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**CALIBER BEAR DEN INTERCONNECT LLC**

**LOCAL TARIFF**

**Containing**

**RULES AND REGULATIONS  
GOVERNING THE INTERSTATE TRANSPORTATION  
OF**

**CRUDE PETROLEUM  
(AS DEFINED HEREIN)**

**BY PIPELINE**

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The rules and regulations published herein apply only under tariffs making specific reference by F.E.R.C. number to this tariff, such reference will include supplements and successive reissues hereof. Specific rules and regulations published in individual tariffs will take precedence over rules and regulations published herein.

Any rates in this tariff are expressed in cents per Barrel.

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

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**EFFECTIVE: December 16, 2016**

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## **ITEM NO. 5 - APPLICATION**

The rules and regulations in this Tariff apply to the transportation of Crude Petroleum from the Receipt Point to the Delivery Point specified in the tariffs making specific reference by F.E.R.C. number to this Tariff.

## **ITEM NO. 10 - DEFINITIONS**

“Barrel” means forty-two (42) U.S. Gallons at Base Pressure and sixty degrees Fahrenheit (60°F).

“Base Pressure” means 14.696 pounds per square inch.

“Carrier” means Caliber Bear Den Interconnect LLC.

“Committed Shipper” means a Shipper that has committed to transporting, or paying for the transportation of, a volume of Crude Petroleum pursuant to a TSA.

“Committed Volume” means, with respect to a Committed Shipper, the volume of Crude Petroleum required to be shipped on the Pipeline as determined pursuant to the Committed Shipper’s TSA.

“Crude Petroleum” means the direct liquid product of oil wells, oil processing plants, the indirect liquid petroleum products of oil or gas wells, or a mixture of such products meeting the quality specifications set forth in Item No. 15.

“DAPL” means the Dakota Access Pipeline.

“Day” means the twenty-four (24) hours commencing at 9:00 a.m. prevailing Central Time.

“Deficiency Payment” means a payment to be made by a Committed Shipper as determined in accordance with the applicable TSA and as further described in the Tariff rates set forth in Carrier’s rates tariff applicable to the Pipeline.

“Delivery Point” means the Pipeline delivery point listed in this Tariff and tariffs making reference hereto and incorporating this Tariff by reference.

“FERC” means the Federal Energy Regulatory Commission.

“Financial Assurances” means the Financial Assurances provided by the Shippers and accepted by the Carrier in accordance with Item No. 95.

“Force Majeure” means any event or occurrence beyond the reasonable control of Carrier that prevents in whole or in part the performance by Carrier of any obligation or condition under this Tariff (and/or any tariffs making reference hereto and incorporating this Tariff by reference therein), including but not limited to: strikes, lockouts, or other industrial disturbances, wars, sabotage, terrorism, blockades, insurrections, or acts of the public enemy; epidemics, landslides, lightning, earthquakes, tornadoes, loss of utilities, fires, explosions, storms, floods, washouts, or

other acts of nature; arrests or restraints of governments and people; riots or civil disturbances, failures, disruptions, breakdowns, or accidents to machinery, facilities, or lines of pipe (whether owned, leased or rented); freezing of lines; embargoes, priorities, expropriation, or condemnation by government or governmental authorities; interference by civil or military authorities; compliance with any orders, directives, rules or regulations issued by governmental authority; or any period in which DAPL is out-of-service or otherwise unable to accept Crude Petroleum through the interconnect from the Pipeline.

“Gallon” means a U.S. gallon of 231 cubic inches at Base Pressure at sixty degrees Fahrenheit (60°F).

“Guaranteed Volume” means, with respect to a Committed Shipper, the volume of capacity for Crude Petroleum shipment that is reserved for such Committed Shipper as determined pursuant to the Committed Shipper’s TSA.

“Linefill” means the quantity of Crude Petroleum needed to occupy the physical space in the pipeline.

“Month” means a period of time commencing at the start of the first Day of a calendar month and ending at the start of the first Day of the next calendar month.

“Nomination” means a written designation by a Shipper to the Carrier of a stated quantity of Crude Petroleum for transportation from a specified Receipt Point to a specified Delivery Point over a period of one operating Month in accordance with this Tariff.

“Receipt Point” means the Pipeline receipt point listed in this Tariff and in tariffs making reference hereto and incorporating this Tariff by reference therein.

“Party” means Carrier or Shipper when referred to individually or “Parties” when referred to collectively.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, or limited liability company.

“Pipeline” shall mean the Caliber Bear Den Interconnect LLC pipeline originating at the Receipt Point and terminating at the Delivery Point.

