

OFFICE OF FOSSIL ENERGY
 NATURAL GAS DIVISION
 DOCKET INDEX

FE DOCKET NO.: 96-61-NG

APPLICANT(S): PROGAS U.S.A., INC

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1 ✓	PROGAS U.S.A., INC	APPLICATION	Application for Authority to Import Natural Gas from Canada \$50.00 Application Fee	96-08-15	96-08-15
2 ✓	DOE/FE	ORDER	Order--1198 Granting Long Term Authority to Import Natural Gas	96-09-16	96-09-16
3 ✓	PROGAS U.S.A., INC	AMENDMENT	Application Requesting Amendment to Import Natural Gas from Canada \$50.00 Application Fee	96-10-04	96-10-04
4 ✓	DOE/FE	ORDER	Order--1198A Amending Long-Term Authority to Import Natural Gas	96-10-16	96-10-16

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

PROGAS U.S.A., INC.

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FE Docket No. *96-61-20*

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APPLICATION OF PROGAS U.S.A., INC. FOR LONG-TERM
AUTHORIZATION TO IMPORT NATURAL GAS

Communications with respect to this Application should
be addressed to:

Charles H. Shoneman, Esq.
Sarah G. Novosel, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W., Suite 500
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100 Congress Avenue, Suite 1900
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(512) 472-7800

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

PROGAS U.S.A., INC.

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FE Docket No. _____-NG

APPLICATION OF PROGAS U.S.A., INC. FOR LONG-TERM
AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. Section 717b, as amended by section 201 of the Energy Policy Act of 1992 ("Energy Policy Act") (P.L. 102-486), ProGas U.S.A., Inc. ("ProGas U.S.A.") submits this application for long-term authorization to import natural gas from Canada. In support of this application, ProGas U.S.A. respectfully shows as follows:

I.
GENERAL

The exact legal name of ProGas U.S.A. is ProGas U.S.A., Inc. Correspondence and communications concerning this application should be directed to:

Charles H. Shoneman, Esq.
Sarah G. Novosel, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W.
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Paul W. Fox, Esq.
Bracewell & Patterson, L.L.P.
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100 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 472-7800

II.
BACKGROUND

ProGas U.S.A. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 400 Third Avenue, S.W., Suite 3300, Calgary, Alberta, Canada. ProGas U.S.A. is beneficially owned by ProGas Limited, a private corporation organized under the laws of the Province of Alberta, Canada, with its principal place of business in Calgary, Alberta. ProGas U.S.A. is actively engaged in the business of purchasing and reselling natural gas throughout the United States. ProGas U.S.A. purchases natural gas supplies primarily from ProGas Limited and resells such supplies directly to end-users and others in "first sale" transactions. ProGas Limited is engaged in the business of buying and selling natural gas to purchasers located in Canada and at the United States border, including ProGas U.S.A.

III.
AUTHORIZATION REQUESTED

ProGas U.S.A. requests authorization to import up to 7,841 MMBtu per day of natural gas, plus fuel, on a long-term basis through October 31, 2000. As confirmed in the attached Exhibit "A", importation of natural gas from Canada is within ProGas U.S.A.'s corporate powers.

ProGas U.S.A. entered into a firm natural gas supply agreement dated November 1, 1992 with Great Plains Natural Gas Company ("Great Plains"). This agreement was scheduled to terminate October 31, 1997, but contained a right of renewal subject to the agreement of the parties. The parties subsequently extended this agreement for three years to October 31, 2000 under an amending contract dated October 6, 1995. Copies of the November 1, 1992 and October 6, 1995 agreements are attached as Exhibit "B" and collectively are referred to herein as the "Agreement".

ProGas U.S.A. will purchase the gas to be sold to Great Plains from ProGas Limited at the U.S./Canadian international boundary at Noyes, Minnesota. ProGas Limited will ship the gas through Canada on the NOVA Gas Transmission Ltd. pipeline to its interconnection with TransCanada PipeLines Ltd. ("TransCanada") at Empress, Alberta. From Empress, ProGas Limited will ship the gas on TransCanada to Noyes at the international boundary. At Noyes, ProGas Limited will sell the gas to ProGas U.S.A. From Noyes, ProGas U.S.A. will import the gas into the United States. Great Plains will ship the gas away from Noyes using its capacity on the Viking Gas Transmission Company ("Viking") pipeline system to the Great Plains' system at Fergus Falls.

Under the terms of the Agreement, the price of the gas sold by ProGas U.S.A. to Great Plains consists of a monthly demand charge, plus a monthly commodity charge for volumes of gas delivered. The Agreement provides for a fixed monthly demand charge which is the product of the number of days in a month times a multiplier. The monthly commodity charge for each MMBtu of gas delivered by ProGas U.S.A. to Great Plains was initially agreed to by the parties and subsequently determined by reference to spot prices.

Gas began flowing under the terms of the Agreement on November 1, 1992. ProGas U.S.A. began its imports, and is currently importing (and has consistently reported) the gas sold under the Agreement, through its short-term blanket import authorizations.

ProGas U.S.A. typically imports gas when it holds capacity on downstream U.S. interstate pipelines and delivers its imported gas to markets off those pipelines. ProGas U.S.A.'s sales to Great Plains do not fall within this category of sales. It has only recently come to the attention of ProGas U.S.A. that, through an administrative oversight, it did not previously seek to place the sales to Great

Plains under a long-term import authorization.¹ Accordingly, ProGas U.S.A. hereby requests such long-term import authorization, together with any related authorizations or waivers that may be necessary to bring it into compliance with applicable regulations of DOE/OFE.

IV.
PUBLIC INTEREST

The Energy Policy Act provides that the importation of natural gas from a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and that applications for such importation shall be granted without modification or delay.² Because ProGas U.S.A.'s application is for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, ProGas U.S.A. submits that its application is within the public interest.

V.
REPORTING REQUIREMENTS

With respect to the imports made pursuant to the long-term authorization requested herein, within two weeks after deliveries begin under the long-term authorization, ProGas U.S.A. will notify the Office of Fuels Programs ("OFP") in writing of the date that the first import of natural gas occurred. Additionally, ProGas U.S.A. will file with the OFP within 30 days following each calendar quarter, a quarterly report showing by month the total volume imported and the average purchase price per MMBtu of gas paid at the international border. The price information for a

¹ ProGas U.S.A. has taken steps internally to see that this type of administrative oversight should not reoccur.

² Energy Policy Act of 1992, Title II - Natural Gas, Pub. L. No. 102-486 (1992).

particular month will include the gas commodity charge, the Canadian pipeline demand charges, and the pipeline fuel and commodity charges.

VI.
CONCLUSION

WHEREFORE, for the foregoing reasons ProGas U.S.A. respectfully requests that the OFP expeditiously consider the instant application and, pursuant to section 3 of the NGA, as amended by section 201 of the Energy Policy Act, grant the requested long-term import authorization. ProGas U.S.A. submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted,



Charles H. Shoneman, Esq.
Sarah G. Novosel, Esq.
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(512) 472-7800

ATTORNEYS FOR PROGAS U.S.A., INC.

August 15, 1996

61816 01

EXHIBIT "A"



ProGas U.S.A., Inc.

3300, 400 Third Avenue S.W.
Calgary, Alberta
Canada T2P 4H2
Telephone: (403) 296-0600
Telecopier: (403) 266-0354

August 13, 1996

Mr. Clifford, Tomaszewski, Clerk
U.S. Department of Energy
Office of Fossil Fuels
1000 Independence Avenue S.W.
Room 3H087
Washington, DC 20001
U.S.A.

Dear Mr. Tomaszewski:

**Re: Application of ProGas U.S.A., Inc. for Long-term
Authorization to Import Natural Gas From Canada
FE Docket No. 96 - _____ - NG**

As counsel for ProGas U.S.A., Inc. (the "Company"), Application in the above-referenced proceeding, I have reviewed the Certificate of Incorporation and Bylaws of the Company, and such other documents as I have deemed necessary in order to advise you that:

1. The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own and operate its properties and to carry on its business; and
2. The Company has the requisite corporate authority to import natural gas from Canada.

Yours truly,

Magdalena A.K. Muir
Attorney for ProGas U.S.A., Inc.

