FERC ICA Oil Tariff **F.E.R.C. No. 3.11.0**

(Cancels F.E.R.C. No. 3.10.0)

Caliber Spring Creek LLC

LOCAL TARIFF
CONTAINING
RULES, REGULATIONS AND RATES

Governing the Transportation of

CRUDE OIL

Transported By Pipeline

FROM ORIGINS IN
McKenzie County, North Dakota

TO DESTINATIONS IN
McKenzie County, North Dakota

The rules and regulations published herein apply only under tariffs making specific reference by F.E.R.C. number to these rules and regulations; such reference will include supplements hereto and successive issues hereof.

Issued in compliance with 18 C.F.R. § 342.3(a) (Indexing).

[C] ~~Issued on one day's notice under authority of 18 CFR § 341.14. This tariff publication is conditionally accepted subject to refund pending a thirty (30) day review period.~~

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

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ISSUED AND COMPILED BY:
Luke A. DiTomas
Chief Financial Officer
Caliber Spring Creek LLC
950 17th Street, Suite 1000
Denver, CO 80202
(720) 630-2666
lditomas@calibermidstream.com

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GENERAL RULES AND REGULATIONS

1. DEFINITIONS

As used in these rules and regulations, the following terms have the following meanings:

"a.m." means a time of day at or after midnight and before noon.

"Affiliate" means, with respect to any person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, Controls or is Controlled by or is under common Control with such particular person or entity.

"Control" or "Controlled" means ownership of fifty percent (50%) or more of voting rights (stock or otherwise) or ownership interest or the power to direct or cause the direction of the management and policies of the person or entity in question.

"Barrel" means a liquid measure equal to forty two (42) United States gallons of two hundred thirty one (231) cubic inches per gallon at sixty (60) degrees Fahrenheit.

"Carrier" means Caliber Spring Creek LLC.

"Committed Shipper" means any Shipper that has entered into a TSA with Carrier for transportation service available on Carrier's pipeline, which is not subject to prorationing, except as provided in subpart a of Item No. 17. The TSA shall state whether the Committed Shipper qualifies as an Item No. 22 Committed Shipper.

"Crude Oil" means the mixture of hydrocarbons that exist in the liquid phase in natural underground reservoirs after passing through surface separation and well site treatment facilities and that remain liquid at atmospheric pressure.

"Crude Oil Specifications" means those specifications set forth in Item No. 2 of this tariff.

"Delivery Point" means the point, or points, of destination for Crude Oil.

"Force Majeure" means the following events to the extent not reasonably foreseeable or avoidable by the affected Party through the exercise of reasonable diligence and commercially reasonable efforts: acts of God, strikes, lockouts, or other industrial disputes or disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, hurricanes, storms, and warnings for any of the foregoing that may necessitate the precautionary shut-down of wells, plants, pipelines, gathering systems (including Carrier's pipeline), or other related facilities, floods, washouts, arrests, and restraints of governments and people, civil disturbances, explosions, sabotage, freezing of wells or lines of pipe, electric power shortages, necessity for compliance with any court order, or any law, statute, ordinance, regulation or order promulgated by a governmental authority having or asserting jurisdiction, inclement weather that necessitates extraordinary measures and expense to construct facilities or maintain operations, and any other event or cause, including mechanical failure, structural failure, breakage of or accident to machinery, lines of pipe, or wells, not within the reasonable control of the Party claiming suspension. "Force Majeure" will also include the following, regardless of whether within the control of the Party claiming suspension provided that such Party exercises reasonable diligence to prevent such event of Force Majeure: (i) any event described in the previous sentence and occurring with respect to the facilities or services of either Party's service providers including a downstream pipeline, providing a service or providing any equipment, goods, supplies, or other services or items necessary to the performance of the Party's obligations under this tariff, (ii) in those instances where Carrier is required to obtain servitudes, rights-of-way, grants, surface rights, permits, or licenses to enable it to fulfill its obligations under this tariff, Carrier's inability to acquire, or delay in acquiring (at commercially reasonable cost and after the exercise of reasonable diligence), such servitudes, rights-of-way, grants, surface rights, permits, or licenses, (iii) in those instances where Carrier is required to secure permits or permissions from any governmental authority to enable it to

fulfill its obligations under this tariff, Carrier's inability to acquire, or delays on its part in acquiring (at commercially reasonable cost and after the exercise of reasonable diligence), such permits and permissions, and (iv) inspections, alterations, or repairs made necessary as a result of any event described in the previous sentence to any part of Carrier's pipeline or required relocations or modifications of pipelines and other equipment and facilities comprising part of Carrier's pipeline.

"F.E.R.C." means the Federal Energy Regulatory Commission or any successor governmental agency.

"Item No. 22 Committed Shipper" means a Committed Shipper that has met the qualifications, and is entitled to the rights, described in Item No. 22 below.

"LACT Unit" means a Lease Automatic Custody Transfer Unit including measurement devices, flow computer, and associated equipment at the Receipt Points.

"Linefill" means the quantity of Crude Oil needed to occupy the physical space in Carrier's facilities.