“Shipper” means a party that Tenders Crude Petroleum for transportation on the Pipeline under the terms of this tariff.

“Tariff” means this tariff.

“Tender” (including its correlatives) means a delivery by a Shipper to Carrier of a stated quantity and grade of Crude Petroleum, under a Nomination accepted by Carrier, for transportation in accordance with these rules and regulations.

“TSA” means a Transportation Service Agreement executed by the Carrier and a Shipper in connection with any widely publicized, non-discriminatory open season.

## **ITEM NO. 15 – CRUDE PETROLEUM SPECIFICATIONS**

- (a) Carrier is engaged in the transportation of Crude Petroleum as herein defined and will not accept any other commodity for transportation under this Tariff. Carrier will transport Crude Petroleum as defined herein with reasonable diligence, considering the quality of such Crude Petroleum, the distance of transportation and other material elements.
- (b) Crude Petroleum will be accepted for transportation at a Receipt Point only if it meets the quality and specifications set forth in this Item No. 15, including the following:
- (1) it is readily susceptible to transportation through Carrier's existing facilities; and
  - (2) it conforms to the quality specifications of any receiving pipeline at the Delivery Point set forth in the applicable Nomination as published by that pipeline in a tariff on file with the FERC.
- (c) The Carrier may require Crude Petroleum Tendered hereunder to be heated prior to acceptance, and may refuse to accept Crude Petroleum Tendered at temperatures in excess of 120 degrees (120°) Fahrenheit.
- (d) Carrier may request a certificate from Shipper stating the specification of each shipment of Crude Petroleum. Carrier reserves the right to sample and/or test any such shipment prior to acceptance or during receipt, and in the event of a difference between the certificate and Carrier's test, Carrier's test shall prevail.
- (e) The presence of contaminants in Crude Petroleum including but not limited to chemicals such as chlorinated and/or oxygenated hydrocarbons and/or lead shall be reason for Carrier to reject any Crude Petroleum. Crude Petroleum containing such contaminants shall be deemed to be unmerchantable and a Shipper who offers contaminated Crude Petroleum shall be deemed to have breached the warranty and representation set forth in Item No. 25(a).
- (f) For Crude Petroleum received by Carrier that does not meet Crude Petroleum specifications or the requirements of this Item No. 15, Carrier reserves the right to charge Shipper the greater of (i) the actual costs and expenses incurred by Carrier to treat or otherwise dispose of all contaminated Crude Petroleum, including Crude Petroleum of other Shippers contaminated by such Shipper's failure to meet the Specifications and settle any claims from other shippers or third parties.

## **ITEM NO. 20 - LINEFILL**

Each Shipper will supply a pro rata share of Crude Petroleum for Linefill as Carrier determines is necessary to maintain efficient operations of Carrier's Pipeline. Each Month Carrier shall adjust the Linefill so that each Shipper shall provide its pro-rata amount of Linefill based upon a ratio of the total shipments by the Shipper to the total shipments over the respective Pipeline for the preceding Month. Subject to the provisions of Item No. 60 (Payment of Carrier Charges), Crude Petroleum furnished to Carrier pursuant to this Item No. 20 shall be returned to Shipper and charged Tariff rates applicable to Shippers who are not Committed Shippers as set forth in Carrier's rates tariff applicable to the Pipeline after such Shipper has provided written notice to

Carrier of Shipper's intent to cease shipping and after a reasonable period of time to allow for administrative and operational requirements associated with the withdrawal of such Linefill.

#### **ITEM NO. 25 – NOMINATIONS, MINIMUM TENDER AND SCHEDULING**

(a) Any Shipper desiring to tender Crude Petroleum for transportation hereunder shall submit on or before the twentieth (20th) day of the Month preceding the Month of shipment a written Nomination to Carrier, on a form acceptable to Carrier, specifying the Receipt Point, Delivery Point, and quantity of Crude Petroleum to be shipped except that, if space is available for current movement, a Shipper may nominate Crude Petroleum for transportation after the twentieth (20th) day of the Month preceding the Month during which the transportation under the nomination is to begin. Unless a Shipper makes a timely Nomination, Carrier shall be under no obligation to accept Crude Petroleum from such Shipper for transportation. Each monthly Nomination by a Shipper shall contain a warranty in favor of Carrier that the Crude Petroleum identified in the Nomination meets Carrier's specifications as set forth in Item No. 15.

