

BOARDWALK TEXAS INTRASTATE, LLC

**NGPA SECTION 311
STATEMENT OF OPERATING CONDITIONS**

VERSION 1.0.0

EFFECTIVE OCTOBER 1, 2022

eTariff Information:

Tariff Submitter: Boardwalk Texas Intrastate, LLC

FERC Tariff Program Name: FERC NGPA Gas SOC

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NGPA SECTION 311
STATEMENT OF OPERATING CONDITIONS

APPLICABLE TO BOARDWALK TEXAS INTRASTATE, LLC
NGPA SECTION 311 TEXAS GAS TRANSPORTATION SERVICE

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STATEMENT OF CURRENTLY EFFECTIVE RATES

Section 311 Rates

| | Maximum <u>Rate</u> | Minimum <u>Rate</u> |
|--------------------|------------------------|------------------------|
| Rate Schedule FTS: | | |
| Reservation Charge | \$ 0.2482 | \$0.0000 |
| Commodity Charge | \$ 0.0014 | \$0.0014 |
| Overrun Charge | \$ 0.2496 | \$0.0014 |
| Rate Schedule ITS: | | |
| Commodity Charge | \$ 0.2496 | \$0.0014 |
| Overrun Charge | \$ 0.2496 | \$0.0014 |

Fuel Retention Rate: 0.61%

1. INTRODUCTION

Boardwalk Texas Intrastate, LLC (“*Transporter*”) is an intrastate Gas transmission utility with facilities located wholly within the State of Texas offering both intrastate transportation and NGPA Section 311 Service. This Statement of Operating Conditions shall apply to all NGPA Section 311 Service rendered under Service Agreements pursuant to Section 311(a)(2) of the NGPA and the FERC’s rules, regulations, and orders thereunder.

2. DEFINITIONS

Except as otherwise specified herein, the following terms will be construed to have the following scope and meaning in this Statement of Operating Conditions and in the Service Agreement:

- a. “*Btu*” means a British thermal unit, which is the amount of heat required to raise the temperature of one pound of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of 14.73 psia.
- b. “*Business Day*” is defined as Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- c. “*Central Time*” shall mean central time, as adjusted for daylight savings time.
- d. “*Commencement Date*” is defined in Section 11 of this Statement of Operating Conditions.
- e. “*Cumulative Operational Imbalance*” is defined in Section 9.7 of this Statement of Operating Conditions.
- f. “*Cumulative Operational Imbalance Fee*” is defined in Section 9.7(a) of this Statement of Operating Conditions.
- g. “*Cumulative Operational Imbalance Tolerance*” is defined in Section 9.7(a) of this Statement of Operating Conditions.
- h. “*Day*” means the period beginning at 9:00 a.m. Central Time on each calendar day and ending at 9:00 a.m. Central Time on the following calendar day.
- i. “*Delivery Point(s)*” is defined in Section 7.2 of this Statement of Operating Conditions.
- j. “*Effective Date*” means the first Day of the term of a Service Agreement.
- k. “*FERC*” means the Federal Energy Regulatory Commission or any successor regulatory agency.
- l. “*Firm*” means that Shipper’s Maximum Daily Quantity is not subject to a prior claim by another Shipper or class of service.

- m. “*Force Majeure*” has the meaning ascribed to it in Section 21.
- n. “*Gas*” means any mixture of gaseous hydrocarbons, consisting essentially of methane and heavier hydrocarbons and inert non-combustible gases that are extracted from the subsurface of the Earth.
- o. “*Heating Value*” means the total or gross Btus produced by the combustion, at constant pressure, of the amount of Gas that would occupy a volume of one cubic foot saturated with water vapor under Standard Conditions and under standard gravitational force with air of the same temperature and pressure as the Gas, when the products of combustion are cooled to the initial temperature of the Gas and air and when the water formed by combustion is condensed to the liquid state. The Heating Value so calculated is deemed dry.
- p. “*Interruptible*” means Transporter, in its discretion, may interrupt, curtail, or suspend the receipt, transportation or delivery of Gas hereunder at any time and from time to time for any reason without notice, whether or not caused by an event of Force Majeure, with no liability to Shipper.
- q. “*Lost & Unaccounted For*” or “*L&U*” means that volume of Gas, in MMBtu, received by Transporter which is released and/or lost from the Pipeline System, which cannot be accounted for, or is vented.
- r. “*Maximum Daily Quantity*” or “*MDQ*” means the maximum quantity of Gas in MMBtu, exclusive of applicable Retention Volume, specified in a Shipper’s Service Agreement that Shipper may nominate and deliver to Transporter each Day at a Receipt Point(s) and the Transporter shall deliver each Day at a Delivery Point(s) at a relatively uniform hourly rate over the course of such Day.
- s. “*MMBtu*” or “*Dekatherm*” means one million Btu’s.
- t. “*Month*” means that period of time beginning at 9:00 a.m. Central Time on the first day of a calendar month and ending at 9:00 a.m. Central Time on the first Day of the following calendar month.
- u. “*Monthly Deadline*” has the meaning ascribed to it in Section 9.1.
- v. “*NGPA*” means *Natural Gas Policy Act of 1978*.
- w. “*Nomination Deadline*” has the meaning ascribed to it in Section 9.1.
- x. “*Nomination Schedule*” has the meaning ascribed to it in Section 9.1.
- y. “*Operational Flow Order*” is defined in Section 9.6 of this Statement of Operating Conditions.

z. “*Pipeline System*” means pipeline facilities and related equipment located in the State of Texas and owned by the Transporter, including, but not limited to, the pipeline, compressor, regulators, meters, support, and appurtenant facilities.

aa. “*Psia*” means pounds per square inch absolute.

bb. “*Psig*” means pounds per square inch gauge.

cc. “*Receipt Point(s)*” is defined in Section 7.1 of this Statement of Operating Conditions.

dd. “*Retention Volume*” means an amount of Gas, expressed in a percentage of volume received by Transporter from a Shipper at each Receipt Point(s), which Transporter will retain, in addition to the Transportation Fees and other charges payable under this Statement of Operating Conditions and the Service Agreement. The Retention Volume will include Fuel and L&U and is reflected in the Statement of Currently Effective Rates as the Fuel Retention Rate.

ee. “*Scheduled Quantity*” means the quantity of Gas up to the MDQ nominated by Shipper and scheduled and confirmed by Transporter with the upstream and the downstream pipeline operators.

ff. “*Section 311 Service*” means transportation service rendered under Service Agreements pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 and Subpart C of Part 284 of FERC’s regulations.

gg. “*Service Agreement*” means the agreement between Transporter and Shipper, whereby Transporter will provide transportation services for Shipper pursuant to the terms and provisions of said Service Agreement and this Statement of Operating Conditions.

hh. “*Shipper*” means the party that holds all lawful rights and/or title to the Gas that is being transported and who has a fully executed Service Agreement with Transporter.

ii. “*Standard Conditions*” means a base pressure of 14.73 psia and a base temperature of 60 degrees Fahrenheit.

jj. “*Stated Rate*” means, for any date, an annual rate of interest (compounded daily) equal to the lesser of (a) two hundred basis points over the per annum rate of interest announced as the “prime rate” for U.S. commercial loans posted from time to time by *The Wall Street Journal* or its successor or a mutually agreed substitute publication, or (b) the maximum lawful interest rate then in effect under applicable law.

kk. “*Transporter*” means Boardwalk Texas Intrastate, LLC.

3. SERVICES AVAILABLE

3.1 Firm Transportation Service

Firm Transportation Service is available on an intrastate basis pursuant to Transporter’s

intrastate Statement of Operating Conditions under the jurisdiction of the Texas Railroad Commission and under NGPA Section 311 authority pursuant to this Statement of Operating Conditions. Subject to the operating conditions contained herein, Transporter shall receive from Shipper such daily quantities of Gas as are nominated by Shipper and scheduled by Transporter pursuant to Section 9, up to Shipper's MDQ as specified in the executed Firm Transportation Service Agreement between Transporter and Shipper, including the required Retention Volume, and deliver an amount equal to the quantity received less the Retention Volume. This transportation service shall be Firm and shall not be subject to curtailment or interruption except as provided in Sections 5, 6 and 21 of this Statement of Operating Conditions.

The availability of Firm Transportation Service will be limited by Transporter's determination as to whether it has sufficient available and uncommitted capacity to perform service requested by Shipper. Firm Service shall not be available from Transporter if capacity on pipeline segment(s), at Receipt Point(s), or at Delivery Point(s) has been fully committed to other Shipper(s).

3.2 Interruptible Transportation Service

Interruptible Transportation Service is available on an intrastate basis pursuant to Transporter's intrastate Statement of Operating Conditions under the jurisdiction of the Texas Railroad Commission and under NGPA Section 311 authority pursuant to this Statement of Operating Conditions. Subject to the operating conditions contained herein, Transporter shall receive from Shipper such daily quantities of Gas as are nominated by Shipper and scheduled by Transporter pursuant to Section 9, up to Shipper's MDQ, as specified in the executed transportation Service Agreement between Transporter and Shipper, including the required Retention Volume, and deliver an amount equal to the quantity received less the Retention Volume. Interruptible Transportation Service shall be subject to curtailment or interruption as provided in Sections 5, 6 and 21 of this Statement of Operating Conditions.

