

LyondellBasell Transportation Company LLC

LOCAL TARIFF

CONTAINING RULES AND REGULATIONS APPLYING ON THE TRANSPORTATION
OF

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Gas Services Department
Railroad Commission of Texas

Ethylene

(as defined herein)

BY PIPELINE

Within the State of Texas

Rules and regulations published herein apply only to transportation that both originates in Texas and has a final destination in Texas and only under tariffs making specific reference by number to this tariff; such reference will include supplements hereto and reissues hereof. Specific rules and regulations published in individual tariffs will take precedence over the rules and regulations published herein. No transportation in interstate or foreign commerce will be accepted under this Tariff.

EFFECTIVE: April 5, 2021

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ITEM 1. DEFINITIONS:

For the purposes of this Tariff, the following capitalized terms have the meanings ascribed to them below:

“Affiliate” means with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, in the case of a Person that is a limited partnership, an “Affiliate” shall include any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the general partner of such limited partnership. For the purposes of this definition, “control” means the ownership, directly or indirectly, of more than fifty percent (50%) of the voting stock or other ownership interest of such Person; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Affiliated Shipper” means any shipper, whether a Regular Shipper, New Shipper, or prospective shipper that is directly or indirectly controlled by, under the common control with, or otherwise affiliated with any other Shipper on the System. In order to determine if a Shipper or prospective shipper is controlled by, under the common control of, or otherwise affiliated with another Shipper on the System for purposes of applying this Proration Policy, Carrier will consider a number of factors, including but not limited to, whether the applicable Shippers or prospective shippers share common owners, parent companies, affiliates, registered agents, directors, officers, managers, organizers, employees, schedulers, mailing addresses, email addresses, telephone numbers, fax numbers, internet protocol addresses, or financial information.

“ASTM” means American Society for Testing and Materials.

“Base Period” means the 12-Month period immediately preceding the Calculation Month.

“Base Shipments” mean the average Monthly Shipments by a Regular Shipper during the Base Period. Base Shipments will be calculated by dividing the total movements by the Regular Shipper in the Base Period by 12.

“Business Day” means any day except a Saturday, Sunday, federal legal holiday, or any other day on which banking institutions in the State of Texas are authorized or required by law or other governmental action to close.

“Calculation Month” means the Month just preceding the Proration Month.

“Carrier” means LyondellBasell Transportation Company, LLC.

“Connection Policy” means the LyondellBasell Transportation Company, LLC Connection Policy, a copy of which will be made available to Shipper on request.

“Consignee” means the Person so identified by Shipper with respect to a given Shipment at the time of its Nomination.

“Cooperating Shipper” means any Shipper or prospective shipper that is (i) an Affiliated Shipper or (ii) acts in concert with, pursuant to the direction of, or in coordination with, another Shipper or prospective shipper, whether written or verbal.

“Day” means the period of time commencing at 0000 hours on one day and running until 2400 hours the same day according to Houston, Texas, local time.

“Deficiency” has the meaning set forth in Item 8, Section D.

“Destination Point” means the point or points on the System where Ethylene is delivered to Shipper, as specified in Carrier’s Rates tariff in effect at the time of shipment.

“Encumbered Ethylene” has the meaning set forth in Item 15.

“Ethylene” means product that meets Carrier’s product Quality Specifications set forth in Item 3.

“Force Majeure” means events including: 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, storms, floods, washouts, or other acts of God; arrests or

restraints of governments and people; compliance (voluntary or involuntary) with federal, state or local laws, rules or regulations, permits, acts, orders, directives, requisitions, or requests of any official or agency of the federal, state, or local governments; rationing of, shortages of, or inability to obtain or a delay in obtaining any material or equipment; riots or civil disturbances, fires, explosions, failures, disruptions, breakdowns, or accidents to machinery, facilities, or lines of pipe (whether owned, leased or rented); the testing of, or the making of repairs, or the performing of maintenance, alterations, enlargements, turnarounds, or connections to machinery, facilities, or lines of pipe (whether owned, leased or rented); the necessity to not operate, or to reduce the operation of, equipment to protect the safety of the public and/or environment; freezing of lines; embargoes, priorities, expropriation, or condemnation by any Governmental Authorities; interference by civil or military authorities; and any cause which is not reasonably within the control of the Carrier or Shipper, or its Affiliates, claiming suspension. Force Majeure also includes: (a) those instances where Carrier is required to obtain servitudes, right-of-way grants, permits or licenses to enable it to fulfill its obligations, the inability or delay of Carrier to acquire, at reasonable cost and after the exercise of reasonable diligence, such servitudes, right-of-way grants, permits or licenses; (b) those instances where the Carrier is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any Governmental Authority to enable the Carrier to fulfill its obligations, the inability of the Carrier to acquire, at reasonable cost and after the exercise of reasonable diligence, such materials, supplies, permits and permissions; and (c) those instances where a third party claims an event of force majeure or otherwise fails to perform under an agreement (whether the failure to perform is excused or unexcused), and such event prevents the performance by the Carrier.