(b) Crude Petroleum will be accepted for transportation only where there has been tendered by the Shipper(s) a quantity of Crude Petroleum of no less than one thousand (1000) Barrels per day in the applicable Month, provided, however, Carrier may for its convenience, transport same by intermittent pumping, and Carrier may in its discretion choose to accept a smaller quantity from time to time if system operations permit. Where delivery must be made by Carrier directly into a connecting pipeline, minimum shipments shall be of a volume equal to or in excess of the minimum shipment requirements of the receiving pipeline and such Crude Petroleum shall be of the same specification as that currently being pumped by such receiving pipeline.

(c) Carrier will transport and deliver Crude Petroleum with reasonable diligence considering the quantity and quality of the Crude Petroleum, distance of transportation, safety of operations, and other material factors but will accept no Crude Petroleum to be transported at a particular time for any particular market. Carrier shall not be liable for any delay in shipments resulting from such scheduling.

#### **ITEM NO. 30 – MIXTURES**

(a) Crude Petroleum will be accepted for transportation only on condition that it shall be subject to such changes in characteristics while in transit that may result from the mixture with other Crude Petroleum, and Carrier shall be under no obligation to make delivery of the identical Crude Petroleum, but may make delivery out of common stock. Carrier reserves the right to make such deliveries out of common stock Crude Petroleum meeting the specifications in Item No. 15. Shippers will be required to accept delivery of such common stream Crude Petroleum, the characteristics of which may have changed due to mixing with other Crude Petroleum. Any revaluations deemed appropriate by Shippers by reason of difference in grade and/or quality that occur, by reason of the mixing, between receipt of the component parts and delivery of the stream, shall be for the account of the Shipper.

(b) CARRIER MAKES NO WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT TO THE GRADE OR QUALITY OF CRUDE PETROLEUM

TRANSPORTED UNDER THIS TARIFF.

**ITEM NO. 35 - STORAGE, RECEIPT POINT AND DELIVERY POINT FACILITIES**

(a) Carrier does not furnish storage facilities or services at the Receipt Point or the Delivery Point.

(b) Crude Petroleum will be accepted for transportation only when the Shipper has provided the necessary equipment and facilities, including storage facilities, satisfactory to Carrier for delivering such tenders to Carrier at the Receipt Point at a pumping rate equal to the current rate of pumping and for receiving same without delay upon arrival at the Delivery Point. Satisfactory evidence may be required by Carrier showing that necessary facilities are available for delivering shipments at Receipt Point and receiving shipments at Delivery Point before any obligation to furnish transportation shall arise.

**ITEM NO. 40 – TITLE**

Crude Petroleum will be accepted for transportation only when free from all liens and charges. When any Crude Petroleum tendered for transportation is involved in litigation, or when the ownership thereof may be in dispute, Carrier will require of Shipper an indemnity bond to protect against all loss.

**ITEM NO. 45 – MEASUREMENT AND CUSTODY**

All Crude Petroleum transported by Carrier will be measured at the time it passes through the Receipt Point and Delivery Point in accordance with applicable Carrier and industry accepted practices and procedures and as required by the interconnection agreements entered into by Carrier for connecting the Pipeline at the Receipt Point and Delivery Point. All measurements and tests shall be performed by Carrier, but Shipper or its representatives may be present to witness. Crude Petroleum shall be received and delivered with volume corrected as to temperature from observed degrees Fahrenheit to sixty degrees (60°) Fahrenheit. A centrifuge or other methods agreed upon shall be used for ascertaining the percentage of basic sediment, water or other impurities in the Crude Petroleum, and the full amount of basic sediment, water and other impurities shall be deducted from the corrected volume. All measurements and tests performed by Carrier shall be determinative unless they are contested by Shipper within ninety (90) days of such action. As between Shipper and Carrier, custody of the Crude Petroleum received under this Agreement shall pass from Shipper to Carrier at the Receipt Point, and shall pass from Carrier to Shipper at the Delivery Point.

**ITEM NO. 50 - FAILURE TO TAKE DELIVERY AT DELIVERY POINT**

If Shipper fails to remove Crude Petroleum from Carrier's Pipeline at the Nominated Delivery Point, threatens or prevents succeeding shipments into or out of Carrier's Pipeline or otherwise by Shipper's actions or inactions causes congestion on Carrier's Pipeline, Carrier shall have the right, but without obligation or liability to the Shipper, to make arrangements for the Crude Petroleum as Carrier deems appropriate. Shipper shall pay all charges, costs, and damages associated with the disposition of Crude Petroleum to Carrier the same as if Shipper had authorized such. In addition to any remedy available to Carrier, including remedies under this

Item No. 50, Carrier may assess a daily demurrage charge in the event Shipper fails to remove Crude Petroleum from Carrier's pipeline and that failure prevents or threatens the movement of succeeding shipments. The daily demurrage charge will be calculated by multiplying the Tariff rates set forth in Carrier's rates tariff applicable to the Pipeline based upon the Nominated Receipt Point and Delivery Point, times the Pipeline system Linefill.

