



Kinder Morgan  
Utopia Ltd.

a Kinder Morgan operated company

01 March 2023

Canada Energy Regulator  
Suite 210, 517 Tenth Ave SW  
Calgary, AB T2R 0A8

**Attention: Mr. Jean-Denis Charlebois, Secretary of the Commission**

Dear Mr. Charlebois:

**Re: Kinder Morgan Utopia Ltd.  
Tariff Filing – CER Tariff No. 17**

In accordance with sections 227 and 229 of the Canadian Energy Regulator Act, Kinder Morgan Utopia Ltd. (“Utopia”) submits for filing to the Canada Energy Regulator (“CER”) clean and blackline copies of CER Tariff No. 17, to be effective on April 1, 2023.

**CER Tariff No. 17** is a rules and regulations tariff (the “Utopia Rules Tariff”). The Utopia Rules Tariff contains a revision to *Rule 21 – Line Fill Policy* to provide for the Line Fill calculation and corresponding Line Fill pro rata obligation of Committed Shippers and Uncommitted Shippers. In addition, the Utopia Rules Tariff contains a revision to *Rule 1* to add a definition for Uncommitted Shipper. No other changes have been made to the Utopia Rules Tariff other than to update references to other tariffs where applicable.

Utopia is unaware of any shipper intent to protest either of these tariff filings.

I hereby certify that copies of this filing have been sent, on or before this date, by means of transmission agreed upon, to all subscribers on the Utopia subscriber list.

If you have any questions regarding this filing, please contact the undersigned at [tina\\_hardy@kindermorgan.com](mailto:tina_hardy@kindermorgan.com) or (205) 325-3668, or Laura Lofton at [laura\\_lofton@kindermorgan.com](mailto:laura_lofton@kindermorgan.com) or (713) 420-3214.

Sincerely,

/s/ Tina Hardy

Tina Hardy  
Director - Regulatory

# **KINDER MORGAN UTOPIA LTD.**

## **LOCAL TARIFF APPLYING ON PETROLEUM PRODUCTS**

### **GENERAL RULES AND REGULATIONS**

**Governing the**

### **TRANSPORTATION OF PURITY ETHANE**

**by**

### **PIPELINE**

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### **GENERAL APPLICATION**

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

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ISSUED: March 1, 2023

EFFECTIVE: April 1, 2023

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Issued By:  
Thomas C. Dender  
Kinder Morgan Utopia Ltd.  
1001 Louisiana St., Suite 1000  
Houston, Texas 77002 USA

Compiled By:  
Tina Hardy  
Kinder Morgan Utopia Ltd.  
1001 Louisiana St., Suite 1000  
Houston, Texas 77002 USA  
(205) 325-3668: (205) 325-3787  
E-mail: Tina\_Hardy@kindermorgan.com

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# RULES AND REGULATIONS

## 1. DEFINITIONS

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

- a. "ASTM" means American Society for Testing and Materials.
- b. "Available Capacity" means the capacity of the Pipeline, expressed in Barrels per day, available to transport in a month, given operating conditions in that month.
- c. "Barrel" means a unit of volume equivalent to forty-two (42) United States gallons measured at a temperature of sixty degrees Fahrenheit (60°F).
- d. "Business Day" means any day other than a Saturday, Sunday or a statutory holiday in the State of Texas or the Province of Alberta.
- e. "Calendar Year" means the period beginning on the first day of January and ending on the last day of December.
- f. "Carrier" means Kinder Morgan Utopia Ltd.
- g. "CER" means Canada Energy Regulator.
- h. "Committed Capacity" means, for a month, the lesser of (i) ninety percent (90%) of the Available Capacity for such month, and (ii) the aggregate Nominations of Committed Volumes for such month.
- i. "Committed Shipper" means any shipper that has entered into a TSA that has not been terminated or rejected.
- j. "Committed Volume" means, with respect to a Committed Shipper, the committed volume of Product as set forth in such Committed Shipper's TSA.
- k. "Common Stream" means Product which is commingled or intermixed with other fungible Product.
- l. "cubic meter" (m<sup>3</sup>) means a metric unit of volume at a temperature of fifteen degrees Celsius (15°C) which is equivalent to 6.289811 Barrels at a temperature of sixty degrees Fahrenheit (60°F).
- m. "Deficiency Fee" means payments to be made by a Committed Shipper for Committed Volume shortfalls, as determined in accordance with such Committed Shipper's TSA.
- n. "Delivery Point" means the point of interconnection between Carrier's delivery flange and another facility as specified by Carrier in individual Product rate tariffs.
- o. "Financial Assurances" means the financial assurances provided by Shipper and accepted by Carrier in accordance with Rule 19.
- p. "Gross Volume" means quantity in Barrels (or metric equivalent) measured at operating temperatures and pressures.
- q. "Line Fill" means the Product necessary for line fill and working stock for the efficient operation of Utopia.
- r. "Mass" means the measure of Product in pounds (lbs) or Tonnes (t) for metric.
- s. "NEB" means the National Energy Board.
- t. "Net Volume" means the quantity in Barrels (or metric equivalent) corrected to a temperature of sixty degrees Fahrenheit (60°F), in accordance with the latest Gas

- Processors Association measurement standards, and at equilibrium vapor pressure.
- u. “Nomination” means a stated quantity of Product which Shipper notifies Carrier that Shipper intends to move on the Pipeline.
  - v. “Origin” or “Origin Point” means the point of interconnection between Carrier’s receipt flange and another facility as may from time to time be specified by Carrier in individual Product rate tariffs.
  - w. “Pipeline” means the pipeline owned by Kinder Morgan Utopia Ltd. that extends from the United States – Canada border in the middle of the Detroit River near Detroit, Michigan to the terminus of the pipeline near Windsor, Ontario, Canada.
  - x. “pressure” means a force per unit area measured in pounds per square inch absolute (psia) or in kilopascals (kPa) for metric.
  - y. “Product” or “Products” means Purity Ethane.
  - z. “Purity Ethane” means a high purity ethane stream with a minimum 95% ethane content and a maximum 3.5% propane content by liquid volume.
  - aa. “Shipper” means the party who contracts with Carrier for the transportation of Products under the terms of this tariff.
  - bb. “Tender” means a quantity of Product received by Carrier from Shipper for transportation on the Pipeline.
  - cc. “Tonne” means metric designation of 1,000 kg. (kilograms) or 2204.62 lbs. (pounds).
  - dd. “TSA” means any transportation services agreement entered into between Carrier and a Shipper in which the Shipper commits to ship, or pay a deficiency payment for failure to ship, a minimum volume of Product or other products on Utopia.
  - ee. “Uncommitted Capacity” means, for a month, the greater of (i) ten percent (10%) of the Available Capacity for such month, or (ii) the positive difference resulting from the subtraction of the Committed Capacity from the Available Capacity.
  - ff. [N] “Uncommitted Shipper” means any shipper that has not qualified as a Committed Shipper.
  - gg. “Uncommitted Volumes” means (i) volumes of Product nominated for transportation for a Shipper that is not a Committed Shipper; and (ii) volumes of Product nominated for transportation for a Committed Shipper in a month that are in excess of the product of such Committed Shipper’s Committed Volume and the number of days in such month.
  - hh. “Utopia” means the entire pipeline system owned collectively by Kinder Morgan Utopia LLC and Kinder Morgan Utopia Ltd. that extends from Origin Point(s) in Harrison County, Ohio, USA to a terminus near Windsor, Ontario, Canada.

## **2. COMMODITY**

This tariff applies to the transportation of Products by pipeline and no commodity other than the Products noted herein will be transported under this tariff.

## **3. ORIGIN AND DESTINATION**

- a. Products will be accepted for transportation at the Origin Point(s) only when consigned to one or more Delivery Points.

- b. Products will be accepted for transportation only when the Shipper has made provision for the necessary storage and other facilities at the Origin Point(s) and Delivery Point(s) satisfactory to Carrier. Carrier will not provide storage for Shipper's Product at the Origin Point(s) or the Delivery Point(s).
- c. Carrier shall not be responsible for Products that cannot be delivered as specified by the Shipper due to any government intervention.

