

**4 - GENERAL TERMS
AND
CONDITIONS**

ENBRIDGE GAS DISTRIBUTION INC.
GENERAL TERMS AND CONDITIONS
Rate 331 Service

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1 INTRODUCTION

1.1 The terms and symbols used herein that are set forth in Article 2 of the Defined Terms shall be construed to have the meaning described therein, unless otherwise defined in these General Terms and Conditions.

1.2 If there is any conflict between the provisions of a Service Schedule and these General Terms and Conditions, the provisions of the Service Schedule shall prevail.

2 REQUESTS FOR SERVICE

2.1 This Article 2 is applicable to requests for FT Service if and whenever Transporter is entitled to allocate any Tecumseh Pipeline Capacity to provide FT Service in accordance with Section 4.2 of the FT Service Schedule. This Article 2 is applicable to requests for IT Service at any time.

2.2 A prospective Shipper may submit a request for Service to Transporter, using a Service Request Form for the purpose. Subject to Section 2.3, Transporter shall evaluate each request on a first-come, first-served basis. If two or more requests for service are received at the same time (i.e. within 5 minutes of each other), Transporter shall offer a proportional share of available capacity to each prospective Shipper that submitted a request. If Transporter is satisfied (acting reasonably) with the information provided by the prospective Shipper, Transporter shall give the prospective Shipper a notice to that effect, together with a Service Agreement executed by Transporter. Transporter shall otherwise give the prospective Shipper a notice indicating the information deficiencies in the Service Request Form.

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- 2.3 On the first Day of the Month, or such other Day as set out in the Service Agreement, following the time when the prospective Shipper has executed and delivered the Service Agreement and has satisfied the availability provisions of Article 2 of the applicable Service Schedule, Transporter shall provide Service to Shipper under the Rate 331 Schedule, the Service Agreement and the applicable Service Schedule.
- 2.4 If and whenever Transporter determines (acting reasonably) that the Tecumseh Pipeline Capacity would not be sufficient to provide the level of FT Service requested by the prospective Shipper(s), in addition to providing FT Service under the existing Service Agreement(s), Transporter shall establish a queue for the request(s) for FT Service on a first-come, first-served basis. Notwithstanding any such queue, Transporter shall not be obligated to apply to the OEB for any authorization to construct and operate any Tecumseh Pipeline Expansion Facilities that Transporter would require in order to provide Service to the prospective Shipper(s).

3 QUALITY SPECIFICATIONS

- 3.1 The gas delivered to Transporter by Shipper, or for Shipper's account, at Dawn shall conform to the following quality specifications:
- (a) the gas shall have a gross heating value no less than 36 megajoules per cubic meter and no more than 40.2 megajoules per cubic metre;
 - (b) the gas shall be commercially free from sand, dust, crude oils, lubricating oils, liquids, chemicals, or compounds used in the production, treatment, compression, or dehydration of the gas or any other objectionable substance in sufficient quantity so as to render the gas toxic, unmerchantable, or cause injury to or

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interference with the proper operation of the pipelines, regulators, meters, or other appliances through which it flows;

- (c) the gas shall not contain more than seven milligrams of hydrogen sulphide per cubic metre nor more than 460 milligrams of total sulphur per cubic metre as determined by standard methods of testing;
- (d) the gas shall not contain more than five milligrams of mercaptan sulphur per cubic metre;
- (e) the gas shall not contain more than 2.0 molar percent by volume of carbon dioxide;
- (f) the gas shall not contain more than 0.5 molar percent by volume of carbon monoxide;
- (g) the gas shall not contain more than 0.4 molar percent by volume of oxygen;
- (h) the gas shall not contain more than 4.0 molar percent by volume of hydrogen;
- (i) the gas shall not contain more than 80 milligrams of water vapour per cubic metre;
- (j) the gas shall not have a hydrocarbon dewpoint exceeding -10 degrees Celsius at a pressure of 5 500 kPa;
- (k) the gas shall not contain less than 1.0 molar percent by volume of ethane; and

