

# BOARDWALK PETROCHEMICAL PIPELINE, LLC

## LOCAL PIPELINE TARIFF

Containing Rates and Terms & Conditions of Service

Applying On Interstate Transportation by Pipeline of

**ETHYLENE**  
(As Defined Herein)

From and To Points Named Herein

Carrier will accept and transport Ethylene offered for transportation through Carrier's Ethylene Pipeline System facilities only as provided by law and pursuant to the Rules and Regulations published herein, supplements hereto and reissues hereof.

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

Effective: ~~November 1, 2024~~July 1, 2025

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The terms and conditions of service published herein apply in their entirety to the services covered by this Tariff, that is, to the interstate transportation of Ethylene from the Origin(s) to the Destination(s) named herein. Shippers utilizing intrastate transportation of Ethylene from certain Origin(s) to Destination(s) should refer to any applicable state-regulated tariff. Requests for copies of the standards referred to in this Tariff should be directed to the official of Carrier listed on the front page of this Tariff.

### RATE TABLES AND ROUTINGS

#### TRANSPORTATION RATES APPLICABLE TO NON-VIP/NON-VOLUME DISCOUNT SHIPPERS

FROM (ORIGIN)	TO (DESTINATION)	RATE (IN DOLLARS PER UNITED STATES POUND)
West to East Transportation		
Enterprise Products Company Interconnect near Port Neches, Texas	ExxonMobil Chemical Company’s Louisiana ethylene product distribution system near Baton Rouge, Louisiana	\$0. <del>02975</del> <u>03034</u>
Motiva Enterprises LLC Interconnect near Port Neches, Texas		
Chevron Phillips Chemical Pipeline Company, LLC, Interconnect near Orange, Texas		
Dow Interconnect near Orange, Texas		
Enterprise Products Company Interconnect near Port Neches, Texas	Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana	\$0. <del>02478</del> <u>02528</u>
Motiva Enterprises LLC Interconnect near Port Neches, Texas		
Chevron Phillips Chemical Pipeline Company, LLC, Interconnect near Orange, Texas		
Dow Interconnect near Orange, Texas		
Enterprise Products Company Interconnect near Port Neches, Texas	Westlake Chemical Interconnect near Lake Charles, Louisiana	
Motiva Enterprises LLC Interconnect near Port Neches, Texas		
Chevron Phillips Chemical Pipeline Company, LLC, Interconnect near Orange, Texas		
Dow Interconnect near Orange, Texas		
Enterprise Products Company Interconnect near Port Neches, Texas	Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of West Baton Rouge, Louisiana	
Motiva Enterprises LLC Interconnect near Port Neches, Texas		
Chevron Phillips Chemical Pipeline Company, LLC, Interconnect near Orange, Texas		
Dow Interconnect near Orange, Texas		

(Continued on next page)

**TRANSPORTATION RATES**  
**APPLICABLE TO NON-VIP/NON-VOLUME DISCOUNT SHIPPERS**  
*(Continued from previous page)*

FROM (ORIGIN)	TO (DESTINATION)	RATE (IN DOLLARS PER UNITED STATES POUND)
East to West Transportation by Displacement <sup>1/</sup>		
Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of West Baton Rouge, Louisiana	Dow Interconnect near Orange, Texas	\$0. <del>007800</del> <u>00796</u>
Westlake Chemical Interconnect near Lake Charles, Louisiana		
Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana		
Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of West Baton Rouge, Louisiana	Chevron Phillips Chemical Pipeline Company, LLC, Interconnect near Orange, Texas	
Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana		
Westlake Chemical Interconnect near Lake Charles, Louisiana		
Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of West Baton Rouge, Louisiana	Motiva Enterprises LLC Interconnect near Port Neches, Texas	
Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana		
Westlake Chemical Interconnect near Lake Charles, Louisiana		
Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of West Baton Rouge, Louisiana	Enterprise Products Company Interconnect near Port Neches, Texas	
Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana		
Westlake Chemical Interconnect near Lake Charles, Louisiana		
Boardwalk Louisiana Midstream Port Allen Interconnect, Parish of East Baton Rouge, Louisiana	Honeywell Performance Materials and Technologies near Orange, Texas	
Boardwalk Louisiana Midstream Sulphur Interconnect, Parish of Calcasieu, Louisiana		

<sup>1/</sup> Transportation in an East to West direction is provided by displacement and is only available subject to operating conditions. These transactions do not qualify for the Take or Pay Volumes Incentive Program as defined in Item 150.

## **ITEM 5 Definitions**

“*Allocated Volume*” means the volume of Prorated Capacity allocated to a Shipper in accordance with Item 60 (Allocation of Prorated Capacity).

“*Carrier*” refers to Boardwalk Petrochemical Pipeline, LLC.

“*Destination(s)*” means the specific delivery location(s) on Carrier’s Pipeline System as designated herein.

“*Ethylene*” means ethylene that meets the component requirements and limitations set forth in Item 10 (Quality Specifications for Ethylene).

“*Force Majeure*” has the meaning ascribed to it in Item 95 (Force Majeure).

“*Line-fill*” means the minimum quantity of product required for pressurization of a pipeline segment on Carrier’s Pipeline System before deliveries can be accommodated.

“*Local Rate Sheet*”, as it may be referred to in Pipeage Contracts, means this Tariff, including its rates and terms.

“*Losses*” has the meaning ascribed to it in Item 15 (Charges for Off-Specification Ethylene).

