

**GENERAL TERMS AND CONDITIONS****INDEX**

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**GENERAL TERMS AND CONDITIONS****1. DEFINITIONS**

The following words and terms, whenever and wherever used or appearing in these General Terms and Conditions, the Rate Schedule to which they apply, or in the Service Agreement to which such Rate Schedule and General Terms and Conditions apply, shall have the following meanings:

- 1.1** “Alaska Natural Gas Transportation System” or “ANGTS”, also known as the Alaska Highway Project, shall mean the pipeline and related facilities for the transportation of U.S. gas from the Prudhoe Bay area, through Alaska and Canada to the 49th Parallel, and from the 49th Parallel to the midwestern U.S. and to California in the western U.S., and for the transportation of Canadian gas via Zone 10 and 11 (the Dempster Line) from the Beaufort Basin area to join the mainline near Whitehorse in the Yukon Territory.
- 1.2** “Banking Day” shall mean any day that the Royal Bank of Canada, Main Branch, Calgary, Canada or other financial institution agreed to by Company, conducts business.
- 1.3** “Billing Commencement Date” shall mean the date when Shipper’s payment obligation commences. This date shall occur when the earliest Billing Commencement Date for any Shipper utilizing Phase I Zone 6 or Zone 7 facilities as defined in subsection 1.2 of the General Terms and Conditions of Foothills Pipe Lines Ltd. Gas Transportation Tariff has occurred.
- 1.4** “Billing Month” shall mean the period beginning at 09:00 CCT on the first day of the month and ending at 09:00 CCT on the first day of the next succeeding month.
- 1.5** “Calendar Year” shall mean the period from 09:00 CCT, on January 1st to 09:00 CCT on January 1st of the next succeeding year.
- 1.6** “Canadian Segments” shall mean those sections of the ANGTS, geographically located in Canada, and which are owned, operated and managed by a specific Subsidiary Company of Foothills Pipe Lines Ltd.

- 1.7** “°C” shall mean degrees Celsius as defined by The International System of Units (SI).
- 1.8** “CCT” shall mean Central Clock Time.
- 1.9** “Company Use Gas” shall mean for any period the total quantity of gas used by Company in its gas transmission operations, as determined by Company, including but not limited to gas used as fuel or for testing plus any measurement variance as determined by Company.
- 1.10** “Company’s Cost of Service” shall mean relative to a Calendar Year, the sum of the Zone Cost of Service for each of Company’s Zones.
- 1.11** “Contract Year” shall mean the period beginning at 09:00 CCT, on the Billing Commencement Date and ending at 09:00 CCT on the next succeeding November 1st (provided, however, in the event that such period is less than six calendar months then the first Contract Year shall not end until 09:00 CCT on the second succeeding November 1st) and thereafter each period of 12 consecutive calendar months beginning at 09:00 CCT, on November 1st of each year and ending at 09:00 CCT, on the annual anniversary of such day in the next succeeding calendar year.
- 1.12** “cubic metre of gas” or “m<sup>3</sup>” shall mean that quantity of gas which, at a temperature of 15 °C and at a pressure of 101.325 kPa occupies one cubic metre.
- 1.13** “day” shall mean a period of 24 consecutive hours, beginning and ending at 09:00 CCT. The reference date for any day shall be the date of the beginning of such day.
- 1.14** “Delivery Point” shall mean the Delivery Points shown in Appendix A to Shipper’s Service Agreement for delivery of gas to Shipper.
- 1.15** “Financial Assurance” shall have the meaning attributed to it in subsection 5.8 of these General Terms and Conditions.
- 1.16** “First Billing Month” shall mean relative to Shipper the billing month in which Shipper’s Billing Commencement Date occurs.

- 1.17** “Foreign Exchange Rate” shall mean for any day that rate for the currency in question as published at 12:00 Eastern Standard Time, by the Bank of Canada in the City of Ottawa.
- 1.18** “G-14” shall mean Measurement Canada’s Bulletin G-14, as may be amended from time to time.
- 1.19** “gas” shall mean natural gas, manufactured, artificial or synthetic gas, or any mixture or combination thereof.
- 1.20** “Gas Plant In Service” shall mean the original cost of the gas plant of Company excluding plant that is entirely distinct from and is not operated in connection with the gas transportation service provided pursuant to this Gas Transportation Tariff.
- 1.21** “Gas Transportation Tariff” shall mean the compilation on file with the National Energy Board of Company’s Rate Schedule, General Terms and Conditions and related Service Agreements with Shippers as in effect from time to time.
- 1.22** “General Terms and Conditions” shall mean, at any time, these General Terms and Conditions as amended or supplemented from time to time.
- 1.23** “GIA” shall mean the Electricity and Gas Inspection Act, Chapter E-4 of the Revised Statutes of Canada, 1985 or as amended, and all regulations issued pursuant to it.
- 1.24** “GJ” shall mean  $10^9$  Joules.
- 1.25** “gross heating value” shall mean the total Joules obtained by complete combustion at constant pressure of one cubic metre of gas with air, the gas to be free of all water vapour and the temperature of the gas, air and products of combustion to be at standard temperature and all water formed by the combustion reaction to be condensed to the liquid state.
- 1.26** “J” shall mean Joule(s), the base unit for energy as defined by The International System of Units (SI).
- 1.27** “km” shall mean kilometre(s) as defined by The International System of Units (SI).