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- (1) the gas shall at all times be interchangeable with other gas in the Tecumseh Pipeline such that the yellow tipping, flashback, and lifting factors shall be within the range permitted for gas according to AGA Research Bulletin No. 36.
- 3.2 The gas delivered by Transporter to Shipper, or for Shipper's account at Dawn, shall conform to the quality specifications prescribed by the Union Gas Q&M Rules.
- 3.3 If the gas received or delivered by Transporter from or to Shipper, or for Shipper's account, fails at any time to conform to the foregoing quality specifications, then Transporter or Shipper, as the case may be, will notify the other of such deficiency and thereupon may at its option suspend the receipt or the delivery, as the case may be, of such gas pending correction. Upon failure to remedy any such deficiency promptly, Shipper or Transporter, as the case may be, may accept such gas and may make changes necessary to bring such gas into conformity with the foregoing specifications, in which event such party shall be reimbursed by the other party for any reasonable expense incurred by such party in this regard.
- 3.4 After Transporter receives Shipper's gas at Tecumseh, Transporter shall have the right to commingle such gas with other gas in the Tecumseh Pipeline. Accordingly, Shipper's gas shall be subject to such changes in gross heating value as may result from such commingling and, notwithstanding any other provision herein, Transporter shall be under no obligation to deliver to Shipper, or for Shipper's account, gas with a gross heating value identical to that of Shipper's gas at Tecumseh.

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4 MEASUREMENT

- 4.1 Transporter will measure gas for custody transfer purposes at Tecumseh. The unit of volume for the purpose of reporting shall be 10^3m^3 and the unit of quantity shall be GJ.
- 4.2 Transporter will not measure gas for custody transfer purposes at Dawn. Rather the volume (expressed in 10^3m^3), the quantity (expressed in GJ), and the composition of the gas delivered by Transporter to Shipper, or for Shipper's account, at Dawn shall be determined as follows:
- (a) The volume, the quantity, and the gas composition for any period shall be deemed to be equivalent to the volume, the quantity, and the gas composition of the corresponding receipts by Union Gas for Shipper, or for Shipper's account, at Dawn during the period and measured by Union Gas in accordance with the Union Q&M Rules.
 - (b) All such measurements (including corrections thereof) shall be binding on Transporter and Shipper. These measurements will define the volume, the quantity, and the composition of the gas delivered by Transporter to Shipper, or for Shipper's account, at Dawn under the Service Agreement.
- 4.3 The volume and the gross heating value of the gas delivered by Shipper, or for Shipper's account, and received by Transporter at Tecumseh shall be determined as follows:
- (a) The gas volumes shall be computed in accordance with the methodology prescribed in the E&GI Act.

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- (b) The average absolute atmospheric (barometric) pressure shall be assumed to be constant during the term thereof, regardless of variations in actual barometric pressure from time to time, and shall be calculated based on the elevation of the measurement point. The formula used to calculate the atmospheric pressure shall be in accordance with the methodology prescribed in the E&GI Act.
- (c) The determination of the gross heating value of the gas shall be performed in a manner approved under the E&GI Act or, if such specification is not set out therein, in accordance with the industry accepted standards and, in any event, in such manner as to ensure that the gross heating values so determined are representative.
- (d) The determination of the relative density of the gas shall be performed in a manner approved under the E&GI Act or, if such specification is not set out therein, in accordance with industry accepted standards and, in any event, in such manner as to ensure that the relative densities so determined are representative.

5 MEASURING EQUIPMENT

- 5.1 All meters and measuring equipment for the determination of gross heating value or relative density, or both, shall be approved pursuant to, and installed and maintained in accordance with, the E&GI Act. Notwithstanding the foregoing, however, all installation of equipment applying to or affecting receipts of gas shall be made in such manner as to permit an accurate determination of the volume and quantity of gas delivered and ready verification of the accuracy of measurement. Care shall be exercised by both Transporter and Shipper in the installation,

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maintenance, and operation of pressure regulating equipment so as to prevent any inaccuracy in the determination of the volume or quantity of gas delivered and received at Tecumseh.

