

## SECTION I RULES AND REGULATIONS

### 1. DEFINITIONS

“Affiliate” means any other Person directly or indirectly controlling, controlled by, or under common control. As used in this definition, “control” and variations thereof will mean the power to direct the management and policies of such other person, whether through ownership, by contract, or otherwise.

“Applicable 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 judgements, and determinations by, or interpretation of any of the foregoing by any Governmental Authority having jurisdiction over the matter in question and binding on a Party.

“API” means American Petroleum Institute.

“ASTM” means the American Society for Testing Materials.

“Barrel” means a liquids measure equal to forty-two (42) United States gallons.

“Carrier” means 3 Bear Energy Delaware Operating–NM, LLC.

“Consignee” means the Person to whom a Shipper has ordered the delivery of Crude Oil.

“Consignor” means the Person from whom a Shipper has ordered the receipt of Crude Oil.

“Crude Oil” means the mixture of liquid hydrocarbons that meet the Quality Specifications set forth in Item 3(A).

“Delivery Point” means the delivery points(s) on Carrier’s System where Crude Oil is delivered to Shipper, as such points are specified in Section II of this tariff.

“Encumbered Crude Oil” has the meaning set forth in Item 14(B).

“Excess Line Fill” has the meaning set forth in Item 13(B).

“Force Majeure” means (a) strikes, lockouts or other industrial disputes or disturbances; (b) acts of the public enemy, hostilities or other disorders, wars (declared or undeclared), blockades, insurrections, riots, civil disturbances, sabotage; (c) acts of nature, landslides, lightning, earthquakes, fires, tornadoes, hurricanes, storms and warnings for any of the foregoing which may necessitate the precautionary shut-down of wells, plants, pipelines, gathering systems, loading facilities, or other facilities, floods, washouts, freezing of machinery, equipment, wells or lines of pipe, inclement weather that necessitates extraordinary measures and expense to construct facilities or maintain operations; (d) arrests and restraints of or other interference or restrictions imposed by a Governmental Authority, necessity for compliance with any Applicable Law (whether or not valid, including the denial, delay, revocation, non-renewal or termination of a permit or license),

expropriation, requisition, confiscation or nationalization; (e) epidemics or quarantine, explosions, breakage or accidents to equipment, machinery, plants, facilities or lines of pipe, the making of repairs or alterations to lines of pipe or plants, maintenance, inability to secure labor or materials to do so, partial or entire failure of wells, electric power shortages; (f) in those instances where a Party is required to acquire and retain servitudes, rights-of-way, grants, permits or licenses, the inability of such Party to acquire and retain, or delays on the part of such Party in acquiring or retaining, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights-of-way, grants, permits or licenses; (g) in those instances where a Party is required to furnish materials and supplies for the purpose of constructing or maintaining facilities to enable such Party to fulfill its obligations under this tariff, the inability of such Party to acquire, or delays on the part of such Party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies; or (h) any other causes, whether of the kind enumerated above or otherwise, which are not within the control of the Party claiming suspension and which by the exercise of reasonable diligence and reasonable costs such Party is unable to prevent or overcome. Force majeure shall also include any event of force majeure occurring with respect to the facilities or services of any Crude Oil terminals, transmission pipelines, transporters, purchasers or markets downstream of the Delivery Point. Notwithstanding the above, none of the following shall, under any circumstance, constitute a Force Majeure event: (a) the lack of financial resources, or the inability of a Party to secure funds or make payments as required by this tariff, (b) adverse market, financial or other economic conditions including changes in market conditions that either directly or indirectly affect the demand for or price of a Crude Oil, or (c) the availability of more attractive markets or pipeline transportation services for transporting Crude Oil.

“Governmental Authority” or “Governmental Authorities” means any governmental, administrative or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal or judicial 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 or Shipper.

“In-Service Date” means the date on which the System is fully operational and is available to accept receipt of Shipper’s Crude Oil for transportation in accordance with the terms of this tariff and the gathering services agreements entered into during the Open Season.

“Line Fill” has the meaning set forth in Item 13(A).

“Nomination,” “Nominate,” or “Nominated” means a written communication (in form and context specified by Carrier) made by a Shipper to Carrier of a quantity of Crude Oil for transportation on the System from a specified Receipt Point to a specified Delivery Point in accordance with the terms of this tariff.

“Off-Spec Crude Oil” has the meaning set forth in Item 3(E).

“Open Season” means that open season held by Carrier that commenced in May 2018 to obtain volume commitments and/or acreage dedication on the System, and any supplemental open season held by Carrier to obtain additional volume commitments and/or acreage dedication on the System.

“Party” shall refer to either Shipper or Carrier, individually, and “Parties” shall refer to Carrier and Shipper, collectively.

“Person” means any individual, corporation, limited liability company, partnership, trust or other entity, or any Governmental Authority.

“Prime Rate” has the meaning set forth in Item 17(C).

