

# WESTERN REFINING PIPELINE, LLC

## RULES AND REGULATIONS

### GOVERNING

### THE TRANSPORTATION

### OF

### CRUDE PETROLEUM

### BY

### PIPELINE

### GENERAL APPLICATION

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

[N] Issued under authority of 18 CFR § 341.3 (Form of tariff)

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

[C] ~~Compiled and Issued by:~~  
~~Leonard Bloom~~  
~~Director - Pipelines~~  
~~Western Refining~~  
~~123 W. Mills Ave., Suite 200~~  
~~El Paso, TX 79901~~  
~~Tel (915) 534 1455~~

[N]

**ISSUED BY**  
C. P. WHELCHER, Vice President  
WESTERN REFINING PIPELINE, LLC  
19100 Ridgewood Parkway  
San Antonio, Texas 78259

**COMPILED BY**  
A. J. HELDMAN  
For  
WESTERN REFINING PIPELINE, LLC  
539 South Main Street  
Findlay, Ohio 45840  
(419) 421-4048  
ajheldman@marathonpetroleum.com

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**ITEM 20 – DEFINITIONS**

**API Gravity:** Gravity determined in accordance with ASTM designation and expressed in degrees API.

**Assay:** A laboratory analysis of a Crude Petroleum to include API gravity, Reid Vapor Pressure, pour point, sediment and water content, sulfur content, viscosity at 100 degrees Fahrenheit, and other characteristics as may be required by Carrier.

**Barrel:** Forty-two (42) United States gallons of a Crude Petroleum at a temperature of sixty (60) degrees Fahrenheit.

**Carrier:** Western Refining Pipeline, LLC [C], ~~Western Refining Southwest, Inc.~~, and other pipeline companies which may, by proper concurrence, participate in joint tariffs incorporating these regulations by specific reference.

**Consignee:** The party to whom a Shipper has ordered the delivery of Crude Petroleum.

**Crude Petroleum:** The direct production from crude oil or gas wells, or blend of such, in its natural form, not having been enhanced or altered in any manner or by any process that would result in misrepresentation of its true value for adaptability to refining as a whole crude oil.

**Fahrenheit:** The temperature scale that registers the freezing point of water as 32°F and the boiling point as 212°F at one atmosphere of pressure.

**Nomination:** A written request by a Shipper representing a commitment to Tender a specific quantity and type of Crude Petroleum to Carrier for transportation between a specified Origin and Destination pursuant to the rules and regulations established by this tariff.

**Nomination Deadline:** 3:00 p.m. (MST) on the twenty-fifth (25<sup>th</sup>) calendar day of the month prior to the month of delivery; provided, however, that in the event the twenty-fifth calendar day falls on a weekend or holiday, the Nomination Deadline shall be 3:00 p.m. (MST) on the previous business day.

**Destination:** A location for the delivery of Crude Petroleum as provided for in the Carrier's Local Tariff Applying On Crude Petroleum.

**Destination Release:** A written commitment of a Consignor, or owner of Destination facilities, to receive a proposed Nomination of Crude Petroleum from Shipper on Carrier's system.

**Origin:** A location for the receipt of Crude Petroleum as provided for in the Carrier's Local Tariff.

**Reid Vapor Pressure ("RVP"):** A standardized measurement of volatility as determined in accordance with ASTM designation and expressed in pounds per square inch.

**Saybolt Universal Seconds:** A standardized measurement of viscosity determined in accordance with ASTM test methods.

**Segregated Batch:** A single Tender of Crude Petroleum for an individual Shipper having specific identifiable characteristics which is moved through the Carrier's pipeline so as to maintain its identity.

**Shipper:** A party who contracts with the Carrier for transportation of Crude Petroleum under the terms of this tariff.

**Tender:** The physical exchange of Crude Petroleum custody between the Shipper and the Carrier.

**Transit Time:** The time a shipment takes to move from Origin to Destination.

**Transmix:** A by-product of pipeline operations created by the mixing of different batches moved sequentially during pipeline transportation.