5.2 The accuracy of measuring equipment shall be verified by Transporter at reasonable intervals and, if requested, in the presence of representatives of Shipper, but Transporter shall not be required to verify the accuracy of such equipment more frequently than once in any 30-day period. In the event either Transporter or Shipper shall notify the other that it desires a special test of any measuring equipment, they shall both co-operate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test, if called for by Shipper, shall be borne by Shipper if the measuring equipment is found to be in error by not more than the following limits:

- (a) 2% for measuring equipment utilized to determine volume,
- (b) 1% for any instrument utilized to determine relative density, and
- (c) 0.5% for any instrument utilized to determine gross heating value.

If upon test any measuring equipment is found to be in error by not more than the specified limits, the previous readings of such equipment shall be considered accurate in computing receipts of gas at Tecumseh but such equipment shall be adjusted at once to register accurately.

If for the period since the last preceding test, it is determined that:

- (a) any measuring equipment, except for those instruments specified in paragraphs (b) and (c) below, shall be found to be inaccurate by an amount exceeding 2% at a recording corresponding to the average hourly rate of flow for such period;

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- (b) any instrument utilized to determine the relative density shall be found to be inaccurate by an amount exceeding 1%;
- (c) any instrument utilized to determine the gross heating value shall be found to be inaccurate by an amount exceeding 0.5%;

then the previous readings of measurement equipment and/or instruments utilized to determine the relative density or gross heating value, as the case may be, shall be corrected to zero error for any period that is known definitely but, in any case where the period is not known or agreed upon, such correction shall be for a period extending over 50% of the time elapsed since the date of the last test.

Notwithstanding the foregoing, when Transporter and Shipper mutually agree that a measurement instrument inaccuracy occurred at a definite point in time, a volume, and a corresponding quantity correction shall be made even though the inaccuracy is less than the limits specified in paragraphs (a), (b), and (c) above.

5.3 In the event a meter is out of service, or registering inaccurately, the volume of gas delivered shall be determined by the most equitable method. Such methods shall include but not be limited to:

- (a) mathematical calculations and comparisons including prevailing ratio with a parallel meter;
- (b) the use of Shipper's check measuring equipment (if any); and
- (c) comparison to deliveries under similar conditions when the meter was registering accurately.

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- 5.4 Transporter shall preserve for a period of at least six years all test data, charts, and other similar records. Microfilms of the original documents shall be considered true records.
- 5.5 Shipper may install, maintain, and operate, at its own expense, such check measuring equipment as desired; provided that such equipment shall be so installed as not to interfere with the operation of Transporter's measuring equipment. Any pressure or volume control regulators installed by Shipper shall be operated so as not to interfere with Transporter's measuring equipment.
- 5.6 The measuring equipment installed by Transporter or Shipper, together with any building erected by it for such equipment, shall be and remain its property. Transporter and Shipper shall nevertheless have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring or checking the measurement of the delivery and receipt of gas at Tecumseh. The records from such measuring 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 10 days after receipt thereof.

6 BILLING AND PAYMENT

- 6.1 On or before the 15th day of each month (or the next Business Day if such day is not a Business Day), Transporter shall provide Shipper with an invoice for Service provided during the preceding Month pursuant to Shipper's Service Agreement. Each invoice shall provide such information in respect of Service provided in the preceding Month as

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Shipper may request (acting reasonably). Shipper shall pay each invoice on or before the 25th day of each month (or the next Business Day if such day is not a Business Day).

- 6.2 Shipper shall have the right to examine at any reasonable time the books, records, and accounts of Transporter to verify any amount payable by Shipper to Transporter for Service under Shipper's Service Agreement; provided that such examination shall be completed within six months following the end of the Contract Year in respect of which such amount is payable.
- 6.3 Should Shipper fail to pay all of the amount of any invoice as herein provided when such amount is due, interest on the unpaid portion of the invoice shall accrue at a rate per annum equal to the minimum commercial lending rate of The Toronto-Dominion Bank in effect from time to time, from the due date until the date of payment. If such failure to pay continues for 30 days after payment is due, in addition to any other remedy Transporter may have under Shipper's Service Agreement, Transporter may suspend Service to Shipper thereunder until such amount is paid.