4. REQUEST FOR SERVICE AGREEMENT

4.1 Requests for Service Agreement

A Service Agreement is required for all transportation services hereunder and will be subject to all terms and provisions of this Statement of Operating Conditions. Any potential shipper desiring to obtain services from Transporter must request a Service Agreement from Transporter. Potential shipper shall provide information requested by Transporter if necessary to adequately examine potential shipper's request for Service Agreement. Such request for Service Agreement may be delivered in person or submitted by United States mail, overnight courier service, email, or fax. If Transporter receives competing requests for the same capacity, Transporter shall award such capacity in a manner that provides the greatest economic benefit to Transporter in Transporter's judgment in a not unduly discriminatory manner. If Transporter and the potential shipper mutually agree to the rate(s) that the potential shipper will pay for transportation service, and other terms and conditions to be included in the Service Agreement, as permitted by this Statement of Operating Conditions, then Transporter shall, subject to the execution of a Service Agreement, endeavor to provide service commencing on the date specified in the written request. The potential shipper's request for service shall be considered complete only if the information specified in Section 4.2 is provided in writing. The potential

shipper shall provide documentation to demonstrate its creditworthiness to the satisfaction of the Transporter in accordance with Section 4.4 hereof.

Requests for Service Agreement may be sent to:

BOARDWALK TEXAS INTRASTATE, LLC
Attn: Contract Administration
9 Greenway Plaza, Suite 2800
Houston, Texas 77046
Fax: (713) 479-1020
Telephone: (713) 479-8208
BTI_ComOps@bwpmlp.com

4.2 Requirements of Requests for Service

Each request for a Service Agreement must include the following information:

- a. Potential shipper's name, address, representative, telephone number, and if available, fax number and e-mail address.
- b. Type of service requested: (1) Firm NPGA Section 311 Service or (2) Interruptible NGPA Section 311 Service.
- c. Requested Receipt Point(s) and Delivery Point(s).
- d. Potential shipper's requested Maximum Daily Quantity.
- e. Price offered by potential shipper for the service requested (Dollars per MMBtu).
- f. The term of the service requested.
- g. 24-hour contact information for the potential shipper and point operator(s) at the potential shipper's requested Receipt Point(s) and Delivery Point(s).
- h. Upon verbal or written request, other requested information, such as quality specifications for Gas delivered upstream of a processing facility.

4.3 Failure to Provide Complete Information

Transporter shall have the right to reject any request for service that: (i) does not contain the required information set forth herein; (ii) Transporter, in Transporter's sole opinion, is operationally unable to perform without detriment to its system or to the rights of existing Shippers on its system; (iii) requires Transporter to construct facilities to effectuate the receipt or delivery; or (iv) requires Transporter to perform a service that, in Transporter's sole opinion, may be contrary to any existing law or regulation or creates a potential safety or environmental

hazard. Transporter will have no liability to potential shipper or any other entity in connection with such rejection.

4.4 *Credit Approval*

Transporter's agreement to execute a Service Agreement is contingent upon a satisfactory appraisal of potential shipper's credit by Transporter. To enable Transporter to conduct such credit appraisal, the potential shipper must submit the information set out in Section 4.4(a) below; provided, however, that submission of such material will not be deemed acceptance of the request for Service Agreement. Transporter will apply consistent evaluation practices on a non-discriminatory basis to determine creditworthiness.

- a. Potential shipper must provide: (i) a copy of its last two (2) fiscal years of audited financial statements, including balance sheet, income statement, cash flow statement and accompanying footnotes; (ii) a bank reference; and (iii) at least three trade references, which indicate that potential shipper's obligations with third parties are being paid on a prompt basis. If potential shipper cannot provide the above information on itself, then potential shipper must, if applicable, provide that information for its parent company.
- b. In the event Transporter determines Shipper's credit to be unsatisfactory, in Transporter's sole opinion, at any time during the term of any Service Agreement, Transporter may demand "*Adequate Assurance of Performance*" which shall mean sufficient security in a form, an amount and for the term reasonably specified by Transporter. Shipper, at its option, may provide one of the following forms of security:
 1. Post an irrevocable standby letter of credit for services in a form and from a bank satisfactory to Transporter; or
 2. Provide a prepayment or a deposit for services equal to three (3) months service; or
 3. Any other security mutually agreed upon by Shipper and Transporter.
- c. Transporter will not be required to perform or continue to perform service under any Service Agreement in the event: (i) Shipper has voluntarily filed for bankruptcy protection under any chapter of the Bankruptcy Code; (ii) Shipper is the subject of an involuntary petition of bankruptcy under any chapter of the Bankruptcy Code, and such involuntary petition has not been settled or otherwise dismissed within ninety (90) Days of such filing; (iii) Shipper otherwise becomes insolvent, whether by an inability to meet its debts as they come due in the ordinary course of business or because its liabilities exceed its assets on a balance sheet test and/or however such

insolvency may otherwise be evidenced; or (iv) Shipper fails to meet Transporter's credit requirements.

- d. Should Shipper fail to provide Adequate Assurance of Performance within two (2) Business Days after receipt of written demand for such assurance, then Transporter shall have the right to: (i) suspend performance under any Service Agreement until such time as Shipper furnishes Adequate Assurance of Performance; and/or (ii) terminate any Service Agreement. These results shall be in addition to all other remedies available at law or in equity.

Notwithstanding the forgoing requirements, in the event Transporter constructs new facilities, Transporter may require a cash prepayment deposit, parental guaranty, or an irrevocable letter of credit, in addition to any security required by this Statement of Operating Conditions, from a Customer that does not meet the credit requirements established herein, in an amount up to the Customer's pro rata share of the costs of the new facilities. On a monthly basis, Transporter shall review Customer's transportation throughput and transportation commitments (or other criteria as the parties may mutually agree) related to the new facilities and pursuant to such evaluation will refund cash prepayments or allow Customer to reduce an irrevocable letter of credit, on a pro rata basis, based upon Transporter's criteria evaluation and Customer's payment history.

In the event Transporter is required to draw on a Customer's collateral, for the facilities constructed, the amount of Customer's collateral retained by Transporter shall be reduced to an amount equal to the difference between (1) the Net Present Value of the future reservation charge revenues of the original Customer that would have been attributed to the cost of such facility and (2) the Net Present Value of the future reservation charge revenues of a newly awarded firm Customer that are directly attributed to the cost of such facility. In no event shall Transporter hold collateral related to facilities constructed, if the cost of those facilities has been recovered from the firm Shippers that have contracted for that capacity and/or through use of the collateral held for defaults by non-creditworthy Customers.

4.5 *Service Agreements*

After potential shipper has requested a Service Agreement and after Transporter has determined that potential shipper is creditworthy, Transporter and potential shipper will enter into a Service Agreement, which will incorporate by reference the provisions of this Statement of Operating Conditions. Neither Transporter nor potential shipper will have any obligations to one another until authorized representatives of both Transporter and Shipper have executed a Service Agreement. Any applicable Service Agreement will contain specific details agreed to by Transporter and Shipper for a particular service arrangement.

5. **PROVISIONS OF SERVICE**

5.1 *Transporter's Obligations*

Transporter will: (a) receive Gas up to the MDQ at the Receipt Point(s) as nominated and tendered by Shipper and scheduled by Transporter under the terms of this Statement of Operating Conditions and the Service Agreement; (b) transport the Gas; and (c) deliver Gas to Shipper at the Delivery Point(s), less the Retention Volume as set forth in Section 10.2 of this Statement of Operating Conditions. Transporter's obligations to receive, transport, and deliver Gas to the Delivery Point(s) shall be in accordance with the applicable character of service (i.e., Firm or Interruptible), and are subject to: (i) events of Force Majeure; (ii) Shipper's failure or refusal to deliver Gas to or receive Gas from Transporter as required under this Statement of Operating Conditions and any Service Agreement; (iii) any laws, rules, orders, or requirements of any governmental or regulatory authorities that limit, prevent, or interfere with Transporter's performance; and (iv) as otherwise provided under any other terms and conditions in this Statement of Operating Conditions and the Service Agreement. In the event of constraints at a Delivery Point(s) or on a downstream pipeline, Transporter will rely on the downstream party's allocation at the affected Delivery Point(s) and, to the extent Shipper's nominations are reduced, Shipper will be deemed to have failed to receive Gas from Transporter as required hereunder.

5.2 Shipper's Obligations

Shipper will tender the Scheduled Quantity at the Receipt Point(s), and accept such Gas, less the Retention Volume, at the Delivery Point(s). Shipper's obligations set forth in the preceding sentence are subject to: (i) events of Force Majeure; (ii) Transporter's failure or refusal to receive Gas from or deliver Gas to Shipper as required under this Statement of Operating Conditions; (iii) any laws, rules, orders, or requirements of any governmental or regulatory authorities that limit, prevent, or interfere with Shipper's performance; and (iv) as otherwise provided under any other terms and conditions in this Statement of Operating Conditions and the Service Agreement.

