all filings and approval fees required in connection with Shipper's Service Agreement that Transporter is obligated to pay to the Commission or any other governmental authority having jurisdiction. Any reimbursement due Transporter by Shipper pursuant to this Section 11.2 shall be due and payable to Transporter within ten (10) days of receipt by Shipper of Transporter's bill(s) for same; provided, however, subject to Transporter's consent such reimbursement, plus carrying charges thereon, may be amortized over a mutually agreeable period not to extend beyond the primary contract term of the service agreement between Transporter and Shipper. Carrying charges shall be computed utilizing interest factors acceptable to both Transporter and Shipper.
- 11.2 Transporter may waive from time to time, at its discretion, all or a portion of the facility cost reimbursement requirement set forth in Section 11.1 if Transporter concludes that the revenues generated by Shipper's service agreement will be adequate to make construction of the facilities economical to Transporter. Transporter shall post the circumstances under which such waivers are granted on its web site to the extent required by Commission regulations. Shipper's service agreement may provide that a waiver of reimbursement hereunder will be rescinded, and Shipper will be obligated to reimburse Transporter for all or a specified portion of the facility cost reimbursement requirement, if, at any time, Transporter determines that Shipper is non-creditworthy, based on criteria no more demanding than those set forth in Section 2.2(b). All requests for waiver shall be handled by Transporter in a manner which is not unduly discriminatory. For purposes of determining whether a project is economical, Transporter will evaluate projects on the basis of various economic criteria, which will include the estimated transportation throughput, cost of the facilities, operating and maintenance as well as administrative and general expenses attributable to the facilities, the revenues Transporter estimates will be generated as a result of such construction, and the availability of capital funds on terms and conditions acceptable to Transporter. In estimating the revenues to be generated, Transporter will evaluate the existence of capacity limitations downstream of the facilities, the marketability of the capacity, the location of the markets, the interruptible versus the firm nature of the

transportation service, and other similar factors which impact whether the available deliverability will actually be utilized.

- 11.3 All requests for new interconnects must be made in writing. Except as provided in Section 11.2 herein, the party requesting the new interconnect shall reimburse Transporter or cause Transporter to be reimbursed for any and all reasonable costs and expenses incurred in constructing, establishing or modifying the facilities required to establish a new interconnection on existing facilities for receipt or delivery of Gas hereunder. In the alternative, the party requesting the interconnect may perform the construction at its own cost in compliance with Transporter's technical requirements. In this regard, all new receipt and delivery meters shall require EGM which shall be owned by Transporter and all new delivery meters shall require a Flow Control Device with pressure override features that can be remotely operated by Transporter. Transporter also must be the custody transfer party at the proposed facility.

In addition to the above requirements, Transporter will agree to construct a new interconnect or modify an existing interconnect on the following terms:

- (a) The construction of the new interconnect will not create any significant operational problems for Transporter;
- (b) The proposed interconnect will not adversely affect the rendition of existing service or adversely alter the operation of the pipeline system;
- (c) The new interconnect must be at a mutually agreeable location on Transporter system; provided, however, that Transporter may not deny a customer's request for specific placement of the interconnect without adequate operational, environmental, or legal justification;
- (d) In order to properly and prudently design and size the new interconnect, Transporter must be provided with reasonable and reliable data concerning the interconnecting facilities, including delivery pressures, and anticipated hourly, daily, monthly and annual volume levels of the service that supports the new interconnect and such other data as is reasonably required to construct the interconnect facility;

- (e) The new interconnect must not result in any minimum pressure receipt or delivery requirement by Transporter, unless Transporter agrees otherwise, such agreement shall not be unreasonably withheld, and Transporter shall not be responsible for any downstream parties' facilities, the operation or maintenance of such facilities, or the delivery of any unauthorized volumes to the facilities;
- (f) The service supporting the interconnect as well as the construction of the new facilities must conform with the provisions of this tariff as well as applicable regulatory requirements;
- (g) The proposed interconnect must not cause Transporter to be in violation of any applicable environmental or safety laws or regulations with respect to the facilities required to establish an interconnect with Transporter's existing facilities; and
- (h) The proposed interconnect must not cause Transporter to be in violation of its right-of-way agreements or any other contractual obligations with respect to the interconnect facilities.

Transporter will respond to each request for interconnect facilities within sixty (60) days after receiving a written request containing reasonably sufficient and reliable information necessary for Transporter to make a determination pursuant to this Section 11.

12. CAPACITY RELEASE

This Section 12 sets forth a firm capacity release mechanism pursuant to which Existing Shippers can voluntarily release and assign all or part of their firm capacity rights to a Potential Shipper or a Prearranged Shipper that wants to obtain that firm capacity. Existing Shippers may release and assign their firm capacity on Transporter only under this Section 12 of these General Terms and Conditions.

Except as otherwise specifically provided, written notices described in this Section 12 must be addressed to:

Empire Pipeline, Inc.
Transportation and Exchange Department
Building #5
365 Mineral Springs Road
Buffalo, New York 14210

Notices via facsimile transmission described in this Section 12 must be transmitted to (716) 827-2381.

Notices via email described in this Section 12 must be transmitted to Empirescheduling@natfuel.com.

12.1 Capacity Eligible For Release:

A Shipper under Rate Schedule FT, FTNN or FSNN may release its firm capacity in whole or in part, on a permanent or temporary basis, and on a recallable or non-recallable basis, provided that a notice requesting a release of capacity subject to an FSNN Service Agreement must be accompanied by a notice requesting a corresponding release of capacity subject to the associated FTNN Service Agreement of a quantity (to be reduced from the Existing Shipper's Contract MDQ and MDWTQ) equal to the MDWQ of the storage capacity to be released, and for a coincident term. Such Existing Shipper may propose a Prearranged Shipper to obtain its released capacity from Transporter.

12.2 Notice Required by Existing Shipper:

(a) Notice by Existing Shipper

An Existing Shipper must notify Transporter that it wants to release its capacity and the terms and conditions of such release (hereinafter called “Shipper’s Notice”). Such Shipper’s Notice may be communicated via written notice, email, facsimile transmission or via Transporter’s Web Site. Notices of prearranged deals may be transmitted via EDM. Such Shipper’s Notice shall provide the terms and conditions of the release as follows:

- (i) on a permanent or temporary basis;
- (ii) on a recallable or non-recallable basis, and if recallable by Shipper under Rate Schedule FT, FTNN or FSNN, whether the capacity is recallable at the Timely, Evening, Intraday 1, Intraday 2, Intraday 3 and Early Evening notification periods;
- (iii) As set forth in NAESB Standard 5.3.28, “[r]elease quantity should be expressed as a numeric quantity only” provided that:
 - (A) a release of storage capacity under Rate Schedule FSNN must be accompanied by a proportionate amount of Shipper’s MDWQ and MDIQ, and Shipper’s MDWQ and MDIQ may not be released without a proportionate amount of Shipper’s MSQ;
 - (B) a notice requesting a release of capacity subject to an FTNN Service Agreement shall specify whether the capacity to be released is associated with Shipper’s MDTQ or its MDWTQ; and
 - (C) a release of capacity associated with an FTNN Shipper’s MDWTQ shall be accompanied by a proportionate release of Shipper’s MDITQ.
- (iv) location of capacity to be released, and Point of Receipt and Point of Delivery associated therewith, each of which

points must be either (a) a Primary Point of Receipt and Point of Delivery under the source agreement, or (b) a secondary Point of Receipt or Point of Delivery provided that, in the case of a segmented release as described at Section 2.4 of Rate Schedule FT or FTNN, each Point of Receipt and Point of Delivery must be a Primary Point of Receipt or a primary or secondary Point of Delivery located along the Existing Shipper's transportation path;

- (v) the source agreements;
- (vi) the period of time or term (which must commence at the start of a day and expire at the end of a day), including any right of recall;
- (vii) the length of time the Existing Shipper's notice is to be posted, but not later than the time set by Section 12.3(a);
- (viii) any Prearranged Shipper (which must appear on Transporter's approved bidder list) proposed by the Existing Shipper to obtain released capacity under the rates, terms and conditions contained in the Shipper's Notice, (a) where the term of the proposed release is 31 days or less, whether the Existing Shipper wants Transporter to solicit bids for the capacity to be released, or (b) whether the release is exempt from the competitive bidding procedure because the Prearranged Shipper is either an asset manager under an asset management agreement as defined in Section 284.8(h)(3) of the Commission's regulations, or a marketer participating in a state-regulated retail access program as defined in Section 284.8(h)(4) of the Commission's regulations;
- (ix) As set forth in NAESB Standard 5.3.26, "[t]he Releasing Shipper should specify which one of the following methods is acceptable for bidding on a given capacity release Offer:
 - Non-Index-based release - dollars and cents,
 - Non-index-based release - percentage of maximum rate, or
 - Index-based formula as detailed in the capacity release offer.

The Bids for the given capacity release Offer should adhere to the method specified by the Releasing Shipper;

- (x) the standard(s) to be utilized by Transporter for determining the best bid for the capacity to be released and for selecting among more than one “best bid” (if different from the standards set forth at Section 12.5(a) hereof, which standards must be objectively stated, applicable to all Potential Shippers, and non-discriminatory);
- (xi) As set forth in NAESB Standard 5.3.8, “Reput method and rights should be specified at the time of the deal. Reput method and rights are individually negotiated between the Releasing Shipper and Replacement Shipper;”
- (xii) whether volumetric bids or bids based upon other variants of the rates applicable to the capacity to be released are to be solicited;
- (xiii) whether the Existing Shipper requests the assistance of Transporter’s Marketing Department in locating Potential Shippers for the capacity to be released;
- (xiv) whether the Replacement Shipper will be required to enter into an agreement with the Existing Shipper, and if so, a description of the terms and conditions of such agreement; and where the release is to an asset manager under an asset management agreement as defined in Section 284.8(h)(3) of the Commission’s regulations, the volumetric level of the asset manager’s delivery or purchase obligation and the time period during which that obligation is in effect;
- (xv) whether Potential Shippers may submit bids subject to contingencies that extend beyond the posting period applicable to the notice;
- (xvi) whether the Existing Shipper requests a release of further obligations to Transporter, as described in Section 12.7 hereof; and
- (xvii) if, pursuant to Section 12.4(d) hereof, the Potential Shipper or Prearranged Shipper will be subject to lesser

security requirements then those set forth in Section 2.2(e) of these General Terms and Conditions, a clear explanation of those lesser security requirements.

- (b) As set forth in NAESB Standard 5.3.14, “Offers should be binding until notice of withdrawal is received by the Transportation Service Provider on its Customer Activities Web site.” As set forth in NAESB Standard 5.3.16, “[t]he releasing party has the right to withdraw its Offer during the bid period, where unanticipated circumstances justify and no minimum Bid has been made.” The withdrawal must be via written notice, facsimile transmission or through email, or via EDM, including an affidavit establishing unanticipated circumstances justifying the withdrawal. A Shipper’s Notice of a prearranged deal transmitted via EDM must be withdrawn via EDM.
- (c) Transporter will support the function of reputting by releasing Shippers.

12.3 Posting of Shipper's Notices

- (a) Except as set forth in Section 12.3(b), Existing Shipper may deliver its completed notice to Transporter on any business day, but in order to be posted on the same day it must be received by Transporter no later than the deadline for offers set forth in Section 12.3(c).