However, if Shipper in good faith disputes the amount of any such invoice or part thereof and pays to Transporter such amounts as Shipper concedes to be correct within such 30 day period, and if at any time thereafter within 20 days of Transporter's demand therefor Shipper furnishes a surety bond for the amount in dispute, in a form satisfactory to Transporter (acting reasonably), assuring payment to Transporter of the amount ultimately found due upon such invoice after a final determination, then Transporter shall not be entitled to suspend Service to Shipper under

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Shipper's Service Agreement because of such non-payment, unless and until a default occurs in relation to the conditions of such bond.

6.4 In the event it is found that, at any time, Shipper has been overcharged or undercharged for Service and Shipper has paid the invoice containing such overcharge or undercharge, the following procedure will apply:

- (a) Transporter will refund the amount of any such overcharge together with interest on such amount at a rate per annum equal to the minimum commercial lending rate of The Toronto-Dominion Bank in effect from time to time, calculated from the time such overcharge was paid to the date of the refund. If such refund is made by means of credit on an invoice from Transporter to Shipper, the date of the refund shall be the date upon which the bill reflecting such credit is payable by Shipper to Transporter; or
- (b) Shipper will pay the amount of any such undercharge without interest; provided that a claim therefor must be made within 60 days from the date of discovery of such error and also within 12 months from the date of payment of the invoice containing such overcharge or undercharge.

7 PRIORITY AND CURTAILMENT OR INTERRUPTION OF SERVICE

7.1 There are three levels of priority: (i) FT Service for one year or greater shall have the highest level of priority for Service in any Day and, thereafter, (ii) FT Service for less than one year, and then (iii) IT Service. Transporter shall implement any curtailment or interruption of Service pursuant to Section 7.2 or 7.3 based on these levels of priority, in ascending order from the lower to the higher level of priority. For certainty, Transporter shall curtail IT Service first. If further curtailment

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is necessary, Transporter shall curtail FT Service for less than one year, followed by FT Service for one year or greater, only if necessary. Any such curtailment or interruption shall be proportional among Shippers within each level of priority, based on the levels of Service contemplated by their respective Confirmations.

- 7.2 Transporter may curtail or interrupt Service to Shippers, according to their individual level(s) of priority, for such periods as may reasonably be required for the purpose of accomplishing any planned repairs, maintenance, replacement or other upgrading, or other work related to the Tecumseh Pipeline. Transporter shall endeavour to consult with all affected Shippers in the process of fixing a schedule for such planned work, but Transporter shall have the right to fix such schedule to suit Transporter's convenience. Transporter shall give all affected Shippers a notice indicating the schedule for such planned work and the likely degree of curtailment or interruption, at least three days prior to the commencement of such planned work.
- 7.3 Transporter may also curtail or interrupt Service to Shippers according to their individual level(s) of priority, for such periods as may reasonably be required, in the event that unforeseen circumstances (including without limitation an event of *force majeure*) affecting the Tecumseh Pipeline prevent Transporter from providing Service according to the applicable Confirmation(s). Transporter shall give Shipper a notice to that effect as soon as is reasonably possible.
- 7.4 Transporter may curtail or interrupt Service to any Shipper to the extent of the failure by Niagara Gas to deliver gas to Shipper, or for Shipper's account, at Tecumseh or by Union Gas to receive gas delivered by Shipper, or for Shipper's account, at Dawn.

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7.5 In the event that Transporter curtails or interrupts gas transmission service on a firm basis, the Maximum Daily Volume during the period of such curtailment or interruption will be deemed to be equal to the average daily volume that Transporter transported for, and delivered to, Shipper during that period.