**4. SPECIFICATIONS AS TO QUALITY**

- a. Products will not be accepted for transportation that are not in a liquid state. Carrier will specify the delivery pressure but it shall not exceed 1,440 psia. The temperature shall not exceed a maximum of 80 degrees Fahrenheit.
- b. Products will not be accepted for transportation which contain impurities or have characteristics which do not meet the following Product specifications:

<b>Purity Ethane must meet the following minimum specifications:</b>		
<b>Component</b>	<b>Specifications</b>	<b>Test Methods</b>
Methane	3.0 Liq. Vol. % max.	ASTM D-2163
Ethane	95.0 Liq. Vol. % min.	ASTM D-2163
Propane & Heavier	3.5 Liq. Vol. % max.	ASTM D-2163
Corrosion, Copper Strip	No. 1	ASTM D-1838
Carbon Dioxide	1,000 ppm wt. max	ASTM D-2504
Total Sulfur	30 ppm wt. max.	ASTM D-2784 or ASTM D-5623
Hydrogen Sulfide	2 ppm wt. max.	ASTM D-5623
Water Content	10 ppm wt. max.	ASTM D-5454

**Notes on Test Methods:** Method numbers listed above, beginning with the letter "D," are American Society for Testing and Materials (ASTM) Standard Test Procedures. The most recent year's revision for the procedures will be used.

**Notes on Specifications and Contaminants:** The specification defines only the basic purity for this product. The product is to be free of any contamination that might render the product unusable for its commonly used applications. Specific contaminants include (but are not limited to) sand, dust, dirt, rust, scale, and all other types of solid contaminants, gums and gum forming substances, crude oil, catalyst poisons, impurities and other objectionable substances which may be injurious to the system or which may interfere with product transmission through the system, caustic, amines, chlorides, heavy metals, oxygenates, inerts and any component added to the product to enhance the ability to meet the specifications.

- c. Additives of any kind shall not be injected by the Shipper into the Products without the express consent of Carrier prior to transportation. Shipper is required to notify Carrier at least 30 days prior to injecting any additives whatsoever to allow sufficient time for approval.
- d. Shippers may be required to furnish Carrier with a certificate setting forth the specifications of each shipment of Products delivered to Carrier.

- e. Shippers will be given 30 days' notice stating any changes in additive to be injected (generic and trade name), the maximum quantity, the Products into which it will be injected, and the date the injection will begin.

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

- a. Products nominated for transportation on the Pipeline will be received by Carrier only on the condition that they shall be subject to such changes in gravity, vapor pressure, and/or quality while in transit as may result from the transportation thereof or the mixture of said Product with other Product received into the Pipeline.
- b. Shipper acknowledges and agrees that Product delivered into the Pipeline by all Shippers will be commingled and that Carrier shall be under no obligation to make delivery of the identical Product received.
- c. Carrier shall not be liable for any damage, loss or consequential loss resulting from a change in the density or other quality of a Shipper's Product that is commingled with other Product in the facilities of Carrier.

## **6. TENDERS AND QUANTITIES**

- a. Shippers desiring to request the transportation of Products shall submit to Carrier in writing (Nomination for Shipment) a separate Nomination for each calendar month on or before the fifteenth (15) day of the preceding month, and shall specify the vapor pressure and specifications of the Products to be tendered.
- b. A Nomination will be accepted only when the total quantity covered thereby will be made available for transportation within the calendar month immediately following delivery of the Nomination, at a delivery rate, in quantities and at times specified by Carrier except as hereunder provided.
- c. Carrier will specify a delivery rate and quantity at an Origin Point that will permit deliveries at the Delivery Point of not less than 5,000 Barrels per day, provided, however that if a delivery is pursuant to a rate tariff that specifies a quantity that is less than 5,000 Barrels per day, then Carrier will specify a delivery rate and quantity at an Origin Point that will permit the delivery at the Delivery Point of the quantity in Barrels per day that is specified in the rate tariff.
- d. Carrier may at its discretion and if operating conditions permit, accept for transportation Products in quantities of less than the specified quantity. If lesser quantity is accepted, it may be delayed at Carrier's election until the minimum delivery quantity is available.
- e. Products will be accepted at the Origin Point(s) if they may be injected directly into compatible Products by use of equipment provided by the Shipper and at rates and pressures as specified by Carrier.

**7. COMMITTED SHIPPER PREPAYMENTS AND DEFICIENCY FEES**

- a. In the event the volume of Product delivered or deemed delivered to a Committed Shipper in a period specified in a Committed Shipper's TSA is less than the Committed Volume for such specified period, the Committed Shipper shall pay to Carrier the Deficiency Fee as determined in accordance with such Committed Shipper's TSA.
- b. In the event the volume of Product delivered or deemed delivered to a Committed Shipper in any month is less than the Committed Volume for such month, the Committed Shipper may be obligated to pay a prepayment amount in accordance with such Committed Shipper's TSA.
- c. Provisions addressing the potential adjustment of the Committed Volume and the payment of Deficiency Fees, and payment and potential crediting of prepayment amounts, are set forth in such Committed Shipper's TSA.

**8. TOLLS**

- a. Products which are accepted for transportation shall be subject to the tolls in effect on the delivery of such Products by Carrier at a Delivery Point(s), irrespective of the date of Tender or date of receipt into the Pipeline.
- b. In accordance with National Energy Board Reasons for Decision MH-001-2013 and Order TO-005-2016, Carrier shall charge Shipper a surcharge applied on a per barrel basis. The surcharge shall be collected by Carrier and set-aside for the purpose of funding abandonment of the pipeline.
- c. The local tolls for the Pipeline will be increased annually, effective on July 1 of each year beginning July 1, 2017, by two and one half percent (2.5%).
- d. The tolls of Carrier are regulated by the CER on a complaint basis. Carrier is required to make copies of tariffs and supporting financial information readily available to interested persons. Persons who cannot resolve toll and tariff issues with Carrier may file a complaint with the CER.

**9. PAYMENT OF TOLLS AND OTHER TARIFF CHARGES AND LIEN FOR UNPAID CHARGES**

- a. Shipper shall pay all charges and costs as provided for in this tariff or otherwise lawfully due to Carrier relating to the transportation of Shipper's Product by Carrier. Shipper shall pay such charges and costs upon receipt of Carrier's invoice respecting such charges and costs. If required by Carrier, Shipper shall pay such charges and costs before delivery, or before acceptance of a transfer, of Shipper's Product by Carrier.
- b. Should a Shipper fail to pay the full amount of an invoice on or before the due date for payment, in addition to any other right or remedy Carrier may have by contract, or under this tariff or applicable law, Carrier will be entitled to interest on the unpaid portion of the invoice, which shall accrue daily, commencing on the day immediately following the payment due date, at a rate of interest per annum equal

to the annual rate of interest publicly announced from time to time by the Bank of Canada as its prime rate plus 2%.

- c. Carrier shall have a general lien on all of a Shipper's Product that is in the possession of Carrier to secure the payment of all charges and costs as provided for in this tariff or otherwise lawfully due to Carrier relating to the transportation of Shipper's Product by Carrier, and all services and procedures related thereto. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract. Carrier may withhold Shipper's Product from delivery and may exercise any other rights and remedies provided at law or by contract, until all such charges and costs have been paid.
- d. If charges for the transportation, and all services and procedures related thereto, of a Shipper's Product remain unpaid for ten (10) days after notice of demand for payment of such charges and costs is made to such Shipper by Carrier, then Carrier shall have the right to remove and sell any or all of such Shipper's Product that is in the possession of Carrier in such lawful manner as deemed appropriate by Carrier.
- e. Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the transportation of such Shipper's Product by Carrier, and all services and procedures related thereto, and all costs incurred by Carrier with respect to storage, removal and sale of such Shipper's Product. The remainder of such proceeds, if any, shall be held by Carrier for Shipper or any other party lawfully entitled to such proceeds.
- f. When required, Carrier shall, with or without notice to Shipper, appoint agent(s) to retain possession of Shipper's Product on behalf of Carrier for the purpose of enforcing the general lien described in this Rule. Carrier hereby advises that it may appoint an agent to hold possession of Shipper's Product for the purpose of enforcing its general lien.