“Proration Month” means the month for which capacity is to be allocated under Item 7.

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

“Receipt Point” means the receipt/inception point(s) where Crude Oil is received into the System, as such points are specified in Section II of this tariff.

“Shipper” means a party that contracts with Carrier for transportation of Crude Oil in accordance with this tariff and any other applicable tariffs of Carrier.

“System” means that portion of Carrier’s pipeline system, including all appurtenances thereto, related to the provision of transportation services provided by Carrier pursuant to this tariff.

“System Capacity” means the operational capacity of the System at any applicable point in time.

“Tender” or “Tendered” means delivery by Shipper to Carrier of a stated quantity of Crude Oil for transportation from a specified Receipt Point to a specified Delivery Point on the System in accordance with this tariff.

“Unremoved Crude Oil” means Crude Oil that Shipper fails to arrange for receipt of, or refuses to receive, upon Carrier’s delivery at the Nominated Delivery Point.

## 2. COMMODITY

Carrier is engaged in the transportation on the System of Crude Oil meeting the Quality Specifications set forth in Item 3 and will not accept any other commodity for transportation under this tariff.

## 3. QUALITY SPECIFICATIONS

- A. The quality specifications for Crude Oil set forth below (“**Quality Specifications**”) shall apply to Shipper’s Tender. Shipper shall not deliver to Carrier and Carrier shall not be obligated to accept Crude Oil that, as determined by Carrier, has on receipt qualities which are outside of the minimum and/or maximum ranges specified in the following table:

Quality	Units	Max	Reference Test Method
Sulfur Content	Weight %	≤ 0.4	ASTM D4294
Reid Vapor Pressure	PSIA	9.5	ASTM D6377
True Vapor Pressure	PSIA	11.0	ASTM D6377
Basic Sediment and Water	% of Volume	≤ 1.0%	API MPMS CHAPTER 10.4

- B. Carrier shall have the right to change or modify the Quality Specifications provided in Item 3(A) at any time and from time to time in order to conform Carrier’s Quality Specifications to those of upstream or downstream connecting facilities.
- C. Shipper shall perform applicable tests to ensure that the Crude Oil it Tenders to Carrier for transportation on the System conforms to the Quality Specifications. Carrier may also require Shipper to furnish a certificate setting forth in detail the specifications of each shipment of Crude Oil offered for transportation hereunder, and Shipper shall be liable for any contamination or damage to other Crude Oil in Carrier’s custody or to Carrier’s System or other facilities caused by failure of the Crude Oil Tendered by Shipper to meet the specifications stated in Shipper’s certification.
- D. Carrier or its representative may test all Crude Oil Tendered for transportation on Carrier’s System for compliance with the Quality Specifications. All such tests shall be performed by Carrier, but Shipper, Consignor, or Consignee may be present or represented at the testing provided such witnessing does not unreasonably interfere with Carrier’s operation of the System. Carrier shall provide reasonable advance notice of any such testing (other than the continuous monitoring of the System) to Shipper. Quantities shall be tested in accordance with applicable API/ASTM standards and pipeline industry practice or such other tests as may be agreed upon by Carrier and Shipper. All tests performed by Carrier shall be final and shall control.
- E. Carrier reserves the right to reject all Tenders of Crude Oil and refuse transportation if Carrier determines that Shipper has delivered Crude Oil that (i) does not conform to the Quality Specifications, (ii) is not merchantable, (iii) is not readily acceptable for transportation through Carrier’s System, (iv) would otherwise adversely affect the System or other Crude Oil on the System and/or (v) would expose any Person or property (including the System) to an undue risk of harm or property damage (“**Off-Spec Crude Oil**”), all of which shall be determined by Carrier, in Carrier’s reasonable discretion.
- F. In the event Shipper Tenders Off-Spec Crude Oil to the System: (i) Carrier may accept such Shipper’s delivery if Carrier determines, in its sole discretion, that the quality of the Off-Spec Crude Oil, when commingled as a common stream, will nonetheless meet the Quality Specifications; or (ii) if Carrier does not accept such Off-Spec Crude Oil as provided in subpart (i) of this Item 3(F), Carrier may

exclude such Shipper from further entry into Carrier's System until such time as Shipper returns the quality of its Crude Oil to a level satisfactory to Carrier in accordance with this tariff. Nothing contained in this tariff, any other tariff filing, any pipeage contract or gathering services agreement or any other document, nor any receipt by Carrier of Off-Spec Crude Oil (either unknowingly, as a temporary accommodation, or in its sole discretion), shall be construed to affect Carrier's right, at any time and from time to time, to reject Tenders of Off-Spec Crude Oil and to refuse or suspend receipt of such Off-Spec Crude Oil until it is established to such Carrier's reasonable satisfaction that subsequent deliveries of Crude Oil will conform to the applicable Quality Specifications.

