

FERC GAS TARIFF  
ORIGINAL VOLUME NO. 1

Of

KINETICA DEEPWATER EXPRESS, LLC

Filed With The  
FEDERAL ENERGY REGULATORY  
COMMISSION

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## PRELIMINARY STATEMENT

Kinetica Deepwater Express, LLC (“Kinetica” or “Transporter”) owns and operates a pipeline system composed of three discrete systems and a number of discontinuous lines in the offshore federal waters of the Gulf of Mexico. The Patterson system extends from points in the Eugene Island and Vermillion areas to a platform in Eugene Island Block 188 and then to the terminus onshore at Patterson, Louisiana. The Grand Chenier system transports gas from various West Cameron Blocks to a facility at Grand Chenier, Louisiana.

The currently effective system map is available on Kinetica's Internet site at  
<http://www.kineticallc.com/images/KineticaDeepwaterSystemMap.pdf>

STATEMENT OF EFFECTIVE RATES AND CHARGES

<u>Rate Schedule:</u>	<u>Maximum Rate 1/</u>	<u>Minimum Rate 1/</u>
FTS-1		
Transmission		
Reservation Charge	\$5.4933	\$0.0000
Commodity Rate	\$0.0019	\$0.0019
Overrun Rate	\$0.1825	\$0.0019
ITS		
Transmission		
Commodity Rate	\$0.1825	\$0.0019

1/ In addition, Shippers are subject to the applicable Transporter's Use (%), which includes a separately stated percentage for lost and unaccounted for gas. The Transporter's Use (%)s are provided in Section 4.2 in accordance with Section 6.29 of the General Terms and Conditions of this FERC Gas Tariff.

## STATEMENT OF SURCHARGES

General Terms and Conditions <u>Section</u>	<u>Particulars</u>	Maximum Rate <u>Per Dth</u>	Minimum Rate <u>Per Dth</u>
6.23	Annual Charge Adjustment 1/	3/	3/
6.24	Hurricane Surcharge 2/	\$0.0000	\$0.0000
6.29	Transporter's Use (%)	0	0
	Fuel Use	0	0
	L&U Gas	0	0
	Transporter's Use true up	0	0

1/ Surcharge applicable to Rate Schedules FTS-1 and ITS

2/ Surcharge applicable to Rate Schedules FTS-1, ITS and IPLS

3/ The currently effective ACA unit charge as published on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) is incorporated herein by reference.

RESERVED FOR FUTURE USE

## RATE SCHEDULES

FTS-1 (Firm Transportation Service)  
ITS (Interruptible Transportation Service)  
TTS (Title Transfer Service)  
IPLS (Interruptible Park and Lend Service)

### RATE SCHEDULE FTS-1 FIRM TRANSPORTATION SERVICE

#### 1. AVAILABILITY

This Rate Schedule is available to any person, corporation, partnership or any other party (hereinafter referred to as "Shipper") for the Transportation of Gas by Transporter, subject to the following limitations:

- (a) Transporter has determined that it has sufficient available and uncommitted capacity to perform service requested by Shipper; and
- (b) Shipper and Transporter have executed an Agreement under this Rate Schedule, or conformed an existing Agreement to be consistent with this Rate Schedule.

#### 2. APPLICABILITY AND CHARACTER OF SERVICE

- (a) This Rate Schedule shall apply to all Transportation Service rendered by Transporter for Shipper pursuant to the executed Agreement under this Rate Schedule.
- (b) Transportation Service under this Rate Schedule shall consist of: (1) the receipt of Gas on behalf of Shipper, (2) the Transportation of Gas, and (3) the Tender of Gas for delivery by Transporter to Shipper, or for Shipper's account.
- (c) Transportation Service rendered under this Rate Schedule shall be firm, up to the Primary Path MDQs specified in the executed Agreement.

#### 3. CHARGES

Each Month Shipper shall pay to Transporter the following charges:

(1) Reservation Charges.

(a) For each Dekatherm of MDQ, the applicable Transmission Reservation Rate(s), as stated in Section 4.1 of this FERC Gas Tariff.

(b) Reservation Credits.

(i) Non-Force Majeure Events - If Transporter fails to Tender Gas for redelivery at the Primary Delivery Point(s) for the account of a Shipper during any Day, due to the Transporter's scheduling of necessary maintenance and repair of pipeline facilities, necessary maintenance and repair of compression facilities, and/or facility outages for tie-in of new facilities, the quantity of Gas that Shipper has nominated, or makes available to Transporter on such Day, or Shipper's MDQ, whichever is less, then subject to the provisions of the General Terms and Conditions of this Tariff, the portion of the monthly bill of such Shipper which is attributable to the Reservation Charges shall be reduced by an amount equal to the combined Reservation Rates times 12 then dividing the result by 365, and multiplied by the difference between such quantity of Gas nominated or made available for delivery by Shipper, whichever is less, up to the MDQ, and the quantity actually delivered by Transporter for the account of Shipper during such Day.

(ii) Force Majeure Events - If Transporter fails to Tender Gas for redelivery at the Primary Delivery Point(s) for the account of a Shipper for a period greater than ten (10) consecutive Days due to an event of Force Majeure, the quantity of Gas that Shipper has nominated for each Day beyond ten (10) Days, or makes available to Transporter on each Day beyond ten (10) Days, or Shipper's Delivery Point MDQ, whichever is less, then subject to the provisions of the General Terms and Conditions of this Tariff, the portion of the monthly bill of such Shipper which is attributable to the Reservation Charges shall be reduced by an amount equal to the combined Reservation Rates times 12 then dividing the result by 365, and multiplied by the difference between such quantity of Gas nominated or made available for delivery by Shipper, whichever is less, up to the Delivery Point MDQ, and the quantity actually delivered by Transporter for the account of Shipper during each Day beyond ten (10) Days.

(iii) If, at the commencement or termination of the Agreement, service is provided for only a portion of a Service Month, any applicable Reservation Charges shall be prorated for the number of Days that service is provided.

(2) Commodity Charges.

- (a) The applicable Transmission Commodity Rate, as stated in Section 4.1 of this FERC Gas Tariff, shall be paid for each Dekatherm of Gas Delivered Hereunder to or on behalf of Shipper for each Nomination Path during the Month.
- (3) Other Applicable Charges or Surcharges. All applicable reservation and volumetric charges or surcharges, including but not limited to those charges under Sections 6.23 and 6.24 of the General Terms and Conditions of this FERC Gas Tariff, for each Dekatherm of MDQ, or Gas Delivered Hereunder, as applicable. Such charges or surcharges are shown in Section 4.2 of this FERC Gas Tariff.
- (4) Daily Scheduling Penalties. As set forth in Section 6.14.1 paragraph (a)(2) of this FERC Gas Tariff, Shippers may be subject to daily scheduling penalties on each Dekatherm of the quantities of variance that exceeds the Swing Percentage. The rate for any such daily scheduling penalty per Dekatherm shall be the highest applicable Rate Schedule ITS Maximum Rate to that Delivery Point.
- (5) Authorized Overrun Service. Transporter may authorize Shipper to take hereunder daily overrun quantities of Gas to the extent that, in the sole judgment of Transporter, the delivery capacity of Transporter's Pipeline System will permit such delivery without jeopardizing the ability of Transporter to meet all of its other firm service delivery obligations. The term "Authorized Daily Overrun Quantity" shall mean the quantity of Gas which is authorized and delivered by Transporter during any one Day in excess of any of Shipper's Primary Path MDQs. Any request for service under this Section 5.1 paragraph 3(5) of this FERC Gas Tariff must be made by Shipper pursuant to a separate nomination for Authorized Daily Overrun Quantity Gas in accordance with Section 6.6.1 paragraph (a) or 6.6.2 paragraph (a) of the General Terms and Conditions of this FERC Gas Tariff.

In addition to other applicable charges, Shipper shall pay the applicable Transmission Overrun commodity charges for each Dekatherm of Authorized Daily Overrun Quantity as set forth in Section 4.1 of this FERC Gas Tariff.

- (6) Unauthorized Overrun Service.
  - (a) Each Dekatherm of Gas Delivered Hereunder to Shipper pursuant to Section 6.14 of the General Terms and Conditions of this FERC Gas Tariff on any Day, which is in excess of any of Shipper's Primary Path MDQs, which has not been authorized under Section 5.1 paragraph 3(5) above shall be considered as "Unauthorized Daily Overrun Quantity" and shall be subject to a penalty rate equal to twice the Rate Schedule ITS Maximum Commodity Rate for any such Unauthorized Daily Overrun not terminated within twenty-four (24) hours of Transporter's verbal notification, in addition to all the charges set forth in Section 5.1 paragraph 3(4) above. Pursuant to Section 6.18.12 of the General Terms and Conditions, Transporter shall waive such penalty where the

imposition thereof is not necessary to prevent the impairment of reliable service.

- (b) Each Dekatherm of Gas Delivered Hereunder to Shipper as an Unauthorized Daily Overrun Quantity at any time after Transporter has issued an express order to Shipper to cease and desist shall be subject to a penalty rate equal to twelve (12) times the sum of the applicable maximum Reservation Rates under this Rate Schedule, in addition to all of the charges set forth in Sections 5.1 paragraph 3(5) and 5.1 paragraph 3(6)(a) above.
- (7) Fuel Reimbursement. Gas for Transporter's Use shall be furnished at Receipt Point(s) based upon the applicable Transporter's Use (%) pursuant to Section 6.29 of the General Terms and Conditions of this FERC Gas Tariff.
- (8) Third Party Charges. Shipper shall be responsible for delivering all Gas to Transporter's system, and shall be free to contract with third party(ies) to achieve such result. If Shipper requests, and Transporter agrees, that Transporter shall, for service to Shipper, use transportation service which Transporter has contracted for with third party(ies) for Shipper, Shipper shall pay Transporter an amount equal to the charges Transporter is obligated to pay to third party(ies) for transportation or other services attributable to performance of service on behalf of Shipper under this Rate Schedule. Such charges include, but are not limited to, compression fuel charges, compression fees, Gas handling fees, measurement fees, processing fees, facility rents, or charges that Transporter pays to a third party for transportation of Shipper's Gas, including third party's filing and regulatory fees. Such charges, as they may be from time to time, shall be set forth as separate items on billings rendered to Shipper.
- (9) Rate Changes. Subject to any limitations agreed to by Shipper and Transporter, Transporter may from time to time and at any time selectively adjust any or all of the rates charged to any individual Shipper for any and all of the transportation paths for which a Maximum Rate and Minimum Rate are stated in Section 4.1 of this FERC Gas Tariff; provided, however, that such adjusted rate(s) shall not exceed the applicable Maximum Rate(s), nor shall they be less than the Minimum Rate(s), set forth in such sections. Transporter shall have the right to charge the Maximum Rate at any time as a condition for new service, or for continuation of service under an existing Agreement, or pursuant to Sections 6.4 paragraph 1(b) and 6.4 paragraph 2(b) of the General Terms and Conditions of this FERC Gas Tariff. Transporter shall make all information filings required by the Commission's regulations with respect to any charges at less than the Maximum Rate.
- (10) Cashout of Monthly Imbalances. Transporter or Shipper, as the case may be, shall be responsible for payment of the Cashout amount(s) provided for in Section 6.15 of the General Terms and Conditions of this FERC Gas Tariff.

#### 4. COMMISSION AND OTHER REGULATORY FEES

Shipper shall reimburse Transporter directly for any separately stated fees required by the

Commission or any other federal or any state regulatory body which are related to service provided under this Rate Schedule.

## 5. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions of this FERC Gas Tariff are hereby specifically incorporated herein and made a part of this Rate Schedule.

### RATE SCHEDULE ITS INTERRUPTIBLE TRANSPORTATION SERVICE

#### 1. AVAILABILITY

This Rate Schedule is available to any person, corporation, partnership or any other party (hereinafter referred to as "Shipper") for the Transportation of Gas by Transporter when Shipper and Transporter have executed an Agreement under this Rate Schedule, or conformed an existing Agreement to be consistent with this Rate Schedule.

#### 2. APPLICABILITY AND CHARACTER OF SERVICE

- (a) This Rate Schedule shall apply to all Transportation Service rendered by Transporter for Shipper pursuant to the executed Agreement under this Rate Schedule.
- (b) Transportation Service under this Rate Schedule shall consist of: (a) the receipt of Gas on behalf of Shipper, (b) the Transportation of Gas and (c) the Tender of Gas for delivery by Transporter to Shipper, or for Shipper's account.
- (c) Transportation Service rendered under this Rate Schedule shall be interruptible. Interruptible service shall be available only to the extent of actual available capacity as it may be from time to time, under current conditions and shall be offered in accordance with the priorities established in the General Terms and Conditions of this Tariff.

#### 3. CHARGES

Each Month Shipper shall pay to Transporter the following charges:

- (1) Commodity Charges.

- (a) A Transmission Commodity Rate, as stated in Section 4.1 of this FERC Gas Tariff shall be paid for each Dekatherm of Gas Delivered Hereunder to or on behalf of Shipper for each Nomination Path utilized during the Service Month.
  - (b) Other Applicable Charges or Surcharges. All applicable reservation and volumetric charges or surcharges, including but not limited to those charges under Sections 6.23 and 6.24 of the General Terms and Conditions of this FERC Gas Tariff, for each Dekatherm of Gas Delivered Hereunder. Such charges or surcharges are shown in Section 4.2 of this FERC Gas Tariff.
- (2) Daily Scheduling Penalties. Shippers may be subject to daily scheduling penalties on each Dekatherm of the quantities of variance that exceeds the Swing Percentage. The rate for any such daily scheduling penalty per Dekatherm shall be the highest applicable Rate Schedule ITS Maximum Rate to that Delivery Point.
- (3) Fuel Reimbursement. Transporter's Use shall be furnished at Receipt Point(s) based upon the applicable Transporter's Use (%) pursuant to Section 6.29 of the General Terms and Conditions of this FERC Gas tariff.
- (4) Third Party Charges. Shipper shall be responsible for delivering all Gas to Transporter's system, and shall be free to contract with third party(ies) to achieve such result. If Shipper requests, and Transporter agrees, that Transporter shall, for service to Shipper, use transportation service which Transporter has contracted for with third party(ies) for Shipper, Shipper shall pay Transporter an amount equal to the charges Transporter is obligated to pay to third party(ies) for transportation or other services attributable to performance of service on behalf of Shipper under this Rate Schedule. Such charges include, but are not limited to, compression fuel charges, compression fees, Gas handling fees, measurement fees, processing fees, facility rents, or charges that Transporter pays to a third party for transportation of Shipper's Gas, including third party's filing and regulatory fees. Such charges, as they may be from time to time, shall be set forth as separate items on billings rendered to Shipper.
- (5) Rate Changes. Subject to any limitations agreed to by Shipper and Transporter, Transporter may from time to time and at any time selectively adjust any or all of the rates charged to any individual Shipper for any and all of the transportation paths for which a Maximum Rate and Minimum Rate are stated in Section 4.1 of this FERC Gas Tariff; provided, however, that such adjusted rate(s) shall not exceed the applicable Maximum Rate(s), nor shall they be less than the Minimum Rate(s), set forth in such sections. Transporter shall have the right to charge the Maximum Rate at any time as a condition for new service, or for continuation of service under an existing Agreement. Transporter shall make all information filings required by the Commission's regulations with respect to any charges at less than the Maximum Rate.
- (6) Cashout of Monthly Imbalances. Transporter or Shipper, as the case may be, shall be responsible for payment of the Cashout amount(s) provided for in Section 6.15 of the General Terms and Conditions of this FERC Gas Tariff.

- (7) Each Dekatherm of Gas Delivered Hereunder to Shipper in excess of that Day's confirmed nomination, after Transporter has issued an express order to Shipper to cease and desist, shall be subject to a penalty rate equal to the penalty rate set forth in Section 5.1 paragraph 3(6)(b) of Rate Schedule FTS-1 of this FERC Gas Tariff.

#### 4. COMMISSION AND OTHER REGULATORY FEES

Shipper shall reimburse Transporter directly for any separately stated fees required by the Commission or any other federal or any state regulatory body which are related to service provided under this Rate Schedule.

#### 5. GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions of this FERC Gas Tariff are hereby specifically incorporated herein and made a part of this Rate Schedule.

### RATE SCHEDULE TTS TITLE TRANSFER SERVICES

#### 1. AVAILABILITY

This rate schedule is available to any person, corporation, partnership or any other party (hereinafter referred to as "Shipper") for Title Transfer Services by Kinetica Deepwater Express, LLC (hereinafter referred to as "Transporter" or "Kinetica"), when:

- (A) Transporter has determined that it has the capability to provide Title Transfer Service pursuant to Section 5.3 paragraph 2 below; and
- (B) Shipper and Transporter have executed a Title Transfer Service Agreement (TTS Agreement) in the form prescribed under this Rate Schedule.

#### 2. APPLICABILITY AND CHARACTER OF SERVICE

The following services shall be provided under this rate schedule:

- (A) TTS provides for the tracking by Transporter of the transfer of quantities of Gas at a Title Transfer Point from any Shipper on Transporter's system to any other Shipper.
- (B) The quantities of Gas nominated for transfer to other party(ies) must equal the quantities nominated for acceptance by the other party(ies).
- (C) The transfer of title to quantities of Gas at Title Transfer Points does not require any physical movement of Gas. In the event that a Shipper desires to move quantities of Gas between Title Transfer Points, the Shipper must arrange such Transportation Service under one of Transporter's Rate Schedules for Transportation Service.
- (D) At no time shall Transporter be deemed to have taken title to Gas nominated for TTS. Title to Gas nominated for TTS shall transfer directly from Shipper to the accepting party and Transporter shall act only as a facilitator in the transfer of such title.
- (E) Transporter reserves the right to suspend or terminate all TTS under this Rate Schedule TTS to be effective on the first Day of the Month following notice of such suspension or termination on Transporter's Internet site.
- (F) Title Transfer Point(s): TTS Service to be provided at:
  - 1. Grand Chenier/ANR TT -
  - 2. Patterson/ANR TT -

### 3. TITLE TRANSFER SERVICE CHARGE

For each Dekatherm of Gas Delivered Hereunder, the applicable TTS Rate, as stated in Section 4.1 of this FERC Gas Tariff.

### 4. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this FERC Gas Tariff are applicable and hereby made part of this rate schedule.

#### 5.4.7 POINTS OF SERVICE

Transporter currently offers this service at the points listed below:

- 1. Grand Chenier/ANR TT -

## 2. Patterson/ANR TT -

### 5.4.1 AVAILABILITY

This Rate Schedule is available to any person, corporation, partnership or any other party (hereinafter referred to as "Shipper") for the parking and lending of Gas from Transporter, subject to the following limitations:

- (a) Transporter has determined that it is operationally able to render such service;
- (b) Shipper and Transporter have executed an Agreement, or conformed an existing Agreement to be consistent with this Rate Schedule; and
- (c) Transporter offers this service at the points listed in Section 5.4.7 of this Rate Schedule, and any other Receipt or Delivery Point, subject to operational and administrative feasibility.

### 5.4.2 APPLICABILITY AND CHARACTER OF SERVICE

1. This Rate Schedule shall apply to service which is rendered by Transporter for Shipper pursuant to an executed Agreement under this Rate Schedule.
2. Service under this Rate Schedule shall consist of parking and lending of Gas on any Day, provided, however, that Shipper cannot both park and lend gas on the same Day at the same Receipt Point or Delivery Point. Service rendered by Transporter under this Rate Schedule shall be interruptible and shall consist of:
  - (a) Parking Service. Parking Service is an interruptible service which provides for (1) the receipt by Transporter of Gas quantities delivered by Shipper to the point(s) of service agreed to by Transporter and Shipper for receipt of parked quantities; (2) Transporter holding the parked quantities on Transporter's Pipeline System; and (3) return of the parked quantities to Shipper at the agreed upon time and at the same Point(s) or other mutually agreed upon Point(s), provided, however, that Transporter is not obligated to return parked quantities on the same Day and at the same Point the Gas is parked.
  - (b) Lending Service. Lending Service is an interruptible service which provides for (1) Shipper receiving Gas quantities from Transporter at the point(s) of service agreed to by Transporter and Shipper for delivery of loaned quantities of

Gas; and (2) the subsequent return of the loaned quantities of Gas to Transporter at the agreed upon time and at the same Point(s) or mutually agreed upon Point(s), provided that, however, Transporter is not obligated to accept return of loaned Gas on the same Day and at the same Point the Gas is loaned.

- (c) If Shipper and Transporter agree that Shipper may receive parked quantities or return loaned quantities at Point(s) other than the Point(s) of the park or loan, then Shipper and Transporter shall enter into a separate Transportation Agreement(s) to effectuate receipt or delivery of the Gas from or to the new Point(s).
- 3. Service rendered under this Rate Schedule shall be provided for a minimum of a one (1) Day term. The term shall be set forth on the Agreement executed between Shipper and Transporter.
- 4. Transportation of Gas quantities for or on behalf of Shipper to or from the designated point(s) of service under the Agreement shall not be performed under this Rate Schedule. Shipper shall make any necessary arrangements with Transporter and/or third parties to receive or deliver Gas quantities at the designated points of service for Parking or Lending Service hereunder.
- 5. Services rendered under this Rate Schedule shall be interruptible. Interruptible services shall be available only to the extent of actual capacity as it may be available from time to time, under current conditions and shall be offered in accordance with the priorities established in the General Terms and Conditions of this Tariff.

### 5.4.3 CHARGES

Each Month Shipper shall pay to Transporter the following charges:

- 1. Commodity Charges.
  - (a) A rate as stated in Section 4.1 of this FERC Gas Tariff, which shall be paid for each Dekatherm of Gas parked or loaned at each point of service by Transporter for or on behalf of the account of Shipper at the end of any Day during the Month;
  - (b) Other Applicable Charges or Surcharges. All applicable reservation and volumetric charges or surcharges, including but not limited to those charges under Sections 6.23 and 6.24 of the General Terms and Conditions of this FERC Gas Tariff, for each Dekatherm of Gas parked or loaned under this Rate

Schedule. Such charges or surcharges are shown in Section 4.2 of this FERC Gas Tariff, but shall not be applicable if paid on related Transportation Service.

2. **Third Party Charges.** Shipper shall be responsible for delivering all Gas to Transporter's system, and shall be free to contract with third party(ies) to achieve such result. If Shipper requests, and Transporter agrees, that Transporter shall, for service to Shipper, use transportation service which Transporter has contracted for with third party(ies) for, Shipper shall pay Transporter an amount equal to the charges Transporter is obligated to pay to third party(ies) for transportation or other services attributable to performance of service on behalf of Shipper under this Rate Schedule. Such charges include, but are not limited to, compression fuel charges, compression fees, Gas handling fees, measurement fees, processing fees, facility rents, or charges that Transporter pays to a third party for transportation of Shipper's Gas, including third party's filing and regulatory fees. Such charges, as they may be from time to time, shall be set forth as separate items on billings rendered to Shipper.
3. **Rate Changes.** Subject to any limitations agreed to by Shipper and Transporter, Transporter may from time to time and at any time selectively adjust any or all of the rates charged to any individual Shipper for which a Maximum Rate and Minimum Rate is stated in Section 4.1 of this FERC Gas Tariff or a superseding tariff; provided, however, that such adjusted rate(s) shall not exceed the applicable Maximum Rate(s), nor shall they be less than the Minimum Rate(s), set forth in such section. Transporter shall have the right to charge the Maximum Rate at any time as a condition for new service, or for continuation of service under an existing Agreement. Transporter shall make all information filings required by the Commission's regulations with respect to any charges at less than the Maximum Rate.

#### 5.4.4 OPERATIONAL REQUIREMENTS OF TRANSPORTER

- (a) Shipper may be required, upon notification from Transporter, to cease or reduce deliveries to, or receipts from, Transporter hereunder within the Day consistent with Transporter's operating requirements. Further, Shipper may be required to return loaned quantities or remove parked quantities upon notification by Transporter. Such notification shall, at a minimum, be provided by posting on Transporter's Internet site and may also be provided by other means of Electronic Communication. Transporter will not recall from (or require withdrawal by) any Shipper, on any Day, any quantity greater than one-tenth (1/10) of the Shipper's outstanding park or loan balance, but in no event shall Transporter be restricted to recalling less than 5,000 Dth from any Shipper on any Day, nor will any Shipper be permitted to extend the

term of its park or loan by reason of this limitation. Transporter's notification shall specify the time frame within which parked quantities shall be removed and/or loaned quantities shall be returned, consistent with Transporter's operating conditions, but in no event shall the specified time be sooner than the next Day after Transporter's notification, subject to the following conditions:

- (1) In the event that the specified time for removal or return of Gas quantities is the next Day, the time frame for required removal or return shall begin from the time that Shipper receives notice from Transporter. Notices provided after business hours for the next Day will be provided to Shipper via Electronic Communication. In the event that Shipper makes a timely and valid nomination in response to notification by Transporter to remove parked quantities and/or return loaned quantities, Shipper shall be deemed to have complied with Transporter's notification; and
  - (2) Unless otherwise agreed by Shipper and Transporter: (i) any parked quantity not nominated for removal within a time frame specified by Transporter's notice shall become the property of Transporter at no cost to Transporter free and clear of any adverse claims; (ii) any loaned quantity not returned within the time frame specified by Transporter's notice shall be sold to Shipper at 150% of the Transporter's Monthly Spot Price Index pursuant to Section 6.16 of the General Terms and Conditions of this FERC Gas Tariff.
- (b) In the event parked quantities remain in Transporter's Pipeline System and/or loaned quantities have not been returned to Transporter's Pipeline System at the expiration of any Agreement executed by Shipper and Transporter, Transporter and Shipper may mutually agree to an extended time frame and/or modified terms, including the rate, of such Agreement. In the event that Shipper and Transporter are unable to reach agreement, Transporter shall notify Shipper, and Shipper shall nominate for removal of the parked quantities and/or return of the loaned quantities within the time frame specified in Transporter's notice, which in no instance shall be less than one (1) Day. Any parked quantity not nominated for removal within the time frame specified by Transporter's notice shall become the property of Transporter at no cost to Transporter, free and clear of any adverse claims. Any loaned quantities not nominated to be returned within the time frame specified by Transporter's notice shall be sold to Shipper at 150% of the Transporter's Monthly Spot Price Index pursuant to Section 6.16 of the General Terms and Conditions of this FERC Gas Tariff.

#### 5.4.5 COMMISSION AND OTHER REGULATORY FEES

Shipper shall reimburse Transporter directly for any separately stated fees required by the Commission or any other federal or any state regulatory body which are related to service provided under this Rate Schedule.

#### 5.4.6 GENERAL TERMS AND CONDITIONS

All of the General Terms and Conditions of this FERC Gas Tariff are hereby specifically incorporated herein and made a part of this Rate Schedule.

#### 5.4.7 POINTS OF SERVICE

Transporter currently offers this service at the points listed below:

1. Grand Chenier/ANR TT - DRN 1260949
2. Patterson/ANR TT - DRN 1260947

## GENERAL TERMS AND CONDITIONS

### 6.1 DEFINITIONS

1. The term "Agreement" shall mean the Service Agreement executed by the Shipper and Transporter and any exhibits, attachments and/or amendments thereto.
2. The term "Associated Liquids" shall mean condensate (liquid hydrocarbons without free water) produced in conjunction with the production of Gas to be transported hereunder.
3. The term "Backhaul" shall mean the receipt and delivery of Gas which is accomplished by the Transporter's delivery of Gas at Delivery Point(s) which are upstream from the Receipt Point(s) of such Gas.
4. The term "Business Day" shall mean Monday through Friday, excluding Federal Banking Holidays.
5. The term "BTU" shall mean one (1) British thermal unit, the amount of heat required to raise the temperature of one (1) pound of water one (1) degree Fahrenheit at sixty (60) degrees Fahrenheit, and is the International Btu. The reporting basis for BTU is 14.73 psia at 60 degrees F (101.325 kPa at 15 degrees C) and dry, and for gigacalorie it is 1.035646 Kg/cm<sup>2</sup> at 15.6 degrees C, and dry.

For purposes of this term, and the term Mcf in Section 6.1(24) below, NAESB WGQ takes no position on the basis upon which transactions are communicated to trading partners and/or regulatory agencies, as applicable, nor does NAESB WGQ state whether transactions may take place between parties on a volumetric basis.

6. The term "Cashout" shall mean the monetary settlement of quantities of Gas owed to or by Transporter or third parties, as further described in Section 6.15 of these General Terms and Conditions.
7. The term "Cashout Price" shall mean the price determined pursuant to Section 6.15 of these General Terms and Conditions.
8. The term "Central Clock Time" or "CCT" shall mean Central Standard

Time ("CST") except when Daylight Savings Time is in effect, when it shall mean one hour in advance of CST. All times referenced in this Tariff shall be in CCT.

