

# Calnev Pipe Line, [W] LLC L.L.C.

## Proration Policy

1. **Definition of Terms.** Except where the context requires another meaning, the following terms have the following meanings:
  - 1.1 “New Shipper” means a Shipper that has not delivered Petroleum Products to any Destination on the Pipeline Segment to be prorationed within the Base Period. A Shipper that becomes a New Shipper shall remain one for [C] ~~the following~~ 12 consecutive [C] ~~calendar~~ months. [N] At the end of 12-months, a New Shipper becomes a Regular Shipper.
  - 1.2 “Regular Shipper” means a Shipper that is not a New Shipper.
  - [C] ~~1.3~~ [C] ~~“Current Tender Basis” means that the portion of Capacity available pursuant to paragraph 2.3 of the Proration Policy to New Shippers will be allocated among all New Shippers in proportion to the volumes of Petroleum Products Tendered by each New Shipper for that month in accordance with Carrier's Tendering and Scheduling Policy.~~
  - [W] ~~1.3~~ ~~1.4~~ “Base Period” is the 12-[C] ~~calendar~~-month period just preceding the Calculation Month. Individual months within the Base Period are designated by Nos. 1 through 12, with “Month 1” being the most recent Base Period month and “Month 12” being the oldest Base Period month.
  - [W] ~~1.4~~ ~~1.5~~ “Base Shipment Percentage” for each Regular Shipper [W] means is the total deliveries of Petroleum Products to all Destinations on the Pipeline Segment to be prorationed by the Regular Shipper during the Base Period divided by the lesser of (a) 12 or (b) the number of the Base Period month within which the Regular Shipper first delivered Petroleum Products to a Destination on the Pipeline Segment to be prorationed, divided by total deliveries to all Destinations on the Pipeline Segment during the Base Period.
  - [W] ~~1.5~~ ~~1.6~~ "Calculation Month" is the [C] ~~calendar~~ month immediately preceding the month for which Capacity is being prorationed.
  - [N] ~~1.6~~ [N] “Nominations” means a designation from a Shipper to Carrier for a quantity of Product (as defined in Carrier’s Pipeline Specification Manual) intended for transportation from a specified Origin to a specified Destination.

Capitalized terms not defined herein shall be defined as they are defined in Carrier's Tariff FERC No. [W] 31.1.0 4, [C] ~~supplements thereto~~ and reissues thereof.

## 2. Prorating of Capacity.

2.1 **When Capacity will be prorated.** This Proration Policy will be used by the Carrier to allocate Capacity among all Shippers for any month for which the Carrier determines, in its sole discretion, that the aggregate volume of Petroleum Products that all Shippers Tender to all Destinations in a Pipeline Segment exceeds [W] the pipeline capacity Capacity. This Proration Policy will be applied separately to each Pipeline Segment where a need for prorating shall arise.

[W] ~~2.2 2.3~~ **Availability and Allocation of Capacity to New Shippers.** Up to [W] ~~2.5~~ 40 percent of [W] available line capacity Capacity shall be made available to [N] each [W] New Shipper subject to a total of 10 percent of available capacity for all New Shippers ~~New Shippers and will be prorated among them on a Current Tender Basis.~~

[N] If four (4) or less New Shippers submit Nominations, each will be allocated the lesser of either 2.5 percent of available capacity or their nominated volume. If more than four (4) New Shippers submit Nominations, the 10 percent of available capacity will be prorated equally among all New Shippers. In the event that the volume allocated to any New Shipper is greater than the volume nominated, the excess volume will be reallocated among all other New Shippers, until each New Shipper is allocated the lesser of 2.5 percent of available capacity or their nominated volumes.

[W] ~~2.3 2.4~~ **Availability [N] and Allocation of Capacity to Regular Shippers.** After the allocation of the portion of Capacity to New Shippers that is required by paragraph [W] ~~2.2 2.3~~, the remaining portion of Capacity for that month shall be available to Regular Shippers who have Tendered volumes for that month.

[C] ~~2.5~~ **[C] Allocation to ~~each Regular Shipper~~.** Such remaining [C] ~~portion of~~ Capacity shall be allocated among Regular Shippers in proportion to their Base Shipment Percentages. In the event that the volume of Petroleum Products that would be allocated to a Shipper on the [C] ~~basis of its~~ Base Shipment Percentage is greater than the volume it Tenders, the [W] excess volumes will be reallocated ~~difference between its volume calculated on the basis of its Base Shipment Percentage and its volume Tendered will be reallocated~~ among all other Regular Shippers in proportion to their Base Shipment Percentages.