5.3 Interruption of Service

Transporter will make reasonable efforts to timely advise (by telephone or electronic medium) Shipper's dispatcher or authorized representative of an interruption of service as soon as practicable, either before or after such interruption, but Transporter will have no liability for any failure to give such notice. Transporter will not be liable for any loss or damage to any person or property caused, in whole or in part, by an interruption of service under any Interruptible Service Agreement. Shipper will indemnify and hold harmless Transporter, its officers, agents, employees, and contractors from and against any and all suits, claims, liability, loss, damages, costs (including attorneys' fees and court costs) or encumbrances whatsoever brought by any person or entity against Transporter as a result of, or arising out of, any interruption of service under any Service Agreement. Should any third party with the right to control the Receipt Point(s), Delivery Point(s), or any other facilities needed for the receipt, transportation, or delivery of Gas hereunder limit or fail to authorize the use of any such facilities to perform services provided hereunder, Transporter will have no obligation hereunder to perform any transportation service or receive or deliver Gas hereunder.

5.4 Priority of Service and Scheduling

From time to time, Transporter may not have sufficient capacity available to

accommodate all nominations through specific Receipt Point(s), specific Delivery Point(s), specific compression stations, and/or specific segments of Transporter's pipeline system. In such event, Transporter will schedule and perform service in the following order of priority:

- a. Firm service shall receive first priority. Within this category, in the event Transporter has insufficient capacity, service will be scheduled pro rata based on each Shipper's MDQ at such affected point(s).
- b. Interruptible service shall receive second priority. Within this category, Transporter shall schedule nominated service on an economic basis. As such, Transporter shall allocate capacity to the Shippers whose transaction provides the greatest economic benefit to Transporter in Transporter's judgment. If two or more Shippers' transactions provide the same economic benefit to Transporter, and there is insufficient capacity to serve all such Shippers, Transporter shall schedule service pro rata based on the quantities that would otherwise be scheduled.

Any nominations received after the Nomination Deadline shall not "bump" any previously scheduled service. If a conflict arises between Shipper's new or revised nomination and the point operator's confirmation, Shipper understands and agrees such Receipt Point or Delivery Point operator's confirmation shall control.

5.5 Multiple Service Agreements

If Shipper has multiple Service Agreements, Shipper will not be permitted to combine services available under such Service Agreements. Specifically, Gas will be received under a particular Service Agreement and will be delivered under the same Service Agreement.

6. CURTAILMENT

6.1 Right to Curtail

Transporter shall have the right to curtail or discontinue transportation services in whole or in part on all or a portion of its system at any time for reasons of Force Majeure or when in Transporter's sole judgment, capacity or operating conditions so require or it is desirable or necessary to perform unplanned maintenance or to make unplanned modifications, repairs or operating changes to its system.

6.2 Notice of Curtailment

Transporter shall provide Shipper such notice of the curtailment as is reasonable under the circumstances. In the event curtailment of transportation service is required, service quantities shall be curtailed in the reverse order of the priority in effect at the time of curtailment established during scheduling as set forth in Section 5.4.

6.3 Liability for Curtailment

Transporter shall not be liable for any loss or damage to any person or property caused, in whole or in part, by any interruption or curtailment of service, except to the extent caused by

Transporter's gross negligence or willful misconduct. *Shipper agrees to indemnify and hold harmless Transporter, its officers, agents, employees, and contractors from and against any and all suits, claims, liability, loss, damages, costs (including attorneys' fees and court costs) or encumbrances whatsoever brought by any person or entity against Transporter as a result of or arising out of any interruption or curtailment of service hereunder for Shipper (unless caused by Transporter's gross negligence or willful misconduct).*

7. DELIVERY POINT(S) AND RECEIPT POINT(S)

7.1 Receipt Point(s)

Shipper will tender Gas for delivery to Transporter under this Statement of Operating Conditions and the Service Agreement at the "*Receipt Point(s)*" identified in the Service Agreement. Except as set forth in other agreements between the parties, Receipt Point(s) may be modified, or additional Receipt Point(s) may be added to the Service Agreement by mutual agreement of the parties.

7.2 Delivery Point(s)

Transporter will deliver Gas to Shipper or its agent, under this Statement of Operating Conditions and the Service Agreement at the "*Delivery Point(s)*" identified in the Service Agreement, less the Retention Volume. Delivery Point(s) may be modified, or additional Delivery Point(s) may be added to a Service Agreement, by mutual agreement of the parties.

7.3 Allocation at Receipt and Delivery Point(s)

It is recognized that quantities of Gas may be transported through the Receipt Point(s) and/or the Delivery Point(s) for one or more parties other than the Shipper. If that occurs, the measurement of Gas under this Agreement may involve the allocation of Gas receipts or deliveries. As between Transporter and Shipper, Transporter will, in its discretion, determine the allocation of all Gas deliveries hereunder.

7.4 Payment of Fees

Shipper must pay any and all transportation, measurement, testing, compression, or other fees or charges imposed by any third party on deliveries at any Receipt Point(s) or Delivery Point(s). Notwithstanding the foregoing, in the event Transporter pays any such fees and charges, Shipper must reimburse Transporter for any such fees or charges paid by Transporter with respect to Shipper's Gas provided that Transporter has given Shipper written notice of the amount of such fees and charges.

8. FACILITIES

8.1 Facilities

Transporter shall not be required to provide any requested transportation service which would require construction or acquisition by Transporter of any new facilities or expansion of

Transporter's existing facilities. Transporter, in its discretion, may agree to construct or acquire new facilities, or expand existing facilities, to provide service requested by any Shipper. In such event, Shipper agrees to reimburse Transporter for the total incremental cost of the new facilities or expansion of existing facilities, unless otherwise mutually agreed in writing. Transporter shall determine method of reimbursement, either lump sum or installment.

8.2 *New Facilities*

To the extent Transporter agrees to construct or acquire any new facilities or expand existing facilities, any such facilities shall be contracted, maintained, owned, and operated by Transporter, except as may otherwise be mutually agreed in writing. The design and installation of all facilities shall be in accordance with the specifications determined by Transporter in its sole, reasonable discretion.

9. **NOMINATIONS AND BALANCING**

9.1 *Nominations*

Shipper or its agent shall submit nominations to transport Gas by emailing or faxing a Shipper gas nomination form to Transporter at the email address BTI_ComOps@bwpmlp.com or fax number 713-479-1815. Transporter will schedule and confirm Shipper's nomination with upstream and downstream point operators in accordance with the provisions of this Statement of Operating Conditions and the Service Agreement. Shipper must have a Service Agreement in place before a nomination can be submitted. No later than 11:30 a.m. Central Time the Business Day prior to the first (1st) Day of any Month ("*Monthly Deadline*"), Shipper shall submit a single nomination to be effective each Day of the following Month setting forth the Shipper's anticipated service requirements for the following Month.

In addition to the monthly nomination, Shipper may submit a new nomination or revise an existing nomination for any Day or consecutive group of Days during the service Month in accordance with the following ("*Nomination Schedule*"):

Nomination Schedule

On the Day prior to gas flow:

- 1:00 p.m. "Nomination Deadline" – Shipper submits nominations to Transporter
- 1:30 p.m. Upon mutual agreement, Transporter sends nomination response to the Shipper;
- 4:30 p.m. Transporter confirms quantities with confirming point operator(s);
- 5:00 p.m. Shipper and point operator(s) receive scheduled quantities from the Transporter.

Scheduled quantities resulting from the Nomination Schedule should be effective at the start of the next Day.

Shipper has the right to nominate quantities up to Shipper's Maximum Daily Quantity. Any nomination received after the Monthly Deadline or Nomination Deadline will be scheduled

by Transporter in its discretion. Transporter may, in its discretion, allow intraday nomination changes at the Receipt Point(s) and Delivery Point(s), subject to available capacity and confirmations.

9.2 *Separate Nominations*

In the event Shipper has more than one transportation Service Agreement, Shipper shall provide Transporter with separate nominations for each transportation Service Agreement. If such nominations include the same Delivery Point(s) and/or Receipt Point(s), Shipper shall specify in writing the order in which Gas received and/or delivered by Transporter shall be applied to such Service Agreements at the Delivery Point(s) and/or Receipt Point(s).

9.3 *Balancing Nominations*

Quantities nominated by Shipper for receipt by Transporter, excluding Retention Volumes, shall equal the quantities nominated by Shipper for delivery by Transporter, unless Shipper is nominating authorized make-up quantities to correct imbalances or unless otherwise authorized by Transporter.