“Governmental Authority” means any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal or arbitral body (whether national, federal, state or local or, in the case of an arbitral body, whether governmental, public or private), having jurisdiction over Carrier.

“Law” means all applicable local, state and federal constitutions, laws (including common law), treaties, statutes, orders, decrees, rules, regulations, codes, and ordinances issued by any Governmental Authority,

and including judicial or administrative orders, consents, decrees, and judgments, and determinations by, or interpretations of any of the foregoing by any Governmental Authority having jurisdiction over the matter in question.

“Month” means a calendar month commencing at 0000 hours on the first day thereof and running until 2400 hours on the last day thereof per Houston, Texas, local time.

“New Shipper” means any Shipper that is not a Regular Shipper. A Shipper’s status as a New Shipper as to a particular line segment does not result in that Shipper being a New Shipper for any other line segment.

“Nomination,” “Nominate,” “Nominates,” “Nominated,” or “Nominating” means a written offer (in form and context specified by Carrier) made by a Shipper or a prospective shipper to Carrier of a stated quantity of Ethylene for transportation from a specified Origin Point to a specified Destination Point pursuant to the terms of this Tariff.

“Origin Point” means the point or points where Ethylene is received into the System, as specified in the Rates Tariff in effect at the time of shipment.

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

“Pound” means 16 ounces avoirdupois.

“Proration Month” means the Month for which capacity is being allocated pursuant to the Proration Policy.

“Proration Policy” means the proration policy set forth in Item 8.

“Quality Specifications” has the meaning set forth in Item 3(A) of this Tariff.

“Rates Tariff” means the tariff in effect at the time a shipment through the System takes place that contains the transportation rate applicable to such shipment, and that incorporates by reference the rules and regulations contained in this Tariff.

“Regular Shipper” means a Shipper that has shipped Ethylene on a particular line segment of the System during each of 12 consecutive Months. In order to maintain its status as a Regular Shipper, the Regular Shipper must ship Ethylene during six Months of any subsequent Base Period. A Regular Shipper that loses its Regular Shipper status will be a New Shipper. A Shipper’s status as a Regular Shipper as to a particular line segment does not result in that Shipper being a Regular Shipper for any other line segment.

“Shipment” means the transportation of a specified amount of Ethylene through the System from a specified Origin Point to a specified Destination Point.

“Shipper” means a party who contracts with Carrier for transportation of Ethylene under the terms of this Tariff.

“System” means the intrastate Texas common carrier Ethylene pipeline system that extends between Corpus Christi, Texas and La Porte, Texas.

“Tender,” “Tenders,” or “Tendered” means the presentation by Shipper to Carrier of a stated quantity of Ethylene for transportation from a specified Origin Point to a specified Destination Point in accordance with this Tariff.

“Unremoved Ethylene” means Ethylene that Shipper [or Consignee] is unable or refuses to receive upon Carrier’s delivery at the Nominated Destination Point.

ITEM 2. COMMODITY:

Carrier is engaged in the transportation of Ethylene, as that term is defined herein, and will not accept any other commodity for transportation under this Tariff.

ITEM 3. SPECIFICATIONS AS TO QUALITY:

- A. The specifications set forth below (the “Quality Specifications”) are the required specifications for Ethylene and shall apply to each Pound of Shipper’s Tender and shall not be limited to the composite sample of the Tender.

QUALITY SPECIFICATIONS

Component	Specifications		Reference Method (latest ASTM Revision)
	Mol.	Wt.	
Ethylene, % min.	99.90	99.90	D-6159
Methane + Ethane ppm max.	1000	1021	D-6159
Propylene and heavier, ppm max.	10	15	D-6159
Carbon Monoxide, ppm max.	1	1	D-2504
Carbon Dioxide, ppm max.	5	7.8	D-2505
Total sulfur, ppm max.	.9	1	D-4468
Water, ppm max.	5	3.2	D-1142
Acetylene, ppm max.	4	3.7	D-6159
Oxygen, ppm max.	2	2.3	D-2504
Methanol, ppm max.	.9	1.0	D-7423 (LowOx GC)
Hydrogen, ppm max.	5	0.4	D-2504
Ammonia, ppm max.	1.6	1	See Note 2

Notes:

1. Parts per million (ppm) mol. values calculated from ppm wt. values and wt. percent purity value, derived from [ASTM 24.21].
 2. For reference method, Ammonia is trapped in weak H₂SO₄ (aq.) and analyzed by ASTM D-1426.
 3. Equivalent laboratory methods and on-line analyzer methods acceptable at Carrier's discretion.
 - a. The following parameters shall be measured by on-line analyzer methodology: Methane, Ethane, Oxygen, Acetylene, Water, Carbon Monoxide and Carbon Dioxide.
 - b. All other parameters are to be routinely tested on a documented quality control basis.
- B. Shipper shall not Tender Ethylene for transportation on the System unless the Ethylene will be readily available for transportation through the System, such Ethylene will not damage the System, and such Ethylene conforms to the Quality Specifications.
- C. Shipper shall perform applicable tests to ensure that the Ethylene it Tenders to Carrier for delivery on the System conforms to the Quality Specifications and shall make the results of such tests available to Carrier. Should spot samples, analyses, or any other test (including tests performed by Carrier) indicate that the Ethylene Tendered or to be Tendered does not meet the Quality Specifications, Shipper agrees

to stop delivery of such off-specification Ethylene to Carrier until such time as it is determined by additional testing that the Ethylene meets the definition of Ethylene in this Tariff.

- D. Carrier reserves the right to reject all Tenders of Ethylene, or any part thereof, and to refuse transportation for such Tender if Carrier determines that Shipper has delivered Ethylene that (i) does not conform to the Quality Specifications, (ii) is not merchantable, (iii) is not readily available for transportation through the System, (iv) would otherwise adversely affect the System or other Ethylene on the System, and/or (v) would, in Carrier's sole judgment, expose Carrier's employees and/or its representatives, the System, or other Shippers to an undue risk of harm or property damage.
- E. In the event Shipper delivers Ethylene to the System that does not meet the Quality Specifications, Carrier at its option (i) may accept such delivery (a) if Carrier determines that the quality of the Ethylene when commingled as a common stream will meet the Quality Specifications or (b) if Carrier has identified a Person who will accept such Ethylene and a readily available Destination Point acceptable to that Person; or (ii) may exclude such delivery and any future deliveries from Shipper until such time as Shipper returns the quality of its Ethylene to a level satisfactory to Carrier in accordance with this Tariff.
- F. Carrier is not responsible for monitoring receipts or deliveries for contaminants. Further, Carrier reserves the right to dispose of any contaminated Ethylene on the System. Disposal thereof may be made in any reasonable manner including, but not limited to, commercial sales. Any liability associated with the contamination or disposal of any contaminated Ethylene shall be borne by Shipper introducing the contaminated Ethylene into the System. Shipper's liability includes, but is not limited to, contamination of the System, claims from other Shippers, carriers, or users of the contaminated Ethylene and the costs of any regulatory or judicial proceeding.
- G. If Ethylene received by Carrier does not meet the Quality Specifications, then, in addition to its rights under paragraph F, Carrier reserves the right to charge Shipper the actual costs and expenses incurred by Carrier to treat, handle, or otherwise dispose of all such contaminated Ethylene

ITEM 4. CERTAIN OBLIGATIONS OF SHIPPER IN AID OF EFFICIENT SYSTEM OPERATION:

- A. Carrier will not accept Ethylene Tendered by Shipper unless:
 - 1. Such Ethylene Tendered by Shipper conforms to the minimum injection pressure and minimum flow rate specified by Carrier for the Origin Point.
 - 2. Shipper is able to accept the Tendered Ethylene at the Destination Point at the pressure and flow rate specified by Carrier for such Destination Point.
- B. Each Shipment shall be subject to deduction of 0.25% by volume of the quantity of Ethylene. Carrier shall transport and deliver such Ethylene at Destination Point, less the appropriate deduction, and the net balance shall be the quantity deliverable by Carrier.

ITEM 5. MEASUREMENT AND TESTING:

- A. All Ethylene transported by Carrier may be measured at the applicable Origin Point and Destination Point, as well as at any other time deemed appropriate by Carrier, with such measurement made in accordance with the latest edition of the American Petroleum Institute (API) Manual of Petroleum Measurement Standards (API MPMS) and Gas Processors Association (GPA) standards. All measurements and tests shall be performed by Carrier, but Shipper or its representative may be present to witness such measurements and tests.
- B. Ethylene received from Shipper and Ethylene delivered to Shipper or Consignee shall, in each instance, be evidenced by tickets, showing opening and closing meter readings, as applicable, temperature, pressure, and any other data essential to the determination of quantity.
- C. A representative of Carrier shall have the right to enter upon the premises where Shipper's Ethylene is received or delivered and have access to any and all storage receptacles or meters for the purposes of measuring and testing and to make any examination, inspection, measurement or test required.
- D. Any overage or shortage of Ethylene may be adjusted with Shippers to allow for inherent losses or gains, including but not limited to those resulting from product measurement, shrinkage, evaporation,

and other physical losses not due to the negligence of the Carrier. The adjustments for such losses or gains will be allocated on a monthly basis among the Shippers in the proportion that the total number of Pounds of Ethylene delivered out of the System for each Shipper bears to the total number of Pounds of Ethylene delivered out of the system for all Shippers.