- 1.28** “kPa” shall mean kilopascal(s) of pressure.
- 1.29** “Line Pack Change” shall mean for any period the difference between the total quantity of line pack gas contained in a Zone of Company’s pipeline at the beginning and end of such period, as computed by Company.
- 1.30** “Line Pack” for any Zone at any time shall mean that quantity of gas which is calculated by Company as the total quantity of gas required as line pack for the efficient operation of its pipeline in such Zone.
- 1.31** “Low Intervention Trade Transaction” shall have the meaning attributed to it in G-14, as may be amended from time to time.
- 1.32** “Make-Up Gas” shall mean for any period the total quantity of gas transported pursuant to subsection 9.2 of Rate Schedule FT, Firm Transportation Service of Foothills Pipe Lines Ltd. Gas Transportation Tariff for all Shippers under that Rate Schedule.
- 1.33** “Maximum Daily Delivery Quantity” or “MDDQ” shall mean, relative to a Delivery Point for any day, the quantity of gas, as specified in Appendix A of Shipper’s Service Agreement.
- 1.34** “MC” shall mean Measurement Canada, an Agency of Industry Canada.
- 1.35** “mg” shall mean milligram(s) as defined by The International System of Units (SI).
- 1.36** “month” shall mean a period of time beginning at 09:00 CCT on the first day of a calendar month and ending at 09:00 CCT on the first day of the next calendar month.
- 1.37** “National Energy Board” or “NEB” or “Board” shall mean the National Energy Board of Canada or any other tribunal which may hereafter exercise the functions now exercised by that Board with respect to the regulation of gas pipelines.
- 1.38** “Northern Pipeline” shall have the same meaning as is attributed to “pipeline” in section 2(1) of the Northern Pipeline Act.

- 1.39** “Operating Agreement” shall mean an agreement between Company and any Person under which such Person undertakes to provide services to facilitate Company’s operation of all or part of Company’s transportation system.
- 1.40** “Person” shall mean an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or a government or political subdivision thereof; and pronouns shall have a similarly extended meaning.
- 1.41** “Phase I Facilities” shall mean those portions of the ANGTS to be constructed by the subsidiary companies of Foothills Pipe Lines Ltd. in the Provinces of British Columbia, Alberta and Saskatchewan for the transmission of Canadian source gas which has been authorized for export from Canada by licences issued under Part VI of the National Energy Board Act.
- 1.42** “plant” shall have the meaning attributed to it in section 2 of the National Energy Board Act Gas Pipeline Uniform Accounting Regulations being regulation SOR/83-190.
- 1.43** “Rate of Interest” shall mean for any period, the annual rate which is the daily weighted average prime rate for Canadian dollar loans, charged during such period to its commercial customers by the Royal Bank of Canada, Main Branch, Calgary, Alberta.
- 1.44** “Rate Schedule” shall mean the Rate Schedule, included as part of this Gas Transportation Tariff, for gas transportation through Company’s transportation system.
- 1.45** “Receipt Point” shall mean one of the Receipt Points shown in Appendix A to Shipper’s Service Agreement for receipt of gas from Shipper.
- 1.46** “Service Agreement” shall mean the executed Service Agreement for service under this Gas Transportation Tariff as then in effect made by and between Company and Shipper.
- 1.47** “Subsidiary Company” shall mean Shipper’s Subsidiary Companies as described in the Northern Pipeline Act and include: Foothills Pipe Lines (South Yukon) Ltd., Foothills Pipe Lines (North Yukon) Ltd., Foothills Pipe Lines (North B.C.) Ltd., Foothills Pipe

Lines (Alta.) Ltd., Foothills Pipe Lines (South B.C.) Ltd. and Foothills Pipe Lines (Sask.) Ltd.

- 1.48** “10<sup>3</sup>m<sup>3</sup>” shall mean 1,000 cubic metres of gas determined pursuant to the pressure and temperature conditions set forth in subsection 1.12 above.
- 1.49** “Zone” shall mean any one of the Zones described in subsection 6.2 of the Rate Schedule into which Company’s transportation system has been divided for rate making purposes.