"Maximum Capacity" means the maximum amount of capacity specified in a Committed Shipper's TSA.

"No." means number.

"Nomination" means a request by a Shipper to Carrier, to accept a stated quantity of Crude Oil for transportation from a specified Receipt Point to a specified Delivery Point in accordance with these rules and regulations.

"Nomination Deadline" means at or before 11:00 a.m. Central Time in Houston, Texas on the ninth (9th) day of each month, unless, in the Carrier's discretion and in a nondiscriminatory manner, Carrier agrees to a later time and date.

"Non-Performance Penalty" means an amount equal to the product of the applicable tariff rate multiplied by the difference between the Shipper's Nomination (plus or minus any Linefill requirements and PLA) and the Shipper's Tender in a month of prorationing under Item No.17.

"Party" means either Carrier or a Shipper.

"Pipeline Segment" means a section of Carrier's pipeline, the limits of which are defined by two geographically identifiable points, that, because of the way that section of Carrier's pipeline is designed and operated, must be treated as a unit for purposes of determining capacity.

"p.m." means a time of day at or after noon and before midnight.

"PLA" means the volumetric losses incurred on the System due to evaporation, measurement, and other losses in transit.

"Quality Bank" has the meaning assigned to such term in subsection c of Item No. 9.

"Ratable" means the delivery of Crude Oil throughout each month in daily quantities that are approximately equal to the volume of Crude Oil delivered during the month divided by the number of days in that month.

"Receipt Point" means the points of origin for receipt of Crude Oil from a Shipper into Carrier's facilities.

"Royalties" has the meaning assigned to such term in subsection c of Item No. 14.

"Shipper" means a party for which Carrier provides interstate transportation of Crude Oil under the terms of these rules and regulations, including all Uncommitted Shippers and Committed Shippers.

"Tender" means a delivery by a Shipper to Carrier of a stated quantity of Crude Oil, under a Nomination accepted by Carrier, for transportation service in accordance with these rules and regulations.

"Tesoro" means Tesoro High Plains Pipeline Company LLC.

"TSA" means a transportation services agreement between a Shipper and Carrier.

"Uncommitted Shipper" means any Shipper that has not entered into a TSA with Carrier for transportation service and is subject to prorationing as provided in Item No. 17.

2. COMMODITY/TSA/SPECIFICATIONS/INDEMNITIES FOR SHIPMENTS

a. Carrier is engaged in the transportation of Crude Oil by pipeline and will not accept any other commodity for transportation.

b. All Committed Shippers must enter into a mutually agreeable TSA with Carrier.

c. Carrier will have no obligation to accept, and, except as provided in subsection e. of this Item No. 2, Shipper will not deliver or cause to be delivered, any shipment for transportation service which shipment does not conform to the Crude Oil Specifications, or that is not good and merchantable Crude Oil readily acceptable for transportation service through Carrier's existing facilities, or that does not meet the quality criteria of the common stream, or that does not meet the more stringent specifications, if any, of the downstream pipeline, or that would otherwise adversely affect Carrier's facilities or other Crude Oil. "**Crude Oil Specifications**" means the following:

i. No presence of contaminants in Crude Oil, including, but not limited to, chemicals such as chlorinated and/or oxygenated hydrocarbons and/or lead;

ii. Sulfur content less than or equal to 0.5% by weight;

iii. Hydrogen sulfide (H2S) vapor phase [ppm] content less than or equal to 5 ppm.

d. If a shipment received by Carrier does not conform to the Crude Oil Specifications, Carrier may treat or otherwise dispose of the contaminated shipment and will bill Shipper, and Shipper will pay, for the costs incurred for the treatment or disposal, including, without limitation, any penalties or charges incurred by Carrier as a result of the contamination, *provided, however,* that if Carrier knowingly accepts from Shipper delivery of Crude Oil that does not meet the Crude Oil Specifications, Carrier may treat or otherwise dispose of the contaminated shipment at Carrier's sole expense. Except as provided in subsection e. of this Item No. 2, Shipper will be responsible and pay for any and all cleanup activities resulting from receipt of any of Shipper's Crude Oil that does not conform to the Crude Oil Specifications, including the costs associated with the cleanup or repair of Carrier's pipeline or the facilities of others affected by the non-conforming Crude Oil.

e. If Carrier knowingly accepts from Shipper delivery of Crude Oil that does not meet the Crude Oil Specifications, then (a) Shipper will be liable to Carrier for any claims of damage asserted by third parties, including special, incidental and consequential, arising directly from the transportation of such nonconforming Crude Oil, and (b) Carrier will be liable for any claims of property damage to Carrier's pipeline.

f. **SHIPPER COVENANTS THAT IT WILL RELEASE, DEFEND, INDEMNIFY AND SAVE CARRIER HARMLESS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, CLAIMS, AND DEMANDS ARISING FROM OR OUT OF ANY ADVERSE CLAIMS MADE BY ANY THIRD PARTY OR BY SHIPPER FOR ANY LOSS, DAMAGE, COST, OR EXPENSE RELATING TO, CAUSED BY, OR ARISING OUT OF: (A) THE PHYSICAL OPERATION BY SHIPPER OF ITS FACILITIES, (B) THE**