## ITEM 25 – QUALITY SPECIFICATIONS

Carrier is engaged in the transportation of Crude Petroleum as specified in this Item and therefore will not accept any other commodities for transportation. No Crude Petroleum will be received for transportation except good merchantable Crude Petroleum, similar to that being currently transported through the same facilities for other Shippers. Consignor and Shipper warrant to Carrier that any Crude Petroleum tendered to Carrier will conform to the specifications as set forth below and is merchantable. Crude Petroleum of substantially different grade or quality will be transported only in such quantities and upon such terms and conditions as Carrier and Shipper may agree.

A Shipper shall not deliver to the Carrier and the Carrier shall not be obligated to accept Crude Petroleum on receipt that fails to meet the specification for West Texas super sweet quality including but not limited to: (i) a sulfur content no greater than 0.25 percent by weight (ii) a Reid Vapor Pressure no greater than 8.0 [W] pounds per square inch absolute (psia) for any Crude Petroleum with an API Gravity of less than 35.0° or a Reid Vapor Pressure no greater than 13.0 psi for any Crude Petroleum with an API Gravity of 35.0° or greater; (iii) a temperature that does not exceed 100 degrees Fahrenheit; (iv) sediment and water that does not exceed 1 percent by volume; (v) a pour point no higher than [W]2540 degrees Fahrenheit; (vi) a viscosity no greater than 60 Saybolt Universal Seconds at [W]60100 degrees Fahrenheit; (vii) Crude Petroleum may not contain any organic chlorides (including but not limited to PCB), any waste oils, lube oils, crankcase oils, Dioxins; and (viii) may not possess physical or chemical characteristics that may render such Crude Petroleum not readily transportable by the Carrier or that may materially affect the quality of other commodities transported by the Carrier or that may otherwise cause disadvantage to the Carrier.

Quality specifications of a connecting carrier may be imposed upon Carrier when such limits are less than that of Carrier, in which case the limitations of the connecting carrier will be applied.

Upon request of Carrier, Shippers are required to furnish Assays and/or other documentation acceptable to Carrier evidencing the Origin of the Crude Petroleum. The Carrier will not accept Tenders of any material resulting from certain post-production recovery operations (i.e. reclaimed or skimmed oil). If a Shipper fails to provide the Carrier with such information, then the Carrier shall not be obligated to accept the Shipper's Crude Petroleum.

If, upon investigation, Carrier determines that a Shipper has delivered to Carrier's facilities, Crude Petroleum that does not meet the current quality specifications, or has been contaminated by the existence of and/or excess amounts of impure substances, including, but not limited to, chlorinated and/or oxygenated hydrocarbons, arsenic, lead and/or other metals, such Shippers will be excluded from further entry into applicable segments of the pipeline system until such time as quality specifications are met to the satisfaction of Carrier. Carrier reserves the right to take appropriate actions including, but not limited to: (1) requiring the Shipper to test its future Crude Petroleum Nominations at Carrier approved laboratory, at Shipper's expense, prior to each Tender; (2) suspension; and (3) permanent disconnection. Further, Carrier reserves the right to dispose of any contaminated, non-compatible or non-acceptable Crude Petroleum in its pipeline system. Disposal thereof, if necessary, may be made in any reasonable commercial manner, and any liability associated with the contamination or disposal of any Crude Petroleum shall be borne by the Shipper introducing the contaminated Crude Petroleum into Carrier's system.

In the event the Carrier is required to dispose of any contaminated, non-compatible or non-acceptable Crude Petroleum it shall pay itself from the proceeds of such sale all costs incurred by the Carrier with respect to the transportation, storage, removal, contaminate mitigation or remediation and sale of such Crude Petroleum. The remainder of such proceeds, if any, shall be held by the Carrier for whomsoever is lawfully entitled to such proceeds.

Changes to the Carrier's Crude Petroleum specification may be issued or reissued from time to time in the manner and to the extent appropriate to facilitate the efficient and economical use and operation of the Carrier's facilities.

**ITEM 30 – CORROSION INHIBITORS**

Shipper may be required to inject oil-soluble corrosion inhibitor, approved by the Carrier, in Crude Petroleum to be transported. Carrier may, from time to time, in its discretion and without prior approval of Shipper, add biocides, or other similar substances to the Crude Petroleum in order to minimize bacteria growth or attacks.