- G. Carrier may monitor, but is not responsible for monitoring, receipts or deliveries for contaminants. Further, Carrier reserves the right to dispose of any Off-Spec Crude Oil. Disposal thereof may be made in any reasonable manner, including, but not limited to, commercial sales. Shipper shall be liable for and shall defend, indemnify and hold Carrier harmless from and against any and all claims, actions, suits, losses, demands, costs and expenses (including attorney's fees and costs of repairing, inspecting, cleaning and decontaminating Carrier's System or the facilities of third parties) of every kind, nature or description to the extent caused by Off-Spec Crude Oil that Shipper has delivered into Carrier's System.
- H. In addition to any other remedies available to Carrier, if Crude Oil received by Carrier into Carrier's System does not meet the Quality Specifications, Carrier reserves the right to charge Shipper for the actual costs and expenses incurred by Carrier to treat, handle, or otherwise dispose of all such Off-Spec Crude Oil. In the event that, based upon Carrier's own testing, it is determined that Shippers are or have been delivering Crude Oil into Carrier's System at a Receipt Point that does not meet Carrier's Quality Specifications, then Carrier may add an off-spec penalty provision to this tariff in order to discourage deliveries of Crude Oil to Carrier's System that violate Carrier's Quality Specifications. For the avoidance of doubt, any Shipper who has delivered Off-Spec Crude Oil that, when commingled as a common stream, results in the common stream not meeting the Quality Specifications, shall be liable for damages caused to other Shippers' Crude Oil to the extent that such Shipper's delivery of Off-Spec Crude Oil results in other Shippers receiving Crude Oil that does not meet the Quality Specifications.

#### **4. VARIATIONS IN QUALITY AND GRAVITY**

- A. Carrier shall not be liable to Shipper for changes in gravity or quality of Shipper's Crude Oil that may occur from commingling or intermixing Shipper's Crude Oil with other Crude Oil in the same common stream while in transit. Carrier is not obligated to deliver to Shipper the identical Crude Oil Nominated and Tended by Shipper; Carrier will deliver the grade of Crude Oil it is regularly transporting as a common stream.
- B. Carrier shall have no responsibility in, or for, any revaluation or settlements which may be deemed appropriate by Shippers and/or Consignees because of

mixing or commingling of Crude Oil shipments between the receipt and delivery of such shipments by Carrier within the same common stream.

- C. Carrier shall not be required to transport Crude Oil except with reasonable diligence, considering the quality of the Crude Oil, the distance of transportation and other material elements. Carrier cannot commit to delivering Crude Oil to a particular destination, at a particular time.

## 5. MINIMUM TENDER

Crude Oil must be Nominated and Tendered for transportation in quantities of not less than 50 Barrels per day at the applicable Receipt Point. However, Carrier may, in its sole discretion, decide to accept Nominations below the minimum requirements set forth in this Item 5, provided that space is available and operating conditions permit such acceptance.

## 6. NOMINATIONS REQUIRED

- A. Crude Oil for shipment through the System will be received only on a properly executed Nomination from Shipper identifying the month for which transportation is desired, the Receipt Point at which the Crude Oil is to be received by Carrier, the Delivery Point of the shipment, the Consignee (if any), and the amount of Crude Oil to be transported. Carrier may refuse to accept Crude Oil for transportation unless satisfactory evidence is furnished that Shipper or Consignor has made adequate provisions for prompt receipt of all volumes at the Delivery Point.
- B. Any Shipper desiring to Nominate Crude Oil for transportation shall make such Nomination to Carrier in writing on or before 12:00 noon Central Standard Time on the 24<sup>th</sup> day of the calendar month preceding the month during which the transportation of Crude Oil under the Nomination is to begin. When the 24<sup>th</sup> day of the calendar month falls on a weekend, nominations will be required prior to 12:00 noon Central Standard Time on the immediately preceding business day. If operating conditions permit, Carrier, in its sole discretion, may consider and accept Nominations submitted after the date specified above.
- C. Carrier may refuse to accept Crude Oil for transportation under this tariff (i) where Shipper, Consignor, or Consignee is not in compliance with this tariff or (ii) where Shipper, Consignor, and/or Consignee is not in material compliance with all Applicable Law regulating shipments of Crude Oil.
- D. All Crude Oil accepted for transportation will be transported at such time and in such quantity as scheduled by Carrier.

## 7. PRORATIONING PROCEDURES

- A. *When System Capacity will be prorated.* When Carrier receives more Nominations in a month for transportation of Crude Oil on Carrier's System than Carrier is able to transport, Carrier shall allocate the System Capacity under the provisions of this Item 7.