## 2. QUALITY OF GAS

### 2.1 Natural Gas

Natural gas shall be the gas obtained either from wells or from residue remaining after the natural gas has been treated for the removal of any of its constituent parts other than methane, and for the removal of methane to such extent as is necessary in removing such other constituents.

### 2.2 Freedom from Impurities

**2.2.1** The following specifications shall apply to the gas which Shipper delivers or causes to be delivered to Company for transportation at any of Company's Receipt Points.

- (i) The gas shall not contain sand, dust, gums, crude oil impurities or other objectionable substances in such quantities as may render it unmerchantable or be injurious to pipeline or may interfere with the transmission, measurement or commercial utilization of gas.
- (ii) The gas shall not, unless otherwise agreed upon, have a hydrocarbon dew point in excess of -10 °C at operating pressure.
- (iii) The gas shall not contain more than 23 mg/m<sup>3</sup> of hydrogen sulphide.
- (iv) The gas shall not contain more than 230 mg/m<sup>3</sup> of total sulphur.
- (v) The gas shall not contain more than 2% by volume of carbon dioxide, unless otherwise agreed upon.
- (vi) The gas shall not contain more than 65 mg/m<sup>3</sup> of water vapour.
- (vii) The gas shall not have a water dew point in excess of -10 °C at Company's operating pressures in excess of 8275 kPa.
- (viii) The gas shall not have a temperature exceeding 49 °C.



- (ix) The gas shall be as free of oxygen as it can be kept through the exercise of all reasonable precautions and shall not in any event contain more than 0.4% by volume of oxygen.

**2.2.2** The gas Company delivers to Shipper or for Shipper's account shall have the constituent parts that result from the commingling of the gas from various sources on Company's transportation system.

### **2.3 Gross Heating Value**

Generally, the gas shall have a gross heating value of not less than 36 MJ/m<sup>3</sup>; provided however, that Company may at its sole discretion permit gas of lower gross heating value to be tendered to Company at individual Receipt Points.

### **2.4 Failure to Conform to Specifications**

**2.4.1** If the gas tendered for transportation shall fail at any time to conform to any of the specifications set forth in this section 2, then Company shall notify Shipper of such deficiency and may, at its option, refuse to accept such gas pending correction. If the deficiency in quality is not promptly remedied, Company may accept such gas and may make changes necessary to bring such gas into conformity with such quality specifications and Company shall include all reasonable expenses incurred by it in effecting such changes in Shipper's monthly bill.

**2.4.2** Notwithstanding subsection 2.4.1 above, Company shall have the right to discontinue receipt of gas from Shipper without notice should the gas fail to meet the specifications set forth in subsection 2.2.1 hereof, provided that such suspension shall not relieve Shipper from any obligation to pay its demand charge, or any other charge payable to Company.

## **2.5 Quality Tests**

Company shall establish reasonable methods and procedures, including instrumentation, for making tests to determine whether gas tendered by Shipper to Company for transportation or delivered by Company to Shipper, meets the specifications set forth in this section 2.

## **3. MEASUREMENT AND MEASURING EQUIPMENT**

Subject to section 4 hereof Company shall cause to be furnished, installed, maintained and operated at each Receipt and Delivery Point all equipment, devices and material necessary to determine gas volume, pressure, temperature, gross heating value, quality, specific gravity and super compressibility. Company and Company's agent shall be responsible for the aforesaid measurements and measuring equipment, and Company and Shipper shall in conjunction with affected parties establish necessary metering, dispatch and operating procedures to provide information required by Company, Shipper or such affected parties. The following shall apply to measuring equipment measuring gas tendered by Shipper to Company for transportation, or delivered by Company to Shipper unless otherwise agreed upon.

### **3.1 Compliance with Regulations**

All measuring equipment, devices and material required shall be compatible with the quantities to be metered at the particular point, and shall be of a type approved for their intended use under the provisions of the GIA, where such approvals are applicable.

### **3.2 Check Measuring Equipment**

At each Shipper's Receipt Point and Delivery Point, Shipper, at its own expense, may cause to be furnished, installed, maintained and operated check measuring equipment, provided that such equipment does not interfere with the operations of the measuring

equipment installed or caused to be installed by Company and the transportation of gas hereunder.

### **3.3 Calibration**

The accuracy of Company's measuring equipment shall be verified at such intervals as may be appropriate for such equipment. Advance notice of the time and nature of each test shall be given to allow Shipper a reasonable amount of time to arrange for a representative to observe the test and any adjustments resulting from such tests. If, after notice, Shipper fails to have a representative present, the results of the test shall nevertheless be considered accurate until the next test.