ITEM 6. IDENTITY OF ETHYLENE, MAINTENANCE OF:

- A. Carrier shall not be liable to Shipper for changes in quality of Shipper's Ethylene that may occur from commingling or intermixing Shipper's Ethylene with other Ethylene in the same common stream while in transit. Carrier is not obligated to deliver to shipper at the Destination Point the same molecules of Ethylene as those tendered by Shipper to Carrier at the Origin Point; all deliveries of Ethylene will be made from the common stream.
- B. Carrier shall have no responsibility in, or for, any revaluation or settlements that may be deemed appropriate by Shippers and/or Consignees because of mixing or commingling of Ethylene between the receipt and delivery of such Shipments by Carrier within the same common stream.
- C. Although Carrier will normally simultaneously receive and deliver a shipment, Carrier does not guarantee such will occur, and Carrier shall not be required to transport Ethylene except with reasonable diligence, considering the quality of the Ethylene, the distance of transportation and other material elements. Carrier cannot commit to delivering Ethylene at a particular time or at a particular hourly flow rate.

ITEM 7. NOMINATIONS REQUIRED:

- A. Ethylene for Shipment through the System will be received only on properly executed Nominations from Shipper showing the point at which the Ethylene is to be received, the point at which the Ethylene is to be delivered, and the amount of Ethylene to be transported. Carrier may refuse to accept Ethylene for transportation if Shipper has not furnished documentation demonstrating that it has made provision for prompt receipt thereof at the Nominated Destination Point.

- B. Any Shipper desiring to Nominate Ethylene for transportation during any Month shall make such Nomination in an amount of at least 1.5 million Pounds of Ethylene to Carrier in writing on or before the 15th day of the Month preceding the Month during which the transportation under the Nomination is to begin; except that, if space is available for current movement, Carrier, in its sole discretion, may consider a Nomination from Shipper for transportation of Ethylene submitted after the 15th day of the Month preceding the Month during which the transportation under the Nomination is to begin. Carrier will not be required to accept from Shipper a Nomination for any Month of less than 1.5 million Pounds, but may accept a Nomination for less than 1.5 million pounds of Ethylene at Carrier's discretion. When the 15th day of the Month preceding the Month of transportation falls on a Saturday or Sunday, Nominations must be submitted prior to 12:00PM Central Standard Time (or Central Daylight Savings Time, as applicable) on the immediately preceding Business Day. When the 15th day of the Month falls on any other day that is not Business Day, Nominations must be submitted prior to 12:00 PM Central Standard Time (or Central Daylight Savings Time, as applicable) on the Business Day that is three Business Days before the 15th of the Month.
- C. Carrier may refuse to accept Ethylene for transportation if Shipper is not in compliance with other provisions of this Tariff or where Shipper has failed to comply with all applicable Law regulating Shipments of Ethylene.

ITEM 8. OFFERS IN EXCESS OF FACILITIES:

- A. When Carrier receives more Nominations in a Month for transportation of Ethylene on Carrier's System than Carrier is able to transport, Carrier shall allocate the capacity of the System in accordance with the Proration Policy set forth in this Item 8. Available capacity shall be divided between New Shippers as a class and Regular Shippers as a class.
- B. The purpose of the Proration Policy is to enable Carrier to comply with its statutory obligations as a common carrier pipeline. The Proration Policy is intended to equitably allocate capacity among all Shippers desiring to ship Ethylene at times when the aggregate Monthly Nominations received from Shippers for a line segment exceed the available capacity of such segment for that Month. For purposes

of clarity, Carrier shall allocate capacity on a line-segment by line-segment basis pursuant to the provisions of the Proration Policy.

C. Updated Nominations

When Carrier determines that it may be necessary to allocate capacity on a particular line segment, Carrier may request Shippers and prospective shippers to furnish updated Nominations of volumes to be shipped in the next succeeding shipping Month or portion of a Month. If Carrier determines that the resulting Nominations exceed the available capacity of the affected line segment, the affected line segment will be prorated in accordance with the Proration Policy. All movements on a prorated segment of the System must be Nominated by the date stated in Carrier's request to Shipper to provide updated an updated Nomination.