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EXHIBIT "B"

BETWEEN:

PROGAS U.S.A., INC.,
a body corporate, having an office in the
City of Calgary, in the Province of Alberta
(herein referred to as "Seller")

APPROVED BY
BOARD OF DIRECTORS

- and -

17 June 93/ces

GREAT PLAINS NATURAL GAS COMPANY,
having an office in the City of Fergus Falls,
in the State of Minnesota
(herein referred to as "Buyer")

BACKGROUND:

Seller has committed to it a long term supply of natural gas produced in western Canada and Seller wishes to sell a portion of this supply to Buyer; and

Buyer is a local distribution company and wishes to obtain a firm supply of natural gas from Seller for resale to their residential, commercial and industrial users.

IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS
HEREIN the parties agree as follows:

ARTICLE I - INTERPRETATION

1.1 Definitions:

The following terms, when used in this Agreement, shall have the following meanings:

- (a) "British thermal unit" or "Btu" means the amount of heat required to raise the temperature of one (1) pound of distilled water one (1) degree Fahrenheit at sixty (60) degrees Fahrenheit, at a constant pressure of 14.73 pounds per square inch absolute;

- (b) "Business Day" means any day except Saturdays, Sundays, statutory holidays and banking holidays, under the laws of Alberta, or the laws applicable to the jurisdiction of Buyer;
- (c) "Buyer's Market" means the requirements of all Buyer's customers served off Viking as at November 1, 1992 (representing 10,841 MMBtu per day as at November 1, 1992);
- (d) "Canadian Regulatory Authorities" means each governmental agency or other authority in Canada which has jurisdiction over any matter relevant to Seller's rights and obligations hereunder, including without limitation the National Energy Board, the Public Utilities Board of Alberta, the Alberta Petroleum Marketing Commission, the Alberta Energy Resources Conservation Board and the Federal Governor-in-Council and Provincial Lieutenant Governors-in-Council;
- (e) "Capacity" means firm transportation capacity on the Upstream Pipelines arranged by Seller to deliver the DCQ plus Fuel where the volumetric equivalent shall be determined by using a deemed heating value of 1.000 MMBtu/Mcf.
- (f) "Commencement Date" shall have the meaning set forth in Article III;
- (g) "Contract Year" means, with respect to the first "Contract Year" the period commencing on the Commencement Date and ending on the thirty first (31st) day of October following the Commencement Date and with respect to any succeeding "Contract Year" the period of twelve (12) consecutive months beginning on November 1 and ending on October 31 of the following calendar year;
- (h) "cubic foot" means the volume of gas which occupies one (1) cubic foot when such gas is at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of 14.73 pounds per square inch absolute;

- (i) "Daily Contract Quantity" or "DCQ" means the quantities set forth in Article IV;
- (j) "day" means a period of twenty-four (24) consecutive hours beginning and ending at 8:00 a.m. Mountain Standard Time;
- (k) "Downstream Pipeline(s)" means Viking or any other transporters designated to transport gas purchased by Buyer from the Point of Delivery to Buyer's Market;
- (l) "Fuel" means the volume of gas required to transport the gas from the Point of Delivery to the Fergus Falls meter station or other meter station on Viking designated by Buyer, which Fuel requirements will be deemed to be 1.60% (Winter) and 1.14% (Shoulder and Summer) unless otherwise agreed to in writing by Buyer and Seller;
- (m) "gas" means natural gas of the quality specified in Article VIII;
- (n) "Heating Value" means the number of Btu's attributable to one (1) cubic foot of gas on a dry basis;
- (o) "MMBtu" means one (1) million Btu's;
- (p) "MMcf" means one (1) million cubic feet of gas;
- (q) "Month" means the period beginning on the first (1st) day of the calendar month and ending immediately before the first (1st) day of the next succeeding calendar month;
- (r) "Monthly Commodity Charge" means the commodity charge that is payable for gas delivered in a Month set forth in Article V;
- (s) "Monthly Demand Charge" means the demand charge payable as set forth in Article V;

- (t) "NOVA" means NOVA Corporation of Alberta;
- (u) "Point of Delivery" has the meaning set forth in Article VII;
- (v) "Scheduled Daily Delivery" means the volume of gas, up to the Daily Contract Quantity, which Buyer requests Seller to cause to be delivered to the Point of Delivery for Buyer's account during any one (1) day;
- (w) "TCPL" means TransCanada PipeLines Limited;
- (x) "TransGas" means TransGas Limited.
- (y) "Upstream Pipeline(s)" means NOVA, TransGas and TCPL or any other transporters designated to transport Seller's gas to the Point of Delivery;
- (z) "U.S. Regulatory Authorities" means each state or federal governmental agency or other authority in the United States of America which has or may accept jurisdiction over any matter relevant to the rights and obligations of Buyer and Seller, including without limitation the United States Department of Energy (Fossil Energy), the Federal Energy Regulatory Commission, the Minnesota Public Utilities Commission and the North Dakota Department of Public Service, and
- (aa) "Viking" means Viking Gas Transmission Company.

1.2

Other:

- (a) The division of this Agreement into articles, sections, subsections, paragraphs and sub-paragraphs and the provision of an index and headings is for convenience of reference only and shall not affect the interpretation of this Agreement.

- (b) All references to currency, unless otherwise specified, are to lawful money of the United States of America. Any necessary conversions from either U.S. or Canadian currency with respect to any charges for any month shall be calculated at the rate of exchange for such month being the rate of exchange shall be the average of the noon spot exchange rates for the U.S. dollar in terms of Canadian dollars for such month as published by the Bank of Canada.
- (c) All references to legislation in this Agreement are intended to also apply to amendments thereto, any re-enactment thereof, and any successor legislation which substantially adopts or duplicates such legislation.

ARTICLE II - CONDITIONS PRECEDENT

2.1 With regard to the commencement of service under this Agreement or any agreed upon extension of service after expiry of the initial term, the obligations of Seller to sell and Buyer to purchase gas under this Agreement shall not arise prior to the satisfaction of each of the following conditions (the "Conditions") unless such conditions are waived by written agreement by both Buyer and Seller:

- (a) the receipt by Seller, from the appropriate Canadian Regulatory Authorities of all necessary permits, licences, certificates or authorizations for the removal of gas from Alberta, the export and sale of gas to Buyer, and the transportation of such gas from the area of production to the Point of Delivery, on terms and conditions acceptable to Seller and Buyer;
- (b) the receipt by Seller of the necessary import authorization from the appropriate U.S. Regulatory Authorities;
- (c) the receipt by Buyer from the appropriate U.S. Regulatory Authorities, of all permits, licences, certificates, or authorizations for the purchase of Seller's gas, and the transportation and delivery of such gas from the Point of Delivery to Buyer's Market on terms acceptable to Buyer and Seller;

- (d) the completion by Seller of all necessary non-proratable firm transportation arrangements for Capacity to the Point of Delivery on the facilities of the Upstream Pipelines on terms acceptable to Seller and Buyer; and
- (e) the completion by Buyer of all necessary firm non-proratable transportation arrangements from the Point of Delivery on the facilities of the Downstream Pipelines for the DCQ on terms acceptable to Buyer and Seller.

2.2 Each of the parties shall proceed with due diligence to apply for and receive their respective authorizations and arrangements set forth above by or before November 1, 1992, or November 1, 1996 in the case of an agreed to extension pursuant to Section 3.1, and to keep the other party informed as to the status. Each of the parties shall use due diligence to maintain and extend, if necessary, any such authorization which may expire during the Term. The parties agree that the term of authorizations required from Canadian Regulatory Authorities and U.S. Regulatory Authorities may be for initial terms shorter than the term of this Agreement and Buyer and Seller shall rely on such short term authorizations to sell and purchase gas hereunder, until such time as the parties agree that long term authorizations covering the term of this Agreement are necessary.

2.3 Buyer shall reimburse Seller for any U.S. customs import merchandising fees or any other import taxes or levies which may be payable by Seller, as importer, upon the import of the gas into the United States.

ARTICLE III - TERM OF AGREEMENT, COMMENCEMENT

3.1 Term

This Agreement shall become effective from the date first above written and shall continue in full force and effect until October 31, 1997. On or before October 31, 1995 the parties shall review the terms and conditions of this Agreement to determine their appropriateness for a second term commencing November 1, 1997 and continuing through to October 31, 2002. If both parties confirm in writing prior to October 31, 1995 that they are satisfied that the terms and conditions of this Agreement are appropriate for such second

term, then, subject to Article II, deliveries shall continue for an additional five (5) contract years until October 31, 2002.