### **3.4 Correction**

If, as a result of any such tests any of the measuring equipment is found to be out of service, or registering inaccurately with the result that a significant measurement error has occurred, such equipment shall be adjusted as soon as practicable to read as accurately as possible and the previous readings of such equipment shall be adjusted to correct for such significant error for a period definitely known or agreed upon, or if not known or agreed upon, for a period of 1/2 of the elapsed time since the last test. The quantity of gas delivered during such period shall be determined by Company using one of the following four methods which in the opinion of Company will provide the best results:

- (a) By using the data recorded by any check measuring equipment if installed and accurately registering; or
- (b) By correcting the error if ascertainable by calibration test or mathematical calculation; or
- (c) By estimating the quantity delivered based upon deliveries under similar conditions during a period when the equipment was registering accurately; or

- (d) By calculation of the balance between Company's receipts and deliveries over the period.

### **3.5 Expense of Special Tests**

If Shipper requests a special test of the accuracy of any measuring equipment and upon testing the equipment the inaccuracy of the equipment is found to be less than 2%, Shipper shall bear the expense of the special test.

### **3.6 Inspection of Equipment and Records**

Shipper or Shipper's agent shall have the right to inspect measuring equipment installed or furnished by Company and measurement or test data of Company at all times during normal business hours, but the reading, calibration and adjustment of such equipment shall be done only by Company or Company's agent.

### **3.7 Unit of Measurement**

The unit of volume for purposes of measurement shall be  $10^3\text{m}^3$ . The unit of quantity for purposes of measurement shall be GJ.

### **3.8 Applicable Procedures**

All measurements, calculations, and procedures used in determining the quantity delivered at any point shall be in accordance with GIA and all applicable regulations issued pursuant thereto. Provided, however, that correction for deviations from ideal gas laws shall be determined from data contained in Report No. 8 as published by the American Gas Association, or the latest revision thereof acceptable to Company.

### **3.9 Atmospheric Pressure**

For the purposes of measurement, the atmospheric pressure, at any Receipt Point or Delivery Point, shall be established by a recognized formula applied to the nearest 0.1 kPa increment and deemed to be a constant for that point.

### **3.10 Gas Characteristics**

The gas characteristics, including gross heating value, specific gravity, and nitrogen and carbon dioxide content, of the gas tendered by Shipper to Company for transportation or delivered by Company at the Delivery Point shall be determined, where applicable, by continuous recording equipment, approved for this use under the provisions of the GIA, or by standard laboratory equipment where a continuous sampler or spot sampler is used or spot samples are taken.

The gas characteristics used in computing gas measurement depending upon the method utilized, shall be:

- (a) The actual “real time” value determined when continuous analyzing equipment supplies live data of the gas characteristic to the real time measurement computer; or
- (b) The arithmetical average recorded each day or part thereof if continuous recording equipment is used; or
- (c) Where sampling is utilized, determinations available from analyses of such samples.

### **3.11 Access to and Exchange of Metering Data**

Company and Shipper shall exchange, upon request of either party, copies of all measuring and testing data and information as soon as practicable for any such requests.

### **3.12 Preservation of Measurement Records**

Company and Shipper shall preserve all original test data, and other similar records in such party's possession for a period of at least six years or such lesser period as may be compatible with record retention rules of any governmental agencies having jurisdiction thereover.

### **3.13 Low Intervention Trade Transaction Level**

If, pursuant to the GIA and G-14, Company has received from MC, conditional permission for the use of gas metering equipment without verification and sealing, at the Low Intervention Trade Transaction level, then the following shall apply:

- a) The Low Intervention Trade Transaction shall be subject to the provisions and conditions listed in G-14, as published on MC's website (or any replacement thereof);
- b) Shipper agrees that the gas metering equipment has been initially calibrated and will be periodically recalibrated (and reprogrammed where necessary) in accordance with a process and procedure acceptable to Shipper;
- c) Any measurement disputes arising between Company and Shipper shall be resolved in accordance with the provisions of subsection 3.4 of these General Terms and Conditions;
- d) Company and Shipper acknowledge and agree that the conditional permission granted by MC may restrict MC's ability to successfully conclude a measurement dispute investigation, if MC involvement has been requested; and
- e) Company and Shipper agree to the implementation of the Low Intervention Trade Transaction in accordance with G-14 and either Company or Shipper has the right to request a revocation of the conditional permission for the Low Intervention Trade Transaction in accordance with G-14.

## **4. NON-COMPANY EQUIPMENT**

All non-Company measuring equipment, devices and material required shall be compatible with the quantities to be metered at the particular point, and shall be of a type approved for their intended use under the provisions of GIA where such approvals are applicable.