9. The term "Commission" or "FERC" shall mean the Federal Energy Regulatory Commission or any successor regulatory authority.
10. The term "Confirmed Price" shall mean the Transportation rate inclusive of all applicable fees and surcharges agreed upon by Transporter and Shipper.
11. The term "Day" shall mean a period of consecutive hours, beginning at 9:00 a.m., and ending on the following 9:00 a.m.
12. The term "Dekatherm" (or "Dth") shall mean the quantity of heat energy which is equivalent to one (1) million (1,000,000) BTU; thus the term MDth shall mean one (1) thousand (1,000) Dth.
13. The term "Delivery Point" shall mean a point on Transporter's Pipeline System that Shipper and Transporter shall agree upon, where Gas exits facilities owned by Transporter, and is metered.
14. The term "Delivery Point MDQ" shall mean the greatest number of Dekatherms that Transporter is obligated to deliver to or on behalf of Shipper on any Day at the applicable Primary Delivery Point.
15. The term "Delivery Point Operator" shall mean the party that is responsible for operating the facilities that are immediately downstream of the applicable Delivery Point.
16. The term "Extreme Condition Situation" shall mean that (a) on any portion of Transporter's Pipeline System throughput approaches capacity, or (b) weather conditions exist, or (c) operating pressures on an affected portion of Transporter's Pipeline System are significantly less than or greater than normal operating pressures, such that Transporter's ability to receive or deliver quantities of Gas in accordance with its service obligations is impaired.
17. The term "Electronic Communication" shall mean the transmission of information via Transporter's Internet site, electronic delivery mechanism prescribed by NAESB or other mutually agreed communication methodologies used to transmit and receive information, including communication by telephone.
18. The term "Electronic Delivery Mechanism" or "EDM" shall mean the Electronic Communication methodology used to transmit and receive

data related to gas transactions. Transporter and Shipper shall designate an electronic "site" at which Shippers and Transporter may exchange data electronically. All data provided at such site shall be considered as being delivered to the appropriate party. Transporter's use and implementation of EDM shall conform to all appropriate NAESB standards.

19. The term "Equivalent Quantities" shall mean a quantity of Gas to be made available on any day to or on behalf of Shipper at a Delivery point, which quantity shall be the thermal equivalent of the quantity of Gas received by Transporter for the account of Shipper at the Receipt Point(s), adjusted, as applicable, by Transporter's Use, in accordance with Section 6.29 of the General Terms and Conditions of this FERC Gas Tariff.
20. The term "Flash Gas" shall mean gaseous hydrocarbons that either vaporize or are vaporized (including flare and vent gas) from liquefied hydrocarbons within facilities located onshore.
21. The term "Gas" shall mean natural gas.
22. The term "Gas Delivered Hereunder" shall mean the quantities of Gas allocated to Shipper by Transporter, as determined in accordance with the provisions of Section 6.14 of these General Terms and Conditions.
23. The term "Interactive Internet Website" shall mean Transporter's electronic communication system which shall be available to any Shipper.
24. The term "Mcf" shall mean one (1) thousand (1,000) cubic feet of Gas; the term MMcf shall mean one (1) million (1,000,000) cubic feet of Gas. The reporting basis for gas volumes measured in cubic feet is (at standard conditions) 14.73 psia at 60 degrees F, and dry. For cubic meters, the reporting basis is 101.325 kPa at 15 degrees C, and dry.
25. The term "Month" shall mean the period beginning on the first Day of a calendar Month and ending at the same hour on the first Day of the next succeeding calendar Month.
26. The term "Negotiated Rate" shall mean a rate or rate formula for computing a rate for service under a single rate schedule under which, for some portion of the contract term, one or more of the individual rate components may exceed the maximum charge, or be less than the minimum charge, for such component of the applicable tariff rate as set forth in Transporter's Statement of Rates in Section 4.1 of this FERC Gas Tariff. A Negotiated Rate must be mutually agreed upon by

Transporter and Shipper, and may be based on a rate design other than straight fixed-variable.

27. The term "Net Present Value" ("NPV") shall mean the discounted cash flow of expected revenues per Dekatherm of the applicable service for a term of up to twenty (20) years, using the interest rate set forth in Section 154.501(d) of the Commission's Regulations.
28. The term "Nomination Path" shall mean the route used to transport Gas from the nominated Receipt Point to the nominated Delivery Point.
29. The term "North American Energy Standards Board" or "NAESB" shall mean the private, consensus standards developer whose wholesale natural gas standards are developed by representatives from all segments of the natural gas industry.
30. The term "Operational Leg" shall mean a contiguous, discrete pipeline system, which for the purposes of this FERC Gas Tariff includes but is not limited to the Patterson system, Grand Chenier system, and Transporter's other discontinuous transmission lines located in Transporter's Pipeline System.
31. The term "Pipeline Condensate" shall mean the hydrocarbons in a liquid state which condense out of the Transporter's facilities (Pipeline Condensate Reduction ("PCR") shall be measured in Dekatherms).
32. The term "Primary Delivery Point(s)" shall mean the Delivery Point(s) as specified in the Agreement.
33. The term "Primary Receipt Point(s)" shall mean the Receipt Point(s) as specified in the Agreement.
34. The term "Primary Point(s)" shall mean the Primary Delivery Point(s) and/or Primary Receipt Point(s).
35. The term "Primary Path" shall mean the shortest distance along contiguous Transporter-owned transmission facilities deemed to transport Gas from the Primary Receipt Point to the Primary Delivery Point, and shall be deemed to include points of interconnection with the facilities of third parties, but shall not include transmission laterals unless the affected Shipper's Primary Receipt or Delivery Points are along any such laterals.
36. The term "Receipt Point" shall mean a point on Transporter's Pipeline System that Transporter and Shipper shall agree upon, where Gas enters facilities owned by Transporter, and is metered.

37. The term "Receipt Point MDQ" shall mean the greatest number of Dekatherms that Transporter is obligated to receive for or on behalf of Shipper on any Day at the applicable Primary Receipt Point.
38. The term "Reput" shall mean the reinstatement of a capacity release transaction that was recalled.
39. The term "Scheduled Daily Delivery" shall mean the quantity of gas, up to the MDQ, scheduled by Transporter based upon Shippers nomination and the applicable allocation procedures, and confirmed by Shipper to be delivered or tendered to Transporter for Transportation.
40. The term "Secondary Delivery Point" shall mean a Delivery Point that is not specified as a Primary Delivery Point.
41. The term "Secondary Receipt Point" shall mean a Receipt Point that is not specified as a Primary Receipt Point.
42. The term "Secondary Point(s)" shall mean the Secondary Delivery Point(s) and/or the Secondary Receipt Point(s).
43. The term "Service Day" shall mean the Day during which Shipper receives Transportation Service pursuant to a nomination in accordance with Section 6.6 of these General Terms and Conditions.
44. The term "Service Month" shall mean the Month during which Shipper receives Transportation Services under this Tariff.
45. The term "Swing Percentage" shall mean the percentage of quantities allocated at Delivery Points to each Shipper that will be excused from overrun charges or daily scheduling penalties, as applicable. The Swing Percentage shall be equal to two percent (2%) of the Delivery Point nomination for such Shipper, unless Transporter shall have posted on the Interactive Internet Website a notification that an Extreme Condition Situation exists. In such case, the Swing Percentage shall be equal to one percent (1%) of the Delivery Point nomination for such Shipper.
46. The terms "Tender Gas," "Tender of Gas," and "Gas Tendered" shall mean that the delivering party is able and willing, and offers, to deliver Gas to the receiving party at the appropriate Receipt Point or Delivery Point.
47. The term "Term of Agreement" shall mean the period set forth in the applicable Agreement during which Shipper may take service under the

Agreement and shall be any period of one Day or longer. A period must be for consecutive Days except that Transporter may agree to non-continuous periods for multiple year contracts on a not-unduly discriminatory basis.

48. The term "Transmission Delivery Point(s)" shall mean any Delivery Point.
49. The term "Transmission Receipt Point(s)" shall mean any Receipt Point.
50. The terms "Transportation" and "Transportation Service(s)" shall mean transportation of Gas by either forward haul, exchange or Backhaul or any combination thereof which includes the use of facilities functionalized on Transporter's books as transmission.
51. The term "Transporter" shall mean Kinetica Deepwater Express, LLC.
52. The term "Transporter's Pipeline System" shall mean those transmission facilities owned by the Transporter.
53. The term "Transporter's Rate Schedules" shall mean the collective Rate Schedules Transporter currently offers under Section 5 of this FERC Gas Tariff as may be updated from time to time.
54. The term "Transporter's Use" shall mean 1) the quantity of Gas required by Transporter for compressor fuel and other use gas ("Fuel Use") and 2) the quantity of Gas required by Transporter for lost-and-unaccounted for ("L&U") Gas in the event of an overall system loss, or reimbursed to Shipper in the event of an overall system gain. Transporter's Use shall be equal to the Transporter's Use (%), positive or negative, under each such Agreement times Receipt Point quantities tendered to Transporter.
55. The term "Transporter's Use (%)" shall mean the applicable percentage of Transporter's Use, as specified in the Agreement, which shall be an allocable amount of Transporter's Use. The Transporter's Use (%) shall be comprised of a Fuel Use component and an L&U component, which may be positive, for a system loss, or negative, for a system gain, and shall be calculated by Transporter by appropriate engineering principles. For Backhaul Transportation Service, Transporter shall assess only the L&U component of the Transporter's Use (%), as set forth in Section 6.29 of these General Terms and Conditions.
56. The term "Wire Transfer" shall mean payments made/effected by wire transfer (Fedwire, CHIPS, or Book Entry), or Automated

Clearinghouse, or any other recognized electronic or automated payment mechanism that is agreed upon by Transporter in the future.

57. Capitalized terms not defined herein are defined pursuant to NAESB.

## 6.2 REQUESTS FOR TRANSPORTATION SERVICE

### 6.2.1 Requests.

To seek to qualify for Transportation Service, a potential Shipper shall submit a request for such service in writing or via Transporter's Internet site to the Transporter. Transporter shall evaluate and respond to such requests as soon as is reasonably possible and shall begin service, if an Agreement is executed, as soon as is reasonably possible, after receipt of such request. Such a request shall be considered acceptable and valid only if the information specified in Section 6.2.2 below is provided in writing or via Transporter's Internet site, but Transporter may waive all or a portion of such information in individual instances, when the information is already in the possession of Transporter. If there is insufficient capacity to meet all requests for firm Transportation Service, and Transporter must prioritize such requests pursuant to Section 6.9 paragraph 1 of these General Terms and Conditions, Transporter may require that each such request be accompanied by earnest money in the form of either Wire Transfer or a check payable to Transporter in the amount of the lesser of: (a) ten thousand dollars (\$10,000); (b) the maximum reservation fee which would be due for the first two Months of service for such requested service; or (c) the maximum reservation fee that would be due for the term of the Agreement, which amount shall be applied, until fully used, against the first amounts due by Shipper to Transporter provided, however, that Transporter shall refund such amount to any Shipper whose request is not granted. Requests for service shall be sent to:

Kinetica Deepwater Express,  
LLC 1001 McKinney, Suite 900  
Houston, Texas 77002  
Attn: Contracts  
Telephone: (713) 228-3347  
Facsimile: (281) 200-0747

Email: [contracts@kineticallc.com](mailto:contracts@kineticallc.com)

An Agreement will be deemed executed either (1) in writing or (2) by approval by Transporter of the Agreement via the Interactive Internet Website and the Shipper's nomination on such Agreement, whichever is earlier.

By execution, Shipper will have certified that the Shipper has title to, or the legal right to cause to be delivered to Transporter, for Transportation, the Gas which is to be Transported and owns facilities or contractual rights which will cause such Gas to be delivered to and received from Transporter (or, as appropriate, that the Shipper will have such necessary title or legal right and associated facilities and contractual rights at the time gas is transported by Transporter on Shipper's behalf).

#### 6.2.2 Request for Transportation.

(a) Each request, to be considered as an acceptable and valid request, must furnish the information set forth below.

(b) Requestor's Identification.

Name, address, representative, telephone and fax number of party requesting service.

Is Requestor affiliated with Kinetica? (Please answer this question with "yes" or "no" and provide the % ownership shared between the parties.)

(c) Shipper's Identification.

Is Shipper affiliated with Kinetica? (Please answer this question with "yes" or "no" and provide the % ownership shared between the parties.)

(Note: The "Shipper" is the party which proposes to execute the Agreement.)

(1) Legal Name

(2) Entity Dun & Bradstreet Number

(3) Representative's name, phone number, fax number and E-Mail address

(d) Type of Request.

New Service or Amendments

If amendment is being requested, the reason for the amendment and the Agreement No(s) of the Agreement(s) being amended.

(e) Term of Service.

New Service

(1) Date service is requested to commence.

(2) Date service is requested to \_\_\_\_\_ terminate.

Amendment(s) Effective Date: \_\_\_\_\_

(f) Type of Service(s) Requested.

Specify which Rate Schedule service is desired.

(g) Contract Quantities (stated in Dekatherms).

(1) For Rate Schedule FTS-1 specify Primary Path(s) and Primary Path(s) MDQ described by Primary Receipt Point identification name and number and Primary Delivery Point identification name and number.

(h) Further Agreement.

Describe any other terms and conditions desired.

(i) Notices.

Name, address, representative, telephone and fax number for invoices, statements and all other matters.

6.2.3 Subsequent Information.

Credit Evaluation.

(1) Shipper's Bank References.

- (2) Shipper should submit year end audited financial statements of Shipper together with the latest quarterly report.
- (3) Shipper's Affiliates, including parent, subsidiaries of parent and of such subsidiaries, and subsidiaries of Shipper.
- (4) In the event proceedings have been commenced by or against such Shipper for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension; or in the event a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Shipper, or of a substantial part of its property, or for the winding up or liquidation of its affairs, shall have been entered, or any substantial part of the property of such Shipper shall be sequestered or attached and shall not be returned to the possession of such Shipper or released from such attachment within thirty (30) Days thereafter; or in the event such Shipper shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, Shipper shall be required to fully disclose any and all actions regarding the above described proceedings against Shipper or related parties defined in Section 6.2.3 paragraph (3) above in its request for service.
- (5) If any of the events or actions described in Section 6.2.3 paragraph (4) above shall be initiated or imposed during the term of service hereunder, Shipper shall provide notification thereof to Transporter within two (2) working Days of any such initiated or imposed event or action. Shipper shall also provide, forthwith, such additional Shipper credit information as may be reasonably required by Transporter, at any time during the term of service hereunder, to determine Shipper's creditworthiness.

#### 6.2.4 Amendments to Change or Elevate Points.

- (a) Unless Transporter and Shipper agree otherwise, a Shipper, or a Replacement Shipper that has acquired its capacity through a permanent release, or a Replacement Shipper that has acquired its capacity through a temporary release may elect changes to any Primary Point(s) designated in its Service Agreement. A Shipper shall have these rights provided that such Shipper (1) is paying maximum rates; (2) is paying discounted rates, but is willing to pay maximum rates; or (3) has a provision in its Service Agreement that entitles it to a specified discounted rate at such changed Primary Point(s); and further provided that nothing herein shall prohibit such Shipper from requesting to transfer a discount to the new point when a similarly situated Shipper with a discount is at such Point(s). If such request is from a Replacement

Shipper that acquired capacity through a temporary release, Transporter shall notify the Releasing Shipper of the request, and such request shall be subject to the terms of the release agreement. A Shipper granted a change of Primary Point(s) pursuant to this section shall relinquish the primary status held at the pre-change point(s). Furthermore, a Shipper may only restore such primary status to the pre-changed points by requesting a change pursuant to provisions of this section.

- (b) A Replacement Shipper that has acquired its capacity through a temporary release, may elect to elevate any Secondary Point(s) designated in its Service Agreement to Primary Point(s). Any such elevation shall cause a portion of the MDQ of the Releasing Shipper's contract equal to the MDQ of the Replacement Shipper's contract, to become a maximum rate contract for the term of the elevation, but the Replacement Shipper may request to transfer the Releasing Shipper's discount when a similarly situated Shipper with a discount is at such Point(s). Any incremental charges associated with such elevation shall be billed in accordance with Section 6.20.2 paragraph (b)(2) of these General Terms and Conditions.
- (c) Shipper shall submit a Request for Service Form updating any information that has changed from the Request for Service Form submitted for the existing Agreement. Transporter shall respond to such request within five (5) Business Days, and shall evaluate any such request on a not unduly discriminatory basis with, and applying the same standards for evaluating, any request(s) for new service at such point(s). Transporter shall not be obligated to agree to any changed or elevated point(s) if such request would reduce the economic value of the Shipper's Agreement to Transporter, taking into consideration either: (a) the revenues projected to be received by Transporter at the existing Point(s) under the Agreement; or (b) any potential loss of incremental revenues associated with new service opportunities for which a Request for Service Form is then pending and that would be precluded if the request were granted.

#### 6.2.5 Request Validity.

Shipper's Request for Service shall be considered null and void if Transporter has tendered an Agreement for execution to Shipper and Shipper fails to execute the Agreement within thirty (30) Days thereafter. In determining whether it is feasible to tender an Agreement, after provision for existing requirements on Transporter's system, operating constraints and pending requests for service, Transporter will not tender a firm Agreement which relates to requests for service for which it does not have sufficient available capacity. In addition, Transporter shall not be required to tender an Agreement for service which Shipper cannot begin within thirty (30) Days after the date the request is made pursuant to Section 6.2.1 above or such other period as the parties may agree to in writing.

#### 6.2.6 Complaints.

In the event that a Shipper or potential Shipper has a complaint relative to service under this Tariff, the Shipper shall:

- (a) Provide a description of the complaint, verbally or in writing, including the identification of the transportation request (if applicable), communicated to Transporter. Information regarding the appropriate contact personnel is available via Transporter's Internet site.
- (b) Within forty-eight (48) hours, or two business Days, whichever is later from the Day of receipt of a complaint, Transporter will respond initially to the complaint and Transporter shall respond in writing within thirty (30) Days advising Shipper or potential Shipper of the disposition of the complaint.

#### 6.2.7 Information.

Contact information is available via Transporter's Internet site for any person desiring information on the availability, pricing, or other terms of the Transportation Services.

#### 6.2.8 Relationship with Affiliates.

Information on any facilities that Transporter's transmission function employees share with any of the marketing function employees of its affiliate(s) will be available on its Internet site, in accordance with the Commission's regulations.

#### 6.2.9 Reserved for Future Use.

#### 6.2.10 Sale of Service.

Transporter will respond to requests for Transportation Service submitted in accordance with this Section 6.2 within five (5) Business Days of Transporter's receipt of such request.

- (a) To the extent that Transporter does not consider a request acceptable and valid in accordance with Section 6.2.2 above, Transporter's response shall identify those elements of the request that cause Transporter to consider the request not acceptable and valid in accordance with Section 6.2.2 above.
- (b) To the extent that Transporter considers a request acceptable and valid in accordance with Section 6.2.2 above, Transporter's response shall state whether it is operationally feasible to provide the requested Transportation Service and whether the request for Transportation Service is granted, provided that Transporter shall not be obligated under any circumstances to accept requests for service at rates less than maximum rates.
- (c) To the extent that a request for service is at maximum rates, is at a fixed MDQ for the requested term and it is operationally feasible for Transporter to provide the requested service, then Transporter shall be obligated to grant such requests for service that are made within the time periods set forth below subject to the conditions above:
  - (i) For service for a term of one year or longer, requests made within six (6) months of the requested service commencement date;
  - (ii) For service for a term of less than one year but greater than one month, requests made within thirty (30) days of the requested service commencement date;
  - (iii) For service for a term of one month or less but greater than one day, requests made within six (6) days of the requested service commencement date;
  - (iv) For service for a term of one day, requests made within three (3) days of the requested service commencement date.
- (d) Transporter may grant, on a not unduly-discriminatory basis, requests for service made outside of the time periods set forth in Section 6.2.10 paragraph (c) above.
- (e) Transporter is not required to sell multiple year contracts unless the

request is for continuous service at a fixed MDQ during the contract period.

- (f) Nothing in this Section 6.2.10 shall in any way limit or affect a Shipper's right, as defined under Section 6.21.3 paragraph (b) of these General Terms and Conditions, to select the term of Agreement when the Shipper is willing to pay maximum rates to exercise its ROFR.
- (g) Transporter may conduct an open season to sell capacity that has been posted on the Interactive Internet Website as uncontracted-for capacity and such capacity is not otherwise subject to a pending request for Transportation Services. If Transporter conducts such an open season it will post a notice of the open season on the Interactive Internet Website to afford all potential Shippers an opportunity to acquire the capacity. Any award of capacity through an open season is subject to the requirements for service to commence as set forth in this Tariff, including Transporter's creditworthiness requirements. Any potential shipper wishing to purchase the capacity in an open season may participate in the open season. Transporter will use nondiscriminatory and objective posting, bidding and evaluation criteria, which evaluation criteria will be specified in the notice of open season, along with the details of what constitutes a valid bid request and details of when the successful bidder(s), if any, will be identified by posting of a notice on the Interactive Internet Website. Once an open season commences, all requests for service for the capacity available through the open season will be treated under this open season process.
- (h) Capacity made available in an open season may include capacity for service that commences outside of time periods set forth in Section 6.2.10 paragraph (c) above. Transporter shall conduct an open season to sell capacity in the following circumstances:

If (i) a potential Shipper requests service one year or more in advance of the date that the service is to commence, (ii) capacity available to satisfy that request is not otherwise subject to a pending request for Transportation Services, and (iii) Transporter wishes to sell capacity for the interim period prior to the start of the requested service commencement date without ROFR, then Transporter shall (1) so indicate in its open season posting, (2) include a bid methodology based on a net present value analysis, and (3) include the interim capacity as available capacity to be bid on by potential Shippers in the open season.

Except as otherwise set forth in this Section 6.2.10 paragraph (h), any open season conducted by Transporter in accordance with this Section 6.2.10 paragraph (h) shall comply with Section 6.2.10 paragraph (g)

above.

#### 6.2.11 Availability of Operationally Created Capacity.

- (a) To the extent that, pursuant to Section 6.11 of these General Terms and Conditions, Shipper and Transporter have agreed to a minimum delivery pressure, such Shipper may at any time elect to waive its right to receive deliveries at the minimum delivery pressure specified in its Service Agreement. Should Shipper waive this right, it shall notify Transporter in writing of its waiver, including the following:
  - (1) the applicable Delivery Point(s);
  - (2) the duration of the waiver, which shall be for a term not longer than the remaining term of the applicable Service Agreement; and
  - (3) the minimum pressure to which it agrees to reduce Transporter's delivery obligation.
- (b) Transporter shall notify Shipper of any increased capacity available on mainline or lateral facilities resulting from Shipper's waiver. Shipper shall then have the right to subscribe, for a term not to exceed the term of the waiver, to all or a portion of the additional capacity for firm Transportation Service by providing notice to Transporter within three (3) Business Days of Transporter's notification. Should Shipper make a timely election to utilize all or a portion of the capacity created through the reduction in delivery pressure, Transporter and Shipper shall amend Shipper's existing agreement(s) or alternatively, execute new agreement(s) for the additional capacity in accordance with this Section 6.2.11. A Shipper that makes a timely election to utilize all or a portion of the capacity created through the reduction in delivery pressure may notify Transporter, in writing, of its election to terminate the waiver prior to the term established pursuant to Section 6.2.11 paragraph (a) above. Following such notification by Shipper, and provided that such termination does not affect Transporter's service obligations to Shippers that subscribed for firm service pursuant to Section 6.2.11 paragraph (c) below, Transporter and Shipper shall amend Shipper's agreement(s) to reflect the elimination of the delivery pressure waiver and the new capacity that was created as a result of the waiver.
- (c) To the extent mainline capacity is created and if within the three (3) Business Day period specified in Section 6.2.11 paragraph (b) above, Shipper does not exercise its right to subscribe for the firm capacity created by the waiver, any such unsubscribed capacity shall be available for firm Transportation Service by other Shipper(s) under any of Transporter's existing firm rate schedules for a term not to

exceed the term of the waiver, in accordance with the procedures set forth in Sections 6.2 and 6.9 of these General Terms and Conditions and subject to the provisions of Section 6.2.11 paragraph (d) below.

- (d) Any new agreement entered into pursuant to this Section 6.2.11 shall not be subject to the Right of First Refusal pursuant to Section 6.21 of these General Terms and Conditions, except to the extent that the term of Shipper's agreement is less than the term of the applicable waiver established pursuant to Section 6.2.11 paragraph (a) above, and Shipper is otherwise eligible for a Right of First Refusal under Section 6.21 of these General Terms and Conditions, in which event Shipper may only exercise its Right of First Refusal to extend the applicable agreement for a term that does not exceed the term of the applicable waiver.

#### 6.2.12 Extension of Service Agreements.

- (a) Transporter and Shipper may mutually agree to the early termination of one or more Agreements in exchange for Shipper's extension of the use of all or part of the underlying capacity under new terms. To the extent that Transporter and Shipper have mutually agreed to this arrangement, Shipper need not participate in an open season for the extension nor must the underlying capacity be posted on Transporter's Internet site as unsubscribed, available capacity prior to the extension.
- (b) Prior to the expiration of the term of an Agreement, Transporter and Shipper may mutually agree to an extension of the term of the Agreement with respect to all or part of the underlying capacity (the exact terms of which are to be negotiated on a case-by-case basis in a not unduly discriminatory manner). If an Agreement has a regulatory Right of First Refusal, the agreement to extend must be reached prior to initiation of the Right of First Refusal procedure pursuant to Section 6.21.3 of these General Terms and Conditions.

### 6.3 FACILITIES POLICY

1. Unless otherwise agreed to by the parties, Transporter shall not be required to own, construct and install any facilities to perform any service requested by a Shipper under this Tariff. In the event that Transporter determines that it will construct facilities

that will result in the expansion of its pipeline system, Transporter shall offer the proposed expansion capacity to all Shippers on a non-discriminatory basis. Further, in the event Transporter agrees to own, construct and install facilities to perform services requested including, but not limited to, hot tap, side valve, measurement, gas supply lateral lines, looping and/or compression facilities, Transporter shall do so on a not unduly discriminatory basis, and may require that Shipper reimburse Transporter for all Transporter's costs associated therewith either on a lump sum or incremental fee basis as agreed to by the parties. Nothing in this policy statement shall require Transporter to file an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act. Nothing in this policy statement, further, shall prevent Transporter from contesting an application for service filed pursuant to Section 7(a) of the Natural Gas Act. Transporter reserves the right to seek a waiver of the policy set forth herein, for good cause shown.

## 2. Capacity Reserved for Expansion Projects.

Transporter reserves the right, but shall not be obligated, to reserve for expansion projects capacity that is or will become available. Such available capacity shall consist of the following types of existing or potential unsubscribed capacity:

- (1) Capacity currently posted on Transporter's Internet site under Informational Postings as unsubscribed, available capacity ("Unsubscribed Capacity");
- (2) Capacity that will be returned to Transporter by an existing capacity holder at the expiration of that Shipper's contract term(s) either (i) pursuant to the provisions of Section 6.21, Right of First Refusal ("ROFR"), of these General Terms and Conditions ("ROFR Capacity"), or (ii) by the termination of a contract that does not have a ROFR ("Non-ROFR Capacity");
- (3) Capacity that is returned to Transporter by an existing capacity holder at the expiration of that Shipper's capacity pursuant to the provisions of Section 6.21 of these General Terms and Conditions ("Expiring Capacity"); and
- (4) Capacity that is returned to Transporter in response to a direct solicitation from Transporter to existing capacity holders for permanent releases of capacity to serve an expansion project ("Turnback Capacity").

Hereinafter, any references to the term "capacity" in this Section 6.3 paragraph 2 shall mean the four types of available capacity collectively, unless noted otherwise.

Before any capacity can be reserved by Transporter, it must first be posted on Transporter's Internet site under Informational Postings as Unsubscribed Capacity for at least five (5) Business Days. Such capacity will be awarded pursuant to this Tariff (see Section 6.9 of these General Terms and Conditions).

Any available capacity that remains unsubscribed following the five (5) Business Days posting can be reserved for an expansion project. Transporter shall notify shippers of its reservation of capacity for an expansion project by making a "reservation posting" on its Internet site. The reservation posting shall include, but not be limited to, the following information: (1) a description of the expansion project for which the capacity is being reserved; (2) the quantity of capacity being reserved; (3) the location of the reserved capacity on the pipeline system, specifying the affected pipeline locations and associated quantities within those locations; (4) the estimated in-service date of the expansion project; (5) the anticipated timing of the expansion open season; and (6) on an ongoing basis, how much of the reserved capacity has been sold on a limited-term basis that would otherwise be eligible for a right of first refusal. Transporter shall make reasonable efforts to update the reservation posting up to the in-service date of the expansion project to reflect any material changes in the scope of the expansion project.

Transporter may only reserve capacity for an expansion project for which an open season has been held or will be held within one (1) year of the date that Transporter posts such capacity on its Internet site under Informational Postings as being reserved. Transporter shall make a non-binding solicitation for Turnback Capacity no later than 90 days after the close of the expansion project open season specifying the minimum terms for a response to the solicitation. Capacity that has been reserved for a future expansion project that does not go forward will be reposted as generally available within 30 days of the date that the capacity becomes available subject to the provisions of Section 6.21.2 of these General Terms and Conditions.

Capacity may be reserved for an expansion project only during a 12-month period prior to Transporter filing for certificate approval for construction of proposed expansion project and thereafter until all expansion facilities are placed into service.

Any capacity reserved under this Section 6.3 paragraph 2 shall be made available for Transportation Service pursuant to these General Terms and Conditions on a limited-term basis up to the in-service date of the expansion project(s). For such limited-term agreements, Transporter reserves the right to limit any extension rights provided in the Service Agreement and pursuant to Section 6.21 of these General Terms and Conditions, commensurate with the proposed in-service date of the expansion project, or the actual in-service date if the project has not been completed by the proposed in-service date. Transporter will indicate any limitations on extension rights that will apply to such limited-term Transportation Service on Transporter's Internet site under Informational Postings listing Unsubscribed Capacity.