#### **ITEM NO. 55 - PAYMENT OF CARRIER CHARGES**

(a) Carrier shall assess transportation and all other lawful charges accruing on Crude Petroleum accepted for transportation at the rate in effect at the date Crude Petroleum is received for transportation at the specified Receipt Point. Carrier will invoice Shipper for transportation charges and all other lawful charges accruing on Crude Petroleum accepted in accordance with Carrier's then current payment policies and procedures at the rates published herein.

(b) Carrier may invoice Shipper monthly for all transportation charges and other charges due based upon the number of Barrels accepted for transportation by Shipper from or on behalf of Carrier, less any adjustments made by Carrier pursuant to Item No. 80 of this Tariff. Shipper shall pay the full amount due under any undisputed invoice within ten (10) Business Days from receipt of the invoice. In the event Shipper disputes any payment hereunder, Shipper shall make timely payment of all undisputed amounts and Shipper and Carrier shall use good faith efforts to resolve the disputed amounts within thirty (30) days following the due date. Any amounts subsequently resolved shall be due and payable within ten (10) days of such resolution. In the event Shipper fails to pay any such undisputed charges within ten (10) Business Days following receipt by Shipper of a Shipper Default Notice, in addition to any other remedies available to Carrier under this Tariff or under applicable law, Carrier shall not be obligated to provide Shipper access to the Pipeline or provide services pursuant to this Tariff until such time as payment is received by Carrier.

(c) If any transportation or other charges are not paid by the due date stated on the invoice, Carrier shall have the right to assess finance charges on the entire past due balance (including principal and accumulated but unpaid finance charges) until paid in full at the rate equal to one hundred twenty-five percent (125%) of the prime rate of interest charged by Citibank N.A., New York, New York, as of the due date, or the maximum finance charge rate allowed by law, whichever is less. Carrier reserves the right to set-off any charges due Carrier by Shipper against any monies owed to Shipper by Carrier or any Crude Petroleum of Shipper in Carrier's custody.

(d) Carrier shall have a lien on all Crude Petroleum to cover all charges accruing under the Tariff until such charges are paid. Shipper shall be responsible for payment of transportation and all other charges as provided for in this tariff or otherwise lawfully due to the Carrier applicable to the shipment, and Carrier, at its option, may require Shipper to pay all such charges and fees in advance or to provide Financial Assurances satisfactory to Carrier. Crude Petroleum not released due to failure to pay or not taken by Shipper at the time of scheduled delivery are subject to sale. Such sale will be at a private sale for the best price obtainable. Carrier may pay itself all lawful charges, including incidental expenses associated with the sale. Should the sales proceeds be insufficient to pay all lawful charges including incidental expenses, Shipper shall remain liable to Carrier for the unpaid balance. Should the same proceeds exceed all lawful charges including incidental expenses due Carrier, Carrier will remit to Shipper the balance of



the excess.

#### **ITEM NO. 60 - CLAIMS, SUITS AND TIME FOR FILING**

As a condition precedent to recovery, claims against Carrier must be filed in writing with Carrier within twenty-four (24) Months after delivery of the Crude Petroleum, or in the case of a failure to make delivery, then within twenty-four (24) Months after a reasonable time for delivery has elapsed. Suit shall be instituted against Carrier only within two (2) years and one (1) day that notice is given in writing by Carrier to the claimant that Carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims for loss or damage are not filed or suits are not instituted thereon in accordance with the foregoing provisions, Carrier shall not be liable and such claims will not be paid.

#### **ITEM NO. 65 – PRORATION OF PIPELINE CAPACITY**

(a) The following definitions apply to this Item No. 65:

“Base Period” means the twelve (12) Month period beginning thirteen (13) Months prior to the Proration Month and excluding the Month preceding the Proration Month. If Carrier has been in operation less than twelve (12) Months, then the Base Period shall be number of Months during which the Carrier has been in operation, excluding the Month preceding the Proration Month.

“Regular Shipper” means a Shipper that has shipped Crude Petroleum during the entirety of the Base Period.