8 FORCE MAJEURE

8.1 The term "*force majeure*" means any of the following uncontrollable events: acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, crevasses, floods, washouts, arrests and restraints of any governmental body or authority (civil or military) and people, civil disturbances, explosions, breakage or accidents to machinery or pipelines, testing (as required by any governmental authority or as deemed necessary by Transporter for the safe and reliable operation of the Tecumseh Pipeline), hydrate obstructions of pipelines or appurtenances thereto, inability to obtain labour, materials, or equipment, inability to obtain permits, orders, or other authorizations, orders of any court, board or governmental authority having jurisdiction, any claim by any third party that any covenant or obligation of such third party is suspended by reason of an event of force majeure, including without limitation any such claim by any transporter, seller, or buyer of gas for, to, or from Transporter or Shipper, or any other cause, whether of the kind herein enumerated or otherwise, that is not reasonably in the control of the affected party or that is occasioned by the necessity of making repairs to or reconditioning machinery, equipment, or pipeline facilities not resulting from the default or negligence of such party and which by the exercise of due diligence such party is unable to

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prevent or overcome. Nevertheless, a lack of funds or other financial cause shall not constitute an event of *force majeure*.

8.2 If either party is unable to perform its obligations under or to otherwise comply with the provisions of the Service Agreement, and if such inability is caused by or materially contributed to by an event of *force majeure*, such inability shall be deemed not to be a breach of the Service Agreement by such party, but such party shall use due diligence to remedy the cause(s) thereof with reasonable dispatch. Nevertheless, the settlement of strikes or lockouts shall be entirely within the affected party's discretion, and such due diligence requirement shall not require the settlement of a strike or lockout by acceding to the demands of the opposing party when such course of action is inadvisable in the opinion of the affected party (acting reasonably).

8.3 If an event of *force majeure* occurs, the affected party shall give the other party a notice to that effect within a reasonable time thereafter, briefly describing the cause(s) thereof to the extent known at the time.

9 NOMINATIONS AND SCHEDULING

9.1 Transporter will provide Shipper prior to any Day with the following two Nomination Cycles, and corresponding Confirmations, for Service during the Day according to the following timeline:

<i>Nomination Cycle</i>	<i>Nomination Time</i>	<i>Confirmation Time</i>
Timely	1130 CCT	1630 CCT
Evening	1800 CCT	2200 CCT

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Transporter will schedule Service for any Day, under either Nomination Cycle, to commence effective at 0900 hours Central Standard Time on the Day.

- 9.2 Transporter will also provide Shipper during any Day with the following two Nomination Cycles, and corresponding Confirmations, for Service on the same Day according to the following timeline:

<i>Nomination Cycle</i>	<i>Nomination Time</i>	<i>Confirmation Time</i>
Intra-Day 1	1000 CCT	1400 CCT
Intra-Day 2	1700 CCT	2100 CCT

Transporter will schedule Service during any Day to commence effective at the following times during the Day:

<i>Nomination Cycle</i>	<i>Effective Time</i>
Intra-Day 1	1700 CST
Intra-Day 2	2100 CST

- 9.3 For any Day in which Shipper wishes Transporter to provide FT Service or IT Service, as the case may be, Shipper shall give Transporter a fully completed Nomination in any of the Nomination Cycles for the Day. Shipper may thereafter give Transporter a Nomination for such Service in any subsequent Nomination Cycle for the Day in accordance with Section 9.1 or 9.2, or both, at Shipper's option.

- 9.4 Shipper may give a fully completed Nomination to Transporter in any of the Nomination Cycles for two or more Days. Shipper may thereafter

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change the Nomination for the second or any subsequent Day specified in the original Nomination by giving Transporter a new Nomination in the corresponding Nomination Cycle for the Day. A multi-Day Nomination will otherwise remain in effect for each Day specified therein.

- 9.5 Each Nomination shall be given by electronic means or facsimile in accordance with the applicable timeline specified in Sections 9.1 and 9.2. Shipper shall not give Transporter more than one Nomination for a single Service Agreement in any Nomination Cycle, for either Service, and the level of Service specified therein shall not exceed the applicable Maximum Daily Quantity. Shipper shall not give Transporter a single Nomination for two or more Service Agreements.
- 9.6 Transporter shall accept Shipper's Nomination for FT Service in the Timely Cycle for any Day by giving Shipper a Confirmation that schedules Shipper's Nomination for the Day, unless Transporter anticipates (acting reasonably) that Tecumseh Pipeline Capacity for the Day would be restricted in some fashion by operating conditions on the Tecumseh Pipeline. In that event, Transporter shall determine Shipper's proportional share of such restricted Tecumseh Pipeline Capacity, based on the levels of Service specified in all Nominations for FT Service in the Timely Cycle. Transporter shall then give Shipper a Confirmation scheduling a lower level of FT Service corresponding to such proportional share. Each Confirmation shall be given by electronic means or facsimile in accordance with the applicable timelines specified in Section 9.1.
- 9.7 Transporter may accept Shipper's Nomination for FT Service in any subsequent Nomination Cycle, in whole or in part, or reject it entirely based on the operating conditions that Transporter anticipates (acting reasonably) will prevail on the Tecumseh Pipeline during the Day.