Reservation of capacity under this Section 6.3 paragraph 2 shall not in any way modify or limit existing capacity holders' rights under Section 6.21 of these General Terms and Conditions.

## 6.4 RECEIPT AND DELIVERY POINT OPTIONS

### 1. Firm Receipt Point Options.

- (a) Agreements shall specify the Receipt Point MDQs by Primary Receipt Point(s) for each Primary Path.
- (b)(1) Any firm service Shipper (including any Releasing Shipper or Replacement Shipper) shall be entitled to nominate any Receipt Point as a Secondary Receipt Point. Any such transportation from any Secondary Receipt Point within the Primary Path shall be at the rate applicable to service from the Primary Receipt Point to the Primary Delivery Point, unless Transporter and Shipper shall expressly agree otherwise.
- (2) In the case of a capacity release, if: (i) a Replacement Shipper nominates any Secondary Receipt Point, outside of the Primary Path; or (ii) the Replacement Shipper nominates any Secondary Receipt Point within the Primary Path and Transporter and Releasing Shipper have agreed otherwise pursuant to Section 6.4 paragraph 1(b)(1) above; then any such transportation shall be at the maximum rates and charges applicable to service from the nominated Secondary Receipt Point to the nominated Delivery Point.

### 2. Firm Delivery Point Options.

- (a) Agreements shall specify the Delivery Point MDQs by Primary Delivery Point(s) for each Primary Path.
- (b)(1) Any firm service Shipper (including any Releasing Shipper or Replacement Shipper) shall be entitled to nominate any Delivery Point as a Secondary Delivery Point. Any such transportation to any Secondary Delivery Point within the Primary Path shall be at the rate applicable to service from the Primary Receipt Point to the Primary Delivery Point, unless Transporter and Shipper shall expressly agree otherwise.
- (2) In the case of a capacity release, if: (i) a Replacement Shipper nominates any Secondary Delivery Point, outside of the Primary Path; or (ii) the Replacement Shipper nominates any Secondary Delivery Point within the Primary Path and Transporter and Releasing Shipper have agreed otherwise pursuant to Section 6.4 paragraph 2(b)(1) above; then any such transportation shall be at the maximum rates and charges applicable to service from the nominated Receipt Point to the nominated Secondary Delivery Point.

## 6.5 TRANSPORTATION SERVICE

### Operating Tolerances.

Variations of allocated receipts from nominations shall be kept to a minimum by Shippers, and shall be balanced as soon as practicable, but shall not exceed a daily variation of five percent (5%) of the nominated receipts; provided, however, that Transporter shall allow a greater variation on a not unduly discriminatory basis:

- (a) Transporter shall have the right to adjust the nominations for receipts or deliveries under any Agreement, effective with at least twenty (20) hours prior notice, if the difference in any Day between nominated and allocated quantities at a Receipt Point under such Agreement is at least five percent (5%) of the nominations.
- (b) Transporter shall not adjust nominations pursuant to Section 6.5 paragraph (a) above unless continued deviations from the applicable tolerance levels would likely threaten, in Transporter's reasonable judgment, the operational integrity of Transporter's Pipeline System.
- (c) Transporter also reserves the right to adjust nominations for receipts or deliveries of Gas of the affected Shipper(s), effective immediately, if any of the following occurs:
  - (1) the quantities of Gas received by Transporter on behalf of a Shipper at any Receipt Point(s) that is an interconnection with an upstream pipeline are reduced by such upstream pipeline; or
  - (2) the quantities of Gas delivered by Transporter on behalf of a Shipper at any Delivery Point(s) that is an interconnection with a downstream pipeline are reduced by such downstream pipeline.
- (d) If Transporter lowers the Shipper's receipt and/or delivery nomination as a result of an event of Force Majeure outside the control of Shipper, Transporter shall provide Shipper with forty-eight (48) hours, after the time Shipper is no longer affected by the event of Force Majeure, to regain its capacity on Transporter's system for the remainder of that Service Month; provided, however, such capacity will not be reserved if the Shipper's Receipt Point is at an interconnection with an upstream pipeline that does not have a corresponding provision in its tariff for maintaining capacity for at least seventy-two (72) hours.
- (e) If, after notification of a nomination change to its receipts or deliveries pursuant to this section, or after notification by Transporter of a change in receipts tendered to conform to nominations, a Shipper does not effectuate such change, then at the end of the Service Month Transporter shall charge Shipper the maximum Cashout

imbalance rate if deliveries were in excess of Transporter's reduced delivery nomination or the Transporter will pay the minimum Cashout rate if receipts were in excess of the reduced receipt nomination. Any required payments pursuant to this provision shall be combined with any Monthly imbalance Cashout payment that is payable for such Agreement pursuant to Section 6.15 of these General Terms and Conditions.

- (f) Notwithstanding any other provision to the contrary, should the quantities of Gas received from Shipper at any Receipt Point exceed the applicable nomination and:
  - (1) such overdelivery, if continued, would threaten the operational integrity of Transporter's system, Shipper, or Shipper's supplier, shall reduce its overdeliveries at such Receipt Point immediately upon notification from Transporter. Failure to comply with Transporter's request to cease overdeliveries shall subject Shipper, in addition to the imbalance charges set forth in Section 6.5 paragraph (f)(2) below to all costs, losses, foregone revenues and damages of any nature whatsoever, direct or indirect; and
  - (2) such overdelivery affects other Shippers' receipts in a capacity constrained location, Shipper, or Shipper's supplier, shall reduce its overdeliveries at such Receipt Point immediately upon notification from Transporter. Failure to comply with Transporter's request shall create an imbalance for all overdeliveries, for which Transporter shall pay Shipper the minimum applicable Cashout Price.
- (g) Consistent with the allocation procedures set forth in Section 6.14 of these General Terms and Conditions, and notwithstanding anything contained in this Section 6.5 express or implied to the contrary, under no circumstances shall Transporter be obligated to deliver to any Shipper, on any Day, a quantity of Gas under any Agreement greater than Transporter receives at Receipt Point(s) on behalf of such Shipper for such Agreement.
- (h) If an event of Force Majeure occurs and Transporter is unable specifically and timely to implement the provisions of this Section 6.5, Transporter shall curtail all services on a pro rata basis to preserve the operational integrity of its system.

## 6.6 NOMINATIONS

Transporter shall accept nominations twenty-four (24) hours a Day via the Interactive Internet Website or the EDM that is authorized by the Commission. All nominations submitted to and accepted by Transporter must contain, at a minimum, the mandatory data elements included in the NAESB standards and any additional business-conditional or

mutually agreeable data elements. In addition, nominations must be stated in Dths, and specify a begin and an end date, which dates must be for a minimum period of one (1) Day, and must be within the term of Shipper's Agreement. At the end of each Day, Transporter shall provide the final scheduled quantities for the just completed Day. With respect to the implementation of this process via the EDI/EDM, Transporter shall send an end of Day Scheduled Quantity (NAESB WGQ Standard 1.4.5) and Scheduled Quantity for Operator (NAESB WGQ Standard 1.4.6). A receiver of either of these documents can waive Transporter's requirement to send such documents.

#### 6.6.1 Submission of Nominations.

- (a) All new or revised nominations must be communicated via the Interactive Internet Website or EDM unless otherwise mutually agreed, and must be submitted in accordance with the standard nomination timelines set forth below. A revised nomination supersedes the previous nomination in effect, but only for the Days specified in such revised nomination, after which the previous nomination once again takes effect until its end date or until superseded by another new or revised nomination, whichever is earlier. For purposes of NAESB WGQ Standard 1.3.2(ii), (iii), (iv), and (v), the word "provides" shall mean, for transmittals pursuant to NAESB WGQ Standards 1.4.x, receipt at the designated site, and for purposes of other forms of transmittal, it shall mean send or post.

The standard nomination timelines are as follows (all times shown are Central Clock Time pursuant to NAESB WGQ Standard 0.3.17):

- (1) The Timely Nomination Cycle  
On the Day prior to the Service Day:
  - 1:00 p.m. Latest time that nominations may leave control of the service requester;
  - 1:15 p.m. Receipt of nominations by Transporter (including from Title Transfer Tracking Service Providers ("TTTSPs"));
  - 1:30 p.m. Transporter sends the quick response to the service requester;
  - 4:30 p.m. Receipt of completed confirmations by Transporter from confirming parties;
  - 5:00 p.m. Service requester and point operator receive scheduled quantities from Transporter.

Scheduled quantities resulting from the Timely Nomination Cycle shall be effective at 9:00 a.m. CCT on the start of the next Service Day.

(2) The Evening Nomination Cycle  
On the Day prior to the Service Day:

- 6:00 p.m. Latest time that nominations may leave control of the service requester;
- 6:15 p.m. Receipt of nominations by Transporter (including from TTTSPs);
- 6:30 p.m. Transporter sends the quick response to the service requester;
- 8:30 p.m. Receipt of completed confirmations by Transporter from confirming parties;
- 9:00 p.m. Transporter provides scheduled quantities to the affected service requester and point operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from the Evening Nomination Cycle shall be effective at 9:00 a.m. CCT on the start of the next Service Day.

(3) The Intraday 1 Nomination Cycle  
On the current Service Day:

- 10:00 a.m. Latest time that nominations may leave control of the service requester;
- 10:15 a.m. Receipt of nominations by Transporter (including from TTTSPs);
- 10:30 a.m. Transporter sends the quick response to the service requester;
- 12:30 p.m. Receipt of completed confirmations by Transporter from confirming parties;
- 1:00 p.m. Transporter provides scheduled quantities to the affected service requester and point operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from the Intraday 1 Nomination Cycle shall be

effective at 2:00 p.m. on the current Service Day.

(4) The Intraday 2 Nomination Cycle  
On the current Service Day:

- 2:30 p.m. Latest time that nominations may leave control of the service requester;
- 2:45 p.m. Receipt of nominations by Transporter (including from TTTSPs);
- 3:00 p.m. Transporter sends the quick response to the service requester;
- 5:00 p.m. Receipt of completed confirmations by Transporter from confirming parties;
- 5:30 p.m. Transporter provides scheduled quantities to the affected service requester and point operator, including bumped parties (notice to bumped parties).

Scheduled quantities resulting from the Intraday 2 Nomination Cycle shall be effective at 6:00 p.m. on the current Service Day.

(5) The Intraday 3 Nomination Cycle  
On the current Service Day:

- 7:00 p.m. Latest time that nominations may leave control of the service requester;
- 7:15 p.m. Receipt of nominations by Transporter (including from TTTSPs);
- 7:30 p.m. Transporter sends the quick response to the service requester;
- 9:30 p.m. Receipt of completed confirmations by Transporter from confirming parties;
- 10:00 p.m. Transporter provides scheduled quantities to the affected service requester and point operator.

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

- (b) Shipper shall also include in its nomination the desired order of priority of receipts and deliveries under each Agreement and Transporter may rely thereon (or in the absence of such information, upon Transporter's judgment) if Transporter takes action to change receipts and/or deliveries according to Section 6.5 of these General Terms and Conditions. The order of priority shall indicate that a priority of one (1) shall be the last to be affected by changes. Nominations with the same priority will be adjusted pro rata.
- (c) If a Shipper completes and resubmits an otherwise incomplete nomination, the first nomination cycle that occurs where the Shipper's complete nomination meets the deadline for nominations to leave a Shipper's control will apply to the Shipper's nomination.
- (d) Variations by Shipper of actual deliveries to Transporter from the nominated deliveries at the Receipt Point(s) shall be kept to a minimum. In addition, variations by Shipper of actual receipts from Transporter from the nominated receipts at the Delivery Point(s) shall be kept to a minimum. If the nominated quantity cannot be delivered or received at uniform daily rates, provisions to deliver the Gas at a non-uniform rate must be made with Transporter's Gas Control Department prior to Gas flowing.
- (e) Any nomination that is submitted and validated by the Interactive Internet Website or EDM shall be considered valid.
- (f) Any shipper may designate an agent, which may be Transporter, to nominate and schedule Transportation Service on Shipper's behalf. Shipper shall notify Transporter, in writing or via the Interactive Internet Website, of the designated agent. An agent who has been designated to nominate and schedule Transportation Service for more than one Shipper may provide aggregate nomination(s) for multiple Shippers. Transporter is authorized to rely on nominations and scheduling information provided by Shipper's agent. By designating an agent, Shipper agrees to indemnify and save Transporter harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising in any way from Shipper's agent's actions on behalf of Shipper, Shipper's agent's failure to act on behalf of Shipper, or Transporter's reliance upon the information provided to Transporter by Shipper's agent; provided, however that such indemnification will not excuse Transporter from liability for actions taken when Transporter is acting as agent.

#### 6.6.2 Implementation of Intra-day Nominations.

- (a) Subject to the deadlines in Section 6.6.1 paragraph (a)(2) through (5) above, intraday nominations may be nominated twenty-four (24) hours a Day and will be processed in the same manner as other nominations. However, the nomination deadline and effective time of intra-day nominations specified in Section 6.6.1 paragraph (a) above will not apply to OFO-related intra-day nominations.
- (b) Subject to upstream and downstream operators' confirmations and Transporter's operating conditions, an intra-day nomination submitted pursuant to one of the deadlines set forth in Section 6.6.1 paragraph (a) above can be used to request increases or decreases in total flow, changes to Receipt Points, or changes to Delivery Points, of scheduled Gas. Transporter will not accept a reduced intra-day nomination for any quantity deemed already delivered based on an elapsed-prorated- scheduled quantity.
- (c) Transporter shall allow Shipper to alter the order of priority of receipts and deliveries upon which Transporter shall rely in taking actions to adjust receipts and/or deliveries under Section 6.5 of these General Terms and Conditions, provided that such changes are submitted via the Interactive Internet Website or EDM in accordance with the nomination deadlines set forth in Section 6.6.1 paragraph (a) above. If Shipper adds a new nomination at a Receipt Point or Delivery Point under its Agreement during the Service Day, provided that any of such additions are not performed simultaneously with a change in priorities that accommodates the new receipt or delivery, Transporter shall place such addition as the last in priority to be affected by any changes under Section 6.5 of these General Terms and Conditions.
- (d) Notice. For purposes of providing notice of any nomination changes (including where an interruptible Shipper's nomination is bumped by a firm Shipper's intra-day nomination) to a Shipper and/or Shipper's agent, Transporter shall use Electronic Communication. Intra-day bump notices should indicate whether daily penalties will apply for the Gas Day for which quantities are reduced. With respect to changes initiated by Transporter, if a Shipper so elects, such Shipper may provide a telephone number and Transporter will contact Shipper at such phone number by means of Electronic Communication to alert Shipper that a change has been made. Such Shipper shall then be responsible for reviewing its Interactive Internet Website account to obtain details of such change.
- (e) Daily Scheduling Penalties. Transporter will not impose any daily scheduling penalties as a result of nomination changes notified under Section 6.6.2 paragraph (d) above if the Shipper can demonstrate that it made a good faith attempt to accept Electronic Communication, and such Electronic Communication could not be accepted through no fault of Shipper, such as an event of force majeure affecting Shipper's facilities. In addition, where an interruptible Shipper's nomination is bumped by a

firm Shipper's intraday nomination, Transporter will, in noncritical situations, waive any daily scheduling penalty for such bumped interruptible Shipper.

#### 6.6.3 Delivery of Gas.

Transporter, subject to the other provisions hereof, shall make daily delivery of Equivalent Quantities of Gas at the Delivery Point(s) that Shipper has nominated and Transporter has simultaneously received at Receipt Point(s). Shipper will not have the right to receive quantities of Gas that it has not simultaneously nominated and delivered to Transporter at Receipt Point(s).

#### 6.6.4 Hourly Variation.

Receipts and deliveries shall be made for all Transportation Services at uniform rates over a twenty-four (24) hour period to the extent practicable. However, Transporter shall not enforce such uniform twenty-four (24) hourly rate limits unless it has provided at least two (2) hours notice to Shipper that it must enforce such hourly rate limits due to operational constraints.

#### 6.6.5 Elimination of Inactive Agreements.

In order to eliminate Agreements that Shippers have not nominated and utilized for service under interruptible rate schedules for a period of twelve (12) consecutive months, Transporter shall be authorized to advise Shipper by mail that the Agreement(s) may be terminated if not utilized during the next six Months following notice, and the priority established for such Agreement(s) pursuant to Section 6.9 paragraph 2 of these General Terms and Conditions relinquished, regardless of the original term established under such Agreement(s). Nominations submitted and rejected because of capacity constraints will qualify as being utilized under this provision.

#### 6.6.6 Scheduled Nominations.

Shipper will be required to review the Interactive Internet Website to view all scheduled nominations. Transporter will notify a Shipper via Electronic Communication, if a segmented nomination was not accepted and the reason why.

## 6.7 FORCE MAJEURE

1. Definition. The term "Force Majeure" as used herein shall mean acts of God, strikes, lockouts, or other industrial disturbances; acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms (including but not limited to hurricanes or hurricane warnings), crevasses, floods, washouts, arrests and restraints of the government, either Federal or State, civil or military, civil disturbances. Force Majeure shall also mean shutdowns for purposes of unexpected and uncontrollable repairs, relocation, or construction of facilities; failure of electronic data capability; breakage or accident to machinery or lines of pipe; the necessity for testing, excluding that associated with normal and planned maintenance (as required by governmental authority or as deemed necessary by Transporter for the safe operation thereof), the necessity of making unexpected and uncontrollable repairs or alterations to machinery or lines of pipe; failure of surface equipment or pipe lines; accidents, breakdowns, inability to obtain necessary materials, supplies or permits, or labor to perform or comply with any obligation or condition of service, rights of way; and any other causes, whether of the kind herein enumerated or otherwise which are not reasonably in Transporter's control. It is understood and agreed that the settlement of strikes or lockouts or controversies with landowners involving rights of way shall be entirely within Transporter's discretion and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts or controversies with landowners involving rights of way by acceding to the demands of the opposing party when such course is inadvisable in the discretion of Transporter.
2. Force Majeure. If by reason of Force Majeure either party hereto is rendered unable, wholly or in part, to carry out its obligations under this Tariff, it is agreed that upon such party giving notice in full particulars of such Force Majeure in writing or by other electronic means to the other party within a reasonable time after the occurrence of the cause relied on, the party giving such notice, so far as and to the extent that it is affected by such Force Majeure, shall not be liable in damages during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

Transporter shall not be liable in damages to Shipper other than for acts of gross negligence or willful misconduct and then only where Force Majeure does not apply.

3. Limitations. Such Force Majeure affecting the performance hereunder by either Transporter or Shipper, however, shall not relieve such party of liability in the event of failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such cause or contingency affecting such performance relieve Shipper from its obligations to make payments as then due or becoming due determined hereunder. Transporter shall notify any affected Shipper of such Force Majeure by use of Electronic Communication.

## 6.8 OPERATIONAL FLOW ORDER(S)

### 6.8.1 General.

Transporter, in its discretion, shall have the right to issue OFOs when in its judgment it is necessary to maintain or restore the operational integrity of Transporter's Pipeline System. Where a particular Shipper's conduct threatens the operational integrity of Transporter's Pipeline System, Transporter will first attempt to modify such Shipper's offending conduct, including the issuance of an OFO to such offending Shipper, before Transporter issues an OFO to non-offending Shippers. Before issuing an OFO, Transporter will also evaluate and implement any reasonable alternatives thereto (e.g., declining to schedule firm secondary nominations and/or curtailing interruptible service). Further, Transporter will not be required to issue an OFO:

- (a) to deliver Gas to any Shipper that has not tendered Equivalent Quantities of Gas to Transporter's Pipeline System; or
- (b) to any other pipeline in order to obtain access to quantities of Gas, except to the extent that such quantities of Gas are being transported by such pipeline for the account of a Shipper or Transporter; or
- (c) to be a supplier of last resort for any Shipper that has insufficient Gas supply.

Transporter shall not be required to respond to any OFO that it receives from another interstate pipeline that is not currently providing equivalent quantities and pressures of Gas to Transporter, unless Transporter is a shipper on that pipeline.

6.8.2 Forms of OFOs. An OFO may:

- (a) direct any Shipper to increase quantities tendered or taken, or increase pressures at a Receipt Point, in accordance with Section 6.8.4 below; or
- (b) utilize such services as may be available under an OFO performance contract in accordance with Sections 6.8.5 and 6.8.6 below; or
- (c) implement verbal arrangements with other transporters; or
- (d) enable Transporter to take or require any other actions as may be deemed necessary by Transporter in its judgment in order to maintain the operational integrity of Transporter's Pipeline System.

6.8.3 OFO Operational Conditions. OFOs may be issued in any of the following circumstances:

- (a) to alleviate conditions that threaten the operational integrity of Transporter's Pipeline System; or
- (b) to maintain minimum necessary pressures for pipeline operations; or
- (c) to ensure adequate Gas supplies in Transporter's Pipeline System to inject Gas into the mainline, or provide line pack; or
- (d) to maintain Transporter's Pipeline System in balance for the foregoing purposes.

The OFO will remain in effect until the operational condition requiring its issuance has been remedied.

6.8.4 OFOs to Increase Quantities.

Transporter may issue an effective OFO to any Shipper under Rate Schedule FTS-1, to increase quantities tendered to Transporter at Shipper's Primary Receipt Point, up to the Shipper's Primary Receipt Point MDQ. Shipper will be required to comply with such OFO within twenty-four (24) hours prior notice.

#### 6.8.5 OFO Supply Contracts.

Transporter may enter into a supply contract, on such terms and conditions as it may deem appropriate, with any supplier of Gas, which supply contract will authorize Transporter to purchase supplies pursuant to an OFO.

#### 6.8.6 OFO Performance Contracts.

Transporter may enter into performance contracts, on such terms and conditions as it may deem appropriate, with Shippers or any other parties receiving firm deliveries from Transporter, which performance contracts will authorize Transporter to interrupt deliveries to Shipper while maintaining its receipts to Transporter, which interrupted quantities will be purchased by Transporter under the provisions of such performance contracts.

#### 6.8.7 Advance Warning and Update of Status.

- (a) As soon as reasonably practicable, Transporter will post a warning of the conditions that may create an OFO, and of the specific type of OFO that Transporter might issue.
- (b) Transporter shall further undertake to post on its Internet site, as soon as reasonably practicable, any information about the status of operational variables that determine when an OFO will begin and end, and such information will be updated as soon as it is available.

#### 6.8.8 OFO Notice, Contents and Procedures.

Transporter shall issue an OFO as expeditiously as is reasonably practicable in the circumstances, through posting and utilizing Electronic Communication. Each OFO will contain the following provisions:

- (a) time and date of issuance;

- (b) time that the OFO is considered to be effective (if no time is specified, the OFO shall be effective immediately);
- (c) duration of the OFO (if none is specified, the OFO will be effective until further notice);
- (d) the party or parties receiving the OFO;
- (e) the quantity of Gas required to remedy the operational condition requiring the issuance of the OFO; and
- (f) any other terms Transporter may reasonably require to ensure the effectiveness of the OFO.

#### 6.8.9 Failure to Comply with OFO.

If Shipper (or Shipper's Gas seller, supplier, agent, or the producer and/or operator as the circumstances may require) fails to comply with the terms of a validly issued OFO, for any reason other than Force Majeure on an upstream pipeline, such Shipper shall be: (a) liable for any damages including, but not limited to direct, consequential, exemplary or punitive damages incurred by Transporter or any other affected party as a result of such failure; and (b) subject to a penalty of fifty dollars (\$50.00) for each Dekatherm of Gas associated with the quantity of Gas that does not comply with such OFO. Notwithstanding anything to the contrary in this Section 6.8.9, if Shipper is required to make a nomination pursuant to an OFO, unless critical circumstances dictate otherwise, no damages and/or penalties will be assessed unless Shipper is given the opportunity to correct the circumstances giving rise to the OFO, and (b) Transporter shall waive otherwise applicable penalties for failure to comply with an OFO to the extent the Shippers' actions are consistent with the following, if: (1) Transporter has provided in advance and on a non-discriminatory basis notice to Shippers that Transporter has determined that specific actions that may otherwise be deemed non-compliant with an OFO will benefit Transporter's Pipeline System; or (2) if a Shipper, prior to taking action that would otherwise be non-compliant with the OFO, has discussed such action with Transporter and receives authorization from Transporter to take such action.

#### 6.8.10 Reimbursement.

If Transporter receives Gas pursuant to an OFO issued under Section 6.8.4 above, then Transporter shall pay the full commodity rate applicable to the primary gas purchaser,

whether higher or lower than Transporter's Cashout price. If Transporter receives Gas pursuant to an OFO issued under Sections 6.8.5 and 6.8.6 above, Transporter shall pay the recipient of the OFO for such quantity of Gas at the applicable contract price.

Notwithstanding the foregoing, any party supplying Gas to Transporter under Sections 6.8.4, 6.8.5 and 6.8.6 above shall have the right to receive such imbalance in kind, delivered to such recipient by no later than the Month subsequent to the Month in which the OFO was issued.

#### 6.8.11 Transporter Cost Recovery for OFO.

Transporter shall direct bill pipeline transmission charges incurred as a result of an OFO to all firm Shippers on a system-wide basis. Gas purchase costs and quantities incurred as a result of an OFO shall be channeled through Transporter's Cashout program pursuant to Section 6.15 of these General Terms and Conditions.

#### 6.8.12 Transporter Liability for OFOs.

Transporter shall not be liable to any person for any costs, damages or other liability associated with the issuance of, or the failure to issue, any OFOs, other than such costs to be paid by Transporter according to Section 6.8.11 above; provided, however, Transporter shall be liable for acts of negligence or undue discrimination, such standards to be judged in light of the emergency conditions under which OFOs are issued.

#### 6.8.13 Transporter's Scheduling Authority.

Transporter shall have the right to act as a scheduling agent for a Shipper's account if (i) the Shipper refuses to schedule gas receipts as specified by an OFO issued pursuant to Section 6.8.4 above; or (ii) if Transporter requires additional quantities in less than the twenty-four (24) hour notice period normally required for an OFO, and the Shipper has refused a verbal request to schedule the required quantity of Gas.

#### 6.8.14 Reporting.

Within ten (10) Days after an OFO terminates, Transporter will post a report containing information on the factors that caused the OFO to be imposed and to be terminated.

### 6.9 PRIORITY OF REQUESTS FOR SERVICE

The following provisions shall govern requests for service among services rendered and to be rendered under this FERC Gas Tariff.

1. Firm Services Priority of Requests. If there is insufficient firm capacity available to accept all new requests for service, after providing for Agreements for firm Transportation Service, the priority of requests for firm Transportation Service received by Transporter shall be pursuant to the greatest NPV, provided, however, that Transporter shall not be obligated to provide service below the maximum applicable rate(s). Usage components will be considered in deriving the NPV for any offer involving a Negotiated Rate transaction that includes a minimum volume commitment. In such instance, usage rate components, to the extent of any minimum volume commitment, will be evaluated using the same criteria applied to the reservation rate components; the sum of the resulting reservation and minimum usage revenues will be used to determine the greatest NPV. Shippers offering to pay a Negotiated Rate which exceeds the applicable maximum tariff rates, including surcharges, shall be considered to be paying such applicable maximum tariff rates in determining the NPV for such Agreement. If more than one such request for firm Transportation Service has the same NPV, then the order of priority as among such requests shall be determined by the order in which the requests are received by Transporter. Requests received by mail will be deemed received at 5:00 p.m. on the date of postmark. Requests received by facsimile or electronic mail will be deemed received at the time noted on the Transporter's facsimile transmission sheet or the electronic mail.
2. Interruptible Services. Agreements relating to interruptible transportation service obligations, and extensions thereof, shall have priority based upon the date of receipt by Transporter, during normal business hours, of valid requests for such service or in the absence of such date, the date of the Agreement.
3. Conditions.

In offering Transportation service from time to time, Transporter may deem any offer made by telephone or other instant communication method to have been refused if acceptance thereof is not communicated to Transporter within six normal working

hours after such offer, or as otherwise agreed to by the parties. The deeming of any such offer as refused shall not disqualify the Shipper from receiving subsequent such offers of further service.

## 6.10 SCHEDULING AND CURTAILMENT OF SERVICES

6.10.1 Scheduling. Transporter will schedule nominated services as of each nominating cycle in accordance with the following procedures:

(a) Transporter will determine available pipeline capacity and allocate it preliminarily to services in the following sequential order, utilizing the Priority Classes defined below: (1) to Priority Class One nominations, pro rata if necessary, up to MDQ; then (2) Priority Classes Two nominations, up to MDQ, on the basis of Confirmed Price; and then (3) to Priority Class Three nominations on the basis of Confirmed Price. Transporter will also determine whether or not there is available capacity at the receipt or delivery points associated with the services that have been preliminarily allocated pipeline capacity pursuant to this Section 6.10.1 paragraph (a). In the event that insufficient capacity exists at a point to accommodate all nominations, the available capacity at the point will be allocated: (1) to firm Primary Point nominations, pro rata if necessary; then (2) to firm Secondary Point nominations on the basis of Confirmed Price; and then (3) to interruptible/FTS-1 overrun nominations on the basis of Confirmed Price, provided that in the event of an equal Confirmed Price within either (2) or (3) above, the capacity will be allocated pro rata. Upon completion of this allocation process, each service will be scheduled at a level of entitlements equal to the lesser of the mainline or point capacity that has been allocated to such service.

(b) The Priority Classes of service to be used for scheduling purposes shall be as follows:

Priority Class One. Part 284 firm service to points only within the Primary Path.

Priority Class Two. All Part 284 firm service nominations outside the Primary Path.

