

**POPB NM Crude II LLC**  
**PRORATION OF PIPELINE CAPACITY POLICY - FERC 3**

Dated: November 1, 2023

During a Month in which the total Nominations submitted for gathering on the System exceed the capacity of the System, System capacity will be prorated equitably among all Producers as follows:

**A. Definitions:**

Terms used in this proration policy but not defined herein shall have the meaning given in Gatherer's Federal Energy Regulatory Commission Rules and Regulations Tariff No. 3.0.0 as amended and reissued from time to time.

**"COGA"** means a crude oil gathering agreement for service on Gatherer's System entered into between a Producer and Gatherer pursuant to the Open Season or from time to time thereafter pursuant to the terms of the Open Season.

**"Committed Producer"** means a Producer that has executed a COGA.

**"Deemed Volume Commitment"** means, for purposes of administering Gatherer's proration policy under the Tariff, the amount of Priority capacity (expressed in Barrels per day) that a Committed Producer shall be entitled to receive on the System during the term of such Committed Producer's COGA.

**"Monthly Deemed Volume Commitment"** means the product of (a) a Committed Producer's Deemed Volume Commitment and (b) the number of Days in the applicable Month.

**"Nomination"** or **"Nominate"** means a written notification (in form and context specified by Gatherer) made by a Producer to Gatherer of a stated quantity of Crude Oil that Producer proposes to tender to Gatherer for transportation from a specified Receipt Point to a specified Delivery Point in the next following Month in accordance with the Tariff or other applicable tariffs.

**"Non-Priority Capacity"** means the System capacity available for allocation to Uncommitted Producers each Proration Month following the allocation of System capacity to Committed Producers under Item 2, which shall equal at least ten percent (10%) of the System capacity, assuming Gatherer receives sufficient Nominations from Uncommitted Producers.

**"Priority"** means that a Committed Producer is for all purposes a priority shipper such that if such Committed Producer (i) tenders Crude Oil for transportation on the Gatherer's System that does not exceed such Committed Producer's Monthly Deemed Volume Commitment and (ii) pays the then-applicable Committed Rate for the transportation of such Committed Producer's Monthly Deemed Volume Commitment, such Committed Producer shall not be subject to prorationing except during events of Force Majeure or other operation disruption that reduces the System capacity available on Gatherer's System to transport Crude Oil.

**"Proration Month"** is the calendar month for which System capacity is being prorated.

“**Tariff**” means Gatherer’s Federal Energy Regulatory Commission Rules and Regulations Tariff No. 3.0.0 as amended and reissued from time to time.

“**Third Party Shipper**” has the meaning set forth in Item 8.

“**Uncommitted Producer**” means a Producer that is not a Committed Producer.

## **B. Proration Procedure:**

This proration policy will be used by Gatherer to allocate capacity among all Producers for any Month for which Gatherer determines, in its sole discretion, that the aggregate volume of crude oil that all Producers Nominate to all Receipt Points and Delivery Points on the System exceeds the System’s capacity. System capacity shall be allocated among Producers using the following procedure:

- 1. Division of System Capacity between Producer Classes.** System capacity will be allocated among Committed Producers as a class and Uncommitted Producers as a class; any remaining System capacity will be allocated in accordance with the provisions of Item 4 below.
- 2. Allocation to Committed Producers.**
  - a. Except as provided in Item 2b. below, Gatherer shall allocate to each Committed Producer an amount of System capacity equal to the lesser of the Committed Producer’s Nomination for the Proration Month or its Monthly Deemed Volume Commitment, as applicable. If a Committed Producer Nominates volumes in excess of its Monthly Deemed Volume Commitment, then the excess incremental volumes shall be subject to prorationing under Item 4 below.
  - b. If an event of Force Majeure or other operational issue causes System capacity to be reduced for the Proration Month, the allocation of System capacity to each Committed Producer under this Item 2 shall be reduced by the same percentage as the reduction in System Capacity that is caused by the Force Majeure event or operational issue. If an event of Force Majeure or other operational issue causes a service disruption on only a portion of Gatherer’s System or at a particular Receipt Point or Delivery Point, Gatherer shall continue to provide full operational service with respect to the unaffected portions of Gatherer’s System and to the unaffected Receipt Points and Delivery Points. Gatherer will reduce the allocations of System capacity to each Committed Producer affected by such Force Majeure event by the same percentage as the reduction in capacity of the affected portion of the System or the reduction in receipt or delivery capability of the affected Receipt Point or Delivery Point, respectively and as applicable.

