

GENERAL TERMS & CONDITIONS

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GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**

Except where the context expressly states another meaning, the following terms, when used in these General Terms and Conditions, in any Service Agreement and in any Toll Schedule into which these General Terms and Conditions are incorporated, shall be construed to have the following meanings:

- 1.1 "Adjusted Index Price" shall mean, on any Day, [one hundred and fifty percent (150%)] of [the "Tenn. zone 6 (delivered)" price published in Gas Daily for that Day, less the Maritimes & Northeast Pipeline, L.L.C., 100% load factor recourse rate for MN365 firm service]; such price in \$U.S./MMBtu then converted to \$Cdn/GJ by applying the: (i) currency settlement conversion factor from U.S. dollars to Canadian dollars published in the same volume of Gas Daily; and (ii) the GJ Conversion Factor. If the Tenn. zone 6 (delivered) price ceases to be available, Pipeline shall replace it with an index that reasonably represents the Boston City Gate Price, or international border price, as applicable.
- 1.2 "Backhaul" shall mean movement of gas from a Point of Receipt to a Point of Delivery such that the contractual direction of movement on the mainline is at all times and at all points along the path in a direction opposite to the design flow of gas in the pipeline.
- 1.3 "British thermal unit" or "Btu" shall mean the International Btu, which is also called the Btu (IT).
- 1.4 "Business Day" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in Canada, and similar holidays for transactions occurring in the U.S.
- 1.5 "Central Time" or "CT" shall mean Central Clock Time, which includes the recognition of Daylight Savings Time.
- 1.6 "Company Used Gas" shall mean the amount of gas used for fuel, including compressor and heater fuel; gas used for maintenance; and unaccounted for gas. Changes in Company Used Gas shall be tracked pursuant to GT&C Article 20.
- 1.7 "Cubic Metre" or "m³" shall mean the volume of gas which occupies one cubic metre of space, measured according to Boyle's and Charles' Law for the measurement of gas under varying pressures with deviation therefrom as provided in Article 14 of the GT&C and on the measurement basis likewise specified in Article 14.
- 1.8 "10³m³" shall mean one thousand (1,000) Cubic Metres of gas.

- 1.9 "Customer" shall mean an entity that has executed a Service Agreement in the form contained in this Tariff, providing for the transportation of gas by Pipeline.
- 1.10 "Date of Commencement of Service" shall mean the date on which Pipeline is ready, willing and able to provide service and all contractual conditions to the commencement of service have been satisfied.
- 1.11 "Day" shall mean a period of twenty-four (24) consecutive hours, beginning at 9:00 a.m. Central Time (11:00 a.m. Atlantic Clock Time, which includes the recognition of Daylight Savings Time).
- 1.12 "ECS" shall mean the Pipeline's electronic communications system which may be used for the purposes set forth in Article 2 of the GT&C.
- 1.13 "Fuel Retainage Quantity" shall have the meaning ascribed thereto in Section 20.1.
- 1.14 "Fuel Retainage Percentage" shall have the meaning ascribed thereto in Section 20.2.
- 1.15 "GT&C" shall mean the General Terms and Conditions of the Tariff, as effective from time to time.
- 1.16 "GJ" shall mean one billion (1,000,000,000) Joules.
- 1.17 "GJ Conversion Factor" shall mean the formula defined herein which Pipeline will use to convert Imperial System "MMBtus" into "GJs" of natural gas for purposes of transportation under this Tariff. The Conversion Factor is 1 GJ = 0.947817 MMBtu.
- 1.18 "Joule" shall mean the work done by a force of 1 Newton with a displacement of 1 meter in the direction of the force.
- 1.19 "kiloPascal" or "kPa" shall mean kiloPascals of pressure absolute.
- 1.20 "Long Term" Service Agreement shall mean a Service Agreement with a primary term of one year or more from the Date of Commencement of Service.
- 1.21 "Managing Partner" shall mean Maritimes & Northeast Pipeline Management Ltd. or such other entity as Maritimes & Northeast Pipeline Limited Partnership may designate.
- 1.22 "Maritimes & Northeast Pipeline, L.L.C." shall mean the Delaware limited liability company that will own the pipeline system interconnecting with the Pipeline at the international border between Canada and the United States and extending to a point near Dracut, Massachusetts.

- 1.23 "Maximum Daily Delivery Obligation" and "MDDO" shall mean the maximum quantity of gas Pipeline is obligated to deliver to Customer, or for Customer's account, on any given Day at a Point of Delivery as set forth in Customer's Service Agreement.
- 1.24 "Maximum Daily Transportation Quantity" and "MDTQ" shall mean the maximum daily quantity of gas exclusive of the Pipeline's Fuel Retainage Quantity that: (a) Customer may tender for transportation in the aggregate to all Points of Receipt; and (b) Pipeline is required to deliver to all Points of Delivery; provided, however, Pipeline shall not be obligated to deliver gas at rates in excess of a uniform hourly rate unless agreed to otherwise by Pipeline and Customer.
- 1.25 "Maximum Daily Receipt Obligation" and "MDRO" shall mean the maximum quantity of gas Pipeline is obligated to receive for Customer's account on any given Day at a Point of Receipt as set forth in Customer's Service Agreement, exclusive of any applicable Fuel Retainage Quantity.
- 1.26 "MJ" shall mean one million (1,000,000) Joules.
- 1.27 "MMBtu" shall mean one million (1,000,000) Btus.
- 1.28 "Month" shall mean the period beginning at 9:00 a.m. Central Time (11:00 a.m. Atlantic Clock Time, which includes the recognition of Daylight Savings Time), on the first Day of a calendar Month, and ending at the same hour on the first Day of the next succeeding calendar Month.
- 1.29 "NEB" shall mean the National Energy Board or any successor regulatory authority having jurisdiction over Pipeline under the *National Energy Board Act* or successor or replacement legislation.
- 1.30 "Nomination Period" shall mean a period of time that Customer includes in a nomination for gas service.
- 1.31 "Operator" shall mean Maritimes & Northeast Pipeline Management Ltd. or such other entity as Maritimes & Northeast Pipeline Limited Partnership may designate as having responsibility for operation of Pipeline.
- 1.32 "Pipeline" shall mean Maritimes & Northeast Pipeline Limited Partnership. The term "Pipeline" expressly excludes any of the individual partners of Pipeline, and any entity with which any partner is affiliated except for Maritimes & Northeast Pipeline Limited Partnership.
- 1.33 "Primary Point of Delivery" shall mean a Point of Delivery specified in a Service Agreement under a firm transportation Toll Schedule, at which Pipeline has a firm MDDO.

- 1.34 "Primary Point of Receipt" shall mean a Point of Receipt specified in a Service Agreement under a firm transportation service Toll Schedule, at which Pipeline has a firm MDRO.
- 1.35 "Secondary Point of Delivery" shall mean a Point of Delivery, other than a Primary Point of Delivery, available to Customer as provided for in the applicable Toll Schedule.
- 1.36 "Secondary Point of Receipt" shall mean a Point of Receipt, other than a Primary Point of Receipt, available to Customer as provided for in the applicable Toll Schedule.
- 1.37 "Service Agreement" shall mean the service agreement executed by Customer and Pipeline or otherwise made effective and any exhibits, attachments and/or amendments thereto.
- 1.38 "Service Year" shall mean the period commencing on November 1 of any given calendar year and ending the following October 31.
- 1.39 "Short Term" Service Agreement shall mean a Service Agreement with a primary term of less than one year from the Date of Commencement of Service.
- 1.40 "Storage Receipt/Delivery Point" shall mean the point at which third party storage facilities directly connect to M&NP.
- 1.41 "Tariff" shall mean Pipeline's NEB Gas Tariff, including but not limited to Toll Sheets, Toll Schedules, General Terms and Conditions and Forms of Service Agreements, as may be revised and effective from time to time.
- 1.42 "Toll Schedule(s)" shall mean one or more of the toll schedules contained in the Tariff.
- 1.43 "Toll Sheet(s)" shall mean one or more of the toll sheets contained in the Tariff.
- 1.44 "Total Heating Value" shall mean the number of Joules, expressed in megajoules per cubic metre (MJ/m³), produced by the complete combustion with air, of one dry cubic metre of gas at a constant pressure of one hundred one and three hundred twenty-five thousandths (101.325) kiloPascals, and a temperature of fifteen (15) degrees Celsius when the products of combustion are cooled to the initial temperature, and the water formed by combustion is condensed to the liquid state.

2. ELECTRONIC COMMUNICATION

- 2.1 Pipeline will make available, at no additional charge to Customers, its Electronic Communications System (ECS) for use by Customers. The ECS is an interactive system pursuant to which Customers shall submit nominations and monitor their accounts. The ECS shall be available on a nondiscriminatory basis to any Customer provided that such Customer agrees to comply with the procedures for access to the ECS and with the procedures for use of the ECS.
- 2.2 For generic, system-wide notices any provisions of this Tariff requiring that these matters be written or in writing are satisfied by Pipeline utilizing electronic transmission through the ECS in accordance with the procedures for utilization of the ECS. The provisions of this Tariff requiring that certain matters be written or in writing are satisfied by Customer utilizing electronic transmission through the ECS in accordance with the procedures for utilization of the ECS. All other provisions, including Service Agreement-specific notices, requiring items or information to be written or in writing remain unchanged unless otherwise agreed by Pipeline and Customer. Critical system-wide notices shall have a separate category from notices that are not critical.

3. SERVICE REQUESTS AND CONTRACTING FOR SERVICE

- 3.1 Customers seeking service from Pipeline must submit a request for service in the form set forth herein and containing the information described herein. No gas will be scheduled for receipt and delivery until a completed service request form has been provided and Customer's credit evaluation pursuant to Sections 3.6 or 3.7 of the GT&C is satisfactory. In the event Pipeline determines that Customer's request for service does not comply with this Article 3 or Customer's credit evaluation does not comply with Sections 3.6 or 3.7 of the GT&C, Pipeline shall, within twenty Days of receiving Customer's request, provide Customer with written notice of the deficiencies and the additional information or changes required to complete the request. Customer shall have the right for a period of ten Days after such notice to supplement Customer's request as required to comply with this Article 3. Pipeline shall, within ten Days of receiving any additional information or changes from Customer, provide Customer with written notice of whether Customer's request, as supplemented, is satisfactory. If Customer's request, as supplemented, remains incomplete and deficient, then Customer's request shall be deemed void.
- 3.2 If Customer's request for service and credit evaluation comply with the GT&C, and capacity is allocated to Customer pursuant to Article 4, Pipeline will tender a service agreement to Customer. In the event the service agreement is not executed by Customer and returned within thirty Days after Pipeline tendered the service agreement, Pipeline shall consider the request invalid and the service agreement shall be void and Pipeline shall refund any prepayment paid or return any security given by Customer pursuant to Article 3 of the GT&C. If capacity is not allocated to Customer, and no Article 17 facilities are required to meet the request, Pipeline shall log the request in its service queue. If Article 17 facilities are required to meet a request, provision of service will be determined pursuant to Article 17.
- 3.3 All firm transportation requests shall be subject to the following conditions:
- (a) No request for transportation from a Primary Point of Receipt or to a Primary Point of Delivery shall be considered valid or be granted if to do so would impair Pipeline's ability to render existing services pursuant to Pipeline's firm service Toll Schedules.
 - (b) Subject to the provisions of (a) above, amendments to any firm Service Agreement or exhibit to add additional Primary Point(s) of Receipt or Primary Point(s) of Delivery pursuant to an applicable firm Toll Schedule will not be considered a new transaction for purposes of complying with this Article 3. Any Customer receiving permission from Pipeline to use any new Primary Point(s) of Receipt or new Primary Point(s) of Delivery shall be deemed to have complied with the requirements of this Article 3 for purposes of receiving priority in contracting for such new Primary Point(s) of Receipt or new Primary Point(s) of Delivery for a firm MDRO or MDDO over any third party requesting firm transportation under a firm Toll

Schedule at that Primary Point(s) of Receipt or Primary Point(s) of Delivery if, at the time of Customer's request, said third party's request has not been accepted by Pipeline. The priority for such new Primary Point(s) of Receipt or Primary Point(s) of Delivery shall be determined in accordance with this Article 3.