- B. ***Allocation of System Capacity.*** Carrier shall allocate the System Capacity for the Proration Month on a pro rata basis to all Shippers according to each Shipper's Nomination for the Proration Month. Each Shipper's allocation of System Capacity shall be equal the product of (i) the System Capacity for the Proration Month, multiplied by (ii) a fraction, the numerator of which shall equal Shipper's Nomination for the Proration Month and the denominator of which shall equal the total Nominations of all Shippers for the Proration Month.
- C. ***Basis for Allocation; Notification.*** When prorationing of System Capacity is in effect:
- (1) Carrier shall allocate System Capacity on a monthly basis; and
  - (2) Carrier will use reasonable efforts to notify each Shipper of its allocation not later than the first working day of the Proration Month.
- D. ***Reallocation of Unused Allocated System Capacity.*** If a Shipper does not use the portion of System Capacity allocated to it under this Item 7 at the times and in the amounts designated by Carrier, Carrier shall have the right to use Shipper's unused portion of System Capacity to fulfill the unmet Nominations of other Shippers.
- E. ***Failure of Shipper to Use Allocated System Capacity.***
- (1) Except as provided in Item 7(E)(2) below, a Shipper that fails to use all of its allocated System Capacity during a Proration Month shall have its allocation of System Capacity reduced in each subsequent Proration Month until the total reductions equal the amount of the deficiency. The amount of any such reduction shall be treated as unused allocated System Capacity and shall be reallocated among other Shippers in accordance with Item 7(D).
  - (2) Reduction of a Shipper's allocation for failure to use its allocated System Capacity during a Proration Month may be waived, in whole or in part, if Carrier determines that Shipper's failure to use all or some of its allocated System Capacity was due to a Force Majeure.
- F. ***Transfer of Allocated System Capacity.*** Shipper's allocation of System Capacity 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.

## 8. MEASUREMENT

- A. Carrier shall furnish, install, operate and maintain suitable measurement equipment for the accurate measurement of the volume of Crude Oil received by Shipper at a Receipt Point for transportation on the System. All such measurements shall be available to Shipper upon request. Quantities, quality and

gravities of Shipper's Crude Oil shall be determined in accordance with generally accepted industry practices in effect at the time, using the latest ASTM/API test methods and the latest edition of API volume correction tables. Corrections shall be made for temperature to correct from actual observed temperatures to 60 degrees Fahrenheit and to correct actual pressures to 14.696 pounds per square inch absolute.

- B. Carrier shall verify the calibration of its meters and make adjustments as necessary as follows: (i) for any meter with an average volume of less than or equal to 400 Barrels of Crude Oil per day, once every six (6) months; (ii) for any meter with an average volume of greater than 400 Barrels of Crude Oil per day, once every three (3) months; or (iii) for any meter, more frequently if required by a Governmental Authority.
- C. With respect to any test made pursuant to this Item 8, a registration within 0.25 percent of the previous meter calibration shall be considered correct. However, the meter shall be adjusted to read as accurately as practicable. Shipper may request a special test of any meter, with the expense of any special test to be borne by Shipper if the meter registration is found to be correct, or borne by Carrier if the meter registration is found to be incorrect. Carrier shall notify Shipper at least three (3) days in advance of any testing, and each Shipper shall have the right to have a representative witness all tests and measurements. Settlement for any period during which the meter registration deviates by more than 0.25 percent shall be corrected at the rate of inaccuracy for any period of inaccuracy that is definitely known or agreed upon; but in case the period is not definitely known or agreed upon, then for a period of one-half of the time since the date of the last test.
- D. Shipper, at its sole risk and liability, shall have the right to be present for any installing, reading, cleaning, changing, repairing, testing, calibrating and/or adjusting of Carrier's measuring equipment. Under no circumstances shall Shipper modify, adjust or tamper with the facilities or equipment of Carrier.

## **9. ORIGINATION FACILITIES**

Carrier will receive Crude Oil from Shippers at the designated Receipt Points on Carrier's System. Crude Oil will be received only from pipelines, tanks, tank batteries, or other facilities that are provided by Shipper or Consignor, or a connecting carrier. Carrier will not accept a Nomination unless such facilities have been provided and conform to the operating requirements of Carrier, in Carrier's sole discretion.

## **10. STORAGE OF CRUDE PETROLEUM**

Carrier does not provide storage for Crude Oil, except storage incidental to transportation on Carrier's System. Carrier has the right to coordinate with downstream connecting facilities to ensure that Shipper has arranged for receipt of its Crude Oil at the Nominated Delivery Point; by Nominating Crude Oil for transportation on the System, Shipper agrees to permit such coordination.



## 11. DESTINATION FACILITIES

Carrier will accept Crude Oil for transportation only when Shipper or Consignee has provided the necessary facilities for taking delivery of the shipment as it arrives at the Delivery Point. Carrier will not accept a Nomination unless such facilities have been provided and conform to the operating requirements of Carrier, in Carrier's reasonable discretion. The cost of such facilities shall be provided at the sole cost of Shipper seeking access to Carrier's System.