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

- a. Products nominated for transportation shall be measured by appropriate Mass and Gross Volume measurement equipment at the applicable Origin Point(s) and applicable Delivery Point(s) and tested by a representative of Carrier, except that Carrier's measurement equipment located in Windsor, Ontario, Canada shall be used for all Products nominated for receipt from the International Boundary near Detroit, Michigan.
- b. Method of measurement shall be in accordance with ASTM accepted industry standards for the Product transported.
- c. The Shipper may be present or represented at such measuring and testing. A representative of Carrier shall have the right to enter upon the premises where such Products are received or delivered and have access to any and all storage receptacles or meters for the purpose of measuring and testing and to make any examination, inspection, measurement or test required.
- d. Shipper shall be entitled to have delivered to it only that portion of its shipment as may remain after deduction of its pro rata share of any loss of Product while in the

custody of Carrier, as determined by Carrier in accordance with Rule 13(b), and after any deductions or adjustments made by Carrier pursuant to the foregoing provisions of this Rule 10.

- e. The results of all such gauging, metering and testing by Carrier shall be final.

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

- a. Products received from and delivered to the Shipper shall, in each instance, be evidenced by records showing Mass and Gross Volumes received and delivered. Such records shall be jointly examined by representatives of Carrier and the Shipper, as appropriate.
- b. Automatic Net Volume calculations, including conversion of Gross Volume to Net Volume, will be recorded at the Origin Point(s) and Delivery Point(s) of the Pipeline, except that Carrier's equipment located in Windsor, Ontario, Canada shall be used for all Products received from the International Boundary near Detroit, Michigan. This report shall constitute full receipt for the Products received or delivered.

## **12. DELIVERY AND ACCEPTANCE**

- a. Carrier will transport Products with reasonable diligence and dispatch and Shipper shall accept and remove its shipment from the applicable Delivery Point(s) immediately upon delivery.
- b. If a Shipper fails to remove its Product from the Pipeline in accordance with paragraph (a) of this Rule 12, then Carrier shall have the right to remove and sell such Product in such lawful manner as deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs incurred by Carrier with respect to the storage, removal, and sale of such Product. The remainder of such proceeds, if any, shall be held by Carrier for Shipper and any other party lawfully entitled to such proceeds.
- c. Under no circumstances will Carrier be deemed to have acquired legal or beneficial ownership in any Product delivered to the Pipeline. Nothing in the foregoing shall limit or affect the lien or other rights of Carrier set forth in Rule 9.
- d. Shipper shall be the importer of Product in Canada, and agrees to be subject to and responsible for the reporting, accounting and other obligations applicable to importers under the Canadian Customs Act and other applicable laws and regulations. Shipper shall account for all imports of Product into Canada and shall pay all duties, taxes and other amounts that may be levied or payable in respect of such imports within the time and in the manner required by the Canadian Customs Act, the Canadian Customs Tariff, the Canadian Excise Tax Act and/or other applicable laws or regulations. Shipper shall report to the Canada Border Services Agency all importation of Product into Canada.

- e. Shipper shall indemnify, hold harmless and reimburse Carrier for any and all duties, taxes, penalties, interest, costs and/or other amounts incurred by or which become payable by Carrier as a result of Shipper's failure to comply with its obligations under Rules 4(a) or 12(d) or in connection with Carrier's rights under Rules 9(b) or (c) hereof or the exercise of such rights.

### **13. LIABILITY OF CARRIER**

- a. Carrier shall not be liable for any loss of, or damage to, any of the Products in its possession, or any delay, caused by fire, storm, flood, epidemics, Acts of God, riots, insurrection, rebellion, sabotage, strikes, labor disturbances, shortage of labor or breakdown of transportation or storage facilities, war, or the acts of the Queen's enemies or public enemies of the United States, or from quarantine, or authority of law or from any order, requisition, interest or necessity of the Government of the United States or of Canada, or any state or province, county or municipal government, or any action on behalf of any government by quasi-judicial boards or other such bodies of competent jurisdiction, default of Carrier, Shipper, or from any cause whatsoever, whether enumerated herein or not, except its own negligence and willful misconduct. In which case Carrier shall be liable, if at all, for direct damages only, and in no circumstance shall Carrier be liable for consequential, indirect, special, or punitive damages of any kind whatsoever.
- b. In case of damage or loss of Products while in the custody of Carrier from any cause, other than the negligence or willful misconduct of Carrier, each Shipper of Products shall participate in such loss in direct proportion to its current monthly requested deliveries of Products; provided, however, that if such loss occurs in such a manner that it is possible to ascertain the ownership of the Products so lost, the full loss shall be charged against the Shipper having ownership. In either event, each Shipper shall be entitled to have delivered only that portion of this shipment as may remain after deduction of this proportion of such loss and will be required to pay charges only upon the quantity of Product delivered.

### **14. INDEMNIFICATION BY SHIPPER**

- a. Subject to Rule 14(c), Shipper shall indemnify Carrier for any damage, loss, or costs incurred by Carrier or any other party as a result of such Shipper's failure to comply with any provision of this tariff, excluding any damage, loss, or costs caused by the negligence or willful misconduct of Carrier. Carrier shall be required to mitigate all such damage, loss, or costs claimed hereunder.
- b. If the Product is not removed from Carrier's facilities and a disruption of Carrier's operation results, Shipper causing such disruption shall be completely and absolutely liable for all costs associated with such disruption, including loss of revenue resulting therefrom. Carrier shall be required to mitigate all such damage, loss, or costs claimed hereunder.

- c. In no circumstances shall Shipper be liable for loss of profit or for any indirect, incidental, punitive, exemplary or consequential damages of any other Shipper related to its use of the transportation services on the Pipeline, including for greater certainty losses suffered by such other Shipper respecting the loss or delay of production, unless, notwithstanding this tariff, Carrier is required by order of a court or other governmental authority to pay such damages or losses to such other Shipper. In no circumstances shall Shipper be liable to Carrier for punitive or exemplary damages related to Carrier's provision of transportation services on the Pipeline to Shipper.

**15. APPORTIONMENT WHEN CURRENT OFFERINGS ARE IN EXCESS OF AVAILABLE CAPACITY**

- a. Carrier may, without liability, allocate Available Capacity for any month in which the Nominations exceed the Available Capacity. If, in a month, the aggregate Nominations by all Shippers exceed the Available Capacity for such month then Carrier will, within two (2) working days of the receipt of all Nominations for the upcoming month, contact Shippers to determine if any are willing to voluntarily reduce their Nominations. If, in a month, the aggregate Nominations, as voluntarily reduced by Shippers, still exceed the Available Capacity for such month then, as set forth below, Carrier will allocate the Available Capacity as outlined in Rule 15(b) below. The method of allocating the Available Capacity among Shippers is outlined in Rule 15(c) below. Shippers will be notified by Carrier of their allocated volumes within four (4) working days of the receipt of all Nominations for the upcoming month.
- b. Allocation of Available Capacity to Uncommitted Volumes will be required in a Month when the aggregate Nominations for Uncommitted Volumes exceed the Uncommitted Capacity. In such Month, Carrier will allocate the Available Capacity among the aggregate Nominations of Uncommitted Volumes in accordance with Rule 15(c)(i) below. Allocation of Available Capacity to Committed Volumes will be required in a Month when the aggregate Nominations for Committed Volumes exceed the Committed Capacity. In such Month, Carrier will allocate the Available Capacity among the aggregate Nominations of Committed Volumes in accordance with Rule 15(c)(ii) below.
- c. Where Available Capacity is allocated among Shippers:
  - i. Uncommitted Capacity will be allocated to Nominations of Uncommitted Volumes in the proportion that each such Nomination bears to the aggregate Nominations of Uncommitted Volumes; and
  - ii. Committed Capacity will be allocated to Nominations of Committed Volumes in the proportion that a Committed Shipper's Committed Volume bears to the Committed Capacity, provided that capacity will not be allocated to a Committed Shipper in excess of such Committed Shipper's Nomination.
  - iii. Any capacity remaining after the allocations in (i) and (ii) will be allocated to Nominations that have not been satisfied under clauses (i) and (ii).