- 3.4 Customers seeking service from Pipeline must submit a request for service in the following form:

Maritimes & Northeast Pipeline Limited Partnership
c/o Marketing Manager
Suite 1600, 1801 Hollis Street
Halifax, Nova Scotia
B3J 3N4

_____ ("Customer") hereby requests transportation service from Maritimes & Northeast Pipeline Limited Partnership ("Pipeline") and hereby provides the following information in connection with this request:

- (a) Complete legal name of Customer:

- (b) Type of legal entity and province of incorporation:

- (c) The specific affiliation of the party requesting service with Pipeline, if any.
- (d) (1) Name of person responsible for this request; address, telephone and facsimile numbers to which correspondence or other communications should be directed. State relationship to Customer.

- (2) Name, address, telephone number and facsimile number of 24-hour contact person(s) for purposes of dispatching.

- (e) Are additional or new Customer facilities required, or are new Pipeline facilities required under Article 17, to receive or deliver gas for the transportation service requested herein?

Customer Facilities: _____ Yes _____ No
 Pipeline Article 17 Facilities: _____ Yes _____ No

(f) Name and title of the person or persons who are authorized to execute a written transportation agreement with Pipeline.

(g) (1) In the case of firm service, name and detailed description of Primary Point(s) of Receipt and the maximum daily quantities of gas to be delivered by Customer for each point:

Primary Point of Receipt	Maximum Daily Receipt Obligation (GJ)	Total for Term of Contract (GJ)	Name of Party/ Parties Receiving Gas
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(2) In the case of firm service, name and detailed description of Primary Point(s) of Delivery where Pipeline will redeliver the gas and the maximum daily quantities of gas to be redelivered by Pipeline for each point:

Primary Point of Delivery	Maximum Daily Delivery Obligation (GJ)	Total for Term of Contract (GJ)	Name Of Party/ Parties Receiving Gas
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(h) (1) Service is requested under Toll Schedule:

_____ MN365
 _____ MN151
 _____ MN 90
 _____ OP214
 _____ OP275
 _____ MNIT
 _____ MNITMR

(2) Date service is proposed to commence: _____

(3) Date service is proposed to terminate: _____

(i) For firm service, will Customer accept a partial allocation of capacity, beyond any specified minimum amount, in the event Pipeline is unable to satisfy the full request (while maintaining the balance of the service request)?

_____ Yes
If Yes, Minimum Amount: _____ GJ/d _____ No

- (j) Customer must provide the credit evaluation information set forth in Section 3.6 of the GT&C
- (k) Customer acknowledges that Pipeline will provide toll and billing information regarding the total amount owed by Customer on Customer's invoice in Canadian currency.
- (l) Submission of this request shall constitute certification that, prior to the commencement of construction:
 - (1) Customer has or will have title to, or a good right to tender for transportation (and all necessary authorizations related thereto), the gas to be transported by Pipeline.
 - (2) Customer has or will enter into all necessary third-party transportation agreements to transport the gas to the party ultimately receiving the gas.
 - (3) If Customer is not a direct end-user of the gas to be transported, Customer has arranged for, or will arrange for, contractual arrangements to be in place for consignment of such gas to a third party or parties at the selected Delivery Point.
- (m) Customer understands that a request for service in the form set forth herein, complete and unrevised as to format, must be received by Pipeline before the transportation request will be processed. Customer hereby agrees to pay Pipeline's currently effective transportation toll applicable to this service. In the case of firm service requiring the construction of additional facilities, Customer agrees to pay tolls as approved by the NEB designed, inter alia, to reimburse Pipeline for the cost of construction of such additional facilities. Customer, by its signature, represents to Pipeline that the information set forth in this transportation request is correct and accurate and that all necessary transportation arrangements with the upstream and downstream transporters, as stated herein, have been or will be secured prior to the commencement of the requested transportation services.

Date: _____

Signature: _____

Name: _____

Title: _____

- 3.5 At the time of requesting firm service, Customer shall make a prepayment by wire transfer in an amount equal to the reservation charges as stated on Pipeline's effective Toll Sheets for one Day's service at the levels specified in Customer's request. If Pipeline rejects Customer's request pursuant to Section 3.1 of the GT&C, Pipeline will refund the prepayment to Customer at that time. If Customer's request is accepted by Pipeline, then: (i) if Customer subsequently abandons the request, the prepayment will be forfeited to Pipeline; or (ii) if Customer subsequently enters into a Service Agreement with Pipeline, the prepayment shall be applied to the first Month's invoice.
- 3.6 Pipeline shall apply, on a non-discriminatory basis, consistent financial evaluation standards to determine the acceptability of Customer's overall financial condition. Such credit appraisal and any further or ongoing credit appraisal as may be necessary shall be based upon the following information and criteria:
- (a) Customer shall provide current financial statements, annual reports, securities reports or other filings with regulatory agencies which discuss Customer's financial status; a list of all corporate affiliates, parent companies and subsidiaries; and any reports from credit reporting and bond rating agencies which are available. Pipeline shall determine the acceptability of Customer's overall financial condition. Pipeline shall maintain the confidentiality of all proprietary information provided by Customer hereunder, provided that Pipeline may disclose such information: (i) to its partners, sponsors, bank lenders, lead bond arrangers and rating agencies under confidentiality agreements; and (ii) to the extent that disclosure is required by law, by any governmental or regulatory body having jurisdiction or as may be necessary to answer claims against Pipeline in any proceeding before a governmental or regulatory body (provided, in such instance, Pipeline will use reasonable efforts to maintain the confidentiality of the material).
 - (b) A Customer requesting long-term firm transportation service with a primary term of more than one (1) year must: (i) demonstrate that the Customer's senior, unsecured, non-credit enhanced long-term debt is rated by Dominion Bond Rating Service as BBB or higher, by Canadian Bond Rating Service as B++ or higher, by Moody's Investors Service, Inc. as Baa3 or higher, or by Standard & Poor's as BBB- or higher; provided that, if such Customer's senior, unsecured, non-credit enhanced long-term debt is rated by two or more such agencies, at least two of the assigned ratings shall meet such credit standards; or (ii) provide a guarantee of payment by another entity whose senior, unsecured, non-credit enhanced long-term debt meets the test in clause (i). A Customer requesting short-term firm transportation service with a primary term of one (1) year or less or interruptible service of any term and which does not meet the tests for long-term transportation service set forth above must provide a letter of credit, guarantee or other reasonable financial support commensurate with the term and type of service (firm or interruptible) requested, satisfactory to Pipeline, if requested by Pipeline.

- (c) If a Customer requesting long-term firm transportation service with a primary term of more than one (1) year is not rated by a recognized rating agency, Customer or (if applicable) Customer's guarantor must demonstrate an equivalent rating acceptable to Pipeline based on the financial rating methodology, criteria and ratios for the industry of the Customer or (if applicable) Customer's guarantor as published by the above rating agencies from time to time.
 - (d) Customer shall confirm in writing that neither Customer nor (if applicable) Customer's guarantor is operating under any bankruptcy laws or is subject to liquidation or debt reduction procedures, such as an assignment for the benefit of creditors, or any informal creditors' committee agreement.
 - (e) Customer shall confirm at the time of the request in writing for the benefit of Pipeline that Customer is not aware of any change in business conditions which would cause a substantial deterioration in Customer's or (if applicable) Customer's guarantor's financial condition, a condition of insolvency, or the inability to exist as an ongoing business entity.
 - (f) Customers with an ongoing business relationship with Pipeline shall have no delinquent balances outstanding for services made previously by Pipeline, and each Customer must have: (i) paid its account according to the established terms; and (ii) not made deductions or withheld payment for claims not authorized by contract.
 - (g) Customer shall confirm at the time of the request in writing for the benefit of Pipeline that no significant claims, lawsuits or judgements are outstanding which would materially affect Customer's or (if applicable) Customer's guarantor's ability to remain solvent as a business entity.
- 3.7 If Customer or (if applicable) Customer's guarantor does not meet the credit criteria for a long-term Service Agreement under subsections 3.6(b) or 3.6(c), or subsequently during the term of a long-term Service Agreement if Customer or (if applicable) Customer's guarantor no longer satisfies such credit criteria (in which case Customer shall notify Pipeline that Customer or (if applicable) Customer's guarantor does not continue to satisfy such credit criteria immediately upon becoming aware of same), such Customer may still obtain credit approval by Pipeline if it elects to provide one of the following:
- (a) An advance deposit in the amount specified below;
 - (b) a standby irrevocable letter of credit from a financial institution acceptable to Pipeline in the amount specified below;
 - (c) security interest in collateral satisfactory to Pipeline; or
 - (d) a guarantee, acceptable to Pipeline, by another person or entity which satisfies the credit appraisal criteria set forth in Section 3.6.

If Customer provides an advance deposit or other credit instrument and then subsequently satisfies or obtains a guarantee from an entity that satisfies the credit criteria set forth in Section 3.6, Pipeline shall return and/or cancel such advance deposit (with accrued interest) or credit instrument forthwith.

The advance deposit or standby irrevocable letter of credit should at all times equal the amount equal to twelve (12) Months of reservation charges for the requested MDTQ at the applicable unit toll hereunder. Customer shall continue to provide such advance deposit or letter of credit for a period of twelve (12) Months following the termination of service, unless Customer pays all of the amounts of any invoices for service as reasonably determined by Pipeline prior to that time. If security or a deposit is not tendered in a timely period as reasonably determined by Pipeline, then Pipeline is not required to continue service. If Customer or (if applicable) Customer's guarantor is unable to maintain credit approval by satisfying the requirements of Section 3.6 or Section 3.7, as applicable, Pipeline shall have the option to terminate the executed Service Agreement by written notice to Customer, in which event the Service Agreement shall terminate as of the first Day of the Month following such written notice.

- 3.8 It is a condition precedent to project financing that Pipeline enter into firm service agreements for a minimum quantity of capacity with customers (or assignees or replacement customers) that meet the credit criteria in subsections 3.6(b) or 3.6(c) above.

4. ALLOCATION OF CAPACITY ENTITLEMENTS

4.1 Allocation of Capacity. Pipeline will allocate pipeline capacity in accordance with the terms and conditions set forth in Sections 4.2, 4.3 and 4.4 of the GT&C.

4.2 Unsubscribed Capacity

- (a) Subject to requirements for requests for firm service in the GT&C and project financing requirements, firm capacity that is available but is not currently subscribed will be allocated to that request(s) generating the highest net present value to Pipeline. Net present value will be determined based on the discounted cash flow of revenues to Pipeline produced, lost, or affected by the request(s) for service. In determining the highest net present value, Pipeline will consider objective criteria only. Such criteria may include, without limitation, the maximum contract quantity requested, the term of the service requested, the date on which the requested service would commence, and such other objective criteria available based on the requests for service received by Pipeline. The net present value evaluation shall include only revenues generated by the reservation charge component exclusive of any discounts. The net present value discount factor used by Pipeline will be applied consistently to all requests for capacity being evaluated at a particular point in time.
- (b) For request(s) for firm service, provided that capacity is available to satisfy any such request(s), Pipeline shall conduct an open season and shall post the notice of such open season within twenty-four (24) hours of receiving the request(s) for firm service. To the maximum extent possible, Pipeline will attempt to structure any such posting so as not to identify specifically the customer or potential customer submitting the request and/or the specific location of the market(s) to be served. Any open season pursuant to this Section 4.2 will be conducted to determine which Customer or potential customer values any available capacity the most.
- (c) For any open season conducted pursuant to this Section 4.2 such open season shall be held for a minimum of: (i) two (2) Business Days for service offerings with a term of less than one (1) year; or (ii) fifteen (15) Business Days for service offerings with a term of one (1) year or more. In no event shall the open season be for a period greater than one (1) Month. All open seasons shall end at 2:00 p.m. CT not less than two (2) Business Days prior to the date service would be available. Any such posting shall, at a minimum, describe the service available, the date(s) that the service will be available, the duration for which the service will be available, the capacity path, any minimum terms and conditions, any other factors Pipeline shall consider in evaluating requests received during the open season, and any other rules applicable to the open season procedure.