If Shipper provides Transporter with a notice by means other than Transporter's Web Site, Transporter shall post Existing Shipper's completed notice on Transporter's Web Site upon receipt or as requested by Existing Shipper. If the Existing Shipper requests a posting time, Transporter will support such request insofar as it comports with the standard timeline set forth in this Section 12.

As set forth in NAESB Standard 5.3.12:

Bids and Offers should be complete before being posted. Only posted Offers and Bids should be available electronically.

- (b) Where an Existing Shipper's Notice requests a release of capacity to a Prearranged Shipper on Transporter's approved bidder list (i) for a term of 31 days or less and the Existing Shipper has not requested that its notice be posted for purposes of soliciting competitive bids, (ii) for a term of more than one year at the maximum tariff rate, or (iii) where the Existing Shipper's Notice designates the release as exempt from the competitive bidding procedure because the Prearranged Shipper is either an asset manager under an asset management arrangement as defined in Section 284.8(h)(3) of the Commission's regulations, or a marketer participating in a state-regulated retail access program, as defined in Section 284.8(h)(4) of the Commission's regulations, the notice will be posted for informational purposes only, and not to solicit bids. This Section 12.3(b) shall not be applicable to the posting of Existing Shipper Notices requesting a continuation of a release transaction previously posted for informational purposes only pursuant to clause (i) of this Section 12.3(b), or a renewal of such a previously posted transaction unless at least twenty-eight days have elapsed since the expiration of such transaction.

(c) Capacity release timeline:

As set forth in NAESB Standard 5.3.1:

[t]he capacity release timeline applies to all parties involved in the capacity release process provided that: 1) all information provided by the parties to the transaction is valid and the acquiring shipper has been determined to be credit-worthy before the capacity release bid is tendered, 2) for index-based capacity release transactions, the Releasing Shipper has provided the Transportation Service Provider (TSP) with sufficient instructions to evaluate the corresponding bid(s) according to the timeline, and 3) there are no special terms or conditions of the release. Further, the TSP may complete the capacity release process on a different timeline if the Offer includes unfamiliar or unclear terms and conditions (e.g. designation of an index not supported by the TSP).

The capacity release timeline will also not apply if the Existing Shipper requests a release from further obligations under its service agreement pursuant to Section 12.7 hereof.

As set forth in NAESB Standard 5.3.2:

For biddable releases (1 year or less):

- Offers should be tendered such that they can be posted by 9:00 a.m. on a Business Day.
- Open season ends at 10:00 a.m. on the same or a subsequent Business Day.
- Evaluation period begins at 10:00 a.m. during which any contingencies are eliminated, determination of best Bid is made, and ties are broken.
- If no match is required, the evaluation period ends and the Award is posted by 11:00 a.m.
- Where match is required, the match is communicated by 11:00 a.m., the match response occurs by 11:30 a.m., and the Award is posted by 12:00 Noon.
- The contract is issued within one hour of the Award posting (with a new contract number, when applicable).
- Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.

For biddable releases (more than 1 year):

- Offers should be tendered such that they can be posted by 9:00 a.m. on a Business Day.
- Open season shall include no less than three 9:00 a.m. to 10:00 a.m. time periods on consecutive Business Days.
- Evaluation period begins at 10:00 a.m.. during which any contingencies are eliminated, determination of best Bid is made and ties are broken.
- If no match is required, the evaluation period ends and the Award is posted by 11:00 a.m.
- Where match is required, the match is communicated by 11:00 a.m., the match response occurs by 11:30 a.m., and the Award is posted by 12:00 noon.
- The contract is issued within one hour of Award posting (with a new contract number, when applicable).
- Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.

For non-biddable releases:

The posting of prearranged deals that are not subject to bid are due no later than one hour prior to the nomination deadline for the applicable cycle, pursuant to NAESB WGQ Standard No. 1.3.2. The posting deadlines are:

- Timely Cycle 12:00 Noon
 - Evening Cycle 5:00 p.m.
 - Intraday 1 Cycle 9:00 a.m.
 - Intraday 2 Cycle 1:30 p.m.
 - Intraday 3 Cycle 6:00 p.m.
- The contract is issued within one hour of the Award posting (with a new contract number, when applicable).
 - Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.

12.4 Eligible Bidders and Bidding Procedure

- (a) During the posting period applicable to an Existing Shipper's Notice that is subject to competitive bidding, Transporter will accept bids from Potential Shippers that are listed on Transporter's approved bidder list and that satisfy Transporter's credit requirements for the capacity proposed to be released. A request to be added to Transporter's approved bidder list must be tendered to Transporter in writing to:

Empire Pipeline, Inc.
Attn: Empire Contract Administration
6363 Main Street
Williamsville, New York 14221

Such requests must include the information required by Section 2.1 of these General Terms and Conditions and by Transporter's Transportation Service Request Form as posted on the Web Site from time to time. To be placed on and to remain on Transporter's approved bidder list, a Potential Shipper must satisfy, initially and on a continuing basis, Transporter's credit requirements as outlined in Section 2.2 of these General Terms and Conditions and execute and maintain in force a Master Service Agreement for Capacity Release Transactions in the form which appears as Form 9.010 in Part 9 of this tariff.

- (b) Bids may be submitted by Potential Shippers to Transporter via written notice, facsimile transmission, or email during the posting period applicable to the Existing Shipper's Notice. Transporter will post the terms of each complete bid, but will not post the identity of the bidder, on the Web Site. Posted bids shall be accessible via EDM.

Transporter shall reject bids which do not match or exceed any minimum rate or term specified by the Existing Shipper's Notice, or are in other respects incomplete or non-responsive to such notice. No rate limitation applies for releases of capacity for a term of one year or less if the release is to take effect on or before one year from the date on which Transporter is notified of the release; otherwise (i) any bid received by Transporter offering to pay rates in excess of Transporter's applicable maximum rates, inclusive of surcharges, shall be treated by Transporter as an offer

to pay rates equal to Transporter's applicable maximum rates, inclusive of surcharges, and no payments may be made or accepted at rates in excess of Transporter's applicable maximum rates, inclusive of surcharges, and (ii) where the Existing Shipper has specified that volumetric bids or bids based upon other variants of the rates applicable to the capacity to be released will be accepted, any bid which has a one hundred percent (100%) load factor derivative more than the one hundred percent (100%) load factor derivative of the maximum rates applicable to the capacity to be released shall be deemed to be a bid offering to pay rates in excess of Transporter's applicable maximum rates. Potential Shippers may revise their bids during the posting period. Potential Shippers may not submit multiple bids for the same package of capacity.

- (c) As set forth in NAESB Standard 5.3.13, “[b]ids should be binding until notice of withdrawal is received by the Transportation Service Provider on its Customer Activities Web site.” As set forth in NAESB Standard 5.3.15, “[b]ids cannot be withdrawn after the bid period ends.” Following the withdrawal of a bid, a Potential Shipper may not submit a bid lower than the bid withdrawn during the remainder of the posting period. For this purpose, bids will be determined to be “higher” or “lower” than the withdrawn bid by application of the standard applicable to the determination of best bid, as set forth in Section 12.5.
- (d) Notwithstanding Sections 12(a)(viii) and 12.4(a) hereof, Existing Shipper may establish a security requirement for Prearranged or Potential Shippers that is less than that prescribed by Section 2.2(e) of these General Terms and Conditions, provided that the security requirement is adequate to cover a value determined under Section 2.2(e)(i)(B) without regard to revenues creditable to the Existing Shipper under Section 12.9 hereof.

12.5 Determination of Best Bid

- (a) Upon the conclusion of the posting period, Transporter shall determine the “best bid” for the capacity described in an Existing Shipper’s Notice by applying the standard described by the Existing Shipper pursuant to Section 12.2(a)(x) hereof, or, if no standard was so described, Transporter shall make such determinations according to which bid would generate the revenue stream with the greatest net present value, without assuming any throughput, applying as the discount rate the rate under Section 154.501 of the Commission’s regulations.

As set forth in NAESB Standard 5.3.3:

[f]or the capacity release business process timing model, only the following methodologies are required to be supported by Transportation Service Providers (TSPs) and provided to Releasing Shippers as choices from which they may select and, once chosen, should be used in determining the Awards from the bid(s) submitted. They are:

- 1) highest rate, 2) net revenue, and 3) present value. For index-based capacity release transactions, the releasing shipper should provide the necessary information and instructions to support the chosen methodology.

Other choices of bid evaluation methodology (including other Releasing Shipper defined evaluation methodologies) can be accorded similar timeline evaluation treatment at the discretion of the TSP. However, the TSP is not required to offer other choices or similar timeline treatment for other choices, nor, is the TSP held to the timeline should the Releasing Shipper elect another method of evaluation.

- (b) Unless its bid is matched by a Prearranged Shipper, the released capacity shall be awarded to the Potential Shipper submitting the “best bid”. If more than one Potential Shipper submits bids that each qualifies as a “best bid”, the released capacity will be awarded to the Potential Shipper who submitted the “best bid”

first in time, unless a different tie-breaking method is specified by the Existing Shipper.

- (c) Any contingencies in bids must be satisfied during the evaluation period specified in Section 12.3(c). As set forth in NAESB Standard 5.3.4, “[w]hen the Transportation Service Provider (TSP) makes awards of capacity for which there have been multiple Bids meeting minimum conditions, the TSP should award the Bids, best Bid first, until all the offered capacity is awarded.”

12.6 Awards

As set forth in NAESB Standard 5.3.11, “[t]he Replacement Shipper initiates confirmation of prearranged deals electronically.” Transporter shall communicate the award via email, facsimile, or Transporter’s web site to the Potential Shipper or Prearranged Shipper. The communication of an award, under a Master Service Agreement for Capacity Release Transactions, is the means by which Transporter shall satisfy its obligation under NAESB Standard 5.3.2 to issue a contract within one hour of award posting.

Once a bid that meets the required terms and conditions of Existing Shipper’s Notice is submitted, it is binding unless withdrawn before the close of the bid period. The capacity shall be awarded to the Potential Shipper that submitted the best bid, in relation to the applicable standard. If a Prearranged Shipper is identified in Existing Shipper’s Notice, then the release shall be awarded to the Prearranged Shipper (i) if its bid is equal to or higher than the bids submitted by all Potential Shippers, determined in accordance with Section 10.5, or (ii) the Prearranged Shipper agrees to match any bid having a higher value within the time period provided in Section 10.3(c). In the event that a Prearranged Shipper is identified in an Existing Shipper’s Notice that is exempt from the competitive bidding procedure, the Prearranged Shipper shall enter its bid, and the capacity shall be awarded to the Prearranged Shipper by Transporter.

As noted above, Transporter shall post the award on its web site, including the name of the successful bidder and the terms of the successful bid. Upon posting, the capacity release award shall become effective and the successful bidder shall become the Replacement Shipper, with its bid for capacity constituting a contractual signature with respect to the service agreement, creating a binding contract between the parties. Once capacity is awarded and posted, Transporter will accept nominations at the start of the next available nomination cycle for the effective date of the contract.

Before an awarded No-Notice Storage contract is available to accept nominations, the Replacement Shipper must either link the contract to a No-Notice Transportation contract, roll inventory from an expired No-Notice Storage contract to the new contract, or opt to do neither, via the web site.