OWNERSHIP OF OR ANY INTEREST IN THE CRUDE OIL TENDERED FOR TRANSPORTATION SERVICES HEREUNDER, (C) EXCEPT AS PROVIDED IN SUBSECTION E. OF THIS ITEM NO. 2 WITH RESPECT TO KNOWING ACCEPTANCE BY CARRIER, THE QUALITY (OR LACK THEREOF) OF SHIPPER'S CRUDE OIL OR THE FAILURE OF SHIPPER'S CRUDE OIL TO MEET THE CRUDE OIL SPECIFICATIONS, (D) THE BREACH BY SHIPPER OF ANY REPRESENTATION OR WARRANTY OR COVENANT MADE BY SHIPPER HEREUNDER OR IN A TSA, AND (E) THE LOSS OF OR DAMAGE TO SHIPPER'S CRUDE OIL FOR REASONS OTHER THAN THE WILLFUL MISCONDUCT OR NEGLIGENCE OF CARRIER PRIOR TO DELIVERY OF THE CRUDE OIL AT THE RECEIPT POINTS AND AFTER RE-DELIVERY OF THE CRUDE OIL AT THE DELIVERY POINTS.

3. TENDERS/NOMINATIONS

a. Crude Oil will be transported only under a Nomination accepted by Carrier, from origins to destinations when a tariff covering the movement is lawfully in effect and on file with F.E.R.C., and, if necessary, with the appropriate state commission covering intrastate commerce.

b. Any Shipper desiring to Tender Crude Oil for transportation will submit a Nomination to Carrier in writing via Carrier's electronic bulletin board or, if an electronic bulletin board is unavailable, via facsimile or email on or before the Nomination Deadline. Unless such notification is made, Carrier will be under no obligation to accept such Shipper's Crude Oil for transportation. However, if operating conditions permit, Nominations for Crude Oil may be accepted for transportation after the Nomination Deadline. In addition, if a Committed Shipper's Tender or Nomination exceeds such Committed Shipper's Maximum Capacity, if sufficient capacity is available, and subject to the terms of any applicable TSA and Item 16, Carrier will accept Committed Shipper's Crude Oil so long as such delivery will not, in Carrier's reasonable judgment, adversely affect Carrier's pipeline or its operation.

c. Tenders will be accepted only when the total quantity covered by a Nomination will be made available for transportation within the month when the Tender is to begin. Crude Oil will be Tendered in quantities of not less than one thousand (1,000) Barrels. If requested by Carrier, Shipper will furnish Carrier with a schedule of the expected deliveries at origin and withdrawals at destination, setting forth Shipper's best estimate of daily rate of deliveries and withdrawals, and dates on which such deliveries and withdrawals will commence. Acceptance of such schedule will not constitute an obligation, legal or otherwise, on the part of Carrier to meet such schedule. Otherwise, Crude Oil will be delivered to Carrier's facilities under this tariff on a Ratable basis. Carrier will have no transportation obligations to Shipper unless Shipper meets the minimum Tender requirements.

d. When the total quantity of Crude Oil received by Carrier at the Receipt Point exceeds the total quantity of Crude Oil delivered by Carrier to Shipper at the Delivery Point in a Month (plus or minus any Linefill requirements and PLA), then Carrier will inform Shipper of the excess quantity that has been received but not delivered by Carrier and Shipper will have the right to include such excess quantities for delivery by Carrier at the Delivery Point the following month's Nomination. If Shipper does not include the excess quantities of Crude Oil for delivery by Carrier at the Delivery Point in the following month's Nomination, Carrier may treat such excess quantities of Crude Oil as Crude Oil that Shipper has failed to remove from Carrier's facilities and may sell such Crude Oil as provided in Item No. 6 of this tariff.

e. Carrier may refuse to accept Crude Oil for transportation if Shipper is not in compliance with the provisions of this tariff, or if Shipper has failed to comply with all applicable laws, rules, and regulations made by any governmental authorities regulating shipments of Crude Oil.

4. SCHEDULING SHIPMENTS

Carrier will transport and deliver Crude Oil with reasonable diligence taking into account the quantity and quality of the Crude Oil, distance of the transportation service, safety of operations, and other relevant factors.

5. DESTINATION FACILITIES

a. Carrier has no obligation to furnish any terminaling, tankage, or any other form of storage at destinations, or at any other location outside of Carrier's facilities.

b. Crude Oil will be accepted for transportation hereunder only when Shipper has provided the necessary facilities at the Delivery Points for receiving Crude Oil. Such facilities must be capable of receiving Crude Oil at time of arrival, without delay, at pressures and at volumetric flow levels required by Carrier.