“*Measurement Procedures*” means the procedures for measurement of Ethylene, as specified in the document “Measurement Procedures for Ethylene” posted on Carrier’s website, <http://www.bwpetrochempl.com/>.

“*New Shipper*” means a Shipper that is not a Regular Shipper or a Volume Discount Shipper. Unless the New Shipper becomes a Volume Discount Shipper by signing a (i) VIP Pipeage Contract in accordance with Item 150 (Take or Pay Volume Incentive Programs) or (ii) new facilities volume commitment agreement pursuant to Item 155 (New Facilities Commitment Program), a New Shipper shall remain a New Shipper for twelve (12) consecutive months, with such twelve-consecutive-month period commencing during the first month that Shipper Tenders Ethylene for shipment on the Pipeline System. At the end of this twelve-consecutive-month-period, a New Shipper becomes a Regular Shipper.

“*Nominated Volume*” means the volume of Ethylene nominated by Shipper during a month for transportation on Carrier’s Pipeline System.

“*Non-Volume Discount Shipper*” means a Shipper who does not (i) commit to transport a minimum volume of Ethylene on Carrier’s Pipeline System pursuant to a VIP agreement in accordance with Item 150 (Take or Pay Volume Incentive Programs) or (ii) have a new facilities volume commitment agreement pursuant to Item 155 (New Facilities Commitment Programs).

“*Numerator Calculation*” has the meaning ascribed to it in Item 60.8 (Allocation to each Volume Discount Shipper).

“*Off-Specification Ethylene*” means ethylene which does not meet the component requirements and limitations of Ethylene as described in Item 10 (Quality Specifications for Ethylene), and the Specifications posted on the Carrier’s website.

“*Origin(s)*” means the specific receipt location(s) on Carrier’s Pipeline System as designated herein.

“*Over-Tender*” means during a month Shipper Tenders volume of Ethylene greater than one hundred

percent (100%) of its Allocated Volume.

“*Pipeage Contract*” means any separate agreement required by Carrier in conjunction with this Tariff, covering facilities, rights of way, connection to Carrier, VIP terms, and/or operational requirements related to the services provided under this Tariff. Pipeage Contracts may include, but are not limited to, volume incentive program agreements, connection agreements, data sharing agreements, certain rights of way agreements.

“*Pipeline System*” means the portions of the interstate common carrier pipeline system owned and operated by Carrier that provide interstate Ethylene transportation service pursuant to S.T.B. regulations from various Origins and Destinations in Texas and Louisiana.

“*Prorated Capacity*” has the meaning ascribed to it in Item 60 (Allocation of Prorated Capacity).

“*Regular Shipper*” means a Shipper who is not a Volume Discount Shipper or a New Shipper. A Regular Shipper who has not Tendered Ethylene on the Pipeline System during the previous twelve-month period, ceases to be a Regular Shipper and will return to New Shipper status.

“*Shipper*” means any party who ships Ethylene under the provisions set forth in this Tariff.

“*Specifications*” means the component requirements and limitations of Ethylene as set forth in the Ethylene Specifications for Boardwalk Petrochemical Pipeline, LLC, as posted on Carrier’s website, <http://www.bwpetrochempl.com/>.

“*S.T.B.*” refers to the Surface Transportation Board of the United States of America.

“*Tariff*” means this document and numbered revisions thereto containing rates, routes, and terms and conditions of service on Carrier’s Pipeline System, and may also be referred to as “*Rates and Terms*” in certain Pipeage Contracts.

“*Tender*” means the delivery by a Shipper to Carrier at an Origin of a stated quantity of Ethylene for transportation on Carrier’s Pipeline System.

“*Under-Tender*” means (i) during a month when Carrier’s Pipeline System is being allocated in accordance with Item 60 (Allocation of Prorated Capacity), Shipper Tenders volume of Ethylene less than ninety-five percent (95%) of its Allocated Volume; or (ii) during a month when Carrier’s Pipeline System is not being allocated Shipper Tenders a volume of Ethylene less than ninety-percent (90%) of its Nominated Volume.

“*VIP*” has the meaning ascribed to it in Item 150 (Take or Pay Volume Incentive Programs).

“*Volume Discount Shipper*” means a Shipper who (i) commits to transport a minimum volume of Ethylene on Carrier’s Pipeline System pursuant to a VIP agreement in accordance with Item 150 (Take or Pay Volume Incentive Programs) or (ii) has a new facilities volume commitment agreement pursuant to Item 155 (New Facilities Commitment Programs).

## **QUALITY AND MEASUREMENT**

### **ITEM 10      Quality Specifications for Ethylene**

10.1      Except as otherwise provided herein, no Ethylene will be accepted for transportation unless its kind and quality are the same as that being received by Carrier, and delivery of such Ethylene

will not result in any damage to the quality or characteristics of other deliveries. Carrier reserves the right to refuse to accept any Ethylene for transportation through Carrier's facilities if the Ethylene does not meet the Specifications. Carrier reserves the right to modify its Specifications in order to maintain the integrity of Carrier's Pipeline System.