12.7 Obligations of Existing Customer

The service agreements of the Existing Shipper releasing capacity will remain in full force and effect, with a portion of the proceeds attributable to any release credited to the Existing Shipper's bill as provided in Section 12.9 hereof. Subject to Section 18.2 of these General Terms and Conditions, the Existing Shipper shall remain liable to Transporter under the terms of its service agreement with Transporter during and irrespective of any assignments of the rights and obligations under the service agreement for all reservation, demand and capacity charges, and any surcharges applicable to such charges, but excluding commodity or usage charges and imbalance penalties.

Where an Existing Shipper proposes to release or has released all its capacity to a Replacement Shipper for the entire remaining term of the applicable service agreement between Transporter and the Existing Shipper, the Existing Shipper may request Transporter to release the Existing Shipper from any further obligations to Transporter upon the effectiveness of a new source service agreement between Transporter and the Replacement Shipper. Transporter shall be under no obligation to grant such requests unless the Replacement Shipper (i) agrees to pay for the released capacity at Transporter's maximum rates and (ii) demonstrates to Transporter that it possesses sufficient financial stability, or if it provides such security as is necessary, to make Transporter reasonably secure that the Replacement Shipper will pay for service on a timely basis throughout the remaining term of the service agreement between Transporter and the Existing Shipper. Transporter shall exercise its discretion under this provision in a non-discriminatory manner.

As set forth in the first paragraph of this Section 12, the capacity release timeline will not be applicable if the Existing Shipper requests Transporter to release it from further obligations; provided however, that said timeline shall apply if the Existing Shipper's notice expressly indicates that the release is not contingent upon Transporter's determination under this provision.

In no event shall the communication of an award pursuant to Section 12.6 be deemed as the grant of a request to release the Existing Shipper from further obligations to Transporter.

In the case of a capacity release, if a Replacement Shipper utilizes any Secondary Receipt Point or Secondary Delivery Point, the Releasing Shipper shall be responsible for paying Transporter's maximum applicable rates for such service unless Transporter has agreed otherwise. The Releasing Shipper may protect itself from added charges by the use of a restriction against the use of higher rate secondary points or by requiring reimbursement from the Replacement Shipper for such added charges as part of the provisions of the posted notice of a capacity release pursuant to Section 12.2(a)(xv) of these General Terms and Conditions, and by the inclusion of such terms in the Bid Agreement.

12.8 Rights and Obligations of Replacement Shippers

- (a) Subject to the provisions of Subsections (b) - (g) of this Section 12.8, once the Replacement Shipper obtains an award of capacity subject to a service agreement with Transporter, the Replacement Shipper becomes an Existing Shipper like any other Shipper and is subject to the provisions set forth in this tariff including all requirements concerning nominations and scheduling. In addition, the Replacement Shipper as an Existing Shipper (hereinafter called a “Secondary Existing Shipper”) may also release its capacity pursuant to this section.
- (b) Upon termination of a source service agreement or a capacity award under a Master Service Agreement for Capacity Release Transactions by reason of Shipper default, Transporter shall have the right to terminate any Replacement Shipper’s capacity award derived from that agreement or award in default, whether the Replacement Shipper obtained its capacity award in a release by the defaulting shipper or by a non-defaulting Secondary Existing Shipper.
- (c) In order to exercise its right under Subsection 12.8(b), Transporter must cause a written notice to be served on the Replacement Shipper, at least thirty (30) days prior to the effective date of termination of the capacity award. Such notice shall inform the Replacement Shipper of the following:
 - (i) that notice of termination has been served upon the defaulting Shipper;
 - (ii) that such termination notice informed the defaulting shipper of Transporter’s intent to terminate its agreement or award if the cause for termination is not remedied within thirty (30) days after the service of such notice;
 - (iii) that the Replacement Shipper’s capacity award will be terminated if such cause for termination of the defaulting Shipper’s agreement or award has not been remedied within such time period;
 - (iv) except in the situation described in Subsection 12.8(c)(v), that at any time within thirty (30) days following the service

of such written notice, the Replacement Shipper may submit a service request for a new source agreement for its awarded capacity (i.e., the Replacement Shipper's capacity entitlement for the remainder of the term of the award) at the lower of (A) the rates applicable to the defaulting shipper's agreement or award or (B) Transporter's maximum rates;

- (v) with respect to a Replacement Shipper with an award of a geographically segmented portion of the capacity subject to the defaulting shipper's agreement or award, that at any time within thirty (30) days following the service of such written notice, the Replacement Shipper may submit a request for a new source service agreement for the Replacement Shipper's Contract Maximum Daily Transportation Quantity along the defaulting shipper's full capacity path for the remainder of the term of the Replacement Shipper's capacity award at the lower of (A) the rates applicable to the defaulting shipper's agreement or award or (B) Transporter's maximum rates; and
 - (vi) an explanation of Shipper's rights as described in Subsections 10.8(d)-(g).
- (d) Subject to Subsections 10.8(e)-(f), if (i) the Replacement Shipper submits a service request within the period of time specified in Subsection 12.8(c)(iv) or (v); (ii) the Replacement Shipper satisfies the service qualification requirements set forth in Section 2 of this tariff; and (iii) the termination of the defaulting Shipper's agreement or award becomes effective, Transporter shall tender the requested source agreement for execution by the Replacement Shipper.
- (e) If Transporter receives more than one timely service request under this Section 12.8 from qualified Replacement Shippers for the same awarded capacity in the situation where the capacity released by the defaulting Shipper has been re-released by its Replacement Shipper, such service requests will be prioritized in the order in which the capacity releases occurred (i.e., a Replacement Shipper closer to the defaulting Shipper in the sequence of successive releases will have priority over a Replacement Shipper further from the defaulting Shipper in such sequence). In this case, all capacity awards derived from the award qualifying for the highest priority will remain in effect

pending and following execution of the new source agreement between Transporter and the Replacement Shipper with the highest priority, and such Replacement Shipper's rights to such capacity will be subject to the rights included in such other capacity awards.

- (f) If Transporter receives more than one timely service request under this Section 12.8 from qualified Replacement Shippers in the situation described in Subsection 12.8(c)(v), with the same priority as determined by Subsection 12.8(e), Transporter shall allocate capacity among such Replacement Shippers in proportion to the maximum transportation quantities specified in such shippers' awards.

- (g) If the Replacement Shipper fails to execute and return the agreement tendered by Transporter within the period of time specified by Transporter, which period shall be at least five (5) business days from the time the agreement is forwarded by Transporter, the Replacement Shipper shall have no further rights under this Section 12.8. In such case, the formerly awarded capacity shall be offered to the qualified Replacement Shipper that submitted a timely service request with the next highest priority, if any, under the same conditions. In the absence of other such requests, the capacity shall be posted and service requests therefore will be solicited in accordance with Section 14 of these General Terms and Conditions.

12.9 Billing Adjustments

Transporter shall credit the bill of the Existing Shipper with any reservation, demand or capacity charges (including surcharges thereon), and, in the case of a Negotiated Rate Shipper responsible for commodity or usage charges, such commodity or usage charges (including surcharges) billed to a Replacement Shipper utilizing capacity released by the Existing Shipper; provided, however, that should a Replacement Shipper (including a Replacement Shipper of any Secondary Existing Shipper) default on its obligation to make timely payment for the charges billed by Transporter, such credit shall be reversed, as of the date the credit was made, and the Existing Shipper shall be liable for such charges, together with interest as set forth in Section 7.2 of these General Terms and Conditions. The bill of the Existing Shipper shall be credited with any such charges received by Transporter subsequent to the reversal of such credit.

The rate paid by a Replacement Shipper in any capacity release transaction which is not subject to Transporter's maximum rate pursuant to Section 284.8(b)(2) of the Commission's regulations will be deemed to be a final rate and is not subject to refund.

12.10 Marketing Assistance

If the Existing Shipper requests the assistance of Transporter's Marketing Department in locating a potential Replacement Shipper, a representative from such department shall contact the Existing Shipper and discuss the services that are available at such time and the fees for such services. If the Existing Shipper and Transporter enter into a mutually agreeable marketing assistance arrangement, Transporter shall bill the Existing Shipper according to the terms of such agreement.

12.11 Intraday Recalls of Capacity

- (A) Releasing shippers may, to the extent permitted as a condition of the capacity release, recall released capacity (scheduled or unscheduled). As set forth in NAESB Standard 5.3.44:

All Transportation Service Providers (TSPs) should support the following recall notification periods for all released capacity subject to recall rights:

(i) Timely Recall Notification:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 8:00 a.m. on the day that Timely Nominations are due;
- (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 9:00 a.m. on the day that Timely Nominations are due;

(ii) Early Evening Recall Notification:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 3:00 p.m. on the day that Evening Nominations are due;
- (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 4:00 p.m. on the day that Evening Nominations are due;

(iii) Evening Recall Notification:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 5:00 p.m. on the day that Evening Nominations are due;

- (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 6:00 p.m. on the day that Evening Nominations are due;
- (iv) Intraday 1 Recall Notification:
 - (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 7:00 a.m. on the day that Intraday 1 Nominations are due;
 - (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 8:00 a.m. on the day that Intraday 1 Nominations are due;
- (v) Intraday 2 Recall Notification:
 - (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 12:00 p.m. on the day that Intraday 2 Nominations are due;
 - (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 1:00 p.m. on the day that Intraday 2 Nominations are due; and
- (vi) Intraday 3 Recall Notification:
 - (a) A Releasing Shipper recalling capacity should provide notice of such recall to the TSP and the first Replacement Shipper no later than 4:00 p.m. on the day that Intraday 3 Nominations are due;
 - (b) The TSP should provide notification of such recall to all affected Replacement Shippers no later than 5:00 p.m. on the day that Intraday 3 Nominations are due.

(B) As set forth in NAESB Standard 5.3.45:

[f]or recall notification provided to the Transportation Service Provider (TSP) prior to the recall notification deadline specified in NAESB WGQ Standard No. 5.3.44 and received between 7:00 a.m. and 5:00 p.m., the TSP should provide notification to all affected Replacement Shippers no later than one hour after receipt of such recall notification.

For recall notification provided to the TSP after 5:00 p.m. and prior to 7:00 a.m., the TSP should provide notification to all affected Replacement Shippers no later than 8:00 a.m. after receipt of such recall notification.

(C) As set forth in NAESB Standard 5.3.54:

[t]he deadline for notifying the Transportation Service Provider of a recall is 8:00 a.m. to allow for timely nominations to flow on the next Gas Day.

(D) In the event capacity is recalled for any Intraday Nomination Cycle, the fixed charges for that day applicable to the Recalling Shipper shall be the fraction of the day remaining after such recall, times the daily equivalent of the monthly fixed charges under the source agreement, and the fixed charges for that day applicable to the Replacement Shipper whose capacity is recalled shall be the fraction of the day remaining up to such recall, times the daily equivalent of the monthly fixed charges under the Replacement Shipper's service agreement. For all Intraday recalls, commodity and other volumetric charges (including charges for releases at volumetric rates) for the Replacement and Recalling Shipper shall be based upon the quantities scheduled by Transporter for each shipper with respect to the portion of the day it holds the capacity.

(E) As set forth in NAESB Standard 5.3.55:

[f]or the recall notification provided to the Transportation Service Provider (TSP), the TSP's tariff should specify whether the quantity should be expressed in terms of (a) total

released capacity entitlements or (b) adjusted total released capacity entitlements based upon the Elapsed Prorata Capacity. The capacity entitlements resulting from the use of either (a) or (b) should be the same.