6. FAILURE TO TAKE DELIVERIES OR NOMINATE EXCESS QUANTITIES

If, at the end of any month, Shipper has delivered more Crude Oil at the Receipt Point than it has had redelivered to it at the Delivery Point (plus or minus any Linefill requirements and PLA), Shipper will remove Crude Oil, or cause Crude Oil to be removed, from Carrier's facilities within thirty (30) days following transportation thereof to a nominated Delivery Point. If Shipper fails to remove Crude Oil as required by this tariff, Carrier will have the right, without liability to Shipper and on twenty four (24) hours' notice to Shipper, to sell the Crude Oil to a third party and promptly remit to Shipper the proceeds from the sale, net of any reasonable costs incurred by Carrier in connection with the removal and sale and less a fee of $0.25 per barrel. Shipper appoints Carrier as its agent to sell Shipper's Crude Oil, and to receive and disburse the proceeds from any such sale, pursuant to this Item No. 6. In addition, if Shipper fails to nominate excess quantities of Crude Oil as provided in Item No. 3 above, such failure will be deemed a failure to remove Crude Oil under this Item No. 6.

7. MEASUREMENT AND INSPECTION

a. Subject to Item 19, Carrier will be responsible for installing and operating measurement facilities on Carrier's pipeline. The volume of Crude Oil received at the origins and delivered to the destinations will be measured by meters (including calibration and proving of meters) or other measurement procedures and sampled in accordance with appropriate American Petroleum Institute (API) Manual for Petroleum Measurement Standards, latest revision, and adjusted to base (reference standard) conditions.

b. Carrier, at its sole cost and expense, will test and calibrate the meters once a month. Carrier will give Shipper seven (7) days' prior notice of each meter test so that Shipper, at its sole risk and expense, may have a representative witness all measurement and sampling at the origins or at the destinations or as mutually agreed. Carrier will conduct additional meter tests if reasonably requested by Shipper, *provided, however*, that any meter tests in excess of the required monthly test will be at the requesting Shipper's sole cost and expense.

8. GAUGING, DEDUCTIONS AND ADJUSTMENTS

a. Quantities for receiving, delivering, assessing charges, and all other purposes will be corrected to a temperature of sixty degrees Fahrenheit, after deduction of impurities shown by tests made by Carrier prior to receipt and upon delivery. Quantities may be computed from tank tables compiled or accepted by Carrier.

b. Pursuant to Item No. 14, Crude Oil quantities transported shall be adjusted for PLA. A deduction of 0.25% will be made to cover PLA.

c. The net quantities determined under subsections a. and b. of this Item No. 8 will be the amounts required to be redelivered to Shipper at the applicable Delivery Point.

9. MIXTURES

a. Carrier may commingle Crude Oil received from various Receipt Points. Carrier reserves the right at any time to substitute and deliver Crude Oil that meets the Crude Oil Specifications at a Receipt Point.

b. Crude Oil will be accepted for transportation service only on the condition that, while in transit, it will be subject to such changes in characteristics (including component changes) as may result from the mixture with other Crude Oil. Carrier will be under no obligation to make delivery of the identical Crude Oil, but may make delivery out of the common stream and Shippers will be required to accept such delivery.

c. Carrier will use commercially reasonable efforts to maintain the quality of the Crude Oil delivered by Shipper at the Receipt Point and to redeliver Crude Oil of materially the same quality at the Delivery Point. If either Carrier or a Shipper determines that (a) there is a material difference in the API gravity or sulfur content of the Crude Oil delivered by Shipper at the Receipt Points and re-delivered by Carrier at the Delivery Points, (b) the material difference is not intentional due to the requirements of the downstream pipeline, and (c) the material difference has existed for two (2) or more consecutive monthly testing periods, then, upon written notice by either Party, the Parties will agree upon "**Quality Bank**" procedures pursuant to which monthly monetary or in-kind adjustments are made based upon the differential between the value of the Crude Oil delivered by Shipper at the Receipt Points and the value of the Crude Oil re-delivered by Carrier at the Delivery Points.

d. The indirect products of oil or gas wells, including gasoline and liquefied petroleum gases, hereinafter referred to as indirect products, will not be accepted or transported as a mixture with the direct liquid products of oil wells, hereinafter referred to as direct products.

10. DIVERSION

If, prior to delivery at the original destination, Shipper requests in writing that Crude Oil in transport be diverted to a destination other than originally specified in the Nomination., such diversion will be made if Carrier, in its sole discretion, determines that such diversion will not have an adverse impact on other shippers or Carrier. Any such diversion will be permitted only in accordance with and subject to the rates, rules, and regulations applicable from point of origin to point of final destination and, upon condition that no out of line or backhaul movement will be made.

11. STORAGE

Carrier does not have available, and does not hold itself out to provide, storage of Shipper's Crude Oil at origin, destination, or intermediate points.

12. RATES APPLICABLE

Crude Oil transported will be subject to the applicable tariff rates and charges in effect on the date of the Tender of such Crude Oil by Carrier. Carrier will charge the applicable tariff rate for Crude Oil based on the total quantities delivered to Shipper at the Delivery Point in a month.