D. Proration Policy

When Nominations for any Month exceed the capacity in any line segment of the System, Carrier shall notify each Shipper by electronic mail of the capacity exceedance and that such line segment shall be prorated in accordance with the Proration Policy. Pipeline capacity for the prorated line segment shall be allocated among Shippers in that line segment as follows:

1. Up to one percent of the total available capacity of the prorated line segment will be allocated to any New Shipper; provided, however, that total capacity allocated to all New Shippers shall not exceed five percent of the total available capacity of the prorated segment. If the number of New Shippers and/or the Nominations of New Shippers would exceed five percent of available capacity of the prorated line segment, the five percent of available capacity will be prorated proportionately among all New Shippers.

2. After the allocation of capacity to New Shippers pursuant to Paragraph 1 above, all remaining available capacity on the prorated line segment shall be available to Regular Shippers that have nominated Ethylene for the Proration Month. Each Regular Shipper shall be allocated an amount of capacity during the Proration Month that is equal to the lesser of (i) the number of Pounds shipped by

the Regular Shipper on the affected line segment during the Base Period, divided by the total number of Pounds shipped by all Regular Shippers on the affected line segment during the Base Period, which resulting percentage shall be multiplied by the available capacity for Regular Shippers, or (ii) its Nomination.

3. In the event any Shipper is allocated more capacity than its Nomination, the excess capacity will be reallocated among all other Shippers in proportion to their unsatisfied Nominations.

4. Carrier shall then notify each Shipper by electronic mail of the amount of its allocated capacity.

5. Upon receipt of its capacity allocation, each Shipper will have two Business Days, in which to notify Carrier in writing that Shipper accepts or declines the capacity allocation, or makes any changes to its Nomination. If Shipper fails to so notify Carrier, Shipper will not be allocated capacity for the Month in question.

6. Any excess capacity resulting from a Shipper's reduction in its Nomination pursuant to Paragraph 5, may be reallocated to other Shippers, at Carrier's sole discretion, but in accordance with the Proration Policy.

7. Shippers receiving additional capacity allocations pursuant to Paragraph 6 shall be notified by electronic mail of their revised allocated capacity. Upon receipt of its revised capacity allocation, each Shipper will have two Business Days, in which to notify Carrier in writing that Shipper accepts or declines the revised capacity allocation. Shippers receiving additional allocated capacity may decline the additional capacity without penalty during this two-Business Day period. If Shipper fails to so notify Carrier, Shipper will not be allocated additional capacity for the Month in question.

8. Upon the expiration of the two-Business Day periods referenced in Paragraphs 5 and 7, as applicable, all capacity allocations under Paragraphs 5 and 7 will be final and binding upon Shipper;

provided, however, that additional capacity may be allocated to Shipper under Paragraph 11, and such additional capacity shall not be considered as part of Shipper's final and binding capacity allocation for purposes of applying the penalty provision of Paragraph 9.

9. If Shipper fails to deliver to Carrier during the Proration Month, based on receipt tickets, the total number of Pounds of Ethylene allocated to Shipper during the Proration Month, Shipper shall nonetheless pay a fee for the amount of Shipper's unused allocated capacity. Such fee shall be calculated by multiplying the transportation rate set forth in the Rates Tariff effective at the time for transportation between the Origin Point and Destination Point specified by Shipper in its Nomination for the Proration Month times the positive difference between (i) the total number of Pounds of Ethylene allocated to Shipper in the prorated segment for the Proration Month and (ii) the actual number of Pounds of Ethylene transported by Carrier for Shipper in that segment in the Proration Month ("Deficiency").

10. In the event Carrier is unable to accept all or a portion of Shipper's Nomination during the Proration Month, which causes Shipper to have a Deficiency, Shipper shall not be subject to the fee described in Paragraph 9 for the amount of Shipper's Deficiency that resulted from Carrier's inability to accept all or a portion of Shipper's Nomination.

11. If Shipper does not use the capacity allocated to it under the Proration Policy at the times and in the amounts designated by Carrier, Carrier shall have the right to use Shipper's unused capacity to fulfill the unmet Nominations of other Shippers.

E. Carrier reserves the right to schedule use of the System and to modify such schedules from time to time in the manner and to the extent reasonably necessary in the opinion of Carrier to facilitate the efficient and economical use and operation of the System and to reasonably accommodate the needs of all Shippers for transportation. If space is available, or becomes available during a Month, Carrier

shall have the right to fill the idle capacity on a best efforts basis using Ethylene readily available for transportation.