- 10.2 If requested by Carrier, Shipper shall be required to furnish Carrier with certified laboratory results showing that the composition of the Ethylene to be transported on Carrier's Pipeline System satisfies Carrier's Specifications. Carrier reserves the right to sample and/or test any such Ethylene prior to acceptance or during receipt and, in the event of a variance between Shipper's certificate and the results of Carrier's test, the latter shall prevail.
- 10.3 If, upon investigation, Carrier determines that Shipper has Tendered Off-Specification Ethylene, Carrier reserves the right to treat or otherwise dispose of the Off-Specification Ethylene in any reasonable commercial manner at Shipper's sole expense.
- 10.4 Nothing contained in this Tariff, any Pipeage Contract, or any other document, nor any temporary receipt of any Off-Specification Ethylene by Carrier (either unknowingly or as a temporary accommodation), shall be construed to affect Carrier's right, at any time and from time to time, to reject any Off-Specification Ethylene and/or to refuse or suspend receipt of such Off-Specification Ethylene until it is established to Carrier's reasonable satisfaction that subsequent deliveries of Ethylene will conform to the Specifications.

#### **ITEM 15 Charges for Off-Specification Ethylene**

- 15.1 In addition to Shipper's obligation to deliver Ethylene meeting Carrier's Specifications and Carrier's right to dispose of Off-Specification Ethylene as provided for herein, Shipper shall pay any costs and fees incurred by Carrier (including the cost to replace any Ethylene) and shall indemnify, defend, reimburse, and hold Carrier harmless from and against all claims, penalties, losses, costs, expenses, extra expenses, business interruption expenses, treating or blending fees, losses to Carrier's property, the property of others (including other Shippers), liabilities or damages of any kind or nature whatsoever (including reasonable attorney's fees and court costs associated therewith) (collectively, "Losses"), whether the Losses be suffered by Carrier or any third party, arising out of or related to Shipper's Tender to Carrier of Off-Specification Ethylene. The indemnity provided for in this Item 15 (Charges for Off-Specification Ethylene) shall not apply to the extent any of such Losses are proximately caused by the sole negligence of Carrier.

#### **ITEM 20 Identity of Ethylene**

- 20.1 Carrier will accept Ethylene for transportation only on condition that the Ethylene shall be intermixed with Ethylene delivered by other shippers and shall be subject to such changes in quality while in transit as may result from the mixture of such Ethylene with other Ethylene in the lines of Carrier. Carrier reserves the right at any time to substitute and deliver Ethylene of like kind as the Ethylene accepted for transportation. To enhance flow on Carrier's Pipeline System, to protect Carrier's Pipeline System, and/or to comply with applicable rules and regulations, Carrier may take actions that affect the quality of Ethylene in Carrier's Pipeline System (including injection of substances, such as corrosive inhibitor or odorant compounds).

#### **ITEM 25 Measurement**

- 25.1 Mass measurement procedures are employed for measurement of Ethylene on Carrier's facilities, and mass measurement is accomplished utilizing differential pressure, flowing pressure, and flowing temperature with density determination as required by the Measurement



Procedures or applicable Pipeage Contract. Unless otherwise set forth in a Pipeage Contract between Carrier and Shipper, the applicable mass measurement procedures to be utilized shall be those set forth in the Measurement Procedures. Carrier reserves the right to modify its Measurement Procedures in accordance with industry standards.

### **NOMINATIONS, SCHEDULING, AND ALLOCATIONS**

#### **ITEM 30 Pipeage Contracts Required**

30.1 Pipeage Contracts may be required by Carrier before any duty for transportation shall arise.

#### **ITEM 35 Nominations and Scheduling**

35.1 All Shippers desiring to Tender Ethylene for transportation on Carrier's facilities shall furnish a written nomination to Carrier by 4:00 p.m. Central Time on the twenty-fifth (25<sup>th</sup>) day (or the immediately preceding business day, if the twenty-fifth (25<sup>th</sup>) day falls on a weekend or a Carrier holiday) of the month prior to the month Shipper desires transportation. Nominations shall specify Nominated Volumes, the Origin of the Ethylene, the Destination of the Ethylene, and any other information required by Carrier. If Shipper does not furnish such written nomination on time, Carrier shall be under no obligation to accept such Ethylene for transportation.

35.2 Nominations shall be transmitted by electronic mail to Carrier at the following email address: [blmnoms@bwpipelines.com](mailto:blmnoms@bwpipelines.com)

35.3 Shipper's Tenders are to be made on a ratable basis, meaning that they will be made in equal amounts each day over the number of days in the month. When Carrier deems it operationally feasible in its sole discretion, Carrier may allow Shippers additional flexibility as it relates to ratable tenders of quantities throughout the month.

35.4 Carrier will receive, confirm and schedule accepted nominations that are within Pipeline System capacity, incorporating Force Majeure, operating conditions known for all or a portion of the month. During periods when pipeline capacity is prorated, in accordance with Item 60 (Allocation of Prorated Capacity), Carrier shall provide written notification to each Shipper of their Allocated Volume. During months when pipeline capacity is not prorated, in accordance with Item 60 (Allocation of Prorated Capacity), Shipper's nominated volumes will be deemed scheduled without written confirmation.

#### **ITEM 40 Minimum Batch at Origin**

40.1 Unless Carrier, in its sole discretion, waives this Item 40 (Minimum Batch at Origin), Carrier will not accept Ethylene for transportation at the Origin in quantities less than one million (1,000,000) pounds per month from one Shipper.

#### **ITEM 45 Origin and Destination Facilities**

45.1 Unless Carrier, in its sole discretion, waives this Item 45 (Origin and Destination Facilities), Ethylene will be accepted for transportation only when equipment and facilities for receipts and/or deliveries at both the Shipper's Origin(s) and /or Destination(s) comply with design requirements necessary to protect the safety, security, integrity, ethylene quality, and efficient operation of Carrier's Pipeline System. Shipper's pumping pressures and rates must meet Carrier's requirements. Carrier may require satisfactory evidence that the necessary facilities are available at the Origin and Destination facilities before Carrier is obligated to accept

Tenders for transportation.

