

FE DOCKET NO.: 95-112-NG

APPLICANT(S): INDECK-YERKES LIMITED PARTNERSHIP

| ITEM | PREPARED OR FILED BY | FILING TYPE | DESCRIPTION OF DOCUMENT | DATED | DATE FILED OR ISSUED |
|------|-----------------------------------|----------------|---|----------|----------------------|
| 1 | INDECK-YERKES LIMITED PARTNERSHIP | APPLICATION | Application for an Order Authorizing Long Term Import of Natural Gas | 95-11-14 | 95-11-14 |
| 2 | DOE/FE | ORDER | Order 1136--Granting Long-Term Authority to Import natural Gas | 95-12-21 | 95-12-21 |
| 3 | INDECK-YERKES LIMITED PARTNERSHIP | APPLICATION | Requesting DOE Rescind and Terminate its Authorization Granted in Order 1136 | 98-08-24 | 98-08-24 |
| 4 | DOE/FE | ORDER | Order 1136-A-Vacating Long-Term Authority to Import Natural Gas | 98-09-10 | 98-09-10 |
| 5 | DOE/FE | CORRESPONDENCE | Letter Denying Requesting for Confidential Treatment of Purchase Agreements, and Return of Confidential Material to Applicant | 98-08-25 | 98-08-25 |

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

1995 11 14 P 4:33

Indeck-Yerkes Limited Partnership)

REC'D DOE/FE/112
FE DOCKET NO. 95-___-NG

APPLICATION OF INDECK-YERKES LIMITED PARTNERSHIP
FOR IMPORT AUTHORIZATION

Pursuant to Section 3 of the Natural Gas Act, 15 U.S.C. § 717b ("NGA"), and Sections 590.201, *et seq.*, of the Administrative Procedures of the Department Energy ("DOE"), Office of the Assistant Secretary for Fossil Energy ("FE"), 10 C.F.R. § 590.201, *et seq.*, Indeck-Yerkes Limited Partnership ("Indeck-Yerkes" or the "Applicant") hereby applies for an import authorization to allow Indeck-Yerkes to import from Canada up to 7 Bcf of natural gas over a period of eight years under the terms of a long-term gas purchase contract (the "Application"). The natural gas will be used as fuel at Indeck-Yerkes's cogeneration project in Tonawanda, New York.

I.

Communications regarding this Application should be addressed to :

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Vice President and General Counsel
Indeck-Yerkes Limited Partnership
1130 Lake Cook Road
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Buffalo Grove, IL 60089
FAX: (708) 520-9883

Phillip G. Lookadoo, Esq.
Dean M. Colucci, Esq.
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II.

The eight-year authorization sought herein will allow Indeck-Yerkes to import up to 7 Bcf of natural gas from Talisman Energy Inc ("Talisman") pursuant to a Gas Purchase Agreement dated October 31, 1995 (the "Agreement"). Talisman is a Canadian gas producer located in Calgary, Alberta. Under the Agreement, Indeck-Yerkes will take delivery of the gas at the interconnection point of the pipeline facilities owned by NOVA Gas Transmission Ltd. and TransCanada Pipelines Limited ("TransCanada") near Empress, Alberta. TransCanada will then transport the gas from Alberta to the U.S.-Canadian border at an interconnection with the pipeline facilities of Tennessee Gas Pipeline Company ("Tennessee") near Niagara Falls, New York.

Tennessee will deliver the gas from the U.S.-Canadian border to the pipeline facilities of Niagara Mohawk Power Corporation ("NiMo") who in turn will deliver the gas to the Applicant's cogeneration plant in Tonawanda, New York, where it will be used as fuel. Through these transportation arrangements, Indeck-Yerkes will use existing facilities of U.S. and Canadian pipelines for the delivery of its imported gas supplies. No new construction is contemplated for the imports for which the Applicant seeks authorization.

Indeck-Yerkes has already been importing gas from Canada under a blanket authorization that DOE/FE issued on December 15, 1994, under DOE/FE Order No. 1012 in FE Docket No. 94-88-NG. Initially, Indeck-Yerkes will utilize this blanket import authorization to import the gas purchased under the Agreement with Talisman. Prior to the expiration of its blanket authorization, Indeck-Yerkes must replace the blanket authorization as it pertains to gas purchased from Talisman with the authorization sought herein. The Agreement with Talisman runs from November 1, 1995, through October 31, 2003. A copy of the Agreement has been attached to the Application as Exhibit A. Accordingly, Indeck-Yerkes requests that the authorization requested herein be issued as expeditiously as possible and remain in effect until the expiration of the Agreement on October 31, 2003.

As indicated above, the total purchases will not exceed 7 Bcf over the requested eight-year authorization. Indeck-Yerkes will make these purchases on a firm basis at an initial price negotiated between the parties and subject to annual adjustment. Indeck-Yerkes shall be responsible for a deficiency charge on any day it does not nominate for delivery its Maximum Daily Quantity as specified in the contract. While the gas is to be used as fuel at the Applicant's cogeneration facility in Tonawanda, New York, any excess gas will be sold to NiMo or other distributors or end-users in the region.

III.

Indeck-Yerke's request to import Canadian natural gas under this Agreement will be consistent with the public interest. Under Section 3 of the NGA, 15 U.S.C. § 717b, an

import of natural gas is to be authorized unless there is a finding that it "will not be consistent with the public interest." Furthermore, as amended by Section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486), Section 3(c) of the NGA specifies that:

... the importation of the natural gas ... [from] a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation ... shall be granted without modification or delay.

Since Canada is a nation with which a free trade agreement is in effect, Indeck-Yerkes respectfully submits that the authorization sought herein to import natural gas from Canada meets the Section 3(c) criterion and, therefore, is consistent with the public interest.

IV.

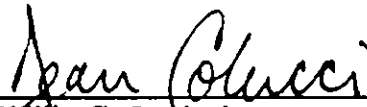
To Indeck-Yerke's knowledge, the same or a related matter is not being considered by any other part of the DOE, including the Federal Energy Regulatory Commission, or any other Federal agency or department.

By way of additional background, Indeck-Yerkes is a limited partnership with one general partner, Indeck Energy Services of Yerkes, Inc., and one or more limited partners. Indeck Energy Services of Yerkes, Inc., is a wholly owned subsidiary of Indeck Energy Services, Inc. In support of its Application, Indeck submits an Opinion of Counsel (as required by 10 C.F.R. § 590.202(c)) that addresses the corporate authorization of Indeck-Yerkes to import natural gas. This Opinion of Counsel is contained in Exhibit B.