“New Shipper” means a Shipper that does not qualify as a Regular Shipper.

“Proration Month” means the Month for which capacity on the Pipeline is subject to prorating pursuant to this Item No. 65

“Total Shipments” means the volume that the applicable Committed Shipper, Regular Shipper or New Shipper has shipped on the Pipeline during each Month of the Base Period.

“Total Throughput” shall mean a volume equal to the sum of the Total Shipments of all Committed Shippers, Regular Shippers and New Shippers during the Base Period.

(b) When Carrier receives more Nominations in a month for transportation of Crude Petroleum than Carrier is able to transport on the Pipeline, Carrier shall apportion the Pipeline capacity in the following manner:

(1) Committed Shippers: Each Committed Shipper shall be allocated one hundred percent (100%) of its Guaranteed Volume for each line segment to which it has committed volumes, provided that Carrier shall reduce the capacity allocated to the Committed Shippers to the extent necessary to ensure that the aggregate capacity allocated to all Committed Shippers does not exceed ninety percent (90%) of Carriers available operational capacity. If a Committed Shipper’s Nomination for a month is less than the volume allocated pursuant to this Item, then the Committed Shipper will be allocated only the amount of its Nomination. Additionally, the allocation to each Committed Shipper shall be reduced by the same percentage of any reduction

in the capacity of the Pipeline if necessary to ensure that the capacity allocated to all of the Committed Shippers, in aggregate, does not exceed ninety percent (90%) of the Carrier's available operational capacity.

(2) Regular Shippers: The percentage of capacity to be allocated to each Regular Shipper will be calculated by dividing the sum of the Total Shipments of each Regular Shipper by the Total Throughput. The resulting percentages will then be applied to the Pipeline capacity available after allocations to Committed Shippers to determine the capacity allocation for each Regular Shipper. Each Regular Shipper will be allocated the lesser of its Nomination or its volume determined pursuant to the above calculation. In the event that the above calculation results in any Shipper being allocated more capacity than its Nomination, the excess of the calculated allocation over the Shipper's Nomination will be reallocated per capita among all other New Shippers and Regular Shippers whose Nominations would not be fulfilled through the allocations calculated in subparts (b)(2) and (b)(3) of this Item No. 65. Carrier will repeat this reallocation process until all of the capacity has been allocated. Allocations for Regular Shippers will be subject to pro rata reduction on the basis of the percentages calculated in this subpart (b)(2), if required, to accommodate New Shippers.

(3) New Shippers: Up to two and one-half percent (2.5%) of Pipeline capacity will be allocated to each New Shipper, subject to a cap of ten percent (10%) of capacity for all New Shippers. During periods of prorationing, New Shippers will be allocated capacity as follows:

If less than four (4) New Shippers have submitted Nominations, each New Shipper will be allocated the lesser of either two and one-half percent (2.5%) of capacity or its Nomination. In the event that four (4) or more New Shippers have submitted Nominations, the Nominations for each New Shipper shall be totaled and divided into ten percent (10%) of the Pipeline capacity. The resulting percentage shall be the initial New Shipper's Proration Factor. Each New Shipper will be allocated capacity equal to the lesser of:

- (i) 2.5% of available capacity, or
- (ii) its Nomination, or
- (iii) its Nomination multiplied by the initial New Shipper Proration Factor.

Any remaining Pipeline capacity, subject to the maximum cap of ten percent (10%) of all available capacity, as outlined above, will be allocated equally among the New Shippers whose Nominations were not fulfilled under the allocations calculated in this subpart (b)(3).

(c) In the event that ninety percent (90%) of the Carrier's available operational capacity is allocated to Committed Shippers, then the remaining ten percent (10%) of the Carrier's available operational capacity shall be allocated pro rata to the Regular Shippers and New Shippers.

(d) In case of operational necessity, or any other extraordinary circumstance beyond the control of Carrier that substantially affects the ability of Carrier to deliver the volumes Tendered by all Shippers for a given month, as determined by Carrier in its sole discretion, Carrier may

curtail deliveries to Shippers to the extent operationally required. In implementing such curtailments, Carrier will first curtail deliveries for Shippers that have, at the time of curtailment, failed to Tender a volume of Crude Petroleum equal to or greater than their respective Nominations for the month of curtailment. If the volume of deliveries for such Shippers is not sufficient to meet the operational necessity, Carrier will curtail deliveries of all other Shippers on a pro rata basis to the extent operationally required.