## **5. BILLING AND PAYMENT**

### **5.1 Billing**

On or before the 9th Banking Day of each month Company shall provide to Shipper a bill for such billing month. Such bill shall reflect:

- (a) any amount payable by Shipper for the immediately preceding month for service provided under the Rate Schedule;
- (b) any billing adjustments to which Shipper is entitled or liable in respect of the second preceding month pursuant to subsection 9.4 of the Rate Schedule FT, Firm Transportation Service of Shipper's Gas Transportation Tariff with its Shippers; and
- (c) other charges or credits to Shipper hereunder.

**5.2 Payment**

Shipper shall make payment of such bill to a depository designated by Company on or before the last Banking Day of the month in which such bill was rendered to Shipper. The bill shall be payable in lawful money of Canada except where partial payment in United States dollars is required as per subsection 5.6 hereunder. Shipper shall, without further notice or demand, make payments pursuant to this subsection 5.2 irrespective of any dispute relative to the amount invoiced, and shall not be entitled to any abatement of such payments or any set off against them, including, but not limited to, abatement or set off due or alleged to be due by reason of any past, present or future claims of Shipper against Company under Shipper's Service Agreement or otherwise.

**5.3 Late Billing**

If presentation of a bill by Company is delayed after the 9th Banking Day of the month, then the time for payment shall be extended correspondingly unless Shipper is responsible for such delay.

**5.4 Interest on Unpaid Amounts**

Company shall have the right to charge interest on the unpaid portion of the bill, from the due date of payment until the date payment is actually made by Shipper, at a rate of interest which is the Rate of Interest plus 1%.

**5.5 Disputed Bills**

**5.5.1** In the event Shipper disputes in good faith any part of a monthly bill, Shipper shall nevertheless pay to Company the full amount of the bill within the time such payment is due.

**5.5.2** If Shipper fails to pay the full amount of any bill when payment is due, Company may upon four (4) Banking Days written notice immediately suspend any or all service being or to be provided to Shipper under any Service Agreement, provided however that such suspension shall not relieve Shipper from any



obligation to pay any rate, toll, charge or other amount payable to Company. If at any time during such suspension Shipper pays the full amount payable to Company, Company shall within two (2) Banking Days recommence such suspended service.

Following suspension, Company may, in addition to any other remedy that may be available to it, upon four (4) Banking Days written notice to Shipper immediately:

- (a) terminate any or all service being or to be provided to Shipper under any Service Agreement; and
- (b) declare any and all amounts payable now or in the future by Shipper to Company for any and all service under any Service Agreement to be immediately due and payable as liquidated damages and not as a penalty.

**5.5.3** In the event that it is finally determined that Shipper's monthly bill was incorrect and that an overpayment has been made, Company shall make reimbursement of such overpayment and Shipper shall be entitled to interest on the amount of such overpayment. Such interest shall be calculated at the Rate of Interest plus 1% from the date that such overpayment was made until the date that Company makes reimbursement of such overpayment to Shipper. In the event of an undercharge, Shipper shall pay the amount of any such underpayment to Company but without interest. Such amount shall be payable on the same terms and conditions as all other amounts payable by Shipper to Company.

## **5.6 Partial Payment in United States Dollars**

Company, in order to meet its obligations payable in U.S. currency, (hereinafter called "U.S. Pay Securities"), may, by designation on any invoice, require Shipper to pay to Company in United States dollars a specified portion of the amount invoiced. The amount so payable in United States dollars shall, for the purpose of computing the balance of the invoiced amount payable in Canadian dollars, be converted to Canadian

dollars by use of The Foreign Exchange Rate for United States dollars as published on the third Banking Day next preceding the day on which such invoiced amount is paid. Company shall give at least six months notice to Shipper of the approximate amount of United States dollars which are likely to be required from Shipper for any Billing Month and this notice shall include:

- (a) The total outstanding amount of securities requiring repayment of principal and/or payment of interest in United States dollars;
- (b) A schedule of the total annual amounts allocated to each Zone in accordance with subsection 8.11.1 of the Rate Schedule of such repayments and/or payments unconditionally required by the terms of such U.S. Pay Securities to be made in United States dollars; and
- (c) The depository where Company desires to receive that part of the said monthly charge which is to be paid by Shipper to Company in United States dollars, if this depository is different than that designated in subsection 5.2 hereof.

The amount of United States dollars to be so paid monthly, shall be 1/12 of the amount of United States dollars allocated to the Zone set forth in the schedule referred to in subsection 5.6(b) above for the year in which Shipper's payment hereunder is due.