WHEREFORE, Indeck-Yerkes respectfully requests that the DOE/FE find, pursuant to Section 3 of the NGA, 15 U.S.C. § 717b, that the import of Canadian natural gas for eight years is consistent with the public interest. Further, Indeck-Yerkes specifically requests that it be permitted to import an aggregate volume not to exceed 7 Bcf during the eight-year authorization. Finally, Indeck-Yerkes requests that the authorization requested herein be issued as expeditiously as possible and remain in effect until the expiration of the Agreement on October 31, 2003, in order to allow Indeck-Yerkes to import the gas purchased from Talisman during the entire eight-year term of the Agreement.

Respectfully submitted,

INDECK-YERKES LIMITED PARTNERSHIP



Phillip G. Lookadoo

Dean M. Colucci

Reid & Priest

701 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Voice: (202) 508-4000

Fax: (202) 508-4321

Its Attorneys

November 14, 1995

VERIFICATION

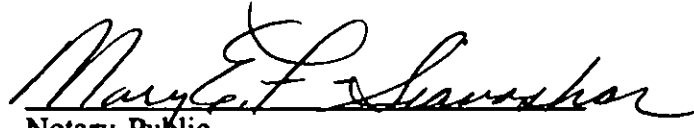
WASHINGTON,)
DISTRICT OF COLUMBIA) ss:

Dean M. Colucci, being duly sworn, deposes and says that he is a duly authorized representative of the Applicant; that he has read the foregoing document; that he is familiar with the contents thereof; that the statements contained therein are true and correct to the best of his knowledge, information and belief; that he is authorized to file the same with the Department of Energy, Office of Fossil Energy; and that, to the best of his 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 other Federal agency or department.



Dean M. Colucci

SUBSCRIBED AND SWORN TO before me this 14th day of November, 1995.



Notary Public

My commission expires: July 14, 1996



EXHIBIT A
GAS PURCHASE AGREEMENT
between
INDECK-YERKES LIMITED PARTNERSHIP
and
TALISMAN ENERGY INC.

GAS PURCHASE AGREEMENT

This Agreement is made and effective as of October 31, 1995 between **Talisman Energy Inc.** (hereinafter referred to as "Seller") a Canadian corporation with its principal place of business in Calgary, Alberta and **Indeck-Yerkes Limited Partnership** (hereinafter referred to as "Buyer") an Illinois limited partnership with its principal place of business in Buffalo Grove, Illinois.

WHEREAS Seller desires to sell and deliver firm Gas to Buyer at the Point of Delivery as defined hereunder, and Buyer desires to purchase and receive such Gas from Seller;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1.0 DEFINITIONS

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

- "Alternative Fuel" shall mean No. 2 or No. 6 fuel oil;
- "British Thermal Unit" or "Btu" shall mean the amount of energy required to raise the temperature of one (1) pound of water from fifty-nine degrees (59°) Fahrenheit to sixty degrees (60°) Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute;
- "Buyer's Facility" shall mean the cogeneration facility owned by Buyer and located in Tonawanda, New York;
- "Buyer's Power Purchaser" shall mean Niagara Mohawk Power Corporation or its successors and assigns;
- "Contract Year" with respect to the first "Contract Year", shall mean the period commencing at 0800 hours MST on October 31, 1995 and continuing through 0800 MST on November 1, 1996. Each

subsequent Contract Year shall commence at the termination of the previous Contract Year and terminate at 0800 hours MST on the following first Day of November.

- "Cubic Metre" or "m³" shall mean the quantity of Gas which at a temperature of fifteen (15) degrees Celsius and at a pressure of one hundred and one and three hundred and twenty-five thousandths (101.325) kilopascals absolute occupies one (1) cubic metre;
- "Day" or "day" shall mean a period of twenty-four (24) consecutive hours, beginning and ending at 0800 hours MST;
- "Delivery Period" shall have the meaning attributed to this term in Section 3.1;
- "Discount Rate" means eight percent (8%) annual rate;
- "Empress Heating Value" shall mean the average megajoules per cubic meter of gas delivered into TCPL at the Delivery Point as reported by TCPL for the twenty-four (24) consecutive months immediately preceding the Start Date, divided by 1.056415;
- "Force Majeure" shall have the meaning defined in Section 12.0 hereunder;
- "Gas" or "gas" shall mean natural or residue gas, or both, comprised primarily of methane, that complies with the quality requirements set out in Article 8.0;
- "GJ" shall mean one (1) gigajoule and is equal to one billion (1,000,000,000) Joules and an amount of energy equal to 0.948213 MMBtu;
- "Joule" or "J" means the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- "Maximum Daily Quantity" or "MDQ" shall mean for any Day the sum of 65.1 10³m³/d and the TCPL Fuel Gas for that Day;
- "MMBtu's" shall equal one million (1,000,000) Btu's;
- "Month" shall mean a period of time beginning at 0800 hours MST on the first day of the calendar month and ending at 0800 hours MST on the first day of the next succeeding calendar month;

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- "NOVA" shall mean NOVA Gas Transmission Ltd. or its successors or assigns;
- "Point of Delivery" shall mean the point of interconnection between the NOVA and TCPL gas transmission systems near Empress, Alberta;
- "Prime Rate" means an annual rate of interest equal to the floating annual rate of interest from time to time set by the Canadian Imperial Bank of Commerce as the prime rate used by it to determine rates of interest charged on U.S. dollar commercial loans to customers in Canada, being the rate from time to time quoted as such by the main branch of the said bank in Calgary, Alberta; provided, however, that if at any time the said bank ceases to exist or to quote a prime rate as aforesaid, the applicable rate of interest shall be the rate quoted as the prime rate as aforesaid of the largest Canadian chartered bank (determined on the basis of total assets) quoting such a rate at the relevant time of consideration;
- "Reference Market Makers" shall mean leading dealers in the energy swap market, selected by the Terminating Party (as defined in Section 10.1) from among dealers of the highest credit standing, which satisfy all the criteria that such Terminating Party applies generally at the time in deciding whether to offer or make an extension of credit;
- "Scheduled Outage" shall mean a shutdown of Buyer's Facility that Buyer schedules in the normal course of business for purposes of routine inspection, maintenance, or repair of Buyer's Facility;
- "10³m³" shall mean one thousand (1,000) Cubic Metres of Gas;
- "10³m³/d" shall mean one thousand (1,000) Cubic Metres of Gas per Day;
- "TCPL" shall mean TransCanada PipeLines Limited or its successors or assigns;
- "TCPL Fuel Gas" shall mean for any Day, the quantity of gas, in 10³m³/d, calculated as follows:

$$341.0 \text{ } 10^3\text{m}^3/\text{d} \times \text{TCPL Fuel Ratio for the Month in which}$$

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such Day occurs;

- "TCPL Fuel Ratio" shall mean the percentage of gas required by TCPL to deliver gas from the Point of Delivery herein to the TCPL interconnection with National Fuel Gas Supply Corporation near Niagara Falls, Ontario as set forth from month to month as pursuant to TCPL's tariff including delivery pressure;
- "Term" shall mean the time period of this Agreement as defined in Section 3.1;
- "Termination Daily Quantity" shall mean the product of the Empress Heating Value multiplied by the Termination Volume, with the result being expressed in MMBtu's;
- "Termination Volume" shall mean the result obtained by multiplying $341.0 \text{ } 10^3\text{m}^3/\text{d}$ by the arithmetic average of the TCPL Fuel Ratios for the twenty-four (24) consecutive months immediately proceeding the Start Date, and adding $65.1 \text{ } 10^3\text{m}^3/\text{d}$.