**ITEM 35 – ADDITIVES**

Carrier reserves the right to approve or reject the injection of viscosity or pour point depressants, drag reducing additives or other such additives in the Crude Petroleum to be transported. Shipper's desiring to inject any additive into the Crude Petroleum it plans to Tender to the Carrier must receive written approval from the Carrier in advance of the shipment. Otherwise, in addition to other remedies that may be established by this tariff, Carrier reserves the right to reject the shipment. Carrier may from time to time, in its discretion, and without the prior approval of Shipper, add drag reducing agents to the Crude Petroleum.

**ITEM 40 – NOMINATIONS AND TENDERS**

Carrier will only transport Crude Petroleum which has been properly nominated by the Shipper and accepted by the Carrier for transportation between an established Origin and Destination on Carrier's system. All Shippers desiring to ship Crude Petroleum through the Carrier's pipelines must provide the following information in writing to nominate each shipment of Crude Petroleum: the quantity (in barrels), Origin, Destination, name of Consignee (if applicable), a description of the Crude Petroleum to be tendered and a written verification that the Crude Petroleum will meet the quality specifications set forth in Item 25 above.

Nominations must be received by the Carrier before the Nomination Deadline. Nominations or changes in Nominations will not be accepted from the Nomination Deadline date to the first day of the following month. After the first of the month, changes will be accepted only in writing and only if space is available, such that the additional or changed Nominations do not impair the movement of Crude Petroleum nominated prior to the Nomination Deadline.

Carrier is not obligated to accept any Nominations tendered after the Nomination Deadline. To the extent the Carrier does accept a Nomination after the Nomination Deadline, it will transport such volumes only to the extent said Nomination meets all the requirements of the Carrier's applicable tariffs and the Carrier has sufficient idle pipeline capacity to accommodate the Nomination without adversely impacting the scheduling of other shipments and Carrier's need to perform maintenance on its system.

Shipper also must satisfy Carrier its Nominations are in good faith and that shipments can be transported in conformance with Carrier's tariffs. Shipper shall, upon notice from the Carrier, provide written third-party verification, as required by the Carrier, in support of such Shipper's Nomination. The Carrier shall not be obligated to accept a Shipper's Nomination where such verification is, in the sole discretion of the Carrier, unacceptable to the Carrier. If the Shipper does not own or operate the Destination facilities required in Item 75, Consignor or operator that controls the Destination must provide a Destination Release to Carrier committing to accept the proposed shipment before the Nomination will be considered valid.

In the event the total Nominations submitted for shipment in a pipeline segment exceed the capacity of that segment, the capacity will be prorated equitably among all shipments according to the proration procedure set forth herein in Item No. 55 (Proration).

The Carrier shall not be obligated to accept a Shipper's Crude Petroleum if the volume is less than the minimum volume or if the receipt flow rate at which such Crude Petroleum is received by the Carrier is less than or greater than the receipt flow rates specified from time to time by the Carrier for each Origin point.

The Carrier shall not be obligated to make a delivery of a Shipper's Crude Petroleum of less than the minimum volume or at a delivery flow rate less than or greater than the delivery flow rates specified from time to time by the Carrier for each Destination point. Carrier shall not be obligated to accept or deliver Crude Petroleum unless Shipper and

Consignee have complied with all provisions of this tariff and any other applicable tariffs issued by the Carrier.

### **ITEM 45 – SEGREGATED BATCH OPERATION**

Carrier operates its system by transporting Segregated Batches. Carrier will endeavor to use its best efforts to maintain the physical identity of each shipment tendered by Shipper and deliver the same Crude Petroleum back to Shipper or Consignee as was tendered to the Carrier with the exception of any applicable shipment transmix associated with the leading and trailing batch interfaces.

Shippers or Consignees are required to accept a proportionate share of all transmix generated during the transportation of their Segregated Crude Petroleum batch. Carrier will invoice Shipper transportation charges on all volumes of transmix delivered at Destination.

### **ITEM 50 – SCHEDULING OF SHIPMENT**

For each calendar month Carrier will establish a sequence for pumping Crude Petroleum. Carrier will inform each Shipper of the time(s) within each calendar month when Crude Petroleum will be received from such Shipper at Origin points and Carrier will inform each Shipper, or its Consignee, of the approximate time(s) within each calendar month when Crude Petroleum will be delivered to such Shipper or Consignee at Destination. Such schedules may be modified from time to time in the manner and to the extent reasonably desirable to facilitate the efficient and economical use and operation of the Carrier's facilities and to reasonably accommodate Shipper's needs for transportation.