- (d) In the event that Pipeline receives two (2) or more requests for service which produce an equivalent net present value, whether during an open season or otherwise, any available capacity will be allocated between or among such service requests which have indicated a willingness to accept a partial allocation of capacity.
- (e) Pipeline shall post the winning request(s) and the method of evaluating such request(s) on the ECS within twenty-four (24) hours after the award of capacity.

4.3 Capacity Created as a Result of Constructing Additional Facilities.

- (a) All Customers and potential customers are put on notice that Pipeline may, but is not required to, from time to time, in addition to constructing facilities under GT&C Article 17, conduct periodic open seasons for the purpose of evaluating market interest to expand and/or extend Pipeline's transportation system. If Pipeline does conduct an open season, any additional pipeline capacity made available by such expansion and/or extension will be allocated under the terms and conditions of such open season.
- (b) If Pipeline conducts an open season for pipeline capacity associated with the facilities of Maritimes & Northeast Pipeline, L.L.C. or any other downstream pipeline, Pipeline shall make reasonable efforts to coordinate such open season with Maritimes & Northeast Pipeline, L.L.C. or other downstream pipeline, respectively.

4.4 Capacity under Terminating Long Term Agreements. Within thirty Days of the issuance by Pipeline or Customer of a notice of termination of a Long Term firm Service Agreement, which notice shall be provided at least two years in advance, Pipeline shall post such capacity for bid on its ECS, setting forth the following information:

- (1) Point(s) of Receipt and Point(s) of Delivery,
- (2) the specific quantity available under the terminated agreement,
- (3) the date of expiration, and
- (4) the current toll applicable to the terminated service.

For capacity made available upon termination of a Long Term firm Service Agreement, the bid must incorporate the applicable toll and specify the contract term. The bid period shall end no later than sixty Days before the effective date of the termination of the Service Agreement. A bidder may make multiple bids for the same capacity. At the close of the bid period, Pipeline shall select among the valid bids the bid with the longest contract term ("Best Bid"). If more than one bidder submits the Best Bid, the first bidder in time shall be selected as the Best Bid. Customer holding the firm service will have a right of first refusal provided

that such right of first refusal does not attach to: (i) a Customer under a firm Service Agreement which provides written notice to Pipeline to terminate such firm Service Agreement; (ii) termination of a Service Agreement by Pipeline pursuant to Sections 3.7, 15.3 or Article 16 of the GT&C; (iii) any Short Term firm Service Agreement; (iv) Service Agreements with a fixed contract term; or (v) interruptible Service Agreements. If Customer has a right of first refusal, then Pipeline shall relay the terms of the Best Bid to the Customer whose long-term firm Service Agreement is being terminated. Upon written notification from Pipeline of the terms of the Best Bid, Customer shall have the right for a thirty-Day period to notify Pipeline whether Customer is willing to match the Best Bid. Failure to notify Pipeline in writing within said thirty-Day period constitutes a non-revocable waiver of Customer's right to match the Best Bid. In order to match the Best Bid, Customer must agree to a contract term equal to or longer than the contract term set forth in the Best Bid, up to a period of five years.

5. SERVICE NOMINATION PROCEDURE

5.1 Customer shall furnish or cause to be furnished to Pipeline nominations showing the quantity of gas to be received and delivered by Pipeline, by individual Point of Receipt and individual Point of Delivery, for each Day of the Nomination Period as required below:

- (a) Such nomination shall reflect Customer's contract number; the beginning and ending dates of the period for which the deliveries are desired, provided the nomination beginning and ending dates are within the term of Customer's contract; the quantity of gas to be received, including Fuel Retainage Quantity and any make-up quantity pursuant to Articles 8 or 11, at each Point of Receipt and the quantity of gas to be delivered at each Point of Delivery on Pipeline. Such nomination shall also specify such information as Pipeline reasonably determines necessary to perform service. To the extent Customer desires to change its nomination for any Nomination Period, Customer must submit a new nomination for such Nomination Period to replace in its entirety the prior nomination. When a nomination for a date range is received, each Day within that range is considered an original nomination. When a subsequent nomination is received for one or more Days within that range, the previous nomination is superseded by the subsequent nomination only to the extent of the Days specified. The Days of the previous nomination outside the range of the subsequent nomination are unaffected. Nominations have a prospective effect only.
- (b) Subject to Sections 8.8 and 11.3, the quantity of gas nominated at each Primary Point(s) of Receipt shall not exceed the MDRO, plus applicable Fuel Retainage Quantity, and the quantity of gas nominated at each Primary Point of Delivery shall not exceed the MDDO.

5.2 Timely Nomination Cycle. The nomination of deliveries under all Toll Schedules to commence on the first Day of any Nomination Period shall be submitted to Pipeline no later than the time specified in the nomination timeline below, or such lesser period as is acceptable to Pipeline, prior to the first Day of the Nomination Period.

The nomination timeline shall be Central Time on the Day prior to gas flow:

11:30 a.m.	Nomination leaves control of the nominating party
11:45 a.m.	Receipt of nomination by Pipeline through the ECS
12:00 p.m.	Quick response by Pipeline regarding validity of data elements of nominations received through the ECS at 11:45 a.m.
3:30 p.m.	Receipt of completed confirmations by Pipeline from upstream and downstream connected parties
4:30 p.m.	Receipt of scheduled quantities by Customer and point operator

Should Customer fail to provide this nomination as specified above, Pipeline may deem Customer's nomination to be zero. Pipeline shall have the right to refuse to receive or deliver any gas not timely and properly nominated. Pipeline shall not be liable to Customer or any other person as a direct or indirect consequence of such refusal and Customer shall indemnify Pipeline from and against any and all losses, damages, expenses, claims, suits, actions and proceedings whatsoever threatened, incurred or initiated as a result of such refusal unless such refusal was due to Pipeline's gross negligence, undue discrimination or willful misconduct.

5.3 Other Nomination Cycles

(a) Evening Nomination Cycle. Subsequent to the Timely Nomination Cycle, as described in Section 5.2, Customer may alter its nominations provided that the nomination given by Customer to Pipeline for deliveries starting at 9:00 a.m. CT on the following Day shall be submitted to Pipeline no later than the time specified in the nomination timeline below, or such lesser period as is acceptable to Pipeline. Any nomination submitted after the Timely Nomination Cycle shall contain Customer's service requirements for one Day only and shall include the effective date and time. Intraday nominations do not replace the remainder of a standing nomination. The nomination timeline shall be Central Time on the Day prior to gas flow:

6:00 p.m.	Nomination leaves control of the nominating party
6:15 p.m.	Receipt of nomination by Pipeline through the ECS
6:30 p.m.	Quick response by Pipeline regarding validity of data elements of nominations received through the ECS at 6:15 p.m.
9:00 p.m.	Receipt of completed confirmations by Pipeline from upstream and downstream connected parties
10:00 p.m.	Provide scheduled quantities to Customer, point operator and bumped parties (notice to bumped parties)

(b) Intraday 1 Nomination Cycle. Subsequent to the Evening Nomination Cycle, as described in subsection 5.3(a), Customer may alter its nominations provided that the nomination given by Customer to Pipeline for deliveries starting at 5:00 p.m. during the current Day shall be submitted to Pipeline no later than the time specified in the nomination timeline below, or such lesser period as is acceptable to Pipeline. Any nomination submitted after the Timely Nomination Cycle shall contain Customer's service requirements for one Day only and shall include the effective date and time. Intraday nominations do not replace the remainder of a standing nomination. The nomination timeline shall be Central Time on the Day of gas flow:

10:00 a.m.	Nomination leaves control of the nominating party
10:15 a.m.	Receipt of nomination by Pipeline through the ECS

- 10:30 a.m. Quick response by Pipeline regarding validity of data elements of nominations received through the ECS at 10:15 a.m.
- 1:00 p.m. Receipt of completed confirmations by Pipeline from upstream and downstream connected parties
- 2:00 p.m. Provide scheduled quantities to Customer, point operator and bumped parties (notice to bumped parties)

(c) Intraday 2 Nomination Cycle. Subsequent to the Intraday 1 Nomination Cycle, as described in subsection 5.3(b), Customer may alter its nominations provided that the nomination given by Customer to Pipeline for deliveries starting at 9:00 p.m. during the current Day shall be submitted to Pipeline no later than the time specified in the nomination timeline below, or such lesser period as is acceptable to Pipeline. Any nomination submitted after the Timely Nomination Cycle shall contain Customer's service requirements for one Day only and shall include the effective date and time. Intraday nominations do not replace the remainder of a standing nomination. The nomination timeline shall be Central Time on the Day of gas flow:

- 5:00 p.m. Nomination leaves control of the nominating party
- 5:15 p.m. Receipt of nomination by Pipeline through the ECS
- 5:30 p.m. Quick response by Pipeline regarding validity of data elements of nominations received through the ECS at 5:15 p.m.
- 8:00 p.m. Receipt of completed confirmations by Pipeline from upstream and downstream connected parties
- 9:00 p.m. Provide scheduled quantities to Customer and point operator

(d) In addition to the nomination timelines outlined in Section 5.2 and subsections 5.3(a), (b) and (c), Pipeline may allow Customer to revise Customer's nominations at other times prior to the end of the Day being scheduled if such revisions do not affect Pipeline's ability to serve other Customers and provided such change can be confirmed in a timely manner with Customer's upstream and downstream parties. Such a change in nominations shall be processed after timely nominations have been scheduled and shall be made prospectively only.

(e) Once all or a portion of the nomination of a Customer is accepted and scheduled for any Day, said daily scheduled service shall not be interrupted unless: (1) such capacity is required to provide a higher priority firm service nominated prior to the Intraday 2 Nomination Cycle as described in subsection 5.3(c); or (2) curtailment is necessary pursuant to the provisions of Article 8 of the GT&C.

6. SERVICE SCHEDULING

Service is deemed scheduled after Customer submits a nomination in accordance with Article 5 of the GT&C and Pipeline confirms the nominated receipt of gas into the system and the nominated delivery of gas to Customer, or for Customer's account. Until Pipeline has informed Customer that its nomination, whether daily, or intraday, is confirmed, such gas quantities will not be deemed scheduled.

6.1 The quantities nominated for transportation by Customer shall be scheduled by Pipeline for receipt and delivery in the following order:

- (a) Firm service utilizing Primary Points of Receipt and Primary Points of Delivery;
- (b) Firm service utilizing Secondary Points of Receipt and/or Secondary Points of Delivery; provided, however, that if Pipeline is restricting service at a particular receipt or delivery point then a Customer utilizing that point as a Primary Point, regardless of the status at the corresponding delivery or receipt point, shall have priority over a Customer using that restrained point as a Secondary Point of Receipt or Delivery.
- (c) Among Pipeline's firm service Customers nominating for Make-Up Service pursuant to Article 8.8;
- (d) Among Pipeline's firm service Customers initiating action pursuant to Article 11 to correct an imbalance situation;
- (e) All interruptible service in sequence starting with the highest toll;
- (f) Among Pipeline's interruptible service Customers initiating corrective action pursuant to Article 11 to correct an imbalance situation.
- (g) Among Pipeline's storage transportation service Customers nominating the storage facility receipt/delivery point.