Priority Class Three. Interruptible and FTS-1 overrun.

- (c)(1) For purposes of this Section 6.10.1, Confirmed Price shall be defined as the Shipper's contract price computed at one hundred percent (100%) load factor.
- (2) To the extent a Shipper's Confirmed Price is either derived from a capacity release transaction or from a Negotiated Rate pursuant to Sections 6.20 or 6.25, respectively, of these General Terms and Conditions and exceeds the applicable maximum tariff rates, including surcharges, such Shipper's Confirmed Price for purposes of this Section 6.10.1 will be based upon the applicable maximum tariff rates.

Ties within any priority class shall be allocated pro rata based on nominations.

#### 6.10.2 Allocation and Curtailment of Capacity During a Service Day.

If, for any Day, Transporter determines that the capacity of its system, or portion(s) thereof, is insufficient to serve all transportation requirements scheduled for such Day, or to accept the quantities of Gas tendered, capacity which requires curtailment shall be curtailed so as to provide the service which is feasible, in the order prescribed for scheduling above; provided, however, that once capacity is scheduled, firm deliveries at Secondary Receipt and Delivery Points will not have a lower priority than firm deliveries at Primary Receipt and Delivery Points; provided, further, that to enable prompt action in an emergency situation where capacity is insufficient, Transporter shall have the authority to take all necessary and appropriate actions, as then may appear necessary, to preserve the operational integrity of its system. Transporter shall not impose any Cashout Price in excess of one hundred percent (100%) with respect to any quantities out of balance that are attributable to implementation of this emergency situation procedure. Transporter shall notify Shippers of the existence of any such emergency situation by use of Electronic Communication, as soon as is reasonably practicable, and shall include with such notification the information set forth in Section 6.8.8 of these General Terms and Conditions.

#### 6.10.3 Segmentation of Capacity.

- (a) Any Shipper, or Replacement Shipper, receiving firm Transportation Service may segment its capacity by nominating, either on a forward haul or backhaul basis, service at any Receipt Point and Delivery Point within the Operational Leg containing the Primary Path specified in its Service Agreement, up to MDQ, provided that: (1) the segmentation nomination is operationally feasible as described in part (b) below; (2) the total of the segmentation nominations by the

original Shipper or a combination of Releasing and Replacement Shippers on any overlapping segment, or at any common point used by multiple forward haul segments, does not exceed the firm entitlements of the underlying segmented Service Agreement on a firm basis; (3) capacity exists at the applicable Receipt and Delivery Points subject to the segmentation nomination.

Further, unless otherwise agreed, the rates and charges applicable to service from the Primary Receipt Point to the Primary Delivery Point shall also apply to segmentation nominations along the Primary Path.

- (b) For purposes of determining whether a nominated segmented release is operationally feasible, Transporter shall take into consideration: (1) the location, requiring that the nominated segmented release must occur within the Operational Leg of Transporter's Pipeline System containing the Primary Path; (2) the availability of Operational Leg and/or point capacity; and (3) whether or not the nomination is otherwise consistent with the tariff requirements and scheduling practices for all of Transporter's services.
- (c) Notwithstanding the provisions of Section 6.10.3 paragraph (a)(2) above, if the sum of the nominations on an overlapping segment exceed the firm entitlements of the underlying segmented Service Agreement, the Releasing and/or Replacement Shipper(s) shall be required to notify Transporter as to which quantities (up to the level of the firm entitlements of the underlying segmented Service Agreement) shall be treated as a firm nomination, and which shall be treated as an authorized overrun nomination. In the absence of such notice, the services shall be scheduled in accordance with Section 6.10.1 above, provided however, that if both services are of equal priority, then Transporter shall treat the nomination of the Releasing Shipper as the nomination entitled to the firm priority status up to the level of the firm entitlements of the underlying segmented Service Agreement.

#### 6.11 PRESSURE AT RECEIPT POINT(S) AND DELIVERY POINT(S)

1. Pressure at Receipt Point(s). Shipper shall cause the Gas to be delivered at the Receipt Point(s) at a pressure sufficient to allow the Gas to enter Transporter's existing pipeline system; provided, however, that such pressure of the Gas delivered or caused to be delivered by Shipper shall not exceed Transporter's Maximum Allowable Operating Pressure.
2. Pressure at Delivery Point(s). Unless otherwise agreed to by the parties as set forth in the Agreement, Transporter shall redeliver the Gas to Shipper at the Delivery Point(s) hereunder at Transporter's prevailing line pressure as such may vary from time to time.

3. Pressure Commitments. If mutually agreed in the Agreement, Transporter may make minimum receipt or delivery pressure commitments to Shippers on a non-discriminatory basis, and where necessary, upon specified conditions to ensure that such commitments do not have any adverse effect on Transporter's system. Transporter will not agree to a minimum or maximum receipt or delivery pressure that will render it unable to meet its existing firm obligations and, upon request, will provide a written explanation to the Shipper explaining the operational basis for rejecting any request for a minimum delivery pressure.

## 6.12 MEASUREMENT AND MEASUREMENT EQUIPMENT

### 6.12.1 Measurement Equipment.

- (a) The volume of Gas delivered at the Receipt Point(s) and at the Delivery Point(s) shall be measured by:
  - (1) An orifice meter, designed, installed, maintained and operated as recommended in the latest issue of American National Standard ANSI/API 2530 (American Gas Association Gas Measurement Report No. 3), entitled "Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids," as such publication may be revised from time to time (hereinafter referred to as "AGA Report No. 3"); or
  - (2) A turbine meter, designed, installed, maintained and operated as recommended in the latest issue of American Gas Association Transmission Measurement Committee Report No. 7, entitled "Measurement of Fuel Gas by Turbine Meters," as such publication may be revised from time to time (hereinafter referred to as "AGA Report No. 7"); or
  - (3) A positive displacement meter, installed and operated in accordance with generally accepted industry practices.
  - (4) An ultrasonic meter designed, installed, maintained and operated as recommended in the latest issue of American Gas Association Transmission Committee Report No. 9 entitled "Measurement of Gas by Multipath Ultrasonic Meters" as such publication may be revised from time to time (hereinafter referred to as "AGA Report No. 9") (revisions will be incorporated within a reasonable time period).

- (b) Auxiliary measuring equipment shall be installed, maintained and operated in accordance with generally accepted industry practices.

#### 6.12.2 Measurement Computations and Factors.

- (a) The volume of Gas delivered at each Receipt Point and Delivery Point shall be calculated by means of an electronic flow computer located at, or by the processing of meter charts recorded at, each Receipt Point or each Delivery Point, in either case in the following manner:
  - (1) When the measuring equipment is an orifice meter, the flow of Gas through the meter shall be computed in the manner recommended in AGA Report No. 3, properly using all factors set forth therein.
  - (2) When the measuring equipment is a turbine meter, the volume of Gas delivered through the meter shall be computed in the manner recommended in AGA Report No. 7, properly using all factors set forth therein.
  - (3) When the measuring equipment is a positive displacement meter, the volume of Gas delivered through the meter shall be computed by properly applying, to the volume delivered at flowing Gas pressures and temperatures, correction factors for (i) absolute static pressure, (ii) flowing Gas temperature, and (iii) compressibility ratio.
- (b) The volume of Gas delivered shall be computed using the standards and factors determined as follows:
  - (1) The unit of volume for the purpose of measurement shall be one thousand cubic feet of Gas at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.73 pounds per square inch absolute. For the purpose of pricing hereunder, the Dekatherm equivalent of such unit of volume shall be determined by multiplying each such unit of volume by the total heating value per cubic foot of the Gas delivered hereunder (adjusted to a common temperature and pressure base) and by dividing the result by one thousand (1000).
  - (2) The average absolute atmospheric (barometric) pressure at each Receipt Point and each Delivery Point shall be assumed to be equal to the value, in pounds per square inch, shown below corresponding to the location of the Receipt Point or Delivery Point, irrespective of the actual location or elevation above sea level of the Receipt Point or Delivery Point or of variations in actual atmospheric pressure from time to time:

- (3) The flowing temperature of the Gas shall be determined by means of an instrument of standard manufacture accepted in the industry for this purpose.
- (4) The supercompressibility factor used in computing the volume of Gas delivered through an orifice meter shall be determined in a manner which yields results consistent with the results produced by the procedures presented in American Gas Association Transmission Measurement Committee Report No. 8, entitled "Compressibility Factors of Natural Gas and Other Related Hydrocarbon Gases."
- (5) The specific gravity of the Gas used in computing the volume of Gas delivered through a meter shall be determined by one of the following methods:
  - (i) At intervals of not more than six (6) Months, by means of an instrument of standard manufacture accepted in the industry for this purpose using a sample of Gas from the Gas stream at the Receipt Point or Delivery Point.
  - (ii) By means of an instrument of standard manufacture accepted in the industry for this purpose installed at a point to measure the specific gravity of the Gas stream from which Gas is being delivered at the Receipt Point or Delivery Point.
- (6) The compressibility ratio factor "s" used in computing the volume of Gas delivered through a turbine meter or a positive displacement meter shall be determined by the equation  $s = (F_{pv})^2$ , in which "F<sub>pv</sub>" is the supercompressibility factor determined as described in Section 6.12.2 paragraph (b)(4).
- (7) In determining the flowing temperature factor, supercompressibility factor, and compressibility ratio factor "s" for use in computing the volume of Gas delivered through a meter, the flowing Gas temperature for only the period(s) of time that Gas was flowing through the meter shall be used.
- (8) When the measuring equipment is an ultrasonic meter, the volume of gas delivered through the meter shall be computed in the manner recommended in AGA Report No. 9, properly using all factors set forth therein.

### 6.12.3 Measurement Testing and Accuracy.

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

The accuracy of all measuring equipment shall be verified by operator at reasonable intervals, and if requested, in the presence of representatives of the other party, but neither Transporter nor Shipper shall be required to verify the accuracy of such equipment more frequently than once in any thirty (30) Day period. If the operator agrees to verification and test of measuring equipment and fails to perform such verification and testing, then the other party shall have the right to cease or temporarily discontinue service under this Agreement relative to such measuring equipment. If either party at any time desires a special test of any measuring equipment, it will promptly notify the other party and the parties shall then cooperate to secure a prompt verification of the accuracy of such equipment. Transportation and related expenses involved in the testing of meters shall be borne by the party incurring such expenses, provided, however, that Shipper shall not be responsible for such Transportation and related expenses if the special testing reveals that the meter(s) is (are) not operating within the required tolerance level of two percent (2%).

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

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

case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of the last test.

#### 6.12.4 Measurement Corrections.

In the event any measuring equipment is out of service, or is found registering inaccurately and the error is not determinable by test, previous recordings of receipts or deliveries through such equipment shall be determined as follows; provided, however, that the correction period shall be within six (6) Months of the production Month, with a three (3) Month rebuttal period and provided, further, that such standard shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Mutual agreement between parties, legal decisions, and regulatory guidance may be necessary to determine if the event qualifies for an extension of the above time periods. Parties' other statutory or contractual rights shall not otherwise be diminished by this standard:

- (a) by using the registration of any check meter or meters if installed and accurately registering, or in the absence of (a);
- (b) by correcting the error if the percentage of error is ascertainable by calibration, special test or mathematical calculation; or in the absence of both (a) and (b) then;
- (c) by estimating the quantity of receipt or delivery based on receipts or deliveries during preceding periods under similar conditions when the meter was registering accurately.

#### 6.12.5 New Methods of Measurement.

If at any time during the term hereof, a new method or technique is developed with respect to Gas measurement or the determination of the factors used in such Gas measurement, such new method or technique may be substituted upon mutual agreement thereto by both parties.

#### 6.12.6 Preservation of Measurement Records.

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

#### 6.12.7 Other Equipment.

Shipper or Transporter may install, maintain, and operate odorizing (at a Delivery Point only), regulating, telemetering, heating and fogging equipment at its own expense as it shall desire at each Receipt Point or Delivery Point, and the operator of such equipment at its own expense shall provide the other party a suitable site therefor and allow the other party free access to and use of the site; provided that such equipment shall be so installed, maintained and operated as not to interfere with the operation or maintenance of the operating party's measuring equipment at each Receipt Point or Delivery Point. All such equipment as Shipper or Transporter shall desire to install shall be constructed, installed and operated to conform to the other party's requirements. Shipper or Transporter may remove any of its equipment installed on such site at any time.

### 6.13 QUALITY

Gas delivered to, and received by, Transporter, shall meet the following specifications:

1. Heat Content. Heat content shall mean the gross heating value per cubic foot of Gas delivered at each Receipt Point and Delivery Point. The Gas at each Receipt Point shall not have a heat content greater than 1200 BTUs per cubic foot or less than 967 BTUs per cubic foot when determined on a dry basis. Transporter shall have the right to waive such BTU content limits if, in Transporter's sole opinion, Transporter is able to accept Gas with a BTU content outside such limits without affecting Transporter's operations. The total heating value per cubic foot of Gas shall be determined at each Receipt Point and each Delivery Point by one of the following methods:
  - (a) by means of an instrument of standard manufacture installed to measure the heating value of the Gas being delivered at the Receipt Point or the Delivery Point;

- (b) at intervals of not more than six (6) Months by means of an instrument of standard manufacture and a sample of Gas from the Gas stream from which Gas is being delivered at the Receipt Point or the Delivery Point; or
- (c) other methods mutually agreed upon by both parties.

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

2. Freedom from Objectionable Matter. The Gas received and delivered hereunder:

- (a) shall be commercially free from objectionable odors, dust, water and any other solid or liquid matter which might interfere with its merchantability or cause injury to or interference with proper operation of the equipment through which it flows and any substance that might become separated from the gas in Transporter's facilities.
- (b) shall not contain more than sixteen (16) parts per million (one (1) grain per one hundred (100) cubic feet of Gas) of hydrogen sulfide as determined by the method prescribed in the Gas Processors Association Standard 2377, entitled "Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes";
- (c) shall not contain more than twenty (20) grains of total sulfur (including the sulfur in any hydrogen sulfide and mercaptans) per one hundred (100) cubic feet of Gas;
- (d) shall not at any time have an oxygen content in excess of one percent (1%) by volume and the parties hereto shall make every reasonable effort to keep the Gas free of oxygen;
- (e) shall be free of water and hydrocarbons in liquid form and shall in no event contain water vapor in excess of seven (7) pounds per million cubic feet of Gas;
- (f) shall not contain more than two percent (2%) by volume of carbon dioxide;
- (g) shall be delivered at a temperature not in excess of one hundred twenty (120) degrees Fahrenheit or less than forty (40) degrees Fahrenheit; and
- (h) shall not contain more than three percent (3%) by volume of nitrogen.
- (i) shall not contain any toxic, hazardous materials or substances, or any deleterious material potentially harmful to persons or to the environment,

including but not limited to, polychlorinated biphenyls and substances requiring investigation, remediation or removal under any law, regulation, rule or order in effect from time to time.

3. Failure to Meet Specifications. Should any Gas tendered for delivery hereunder fail at any time to conform to any of the specifications of this Section 6.13 ("Non-Conforming Gas"), the affected Party shall notify the party tendering such Gas of any such failure and the affected party may at its option suspend all or a portion of the receipt of any such Non-Conforming Gas, and shall be relieved of obligations hereunder for the duration of such time as the Non-Conforming Gas does not meet such specifications. Nothing in this Section 6.13 shall prevent Transporter from waiving any quality specifications where the acceptance of Non-Conforming Gas will not in the reasonable judgment of Transporter adversely impair its operation. The exclusive remedy of the Affected Party shall be liquidated damages not to exceed the greater of (a) twenty-five dollars (\$25.00), or (b) five times the Spot Price Index (as defined in Section 6.16 of these General Terms and Conditions), for each Dekatherm of such Non-Conforming Gas.
4. Commingling. It is recognized that Gas delivered by Shipper will be commingled with other Gas transported hereunder by Transporter. Accordingly, the Gas of Shipper shall be subject to such changes in heat content as may result from such commingling and Transporter shall, notwithstanding any other provision herein, be under no obligation to redeliver for Shipper's account, Gas of a heat content identical to that caused to be delivered by Shipper to Transporter.

#### 6.14 ALLOCATION OF RECEIPTS AND DELIVERIES, DAILY BALANCING

6.14.1 Allocation of Deliveries. Unless Transporter and operator mutually agree to allocate deliveries each Day using ranked, pro rata, percentage, swing, or operator provided value methodologies, such deliveries will be allocated through the meter using the allocation methodology in Section 6.14.1 paragraph (a) below.

- (a) Each Day's deliveries of Gas shall be allocated by Transporter for all services using the following order through the meter:
  - (1) All Transportation Services will be allocated a quantity equal to the confirmed daily nomination for such services;
  - (2) All residual quantities, positive or negative, shall first be allocated to any Transportation Service designated for that purpose by the Delivery Point Operator (if the affected Shipper has agreed in writing) and then shall be

allocated pro rata based on nominations to all Transportation Services, and such Shippers shall be subject to daily scheduling penalties on each Dekatherm of such allocated quantities in excess of the Swing Percentage.

- (b) If allocated deliveries hereunder exceed nominations and the MDQ under any Agreement, Transporter will, after applying the Swing Percentage, only charge the affected Shipper the applicable daily scheduling penalty for overdeliveries up to MDQ, and only the applicable overrun charges for overdeliveries in excess of MDQ.

6.14.2 Allocation of Receipts. Each Day, allocation of actual quantities at a Receipt Point shall be made pro rata, based on nominations, to all services at each Receipt Point, provided, however, that if Transporter and operator mutually agree, Transporter shall allow the operator, if any, at any Receipt Point, to establish allocation priorities according to the following procedures:

- (a) Operator shall notify Transporter via the Interactive Internet Website after or during confirmation and before start of the Service Day, that it desires to establish allocation priorities at Receipt Points utilizing any of the following methodologies: ranked, percentage, swing, or operator provided value provided, however, Transporter will not be required to agree to any of such allocation methodologies if they are operationally or administratively infeasible.
- (b) Transporter shall advise such operator of the confirmed nominations at such Receipt Points.
- (c) The operator shall establish separate allocation priorities for over and under production at the level of detail that the confirmed nominations are provided, and advise Transporter of such priorities via the Interactive Internet Website before the beginning of the Day. Any confirmed nominations that do not have established allocation priorities shall be considered as having the highest priority:
  - (1) In the case of underproduction, such allocation priorities shall be used by Transporter to allocate Gas, such that Transporter shall allocate Gas to each Shipper, in order of priority designated by the operator, up to the full nomination of that Shipper, until the entire gross measured volume at such Receipt Point is allocated.
  - (2) In the case of over production, such allocation priorities shall be

used by Transporter to allocate Gas, such that Transporter shall allocate Gas to each Shipper, in order of priority designated by the operator, equal to the full nomination of that Shipper, with any over produced quantities being allocated to the Shipper(s) with the lowest priority, until the entire gross measured volume at such Receipt Point is allocated.

6.14.3 Simultaneous Receipts and Deliveries. To the extent that both receipts and deliveries have been nominated at the same meter, then for any Day:

- (a) If the actual flow through the meter represents a delivery by Transporter, then the nominated receipts shall be allocated as nominated and the sum of such receipts shall be added to the metered quantity before any allocation is made in accordance with Section 6.14.1 above; or
- (b) If the actual flow through the meter represents a receipt by Transporter, then the nominated deliveries shall be allocated as nominated and the sum of such deliveries shall be added to the metered quantity before any allocation is made in accordance with Section 6.14.2 above.

6.14.4 Prior Period Adjustments.

- (a) In accordance with the provisions of Sections 6.12.3, 6.12.4, 6.17 paragraph 1 and 6.17 paragraph 3 of these General Terms and Conditions, Transporter shall use the best information available to close its allocation of quantities for a Service Month five (5) business days after such Service Month. To the extent that adjustments are made after the date of such close, such adjustments ("Prior Period Adjustments" or "PPA") shall be treated under this Section 6.14.4. If the PPAs are due to the correction of measurement data or allocations, such adjustments should be processed within six (6) Months of the applicable Service Month. If the affected party disputes the as-adjusted quantity, it is entitled to rebut the basis for the PPAs, but only if it does so within three (3) Months of the processing of the as-adjusted quantity. Notwithstanding the above-specified deadlines for processing/rebutting PPAs, such deadlines shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Parties' other statutory or contractual rights shall not be diminished by this standard. Mutual agreement between parties, legal decisions, and regulatory guidance may be necessary to determine if the event qualifies for an extension of the above time periods.

- (b) If an adjustment is required at a Delivery Point, such adjustment shall be allocated pursuant to the methodology set forth in Section 6.14.1 above. Such Delivery Point adjustments shall further affect any associated Shipper imbalances, as described in Section 6.15 of these General Terms and Conditions.

#### 6.14.5 Trespass Gas.

Gas that is received by Transporter during a Service Month at a Receipt Point, for which there is no valid nomination, shall be considered Trespass Gas. If Transporter receives Trespass Gas during a Service Month, it shall post such fact on the Interactive Internet Website, including the location and quantity of such Trespass Gas, for a period of ninety (90) Days after the end of the Service Month. The owner of such Trespass Gas may claim such Gas by informing Transporter in writing of such fact and by having the ownership verified by the operator of the facilities upstream of the Receipt Point. Upon receiving a valid claim of ownership, Transporter shall first give the claimant the opportunity to move the Gas off of Transporter's Pipeline System upon payment of the applicable transportation charges that shall consist of transportation service to claimant's Delivery Point. Alternatively, the claimant may request payment of an amount (as full consideration, inclusive of taxes and any other amounts) equal to the product of the quantity of Trespass Gas times fifty percent (50%) of the Cashout Price for the Service Month in which the Trespass Gas was received into Transporter's system. If there is no valid claim for such Trespass Gas within such ninety (90) Day posting period, Transporter shall be allowed to retain such Trespass Gas.

#### 6.14.6 Conversion of Gas.

Any party that takes Gas without Transporter's authorization shall be liable for all costs, losses, and damages attributable to such taking, the penalties set forth in Section 5.1 paragraph 3(6)(b) of Rate Schedule FTS-1 of this FERC Gas Tariff, and any other charges under this Tariff, in addition to any legal remedies otherwise available.

#### 6.14.7 Electronic Information.

Transporter shall operate its allocation procedures under this Section 6.14 on the basis of electronic information available at Receipt Point(s) and/or Delivery Point(s). If such electronic information is not available on any Day, however, Transporter shall be entitled to assume that receipts and/or deliveries are equal to nominations, provided, however, that Transporter shall be required to adjust such assumed receipts and/or deliveries to actual receipts and/or deliveries as soon as is reasonably practicable after such actual information becomes available before the close date specified in Section 6.14.4 above.

#### 6.14.8 Information Availability.

Within one (1) Business Day following the end of each Gas Day, Transporter shall, based upon available quantities and/or scheduled quantities, post on the Interactive Internet Website and EDM (if requested) individual Shipper information regarding the quantity allocated at each Receipt Point and at each Delivery Point including any information on imbalances.

Upon request to Transporter, Shipper will be provided operational allocated quantities pursuant to NAESB WGQ Standard 2.4.3 or 2.4.4 for the transaction(s) which have been scheduled by Transporter for Shipper.

Transporter can agree to send the operational allocated quantities on a daily basis to a Shipper rather than accept the Request for Information (NAESB WGQ Standard 2.4.7) for operational allocated quantities.

Transporter is not required to support requests for operational allocated quantities other than on an "all locations for a Shipper basis." Where Transporter has determined to support NAESB WGQ Standard 2.3.21 in a manner other than:

- (a) providing specific operational allocated quantities in response to a request for same, or
- (b) providing operational allocated quantities on an "all locations for a Shipper basis," then the Shipper can rely on the absence of a line item(s) provided by Transporter as indicative that the particular line item(s)' scheduled quantities are operational allocated quantities.

NAESB WGQ Standard 2.3.21 applies to the daily provision of operational allocated quantities whether they are provided pursuant to NAESB WGQ Standard 2.4.3, NAESB WGQ Standard 2.4.4 or NAESB WGQ Standard 2.4.7.

## 6.15 CASHOUT AND TRADING OF MONTHLY IMBALANCES

### 6.15.1 Cashout of Imbalances.

- (a) For the purposes of this Section 6.15, "Receipts" shall mean quantities of Gas allocated pursuant to Section 6.14 of these General Terms and Conditions, net of Transporter's Use, and "Deliveries" shall mean quantities of Gas allocated pursuant to Section 6.14 of these General Terms and Conditions. Transporter and Shipper shall Cashout any remaining imbalance between Monthly Receipts and Monthly Deliveries under all of Shippers' Transportation Agreements, subject to Transporter's Billing and Payment provisions contained in Section 6.17 of these General Terms and Conditions.
- (b) If Monthly Receipts are greater than Monthly Deliveries, the difference shall be "Excess Quantities." If Monthly Deliveries are greater than Monthly Receipts, the difference shall be "Deficient Quantities." Such Excess Quantities and/or Deficient Quantities shall be divided by the Monthly Delivery Point nominations using such information as was available to Shipper on the last Day of the Service Month on the Interactive Internet Website, for the purpose of determining the applicable imbalance percentage. Transporter shall be authorized to purchase and sell Gas at Receipt Points to manage imbalance quantities. Any such purchases or sales of Gas shall be made by the end of the month following the Service Month in which the imbalance is determined, to the extent such purchases or sales are operationally practicable.
- (c) The Cashout Price will be equal to the Louisiana Spot Price Index, as is defined in Section 6.16 of these General Terms and Conditions. The indicated percentage(s) of the Cashout Price (as defined below) will be paid for the Excess/Deficient Quantities that fall within each respective bracket of the total imbalances (1) by Transporter to Shipper (as full consideration, inclusive of taxes and any other amounts) for Excess Quantities or (2) by Shipper to Transporter for Deficient Quantities, based on the scale set forth below:

Transporter Pays Shipper the following % of Imbalance:

Percentage of the Cashout

% of Imbalance -----	Price for the Excess Quantities -----
> 0% Up to 5%	100%
> 5% Up to 10%	85%
> 10% Up to 15%	70%
> 15% Up to 20%	60%
> 20%	50%

Shipper Pays Transporter the following % of Imbalance:

% of Imbalance -----	Percentage of the Cashout Price for the Deficient Quantities -----
> 0% Up to 5%	100%
> 5% Up to 10%	115%
> 10% Up to 15%	130%
> 15% Up to 20%	140%
> 20%	150%

- (d) The Cashout Payment applicable to all Agreements of a Shipper during a Service Month shall equal (1) the Excess Quantities (if applicable) multiplied by the Cashout Price less the Cashout Price Surcharge, if any, pursuant to Section 6.15.5 paragraph (b) below, minus (2) the Deficient Quantities (if applicable) multiplied by the Cashout Price plus the Cashout Price Surcharge, if any, pursuant to Section 6.15.5 paragraph (b) below. If the difference is positive, such amount will be paid by Transporter to Shipper. If the difference is negative, such amount will be paid by Shipper to Transporter.

The Receipt Quantities under each Agreement will equal the Monthly receipts under such Agreement that entered Transporter's System through Receipt Point(s) in the Transporter's facilities.

- (e) A Cashout of imbalances at prices above or below one hundred percent (100%) of the Cashout Price shall not occur if it has been determined that such imbalances are due to Transporter's negligence. Additionally, a Cashout of imbalances due to Excess Quantities or Deficient Quantities shall be limited to one hundred percent (100%) of the Cashout Price if such imbalances occurred during circumstances of force majeure that directly affect the Transporter's or upstream or downstream facilities over which Gas is transported under the applicable Agreement, or during circumstances of force majeure that directly affect Shipper's facilities for the period until Shipper has an opportunity to adjust its nominations, or

were the direct result of an OFO issued to the Shipper or its supplier. Transporter shall be required to provide accumulated imbalance data to Shipper requesting such data by electronic or other available means of communication within forty-eight (48) hours of such request during the Service Month.

#### 6.15.2 Cashout of Imbalances at Agreement Expiration.

At the time of expiration of an Agreement, all imbalances shall be paid for according to the provisions of Section 6.15.1 above.

#### 6.15.3 Upstream Transportation.

In the event that Transporter acts as agent on behalf of any Shipper in obtaining transportation service on any upstream pipeline, the Cashout provisions (if any) of any such upstream pipeline shall be applicable to such upstream transportation, and not the provisions of this Section 6.15.

#### 6.15.4 Penalties.

Failure of Shipper to fulfill responsibilities, during the period of Force Majeure, which contribute to Excess Quantities or Deficient Quantities pursuant to the Cashout provisions of this Section 6.15, shall result in the use by Transporter of the applicable Cashout Price as to each Dekatherm for which payments are due under such provisions.

#### 6.15.5 Treatment of Cash-Out Revenues and Costs.

Subsequent to the end of each calendar year Transporter shall compare (a) the revenues received by Transporter for sales of gas to eliminate imbalances with (b) the costs incurred by Transporter for purchases of gas to eliminate imbalances. If the revenues received exceed the costs incurred, then

Transporter shall use such net positive revenues to reduce any positive surcharge associated with any negative Transporter's Use true up determined for the same calendar year as calculated pursuant to Section 6.29(3)(c). If revenues received are less than the costs incurred, then Transporter shall carry forward such net negative revenues and may offset such net negative revenues against any future net positive revenues that may subsequently occur.

#### 6.15.6 Imbalance Netting.

Transporter shall net any Shipper imbalances on and across Agreements with the Shipper at the close of each Service Month including any prior period adjustment volumes received by Shipper.