Shipments on Carrier's system are subject to Transit Time restrictions. The time required for the Carrier to deliver Crude Petroleum is a function of the Origin and Destination of the shipment, the flow rate and volume of Crude Petroleum being transported between these two locations for all Shippers and the pipeline capacity (i.e., linefill) between these two locations. Carrier assumes no responsibility or liability for the length of time required to transport the Shipper's Segregated Batch from its Origin to its Destination.

Once a Nomination has been accepted by the Carrier and a shipment schedule has been established, a Shipper must request any proposed changes in the shipment schedule in writing at least 72 hours prior to the scheduled receipt by the Carrier at the Origin or delivery at the Destination. Any requested changes will be subject to the rates, rules and regulations applicable from point of Origin to point of final Destination. The Carrier shall not be obligated to accept any proposed change that adversely affect the efficient and economic operation of Carrier's system or existing shipment schedules established for other Shippers.

Carrier's facilities are not bi-directional, Carrier will only accept a change in an Origin or Destination for an existing shipment to the extent it can accomplish such a movement given the direction of Crude Petroleum flow from the Carrier's Origin(s) to Destination(s). No out-of-line movements are allowed. In addition, the Carrier will not make any backhaul movements (i.e., a movement in a direction opposite of the pipeline flow).

### **ITEM 55 – PRORATION**

When there shall be tendered to Carrier, for transportation, more crude petroleum than can be immediately transported, the transportation furnished by Carrier shall be prorated among Shippers on an equitable basis.

During any month in which the total Nominations submitted for shipment in a pipeline segment exceed the capacity of that segment, the capacity will be prorated equitably among all Shippers as described by the following Proration Policy:

**1. Initial Prorationing.** At such times as Carrier determines that it may be necessary to allocate space in a pipeline segment, Carrier will notify all Shippers of the necessity to prorate the segment. Carrier also will notify each Shipper of its allocated space for the month. The allocation will be determined according to the procedure described in Section 2 of this Item.

**2. Allocation Procedure.** When the nominated volumes for any month exceed the capacity of any one or more segments of the system, the total nominated volumes for the segment(s) will be divided into each Shipper's nominated volume to determine the 'factor' for that Shipper. Each Shipper's allocation for that segment(s) shall be determined by multiplying its 'factor' for that segment(s) by the capacity of the prorated segment. Capacity will be defined as the throughput limit for the prorated segment in Barrels per day as determined by Carrier.

**3. Continued Prorationing.** Carrier will require Shippers to nominate volumes to be shipped in the prorated line segment in subsequent months by the Nomination Deadline. Space each month will be allocated based on the volume nominated for that particular month. Shippers will be informed of their allocations five (5) days after the Nomination Deadline.

Volumes shipped on Carrier's pipeline system will be limited to throughput capacity as determined by Carrier.

Shipper must have unencumbered title to all volumes that are nominated. Space allocated to a Shipper may only be used by such Shipper and may not be assigned, sold or otherwise transferred to another Shipper. Any Shipper violating this provision will not be allowed to ship in the following month if proration continues.

If a Shipper fails to use its total allocated space for the month and if such Shipper is unable to provide a reasonable explanation therefore, then such Shipper's Nomination for the following month will be limited to the volume that was actually shipped during the month in which Shipper failed to use its space. This Nomination will then be subject to the prorationing procedures contained herein.

Any undue preference or advantage Shippers may offer, grant, give, solicit, accept or receive with respect to the allocation of shipping space, may be a violation of Section 41, Title 49, U.S.C.A., and other applicable laws.

## **ITEM 60– MINIMUM SHIPMENT QUANTITIES**

Carrier will not accept any shipment of less than 25,000 barrels of Crude Petroleum at any Origin point except when necessitated by pipeline operations or except where a smaller delivery is authorized by an individual tariff as may be subsequently issued by Carrier. Provided the Carrier's pipeline operation can accommodate, Shippers will be allowed to inject quantities of less than 25,000 barrels into an existing Segregated Batch for that Shipper which is currently being transported through an Origin point. Any Shipper desiring to inject Crude Petroleum into another batch must meet all provision of this tariff including the submission of a separate Nomination for the injection volumes.