[W] ~~2.4 2.2~~ **Prorating on Gasoline Equivalent Basis.** When and if the Carrier, in its sole discretion, determines that a Barrel of gasoline consumes a smaller portion of Capacity, on the average, than a Barrel of heavier Petroleum Products such as distillate, Capacity will be prorated on a gasoline equivalent basis.

[W] ~~2.5~~ ~~2-6~~ **Basis for allocation: notification.** When prorationing of Capacity is in effect, [C] ~~(a)~~ Capacity shall be allocated among eligible Shippers on a monthly basis [N] who have properly submitted valid, timely Nominations [C] ~~;~~ ~~and~~

[C] ~~(b)~~ ~~the~~ Carrier shall use reasonable effort to notify each Shipper [W] of their entitled to an allocation [C] ~~of a portion of Capacity~~ [C] ~~of the amount of its allocation no later than the 25<sup>th</sup> day of the month preceding the month for which the allocation is made.~~ [N] Each Shipper will within 48 hours of notification resubmit their Nominations, which shall not exceed their gasoline equivalent allocation. Carrier shall distribute a monthly schedule reflecting the prorated Nominations.

[C] ~~2.7~~ [C] ~~**Good Faith Tenders.**~~ ~~Carrier will accept only good faith Tenders from Shippers and Carrier shall use whatever reasonable means necessary to determine whether Tenders are made in good faith. Good faith means the non-contingent ability and willingness of Shipper to deliver to Carrier at the Origins specified in the Tender all of the Barrels Tendered during the month for which the Tender is made.~~

[W] ~~2.6~~ ~~2-8~~ [N] **Penalty for Failure to use allocated [W] space portion of Capacity.** If a New Shipper [W] Tenders a volume less than ninety percent (90%) of its binding nomination, then the making a good faith Tender fails to deliver, at the Origins specified by it in its Tender, Petroleum Products sufficient to fill the portion of Capacity allocated to it and [N] Carrier will reduce such Shipper's allocation for the next proration period after the end of the month during which such failure occurred by the amount of capacity not Tendered. Carrier reserves the right to waive the penalty for failure to use allocated space if such failure [W] was has not been caused by force majeure, as substantiated in a manner satisfactory to the Carrier. [C] ~~Carrier will reduce such Shipper's allocation for the next proration period after the end of the month during which such failure occurred for which such Shipper Tenders as a New Shipper by the allocated portion of Capacity not utilized.~~

[W] ~~2.7~~ ~~2-9~~ **Transfer of Base Shipment Percentage or allocated portion of Capacity.** [C] ~~**use of affiliates.**~~ Neither a Shipper's Base Shipment Percentage nor volumes allocated to it during a period when prorationing is in effect shall be assigned, conveyed, loaned, transferred to, or used in any manner by, another Shipper. However, a Shipper's Base Shipment Percentage or its allocation may be transferred as an incident of the bona fide transfer of the Shipper's business or to a successor to the Shipper's business by the operation of law, such as an executor or trustee in bankruptcy. A Shipper may not use an affiliated or cooperating entity to increase its Base Shipment Percentage or its allocated portion of Capacity. All transfers made pursuant to this section shall be irrevocable. [N] If a Shipper transfers its Base Shipment Percentage, that Shipper is prohibited from becoming a New Shipper for a period of twelve (12) months.

[W] 2.8 ~~2-10~~ **Enhancement of Allocation.** In no event will an allocation to a Shipper be used in such a manner that will enhance the allocation of another Shipper beyond the allocation that such Shipper would be entitled to under this policy. Carrier may require written assurances from a responsible officer of Shipper regarding its use of its allocated portion of Capacity stating that Shipper has not violated this policy. In the event any Shipper shall, by any device, scheme or arrangement whatsoever, attempt to transfer all or any part of its allocated portion of Capacity to any other Shipper in violation of this policy, or in the event any Shipper shall attempt to receive and use such portion of Capacity, the portion of Capacity allocated to each such Shipper will be reduced in the next month that is subject to prorationing after the date that the violation is discovered by a volume equal to such attempted transfer.