2.0 CONDITIONS PRECEDENT

2.1 Buyer's obligation to purchase and receive and Seller's obligation to sell and deliver gas under the terms and conditions of this Agreement on and after November 1, 1996 shall be subject to the conditions precedent set forth below (the "Conditions Precedent"). Buyer or Seller, as applicable, shall make diligent, good faith efforts to satisfy the applicable Conditions Precedent on or before the dates specified below. If all Conditions Precedent have not been satisfied on or before the dates specified below, this Agreement shall terminate effective upon thirty (30) Days notice by either party on or after November 1, 1996 unless the date for the satisfaction of such Conditions Precedent is extended by agreement of the parties. The Conditions Precedent are as follows:

- (i) By November 1, 1996, Buyer shall have obtained an authorization from the United States Department of Energy authorizing Buyer to import the $65.1 \text{ } 10^3\text{m}^3/\text{d}$ of gas from Canada on each Day during the

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remaining Term of this Agreement;

- (ii) By November 1, 1996, Seller shall have obtained a permit from the Alberta Energy and Utilities Board authorizing Seller to remove the MDQ of gas from the Province of Alberta on each Day during the remaining Term of this Agreement;
- (iii) By November 1, 1996, Buyer shall have obtained any necessary approvals from the Canadian National Energy Board authorizing Buyer to export the 65.1 $10^3\text{m}^3/\text{d}$ of gas from Canada on each Day during the remaining Term of this Agreement.

2.2 For the purposes of this Section 2.2, the term "Authorizations" shall collectively refer to the authorization described in Section 2.1 (i), the permit described in Section 2.1 (ii) and the approvals described in Section 2.1 (iii). If the Conditions Precedent set forth in Section 2.1 are satisfied and any one or more of the Authorizations becomes subject to any statutory appeal or judicial or administrative proceeding, the parties will diligently pursue the successful resolution of such appeal or proceeding in an effort to maintain the subject Authorizations. If any Authorization is refused, revoked or set aside in a final manner by a regulatory authority or court having jurisdiction, this Agreement shall terminate following thirty (30) Days written notice delivered by one party to the other without liability by either party to the other party except for obligations incurred prior to such termination.

3.0 TERM OF AGREEMENT

3.1 This Agreement shall become effective on the date of execution and shall continue in full force and effect through October 31, 2003 (the specified period called the "Term"), unless this Agreement is otherwise terminated pursuant to Sections 2.1, 2.2, 5.5, 5.6, 9.3, 9.4 or 14.3. The period during which gas will be purchased and sold shall commence on October 31,

1995 and end on the last Day of the Term (the specified period called the "Delivery Period").

4.0 PURCHASE AND SALE

4.1 On the terms and subject to the conditions as described in this Agreement for each day during the Delivery Period:

- i) Buyer shall purchase and take from Seller at the Point of Delivery on a firm basis a volume of gas equal to the MDQ and;
- ii) Seller shall sell and deliver to Buyer a quantity of gas in accordance with Buyer's nomination on a firm basis at the Point of Delivery which shall not exceed the MDQ.

4.2 Notwithstanding clause 4.1 herein, during any Contract Year, Buyer shall have the right to declare once per Contract Year a Scheduled Outage at Buyer's Facility that shall not exceed fourteen (14) consecutive days and Buyer shall provide Seller with thirty (30) days prior written notice of any such Scheduled Outage. During any such Scheduled Outage, Buyer will use reasonable efforts to resell a volume of gas equal to the MDQ less the TCPL Fuel Gas at the highest net back price available using Buyer's firm transportation.

4.3 If Buyer, using reasonable efforts, determines it is able to resell such gas during a Scheduled Outage at a price higher than the sum of Aeco + NvT + Vc as defined below, Seller will deliver and sell and Buyer will purchase and receive the MDQ of Gas during such Scheduled Outage at the Outage Price. Buyer shall advise Seller of its intent to resell such gas no less than twenty-four (24) hours prior to the start of the Scheduled Outage. The Outage Price shall be calculated in US dollars per MMBtu as follows:

$$\text{Outage Price} = .5 (\text{SP} - \text{Vc} - (\text{Aeco} + \text{NvT})) + \text{Aeco} + \text{NvT}$$

where:

- SP = Buyer's resale price;
- Vc = the variable pipeline costs including fuel incurred by Buyer to transport the gas from the Point of Delivery

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to the point of resale using Buyer's firm transportation service;

Aeco = the average daily spot gas price index in US \$ per MMBtu at 'Aeco 'C' & N.I.T.' for that day as reported in Canadian Gas Price Reporter;

NvT = the NOVA demand and commodity charges in US dollars per MMBtu from 'Aeco 'C' & N.I.T.' to the Point of Delivery.

In the event Buyer does not provide Seller with thirty (30) days prior written notice as pursuant to Section 4.2, Buyer shall purchase and take and Seller shall sell and deliver the MDQ of Gas during such Scheduled Outage at a price equal to the Purchase Price in Section 9.1.

- 4.4 If Buyer, using reasonable efforts, determines it will be unable to resell the MDQ during such Scheduled Outage at a price greater than $Aeco + NvT + Vc$, then after consulting with Seller regarding the then current market price of gas in Alberta, Buyer will promptly advise Seller, at least twenty-four (24) hours prior to the commencement of the Scheduled Outage. Thereafter, Seller will be solely responsible for the reselling of the MDQ during any Scheduled Outage and Buyer shall pay to Seller the then current NOVA demand charges from 'Aeco 'C' & N.I.T.' to the Point of Delivery for each MMBtu of gas Seller resells.
- 4.5 The parties agree that when gas is not being consumed at Buyer's Facility because Buyer's Power Purchaser has dispatched Buyer's Facility off-line, Buyer shall have the right to resell the gas supplies delivered by Seller hereunder.