9.4 *Shipper's Balancing Obligations*

For each Service Agreement, the maximum quantity of Gas that Transporter is obligated to receive at the Receipt Point(s) and deliver at the Delivery Point(s) during any given hour of any Day is 1/24th of Shipper's Scheduled Quantity. Shipper will use all reasonable commercial efforts to monitor and adjust its nominations, deliveries, and receipts to maintain the hourly and daily balances between the Receipt Point(s) and Delivery Point(s), and notify Transporter immediately of any imbalances or situations that may cause imbalances. If Transporter is unable to receive the Scheduled Quantity at any Receipt Point(s) or deliver the Scheduled Quantity at any Delivery Point(s), Transporter will notify Shipper as soon as practicable. Transporter has no obligation to receive and deliver quantities of Gas that differ from the Scheduled Quantity.

9.5 *Fluctuations in Hourly Flow*

Transporter will use commercially reasonable efforts to operate its facilities so that it may accommodate fluctuations in hourly flow. Notwithstanding the above, the maximum quantity of Gas that Transporter is obligated to receive hereunder at the Receipt Point(s) and deliver hereunder at the Delivery Point(s) during any given hour of any Day is 1/24th of Shipper's MDQ. If Shipper desires to deliver at non-uniform rates of flow, then Shipper shall notify and nominate the variation. If operationally and commercially feasible, the Transporter shall confirm and schedule the nominations.

9.6 *Operational Flow Orders*

If, in Transporter's discretion, it is necessary or desirable, in order to preserve the overall operational balance of Transporter's system, or to enable Transporter to provide the services set

forth in this Statement of Operating Conditions and any Service Agreement, Transporter may issue an “*Operational Flow Order*.”

- a. An Operational Flow Order may require Shipper to take any of the following or similar actions:
 1. Commence or increase supply inputs into Transporter’s Pipeline System at specific Receipt Point(s) as permitted by Transporter, or, alternatively, cease or reduce deliveries from Transporter’s Pipeline System at specific Delivery Point(s).
 2. Cease or reduce supply inputs into Transporter’s pipeline system at specific Receipt Point(s) or, alternatively, commence or increase deliveries of Gas from Transporter’s pipeline system at specific Delivery Point(s) as permitted by Transporter.
 3. Eliminate any transportation imbalances, as directed by Transporter.
 4. Conform actual receipts and deliveries to nominated and scheduled receipts and deliveries.
 5. Delay changes in deliveries up to twenty-four hours to account for the molecular movement of Gas.
 6. Such other actions that are within Shipper’s control that would tend to alleviate the situation to be addressed.
- b. The Cumulative Operations Imbalance Fee under Section 9.7 will not apply to Shipper’s actions taken in compliance with Operational Flow Orders.
- c. Should Shipper fail to adjust its receipts and/or deliveries in compliance with an Operational Flow Order, then in addition to any other charges set forth herein, Shipper must pay Transporter a charge equal to the greater of
 - (i) the arithmetic average price of the indices published for the applicable day found in Platts Gas Daily, Daily Price Survey, for the following locations:

Tennessee, Zone 0
Katy
Tx Eastern, STX
 - or (ii) ten dollars (\$10.00), for each MMBtu delivered under the Service Agreement at the Delivery Point(s) during each hour in which deliveries are greater than one hundred ten percent (110%) or less than ninety percent (90%) of the Scheduled Quantities at the Receipt Point(s) for such

hour, less Retention Volume, while the Operational Flow Order is in effect. For any day where Platts Gas Daily does not publish a price for any of the above referenced locations, Transporter shall calculate the average price using the published prices for the remaining above referenced locations which are published on that day. For any day where Platts Gas Daily is not published for all of the above referenced locations, Transporter shall calculate the average price using the above referenced indices which are available and published for the day immediately before and the day following the applicable day of the Shipper's failure to comply with an operational flow order.

Should this publication cease to exist in its current form, then Transporter will submit an alternate publication and/or set of published prices for the index calculation.

- d. Should Shipper fail to abide by an Operational Flow Order issued pursuant to this Section 9.6, Shipper will also be responsible for any and all damages asserted by any third parties, and will indemnify Transporter against any claims by any third parties resulting from Shipper's failure to comply with the Operational Flow Order.

9.7 *Gas Imbalance Account*

Any variance or imbalance between the quantity of Gas delivered at the Delivery Point(s) and the quantity of Gas received at the Receipt Point(s) (less the Retention Volume) during a given Day will be recorded in a gas imbalance account, the cumulative balance of which shall be the "*Cumulative Operational Imbalance*."

- a. If the Cumulative Operational Imbalance or the value of the Cumulative Operational Imbalance, as applicable, exceeds either: (i) ten thousand (10,000) MMBtu; or (ii) fifty thousand dollars (\$50,000.00) pursuant to the cash out methodology set forth in Sections 9.7(d)(i) and 9.7(d)(ii) below ("*Cumulative Operational Imbalance Tolerance*"), then Transporter may require Shipper to pay Transporter an amount equal to the rate as determined by Sections 9.7(d)(i) and 9.7(d)(ii) below multiplied by the quantity in the gas imbalance account varying from the Cumulative Operational Imbalance Tolerance for each and every Day such event occurs ("*Cumulative Operational Imbalance Fee*") in addition to any other fees and charges that Shipper is obligated to pay, including but not limited to the Overrun Charge.
- b. Any physical flow adjustments will be made as permitted in Transporter's discretion (which shall be in accordance with the nomination procedures herein) to adequately control imbalance levels.

- c. Transporter shall waive any fees due to imbalances which result from errors made by Transporter or which result from Force Majeure invoked by Transporter.
- d. In the event there is a balance in the Gas Imbalance Account, the Gas Imbalance Account will be cashed out on the following terms upon the termination of a Service Agreement, unless Transporter elects to require Shipper to settle the Cumulative Operational Imbalance by physical deliveries of Gas, in which case such obligation of Shipper shall survive the termination of the Service Agreement.
 - (i) Determination of Index “Buy” Price - For the month in which the imbalance occurred, the index “buy” price per Dekatherm used in the calculation shall be 75% of the lowest of the arithmetic average of the “Delivered to Pipeline” indices published each week during the month and first week following the month found in Natural Gas Week under the title “Gas Price Report” for the following locations:
 - Tenn Zone 0
 - Katy Hub
 - Tetco – South Texas
 - (ii) Determination of Index “Sell” Price – For the month in which the imbalance occurred, the index “sell” price per Dekatherm used in the calculation shall be 125% of the highest of the arithmetic average of the “Delivered to Pipeline” indices published each week during the month and the first week following the month found in Natural Gas Week under the title “Gas Price Report” for the following locations:
 - Tenn Zone 0
 - Katy Hub
 - Tetco – South Texas

If any of the above referenced locations are not published during any applicable week, Transporter shall exclude that location from the arithmetic average calculation for that week. Should this publication cease to exist in its current form, then Transporter will submit an alternate publication and/or set of published prices for the index calculation.

9.8 *Transporter’s Right to Balance*

Notwithstanding anything in this Statement of Operating Conditions to the contrary, Transporter may, at any time and from time to time, with notice to Shipper, restrict, interrupt, or reduce its receipts or deliveries of Gas at the Receipt Point(s) or Delivery Point(s), and direct Shipper to make adjustments in its receipts or deliveries, in order to maintain a daily and/or hourly balance or to correct an imbalance. If Shipper fails or refuses to follow any such request from Transporter, Transporter may, without liability hereunder, cease accepting or delivering Gas under this Agreement until the conditions causing the imbalance are corrected.

10. RATES

10.1 *Transportation Fees*

Each Month, Shipper will, where applicable, pay Transporter the fees per MMBtu for Gas delivered by Transporter to Shipper as set forth in the Service Agreement (“*Transportation Fees*”). Transporter has elected to perform NGPA Section 311 Service utilizing the rates approved by the FERC pursuant to Section 284.123(b)(2)(i) of FERC’s regulations. Transporter reserves the right to seek regulatory approval of a higher maximum rate for such Section 311 Service during the term of any Service Agreement entered into pursuant hereto, and the rate applicable under such Service Agreement shall be revised to equal the maximum rate eventually approved. Notwithstanding this provision, Transporter and Shipper may mutually agree upon a rate that varies from the maximum rate established provided that such rate shall not exceed the maximum rate or be discounted below the minimum rate shown in the Statement of Currently Effective Rates. Transportation Fees and other charges due under this Statement of Operating Conditions and the Service Agreement will be invoiced and payable under Section 16.

10.2 *Retention Volume*

In addition to the Transportation Fees and other charges payable under this Statement of Operating Conditions and the Service Agreement, Transporter will retain the Retention Volume percentage of the quantity of Gas received by Transporter at each Receipt Point(s).

10.3 *Third Party Fees*

In addition to the other charges set forth in the Service Agreement or the Statement of Currently Effective Rates, Shipper shall reimburse Transporter for Shipper’s pro-rated share of any Receipt Point, Delivery Point, balancing fee, or metering fee charged by any third party for receipts or deliveries at the Receipt Point(s) or Delivery Point(s). If any third party with the right to control the Delivery Point(s), or any other facilities needed for the receipt, transportation, or delivery of Gas hereunder fails to authorize the use of any such facilities to perform the services provided herein, then Transporter will have no obligation hereunder to perform any transportation services, or receive or deliver Gas hereunder, where Transporter’s ability to perform such services is in any way adversely affected by such third party’s refusal.