13. PAYMENT OF CHARGES

a. As soon as practicable after the end of each Month during the Term, Carrier will invoice Shipper for the amounts payable by Shipper to Carrier under this tariff with respect to the preceding Month. Carrier's invoice to Shipper will include a monthly statement of the fees payable by Shipper to Carrier based upon the confirmed quantity of Shipper's Crude Oil at the Delivery Point during such Month. Carrier's invoice will also include any adjustments to the prior Month's volumes, Shipper's allocation of received volumes based upon the confirmed volume at the Delivery Point, and any

PLA. Further, with respect to Carrier's invoice and monthly statements submitted hereunder, Carrier will provide any supporting documentation reasonably requested by Shipper. The undisputed portion of each invoice will be paid within thirty (30) Days after the date of invoice. All amounts will be paid by electronic funds transfer into the nominated bank account of Carrier. If the last Day for payment falls on a Day that is not a Business Day, then the payment will be made on the nearest succeeding Business Day.

b. If Shipper fails to pay any charges when due to Carrier, Carrier will not be obligated to provide Shipper access to Carrier's facilities or provide services pursuant to Carrier's tariff until such time as payment is received by Carrier. Carrier reserves the right to set-off any amounts owing to Carrier against any monies owed by Carrier to Shipper under this tariff, or under Shipper's TSA, if any, or against any Crude Oil of Shipper in Carrier's custody. In addition, Shipper will pay all documented costs incurred by Carrier to collect any unpaid amounts, including reasonable attorney fees and costs incurred by Carrier. Any late payment owed by Shipper to Carrier will bear simple interest of 0.05% per day from the due date until the date of receipt of the payment, but this rate will be capped at the maximum rate allowed by applicable law.

c. Carrier will have a lien on all Crude Oil accepted for transportation, such lien being to secure the payment of all charges, including demurrage charges, and may refuse to deliver Crude Oil until all charges have been paid. If all undisputed charges, or any part thereof, remain unpaid thirty (30) days computed from seven o'clock a.m. the day after written notice is mailed to Shipper of Carrier's intention to enforce Carrier's lien as herein provided, or when there is a failure to take the Crude Oil at the point of destination as provided in Item No. 6 within thirty (30) days computed from seven o'clock a.m. the day after expiration of the notice therein provided, Carrier will have the right through an agent to sell said Crude Oil at public auction, for cash, provided that the time and place of such sale and the quantity, general description and location of the Crude Oil to be sold has been published in a daily newspaper of general circulation published in the town or city where the sale is to be held, and sent by fax to Shipper. Carrier may be a bidder and purchaser at such sale. Carrier may use the proceeds of such sale in order to pay itself all transportation, demurrage, and other lawful charges, expense of notice, advertisement, sale, and other necessary expense, and of caring for and maintaining the Crude Oil, and the balance will be held for whomsoever may be lawfully entitled thereto. Shipper appoints Carrier as its agent to sell Shipper's Crude Oil, and to receive and disburse the proceeds from any such sale, pursuant to this Item No. 13.

d. When reasonable grounds for insecurity of payment or performance arise, Carrier may demand from Shipper adequate assurance of performance. Adequate assurance means sufficient security in the form and for the term specified by Carrier, including, but not limited to, a standby, irrevocable letter of credit, a prepayment, or a guarantee by a creditworthy entity.

14. LIABILITY/INDEMNITIES

a. No waiver by either Party of any default by the other in the performance of any provision, condition, or requirement in this tariff will be deemed to be a waiver of, or in any manner release the other Party from, performance of any other provision, condition, or requirement in this tariff, nor deemed to be a waiver of, or in any manner release the other Party from, future performance of the same provision, condition, or requirement; nor will any delay or omission of either Party to exercise any right under this tariff in any manner impair the exercise of any such right or like right accruing to it thereafter.

b. Shipper will pay or cause to be paid, and agrees to indemnify and hold harmless Carrier from and against the payment of, all excise, gross production, severance, sales, occupation, and all other taxes, charges, or impositions of any and every kind and character required by statute or by any governmental authority with respect to the Crude Oil and the handling thereof prior to and at the Receipt Points and then at and after the Delivery Points. Carrier will pay or cause to be paid all taxes and assessments, if any, imposed upon Carrier for the activity of gathering, compressing,

dehydrating, and treating the Crude Oil after the Receipt Points and prior to redelivery at the Delivery Points. Neither Party will be responsible or liable for any taxes or other statutory charges levied or assessed against the facilities or the other Party used for the purpose of carrying out the provisions of this tariff. Any Party entitled to an exemption from any such taxes or charges will furnish the other Party any necessary documentation thereof.

c. Shipper will be solely responsible for the payment of all royalties, overriding royalties, bonus payments, production payments, payments for interests in production, or other similar payments due on production collectively ("**Royalties**") relating to the Crude Oil in accordance with the terms of the applicable oil and Gas leases, applicable laws, rules, regulations, or orders and other instruments affecting production of the Crude Oil. Shipper assumes full responsibility and liability for said payments, and hereby agrees to indemnify, defend, and save Carrier and its Affiliates harmless from any and all liability or loss of any kind or character incident to the payment of Royalties.