## 12. NOTICE OF ARRIVAL, DELIVERY AT DESTINATION

- A. After a shipment of Crude Oil has had time to arrive at Shipper's Nominated Delivery Point and on twenty-four (24) hours' notice to Shipper or Consignee, Carrier may begin delivery of such Crude Oil to Shipper or Consignee at Carrier's current rate of pumping. Shipper shall timely remove its Crude Oil, or cause such Crude Oil to be removed, from the System following transportation to a Nominated Delivery Point. If Shipper or Consignee is unable or refuses to receive said shipment, Carrier will assess a demurrage charge of \$0.0125 per Barrel for each day (or fractional part thereof) commencing twenty-four (24) hours following Carrier's notification described above and Shipper's failure to promptly accept such Crude Oil. In addition to such demurrage charge, Carrier shall also have the right to curtail the amount of Crude Oil it will accept from Shipper until such Unremoved Crude Oil is removed.
- B. In addition to the demurrage charge specified in Item 12(A), Carrier also reserves the right if deemed necessary to clear Carrier's System to make whatever arrangements for disposition of the Unremoved Crude Oil that are appropriate, which includes selling the Unremoved Crude Oil at a private sale for the best price reasonably obtainable. Carrier may be a purchaser at such sale. The proceeds of any sale shall be applied in the following order: (i) to the reasonable expenses of holding, preparing for sale, selling, and transporting the Crude Oil, and to the extent allowed by Applicable Law, reasonable attorneys' fees and legal expenses incurred by Carrier; and (ii) to the satisfaction of Shipper's indebtedness 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 and the proceeds of any sale after reduction as set forth above. Shipper shall indemnify Carrier for all losses associated with Unremoved Crude Oil and Carrier's disposition of the Unremoved Crude Oil. Carrier shall have no liability to Shipper associated with Shipper's Unremoved Crude Oil or Carrier's disposition of Unremoved Crude Oil except as set forth herein.

## 13. LINE FILL REQUIREMENTS

- A. Carrier shall require Shipper to supply, and Shipper shall supply, Crude Oil constituting its proportionate share of Crude Oil for line fill necessary for operation of Carrier's System ("**Line Fill**").

- B. In the event a Shipper's Line Fill balance drops below its proportionate share of the volume of Crude Oil necessary for operation of Carrier's System, Carrier will notify Shipper of the amount of Line Fill that Shipper owes and Shipper shall supply such Line Fill to Carrier before Carrier is obligated to accept Shipper's Nominations or Tenders or make deliveries or shipments on behalf of Shipper. Any notice to Shipper of additional Line Fill requirements under this Item 13(B) shall provide adequate time for Shipper to make the required Nominations under Item 6. Subject to the provisions of Item 17, in the event Shipper's Line Fill balance is above its proportionate share of the volume of Crude Oil necessary for Line Fill ("**Excess Line Fill**"), then Carrier shall notify Shipper of such Excess Line Fill amount and will return such Excess Line Fill to Shipper upon written request by Shipper to Carrier and following a reasonable period of time to allow for administrative and operational requirements associated with the withdrawal of such Excess Line Fill.
- C. Subject to the provisions of this tariff, including Item 17, Shipper shall not be entitled to withdraw its Line Fill from the System until (i) Shipper has ceased tendering shipments to Carrier's System for at least a three (3) month period, (ii) Shipper has notified Carrier in writing that it no longer intends to Tender shipments for transportation on the System, and (iii) Shipper's inventory balances and all outstanding amounts due under this tariff or any other agreements having been reconciled between Shipper and Carrier and Shipper having paid in full any amounts owed to Carrier following such reconciliation. After the foregoing conditions have been met, Shipper shall be permitted to withdraw its Line Fill, provided that Carrier shall have a reasonable period of time to complete administrative and operational requirements incident to Shipper's withdrawal of Line Fill.

#### 14. TITLE

- A. Carrier may require of Shipper satisfactory evidence of its perfected and unencumbered title of any Crude Oil Tendered for shipment on the System. Carrier shall have the right to reject any Crude Oil, when Tendered for transportation, that constitutes Encumbered Crude Oil (as defined below).
- B. At the time of Nomination, Shipper shall inform Carrier if any Crude Oil Nominated and/or to be Tendered to Carrier for transportation (i) may be involved in litigation, (ii) may be subject to a title dispute, or (iii) may be encumbered by a lien or charge of any kind at the time of delivery of such Crude Oil to Carrier at an Receipt Point (other than the lien created hereunder in favor of Carrier) ("**Encumbered Crude Oil**"). In the event Carrier receives such Shipper notice of Encumbered Crude Oil or otherwise learns that Shipper has or will Nominate or Tender Encumbered Crude Oil, Carrier, in its reasonable discretion, 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, or (iv) subordination agreement from the applicable lienholder. Carrier also has the right to refuse any shipment of Encumbered Crude Oil.

