

GENERAL TERMS AND CONDITIONS

18. LIABILITY AND REMEDIES

18.1 Relief from Liability.

- (a) Neither Transporter nor Shipper shall be liable in damages to the other for any act, omission or circumstances occasioned by or in consequence of any event constituting force majeure and, except as otherwise provide in Section 18.2 of the General Terms and Conditions of this Tariff, the obligations of Transporter and Shipper shall be excused during the period thereof to the extent affected by such events of force majeure. The term "force majeure" shall mean acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, arrest and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to pipeline facilities, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any cause, whether by of the kind herein enumerated, or otherwise, and whether caused or occasioned by or happening on account of the act or omission of one of the parties to the Transportation Service Agreement between the Transporter and Shipper or some person or concern not party thereto, which is not within the control of the party claiming excuse and which by the exercise of due diligence such party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within the control of the party claiming excuse. Under no circumstances will lack of finances be construed to constitute force majeure.
- (b) Transporter shall not be liable in damages to Shipper for any interruption, curtailment, impairment or reduction in service due to routine scheduled maintenance, maintenance required by applicable regulations or good engineering practice, or construction pursuant to a certificate of public convenience and necessity duly issued by the Commission, provided that Transporter shall exercise reasonable efforts to schedule such maintenance or construction so as to minimize the impact on all Shippers taken as a group.

18.2 Liabilities Not Relieved. Such causes or contingencies affecting the performance of said Transportation Service Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence 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.

- (a) In the event that Transporter cannot make deliveries of the quantity of gas to which a Shipper has firm entitlements on any day under a Transportation Service Agreement, other than for an event of force majeure as defined in Section 18.1, and Shipper has nominated gas which is confirmed for delivery from a primary receipt point to a primary delivery point in the Service Agreement, Transporter shall provide a reservation charge credit for the quantity of gas that was confirmed by Shipper's supplier or upstream pipeline, net of applicable retentions for L&U, but not delivered; provided, however, Transporter shall not be relieved of the obligation to provide a credit for failure to confirm a nomination for reasons within its control. The quantity of gas for which a reservation charge credit may be paid shall be determined as follows:
- (1) when Transporter has given notice of the unavailability of service at least twenty-four (24) hours prior to the 11:30 a.m. deadline for nominations under this tariff, the lesser of the applicable MDQ or the average daily quantities nominated and confirmed from Shipper's primary receipt point to the Shipper's primary delivery point during the most recent seven (7) days preceding the date service became unavailable, during which service was available less the quantity measured as delivered at Shipper's primary delivery point and allocated to Shippers; OR
- (2) when Transporter has not given notice as discussed in 18.2 (a)(1), the lesser of the applicable MDQ or the quantity Shipper nominated in accordance with this tariff, and which has been confirmed by Shipper's supplier or upstream pipeline, for the day, less the quantity measured as delivered at Shipper's primary delivery point and allocated to Shipper.
- (b) Exceptions and Clarification to Reservation Charge Crediting: Transporter shall

not be obligated to provide a reservation charge credit with respect to quantities:

- (1) nominated by Shipper and subsequently delivered by Transporter at another primary or secondary delivery point during the day; provided that Shipper will not be obligated to submit nominations to another delivery point;
 - (2) that Transporter is unable to schedule at a primary receipt or delivery point due to the allocation of capacity to a Shipper that was properly scheduled in an earlier nomination cycle that is not subject to reduction or "bumping" in the current;
 - (3) that Transporter delivered at the primary delivery point but was not allocated to Shipper because other shippers without primary firm priority at the point were ranked higher than Shipper under the applicable allocation method for the point;
 - (4) that Transporter is unable to schedule or deliver due to a failure or inadequacy of supply, transportation or market upstream or downstream of Transporter's system, provided that this clause (4) shall not apply when Transporter's inability to deliver gas is due to the incidence of force majeure, as defined in Section 18.1 of the General Terms and Conditions, affecting Transporter and an upstream or downstream pipeline;
 - (5) that Transporter does not accept at a primary receipt point in accordance with the gas quality standards in Section 9 of the General Terms and Conditions of this Tariff;
 - (6) that Shipper elected not to receive at a primary delivery point, except when Shipper refused to accept deliveries because of Transporter's failure to meet its obligations under this Tariff; or
 - (7) not delivered at a primary delivery point due to scheduled work on Transporter's facilities if Transporter and Shipper have mutually coordinated the timing of the scheduled work and the work is performed in accordance with that schedule.
- (c) Calculation of the Credit When the Curtailment is Due to Force Majeure. When Transporter's inability to provide firm service is due to an incident of force majeure, as defined in Section 18.1 of the General Terms and Conditions, the Transporter shall provide Shippers with 100% reservation charge credits, for each day that service is curtailed, commencing on the eleventh day of the curtailment due to a force majeure event and continuing until service is no longer curtailed due to a force majeure event.
- (d) Calculation of the Credit When Curtailment is Not Due to Force Majeure. When Transporter's inability to provide firm service is due to Transporter's scheduling of necessary maintenance and repair of facilities, the tie-in of new facilities, or other causes, excepting circumstances of force majeure addressed in Section 18.1, the reservation charge credit for the day shall be computed by multiplying the quantity of gas to which the credit applies by the contractual reservation rate, expressed as a daily rate. A daily rate is derived by multiplying the reservation rate by 12 (months) and then dividing by 365 (days).
- (e) Any reservation charge credit will be reflected on the Shipper's monthly invoice and will be applied first to any balances owed by Shipper.
- (f) For capacity release transactions, reservation charge credits applicable to the Replacement Shipper shall be determined as if the Replacement Shipper were the Releasing Shipper, provided that the contractual reservation rate utilized in calculating any applicable credits shall be the lower of the rate paid by the Replacement Shipper or the rate paid by the Releasing Shipper to the Transporter. If the Replacement Shipper is paying a volumetric rate, no reservation charge credit will be provided. Credits due to a Releasing Shipper by reason of payments by a Replacement Shipper shall be calculated without regard to any reservation charge credit provided to the Replacement Shipper under Section 18.2. Under no circumstances shall the total of reservation charge credits exceed the reservation charge Shipper would have paid absent a capacity release or segmentation by Shipper.