## **ITEM 65 – MINIMUM DELIVERY QUANTITIES**

Except as otherwise provided by an individual tariff, as may be issued or subsequently reissued by Carrier, a minimum delivery from any Segregated Batch may be made as follows:

- (1) Except as otherwise provided, a minimum of 12,500 Barrels of Crude Petroleum must be delivered to a single Destination, or
- (2) Any quantity of barrelage may be delivered to a Destination provided that the Carrier can consolidate such consignment with other barrelage so that the total barrelage is 12,500 or more Barrels of Crude Petroleum consigned to the same Destination by the same or other Shippers, or
- (3) Any quantity of barrelage may be delivered to a Destination provided that the Carrier can consolidate such consignment with other barrelage so that the total barrelage is 5,000 or more Barrels of Crude Petroleum consigned to the same Destination by the same or other Consignors and further provided that the Carrier can consolidate the 5,000 Barrels with 12,500 or more Barrels of the same specifications consigned by the same or other Consignors to a Destination on the same line situated beyond the Destination to which the 5,000 Barrels are destined.

## **ITEM 70 – ORINATION FACILITIES**

Crude Petroleum shall be accepted for transportation only at Origin points established by the Carrier in currently effective rate tariffs which reference these rules and regulations. Carrier does not provide storage or other facilities at

points of Origin. Crude Petroleum will be received only from pipelines, tanks or other facilities that are provided by Shipper. Carrier will determine and advise Shippers of the size and capacity of pipelines, tanks and/or metering facilities required to be provided by Shipper at the point of Origin in order to meet the operating requirements established by Carrier at such points. Carrier will not accept Crude Petroleum for transportation unless equipment and facilities have been furnished by the Shipper which are satisfactory to the Carrier which are capable of tendering Crude Petroleum to Carrier at adequate pressures and flow rates without delay.

### **ITEM 75 – DESTINATION FACILITIES**

Crude Petroleum shall be accepted for transportation only when tendered for shipment to Destination points established by the Carrier in currently effective rate tariffs which reference these rules and regulations. Carrier does not provide storage or other facilities at Destination points. Crude Petroleum will be delivered only to pipelines, tanks or other facilities that are provided by Shipper or Consignor. Carrier will determine and advise Shipper or Consignor of the size and capacity of pipelines, tanks and/or metering facilities required to be provided by Shipper or Consignor at the Destination point in order to meet the operating requirements established by Carrier at such points. Carrier will not accept Crude Petroleum for transportation unless equipment and facilities have been furnished by the Shipper or Consignor which are satisfactory to the Carrier which are capable of receiving Crude Petroleum at the Destination point from Carrier at adequate pressures and flow rates as to avoid delay or congestion on the Carrier's system.

In the event Shipper or Consignor fails to provide adequate facilities at the Destination for receipt as provided in this Item or fails to accept delivery of a shipment on a timely basis, Carrier shall have the right, on 24 hours' notice, to divert the shipment, subject to the rates, rules and regulations applicable from the Origin point to actual final Destination, or make whatever arrangements for disposition as are deemed appropriate to clear the Carrier's facilities, including the right of private sale for the best price reasonably obtainable given the distressed nature of the inventory.

The Carrier may be a purchaser at such sale. Out of the proceeds of said sale, the Carrier shall pay itself all transportation and other lawful charges and necessary expenses of the sale and any expense incurred in maintaining the Crude Petroleum inventory until disposed of and any costs associated with the disruption caused by Shipper or Consignee's failure to accept delivery of Crude Petroleum. Any proceeds remaining shall be held for whomsoever may be lawfully entitled thereto.

When required, the Carrier shall, with or without notice to the Shipper, appoint agent(s) to retain possession of the Shipper's Crude Petroleum on behalf of the Carrier for the purpose of enforcing this Rule.

### **ITEM 80 – WARRANTY OF TITLE**

The act of delivering Crude Petroleum into Carrier's pipeline for transportation shall constitute a warranty by Shipper that Shipper has unencumbered title thereto and that unencumbered title shall remain with Shipper until such Crude Petroleum is delivered out of Carrier's pipeline.

By tendering Crude Petroleum, the Shipper warrants and guarantees that it 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.