6.2 Within category (f) listed above transportation quantities shall be scheduled, to the extent practicable, to maintain the existing quantities of service to each Customer.

6.3 In the event a tie for capacity exists among category (a), (b), (c) or (d) Customers, quantities within that category will be scheduled pro rata on the basis of Customers' MDTQ's. In the event a tie for capacity exists among category (e), (f) or (g) Customers, quantities within that category will be scheduled pro rata on the basis of Customers' nominated quantities.

6.4 Should Customer be unable to accept the quantities of gas tendered at the Points of Delivery on any Day, then Pipeline may refuse to receive equivalent quantities of gas at the Points of Receipt on such Day. Should Customer be unable to tender quantities of gas at the Points of Receipt on any Day, then

Pipeline may refuse to deliver equivalent quantities of gas at the Points of Delivery on such Day.

- 6.5 Pipeline shall have the unqualified right to commingle gas transported hereunder with gas from other sources, and to treat and handle all such gas as under its possession and control. It is recognized that gas molecules delivered by Pipeline may not be the same molecules as those received at the Points of Receipt.

7. INTERCONNECTING FACILITY GAS FLOW ALLOCATION METHODS

- 7.1 For all gas to be received by Pipeline, Customers may cause the operating party of the facilities immediately upstream of a Pipeline Point of Receipt to provide a predetermined allocation methodology acceptable to Pipeline to be used in allocating said gas through the Point of Receipt.
- 7.2 In addition, for all gas to be delivered to Customers, Customers may cause the operating party of the facilities immediately downstream of a Pipeline Point of Delivery to provide a predetermined allocation methodology acceptable to Pipeline to be used in allocating said gas through the Point of Delivery.
- 7.3 Any allocation methodology shall be provided to Pipeline not less than one Business Day prior to the first Day of the Month gas is to be tendered to Pipeline and shall prescribe the methodology for all Service Agreements for which quantities have been scheduled at such Points of Receipt and Points of Delivery.
- 7.4 In the event no methodology acceptable to Pipeline is provided, Pipeline shall allocate the actual quantities received or delivered by Pipeline among Customers pro rata, based on the ratio of each scheduled quantity to the total scheduled quantities of gas at such Points of Receipt or Points of Delivery applied to the total quantity actually received or delivered by Pipeline.
- 7.5 Changes to the daily allocation methodology may be made. Such changes must be submitted and accepted by Pipeline in advance of the effective date and shall be effective prospectively. No retroactive reallocation of any transaction shall be permitted.
- 7.6 Pipeline shall not have any liability to any Customer as a result of Pipeline's reliance on any allocation methodology described herein, and Customer shall indemnify Pipeline from and against any and all losses, damages, expenses, claims, suits, actions and proceedings whatsoever threatened, incurred or initiated as a result of Pipeline's reliance on such allocation methodology.

8. CURTAILMENT

- 8.1 Pipeline shall have the right to curtail or discontinue transportation services, in whole or in part, on all or a portion of its system, at any time for reasons of force majeure or when, in Pipeline's sole judgment, acting reasonably, capacity or operating conditions so require or it is desirable or necessary to make modifications, repairs or operating changes to its system. Pipeline shall provide Customer and interconnecting facilities operators such notice of the curtailment as is reasonable under the circumstances.
- 8.2 In the event that service is interrupted or curtailed, Pipeline shall reduce each Customer's scheduled service in the reverse order of that outlined for the scheduling of nominations in Article 6 of the GT&C.
- 8.3 If curtailment or interruption is caused by an event occurring at a specific Point of Receipt or Point of Delivery or lateral, quantities will be curtailed based on the utilization of that point as firm or interruptible and in the order specified above.
- 8.4 All quantities received and/or taken in violation of Pipeline's curtailment or interruption notices shall constitute unauthorized receipts or deliveries of gas to which a charge per GJ equal to the Adjusted Index Price shall be assessed in addition to any other applicable toll, charge or penalty. Such charge shall be applicable to all such unauthorized receipts and deliveries following notification of curtailment or interruption pursuant to Section 8.5 below, which may be given by telephone, confirmed by facsimile transmission or any other reasonable means.
- 8.5 Notice of Curtailment.
- (a) Notice by Pipeline. Pipeline shall provide Customer and interconnecting facilities operators with notice of curtailment or interruption at a time and in a manner that is reasonable under then existing conditions, and shall in any event confirm in writing or by facsimile transmission the notice given if originally provided telephonically.
- (b) Notice by Customer. Customer shall have the responsibility to inform its end-users, suppliers and all others involved in the transaction, as to any curtailment or interruption.
- 8.6 Except as provided in Section 8.7 below, in the event Pipeline fails to deliver on any one Day at least 97% of the quantity of gas requested by Customer to be delivered by Pipeline at Point(s) of Delivery which Pipeline is obligated to deliver on a firm basis at such Point(s) of Delivery on such Day up to the MDTQ, or at least 100% of a Customer's nomination which Pipeline has confirmed pursuant to Article 6, the reservation charge shall be decreased by an amount equal to the reservation charge on a 100% load factor basis multiplied by the quantity of gas not delivered up to the lesser of the total quantity of gas requested and not delivered, or the MDTQ.

- 8.7 Pipeline shall not be obligated to adjust the reservation charge pursuant to Section 8.6 above, when Pipeline's failure to deliver on any one Day at least 97% of the quantity of gas requested by Customer to be delivered at Point(s) of Delivery which gas Pipeline is obligated to deliver on a firm basis at such Point(s) of Delivery on such Day up to the MDTQ:
- (a) is the result of the conduct of Customer or the downstream operator of the facilities at the Point of Delivery;
 - (b) is the result of Pipeline having operational flow orders in effect against Customer on such Day;
 - (c) is the result of Pipeline performing routine operational maintenance and repair, provided that Pipeline provides at least five (5) Days notice of such maintenance and repair;
 - (d) is the result of Pipeline performing at any time repair and maintenance of its facilities to comply with applicable regulatory requirements; or
 - (e) occurs during a force majeure event as contemplated by Article 23 of the GT&C and subject to the notice and due diligence requirements of Article 23 of the GT&C (Force Majeure), however, (c) and (d) are also subject to the notice and due diligence requirements of Article 23 of the GT&C (Force Majeure).

Provided that if in any Service Year, Pipeline fails to deliver, for any reason other than as set forth in (a), (b) and (d) above, an aggregate of 97% of the quantity of gas requested by Customer to be delivered at Point(s) of Delivery which gas Pipeline is obligated to deliver on a firm basis at such Point(s) of Delivery in such Service Year ("Shortfall Quantity"), the reservation charge shall be decreased by an amount equal to the reservation charge on a 100% load factor basis multiplied by the Shortfall Quantity.

- 8.8 If in any Service Year, Pipeline fails to deliver, for any reason, the quantity of gas requested by Customer to be delivered at Point(s) of Delivery which gas Pipeline is obligated to deliver on a firm basis at such Point(s) of Delivery, and Pipeline has not decreased Customer's reservation charge with respect to such quantities pursuant to Section 8.6, then Pipeline shall use all reasonable efforts to provide Customer with an equivalent amount of transportation service ("Make-Up Service") during the period ending in the Service Year following the Service Year in which the failure to deliver occurred. Pipeline shall not charge any reservation charge for such Make-Up Service.
- 8.9 Customer shall indemnify Pipeline against and hold Pipeline harmless from any and all damages, claims, suits, actions or proceedings whatsoever threatened or initiated as a result of any curtailment or interruption invoked by Pipeline; which shall include any curtailment or interruptions described in any part of Article 8; except if such damages, claims, suits, actions or proceedings are due to Pipeline's gross negligence, undue discrimination or willful misconduct.

9. ASSIGNMENTS

- 9.1 Assignments. A Customer ("Assignor") may voluntarily assign all or a portion of its firm service rights on a temporary or permanent basis to a replacement customer ("Assignee") pursuant to the provisions of this Article 9 of the GT&C.
- 9.2 Use of ECS to Facilitate Customer Assignments. Pipeline will make its ECS available to Assignors seeking to locate Assignees. Assignors may post the availability of their capacity along with any specific conditions relating thereto on the ECS. Any parties interested in such capacity would be required to contact the Assignor directly.
- 9.3 Temporary Assignments. An Assignor may assign all or a portion of its contracted capacity and associated contractual rights (excluding any contract termination rights) (the "Assigned Service") to an Assignee on a temporary basis without prior approval from Pipeline. At the end of the assigned term, the Assigned Service shall revert back to the Assignor. Upon receipt of an executed temporary assignment agreement between the Assignor and the Assignee, Pipeline will treat the Assignee as a Customer with a service entitlement equal to the assigned capacity during the term of the assignment and Pipeline will invoice the Assignee directly. The Assignor shall not be released from its obligations to Pipeline with respect to the Assigned Service and shall be responsible for such obligations in the event the Assignee defaults. Pipeline shall notify the Assignor in the event the Assignee fails to pay part or all of the amount of any invoice for service provided when such amount is due in accordance with Article 15 of the GT&C.
- 9.4 Permanent Assignments. An Assignor may assign all or a portion of its contracted capacity and associated contractual rights to an Assignee on a permanent basis. Upon Pipeline entering into a permanent assignment agreement with the Assignor and Assignee, Pipeline will treat the Assignee as a Customer with a service entitlement equal to the assigned capacity for the remaining term of the agreement and Pipeline will invoice the Assignee directly. In the event there is a permanent assignment of Customer's capacity, Pipeline will agree to discharge the Assignor of liability, on a prospective basis, for the portion of the capacity assigned, provided: (i) the Assignee meets or exceeds the initial creditworthiness test met by the Assignor; or (ii) Pipeline and Pipeline's lenders agree to such discharge.

10. OPERATIONAL FLOW ORDERS

- 10.1 Pipeline reserves and will have the right to issue operational flow orders when, in Pipeline's sole judgment, acting reasonably, such action is required to preserve the integrity of Pipeline's system, to ensure adequate operating pressures, to have adequate supplies in the system, to assure adequate Company Used Gas, to maintain firm services and to optimize the operation of the system. Pipeline shall not impose an operational flow order primarily for the purpose of relieving Pipeline of its obligations to make any reservation charge credit adjustment. To the extent possible, Pipeline will identify discrete Customer(s) whose action(s) require Pipeline to issue an operational flow order(s) and Pipeline will limit the applicability of operational flow order(s) to such Customer(s). Notwithstanding the foregoing, if Pipeline is unable to identify discrete Customer(s) whose action(s) require issuance of an operational flow order, operational flow order(s) will be issued as necessary to resolve the operational problem.
- 10.2 If Pipeline is required to issue an operational flow order, Pipeline will post a notice of such operational flow order on the system with a description of the necessity of such order, the Customer(s) to which the order is directed, and the anticipated duration of such order. To the extent discrete Customer(s) are not identified in any notice of an operational flow order, such order will be applicable to all Customers. To the extent feasible under the circumstances, Pipeline will post any notice of an operational flow order on the ECS at least 24 hours prior to such order becoming effective. Pipeline will post a notice on the ECS informing Customer(s) when any operational flow order in effect will be canceled.
- 10.3 To the extent Pipeline issues an operational flow order and Customer(s) does not comply with such order, Pipeline will assess and Customer will be obligated to pay Pipeline a fee per GJ equal to the Adjusted Index Price for failure to comply with such order. Such fee will be assessed on each GJ of gas received into or delivered out of Pipeline's system when such receipts and/or deliveries are not in compliance with any operational flow order in effect.