F. Transfer, Loan, Assignment or Conveyance of Capacity and Shipment History

New Shipper or Regular Shipper capacity allocations or shipment history may not be assigned, conveyed, loaned or transferred to any Shipper or prospective shipper. Further, New Shipper or Regular Shipper capacity allocations or shipment history may not be used by any Shipper or prospective shipper other than the Shipper assigned such allocation by Carrier. However, a Shipper's capacity allocation or shipment history may be transferred as an incident of the bona fide sale of the Shipper's business or to a successor to the Shipper's business by the operation of law, such as an executor or trustee in bankruptcy.

In no event shall any portion of an allocation to a Shipper be used in such a manner that it will increase the allocation of another Shipper or any Cooperating Shipper beyond what it is entitled to under the Proration Policy or, in the case of a Regular Shipper, seek New Shipper status, in its own name or through any Cooperating Shipper. Shippers are prohibited from pooling two or more allocations of capacity to the benefit of a Shipper. Further, a Shipper may not create, use or otherwise work with a Cooperating Shipper in order to circumvent the Proration Policy for the purposes of improperly obtaining additional capacity on the System, becoming a Regular Shipper, establishing shipment history, or any other improper purposes.

Shipper shall have the burden of demonstrating that it is not in violation of the Proration Policy. To this end, Carrier may require written assurances from a responsible official, through the submission of a notarized affidavit or similar document, stating that Shipper is not violating this requirement with respect to the use of allocated capacity. In the event that Carrier determines that a Shipper or potential shipper is in violation of the requirements and prohibitions set forth in this Section, Carrier will enforce the following penalties, as applicable: (1) deny requested New Shipper status to a Cooperating Shipper;

(2) void the Nomination of a Cooperating Shipper for the applicable Proration Month; (3) upon the second finding by Carrier of a violation by any Shipper of the requirements and prohibitions in this Section, bar such Shipper from shipping on the System during the next Proration Month.

ITEM 9. FAILURE TO TAKE DELIVERY AT DESTINATION POINT:

Carrier does not provide storage. Thus, when Carrier notifies Shipper or the Consignee designated by Shipper that a Shipment is available for delivery at the Destination Point, if said Shipment is not received at the Destination Point within 24 hours because of an act or omission by Shipper or Shipper's Consignee, Carrier shall have the right to curtail the amount of Ethylene it will accept from Shipper until Shipper causes such Unremoved Ethylene to be removed. Carrier shall also have the right, if Carrier deems it necessary, to clear the System and to make whatever arrangements for disposition of the Unremoved Ethylene that are appropriate, which includes selling the Unremoved Ethylene to the first available purchaser at a reasonable price, which reasonableness shall be determined in Carrier's sole discretion. Any expenses incurred by Carrier in making such arrangements shall be borne by Shipper. Shipper shall indemnify Carrier for all losses associated with Unremoved Ethylene and Carrier's disposition of the Unremoved Ethylene. Carrier shall have no liability to Shipper or Shipper's Consignee associated with Shipper's Unremoved Ethylene or Carrier's disposition of the Unremoved Ethylene.

ITEM 10. APPLICATION OF RATES:

- A. Ethylene accepted for transportation shall be subject to the rates shown in the Rates Tariff.
- B. For Shipments accepted for transportation from any origin point or to any destination point which is not named in the Rates Tariff in effect at the time of shipment, and which origin or destination point is directly intermediate to any Origin Point or Destination Point from or to which a rate applying through such unnamed point is published in the Rates Tariff, Carrier will apply, from or to such unnamed intermediate point, the rate published from or to the next more distant point published in the Rates Tariff.

ITEM 11. PAYMENT OF TRANSPORTATION RATES AND OTHER CHARGES:

- A. Shipper shall pay, as provided below, all applicable transportation and other charges accruing on Ethylene handled by Carrier.
- B. All payments are due on the due date stated in the invoice.
- C. If any charge remains unpaid after the due date, then such amount due shall bear interest from the Day after the due date until paid, calculated at an annual rate equivalent to the lesser of (i) 125% of the prime rate of interest, as of the date of Carrier's invoice, charged by the Citibank, N.A. of New York, New York, for 90 day loans made to substantial and responsible commercial borrowers or (ii) the maximum rate allowed by law. In addition, Shipper shall pay all documented costs incurred by Carrier to collect any unpaid amounts, including reasonable attorneys' fees and costs incurred by Carrier.
- D. In the event Shipper fails to pay any charges when due, Carrier shall have the right, until such payments, including interest thereon, are made in full, to: (i) refuse to provide Shipper access to the System or provide services pursuant to this Tariff, (ii) offset the current and future amounts owed by Shipper against any amounts Carrier owes to Shipper, and (iii) exercise any other rights and remedies granted under this Tariff or existing under applicable Law.
- E. Carrier shall have a self-executing lien on all Ethylene delivered by Shipper to Carrier to secure the payment of any and all transportation or any other charges that are owed Carrier. Such lien shall survive delivery of Ethylene to Shipper. Such lien shall extend to all Ethylene in Carrier's possession beginning with Shipper's first receipt of transportation or other services from Carrier. The lien provided herein shall be in addition to any lien or security interest provided by this Tariff, statute or applicable Law. Carrier may withhold delivery to Shipper of any of Shipper's Ethylene in Carrier's possession and exercise any other rights and remedies granted under this Tariff or existing under applicable Law until all such charges have been paid as provided above.
- F. If Shipper fails to pay an invoice by the due date, in addition to any other remedies under this Tariff or under applicable Law, Carrier shall have the right, either directly or through an agent, to sell any