The Carrier shall have the right to reject any Crude Petroleum when tendered for shipment which may be involved in litigation, the title of which may be in dispute, or which may be encumbered by lien or charge of any kind. Further, Carrier may require Shipper's proof of perfect and unencumbered title or a satisfactory indemnity bond.

### **ITEM 85 – MEASURING, TESTING AND DEDUCTIONS**

The Carrier shall gauge or meter, or cause to be gauged or metered, a Shipper's Crude Petroleum upon receipt and delivery by the Carrier. All measurements and tests shall be determined by Carrier, but Shipper and Consignee or their representatives may be present to witness them. The Carrier shall provide 24 hours' notice to Shipper prior to conducting measurements and tests. Failure of a Shipper or Consignee to have a representative present will, however,



constitute a waiver, and the Shipper and Consignee shall be bound by the information and data on the tickets.

The volume of Crude Petroleum received and delivered by Carrier will be measured in Barrel units by meter or by gauge. If tank gauges are used, the volume of Crude Petroleum shall be computed from tank tables computed on a 100 percent volume basis. The Carrier shall have the right to enter the premises where Crude Petroleum is received or delivered by the Carrier and shall be granted access to all facilities for the purpose of gauging or metering and to make any examination, inspection, sampling, measurement or test as required by the Carrier to verify the accuracy of such facilities and the quality of such Shipper's Crude Petroleum.

The Carrier shall correct the density and volume of Crude Petroleum received and delivered by the Carrier from the actual observed temperature of such Crude Petroleum to 60 degrees Fahrenheit by use of API 2540 Petroleum Measurement Standards or the latest revision to such Standards. The Carrier shall correct the metered volume of Crude Petroleum for compressibility by the use of API Manual of Petroleum Measurement Standards, Chapters 11.2.1 M or 11.2.1 or the latest revision to such Chapters. The Carrier shall determine the percentage of sediment and water in Crude Petroleum by the use of a centrifuge or other method the Carrier deems appropriate. The Carrier shall deduct the amount of sediment and water from the corrected volume of such Crude Petroleum. The Carrier shall, as deemed necessary by the Carrier, adjust the measured volume of Crude Petroleum for shrinkage in accordance with API Bulletin 2509 C or the latest revision to such Bulletin. The results of all such gauging, metering and testing by the Carrier shall be final. The Carrier shall deduct, as allowance oil, 0.2 percent of the volume of Crude Petroleum tendered by the Shipper to cover losses inherent in the transportation of Crude Petroleum by the pipeline.

All receipts of Crude Petroleum having an API gravity of ~~[W]45~~50 degrees or above shall also be subject to a deduction to cover shrinkage and evaporation. Such deduction shall be determined in accordance with the following table:

<u>API Gravity, Degrees</u>	<u>Deduction For Incremental Evaporation &amp; Shrinkage</u>
[W] <del>45</del> 50.0 through 54.9	0.5%
55.0 through 64.9	1.0%
65.0 through 74.9	1.5%
75.0 and above	2.0%

After consideration of all of the factors set forth in this Item, a net balance will be determined as the quantity deliverable by Carrier, and transportation charges will be assessed on this net balance.

**ITEM 90 – EVIDENCE OF RECEIPTS AND DELIVERIES**

Crude Petroleum received from a Shipper and Crude Petroleum delivered to Shipper or Consignee shall, in each instance, be evidenced by Carrier tickets or statements containing data essential for the determination of quantity.

**ITEM 95 – LIABILITY FOR LOSSES**

Carrier will not be liable for any loss of Crude Petroleum while in the possession of Carrier or for any delay in receiving or delivering Crude Petroleum, including any damages associated therewith, if caused by any of the following: Act of God, a strike or labor dispute, damage by the elements, storm, flood, fire, explosion, electrical blackout, corrosion, third-party damage to Carrier's facilities, rebellions, insurrection, breakage or accident to machinery or equipment, act, regulation, or edict of any governmental authority, acts of any public enemy, quarantine, authority of law, strikes, riots, requisition by Government, war, the act or default of Shipper or Consignee, or any other

cause not attributable to the sole negligence of Carrier.

If a loss of Crude Petroleum occurs, as identified above, then the Shipper shall bear the entire loss, damage or delay that occurs.