In accordance with NAESB Standard 5.3.55, Transporter specifies the Elapsed Prorata Capacity method.

(F) As set forth in NAESB Standard 5.3.57:

[t]he Transportation Service Provider should not be obligated to deliver in excess of the total daily contract quantity of the release as a result of NAESB WGQ Standard No. 5.3.55.

12.12 Offers to Purchase Capacity

A party that wishes to purchase firm capacity on Transporter's system may request Transporter to post a notice of its offer on Transporter's web site. The offering party shall provide Transporter with the following information, to the extent applicable:

- (a) the offering party's legal name;
- (b) the amount of capacity sought in Dth per day;
- (c) the proposed effective date and term;
- (d) the primary receipt and delivery point desired;
- (e) the maximum rate the party is willing to pay;
- (f) the length of time the offering party requests to have its offer posted on Transporter's web site, not to exceed thirty (30) days; and
- (g) any other relevant terms.

Transporter shall post offers submitted by a party pursuant to this Section 12.12 for at least the time period requested by the offering party under clause (f).

13. ACQUIRED CAPACITY

- (a) Transporter may from time to time acquire capacity on a third-party system (“Acquired Capacity”). Transporter may use Acquired Capacity for its system operational needs and to render service to its customers. When Transporter uses Acquired Capacity to transport or store gas for others, such service will be provided pursuant to this FERC Gas Tariff. For purposes of any use of Acquired Capacity covered by this Section 13, the “shipper must hold title” requirement is waived.
- (b) This Section 13 does not preclude Transporter from seeking case specific authorization for the utilization of Acquired Capacity on terms and conditions that differ from those set forth in Section 13(a). Case specific authorization is required for Transporter to acquire capacity on an interstate pipeline in the form of a lease.
- (c) In the event that Acquired Capacity used to render service to Transporter’s Shippers is subject to renewal limitations, consistent with the third-party provider’s tariff, operating statement or capacity lease, Transporter will indicate, in any posting of capacity available for service, any limitation to the term or to the extension rights that will apply as a result of the limitation on the Acquired Capacity. Any such limitation shall be reflected in the Service Agreement between Transporter and Shipper. This provision shall not impact any right of first refusal Shipper may have pursuant to this tariff, except that extension of the affected Service Agreement shall be limited to the term of Transporter’s contract or service agreement with the third-party provider.

14. PROCEDURES FOR ALLOCATING FIRM CAPACITY

14.1 In the event firm capacity on Transporter's system becomes available or will become available other than through the applicable provisions of Sections 12 or 15 of these General Terms and Conditions or Subsection 14.10, Transporter shall post on its Web Site all relevant terms and conditions pertaining to such capacity and will solicit service requests for at least the following periods:

- (a) One (1) business day for firm capacity which will be available for less than five (5) months;
- (b) Three (3) business days for firm capacity which will be available for five (5) months or more but less than twelve (12) months; and
- (c) Five (5) business days for firm capacity which will be available for twelve months or longer.

A Shipper submitting a service request in response to a posting pursuant to this Section 14 shall include, in addition to the information required by the applicable rate schedule, a request for any discount sought by the Shipper. The rate for the service requested by Shipper, as discounted in accordance with the Shipper's request, and the term of service requested by the Shipper, shall constitute the Shipper's bid for the capacity posted by Transporter.

14.2 Transporter shall evaluate and determine the value of the bid(s) for the capacity posted by Transporter in accordance with one of the following two methods, with the specific method identified in its posting:

- (a) Net present value of reservation, demand and capacity charges per unit of capacity; or
- (b) Rate bid, provided such bid meets the minimum term (if any) stated in Transporter's posting.

In the event Transporter receives two or more bids of equal value, then under method (a) the best bid shall be the bid with the shortest term and under method (b) the best bid shall be the bid with the longest term. Transporter shall base its selection of method (a) or method (b) upon its assessment of which method will result in greater revenues for the services associated with the capacity.

- 14.3 In processing requests for service received within the posting period, Transporter shall allocate capacity among shippers according to the present values (where method (a) is employed) or rates (where method (b) is employed) of the bids received. A ratable allocation, based on the quantities requested, shall be made among shippers that submit bids that are equal with respect to both value and term.
- 14.4 Transporter's posting shall also specify the number of days within which shippers must execute and return service agreements or precedent agreements once Transporter has allocated available capacity in accordance with Section 14.3. If a Shipper fails to execute and return the agreement tendered by Transporter within such specified period, the capacity allocated to that Shipper will be reallocated among the remaining shippers requesting the posted capacity during the posting period, in accordance with Section 14.3.
- 14.5 If some or all of the posted capacity remains available following the posting period, either for an indefinite period or for an interim period ending with the commencement date of the service(s) of the shipper(s) submitting the Best Bid(s) and awarded during the posting period ("Interim Period"), Transporter may, in its discretion, establish additional posting periods. Requests for firm service that are received by Transporter outside of an established posting period shall be processed on a first-come, first-served basis in accordance with the applicable rate schedule, subject to Section 14.6. A service agreement for capacity available only during an Interim Period shall not be a Qualifying Agreement for purposes of Section 15 of these General Terms and Conditions (Pregranted Abandonment and Right of First Refusal).
- 14.6 If Transporter receives a request for firm service that requires capacity that exists on Transporter's system, but has not been disclosed to shippers on Transporter's Web Site, Transporter shall solicit service requests for such capacity, and shall allocate such capacity in accordance with this Section 14. In such case, the request for capacity that had not been disclosed shall be considered to have been received in response to the posting and during the posting period.
- 14.7 Any shipper submitting a request in response to a posting pursuant to this Section 14 may later amend its bid prior to the conclusion of the posting period.

- 14.8 Notwithstanding the above, Transporter shall not be obligated to accept any bid or execute a service agreement or precedent agreement at a rate less than the maximum rate allowable under the applicable rate schedule. Transporter's posting may specify a minimum rate and the latest commencement date that Transporter will accept for service requiring the capacity described in its posting. Transporter may also determine a minimum rate prior to the commencement of the posting period, without posting such minimum rate.
- 14.9 In the event Transporter announces a plan to construct or acquire facilities that would result in additional capacity, Transporter may use any or all of the procedures set forth in this Section 14 or may use different procedures so long as it allocates capacity without undue discrimination.
- 14.10 If capacity posted hereunder is contracted by a shipper, either in response to the posting or outside of an established posting period pursuant to Subsection 14.5 hereof, for a primary term of less than twelve (12) months, Transporter shall not be obligated to post such capacity upon expiration of such contract pursuant to this Section 14, but may process requests for firm service utilizing such capacity on a first-come-first-served basis, subject to Subsection 14.6 hereof.
- 14.11 Transporter may offer firm transportation capacity that is not associated with an FSNN Service Agreement under the FT Rate Schedule and/or the FTNN Rate Schedule.

15. PREGRANTED ABANDONMENT AND RIGHT OF FIRST REFUSAL

15.1 Eligible Service Agreements

Unless Transporter and Shipper expressly agree otherwise in Shipper's service agreement, this Section 15 shall apply only to long-term service agreements under the FT, FTNN and FSNN Rate Schedules at the applicable Maximum Rates (but not those agreements excluded by Section 14.5 or Section 17 of these General Terms and Conditions) ("Qualifying Agreements").

To the extent a Shipper holding a Qualifying Agreement satisfies the bid matching requirements of this Section 15 or Transporter and Shipper reach agreement as contemplated by Section 15.7, such Shipper may retain its capacity and continue to receive firm service for which Transporter or Shipper has served notice of termination. If Transporter receives one or more acceptable bids for such capacity and Shipper does not satisfy the bid matching requirements of this Section 15 or if Transporter does not receive any acceptable bids for such capacity and Transporter and Shipper do not reach agreement as contemplated by Section 15.7, Shipper shall no longer have, as of the effective date of Transporter's or Shipper's notice of termination, rights under the Qualifying Agreement and Transporter shall have all necessary abandonment authorizations under the Natural Gas Act. Service agreements that are not Qualifying Agreements ("Non-Qualifying Agreements") are not subject to the abandonment protection of this Section 15. Upon termination of a Non-Qualifying Agreement, Transporter shall have all necessary abandonment authorization under the Natural Gas Act effective as of such termination date. For purposes of this Section 15, the term "long-term service agreement" shall include any service agreement with a primary or extended term of one (1) year or longer. Where Transporter and a shipper under a Non-Qualifying Agreement agree that this Section 15 applies to such agreement, the parties may agree to limit the applicability of Shipper's Right of First Refusal ("ROFR") under this section in certain respects; for example, to circumstances where Transporter initiates the termination of the agreement, or to a single ROFR exercise as of the end of the primary term of the service agreement.

15.2 Shipper's ROFR Notice

When Transporter provides a notice of termination of a Qualifying Agreement, Shipper shall notify Transporter within thirty (30) days thereof as to whether it wishes to avail itself of the Right of First Refusal procedures set forth in this Section 15 ("Shipper's ROFR Notice"). When Shipper provides a notice of termination of a Qualifying Agreement, it shall provide Shipper's ROFR Notice within such termination notice. A Shipper that does not provide a Shipper's ROFR Notice indicating that it wishes to avail itself of the Right of First Refusal procedures set forth in this Section 15 as set forth herein shall be deemed to have irrevocably waived its Right of First Refusal.

15.3 Posting of Notices of Termination

Within thirty (30) days of Shipper's ROFR Notice, but no earlier than six (6) months prior to the date by which notice of termination must be provided under the agreement, Transporter shall post on its Web Site the following information:

- (a) Point(s) of Receipt and Point(s) of Delivery,
- (b) the specific quantity available under the terminated contract,
- (c) the date of expiration,
- (d) the current maximum rate applicable to the terminated service.

15.4 Bidding Procedure

For the time period stated in Transporter's posting, which shall be no shorter than ten (10) Business Days, Transporter will accept service requests from Shippers. A Shipper submitting a service request in response to a posting pursuant to this Section 15 shall include, in addition to the information required by the applicable rate schedule, a request for any discount sought by the Shipper. The rate for the service requested by Shipper, as discounted in accordance with the Shipper's request, and the term of service requested by the Shipper, shall constitute the Shipper's bid for the capacity posted by Transporter.

Potential Shippers may revise their bids during the posting period. Transporter may reject any bid which would require Transporter to discount below a rate or beyond a discount period agreeable to Transporter.

Transporter will accept bids from Potential Shippers with respect to a quantitative portion of Shipper's contract quantity.

When Transporter posts notices of termination of an FSNN service agreement and an associated FTNN service agreement, a bidder will be permitted to specify that its bid for each individual service is contingent upon its ability to contract for its requested capacity under both services.

15.5 Determination of Best Bid

Transporter shall review all bids from Potential Shippers received pursuant to Section 15.4, which have not been rejected by Transporter, to determine which bid is the Best Bid(s). For purposes of this Section 15.5, the "Best Bid(s)" shall be the bid(s) yielding to Transporter the highest net present value. Net present value shall be calculated on the basis of the present value of the Reservation Charge per unit to Transporter. In making the determination of net present value Transporter shall apply the same discount factor to all bids. Transporter shall disclose in each posting the discount factor to be used for such posting. If Transporter receives two (2) or more mutually exclusive Best Bids during the posting period that are not matched by Shipper, Transporter will consider the bid submitted earliest in time to be the Best Bid.