#### **ITEM NO. 70 – DEFICIENCY PAYMENTS**

To the extent a Committed Shipper fails to nominate and/or Tender a volume of Crude Petroleum equal to the Committed Volume under its TSA, then, such Committed Shipper shall nevertheless pay to the Carrier the Deficiency Payment in accordance with the TSA as further described in the Carrier's rates tariff applicable to the transportation service in question.

#### **ITEM NO. 75 - LIABILITY OF CARRIER**

(a) Carrier shall not be liable to Shipper for any loss of Crude Petroleum or damage thereto caused by Force Majeure or act of default of Shipper, or from any cause not due to the negligence of the Carrier. Any such loss or damage to Crude Petroleum in Carrier's custody shall be apportioned to each shipment in the same proportion that such shipment, or portion thereof, received and undelivered at the time such loss or damage occurs bears to the total of all shipments, or portion thereof, then in the custody of Carrier for transportation. Each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion, as so determined, of such loss or damage. Carrier shall not be liable for discoloration, contamination, or deterioration of Crude Petroleum transported unless such discoloration, contamination, or deterioration of Crude Petroleum transported results from the negligence of Carrier.

(b) The Carrier operates under this tariff solely as a common carrier and not as an owner, manufacturer, or seller of the Crude Petroleum transported or stored hereunder, and Carrier expressly disclaims any liability for any expressed or implied warranty for Crude Petroleum transported or stored hereunder including any warranties of merchantability or fitness for intended use.

**AS A CONDITION TO CARRIER'S ACCEPTANCE OF CRUDE PETROLEUM UNDER THIS TARIFF, EACH SHIPPER AGREES TO PROTECT AND INDEMNIFY CARRIER AGAINST ANY INDEMNIFIABLE CLAIM ASSERTED BY ANYONE RESULTING FROM OR ARISING OUT OF (1) ANY BREACH OF OR FAILURE TO ADHERE TO ANY PROVISION OF THIS TARIFF BY SHIPPER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES; (2) THE NEGLIGENT ACT(S) OR FAILURE(S) TO ACT OF SHIPPER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES IN CONNECTION WITH DELIVERY OR RECEIPT OF CRUDE PETROLEUM; AND/OR (3) ANY OFF-SPEC CRUDE PETROLEUM DELIVERED BY OR ON BEHALF OF SHIPPER TO CARRIER, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM CONTAMINATION OF OTHER SHIPPERS' CRUDE PETROLEUM. THIS INDEMNITY OBLIGATION SHALL EXTEND TO ANY INDEMNIFIABLE CLAIM EVEN THOUGH SUCH CLAIM ARISES AS A RESULT OF**

**THE NEGLIGENCE OF THE PARTY INTENDED TO BE INDEMNIFIED BY THE APPLICABLE INDEMNITY PROVISION, EXCEPT THAT THIS INDEMNITY SHALL NOT EXTEND TO ANY PORTION OF AN INDEMNIFIABLE CLAIM THAT ARISES AS A RESULT OF THE NEGLIGENCE OF THE PARTY INTENDED TO BE INDEMNIFIED BY THIS INDEMNITY PROVISION.**

**ITEM NO. 80 – GAINS OR LOSSES**

In addition to Item No. 75 (Liability of Carrier), Shippers are responsible for pipeline gains and losses, calculated as the difference between measured receipts and measured deliveries. Gains or losses will be apportioned according to each shipper's proportionate share of measured deliveries. Gains or losses will be broken out on each monthly statement and settled monthly.

**ITEM NO. 85 – OTHER CHARGES**

In addition to the transportation charges and all other charges accruing on Crude Petroleum accepted for transportation, a per Barrel charge will be assessed and collected in the amount of any tax, fee, or other charge levied against Carrier in connection with such Crude Petroleum pursuant to any federal, state, or local act or regulation which levies a tax, fee, or other charge on the receipt, delivery, transfer, or transportation of such Crude Petroleum within its jurisdiction. Such charge shall, without limitation, apply to any tax, fee, or other charge levied against Carrier for the purpose of creating a fund for the prevention, containment, clean up, and/or removal of spills and/or the reimbursement of persons sustaining a loss therefrom or any program where Carrier is acting as a collecting agent.

**ITEM NO. 90 - ADDITIONAL CONTRACTS**

Separate pipeage or other agreements in accord with this Tariff, and applicable regulations covering further details, may be required by Carrier before any duty for transportation shall arise.