- d. If a Shipper fails to physically deliver to Carrier at the Origin Point(s) its allocated volume resulting from its Nomination in a month when apportionment is applied (“Over-nominating Shipper”) then:
  - i. If Over-nominating Shipper advises Carrier in writing of its inability to deliver a portion of its allocated volume (“shortfall volume”) then Carrier will use all reasonable efforts to equitably offer such shortfall volume to other Shippers;
  - ii. Any volumes reallocated to other Shippers will be credited against all shortfall volumes of the Over-nominating Shippers on a pro rata basis;
  - iii. Any shortfall volumes that are not taken and reallocated to other Shippers shall be invoiced at the published toll as though such shortfall volumes had been physically received and delivered for the Over-nominating Shipper; and
  - iv. Any invoices for shortfall volumes will have to be paid before Carrier will accept further Nominations or Product for receipt from that Over-nominating Shipper.

**16. REQUESTED CHANGE BY SHIPPER FOR DIVERSION OR RECONSIGNMENT**

Subject to Carrier’s reasonable determination that it is possible to accomplish under operational conditions at the time, Carrier will permit diversion or reconsignment but only to a posted Delivery Point without charge if requested in writing by the Shipper, giving sufficient time to Carrier, prior to delivery at the original Delivery Point(s), subject to the tolls, rules and regulations applicable from the initial Origin Point to the final Delivery Point, and upon condition that no out-of-line or backhaul movement will be made.

**17. PRODUCTS INVOLVED IN LITIGATION AND LEGALITY OF SHIPMENT**

- a. Shipper shall not Tender or deliver to Carrier Product which is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind unless Shipper provides written notification to Carrier of such litigation, dispute, lien or charge not less than twenty (20) days before such Tender is made to Carrier and Carrier accepts such Product in accordance with Rule 17(b).
- b. Carrier shall not be obligated to accept Product that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.
- c. A Shipper shall advise Carrier in writing if, at any time while Shipper’s Product is in the possession of Carrier, such Product becomes involved in litigation, the ownership of such Product becomes in dispute or such Product becomes encumbered by a lien or charge of any kind.
- d. A Shipper shall, upon demand from Carrier, provide a bond or other form of indemnity satisfactory to Carrier protecting Carrier against any liability or loss that may arise as a result of such Shipper’s Product that is involved in litigation, the

ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.

**18. CLAIMS, SUITS AND TIME FOR FILING**

As a condition precedent to recovery, claims for loss, damage or delay in connection with the shipment of Product under the terms of this tariff must be filed in writing with the initial or delivering Carrier within one (1) month after delivery of the Products, or, in the case of failure to make delivery, then within one (1) month after a reasonable time for delivery has elapsed; and suits arising out of such claims must be constituted against Carrier within six (6) months from the day when notice in writing is given by Carrier to the claimant that Carrier has disallowed the claim or any part of parts thereof specified in the notice. In causing Products to be transported under this tariff, the Shipper agrees to be bound by provisions of this clause and waive any rights which it might otherwise have, at common law or otherwise, to make a claim after the expiration of the said period of one (1) month or to bring an action after the expiration of the said period of six (6) months.

**19. FINANCIAL ASSURANCES**

- a. At all times any prospective or existing Shipper shall either:
  - i. maintain a credit rating or credit ratings for senior unsecured long term debt that are no lower than any of the minimum credit ratings set forth below:

Agency	Minimum Credit Rating
Moody's Investor Services	Baa3
Standard & Poor's	BBB-
Dominion Bond Rating Service	BBB (low)

- ii. if a Shipper or prospective Shipper has at least one credit rating for senior unsecured long term debt that is lower than one of the minimum credit ratings set out in Rule 19(a)(i) or does not maintain a credit rating for senior unsecured long term debt, such Shipper or prospective Shipper shall have and maintain in favor of Carrier either:

- A. a guarantee, in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier in form and substance acceptable to Carrier in its sole discretion, from a guarantor that is credit rated and has no credit ratings that are lower than any of the minimum credit ratings set out in Rule 19(a)(i) and that either is a direct or indirect parent of Shipper or prospective Shipper at the time such guarantee is delivered to Carrier or provides a legal opinion to Carrier confirming the enforceability of such guarantee, from an issuer and in form and substance acceptable to

Carrier (the “Guarantee”); or

- B. other financial assurances acceptable to Carrier, which are in a form, an amount and on terms and conditions acceptable to Carrier.

b. If Carrier reasonably determines that:

- i. Shipper’s credit rating has fallen below one or more of the minimum credit ratings set forth above, or has otherwise become impaired or unsatisfactory; or
- ii. if the Guarantee required in accordance with Rule 19(a)(ii)(A) no longer provides adequate security for the performance of Shipper’s obligations arising from the transportation of Products under this tariff or the credit rating of the guarantor falls below one or more of the minimum credit ratings set forth in Rule 19(a)(i); or
- iii. if the financial assurances provided in accordance with Rule 19(a)(ii)(B) no longer provides adequate security for the performance of Shipper’s obligations arising from the transportation of Products under this tariff,

then Shipper shall, within ten (10) Business Days after written notice from Carrier, deliver to Carrier one or more of the following financial assurances (the “Financial Assurances”), as selected by Shipper, for payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to Carrier:

- A. prepayment of an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier;
- B. a letter of credit in favor of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier, in a form and from an institution reasonably acceptable to Carrier, such letter of credit to allow Carrier to demand full or partial payment thereunder in the event of a Shipper Default; and/or
- C. another Guarantee in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier, in a form and from a third party acceptable to Carrier.

Carrier shall not be obligated to accept Products for transportation from an existing or prospective Shipper if such existing or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) Business Days of Shipper's receipt of Carrier's written request for such Financial Assurances.

For so long as Shipper or the guarantor maintains at least a credit rating for senior unsecured long term debt from at least one of the rating agencies set forth above and no such credit rating has fallen below one or more of the minimum credit ratings set forth above, then Carrier shall not be entitled to require any prepayment, posting of a letter of credit or another Guarantee if and for so long as Shipper or the

guarantor has a credit rating no lower than Baa1 (Moody's), BBB+ (Standard & Poors) or BBB (high) (Dominion) from any of the above rating agencies.

- c. If Rule 19(a) is not satisfied or required Financial Assurances are not provided in accordance with Rule 19(b), upon the request of Carrier, any prospective or existing Shipper that is not a publicly held company shall provide information to Carrier that will allow Carrier to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Product under the terms of this tariff, including the payment of transportation charges, equalization obligations and the value of the negative Shipper's balance positions. Carrier shall not be obligated to accept Products for transportation from an existing or prospective Shipper that is not a publicly held company if Shipper or prospective Shipper fails to provide the requested information to Carrier within ten (10) Business Days of Carrier's written request, or if Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of Shipper's Products under the terms of this tariff, including the payment of transportation charges, equalization obligations and negative Shipper's balance positions.

## **20. INTERPRETATION**

- a. Unless otherwise expressly specified herein, (i) defined terms in the singular will also include the plural and vice versa, (ii) the words "hereof", "herein", "hereunder" and other similar words refer to this tariff as a whole, (iii) Rule references in this tariff are to the Rules in this tariff, and (iv) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders.
- b. The captions in this tariff are for convenience only and will not in any way affect the meaning or construction of any provision of this tariff.
- c. Unless context otherwise requires, "including" means "including without limitations".

## **21. LINE FILL POLICY**

- a. Carrier shall not be obligated to provide any Line Fill.
- b. If it becomes necessary for Carrier to provide Line Fill for operational reasons, Carrier shall be entitled to recover the cost of such Line Fill from its Shippers.
- c. All Shippers will provide their pro-rata share of Line Fill during periods of time when Product is being transported in the Pipeline. [ N ] In accordance with the TSA, a Committed Shipper shall provide its proportionate share of Line Fill based on its Committed Volume as a percentage of Total Volume Commitments. A Uncommitted Shipper's pro rata share of Line Fill will be calculated as a function of its Nomination. For clarity, Uncommitted Shippers shall be obligated to provide their pro rata share of Line Fill, per the instructions of Carrier, at the time it Tenders Product to the Pipeline. Carrier may require Shipper to confirm it will provide such Line Fill before Carrier is obligated to accept Shipper's Nomination. Deliveries will be made on a transit time basis and

Carrier shall provide all Shippers with a monthly schedule identifying the approximate date and time of their scheduled delivery no later than the 27<sup>th</sup> day of the month. Carrier will update the monthly schedule at least once per week to reflect changes in operating conditions and subsequent changes to receipt and delivery dates and times. [N] If a Shipper's Line Fill balance drops below its pro rata share of the Line Fill necessary for operation of the Pipeline, Carrier will notify Shipper of the amount of Line Fill that Shipper owes and Shipper shall supply such Line Fill to Carrier before Carrier is obligated to accept Shipper's Nomination or Tenders or make deliveries on behalf of Shipper. In the event Shipper's Line Fill balance falls above its pro rata share of the Line Fill necessary for operation of the Pipeline, Carrier shall notify Shipper of such excess Line Fill and will return such excess Line Fill to Shipper. Carrier shall perform this evaluation on a quarterly basis.