## **5.7 Monthly Charge**

**5.7.1** Shipper's monthly charge for each billing month beginning with Shipper's First Billing Month shall be 1/12 of the Company's Cost of Service.

**5.7.2** Prior to each December 1, Company shall estimate Company's Cost of Service for the Calendar Year commencing on the next following January 1st.

Company shall use reasonable care in making such estimates, but shall have no liability for any inaccuracy therein.

**5.7.3** If Company's Cost of Service is greater or less than the estimated Company's Cost of Service for a Calendar Year, an amount equal to the deficiency or

overpayment, respectively, shall be included as an adjustment to the Company's Cost of Service in the next Calendar Year. Such deficiency or overpayment shall be increased by the interest on such deficiency or overpayment to be calculated at the Rate of Interest, from the date such deficiency or overpayment occurred.

- 5.7.4** Company shall give Shipper notice in writing of the amount of Shipper's monthly charge for each billing month in the Calendar Year commencing on the next following January 1st. Such notice shall set forth in reasonable detail the basis of determining such monthly charge.

## **5.8 Financial Assurances**

### **5.8.1 Financial Assurance for Performance of Obligations**

Company may request that Shipper (or any assignee) at any time from time to time prior to and during service under any Service Agreement, provide Company with an irrevocable letter of credit or other assurance acceptable to Company, in form and substance satisfactory to Company and in an amount determined in accordance with subsection 5.8.3 (the "Financial Assurance").

### **5.8.2 Failure to Provide Financial Assurance**

Company may withhold the provision of new service under any Service Agreement until Company has received a requested Financial Assurance.

If Shipper fails to provide a requested Financial Assurance to Company within four (4) Banking Days of Company's request, Company may upon four (4) Banking Days written notice immediately suspend any or all service being or to be provided to Shipper under any Service Agreement, provided however that any such suspension shall not relieve Shipper from any obligation to pay any rate, toll, charge or other amount payable to Company. If at any time during such suspension Shipper provides such Financial Assurance to Company, Company shall within two (2) Banking Days recommence such suspended service.

If Shipper fails to provide such Financial Assurance during such suspension, Company may, in addition to any other remedy that may be available to it, upon four (4) Banking Days written notice to Shipper immediately:

- (a) terminate any or all service being or to be provided to Shipper under any Service Agreement; and
- (b) declare any and all amounts payable now or in the future by Shipper to Company for any and all service under any Service Agreement to be immediately due and payable as liquidated damages and not as a penalty.

Any notice provided by Company to Shipper to withhold, suspend or terminate service under any Service Agreement pursuant to subsection 5.8.2 shall be filed concurrently with the NEB.

### **5.8.3 Amount of Financial Assurance**

The maximum amount of Financial Assurance Company may request from a Shipper (or assignee) shall be as determined by Company an amount equal to:

- (a) for the provision of all gas transportation and related services, other than such services referred to in subsection 5.8.3(b), the aggregate of the maximum rates, tolls, charges or other amounts payable to Company for a period of 70 Days. Provided however, the amount of Financial Assurance for all rates, tolls and charges other than demand charges shall be based on the daily average of the actual charges billed for services for the preceding 12 Month period with the initial forecast to be provided by the Shipper; and
- (b) for the provision of any gas transportation and related services where Company determines that it must construct new facilities, the aggregate of all rates, tolls, charges or other amounts payable to Company for a period of seventy (70) Days plus one (1) Month for each remaining year of the term of such service, up to a maximum of twelve (12) Months total.

## **6. LIABILITIES**

### **6.1 Warranty and Title of Gas**

Shipper warrants and represents that it owns or controls and has the right to deliver the gas to be delivered to the Receipt Point and that it has the right, power and authority to enter into a Service Agreement in respect thereof.

### **6.2 Possession of Gas**

Gas received by Company from Shipper for transportation shall be deemed to be in the custody and under the control of Company from the time such gas is accepted for transportation at any Receipt Point and until delivered by Company to Shipper at any Delivery Point.

### **6.3 Responsibility**

As between Shipper and Company, Company shall be responsible for all gas received from Shipper between the time such gas is received by it from Shipper at any Receipt Point and the time gas is delivered to Shipper by Company at any Delivery Point and at no other time.

### **6.4 Force Majeure**

**6.4.1** As utilized herein, force majeure shall mean any act of God, strikes, lockouts, or other industrial disturbances, acts of the public's enemy, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakages, or accidents to machinery or pipelines, hydrate obstructions of pipelines or appurtenances thereto, temporary failure of gas supply, freezing of wells or delivery facilities, well blowouts, craterings; inability to obtain materials or equipment; inability to obtain permits, orders, licences, certificates or other authorizations; orders of any court, board or

governmental authority having jurisdiction, any act or omission which is excused by any event or occurrence of the character herein defined as constituting force majeure; or any other cause, whether of the kind herein enumerated or otherwise not within the control of the applicable party and which by the exercise of due diligence such party is unable to prevent or overcome.