3.2 Commencement Date

Subject to the fulfilment or waiver of the Conditions set forth in Article II, the obligation of the parties to sell and purchase gas shall commence November 1, 1992 ("Commencement Date").

ARTICLE IV - CONTRACT QUANTITIES; DELIVERIES

4.1 Daily Contract Quantity

The Daily Contract Quantity ("DCQ") will be:

- (a) during the months of October through May inclusive of each Contract Year ("Winter DCQ"), a quantity equal to 7,841 MMBtu per day plus Fuel.
- (b) During the months of June, July and August inclusive of each Contract Year ("Summer DCQ"), a quantity equal to 4,000 MMBtu per day plus Fuel for the first Contract Year. The Summer DCQ will increase in subsequent Contract Years in the following manner:

2nd Contract Year: 4313 MMBtu/day plus Fuel;
 3rd Contract Year: 5489 MMBtu/day plus Fuel;
 4th Contract Year: 5881 MMBtu/day plus Fuel;
 5th Contract Year: 7841 MMBtu/day plus Fuel;
 or the Winter DCQ, whichever is greater (and thereafter, if applicable).

- (c) During the month of September of each Contract Year ("Shoulder DCQ") a quantity equal to 6,000 MMBtu per day plus Fuel or the Summer DCQ, whichever is greater.
- (d) In the event that the Fuel requirements in Viking's tariff increase, any corresponding increase in the DCQ will be conditional on Seller obtaining additional firm transportation on the Upstream Pipelines.

4.2 Delivery Obligation

Subject to the fulfilment of the Conditions set forth in Article II and the remaining provisions of this Agreement, on each day commencing on and after the Commencement Date and continuing until the end of the term of this Agreement, Seller shall tender for delivery and sell, and Buyer shall purchase and cause to be received, the Scheduled Daily Delivery, at the Point of Delivery. Seller's obligation to deliver will in no event exceed the Capacity. In the event that the Heating Value of the gas delivered is less than the deemed Heating Value set forth in Section 1.1(e), such that additional Capacity is required to deliver the MMBtu's requested by Buyer, Seller will use reasonable efforts to obtain such additional capacity.

4.3 Failure to Deliver

- (a) If, on any day, Seller does not tender for delivery sufficient gas at the Point of Delivery to meet the Scheduled Daily Delivery for reasons other than Force Majeure, then Seller shall have the right, but not the obligation, to deliver replacement volumes from other locations, provided however that Buyer has transportation service available and that Seller shall pay the cost of such alternate transportation service up to the replacement volume to the extent that such cost exceeds the amount otherwise payable by Buyer for transportation of gas delivered by Seller as contemplated herein.
- (b) In the event that Seller should elect not to or cannot deliver replacement volumes from other locations, Buyer shall have the right to purchase such gas

from alternate sources. Buyer shall use reasonable efforts to obtain the lowest cost alternative source of gas available, and to minimize any incremental transportation charges.

- (c) In the event Buyer purchases replacement volumes as outlined in (b) above, and the failure of Seller to deliver was not excused by an event of Force Majeure, then Seller hereby covenants and agrees to indemnify and hold Buyer harmless from the costs actually and reasonably incurred by Buyer, insofar as same are or relate to:
 - (i) the direct costs, charges and expenses incurred by Buyer in purchasing the undelivered portion of the nominated quantities; and
 - (ii) the transportation costs, charges and expenses of transporting any volumes referred to in clause (i) to Buyer's point of resale paid by Buyer to the extent that such costs exceed the costs which Buyer would otherwise have incurred in respect of gas delivered by Seller hereunder.
- (d) The indemnification contained herein shall apply only to the extent such costs, charges, expenses and obligations exceed the price of gas hereunder. The indemnification herein shall be Buyer's sole remedy in the event that Seller fails to deliver.
- (e) The remedies hereunder shall be the sole remedies of Buyer in the event Seller fails to deliver and such failure was not otherwise excused hereunder.

4.4 Purchase Obligation

All gas required for Buyer's Market up to the DCQ will be acquired by Buyer from Seller and Buyer shall not displace the supply available hereunder with supply from any other sources.

4.6 Right of First Refusal

In the event that the requirements of Buyer's Market increase, prior to entering into any firm obligation to purchase gas supply from any other supplier at the TCPL interconnect with Viking at Emerson, Buyer shall, by giving notice in writing, advise Seller as to its desire to purchase additional supply and the terms of any offer to supply ("Third Party Offer to Supply") which Buyer is considering. Unless otherwise mutually agreed, Seller shall have a first right to either accept or reject the terms of any Third Party Offer to Supply or submit an offer to supply within thirty (30) days of Buyer's notice. In the event Seller accepts the Third Party Offer to Supply, or Buyer accepts Seller's offer to supply, Buyer will purchase gas from Seller on such terms. In the event that Seller rejects the Third Party Offer to Supply or Buyer rejects Seller's offer to supply, if any, then Buyer may purchase the gas in accordance with the Third Party Offer to supply.

ARTICLE V - PRICE

5.1 Price

The price to be paid by Buyer for natural gas supply and service hereunder shall consist of a Monthly Demand Charge commencing November 1, 1992 and the Monthly Commodity Charge per MMBtu delivered.

5.2 Monthly Demand Charge

The Monthly Demand Charge shall be the product of the Capacity, applicable to such month expressed in Mcf and the monthly demand rate ("MDR"), where the MDR for any month shall be equal to the sum of the following:

- (a) the monthly demand toll, for TCPL firm transportation service as determined by the National Energy Board and in effect during the month applicable to the transportation and delivery of gas, expressed in U.S. dollars per Mcf;

- (b) Buyer's pro rata share of the total actual monthly demand charges as billed to Seller directly or indirectly for NOVA Firm Service ("NOVA Toll") and TransGas Limited ("TransGas Toll") including monthly billing adjustments expressed in U.S. dollars per Mcf provided that the TransGas Toll may not be greater than the NOVA Toll on a per Mcf basis; and
- (c) Buyer's pro rata share of ProGas' cost of service for the applicable month as approved by the Alberta Petroleum Marketing Commission, or such other authority as may be approved pursuant to ProGas Limited's supply contracts with its producers, expressed in U.S. dollars per Mcf ("ProGas Toll").

Where Buyer's "pro rata share" will be calculated by dividing the DCQ by the sum of the daily contract quantity equivalent of Seller's firm sales commitments which incorporate a monthly demand charge for such month.

5.3 Monthly Commodity Charge

The Monthly Commodity Charge for each MMBtu delivered by Seller in a Month shall be:

- (a) for the Contract Year commencing November 1, 1992 the Monthly Commodity Charge shall be U.S.\$1.43/MMBtu; and
- (b) for the Contract Year commencing November 1, 1993, the Monthly Commodity Charge shall be U.S.\$1.53/MMBtu and thereafter the Monthly Commodity Charge will be determined in accordance with Article XI or Article XII.

ARTICLE VI - BILLING AND PAYMENTS

6.1 Monthly Statements and Payments

- (a) Seller shall render to Buyer on or before the fifteenth (15th) day of each month ("Invoice Date") a statement for the preceding month (the "Sale Month") showing the daily and total quantity of gas delivered, the Heating Value and the total amount payable by Buyer stated in U.S. dollars ("the U.S. Dollar Sum"). Buyer agrees to deposit by wire transfer in Seller's account at the Bank of Montreal, Calgary, Alberta, Canada, or such other bank as may be designated by Seller, on or before the twenty fifth (25th) day of each month ("Payment Date"), the U.S. Dollar Sum for the Sale Month. In the event that Buyer has not received Seller's statement on or before the Invoice Date, the Payment Date shall be extended one (1) day for each day that Seller's statement is late. If the Payment Date is not a Business Day, then payment shall be due on the Business Day closest and prior to the Payment Date. Notwithstanding the foregoing Buyer agrees to use reasonable efforts to pay Seller by the 20th day of each month.
- (b) If Seller is unable to render a statement based on actuals reported by pipelines, on or before the Invoice Date, Seller may at its option, render a statement containing Seller's best estimate of the daily and total quantity of gas delivered in the Sales Month, and the total amount payable by Buyer ("Estimate"). Buyer shall deposit in Seller's account the Estimate by the Payment Date. Seller shall render the final statement for such Sales Month with Seller's statement for the next succeeding Sales Month. Seller's statement for such next succeeding month shall reflect an adjustment for any difference between the Estimate and the final statement for the previous Sales Month.
- (c) In the event that the actual billing for the amounts set forth in Section 5.2 is not available to Seller by the Invoice Date, unless otherwise agreed to by the parties, Seller may charge to Buyer the most recent previous month's actual billings for such amounts.