11. BALANCING

11.1 Balancing. Customer shall endeavor to monitor and, if necessary, adjust receipts and deliveries of gas in order to maintain a concurrent balance between quantities of gas received at the Point(s) of Receipt, adjusted for appropriate Fuel Retainage Quantity, and quantities of gas delivered at the Points(s) of Delivery. Pipeline shall not be obligated to receive or make available gas in excess of the scheduled receipt quantities up to the MDRO, nor shall Pipeline be obligated to deliver to Customer at the Point(s) of Delivery quantities in excess of scheduled delivery quantities up to the MDDO. Any adjustment to deliveries and receipts by Customer shall be coordinated with Pipeline and in accordance with the scheduling procedures set forth in Article 6.

If Customer fails to maintain a balance between quantities of gas received (adjusted for appropriate Fuel Retainage Quantities) and quantities of gas delivered, or inaccurately nominates receipts and deliveries, Pipeline shall impose one or more of the imbalance or overrun charges set forth in this article, as applicable.

11.2 Balancing Charges.

(a) Daily Balancing. The "Daily Imbalance" shall be the absolute difference between the actual quantities received from Customer at all Point(s) of Receipt, adjusted for appropriate Fuel Retainage Quantities and any make-up quantities for correcting imbalances, and the actual quantities taken by Customer at all Point(s) of Delivery on a particular Day. For firm Service Agreements, the "Daily Imbalance Percentage" on any Day shall be equal to one hundred (100) times the Daily Imbalance divided by Customer's MDTQ. For interruptible Service Agreements, the "Daily Imbalance Percentage" shall be equal to one hundred (100) times the Daily Imbalance divided by the quantity nominated by Customer at the Point(s) of Delivery on that Day. On any Day, as applicable, and after minimization in accordance with Section 11.4, Pipeline shall charge Customer, and Customer shall pay, a daily imbalance charge as follows (provided that there will be no charge: (i) for any Daily Imbalance of less than 2,000 GJ; (ii) for any Daily Imbalance incurred prior to November 1, 2000; (iii) with respect to any new Customer that starts service within the Initial Period or Secondary Period, for any Daily Imbalance incurred for the first ninety (90) Days the Customer makes use of Pipeline's system; or (iv) with respect to any new Customer that starts service within the Final Period, for any Daily Imbalance incurred within the first thirty (30) Days the Customer makes use of Pipeline's system):

Initial Period: November 1, 2000 to October 31, 2001

<u>Daily Imbalance Percentage</u>	<u>Daily Imbalance Charge</u> <u>(Multiple of Undiscounted MN365 toll)</u>
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0% - \leq 20%

0

>20% - ≤40%	0.5
>40%	1.0

Secondary Period: November 1, 2001 to October 31, 2002

<u>Daily Imbalance Percentage</u>	<u>Daily Imbalance Charge (Multiple of Undiscounted MN365 toll)</u>
0% - ≤10%	0
>10% - ≤20%	0.5
>20%	1.0

Final Period: November 1, 2002 Onward

<u>Daily Imbalance Percentage</u>	<u>Daily Imbalance Charge (Multiple of Undiscounted MN365 toll)</u>
0% - ≤5%	0
> 5% - ≤10%	0.5
>10%	1.0

Any daily imbalance charge shall be in addition to, and not in place of, any other charges under this Article 11.

- (b) Cumulative Balancing. The "Cumulative Imbalance" shall be the absolute value of the accumulation of the daily differences between the actual quantities received from Customer at the Point(s) of Receipt, adjusted for appropriate Fuel Retainage Quantity, and the actual quantities taken by Customer at the Point(s) of Delivery. For firm Service Agreements, the "Cumulative Imbalance Percentage" on any Day shall be equal to one hundred (100) times the Cumulative Imbalance divided by Customer's average MDTQ over the previous thirty (30) Days. For interruptible Service Agreements, the "Cumulative Imbalance Percentage" shall be equal to one hundred (100) times the Cumulative Imbalance divided by the average daily quantity nominated by Customer at the Point(s) of Delivery over the previous thirty (30) Days. On any Day, as applicable, and after minimization in accordance with Section 11.4, Pipeline shall charge Customer, and Customer shall pay, a cumulative imbalance charge as follows (provided that there will be no charge: (i) for any Cumulative Imbalance of less than 5,000 GJ; (ii) for any Cumulative Imbalance incurred prior to November 1, 2000; (iii) with respect to any new Customer that starts service within the Initial Period or Secondary Period, for any Cumulative Imbalance incurred for the first ninety (90) Days the Customer makes use of Pipeline's system; or (iv) with respect to any new Customer that starts service within the Final Period, for any Cumulative Imbalance incurred within the first thirty (30) Days the Customer makes use of Pipeline's system):

Initial Period: November 1, 2000 to October 31, 2001

<u>Cumulative Imbalance Percentage</u>	<u>Cumulative Imbalance Charge (Multiple of Undiscounted MN365 toll)</u>
0% - ≤50%	0
>50% - ≤100%	0.25
>100%	0.5

Secondary Period: November 1, 2001 to October 31, 2002

<u>Cumulative Imbalance Percentage</u>	<u>Cumulative Imbalance Charge (Multiple of Undiscounted MN365 toll)</u>
0% - ≤25%	0
>25% - ≤50%	0.25
>50%	0.5

Final Period: November 1, 2002 Onward

<u>Cumulative Imbalance Percentage</u>	<u>Cumulative Imbalance Charge (Multiple of Undiscounted MN365 toll)</u>
0% - ≤12.5%	0
>12.5% - ≤25%	0.25
>25%	0.5

Any cumulative imbalance charge shall be in addition to, and not in place of, any other charges under this Article 11.

11.3 Balancing Overrun Service. For purposes of reducing a Cumulative Imbalance, Pipeline may allow Customer to nominate quantities in excess of the MDTQ (and corresponding MDRO(s) and MDDO(s)) as stated in Customer's Service Agreement, provided that such action will not impair the integrity of Pipeline's system nor Pipeline's ability to maintain firm services. In the event that Pipeline allows such an overrun service on any Day, then with respect to the quantity in excess of the MDTQ, Pipeline shall charge Customer, and Customer shall pay: (i) the Usage Charge Outside Tolerances set forth in the applicable Toll Schedule; and (ii) any amount by which the highest bid for interruptible service on that Day exceeds the 100% load factor undiscounted MN365 toll. Any such overrun charge shall be in addition to, and not in place of, any other charges under this Article 11.

11.4 Balancing Charge Provisions Inapplicable. Pipeline will not assess imbalance charges in the event Customer's failure to take corrective action or Customer's failure to correctly nominate gas deliveries is caused by Pipeline's actions or force majeure conditions as defined in Article 23 hereof. No imbalance charge shall be imposed when a prior period adjustment applied to the current period causes or increases a current cumulative charge. In calculating excess and

deficient quantities, Pipeline shall take into consideration: (i) make-up quantities used to correct any excess or deficiency in receipt and deliveries; and (ii) for purposes of assessing imbalance charges, any offsetting excess or deficiency under other transportation contracts between Pipeline and Customer.

- 11.5 Balance Charge Provisions Not Exclusive. Nothing in this Article 11 shall limit Pipeline's right to take such action as may be required to adjust deliveries and receipts in order to alleviate conditions which threaten the integrity of its system, nor prevent Pipeline from exercising any other legal remedies which may be available.

12. QUALITY OF GAS

The provisions set forth in this Article 12 shall apply to all gas received or delivered by Pipeline, except as expressly set forth herein to the contrary.

12.1 Natural or Artificial Gas. The gas received or delivered by Pipeline hereunder shall be a combustible gas consisting wholly of, or a mixture of:

- (a) Natural gas of the quality that meets Pipeline specifications.
- (b) Gas generated by vaporization of liquefied natural gas.
- (c) Manufactured, reformed, or mixed gas consisting essentially of hydrocarbons of the quality and character produced by nature in the petroleum, oil and gas fields with physical properties such that when the artificial pipeline gas is commingled with natural gas, the resulting mixture is indistinguishable from natural gas complying with specifications under the GT&C.

12.2 Total Heating Value.

- (a) No gas received or delivered hereunder shall have a Total Heating Value below 36 MJ/m^3 or above 41 MJ/m^3 .
- (b) The Total Heating Value shall be determined by gas chromatographic analysis using most recent AGA standards or any revision thereof, or by other methods mutually agreed upon by Customer and Pipeline.

12.3 Composition.

- (a) Merchantability. The gas shall be commercially free, under continuous gas flow conditions, from objectionable odors (except those required by applicable regulations), solid matter, dust, gums, and gum-forming constituents which might interfere with its merchantability or cause injury to or interference with proper operations of the pipelines, compressor stations, meters, regulators or other appliances through which it flows.
- (b) Oxygen. The gas shall not have an uncombined oxygen content in excess of two-tenths (0.2) of one percent (1%) by volume, and both parties shall make every reasonable effort to keep the gas free from oxygen.
- (c) Non-Hydrocarbon Gases. The gas shall not contain more than four percent (4%) by volume, of a combined total of non-hydrocarbon gases (including carbon dioxide and nitrogen); it being understood, however, that the total carbon dioxide content shall not exceed three percent (3%) by volume.
- (d) Liquids. The gas shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the gas is received and delivered.

- (e) Hydrogen Sulfide. The gas shall not contain more than six (6) milligrams of hydrogen sulphide per one (1) Cubic Metre.
- (f) Total Sulphur. The gas shall not contain more than four-hundred and sixty (460) milligrams of total sulphur, excluding any mercaptan sulphur, per one (1) Cubic Metre.
- (g) Temperature. The gas shall not have a temperature of more than forty-nine degrees (49°) Celsius.
- (h) Water Vapor. The gas shall not contain in excess of eighty (80) milligrams of water vapor per one (1) Cubic Metre.
- (i) Liquefiable Hydrocarbons. The gas shall not contain liquid hydrocarbons or hydrocarbons liquefiable at temperatures warmer than minus nine degrees (-9°) Celsius and normal pipeline operating pressures of between 690 and 9930 kPag.
- (j) Microbiological Agents. The gas shall not contain any microbiological organism, active bacteria or bacterial agent capable of contributing to or causing corrosion and/or operational and/or other problems.

Microbiological organisms, bacteria or bacterial agents include, but are not limited to, sulfate reducing bacteria (SRB) and acid producing bacteria (APB). Tests for bacteria or bacterial agents shall be conducted on samples taken from the meter run or the appurtenant piping using American Petroleum Institute (API) test method API-RP38 or any other test method acceptable to Pipeline and Customer which is currently available or may become available at any time.

12.4 If the gas tendered for Customer's account to Pipeline shall fail at any time to conform to any of the specifications set forth in this Article 12 or in Pipeline's reasonable judgment, may cause harm to its facilities or diminish the quality of gas in the system, then Pipeline shall have the right, after either written, oral or telephonic notice to Customer, to refuse to accept all or any portion of such quality deficient gas. In the event Pipeline refuses to accept gas tendered by Customer because such gas does not conform to the specifications set forth herein, Customer shall not be relieved of its obligation to pay any reservation charge provided for in Customer's Service Agreement. If the gas tendered by Pipeline for Customer's account shall fail at any time to conform to any of the specifications set forth in this Article 12 then Customer shall notify Pipeline of such deficiency and may, at its option, refuse to accept delivery pending correction by Pipeline.