10.4 *Capital Improvements*

From time to time, in order to (i) increase the capacity of the Pipeline System to meet a Shipper’s additional transportation requirements, including by the addition of compression, (ii) meet other operational objectives agreed upon by Transporter and a Shipper, or (iii) comply with applicable laws, rules and regulations, Transporter may, in its discretion, make capital improvements to the Pipeline System. Transporter and Shipper acknowledge and agree that the rates set forth in a Service Agreement and the Statement of Currently Effective Rates are based upon the configuration and capacity of the Pipeline System as of the Effective Date of a Service Agreement, and that such rates may, upon agreement of Transporter and a Shipper, be adjusted from time to time to reflect capital

improvements made by Transporter, and any resulting services to be provided by the Pipeline System.

10.5 *Governmental Charges*

In addition to any other charges required in this Statement of Operating Conditions, Shipper is liable for and shall pay or reimburse Transporter for all surcharges, fees, charges, and assessments imposed by or on behalf of any governmental entity in connection with any services provided and actions taken under this Statement of Operating Conditions and a Service Agreement or any of the transactions contemplated thereunder.

10.6 *Prohibition from Collecting Agreed Rates*

In the event any regulatory body having jurisdiction over the transportation service prohibits Transporter from collecting specific rates for the services provided under the Transportation Agreement or subjects its transportation facilities to any greater or different regulation or jurisdiction than that existing on the date of initial transportation service hereunder (or thereafter as such regulation or jurisdiction may have changed and been accepted), then Transporter shall have the right to terminate the Transportation Agreement anything herein to the contrary notwithstanding and shall have no liability to Shipper or any other entity in connection with any such termination.

11. TERM

The Service Agreement will be effective on the date listed in the Service Agreement as the “*Commencement Date*,” and will, subject to the terms and provisions of this Statement of Operating Conditions remain in full force and effect for the term set forth therein. Termination, cancellation, or expiration of the Service Agreement will not extinguish any obligation that accrued before or as a result of the termination, cancellation, or expiration.

12. LAWS AND REGULATIONS

12.1 *Subject to Laws*

Transporter’s transportation services are subject to all present and future valid laws and lawful orders of all regulatory authorities now or hereafter having jurisdiction of the services or facilities used to provide such services. Should Shipper or Transporter, by force of any such law or regulation imposed at any time during the term of Shipper’s Service Agreement, be rendered unable, wholly or in part, to carry out its obligations under the Service Agreement, other than to make payments due hereunder, the Service Agreement nevertheless shall continue and shall be deemed modified to conform with the requirements of such law or regulation, except as hereinafter provided. The Service Agreement shall be modified to the least extent necessary to conform to such requirements; the primary intent of any such modification being to retain, to the greatest extent possible, the bargain of the Shipper’s Service Agreement. The Service Agreement is expressly made subject to any and all tariff, statement of operating conditions, and other rate filings made by Transporter and approved by any federal or state regulatory body as such may be

amended from time to time. Transporter shall have the right to propose to any governing regulatory body such changes in its rates and terms of service at any time as it deems necessary, and Shipper's Service Agreement shall be deemed to include any changes which are made effective pursuant to order or regulation or provisions of law, without prejudice to Shipper's right to protest the same. In the event that any regulatory body having jurisdiction over the Service Agreement prohibits Transporter from collecting specific rates for the services provided under the Service Agreement or subjects its transportation facilities to any greater or different regulation or jurisdiction, by order or otherwise, than that existing on the date of initial transportation service hereunder (or thereafter as such regulation or jurisdiction may have changed and been accepted), then Transporter shall have the right to terminate the Service Agreement on the effective date of such greater or different regulation or jurisdiction, anything herein to the contrary notwithstanding and shall have no liability to Shipper or any other entity in connection with any such termination.

12.2 Shipper Warranties

Shipper warrants that at all times during the term of the Service Agreement, Shipper will commit no action or omission that will cause the transportation service provided to Shipper to fail to comply with all applicable rules and regulations of the applicable regulatory agencies.

13. PRESSURES AT RECEIPT AND DELIVERY POINT(S)

13.1 Receipt Point Pressure

Shipper (or its designee) will deliver Gas to Transporter at the Receipt Point(s) at pressures sufficient to enter Transporter's Pipeline System at such points; provided, however, that Shipper's delivery pressure into Transporter's system at the Receipt Point(s) may not exceed Transporter's maximum allowable operating pressure, as such may vary from time to time, at any such point or cause the pressure at any such point to exceed Transporter's maximum allowable operating pressure. Transporter shall not have any obligations to alter its pipeline pressures, provide compression, or modify its pipeline operations in order to effectuate the receipt or delivery of Gas.

13.2 Delivery Point Pressure

Transporter will deliver Gas to Shipper or Shipper's designee at Transporter's operating pressure at the Delivery Point(s), as such may vary from time to time.

14. MEASUREMENT

14.1 Measurement Facilities

Transporter shall be the party responsible for metering the Gas at the Receipt Point(s) and Delivery Point(s).

14.2 Standards

The measuring facilities shall be designed, installed, operated, and maintained by

Transporter or its designee, and Transporter shall sample and determine the Gross Heating Value, relative density and compressibility at the Receipt Point(s) and Delivery Point(s) utilizing the following standards:

- a. Orifice Measurement - ANSI/API 2530, AGA Report No. 3, API 14.3, GPA 8185 "*Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids*".
- b. Turbine Measurement - American Gas Association Report Number 7, dated 1996 or the most recent edition as agreed to by all parties (herein referred to as AGA 7).
- c. Positive Measurement - American National Standards Institute B109.2, dated 2000 or the most recent edition as agreed to by all parties (herein referred to as ANSI B109.2).
- d. Ultrasonic Measurement - American Gas Association Report Number 9, dated 2003 or the most recent edition as agreed to by all parties (herein referred to as AGA 9).

Where electronic gas measurement ("EGM") and flow computers are used, the parties shall use and accept the electronic derivations, measurements, and calculations in lieu of mechanical recordings, chart integration, and subsequent calculations.

14.3 *Measurement Estimation*

If emergency conditions and/or circumstances exist that in the judgment of Transporter cause Lost & Unaccounted For Gas, which cannot be measured by Transporter, then Transporter shall reasonably estimate the volume of Shipper's L&U.

14.4 *Installation*

Shipper may, at its option and expense, install and operate meters, instruments and equipment, in a manner that will not interfere with Transporter's equipment, to check Transporter's meters, instruments, and equipment, but the measurement for the custody transfer of Gas for the purpose of this Agreement will be by Transporter's meter only, except as hereinafter specifically provided. The meters, check meters, instruments, and equipment installed by each party will be subject at all reasonable times to inspection or examination by the other party, but the calibration and adjustment thereof will be done only by the installing party.

14.5 *Calibration*

All meters will be calibrated and/or proven on a mutually agreed schedule, ensuring that the meter calibration or proving frequency is in compliance with regulatory requirements. Notification of scheduled calibrations shall be made to all interested parties and reasonable effort will be made to accommodate each party's schedule; however, calibration will proceed at the scheduled time regardless of attendees. Records from all measuring equipment are the property of Transporter who will keep all such records on file for a period of not less than two (2) years.

Upon request, Transporter will make available to Shipper volume records from the measuring equipment, together with calculations therefrom, for inspection and verification, subject to return within thirty (30) Days after receipt thereof by Shipper.

14.6 *Testing*

Either party shall have the right to conduct such pulsation tests as they deem prudent, at the testing party's sole risk and expense. If excessive pulsation is evident, mutually agreed modifications to operation or facility design will be made to reduce the effect of such pulsation.

14.7 *Measurement Error*

If any of the measuring or testing equipment is found to be out of service or registering inaccurately in any percentage, then Transporter shall adjust it at once to read accurately, within the limits prescribed by the manufacturer. If such equipment is out of service or inaccurate by an amount exceeding one percent (1%) at a reading corresponding to the average rate of flow for the period since the last preceding test, then the parties shall disregard the previous readings of such equipment for any period definitely known or agreed upon, or for a period of one-half (½) of the time elapsed since the last test of the measuring equipment affected, not to exceed thirty (30) Days. Transporter shall estimate the volume measured during such period by (a) using the data recorded by any check measuring equipment if installed and registering accurately, or if not installed or registering accurately, (b) by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation, or if neither such method is feasible, or (c) by estimating the quantity or quality measured, based upon deliveries under similar conditions during a period when the equipment was registering accurately. Transporter shall make no correction to billings for recorded inaccuracies of one percent (1%) or less.

14.8 *Measurement Volume Computation*

The unit of volume of Gas shall conform to the Standard Conditions. The energy content may be recalculated, if the water vapor of the Gas is determined to be greater than seven pounds of water vapor per one million (1,000,000) standard cubic feet, by adjusting the measured volume to correct for the volume of water vapor assuming saturation at the temperature and pressure of measurement and multiplying the corrected volume by the Gross Heating Value. Atmospheric pressure shall be assumed to be the pressure value as reasonably determined by Transporter for each Receipt Point(s) and Delivery Point(s) location pursuant to generally accepted practices. All metered volumes shall be computed in accordance with the standards set forth herein.