6.2

Failure to Pay

(a) If Buyer fails to deposit the U.S. Dollar Sum, or any portion thereof, in Seller's account by the Payment Date, interest thereon shall accrue as provided in Section 6.4. If Buyer's failure to pay continues for five (5) days beyond the Payment Date, Seller may, in addition to all other remedies, thereafter suspend the sale of gas provided that Seller must first have notified Buyer in writing ten (10) days prior to exercising such right of its intent to do so. If after Buyer receives such notice:

(i) Buyer pays the amount so due to Seller within such ten (10) day period;
or

(ii) Buyer in good faith disputes the amount of any such statement and pays to Seller such amounts as it concedes to be correct and within such ten (10) day period either (1) furnishes a bond; or (2) deposits the disputed amount in escrow, in either case under terms reasonably satisfactory to Seller and sufficient to guarantee payment to Seller of the amount ultimately found due upon such bill after a final determination which may be reached either by agreement or judgement of the courts,

Seller shall not be entitled to suspend further sales of gas provided that Seller will be entitled to immediately suspend sales of gas upon default of the terms of any bond or escrow established.

(b) If the default of payment continues after the expiration of the ten (10) day notice of suspension and without a bond or escrow as provided in Section 6.2, or such bond or escrow is in default Seller may thereafter in addition to any other rights Seller may have, terminate this Agreement.

6.3 Inspection

Each party shall have the right to inspect and examine, at reasonable times, the records and pipeline statements of the other party pertaining to the purchase and sale of gas hereunder. If any overcharge or undercharge is discovered, Seller shall refund the amount of the overcharge paid by Buyer or Buyer shall pay the amount of the undercharge, within thirty (30) days after the final determination. No retroactive adjustment is required for any discrepancy beyond a period of twelve (12) months from the date it occurred. Both parties agree to request any applicable transporter for records under their agreements with the transporting pipelines if required to settle a dispute.

6.4 Interest

If either party fails to pay any amount when due and claimed, and such amount is not successfully disputed by such party or if refunds are due, interest on any amount finally determined to be due shall accrue at the rate equal to the annual U.S. Base Lending Rate of interest plus two (2) percent announced from time to time by the bank used or designated by Seller.

ARTICLE VII - POINT OF DELIVERY

7.1 Point of Delivery

The Point of Delivery shall be the point of interconnection between the facilities of TCPL and Viking, at the international boundary between Emerson, Manitoba, Canada and Noyes, Minnesota, United States of America.

7.2 Title and Possession

Possession of and title to gas sold by Seller to Buyer hereunder shall pass from Seller to Buyer at the Point of Delivery. Until the gas reaches the Point of Delivery as between Seller and Buyer, Seller shall be deemed to be in control of, have possession of, and be responsible for such gas after which Buyer shall be deemed to be in control of, have

possession of, and be responsible for such gas. Seller warrants that it will at the time of delivery have good title to all gas sold to Buyer hereunder, free and clear of all liens, encumbrances and claims whatsoever and that Seller will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to the title of said gas, which arise prior to title passing to Buyer.

7.3 Delivery Pressure

The gas shall be delivered to Viking at Viking's line pressure at the Point of Delivery.

7.4 Taxes

The price as determined by Article V shall be the price paid at the Point of Delivery from Canada to the United States. Any taxes imposed by any taxing authority upon the sale, use or transportation of gas under the Agreement following the Point of Delivery, including but not limited to United States sales, use, utility city license and transportation taxes or import taxes shall be the responsibility of Buyer. Seller shall be responsible for all taxes due or levies on the production, treating, gathering, processing, handling or transmission prior to the Point of Delivery including, but not limited to, Canadian sales or export taxes.

7.5 Transportation

Seller shall be responsible for payment of all transportation charges on the Upstream Pipelines and Buyer shall be responsible for payment of all transportation charges on the Downstream Pipelines.

ARTICLE VIII - QUALITY AND MEASUREMENT

8.1 Quality

Seller agrees that the gas delivered hereunder at the Point of Delivery will meet the then effective quality specifications of the Upstream and Downstream Pipelines. If the gas which Seller causes to deliver hereunder fails at any time to conform to the quality requirements of the transporter receiving the gas at the Point of Delivery, then upon Buyer's notice to Seller, Buyer shall at its option, be relieved of its obligation to purchase and Seller shall be relieved of its obligation to sell until the problem has been rectified.

8.2 Measurement

For billing purposes the quantity and Heating Value of gas delivered hereunder shall be calculated from the measurements taken at the meter or instruments installed, operated and maintained by the measuring pipeline at the Point of Delivery. Measurement shall be made based on the tariff specifications of such pipeline as such specifications may be changed from time to time by such pipeline; provided, however, that notwithstanding any provision in such tariff to the contrary, payment for gas delivered hereunder shall be based on the total Heating Value of the gas received on a dry basis.

8.3 Conversions

Where required, standards of measurement shall be converted to metric measures or to imperial measures. The conversion of any quantity or value referred to below shall be done using the following equivalent factors:

MMBtu X 1.054615	=	GJ
MMcf X 28.32784	=	10 ³ m ³
psi X 6.894757	=	kPa
(°F - 32) X 5/9	=	°C

ARTICLE IX - NOMINATIONS AND BALANCING

9.1 Nominations

By at least two (2) days prior to the commencement of each Month, Buyer shall provide Seller with an estimate of the anticipated Scheduled Daily Delivery(s) for the following month. Buyer may advise Seller of any changes to the Scheduled Daily Delivery by providing sufficient advance notice to Seller to allow Seller to meet the nomination deadlines set by the Upstream Pipelines. Seller will advise Buyer of Seller's nomination deadlines or changes to same. The parties agree to use best efforts to arrange nominations on non Business Days. If no nomination or change to the Scheduled Daily Delivery is received by Seller for any day, the last nomination, or Scheduled Daily Delivery will remain in effect.

9.2 Imbalances

Buyer and Seller agree to use best efforts to minimize imbalances and circumstances that may give rise to pipeline penalties or charges in a given month. If penalties or charges are imposed on either party by third party pipelines transporting gas hereunder, as a result of the delivery, non-delivery, receipt or non-receipt of gas, Buyer and Seller will use best efforts and cooperate to expeditiously ascertain the cause of, mitigate and resolve, such fees, penalties or charges. It is the intent of the parties that the party responsible for causing the penalty shall be responsible for paying same.

ARTICLE X - FORCE MAJEURE

10.1 Except for the obligation to pay Demand Charges and the payment of monies owed, and subject to 10.3 a party shall be relieved of those obligations which it is prevented from carrying out due to, and to the extent of, a Force Majeure condition.

10.2 Force Majeure conditions shall be those events or conditions not caused by, and beyond the reasonable control of, the affected party which prevent such party from carrying out all or a portion of its obligations under this Agreement. Force Majeure shall not include financial impracticability or financial inability but shall include, but not be limited to:

interruption or prorationing of firm transportation service by a pipeline transporting gas hereunder; failure of field production facilities of, or supply from producers contracted to Seller, but only to the extent that such failure of production can be demonstrated to affect Seller's ability to obtain supply from its contracted supply sources in western Canada below the level of its then existing total firm sales obligations; explosions, breakages or accidents to machinery, lines of pipe or field and delivery facilities, line freeze ups, or temporary failure of gas supply due to similar causes; loss of import or export licenses or other necessary regulatory authority or where continued performance would be in violation of an order, legislation, regulation or similar direction of a government, board, agency or court having jurisdiction which has been resisted in good faith.