15.6 Notification of and Right to Match Best Bid

Upon receipt from Transporter of notice of the Best Bid(s), Shipper shall have the right for a period of ten (10) Business Days period to notify Transporter whether the Shipper is willing to match the Best Bid(s). This right to match the Best Bid(s) shall be referred to herein as the "Right of First Refusal" or "ROFR". Failure to notify Transporter within said ten (10) Business Day period constitutes an irrevocable waiver of Shipper's ROFR. In order to exercise its ROFR, Shipper must agree to a combination of rate and term that is equivalent to the Best Bid(s) on a net present value basis, and is otherwise consistent with the bid evaluation criteria specified in Transporter's posting.

If the Best Bid(s) apply to a quantitative portion of Shipper's contract quantity, Shipper need only match the Best Bid(s) with respect to such quantitative portion, in which case, the remaining quantitative portion of Shipper's contract quantity will be subject to Section 15.7 hereof.

Shipper may also match a Best Bid(s) with respect to a quantitative portion of the capacity bid upon. If a Shipper elects to exercise its ROFR as to only a quantitative portion of its capacity, its rights under its service agreement shall be reduced as follows: (i) Shipper's maximum entitlement shall be reduced in the same proportion on each Day that Shipper is entitled to receive service during the year; and (ii) Shipper may specify the allocation of the reduction among primary receipt and delivery points, provided however, that Transporter may require a different allocation among receipt and/or delivery points if Shipper's proposal is operationally infeasible or would adversely affect system operations and Transporter provides a written explanation to Shipper of that result. If Shipper does not specify a particular allocation of the reduction among primary receipt and delivery points, Shipper shall retain the same points with a proportionate reduction at each point.

If Shipper notifies Transporter that it is exercising its ROFR with respect to Shipper's entire contract quantity, the Shipper's service agreement shall be deemed to be amended in accordance with the terms of the Best Bid(s) so matched by Shipper. If Shipper notifies Transporter that it is exercising its ROFR with respect to a quantitative portion of Shipper's contract quantity, or that it is matching a quantitative portion of the capacity bid upon, Transporter shall send Shipper an executable service agreement in the Form of Service Agreement set forth in this tariff, reflecting the reduction of Shipper's contract quantity and the allocation of that reduction among receipt and delivery points. Shipper must execute and return this service agreement to Transporter within ten (10) Business Days after it is tendered by Transporter. Shipper's failure to abide in a timely manner with this requirement shall constitute an irrevocable waiver of its ROFR.

15.7 Absence of Acceptable Bids

In the event Transporter does not receive any bids pursuant to Section 15.3 or Transporter rejects all bids received due to the fact that such bids were premised on rate discount levels or rate discount periods unacceptable to Transporter, Transporter shall notify Shipper to such effect, and Transporter and Shipper may mutually agree upon the terms

and conditions under which Shipper shall be entitled to retain its capacity and continue to receive service, provided that in such event Shipper may retain its capacity (or a quantitative portion thereof) and continue to receive service at the applicable maximum rates, or at a rate between the minimum and maximum negotiated by Transporter and Shipper, for a term specified by Shipper. In the event Transporter and Shipper have not reached agreement on the terms and conditions under which service will be extended for Shipper before the date which is twenty (20) days following the date of Transporter's notice to Shipper that no acceptable bids have been received, then Transporter shall have all necessary abandonment authorization under the Natural Gas Act as of the date of termination of the long-term service agreement.

15.8 Capacity Release Transactions

In the event that, pursuant to Section 12.7 of these General Terms and Conditions, an Existing Shipper's capacity is released on a permanent basis to a Replacement Shipper and Transporter has granted the request of Existing Shipper to be released of any further obligations under its service agreement, the Replacement Shipper shall succeed to any ROFR rights held by the Existing Shipper with respect to such agreement. In all other cases, a Releasing Shipper's ROFR shall not be affected by a capacity release and the Replacement Shipper shall have no ROFR.

15.9 Extension of Service Agreements

Notwithstanding anything to the contrary in this tariff, Transporter may agree with any Shipper, on a not unduly discriminatory basis, to the extension of the term of a service agreement, applicable to Shipper's entire contract quantity or quantitative portion thereof, to be negotiated on a case-by-case basis. An agreement pursuant to this Section 15.9 shall not constitute a material deviation from the applicable form of service agreement.

16. OPERATIONAL FLOW ORDERS

16.1 Scope of Provision

This Section implements Section 284.12(b)(iv) of the Commission’s Regulations, which establishes certain requirements regarding “operational flow orders (OFOs) or other measures taken to respond to adverse operational events on its system.” For purposes of this provision, the abbreviation “OFO” will be used to represent any measure within the scope of Section 284.12(b)(iv).

- (a) Examples of OFO’s under this tariff include, without limitation:
- (1) A curtailment of service pursuant to Section 9 of these General Terms and Conditions resulting from adverse operational events on Transporter’s system;
 - (2) A declination by Transporter to schedule firm service pursuant to Section 4.2 of these General Terms and Conditions resulting from adverse operational events on Transporter’s system;
 - (3) A determination by Transporter that operating conditions require the rectification of imbalances pursuant to Section 3.1 of these General terms and Conditions.
 - (4) A determination by Transporter that receipts and deliveries must be made at uniform hourly rates to protect the integrity of its system, pursuant to Section 4.5 of these General Terms and Conditions, or that Transporter otherwise cannot permit the hourly variations therein described.
- (b) Examples of measures that do not constitute OFO’s include, without limitation:
- (1) A declination by Transporter to schedule any interruptible overrun service, or a curtailment or bumping of any interruptible service, in order to serve higher priority shippers;

- (2) A declination by Transporter to schedule any firm service at Secondary Points of Receipt or Delivery, or a curtailment of bumping of such secondary firm service, in order to provide firm service to other shippers at Primary Points of Receipt or Delivery; and
- (3) A declination to transport excess deliveries pursuant to Section 4.6 of these General Terms and Conditions.

16.2 Standards for the Beginning and End of OFO's

(a) General

Transporter, in its reasonable discretion, shall have the right to issue OFO's upon determination by Transporter that action is required in order to alleviate conditions which threaten the integrity of Transporter's system, to maintain pipeline operations at the pressure required to provide reliable firm services, to have adequate supplies in the system to deliver on demand, to maintain firm service to all shippers and for all firm services, and to maintain the system in balance for the foregoing purposes. To the extent feasible, Transporter shall direct such OFO's to those shippers causing the condition that necessitates issuance of the OFO. As soon as the conditions giving rise to an OFO have been corrected or are no longer present, the OFO shall be terminated.

(b) Pipeline Specific Standards

On Transporter's system, the circumstances which may result in an OFO include, without limitation, the following:

- (i) Unavailability of compression facilities, as a result of planned work or the necessity to make repairs;
- (ii) Unavailability of pipeline facilities, as a result of planned work or the necessity to make repairs;
- (iii) Partial or entire electrical or communication failure that impairs Transporter's ability to monitor and control essential facilities;

- (iv) Severe or unanticipated weather conditions, which can include unusually cold or warm temperatures for the time of year, significant differences between prevailing weather conditions from those forecasted, or sudden changes in weather conditions;
- (v) The presence of objectionable matter in gas in any part of Transporter's system; and
- (vi) The occurrence of unusually low or high system pressure, impairing Transporter's ability to meet its obligations.

16.3 Notice Procedures for OFO's

Transporter will post all notices of OFO's on its Web Site as expeditiously as is practicable, and, to the extent an Operational Flow Order is applicable only to specific shippers, Transporter will notify each such Shipper by facsimile or email, provided that such Shipper has provided a facsimile number or email address to Transporter.

Transporter shall update its OFO notices with available information regarding the operational variables that determine when the OFO will begin and end. For example, if an OFO will remain in effect until repairs to a compressor or pipeline are complete, information regarding the status of the repairs will be posted by Transporter. Transporter shall post notices concerning planned work at compressor or other facilities, which, under reasonably foreseeable circumstances, may cause Transporter to issue an OFO. Within a reasonable time following the termination of an OFO, Transporter shall post a report detailing the factors requiring the issuance of the OFO and the termination of the OFO.

16.4 Operational Remedies Prior to Issuance of an OFO

Transporter shall, whenever practicable, attempt to obviate the issuance of an OFO to a particular shipper by (i) temporarily changing system operations, (ii) seeking the voluntary assistance of other parties, including, without limitation, shippers and interconnected facility operators, and (iii) restricting service to shippers with lower scheduling and curtailment priority.

16.5 Degrees of Severity of OFO's

If Transporter determines that it is necessary to issue an OFO, Transporter will classify the OFO within one of the following three levels of severity, with Level 1 representing the least severe operational condition and Level 3 representing the most severe operational condition:

Level 1: Transporter experiences a condition covered by Section 16.2(a) that is not a Level 2 or Level 3 condition.

Level 2: Transporter experiences a condition covered by Section 16.2(a) during the non-heating season (May-October) that threatens service to local markets directly connected to Transporter's system.

Level 3: Transporter experiences a condition covered by Section 16.2(a) during the heating season (November-April) that threatens service to local markets directly connected to Transporter's system.

16.6 Penalties

Tenders or receipts in violation of an OFO shall subject Shipper to penalties as specified in Section 10.3 of these General Terms and Conditions.

17. RESERVATION OF CAPACITY FOR EXPANSION PROJECTS

Transporter may elect to reserve, for future expansion projects, unsubscribed firm capacity or capacity under expiring or terminating firm service agreements where such agreements are Non-Qualifying Agreements under Section 15 of these General Terms and Condition, or Shipper does not exercise its Right of First Refusal under such section. Transporter may only reserve capacity for a future expansion project for which an open season has been held or will be held within one (1) year of the date Transporter posts such capacity as being reserved. If Transporter elects to reserve capacity for future expansion projects under this Section, such capacity may be reserved for up to one year prior to Transporter filing for certificate approval or requesting initiation of the Commission's NEPA Pre-Filing Process for the proposed expansion under Section 7(c) of the Natural Gas Act, and thereafter until such expansion is placed into service. Transporter shall, on a limited-term basis up to the in-service date of the expansion project, make available any capacity reserved under this section in accordance with Section 14 of these General Terms and Conditions.

A service agreement for capacity available on a limited-term basis up to the in-service date of the expansion project shall not be a Qualifying Agreement for purposes of Section 15 of these General Terms and Conditions (Pregranted Abandonment and Right of First Refusal).

Prior to reserving capacity for future expansion projects under this section, Transporter shall first make such capacity available pursuant to Section 14 of these General Terms and Conditions.

Capacity that remains available after the posting and bidding procedure in accordance with Section 14 may be reserved by Transporter by means of a posting on Transporter's Web Site which shall include, but not be limited to:

- (i) A description of the expansion project for which the capacity will be reserved;
- (ii) The total quantity of capacity to be reserved;
- (iii) The location of the proposed reserved capacity on Transporter's system;
- (iv) When Transporter held or anticipates holding an open season or otherwise posting the capacity for bidding in connection with the expansion project;

- (v) The projected in-service date of the expansion project; and,
- (vi) On an ongoing basis, how much of the reserved capacity has been sold on a limited-term basis.