14.9 *Records*

Records of calibration and or proving and data associated with the volume calculation are the property of Transporter who will keep all such records and data on file for a period of not less than two (2) years. Upon request, Transporter will make available to Shipper records of calibration and or testing and data associated with the volume calculation, subject to return within thirty (30) Days after receipt thereof by Shipper. If Shipper fails to return the records and

charts within thirty (30) days, Transporter shall be under no obligation to provide additional records and charts until the non-returned records and charts are returned to Transporter.

14.10 *Standards*

Transporter shall sample and determine the Gross Heating Value, relative density and compressibility at the Receipt Point(s) or Delivery Point(s) utilizing the following standards:

- a. Gas Processors Association (GPA) 2166 – Obtaining Natural Gas Samples for Analysis by Gas
- b. Gas Processors Association (GPA) 2261 – Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography.
- c. Gas Processors Association (GPA) 2145 – Physical Constants for Paraffin Hydrocarbons and Other Components of Natural Gas
- d. Gas Processors Association (GPA) 2172 – Calculation of Gross Heating Value, Relative Density, and Compressibility of Natural Gas Mixtures from Compositional Analysis.
- e. American Gas Association Report Number 8 – Compressibility Factors of Natural Gas and Other Related Hydrocarbon Gases

14.11 *Methods*

Transporter shall sample the flowing Gas stream utilizing one of the following methods:

- a. On-line Chromatography.
- b. Accumulated Sample – If this method is utilized the application of gas quality in the volume calculation will be during the time period the Gas sample was accumulated.
- c. Spot Sample – If this method is utilized the application of Gas quality in the volume calculation will be the time period beginning on the date the sample was obtained until the next sample is obtained.

14.12 *Modifications to Measurement Procedures*

Transporter may modify the measurement procedures from time to time in order to conform to the general measurement procedures prevailing in the industry and/or to remove any inequities found to exist, and such other measurements procedures adopted by Transporter are applicable to this Agreement if such measurement procedures are consistently applied to all Shippers.

14.13 *Measurement Disputes*

The parties shall refer for determination any dispute, controversy, or claim arising out of or in connection with this Section 14 (“*Measurement Dispute*”), which the parties are unable to resolve, to a mutually agreeable measurement expert (“*Measurement Expert*”) as the sole and exclusive remedy of the parties as to the Measurement Dispute. The decision of the Measurement Expert is final and binding upon the parties.

15. QUALITY

15.1 Gas Quality

All gas received and delivered hereunder shall conform to the specifications set forth below (“*Gas Quality Specifications*”), unless such Gas is subject to a written Gas quality waiver granted by Transporter. However, Transporter may establish on a not unduly discriminatory basis, the quality specifications of Gas tendered for delivery to a processing facility on Transporter’s Pipeline System as the quality specifications designated by such processing facility, provided that (i) the gas is actually being processed or otherwise treated at the facility and (ii) such quality specifications are acceptable to Transporter and do not compromise the integrity of Transporter’s Pipeline System.

- a. *Oxygen.* The oxygen content shall not exceed two tenths of one percent (0.2%) by volume, and the parties shall make reasonable efforts to maintain the Gas free from oxygen.
- b. *Hydrogen Sulfide.* The hydrogen sulfide content shall not exceed sixteen (16) parts per million (PPM) by volume.
- c. *Sulfur.* The total sulfur contentshall not exceed three hundred and twenty (320) parts per million (PPM) by volume.
- d. *Carbon Dioxide.* The carbon dioxide content may not exceed three percent (3.0%) by volume.
- e. *Liquids.* The Gas shall be commercially free of water and other objectionable liquids at the temperature and pressure at which the Gas is delivered and shall, in no event, contain water vapor in excess of seven (7) pounds per one million (1,000,000) cubic feet.
- f. *Dust, Gums and Solid Matter.* The Gas shall be commercially free of dust, gums, gumforming constituents, or other objectionable liquid or solid matter which might become separated from the Gas in the course of transportation through the pipeline.
- g. *Heating Value.* The gas delivered shall contain a daily or monthly average heating content of not less than nine hundred fifty (950) nor more than eleven hundred seventy-five (1175) Btu’s per cubic foot measured on a dry basis, unless otherwise mutually agreed to by Transporter and Shipper.

- h. *Temperature.* The Gas shall have a temperature of not be less than forty degrees (40°) Fahrenheit nor more than one hundred twenty degrees (120°) Fahrenheit.
- i. *Nitrogen.* The nitrogen content shall not exceed three percent (3%) by volume.
- j. *Hydrogen.* The Gas shall contain no carbon monoxide, halogens, or unsaturated hydrocarbons, and no more than four hundred parts per million (400 ppm) of hydrogen.
- k. *Pentanes and Heavier Liquefiable Hydrocarbons.* The Gas shall not contain more than two tenths (0.20) gallons of pentanes and heavier liquefiable hydrocarbons per one thousand (1000) cubic feet (Mcf).

15.2 *No Hazardous Substances*

Shipper shall not introduce corrosion inhibitors, chemicals, antifreeze agents or other materials containing constituents harmful or injurious to Transporter's operations into Gas delivered hereunder. Gas delivered hereunder shall not contain any substance that is a hazardous or toxic waste or contaminant under applicable laws, rules or regulations.

15.3 *Changes to Specifications*

Notwithstanding anything to the contrary herein, Transporter may from time to time, in its discretion modifies its pipeline specifications to meet commercial needs, industry standards or specifications of interconnecting pipelines or facilities.

15.4 *Variance from Specifications*

Acceptance of such Gas by Transporter shall be in its discretion. Transporter's acceptance of such Gas tendered by Shipper on a particular Day does not constitute a waiver by Transporter of its right to refuse to accept Gas not conforming to the quality specifications stated above on another Day.

15.5 *Acceptance of Off-Specification Gas*

In the event that the Gas being received does not conform to the standards outlined above, Transporter may, in a not unduly discriminatory manner accept such Gas or restrict or refuse any volumes that are non-conforming or deficient, but such acceptance does not operate as a waiver of the Gas Quality Specifications and Transporter may decline to accept Off-Spec Gas at any time. Transporter's receipt of such Off-Spec Gas shall not obligate Transporter to accept subsequent Off-Spec Gas from Shipper. Shipper is responsible for, at its sole cost and expense, any costs necessary to treat or condition the Shipper Gas to meet the Gas Quality Specifications.

15.6 *Gas Quality Indemnity*

Shipper hereby releases, and agrees to indemnify, defend, and hold harmless Transporter and Transporter's Affiliates, members, managers, directors, officers, agents, and

employees from and against all Claims or Losses, including consequential, incidental, special, and punitive damages, arising out of or in any way relating to the delivery by Shipper of Off-Spec Gas, including Claims or Losses related to: (i) the negligence of Transporter, whether such negligence be sole, joint, or concurrent, or active or passive; (ii) strict products liability; (iii) strict liability; or (iv) any other cause of action currently recognized under Texas law.

16. BILLING, ACCOUNTING AND REPORTS

16.1 Transporter's Statement

Transporter shall render a statement to Shipper on or about the 15th Day of each Month setting forth the amount due Transporter for all fees incurred by Shipper for the transportation of Gas and other services performed hereunder by Transporter during the preceding Month. If actual Gas quantities are not available, Transporter may utilize a reasonable, good faith, estimated quantity based upon quantities received and transported by Transporter during the preceding Month. As soon as the actual quantity becomes available, the estimate shall be adjusted and the adjustment shall be reflected in the subsequent Month's statement. In the event such quantities are estimated for any period, corrected statements shall be rendered by Transporter to Shipper and paid by Shipper or refunded or credited by Transporter, as the case may be, in each instance in which the actual quantity received or delivered hereunder with respect to a Month shall be determined to be at variance with the estimated quantity theretofore made the basis of billing and payment hereunder.

16.2 Payment

Shipper shall pay Transporter the amount due in the form of immediately available federal funds by wire or electronic fund transfer to the bank account specified on the statement or any other mutually agreed upon method, on or before tenth (10th) Day following the rendition of the statement described in Section 16.1. Shipper must tender a timely payment even if the statement includes an estimated receipt or delivery volume. If the Shipper fails to pay any statement in whole or in part when due, in addition to any other rights or remedies available to the Transporter, interest at the Stated Rate shall accrue on all unpaid amounts. Notwithstanding the foregoing, if a legitimate good faith dispute arises between Shipper and Transporter concerning a statement, Shipper shall pay that portion of the statement not in dispute on or before such due date, and upon the ultimate determination of the disputed portion of the statement, Shipper shall pay the remaining amount owed, if any, plus the interest accrued thereon at the Stated Rate from the due date.