10.3 An event of Force Majeure affecting either party's performance under this Agreement shall not relieve the non performing party of liability:

- (a) to the extent that the negligence of the non-performing party or its affiliates was the proximate cause of the event;
- (b) to the extent the non-performing party fails to remedy the situation and remove or overcome the cause of the event with due diligence and all reasonable dispatch;
- (c) from the obligation to make any payments due hereunder for actions taken prior to the event of Force Majeure; and
- (d) unless the non performing party shall give notice and full particulars of the same as soon as possible after the occurrence of the event for which excuse is claimed.

ARTICLE XI - RENEGOTIATION AND ARBITRATION

11.1 Renegotiation

Either party may, by written notice to the other party prior to May 1 of the second Contract Year, or May 1 of any subsequent Contract Years, request renegotiation of the Monthly Commodity Charge to be effective no earlier than the commencement of the following Contract Year unless otherwise mutually agreed. The purpose of such renegotiation will be to reach agreement on a Monthly Commodity Charge which will result in an overall Price for gas supplies purchased hereunder which is reasonably equivalent to prices for alternate firm gas supplies delivered into Viking at Emerson and prices for other alternate firm gas supplies available to Buyer, for terms of at least five (5) years with comparable reliability and flexibility of service as provided pursuant to this Agreement. In the event that neither party requests renegotiation in any given year, the last Monthly Commodity Charge will continue in effect.

11.2 Referral to Arbitration

If the parties fail to reach agreement on a Monthly Commodity Charge by June 1 following the notice for renegotiation, unless otherwise mutually agreed, the matter shall be submitted to Arbitration pursuant to Article XII. The Arbitrator(s) shall consider an overall Price for gas under this Agreement equivalent to prices for alternate firm gas supplies delivered into Viking at Emerson and prices for other alternate firm gas supplies available to Buyer, for terms of at least five (5) years with comparable reliability and flexibility of service as provided pursuant to this Agreement. In reaching such determination, the Arbitrators shall have regard to the following:

- (a) the security of supply and indemnity obligations backing Seller's obligation to deliver, compared to alternate firm gas supply options available;
- (b) the period of time for which a firm commitment to supply is made; and
- (c) the flexibility of the Buyer to adjust levels of take.

11.3 Unless otherwise agreed to by Buyer and Seller, the Monthly Demand Charge shall not be subject to amendment or modification through renegotiation or arbitration.

ARTICLE XII - ARBITRATION

12.1 Upon written notice from either party requiring arbitration under this Agreement as required herein or as agreed to by the parties, unless otherwise agreed to by the parties the following shall apply:

- (a) the arbitration will be referred to the British Columbia International Commercial Arbitration Centre ("BCICAC") and finally resolved by arbitration under the rules of the BCICAC ("BCICAC Rules");
- (b) the place of arbitration shall be Vancouver, British Columbia, Canada;
- (c) the case shall be administered by the BCICAC in accordance with the "Procedures for cases under the BCICAC Rules";
- (d) each notice demanding arbitration shall include a suggested arbitrator. Within fifteen (15) days following receipt of such notice, the party receiving notice shall accept the arbitrator or propose an alternative arbitrator. If the parties are unable to select a single arbitrator within thirty (30) days from the date of notice, the arbitrators selected by each party shall promptly select a third and the arbitration hearing shall be held within sixty (60) days from the date of notice of arbitration. Unless otherwise mutually agreed, the Hearing shall not exceed thirty (30) days. Each party shall pay all costs for presenting its position and the costs of the arbitrator, elected by such party in the case of a three (3) arbitrator panel. All costs for the hearing facilities and for the single arbitrator or the third arbitrator, if applicable, shall be divided equally between Buyer and Seller; and
- (e) the decision of the arbitrator(s) shall be delivered within thirty (30) days from the date of the conclusion of the Hearing. The decision of the arbitrator (a

majority vote if an arbitration panel is used) shall be final and binding, subject only to such appeal as may be permitted for binding arbitration decisions under the International Commercial Arbitration Act of British Columbia, and any regulatory approvals which may be required. The parties agree to use due diligence in obtaining such regulatory approvals.

12.2 Pending the outcome of any such arbitration, the terms in effect immediately prior to such arbitration shall remain in effect. Any modification approved by the arbitrator(s) shall be effective prospectively only, and such modification shall become effective on the first day of the first month following the decision of the arbitrators, but in no event earlier than the first day of the Contract Year following the date on which notice of the renegotiation that resulted in such arbitration was given.

ARTICLE XIII - LAWS AND REGULATORY BODIES

13.1 This Agreement and the rights and obligations of the parties hereunder are subject to all applicable present and future laws, regulations and orders of any regulatory, executive, or legislative body or other duly constituted authority having jurisdiction over Seller or Buyer.

13.2 This Agreement is governed and construed in accordance with the State of Minnesota, without recourse to the rule of conflict of laws. The parties submit to the courts of Alberta for the interpretation and enforcement hereof.

13.3 If any action of a governmental or regulatory body materially adversely affects a party in relation to such parties rights and obligations under this Agreement, such party may, by written notice to the other party, request renegotiation of this Agreement. For further clarity this includes FERC Orders in relation to Viking's compliance with FERC Orders 636. In the event that the parties are unable, in good faith, to renegotiate this Agreement in a manner that addresses the adverse effect of the government action within thirty (30) days of the written notice, the party initiating the renegotiation may terminate this Agreement upon ninety (90) days written notice to the other parties.

ARTICLE XIV - TRANSFER AND ASSIGNMENT

14.1 Any entity which shall succeed by purchase, merger, or consolidation to the properties and contracts, substantially as an entirety, of Buyer or of Seller, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Seller may, without relieving itself of its obligations under this Agreement, assign any of its rights and obligations hereunder to an entity with which it is affiliated at the time of such assignment. Otherwise no assignment hereunder shall be made by Seller without the written consent of Buyer first obtained which consent shall not be withheld unreasonably. Buyer may, without relieving itself of its obligations under this Agreement, assign any of its rights and obligations hereunder to an entity with which it is affiliated at the time of such assignment. Otherwise no assignment of this Agreement or any of its rights or obligations hereunder shall be made by Buyer without the written consent of Seller first obtained which consent shall not be withheld unreasonably.

ARTICLE XV - NOTICES

15.1 Every notice, statement or bill provided for in this Agreement shall be in writing directed to the party to whom given, made or delivered personally, by courier, first class mail, or facsimile to such party's address as follows:

Seller: ProGas U.S.A., Inc.
4100, 400 Third Avenue S.W.
Calgary, Alberta
T2P 4H2

Attention: Manager, Operations

Telephone: (403) 266-0300
Telecopier: (403) 266-0354

Buyer: Great Plains Natural Gas Company
105 West Lincoln Avenue
Fergus Falls, Minnesota 56538-0178

Attention: Vice President, Administration

Telephone: (218) 736-6935

Telecopier: (218) 736-7135

15.2 Either party may change its address from time to time by giving written notice of such change to the other party. Any notice, statement or bill or other document made, given or delivered hereunder by mail shall be deemed to have been effectively delivered to the addressee thereof at the end of the fifth (5th) business day after the date of mailing by prepaid registered mail and return receipt requested in the United States mail or Canadian mail. Any such notice, statement, bill or other document delivered by hand or courier shall be deemed effective when delivered to the addressee in accordance with the instructions set forth in Section 15.1 and confirmed by record of the party making the delivery. In the case of a transmission by telecopy or other similar means delivery shall be when receipt has been verified.

15.3 It is expressly understood and agreed, however, that the statements and notices referred to in Article VI and Section 9.1 shall first be delivered by telecopier, or other similar means, in accordance with the dates and times provided therein, and shall be mailed as soon as practicable thereafter, unless otherwise agreed to by the parties.

ARTICLE XVI - MISCELLANEOUS PROVISIONS

16.1 This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the parties concerning such subject matter unless specifically stated herein. No amendment shall be effective unless reduced to writing and signed by both parties.

16.2 The parties agree to maintain the confidentiality of this Agreement and the actions hereunder, and agree to disclose such to parties only to the extent of the need to know. This Agreement may be filed as necessary to support regulatory approvals.

16.3 In no event shall any party to this Agreement be liable to any party for indirect, consequential or special damages, including without limitation, loss of profits or income, loss of business expectations, business interruptions, loss of contract or any damage to third parties arising out of this Agreement or breach thereof.