# KINDER MORGAN UTOPIA LTD.

## LOCAL TARIFF APPLYING ON PETROLEUM PRODUCTS

### GENERAL RULES AND REGULATIONS

Governing the

### TRANSPORTATION OF PURITY ETHANE

by

### PIPELINE

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### GENERAL APPLICATION

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

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ISSUED: ~~October 1, 2021~~ **March 1, 2023**

EFFECTIVE: ~~November 1, 2021~~ **April 1, 2023**

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Issued By:  
~~Sital Mody~~ **[N] Thomas C. Dender**  
Kinder Morgan Utopia Ltd.  
1001 Louisiana St., Suite 1000  
Houston, Texas 77002 USA

Compiled By:  
Tina Hardy  
Kinder Morgan Utopia Ltd.  
1001 Louisiana St., Suite 1000  
Houston, Texas 77002 USA  
(205) 325-3668: (205) 325-3787  
E-mail: Tina\_Hardy@kindermorgan.com

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# RULES AND REGULATIONS

## 1. DEFINITIONS

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

- a. "ASTM" means American Society for Testing and Materials.
- b. "Available Capacity" means the capacity of the Pipeline, expressed in Barrels per day, available to transport in a month, given operating conditions in that month.
- c. "Barrel" means a unit of volume equivalent to forty-two (42) United States gallons measured at a temperature of sixty degrees Fahrenheit (60°F).
- d. "Business Day" means any day other than a Saturday, Sunday or a statutory holiday in the State of Texas or the Province of Alberta.
- e. "Calendar Year" means the period beginning on the first day of January and ending on the last day of December.
- f. "Carrier" means Kinder Morgan Utopia Ltd.
- g. "CER" means Canada Energy Regulator.
- h. "Committed Capacity" means, for a month, the lesser of (i) ninety percent (90%) of the Available Capacity for such month, and (ii) the aggregate Nominations of Committed Volumes for such month.
- i. "Committed Shipper" means any shipper that has entered into a TSA that has not been terminated or rejected.
- j. "Committed Volume" means, with respect to a Committed Shipper, the committed volume of Product as set forth in such Committed Shipper's TSA.
- k. "Common Stream" means Product which is commingled or intermixed with other fungible Product.
- l. "cubic meter" (m<sup>3</sup>) means a metric unit of volume at a temperature of fifteen degrees Celsius (15°C) which is equivalent to 6.289811 Barrels at a temperature of sixty degrees Fahrenheit (60°F).
- m. "Deficiency Fee" means payments to be made by a Committed Shipper for Committed Volume shortfalls, as determined in accordance with such Committed Shipper's TSA.
- n. "Delivery Point" means the point of interconnection between Carrier's delivery flange and another facility as specified by Carrier in individual Product rate tariffs.
- o. "Financial Assurances" means the financial assurances provided by Shipper and accepted by Carrier in accordance with Rule 19.
- p. "Gross Volume" means quantity in Barrels (or metric equivalent) measured at operating temperatures and pressures.
- q. "Line Fill" means the Product necessary for line fill and working stock for the efficient operation of Utopia.
- r. "Mass" means the measure of Product in pounds (lbs) or Tonnes (t) for metric.
- s. "NEB" means the National Energy Board.
- t. "Net Volume" means the quantity in Barrels (or metric equivalent) corrected to a temperature of sixty degrees Fahrenheit (60°F), in accordance with the latest Gas

- Processors Association measurement standards, and at equilibrium vapor pressure.
- u. “Nomination” means a stated quantity of Product which Shipper notifies Carrier that Shipper intends to move on the Pipeline.
  - v. “Origin” or “Origin Point” means the point of interconnection between Carrier’s receipt flange and another facility as may from time to time be specified by Carrier in individual Product rate tariffs.
  - w. “Pipeline” means the pipeline owned by Kinder Morgan Utopia Ltd. that extends from the United States – Canada border in the middle of the Detroit River near Detroit, Michigan to the terminus of the pipeline near Windsor, Ontario, Canada.
  - x. “pressure” means a force per unit area measured in pounds per square inch absolute (psia) or in kilopascals (kPa) for metric.
  - y. “Product” or “Products” means Purity Ethane.
  - z. “Purity Ethane” means a high purity ethane stream with a minimum 95% ethane content and a maximum 3.5% propane content by liquid volume.
  - aa. “Shipper” means the party who contracts with Carrier for the transportation of Products under the terms of this tariff.
  - bb. “Tender” means a quantity of Product received by Carrier from Shipper for transportation on the Pipeline.
  - cc. “Tonne” means metric designation of 1,000 kg. (kilograms) or 2204.62 lbs. (pounds).
  - dd. “TSA” means any transportation services agreement entered into between Carrier and a Shipper in which the Shipper commits to ship, or pay a deficiency payment for failure to ship, a minimum volume of Product or other products on Utopia.
  - ee. “Uncommitted Capacity” means, for a month, the greater of (i) ten percent (10%) of the Available Capacity for such month, or (ii) the positive difference resulting from the subtraction of the Committed Capacity from the Available Capacity.
  - ff. **[N] “Uncommitted Shipper” means any shipper that has not qualified as a Committed Shipper.**
  - gg. “Uncommitted Volumes” means (i) volumes of Product nominated for transportation for a Shipper that is not a Committed Shipper; and (ii) volumes of Product nominated for transportation for a Committed Shipper in a month that are in excess of the product of such Committed Shipper’s Committed Volume and the number of days in such month.
  - hh. “Utopia” means the entire pipeline system owned collectively by Kinder Morgan Utopia LLC and Kinder Morgan Utopia Ltd. that extends from Origin Point(s) in Harrison County, Ohio, USA to a terminus near Windsor, Ontario, Canada.

## 2. COMMODITY

This tariff applies to the transportation of Products by pipeline and no commodity other than the Products noted herein will be transported under this tariff.

## 3. ORIGIN AND DESTINATION

- a. Products will be accepted for transportation at the Origin Point(s) only when consigned to one or more Delivery Points.

- b. Products will be accepted for transportation only when the Shipper has made provision for the necessary storage and other facilities at the Origin Point(s) and Delivery Point(s) satisfactory to Carrier. Carrier will not provide storage for Shipper's Product at the Origin Point(s) or the Delivery Point(s).
- c. Carrier shall not be responsible for Products that cannot be delivered as specified by the Shipper due to any government intervention.

**4. SPECIFICATIONS AS TO QUALITY**

- a. Products will not be accepted for transportation that are not in a liquid state. Carrier will specify the delivery pressure but it shall not exceed 1,440 psia. The temperature shall not exceed a maximum of 80 degrees Fahrenheit.
- b. Products will not be accepted for transportation which contain impurities or have characteristics which do not meet the following Product specifications:

<b>Purity Ethane must meet the following minimum specifications:</b>		
<b>Component</b>	<b>Specifications</b>	<b>Test Methods</b>
Methane	3.0 Liq. Vol. % max.	ASTM D-2163
Ethane	95.0 Liq. Vol. % min.	ASTM D-2163
Propane & Heavier	3.5 Liq. Vol. % max.	ASTM D-2163
Corrosion, Copper Strip	No. 1	ASTM D-1838
Carbon Dioxide	1,000 ppm wt. max	ASTM D-2504
Total Sulfur	30 ppm wt. max.	ASTM D-2784 or ASTM D-5623
Hydrogen Sulfide	2 ppm wt. max.	ASTM D-5623
Water Content	10 ppm wt. max.	ASTM D-5454

**Notes on Test Methods:** Method numbers listed above, beginning with the letter "D," are American Society for Testing and Materials (ASTM) Standard Test Procedures. The most recent year's revision for the procedures will be used.