5.0 INDEMNITIES

- 5.1 If on any Day during the Delivery Period, Buyer fails to nominate the MDQ (except for reasons of the suspension of Buyer's purchase obligations pursuant to Section 14.3, an event of Force Majeure, Seller's failure to deliver Gas to the Point of Delivery or Buyer's Scheduled Outage), Buyer shall pay to Seller an amount (hereinafter referred to as Deficiency Charge)

which shall be due and owing to Seller as pursuant to Section 9.0. The Deficiency Charge shall be equal to the Price Difference multiplied by the Deficiency Quantity where:

Price Difference = the positive difference, if any, of the applicable Purchase Price as described in Section 9.1 less the Deficiency Price;

Deficiency Price = the average daily spot gas price index at 'Aeco 'C' & N.I.T.' for the Day on which Buyer failed to nominate the MDQ as reported in Canadian Gas Price Reporter (in US\$ per MMBtu) plus any NOVA demand and commodity charges applicable between 'Aeco 'C' & N.I.T.' and the Point of Delivery which are recovered by Seller (converted to US\$ per MMBtu).

Deficiency Quantity= the quantity of gas (in MMBtu's), equal to the MDQ (less volumes not taken due to the suspension of purchase obligations pursuant to Section 14.3, an event of Force Majeure, Seller's failure to deliver or Buyer's Scheduled Outage) less the quantity of gas Buyer actually nominated on such day.

If the Deficiency Price as calculated above is greater than the Purchase Price on the day(s) in which such non-deliveries took place, then the Deficiency Charge for such days(s) shall be zero. Payment of the Deficiency Charge shall be the limit of Buyer's liability for its failure to nominate the MDQ on any Day.

5.2 If on any day during the Delivery Period of this Agreement, Seller fails to deliver any portion or all of the volumes of Gas nominated by Buyer (up to the MDQ) under this Agreement (except for reason of the suspension of delivery obligations pursuant to Sections 9.3 or 14.3 or an event of Force Majeure), then Buyer may purchase replacement gas supplies up to the

shortfall in Seller's delivery. Seller shall pay to Buyer an amount equal to the difference between the Purchase Price as described in Section 9.1 and the actual price paid by Buyer for replacement gas multiplied by the quantity of gas Seller failed to deliver to the Point of Delivery. In the event that Buyer acquires replacement gas supplies for less than the Purchase Price described in Section 9.1, Seller shall not pay Buyer pursuant to this Section 5.2. Subject to Sections 5.3, 5.5 and 10.1, payment for replacement gas shall be the limit of Seller's liability for its failure to deliver gas under this Section 5.2. Any statement or payment pursuant to this Section 5.2 shall be remitted in accordance with Sections 9.0 and 13.0 contained herein.

- 5.3 If on any day during the Delivery Period of this Agreement, Seller fails to deliver any portion or all of the volumes of gas nominated by Buyer (except for reason of the suspension of delivery obligations pursuant to Sections 9.3 or 14.3 or an event of Force Majeure) and Buyer, acting reasonably, is unable to acquire gas to replace the Seller's deficiency at the Point of Delivery due to (i) the cost of replacement gas supplies (plus variable commodity and fuel costs to deliver such gas to Buyer's Facility) is uneconomic relative to Alternative Fuel or (ii) replacement gas at the Point of Delivery is unavailable, then Seller shall pay to Buyer the incremental cost incurred by Buyer to acquire Alternative Fuel for such day over the cost of gas under this Agreement and delivered to Buyer's Facility. Subject to Sections 5.5 and 10.1, payment for such Alternative Fuel shall be the limit of Seller's liability for its failure to deliver gas under this Section 5.3. Any statement or payment pursuant to this Section 5.3 shall be remitted in accordance with Sections 9.0 and 13.0 contained herein.
- 5.4 Buyer shall use reasonable efforts to minimize the cost of purchased replacement gas and/or purchased Alternative Fuel as pursuant to Sections 5.2 and 5.3.
- 5.5 If Seller fails to deliver all or any part of Buyer's daily nominated quantities, which shall not exceed the MDQ, (for reasons other than the suspension of delivery obligations pursuant to Sections 9.3 or 14.3 or an event of Force Majeure) for either (i) twenty (20) consecutive days or, (ii) a total of

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thirty (30) days in a Contract Year, Buyer may terminate this Agreement upon five (5) Days written notice to Seller.

- 5.6 If Buyer fails to nominate the MDQ (for reasons other than the suspension of purchase obligations pursuant to Sections 4.4 or 14.3 or Force Majeure) for either (i) twenty (20) consecutive Days or (ii) a total of thirty (30) Days in a Contract Year, Seller may elect to terminate this Agreement upon five (5) Days written notice to Buyer.
- 5.7 If either (i) the publication Canadian Gas Price Reporter referred to in Sections 4.3 and 5.1 of this Agreement is no longer available, or (ii) the Canadian Gas Price Reporter ceases to report the average daily spot gas price index for 'AECO 'C' & N.I.T.', as referred to in Sections 4.3 and 5.1 of this Agreement, the parties shall negotiate a comparable replacement publication or price index, as the case may be. If the parties are unable to reach agreement concerning a replacement publication or price index, then either party may deliver to the other party a notice to commence arbitration proceedings to determine the applicable replacement, which shall be conducted in accordance with Section 5.8 of this Agreement.
- 5.8 Arbitration proceedings to determine a replacement for the publication described in Section 5.7 (i) or the price index described in Section 5.7 (ii) shall be conducted by a single arbitrator and in accordance with the International Commercial Arbitrator Act (British Columbia), and the Rules of the British Columbia International Commercial Arbitration Center ("BCICAC") may be applied to the extent necessary and as varied by the procedures specified in this Section 5.8. The appointment of an arbitrator shall be by agreement of the parties, except if, within ten (10) days following the delivering of the notice to commence arbitration proceedings described in Section 5.7, the parties are unable to agree on the appointment of the arbitrator, either party may request the BCICAC to make such appointment. Within ten (10) business days of the appointment of the arbitrator, each of the parties shall file with the arbitrator and each other their written submission specifying a proposed replacement publication or price index, as the case may be. Within five (5) business days following receipt of the submissions the arbitrator shall choose the

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replacement proposed by one of the parties only and that replacement will become the replacement publication or price index for the applicable provisions of the Agreement. The decision of the arbitrator shall be final and binding.

6.0 NOMINATIONS, DELIVERY AND TITLE

- 6.1 On or before the twenty-fifth (25th) Day of each Month during the Term of this Agreement, Buyer shall provide Seller electronic notice of the MDQ and Buyer's nomination for the next month. Seller shall not be required to change its rate of daily deliveries until the expiration of twenty-four (24) hours following receipt by Seller of Buyer's notice, subject to the requirements of transporting pipelines.
- 6.2 Title and risk to the Gas sold pursuant to this Agreement shall pass from Seller to Buyer at the Point of Delivery.