Notwithstanding any other provision herein, Company and Shipper agree that a lack of funds or other financial cause shall not, under any circumstances, be an event of force majeure.

- 6.4.2** If either party fails to perform any obligations imposed by the Service Agreement, including the applicable Rate Schedules and General Terms and Conditions of this Gas Transportation Tariff, and such failure shall be caused or materially contributed to by any occurrence of force majeure such failure shall be deemed not to be a breach of the obligation of such party, but such party shall use reasonable diligence to put itself in a position to carry out its obligations. Provided, however, that the settlement of strikes or lockouts shall be entirely within the discretion of each party, and that the above requirement that any force majeure shall be remedied with the exercise of due diligence shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the appropriate party.
- 6.4.3** Notwithstanding subsections 6.4.1 and 6.4.2, no cause affecting the performance of obligations by any party;
- (a) Shall relieve any party from its obligation to make payment of amounts pursuant to this Gas Transportation Tariff; or
  - (b) Shall relieve any party from any other obligation unless such party shall give notice of such cause in writing to the other party with reasonable promptness and like notice shall be given upon termination of such cause, nor shall such cause continue to relieve such party from such other

obligation after the expiration of a reasonable period of time within which, by the use of due diligence, such party could have remedied the situation.

## **7. DELIVERIES OF GAS AND SUPPLY OF LINE PACK**

### **7.1 Commingled Gas**

Shipper and Company agree that the gas received by Company from Shipper under Shipper's Service Agreement, shall be commingled in Company's transportation system with gas received by Company from other Shippers under their Service Agreements. The gas which Company shall deliver to Shipper shall not be the identical gas which Company shall receive from Shipper. If the gas delivered by Company to Shipper meets the specifications set forth in the General Terms and Conditions, then such gas may be gas from other sources in lieu of all or any part of said gas delivered by Shipper to Company.

### **7.2 Company Use Gas**

Company shall have the right but shall not be obligated to use gas being transported for Shipper for the operation, maintenance and construction of Company's facilities, such use to include among other things:

- (a) Fuel used in the operation of compressor stations;
- (b) Fuel used in buildings;
- (c) Purging and testing; and
- (d) Measurement variance.

### **7.3 Beginning of Delivery Obligation**

Company shall have no obligation to deliver gas to Shipper prior to Shipper's Billing Commencement Date.

**7.4 Provision of Line Pack Gas**

Company shall provide and own Line Pack for Company's facilities or any part thereof and such Line Pack gas shall remain the property of Company.

**7.5 Scheduling of Alteration and Repairs**

Company shall have the right to interrupt or reduce service to Shipper when necessary for any alterations, modifications, enlargements or repairs to any facilities or property comprising a part of Company's pipeline system or otherwise related to the operation thereof. Company shall give Shippers at least 3 days notice of such interruptions or curtailments or, in the event of unforeseen circumstances, such shorter notice as is reasonably possible for Company to give. Company shall endeavour to schedule such alterations, modifications, enlargements or repairs in cooperation with Shipper so that Shipper may arrange for alternate supply or otherwise accommodate its operations to such reduction or interruption of service.

**8. COOPERATIVE EXCHANGE OF INFORMATION**

Company and Shipper shall, on request by either made to the other, cooperate in providing such certificates, estimates and information as shall be in its possession, and as shall be reasonably required by the other for the purpose of financing, for the purpose of operations, for obtaining any permits required for the construction of additional facilities, or for the purpose of complying with the provisions of any Deed of Trust and Mortgage to which it is a party.



**9. SERVICE AGREEMENT****9.1 Service Rendered**

Service rendered by Company for Shipper shall be pursuant to the terms of the Service Agreement between Company and Shipper.

**9.2 Expansions in Service**

When Shipper desires an expansion of service, it shall so advise Company, and Company will, as promptly as practicable, advise Shipper whether and to what extent it can render desired service and the terms hereof.

**9.3 Defaults**

No default in the performance of any of the obligations of Company or Shipper, under Shipper's Service Agreement, shall operate to terminate such Service Agreement, or except as specifically provided in such Service Agreement, to relieve Company or such Shipper from due and punctual compliance with its obligations thereunder.

**9.4 Non-Waiver of Future Default**

No waiver by any party of any default by the other party shall operate as a waiver of any continuing or future default, whether of a like or different character.

**9.5 Assignability**

The Service Agreement into which these General Terms and Conditions are incorporated shall not be assigned in whole or in part without the consent of Company, which consent shall not be unreasonably withheld.