- 45.2 If the facilities provided by Shipper fail to meet any or all of Carrier's requirements, Carrier may refuse to commence service or, if service has already commenced, may discontinue service to or from such facility until all requirements have been met; provided, however, Carrier may, in its sole discretion, continue service to a facility not in compliance with this Item 45 (Origin and Destination Facilities) to avoid disruption of its Pipeline System or to avoid any other unsafe condition. Any decision to make or continue a delivery shall not be construed as a waiver by Carrier of Shipper's breach of this Item 45 (Origin and Destination Facilities) and shall not affect Shipper's obligations pursuant to this Tariff. In addition, Carrier's acceptance and delivery of Ethylene shall not be construed as evidence of Carrier's approval of the adequacy of the facilities or the competency of Shipper's personnel. Shipper agrees that it is solely and exclusively responsible for such facilities and for Shipper's personnel.

#### **ITEM 50      Delivery at Destination**

- 50.1 If Shipper fails to promptly accept Ethylene at the Destination as provided in this Tariff, then Carrier shall have the right to divert, consign, or make whatever arrangements for disposition of the Ethylene that Carrier deems appropriate to clear its pipeline facilities, including the right to sell, for the account of Shipper, the Ethylene at private or public sale. Carrier may pay itself all applicable transportation charges and other necessary expenses for caring for, maintaining, and disposing of the Ethylene.

#### **ITEM 55      Overages and Shortages**

- 55.1 The Carrier shall account to each Shipper for one hundred percent (100%) of Ethylene received, as adjusted in accordance with the provisions herein. Any overages or shortages, including those related to flaring, not due to the negligence of the Carrier, including loss for shrinkage and evaporation will be allocated on a monthly accrual basis among the Shippers in the proportion that the total number of pounds delivered from the entire system for each Shipper bears to the total number of pounds delivered from the entire system for all Shippers.

#### **ITEM 60      Allocation of Prorated Capacity**

- 60.1 Carrier will prorate capacity of its Pipeline System, or a portion thereof, during any month when it determines that, based upon nominations properly submitted by Shippers in accordance with Item 35 (Nominations and Scheduling), total Nominated Volumes exceeds the capacity of Carrier's Pipeline System or any portion thereof. Available capacity, as prorated, is referred to herein as "Prorated Capacity". Allocation of Prorated Capacity may occur due to total nominations, Force Majeure, maintenance, operational reasons, or otherwise. Shippers will not be allocated capacity in excess of their Nomination for the month.
- 60.2 **Prorated Capacity available to Regular Shippers and New Shippers:** Ten percent (10%) of Prorated Capacity shall be set aside for Regular Shippers and New Shippers. The Prorated Capacity allocated to Regular Shippers and New Shippers will be allocated as follows, unless otherwise provided for in this Item 60 (Allocation of Prorated Capacity):
- 60.3 **Availability of Prorated Capacity to New Shippers:** Not more than five percent (5%) of the total available Prorated Capacity of Carrier's system or portion thereof shall be made available to New Shippers.

- 60.4 **Allocation to each New Shipper.** Each New Shipper shall be allocated a portion of the Prorated Capacity available to all New Shippers, as set forth in Item 60.3 above, equal to the lesser of:
- (a) five percent (5%) of the total available Prorated Capacity of Carrier's system or portion thereof divided by the number of New Shippers who nominated volumes for shipment on the system or portion thereof during the month for which the allocation is being calculated; or
  - (b) 1.25 percent (one-fourth of 5%) of the available Prorated Capacity of the system or portion thereof for that month.
- 60.5 Any remaining capacity from this five percent (5%) made available to New Shippers will be included in the Prorated Capacity available to Regular Shippers.
- 60.6 The Prorated Capacity allocated to each Regular Shipper will be allocated based on a fraction, the numerator of which is the total shipments by that Shipper on Carrier's system using the latest twelve (12) month period, and the denominator of which is the total shipments during such twelve (12) month period by all Regular Shippers. The resulting fraction is multiplied by the total Prorated Capacity available to all Regular Shippers during that month to determine the Regular Shipper's Allocated Volume.
- 60.7 Any remaining capacity from this ten percent (10%) available to Regular Shippers and New Shippers, as set forth above in Item 60.2 (Prorated Capacity available to Regular Shippers and New Shippers), will be allocated to the Volume Discount Shippers.
- 60.8 **Allocation to each Volume Discount Shipper:** The Prorated Capacity remaining after allocation to Non-Volume Discount Shippers will then be allocated to Volume Discount Shippers as follows: The remaining Prorated Capacity will be allocated to each Volume Discount Shipper based on a fraction, the numerator of which will be the lesser of: (i) the volume of Ethylene that the Volume Discount Shipper nominated for the month in accordance with Item 35 (Nominations and Scheduling); (ii) the committed volume for which the Volume Discount Shipper has paid or committed to pay the applicable rate for pursuant to the Volume Discount Shipper's VIP agreement as described in Item 150 (Take or Pay Volume Incentive Programs) or the Volume Discount Shipper's new facilities agreement as described in Item 155 (New Facilities Commitment Programs); and (iii) the total shipments using the latest twelve (12) month period for Volume Discount Shippers with no stated volume commitment quantity in its new facilities agreement as described in Item 155 (New Facilities Commitment Programs) ("Numerator Calculation"), and the denominator of which will be the sum of the Numerator Calculations for all Volume Discount Shippers. The resulting fraction is multiplied by the total Prorated Capacity available to Volume Discount Shippers to determine the Volume Discount Shipper's Allocated Volume.
- 60.9 If a Volume Discount Shipper's calculated Allocated Volume exceeds the Volume Discount Shipper's Nomination for the month, the Allocated Volume will be reduced to match the Volume Discount Shipper's Nomination and the excess Allocated Volume will be allocated to the remaining Volume Discount Shippers utilizing the same methodology described above for those remaining Shippers only. This iterative process will continue until all Prorated Capacity has been allocated to Volume Discount Shippers up to the nominated quantities for the month.
- 60.10 If any Prorated Capacity remains after the allocation to Volume Discount Shippers, Prorated Capacity will first be allocated to remaining Regular Shippers whose Nomination was not met in the prior allocation process. The Prorated Capacity allocated to each remaining Regular