7.0 PERMITS AND TRANSPORTATION CONTRACTS

- 7.1 The parties acknowledge that Seller has in place a short term Alberta Energy and Utilities Board gas removal permit and that Buyer has in place a National Energy Board license to export gas hereunder, and a short term U.S. Department of Energy Import Order to import gas hereunder and the parties agree to utilize such authorizations for the delivery and receipt of gas under this Agreement until the date by which all regulatory authorizations described in Section 2.1 (i), 2.1 (ii), and 2.1 (iii) have been obtained.
- 7.2 Seller shall obtain and maintain during the Term of this Agreement firm NOVA receipt service and firm non-proratable delivery service at the Point of Delivery for a daily volume equal to the MDQ. For the Term of this Agreement, Buyer shall hold firm transportation sufficient to transport the 65.1 $10^3\text{m}^3/\text{d}$ of gas from the Point of Delivery to the interconnect of National Fuel Gas Supply Corporation and National Fuel Gas Distribution Corporation near Vicksburg, New York.

- 7.3 By November 15, 1995, Seller shall apply for the gas removal permit described in Section 2.1 (ii). Upon receipt of such gas removal permit, Seller shall provide a copy to Buyer and shall use best efforts to maintain the gas removal permit during the remaining Term of this Agreement.
- 7.4 By November 15, 1995, Buyer shall apply for the authorization to import gas hereunder from the United States Department of Energy described in Section 2.1 (i) and for the necessary approvals of the National Energy Board described in Section 2.1 (iii). Upon receipt of such authorization and approval, Buyer shall provide copies to Seller and shall use best efforts to maintain the authorization and approval during the remaining Term of this Agreement.

8.0 QUALITY AND MEASUREMENT

- 8.1 The Gas to be delivered hereunder shall at all times comply with the quality requirements of TCPL at the Point of Delivery.
- 8.2 The quality and quantity of Gas delivered to TCPL for Buyer's account at the Point of Delivery shall be determined by TCPL in accordance with its then current standard terms and conditions applicable.

9.0 PURCHASE PRICE AND PAYMENT

- 9.1 The Purchase Price per MMBtu that Buyer shall pay to Seller for Gas sold and delivered by Seller to Buyer under this Agreement shall be as set forth in Exhibit A, attached hereto. The Purchase Price includes all transportation costs, any taxes, royalties and duties assessed on the Gas and any related losses or unaccounted for retainage and any other fees that may be incurred prior to the Point of Delivery, and Seller shall indemnify and save Buyer harmless from all such transportation costs, taxes, royalties, duties and fees levied or assessed upon Buyer in connection with the sale of the Gas prior to the Point of Delivery. Buyer shall indemnify Seller for all taxes, duties, and surcharges at and after the Point of Delivery provided that if during the Term of this Agreement Buyer

becomes liable to pay any governmentally imposed tax, duty or surcharge in connection with the sale of the Gas at the Point of Delivery and if, in Buyer's opinion and acting reasonably, the new tax, duty or surcharge will substantially impair the economic feasibility of Buyer's Facility, Buyer may terminate this Agreement upon thirty (30) Days written notice to Seller without any further liability to Seller except for obligations incurred prior to such termination. If Buyer delivers such notice of termination, Buyer shall provide to Seller information describing how the new tax, duty or surcharge has substantially impaired the economic feasibility of Buyer's Facility and Buyer shall use reasonable efforts to demonstrate to Seller how the new tax, duty or surcharge has substantially impaired the economic feasibility of Buyer's Facility. Before the expiry of the thirty (30) Days notice period for termination, Seller may give written notice to Buyer that Buyer will be relieved from indemnifying Seller for the additional tax, duty or surcharge, in which case Buyer's termination notice shall cease to have any effect and Seller shall then become liable for payment of such tax, duty or surcharge.

- 9.2 On or about the fifteenth (15th) Day of the Month following each Month in which Gas is delivered hereunder, Seller shall render an invoice to Buyer stating (i) the total 10^3m^3 's of Gas nominated and received by Buyer during the preceding Month, (ii) the heating value at the Point of Delivery during the preceding Month, (iii) the total GJ's and total MMBtu's delivered to Buyer at the Point of Delivery during the preceding Month (iv), Purchase Price to be paid per MMBtu and (v), any amounts owed by Buyer to Seller under Sections 4.0 and 5.0 herein. On or before the later of the tenth (10th) Day after receipt of Seller's invoice or the twenty-fifth (25th) Day of the Month after the Month to which the invoice applies, Buyer shall render payment to Seller for the amounts set out on Seller's invoice. All statements and billings shall be subject to correction of any errors contained therein for a period of twenty-four (24) Months following the Month to which the statement pertains, after which such statements and billings shall be conclusively deemed to be correct except to the extent Buyer or Seller has made a written objection thereto to the other party.

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- 9.3 Should Buyer fail to make payments under Section 5.1 and/or Section 9.2 within ten (10) Days after Buyer's receipt of Seller's invoice, then Seller may suspend its delivery obligations on ten (10) days written notice to Buyer. During any period for which deliveries have been suspended pursuant to this Section 9.3, Buyer shall be liable to pay to Seller the Deficiency Charge calculated in accordance with Sections 5.1, as if Buyer's nominations were zero (0) MMBtu of gas on each day during the period of suspension. If on any suspension of deliveries, Buyer's failure to pay remains unremedied for thirty (30) days, Seller may elect at any time thereafter, to terminate this Agreement by notifying Buyer, in writing, of its intention to terminate. This Agreement will terminate on the expiration of sixty (60) Days following Buyer's receipt of such notice unless Buyer shall have remedied its default within such sixty (60) Day period and reimbursed Seller for all monies due Buyer under this Agreement, in which case, this Agreement shall remain in full force and effect and Seller shall forthwith recommence deliveries of Gas.
- 9.4 Should Seller fail to make payments under Section 5.2 and/or 5.3 within ten (10) Days after Seller's receipt of Buyer's invoice, Buyer may elect to terminate this Agreement by notifying Seller, in writing, of its intention to terminate. This Agreement will terminate on the expiration of thirty (30) Days following Seller's receipt of such notice unless Seller shall have remedied its default within such thirty (30) Day period and reimbursed Buyer for all monies due under this Agreement, in which case this Agreement shall remain in full force and effect.
- 9.5 The parties hereby agree that Seller and Buyer shall comply with all provisions of the Excise Tax Act of Canada (the "ETA") as it may apply to the provisions herein.
- 9.6 If there exists a bona fide dispute between the parties regarding amounts payable hereunder, a party shall not be entitled to exercise its rights to suspend performance of its obligations or to terminate this Agreement if the party, claimed to be in default of payment, posts a bond or other security acceptable to the other party, acting reasonably, for the amounts in dispute.