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Transporter shall give Shipper a Confirmation that schedules the accepted level of FT Service for the Day or, if none is accepted, a Confirmation that schedules a nil level of FT Service for the Day. Each Confirmation shall be given by facsimile or electronic means in accordance with the applicable timelines specified in Sections 9.1 and 9.2.

- 9.8 Transporter shall accept Shipper's Nomination for IT Service in the Timely Cycle for any Day by giving Shipper a Confirmation that schedules Shipper's Nomination for the Day, unless Transporter anticipates (acting reasonably) that Tecumseh Pipeline Capacity available for IT Service in the Day, after scheduling FT Service in the Timely Cycle, would not be sufficient to schedule all Nominations for IT Service in the Timely Cycle. In that event, Transporter shall determine Shipper's proportional share of available Tecumseh Pipeline Capacity, based on the levels of IT Service specified in all Nominations for IT Service in the Timely Cycle. Transporter shall then give Shipper a Confirmation scheduling a lower level of IT Service corresponding to such proportional share. Each Confirmation shall be given by facsimile or electronic means in accordance with the applicable timelines specified in Section 9.1.
- 9.9 Transporter may accept Shipper's Nomination for IT Service in any subsequent Nomination Cycle, in whole or in part, or reject it entirely based on the amount of Tecumseh Pipeline Capacity that Transporter anticipates (acting reasonably) will be available for IT Service during the Day. Transporter shall give Shipper a Confirmation that schedules the accepted level of IT Service for the Day or, if none is accepted, a Confirmation that schedules a nil level of IT Service for the Day. Each Confirmation shall be given by electronic means or facsimile in accordance with the applicable timelines specified in Sections 9.1 and 9.2.

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10 ALLOCATION OF RECEIPTS AND DELIVERIES

- 10.1 The total volume of gas received by Transporter at Tecumseh during any period shall be allocated proportionally among all Shippers that have Confirmations during the period, using as allocation factors the levels of Service according to the applicable Confirmations. The volume of gas so allocated to each Shipper shall constitute Shipper's Receipt Volume during the period.
- 10.2 The total volume of gas delivered by Transporter at Dawn during any period shall be allocated proportionally among all Shippers that have Confirmations during the period, using as allocation factors the levels of Service according to the applicable Confirmations. The volume of gas so allocated to each Shipper shall constitute Shipper's Delivery Volume during the period.
- 10.3 In the event that Transporter provides Shipper with both FT and IT Service to Dawn during any period, Shipper's Delivery Volume during the period shall be allocated as follows.
- (a) first to FT Service, until the amount so allocated is equal to the sum of the level(s) of FT Service according to the applicable Confirmation(s); and
 - (b) then to IT Service.

11 IMBALANCES

- 11.1 Transporter shall keep to a minimum the imbalance(s) between Shipper's Receipt Volume and Shipper's Delivery Volume during any period. Nevertheless, whenever Transporter determines that there is such an imbalance, Transporter may give Shipper a notice to that effect in

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Transporter's sole discretion, indicating the amount of the imbalance. Within 10 Days thereafter, Transporter shall eliminate the imbalance by adjusting, as required, the volume of gas that Transporter would otherwise deliver to Shipper, or for Shipper's account, at Dawn or by such other method as may be agreed upon by Transporter and Shipper.