Ethylene of such Shipper in Carrier's custody at public auction, on any day not a legal holiday, not less than 48 hours after publication of notice of such sale in a daily newspaper of general circulation published in the town, city, or general area where the sale is to be held, stating the time and place of sale and the quantity and location of the Ethylene to be sold. At said sale, Carrier shall have the right to bid, and, if it is the highest bidder, to become the purchaser. The proceeds of any sale shall be applied in the following order: (i) to the reasonable expenses of holding, preparing for sale, selling, and to the extent allowed by Law, reasonable attorneys' fees and legal expenses incurred by Carrier; and (ii) to the satisfaction of Shipper's indebtedness to Carrier including interest herein provided from the date payment is due. The balance of the proceeds of the sale remaining, if any, shall be paid to Shipper or, if there is a dispute or claim as to entitlement, held for whoever may be lawfully entitled thereto. Carrier will have a claim for and against Shipper with respect to any deficiency arising from the debt due to Carrier from Shipper after reduction as set forth above.

ITEM 12. FINANCIAL ASSURANCES:

- A. In order to receive the transportation services provided under this Tariff, Shipper must maintain an investment grade credit rating for senior unsecured debt by both Moody's Investor Services and Standard & Poor's. If Shipper does not have or fails to maintain an investment grade credit rating or Shipper's credit otherwise is or becomes impaired or unsatisfactory to Carrier, Shipper must provide the financial assurances set forth in Item 12(B) below upon notice provided by Carrier and pursuant to the terms of Item 12(B).
- B. If Shipper fails to maintain the minimum credit ratings required under Item 12(A), or Shipper's credit otherwise is or becomes impaired or unsatisfactory to Carrier, then Shipper shall, within 10 Business Days after written notice from Carrier, deliver to Carrier pre-payment of an amount equal to the Shipper's anticipated Shipments on the System for the following six-Month period as financial assurance to Carrier for Shipper's payment of transportation costs and other charges pursuant to the provisions of this Tariff.

- C. In the event Shipper fails to comply with any obligation in Item 12 on or before the due date provided herein, Carrier shall not be obligated to provide Shipper with access to the System or to provide the transportation services pursuant to this Tariff until such requirement is fully met.

ITEM 13. CLAIMS, SUITS AND TIME FOR FILING:

As a condition precedent to recovery by Shipper for loss, damage or delay in receipt or delivery of Shipper's Ethylene for which Carrier may be responsible, Shipper's claim must be filed in writing with Carrier within nine months after delivery of the affected Ethylene, or, in case of Carrier's failure to make delivery of Shipper's Ethylene, then within nine months after a reasonable time for delivery has elapsed. Suit against Carrier shall be instituted only within two years and one day from the day when notice in writing is given by Carrier to Shipper that Carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted by Shipper on such claims in accordance with the foregoing provisions, such claims will not be paid and Carrier shall not be liable.

ITEM 14. LIABILITY OF CARRIER:

- A. **AS A CONDITION TO CARRIER'S ACCEPTANCE OF ETHYLENE UNDER THIS TARIFF, SHIPPER AGREES TO PROTECT AND INDEMNIFY CARRIER AGAINST CLAIMS OR ACTIONS FOR INJURY AND/OR DEATH OF ANY AND ALL PERSON WHOMEVER AND FOR DAMAGE TO PROPERTY OF OR ANY OTHER LOSS SUSTAINED BY CARRIER, SHIPPER AND/OR ANY THIRD PARTY RESULTING FROM OR ARISING OUT OF (I) ANY BREACH OF OR FAILURE TO ADHERE TO ANY PROVISION OF THE TARIFF BY SHIPPER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES; AND/OR (II) EACH NEGLIGENT ACT OR FAILURE TO ACT OF SHIPPER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES IN CONNECTION WITH DELIVERY OR RECEIPT OF ETHYLENE. 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 SOLE**

NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY INTENDED TO BE INDEMNIFIED BY THIS INDEMNITY PROVISION.