**ITEM NO. 93 – FINANCIAL INFORMATION**

Except as provided in a TSA, Shipper shall provide to Carrier, at any time:

(i) upon Carrier's request, information ("Financial Information") that will allow the Carrier to evaluate (or re-evaluate) and establish Shipper's capacity to perform any financial obligations that could arise from the transportation of Shipper's Crude Petroleum on the Pipeline; and

(ii) upon Carrier's reasonable request, financial security for the payment of the rates and other charges to be paid by Shipper to Carrier in respect of transportation or other service ("Financial Assurances"), as specified in Item No. 95.

If Shipper fails to provide Financial Information or Financial Assurances to Carrier within four (4) business days of Shipper's receipt of Carrier's written request for such Financial Information or Financial Assurances, Shipper shall thereupon be deemed to be in default and Carrier may, in addition to any other remedy it may have under a TSA, the Tariff, at law or in equity, upon three (3) business days written notice to Shipper, suspend further receipt and delivery of Crude

Petroleum from and to Shipper until such Financial Information or Financial Assurances are provided by Shipper to Carrier; provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, tolls, charges or other amounts payable (including taxes) to Carrier under the Tariff. If, at any time during such suspension, Shipper provides the requested Financial Information or Financial Assurances to Carrier, Carrier shall, within two (2) business days of receipt of such Financial Information or Financial Assurances, recommence receipt and delivery of Shipper's Crude Petroleum.

#### **ITEM NO. 94 – CREDITWORTHINESS**

For the purposes of Item Nos. 93 and 95, Carrier may make a reasonable request for Financial Information or Financial Assurances on the following grounds:

(i) Carrier has reasonable grounds for insecurity regarding the performance of any obligation under the TSA or the Tariff;

(ii) the rating given to Shipper's senior unsecured long term debt, excluding any third party enhancement, is lower than any of the following as applicable: (a) "BBB-" from Standard & Poor's, a division of The McGraw Hill Companies, Inc.; or (b) "Baa3" from Moody's Investors Service, Inc., or any of such rating agencies' respective successors in interest; or

(iii) any Financial Assurances previously provided by Shipper no longer provide adequate support for the performance of Shipper's obligations that could arise under the Tariff.

#### **ITEM NO. 95 – FINANCIAL ASSURANCES**

(a) At any time, upon the request of the Carrier, any prospective or existing Shipper shall provide information to the Carrier that will allow the Carrier to determine the prospective or existing Shipper's capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations and the value of the allowance oil and negative Shipper's balance positions. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to provide the requested information to the Carrier within ten (10) days of the Carrier's written request, or if the Carrier's review of the requested information reveals that the existing or prospective Shipper does not have the capacity to perform any financial obligations that could arise from the transportation of that Shipper's Crude Petroleum under the terms of this tariff, including the payment of transportation charges, equalization obligations and the reasonably determined value of the allowance oil and negative Shipper's balance positions.

(b) Subject to the provisions of Item No. 95(c), the Carrier upon notice to the Shipper, may require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier to be provided at the expense of the Shipper:

(i) prepayment;

- (ii) a letter of credit in favor of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier in a form and from an institution acceptable to Carrier;
  - (iii) a guaranty in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or
  - (iv) such other enforceable collateral security including but not limited to security agreements over assets of the Shipper, in a form acceptable to the Carrier.
- (c) In the event that the Carrier reasonably determines that:
- (i) the existing or prospective Shipper's financial condition is or has become impaired or unsatisfactory;
  - (ii) any Financial Assurances previously provided by a Shipper no longer provide adequate security for the performance of the Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or
  - (iii) the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper,

then the Shipper shall provide Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum by the Carrier. For the purpose of this tariff, and without limiting the generality of the charges and costs lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum, those charges and costs shall include transportation charges, equalization obligations, negative Shipper's balance positions and the allowance oil. The Carrier shall not be obligated to accept Crude Petroleum for transportation from an existing or prospective Shipper if the Shipper or prospective Shipper fails to deliver the Financial Assurances to Carrier within ten (10) days of Shipper's receipt of Carrier's written request for such Financial Assurances.

#### **ITEM NO. 100 – FORCE MAJEURE**

If Carrier is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (other than the obligation to make payments of monies due hereunder), then Carrier shall give prompt written notice of the Force Majeure stating facts supporting such claim of inability to perform. Thereupon, the obligation to perform so affected shall be suspended during the continuation of an inability so caused, but for no longer period, and this Agreement shall otherwise remain unaffected. Carrier shall use due diligence to remove the cause, where commercially practicable, with all reasonable dispatch; provided, however, that this provision shall not require the settlement of strikes, lockouts, or other labor difficulty such course is determined inadvisable by Carrier.