If such loss of Crude Petroleum occurs involving several Segregated Batches, then each Shipper shall share such loss in the proportion that the amount of Crude Petroleum in the custody of Carrier for the account of such Shipper in such system immediately before the loss occurred, bears to the total amount of Crude Petroleum in the custody of Carrier in such system immediately before the loss occurred.

In either case, Carrier will be obligated to deliver only that portion of Crude Petroleum remaining after such loss. Transportation charges will be made only on quantities of Crude Petroleum delivered.

If Crude Petroleum is lost while in the custody of Carrier due to the sole negligence or the willful misconduct of Carrier, Carrier may obtain and deliver to the Shipper or Consignee thereof other Crude Petroleum of the similar quantity and quality as that which was lost. Carrier shall not, however, be obligated to do so; rather Carrier may compensate Shipper for such loss (less deductions) in money. The dollar value of such loss shall be based upon the reasonable market price for Crude Petroleum of similar gravity and quality in effect on the date the Crude Petroleum was lost.

#### **ITEM 100 – DUTY OF CARRIER**

The Carrier holds itself out solely to receive Crude Petroleum from an established Origin point, as defined in its tariffs and identified in the Shipper's Nomination; transport this Crude Petroleum with reasonable diligence over pipelines owned or operated by Carrier in Common Carriage in a manner consistent with the efficient and economic operation of its pipeline system; and deliver the net quantity of Crude Petroleum, as defined by this tariff, at a Destination point established in the Carrier's tariffs, as identified in the Shipper's Nomination.

#### **ITEM 105 – PIPEAGE CONTRACTS REQUIRED**

Separate pipeage contracts in accordance with this tariff and these regulations covering further details may be required of a Shipper before any duty to transport shall arise.

#### **ITEM 110 – LIABILITY FOR NON-COMPLIANCE WITH TARIFF**

Any Shipper or Consignee who does, or permits to be done, any act, matter or thing that violates the terms of this tariff shall be liable to Carrier only for actual losses, damages, or injuries caused thereby or resulting there from.

A Shipper shall indemnify the Carrier for any damage, loss, costs or consequential loss incurred by the Carrier or any other party as a result of such Shipper's failure to comply with any provision of this tariff.

#### **ITEM 115 – RATES APPLICABLE**

The rate that shall apply to the transportation of the Crude Petroleum shall be the rate in effect on the date the Crude Petroleum is received by Carrier for transportation. Likewise, the rules and regulations which shall govern the transportation of the Crude Petroleum shall be the rules and regulations in effect on the date the Crude Petroleum are received by Carrier for transportation.

#### **ITEM 120 – CHARGES FOR SPILL COMPENSATION ACTS AND REGULATIONS**

In addition to the transportation charges and all other charges accruing on Crude Petroleum accepted for transportation, a per Barrel charge will be assessed and collected in the amount of any tax, fee, or other charge levied against the Carrier in connection with such Crude Petroleum pursuant to any Federal, State, or Local act or regulation which levies

a tax, fee, or other charge on the receipt, delivery, transfer, or transportation of such Crude Petroleum within their jurisdiction for the purpose of creating a fund for the prevention, containment, clean up, and/or removal of spills and/or reimbursement of persons sustaining such costs or losses therefrom. Carrier will post all such charges in its tariffs.

### **ITEM 125 – LIABILITY FOR CHARGES**

Carrier will invoice Shipper each month for transportation and other tariff charges on Crude Petroleum delivered during the previous month. Such invoices shall be deposited in the U.S. Post Office, postage prepaid, and sent to the last address provided to Carrier by Shipper. The Shipper shall be liable for the payment of transportation charges, fees, and other lawful charges accruing to or due Carrier by Shipper, including but not limited to, penalties, interest and late payment charges on Crude Petroleum delivered by Carrier to Consignee. All accrued charges are due the later of the 25th of the month after the month of delivery of Crude Petroleum or ten (10) calendar days after receipt of such invoice.

If such charges are not paid by the due date stated on the invoice, Carrier shall have the right to assess finance charges on the entire past due balance (including principal and accumulated but unpaid finance charges) until paid in full at the rate equal to one hundred twenty-five percent (125%) of the prime rate ~~[W]of interest charged by Citibank N.A., New York, New York~~ as quoted by a major New York bank as of the due date or the maximum finance charge rate allowed by law, whichever is less.