#### 6.15.7 Imbalance Trading.

- (a) Transporter will allow Shipper(s) (including agents of Shippers(s)) to trade any imbalances remaining from the previous Service Month after imbalance netting pursuant to Section 6.15.6 above.
- (b) Authorizations to post imbalances that are received by Transporter by 11:45 a.m. via the Interactive Internet Website or EDI data set will be effective by 8:00 a.m. the next Business Day (CCT). Imbalances previously authorized for posting should be posted on or before the ninth Business Day of the Month following service.
- (c) Imbalance(s) to be posted for trading must be authorized by the Shipper. The Shipper can note that the authorization will be effective for a specific period of time or leave the authorization open-ended. Posted imbalances can be viewed and downloaded upon request.
- (d) Transporter may not post zero imbalances.
- (e) Transporter will enable the imbalance trading process by:
  - (1) Receiving requests for imbalance trades;
  - (2) Receiving imbalance trade confirmations;
  - (3) Sending imbalance trade notifications; and
  - (4) Reflecting the trade on the next Monthly Cashout billing.
- (f) Imbalance trading will be allowed between the ninth and seventeenth

Business Day of each Month via the Interactive Internet Website or EDI data sets. Transporter will provide the ability to post and trade imbalances until the close of the seventeenth Business Day of the Month.

- (g) Imbalance trades can only be withdrawn by the party initiating the trade and only prior to the confirming party's confirmation of the trade. Imbalance trades are considered final when confirmed by the party confirming the trade and effectuated by the Transporter.
- (h) When trading imbalances, a quantity should be specified. Transporter will not authorize an imbalance trade that will increase the Shipper's absolute imbalance position (above/below zero). After receipt of an imbalance trade confirmation, Transporter will post trade results on the Interactive Internet Website and, for EDI transactions, will send, no later than noon CCT of the next Business Day, a notice of the imbalance trade to the party initiating and the party confirming the trade.
- (i) The information required for trading must include the identification of both Shippers involved in the trade, production period, and the monthly volume to be traded.
- (j) Any imbalance remaining after the close of the imbalance trading period set out in Section 6.15.7 paragraph (f) above will be cashed out pursuant to this Section 6.15.

## 6.16 SPOT PRICE INDEX

Spot Price Index. The Spot Price Index shall be determined in accordance with the provisions of this Section 6.16:

- (a) Louisiana Spot Price Index. The spot price index for Transporter Receipts shall be the Louisiana Spot Price Index and will be determined for a week by use of the published weekly spot prices contained in the following two publications:
  - (i) Energy Intelligence's Natural Gas Week prices for onshore deliveries to Transporter of 5,000 MMBtu or more, and
  - (ii) Natural Gas Intelligence's Weekly Gas Price Index for the onshore deliveries to Transporter. The Louisiana Spot Price Index for Deficient Quantities will be the highest of the simple weekly averages of the "ANR spot" prices in the two publications. The Louisiana Spot Price Index for Excess Quantities will be the lowest of the simple weekly averages of the "ANR spot" prices in the two publications.

- (b) Price Reporting and Material Changes. The published spot prices used in determining the Louisiana Spot Price Index shall be prices for short term contracts, preferably thirty to thirty-one Day contracts, on a delivered-to-interstate-pipeline basis. The published spot prices used shall be the Index prices (volume weighted average prices), or, if such a volume weighted average price is not available, an average of the high and low prices reported. If there is a material change by any of the publications to be used in determining the Louisiana Spot Price Index in the definition of how prices are reported for deliveries to Transporter, then the prices for such deliveries in such publication will no longer be used in calculating the Index Price.
- (c) Cessation of Publications. To the extent the reported prices referenced above are not published for the Month required, Transporter shall determine the Louisiana Spot Price Index using another similar publication selected by Transporter in its reasonable judgment that is broadly published and widely accepted within the gas industry as a reliable source for the quotation of gas prices.

## 6.17 BILLING AND PAYMENT

1. Billing. On or before the ninth (9th) Business Day of each Month, Transporter shall render (for purposes of this Section 6.17 paragraph 1, "render" shall mean either (a) postmarked or (b) time-stamped and electronically transmitted via EDM to the designated site, whichever is applicable) to Shipper a statement of the amount due for the preceding Month under the applicable Rate Schedule(s). Any charges pursuant to the Cashout provisions of Section 6.15 of these General Terms and Conditions shall be billed on the following month's transportation invoice. When information necessary for billing purposes is in the control of Shipper, Shipper shall furnish such information to Transporter on or before the third (3rd) Day of the Month.

Both Transporter and Shipper have the right to examine at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions hereof.

2. Payment. Shipper shall pay Transporter the amount due for the preceding Month on or before the tenth (10th) Day after the Date of the invoice. Payments by Shipper to Transporter shall be made in the form of Wire Transfer directed to a bank account designated by Transporter's Controller for amounts equal to or greater than \$50,000 such that funds are available on the date payment is due. Payments of amounts less than \$50,000 by

Shipper to Transporter shall be made at Shipper's election by either Wire Transfer directed to a bank account designated by Transporter's Controller, or by check at Transporter's general office or at such other address as Transporter shall designate such that funds are available on the date payment is due.

Party making payment should submit supporting documentation, party receiving payment should apply payment per supporting documentation provided by the paying party; and if payment differs from the invoiced amount, remittance detail should be provided with the payment except when payment is made by electronic funds transfer (EFT), in which case the remittance detail is due within two business days of the payment due date. Interest on the unpaid portion of the bill shall accrue at the current rate as set forth in Section 154.501(d) of the Commission's Rules and Regulations, from the due date until the date of payment. If such failure to pay continues for thirty (30) Days after payment is due, Transporter, in addition to any other remedy it may have hereunder, may upon receipt of the appropriate regulatory approval, if any, suspend further delivery of Gas until such amount is paid. If Shipper in good faith disputes the amount of any such bill or part thereof and pays to Transporter such amounts, if any, as it concedes to be correct and, at any time thereafter within thirty (30) Days of a demand made by Transporter, furnishes a good and sufficient surety bond in an amount and with surety satisfactory to Transporter or other assurance

acceptable to Transporter, guaranteeing payment to Transporter of the unpaid amount, then Transporter shall not be entitled to suspend further delivery of such Gas unless and until default be made in the conditions of such bond.

3. Adjustment of Billing Errors. Subject to the provisions of Sections 6.12.3, 6.12.4 and 6.14.4 of these General Terms and Conditions, if it shall be found that at any time or times a person has been charged an overrun penalty and Shipper shall have actually paid the bills containing such penalty, then within thirty (30) Days after the final determination thereof, either Transporter shall refund the amount of any overcharge or Shipper shall pay the amount of any undercharge. In the event an error is discovered in the amount billed in any statement rendered by Transporter, such error shall be adjusted within thirty (30) Days of the determination thereof, provided that claim therefor shall have been made within thirty (30) Days from the date of discovery of such error, but in any event within six (6) Months from the date of such statement, provided, however, that the party harmed by the adjustment shall have up to three (3) Months to dispute such adjustment. The timing of billing claims and adjustments referenced in the previous sentence shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. Parties' other statutory or contractual rights shall not be diminished by this standard. Mutual agreement between parties, legal decisions, and regulatory guidance may be necessary to determine if the event qualifies for an extension of the above time

periods. If the parties are unable to agree on the adjustment of any claimed error, any resort by either of the parties to legal proceedings shall be commenced within fifteen (15) Months after the supposed cause of action is alleged to have arisen, or shall thereafter be forever barred.

4. Refunds. Refunds due Shipper from Transporter pursuant to either the terms and conditions of this Tariff or orders of the Commission shall be paid by Wire Transfer to a bank account established by Shipper if: (a) Shipper has made twelve consecutive Monthly payments to Transporter in the form of Wire Transfer preceding the date of the refund; (b) the amount of the refund, including interest, exceeds \$50,000; and (c) Shipper has designated a bank account for the receipt of refunds by Wire Transfer at least thirty (30) Days prior to the date established for refunds by written communication to Transporter's Controller. Refunds of an amount less than \$50,000 will be paid by Transporter to Shipper by check.

## 6.18 MISCELLANEOUS

### 6.18.1 Responsibility for Gas.

Upon receiving delivery of Gas to be transported at the Receipt Point(s), Transporter shall be in exclusive control and possession of such Gas and responsible for any loss thereof, or any and all injury or damage caused thereby, until the Equivalent Quantities of Gas have been delivered for the account of Shipper at the Delivery Point(s) after which Shipper shall be in exclusive control and possession of such Gas and responsible for any and all injury or damage caused thereby.

### 6.18.2 Warranty.

Shipper warrants for itself, its successors, and assigns, that it has, or will have, at the time of delivery of the Gas for transportation hereunder good title to such Gas and/or good right to cause the Gas to be delivered to Transporter for Transportation. Shipper warrants for itself, its successors, and assigns, that the Gas it warrants hereunder shall be free and clear of all liens, encumbrances or claims, that it will indemnify and save Transporter harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of any adverse claims of any and all persons to said Gas and/or to royalties, taxes, license fees, or charges thereon which are directly applicable to such delivery of Gas and that it will indemnify and save Transporter harmless from

all taxes or assessments which may be directly levied and assessed upon such delivery and which are by law payable and the obligation of the party making such delivery. Shipper shall be solely responsible for, and shall indemnify and save Transporter harmless from any sales or use tax which may be levied on Gas furnished by Shipper for Transporter's Use.

#### 6.18.3 Waivers.

No waiver by either Transporter or Shipper of any one or more defaults by the other in the performance of any provisions hereunder shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character. Transporter may waive compliance with provisions of this Tariff, so long as such is done in a manner which shall not be unduly discriminatory.

#### 6.18.4 Assignments.

Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Shipper or of Transporter, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in interest under an Agreement. Any party may, without relieving itself of its obligations under an Agreement, pledge, mortgage or assign its rights hereunder as security for its indebtedness. Except for such pledge, mortgage or assignment, neither party shall assign an Agreement or any of its rights thereunder without the consent in writing of the other party.

#### 6.18.5 Creditworthiness.

Transporter shall not be required to commence service or, subject to the following timing provisions, to continue to provide service under an Agreement with any Shipper, that (a) is or has become insolvent; (b) has applied for bankruptcy under Chapter 11 of the Bankruptcy Code, or which is subject to similar proceedings under State or Federal law; or (c) when requested by Transporter to demonstrate creditworthiness, fails to do so in Transporter's reasonable judgment, in light of previous payment experience and changes thereto and the prudent credit analysis of information available; provided, however, that any such Shipper that is receiving service shall continue to receive service for a period of fifteen (15) Days after written notice by Transporter of any such circumstance, and shall continue thereafter to receive service if, within such fifteen (15)

Day notice period, such Shipper (a) deposits with Transporter and maintains, on account, an amount which would be due for three (3) Months service at the full Maximum Daily Quantity plus an amount equal to the three (3) highest Cashout payments, if any, incurred during the previous twelve (12) Months, or (b) furnishes good and sufficient security, which may include an acceptable standby letter of credit, or Monthly prepayment agreement or other security as reasonably determined by Transporter of a continuing nature and in an amount no less than such amounts which would be due for service, which may include a grant to Transporter of a security interest in collateral found to be satisfactory to Transporter, or a guarantee acceptable to Transporter, by another person or entity that satisfies credit appraisal, or any combination thereof upon which Transporter and Shipper mutually agree. If such payment on account or payment security is not received within such fifteen (15) Day notice period, Transporter may, without waiving any rights or remedies it may have, immediately suspend further service and may provide simultaneous written notice to Shipper and the Commission that service will be terminated in thirty (30) Days if such payment on account or a payment security is not received within the thirty-day notice period.

#### 6.18.6 Limitation of Service.

If a Shipper fails to comply with any material terms of the Agreement, including the applicable Rate Schedules and these General Terms and Conditions, Transporter may unilaterally and without liability, after five (5) Days notice to such Shipper, suspend any service provided hereunder to Shipper until such time as Shipper has cured such failure to comply.

#### 6.18.7 Interpretation of Laws.

Any Agreement shall be interpreted, performed and enforced in accordance with the laws of the State of Texas.

#### 6.18.8 Regulations.

Any Agreement, and all terms and provisions herein, and the respective obligations of the parties thereunder are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. If any provision of any Agreement is

declared null and void, or voidable, by a regulatory authority or court of competent jurisdiction, then that provision will be considered severable at either Party's option; and if the severability option is exercised, the remaining provisions of the Agreement shall remain in full force and effect.

#### 6.18.9 No Third Party Beneficiary.

It is expressly agreed that there is no third party beneficiary of any Agreement, and that the provisions of any Agreement and these General Terms and Conditions do not impart enforceable rights in anyone who is not a party or successor or assignee of any party to an Agreement herein.

#### 6.18.10 Counterparts.

Any Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

#### 6.18.11 Headings.

The headings contained in any Agreement are for reference purposes only and shall not affect the meaning or interpretation of any Agreement.

#### 6.18.12 Waiver of Penalties.

Transporter shall waive the following penalties where the imposition thereof is not necessary to prevent the impairment of reliable service:

- (a) daily scheduling penalties assessed as a result of allocations of deliveries pursuant to Section 6.14.1 paragraph (a)(2) of these General Terms and Conditions;
- (b) penalty rates for unauthorized overrun charges assessed pursuant to any of Transporter's firm service rate schedules.

6.18.13 Responsibility For Unauthorized Overrun.

- (a) Shippers shall have a duty to refrain from taking delivery of quantities in excess of their MDQ. In the event a Shipper takes delivery of quantities in excess of its MDQ such Shipper may be held accountable either through a direct cause of action by other Shippers, or as an impleaded or third party defendant in a suit by other Shippers. In no event shall the payment of overrun charges be considered as giving Shipper the right to take overrun quantities, nor shall such payment be considered as a substitute for all other rights and remedies (including but not limited to consequential damages) available to any other Shipper.
- (b) Transporter shall use reasonable care in scheduling the Gas quantities available to Shipper up to its confirmed nomination, based on the best operating information available to Transporter. Transporter shall be responsible to Shipper for penalties, in the same manner as an overrun by a Shipper, for service deficiencies (i.e., the failure to allow Shipper to nominate Gas for receipt or delivery) caused by Transporter allocating to any other Shipper in a knowing, willful or grossly negligent manner the Gas which Transporter has confirmed as available to Shipper.

6.18.14 Compliance with North American Energy Standards Board.

Compliance with 18 CFR, Section 284.12

Transporter has adopted the Business Practices and Electronic Communications Standards, NAESB WGQ Version 3.2, which are required by the Commission in 18 CFR Section 284.12(a), as indicated below. Standards without accompanying identification or notations are incorporated by reference. Standards that are not incorporated by reference are identified along with the tariff record in which they are located. Standards for which waivers or extensions of time have been granted are also identified.

**Standards not Incorporated by Reference and their Location in Tariff:**

<u>NAESB Standard</u>	<u>Tariff record</u>
1.3.1	GT&C, Definitions, 6.1(11)
1.3.2(i)-(vi)	GT&C, Submission of Nominations, 6.6.1(a)
1.3.3	GT&C, Submission of Nominations, 6.6
1.3.4	GT&C, Nominations, 6.6
1.3.5	GT&C, Nominations, 6.6

1.3.7	GT&C, Submission of Nominations, 6.6.1(a)
1.3.8	GT&C, Submission of Nominations, 6.6.1(a)(3)-(5)
1.3.11	GT&C, Implementation of Intra-day Nominations, 6.6.2(b)
1.3.14	GT&C, Nominations, 6.6
1.3.19	Rate Schedule FTS-1, Charges, 5.1(3)
1.3.29	GT&C, Submission of Nominations, 6.6.1(f)
1.3.34	GT&C, Operational Flow Order(s), 6.8
1.3.51	GT&C, Implementation of Intra-day Nominations, 6.6.2(d)
2.3.7	GT&C, Prior Period Adjustments, 6.14.4(a)
2.3.9	GT&C, Definitions, 6.1(5) and (24)
2.3.14	GT&C, Measurement Corrections, 6.12.4
2.3.15	GT&C, Allocation of Deliveries, 6.14.1(a); and GT&C, Allocation of Receipts, 6.14.2
2.3.16	GT&C, Allocation of Deliveries, 6.14.1; and GT&C, Allocation of Receipts, 6.14.2(a)
2.3.17	GT&C, Allocation of Deliveries, 6.14.1(a); GT&C, Allocation of Receipts, 6.14.2; and GT&C, Simultaneous Receipts and Deliveries, 6.14.3
2.3.18	GT&C, Allocation of Deliveries, 6.14.1; and GT&C, Allocation of Receipts, 6.14.2
2.3.21	GT&C, Information Availability, 6.14.8
2.3.26	GT&C, Prior Period Adjustments, 6.14.4(a)
2.3.28	GT&C, Billing and Payment, 6.17(1)
3.2.1	GT&C, Definitions, 6.1(4)
3.3.14	GT&C, Billing and Payment, 6.17(1)
3.3.15	GT&C, Billing and Payment, 6.17(3)
3.3.17	GT&C, Billing and Payment, 6.17(2)
3.3.19	GT&C, Billing and Payment, 6.17(2)
5.3.1	GT&C, Capacity Release Timeline, 6.20.1.6
5.3.2	GT&C, Capacity Release Timeline, 6.20.1.6
5.3.3	GT&C, Required Information for the Release of Capacity, 6.20.1.7(15)
5.3.4	GT&C, Awarding of Capacity Available for Release, 6.20.1.11
5.3.5	GT&C, Required Information for the Release of Capacity, 6.20.1.7(7)
5.3.7	GT&C, Recall Rights, 6.20.1.4(2)
5.3.8	GT&C, Recall Rights, 6.20.1.4(2)
5.3.10	GT&C, Pre-arranged Release not Subject to Bidding, 6.20.1.9
5.3.11	GT&C, Pre-arranged Release not Subject to Bidding, 6.20.1.9
5.3.12	GT&C, Required Information for the Release of Capacity, 6.20.1.8; GT&C, Bidding Period, 6.20.1.5; and GT&C, Posting of Purchase Offers, 6.20.3
5.3.13	GT&C, Open Bidding Process, 6.20.1.8
5.3.14	GT&C, Bidding Period, 6.20.1.5
5.3.15	GT&C, Open Bidding Process, 6.20.1.8

5.3.16	GT&C, Bidding Period, 6.20.1.5
5.3.19	GT&C, Released Capacity Availability, 6.20.1.2
5.3.24	GT&C, Bidding Period, 6.20.1.5
5.3.26	GT&C, Required Information for the Release of Capacity, 6.20.1.7(7); and GT&C, Open Bidding Process, 6.20.1.8
5.3.28	GT&C, Required Information for the Release of Capacity, 6.20.1.7(3)
5.3.29	GT&C, Required Information for the Release of Capacity, 6.20.1.7(3)
5.3.44	GT&C, Recall Rights, 6.20.1.4(1)
5.3.45	GT&C, Recall Rights, 6.20.1.4(1)
5.3.49	GT&C, Recall Rights, 6.20.1.4(1)
5.3.51	GT&C, Recall Rights, 6.20.1.4(1)
5.3.53	GT&C, Recall Rights, 6.20.1.4(1)
5.3.54	GT&C, Recall Rights, 6.20.1.4(1)
5.3.55	GT&C, Recall Rights, 6.20.1.4(1)
5.3.56	GT&C, Recall Rights, 6.20.1.4(1)
5.3.57	GT&C, Recall Rights, 6.20.1.4(1)
5.3.58	GT&C, Recall Rights, 6.20.1.4(1)

### **Standards Incorporated by Reference:**

Additional Standards:

General:

**Definition:**

0.2.5

Standards:

0.3.1, 0.3.2, 0.3.16, 0.3.17

Creditworthiness:

Standards:

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

Gas/Electric Operational Communications:

Definitions:

0.2.1, 0.2.2, 0.2.3, 0.2.4

Standards:

0.3.11, 0.3.12, 0.3.13, 0.3.14, 0.3.15

## Operating Capacity and Unsubscribed:

### Standards:

0.3.18, 0.3.20, 0.3.21, 0.3.22

### Data Sets:

0.4.2, 0.4.3

## Location Data Download:

### Standards:

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

### Datasets:

0.4.4

## Storage Information:

### Data Sets:

0.4.1

## Nominations Related Standards:

### Definitions:

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

### Standards:

1.3.6, 1.3.9, 1.3.13, 1.3.15, 1.3.16, 1.3.17, 1.3.18, 1.3.20, 1.3.21, 1.3.22, 1.3.23, 1.3.24, 1.3.25, 1.3.26, 1.3.27, 1.3.28, 1.3.30, 1.3.31, 1.3.32, 1.3.33, 1.3.35, 1.3.36, 1.3.37, 1.3.38, 1.3.39, 1.3.40, 1.3.41, 1.3.42, 1.3.43, 1.3.44, 1.3.45, 1.3.46, 1.3.48, 1.3.53, 1.3.55, 1.3.56, 1.3.58, 1.3.62, 1.3.64, 1.3.65, 1.3.66, 1.3.67, 1.3.68, 1.3.69, 1.3.70, 1.3.71, 1.3.72, 1.3.73, 1.3.74, 1.3.75, 1.3.76, 1.3.77, 1.3.79, 1.3.80, 1.3.81, 1.3.82

### Data Sets:

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

## Flowing Gas Related Standards:

### Definitions:

2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5

### Standards:

2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.3.5, 2.3.6, 2.3.8, 2.3.10, 2.3.11, 2.3.12, 2.3.13, 2.3.19,

2.3.20, 2.3.22, 2.3.23, 2.3.25, 2.3.27, 2.3.29, 2.3.30, 2.3.31, 2.3.32, 2.3.40, 2.3.41, 2.3.42, 2.3.43, 2.3.44, 2.3.45, 2.3.46, 2.3.47, 2.3.48, 2.3.50, 2.3.51, 2.3.52, 2.3.53, 2.3.54, 2.3.55, 2.3.56, 2.3.57, 2.3.58, 2.3.59, 2.3.60, 2.3.61, 2.3.62, 2.3.63, 2.3.64, 2.3.65, 2.3.66

Data Sets:

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

Invoicing Related Standards:

Definitions:

Standards:

3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8, 3.3.9, 3.3.10, 3.3.11, 3.3.12, 3.3.13, 3.3.16, 3.3.18, 3.3.21, 3.3.22, 3.3.23, 3.3.24, 3.3.25, 3.3.26, 3.3.27

Data Sets:

3.4.1, 3.4.2, 3.4.3, 3.4.4

Quadrant Electronic Delivery Mechanism Related Standards:

Definitions:

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

Standards:

4.3.1, 4.3.2, 4.3.3, 4.3.16, 4.3.17, 4.3.18, 4.3.20, 4.3.22, 4.3.23, 4.3.24, 4.3.25, 4.3.26, 4.3.27, 4.3.28, 4.3.30, 4.3.31, 4.3.32, 4.3.33, 4.3.34, 4.3.35, 4.3.36, 4.3.38, 4.3.40, 4.3.41, 4.3.42, 4.3.43, 4.3.44, 4.3.45, 4.3.46, 4.3.47, 4.3.48, 4.3.49, 4.3.50, 4.3.52, 4.3.53, 4.3.54, 4.3.55, 4.3.57, 4.3.58, 4.3.60, 4.3.62, 4.3.66, 4.3.67, 4.3.68, 4.3.69, 4.3.72, 4.3.75, 4.3.78, 4.3.79, 4.3.80, 4.3.81, 4.3.82, 4.3.84, 4.3.85, 4.3.86, 4.3.87, 4.3.89, 4.3.90, 4.3.91, 4.3.92, 4.3.93, 4.3.94, 4.3.95, 4.3.96, 4.3.97, 4.3.98, 4.3.99, 4.3.100, 4.3.101, 4.3.102, 4.3.103, 4.3.104, 4.3.105, 4.3.106, 4.3.107, 4.3.108, 4.3.109, 4.3.110

Capacity Release Standards:

Definitions:

5.2.1, 5.2.2, 5.2.3, 5.2.4, 5.2.5

Standards:

5.3.9, 5.3.18, 5.3.20, 5.3.21, 5.3.22, 5.3.23, 5.3.25, 5.3.31, 5.3.32, 5.3.33, 5.3.34, 5.3.35, 5.3.36, 5.3.37, 5.3.38, 5.3.39, 5.3.40, 5.3.41, 5.3.42, 5.3.46, 5.3.47, 5.3.48, 5.3.50, 5.3.52, 5.3.59, 5.3.60, 5.3.62, 5.3.62a, 5.3.63, 5.3.64, 5.3.65, 5.3.66, 5.3.67,

5.3.68, 5.3.69, 5.3.70, 5.3.71, 5.3.72, 5.3.73

Data Sets:

5.4.14, 5.4.15, 5.4.16, 5.4.17, 5.4.20, 5.4.21, 5.4.22, 5.4.23, 5.4.24, 5.4.25, 5.4.26, 5.4.27

Internet Electronic Transport Related Standards:

Definitions:

10.2.1, 10.2.2, 10.2.3, 10.2.4, 10.2.5, 10.2.6, 10.2.7, 10.2.8, 10.2.9, 10.2.10, 10.2.11, 10.2.12, 10.2.13, 10.2.14, 10.2.15, 10.2.16, 10.2.17, 10.2.18, 10.2.19, 10.2.20, 10.2.21, 10.2.22, 10.2.23, 10.2.24, 10.2.25, 10.2.26, 10.2.27, 10.2.28, 10.2.29, 10.2.30, 10.2.31, 10.2.32, 10.2.33, 10.2.34, 10.2.35, 10.2.36, 10.2.37, 10.2.38, 10.2.39

Standards:

10.3.1, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.3.10, 10.3.11, 10.3.12, 10.3.14, 10.3.15, 10.3.16, 10.3.17, 10.3.18, 10.3.19, 10.3.20, 10.3.21, 10.3.22, 10.3.23, 10.3.24, 10.3.25, 10.3.26, 10.3.27, 10.3.28, 10.3.29

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

NONE

6.18.15 Limited Liability.

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

6.19 PAPER POOLING

- (a) Paper pooling will be effectuated, via a Title Transfer Service, pursuant to a Shipper's valid Agreement(s) under the Rate Schedule(s) in each Title Transfer Point.
- (b) Paper pooling shall not relieve any Shipper from its obligation to make valid nominations for Transportation Service in accordance with the provisions of Section 6.6 of these General Terms and Conditions.

## 6.20 CAPACITY RELEASE PROVISIONS

This section sets forth the terms and conditions that are applicable to the release of firm entitlements under various services that are provided pursuant to this Tariff.

### 6.20.1 Procedure.

Capacity released shall be subject to the terms and conditions of this Section 6.20.1.

#### 6.20.1.1 Eligibility.

Any Shipper ("Releasing Shipper") under Rate Schedule FTS-1 of this Tariff, shall be entitled, subject to the terms and conditions of this Section 6.20.1, to release any or all of its firm Transportation entitlements held under an Agreement but only to the extent that the capacity so released is acquired by another Shipper ("Replacement Shipper") pursuant to the provisions of this Section 6.20.1. Any such release shall result in a temporary suspension of the Releasing Shipper's right to use the released firm entitlements. In the case of segmented capacity releases, all segmentation nominations shall be subject to the limitations set forth in Section 6.10.3 of these General Terms and Conditions. In addition, the following conditions shall apply:

Any Replacement Shipper that acquires capacity pursuant to a segmented release shall acquire Secondary Receipt and Delivery Points unless the Releasing Shipper has agreed to release all or part of the capacity at the

Primary Receipt and/or Delivery Points. With the prior consent of the Releasing Shipper, as expressed in the capacity release notice, a Replacement Shipper that acquires Primary Receipt and/or Delivery Points may request a change in such point(s) from Transporter pursuant to Section 6.2.4 of these General Terms and Conditions. In addition, a Replacement Shipper that acquires Secondary Receipt and/or Delivery Points shall have the right to request that Transporter elevate such point(s) to Primary Points subject to the conditions set forth below and in accordance with Sections 6.2.4 and 6.10.3, as applicable, of these General Terms and Conditions. In addition, the following provisions will apply.

- (i) No point may be elevated to a Primary Point if such point is not eligible for treatment as a Primary Point under these General Terms and Conditions and Shipper's Rate Schedule.
- (ii) A Replacement Shipper may not hold Primary Receipt or Delivery Point capacity in excess of the MDQ specified in the Replacement Shipper's Agreement. The sum of the MDQ at all Primary Receipt Points must be less than or equal to the MDQ specified in the Replacement Shipper's Agreement. Likewise, the sum of the MDQ at all Primary Delivery Points must be less than or equal to the MDQ specified in the Replacement Shipper's Agreement.

A Replacement Shipper shall be permitted to elevate a Secondary Point to a Primary Point, if sufficient path and point capacity is available. Once a Secondary Point is elevated to a Primary Point, the Replacement Shipper may change the Primary Point in accordance with the provisions of Section 6.2.4 of these General Terms and Conditions and subject to the conditions specified in this Section 6.20.1.1. Furthermore, at the end of the release, the Replacement Shipper's Primary Point(s) that were elevated from Secondary Points during the release shall revert to Secondary Point(s).

#### 6.20.1.2 Released Capacity Availability.

Released Capacity shall be made available on a basis that is not unduly discriminatory, and any Replacement Shipper shall be entitled to acquire Releasing Shipper's capacity subject to the terms and conditions under this Section 6.20.1, provided the Replacement Shipper meets all provisions governing eligibility under this Tariff in a timely manner. A Replacement Shipper shall be entitled to release acquired capacity to another Replacement Shipper, subject to the requirement that the original Replacement Shipper satisfies all of the provisions of this Section 6.20.1 as if such Replacement Shipper were a Releasing Shipper, and the new Replacement Shipper meets all

provisions governing eligibility under this Tariff in a timely manner, provided, however, that a Replacement Shipper that acquired released capacity through a volumetric bid shall not be entitled to re-release that capacity.