- B. Carrier, while in possession of Shipper's Ethylene, shall not be liable, and Shipper hereby waives any claims against Carrier for, any loss thereof, damage thereto, or delay caused by Force Majeure or by act or default of Shipper, or resulting from any other causes not due to the sole negligence of Carrier, whether similar or dissimilar to the causes herein enumerated. In case of loss of Ethylene from any such causes, after it has been received for transportation at the Origin Point and before the same has been delivered to Shipper at the Destination Point, Shipper shall stand a loss in such proportion as the amount of its Shipment, already delivered to Carrier, bears to all of the Ethylene then in the custody of Carrier, for Shipment via the lines or other facilities in which the loss or damage occurs, and Shipper shall be entitled to have delivered only such portion of its Shipment as may remain after deduction of its due proportion of such loss, but in such event Shipper shall be required to pay charges only upon the quantity delivered.
- C. Carrier expressly disclaims any liability for any express or implied warranty for Ethylene transported hereunder including any warranties of merchantability or fitness for intended use.
- D. Carrier will not be liable for discoloration, contamination, or deterioration of the Ethylene transported hereunder unless such discoloration, contamination, or deterioration of that Ethylene results from the sole negligence of Carrier. Negligence in this case shall not be construed to include contaminants absorbed by the material during transit through the System.

ITEM 15. ETHYLENE INVOLVED IN LITIGATION, ETC. – INDEMNITY AGAINST LOSS:

At the time of Nomination Shipper shall inform Carrier if any Ethylene Nominated and/or Tendered to Carrier for transportation is or may be (i) encumbered by a lien or charge of any kind, (ii) involved in litigation or, (iii) subject to a title dispute ("Encumbered Ethylene"). When any Encumbered Ethylene is Nominated for transportation, Carrier may require Shipper to provide one or more of the following: (i) satisfactory evidence of its perfected and unencumbered title, (ii) satisfactory indemnity bond to protect Carrier against any and

all loss, (iii) pre-payment of transportation charges, and (iv) subordination agreement from the applicable lienholder. Carrier also has the right to refuse any Shipment of Encumbered Ethylene. By Nominating Ethylene, Shipper warrants and guarantees that Shipper has good title thereto and agrees to hold Carrier harmless for any and all loss, cost, liability, damage and/or expense resulting from failure of title thereto; provided that acceptance for transportation shall not be deemed a representation by Carrier as to title.

In addition, Shipper shall not cause or permit any lien, security interest or other form of burden be filed or created with respect to Ethylene in Carrier's possession, except for the lien created in favor of Carrier under Item 11(E) of this Tariff.

ITEM 16. CHARGE FOR FUND COMPENSATION:

In addition to all other charges accruing on Ethylene accepted for transportation, a charge will be assessed and collected in the amount of any tax, fee, or other charge levied against Carrier in connection with such Ethylene by any Federal, State or local act, regulation or agency 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 17. ORIGIN FACILITIES:

Carrier will receive Ethylene from Shipper at the Origin Points on the System. Ethylene will be received only from pipelines that are provided by Shipper or Shipper's designee, or a connecting carrier. Carrier will determine and advise Shipper of the size and capacity of pipelines to be provided at the Origin Point to meet the operating conditions of the System at such point. Carrier will not accept Ethylene for transportation unless such facilities have been provided.

ITEM 18. DESTINATION FACILITIES:

Carrier will accept Ethylene for transportation only when Shipper or Consignee has provided the necessary facilities for receiving the Shipment as it arrives at the Destination Point. Carrier will not accept Ethylene for transportation unless such facilities have been provided.

ITEM 19. CONNECTION POLICY:

Requests for connections to the System shall be made by formal written request to Carrier, to the address shown on the front page of this Tariff. A connection shall only be made in accordance with the Connection Policy, a copy of which will be made available upon written request.

ITEM 20. SEPARATE AGREEMENTS:

Separate agreements, if applicable, in association with pipeline connections or other facilities ancillary to the System and in accordance with this Tariff shall be required of any Shipper before any obligation to provide transportation shall arise.

ITEM 21. USE OF ELECTRONIC DATA INTERCHANGE:

Carrier may utilize an electronic data interchange ("EDI") for transmission/distribution to Shipper of System related documentation including, but not limited to, pipeline meter tickets and schedules. Carrier reserves the right to require Shipper to be capable of receiving such documentation via EDI systems. However, Carrier assumes no liability for errors, for delays in transmission or for interruption of services.

[C] Cancel
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