Where the turn back of the firm capacity by existing shippers could reduce the scope of the expansion project, Transporter's posting for capacity to be reserved under this section shall also include a non-binding solicitation for the turn back of capacity from Transporter's existing shippers to serve the expansion project, provided that Transporter shall post such solicitation for capacity turn back no later than 90 days after the close of the expansion project open season.

Any capacity reserved under this Section for an expansion project that does not go forward because Transporter does not file any required application with the Commission within one year from such reservation date, or because Transporter ultimately does not receive authorization, shall be posted as available capacity within 30 days of the date such capacity becomes available subject to then existing commitments for such capacity.

18. ADJUSTMENTS, SURCHARGES, NEGOTIATED RATES, AND ISS REVENUE CREDITS

18.1 Adjustments and Surcharges

Transporter and Shipper recognize that Transporter shall, from time to time, experience changes in costs related to providing service under this FERC Gas Tariff, including, but not limited to, changes in the cost of labor, benefits, materials and supplies, taxes, and required rate of return, costs associated with the resolution of past disputes or outstanding uncertainties concerning amounts owed by Transporter or attributable to Transporter, and costs generated by decisions by the Commission, the courts, or by an arbitration panel or other body having jurisdiction over Transporter. It may be appropriate, equitable, and consistent with cost responsibility to allocate such costs among Shippers based on taking into account past period factors, such as contract demand levels, purchases, or other factors related to a prior period of time. Shipper agrees that Transporter shall have the right, from time to time, to make rate change filings based in whole or in part on factors related to past periods. Shipper shall have the right to intervene and protest any such filings.

18.2 Negotiated Rates

- (a) Notwithstanding anything to the contrary contained in this tariff, Transporter may charge a negotiated rate for service under any rate schedule contained in this tariff to any shipper that has access to service at the rates set forth in the applicable rate schedule and agrees to pay such negotiated rate.
- (b) A Negotiated Rate shall mean a rate for service, where one or more of the individual rate components exceed the maximum charge, or are less than the minimum charge, for such components. This definition shall include a formula rate where one or more of the individual rate components may exceed the maximum charge, or may be less than the minimum charge, for such components in some months but not in others.
- (c) With respect to a Negotiated Rate which exceeds Transporter's maximum rate for that service, for the purposes of allocation of capacity pursuant to Sections 4, 14 and 15 of these General Terms and Conditions, a Shipper paying said Negotiated Rate would be considered to have paid the maximum rate for such service.

- (d) For purposes of Section 15 of these General Terms and Conditions the highest rate that a Shipper must match in order to continue to receive service is the maximum rate applicable to such service.
- (e) For purposes of a release of capacity subject to a negotiated rate, Section 12.4(b) of these General Terms and Conditions, which provides that no payments may be made or accepted at rates in excess of Transporter's applicable maximum rates, shall be applicable.
- (f) Transporter shall make any filings with the Commission necessary to effectuate a Negotiated Rate.
- (g) Transporter shall have the right to seek in general rate proceedings discount-type adjustments in the design of its rates related to services subject to Negotiated Rates. A discount adjustment to recourse rates for Negotiated Rate agreements shall only be allowed to the extent that Transporter can meet the standards required of an affiliate discount type adjustment including requiring that the Transporter shall have the burden of proving that any discount granted is required to meet competition. Accordingly, Transporter shall be required to demonstrate that any such discount type adjustment does not have an adverse impact on recourse rate shippers by: (i) demonstrating that, in the absence of Transporter's entering into such Negotiated Rate agreement, Transporter would not have been able to contract for such capacity at any higher rate(s) and that recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; or (ii) making another comparable showing that the Negotiated Rate contributes more to fixed cost recovery to the system than could have been achieved without the negotiated rate.
- (h) Transporter and a Shipper may, in connection with their agreement to a Negotiated Rate, agree upon payment obligations and crediting mechanisms in the event of capacity releases that vary from or are in addition to those set forth in Section 12 of these General Terms and Conditions. Nothing in the foregoing provision, however, shall authorize Transporter or a Shipper to violate the Commission's policy with respect to the negotiation of terms and conditions of service.

18.3 Crediting of ISS Revenues

Revenues collected by Transporter under Rate Schedule ISS during any Month shall be subject to crediting as follows:

- (a) Transporter shall allocate revenues collected under Rate Schedule ISS (“ISS Revenues”) among FSNN shippers that received service in such Month, in proportion to the charges billed to such shippers during such Month.

- (b) Transporter shall accumulate credits hereunder during each calendar Year and reflect the credits due each Shipper for such calendar Year on the invoice for service provided during the immediately following January.

19. ANNUAL CHARGES ADJUSTMENT CLAUSE

19.1 Purpose

For the purpose of funding the Annual Charges assessed against Transporter by the Commission or any successor agency, this Section establishes an Annual Charge Adjustment Clause (“ACA”) pursuant to 18 CFR §154.402 to be applicable to Transporter’s Rate Schedules FT, FTNN, IT, FSNN, and ISS, provided, however, the ACA shall not be applied to (a) quantities injected into storage if the quantities were transported by Transporter prior to storage injection; (b) quantities withdrawn from storage; or (c) quantities transported by Transporter following withdrawal from storage.

19.2 Basis of the ACA

Services under the rate schedules specified in Section 19.1 hereof shall be subject to the ACA unit charge, as revised annually and posted on the Annual Charges page of the Natural Gas section of the Commission’s web site, located at <http://www.ferc.gov> and incorporated herein by reference. The applicability of the ACA unit charge shall be reflected on the table appearing as Part 4 (Applicable Rates) of this tariff.

19.3 Intent

Transporter intends to fund the Annual Charges assessed against it by the Commission or any successor agency pursuant to 18 CFR §154.402 through this Section 19. If this Section 19 is approved by the Commission, Transporter does not intend to recover such Annual Charges recorded in FERC Account No. 928 through a general rate case filing under Section 4 of the Natural Gas Act.

20. COMPLAINT PROCEDURES

This Section 20 is required by 18 CFR 250.16:

Complaints by shippers and potential shippers concerning any transportation or sales services offered by Transporter or any of Transporter's transportation or sales practices and procedures should be directed to Transporter's President, at (716) 857-7536. Transporter will respond initially within 48 hours and in writing within 30 days to such complaints. Any person dissatisfied with the response received from the President, should resubmit the complaint, in writing, to:

Legal Counsel for
Empire Pipeline, Inc.
6363 Main Street
Williamsville, NY 14221

21. RESERVED FOR FUTURE USE

22. PERIODIC REPORTS

Set forth below are the periodic reports required to be filed by Transporter pursuant to Commission orders or this tariff:

Report	Tariff Reference	Frequency	Filing Deadline
Report of Refunds	N/A	Annual	March 1st

23. FUEL, COMPANY-USE, AND LOST AND UNACCOUNTED FOR GAS

23.1 Transporter's rates set forth on the table appearing as Part 4 of this tariff are exclusive of Compressor Fuel and Other Gas for Transporter's Use, which shippers will cause to be furnished to Transporter as set forth in Section 23.

23.2 The Compressor Fuel Factor or Compressor Fuel Retention shall be applicable to all shippers under Rate Schedule FT, FTNN and IT.

23.3 General

This section sets forth the procedures Transporter shall use to adjust its Compressor Fuel Retention and its Other Gas for Transporter's Use (collectively, the "Retainages"). Each Retainage shall be stated as a percentage. With respect to Negotiated Rate agreements providing for a retention factor different than the Retainage, Transporter shall assume that it retains or charges the Retainage stated in this tariff, for purposes of calculating the Retainages.

(a) Definitions

- (i) "Base Period" shall mean the period of twelve months ending three (3) months prior to the effective date of a change in the Retainages filed pursuant to this Section 23.3.
- (ii) "Estimated Quantities" shall mean the actual billable transportation received quantities in the Base Period for which Transporter applies the Compressor Fuel Retention and the Other Gas for Transporter's Use; provided that for any out-of-cycle adjustment, Base Period quantities shall be annualized in determining Estimated Quantities.
- (iii) "Compressor Fuel" shall have the same meaning as provided in Section 1.9, set forth in Part 7 of this tariff.
- (iv) "Compressor Fuel Retention" shall mean the Compressor Fuel Retention determined and adjusted in accordance with this Section 23.3 and set forth in Part 4 of this tariff.

- (v) “Other Gas for Transporter’s Use” or (“OGFTU”) shall have the meaning as provided in Part 7, Section 1.24 herein.
- (vi) “OGFTU Retention” shall mean the OGFTU Retention determined and adjusted in accordance with this Section 23.3 and set forth in Part 4 of this tariff.

(b) Filing and Effectiveness of Retainages

Transporter shall file annually to revise its Retainages at least thirty (30) days prior to the effective date of the proposed changes. Such filings shall be filed by Transporter to become effective on April 1 of each year; provided that Transporter shall have the right to file out-of-cycle adjustments as described in Subsection 23.3(d)(v) below.

(c) Determination of Retainages

- (i) Compressor Fuel and OGFTU for the Base Period, including the effect of prior period adjustments recorded during the Base Period, shall be summed with the balance at the end of the Base Period in the applicable Deferred F&LR subaccount as determined in accordance with Subsection 23.3(d) below.
- (ii) The Compressor Fuel and OGFTU, determined pursuant to Subsection 23.3(c)(i) shall be divided by the applicable Estimated Quantities to arrive at the Compressor Fuel Retention and OGFTU Retention, respectively.

(d) Deferred F&LR Accounts

- (i) Transporter shall maintain a Deferred F&LR Account with appropriate subaccounts for each Retainage to separately track over or under collections of Compressor Fuel and OGFTU. Each such subaccount may have a negative or positive balance to reflect any past over or under collection.
- (ii) Transporter shall determine for each month the difference between (a) actual Compressor Fuel and OGFTU and (b) quantities retained by Transporter under each respective Retainage.

- (iii) The balance in the applicable Deferred F&LR subaccounts shall be increased or decreased by the difference computed pursuant to Subsection 23.3(d)(ii) above. These subaccount balances shall also be increased (or decreased) to reflect any operational sales (or operational purchases) subject to the crediting mechanism set forth at Section 4.9 of these General Terms and Conditions. Such operational sales (or operational purchases) shall be allocated among the subaccounts with negative (or positive) balances in proportion to the magnitude of such negative (or positive) balances.
- (iv) Transporter shall include the balance of each Deferred F&LR subaccount as of the end of the Base Period in the determination of the Retainages as set forth in Subsection 23.3(c) above.
- (v) To the extent the Deferred F&LR Account exceeds 50,000 Dth (positive or negative), Transporter shall have the right to file an out-of-cycle Retainage adjustment utilizing the same methodology contained herein to be effective on not less than thirty (30) days' notice.