#### 6.20.1.3 Term.

Any release under this Section 6.20 shall be for a minimum period of one Day, and shall not exceed the expiration of the initial term of the Agreement that is released.

#### 6.20.1.4 Recall Rights.

(1) Releasing Shippers may, to the extent permitted as a condition of the capacity release, recall released capacity by providing notice to the Transporter in accordance with the time line, stated in CCT, set forth below. The recall notification shall show the recall quantity expressed in terms of adjusted total released capacity entitlements based upon the Elapsed Prorata Capacity. Recalled capacity notices will indicate whether penalties will apply for the Gas Day for which quantities are reduced due to a capacity recall. Transporter will support the ability for the Releasing Shipper to specify, as a condition of a release, whether the Releasing Shipper's recall notification must be provided exclusively on a Business Day. When capacity is recalled, it may not be Reput for the same Gas Day. The deadline for notifying Transporter of a Reput is 8:00 a.m. to allow for the timely nominations to flow on the next Gas Day.

##### (i) Timely Recall Notifications:

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

(ii) Early Evening Recall Notifications:

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

(iii) Evening Recall Notifications:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the Transporter and the first Replacement Shipper no later than 5:00 p.m. on the day that Evening Nominations are due;
- (b) The Transporter should provide notification of such recall to all affected Replacement Shippers no later than 6:00 p.m. on the day that Evening Nominations are due;

(iv) Intraday 1 Recall Notifications:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the Transporter and the first Replacement Shipper no later than 7:00 a.m. on the day that Intraday 1 Nominations are due;
- (b) The Transporter should provide notification of such recall to all affected Replacement Shippers no later than 8:00 a.m. on the day that Intraday 1 Nominations are due;

(v) Intraday 2 Recall Notifications:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the Transporter and the first Replacement Shipper no later than 12:00 noon on the day that Intraday 2 Nominations are due;
- (b) The Transporter should provide notification of such

recall to all affected Replacement Shippers no later than 1:00 p.m. on the day that Intraday 2 Nominations are due; and

(vi) Intraday 3 Recall Notifications:

- (a) A Releasing Shipper recalling capacity should provide notice of such recall to the Transporter and the first Replacement Shipper no later than 4:00 p.m. on the day that Intraday 3 Nominations are due;
- (b) The Transporter should provide notification of such recall to all affected Replacement Shippers no later than 5:00 p.m. on the day that Intraday 3 Nominations are due.

In the event of an intra-day capacity recall, Transporter will determine the allocation of capacity between the Releasing Shipper and the Replacement Shipper(s) based upon the Elapsed Prorata Capacity. Variations to the use of Elapsed Prorata Capacity may be necessary to reflect the nature of Transporter's Tariff, services, and/or operational characteristics.

Transporter will not be obligated to deliver in excess of the total daily contract quantity of the release as a result of NAESB WGQ Standard 5.3.55.

The amount of capacity allocated to the Replacement Shipper(s) should equal the original released capacity less the recalled capacity that is adjusted based upon the Elapsed Prorata Capacity or other Transporter Tariff specific variations of the Elapsed Prorata Capacity in accordance with NAESB WGQ Standard 5.3.56.

For recall notification provided to the Transporter prior to the recall notification deadline specified above and received between 7:00 a.m. and 5:00 p.m., the Transporter should provide notification to all affected Replacement Shippers no later than one hour after receipt of such recall notification. For recall notification provided to the Transporter after 5:00 p.m. and prior to 7:00 a.m., the Transporter should provide notification to all affected Replacement Shippers no later than 8:00 a.m. after receipt of such recall notification.

The Releasing Shipper shall make such recall effective by communicating the recall via the Interactive Internet Website and submitting a nomination change to Transporter, pursuant to Section 6.6.1 of these General Terms and Conditions.

Upon notification of a recall, the MDQ of the Replacement Shipper(s) shall be reduced by the quantity of the recall, and its nominations adjusted as necessary. Transporter shall be entitled to rely upon such nomination change and not be held liable under any circumstances whatsoever in the event of any such recall. The terms and conditions of recall may include non-payment of reservation charges by the Replacement Shipper. Transporter shall notify the Releasing Shipper of Replacement Shipper's non-payment of reservation charges no later than five (5) business days after the date such payment was due pursuant to Section 6.17 paragraph 2 of these General Terms and Conditions.

- (2) Upon notification by Releasing Shipper to Transporter that such recall of transportation entitlements is no longer in effect, the Replacement Shipper shall, if provided for in the Agreement with the Releasing Shipper, be entitled to Reput the release effective upon communication to Transporter via the Interactive Internet Website a nomination change pursuant to Section 6.6.1 of these General Terms and Conditions.
- (3) If released transportation capacity is recalled by the Releasing Shipper, Transporter may, if requested by the Replacement Shipper, and subject to availability of capacity, continue service to the Replacement Shipper under Rate Schedule ITS.

#### 6.20.1.5 Bidding Period.

Releasing Shipper may specify the date and time that the Bidding Period starts and the date that the Bidding Period ends, provided, however, that the Bidding Period shall not commence any later than the time set forth in Section 6.20.1.6 below regarding the capacity release timeline.

Releasing Shipper's offer to release shall be posted for the Bidding Period; provided, however, that the Releasing Shipper shall have the right to withdraw such offer before the end of the Bidding Period

where unanticipated circumstances so justify and a notice of withdrawal of the offer is posted on the Interactive Internet Website prior to the receipt of any valid bids for such capacity.

Transporter will post offers and bids, including prearranged deals, upon receipt. A Releasing Shipper may request a later posting time for posting of such offer, and Transporter will support such request insofar as it comports with the Capacity Release timeline in Section 6.20.1.6 below.

#### 6.20.1.6 Capacity Release Timeline.

The following capacity release timeline, stated in CCT, is applicable to all parties involved in the capacity release process; however, it is only applicable if all information provided by the parties to the transaction is valid and the Replacement Shipper has been determined to be creditworthy before the capacity release bid is tendered, for index-based capacity release transactions the Releasing Shipper has provided Transporter with sufficient instructions to evaluate the corresponding bid(s) according to the timeline, and there are no special terms or conditions of the release.

Further, Transporter may complete the capacity release process on a different timeline if the offer includes unfamiliar or unclear terms and conditions (e.g. designation of an index not supported by the Transporter).

- (i) For biddable releases (1 year or less):
  - (1) Offers should be tendered such that they can be posted by 9:00 a.m. on a Business Day.
  - (2) Open season ends at 10:00 a.m. on the same or a subsequent Business Day.
  - (3) Evaluation period begins at 10:00 a.m. during which any contingencies are eliminated, determination of best bid is made, and ties are broken.
  - (4) If no match is required, the evaluation period ends and the award is posted by 11:00 a.m.
  - (5) Where match is required, the match is communicated by 11:00 a.m., the match response occurs by 11:30 a.m., and the award is posted by 12:00 noon.
  - (6) The contract is issued within one hour of the award posting (with a new contract number, when applicable).
  - (7) Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.

- (ii) For biddable releases (more than 1 year):
  - (1) Offers should be tendered such that they can be posted by 9:00 a.m. on a Business Day.
  - (2) Open season shall include no less than three 9:00 a.m. to 10:00 a.m. time periods on consecutive Business Days.
  - (3) Evaluation period begins at 10:00 a.m. during which any contingencies are eliminated, determination of best bid is made, and ties are broken.
  - (4) If no match is required, the evaluation period ends and the award is posted by 11:00 a.m.
  - (5) Where match is required, the match is communicated by 11:00 a.m., the match response occurs by 11:30 a.m., and the award is posted by 12:00 noon.
  - (6) The contract is issued within one hour of the award posting (with a new contract number, when applicable).
  - (7) Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.
  
- (iii) For non-biddable releases:
  - The posting of prearranged deals that are not subject to bid are due no later than one hour prior to the nomination deadline for the applicable cycle, pursuant to NAESB WGQ Standard 1.3.2. The posting deadlines are:
    - Timely Cycle            12:00 noon
    - Evening Cycle         5:00 p.m.
    - Intraday 1 Cycle      9:00 a.m.
    - Intraday 2 Cycle      1:30 p.m.
    - Intraday 3 Cycle      6:00 p.m.
  
  - The contract is issued within one hour of the award posting (with a new contract number, when applicable).
  - Nomination is possible beginning at the next available nomination cycle for the effective date of the contract.

#### 6.20.1.7 Required Information for the Release of Capacity.

The Releasing Shipper shall submit the following information, objectively stated and applicable to all potential shippers on a non-discriminatory basis, to Transporter via Electronic Communication:

- (1) The Releasing Shipper's legal name, contract number, and the

name, title, address and phone and fax number of the individual who will authorize the release of capacity for the Releasing Shipper.

- (2) Whether the capacity is biddable.
- (3) The level of daily firm entitlements that the Releasing Shipper elects to release, expressed as a numeric quantity per Day and total release period quantity.
- (4) The Primary Path(s) or segment within such Primary Path(s), and quantity to be released for such Primary Path.
- (5) The requested effective date and the term of the release.
- (6) The minimum acceptable period of release and minimum acceptable quantities (if any).
- (7) The Releasing Shipper's maximum reservation rate (including any demand type surcharges, direct bills, or similar mechanisms), any minimum rate requirement, whether bids are to be submitted on a reservation or volumetric basis, and whether the bids should be stated in dollars and cents or percent of the maximum tariff rate for a non-index-based release, or the index-based formula as detailed in the capacity release offer.

If the release is for a term of one (1) year or less and is to take effect on or before one (1) year from the date on which the Transporter is notified of the release, the Reservation Rate, percentage of the maximum tariff rate, or the rate resulting from the index-based formula as detailed in the capacity release offer for capacity released and assigned may exceed the Maximum Reservation Rate for the service being released.

Payments or other consideration exchanged between the Releasing Shipper and Replacement Shipper in a release to an asset manager as described in Section 6.20.1.9 below are not subject to the maximum rate.

- (8) The Releasing Shipper's request (if at all) for Transporter to market actively the capacity to be released.
- (9) The legal name of the Replacement Shipper that is designated in any pre-arranged release ("Pre-arranged Replacement Shipper").

- (10) Whether the capacity is to be released on a recallable basis, and, if so, the terms and conditions of such recall, and whether the Releasing Shipper is authorized to Reput the release if and when it notifies Transporter that the recall is no longer in effect; or whether the capacity is to be released on a permanent basis.
- (11) Whether the capacity to be released is contingent on the release of other capacity, or on certain terms and conditions, and if so, the capacity, terms and/or conditions upon which the release is contingent.
- (12) The terms and conditions under which Releasing Shipper will accept contingent bids, including bids that are contingent upon the Replacement Shipper acquiring transportation on a pipeline interconnected to Transporter, the method for evaluating contingent bids, what level of proof is required by the contingent bidder to demonstrate that the contingency did not occur, and for what time period the next highest bidder will be obligated to acquire the capacity if the next winning contingent bidder declines the release.
- (13) Whether Releasing Shipper requires bidders to post a deposit with Transporter, not to exceed the amount required by Transporter pursuant to Section 6.2.1 of these General Terms and Conditions, to guard against frivolous bids. Deposits will be refunded to losing bidders at the time the capacity is awarded, and credited against the Replacement Shipper's invoices until fully utilized.
- (14) Whether Releasing Shipper will require Replacement Shipper to post a deposit, not to exceed the amount required by Transporter pursuant to Section 6.2.1 of these General Terms and Conditions, to guard against payment defaults if Transporter waives the deposit requirement contained in Section 6.2.1 of these General Terms and Conditions. Such deposit will be paid by the Replacement Shipper to Transporter at the time specified in Section 6.2.1 of these General Terms and Conditions, and will be credited against Replacement Shipper's invoices until fully utilized.
- (15) Any other reasonable and not unduly discriminatory terms and conditions to accommodate the release, including provisions necessary to evaluate bids and tie breaking criteria, provided, however, that bid evaluations will be limited to highest rate, net revenue and present value. For index-based capacity release transactions, the Releasing Shipper should provide the

necessary information and instructions to support the chosen methodology.

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

- (16) Any restriction on the use of higher rate Secondary Points that Transporter and Releasing Shipper have agreed to, or any requirement that the Replacement Shipper reimburse the Releasing Shipper for any incremental charges assessed by Transporter pursuant to Sections 6.4 paragraph 1(b)(2) and 6.4 paragraph 2(b)(2) of these General Terms and Conditions for use of Secondary Points by the Replacement Shipper.
- (17) Any other additional information that Transporter deems necessary, from time to time, to effectuate releases hereunder.
- (18) Transporter shall not be liable for information provided to Transporter, including any such information that is posted on the Interactive Internet Website, or with respect to the deposit required by the Replacement Shipper pursuant to Section 6.20.1.7 paragraph (14) above.
- (19) Any restriction on the changing of Primary Points that Replacement Shipper and Releasing Shipper have agreed to, or any requirement that the Replacement Shipper reimburse the Releasing Shipper for any incremental charges assessed by Transporter associated with a change in Primary Points pursuant to Section 6.2.4 of these General Terms and Conditions. Absent an indication to the contrary, the Replacement Shipper shall not have a right to change the Primary Point(s). In any event, when a Primary Point is changed as part of a temporary release, at the end of such release the Releasing Shipper shall be responsible for any on-going incremental charges associated with the Primary Point.
- (20) The priority to be afforded the nominations of Releasing Shipper and Replacement Shipper in the event of overlapping nominations of equal priority in excess of the firm entitlements of the released capacity.

Absent an indication to the contrary, the Replacement Shipper shall be deemed responsible for any nominations scheduled in

excess of the firm entitlements of the released capacity on the overlapping segment.

- (21) An indication of whether the Pre-arranged capacity release is to an asset manager as described in Section 6.20.1.9 below, and the asset manager's obligation as to volumetric level and effective time period(s) to deliver gas to, or purchase gas from the Releasing Shipper.
- (22) An indication of whether the Pre-arranged capacity release is to a marketer participating in a state-regulated retail access program as described in Section 6.20.1.9 below.

#### 6.20.1.8 Open Bidding Process.

Prospective Shippers wishing to acquire capacity available for release ("Bidding Shipper"), must: (1) have an executed Master Service Agreement in place pursuant to this Section 6.20.1; and (2) place a bid on the Interactive Internet Website or in writing for the available capacity during the Posting Period. If such bid is not expressly labeled contingent, such bid shall be binding. The bid shall contain the following information:

- (1) The Bidding Shipper's legal name and the name, title, address and phone number of the individual who will authorize the acquisition of the available capacity.
- (2) The level of daily firm entitlements that the Bidding Shipper requests and the minimum quantity it will accept.
- (3) The requested effective date and the term of the acquisition.
- (4) The Bidding Shipper's bid, addressing all criteria required by the Releasing Shipper.

The Bidding Shipper shall be entitled to withdraw its bid via the Interactive Internet Website prior to the end of the bidding period, if such withdrawal is not due to lower bids by other Shippers. Bidding Shipper cannot withdraw its bid after the Bidding Period ends. If Bidding Shipper withdraws its bid, it may not resubmit a lower bid. If Bidding Shipper submits a higher bid, lower bids previously submitted by Bidding Shipper will be automatically eliminated. A Bidding Shipper may submit multiple bids where the term or quantity involved in each bid is different. Transporter shall post all information provided by Bidding Shippers, except the

information provided in Section 6.20.1.8 paragraph (1) above.

The bids for the given capacity release offer should adhere to the method specified by the Releasing Shipper. No bid shall exceed the maximum applicable transportation rates, in addition to any and all applicable fees and surcharges, as specified in this Tariff, provided, however, that such limitation shall not apply to any bid for release of capacity with a term of one (1) year or less and is to take effect on or before one (1) year from the date on which the Transporter is notified of the release. The quantity or the requested term of the release of such bid shall not exceed the maximum quantity or term specified in the executed Agreement.

#### 6.20.1.9 Pre-arranged Release not Subject to Bidding.

Releasing Shipper shall have the right to release capacity to a pre-arranged Replacement Shipper without posting an offer via Electronic Communication if: Replacement Shipper will confirm via the Interactive Internet Website the terms and conditions of the Pre-arranged Release, meets all other terms and conditions of the release, and the release is either:

- (1) A capacity release transaction for a term of more than one (1) year at maximum rates, or
- (2) A capacity release transaction equal to 31 days or less, or
- (3) A Capacity release transaction to an asset manager that contains a condition that the Releasing Shipper may call upon the Replacement Shipper to deliver to, or purchase from, the Releasing Shipper a volume of gas up to 100 percent of the daily contract demand of the released transportation capacity, provided that:
  - (a) if the capacity release is for a period of one (1) year or less, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of the lesser of five (5) months (or 155 days) or the term of the release;
  - (b) if the capacity release is for a period of more than one (1) year, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of five (5) months (or 155 days) of each

twelve-month period of the release, and on five-twelfths of the days of any additional period of the release not equal to twelve months.

- (4) A capacity release transaction to a marketer participating in a state- regulated retail access program that will be utilized by the Replacement Shipper to provide the gas supply requirement of retail consumers pursuant to a retail access program approved by the state agency with jurisdiction over the local distribution company that provides delivery service to such retail consumers.

If Releasing Shipper exercises such right, Releasing Shipper must notify Transporter prior to the nomination of the released entitlements, and the Replacement Shipper shall adhere to the contracting requirements pursuant to Section 6.20.2, below. Releasing Shipper will post the information on the Interactive Internet Website any time before the release transaction begins. The Replacement Shipper shall confirm the pre-arranged release and meet any eligibility requirements under this Section 6.20. Transporter will support the creation of pre-arranged releases on the Interactive Internet Website.

#### 6.20.1.10 Matching Rights for Pre-arranged Releases Open for Bidding.

A Pre-arranged Replacement Shipper shall have the right of first refusal for a time period as negotiated by the Releasing Shipper and the Pre-arranged Replacement Shipper ("Matching Period"). The Matching Period will be one-half (1/2) hour following the time the Pre-Arranged Replacement Shipper has been notified of the winning bid. In the event a bid is received that more closely meets the criteria specified by the Releasing Shipper, Transporter shall provide the Pre-arranged Replacement Shipper an opportunity during the Matching Period to match or exceed the bid that more closely meets the criteria specified by the Releasing Shipper. No later than 11:00 a.m., the Pre-arranged Replacement Shipper shall receive notification on the Interactive Internet Website of the terms and conditions of the prevailing bid, and shall have the Matching Period to respond via the Interactive Internet Website. Absent a response, the capacity shall be awarded to the prevailing Bidding Shipper no later than 12 noon.

#### 6.20.1.11 Awarding of Capacity Available for Release.

Capacity for Release subject to bidding will be awarded consistent with the timeline set forth in Section 6.20.1.6 above. The capacity available for release shall be awarded to the Bidding Shipper with the highest bid matching all terms and conditions provided by the Releasing Shipper. In the case of multiple bid winners, the highest ranking bid will receive the entire maximum amount of capacity bid. The next highest bidder will receive the remainder of the offered capacity provided that the amount remaining is above the bidder's minimum acceptable quantity. Any remaining capacity will be given to the next highest bidder under the same provisions as above. This process will repeat until either all of the offered capacity is awarded or the remaining capacity falls below either the Releasing Shipper's minimum quantity or all the remaining bidder's acceptable quantities. If bids are received that do not match all the terms and conditions provided by the Releasing Shipper, bids will be evaluated by the criteria provided by the Releasing Shipper. If no criteria are provided by the Releasing Shipper, the Bidding Shipper bidding the greatest NPV shall be awarded the capacity. If more than one such bid has an equal NPV, then the capacity shall be awarded on a first come, first served basis. The ultimate awarding of capacity will be posted subsequently on Transporter's Interactive Internet Website consistent with the timeline set forth in Section 6.20.1.6 above.

#### 6.20.1.12 Remaining Capacity.

In the event that a Releasing Shipper does not release all of its firm entitlements, the Releasing Shipper shall remain responsible for the remaining entitlements and is entitled to utilize the remaining entitlements with the MDQ reduced accordingly by the released capacity quantities.

#### 6.20.1.13 No Rollover.

The Releasing Shipper shall not re-release firm entitlements that were previously released pursuant to Section 6.20.1.9 paragraph (2) above to the same Pre-arranged Replacement Shipper on a pre-arranged basis, until twenty-eight (28) Days after the end of the first release period. The 28-day

hiatus does not apply to any rerelease to the same Replacement Shipper that is posted for bidding or that qualifies for any other exemptions from bidding under Section 6.20.1.9. Sections 6.20.1.9 paragraph (1) and 6.20.1.9 paragraph (3) transactions can be rolled-over for subsequent periods without bidding.

#### 6.20.1.14 Agreement for Multiple Capacity Release Transactions.

In lieu of execution of individual Agreement(s), Transporter and Replacement Shipper may execute a Master Service Agreement For Capacity Release Transactions to cover multiple capacity release transactions.

#### 6.20.2 Execution of Capacity Release Agreements.

- (a) Contractual Obligations. Transporter and Replacement Shipper must have a Master Service Agreement in effect pursuant to Section 6.20.1 above. In the event a Replacement Shipper does not satisfy Transporter's creditworthiness requirements such Shipper shall be required to comply with the creditworthiness requirements of Section 6.18.5 of these General Terms and Conditions. All Replacement Shippers shall be required to accept by a release all transportation rights and obligations of the Releasing Shipper with respect to the capacity released, including nominations and Primary Paths. Unless otherwise agreed by Transporter, the Releasing Shipper shall remain fully liable to Transporter for all reservation charges, including reservation type surcharges and direct bills, that were due under the Releasing Shipper's Agreement, unless Replacement Shipper has agreed to pay Transporter maximum rates, and to accept all obligations of the Releasing Shipper under the Releasing Shipper's Agreement for the remaining term of such Releasing Shipper's Agreement.
- (b) Billing. Pursuant to Sections 6.15, 6.17 and 6.20.2 paragraph (c) of these General Terms and Conditions, Replacement Shipper shall be billed for its services the applicable rates and charges set forth in Sections 6.4 paragraph 1 and 6.4 paragraph 2 of these General Terms and Conditions, and further provided that:
  - (1) Transporter shall bill the Releasing Shipper the difference between (1) the Releasing Shipper's rates and charges under its Service Agreement and (2) any additional reservation charges applicable under Sections 6.4 paragraph 1 and 6.4 paragraph 2 of these General Terms and Conditions in the event that the Releasing Shipper has agreed to be billed any such

additional reservation charges as part of its capacity release offer otherwise those incremental charges will be billed to the Replacement Shipper. Transporter shall also bill the Releasing Shipper in the event of default in payment of the Replacement Shipper.

- (2) If the Replacement Shipper elevates Secondary Point(s) to Primary Point(s) in accordance with the provisions of Section 6.2.4 of these General Terms and Conditions, then Transporter shall bill the Releasing Shipper the difference between (1) the Releasing Shipper's rates and charges under its Service Agreement and (2) any additional reservation charges applicable under Sections 6.2.4 paragraph (b), 6.4 paragraph 1 and 6.4 paragraph 2 of these General Terms and Conditions in the event that the Releasing Shipper has agreed to be billed any such additional reservation charges as part of its capacity release offer, otherwise those incremental charges will be billed to the Replacement Shipper.
- (c) Credits. Except as otherwise agreed to between Transporter and Releasing Shipper, Releasing Shipper shall receive a credit against its Monthly Reservation Charges equal to the amount of reservation charges contained within the Replacement Shipper's bid plus any amounts billed to Replacement Shipper pursuant to Sections 6.4 paragraph 1(b)(2) and 6.4 paragraph 2(b)(2) of these General Terms and Conditions, as the case may be. Transporter and Shipper may, in connection with a Negotiated Rate Agreement under a firm rate schedule, agree upon payment obligations and crediting mechanisms in the event of a capacity release that vary from, or are in addition to, those set forth in this Section 6.20.2, provided, however, that terms and conditions of service may not be negotiated.
- (d) Refunds. Releasing Shipper and any Replacement Shipper must track any changes in Transporter's rates approved by the Commission. In the event the Commission orders refunds of any such rates charged by Transporter and previously approved, Transporter and/or Releasing Shipper, as the case may be, must make corresponding refunds to such Releasing Shipper or any Replacement Shipper, to the extent that Releasing Shipper or Replacement Shipper(s) has paid a rate in excess of Transporter's just and reasonable, applicable maximum rates. Transporter shall assume no liability or responsibility whatsoever for the failure of the Releasing Shipper to comply with its obligations under this Section 6.20.2 paragraph (d).

### 6.20.3 Posting of Purchase Offers.

Transporter shall allow a potential Replacement Shipper to post for at least thirty (30) Days its offers to acquire released firm entitlements. The offer must contain the following information:

- (a) The potential Replacement Shipper's legal name and the name, title, address and phone number of the individual who will authorize the acquisition of the available capacity.
- (b) The daily quantities of capacity which the Bidding Shipper requests.
- (c) The Receipt Points and/or Delivery Points where capacity is requested, as applicable.
- (d) The requested effective date and the term of the acquisition.

#### 6.20.4 Marketing Fee.

Transporter shall be entitled, upon Releasing Shipper's request, to market the capacity available for release actively on Releasing Shipper's behalf. Transporter and Releasing Shipper will negotiate the terms and conditions upon which Transporter will market the Releasing Shipper's capacity.

#### 6.20.5 Transporter's Right to Suspend or Terminate a Capacity Release.

Transporter may elect to suspend or terminate a Replacement Shipper's Agreement, upon written notice to Replacement Shipper, under the following conditions:

- (a) The Releasing Shipper, pursuant to this Section 6.20, has failed to maintain creditworthiness in accordance with Section 6.18.5 of these General Terms and Conditions such that Transporter has provided notice that it will suspend and then terminate Releasing Shipper's Agreement; and
- (b) The rate stated in the effective Replacement Shipper's Agreement is less than the maximum Reservation Rate and Commodity Rate for the contracted for service; and
- (c) The Replacement Shipper has not, prior to the expiration of thirty (30) days, executed an amendment to such Replacement Shipper's Agreement, agreeing to pay, beginning the first day after the end of the thirty day notice period and for the

remainder of the term of the Replacement Shipper's Agreement, the lesser of (1) the Releasing Shipper's contract rate (2) the maximum tariff rate for the service or (3) a mutually agreeable rate.

Should the Releasing Shipper cure its failure to maintain creditworthiness prior to termination, the Replacement Shipper's amendment to its contract will expire by its own terms without ever having gone into effect.

## 6.21 RIGHT OF FIRST REFUSAL

### 6.21.1 ROFR Purpose.

The Purpose of this section is to provide the necessary information pertaining to the right of long-term firm Shippers to continue firm Transportation Service at the expiration of their Agreements, or any volumetric portion thereof (both hereinafter referred to as "Capacity" for purposes of this Section 6.21), by exercising a right of first refusal.

### 6.21.2 ROFR Eligibility.

Any Shipper with an Agreement under Rate Schedule FTS-1 which is for a term of twelve (12) consecutive months or more and is at the maximum applicable tariff rate (including maximum rate Agreements of one year or more where service is not available for twelve consecutive months), may exercise a right to continue to receive service thereunder from Transporter at the expiration of its Agreement provided that Shipper gives notice to Transporter that it desires to continue its Agreement and will match (a) the longest term, and (b) the highest rate for such service, up to the maximum rate, that is offered by any other person desiring such capacity; provided, however, that Transporter shall not be obligated to provide service at less than the maximum applicable rate(s). If a Shipper's Agreement does not qualify for the right of first refusal under this Section 6.21, then Transporter in a not unduly discriminatory manner may agree otherwise with any such Shipper. However, capacity sold on an interim basis in accordance with Section 6.3 paragraph 2 of these General Terms and Conditions shall not be eligible for a right of first refusal unless Transporter and Shipper agree to a conditional contractual ROFR that would take effect upon a determination that the proposed project will not go forward.

Also, the right of first refusal will not be applicable to interim Service Agreements for entitlement associated with capacity that is already under contract for a future period subject to the following conditions and in accordance with Section 6.2.10 paragraph (h) of these General Terms and Conditions:

- (a) The future capacity must have been sold through an open season bidding process permitting bids for capacity for service to start immediately or anytime in the future;
- (b) The bids must have been evaluated on a net present value basis; and
- (c) The future capacity must have been awarded to the Shipper providing the highest net present value bid.

The Shipper may exercise its right to retain a portion of its firm service entitlement subject to the right of first refusal.

#### 6.21.3 ROFR Procedure.

- (a) Except as to expiring Capacity that is the subject of the provisions of Section 6.21.3 paragraph (b) below, Transporter shall notify Shipper no earlier than eight (8) Months, nor later than seven (7) Months, prior to the expiration of the Capacity whether there exists any acceptable bona fide offers for Transporter's Capacity that could be satisfied by the relinquishment of Shipper's Capacity. If Transporter has received any such offers, Transporter shall inform Shipper of the rate and the term that has been offered for Shipper's Capacity and, if requested, shall provide to Shipper a copy of the acceptable, bona fide, offer (except that Transporter may redact the identity of the offering Shipper, unless the offering Shipper is an affiliate of Transporter, in which case the identity of the offering Shipper shall not be redacted). Shipper shall notify Transporter within thirty (30) days after notification whether it desires to match the offered rate, up to the applicable maximum rate, and term. If Shipper elects to match the bona fide offer, Transporter shall provide Shipper with an executable contract within ten (10) days after receipt of Shipper's election, and Shipper shall have twenty (20) days after receipt of the contract to execute and return the contract to Transporter.