11.2 Shipper shall keep to a minimum the imbalance(s) between Shipper's Receipt Volume during any period and the level(s) of Service according to the applicable Confirmation(s) during the period. Nevertheless, whenever Transporter determines that there is such an imbalance, Transporter may give Shipper a notice to that effect in the Transporter's sole discretion, indicating the amount of the imbalance. Promptly after receiving notice from Transporter, Shipper shall take action to eliminate the imbalance as soon as practicable.

11.3 Deliveries of gas to Transporter at Tecumseh shall be made by Shipper, or for Shipper's account, such that Transporter will be able to receive such gas at uniform hourly rates of flow to the extent permitted by operating conditions. Deliveries of gas by Transporter at Dawn shall be received by Shipper, or for Shipper's account, such that Transporter will be able to deliver such gas at uniform hourly rates of flow to the extent permitted by operating conditions.

12 RECEIPT AND DELIVERY PRESSURES

12.1 Deliveries of gas to Transporter by Shipper, or for Shipper's account, at Tecumseh shall be made at such pressures as will enable the gas to flow into the Tecumseh Pipeline but in no event less than 5 380 kPa (780 psig) during the Winter Period and 5 170 kPa (750 psig) during the Summer Period.

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12.2 Deliveries of gas by Transporter to Shipper, or for Shipper's account, at Dawn shall be made at such pressures as will enable the gas to flow into the facilities of the Union Gas, but in no event greater than 4 850 kPa (700 psig) in both the Winter Period and the Summer Period, unless Transporter otherwise consents.

13 CONTROL AND POSSESSION OF GAS

13.1 Shipper warrants that it owns or controls, and has the right to deliver, the gas that is delivered by Shipper, or for Shipper's account, and received by Transporter under the Service Agreement. Shipper shall indemnify and save harmless Transporter against all claims, actions, or damages arising from any adverse claims by any person claiming an ownership interest in the gas so delivered to Transporter, in the manner contemplated by Article 16.

13.2 Upon receiving gas from Shipper, or for Shipper's account, at the Tecumseh, Transporter shall be in exclusive control and possession of such gas and shall be responsible for any loss thereof, and for any and all injury or damage caused thereby, until such gas has been delivered to Shipper, or for Shipper's account, at Dawn. Thereafter, Shipper shall be in exclusive control and possession of such gas and shall be responsible for any and all injury or damage caused thereby.

14 FINANCIAL INFORMATION AND SECURITY

14.1 Shipper shall provide Transporter with any financial information that Transporter requests (acting reasonably) prior to providing Service in order that Transporter may establish Shipper's creditworthiness. Transporter may request Shipper to provide to Transporter, as a condition

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of providing Service, such financial security as Transporter may require (acting reasonably).

14.2 If Transporter has a reasonable basis for concern in respect of Shipper's creditworthiness at any time during the Term, Transporter may request, and Shipper shall provide, an irrevocable letter of credit, issued by a financial institution acceptable to Transporter, in an amount equal to the value of, as the case may be, (a) Transporter's monthly demand charge as specified in the Rate 331 Schedule for a period of three Months; or (b) Transporter's monthly commodity charge under the Rate 331 Schedule for a period of three months as if Shipper's Delivery Volume in each such Month were equal to the average of its Delivery Volumes during the previous 12 Months.

14.3 A failure by Shipper to provide financial security pursuant to this Article 14 shall be deemed to be a failure to perform an obligation of Shipper for the purposes of Article 15.

15 DEFAULT AND TERMINATION

15.1 If either Transporter or Shipper fails to perform any of its obligations under or to otherwise comply with the provisions of the Service Agreement, then the other party may treat such failure as a default and may elect to terminate the Service Agreement by giving the party in default a notice to that effect, briefly describing the default.

15.2 If such a notice is given, the party in default will have 30 days in which to remedy the default. If the party in default remedies the default within the 30-day period, then such notice shall be deemed to be withdrawn and the Service Agreement shall continue in full force and effect. If the party in default does not remedy the default within the 30-day period, then the

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Service Agreement shall thereupon terminate. Any such termination shall be without prejudice to any remedy to which the party not in default may be entitled for breach of the Service Agreement.