d. **CARRIER WILL USE COMMERCIALLY REASONABLE EFFORTS TO MAINTAIN THE QUALITY OF THE CRUDE OIL DELIVERED BY SHIPPER AT THE RECEIPT POINT AND TO REDELIVER CRUDE OIL OF MATERIALLY THE SAME QUALITY AT THE DELIVERY POINT. CARRIER OPERATES UNDER THIS TARIFF SOLELY AS A COMMON CARRIER AND NOT AS AN OWNER, MANUFACTURER, SELLER, GUARANTOR, OR WARRANTOR OF THE CRUDE OIL TRANSPORTED HEREUNDER, AND CARRIER EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY FOR CRUDE OIL TRANSPORTED HEREUNDER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR INTENDED USE OR PARTICULAR PURPOSE.**

e. **IN ADDITION TO THE OTHER TERMS AND LIMITATIONS IN THIS TARIFF, NO PARTY SHALL HAVE ANY LIABILITY TO ANY OTHER PARTY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH TRANSPORTATION SERVICES UNDER THIS TARIFF OR OTHERWISE UNLESS SUCH PARTY GIVES THE OTHER PARTY WRITTEN NOTICE OF THE CLAIM, SETTING FORTH FULLY THE FACTS ON WHICH IT IS BASED, NO MORE THAN ONE HUNDRED AND EIGHTY (180) DAYS AFTER THE DATE ON WHICH SUCH FACTS WERE DISCOVERED OR REASONABLY SHOULD HAVE BEEN DISCOVERED.**

f. **SUITS AGAINST EITHER CARRIER OR SHIPPER MUST BE INSTITUTED AGAINST THAT PARTY NO LATER THAN THE EARLIER OF (I) THE DAY THE APPLICABLE STATUTE OF LIMITATIONS OR OTHER TIME RESTRICTION APPLICABLE TO THE CLAIMS RUNS OR EXPIRES UNDER APPLICABLE LAW OR (II) THE DAY THAT IS TWO (2) YEARS FROM THE DAY WHEN NOTICE IN WRITING IS GIVEN BY THE PARTY AGAINST WHOM THE SUIT IS INSTITUTED TO THE CLAIMANT THAT THE PARTY HAS DISALLOWED THE CLAIM OR ANY PART OR PARTS THEREOF SPECIFIED IN THE NOTICE. IF SUITS ARE NOT INSTITUTED WITHIN THE TIME LIMITS SET HEREIN, THE PARTY AGAINST WHOM THE SUIT IS INSTITUTED WILL NOT BE LIABLE.**

g. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS TARIFF, REGARDLESS OF CAUSE, IRRESPECTIVE OF WHETHER FORESEEABLE, NO PARTY SHALL BE LIABLE TO ANOTHER PARTY (OR ANY OTHER THIRD-PARTY) FOR LOSS OF PRODUCTION, LOSS OF USE, LOSS FROM BUSINESS INTERRUPTION, LOSS OF PROFIT OR ANTICIPATED PROFIT, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF GOODWILL OR REPUTATION, OR WASTED EXPENDITURE, OR FOR FINES OR PENALTIES, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE COST, EXPENSE, LOSS, OR DAMAGE OF ANY KIND ARISING OUT OF OR RELATING TO**

THIS TARIFF, ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF, OR ANY CONTRACT ENTERED INTO COVERING THE TRANSACTIONS CONTEMPLATED BY THIS TARIFF.

15. TITLE

a. A Tender of Crude Oil will be deemed a warranty of title by the party Tendering such Crude Oil, but acceptance will not be deemed a representation by Carrier as to title. Carrier will have the right to reject any Crude Oil that, when offered for transportation, may be the subject of litigation or are that are encumbered by any lien, security interest, or other form of burden, and Carrier may require Shipper to provide satisfactory evidence of unencumbered title or satisfactory indemnity bond to protect Carrier against any and all losses. Shipper will not permit any lien, security interest, or other form of burden to be filed or created with respect to Linefill or Crude Oil while in Carrier's possession.