17. EXAMINATION OF BOOKS, RECORDS, AND CHARTS

Transporter and Shipper shall have the right during reasonable working hours and after execution of a confidentiality agreement to examine the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, payment calculations or determinations made pursuant to the provision contained herein. If any such examination reveals any inaccuracy in any statement or charge, then necessary adjustment and correction thereof shall be made promptly, provided that no adjustment for any billing or payment shall be made

after the lapse of six (6) months from the date of the invoice or statement thereof unless prior thereto the adjustment is made or the error is challenged in writing including documentation as to the basis and reasons for the claimed error. This six (6) month standard shall not apply in the case of deliberate omission or misrepresentation or mutual mistake; provided, however, in no event will any changes be made to a statement or charge after twenty-four (24) months from the date of invoice or statement, at which time the accuracy of any statement, payment calculations or determinations made pursuant to the provisions contained herein shall be conclusively presumed to be correct. If any such timely examination shall reveal, or if Transporter or Shipper shall timely discover, any error in its own or the other party's statements, payment calculations or determinations, then proper adjustment and correction thereof shall be made as promptly as practicable thereafter notwithstanding the provisions stated above.

18. WARRANTIES TITLE AND RISK OF LOSS.

18.1 Shipper Warranty

Shipper warrants for itself, its successors and assigns, that it will have at the time of delivery of Gas at the Receipt Point(s) for transportation, hereunder either good title or all rights necessary and appropriate to have the Gas transported. Shipper warrants for itself, its successors and assigns, that the Gas it delivers hereunder shall be free and clear of all liens, encumbrances and claims on the title to the Gas; and that it will indemnify and hold harmless Transporter, its officers, agents, employees and contractors from and against any and all suits, claims, liability, loss, damages, costs (including attorneys' fees and court costs) or encumbrances whatsoever arising directly or indirectly from or with respect to the title and/or right to Gas tendered to Transporter hereunder. Transporter warrants that at the time of delivery to Shipper at the Delivery Point(s) the gas delivered hereunder shall be free and clear of all liens, encumbrances and claims arising by, through, or from any action or failure to act of Transporter on the title to the Gas save and except for liens stemming from Shipper's failure to pay amounts due under Service Agreements with Transporter; and that it will indemnify and hold harmless Shipper, its officers, agents, employees and contractors against any and all suits, claims, liability, loss, damages, costs (including attorneys' fees and court costs) or encumbrances whatsoever arising directly or indirectly from or with respect to the title and/or right to Gas delivered to Shipper as a result of Transporter's possession or transportation hereunder.

18.2 Possession and Control

Transporter shall be deemed to be in possession of the Gas delivered by Shipper only from the time it is received from Shipper at the Receipt Point(s) for transportation until it is delivered to Shipper at the Delivery Point(s) as provided for herein. Subject to the provisions of Section 15.6, during Transporter's possession and control of such Gas, Transporter shall be responsible for any damages, losses, or injuries caused thereby until such Gas has been redelivered to Shipper or its designee at the Delivery Point(s), except for damages, losses, or injuries arising from the gross negligence or willful misconduct of Shipper. Shipper shall be deemed to be in possession and control of such Gas and responsible for any damages, losses or injuries caused thereby prior to receipt by Transporter and after delivery by Transporter. Transporter shall have no responsibility with respect to such Gas before receipt from Shipper at

the Receipt Point(s) or after delivery to Shipper at the Delivery Point(s). The party in possession of the Gas shall indemnify and hold harmless the other party, its officers, agents, employees and contractors from and against any and all suits, claims, liability, loss, damages, costs (including attorneys' fees and court costs) or encumbrances whatsoever, including injury and death of persons, arising directly or indirectly during such possession of the Gas; provided, neither Transporter nor Shipper shall be liable for the gross negligence or willful misconduct of the other party.

18.3 *Title to Gas*

Title and/or rights to all Gas delivered by Shipper to Transporter for transportation hereunder will remain with Shipper during transport by Transporter; provided, however, it is understood and agreed that the Gas delivered at the Delivery Point(s) will not be the identical Gas that was delivered to Transporter for transportation hereunder, but such Gas will be a part of the commingled delivery of Gas and, for the purpose of Shipper's Service Agreement, the commingled Gas may be substituted for Shipper's Gas on a heat-equivalent basis.

18.4 *Notices*

Any notice, request, demand, or statement, provided for in Shipper's Service Agreement, except as otherwise herein provided, may be given in writing or delivered in person or by United States mail, to the parties hereto at the addresses specified in the Service Agreement or at such other addresses as may hereafter be furnished to the other party in writing.

19. ODORIZATION

Each party expressly notifies the other that the Gas delivered to the Receipt and Delivery Points hereunder is not odorized. In the event that either party, at its own election or pursuant to laws, orders, rules or regulations of any governmental body having jurisdiction, elects or is required to odorize the Gas deliverable hereunder, then such party shall give prior written notice to the other of its intention to odorize such Gas. Shipper shall be responsible for odorizing any part of the Gas delivered hereunder at the Delivery Point(s) which is diverted and/or used for any purpose for which odorization is required pursuant to regulations of the Texas Railroad Commission.

20. INERT CONSTITUENTS

20.1 *Responsibility*

At all times, Shipper has title to all Inert Constituents in Shipper's Gas (collectively, whether any such Inert Constituents are removed from the Gas or not, "*Shipper's Inert Constituents*"). To the extent that Transporter removes Shipper's Inert Constituents from such Gas and Shipper has not made arrangements to utilize, market or dispose of Shipper's Inert Constituents, then Transporter shall dispose of Shipper's Inert Constituents by venting or other methods reasonably accepted in the gas processing industry. Notwithstanding the foregoing, if (i) Transporter deems venting Shipper's Inert Constituents to be uneconomic, (ii) a Governmental Authority prohibits or disallows venting of Shipper's Inert Constituents, or (iii) Transporter will incur additional costs to vent, dispose of, or handle Shipper's Inert Constituents due to rules, regulations, or other applicable laws, then Shipper shall promptly (a) make alternate

arrangements to utilize, market, and/or dispose of Shipper's Inert Constituents at Shipper's sole cost and expense, (b) notify Transporter in writing and in reasonable detail of such alternate arrangements, and (c) reimburse Transporter for any costs incurred by Transporter in delivering Shipper's Inert Constituents for such utilization, marketing, and/or disposal. If Shipper fails to comply with Shipper's obligations under the immediately preceding sentence, then Transporter may, but has no obligation to, without further notice to Shipper, make arrangements for utilization, marketing, and/or disposal of Shipper's Inert Constituents for Shipper's account and at Shipper's sole cost and expense, and Shipper shall promptly reimburse Transporter upon demand for any reasonable costs and expenses incurred by Transporter in connection with such arrangements by Transporter. EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR VIOLATION OF ANY LAW, BY TRANSPORTER, SHIPPER HEREBY RELEASES, AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS TRANSPORTER AND TRANSPORTER'S AFFILIATES MEMBERS, MANAGERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS OR LOSSES TO THE EXTENT ARISING OUT OF OR IN ANY WAY RELATING TO (I) SHIPPER'S INERT CONSTITUENTS THAT ARE REMOVED FROM SHIPPER'S GAS, INCLUDING THE UTILIZATION, MARKETING, OR DISPOSAL THEREOF, AND/OR (II) ANY PERSONAL INJURY, DEATH, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE, POLLUTION, OR CONTAMINATION ARISING OUT OF OR RELATING TO SHIPPER'S INERT CONSTITUENTS THAT ARE REMOVED FROM SHIPPER'S GAS.

21. FORCE MAJEURE

21.1 *Force Majeure*

If either party is rendered unable, wholly or in part, by Force Majeure (defined below) or other causes herein specified, to carry out its obligations under this Agreement other than the obligation to make payment of amounts due hereunder, it is agreed that on such party's promptly giving notice and reasonably full particulars of such Force Majeure in writing or facsimile or by email to the other party within a reasonable time after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as such obligations are affected by such Force Majeure or other causes herein specified, with the exception of obligations to make payments hereunder, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

21.2 *Definition of Force Majeure*

The term "*Force Majeure*" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, high water, washouts, or other natural disasters, threat of physical harm or damage resulting in the evacuation or shutdown of facilities necessary for the production, delivery, receipt or storage of gas, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of lines of pipe, partial or entire failure of storage or transportation facilities, the orders of any court, regulatory body or governmental authority having jurisdiction or the refusal or withdrawal of any necessary order, certificate or permit by

any court regulatory body or governmental authority or agency having jurisdiction, any acts or omissions (including failure to take gas) of a transporter of gas to or for Customer or Transporter not caused by any acts or omissions of Customer or Transporter, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include, instances when either Customer or Transporter is required to obtain servitudes, rights-of-way grants, permits, certificates or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost, and after the exercise of reasonable diligence, such materials and supplies, permits and permissions.