- C. By Nominating Crude Oil, Shipper warrants and guarantees that Shipper has good title (or right to ship or control) thereto and agrees to hold Carrier harmless for any and all loss, cost, liability, damage and/or expense resulting from failure of title (or right to ship or control) thereto; provided that acceptance for transportation shall not be deemed a representation by Carrier as to title (or right to ship or control). Shipper shall not cause or permit any lien, security interest or other form of burden to be filed or created with respect to Crude Oil in Carrier's possession, except for any lien created hereunder in favor of Carrier.

## 15. RATES APPLICABLE

Crude Oil accepted for transportation shall be subject to the rates and charges in effect on the date of receipt by Carrier that are applicable to Shipper's shipments, irrespective of the date of the Nomination. The applicable rates are set forth in Section II herein. Transportation and all other lawful charges shall be collected on the basis of the gross Barrels of Crude Oil received at a Receipt Point, and said quantities will be determined in the manner provided in Item 8.

## 16. RATES APPLICABLE FROM INTERMEDIATE POINTS

Shipments accepted for transportation from or to any point on Carrier's System not named in this tariff, but which is intermediate to a point where rates are published, will be assessed the rate in effect from or to the next more distant point published in this tariff. Continuous use of intermediate point rate application under this Item 16 for more than thirty (30) days requires establishment of a rate for the transportation service.

## 17. PAYMENT OF CHARGES

- A. Carrier will invoice Shipper for the transportation rates, fees, and charges, and any other amounts accruing on Crude Oil transported by Carrier in accordance with Carrier's then-current invoicing and payment policies and procedures.
- B. All payments are due by the date specified in Shipper's invoice. If Shipper, in good faith, disputes the amount of any such invoice or any part thereof, Shipper shall pay such amount as it concedes to be correct. If Shipper disputes the amount due, it must provide supporting documentation to support the amount disputed within ten (10) days of the date of such invoice.
- C. If any charge remains unpaid after the due date, then interest shall accrue at a per annum rate of interest equal to the lower of (i) the Prime Rate plus five percent (5%) or (ii) the maximum legal rate. "**Prime Rate**" means the prime rate on corporate loans at large U.S. money center commercial banks as set forth in the Wall Street Journal "Money Rates" table under the heading "Prime Rate," or any successor thereto, on the first date of publication for the month in which payment is due.
- D. In the event Shipper fails to pay any undisputed charges owed to Carrier, whether under this tariff or any other agreement, when due, Carrier shall have the right, until such payments, including interest thereon, are paid in full, to: (i) refuse to provide Shipper access to the System or provide services pursuant to this tariff,

including delivery of any of Shipper's Crude Oil in Carrier's possession to Shipper, (ii) offset the current and future amounts owed by Shipper under this tariff against any amounts Carrier owes to Shipper or against any of Shipper's Crude Oil in the System, and (iii) exercise any other rights and remedies granted under this tariff or existing under Applicable Law.

- E. Carrier shall have a lien on all Crude Oil delivered to and in the possession of Carrier to secure the payment of any and all charges and fees owed to Carrier by Shipper, whether under this tariff or any other agreement, including but not limited to, transportation fees, penalties, interest and late payment charges. Such lien shall extend to all Crude Oil in Carrier's possession beginning with Shipper's first receipt of transportation or other services from Carrier. Shipper agrees to execute such additional documents as may be reasonably necessary to perfect or evidence such lien. If a bill of lading is required under Applicable Law for such a lien to arise, acceptance of the Nomination will be deemed to be the bill of lading for all Crude Oil subject to such Nomination. The lien provided herein shall be in addition to any lien or security interest provided by this tariff or Applicable Law.
- F. If Shipper fails to pay an invoice by the due date, Carrier will notify Shipper of the failure, and if Shipper has not remedied the failure within ten (10) days following receipt of notice from Carrier, 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 Crude Oil of such Shipper in Carrier's custody, including Shipper's Line Fill, at public auction, on any day not a legal holiday, not less than forty-eight (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 Crude Oil 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 transporting the Crude Oil and to the extent allowed by Applicable Law reasonable attorneys' fees and legal expenses incurred by Carrier; and (ii) to the satisfaction of Shipper's indebtedness 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 and the proceeds of any sale after reduction as set forth above.

## 18. FINANCIAL ASSURANCES

- A. Each prospective Shipper shall provide information to Carrier that will allow Carrier to determine the prospective Shipper's ability to pay any financial obligations that could arise from the transportation of the prospective Shipper's Crude Oil under the terms of this tariff. The type of information Carrier may request from a prospective Shipper includes, but is not limited to, most recent year-end financials, Form 10-K reports or other filings with regulatory agencies,

and bank references. If, in the reasonable opinion of Carrier, such prospective Shipper is not creditworthy, Carrier shall require such Shipper to prepay all transportation and other fees and lawful charges accruing on Crude Oil delivered and accepted by Carrier or supply an irrevocable letter of credit from a bank acceptable to Carrier, with terms in a form acceptable to Carrier and such prepayment must be received within five (5) days of Shipper's first Nomination.