Shipper will be allocated based on a fraction, the numerator of which is the total shipments by that Shipper on Carrier's system using the latest twelve (12) month period, and the denominator of which is the total shipments during such twelve (12) month period by all remaining Regular Shippers. The resulting fraction is multiplied by the total Prorated Capacity available to all remaining Regular Shippers during that month to determine the remaining Regular Shipper's Allocated Volume.

- 60.11 If a remaining Regular Shipper's calculated Allocated Volume exceeds the Regular Shipper's Nomination for the month, the Allocated Volume will be reduced to match the Regular Shipper's Nomination and the excess Allocated Volume will be allocated to the remaining Regular Shippers utilizing the same methodology described above for those remaining Regular Shippers only. This iterative process will continue until Prorated Capacity has been allocated to remaining Regular Shippers up to their Nomination.
- 60.12 If any Prorated Capacity remains after the allocation to remaining Regular Shippers, Prorated Capacity will be allocated to remaining New Shippers whose nomination was not met in the prior allocation process. The Prorated Capacity allocated to each remaining New Shipper will be allocated based on a fraction, the numerator of which will be the volume of Ethylene that the remaining New Shipper nominated for the month in accordance with Item 35 (Nominations and Scheduling) and the denominator of which will be the sum of the Nominations for all remaining New Shippers. The resulting fraction is multiplied by the total Prorated Capacity available to remaining New Shippers to determine the New Shipper's Allocated Volume.
- 60.13 If a New Shipper's calculated Allocated Volume exceeds the New Shipper's Nomination for the month, the Allocated Volume will be reduced to match the New Shipper's Nomination and the excess Allocated Volume will be allocated to the remaining New Shippers utilizing the same methodology described above for those remaining New Shippers only. This iterative process will continue until all Prorated Capacity has been allocated to remaining New Shippers up to their Nomination.

#### **ITEM 65 Over/Under-Tender Penalties**

- 65.1 If the volume of Ethylene Tendered by Shipper does not result in an Over-tender or an Under-tender, the Shipper shall be invoiced based on its delivered volumes, in accordance with Item 75 (Payment of Transportation and Other Charges). In its sole discretion, Carrier may waive Over-tender and/or Under-tender penalties. Any waiver or partial waiver of penalties will be provided to Shippers in a not unduly discriminatory manner.
- 65.2 If a Shipper Over-tenders or Under-tenders, Shipper will be subject to the following charges and penalties:

##### **Penalty When Pipeline System is Not in Allocation:**

- 65.3 **Under-Tender:** If the volume of Ethylene Tendered by Shipper results in an Under-tender, the Shipper shall be invoiced for ninety percent (90%) of the Shipper's Nomination times the applicable Transportation Rate.

##### **Penalty When Pipeline System is in Allocation:**

- 65.4 **Under-Tender:** If the volume of Ethylene Tendered by Shipper results in an Under-tender, the Shipper shall be invoiced for ninety-five percent (95%) of the Shipper's Allocated Volume times the applicable Transportation Rate.

- 65.5 **Over-Tender:** If the volume of Ethylene Tendered by Shipper results in an Over-tender, Shipper shall be invoiced based on its Tendered volumes, in accordance with Item 65 (Over/Under-Tender Penalties), plus an Over-tender penalty of five percent (5%) of the applicable Transportation Rate per pound of Ethylene Tendered in excess of one hundred percent (100%) of Shipper's Allocated Volume.

## **RATES AND PAYMENT**

### **ITEM 70 Applicable Rates and Terms**

- 70.1 Ethylene transported shall be subject to the rate in effect on the date the Ethylene is received by Carrier for transportation. Likewise, the terms and conditions of service which govern the transportation of Ethylene shall be those terms and conditions of service in effect on the date the Ethylene is received by Carrier for transportation.
- 70.2 Carrier may elect each year to adjust its Tariff transportation rates, included herein, utilizing the Federal Energy Regulatory Commission's indexation methodology as described in 18 C.F.R. §342.3.