b. Shipper will retain title to its Crude Oil while the same is in Carrier's custody, or when the same is being trucked pursuant to Item No. 22. Shipper will be deemed to be in exclusive control and possession of the Crude Oil until such Crude Oil has been received by Carrier at the Receipt Points and after delivery of the Crude Oil by Carrier to Shipper at the Delivery Points. Carrier will be in exclusive control and possession of the Crude Oil when such Crude Oil has been received by Carrier at the Receipt Points and until delivery of the Crude Oil by Carrier to Shipper at the Delivery Points. The Party that is in exclusive control and possession of the Crude Oil will be responsible for all injury, damage, pollution, or contamination, or violation of or the need to comply with any applicable law, regulation, or legal requirement caused thereby, except (a) to the extent attributable to the gross negligence or willful misconduct of the other Party and (b) with respect to Crude Oil that does not meet the Crude Oil Specifications (responsibility for which is provided in Item No. 2). Further, the Party having responsibility for Crude Oil under the preceding sentences (except to the extent such Crude Oil does not meet the Crude Oil Specifications, responsibility for which is provided in Item No. 2), will release, defend, indemnify, and hold the other Party, its Affiliates, and its and their officers, employees, and agents harmless from and against any and all Claims arising from (i) personal injury, death, damage, pollution or contamination, or violation of or the need to comply with any applicable law, regulation, or other legal requirements, caused by Crude Oil deliverable under this tariff while such Crude Oil was in the control and possession of the Party as set forth in this subsection b.; or (ii) personal injury, death, damage, pollution or contamination, or violation of or the need to comply with any applicable law, regulation, or other legal requirements arising out of the Party's facilities or operations **WITHOUT REGARD TO WHETHER THE ACT, OCCURRENCE, OR CIRCUMSTANCE GIVING RISE TO THE INDEMNIFICATION OBLIGATION IS THE RESULT OF THE SOLE, ACTIVE, PASSIVE, CONCURRENT, OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE), OR OTHER FAULT OF OR VIOLATION OF ANY LAW BY THE INDEMNIFIED PERSON, PROVIDED THAT NO INDEMNIFICATION WILL BE APPLICABLE TO THE EXTENT OF ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PERSON.**

16. CAPACITY ALLOCATION

a. Except as provided in Item 17, Carrier will allocate ten percent (10%) of the capacity of Carrier's pipeline to Uncommitted Shippers. When the Nominations made by Uncommitted Shippers exceed ten percent (10%) of the available capacity on Carrier's pipeline, each Uncommitted Shipper will receive a pro rata portion of the ten percent (10%) allocated to all Uncommitted Shippers.

b. The remaining ninety percent (90%) of the capacity of Carrier's pipeline will be allocated to Committed Shippers so that each Committed Shipper is allocated capacity in an amount equal to its Maximum Capacity. A Committed Shipper that Nominates or Tenders Crude Oil in excess of its Maximum Capacity will be an Uncommitted Shipper with respect to such excess.

c. If there still remains capacity after allocating ten percent (10%) of capacity to Uncommitted Shippers and after allocating each Committed Shipper its Maximum Capacity, Carrier will allocate the remaining capacity pro rata among each Committed Shipper.

d. If there still remains capacity after the foregoing allocation procedures, such unused available capacity will be distributed pro rata among all Uncommitted Shippers, up to the level of each Uncommitted Shipper's Nomination and not subject to any percentage cap.

e. Upon termination of a Committed Shipper's TSA, such Committed Shipper will be considered an Uncommitted Shipper.

17. PRORATION OF PIPELINE CAPACITY

a. When Carrier is unable to accept all Crude Oil Nominated in a month due to Force Majeure, Carrier will allocate the available capacity on such Pipeline Segment in the following order:

i. Each Uncommitted Shipper will receive a pro rata portion of available capacity such that the total allocated available capacity for all Uncommitted Shippers on the Pipeline Segment equals, but shall not exceed, ten percent (10%) of the available capacity.

ii. Following the allocation of ten percent (10%) of the available capacity on the Pipeline Segment to Uncommitted Shippers, all of the remaining capacity will be allocated as described in subsection b. of Item No. 16. If the capacity on the Pipeline Segment is curtailed so that there is insufficient capacity available for each Committed Shipper to be allocated its Maximum Capacity, after the allocation described in subsection i. of this Item No. 17, each Committed Shipper will be allocated its pro rata share of the available capacity based upon its Maximum Capacity.

iii. In months of prorationing, if there is a shortfall in Tenders of Crude Oil from a Shipper that exceeds five percent (5%) of that Shipper's allocated volume, a Non-Performance Penalty will be applied to the amount of the shortfall. The Non-Performance Penalty will be calculated by multiplying the amount of the Shipper's shortfall in excess of the 5% threshold for the month by the unit rate applicable to the Shipper's nominated volumes for the month. The Non-Performance Penalty will not be applied to that portion of shortfall caused by Force Majeure. Carrier shall include any Non-Performance Penalty in Carrier's invoice to Shipper. In addition, if a Shipper is subject to the Non-Performance Penalty, the Nomination that will be accepted by Carrier from that Shipper in the next three (3) months, beginning the month after the month of non-performance, may be limited to no more than the volume that Shipper actually shipped during the months of prorationing, provided that this volume limitation will be applied only when the pipeline is being prorationed.

18. LINEFILL

Shipper will supply its pro rata share of Crude Oil for Linefill as Carrier determines is necessary to maintain efficient operations of Carrier's facilities. Arrangements for the delivery of such Linefill shall be provided to Carrier prior to Shipper's transportation on Carrier's pipeline. To the extent practicable, each month, Carrier will adjust the Linefill so that Shipper provides its pro rata amount of Linefill equivalent to Shipper's total deliveries to the Receipt Points during the month divided by the total deliveries by all Shippers at all Receipt Points during that month. Upon Shipper's payment of all amounts payable under this tariff, a TSA, and any other agreements between Carrier and Shipper or their affiliates affecting the movement of Crude Oil on Carrier's facilities, and upon termination or expiration of any TSA or other agreement, Shipper's pro rata share of Crude Oil used as Linefill will be returned to Shipper within thirty (30) days following Shipper's written notice of Shipper's intent to cease delivering Crude Oil to the Receipt Points.