If Transporter notifies Shipper that there are no acceptable, bona fide, offers for Shipper's capacity under this Section 6.21.3 paragraph (a), Transporter and Shipper shall have sixty (60) days after notification to negotiate the terms and conditions of a new or amended Agreement; provided, however, that in no event shall Shipper have any automatic right to renew service at a discounted rate; provided further, however, Shipper may select the term of the Agreement after agreeing to pay maximum rates, and all applicable surcharges.

If Shipper does not execute a new or amended Agreement within either of these sixty (60) day periods, whichever is applicable, Shipper's rights to such Capacity shall terminate and Transporter shall at such time post the Capacity as becoming generally available at the expiration of its term.

- (b) For purposes of this Section 6.21.3, offers will be deemed bona fide if made in compliance with Section 6.2.1 of these General Terms and Conditions. Any party that has an outstanding request for firm service under Section 6.9 paragraph 1 of these General Terms and Conditions shall be notified and given the opportunity to specify the rate and term it is willing to offer for Shipper's capacity.

## 6.22 INTERNET SITE

The Interactive Internet Website is available via Transporter's Internet site at [www.kineticallc.com](http://www.kineticallc.com).

## 6.23 FERC ANNUAL CHARGE ADJUSTMENT

1. Purpose. The purpose of this Section 6.23 is to establish an Annual Charge Adjustment ("ACA") as permitted by Section 154.402 of the Commission's Regulations to permit Transporter to recover from its Shippers all Total Annual Charge annual charges assessed it by the Commission under Part 382 of the Commission's Regulations.
2. Applicable Rate Schedules: The ACA as set forth in Section 4.2 of this FERC Gas Tariff, is applicable to Transporter's Rate Schedules FTS-1 and ITS.
3. Remittance to the Commission. Transporter shall remit to the Commission, not later than forty-five (45) Days after receipt of the Annual Charges Billing, the Total Annual Charge stated on such billing.
4. Basis of the Annual Charge Adjustment. Transporter's Rate Schedules specified in Section 6.23 paragraph 2 above shall include an increment for an Annual Charge Adjustment for costs specified in Section 6.23 paragraph 1 above. Such adjustment shall be the billable charge factor from the Commission, adjusted to the Company's pressure base and heating value, if required, which the Commission orders to be effective each fiscal year as posted in a notice on its website (<http://www.ferc.gov>)

entitled “FY [Year] Gas Annual Charges Correction for Annual Charges Unit Charge.” The Annual Charge Adjustment shall be reflected in Section 4.2 of this FERC Gas Tariff.

#### 6.24 Hurricane Surcharge.

(a) Purpose and Applicability.

This section sets forth the tariff mechanism whereby Transporter shall have the right to implement, through a limited filing under Section 4 of the Natural Gas Act, a commodity surcharge (the “Hurricane Surcharge”) for the recovery of all qualifying expenditures, as defined in part (b) below, that Transporter incurs in connection with the repair of damage to its facilities caused by a “Storm Event.” For purposes of this Section 6.24, a Storm Event shall consist of any hurricane, tropical storm or depression named or numbered by the U.S. National Weather Service. The Hurricane Surcharge shall be applicable to each Dekatherm of Gas transported under any Rate Schedule FTS-1, ITS or IPLS Transportation Service Agreement in effect under this FERC Gas Tariff, including any discounted recourse rate or negotiated rate Agreement, and shall be paid in addition to the rates and charges otherwise applicable to such services. The Hurricane Surcharge cannot be assessed to both Rate Schedule IPLS and the related transportation service to complete an IPLS transaction.

(b) Eligible Costs.

The costs that Transporter will be entitled to collect through the Hurricane Surcharge (the “Eligible Costs”) shall include actual costs incurred by Transporter resulting from a Storm Event, including but not limited to: temporary or permanent pipeline re-routings; repair, replacements or abandonments of Transporter pipeline (including Storm Event-related damage caused by third-party equipment or facilities and damages to third parties caused by Storm Event-related damage to Transporter facilities), platforms, receipt points, delivery points, compressors, and other property and appurtenant equipment; construction of replacement or alternative, or remediation of existing, pipeline interconnections or multiple pipeline crossings and associated facilities; removal of pipelines and other equipment (including but not limited to removal of any Transporter equipment located on third party offshore platforms owned by third parties); removal of debris (including but not limited to sunken marine vessels or equipment and platforms); pipeline burials; smart pigging operations related to a Storm Event; post-Storm Event inspections (including but not limited to inspections by remote operated submersible vehicles and inspections required by any governmental authority); reimbursement of damage to third party

property and persons; miscellaneous expenses associated with having personnel available to repair Transporter's system; any costs which Transporter incurs to restore system operations following the occurrence of a Storm Event; including replacement of line pack; and any other Storm Event-related incremental costs resulting from federal, state and/or local regulation. Eligible costs shall include costs that are subject to future recovery through insurance, provided that any such costs actually recovered are later credited to a subsequent tracker filing made under this Section.

Eligible costs shall be exclusive of preventative measures or improvements to Transporter's system, the costs of which shall be addressed in a general rate change application made under Section 4 of the Natural Gas Act.

(c) Effective Date and Filing Procedure.

- (1) The minimum and maximum amount of the effective Hurricane Surcharge shall be shown on Transporter's Statement of Surcharges in Section 4.2 of this FERC Gas Tariff and shall be made effective January 1 of each year.
- (2) Subsequent to the initial filing to implement Transporter's Hurricane Surcharge, Transporter shall be permitted (but not required) each year to make a Hurricane Surcharge tracker filing by December 1, to be effective January 1. With each such filing, Transporter shall include detailed information of all Eligible Costs proposed in its filing for recovery (except for any expenditure carried forward from a prior filing), with an explanation of how each such expenditure qualifies for inclusion in the Hurricane Surcharge. Each filing shall also include information detailing (1) all revenues that Transporter collected during the prior twelve months pursuant to its Hurricane Surcharge; (2) all of the Eligible Costs that Transporter has incurred; and (3) any insurance proceeds or recoveries from other affiliated or unaffiliated third parties actually received for any portion of the Eligible Costs previously collected through any prior Hurricane Surcharge, together with supporting workpapers.
- (3) In evaluating the timing and costs of repairing its facilities, it shall be prudent for Transporter to (1) consider the time of the Year in which any Storm Event damage repair occurs, (2) incur Eligible Costs reflecting high demand for offshore repair services and equipment (for example, special barges) at the time of or after the Event occurred, (3) incur Eligible Costs as necessary to return its pipeline system (or any part thereof) damaged by the Storm Event back into service as soon as possible, including but not limited to in

response to urging by any governmental authority, and (4) incur costs to arrange for temporary housing, meals, travel and other necessities for personnel to be available to repair Transporter's system.

- (4) If, by January 1 of any year, Transporter has had in effect during the previous twelve month period a Hurricane Surcharge, and has not made a filing on the immediately prior December 1 to place into effect a new Hurricane Surcharge, Transporter shall file with the Commission a final report setting forth (1) all of the revenues that Transporter has collected through the Hurricane Surcharge applicable to the most recent Storm Event subject to surcharge recoveries; (2) all of the Eligible Costs incurred with respect to such Storm Event; and (3) any insurance proceeds or recoveries from other affiliated or unaffiliated third parties actually received for any portion of Eligible Costs previously collected through any Hurricane Surcharge applicable to such Storm Event, together with supporting workpapers. Interested parties shall have the right to protest any such final report. Such final report shall also be subject to the requirements of Section 6.24 paragraph (f)(3) below.

(d) Hurricane Deferred Cost Account.

Transporter shall establish and maintain separately a Hurricane Deferred Cost Account as follows:

- (1) Each Month, the Hurricane Deferred Cost Account shall be (1) debited by the Eligible Costs incurred that Month, (2) credited by any insurance proceeds and other recoveries from third parties for that Month of any Eligible Costs previously debited to the Hurricane Surcharge Cost Account, (3) credited by the revenue collected by Transporter that Month through collection of the Hurricane Surcharge, and (4) debited or credited, as appropriate, each Month by carrying charges calculated at the FERC-prescribed interest rate, as set forth in Section 154.501(d) of the Commission's Rules and Regulations, on the monthly balance of the Hurricane Deferred Cost Account for the prior Month.
- (2) It is Transporter's intent that the accounting set forth in Section 6.24 paragraph (d)(1) above shall operate as a true-up mechanism between Transporter's (1) Eligible Costs; and (2) Hurricane Surcharge revenue plus insurance proceeds and any recoveries from third parties of Eligible Costs previously included in the Hurricane Deferred Cost Account.

(e) Calculation of the Hurricane Surcharge.

- (1) The Hurricane Surcharge shall equal:
    - (i) The latest available balance in the Hurricane Deferred Cost Account, divided by
    - (ii) The projected total system throughput (unadjusted for any rate discounting) for the 12-Month period beginning on the proposed effective date of the applicable Hurricane Surcharge.
  - (2) In calculation of the Hurricane Surcharge in each separate filing, the collection of any Eligible Costs included for recovery in such filing shall be amortized over a 36 Month period.
  - (3) To the extent that any portion of the Hurricane Deferred Cost Account remains uncollected at the end of a given period as a result of the 36 Month amortization period, the foregone revenue plus carrying costs at the FERC- prescribed interest rate may be collected by Transporter in a subsequent period.
  - (4) If the amount in the Hurricane Deferred Cost Account is less than \$100,000 (either negative or positive), Transporter may, upon at least thirty (30) Days prior notice to the Commission, reduce the Hurricane Surcharge to \$0.00/Dth and refund to or bill Shippers the amount in the Hurricane Deferred Cost Account in the invoice for the Month following the date the Hurricane Surcharge is reduced to \$0.00/Dth based on the actual quantities received by Transporter for each Shipper during such Month.
- (f) Miscellaneous.
- (1) No Eligible Cost included in the calculation of the Hurricane Surcharge may be included in Transporter's existing base rates. Nor shall any cost included in Transporter's existing base rates be included in the calculation of the Hurricane Surcharge.
  - (2) Any capital-related Eligible Costs (or portion thereof) for which Transporter is reimbursed through collection of the Hurricane Surcharge shall not be debited to Transporter's gross plant (Property, Plant, and Equipment) accounts.
  - (3) If Transporter discontinues the use of the Hurricane Surcharge, Transporter shall file to refund to or bill its Shippers any negative or positive amount remaining in the Hurricane Deferred Cost Account as of the date that the Hurricane Surcharge is discontinued; provided, however, that all amounts for reimbursement for Eligible

Costs received after such date (such as insurance proceeds and recoveries from third parties of Eligible Costs previously included in the Hurricane Deferred Cost Account) shall be refunded to its Shippers. Any such refunds to or billings of Shippers shall be based on the actual quantities received by Transporter for each Shipper during the Month covered by the invoice on which such refund or billing is reflected.

## 6.25 NEGOTIATED RATES

1. **Availability.** Notwithstanding anything to the contrary contained in this Tariff, including the provisions of the rate schedules contained herein, Transporter and Shipper may mutually agree to a Negotiated Rate under any Agreement, provided that Shipper has not acquired its capacity under the capacity release provisions of Section 6.20 of these General Terms and Conditions. If a portion of the capacity under any existing Agreement is agreed to be priced at Negotiated Rates, the existing Agreement must first be bifurcated, and the existing maximum or discounted tariff rates will continue to apply to the capacity not subject to the Negotiated Rates. As a recourse to Negotiated Rates, any Shipper may receive service at the applicable maximum tariff rates, including surcharges, for service under the rate schedule applicable to the Negotiated Rate.
2. **Filing Requirement.** No later than the first business day on or after service under a Negotiated Rate Agreement commences, Transporter shall file with the Commission either the Negotiated Rate Agreement or a tariff section stating the exact legal name of the Shipper, the Negotiated Rate, the rate schedule, the receipt and delivery points, the contract quantities, and, where applicable, the exact formula underlying a Negotiated Rate for any Negotiated Rate Agreement. Such tariff section will contain a statement that the Negotiated Rate Agreement does not deviate in any material aspect from the Form of Agreement in the Tariff for the applicable rate schedule.
3. **Rate Treatment.**

A discount adjustment to recourse rates for negotiated rate agreements shall only be allowed to the extent that Transporter can meet the standards required of an affiliate discount-type adjustment including requiring that Transporter shall have the burden of proving that any discount granted is required to meet competition.

Transporter shall be required to demonstrate that any discount-type adjustment for negotiated rate agreements does not have an adverse impact on recourse rate shippers.

- (a) Demonstrating that, in the absence of Transporter's entering into such negotiated rate agreement providing for such discount, Transporter would not have been able to contract for such capacity at any higher rate, and that recourse rates would otherwise be as high or higher than recourse rates which result after applying the discount adjustment; or
  - (b) Making another comparable showing that the negotiated rate discount contributes more fixed costs to the system than could have been achieved without the discount.
- 4. Limitations. This Section 6.25 does not authorize Transporter to negotiate terms and conditions of service.
- 5. Capacity Release. Negotiated Rates do not apply as the price cap for capacity release transactions. However, if the release is for a term of one (1) year or less and if the release is to take effect on or before one (1) year from the date on which the Transporter is notified of the release, the rate at which capacity subject to a Negotiated Rate may be released shall not be capped at the maximum applicable tariff rate. Further, capacity release bids must conform to Transporter's applicable tariff rates, as further described in Sections 6.20.1.7, 6.20.1.8 and 6.20.1.9 of these General Terms and Conditions.
- 6. Right of First Refusal. For purposes of exercising rights to continue service pursuant to Section 6.21 of these General Terms and Conditions, the highest rate that a Shipper must match if it desires to retain all or a portion of its capacity, is the applicable maximum tariff rate, including surcharges, for such service.
- 7. Transaction Treatment. Transporter shall maintain separate records for all revenues associated with Negotiated Rate transactions. Transporter shall record each volume transported, billing determinant, rate component, surcharge, and the revenue associated with its Negotiated Rates so that this information can be filed, separately identified, and separately totaled, as part of and in the format of Statements G, I, and J in Transporter's next general rate change application.

## 6.26 DISCOUNTED RATES

- (a) Transporter and Shipper may agree that a specified discounted rate will apply: (a) only to certain specified firm service entitlements under the Agreement; (b) only if specified quantity levels are actually achieved under the Agreement (with higher rates, charges, and fees applicable to all quantities above those levels, or to all quantities under the Agreement if the specified levels are not achieved); (c) only to production reserves committed by the Shipper; (d) only during specified time periods; (e) only to specified Receipt Points, Delivery Points, transportation paths, or

defined geographical areas; provided, however, that any such discounted rates set forth above shall be between the minimum and maximum rates applicable to the service provided under the Agreement.

- (b) Transporter and Shipper may also agree that a specified discounted rate is based on published index prices for specific Receipt and/or Delivery Points or other agreed upon pricing reference points. Such discounted rate may be based on the differential between published index prices or arrived at by formula. Any Agreement containing such discounted rate shall specify the rate component(s) to be discounted (i.e., reservation charge or usage charge or both) and any formula will provide a reservation rate per unit of contract demand. In no event shall Shipper pay to Transporter more than the maximum rates applicable to the service provided under the Agreement, or less than the minimum rates applicable to the service provided under the Agreement.
- (c) In addition, the discount agreement may include a provision that if one rate component which was at or below the applicable maximum rate at the time the discount agreement was executed subsequently exceeds the applicable maximum rate due to a change in Transporter's maximum rates so that such rate component must be adjusted downward to equal the new applicable maximum rate, then other rate components may be adjusted upward to achieve the agreed overall rate, as long as none of the resulting rate components exceeds the maximum rate applicable to that rate component. Such changes to rate components shall be applied prospectively, commencing with the date a Commission Order accepts revised tariff section rates. However, nothing contained herein shall be construed to alter a refund obligation under applicable law for any period during which rates that had been charged under a discount agreement exceeded rates, which ultimately are found to be just and reasonable.
- (d) Transporter may, from time to time, selectively adjust any or all of the rates charged to any individual Shipper for service under Part 284 of the Commission's regulations for which maximum and minimum rates are stated in this FERC Gas Tariff. Discounting of rates shall, however, not be below the stated minimum charge and shall be done in the following order:
  - 1. FTS-1 Transmission Reservation Charge
  - 2. ITS Transmission Commodity Charge
  - 3. IPLS Commodity Rate
  - 4. Hurricane Surcharge

## 6.27 OFF-SYSTEM CAPACITY

From time to time, Transporter may enter into transportation and/or storage agreements with other interstate and intrastate pipeline and storage providers ("off-system capacity"). In the event that Transporter acquires off-system capacity, Transporter will use such capacity for operational reasons or to render service for its Shippers. In the event that Transporter uses off-system capacity to render service for its Shippers, it will only render service to Shippers on the acquired capacity pursuant to Transporter's Tariff and subject to Transporter's approved rates, as such tariff and rates may change from time to time. For purposes of transactions entered into subject to this section, the "Shipper must have title" requirement is waived.

## 6.28 CREDITING OF PENALTY REVENUES

1. Definition. As used in this Section 6.28, the term "penalty revenues" shall mean any net revenues that Transporter actually receives for any of the following:
  - (a) daily scheduling penalties assessed as a result of allocations of deliveries pursuant to Section 6.14.1 paragraph (a)(2) of these General Terms and Conditions;
  - (b) penalty rates for unauthorized overrun charges assessed pursuant to any of Transporter's firm service rate schedules; or
  - (c) penalties assessed for failure to comply with the OFO pursuant to Section 6.8.9 of these General Terms and Conditions.
2. Crediting of Penalty Revenues. Transporter shall record all penalty revenues received from time to time in a separate account, and credit such penalty revenues to all non-offending shippers on an annual basis in accordance with the following procedures:
  - (a) On July 1 of each year, Transporter shall determine the outstanding balance in its penalty revenues account for the previous annual period. Such annual period shall consist of the twelve (12) Month period ending three (3) Months prior to the determination date of July 1;
  - (b) If there is a positive balance in such account exceeding \$100,000, Transporter shall allocate such positive balance to its "Eligible Credit Shippers," who shall consist of those non-offending shippers who received service during any such previous annual period provided, however, that any such Shipper that paid any penalty revenues to Transporter during any Month of the applicable annual period shall not be an Eligible Credit Shipper to receive any of that Month's penalty revenues.

- (c) The allocation of the credits to the qualifying Eligible Credit Shippers shall be determined pro rata based on the firm service revenues paid to Transporter by such non-offending shippers during the applicable annual period, and each Shipper's cumulative annual credit, if any, shall be reflected as a credit to the billing statement(s) due to such Shipper on the ninth (9th) business Day of the next Month. If no such billing statement is due to any such Eligible Credit Shipper, then the credit shall be paid to such Shipper by Transporter in cash; and
- (d) Any positive balance less than \$100,000 shall be carried forward, with interest assessed in accordance with Section 154.501(d) of the Commission's Regulations, to the next July 1 determination.

## 6.29 TRANSPORTER'S USE

1. Transporter's Use Percentage. The Transporter's Use Percentage shall be expressed as a percentage rounded to two (2) decimal places and shall be used to calculate the quantity of gas, expressed in MMBtu, to be delivered by or for the account of Shipper and accepted by Transporter at receipt point(s) to reimburse Transporter for actual Fuel Use and L&U Gas. Such percentage shall be the sum of the Fuel Use percentage, the L&U Gas percentage and the Transporter's Use true up percentage and shall be set in accordance with this Section 6.29. The currently effective Transporter's Use, Fuel Use, L&U Gas, and Transporter's Use true up percentages shall be separately stated in Section 4.2 of this Tariff. For purposes of this Section 6.29, "receipts" shall mean net receipts, defined as gross receipts on Transporter less Transporter's Use.
2. Annual Filing of Transporter's Use Percentage. For any year for which Transporter seeks a positive Transporter's Use Percentage, it shall make an annual Transporter's Use Percentage filing with an effective date of April 1. Such filing shall include workpapers setting forth the calculation of the prospective Fuel Use, L&U Gas, and Transporter's Use True Up percentages as determined in accordance with Section 6.29(3).
3. Computation of Transporter's Use Percentage. The Fuel Use, L&U Gas, Transporter's Use True Up and Transporter's Use Percentages determined as part of any filing and posted in Section 4.2 of this Tariff, shall be calculated in accordance with this section.
  - (a) Fuel Use. The Fuel Use percentage shall be calculated as the quotient of a) the compressor fuel used for the previous calendar year ending each December 31 and b) the projected quantity of gas received by Transporter for the account of Shippers during the recovery period. Transporter shall include supporting workpapers.

- (b) L&U Gas. The L&U Gas percentage shall be calculated as the quotient of a) the L&U Gas experienced for the previous calendar year ending each December 31 and b) the projected quantity of gas received by Transporter for the account of Shippers during the recovery period. Transporter shall include supporting workpapers.
- (c) Transporter's Use true up. As part of any filing made pursuant to this Section 6.29, Transporter shall calculate a Transporter's Use true up percentage as the quotient of a) the Transporter's Use Variance ("TUV") on the balance sheet of the company as of the end of the previous calendar year, plus carrying charges, and b) the projected quantity of gas received by Transporter for the account of Shippers during the recovery period. Transporter shall include supporting workpapers.

Notwithstanding the foregoing, Transporter shall mitigate any positive Transporter's Use true up as provided herein. If, at the end of a calendar year, Transporter has a negative TUV and calculates a positive Transporter's Use true up pursuant to this Section; and during the same calendar year utilized herein Transporter realizes net positive cashout revenue as provided in Section 6.15.5 of these General Terms and Conditions; then Transporter shall utilize such net positive revenues to either offset or purchase Gas quantities and reduce or eliminate any such positive Transporter's Use true up as provided below.

Each month Transporter shall record a) the costs or revenues and b) the negative or positive quantities of TUV for that Month. At the end of the calendar year, Transporter shall calculate an average TUV price ("ATUVP") which shall equal the quotient of the net costs of the TUV divided by the net negative quantities of the TUV, both as reflected on the balance sheet of the company at the end of such year.

If electing to offset any positive Transporter's Use true up, Transporter will reduce the costs and quantities using the ATUVP. If electing to purchase quantities, Transporter shall post a notice on its bulletin board soliciting bids for the sale of the Gas and shall accept the bid(s) with the lowest net cost to Transporter.

## 6.30 PURCHASE AND SALE OF GAS

Transporter is not providing a supply service under any Rate Schedule of this Tariff. Without limitation of the foregoing, Transporter may buy and sell gas to the extent necessary to maintain system pressure, to maintain line pack and provide additional line pack for new facilities, to implement the cashout procedures under Section 6.15 and to perform other functions in connection with

providing transportation service. Such sales shall be authorized pursuant to Transporter's blanket sales certificate. Nothing herein shall impose on Transporter any obligation to provide a supply function to any of its transportation Shippers.

#### 6.31 NON-CONFORMING AGREEMENTS

1. Anadarko US Offshore Corporation, Lease Dedication Agreement (Baldpate/Conger, Garden Banks Area, Gulf of Mexico), dated December 3, 2012; and Anadarko Energy Services Company, Rate Schedule ITS Service Agreement (#119883), dated October 4, 2012.

## FORM OF SERVICE AGREEMENT

Service Agreement - Rate Schedules FTS-1, ITS, TTS and IPLS  
Master Service Agreement  
Transportation Service Request Form

FORM OF AGREEMENT  
(For use under Transporter's Rate Schedules  
FTS-1, ITS, TTS and IPLS)

Date: \_\_\_\_\_

Contract No. \_\_\_\_\_

**SERVICE AGREEMENT**

**This AGREEMENT** is entered into by Kinetica Deepwater Express, LLC (Transporter) and \_\_\_\_\_ (Shipper).

**WHEREAS**, Shipper has requested Transporter to transport Gas on its behalf and Transporter represents that it is willing to transport Gas under the terms and conditions of this Agreement.

**NOW, THEREFORE**, Transporter and Shipper agree that the terms below, together with the terms and conditions of Transporter's applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff constitute the Transportation Service to be provided and the rights and obligations of Shipper and Transporter.

**1. RATE SCHEDULE:** \_\_\_\_\_

**2. CONTRACT QUANTITIES:**

Receipt Points - see Exhibit attached hereto (if applicable).  
Delivery Points - see Exhibit attached hereto (if applicable).  
Contract Quantities - see Exhibit attached hereto (if applicable).

Such Contract Quantities shall be reduced for scheduling purposes, but not for billing purposes, by the Contract Quantities that Shipper has released through Transporter's capacity release program for the period of any release.

**3. TERM OF AGREEMENT:**

\_\_\_\_\_ to \_\_\_\_\_  
\_\_\_\_\_ to \_\_\_\_\_

For Interruptible Service only: \_\_\_\_\_ to \_\_\_\_\_, and month to month thereafter until terminated by either party upon thirty (30) days written notice.

**4. RATES:**

Maximum rates, charges, and fees shall be applicable for the entitlements and quantities

delivered pursuant to this Agreement unless Transporter and Shipper have agreed otherwise as provided herein, or through the Interactive Internet Website.

It is further agreed that Transporter may seek authorization from the Commission and/or other appropriate body at any time and from time to time to change any rates, charges or other provisions in the applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff, and Transporter shall have the right to place such changes in effect in accordance with the Natural Gas Act. This Agreement shall be deemed to include such changes and any changes which become effective by operation of law and Commission order. Nothing contained herein shall be construed to deny Shipper any rights it may have under the Natural Gas Act, including the right to participate fully in rate or other proceedings by intervention or otherwise to contest changes in rates in whole or in part.

**5. INCORPORATION BY REFERENCE:**

The provisions of Transporter's applicable Rate Schedule and the General Terms and Conditions of Transporter's Tariff are specifically incorporated herein by reference and made a part hereof.

**6. NOTICES:**

All notices can be given by telephone or other electronic means; however, such notice shall be confirmed in writing at the addresses below or through the Interactive Internet Website. Shipper or Transporter may change the addresses below by written notice to the other without the necessity of amending this agreement:

**TRANSPORTER:**

Kinetica Deepwater Express, LLC  
1001 McKinney, Suite 900  
Houston, Texas 77002  
Attn: Contracts  
Telephone: (713) 228-3347  
Facsimile: (281) 200-0747  
Email: [contracts@kineticallc.com](mailto:contracts@kineticallc.com)  
Shipper Hotline: 1-888-818-3347

**SHIPPER:**

\_\_\_\_\_ (Shipper Name)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_ (City, State, Zip)

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

**INVOICES AND STATEMENTS:**

\_\_\_\_\_ (Shipper Name)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_ (City, State, Zip)

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

**7. FURTHER AGREEMENT:**

(This part to be utilized when necessary to specify other provisions permitted to be negotiated by Transporter's Tariff. Write None or specify the agreement)

(if applicable)

Pursuant to Section 6.11 of Transporter's Tariff, Transporter and Shipper have mutually agreed to receipt and/or delivery pressure commitment(s) as stipulated herein:

(if applicable)

Shipper shall be entitled to the Right of First Refusal provided for in Section 6.21 of the General Terms and Conditions of Transporter's Tariff, notwithstanding the fact that Shipper would otherwise be ineligible for this right under Section 6.21.2.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed by their respective Officers or Representatives thereunto duly authorized to be effective as of the date stated above.

**SHIPPER:** \_\_\_\_\_

**TRANSPORTER:** Kinetica Deepwater Express, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT**  
**To Agreement Between**  
**Kinetica Deepwater Express, LLC (Transporter)**  
**AND (Shipper)**

Contract No:  
Rate Schedule:  
Contract Date: Month, Day, Year  
Amendment Date: Month, Day, Year

Receipt  
Location  
Name

Delivery  
Location  
Name

MDQ  
(DTH)

Rec Loc No.  
Receipt Location Name  
FROM: Month, Day, Year

Del. Loc No.  
Delivery Location Name  
TO: Month, Day, Year

MASTER SERVICE AGREEMENT  
FOR CAPACITY RELEASE TRANSACTIONS

**This AGREEMENT** is entered into by Kinetica Deepwater Express, LLC (Transporter) and \_\_\_\_\_(Shipper).

**WHEREAS**, Shipper has requested Transporter to transport Gas on its behalf in the event that Shipper is awarded by Transporter capacity released on Transporter's system and Transporter represents that it is willing to transport Gas under the terms and conditions of this Agreement.

**NOW, THEREFORE**, Transporter and Shipper agree that the terms below, together with the terms and conditions of Transporter's applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff constitute the Transportation Service to be provided and the rights and obligations of Shipper and Transporter.

**1. SCOPE OF AGREEMENT:**

Shipper and Transporter acknowledge that this is a Master Service Agreement entered into pursuant to Section 6.20.1.14 of the General Terms and Conditions of Transporter's FERC Gas Tariff for the purpose of facilitating the capacity release process. Accordingly, Shipper agrees to be bound by the terms of its capacity release bid(s) if and when Transporter awards Shipper any such bid(s). Further, for each release transaction performed pursuant to this Agreement, Shipper agrees that, in addition to the terms and conditions of this Agreement, Shipper's rights under this Agreement shall not exceed those of the Releasing Shipper. Within one hour after Transporter has been notified of any release to Shipper, and of the term, maximum daily quantity, rate schedule, route, authority for Transportation Service, and other terms as applicable, for such release, Transporter shall issue a contract for the release transaction and shall confirm the release through the Interactive Internet Website in the form of an ("Award Notice"). The terms of such Award Notice(s) are hereby incorporated by reference in this Agreement.