### **ITEM 75 Payment of Transportation and Other Charges**

- 75.1 Transportation charges will be computed and collected at the applicable rate on the quantity of Ethylene received, as determined pursuant to this Tariff unless otherwise determined by Carrier in its sole discretion.
- 75.2 Shipper shall be invoiced monthly for the preceding month's transportation charges. Payment of such invoice is due within fifteen (15) days of the date of the invoice. If charges are not paid by the due date determined by this Item 75 (Payment of Transportation and Other Charges), Carrier shall have the right to assess finance charges on the entire past due balance (including principal and accumulated but unpaid finance charges) until paid in full, at a rate equal to one hundred twenty-five percent (125%) of the prime rate of interest as reported by Citibank N.A. of New York, New York on ninety-day (90-day) loans to substantial and responsible commercial borrowers as of the first of the month in which the charges are due or at the maximum finance rate allowed by applicable law, whichever is less.
- 75.3 Shipper shall be responsible for all charges applicable to a particular shipment and, if required by Carrier pursuant to Item 145 (Creditworthiness of Shippers), shall prepay all charges or furnish guaranty of payment satisfactory to Carrier. Carrier shall have a security interest in all Ethylene accepted from Shipper under this Tariff. This security interest shall secure: (i) all transportation and any other charges due or to become due from Shipper under the terms of this Tariff; and (ii) all costs and expenses of Carrier in exercising any of its rights pursuant to this Tariff, including, but not limited to, all Losses, and settlement of conflicting liens. The security interest provided herein shall be in addition to any lien provided by statute or common law.
- 75.4 In the event Shipper fails to satisfy when due any obligation to Carrier, including without limitation making timely payments of any amounts due, prepaying charges, or furnishing guaranties of payment satisfactory to Carrier as may be required by this Item 75 (Payment of Transportation and Other Charges) or Item 145 (Creditworthiness of Shippers), Carrier shall have all of the rights and remedies accorded a secured party under the applicable law and in addition may take any or all of the following actions: (i) refuse to deliver Ethylene in its custody until all such obligations have been paid; (ii) suspend or terminate any agreements between Shipper and Carrier providing Volume Incentive Ship or Pay Program service

pursuant to Item 150 (Take or Pay Volume Incentive Programs); (iii) sell any or all of Shipper's Ethylene in Carrier's Pipeline System, in accordance with the applicable provisions of State law, and apply the proceeds to such obligations; and/or (iv) take any other action Carrier deems necessary for the proper protection and sale of the Ethylene. Shipper shall be liable for all Losses incurred by Carrier in taking any of these actions.

## **OPERATIONS**

### **ITEM 80      Routine Maintenance**

- 80.1 Shipper recognizes that Carrier may, from time to time, require routine scheduled maintenance periods to service or test portions of Carrier's Pipeline System and/or related facilities. Carrier will provide Shipper with prior notice of any scheduled maintenance which will interrupt delivery or receipt of any Ethylene hereunder and, if scheduling, maintenance, or operational restrictions exist at the time Shipper schedules movements of Ethylene, then Carrier shall promptly notify Shipper of such restrictions.

### **ITEM 85      Transportation Inventory and Line-fill Requirements**

- 85.1 Carrier will require each Shipper to supply a prorata share of Line-fill for the efficient operation of Carrier's Pipeline System prior to delivery. Prorata Line-fill requirements will be based on the total Line-fill of segment(s) utilized by a Shipper. Ethylene provided as Line-fill is owned by Shippers and subject to the conditions set forth in Item 75 (Payment of Transportation and Other Charges). Shipper's Line-fill may be withdrawn from Carrier's Pipeline System only after shipments have ceased and if written notice to discontinue shipments in Carrier's Pipeline System is received thirty (30) days prior to the requested delivery of Shipper's Line-fill.
- 85.2 Carrier will periodically review Line-fill requirements by segment and request adjustments thereto, if necessary. Shippers required to reduce their Line-fill share must request delivery within thirty (30) days of such notice by Carrier. Shippers required to increase their Line-fill share shall fulfill such request within thirty (30) days of such notice by Carrier.

## **WARRANTY, LIABILITY, INDEMNITY, CLAIMS, DISPUTE RESOLUTION**

### **ITEM 90      No Express or Implied Warranty**

- 90.1 Carrier operates under this Tariff solely as a provider of transportation services and not as an owner, manufacturer, or seller of Ethylene transported by Carrier pursuant to this Tariff. Carrier expressly disclaims any liability for any express or implied warranty for Ethylene transported hereunder including any warranties of merchantability or fitness for intended use or particular purpose.



**ITEM 95 Force Majeure**

- 95.1 Carrier, while in possession of Ethylene Tendered by Shipper, shall not be liable for any loss, damage, or delay caused by an event of Force Majeure. "Force Majeure" means: act of God, war, natural disasters (including, but not limited to epidemics, pandemics, quarantines, landslides, lightning, earthquakes, fires, storms, floods, washouts, hurricanes, or storms named by the U.S. National Hurricane Center), act of public enemy, terrorism, insurrection, sabotage, vandalism, the authority of law, explosions, breakage or accident to machinery or pipe, riots, civil disorder, requisition or necessity of the Government of the United States or any other governmental authority; acts of or compliance with new governmental regulations and/or requests of federal, provincial or local governments or any agency thereof, the orders of any court or governmental authority, inability to obtain permits; transportation embargoes or failures or delays in transportation or availability of transportation, including rail transportation; strikes, labor disputes, lockout of employees; inability to obtain or curtailment of supply of electric power, water, fuel or other utilities or services necessary to operate facilities; default of Shipper, their agents, employees or representatives, or from any other causes, whether herein enumerated or otherwise, not within the reasonable control of the party.
- 95.2 **Non-Performance Excused.** Neither Carrier or Shipper will be deemed to be in default of, or liable for any obligation under this Tariff or any agreement if the default or non-performance is caused by, or to the extent directly attributable to, an event of Force Majeure. Notwithstanding the foregoing, nothing shall excuse Shipper's obligations to pay all fees and amounts due to Carrier.
- 95.3 **Exceptions to Force Majeure.** Neither Carrier or Shipper shall be entitled to the benefit of the provisions of this Item 95 (Force Majeure) to the extent that Carrier or Shipper's default or failure to perform is caused by (i) a lack of finances or an event the occurrence of which is due to the inability of the Party to pay an amount which a prudent and financially sound entity in similar circumstances would reasonably be expected to pay to avoid such event; or (ii) adverse economic conditions.
- 95.4 **Force Majeure Notices.** The party claiming Force Majeure shall give the other party notice in writing as soon as reasonably practicable after determining that an event of Force Majeure has occurred. Said notice shall specify the nature of the event and the particular covenants and obligations of the party that are affected and its estimated duration. The party claiming suspension shall likewise give notice as soon as reasonably practicable after the event of Force Majeure has been remedied and thereafter the party shall resume performance in a reasonable time.