- 15.3 No waiver by either Transporter or Shipper of any one or more defaults by the other in performance of any provisions of the Service Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character. Transporter may waive compliance with provisions of the Service Agreement so long as such is done in a manner that would not be unjustly discriminatory.

16 INDEMNIFICATION

- 16.1 Each party shall be liable for and shall indemnify and save harmless the other party from and against any and all claims, demands, suits, actions, damages, costs, losses, and expenses of whatsoever nature arising out of or in any way connected, either directly or indirectly, with any act, omission, or default arising out of the negligence or wilful default of such party.

- 16.2 Notwithstanding Section 16.1:

- (a) Transporter and Shipper shall have no liability for, nor any obligation to indemnify and save harmless the other from, any claim, demand, suit, action, damage, cost, loss, or expense that is indirect, special, or consequential in nature;
- (b) Transporter shall have no liability or obligation to indemnify and save harmless Shipper in respect of a failure for any reason whatsoever, other than Transporter's negligence or wilful default, to provide Service under any Service Agreement, the Rate 331

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Schedule and the applicable Service Schedule, and no such failure shall relieve Shipper of its obligation to pay Transporter's monthly demand charges under the Rate 331 Schedule except as therein or herein provided; and

- (c) neither Transporter nor Shipper shall be liable to indemnify the other unless the party requesting indemnification gives reasonably prompt notification to the other party after being served any claim, suit, or action for or in respect of which indemnification is to be claimed.

- 16.3 If a notice is given pursuant to Section 16.2(c), the indemnifying party shall be entitled to participate in any such suit or action and, to the extent that the indemnifying party may wish to do so, to assume the defence thereof with counsel satisfactory to the notifying party (acting reasonably). Thereafter, the indemnifying party will not be liable for any legal or other expenses incurred by the notifying party in connection with the defence thereof. The indemnifying party shall not be liable to indemnify the notifying party on account of any settlement of any claim, suit, or action agreed to without the consent of the indemnifying party.

17 DISPUTE RESOLUTION

- 17.1 Transporter and Shipper (each a “party”) shall resolve disputes, claims, questions or differences arising out of or in connection with any Service Agreement or its performance, enforcement, breach, termination, or validity (each a “Dispute”) in the manner set out in this Article 17.
- 17.2 The party claiming that a Dispute has arisen must give written notice (a “Dispute Notice”) to the other party specifying the nature of the dispute, the relief sought, and the basis for the relief sought.

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- 17.3 Forthwith following delivery of a Dispute Notice, the parties must commence the process of attempting to resolve the Dispute by referring such Dispute to their respective representatives and shall cause their respective representatives to meet, discuss, and negotiate in good faith with the intention of a reaching a just and equitable solution satisfactory to both parties.
- 17.4 If the Dispute is not resolved to the satisfaction of the parties with 15 Business Days after delivery of the Dispute Notice, then either party may require, upon notice by such party to the other (an “Arbitration Notice”) at any time thereafter, that the Dispute be resolved by binding arbitration. The Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) based upon the following provisions:
- (a) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the parties, or in the event of failure to agree within 10 Business Days following delivery of the Arbitration Notice, each of the parties shall designate an unaffiliated third person within a further 10 Business Days who together shall agree upon and appoint an arbitrator. In the event such unaffiliated third persons fail to appoint the arbitrator within such period, either party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to rule upon the particular matter to be decided.
 - (b) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must

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be made within 60 days of the submission of the Dispute to arbitration.

- (c) After the Arbitration Notice is given, the parties will meet within 15 Business Days of delivery of such notice and will negotiate in good faith any changes in these arbitration provisions or the rules of arbitration that are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the value(s) at risk.
- (d) The arbitration shall take place in Toronto, Ontario and the language of the arbitration shall be English.
- (e) The arbitration award shall be given in writing and shall be final and binding on the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrator's fees and expenses, the provision of a reporter and transcripts, reasonable legal fees, and reasonable costs of preparation.
- (f) The arbitration shall be kept confidential and the existence of the proceeding and any element of it (including any pleadings, briefs, or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the arbitrator, the parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise, or as may be required by the OEB.