12.5 Should Customer choose not to process or cause to be processed any gas which fails to conform to any of the specifications set forth in this Article 12, Pipeline, at any time and from time to time, shall have the right, either by written, oral or telephonic notice to Customer, to arrange for any necessary processing of Customer's quality deficient gas tendered to Pipeline to ensure such gas meets

the minimum quality specifications set forth in this Article 12. Upon Customer's request, Pipeline shall also attempt to contact Customer's gas supplier to determine what steps the supplier may take to make the gas conform to any of the specifications set forth in this Article 12. Pipeline shall bill the applicable Customer and such Customer shall pay Pipeline for all costs (including shrinkage and administrative costs) incurred by Pipeline relating to the processing of the Customer's gas as necessary to ensure that Pipeline fully recovers such costs and applicable carrying charges.

- 12.6 Pipeline shall have the unqualified right to commingle gas transported hereunder with gas from other sources. It is recognized that gas delivered may not be the same molecules as those received at the Point of Receipt and may exclude constituents lost as a result of normal pipeline operations. Customer may elect to process its gas for the purpose of removing any of its constituent parts, and ownership in such constituent parts shall vest in Customer, provided that such action does not result in the gas failing to conform to any of the specifications set forth in this Article 12 and such action does not adversely impact Pipeline's facilities or operations. For any period for which Customer elects to process its gas, Customer or other applicable party shall be obligated to perform and pay for such processing for all relevant gas quantities during such period. The quantities of gas delivered hereunder at the Point(s) of Delivery shall be thermally equivalent to the quantities of gas received at the Point(s) of Receipt for transportation less applicable Fuel Retainage Quantities and, if applicable, any reduction due to processing.
- 12.7 Pipeline and Customer may agree, or governmental authorities may require, that the gas be odorized by use of a malodorant agent of such character as to indicate by a distinctive odor the presence of gas. Whenever odorized gas is delivered, the quality and specifications, as set forth in this Article 12 of such gas shall be determined prior to the addition of malodorant or with proper allowance for changes or additions due to such malodorant. Such odorization of the gas by the Pipeline, unless otherwise mutually agreed by Customer and Pipeline, shall be for the purpose of detection of the gas only during the time, prior to delivery to the Customer, when in possession of the Pipeline. Pipeline and Customer may agree from time to time, to allow Customer to deliver odorized gas to Pipeline. Pipeline shall not be obligated to receive such odorized gas from Customer when such receipt may, in Pipeline's sole discretion, be detrimental to Pipeline's system operations.

13. PRESSURE

- 13.1 Receipt Pressure Obligations. Customer shall deliver gas or cause gas to be delivered to Pipeline for Customer's account at the Point(s) of Receipt at the pressure conditions specified in the effective Service Agreement; provided, that Pipeline shall not be obligated to reduce the pressures in its facilities at such Point of Receipt(s) below the pressures which it determines, in its sole judgment, are required from time to time for the operation of its facilities.
- 13.2 Delivery Pressure Obligations. Pipeline shall deliver gas hereunder for Customer's account at the Point(s) of Delivery at the pressure conditions specified in the effective Service Agreement. Pipeline shall not be obligated to deliver gas at any time at a pressure in excess of the maximum allowable operating pressure for Pipeline's facilities at such Point(s) of Delivery. In addition, Pipeline and Customer may specify in the executed Service Agreement a minimum delivery pressure obligation at any Point(s) of Delivery, and Pipeline shall not be obligated to reduce the pressures in its facilities at such Point(s) of Delivery below such minimum delivery pressure obligation.
- 13.3 In no event shall Pipeline be responsible for over-pressure protection on Customer(s) facilities.

14. MEASUREMENT & MEASUREMENT EQUIPMENT

14.1 Determination of Quantity. For all purposes under this Tariff, quantities at the Point of Receipt shall equal the actual quantities received, less Fuel Retainage Quantities determined pursuant to the Tariff. Where Customer is taking gas for delivery to Maritimes & Northeast Pipeline, L.L.C. or other downstream pipeline and there are no measurement facilities at the Point of Delivery, quantities at that Point of Delivery shall equal actual quantities delivered to Customer off of Maritimes & Northeast Pipeline, L.L.C. or other downstream pipeline, plus Fuel Retainage Quantities determined pursuant to the tariff of Maritimes & Northeast Pipeline, L.L.C. or other downstream pipeline. The quantity of gas received and delivered by Pipeline for Customer's account hereunder shall be measured according to Boyle's and Charles' Laws for the measurement of gas under varying pressures and temperatures with deviations therefrom as provided in Section 14.9 below and shall be determined as follows:

- (a) The unit of measurement for the purpose of service under any of Pipeline's Toll Schedules shall be one (1) GJ. The number of GJ's delivered shall be determined by multiplying the number of Cubic Metres of gas received or delivered, measured on the measurement basis hereinafter specified, by the Total Heating Value of such gas, in MJ/m³, as defined in Article 1 of the GT&C, and by dividing the product by 1 million (1,000,000).
- (b) The unit of quantity for the purpose of measurement shall be 1 Cubic Metre of gas at a temperature of 15° Celsius and an absolute pressure of one hundred one and three hundred twenty-five thousandths kiloPascals (101.325 kPa).
- (c) The unit of weight for the purpose of measurement shall be one (1) kilogram mass of gas.
- (d) The average absolute atmospheric pressure shall be assumed to be 99 kiloPascals.
- (e) The temperature of the gas passing through the meters shall be determined by the use of electronic transducers, recording thermometer or other temperature measuring devices. The instantaneous measurement from the electronic measurement equipment or the arithmetic average of the temperature recorded each Day shall be used in computing gas quantities.
- (f) The specific gravity of the gas flowing through the meters shall be determined by gas chromatographic analysis, recording gravimeter, or continuous or spot sampling methods, unless otherwise mutually agreed upon by Customer and Pipeline. The arithmetic average of the specific gravity recorded during each 24-hour Day shall be used in computing gas quantities or other periodic measurements within a shorter time frame or

instantaneous specific gravity measurements may be applied to metering instruments to provide the quantity computation.

- (g) When orifice meters are used, the computation of quantities of gas delivered shall be in accordance with the recommendations as published by the American Gas Association's Report No. 3, Revised - 1994, (ANSI/API 2530), and any subsequent amendments thereof as may be mutually agreed upon by Customer and Pipeline.
- (h) The Total Heating Value shall be measured, unless otherwise agreed by the parties concerned, by methods in accordance with acceptable industry practice, such as, but not limited to, recording calorimeter(s) or gas chromatograph(s) located at appropriate points. The arithmetic average of the heating value recorded each 24-hour Day and as adjusted to conditions as specified in Article 1 of the GT&C, or other periodic measurements within a shorter time frame as Pipeline shall select, shall be used for computations.
- (i) The deviation of the gas delivered hereunder from Boyle's and Charles' Laws shall be determined in accordance with, but not limited to, the published recommendations of the American Gas Association's Report No. 3, Revised - 1994 and the American National Standards Institute as Pipeline deems to be in accordance with generally accepted industry practice.

14.2 Measurement Operations and Equipment. Measurement operations ("Measurement Operations") shall include, but not be limited to, the operation, calibration and testing of the RTU, transducers, chart recorders, meter runs, gas quality monitoring devices, control valves and responsibility for quantity calculations for the measurement facility. Pipeline may allow Customer or third parties the right to perform Measurement Operations, provided that such Customer or third party furnishes to Pipeline all data required for flow computation and can meet Pipeline's measurement and operating standards; and provided, further, such Customer or third party which performs such Measurement Operations shall be responsible for any and all associated costs of such Measurement Operations unless otherwise agreed by Pipeline and Customer or third party. Measurement equipment shall consist of the necessary metering devices, designed and installed in accordance with the current published recommendations of the American Gas Association or as mutually agreed upon by Customer and Pipeline, measurement equipment shall be installed, operated and maintained at or on each interconnection of Pipeline's facility with facilities of third parties; provided, however, Pipeline shall have the right to require and may install or cause to be installed electronic gas measurement and control equipment at all points.

- (a) Where orifice measurement equipment is to be used, it shall utilize "Flange Tap Connections" and the static pressure shall be measured at the down-stream flange tap connection.

- (b) An electronic temperature transducer, a recording thermometer or other mutually acceptable device shall be installed at the measuring station to measure the flowing gas temperature.
- 14.3 Access to Equipment and Records. Each party shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's equipment used in measuring receipts and deliveries hereunder. The records from such measurement equipment shall remain the property of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within thirty (30) Days after receipt thereof.
- 14.4 Pressure Protection. Pressure regulation, pressure override and pressure relief valve or other pressure limiting devices installed and operated by Pipeline at the measuring station or at or near each interconnection of Pipeline's facilities with facilities of third parties shall only be for the purpose of operation and protection of Pipeline's measurement equipment and Pipeline's facilities.
- 14.5 Test of Meters. The accuracy of Pipeline's and Customer's measurement equipment shall be verified by Pipeline and Customer at reasonable intervals and, if requested, in the presence of representatives of Pipeline and Customer.
- (a) Pipeline and Customer shall not be required to verify the accuracy of orifice meter equipment more frequently than once in any thirty (30) Day period.
- (b) Pipeline and Customer shall not be required to verify the accuracy of measurement equipment, other than orifice meter equipment, more frequently than once in any ninety (90) Day period.
- (c) Pipeline and Customer shall not be required to verify the accuracy of the gas chromatograph or other heating value measurement device more frequently than once in any thirty (30) Day period.
- (d) Any errors or discrepancies found when testing shall be corrected immediately whenever possible or as soon thereafter as procurement of repair parts, materials and tools can be arranged.
- 14.6 Measurement Equipment Inaccuracy and Failure. The quantity of gas received and delivered by Pipeline and delivered to Customer or for Customer's account hereunder during periods when the measurement equipment is out of service or registering inaccurately shall be estimated as follows:
- (a) If, upon test, any measurement equipment, the readings of which are used in the registration, integration or computation of quantities of gas hereunder, is found to be in error to the extent that it introduces not more than one percent (1%) measurement error in the individual measurement

equipment affected, previous records of such equipment shall be considered accurate;

- (b) If, upon test, any such above measurement equipment is found to be in error, to the extent that it causes the registered or computed quantities of the instrument(s) so affected to be in error, by an amount exceeding one percent (1%) at a recording corresponding to the average hourly rate of flow through the instrument(s) in the period since the last preceding test, then any registrations, integration or computed quantities of such instrument(s) affected shall be corrected to zero (0) error for any part of the period since the last test in which such error is known to have existed or which may be agreed upon by representatives of the parties. In case the period of such error is not known definitely or agreed upon, such correction shall be for a period of one-half (1/2) of the elapsed time since the date of the last test, but not exceeding a correction period of sixteen (16) Days where orifice measurement equipment is used in the computation of quantity and not exceeding forty-five (45) Days where other measurement equipment is used; and
- (c) If no tests have been performed to determine the degree of inaccuracy, or measurement equipment is out of service, the quantity of gas shall be estimated:
 - (1) By using the registration of any existing and agreed upon check equipment considered by parties concerned to be registering accurately, or in the absence of such facilities,
 - (2) By correcting the error, if the quantity or percentage of error is ascertainable by calibration, test, or mathematical calculation, or if neither of the two foregoing procedures are applicable,
 - (3) By relating the quantity of receipt or delivery to receipts or deliveries during periods under similar conditions when the measurement equipment was deemed to have been registering accurately.

14.7 Preservation of Records. Each party shall preserve for a period of at least two (2) years all test data, charts and other similar records or such longer period as may be required by the NEB.

14.8 Flow Control. The Pipeline shall control flow of gas into and out of its facilities at all measurement facilities, but may allow the following if all of Pipeline's operating standards and requirements are met: (a) Pipeline may allow third parties to control flow into the Pipeline's facilities, and (b) Pipeline may allow third parties to control flow out of the Pipeline's facilities, but reserves the right to override the third party's flow control equipment.