- B. If Carrier determines that a Shipper's creditworthiness is at any time unsatisfactory, Carrier may require Shipper to provide adequate assurance of performance. As adequate assurance, Carrier may require Shipper to provide one of the following (at Carrier's election): (i) cash (in U.S. dollars), as collateral held for security, (ii) a guaranty from a creditworthy person reasonably acceptable to Carrier and otherwise in form and substance reasonably acceptable to Carrier, (iii) a prepayment, and/or (iv) an irrevocable standby letter of credit issued by a banking institution reasonably acceptable to Carrier, in an amount equal to the amount estimated by Carrier in good faith to be owed by Shipper to Carrier hereunder for the following three months, and otherwise in form and substance reasonably acceptable to Carrier. In the event Carrier requests Shipper to provide adequate assurance of performance pursuant to this Item 18(B), Shipper shall provide such assurance within ten (10) business days following Carrier's written demand.
- C. In the event a prospective Shipper fails to comply with any obligation in this Item 18, Carrier shall not be obligated to provide such prospective Shipper with access to Carrier's System or to provide transportation services pursuant to this tariff until such requirement is fully met.

## **19. CHARGE FOR FUND COMPENSATION**

In addition to all other charges to Shipper accruing on Crude Oil accepted for transportation, a per Barrel charge will be assessed and collected by Carrier in the amount of any tax, fee, or other charge levied against Carrier in connection with such Crude Oil by any Governmental Authority 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. Such charge will be included in the appropriate tariff filed with the Federal Energy Regulatory Commission.

## **20. LIABILITY OF SHIPPER**

Shipper shall be solely responsible for any loss or damage to Crude Oil that occurs prior to the delivery of Shipper's Crude Oil to Carrier at a Receipt Point and after delivery of such Crude Oil to Shipper at a Delivery Point. As a condition to Carrier's acceptance of Crude Oil for transportation on Carrier's System, each Shipper agrees to protect and indemnify Carrier against claims or actions for injury and/or death of any and all Persons whomever and for damage to property of or any other loss sustained by Carrier, Shipper, Consignor, Consignee and/or any third party, resulting from or arising out of (A) any breach of or failure to adhere to any provision of Carrier's tariff(s) by such Shipper or any of its Consignors, Consignees, or any of their agents, employees or representatives and (B) the negligent act(s) or failure(s) to act of such Shipper or

any of its Consignors, Consignees, or any of their agents, employees or representatives in connection with delivery or receipt of Crude Oil.

## **21. LIABILITY OF CARRIER**

- A. Carrier, while in possession of Crude Oil herein described, shall not be liable for, and Shipper hereby waives any claims against Carrier for, any loss thereof, damage thereto, or delay caused by Force Majeure, the act of Shipper itself, a Governmental Authority, the nature of the goods, or resulting from any other causes, unless such loss, damage, or delay is due to the negligence or willful misconduct of Carrier. Carrier shall not be liable for, and Shipper hereby waives any claims against Carrier for, any loss or damage to Crude Oil prior to the delivery of Crude Oil to Carrier at the Receipt Points and after delivery of Crude Oil at the Delivery Points.
- B. In case of loss or damage of any Crude Oil from any such causes that are not due to the negligence or willful misconduct of Carrier, after it has been received for transportation at the Receipt Point and before the same has been delivered to Shipper at the Delivery Point, such loss will be charged proportionately to each Shipper in the ratio that its Crude Oil, or portion thereof, received and undelivered at the time the loss occurs, bears to the total of all Crude Oil then in the custody of Carrier for transportation via the lines or other facilities in which the loss occurs. Carrier will be obligated to deliver only that portion of such Crude Oil remaining after deducting Shipper's portion of such loss determined as aforesaid. In the aforementioned instance, transportation charges will be assessed only on the quantity delivered.
- C. Carrier will not be liable for discoloration, contamination, or deterioration of the Crude Oil transported hereunder unless and to the extent such discoloration, contamination, or deterioration of Crude Oil transported results from the negligence or willful misconduct of Carrier. Carrier's liability to Shipper, Consignor, or Consignee for any claim of negligence, willful misconduct or other loss shall be limited to the value of the Crude Oil transported and related transportation charges.
- D. Carrier operates under this tariff solely as a common carrier and not as an owner, manufacturer, or seller of the Crude Oil transported or stored hereunder, and Carrier expressly disclaims any liability for any express or implied warranty for Crude Oil transported hereunder including any warranties of merchantability or fitness for intended use.

## **22. 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 Crude Oil for which Carrier may be responsible, Shipper's claim must be filed in writing with Carrier within nine (9) months after delivery of the affected Crude Oil, or in case of Carrier's failure to make delivery of Shipper's Crude Oil, then within nine (9) months after a reasonable time for delivery has elapsed; and suits shall be instituted against Carrier only within

two (2) years and one (1) 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 will not be liable.