24. COMBINATION AND MUTUAL TERMINATION OF AGREEMENTS

24.1 Combination of Service Agreements

Transporter and Shipper may mutually agree on a not unduly discriminatory basis to (i) different termination dates for specified quantities within the same service agreement and/or (ii) combine service agreements under the same rate schedule into a single service agreement with different termination dates for specified quantitative portions of Shipper's maximum quantity. Transporter and Shipper may mutually agree to combine service agreements only to the extent that each individual service agreement's rates, terms, and conditions can be distinctly maintained and will not be altered by the combination. For each service agreement executed in accordance with this Section 24, each of the varying termination dates and associated quantities will be set forth on a separate exhibit. Each component with a different termination date for a specified quantitative portion of Shipper's maximum quantity within the same service agreement and reflected in a separate exhibit will be regarded as a single service agreement for purposes of Shipper's exercise of any Right of First Refusal under the provisions of Section 15 of these General Terms and Conditions. In the event of a constraint or other occurrence that precludes combined nominations or allocations, Transporter may advise shippers under such combined service agreements that capacity must be nominated separately, and is subject to separate allocation, pursuant to the terms of each separate exhibit of each service agreement. Each exhibit of each combined service agreement will be identified by its original contract number or such other identification convention determined to be applicable by Transporter.

24.2 Mutual Termination or Reduction of Service Agreements

Transporter may, on a not unduly discriminatory basis, agree with a Shipper to terminate its service agreement prior to its expiration date or to reduce the contract quantity thereunder. The situations in which Transporter may so agree include, without limitation, the following:

- (a) where shipper responds to a solicitation for capacity release offers in an open season for capacity requiring the construction of new facilities pursuant to Section 17 of these General Terms and Conditions, and the conditions set forth in the solicitation have been satisfied;

- (b) where shipper no longer qualifies for service pursuant to Section 2.1 of these General Terms and Conditions;
- (c) where the termination of the service agreement is part of a restructuring of services between Transporter and Shipper, involving the execution of one or more new service agreements or the extension of one or more other existing service agreements, which Transporter reasonably considers financially beneficial to Transporter; or
- (d) where shipper agrees to pay an exit fee that is sufficient, taking into account the remaining term of the agreement and the value and liquidity of the capacity subscribed under the service agreement being terminated or reduced, to make the termination or reduction financially beneficial to Transporter, in Transporter's reasonable judgment; provided, however, that Transporter may waive the exit fee where Shipper's service agreement provides for a discounted rate and Transporter concludes that the capacity subscribed thereunder would be sold at a higher rate for the full remaining term of such agreement.

An agreement under this Section 24.2 shall not constitute a material deviation from the applicable form of service agreement.

25. NON-CONFORMING AGREEMENTS

The following agreements contain one or more currently effective provisions that differ materially from the applicable form contained in this tariff.

Name of Shipper	Agreement Number	Rate Schedule
Sithe/Independence Power Partners, L.P.	Amendment III to F11045	FT

26. PRESSURE

- (a) Transporter shall deliver gas at each delivery point to or for the account of Shipper at the pressure which shall be available from time to time in Transporter's pipeline, less any pressure reduction that may occur through any measurement, flow control, regulation or other appurtenant facilities that are owned by Transporter; provided, however, that Transporter and a firm Shipper may mutually agree to a specific minimum delivery pressure for a stated period at any delivery point or points which Transporter shall agree to meet or exceed, and where necessary, upon specified conditions to ensure that such agreement does not have any adverse effects on Transporter's system. Transporter's obligation to meet or exceed this minimum delivery pressure shall be contingent upon total deliveries at the particular delivery point or points not exceeding the sum of the maximum quantities, applicable to such point, of all Shippers with firm service agreements specifying such point as a primary delivery point. Transporter may meet or exceed the specified minimum delivery pressure if deliveries at the delivery point or points are in excess of such sum, but shall have no obligation to do so. If Transporter and Shipper agree to a specific minimum delivery pressure obligation for a stated period, the pressure obligation and any conditions will be specified in the service agreement in the blank spaces provided in the Form of Service Agreement. Transporter may at any time, and from time to time, exceed a minimum delivery pressure obligation it has made to a Shipper. Transporter also may operate its facilities at less than the minimum delivery pressure obligation made to a Shipper when maintenance of the minimum pressure is not necessary to effect delivery of scheduled quantities up to the maximum quantity specified in Shipper's service agreement. If Transporter and a Shipper are unable to mutually agree upon a minimum pressure commitment, Transporter will, upon request from that Shipper, provide a written explanation concerning the operational reasons for the denial.
- (b) Shipper shall deliver gas or cause gas to be delivered to Transporter at the receipt point(s) at a pressure sufficient to allow the gas to enter Transporter's pipeline, as such pressure shall vary from time to time, provided, however, that such pressure shall not exceed any maximum pressure determined by Transporter from time to time. Transporter shall not be required to compress into its pipeline gas transported under any rate schedule, or otherwise change its normal pipeline operations. At each receipt point, Shipper shall provide, or cause to be provided, equipment

acceptable to Transporter that will prevent overpressuring of Transporter's pipeline. Transporter and Shipper may agree to a specific minimum receipt pressure for a stated period at any point or points, below which Transporter is not obligated to receive gas from or on behalf of Shipper, and where necessary, upon specified conditions to ensure that such agreement does not have any adverse effect on Transporter's system. If Transporter and Shipper agree to a specific minimum receipt point pressure obligation for a stated period, the pressure obligation and any conditions will be specified in the service agreement in the blank spaces provided in the Form of Service Agreement. If Transporter and a Shipper are unable to mutually agree upon a minimum pressure commitment, Transporter will, upon request from that Shipper, provide a written explanation concerning the operational reasons for the denial.

- (c) Transporter will not enter into minimum pressure obligations or conditions that will adversely affect Transporter's ability to meet its firm service obligations to an existing Shipper.

27. INDUSTRY STANDARDS

In compliance with 18 CFR §284.12

Transporter has adopted the Business Practices and Electronic Communications Standards, NAESB WGQ Version 3.1, which are required by the Commission in 18 CFR §284.12(a), as indicated below. Standards without accompanying identification or notations are incorporated by reference. Standards that are not incorporated by reference are identified along with the tariff record in which they are located. Standards for which waivers or extensions of time have been granted are also identified.

Standards not Incorporated by Reference and their Location in Tariff:

<u>NAESB Standard</u>	<u>Tariff Record</u>
1.3.1	Part 7, GT&C §1 – Definition of Terms
1.3.2(i)	Part 7, GT&C §4.1(a) – Timely Nominations
1.3.2(ii - vi)	Part 7, GT&C §4.1(b) – Intraday Nominations
1.3.4	Part 7, GT&C §4.1 – Nominations
1.3.6	Part 7, GT&C §4.1(c) – Other Nominations
1.3.23	Part 7, GT&C §4.2 – Scheduling and Allocation of Capacity
2.3.14	Part 7, GT&C § 5.3 – Measurement and Measurement Equipment
3.2.1	Part 7, GT&C §1 – Definition of Terms
3.3.15	Part 7, GT&C §7.3 – Verification and Correction of Errors
5.2.3	Part 7, GT&C §1 – Definition of Terms
5.3.1	Part 7, GT&C §12.3(c) – Capacity Release Timeline
5.3.2	Part 7, GT&C §12.3(c) – Capacity Release Timeline
5.3.3	Part 7, GT&C §12.5(a) – Determination of Best Bid
5.3.4	Part 7, GT&C §12.5(c) – Determination of Best Bid
5.3.8	Part 7, GT&C §12.2(a)(xi) – Notice by Existing Shipper
5.3.11	Part 7, GT&C §12.6 – Awards
5.3.12	Part 7, GT&C §12.3(a) – Posting of Shipper’s Notice
5.3.13	Part 7, GT&C §12.4(c) – Eligible Bidders and Bidding Procedures
5.3.14	Part 7, GT&C §12.2(b) – Notice Required by Existing Shipper
5.3.15	Part 7, GT&C §12.4(c) – Eligible Bidders and Bidding Procedures

<u>NAESB Standard</u>	<u>Tariff Record</u>
5.3.16	Part 7, GT&C §12.2(b) – Notice Required by Existing Shipper
5.3.26	Part 7, GT&C §12.2(a)(ix) – Notice by Existing Shipper
5.3.28	Part 7, GT&C §12.2(a)(iii) – Notice by Existing Shipper
5.3.44	Part 7, GT&C §12.11 – Intraday Recalls of Capacity
5.3.45	Part 7, GT&C §12.11(b) – Intraday Recalls of Capacity
5.3.54	Part 7, GT&C §12.11(c) – Intraday Recalls of Capacity
5.3.55	Part 7, GT&C §12.11(e) – Intraday Recalls of Capacity
5.3.57	Part 7, GT&C §12.11(f) – Intraday Recalls of Capacity

Standards Incorporated by Reference:

Additional Standards:

General:

Definition: 0.2.5
Standards: 0.3.1, 0.3.2, 0.3.16, 0.3.17

Creditworthiness:

Standards: 0.3.3, 0.3.4, 0.3.5, 0.3.6, 0.3.7, 0.3.8, 0.3.9, 0.3.10

Gas/Electric Operational Communications:

Definitions: 0.2.1, 0.2.2, 0.2.3, 0.2.4
Standards: 0.3.11, 0.3.12, 0.3.13, 0.3.14, 0.3.15

Operating Capacity and Unsubscribed:

Standards: 0.3.18, 0.3.20, 0.3.21, 0.3.22
Datasets: 0.4.2, 0.4.3

Location Data Download:

Standards: 0.3.23, 0.3.24, 0.3.25, 0.3.26, 0.3.27, 0.3.28, 0.3.29

Dataset: 0.4.4

Storage Information

Datasets: 0.4.1

Nominations Related Standards:

Definitions: 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.8, 1.2.9, 1.2.10, 1.2.11, 1.2.12, 1.2.13, 1.2.14, 1.2.15, 1.2.16, 1.2.17, 1.2.18, 1.2.19

Standards: 1.3.3, 1.3.5, 1.3.7, 1.3.8, 1.3.9, 1.3.11, 1.3.13, 1.3.14, 1.3.15, 1.3.16, 1.3.17, 1.3.18, 1.3.19, 1.3.20, 1.3.21, 1.3.22, 1.3.24, 1.3.25, 1.3.26, 1.3.27, 1.3.28, 1.3.29, 1.3.30, 1.3.31, 1.3.32, 1.3.33*, 1.3.34, 1.3.35, 1.3.36, 1.3.37, 1.3.38, 1.3.39, 1.3.40, 1.3.41, 1.3.42, 1.3.43, 1.3.44, 1.3.45, 1.3.46, 1.3.48, 1.3.51, 1.3.53, 1.3.55, 1.3.56, 1.3.58, 1.3.62, 1.3.64, 1.3.65, 1.3.66, 1.3.67, 1.3.68, 1.3.69, 1.3.70, 1.3.71, 1.3.72, 1.3.73, 1.3.74, 1.3.75, 1.3.76, 1.3.77, 1.3.79, 1.3.80, 1.3.81, 1.3.82

Datasets: 1.4.1, 1.4.2, 1.4.3, 1.4.4, 1.4.5, 1.4.6, 1.4.7

Flowing Gas Related Standards:

Definitions: 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5

Standards: 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.3.6, 2.3.7, 2.3.8, 2.3.9, 2.3.10, 2.3.11, 2.3.12, 2.3.13, 2.3.14, 2.3.15, 2.3.16, 2.3.17, 2.3.18, 2.3.19, 2.3.20, 2.3.21, 2.3.22, 2.3.23, 2.3.25, 2.3.26, 2.3.27, 2.3.28, 2.3.29, 2.3.30, 2.3.31, 2.3.32, 2.3.40, 2.3.41, 2.3.42, 2.3.43, 2.3.44, 2.3.45, 2.3.46, 2.3.47, 2.3.48, 2.3.50, 2.3.51, 2.3.52, 2.3.53, 2.3.54, 2.3.55, 2.3.56, 2.3.57, 2.3.58, 2.3.59, 2.3.60, 2.3.61, 2.3.62, 2.3.63, 2.3.64, 2.3.65, 2.3.66