Carrier reserves the right to set-off any such charges against any monies owed to Shipper by Carrier or any Crude Petroleum of Shipper in Carrier's custody.

### **ITEM 130 – FINANCIAL ASSURANCES**

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

Carrier, upon notice to the Shipper, may require one or more of the following Financial Assurances for the payment of all charges and costs as provided for in this tariff, or otherwise lawfully due to the Carrier, to be provided at the expense of the Shipper: (i) prepayment; (ii) a letter of credit in favor of Carrier in an amount sufficient to ensure payment of all costs and charges that could reasonably accrue due to the Carrier, in a form and from an institution acceptable to Carrier; (iii) a guaranty in an amount sufficient to ensure payment of all such costs and charges that could reasonably accrue due to the Carrier, in a form and from a third party acceptable to Carrier; or (iv) such other enforceable collateral security, including but not limited to security interests in the assets of the Shipper, in a form acceptable to the Carrier ("the Financial Assurances").

In the event that the Carrier reasonably determines that: (i) the existing or prospective Shipper's financial condition is or has become impaired or unsatisfactory; or (ii) any Financial Assurances previously provided by a Shipper no longer provide adequate security for the performance of the Shipper's obligations that could arise from the transportation of its Crude Petroleum under the terms of this tariff; or (iii) the Carrier otherwise determines that it is necessary to obtain Financial Assurances from the Shipper, then the Shipper shall provide sufficient Financial Assurances for the payment of the charges and costs as provided for in this tariff or otherwise lawfully due to the Carrier relating to the transportation of the Shipper's Crude Petroleum by the Carrier.

### **ITEM 135 – PAYMENT PRIOR TO DELIVERY**

Carrier may require a Shipper or Consignee to pay charges, transportation charges, fees and other lawful charges

accruing to or due Carrier by Shipper or Consignee, including, but not limited to, overdue transportation charges, penalties, interest and late payment charges, before making delivery of the Crude Petroleum if it appears that the value of the Crude Petroleum remaining in the custody of Carrier for Shipper’s account after making such delivery will not exceed the total of all such charges.

**ITEM 140 – LIENS**

Carrier shall have a lien on all Crude Petroleum received into Carrier’s pipelines. Such lien shall take effect at the point of Origin as the Crude Petroleum is received into Carrier’s pipelines. Such lien shall secure the payment of any and all transportation charges, fees, and other lawful charges owed to Carrier by Shipper or Consignee, including but not limited to, penalties, interest and late payment charges. Carrier may enforce such lien by any manner referred to in the relevant Statutes of the States of Texas, New Mexico, and Utah, or any other applicable law, provided that Carrier’s sale of such Crude Petroleum to another Shipper or Carrier, or any other person, after ten (10) days prior notice to Shipper and the solicitation of three (3) bids thereon, shall be deemed commercially reasonable. Such lien shall be in addition to any and all other rights and remedies Carrier has at law or in equity.

**ITEM 145 – TIME LIMITATION OF CLAIMS**

As a condition precedent to recovery for loss or delay, claims must be filed in writing with the Originating or delivering Carrier within nine (9) months and one (1) day after delivery of the property, or in case of failure to make delivery, within nine (9) months and one (1) day after a reasonable time for delivery has elapsed, and suits shall be instituted against the Carrier only within two (2) years and one (1) day from the day when notice in writing is given by the Carrier to the claimant that the 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 thereon in accordance with the foregoing provisions, Carrier will not be liable and such claims will not be paid by Carrier.

**EXPLANATION OF REFERENCE MARKS**

- [N] New
- [C] Cancel
- [W] Change in wording only

**EXPLANATION OF ABBREVIATIONS**

- API ..... American Petroleum Institute
- ASTM ..... American Society for Testing and Materials
- F.E.R.C. .... Federal Energy Regulatory Commission
- ~~[C]EPA~~ ..... ~~Environmental Protection Agency~~
- MST ..... Mountain Standard Time
- No. .... Number
- psi ..... pounds per square inch
- RVP ..... Reid Vapor Pressure
- ~~[C]WRPL~~ ..... ~~Western Refining Pipeline, LLC~~
- U.S. .... The United States of America

**[C] WESTERN REFINING PIPELINE, LLC**

System Map