21.3 Force Majeure Exclusions

Force Majeure does not include: mechanical failure or breakdown of electric generation plants, changes in market conditions or changes in demand for electricity at electric generation plants such as increases or decreases in electric generation that are required by the Electric Reliability Council of Texas, or any other agency or body having such authority, or failure of upstream transportation prior to delivery hereunder at the Receipt Point(s). Notwithstanding anything herein to the contrary, neither party shall be entitled to the benefits of Section 21.1 to the extent the event of Force Majeure is caused or affected by any or all of the following circumstances: (i) the party claiming excuse failed to remedy the condition and to resume the performance of its covenants or obligations with reasonable dispatch; or (ii) economic hardship, to include, without limitation, Shipper's ability to sell its Gas at a higher or more advantageous price to a market not requiring the transportation services contracted for herein; or (iii) the loss of Shipper's market or Shipper's inability to use or resell Gas transported hereunder, or (iv) the loss or failure of Shipper's Gas supply (except for failure of mechanical equipment provided for under Section 21.2) or depletion of reserves, unless such loss or failure is a result of a Force Majeure event in facilities upstream of the interconnect with Transporter at the Receipt Point(s).

21.4 Scheduled Maintenance and Repairs

Either party may partially or entirely interrupt its performance hereunder for the purpose of making necessary or scheduled inspections, alterations and repairs which are described as a maintenance event, but only for such time as may be reasonable and unavoidable; and the party requiring such relief shall give to the other party five (5) Days' notice of its intention to suspend its performance hereunder, except in cases of emergency where such notice is impracticable and shall endeavor to arrange such interruption so as to inconvenience the other party as little as possible. Should a Force Majeure or maintenance event occur, the volumes to be delivered and / or received at the Receipt Point(s) and Delivery Point(s) by Transporter must be balanced with the hourly and daily nominated quantities.

22. WAIVER OF BREACHES, DEFAULTS, OR RIGHTS

No waiver by either party of any one or more breaches, defaults, or rights under any provisions of this Statement of Operating Conditions and the Service Agreement will operate or be construed as a waiver of any other breaches, defaults, or rights, whether of a like or of a different character. By providing written notice to the other party, either party may assert any right not previously asserted hereunder or there under or may assert its right to object to a default

not previously protested. Transporter reserves the right to vary its operations from this Statement of Operating Conditions from time to time on a non-discriminatory basis, and the parties agree that if it does so it will not be deemed to have waived its right subsequently to enforce the provisions of this Statement of Operating Conditions. Variances from the terms of this Statement of Operating Conditions or the Service Agreement shall not be considered to amend or alter the construction or interpretation of the Service Agreement. Except as specifically provided herein or in the Service Agreement, in the event of any dispute under this Statement of Operating Conditions or the Service Agreement, the parties will, notwithstanding the pendency of such dispute, diligently proceed with the performance of the Service Agreement without prejudice to the rights of either party.

23. REMEDY FOR BREACH

Except as otherwise specifically provided herein, if either party fails to perform any of the material covenants or obligations imposed upon it in this Statement of Operating Conditions or the Service Agreement (except where such failure is excused under the Force Majeure or other provisions hereof or thereof), then the other party may, at its option (without waiving any other remedy for breach hereof), by notice in writing specifying the default that has occurred, indicate such party's intention to terminate the Service Agreement by reason thereof. The party in default will have thirty (30) Days from receipt of such notice to remedy such material default, and upon failure to do so the non-defaulting party may elect to immediately terminate or suspend the Service Agreement. Notwithstanding the foregoing, Shipper's failure to pay Transporter within a period of ten (10) Days following Shipper's receipt of written notice from Transporter advising of such failure to make payment in full within the time specified previously herein, will be a default that gives Transporter the right to immediately terminate or suspend the Service Agreement, unless such failure to pay such amounts is the result of a bona fide dispute between the parties regarding such amounts and Shipper timely pays all amounts not in dispute. Such termination or suspension will be an additional remedy and will not prejudice the right of the party not in default: (i) to collect any amounts due it for any damage or loss suffered by it, including (x) the interest accrued thereon at the Stated Rate from the due date and (y) the costs of collection incurred by Transporter, including reasonable attorney's fees, and (ii) will not waive any other remedy to which the party not in default may be entitled for breach of this Statement of Operating Conditions or the Service Agreement.

24. ADDRESSES

24.1 Addresses of Parties

Except to the extent that oral notification is expressly permitted by this Statement of Operating Conditions, all notices, requests, demands, statements and payments provided for in this Statement of Operating Conditions must be given in writing at the addresses of the parties specified in the Service Agreement.

24.2 Change of Address

A party may change its address under the Service Agreement by giving 30 Days' prior written notice. Notices and payments will be effective when they are delivered at the appropriate

address specified in the Service Agreement, during normal business hours on a Business Day. Notices delivered after business hours or on a weekend or holiday will be effective on the next Business Day.

25. SHIPPER WARRANTY FOR NGPA SECTION 311 SERVICE

Shipper warrants (and shall, upon request provide written evidence satisfactory to Transporter) that the transportation service provided or to be provided under a Service Agreement is "on behalf of" an interstate pipeline or a local distribution company served by an interstate pipeline and that such transportation service otherwise qualifies for transportation service pursuant to Section 311(a)(2) of the NGPA and the FERC's rules, regulations, and orders thereunder. Transporter shall have no obligation under Shipper's Service Agreement if Transporter, in its discretion, determines at any time that Shipper has breached the foregoing warranty(ies) or that the transportation service to be provided under a Service Agreement does not so qualify. Shipper agrees to indemnify and hold Transporter harmless from and against any and all consequences, claims, damages, losses, costs and expenses of any kind or nature (including, without limitation, attorneys' fees) sustained by Transporter relative to any breach by Shipper of the representations, warranties and/or covenants herein expressed.

26. CHANGES TO THIS STATEMENT

Transporter reserves the right to add, delete or modify conditions in this Statement of Operating Conditions at any time. A copy of the revised Statement of Operating Conditions will be available on the Transporter's website.

27. MISCELLANEOUS

27.1 Assignment and Transfer

Any entity which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, Transporter or Customer, shall, if eligible, succeed to the rights and obligations of its predecessor in title under a Service Agreement. Either party may pledge a Service Agreement under the provisions of any mortgage, deed of trust, indenture, or similar instrument which it has executed or may execute hereafter covering substantially all of its properties; otherwise, except as provided below, neither party shall assign a Service Agreement or any of its rights or obligations thereunder without the consent in writing of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding anything in the previous sentence to the contrary, Transporter may assign the Service Agreement without consent to an acquirer of the facilities utilized in providing the services. Upon assignment, the rights and obligations of the parties under a Service Agreement shall be binding upon the successors and assigns of those parties.

27.2 Entirety

This Statement of Operating Conditions, the Exhibits, and the Service Agreement constitute the entire Agreement between the parties covering the subject matter hereof, and there are no agreements, modifications, conditions, or understandings, written or oral, express or implied, pertaining to the subject matter hereof that are not contained herein or therein.

27.3 *Heading*

The captions or headings preceding the various parts of this Statement of Operating Conditions are inserted and included solely for convenience and will never be considered or given any effect in construing this Statement of Operating Conditions, or in connection with the intent, duties, obligations, or liabilities of Transporter and Shipper.

27.4 *Third Parties*

Nothing contained in this Statement of Operating Conditions or the Service Agreement, either express or implied, confers any rights, remedies, or claims upon any person or entity not a party to the Service Agreement, other than the successors or permitted assigns of the parties.

27.5 *Law and Venue*

THIS STATEMENT OF OPERATING CONDITIONS, THE SERVICE AGREEMENT, AND THE RIGHTS OF TRANSPORTER AND SHIPPER ARE SUBJECT TO ALL VALID LAWS, ORDERS, RULES, AND REGULATIONS OF ANY DULY CONSTITUTED AUTHORITY HAVING JURISDICTION. THE VALIDITY, CONSTRUCTION, INTERPRETATION AND EFFECT OF ANY SERVICE AGREEMENT COVERED HEREUNDER MUST BE INTERPRETED AND ENFORCED IN ACCORDANCE WITH LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF TEXAS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN STATE OF TEXAS. TRANSPORTER AND SHIPPER AGREE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS IN HARRIS COUNTY, TEXAS AND AGREE THAT ANY ACTION, SUIT, OR PROCEEDING CONCERNING, RELATED TO, OR ARISING OUT OF THE SERVICE AGREEMENT WILL BE BROUGHT ONLY IN A FEDERAL OR STATE COURT IN HARRIS COUNTY, TEXAS AND NEITHER TRANSPORTER NOR SHIPPER MAY RAISE ANY DEFENSE OR OBJECTION OR FILE ANY MOTION BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, INCONVENIENCE OF THE FORUM, OR THE LIKE IN ANY CASE FILED IN A FEDERAL OR STATE COURT IN HARRIS COUNTY, TEXAS.

27.6 *Limitation on Damages*

EXCEPT FOR DAMAGES THAT ARISE OUT OF A BREACH OF THE WARRANTIES CONTAINED IN SECTIONS 12.2, 18.1 AND 25 OR THE QUALITY PROVISIONS CONTAINED IN SECTION 15, IN NO EVENT WILL TRANSPORTER OR SHIPPER BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO THE LOSS OF USE, LOST PROFITS, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED ON CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

27.7 Counterparts

The Service Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute one and the same Agreement.