16.4 No waiver by either party of any one or more defaults in performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any future default, whether of a like or difference character.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in duplicate and, if necessary, their corporate seals to be hereunto affixed and attested by the hands of their proper officers duly authorized in that behalf this 12th day of April, 1992.

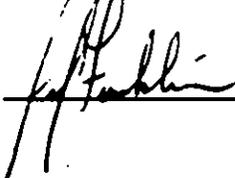
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PROGAS U.S.A., INC.

Per: 

Per: 

GREAT PLAINS NATURAL GAS COMPANY

Per: 



THIS AMENDING AGREEMENT made as of the 6th day of October, 1995

BETWEEN:

PROGAS U.S.A., INC.,
a body corporate, having an office in the
City of Calgary, in the Province of Alberta
(Hereinafter referred to as "Seller")

AND:

GREAT PLAINS NATURAL GAS COMPANY,
having an office in the City of Fergus Falls,
in the State of Minnesota
(hereinafter referred to as "Buyer")

BACKGROUND

Seller and Buyer are parties to a Gas Sales Agreement made as of the 1st day of November, 1992 (the "Gas Sales Agreement") and in consideration of the mutual covenants agreed to, the parties have agreed to amend the Gas Sales Agreement as follows:

- (1) Section on 3.1 of the Gas Sales Agreement will be deleted and replaced with the following:

"3.1 Term

This Agreement shall become effective from the date first above written and shall continue in full force and effect until October 31, 2000 ("the Termination Date"). On or before October 31, two contract years prior to the Termination Date, the parties shall review the terms and conditions of the Agreement to determine their appropriateness for an additional three year term. If both parties confirm in writing prior to the Termination Date that they are satisfied that the terms and conditions of the Agreement are appropriate for such additional term, then, subject to Article II, the term of the Gas Sales Agreement shall be extended for an additional three (3) years".

- (2) Except as expressly modified herein, the Gas Sales Agreement is hereby ratified and affirmed, and continues in full force and effect.

IN WITNESS WHEREOF the parties have hereby executed the Amending Agreement.

GREAT PLAINS NATURAL GAS COMPANY

Per: 

Per: 

Date: October 11, 1995

PROGAS U.S.A., INC.

Per: 

Per: 

Date: oct. 6/95

EXHIBIT "C"

VERIFICATION

Magdalena A.K. Muir, being first duly sworn, deposes and says that she is a duly authorized representative of the Applicant; that she has read the foregoing document; that she is familiar with the contents thereof; that the statements contained therein are true and correct to the best of her knowledge, information and belief, that she is authorized to file the same with the Office of Fossil energy; and that, to the best of her knowledge, information and belief, the same or a related matter is not being considered by any other part of the Department of Energy, including the Federal Energy Regulatory Commission, or any federal agency or department.

Magdalena A.K. Muir
Magdalena A.K. Muir

Subscribed and sworn to before
me this 13th day of August, 1996.

Janice Kowch
A Notary Public in and for the
Province of Alberta

JANICE R.M. KOWCH
A Commissioner for Oaths, Notary Public
in, and for the Province of Alberta
My Commission Expires at the pleasure of
the Alberta Attorney General

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

1996 SEP 16 P 2:37

REC'D DOE/FE

PROGAS U.S.A., INC.)
_____)

FE DOCKET NO. 96-61-NG

ORDER GRANTING LONG-TERM AUTHORIZATION TO
IMPORT NATURAL GAS FROM CANADA

DOE/FE ORDER NO. 1198

SEPTEMBER 16, 1996

I. DESCRIPTION OF REQUEST

On August 15, 1996, ProGas U.S.A., Inc. (ProGas) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) ^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting long-term authorization to import from Canada up to 7,841 MMBtu^{2/} per day of natural gas, plus gas required for transportation. ProGas is a corporation under the laws of the State of Delaware with its principal place of business in Calgary, Alberta, Canada, and is beneficially owned by ProGas Limited.

ProGas will purchase the natural gas to be imported from ProGas Limited under a netback arrangement, and resell the supplies to the Great Plains Natural Gas Company (Great Plains) under the terms of a November 1, 1992, natural gas sales agreement, and an October 6, 1995, amending agreement. The November 1, 1992, agreement provides for the firm sale of 7,841 MMBtu per day of natural gas for a five-year term beginning on November 1, 1995, through October 31, 1997.^{3/} The amending agreement of October 6, 1995, extended that term until October 31, 2000. Under the terms of the agreement, the price of gas sold by ProGas to Great Plains consists of a fixed monthly

^{1/} 15 U.S.C. § 717b.

^{2/} This volume is equivalent to 7,841 Mcf of natural gas.

^{3/} ProGas is currently importing this gas under blanket authority in FE Docket No. 95-22-NG, dated April 17, 1995 (1 FE ¶ 71,104).

demand charge subject to revision by ProGas, plus a monthly commodity charge.

ProGas states that the imported natural gas will enter the United States at the interconnection of TransCanada PipeLines Ltd. and Viking Gas Transmission Company (Viking) pipeline systems at Noyes, Minnesota. Viking will then ship the gas to Great Plains' system at Fergus Falls, Minnesota.

II. FINDING

The application filed by ProGas has been evaluated to determine if the proposed import arrangement meets the public interest requirement of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the import of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. The authorization sought by ProGas to import natural gas from Canada, a nation with which a free trade agreement is in effect, meets the section 3(c) criterion and, therefore, is consistent with the public interest.

ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. ProGas U.S.A., Inc. (ProGas) is authorized to import from Canada up to 7,841 Mcf per day of natural gas, plus gas required for transportation, effective the date of this Order through October 31, 2000, under the terms and conditions of the

gas sales agreement dated November 1, 1992, and the October 6, 1995, amendment to the gas sales agreement between ProGas and Great Plains Gas Natural Gas Company. This natural gas may be imported at the interconnect of TransCanada PipeLines Ltd. and Viking Gas Transmission Company at the international border at Noyes, Minnesota.

B. With respect to the natural gas imports authorized by this Order, ProGas shall file with the Office of Fuels Programs, within 30 days following each calendar quarter, a quarterly report indicating by month the volumes and prices of natural gas imported pursuant to this Order. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. If imports have occurred, ProGas must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu delivered at the international border. The monthly price information shall itemize separately the monthly demand and commodity charges, fuel charges, and, if applicable, reservation fees.

C. The first quarterly report required by Ordering Paragraph B of this Order is due not later than October 30, 1996, and should cover the period from the date of this Order through the end of the third calendar quarter, September 30, 1996.

Issued in Washington, D.C., on September 16, 1996.



Anthony J. Como
Director
Office of Coal & Electricity
Office of Fuels Programs
Office of Fossil Energy

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

PROGAS U.S.A., INC.

)
)
)

FE Docket No. 96-61-NG

APPLICATION OF PROGAS U.S.A., INC. TO AMEND LONG-TERM
AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. Section 717b, as amended by section 201 of the Energy Policy Act of 1992 ("Energy Policy Act") (P.L. 102-486), ProGas U.S.A., Inc. ("ProGas U.S.A.") submits this application to amend a long-term authorization to import natural gas from Canada. This authorization was granted to ProGas U.S.A. in DOE/FE Order No. 1198, FE Docket No. 96-61-NG, issued September 16, 1996. In support of this application, ProGas U.S.A. respectfully shows as follows:

I.
GENERAL

The exact legal name of ProGas U.S.A. is ProGas U.S.A., Inc. Correspondence and communications concerning this application should be directed to:

Charles H. Shoneman, Esq.
Sarah G. Novosel, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W.
Washington, D.C. 20006
(202) 828-5800

Paul W. Fox, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
100 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 472-7800

II.
BACKGROUND

ProGas U.S.A. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 400 Third Avenue, S.W., Suite 3300, Calgary, Alberta, Canada. ProGas U.S.A. is beneficially owned by ProGas Limited, a private corporation organized under the laws of the Province of Alberta, Canada, with its principal place of business in Calgary, Alberta. ProGas U.S.A. is actively engaged in the business of purchasing and reselling natural gas throughout the United States. ProGas U.S.A. purchases natural gas supplies primarily from ProGas Limited and resells such supplies directly to end-users and others in "first sale" transactions. ProGas Limited is engaged in the business of buying and selling natural gas (plus fuel) to purchasers located in Canada and at the United States border, including ProGas U.S.A.