**3. *Allocation to Uncommitted Producers.***

- a. Following the allocation of System capacity set forth in Item 2 above, Gatherer shall next allocate the Non-Priority Capacity on Gatherer's System among all Uncommitted Producers in the following manner:
  - i. Each Uncommitted Producer shall be allocated an amount of System Capacity in the Proration Month that is equal to:
    1. its Nomination, if the total volume Nominated by all Uncommitted Producers is less than or equal to ten percent (10%) of System capacity on Gatherer's System; or
    2. its pro rata share, in accordance with its Nomination, of ten percent (10%) of the System capacity on Gatherer's System, if the total volume Nominated by all Uncommitted Producers is greater than ten percent (10%) of such System capacity.

**4. *Remaining System Capacity.***

- a. Any remaining System capacity not allocated through the application of Items 2 or 3 above shall be allocated first, pro rata, among all Committed Producers having remaining unmet Nominations according to the level of each Committed Producer's Monthly Deemed Volume Commitment, as applicable. If allocation to any Producer pursuant to this Item 4 exceeds such Producer's remaining Nomination or there remains unallocated System Capacity following this additional allocation to Committed Producers, then the excess volume will be allocated among all other Producers having unmet Nominations until the remaining System capacity is fully allocated or all of the remaining Nominations have been fulfilled.

**5. *Basis for Allocation; Notification.*** When prorationing of System capacity is in effect:

- a. Gatherer shall allocate System capacity on a Monthly basis; and
- b. Gatherer will use reasonable efforts to notify each Producer of its allocation not later than the first working day of the Proration Month.

**6. *Reallocation of Unused Allocated System Capacity.*** If a Producer does not use the portion of System capacity allocated to it under the procedures identified in this proration policy at the times and in the amounts designated by Gatherer, Gatherer shall have the right to use such Producer's unused portion of System capacity to fulfill the unmet Nominations of other Producers.

**7. *Committed Producer Ramp-Up Rights.*** Pursuant to the Open Season and the COGA, Committed Producers have the ability to increase their Priority capacity rights on the System during the term of their COGAs. These rights will not result in Committed Producers collectively receiving more than ninety percent (90%) of the System capacity at

any given time, but could reduce the amount of System capacity once available to Uncommitted Producers when such rights are exercised.

8. ***Transfer of Allocated System Capacity; Third Party Shippers.*** A Producer's allocation of System capacity may be transferred as an incident of the bona fide sale of such Producer's business or to a successor to the Producer's business by the operation of law, such as an executor or trustee in bankruptcy. In addition, a Committed Producer that ships from the Receipt Points may, at its option, at any time and from time to time upon thirty (30) Days' prior written notice to Gatherer, (i) sell Crude Oil dedicated to Gatherer under its COGA at the well head or at any point upstream of a Delivery Point, (ii) designate an agent to act on its behalf with regard to making nominations or scheduling Barrels of Crude Oil for delivery or (iii) use a third party shipper to deliver Barrels of Crude Oil for transportation on Gatherer's System, in all cases, subject to and in accordance with the terms of the applicable COGA. In the event a Committed Producer exercises such option, the Committed Producer shall notify Gatherer in writing of (w) the name, address, contact person and telephone number of the purchaser(s), agent for or recipient of the Crude Oil (the "**Third Party Shipper**"), (x) the Barrels sold and/or delivered to the Third Party Shipper, (y) the effective date or dates of sale and/or delivery, and (z) the applicable Delivery Points. Any Third Party Shipper seeking to transport Crude Oil pursuant to a Committed Producer's COGA must agree in a writing approved by Gatherer to pay the applicable Committed Rate, and not to protest, complain, or take any action, directly or indirectly, that is designed to or may challenge the lawfulness or effectiveness of the applicable Committed Rates or any adjustment thereto.

After Gatherer completes the proration procedure, Gatherer will notify each Producer of its confirmed allocated capacity. Gatherer will accept only good faith Nominations from Producers, and Gatherer shall use whatever reasonable means necessary to determine whether Nominations are made in good faith. Good faith means the non-contingent ability and willingness of Producers to deliver to Gatherer at the Receipt Point(s) specified in the Nomination all of the Barrels Nominated during the month for which the Nomination is made.