9.7 Should Buyer or Seller fail to pay an amount of the other party's invoice when due, interest thereon shall accrue from the date such amount is due at an annual rate equal to the Prime Rate plus two percent (2%).

10.0 TERMINATION DAMAGES AND LIMITATION OF LIABILITY

10.1 For purposes of this Section 10.1 "Start Date" shall mean the effective date of any early termination of this Agreement pursuant to Sections 5.5, 5.6, 9.3, 9.4, or 14.3 and "End Date" shall mean October 31, 2003. Notwithstanding the foregoing and pursuant to this Section 10.1, if any of the Conditions Precedent have not been satisfied by the dates specified in Section 2.0, the End Date shall be October 31, 1996. The party not terminating this Agreement ("Party in Breach") shall pay to the party terminating this Agreement under Sections 5.5, 5.6, 9.3, 9.4 or 14.3 ("Terminating Party") an amount equal to the economic loss, if any, suffered by the Terminating Party ("Termination Damages"). Termination Damages will be determined as follows:

for each Contract year (or portion thereof) remaining from the Start Date to the End Date, Termination Damages shall equal the subtraction of (A) from (B) below if Seller is the Terminating Party, or (B) from (A) if Buyer is the Terminating Party and thereafter calculating the net present value ("NPV") of the resulting values using the Discount Rate. If the NPV is less than or equal to zero dollars (\$0), the Termination Damages shall equal zero dollars (\$0).

For the purpose of this Section 10.1; .

(A) = for each Contract Year (or portion thereof) remaining from the Start Date to the End Date, the amount of money that the Terminating Party would pay to or receive from (as the case may be) a third party in an arm's length transaction for the

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Termination Daily Quantity at a 100% load factor at the Point of Delivery under credit terms similar to those contained in this Agreement.

The values for (A) shall be calculated by the Terminating Party in the following manner:

- (i) the Terminating Party shall, in good faith, on the closest business day to the Start Date, request and obtain written quotations from five Reference Market Makers;
- (ii) the request for quotation shall specify basing the quotation on a single fixed price in (US\$/MMBtu) for the entire period of the quotation at the Point of Delivery;
- (iii) the request for quotation shall specify that the quotation be expressed, for each Contract Year (or portion thereof) remaining from the Start Date to the End Date, as an amount of money equalling the Termination Daily Quantity (expressed in MMBtu) times the number of Days in the relevant Contract Year times the single fixed price obtained from such third party; and
- (iv) the highest and lowest of such quotations shall be discarded and, calculated for each contract Year (or portion thereof) remaining from the Start Date to the End Date, the arithmetic mean of the three remaining quotations shall be the values for (A).

(B) = for each Contract Year (or portion thereof) remaining from the Start Date to the End Date, the amount of money that the Terminating Party would have paid to or received from (as the case may be) the Party in Breach under this Agreement assuming the Termination Daily Quantity was to be

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transacted each day at a 100% load factor.

For the purposes of the NPV calculation, the Contract Year subsequent to the Contract Year containing the Start Date shall be the initially discounted Contract Year.

The Terminating Party shall give the Party in Breach written notice of the payment due for Termination Damages, including reasonable detail as to how the amount was calculated. The Party in Breach shall pay the Termination Damages, which shall be adjusted for any amount owing between the parties on the effective date of termination, within ten (10) days of receiving the notice of payment due. If the Party in Breach fails to pay when due the full amount owing under this Section 10.1, interest thereon shall accrue from the due date at an annual rate equal to the Prime Rate plus two percent (2%).

- 10.2 The parties agree that the Termination Damages, calculated in accordance with Section 10.1, is a genuine pre-estimate of damages which will be suffered by the Terminating Party as a result of the failure of the Party in Breach to perform the obligations for which this Agreement is terminated.
- 10.3 Payment of Termination Damages, adjusted as may be necessary pursuant to Section 10.1, shall be the limit of liability arising from the failure of the Party in Breach to perform the obligations for which this Agreement is terminated.
- 10.4 The rights and obligations created by this Article 10 shall survive the termination of this Agreement.
- 10.5 In no event shall either party be responsible to the other party for indirect, consequential or special damages resulting from the other party's failure to perform its obligations in accordance with the provisions of this Agreement.

11.0 WARRANTIES AND REPRESENTATIONS

- 11.1 Seller warrants that it has good and merchantable title to all of the Gas delivered by it to Buyer at the Point of Delivery hereunder free and clear

of any and all liens, claims, and encumbrances of whatsoever nature relating to title to the Gas delivered to Buyer by Seller pursuant hereto, and Seller has the right and lawful authority to sell such Gas to Buyer. Seller shall defend, indemnify and save Buyer, its officers, directors and employees harmless from any and all suits, claims, liens and encumbrances of whatsoever nature relating to title to the Gas delivered to Buyer hereunder or Seller's right and authority to sell such Gas to Buyer, and Seller shall reimburse Buyer for any and all reasonable damages and direct costs incurred by Buyer, its officers, directors and employees (including, without limitations, all reasonable direct costs of court and reasonable attorney's and expert's fees) in defense, settlement, and satisfaction of any such suit or claim.

12.0 FORCE MAJEURE

- 12.1 Subject to the other provisions of this Article and this Agreement, if either party to this Agreement is rendered unable by reason of Force Majeure, to perform, in whole or in part, any obligation set forth in this Agreement, then such obligation shall be suspended to the extent necessary for the period of such Force Majeure condition.
- 12.2 For purposes of this Agreement, the term "Force Majeure" shall mean any of the following events, provided they are not within the control of the party claiming suspension, and which by the exercise of due diligence, such party is unable to prevent or overcome: (i) subject to Section 12.6, the curtailment of Seller's FS transportation service by NOVA for any volume up to and including the MDQ from Seller's firm NOVA receipt points to the Point of Delivery, (ii) curtailment of Buyer's firm transportation service at any point between the Point of Delivery and the interconnection of National Fuel Gas Supply Corporation and National Fuel Gas Distribution Corporation, near Vicksburg, New York, (iii) interruption in the operation of Buyer's Facility caused by any act of God, civil commotion, labour dispute or breakage of or damage to equipment occurring at Buyer's Facility or, (iv) the binding order of any court, governmental authority or regulatory

authority.