**ITEM 100 Liability of Parties**

- 100.1 As a condition to Carrier's acceptance of Ethylene under this Tariff, each Shipper agrees to hold harmless, indemnify, and defend Carrier against claims or actions for Losses, injury and/or death of any and all persons and for damage to property of Carrier, Shipper, and/or any third party resulting from or arising out of (i) any breach of or failure to adhere to any provision of this Tariff by Shipper, and/or their agents, employees, or representatives; and/or (ii) the negligent act(s), failure(s) to act, or willful misconduct of Shipper, and/or their agents, employees, or representatives in connection with delivery or receipt of Ethylene.
- 100.2 In the event of any loss of Ethylene while in the possession of Carrier and for which Carrier is not liable, including loss of Ethylene due to operational flaring or Force Majeure as set forth

in Item 95 (Force Majeure), such loss will be charged proportionally to each Shipper in the ratio that the Shipper's Ethylene, or portion thereof, received and undelivered at the time the loss occurs, bears to the total of all Ethylene then in the custody of Carrier. Carrier will be obligated to deliver only that portion of such Ethylene remaining after deducting Shipper's proportion of such loss determined in accordance with this Tariff, and transportation charges will be assessed only on the quantity of Ethylene delivered.

- 100.3 For Ethylene losses for which Carrier is liable, Carrier may, at its discretion, obtain and deliver to Shipper other Ethylene meeting the Specifications, or compensate Shipper for such loss based on the market price in accordance with an industry-accepted price service selected by Carrier for Mont Belvieu, Texas.
- 100.4 Carrier shall not be liable for any cost, expense, damage or liability arising out of or related to (i) discoloration, contamination, or deterioration that occurs while Ethylene is in the custody of Carrier, (ii) untimely delivery of Ethylene by Carrier, or (iii) other Carrier's actions including, but not limited to, Carrier's actions in allocating service, terminating operations on all or a portion of its Pipeline System, refusing to accept Shipper's Ethylene due to non-compliance with the quality specifications, and untimely delivery of Ethylene. This exclusion of liability shall not apply if negligent conduct by Carrier is determined to be the sole, proximate cause of the cost, expense, damage, or liability incurred by Shipper.
- 100.5 Carrier will be obligated to deliver only that portion of such Ethylene remaining after deducting for all shrinkage, evaporation, and other physical product losses or charges contemplated under this Tariff. All such Ethylene losses shall be accounted for as provided pursuant to this Tariff. Carrier recognizes and accepts custody of all Ethylene accepted for shipment while such Ethylene is in Carrier's Pipeline System.
- 100.6 Without limiting any other rights of Carrier hereunder, for all services provided for and received under this Tariff, Shipper agrees to hold harmless, indemnify, and defend Carrier from any and all Losses, including claims for personal injury, death, or property damage involving Carrier, Shipper, or third parties based on or arising out of Carrier's performance of such services where such services are performed in accordance with applicable Federal, State, or local statutes, regulations, or ordinances. This indemnification shall include but not be limited to services such as the provision of emergency response numbers and shall include claims of any nature, legal or equitable, whether based on strict liability, negligence, breach of warranty, or any other causes of action. This indemnification obligation shall not apply if negligent conduct by Carrier is determined to be the sole, proximate cause of said Losses.

#### **ITEM 105 Consequential Damages**

- 105.1 CARRIER SHALL NOT BE LIABLE TO SHIPPER OR SHIPPER'S CUSTOMERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES OR ANY LOST PROFITS, LOST BUSINESS OPPORTUNITIES, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, OR SIMILAR DAMAGES.**

#### **ITEM 110 Billing Disputes**

- 110.1 If Shipper disputes an invoice in good faith, Shipper shall provide to Carrier a written explanation of the basis for the dispute prior to the date upon which such invoice payment is due and shall make payment of the undisputed amount due. To the extent any disputed amount is later determined to have been properly due and payable, Shipper shall make proper payment to Carrier no later than ten (10) days after such determination, together with interest accrued



at the rate set forth in Item 70 (Applicable Rates and Terms), commencing thirty (30) days following Shipper's receipt of the applicable invoice. The interest unpaid at the end of each month shall be added to the amount due hereunder for the purposes of the calculation of interest due on the disputed amount.