## **ITEM NO. 105 – MAINTENANCE**

Shipper recognizes that Carrier will from time to time require routine scheduled and unscheduled maintenance periods to overhaul, service, or test the Pipeline or related facilities (“Maintenance”). Carrier shall use reasonable efforts to minimize the amount of Maintenance consistent with safe and reliable operations. Carrier shall provide Shipper sixty (60) Days’ prior notice (or, in instances when sixty (60) days’ notice is not possible, as much notice as is practicable) of any scheduled Maintenance which will interrupt delivery or receipt of any Crude Petroleum hereunder and, Carrier shall use reasonable efforts to give Shipper updates as such Maintenance schedule changes. If scheduling, maintenance, or operational restrictions exist at the time Shipper schedules movements of Crude Petroleum, then Carrier shall promptly notify Shipper of such restrictions.

**CALIBER BEAR DEN INTERCONNECT LLC**

**LOCAL TARIFF**

**Containing**

**RATES AND ROUTING  
GOVERNING THE INTERSTATE TRANSPORTATION  
OF**

**CRUDE PETROLEUM  
(AS DEFINED HEREIN)**

**BY PIPELINE**

From and To Points Named Herein

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This tariff is filed under authority of 18 C.F.R. § 342.2(b) (establishing initial rates).

Governed, except as otherwise provided herein, by rules and regulations published in Caliber Bear Den Interconnect LLC's F.E.R.C. No. 1.0.0 or supplements or successive issues thereof.

The rates in this tariff are expressed in cents per Barrel and are subject to change as provided by law, and to the Rules and Regulations published herein, supplements hereto and revisions hereof.

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

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**ISSUED: November 15, 2016**

**EFFECTIVE: December 16, 2016**

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**ISSUED AND COMPILED BY:**

Scott Gruber

General Counsel

Caliber Bear Den Interconnect LLC

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<b>TABLE OF GENERAL COMMODITY RATES</b> (Rates in Dollars per Barrel of 42 U.S. Gallons each)		
<b>RECEIPT POINT</b>	<b>DELIVERY POINT</b>	<b>RATE</b>
<b>Inlet Flange of the Carrier Interconnection to the Enable Midstream Partners, L.P. Gathering System in McKenzie County, North Dakota</b>	<b>Outlet Flange of the Carrier Interconnection to the Dakota Access Pipeline in Watford, North Dakota</b>	<b>\$0.19</b>
<b>TABLE OF COMMITTED RATES</b> <sup>(NOTE 1)</sup> (Rates in Dollars per Barrel of 42 U.S. Gallons each)		
<b>RECEIPT POINT</b>	<b>DELIVERY POINT</b>	<b>RATE</b>
<b>Inlet Flange of the Carrier Interconnection to the Enable Midstream Partners, L.P. Gathering System in McKenzie County, North Dakota</b>	<b>Outlet Flange of the Carrier Interconnection to the Dakota Access Pipeline in Watford, North Dakota</b>	<b>\$0.20</b> <sup>(NOTE 2)</sup>
<b>NOTES:</b>		
<b>1. Committed Rates are available to Shippers who executed a Transportation Services Agreement with Carrier as part of or pursuant to any widely publicized, non-discriminatory open season.</b>		
<b>2. Committed Rates are subject to the following Deficiency Payments during a Month when the Committed Shipper does not ship the full volume of its Committed Volume over and through the Pipeline:</b>		
(a) For up to twenty four (24) months in the aggregate, the Committed Shipper may elect, upon prior Notice to Carrier, to calculate the deficiency payment for such Month as follows:		
(1) If the Committed Shipper has shipped equal to or less than 66.67% of Committed Shipper's Guaranteed Volumes over and through the Pipeline during a Month, the Deficiency Payment for that Month shall be the Committed Rate for each Barrel of Committed Volume that was not transported over and through the Pipeline.		
(2) If the Committed Shipper has shipped greater than 66.67% of Committed Shipper's Guaranteed Volumes over and through the Pipeline during a Month, the Deficiency Payment for that Month shall be \$.05 per Barrel of Committed Volume that was not transported over and through the Pipeline and an additional \$0.01 per Barrel for Committed Volumes transported over and through the Pipeline during that Month.		
(b) If the Committed Shipper does not make the election for such month or the Committed Shipper has exceeded twenty four (24) months using such election, then the Deficiency Payment for that Month shall be the Committed Rate for each Barrel of Committed Volume that was not transported over and through the Pipeline.		