**Notes on Specifications and Contaminants:** The specification defines only the basic purity for this product. The product is to be free of any contamination that might render the product unusable for its commonly used applications. Specific contaminants include (but are not limited to) sand, dust, dirt, rust, scale, and all other types of solid contaminants, gums and gum forming substances, crude oil, catalyst poisons, impurities and other objectionable substances which may be injurious to the system or which may interfere with product transmission through the system, caustic, amines, chlorides, heavy metals, oxygenates, inerts and any component added to the product to enhance the ability to meet the specifications.

- c. Additives of any kind shall not be injected by the Shipper into the Products without the express consent of Carrier prior to transportation. Shipper is required to notify Carrier at least 30 days prior to injecting any additives whatsoever to allow sufficient time for approval.
- d. Shippers may be required to furnish Carrier with a certificate setting forth the specifications of each shipment of Products delivered to Carrier.

- e. Shippers will be given 30 days' notice stating any changes in additive to be injected (generic and trade name), the maximum quantity, the Products into which it will be injected, and the date the injection will begin.

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

- a. Products nominated for transportation on the Pipeline will be received by Carrier only on the condition that they shall be subject to such changes in gravity, vapor pressure, and/or quality while in transit as may result from the transportation thereof or the mixture of said Product with other Product received into the Pipeline.
- b. Shipper acknowledges and agrees that Product delivered into the Pipeline by all Shippers will be commingled and that Carrier shall be under no obligation to make delivery of the identical Product received.
- c. Carrier shall not be liable for any damage, loss or consequential loss resulting from a change in the density or other quality of a Shipper's Product that is commingled with other Product in the facilities of Carrier.

## **6. TENDERS AND QUANTITIES**

- a. Shippers desiring to request the transportation of Products shall submit to Carrier in writing (Nomination for Shipment) a separate Nomination for each calendar month on or before the fifteenth (15) day of the preceding month, and shall specify the vapor pressure and specifications of the Products to be tendered.
- b. A Nomination will be accepted only when the total quantity covered thereby will be made available for transportation within the calendar month immediately following delivery of the Nomination, at a delivery rate, in quantities and at times specified by Carrier except as hereunder provided.
- c. Carrier will specify a delivery rate and quantity at an Origin Point that will permit deliveries at the Delivery Point of not less than 5,000 Barrels per day, provided, however that if a delivery is pursuant to a rate tariff that specifies a quantity that is less than 5,000 Barrels per day, then Carrier will specify a delivery rate and quantity at an Origin Point that will permit the delivery at the Delivery Point of the quantity in Barrels per day that is specified in the rate tariff.
- d. Carrier may at its discretion and if operating conditions permit, accept for transportation Products in quantities of less than the specified quantity. If lesser quantity is accepted, it may be delayed at Carrier's election until the minimum delivery quantity is available.
- e. Products will be accepted at the Origin Point(s) if they may be injected directly into compatible Products by use of equipment provided by the Shipper and at rates and pressures as specified by Carrier.

**7. COMMITTED SHIPPER PREPAYMENTS AND DEFICIENCY FEES**

- a. In the event the volume of Product delivered or deemed delivered to a Committed Shipper in a period specified in a Committed Shipper's TSA is less than the Committed Volume for such specified period, the Committed Shipper shall pay to Carrier the Deficiency Fee as determined in accordance with such Committed Shipper's TSA.
- b. In the event the volume of Product delivered or deemed delivered to a Committed Shipper in any month is less than the Committed Volume for such month, the Committed Shipper may be obligated to pay a prepayment amount in accordance with such Committed Shipper's TSA.
- c. Provisions addressing the potential adjustment of the Committed Volume and the payment of Deficiency Fees, and payment and potential crediting of prepayment amounts, are set forth in such Committed Shipper's TSA.

**8. TOLLS**

- a. Products which are accepted for transportation shall be subject to the tolls in effect on the delivery of such Products by Carrier at a Delivery Point(s), irrespective of the date of Tender or date of receipt into the Pipeline.
- b. In accordance with National Energy Board Reasons for Decision MH-001-2013 and Order TO-005-2016, Carrier shall charge Shipper a surcharge applied on a per barrel basis. The surcharge shall be collected by Carrier and set-aside for the purpose of funding abandonment of the pipeline.
- c. The local tolls for the Pipeline will be increased annually, effective on July 1 of each year beginning July 1, 2017, by two and one half percent (2.5%).
- d. The tolls of Carrier are regulated by the CER on a complaint basis. Carrier is required to make copies of tariffs and supporting financial information readily available to interested persons. Persons who cannot resolve toll and tariff issues with Carrier may file a complaint with the CER.

**9. PAYMENT OF TOLLS AND OTHER TARIFF CHARGES AND LIEN FOR UNPAID CHARGES**

- a. Shipper shall pay all charges and costs as provided for in this tariff or otherwise lawfully due to Carrier relating to the transportation of Shipper's Product by Carrier. Shipper shall pay such charges and costs upon receipt of Carrier's invoice respecting such charges and costs. If required by Carrier, Shipper shall pay such charges and costs before delivery, or before acceptance of a transfer, of Shipper's Product by Carrier.
- b. Should a Shipper fail to pay the full amount of an invoice on or before the due date for payment, in addition to any other right or remedy Carrier may have by contract, or under this tariff or applicable law, Carrier will be entitled to interest on the unpaid portion of the invoice, which shall accrue daily, commencing on the day immediately following the payment due date, at a rate of interest per annum equal

to the annual rate of interest publicly announced from time to time by the Bank of Canada as its prime rate plus 2%.

- c. Carrier shall have a general lien on all of a Shipper's Product that is in the possession of Carrier to secure the payment of all charges and costs as provided for in this tariff or otherwise lawfully due to Carrier relating to the transportation of Shipper's Product by Carrier, and all services and procedures related thereto. The general lien provided herein shall be in addition to any lien or security interest otherwise provided by law or contract. Carrier may withhold Shipper's Product from delivery and may exercise any other rights and remedies provided at law or by contract, until all such charges and costs have been paid.
- d. If charges for the transportation, and all services and procedures related thereto, of a Shipper's Product remain unpaid for ten (10) days after notice of demand for payment of such charges and costs is made to such Shipper by Carrier, then Carrier shall have the right to remove and sell any or all of such Shipper's Product that is in the possession of Carrier in such lawful manner as deemed appropriate by Carrier.
- e. Carrier shall pay from the proceeds of such sale all charges and costs accruing or due relating to the transportation of such Shipper's Product by Carrier, and all services and procedures related thereto, and all costs incurred by Carrier with respect to storage, removal and sale of such Shipper's Product. The remainder of such proceeds, if any, shall be held by Carrier for Shipper or any other party lawfully entitled to such proceeds.
- f. When required, Carrier shall, with or without notice to Shipper, appoint agent(s) to retain possession of Shipper's Product on behalf of Carrier for the purpose of enforcing the general lien described in this Rule. Carrier hereby advises that it may appoint an agent to hold possession of Shipper's Product for the purpose of enforcing its general lien.

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

- a. Products nominated for transportation shall be measured by appropriate Mass and Gross Volume measurement equipment at the applicable Origin Point(s) and applicable Delivery Point(s) and tested by a representative of Carrier, except that Carrier's measurement equipment located in Windsor, Ontario, Canada shall be used for all Products nominated for receipt from the International Boundary near Detroit, Michigan.
- b. Method of measurement shall be in accordance with ASTM accepted industry standards for the Product transported.
- c. The Shipper may be present or represented at such measuring and testing. A representative of Carrier shall have the right to enter upon the premises where such Products are received or delivered and have access to any and all storage receptacles or meters for the purpose of measuring and testing and to make any examination, inspection, measurement or test required.
- d. Shipper shall be entitled to have delivered to it only that portion of its shipment as may remain after deduction of its pro rata share of any loss of Product while in the

custody of Carrier, as determined by Carrier in accordance with Rule 13(b), and after any deductions or adjustments made by Carrier pursuant to the foregoing provisions of this Rule 10.

- e. The results of all such gauging, metering and testing by Carrier shall be final.