### **23. CONNECTIONS**

Connections to Carrier's System will only be considered if made by formal written application to Carrier in accordance with Carrier's connection policy and requirements. All connections will be subject to design requirements necessary to protect the safety, security, integrity and efficient operation of Carrier's System in accordance with generally accepted industry standards and Carrier's connection requirements and policies. Acceptance of any application for connection will be within the sole discretion of Carrier and will be subject to compliance with Governmental Authorities and industry regulations.

### **24. CARRIER DISCRETION**

Carrier will operate its System and implement the rules and regulations contained in this tariff, including those provisions providing for Carrier's discretion, in a manner that is not unduly discriminatory or unduly preferential.

### **25. LOSS ALLOWANCE**

Each Shipper shall bear its proportionate share of any actual losses of Crude Oil due to evaporation, interface losses, and other normal losses that are inherent in the transportation of Crude Oil on Carrier's System. Each Shipper's proportionate share shall be the difference between (A) the sum of (i) the volume of Shipper's Crude Oil delivered to the Pipeline, as measured at the applicable Receipt Point(s) and (ii) the change in the amount of Crude Oil in Carrier's operational storage inventory, and (B) the total volume of Crude Oil delivered at the Delivery Points for all Shippers, excluding any loss on the System that results from Carrier's negligent operation of the System. If Shipper's proportionate share of actual losses exceeds 0.25 percent of the total volume of Crude Oil that Shipper delivered to the System in a month at the Receipt Point(s), Shipper shall only be responsible for such excess actual losses if Carrier reasonably demonstrates to Shipper that such loss was not the result of Carrier's negligent operation of the System.

**26. INTERIM SERVICE**

Carrier is providing transportation service under this tariff on an interim basis only in order to provide partial transportation services on the portion of Carrier's System that is available and capable of accepting Crude Oil in accordance with this tariff. Prior to the In-Service Date of Carrier's System, Carrier will submit a revised tariff that includes the rules, regulations and rates that will govern movements following the In-Service Date, including the rules, regulations and rates that are consistent with the gathering services agreement entered into during the Open Season. For clarity, such revisions may include, but are not limited to, changes to Carrier's prorationing policy, line fill requirements, and the rate structure and rates applicable to movements under this tariff. By Nominating and Tendering Crude Oil to Carrier under this tariff, Shipper hereby acknowledges and accepts that the transportation services and associated rules, regulations and rates provided under this tariff are for interim transportation service only and that such service and the corresponding rules, regulations and rates may be modified by Carrier upon the In-Service Date as contemplated in this Item 26.



**SECTION II  
TABLE OF RATES**

<b>Receipt Point</b>	<b>Delivery Point</b>	<b><u>Rate</u> (Dollars per Barrel) [Notes 1 &amp; 2]</b>
Tank Battery Receipt Points in Lea County, New Mexico	Lynch Tank Battery located in Section 26, T20S R34E, Lea County, New Mexico	[N] <u>\$0.52</u>

**Notes:**

1. An additional pumlover fee of \$0.06 per Barrel will be assessed on any deliveries to Plains Pipeline, L.P. Injection Station at Lynch.
2. For those tank battery receipt points constructed by Carrier, where Shipper elects for Carrier to own, operate, maintain and repair the LACT Units, a charge of \$0.07 shall be assessed in addition to the transportation rates set forth in the Table of Rates. Carrier shall also assess a charge of \$0.10 per Barrel for any Receipt Point that delivers less than 2,000 Barrels in a given month.

**Explanation of Reference Marks:**

[N] New.

**AFFIDAVIT**

**THE STATE OF COLORADO**  
**COUNTY OF DENVER**

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§

BEFORE ME, the undersigned authority, on this day personally appeared David A. Lytle, first being duly sworn according to law upon his oath, and stated that the following facts are true:

“My name is David A. Lytle. I am the Chief Commercial Officer for 3 Bear Energy, LLC, the parent company of 3 Bear Delaware Operating-NM, LLC, and, as such, have personal knowledge of the facts stated in this Affidavit and am authorized to make this Affidavit in compliance with Title 18, Section 342.2(b) of the Code of Federal Regulations.

There is a person who intends to use the new transportation service established in F.E.R.C. No. 1.0.0. Such person is not affiliated with 3 Bear Delaware Operating-NM, LLC. Such person is aware of and agrees with the rates applicable to the new transportation service established in F.E.R.C. No. 1.0.0.

I swear that the above statement is true and correct.”



SUBSCRIBED AND SWORN TO BEFORE ME on this 13th day of June, 2018.

Robin G Machholz  
Notary Public  
State of Colorado  
Notary ID 20024015288  
My Commission Expires May 08, 2022

  
Notary Public for the State of Colorado

Robin G. Machholz  
[Printed or typed name of Notary]

My Commission Expires: May 8, 2022