Datasets: 2.4.1, 2.4.2, 2.4.3, 2.4.4, 2.4.5, 2.4.6, 2.4.7, 2.4.8, 2.4.9, 2.4.10, 2.4.11, 2.4.17, 2.4.18

Invoicing Related Standards:

Standards: 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8, 3.3.9, 3.3.10, 3.3.11, 3.3.12, 3.3.13, 3.3.14, 3.3.16, 3.3.17, 3.3.18, 3.3.19, 3.3.21, 3.3.22, 3.3.23, 3.3.24, 3.3.25, 3.3.26

Datsets: 3.4.1, 3.4.2, 3.4.3, 3.4.4

Quadrant Electronic Delivery Mechanism Related Standards:

Definitions: 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8, 4.2.9, 4.2.10, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 4.2.15, 4.2.16, 4.2.17, 4.2.18, 4.2.19, 4.2.20

Standards: 4.3.1, 4.3.2, 4.3.3, 4.3.16, 4.3.17, 4.3.18, 4.3.20, 4.3.22, 4.3.23, 4.3.24, 4.3.25, 4.3.26, 4.3.27, 4.3.28, 4.3.30, 4.3.31, 4.3.32, 4.3.33, 4.3.34, 4.3.35, 4.3.36, 4.3.38, 4.3.40, 4.3.41, 4.3.42, 4.3.43, 4.3.44, 4.3.45, 4.3.46, 4.3.47, 4.3.48, 4.3.49, 4.3.50, 4.3.52, 4.3.53, 4.3.54, 4.3.55, 4.3.57, 4.3.58, 4.3.60, 4.3.61, 4.3.62, 4.3.66, 4.3.67, 4.3.68, 4.3.69, 4.3.72, 4.3.75, 4.3.78, 4.3.79, 4.3.80, 4.3.81, 4.3.82, 4.3.83, 4.3.84, 4.3.85, 4.3.86, 4.3.87, 4.3.89, 4.3.90, 4.3.91, 4.3.92, 4.3.93, 4.3.94, 4.3.95, 4.3.96, 4.3.97, 4.3.98, 4.3.99, 4.3.100, 4.3.101, 4.3.102, 4.3.103, 4.5.104, 4.3.105, 4.3.106

Capacity Release Standards:

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Standards for which Waiver or Extension of Time to Comply have been granted:

None

28 TRANSFERS OF STORAGE BALANCE

- 28.1 Subject to the limitations of this Section 28, and subject to Section 3.7 of the ISS Rate Schedule, any Shipper under the FSNN or ISS Rate Schedule (a “Transferring Shipper”) may transfer all or any part of its Storage Balance to:
- (a) any other Shipper that has executed a Service Agreement providing for service under the FSNN or ISS Rate Schedule (“Receiving Shipper”), including Service Agreements executed in connection with the release of storage service under Section 12 of these General Terms and Conditions; or
 - (b) its Storage Balance under a different Service Agreement under the FSNN or ISS Rate Schedules (in which capacity the Transferring Shipper shall be referred to as the “Receiving Shipper”).
- 28.2 A Transferring Shipper may transfer all or any part of its Storage Balance to a Receiving Shipper only as follows:
- (a) Transferring Shipper and Receiving Shipper shall each submit to Transporter a Customer Nomination as described in Section 4.1 of these General Terms and Conditions, which Customer Nomination shall be without conditions and identify the date(s) on which the transfer is proposed to be effective. Upon Transporter’s receipt of both Customer Nominations to transfer Storage Balance, both such nominations shall be irrevocable.
 - (b) Subject to the limitations of this Section 28, a Storage Balance transfer from Transferring Shipper to Receiving Shipper will occur at the effective time of the Receiving Party’s nomination for that transfer.
 - (c) By delivering to Transporter a Customer Nomination for a transfer of Storage Balance under this Section 28, Transferring Shipper warrants to Transporter that Transferring Shipper has the authority to transfer the Storage Balance.
- 28.3 All provisions of Section 4 of these General Terms and Conditions shall apply to Customer Nominations to transfer Storage Balance under this Section 28, except that Transporter may reject a nominated transfer of Storage Balance as described in this Section 28.3. Transporter may reject a nominated transfer of Storage Balance (and notify nominating Shippers)

within the time period and in the manner by which the nominating Shipper must receive notice of its scheduled quantities pursuant to Section 4.1 of the General Terms and Conditions of this tariff. To reject a nominated transfer of Storage Balance, Transporter must determine, in its reasonable discretion (in which Transporter may assume that Receiving Shipper will subsequently nominate to withdraw the transferred Storage Balance and ship it to Receiving Shipper's primary delivery point or points under its firm transportation agreement, if any) that:

- (a) the nominated transfer would cause the Storage Balance of Receiving Shipper to exceed that Shipper's MSQ;
- (b) the Storage Balance of Transferring Shipper is less than the quantities proposed to be transferred;
- (c) the nominated transfer would not be a transfer to an entity which qualifies to be a Receiving Shipper as described in Section 28.1;
- (d) the nominated transfer would in any way threaten the integrity of Transporter's system;
- (e) the nominated transfer would impair Transporter's current or future operations, or curtail current or future service to any firm Shipper at a Primary Point; or
- (f) the nominated transfer would require Transporter to issue an operational flow order to any other Shipper.

28.4 Except as set forth in Section 3.4 of the ISS Rate Schedule, no injection charge, withdrawal charge, surcharge, or Storage Operating and LAUF Retention shall apply to a transfer of Storage Balance under this Section 28; provided, however, that any charge specifically provided for in a Rate Schedule for a transfer of Storage Balance shall be applicable. No transfer under this Section 28 shall affect Transferring Shipper's obligation to have paid charges applicable to physical injection of such Storage Balance, or Receiving Shipper's obligation to pay applicable charges upon the eventual withdrawal and transportation of such transferred Storage Balance.

29. RESERVED FOR FUTURE USE

30. MISCELLANEOUS

- 30.1 Assignments. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Shipper or of Transporter, as the case may be, shall if eligible be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; and either party may assign or pledge this Agreement under the provisions of any mortgage, deed of trust, indenture, or similar instrument which it has executed or may execute hereafter covering substantially all of its properties; otherwise neither party shall assign this Agreement or any of its rights hereunder unless it first shall have obtained the consent thereto in writing of the other party; provided further, however, that neither party shall be released from its obligations hereunder without the consent in writing of the other party. Shipper may release capacity pursuant to Section 12 of these General Terms and Conditions. Transporter also may agree to other amendments or cancellations of agreements hereunder.
- 30.2 Regulations. Any Agreement, and all terms and provisions herein, and the respective obligations of the parties thereunder are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.
- 30.3 Responsibility for Gas. Shipper shall be deemed in exclusive control and possession of the Gas until such Gas has been delivered to Transporter at the Point of Receipt and after such Gas has been redelivered to or for the account of Shipper at the Point of Delivery. Transporter shall be in exclusive control and possession of such Gas between the Point(s) of Receipt and the Point(s) of Delivery set forth in this Agreement. The party which shall be in exclusive control and possession of such Gas shall be responsible for all injury or damage caused thereby to any third party.
- 30.4 Indemnification of Transporter. In the absence of gross negligence or willful misconduct on the part of Transporter's officers, employees or agents, Shipper waives and indemnifies against any and all claims against Transporter, its officers, employees or agents, arising out of or in any way connected with (i) the quality, use or condition of the Gas after delivery from Transporter's line for the account of such Shipper, and (ii) with respect to third-party claims, any losses or shrinkage of Gas during or resulting from transportation hereunder; Shipper agrees to supply

Transporter with a waiver of subrogation of Shipper's insurance company for all claims subject to the indemnification and the save harmless provisions covered by this paragraph.

30.5 Warranty. Shipper warrants for itself, its successors, and assignees, that it has, or will have, at the time of delivery of the Gas for transportation hereunder, good title to such Gas to be delivered to Transporter for Transportation, or, where a waiver of the Commission's shipper-must-have-title is applicable, the contractual right to allow and cause such gas to be delivered to and transported by Transporter. Shipper warrants for itself, its successors, and assigns, and any person(s) which grant such contractual right to Shipper, that the Gas it warrants hereunder shall be free and clear of all liens, encumbrances or claims, that it will indemnify and save Transporter harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of any adverse claims of any and all persons to said Gas and/or to royalties, taxes, license fees, or charges thereon which are directly applicable to such delivery of Gas and that it will indemnify and save Transporter harmless from all taxes or assessments which may be directly levied and assess upon such delivery and which are by law payable and the obligation of the party making such delivery. The reference to taxes and assessments in this section is not intended to include taxes or assessments on the income, profits, or assets on an ad valorem basis of Transporter.

30.6 Force Majeure

(a) Definition. The term "force majeure" as used herein shall mean acts of God, strikes, lockouts, or other industrial disturbances; acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms (including but not limited to hurricanes or hurricane warnings), crevasses, floods, washouts; arrests and restraints of peoples or of the government, either Federal or State, civil or military; and civil disturbances, shutdowns for purposes of necessary unplanned, emergency repairs, relocation, or construction of facilities; explosions, power outages, telecommunications failure, breakage or accident to machinery or lines of pipe; the necessity of making unplanned, emergency repairs or alterations to machinery or lines of pipe; failure of surface equipment or pipe lines; accidents, breakdowns, inability to obtain necessary materials, supplies or permits, or labor to perform or comply with any obligation or condition of this Agreement, rights of way; and any other causes,

whether of the kind herein enumerated or otherwise which are not reasonably in Transporter's control. It is understood and agreed that the settlement of strikes or lockouts or controversies with landowners involving rights of way shall be entirely within Transporter's discretion and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts or controversies with landowners involving rights of way by acceding to the demands of the opposing party when such course is inadvisable in the discretion of Transporter.

- (b) Force Majeure. If by reason of force majeure either party hereto is rendered unable, wholly or in part, to carry out its obligations under this Agreement, it is agreed that if such party gives notice in full particulars of such force majeure in writing or by telecopy to the other party within a reasonable time after the occurrence of the cause relied on, the party giving such notice, so far as and to the extent that it is affected by such force majeure, shall not be liable for damages during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. Transporter shall not be liable for damages to Shipper other than for acts of gross negligence or willful misconduct, and only in circumstances in which conditions of force majeure do not exist.
- (c) Limitations. Such force majeure affecting the performance hereunder by either Transporter or Shipper, however, shall not relieve such party of liability in the event of failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Shipper from its obligations to make payments then due or becoming due under this agreement.

30.7 Waiver

- (a) Discretionary Waiver. Transporter may waive any of its rights hereunder or any obligations of Shipper as to any specific default that has already occurred, or case-by-case in advance as to any specific, temporary operational problem, on a basis that is not unduly discriminatory.

- (b) Non-Waiver. Notwithstanding the foregoing, no waiver by either Transporter or Shipper of any one or more defaults by the other in performance of any of the provisions of an effective service agreement shall operate or be construed as a waiver of any other existing or future default or defaults, whether of a like or of a different character.

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