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

- a. Products received from and delivered to the Shipper shall, in each instance, be evidenced by records showing Mass and Gross Volumes received and delivered. Such records shall be jointly examined by representatives of Carrier and the Shipper, as appropriate.
- b. Automatic Net Volume calculations, including conversion of Gross Volume to Net Volume, will be recorded at the Origin Point(s) and Delivery Point(s) of the Pipeline, except that Carrier's equipment located in Windsor, Ontario, Canada shall be used for all Products received from the International Boundary near Detroit, Michigan. This report shall constitute full receipt for the Products received or delivered.

## **12. DELIVERY AND ACCEPTANCE**

- a. Carrier will transport Products with reasonable diligence and dispatch and Shipper shall accept and remove its shipment from the applicable Delivery Point(s) immediately upon delivery.
- b. If a Shipper fails to remove its Product from the Pipeline in accordance with paragraph (a) of this Rule 12, then Carrier shall have the right to remove and sell such Product in such lawful manner as deemed appropriate by Carrier. Carrier shall pay from the proceeds of such sale all costs incurred by Carrier with respect to the storage, removal, and sale of such Product. The remainder of such proceeds, if any, shall be held by Carrier for Shipper and any other party lawfully entitled to such proceeds.
- c. Under no circumstances will Carrier be deemed to have acquired legal or beneficial ownership in any Product delivered to the Pipeline. Nothing in the foregoing shall limit or affect the lien or other rights of Carrier set forth in Rule 9.
- d. Shipper shall be the importer of Product in Canada, and agrees to be subject to and responsible for the reporting, accounting and other obligations applicable to importers under the Canadian Customs Act and other applicable laws and regulations. Shipper shall account for all imports of Product into Canada and shall pay all duties, taxes and other amounts that may be levied or payable in respect of such imports within the time and in the manner required by the Canadian Customs Act, the Canadian Customs Tariff, the Canadian Excise Tax Act and/or other applicable laws or regulations. Shipper shall report to the Canada Border Services Agency all importation of Product into Canada.

- e. Shipper shall indemnify, hold harmless and reimburse Carrier for any and all duties, taxes, penalties, interest, costs and/or other amounts incurred by or which become payable by Carrier as a result of Shipper's failure to comply with its obligations under Rules 4(a) or 12(d) or in connection with Carrier's rights under Rules 9(b) or (c) hereof or the exercise of such rights.

### **13. LIABILITY OF CARRIER**

- a. Carrier shall not be liable for any loss of, or damage to, any of the Products in its possession, or any delay, caused by fire, storm, flood, epidemics, Acts of God, riots, insurrection, rebellion, sabotage, strikes, labor disturbances, shortage of labor or breakdown of transportation or storage facilities, war, or the acts of the Queen's enemies or public enemies of the United States, or from quarantine, or authority of law or from any order, requisition, interest or necessity of the Government of the United States or of Canada, or any state or province, county or municipal government, or any action on behalf of any government by quasi-judicial boards or other such bodies of competent jurisdiction, default of Carrier, Shipper, or from any cause whatsoever, whether enumerated herein or not, except its own negligence and willful misconduct. In which case Carrier shall be liable, if at all, for direct damages only, and in no circumstance shall Carrier be liable for consequential, indirect, special, or punitive damages of any kind whatsoever.
- b. In case of damage or loss of Products while in the custody of Carrier from any cause, other than the negligence or willful misconduct of Carrier, each Shipper of Products shall participate in such loss in direct proportion to its current monthly requested deliveries of Products; provided, however, that if such loss occurs in such a manner that it is possible to ascertain the ownership of the Products so lost, the full loss shall be charged against the Shipper having ownership. In either event, each Shipper shall be entitled to have delivered only that portion of this shipment as may remain after deduction of this proportion of such loss and will be required to pay charges only upon the quantity of Product delivered.

### **14. INDEMNIFICATION BY SHIPPER**

- a. Subject to Rule 14(c), Shipper shall indemnify Carrier for any damage, loss, or costs incurred by Carrier or any other party as a result of such Shipper's failure to comply with any provision of this tariff, excluding any damage, loss, or costs caused by the negligence or willful misconduct of Carrier. Carrier shall be required to mitigate all such damage, loss, or costs claimed hereunder.
- b. If the Product is not removed from Carrier's facilities and a disruption of Carrier's operation results, Shipper causing such disruption shall be completely and absolutely liable for all costs associated with such disruption, including loss of revenue resulting therefrom. Carrier shall be required to mitigate all such damage, loss, or costs claimed hereunder.

- c. In no circumstances shall Shipper be liable for loss of profit or for any indirect, incidental, punitive, exemplary or consequential damages of any other Shipper related to its use of the transportation services on the Pipeline, including for greater certainty losses suffered by such other Shipper respecting the loss or delay of production, unless, notwithstanding this tariff, Carrier is required by order of a court or other governmental authority to pay such damages or losses to such other Shipper. In no circumstances shall Shipper be liable to Carrier for punitive or exemplary damages related to Carrier's provision of transportation services on the Pipeline to Shipper.

**15. APPORTIONMENT WHEN CURRENT OFFERINGS ARE IN EXCESS OF AVAILABLE CAPACITY**

- a. Carrier may, without liability, allocate Available Capacity for any month in which the Nominations exceed the Available Capacity. If, in a month, the aggregate Nominations by all Shippers exceed the Available Capacity for such month then Carrier will, within two (2) working days of the receipt of all Nominations for the upcoming month, contact Shippers to determine if any are willing to voluntarily reduce their Nominations. If, in a month, the aggregate Nominations, as voluntarily reduced by Shippers, still exceed the Available Capacity for such month then, as set forth below, Carrier will allocate the Available Capacity as outlined in Rule 15(b) below. The method of allocating the Available Capacity among Shippers is outlined in Rule 15(c) below. Shippers will be notified by Carrier of their allocated volumes within four (4) working days of the receipt of all Nominations for the upcoming month.
- b. Allocation of Available Capacity to Uncommitted Volumes will be required in a Month when the aggregate Nominations for Uncommitted Volumes exceed the Uncommitted Capacity. In such Month, Carrier will allocate the Available Capacity among the aggregate Nominations of Uncommitted Volumes in accordance with Rule 15(c)(i) below. Allocation of Available Capacity to Committed Volumes will be required in a Month when the aggregate Nominations for Committed Volumes exceed the Committed Capacity. In such Month, Carrier will allocate the Available Capacity among the aggregate Nominations of Committed Volumes in accordance with Rule 15(c)(ii) below.
- c. Where Available Capacity is allocated among Shippers:
  - i. Uncommitted Capacity will be allocated to Nominations of Uncommitted Volumes in the proportion that each such Nomination bears to the aggregate Nominations of Uncommitted Volumes; and
  - ii. Committed Capacity will be allocated to Nominations of Committed Volumes in the proportion that a Committed Shipper's Committed Volume bears to the Committed Capacity, provided that capacity will not be allocated to a Committed Shipper in excess of such Committed Shipper's Nomination.
  - iii. Any capacity remaining after the allocations in (i) and (ii) will be allocated to Nominations that have not been satisfied under clauses (i) and (ii).

- d. If a Shipper fails to physically deliver to Carrier at the Origin Point(s) its allocated volume resulting from its Nomination in a month when apportionment is applied (“Over-nominating Shipper”) then:
  - i. If Over-nominating Shipper advises Carrier in writing of its inability to deliver a portion of its allocated volume (“shortfall volume”) then Carrier will use all reasonable efforts to equitably offer such shortfall volume to other Shippers;
  - ii. Any volumes reallocated to other Shippers will be credited against all shortfall volumes of the Over-nominating Shippers on a pro rata basis;
  - iii. Any shortfall volumes that are not taken and reallocated to other Shippers shall be invoiced at the published toll as though such shortfall volumes had been physically received and delivered for the Over-nominating Shipper; and
  - iv. Any invoices for shortfall volumes will have to be paid before Carrier will accept further Nominations or Product for receipt from that Over-nominating Shipper.