19. SEPARATE PIPELINE AGREEMENTS

Separate agreements, if applicable, in association with pipeline connection or other facilities ancillary to the Carrier's pipeline system, including LACTs, and/or in accordance with this tariff may be required of any Shipper before any obligation to provide transportation arises. In accordance with such separate agreements, Shipper and Carrier shall agree upon the payment obligations for any ancillary facilities or services.

20. TAX REGISTRATION

If applicable, Shipper will be required to provide Carrier with proof of registration with, or tax exemption from, the appropriate federal and/or state tax authorities, that are in any way related to the collection and payment of excise taxes, sales taxes, BTU taxes, value added taxes, fees, levies, or any similar or dissimilar assessments or charges for the receipt, handling, use, storage, or transportation of Crude Oil.

21. *INTENTIONALLY OMITTED*

22. MINIMUM ACREAGE/TRUCKING/REIMBURSEMENT

a. The terms and conditions of this Item No. 22 are applicable only to Committed Shippers that have entered into a TSA for a term of 10 years or more pursuant to which the Committed Shipper either: (i) commits to a minimum volume commitment of at least 5,000 bbls per day of Crude Oil to be transported on Carrier's pipeline; or (ii) dedicates acreage to Carrier that, in Carrier's sole judgment based on reasonable drilling forecasts and any additional materials reasonably requested by Carrier, is sufficient to assure the delivery of a minimum of 5,000 bbls per day of Crude Oil to Carrier for transportation on Carrier's pipeline; provided that Carrier's determination as to an acreage dedication Committed Shipper's qualification for Item No. 22 status shall be memorialized in the TSA with such Committed Shipper, and such determination shall be final and irrevocable for the term of such Committed Shipper's TSA.

b. Carrier may, if necessary to receive the quantities of Crude Oil, up to the Maximum Capacity, made available by the Item No. 22 Committed Shipper at the Receipt Points, at its sole option, either (i) install temporary LACT Units at each Receipt Point, or (ii) provide Crude Oil trucking services at the same cost as the fees attributable to the quantity of Crude Oil requiring trucking.

c. If Carrier is unable to accept any Tender or Nomination of Crude Oil up to Item No. 22 Committed Shipper's Maximum Capacity for transportation service and Carrier's inability to accept the Crude Oil is not excused by the provisions of the TSA or this tariff, then, until the last day of the month following the month in which such inability to accept the Crude Oil ends, Carrier will, at Item No. 22 Committed Shipper's option, either (i) credit to Item No. 22 Committed Shipper the fees due to Carrier attributable to the Crude Oil Carrier is unable to accept, or (ii) provide Crude Oil trucking services to Item No. 22 Committed Shipper to a truck unloading station on Carrier's pipeline or such other points acceptable to Item No. 22 Committed Shipper at the same cost as the fees due to Carrier attributable to the Crude Oil Carrier is unable to accept. If, during an inability to accept Crude Oil as described in this subsection c, the Item No. 22 Committed Shipper has assigned, conveyed, loaned, transferred, or otherwise allowed another Shipper to use the Item No. 22 Committed Shipper's allocated capacity on Carrier's pipeline as provided in Item No. 23, then Carrier will credit directly to the Item No. 22 Committed Shipper any amounts that may be due under clause (i) of this subsection c. with respect to any such capacity.

23. ASSIGNMENT

a. Except as expressly provided below or set forth in a TSA, a Shipper is not permitted to assign, in whole or in part, its TSA, its rights and obligations under its TSA, all or a part of the properties or production dedicated to Carrier pursuant to its TSA, or its rights or obligations arising under and out

of this tariff, including such Shipper's rights to capacity, without the prior written consent of Carrier, which consent shall not be unreasonably withheld, conditioned or delayed.

b. In the event a Shipper assigns all or a part its TSA, or all or a part of the properties or production dedicated to Carrier pursuant to its TSA, without the prior written consent of Carrier (which consent shall not be unreasonably withheld, conditioned or delayed), subject to the terms of a TSA, the Shipper will remain liable for, and guarantees the payment of, all fees, damages, and other amounts due Carrier by the Shipper's assignee pursuant to the TSA.

24. RATES

Table 1 **In Cents Per Barrel**	
From	To
McKenzie County, North Dakota	Interconnect with Tesoro High Plains Pipeline McKenzie County, North Dakota
SHIPPER STATUS	**RATE**
Committed Shipper	**[I]** 162.6992
Uncommitted Shipper	**[I]** 161.5883

Table 2 **In Cents Per Barrel**	
From	To
McKenzie County, North Dakota	Interconnect with Dakota Access Pipeline Watford City McKenzie County, North Dakota
SHIPPER STATUS	**RATE**
Committed Shipper	**[I]** 202.0647
Uncommitted Shipper	**[I]** 201.0068

EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS

[I] Increased rate
[C] Canceled