14.9 Maintenance.

- (a) Major maintenance ("Major Maintenance") shall include, but not be limited to, the repair or replacement of major components and equipment required to support the Measurement Operations. For measurement facilities which Customer or third party owns and for which Pipeline performs Measurement Operations, such Customer or third party shall be responsible for any and all associated costs of such Major Maintenance unless otherwise agreed by Pipeline and Customer or third party.
- (b) Routine maintenance ("Routine Maintenance") shall be the normal Day to Day maintenance required to support the Measurement Operations or necessary to upkeep the measurement facility and shall include, but not be limited to, replacement of minor replacement parts for instrumentation, measurement equipment (including the RTU) and minor valves and piping. The entity (Pipeline, Customer or third party) which performs the Measurement Operations for the measurement facility shall also be responsible for such Routine Maintenance and any and all associated costs of such Routine Maintenance unless otherwise agreed by Pipeline and Customer or third party.

15. INVOICES AND PAYMENTS

- 15.1 Pipeline shall bill Customer on or before the 10th Day of each Month for all charges and costs incurred hereunder during the preceding Month according to the measurement, computations and charges provided in this Tariff. If actual quantities are unavailable in time to prepare the billing, such charges shall be based on estimated quantities and Pipeline shall provide, in the succeeding Month's billing, an adjustment based on any difference between actual quantities and estimated quantities.
- 15.2 The invoice submitted pursuant to Section 15.1 shall be paid by Customer so that Pipeline will receive the funds no later than ten (10) Days from the date of the invoice, except when such Day is a Saturday, Sunday or bank holiday applicable to the bank to which the payment is being remitted, in which case payment is due the following Business Day (hereinafter called "Due Date"). All payments shall be by Electronic Funds Transfer to a bank account designated by Pipeline, or by mutual agreement, made in immediately available funds payable to Pipeline. If Customer pays by cheque, payment shall be considered to have been made one Business Day after the date of receipt of such cheque at the address specified on the invoice. If Customer pays by Electronic Funds Transfer, payment shall be considered to have been made on the date when such payment is transferred by Customer to a bank account designated by Pipeline. All payments shall be identified by invoice number(s) and if payment differs from the invoiced amount, remittance detail shall be provided with payment.
- 15.3 Should Customer fail to pay part or all of the amount of any invoice for service provided when such amount is due, Pipeline may charge interest on the unpaid portion of the invoice computed from such Due Date until the date of payment at the prime rate of interest of the Canadian Imperial Bank of Commerce. If such failure to pay continues for ten (10) Days after payment is due, Pipeline shall notify Customer of the delinquency. In the event payment is not received within twenty (20) Days of the first delinquency notice, Pipeline will provide a second delinquency notice requesting payment within five Business Days. Should Customer's delinquency continue, Pipeline will provide Customer with a third and final notice stating that if payment is not received within five Business Days, then Pipeline, in addition to any other remedy it may have, may suspend further receipt and delivery of Customer's gas until such amount is paid or terminate Customer's Service Agreement. In the event of such termination of the Service Agreement, Pipeline shall serve Customer with written notice of the termination.
- 15.4 If Customer in good faith shall dispute in writing the amount of any such invoice or parts thereof and shall pay to Pipeline such amounts as it concedes to be correct, and at any time thereafter within thirty (30) Days of demand made by Pipeline shall furnish a good and sufficient surety bond guaranteeing payment to Pipeline of the disputed amount pending a final determination with respect thereto, which may be reached either by agreement or judgment of the courts as may be the case, then Pipeline shall not be entitled to suspend further service unless and until default be made in the conditions of such bond. If resolution of

the dispute is in favour of Customer and Customer furnished a surety bond instead of paying the disputed amount, then Pipeline shall reimburse Customer for the cost of securing that surety bond. No payment by Customer of the amount of a disputed invoice shall prejudice the right of Customer to claim an adjustment of the disputed invoice, subject to Section 15.5 herein.

- 15.5 In the event an error is discovered in the amount billed in any invoice rendered by Pipeline, such error shall be corrected within thirty (30) Days of the determination thereof, provided that claim therefor shall have been made in writing within twelve (12) Months. No errors in billing will be corrected if a claim therefor has not been made in writing within twelve (12) Months of the date of the applicable invoice.
- 15.6 Customer is responsible for customs, duty, taxes, and any other charges associated with the import of gas into or export of gas out of Canada.
- 15.7 Refunds due Customer pursuant to the terms of this Tariff or orders of the NEB shall be paid by Electronic Funds Transfer to a bank account established by Customer if:
- (a) Customer has transmitted payment for services to Pipeline by Electronic Funds Transfer within the twelve (12) Month period preceding the date of the refunds; and
 - (b) Customer has designated in writing a bank account for the receipt of Electronic Funds Transfers at least thirty (30) Days prior to the date established for refunds.

Refunds not paid by Electronic Funds Transfer or credit adjustment shall be paid by cheque.

- 15.8 Both Pipeline and Customer shall have the right to examine on reasonable notice and at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any invoice or claim rendered hereunder.
- 15.9 All amounts payable by Customer to Pipeline, for services rendered or any other amounts, are to be remitted to Pipeline in the legal currency of Canada, unless otherwise mutually agreed to between the parties.
- 15.10 Pipeline may designate an agent for the purpose of scheduling, allocating, invoicing and/or payment. In the event an agent is designated, the agent will comply with all applicable scheduling, allocation, invoicing, and/or payment terms set forth in this Tariff.

16. TERMINATION FOR DEFAULT

- 16.1 If either Pipeline or Customer shall fail to perform any of the covenants or obligations imposed upon it or them under and by virtue of a Service Agreement hereunder, then in such event the other party may at its option terminate such agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default stating specifically the cause for terminating the agreement and declaring it to be the intention of the party giving the notice to terminate the same; thereupon the party in default shall have thirty (30) Days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the agreement, and if within said period of thirty (30) Days the party in default does so remove and remedy said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, by a good and sufficient bond or otherwise, then such notice shall be withdrawn and the agreement shall continue in full force and effect. In case the party in default does not so remedy and remove the cause or causes or does not so indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) Days, then, after any necessary authorization by regulatory bodies having jurisdiction, the agreement shall become null and void from and after the expiration of said period, provided that notice of termination has not been withdrawn prior thereto. Any cancellation of such agreement pursuant to the provision of this paragraph shall be without prejudice to the right of Pipeline to collect any amounts then due to it for service prior to the time of cancellation and shall be without prejudice to the right of Customer to receive any service for which it has paid but has not received, although entitled thereto, prior to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of such agreement. Failure to perform an act that is excused due to, *inter alia*, force majeure does not constitute an event of default hereunder.
- 16.2 Prior to a termination for default, Pipeline may suspend service to any Customer who fails to comply with the GT&C, the applicable Toll Schedule, or Customer's Service Agreement. Pipeline's failure to invoke its right to terminate an agreement for default shall not be construed as a waiver of Pipeline's right to terminate service during any other period when Customer is in violation of the terms of this Tariff or of Customer's Service Agreement.

17. POLICY WITH RESPECT TO FEES AND CONSTRUCTION OF NEW FACILITIES

17.1 Customers may request that Pipeline construct a pipeline extension (other than a mainline extension) from Pipeline's existing facilities to deliver gas to one or more Customers, including new delivery points and enlargements or replacements of existing laterals. Pipeline is not required to build facilities upon Customer request or otherwise if a government of a province in which the facilities would be located objects or if, as determined by Pipeline in its reasonable judgment, such facilities are not operationally feasible, will adversely impact on Pipeline's existing services or would otherwise adversely impact Pipeline's system. In the event Pipeline decides to construct such facilities and the contracted demand requested by a Customer generates sufficient revenue each year, based on a test toll of \$0.05/MMBtu less than the current MN365 toll designed to maintain the competitiveness of Pipeline's tolls, to recover the annual cost of service associated with the incremental capital and operating cost of the facilities, Pipeline will proceed to construct the facilities without any contribution from the Customer. The test toll will remain in place until Pipeline's first mainline expansion at which time the appropriateness of the test toll may be revisited. If the facilities do not generate sufficient revenue to cover the cost of service associated therewith, Pipeline will require a Customer contribution in accordance with the following:

- (a) The annual cost of service associated with the facilities will be calculated for each year using conventional cost of service methodology based on Pipeline's estimate of the capital and operating costs of the facilities and a depreciation rate based on the term of the shipper's transportation contract.
- (b) A contribution will only be based on the period in which the facilities generate a revenue deficit.
- (c) Customers have the option of paying the contribution as a single lump-sum payment at the commencement of the facilities project or as a unit surcharge that would amortize the contribution over the term of the contract. If Customer elects to pay a surcharge, the surcharge may be adjusted up or down in future years, if existing Customers request additional service, or any new Customers request service, on the same facilities.

Where a Customer requests service that requires more than one set of facilities to be constructed in the same time frame, as determined by Pipeline, such sets of facilities can be considered as one project for the purposes of calculating the need for any contribution.

17.2 Pipeline may waive from time to time, at its discretion, all or a portion of the monetary reimbursement requirement set forth in Section 17.1 if it determines that construction of the facilities would be economic, based on Customer assurance of transportation throughput through the proposed facilities and other

matters, as described below. All requests for waiver shall be handled by Pipeline in a manner which is not unduly discriminatory.

For purposes of determining whether a project is economic, Pipeline will evaluate projects on the basis of various economic criteria, which may include, without limitation, the estimated transportation throughput, cost of the facilities, operating, maintenance, administrative and general expenses attributable to the facilities, the system net revenues Pipeline estimates will be generated subsequent to such construction and the availability of capital funds on terms and conditions acceptable to Pipeline. In estimating the system net revenues to be generated, Pipeline will evaluate the existence of capacity limitations of the existing facilities, the marketability of the capacity, the location of the markets, the nature of the transportation service, and other factors which impact the utilization of Pipeline's system.

- 17.3 Any monetary reimbursement due Pipeline by Customer pursuant to this Article 17 shall be due and payable to Pipeline within ten (10) Days of receipt by Customer of Pipeline's invoices for same; provided, however, such monetary reimbursement, plus carrying charges thereon, may be amortized over the contract term or a mutually agreeable period. Carrying charges shall be computed utilizing interest factors acceptable to both Pipeline and Customer.
- 17.4 Nothing in this statement of policy shall require Pipeline to file an application for a certificate of public convenience and necessity under Part III of the *National Energy Board Act*. Further, nothing in this policy statement shall prevent Pipeline from contesting an application for the provision of facilities filed pursuant to subsection 71(3) of the *National Energy Board Act* or a request to compel the rendition of service pursuant to subsection 71(2) of the *National Energy Board Act*. Pipeline reserves the right to seek a waiver of the policies set forth in this Article 17 for good cause shown during any proceeding before the NEB.

18. POSSESSION OF GAS

- 18.1 Control. Pipeline shall be deemed to be in control and possession of the gas hereunder upon receipt of such gas until it shall have been delivered for Customer's account, and Customer shall be deemed to be in control and possession of such gas prior to such receipt by Pipeline and after such delivery for Customer's account.
- 18.2 Responsibility. Pipeline shall have no responsibility with respect to the gas or on account of anything done, occurring or arising with respect to the gas before receipt of such gas by Pipeline or after delivery of the gas for Customer's account, and Customer shall have no responsibility with respect to the gas or on account of anything done, occurring or arising with respect to the gas while such gas is in Pipeline's possession; provided, however, in the event any gas flows through facilities of Customer prior to such delivery to or for Customer's account, Pipeline shall have no responsibility with respect to such gas or on account of anything which may be done, happen or arise with respect to such gas while in the facilities of Customer.