**2. AUTHORITY FOR TRANSPORTATION SERVICE:**

To be specified in the applicable Award Notice.

**3. RATE SCHEDULE:**

To be specified in the applicable Award Notice.

**4. CONTRACT QUANTITIES:**

To be specified in the applicable Award Notice.

Contract Quantities shall be reduced for scheduling purposes, but not for billing purposes, by the Contract Quantities that Shipper has rereleased through Transporter's capacity release program for the period of any rerelease.

**5. TERM OF AGREEMENT:**

\_\_\_\_\_ to \_\_\_\_\_, and then month to month thereafter, until terminated by either party upon thirty (30) days written notice.

(The term of any release transaction under this Agreement shall be specified in the applicable Award Notice.)

**6. RATES:**

The reservation rate for all quantities of gas transported on the Primary Path under this Agreement shall be as stated in the capacity release bid. In addition, Shipper will be charged the applicable base tariff Commodity rate, Volumetric Surcharges, ACA, fuel and any other related fees or surcharges.

All quantities associated with the release of capacity under this agreement (i.e., a rerelease) will be at the applicable rate(s) plus all other related fees, surcharges and fuel.

All quantities associated with Secondary Receipt Points and Secondary Delivery Points will be at maximum tariff rates (unless Transporter shall agree otherwise) plus all other related fees, surcharges and fuel associated with the additional zone(s).

**7. INCORPORATION BY REFERENCE:**

The provisions of Transporter's applicable Rate Schedule and the General Terms and Conditions of Transporter's Tariff are specifically incorporated herein by reference and made a part hereof.

**8. NOTICES:**

All notices may be given by telephone or other electronic means; however, such notice shall be confirmed in writing at the addresses below or through the Interactive Internet Website. Shipper and Transporter may change the addresses below by written notice to the other without the necessity of amending this agreement:

**TRANSPORTER:**

Kinetica Deepwater Express, LLC  
1001 McKinney, Suite 900  
Houston, Texas 77002  
Attn: Contracts

Telephone: (713) 228-3347  
Facsimile: (281) 200-0747  
Email:contracts@kineticallc.com  
Shipper Hotline: 1-888-818-3347

**SHIPPER:**

\_\_\_\_\_(Shipper Name)  
\_\_\_\_\_(Address)  
\_\_\_\_\_(City, State, Zip)

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_

**INVOICES AND STATEMENTS:**

\_\_\_\_\_(Shipper Name)  
\_\_\_\_\_(Address)  
\_\_\_\_\_(City, State, Zip)

Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_

**9. FURTHER AGREEMENT:**

(This paragraph may address, inter alia, other terms and conditions of service to be determined in the Award Notice or any agency services that Shipper agrees Transporter shall provide.)

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed by their respective Officers or Representatives thereunto duly authorized to be effective as of the date stated above.

**SHIPPER:** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TRANSPORTER:** Kinetica Deepwater Express,  
LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



2. TYPE OF REQUEST

\_\_\_\_\_New Service  
\_\_\_\_\_Amended Service \_\_\_\_\_(Contract #)

Amendment Reason: \_\_\_\_\_ Change Primary Point(s) (Must extend through term of Agreement)  
\_\_\_\_\_ Elevation of Secondary Point to Primary  
\_\_\_\_\_ Other (Reason) \_\_\_\_\_

If Amended Service Request is from a Capacity Release Replacement Shipper:

Replacement Shipper Contract #: \_\_\_\_\_  
Releasing Shipper Contract #: \_\_\_\_\_

3. CONTRACT TERM From: \_\_\_\_\_ To: \_\_\_\_\_  
Amendment Effective Date: \_\_\_\_\_

4. RATE SCHEDULE

\_\_\_\_\_FTS-1\_\_\_\_\_ITS\_\_\_\_\_TTS\_\_\_\_\_IPLS  
\_\_\_\_\_MSA (Master Service Agreement for Capacity Release)

5. CONTRACT QUANTITIES

(A) Primary Paths for Rate Schedules FTS-1

<u>Start Date</u>	<u>End Date</u>	<u>Receipt Point</u> <u>No.</u> <u>Name</u>	<u>Delivery Point</u> <u>No.</u> <u>Name</u>	<u>MDQ</u> <u>Dth</u>
_____	_____	_____	_____	_____

6. FURTHER AGREEMENT

(Write None or specify the agreement.)

7. NOTICES

(A) Shipper Notices

Address: \_\_\_\_\_  
\_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Attn: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

(B) Invoices and Statements \_\_\_\_\_ Same as above

Address: \_\_\_\_\_  
\_\_\_\_\_  
City, State Zip: \_\_\_\_\_  
Attn: \_\_\_\_\_  
E-Mail: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

THIS TRANSPORTATION SERVICE REQUEST IS HEREBY SUBMITTED.

REQUESTOR:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (City, State Zip)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

## NON-CONFORMING AGREEMENTS

Lease Dedication Agreement  
Anadarko US Offshore Corporation (as Producer)  
Dated December 3, 2012

&

Rate Schedule ITS Transportation Service Agreement (#119883)  
Anadarko Energy Services Company (as Shipper)

Agreement Effective Date: December 3, 2012  
Amendment No. 01 Effective Date: December 3, 2012

December 3, 2012

Anadarko US Offshore Corporation  
1201 Lake Robbins Drive  
The Woodlands, TX 77380

**Re: LEASE DEDICATION AGREEMENT  
(BALDPATE/CONGER, GARDEN BANKS AREA, GULF OF MEXICO)**

Gentlemen:

Anadarko US Offshore Corporation (hereinafter referred to as "Producer") and TC Offshore LLC (hereinafter referred to as "TC Offshore") are entering into this Letter Agreement ("Agreement") setting forth the terms and conditions pursuant to which Producer shall commit to deliver Garden Banks Gas, as defined below, to TC Offshore's pipeline system.

In consideration of the mutual covenants and benefits contained herein, TC Offshore and Producer hereby agree as follows:

**1. Definitions**

(a) Garden Banks Gas — shall refer to all natural gas reserves which are owned and produced by Producer (or its permitted successor(s) or assigns in interest) underlying those lands and leaseholds identified in Exhibit A (hereinafter the "Dedicated Lease(s)"), which is attached hereto, and made a part hereof, as amended or modified from time to time to include any other gas reserves dedicated to TC Offshore under this Agreement.

(b) SMI 76 Receipt Point — shall refer to a point of interconnection between the pipeline facilities of Garden Banks Gas Pipeline, LLC ("Garden Banks Gas Pipeline," which term also refers to any successor owner of such pipeline facilities) and TC Offshore located in South Marsh Island, Block 76, Offshore Louisiana.

**2. Producer Reserve Commitment**

(a) Producer (and/or its permitted successors or assigns in interests in the Dedicated Lease(s)) shall deliver, or cause to be delivered, all Garden Banks Gas to the SMI 76 Receipt Point for transportation and delivery to other points on TC Offshore's pipeline system, except that Producer reserves unto itself, its permitted successors and assigns, the following rights and quantities of production sufficient to satisfy or account for the following:

- (i) the right to operate the Dedicated Lease(s) free from any control by TC Offshore, including, without limitation, the right (but never the obligation) to drill new wells, to repair and rework old wells, to shut in wells, to renew, surrender, release, or terminate any lease in whole or in part covering the affected Dedicated Lease(s);
- (ii) the right to deliver production to lessors of leases covering the Dedicated Lease(s) in quantities sufficient to fulfill lease obligations from time to time, including the right to take royalty in kind;
- (iii) the right to use production for development and operations of the Dedicated Lease(s), including (but not limited to) the use of Garden Banks Gas for fuel, drilling

(including gas drilling), deepening, reworking, compressing, gas lifting, processing, treating, cycling, re-pressuring, or other supplemental recovery operations; provided, however, that any Garden Banks Gas so used but not consumed by such uses shall remain dedicated to TC Offshore's pipeline system under this Agreement;

- (iv) Producer's obligations with respect to fuel and lost and unaccounted for gas on the Garden Banks Gas Pipeline system; and
- (v) the Garden Banks Gas which forms into liquids as a result of changes in temperature and pressure on the Garden Banks Gas Pipeline system.

(b) To the extent that TC Offshore is unable to take receipt of or make redelivery of all, or a part of, Garden Banks Gas being delivered to TC Offshore due to either (i) capacity constraints on TC Offshore's pipeline system, or (ii) Force Majeure on TC Offshore's pipeline system, or (iii) constraints at the terminus of TC Offshore facilities which prevent redelivery then only such Garden Banks Gas quantities that TC Offshore is unable to take shall be temporarily released from dedication on TC Offshore. No later than forty-two (42) days after notification to Producer that TC Offshore has regained, or notification to Producer of the date TC Offshore will regain, its ability to take receipt of all Garden Banks Gas delivered to TC Offshore, Producer shall resume nomination of all Garden Banks Gas (including those gas volumes temporarily released) for delivery to TC Offshore at the SMI 76 Receipt Point in accordance with the terms and conditions of this Agreement.

(c) To the extent that TC Offshore is unable to take receipt of or make redelivery of all, or a part of, Garden Banks Gas being delivered to TC Offshore's pipeline system at the SMI 76 Receipt Point due to scheduled outages on TC Offshore's pipeline system or scheduled outages on systems downstream of TC Offshore's terminus which prevent redelivery, then only such Garden Banks Gas quantities that TC Offshore is unable to take shall be temporarily released from dedication on TC Offshore's pipeline system. No later than the first available nomination period after the first twenty-four (24) hours following Producer's receipt of notification by TC Offshore that the scheduled outage has concluded, Producer shall resume nomination of all Garden Banks Gas (including those gas volumes temporarily released) for delivery to TC Offshore at the SMI 76 Receipt Point in accordance with the terms and conditions of this Agreement.

(d) To the extent that Producer is unable to deliver all, or a part of, Garden Banks Gas to TC Offshore's pipeline system at the SMI 76 Receipt Point due to the inability of the upstream transporter(s) to deliver such Garden Banks Gas as a result of either (i) an event of force majeure on the upstream transporters' pipeline systems, or (ii) failure of one or more of the upstream transporters to deliver Garden Banks Gas to TC Offshore's pipeline system at the SMI 76 Receipt Point for any reason(s), other than a breach by Producer of its obligations under the upstream transporter(s)' transportation agreements, or any other action or non-action of Producer, then only such Garden Banks Gas quantities not taken by the upstream transporters shall be temporarily released from dedication on TC Offshore's pipeline system. No later than the first available nomination period after the first twenty-four (24) hours following Producer's receipt of notification by the upstream transporters of upstream transporter(s) ability to resume deliveries of Garden Banks Gas to TC Offshore's pipeline system at the SMI 76 Receipt Point, Producer shall resume nomination of all Garden Banks Gas (including those gas volumes temporarily released) for delivery to TC Offshore at the SMI 76 Receipt Point in accordance with the terms and conditions of this Agreement.

(e) To the extent necessary to determine whether Producer has fulfilled its obligation to deliver Garden Banks Gas dedicated to TC Offshore's pipeline system, TC Offshore shall have the right, during regular business hours and at Producer's offices, to audit, at TC Offshore's own expense,

all books and records maintained by Producer relating to (i) Garden Banks Gas production volumes for the Dedicated Lease(s), and (ii) nomination information from the Dedicated Lease(s) on the Garden Banks Gas Pipeline and TC Offshore pipeline systems. Notwithstanding the foregoing, Producer shall not be required to provide nomination or production data relating to periods occurring prior to the two-year period immediately preceding the date of TC Offshore's request for the same. Provided however, that TC Offshore shall neither call for or conduct such audit more often than once per calendar year. All information obtained by TC Offshore through such an audit shall be subject to the confidentiality provision of this Agreement.

(f) The parties hereby agree to amend Exhibit A to reflect the lands and leaseholds covering additional gas reserves dedicated to TC Offshore under this Agreement.

### **3. Producer Permanent Reserve Release**

(a) The term "TC Offshore's Inability" shall refer to TC Offshore's inability to accept quantities of Garden Banks Gas tendered by Producer at the SMI 76 Receipt Point for reasons other than (i) force majeure, (ii) scheduled or routine maintenance on TC Offshore's pipeline system, (iii) failure of downstream or upstream transporters and/or (iv) any acts or omissions by Producer. If TC Offshore's Inability lasts for a period of more than sixty (60) consecutive days, or for more than sixty (60) cumulative days during any one hundred eighty (180) day period, then Producer may request (in writing) a prospective permanent release of Garden Banks Gas equal to the daily average of Garden Banks Gas impacted by TC Offshore's Inability (hereinafter referred to as "Producer's Impacted Quantities"). Producer's Impacted Quantities shall be determined by dividing the sum of all Garden Banks Gas quantities unaccepted by TC Offshore during a (i) sixty (60) consecutive day period or (ii) any sixty (60) days during a one hundred eighty (180) day period, by sixty (60).

(b) Within three (3) months following Producer's request for permanent release due to TC Offshore's Inability, TC Offshore shall review with Producer the steps or actions TC Offshore is taking or proposes to take to enable TC Offshore to receive Producer's Impacted Quantities. TC Offshore shall have nine (9) months (but eighteen (18) months if additional compression facilities are required) from the date of TC Offshore's receipt of Producer's permanent release request to complete such steps or actions, including without limitation, the installation of facilities to enable TC Offshore to receive Producer's Impacted Quantities at the SMI 76 Receipt Point, provided, however, that TC Offshore shall have the right to extend such date for an additional three (3) months beyond the original nine (9) month period or, with respect to compression facilities, the original eighteen (18) month period, if TC Offshore has made a significant economic commitment with respect to such curative actions, it is reasonable to believe that such actions will enable TC Offshore to receive Producer's Impacted Quantity within three (3) months following the original nine (9) month period or, with respect to compression facilities, the original eighteen (18) month period, and all Garden Banks Gas tendered but not taken is temporarily released pursuant to Paragraph 2(b) above.

(c) Within thirty (30) days after completion of the review described in the immediately preceding paragraph, Producer shall notify TC Offshore in writing if Producer reasonably believes TC Offshore has not commenced activities which could reasonably be expected to allow TC Offshore to receive such Producer's Impacted Quantities and Producer therefore elects to implement the permanent release of its obligations under Paragraph 3(a) with respect to Producer's Impacted Quantities. If such notification is timely delivered, immediately after the end of the nine (9) months or (18) month period set forth above, TC Offshore will permanently release Producer's Impacted Quantities from any and all obligations under this Agreement.

(d) For purposes of identifying Garden Banks Gas permanently or temporarily released

in accordance with the terms and conditions of this Agreement, the parties hereby agree that the last gas that goes through the measurement facilities located at Garden Banks 260, meter number 992102 and Garden Banks 215 (the SMI 128 point), meter number 992101, as applicable, shall be deemed the Garden Banks Gas permanently or temporarily released.

#### 4. Notices

Unless otherwise specifically provided herein to the contrary, all notices, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by facsimile, by overnight courier or by mail, in each instance with proof of delivery, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person; (b) if given by facsimile, upon the successful completion of such transmission during normal business hours of 8:00 a.m. to 5:00 p.m., local time of the receiving party or if received after such hours, on the next day; (c) one (1) business day after having been delivered to an air courier for overnight delivery; or (d) three (3) business days after having been deposited in the U.S. mail, in each instance all fees prepaid. Any such notice shall be directed to the party, or its permitted assignee at the following address:

If to TC Offshore:

TC Offshore LLC  
717 Texas Street  
Houston, Texas 77002-2761  
Attention: Commercial Director  
Fax: (832) 320-5677

If to Producer:

Anadarko US Offshore Corporation  
1201 Lake Robbins Dr.  
The Woodlands, TX 77380  
Attention: Chris Barnett  
Phone: (832) 636-7328  
Fax: (832) 636-5426

Either party may change its address for the purpose of notice hereunder by giving the other party prior written notice of such new address in accordance with this provision by certified or registered mail.

#### 5. Term

This Agreement shall be effective as of the date set for the above, and shall continue in full force and effect until the earlier to occur of (i) the effective date of the notice, issued pursuant to 30 CFR Section 256.76 (as amended or replaced), provided by, or on behalf of, Producer to the Bureau of Ocean Energy Management, or any governmental body that may succeed to its authority, of the surrender of the last of the leases covering the Dedicated Lease(s), or (ii) October 31, 2022, or (iii) the mutual agreement of the parties (in writing), or (iv) the termination of the TC Offshore transportation agreements under which Garden Banks Gas is transported in accordance with the terms and conditions thereof, or (iv) termination of this Agreement pursuant to Paragraph 6 hereof.

Notwithstanding the termination of this Agreement for any reason, the parties hereunder shall be required to pay any and all bills, costs and charges accrued under this Agreement for the period up to and

including the effective termination date of this Agreement.

#### **6. Default Clause**

“Event of Default” or “Default” hereunder shall mean the failure by either party (the “Non-Performing Party”) to perform or comply with any material term, covenant, condition, obligation, or other provision contained in this Agreement when such failure has not been remedied within thirty (30) days (or other time period expressly specified by this Agreement) (the “Notice Period”) after receipt of written notice describing the alleged non-performance or non-compliance with particularity and demanding that such non-performance or non-compliance be cured or remedied; provided, however, that there shall be no Event of Default or Default if the failure cannot reasonably be cured within such Notice Period so long as the Non-Performing Party commences reasonable efforts to remedy or cure said failure promptly upon receipt of notice and continues these efforts after the Notice Period until the failure has been cured or remedied and such remedy or cure has been effected within a reasonable period of time.

The party not causing said Event of Default or Default, at its option, may elect to terminate this Agreement by providing the Non-Performing Party written notice of its intent to terminate this Agreement within sixty (60) days of said Event of Default or Default.

#### **7. Severability Clause**

Should any provision of this Agreement be found to be invalid or be required to be modified as a matter of law in a court having jurisdiction or by a duly authorized government agency, then only that provision of this Agreement shall be invalid or modified, and the remainder of this Agreement that is still valid and unaffected shall remain in force and unchanged. In such event, the parties shall make a good faith effort to negotiate reasonable and valid provisions to replace only those provisions of the Agreement found to be invalid or required to be modified and those provisions directly related and adversely impacted by such invalidation or required modification. The party seeking renegotiation shall give the other party (“Receiving Party”) written notice. In the event a mutually acceptable agreement cannot be reached within ninety (90) days after Receiving Party’s receipt of such notice, a party that is materially deprived of the economic benefit of this Agreement by virtue of the invalidation or required modification of said provision of this Agreement shall have the right to terminate this Agreement upon thirty (30) days prior written notice with no liability or obligation to the other party whatsoever, except as expressly provided for in this Agreement.

#### **8. Confidentiality**

During the term of this Agreement, and continuing for three years thereafter, the terms and conditions stated herein, including any information or data exchanged between the parties hereunder that is marked as “Confidential” or “Proprietary”, shall be maintained as confidential, and shall not be disclosed by either party to any third party without the prior written consent of the other party (which consent shall not be unreasonably withheld), except as such disclosure is either (i) required by law, including without limitation, the rules and regulations of any regulatory agency or governmental body having jurisdiction over Producer, TC Offshore, or the subject matter hereof; (ii) made to the disclosing party’s designated agent or representative (excluding the disclosing party’s gas exploration and/or production affiliates), and such designated agent or representative has agreed to be bound by the terms of this confidentiality provision; or (iii) made by Producer to its marketing affiliate(s), and such marketing affiliate(s) has agreed to be bound by the terms of this confidentiality provision; and/or (iv) if required by law to be made by Producer, to the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, or any successor governmental authority. To the extent that such disclosure

is required by law, the disclosing party shall request confidential and/or privileged treatment of all such information pursuant to the applicable statutes, rules or regulations, and shall provide reasonable notice to the other party prior to such disclosure.

**9. Miscellaneous**

(a) To the extent the law of another jurisdiction is not required to be applied, this Agreement shall be deemed to be a contract under, and shall be construed, interpreted and governed by and according to, the laws of the State of Texas without regard to any choice or conflict of laws rules or principles which, if applied, might permit or require the application of the laws of another jurisdiction.

(b) The numbering and heading of particular provisions of this Agreement is for the purpose of convenience only, and shall not be construed as having any substantive effect on the terms of this Agreement.

(c) This Agreement constitutes the entirety of the understanding between TC Offshore and Producer with respect to the provisions expressly set forth herein, and supersedes and cancels any prior understanding or written or oral agreement relative to said provisions. No modification, variation, or amendment of this Agreement shall be effective unless first reduced to writing and fully executed by both TC Offshore and Producer.

(d) A waiver by TC Offshore or Producer of any Default by the other in the performance of this Agreement shall not operate or be construed as a waiver of any future Default, whether of a like or different character.

(e) No assignment of this Agreement, or any right or obligation hereunder, shall be made without prior written notice to, and consent of, the other party, which consent shall not be unreasonably withheld, except that Producer shall have the right to assign this Agreement to its successors and assigns acquiring all, or any portion of, Producer's respective interests in and to the lands and leaseholds identified in Exhibit A.


(f) Nothing in this Agreement, express or implied, is intended, or will be construed, to confer upon or give any person or entity other than TC Offshore and Producer (and their respective successors and permitted assigns) any rights, remedies or obligations under, or by reason of, this Agreement or any transaction contemplated hereby.

(g) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE WHETHER OR NOT SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHERWISE. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

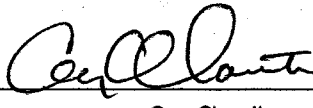
[Signatures appear on the following page.]

If the foregoing correctly sets forth the mutual understandings of Producer and TC Offshore with respect to the matters set forth herein, please execute two (2) originals of this Agreement in the space provided below, and return them to TC Offshore. TC Offshore will provide a fully executed original of this Agreement to Producer for its records.

**TC OFFSHORE LLC**

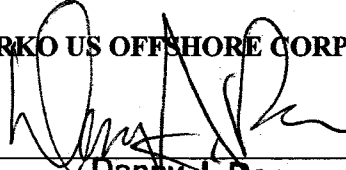
By:  \_\_\_\_\_  
Name: Dean Patry  
Title: VP US Pipelines Central  
Date: 12-03-12

  
12/3/12

By:  \_\_\_\_\_  
Name: Gary Charette  
Title: VP US Commercial Operations  
Date: 12-3-12

**ANADARKO US OFFSHORE CORPORATION**

  
12/3/12

By:  \_\_\_\_\_  
Name: Danny J. Rea  
Title: Vice President  
Date: \_\_\_\_\_

**EXHIBIT A**  
**TO GARDEN BANKS AREA DEDICATION AGREEMENT**  
**BETWEEN TC OFFSHORE LLC AND**  
**ANADARKO US OFFSHORE CORPORATION**

LANDS AND LEASEHOLDS COMPRISING THE DEDICATED LEASE(S)

<u>Areas</u>	<u>Blocks</u>	<u>Leases</u>
Garden Banks	171	OSC-G32402
Garden Banks	215	OSC-G9216
Garden Banks	216	OSC-G14224
Garden Banks	259	OSC-G7461
Garden Banks	260	OSC-G7462

Date: October 04, 2012

Contract No.: 119883

### ITS SERVICE AGREEMENT

This AGREEMENT is entered into by TC Offshore LLC (Transporter) and ANADARKO ENERGY SERVICES COMPANY (Shipper).

WHEREAS, Shipper has requested Transporter to transport Gas on its behalf and Transporter represents that it is willing to transport Gas under the terms and conditions of this Agreement.

NOW, THEREFORE, Transporter and Shipper agree that the terms below, together with the terms and conditions of Transporter's applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff constitute the Transportation Service to be provided and the rights and obligations of Shipper and Transporter.

1. **RATE SCHEDULE: Interruptible Transportation Service (ITS)**

2. **CONTRACT QUANTITIES:**

Not Applicable.

3. **TERM OF AGREEMENT:**

November 01, 2012 to November 30, 2012, and month to month thereafter, until terminated by either party upon thirty (30) days written notice.

4. **RATES:**

Maximum rates, charges, and fees shall be applicable for the entitlements and quantities delivered pursuant to this Agreement unless Transporter and Shipper have agreed otherwise in the Further Agreement Section of this Agreement.

It is further agreed that Transporter may seek authorization from the Commission and/or other appropriate body at any time and from time to time to change any rates, charges or other provisions in the applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff, and Transporter shall have the right to place such changes in effect in accordance with the Natural Gas Act. This Agreement shall be deemed to include such changes and any changes which become effective by operation of law and Commission order. Nothing contained herein shall be construed to deny Shipper any rights it may have under the Natural Gas Act, including the right to participate fully in rate or other proceedings by intervention or otherwise to contest increased rates in whole or in part.

Date: October 04, 2012

Contract No.: 119883

5. **INCORPORATION BY REFERENCE:**

The provisions of Transporter's applicable Rate Schedule and the General Terms and Conditions of Transporter's Tariff are specifically incorporated herein by reference and made a part hereof.

6. **NOTICES:**

All notices can be given by telephone or other electronic means, however, such notice shall be confirmed in writing at the addresses below or through GEMS<sub>sm</sub>. Shipper or Transporter may change the addresses below by written notice to the other without the necessity of amending this agreement:

**TRANSPORTER:**

TC Offshore LLC  
717 Texas Street, Suite 2500  
Houston, Texas 77002-2761  
Attention: Commercial Services

**SHIPPER:**

ANADARKO ENERGY SERVICES COMPANY  
1200 TIMBERLOCH PLACE  
THE WOODLANDS, TX 77380  
Attention: BOB MOSEMANN

Telephone: 832-636-7161  
Fax: 832-636-5958

**INVOICES AND STATEMENTS:**

ANADARKO ENERGY SERVICES COMPANY  
1200 TIMBERLOCH PLACE  
THE WOODLANDS, TX 77380  
Attention: LISA BRYANT

Telephone: 832-636-7695  
Fax: 832-636-5660

Date: October 04, 2012

Contract No.: 119883

7. FURTHER AGREEMENT:

None.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective Officers or Representatives thereunto duly authorized to be effective as of the date stated above.

SHIPPER: ANADARKO ENERGY SERVICES COMPANY

By: CCF Kuntt

Title: GAS TRANSPORTATION MANAGER

Date: 10/30/2012

TRANSPORTER: TC Offshore LLC

By: Joseph E. Pollard

Title: Agent and Attorney-in-Fact

Date: 10/30/12

BB 10/30/12

CW 10-30-12

Contract No: 119883  
Amendment No: 01

#### AMENDMENT

Date: January 29, 2013

"Transporter": TC Offshore LLC

"Shipper": ANADARKO ENERGY SERVICES COMPANY

ITS Contract No. 119883 dated October 04, 2012 ("Agreement") between Transporter and Shipper is amended effective December 03, 2012 as follows:

Shipper and Transporter have agreed to remove Section 4. RATES:, in its entirety and replace with the following:

#### 4. RATES:

Maximum rates, charges, and fees shall be applicable for the quantities delivered pursuant to this Agreement unless Transporter and Shipper have agreed otherwise as referenced herein, or in writing or by GEMS™, that they have agreed otherwise.

It is further agreed that Transporter may seek authorization from the Commission and/or other appropriate body at any time and from time to time to change any rates, charges or other provisions in the applicable Rate Schedule and General Terms and Conditions of Transporter's Tariff, and Transporter shall have the right to place such changes in effect in accordance with the Natural Gas Act. This Agreement shall be deemed to include such changes and any changes which become effective by operation of law and Commission order. Nothing contained herein shall be construed to deny Shipper any rights it may have under the Natural Gas Act, including the right to participate fully in rate or other proceedings by intervention or otherwise to contest increased rates in whole or in part.


Shipper shall pay a Commodity Rate of \$0.0500 per dth from December 3, 2012, to October 31, 2022, for all gas quantities sourced from Garden Banks Blocks 171 (OSC-G32402), 215 (OSC-G9216), 216 (OSC-G14224), 259 (OSC-G7461), 260 (OSC-G7462) and Shipper owned production received by TC Offshore from the Garden Banks Gathering System Platform in South Marsh Island Area 76. This rate will be exclusive of any additional FERC approved surcharges, including, but not limited to, any Hurricane Surcharge, Transporter's Use (which includes any fuel and/or lost and unaccounted for gas), or any federal, state or locally mandated surcharge.

The mutually agreed upon rate for the use of any point not listed above shall be TC Offshore's Maximum Applicable Commodity Rates under ITS service. In addition, Shipper shall be charged any additional FERC approved surcharges, including, but not limited to, any Hurricane Surcharge, Transporter's Use (which includes any fuel and/or lost and unaccounted for gas), or any federal, state or locally mandated surcharge.

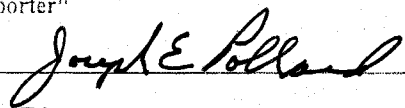
Contract No: 119883  
Amendment No: 01

All other terms and conditions of the Agreement shall remain in full force and effect.

ANADARKO ENERGY SERVICES COMPANY  
"Shipper"

By:   
Title: CAS TRANSPORTATION MGR  
Date: 2/6/2013

TC Offshore LLC  
"Transporter"

By:   
Title: Director, - Commercial Services  
Date: 2/7/13

*cc 2/6/13  
cc 2/7/13*

## NEGOTIATED RATE AGREEMENTS

RESERVED FOR FUTURE USE

RESERVED FOR FUTURE USE

RESERVED FOR FUTURE USE