III.
AUTHORIZATION REQUESTED

In Order No. 1198, the United States Department of Energy ("DOE") authorized ProGas U.S.A. to import up to 7,841 MMBtu (plus fuel) per day of natural gas on a long-term basis through October 31, 2000. ProGas U.S.A. was importing this gas for resale to Great Plains Natural Gas Company ("Great Plains") under an agreement dated November 1, 1992, as amended (the "Agreement"). The Agreement has now been amended by a term sheet dated September 6, 1996. A copy of the term sheet is attached as Exhibit "A" and referred to as the "Amending Agreement." As confirmed in the attached Exhibit "B", importation of natural gas from Canada is within ProGas U.S.A.'s corporate powers.

The Amending Agreement modifies the Agreement, effective November 1, 1997, by extending the termination date of the existing sale of 7,841 MMBtu (plus fuel) per day to Great Plains from October 31, 2000 to October 31, 2012 (the "Extended Sale"), and by providing for the sale of an

incremental volume of up to 5,000 MMBtu (plus fuel) per day (the "Incremental Sale"). The Extended Sale will take place on the same terms and conditions contained in the Agreement. The Incremental Sale will take place in accordance with the terms and conditions described below.

The gas in the Incremental Sale will be transported in the same manner as the gas in the import authorization approved by the DOE in Order No. 1198. Under the terms of the Amending Agreement, the price of the gas sold in the Incremental Sale by ProGas U.S.A. to Great Plains will consist of a monthly demand charge and a commodity charge. The commodity charge is equivalent to the commodity charge under the Agreement. The monthly demand charge is calculated on the daily contract quantity elected by Great Plains for that month, times the number of days in that month, times the sum of the demand charge under the Agreement and a winter surcharge.

The Incremental Sale will begin, under the terms of the Agreement and the Amending Agreement, on November 1, 1997.

IV. PUBLIC INTEREST

The Energy Policy Act provides that the importation of natural gas from a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and that applications for such importation shall be granted without modification or delay.¹ Because ProGas U.S.A.'s application is for an amendment to a prior authorization for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, ProGas U.S.A. submits that its application is within the public interest.

¹ Energy Policy Act of 1992, Title II - Natural Gas, Pub. L. No. 102-486 (1992).

incremental volume of up to 5,000 MMBtu (plus fuel) per day (the "Incremental Sale"). The Extended Sale will take place on the same terms and conditions contained in the Agreement. The Incremental Sale will take place in accordance with the terms and conditions described below.

The gas in the Incremental Sale will be transported in the same manner as the gas in the import authorization approved by the DOE in Order No. 1198. Under the terms of the Amending Agreement, the price of the gas sold in the Incremental Sale by ProGas U.S.A. to Great Plains will consist of a monthly demand charge and a commodity charge. The commodity charge is equivalent to the commodity charge under the Agreement. The monthly demand charge is calculated on the daily contract quantity elected by Great Plains for that month, times the number of days in that month, times the sum of the demand charge under the Agreement and a winter surcharge.

The Incremental Sale will begin, under the terms of the Agreement and the Amending Agreement, on November 1, 1997.

IV. PUBLIC INTEREST

The Energy Policy Act provides that the importation of natural gas from a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and that applications for such importation shall be granted without modification or delay.¹ Because ProGas U.S.A.'s application is for an amendment to a prior authorization for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, ProGas U.S.A. submits that its application is within the public interest.

¹ Energy Policy Act of 1992, Title II - Natural Gas, Pub. L. No. 102-486 (1992).

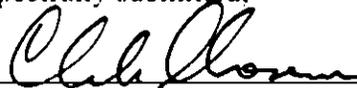
V.
REPORTING REQUIREMENTS

ProGas U.S.A. is currently reporting in accordance with the existing long-term authorization, and will report the incremental volumes delivered as a result of this amendment as they are imported into the U.S., effective November 1, 1997, and following.

VI.
CONCLUSION

WHEREFORE, for the foregoing reasons ProGas U.S.A. respectfully requests that the DOE expeditiously consider the instant application to amend and, pursuant to section 3 of the NGA, as amended by section 201 of the Energy Policy Act, grant the requested amendment to the long-term import authorization. ProGas U.S.A. submits that a grant of such amendment would be consistent with the public interest.

Respectfully submitted,



Charles H. Shoneman, Esq.
Sarah G. Novosel, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
2000 K Street, N.W., Suite 500
Washington, D.C. 20006
(202) 828-5800

Paul W. Fox, Esq.
Bracewell & Patterson, L.L.P.
A Registered Limited Liability Partnership
100 Congress Avenue, Suite 1900
Austin, Texas 78701-4052
(512) 472-7800

ATTORNEYS FOR PROGAS U.S.A., INC.

October 4, 1996

63923.01

EXHIBIT "A"

Term Sheet

For an Incremental Sale of 5,000 MMBtu/day
From ProGas USA Inc. to Great Plains Natural Gas Co.
September 6, 1996

**Delivery
Point:**

The delivery point will be the Great Plains town border stations ("TBS") of Crookston, Minnesota and Fergus Falls, Minnesota or the exchange point with Northern Natural at North Branch, Minnesota or any other delivery point on the Viking Gas Transmission Company ("VGT") system agreed to by ProGas and Great Plains subject to VGT capacity restrictions.

Transport:

ProGas has applied for sufficient firm expansion capacity on VGT to Marshfield, Wisconsin and on TransCanada PipeLines ("TCPL") to Emerson, Manitoba to supply this sale and this proposal is subject to receiving the expansion capacity as applied for.

Great Plains will pay all the monthly VGT charges associated with the Incremental DCQ requested by ProGas, or in the alternative, ProGas agrees to assign the VGT capacity to Great Plains for the term of the contract, if required, provided that ProGas has full use of the capacity when not utilized by Great Plains for the Incremental Sale. The Delivery Point will be Noyes, Minnesota (Emerson, Manitoba) if ProGas assigns VGT capacity to Great Plains.

Term:

The term of the Incremental Sale will be fifteen years from November 1, 1997 to October 31, 2012. The term of the Existing Contract will be extended to October 31, 2012.

**Incremental
DCQ:**

The Incremental Daily Contract Quantity ("IDCQ") of the Incremental Sale will be 5,000 MMBtu/day.

Great Plains IDCQ Reduction Rights:

Great Plains will have the right to reduce the IDCQ on a monthly basis ("Reduction Month") by serving a reduction notice at least one month prior to the beginning of the Reduction Month ("Reduction Notice Period"). If a reduction notice is served within the Reduction Notice Period then the Demand Charge will apply only to the reduced IDCQ and ProGas will not be obligated to deliver above the reduced IDCQ.

Great Plains will have an annual IDCQ reduction right equal to 50% of the annualized IDCQ in the 1997-98 contract year ($5,000 \times 365 \times 50\% = 912,500$ MMBtu). This IDCQ reduction right will allow Great Plains the flexibility to create an annual IDCQ profile with monthly demand charge obligations from 0 to 5,000 MMBtu/day in the 1997-98 contract year. However, Great Plains is required to pay Demand Charges that average 2,500 MMBtu per day in the 1997/98 Contract

Term Sheet

**For an Incremental Sale of 5,000 MMBtu/day
From ProGas USA Inc. to Great Plains Natural Gas Co.
September 6, 1996**

year. For example, Great Plains could elect a IDCQ of 5,000 MMBtu/day for six months and zero for six months and pay a average monthly Demand Charge on only 2,500 MMBtu/day. Additional flexibility is permitted since Great Plains has no take obligation and can reduce daily nominations to zero if necessary with no penalty if it so wishes. However, a monthly Demand Charge is payable on the original contract DCQ and on the then applicable IDCQ.

The annual reduction right will be reduced each year commencing May 1, 1999 by the increase in Great Plains' customer count determined by using the year over year percentage change in the total number of customers at year end as reported in the Annual Reports filed with the states of Minnesota and North Dakota. Both parties recognize that the reports are currently filed April of each year. Therefore, the change in the annual reduction right calculated each May 1, commencing May 1999 will apply for the then current contract year. For example, if the annual reports filed April 1999 indicate that the customer count increased by 2.8% from 1997 to 1998, then the annual reduction right for the contract year commencing November 1, 1998 will decrease by 25,550 MMBtu from 912,500 to 886,950 MMBtu ($2.8\% \times 2500 \text{ MMBtu/d} \times 365 \text{ days}$). The reduction right will continue until the annual reduction right volume is reduced to zero. The annual reduction right will not change if Great Plain's annual customer count decreases.