#### **ITEM 115 Claims, Time for Filing**

- 115.1 Claims for loss, damage, or overcharges must be made in writing with Carrier within nine (9) months after delivery of the Ethylene, or in case of an alleged failure by Carrier to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed.
- (a) Suits for loss or damage shall be instituted only within two (2) years after the claim accrues.
  - (b) Suits for overcharges shall be instituted within three (3) years after the claim accrues.
  - (c) If a Carrier has notified the claimant in writing that the Carrier has disallowed the claim for any part or parts thereof specified in the notice, the limitation periods provided under Item 115.1(a) and Item 115.1(b) above shall be extended for ninety (90) days and six (6) months respectively from the time written notice was provided.

#### **ITEM 120 Applicable Law**

- 120.1 This Tariff shall be governed by and construed pursuant to the Interstate Commerce Commission Termination Act of 1995 and the applicable regulatory authority of the S.T.B.

#### **ITEM 125 Reservation of Rights**

- 125.1 Notwithstanding any negotiation or mediation, Carrier reserves all rights and remedies available at law and equity, and Carrier may seek immediate redress in applicable regulatory body courts for injunctive relief or otherwise to protect its interests.

#### **ITEM 130 Ethylene Involved in Litigation**

- 130.1 When any Ethylene Tendered for transportation is involved in litigation, disputed ownership, or encumbrance by lien or charge of any kind, Shipper shall so advise Carrier in writing as soon as reasonably practicable. Carrier may refuse to accept such Ethylene or may require that Shipper(s) provide an indemnity bond or other form of financial undertaking to protect Carrier against any and all Losses.

#### **ITEM 135 Audit Rights**

- 135.1 Once per calendar year, Shipper shall have the right at mutually-agreeable times during normal business hours, upon written request, to audit Carrier's applicable records related to Shipper's volumes transported and invoicing during the twelve (12) months immediately preceding the requested audit. After such twelve (12) month period, Carrier's record shall be presumed to be correct and Shipper's right to audit shall expire. If any audit conducted pursuant to this Item 135 (Audit Rights) reveals there was an inaccuracy or omission in the invoices submitted, the Parties shall within ten (10) business days of a request by either Party thereof, meet to discuss the adjustments and/or payments that would be necessary to correct such inaccuracy or omission. Upon agreement by the Parties on the adjustments and/or payments needed to correct the inaccuracies or omissions found by the audit, such adjustments and/or payment shall be made promptly, but in no case more than thirty (30) days from such agreement.

Interest shall accrue until payment is received on any adjusted amounts owed in accordance with the rate set forth in Item 70 (Applicable Rates and Terms).

## **TAX AND CREDIT**

### **ITEM 140 Tax Registration**

- 140.1 Shipper represents to Carrier that Shipper holds valid proof of registration with, or tax exemption from, the appropriate Federal and/or State tax authorities related to the collection and payment of excise tax or other similar taxes, levies or assessments and will furnish such proof upon request. Shipper will be responsible to reimburse Carrier for any taxes, levies or assessments, plus the cost of collection and related expenses (including attorney fees), if they should be imposed against Carrier with respect to any shipment of Shipper or the services provided under this Tariff to Shipper.

### **ITEM 145 Creditworthiness of Shippers**

- 145.1 All prospective Shippers must submit sufficient financial information to establish creditworthiness. If a prospective Shipper is not creditworthy, Carrier may require prepayment of transportation charges, and/or a letter of credit from an appropriate financial institution in a form acceptable to Carrier or another form of credit assurance satisfactory to Carrier. Shipper shall periodically provide to Carrier that financial information or security deemed necessary by Carrier to support any credit extension. If Shipper's credit deteriorates or becomes unsatisfactory to Carrier, in the sole judgment of Carrier, advance cash payment or security satisfactory to Carrier shall be given by Shipper on demand of Carrier and deliveries may be withheld until such payment of security received.
- 145.2 This is in addition to, and does not limit, Carrier's right to prepayment or furnishing of guaranty of payment under Item 75 (Payment of Transportation and Other Charges).

## **COMMERCIAL**

### **ITEM 150 Take or Pay Volume Incentive Programs**

- 150.1 Carrier offers volume incentive ship or pay program(s) ("VIP") to Shippers willing to commit certain minimum volumes for transportation on Carrier's facilities for an extended term or pay the applicable rate for volumes not transported under the minimum required by the VIP. Shippers desiring to participate in a VIP must enter a separate volume commitment agreement with Carrier (outlining the extended term and other details) prior to participation in any VIP. Carrier, at its sole discretion, may negotiate terms and conditions with its Shippers including but not limited to Item 75 (Payment of Transportation and Other Charges) and Item 95 (Force Majeure).
- 150.2 Transactions for transportation from East to West (i.e. via displacement) do not qualify for participation in the VIP as described in this section. Any displacement transportation transactions by a Shipper do not apply towards the required minimum volume commitment of the Shipper's VIP.

### **ITEM 155 New Facilities Commitment Programs**

- 155.1 In the event Carrier constructs new facilities to provide service to Shipper(s), in lieu of Shipper(s) reimbursing Carrier for such new facilities, Carrier may offer volume commitment or revenue guarantee programs to Shippers. Such volume commitment or revenue guarantee

programs will require Shippers to either (i) commit certain minimum volumes for transportation for a minimum term at agreed upon rates (which rates may be lower or higher than the transportation rates applicable to non-committed volumes in this Pipeline Tariff and may be derived from a different rate design structure) on Carrier's facilities or pay the applicable rate for volumes not transported under the minimum required by the volume commitment; or (ii) guarantee certain minimum revenues to Carrier for an extended term.