**16. REQUESTED CHANGE BY SHIPPER FOR DIVERSION OR RECONSIGNMENT**

Subject to Carrier’s reasonable determination that it is possible to accomplish under operational conditions at the time, Carrier will permit diversion or reconsignment but only to a posted Delivery Point without charge if requested in writing by the Shipper, giving sufficient time to Carrier, prior to delivery at the original Delivery Point(s), subject to the tolls, rules and regulations applicable from the initial Origin Point to the final Delivery Point, and upon condition that no out-of-line or backhaul movement will be made.

**17. PRODUCTS INVOLVED IN LITIGATION AND LEGALITY OF SHIPMENT**

- a. Shipper shall not Tender or deliver to Carrier Product which is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind unless Shipper provides written notification to Carrier of such litigation, dispute, lien or charge not less than twenty (20) days before such Tender is made to Carrier and Carrier accepts such Product in accordance with Rule 17(b).
- b. Carrier shall not be obligated to accept Product that is involved in litigation, the ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.
- c. A Shipper shall advise Carrier in writing if, at any time while Shipper’s Product is in the possession of Carrier, such Product becomes involved in litigation, the ownership of such Product becomes in dispute or such Product becomes encumbered by a lien or charge of any kind.
- d. A Shipper shall, upon demand from Carrier, provide a bond or other form of indemnity satisfactory to Carrier protecting Carrier against any liability or loss that may arise as a result of such Shipper’s Product that is involved in litigation, the

ownership of which may be in dispute or which is encumbered by a lien or charge of any kind.

**18. CLAIMS, SUITS AND TIME FOR FILING**

As a condition precedent to recovery, claims for loss, damage or delay in connection with the shipment of Product under the terms of this tariff must be filed in writing with the initial or delivering Carrier within one (1) month after delivery of the Products, or, in the case of failure to make delivery, then within one (1) month after a reasonable time for delivery has elapsed; and suits arising out of such claims must be constituted against Carrier within six (6) months from the day when notice in writing is given by Carrier to the claimant that Carrier has disallowed the claim or any part of parts thereof specified in the notice. In causing Products to be transported under this tariff, the Shipper agrees to be bound by provisions of this clause and waive any rights which it might otherwise have, at common law or otherwise, to make a claim after the expiration of the said period of one (1) month or to bring an action after the expiration of the said period of six (6) months.

**19. FINANCIAL ASSURANCES**

- a. At all times any prospective or existing Shipper shall either:
  - i. maintain a credit rating or credit ratings for senior unsecured long term debt that are no lower than any of the minimum credit ratings set forth below:

Agency	Minimum Credit Rating
Moody's Investor Services	Baa3
Standard & Poor's	BBB-
Dominion Bond Rating Service	BBB (low)

- ii. if a Shipper or prospective Shipper has at least one credit rating for senior unsecured long term debt that is lower than one of the minimum credit ratings set out in Rule 19(a)(i) or does not maintain a credit rating for senior unsecured long term debt, such Shipper or prospective Shipper shall have and maintain in favor of Carrier either:

- A. a guarantee, in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier in form and substance acceptable to Carrier in its sole discretion, from a guarantor that is credit rated and has no credit ratings that are lower than any of the minimum credit ratings set out in Rule 19(a)(i) and that either is a direct or indirect parent of Shipper or prospective Shipper at the time such guarantee is delivered to Carrier or provides a legal opinion to Carrier confirming the enforceability of such guarantee, from an issuer and in form and substance acceptable to

Carrier (the “Guarantee”); or

- B. other financial assurances acceptable to Carrier, which are in a form, an amount and on terms and conditions acceptable to Carrier.

b. If Carrier reasonably determines that:

- i. Shipper’s credit rating has fallen below one or more of the minimum credit ratings set forth above, or has otherwise become impaired or unsatisfactory; or
- ii. if the Guarantee required in accordance with Rule 19(a)(ii)(A) no longer provides adequate security for the performance of Shipper’s obligations arising from the transportation of Products under this tariff or the credit rating of the guarantor falls below one or more of the minimum credit ratings set forth in Rule 19(a)(i); or
- iii. if the financial assurances provided in accordance with Rule 19(a)(ii)(B) no longer provides adequate security for the performance of Shipper’s obligations arising from the transportation of Products under this tariff,

then Shipper shall, within ten (10) Business Days after written notice from Carrier, deliver to Carrier one or more of the following financial assurances (the “Financial Assurances”), as selected by Shipper, for payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to Carrier:

- A. prepayment of an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier;
- B. a letter of credit in favor of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier, in a form and from an institution reasonably acceptable to Carrier, such letter of credit to allow Carrier to demand full or partial payment thereunder in the event of a Shipper Default; and/or
- C. another Guarantee in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to Carrier, in a form and from a third party acceptable to Carrier.

Carrier shall not be obligated to accept Products for transportation from an existing or prospective Shipper if such existing or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) Business Days of Shipper's receipt of Carrier's written request for such Financial Assurances.

For so long as Shipper or the guarantor maintains at least a credit rating for senior unsecured long term debt from at least one of the rating agencies set forth above and no such credit rating has fallen below one or more of the minimum credit ratings set forth above, then Carrier shall not be entitled to require any prepayment, posting of a letter of credit or another Guarantee if and for so long as Shipper or the

guarantor has a credit rating no lower than Baa1 (Moody's), BBB+ (Standard & Poors) or BBB (high) (Dominion) from any of the above rating agencies.

- c. If Rule 19(a) is not satisfied or required Financial Assurances are not provided in accordance with Rule 19(b), upon the request of Carrier, any prospective or existing Shipper that is not a publicly held company shall provide information to Carrier that will allow Carrier to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Product under the terms of this tariff, including the payment of transportation charges, equalization obligations and the value of the negative Shipper's balance positions. Carrier shall not be obligated to accept Products for transportation from an existing or prospective Shipper that is not a publicly held company if Shipper or prospective Shipper fails to provide the requested information to Carrier within ten (10) Business Days of Carrier's written request, or if Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of Shipper's Products under the terms of this tariff, including the payment of transportation charges, equalization obligations and negative Shipper's balance positions.

## 20. INTERPRETATION

- a. Unless otherwise expressly specified herein, (i) defined terms in the singular will also include the plural and vice versa, (ii) the words "hereof", "herein", "hereunder" and other similar words refer to this tariff as a whole, (iii) Rule references in this tariff are to the Rules in this tariff, and (iv) words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders.
- b. The captions in this tariff are for convenience only and will not in any way affect the meaning or construction of any provision of this tariff.
- c. Unless context otherwise requires, "including" means "including without limitations".

## 21. LINE FILL POLICY

- a. Carrier shall not be obligated to provide any Line Fill.
- b. If it becomes necessary for Carrier to provide Line Fill for operational reasons, Carrier shall be entitled to recover the cost of such Line Fill from its Shippers.
- c. All Shippers will provide their pro-rata share of Line Fill during periods of time when Product is being transported in the Pipeline. **[N] In accordance with the TSA, a Committed Shipper shall provide its proportionate share of Line Fill based on its Committed Volume as a percentage of Total Volume Commitments. A Uncommitted Shipper's pro rata share of Line Fill will be calculated as a function of its Nomination. For clarity, Uncommitted Shippers shall be obligated to provide their pro rata share of Line Fill, per the instructions of Carrier, at the time it Tenders Product to the Pipeline. Carrier may require Shipper to confirm it will provide such Line Fill before Carrier is obligated to accept Shipper's Nomination.** Deliveries will be made on a

transit time basis and Carrier shall provide all Shippers with a monthly schedule identifying the approximate date and time of their scheduled delivery no later than the 27<sup>th</sup> day of the month. Carrier will update the monthly schedule at least once per week to reflect changes in operating conditions and subsequent changes to receipt and delivery dates and times. **[N] If a Shipper's Line Fill balance drops below its pro rata share of the Line Fill necessary for operation of the Pipeline, Carrier will notify Shipper of the amount of Line Fill that Shipper owes and Shipper shall supply such Line Fill to Carrier before Carrier is obligated to accept Shipper's Nomination or Tenders or make deliveries on behalf of Shipper. In the event Shipper's Line Fill balance falls above its pro rata share of the Line Fill necessary for operation of the Pipeline, Carrier shall notify Shipper of such excess Line Fill and will return such excess Line Fill to Shipper. Carrier shall perform this evaluation on a quarterly basis.**