- 12.3 Notwithstanding Sections 12.1 and 12.2, a party hereto shall not be relieved of liability for inability to perform an obligation contained in this Agreement because of an event of Force Majeure to the extent that such Force Majeure event results from its own failure to have used due diligence or to the extent that such inability continues because such party does not use due diligence to resume being able to perform such obligation following the occurrence of the Force Majeure event. Events of Force Majeure affecting performance of an obligation contained in this Agreement shall not relieve either party from its obligation to make payments of amounts previously due hereunder.
- 12.4 A party claiming to be relieved from liability for inability to perform an obligation hereunder as a result of a Force Majeure event shall give notice in writing or electronically or orally confirmed in writing or electronically to the other party as soon as possible after the commencement of the Force Majeure event and shall use all reasonable efforts to restore its ability to perform such obligation with all reasonable dispatch. No party shall be required against its will to adjust or settle any labor disputes.
- 12.5 A Force Majeure event shall not extend the Term of this Agreement unless agreed to by the parties.
- 12.6 It is specifically agreed that (i) lack of funds or economic hardship, (ii) lack of gas supplies, (iii) lack of deliverability from gas wells, or (iv) any curtailment or interruption of Seller's firm NOVA transportation capacity, unless such curtailment or interruption occurs at the Point of Delivery or affects more than forty percent (40%) of Seller's total NOVA firm receipt capacity (excluding NOVA firm receipt capacity for lands committed under "dedicated lands" contracts), shall not constitute events of Force Majeure.
- 12.7 The party claiming a Force Majeure event shall give prompt notice to the other upon the cessation of said event.
- 12.8 In the event Seller claims relief from liability under this Agreement as a result of a Force Majeure event, then notwithstanding any other provision, Seller shall, on each Day during which the event of Force Majeure exists:

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- (i) Use commercially reasonable efforts to deliver Gas at alternate delivery points at which Buyer has the ability to receive Gas however Seller and/or Buyer shall not be required to incur extra gas costs or transportation costs to deliver and/or receive gas at such alternate delivery point;
- (ii) Seller must first curtail and cease delivering Gas to all of its interruptible customers on that Day, to the extent necessary to enable Seller to deliver the entire quantity as nominated under this Agreement for that Day; and
- (iii) if on that Day Seller still remains unable to deliver the entire nomination, Seller shall curtail all deliveries of Gas to the Delivery Point under Seller's firm sales contracts (excluding dedicated reserves contracts), to the extent necessary to enable Seller to deliver to Buyer a pro rata share of Seller's then remaining Gas supply which is able to be delivered by Seller to the Delivery Point (excluding Gas committed under dedicated reserves contracts). Seller shall not prorate any of its sales contracts based on price.

13.0 NOTICES

13.1 Except as otherwise herein specifically provided, any notice, request, demand or statement shall be given in writing. Written notice shall be deemed given on the earlier of (i) the date received by the addressee when delivered by hand, or (ii) the date sent by telecommunications means to the telecopy numbers set forth below:

To Seller: Talisman Energy, Inc.
2400, 855 2nd Street S.W.
Calgary, Alberta T2P 4J9
CANADA

Attention: Manager Natural Gas Marketing
Telephone: (403) 237-1234
Telecopy: (403) 237-1078

J. J.

To Buyer: Indeck-Yerkes Limited Partnership
1130 Lake Cook Road - Suite 300
Buffalo Grove, Illinois 60089

Attention: Manager, Fuel Services Group

Telephone: (708) 520-3212

Telecopy: (708) 520-9883

or at such other address as either party may from time to time specify as its address for such purposes by written notice given pursuant to this Section 13.1.

14.0 FURTHER ASSURANCES

- 14.1 Seller and Buyer and their respective heirs, personal representatives, successors and assigns shall execute, acknowledge or verify, and deliver any and all documents which from time to time may be reasonably requested by either party to this Agreement to carry out the purpose and intent of this Agreement.
- 14.2 Each party shall have the right at reasonable business hours and upon reasonable notice to appoint an independent auditor to examine the books, records, and charts of the other party to the extent necessary to verify the accuracy of any statement, declaration, charge, or computation made pursuant to the provisions of any Section hereof. The party initiating any audit shall do so at its sole cost and which shall not be recoverable in any form.
- 14.3 Either party ("Innocent Party") may suspend its obligations to perform under this Agreement if the other party ("Defaulting Party") is declared bankrupt by a court of competent jurisdiction or files a petition or otherwise commences a proceeding under any bankruptcy or similar law for the protection of creditor or has such a proceeding commenced against it ("Bankruptcy Proceeding"). If a Bankruptcy Proceeding occurs with respect to Buyer, Seller may immediately suspend its delivery obligations until such

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time as all outstanding accounts owing to Seller have been paid and Buyer provides Seller with security for payment in the amount equal to the purchase price times the MDQ times sixty (60) days. If within sixty (60) Days of a Bankruptcy Proceeding occurring, the Defaulting Party does not (i) make payment in full of any overdue accounts under this Agreement; and (ii) provide security, acceptable to the Innocent Party, acting reasonably, being to cover its continued performance under this Agreement the Innocent Party may terminate this Agreement upon five (5) Days written notice to the Defaulting Party. If such payment of overdue accounts is made and such security is provided, and thereafter maintained, each within the time specified, the Innocent Party shall resume its obligations herein.

15.0 GOVERNING LAW

15.1 All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the parties with respect to performance under this Agreement shall be construed and resolved under the laws of the Province of Alberta and submitted to the exclusive jurisdiction of the courts of the Province of Alberta.

16.0 ASSIGNMENT

16.1 This Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by either party in whole or in part except with the prior written consent of the other party, which consent shall not be unreasonably delayed, withheld or conditioned. Any Party to whom this Agreement may be assigned must be as reasonably creditworthy as the assignor. Unless an assignment has been expressly consented to by the other party, the assignment of this Agreement shall not be effective unless and until the assignee has executed and delivered to the other party an agreement in writing whereby the assignee agrees to be bound by the assignor's obligations under this Agreement and no such assignment shall

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release such assignor from its duties and obligations under this Agreement. Notwithstanding the foregoing, any party may assign, pledge, mortgage, collateralize or securitize its interests hereunder for financing purposes of Buyer's Facility (including, without limitation, the assignment of this Agreement by Buyer to Buyer's lenders) without the consent of Seller.

17.0 SEVERABILITY

17.1 The intention of the parties to this Agreement is to comply fully with all applicable laws, and this Agreement shall be construed consistently with all applicable laws to the extent possible. If, and to the extent that, any court of competent jurisdiction determines that it is impossible to construe any provision of this Agreement consistently with any applicable law and consequently holds that provision to be invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect.

18.0 ENTIRE AGREEMENT

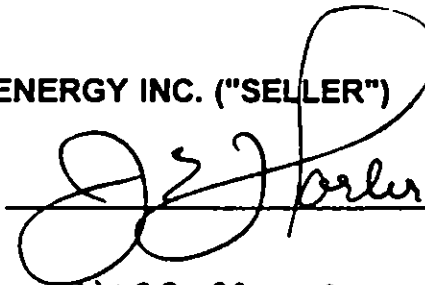
18.1 This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all previous discussions, negotiations and agreements between the parties with respect to the subject matter hereof, including, but not limited to, the Letter Agreement between the parties dated May 15, 1995.