19. WARRANTY/INDEMNITY

Customer warrants that Customer will at the time of receipt of the natural gas by Pipeline have good and merchantable title to all of the natural gas free and clear of all liens, encumbrances and claims whatsoever or good right to tender gas for transportation (and all necessary authorizations related thereto). Customer warrants to Pipeline that at the time of delivery of natural gas to Pipeline it will have obtained, and will maintain, or will have arranged for an appropriate party to obtain and maintain, any necessary authorizations for the removal of Gas from the province of production, export of gas from Canada and import of gas into the United States and any other authorization required to permit its gas to be transported hereunder. Title or rights to the gas received by Pipeline for Customer's account hereunder shall remain with Customer during its transportation or storage by Pipeline. Customer agrees to indemnify and save Pipeline harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of adverse claims of any and all persons to the natural gas prior to its delivery to Pipeline for Customer's account and after its delivery by Pipeline for Customer's account. Pipeline agrees to indemnify and save Customer harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of adverse claims of any and all persons to the natural gas during its possession by Pipeline for Customer's account.

20. FUEL RETAINAGE QUANTITY

20.1 Fuel Retainage Quantity. The Fuel Retainage Quantity shall be the quantity of gas required as Company Used Gas by Pipeline to transport Customer's gas on its system. The Fuel Retainage Quantity shall be determined by multiplying the total nominated quantity of gas to be received at each Point of Receipt by the Fuel Retainage Percentage.

20.2 Fuel Retainage Percentage. The Fuel Retainage Percentage shall be determined by Pipeline based on its operating experience. On or before the twenty-fifth Day of the Month preceding each of the following two calendar periods, Pipeline shall provide Customer with written notice of any adjustments to be applied to the Fuel Retainage Percentage specified in the then current Toll Sheets of this Tariff:

- (i) Winter Period: November 1 through March 31
- (ii) Spring/Summer/Fall Period: April 1 through October 31

20.3 Adjustments. In determining adjustments, if any, to the Fuel Retainage Percentage for each of the periods specified in Section 20.2, Pipeline shall take into account the difference between: (i) the actual quantity of Fuel Retainage Gas realized as a result of application of this Article 20; and (ii) the actual quantity of Company Used Gas for the preceding period.

21. INVENTORY TRANSFER

- 21.1 A Customer entitled to service pursuant to a Service Agreement may transfer a quantity of gas that has been received into, but not delivered out of, Pipeline's facilities (such quantity of gas being referred to as "Inventory") to any other Customer entitled to service pursuant to a Service Agreement on the following terms and conditions outlined in this Article 21.
- 21.2 Customers wishing to transfer or receive Inventory shall provide Pipeline with written documentation satisfactory to Pipeline detailing:
- (a) the Customer transferring Inventory;
 - (b) the Customer receiving Inventory to be transferred;
 - (c) the quantity (in GJ's) of Inventory to be transferred;
 - (d) the effective date of the Inventory transfer; and
 - (e) if the documentation provides for Inventory to be transferred over a series of Days, the last of such series of Days upon which transfer is to be made.
- 21.3 Pipeline will accommodate Inventory transfers during the Nomination Cycles set forth in Article 5.
- 21.4 An Inventory transfer may be terminated prior to the date referred to in subsection 21.2(e) above, upon receipt by Pipeline of documentation satisfactory to Pipeline by one of the Customers involved in the transfer. The termination of the Inventory transfer will be effective at the next nomination time that is not less than six (6) hours from the time of receipt by Pipeline of the termination documentation.
- 21.5 The above terms and conditions are subject to all other provisions of the GT&C, including Article 11 ("Balancing Provisions").
- 21.6 An Inventory transfer may be carried out through an agent provided that Pipeline receives an executed Notice of Appointment of Agent for Daily Inventory Transfers, in the form prescribed by Pipeline, authorizing the agent to act on behalf of the Customers involved in the transfer.

22. PERIODIC TOLL ADJUSTMENTS

Pipeline and Customer recognize that Pipeline will from time to time experience changes in quantities and costs related to providing service under this Tariff, including, but not limited to, changes in the cost of labor, benefits, materials and supplies, taxes, required rate of return, costs associated with the resolution of past disputes or outstanding uncertainties concerning amounts owed by Pipeline or Customer or attributable to Pipeline or Customer, and costs generated by decisions of the NEB, the courts or by an arbitration panel or other body having jurisdiction over the Pipeline. Pipeline hereby notifies Customers that it may be appropriate, equitable and consistent with cost responsibility to allocate such costs among Customers based on or taking into account past period factors, such as contract demand levels, purchases or other factors related to a prior period of time. Pipeline hereby notifies Customers that Pipeline shall have the right from time to time to make toll change filings which may include such costs and utilize an allocation methodology based in whole or in part on factors related to past periods. Customer shall have the right to intervene and protest any such filing.

23. FORCE MAJEURE AND LIMITATION ON OBLIGATION TO PROVIDE SERVICE

- 23.1 Relief from Liability. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, land subsidence, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, line freezeps, failure of third party transportation, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.
- 23.2 Liabilities not Relieved. Such causes affecting performance by either party, however, shall not relieve it of liability in the event of its contributory negligence or misconduct or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve either party from its obligations to make payments of amounts as provided in the applicable Toll Schedule. Subject to Sections 8.6 and 8.7, Customer's obligation to pay applicable reservation charges shall not be suspended by any failure of Pipeline to deliver gas to or on behalf of Customer for any reason or cause whatsoever, whether or not described in this Article 23, except in the event that such failure is caused by the gross negligence, undue discrimination or willful misconduct of Pipeline.
- 23.3 Scheduling of Routine Maintenance. Pipeline shall have the right to curtail, interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform routine repair and maintenance on Pipeline's system as necessary to maintain the operational capability of Pipeline's system or to comply with applicable regulatory requirements. Pipeline shall exercise due diligence to schedule routine repair and maintenance so as to minimize disruptions of service to Customers and shall provide reasonable notice of the same to Customers.
- 23.4 Compliance with Directives of Governmental Agencies. Whenever in order to comply with orders, directives or regulations of duly constituted provincial, local or federal authorities Pipeline must curtail deliveries to Customer and is unable to deliver to Customer the quantities of gas which Customer may then require up to the quantities of gas Pipeline is then obligated to deliver to Customer, Pipeline shall not be liable in damages or otherwise to Customer or any other person or entity for any such failure to deliver such quantities of gas to Customer except to the extent the orders or directives were issued as a result of gross negligence, undue discrimination or willful misconduct or failure to exercise due diligence on the part of Pipeline.

- 23.5 Effect of Interconnecting Operations. In the event that any upstream entity involved in handling Customer's gas refuses or is unable to deliver gas to Pipeline, Pipeline shall not be required to continue deliveries of gas on behalf of Customer to the extent of such refusal or inability to deliver gas to Pipeline. In the event that any downstream entity, including without limitation, Maritimes & Northeast Pipeline, L.L.C., involved in handling Customer's gas refuses or is unable to receive gas from Pipeline, Pipeline shall have the right to reduce deliveries of gas on behalf of Customer to the extent of such refusal or inability by the downstream entity to receive gas from Pipeline.

24. TURNBACK

Prior to applying for regulatory approval to construct any new mainline or lateral expansion facilities to meet an incremental firm service request ("Incremental Firm Service Request"), Pipeline shall first apply this Turnback Procedure.

24.1 Request for Turnback Proposals. Pipeline shall post a request for turnback proposals ("Turnback Proposals") on its ECS. Pipeline shall use reasonable efforts to bring the request for Turnback Proposals to the attention of all Customers that have entered into a Service Agreement for firm service ("Firm Service Agreement") under the Pipeline's Toll Schedule ("Firm Customers").

Pipeline's request for Turnback Proposals shall identify the relevant terms of the Incremental Firm Service Request, including:

- (a) Primary Point(s) of Receipt and Delivery;
- (b) Maximum Daily Transportation Quantity ("MDTQ")
- (c) Date of Commencement of Service; and
- (d) Primary Term of Service.

Pipeline's request for Turnback Proposals shall identify the date that Turnback Proposals must be received by Pipeline. Such date shall be a minimum of 20 Business Days from the date that the request for Turnback Proposals was posted.

24.2 Turnback Proposals. All existing Firm Customers may submit a Turnback Proposal for all, or a portion of, their MDTQ as set out in their Service Agreement.

Turnback Proposals shall:

- (a) commence on the Date of Commencement of Service for the Incremental Firm Service Request;
- (b) have a term equal to the remaining term of the Customer's Firm Service Agreement underpinning the Turnback Proposal;
- (c) have an MDTQ not exceeding the MDTQ of the Incremental Firm Service Request; and
- (d) have primary receipt and delivery points that can accommodate the transportation path of the Incremental Firm Service Request.

24.3 Turnback Proposal Evaluation. Pipeline shall reject any Turnback Proposal that does not meet the requirements of Section 24.2 of this Turnback Procedure.

Turnback Proposals meeting the requirements of Section 24.2 of this Turnback Procedure shall generally be considered acceptable subject to the remaining provisions of this Article 24.3 and Article 24.4.

In conjunction with the following paragraph, M&NP will accept any turnback that reduces the need for incremental facilities.

Pipeline shall evaluate Turnback Proposals based on criteria including the following:

- (a) changes in owning and operating costs (i.e. the impact on fuel and operating costs) regarding the path of the MDTQ;
- (b) the impact on tolls, (i.e. the change in transportation revenue as a result of the Turnback Proposal);
- (c) the impact of the Turnback Proposal on future renewals and potential utilization of facilities;
- (d) the impact of the Turnback Proposal on overall customer credit quality and pipeline financial arrangements;
- (e) environmental issues;
- (f) the optimal sizing of future expansion facilities (i.e. the partial reduction in facility requirements due to Turnback Proposals.); and
- (g) other objective criteria that pipeline deems relevant for a particular expansion / turnback.

Pipeline shall apply these criteria in an objective and reasonable manner.

24.4 Backstop Agreement Obligations. Pipeline's adherence to the process under this Turnback Procedure is subject to Pipeline being able to fully comply with its obligations under the Agreement for Purchase of Unsubscribed Firm Capacity and Rate Agreement with Respect to Firm Service for Rate Schedule MN365 between Pipeline and ExxonMobil Canada Properties/ExxonMobil Canada Limited ("Agreement"). In addition, in the event of any conflict between the provisions of the Turnback Procedure and the provisions of the Agreement, the provisions of the Agreement will prevail.

24.5 Reporting. Pipeline shall post on its ECS details of each Turnback Proposal received and each Turnback Proposal accepted by Pipeline identifying quantity, term, receipt point, delivery point and any other information that may be relevant. Names of the Customers shall not be disclosed.

24.6 Revenue and Volume Adjustments. For those Turnback Proposals accepted by Pipeline, the MDTQ set out in the Service Agreement shall be permanently reduced in accordance with the Turnback Proposal and the Firm Customer shall lose all rights, including renewal options, on the MDTQ turned back.

Changes in demand determinants due to acceptance of Turnback Proposals and Incremental Firm Service Requests shall be reflected in the demand determinants of subsequent years' transportation tolls. All variations in revenue due to acceptance of Turnback Proposals and Incremental Firm Service Requests shall be recorded in a Flow-Through Deferral Account and applied to the Net Revenue Requirement in subsequent Test Years.

25. DISCRETIONARY WAIVERS

Pipeline may waive any of its rights hereunder or any obligations of Customer on a basis that is not unduly discriminatory; provided that no waiver by either Customer or Pipeline of any one or more defaults by the other in the performance of any provision of the Service Agreement between Customer and Pipeline shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

26. DESCRIPTIVE HEADINGS

The descriptive headings of the provisions of this Tariff are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any of such provisions.

27. GOVERNMENTAL REGULATIONS

The Service Agreement, and all terms and provisions contained or incorporated therein, and the respective obligations of the parties thereunder are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.