**9.6 Diversions**

Company shall, at the request of Shipper and subject to operational constraints on the Company's facilities, divert the quantity of gas Shipper is authorized to receive on any day under a Service Agreement to a point which is upstream of the Delivery Point,

provided that the Shipper shall pay to Company the same monthly demand charge which would have been otherwise payable had such diversion not occurred.

#### **10. TARIFF SUBJECT TO APPLICABLE LAW**

The Gas Transportation Tariff shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable laws of Canada, and Company and Shippers irrevocably submit to the jurisdiction of the courts of the Province of Alberta for the interpretation and enforcement of the Gas Transportation Tariff.

#### **11. INDEMNIFICATION**

Company and Shipper shall each indemnify and save harmless the other from all liability, damages, costs, losses and charges of every character resulting from any claim made against such other by any Person for injury or death to Persons, or damage to property, in any way connected with the property and equipment of the indemnitor or the presence of gas deemed hereby to be the responsibility of the indemnitor, unless such injury, death or damage is caused by the negligence or willful default of the indemnitee or any Person for whose actions the indemnitee is responsible in law; provided that neither Company nor Shipper shall be liable to indemnify the other unless the Person requesting indemnification shall have promptly notified the other in writing of any claim, suit or action for or in respect of which indemnification is to be claimed. The Person receiving such notification shall be entitled to participate in any such suit or action, and, to the extent that it may wish, assume the defense thereof with counsel who shall be to the reasonable satisfaction of the Person requesting indemnification, and after notice from the indemnitor to the indemnitee of its election so to assume the defense thereof, the indemnitor will not be liable to the indemnitee for any legal or other expenses incurred by the indemnitee in connection with the defense thereof. An

indemnitor shall not be liable to indemnify an indemnitee on account of any settlement of any claim, suit or action effected without the consent of such indemnitor.

Claims made under this section 11 with respect to injury or death to Persons or damage to property occurring during the term of Shipper's Service Agreement shall survive the termination thereof.

### **11.1 Limitation of Liability**

Notwithstanding anything to the contrary in this Gas Transportation Tariff;

- (a) Company shall have no liability for consequential damages;
- (b) Company shall have no liability in damages to Shipper in respect of failure for any reason whatever, other than Company's willful default, to accept receipt of, receive or deliver gas pursuant to the provisions of Shipper's Service Agreement; and
- (c) Shipper shall notwithstanding any such failure, for any reason whatever, to accept receipt of, receive or deliver gas, make payment to Company in the amounts, in the manner and at the times provided in Shipper's Service Agreement.

## **12. SEVERABILITY**

If any provision of this Gas Transportation Tariff shall be contrary to or prohibited by applicable law, such provision shall be severable from the remaining provisions of the Gas Transportation Tariff and shall be deemed to be deleted therefrom, and all of the provisions of this Gas Transportation Tariff which are not contrary to or prohibited by applicable law shall, notwithstanding such deletion, remain in full force and effect. If any provision of this Gas Transportation Tariff requires the payment of interest at a rate which exceeds the rate which the Person to whom such interest is required to be paid is permitted under applicable law to receive, or which the Person required to pay such

interest is permitted under applicable law to pay, such rate shall be reduced to the highest rate which is permitted under applicable law.

### **13. SURVIVAL OF OBLIGATION**

Notwithstanding the termination of Shipper's Service Agreement, Shipper and Company shall remain liable thereafter to discharge all obligations incurred and to pay all amounts due or accruing due hereunder to the date of such termination in the manner provided herein and subject to the provisions of the Gas Transportation Tariff.

### **14. AUTHORIZED PERSONS**

Shipper may, by notice to Company, authorize Persons to make or receive deliveries of gas on behalf of Shipper in accordance with the provisions of Shipper's Service Agreement. Unless such authorization is revoked by notice from Shipper to Company, Shipper shall be bound by all actions taken by Person so authorized in connection with the receipt, delivery, measurement or testing of gas received or delivered by Company under Shipper's Service Agreement.

### **15. MISCELLANEOUS PROVISIONS**

#### **15.1 Effect of Headings**

The headings used throughout this Gas Transportation Tariff are inserted for reference purposes only and are not to be considered or taken into account in construing the terms and provisions of any section nor to be deemed in any way to qualify, modify or explain the effects of any such provisions or terms.

#### **15.2 Words in Singular or Plural**

In the interpretation of the Service Agreement and this Gas Transportation Tariff, words in the singular shall be read and construed in the plural and words in the plural shall be read and construed in the singular where the context so requires.

### **15.3 Effective Date**

This Gas Transportation Tariff shall be effective as from the date fixed by the National Energy Board.