In any month that Great Plains has given notice to reduce the IDCQ to less than 5000 MMBtu's/d, ProGas shall have the right to sell the difference between 5000 MMBtu's/d and the then applicable IDCQ on a firm basis and ProGas' only firm supply obligation to Great Plains shall be the sum of the current contract DCQ and the elected IDCQ in the month.

ProGas IDCQ Reduction Rights:

ProGas will have the right to reduce the IDCQ on an annual or permanent basis by serving a reduction notice at least four months prior to the month it wishes to reduce the IDCQ. ProGas will have annual and permanent IDCQ reduction rights equal to Great Plain's annual reduction rights existing at the time that ProGas' reduction notice is served. Prior to serving its reduction notice, ProGas must demonstrate that a bona fide alternative market (or sales opportunity) is available to ProGas. Buyer shall have the right to retain the full IDCQ if it eliminates its IDCQ reduction rights for one year in the case of an annual bona fide market opportunity or permanently in the case of a longer term bona fide market opportunity upon notification by Seller.

**Take
Obligation:**

There will be no minimum take obligation associated with the Incremental Sale and Great Plains will be charged only for the gas taken plus the Demand Charge on the applicable IDCQ each month. If Great Plains elects a IDCQ of zero for a Reduction Month within the Reduction Notice Period, then no charges associated

Term Sheet

For an Incremental Sale of 5,000 MMBtu/day
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September 6, 1996

with the IDCQ will be incurred. However, Great Plains will continue to be obligated to purchase exclusively from ProGas as specified in the Existing Contract.

Pricing: The price for the Incremental Sale will be the Incremental Demand Charge plus the Incremental Commodity Charge per MMBtu delivered.

Incremental Demand Charge:

An Incremental Demand Charge will equal the Monthly Demand Charge as calculated in section 5.2 of the Existing Contract (approximately \$0.47 US/MMBtu) plus VGT fixed charges as billed by VGT (approximately \$0.28/MMBtu for November, 1997 expansion capacity). In addition, a winter surcharge of \$0.10/MMBtu/month will apply to the IDCQ for November through March. The total Incremental Demand Charge would equal approximately \$0.85/MMBtu in the winter and \$0.75 in the summer at the Delivery Point. (If Great Plains takes assignment of ProGas' VGT capacity, the Demand Charge will be reduced by eliminating the VGT demand rate portion of the ProGas Demand Charge).

Incremental Commodity Charge:

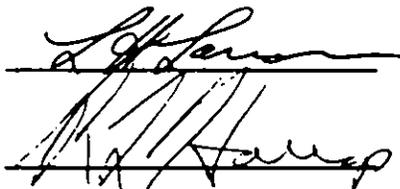
The Incremental Commodity Charge will equal the Commodity Charge as calculated in section 5.3 of the Existing Contract (TOK minus 16 cents). The Incremental Commodity Charge will apply only to the volume of gas delivered each month and if Great Plains reduces the IDCQ to zero then no Incremental Commodity Charges will be incurred.

Other: This proposal is subject to ProGas acquiring TCPL and VGT capacity as it has been applied for.

This proposal and the Incremental Sale amendment to the Existing Contract is subject to approval by the ProGas producer pool.

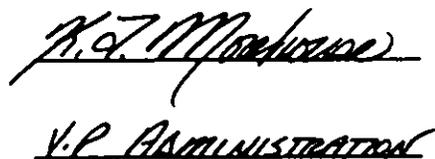
Agreed to this 10 day of September, 1996

ProGas U.S.A., Inc.



F:\USERS\WPSHARED\WGPG\GPNG-2

Great Plains Natural Gas Co.



V.P. ADMINISTRATION

EXHIBIT "B"



ProGas Limited

3300, 400 Third Avenue S.W.
Calgary, Alberta
Canada T2P 4H2
Telephone: (403) 296-0600
Telecopier: (403) 266-0354

September 26, 1996

Mr. Clifford Tomaszewski, Clerk
U.S. Department of Energy
Office of Fossil Fuels
1000 Independence Avenue S.W.
Room 3H087
Washington, DC 20001
U.S.A.

Dear Mr. Tomaszewski:

**Re: Application of ProGas U.S.A., Inc. for Long-term
Authorization to Import Natural Gas From Canada
FE Docket No. 96 - _____ - NG**

As counsel for ProGas U.S.A., Inc. (the "Company") in connection with the Application in the above-referenced proceeding, I have reviewed the Certificate of Incorporation and Bylaws of the Company, and such other documents as I have deemed necessary in order to advise you that:

1. The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own and operate its properties and to carry on its business; and
2. The Company has the requisite corporate authority to import natural gas from Canada.

Yours truly,

Magdalena A.K. Muir
Attorney for ProGas U.S.A., Inc.

F:\USERS\WPSHARED\HDZMAKM\USAAPP.LTR

EXHIBIT "C"

VERIFICATION

Magdalena A.K. Muir, being first duly sworn, deposes and says that she is a duly authorized representative of the Applicant; that she has read the foregoing document; that she is familiar with the contents thereof; that the statements contained therein are true and correct to the best of her knowledge, information and belief, that she is authorized to file the same with the Office of Fossil energy; and that, to the best of her knowledge, information and belief, the same or a related matter is not being considered by any other part of the Department of Energy, including the Federal Energy Regulatory Commission, or any federal agency or department.



Magdalena A.K. Muir

Subscribed and sworn to before
me this 26th day of September, 1996.



A Notary Public in and for the
Province of Alberta

JANICE R.M. KOWCH
A Commissioner for Oaths, Notary Public
in and for the Province of Alberta
My Commission Expires at the pleasure of
the Alberta Attorney General

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

1996 OCT 16 P 5:04

PROGAS U.S.A., INC.)
_____)

REC'D DOE/FE
FE DOCKET NO. 96-61-NG

ORDER AMENDING LONG-TERM AUTHORIZATION TO
IMPORT NATURAL GAS FROM CANADA

DOE/FE ORDER NO. 1198-A

On September 16, 1996, the Office of Fossil Energy (FE) of the Department of Energy (DOE) granted long-term authorization to ProGas U.S.A., Inc. (ProGas) in DOE/FE Order No. 1198 (Order 1198) to import from Canada up to 7,841 Mcf per day of natural gas, plus gas required for transportation, for resale to Great Plains Natural Gas Company (Great Plains). This authorization is effective from September 16, 1996, through October 31, 2000.

On October 4, 1996, ProGas notified FE that it had amended its gas sales agreement with Great Plains by a term sheet dated September 6, 1996. The amending agreement, effective November 1, 1997, extends the termination date until October 31, 2012, and provides for an incremental volume of 5,000 MMBtu's per day of

natural gas, plus gas for transportation. The extended sale and the transportation of the volumes will remain under the same terms and conditions contained in Order 1198. The price of the incremental volumes to be sold to Great Plains will consist of a monthly demand and commodity charge. The commodity charge is equivalent to the commodity charge in Order 1198. The monthly demand charge is equal to the daily contract quantity, times the number of days in a month, times the sum of the demand charge and a winter surcharge.

Under section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486), the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest, and related applications must be granted without modification or delay. Approving ProGas' application to amend its current authority covering imports of natural gas produced in Canada meets the section 3(c) criterion and, therefore, is consistent with the public interest.

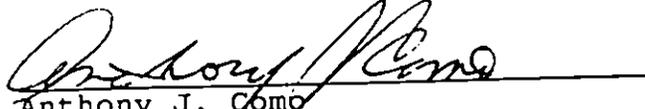
ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. DOE/FE Order No. 1198, issued to ProGas U.S.A., Inc. (ProGas) on September 16, 1996, is amended to authorize ProGas to import up to an additional 5,000 MMBtu per day of natural gas, plus gas required for transportation, under the terms and

E. All terms and conditions in Order 1198 remain in full force and effect.

Issued in Washington, D.C., on October 16, 1996.



Anthony J. Compton
Director
Office of Coal & Electricity
Office of Fuels Programs
Office of Fossil Energy