JH

IN WITNESS WHEREOF, two original copies of this instrument have been executed in counterpart by the Seller and Buyer by their duly authorized representatives, each of which is an original and will stand alone as such.

TALISMAN ENERGY INC. ("SELLER")

Per:



Title:

VICE PRESIDENT MARKETING

Witness: Per:

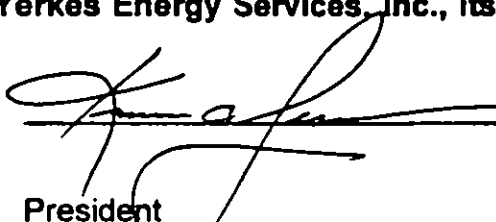


Assistant Secretary

INDECK-YERKES LIMITED PARTNERSHIP ("BUYER")

by Indeck-Yerkes Energy Services, Inc., its general partner

Per:



Title:

President

Witness:

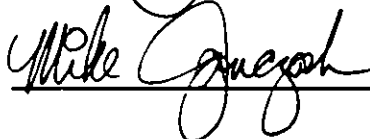




EXHIBIT 'A'

THIS EXHIBIT is attached to and made part of that certain Gas Purchase Agreement dated as of this 31st day of October, 1995 by and between Talisman Energy Inc. ("Seller") and Indeck-Yerkes Limited Partnership ("Buyer").

PURCHASE PRICE

The purchase price ("Purchase Price") for all Gas sold and purchased at the Point of Delivery under this Agreement during a Month shall be as follows:

| <u>From</u> | <u>Through</u> | <u>Price (US/MMBtu)</u> |
|------------------|------------------|-------------------------|
| November 1, 1995 | October 31, 1996 | \$1.395 |
| November 1, 1996 | October 31, 1997 | \$1.479 |
| November 1, 1997 | October 31, 1998 | \$1.567 |
| November 1, 1998 | October 31, 1999 | \$1.661 |
| November 1, 1999 | October 31, 2000 | \$1.761 |
| November 1, 2000 | October 31, 2001 | \$1.867 |
| November 1, 2001 | October 31, 2002 | \$1.979 |
| November 1, 2002 | October 31, 2003 | \$2.098 |

J. J. J.

EXHIBIT 'B'

THIS EXHIBIT is attached to and made a part of that certain Gas Purchase Agreement dated as of this 31st day of October, 1995 by and between Talisman Energy Inc. ("Seller"), and Indeck-Yerkes Limited Partnership ("Buyer").

LIST OF OPERATING PERSONNEL CONTACTS

Buyer's Representatives

Contractual Matters

Attention: Manager, Fuel Services
Telephone: (708) 520-3212
Telecopy: (708) 520-9883

Nominations, Billings and Payments

Northstar Energy Corp.
300, 535-7th Avenue S.W.
Calgary, Alberta T2P 0Y4

Attention: Luanne Duffy
Telephone: (403) 298-0238
Telecopy: (403) 298-0579

Seller's Representatives

Contractual Matters

Attention: Manager Natural Gas Marketing
Telephone: (403) 237-1173 / (403) 237-1234
Telecopy: (403) 237-1078

Nominations

Attention: Natural Gas Trading Room
Telephone: (403) 237-1234
Telecopy: (403) 237-1078

Billings and Payments

Attention: Natural Gas Accountant
Telephone: (403) 237-1234
Telecopy: (403) 237-1078

Buyer or Seller may change its representatives by notice to each other.

EXHIBIT B

OPINION OF COUNSEL FOR INDECK-YERKES LIMITED PARTNERSHIP



November 13, 1995

VIA FEDERAL EXPRESS

Mr. Clifford P. Tomaszewski
Acting Deputy Assistant Secretary
Office of Fuels Programs - Fossil Energy
U. S. Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: Application of Indeck-Yerkes Limited Partnership for
Authorization to Import Natural Gas from Canada

Dear Mr. Tomaszewski:

Pursuant to Section 590.202(c) of the Administrative Procedures for the Office of Fossil Energy, 10 C.F.R. § 590.202(c), I am hereby providing the opinion of counsel relating to the corporate power of Indeck-Yerkes Limited Partnership ("Indeck-Yerkes") to import Canadian natural gas.

I have reviewed the limited partnership agreement of Indeck-Yerkes, as well as the Articles of Incorporation and by-laws of Indeck-Yerkes' general partner. Based on review of these documents, it is my opinion that Indeck-Yerkes and its general partner are duly organized and validly existing under the laws of the State of Illinois. Furthermore, it is my opinion that Indeck-Yerkes is not precluded by such documents from importing natural gas.

Respectfully submitted,

INDECK-YERKES LIMITED PARTNERSHIP
By: Indeck-Yerkes Energy Services, Inc.,
its general partner

A handwritten signature in black ink, appearing to read "Gerald F. DeNotto".

Gerald F. DeNotto
Vice President and General Counsel

/rtb

UNITED STATES OF AMERICA

[6450-01-P]

DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

[FE DOCKET NO 95-112-NG]

INDECK-YERKES LIMITED PARTNERSHIP

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

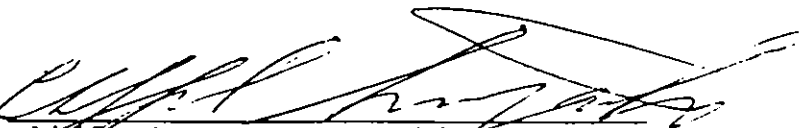
AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Indeck-Yerkes Limited Partnership authorization to import up to 7 Bcf of natural gas per day from Canada over a period of eight years, under the terms and conditions of letter agreements with Talisman Energy Inc.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., December 21, 1995.



Clifford P. Tomaszewski
Director, Office of Natural Gas
Office of Fuels Programs
Office of Fossil Energy

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DEC 21 1995

INDECK-YERKES LIMITED PARTNERSHIP)
_____)

FE DOCKET NO. 95-112-NG

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

DOE/FE ORDER NO. 1136

DECEMBER 21, 1995

I. DESCRIPTION OF REQUEST

On November 14, 1995, Indeck-Yerkes Limited Partnership (Indeck-Yerkes) filed an application with the Office of Fossil Energy 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, for authorization to import up to 7 Bcf of Canadian natural gas over a period of eight years from November 1, 1995, through October 31, 2003.^{2/} Indeck-Yerkes is an Illinois limited partnership with one general partner, Indeck Energy Services of Yerkes, Inc., and has its principal place of business in Buffalo Grove, Illinois. Indeck-Yerkes intends to purchase natural gas from Talisman Energy Inc. (Talisman) under the terms and conditions of a gas purchase agreement (Agreement) dated October 31, 1995. Indeck-Yerkes will purchase the gas on a firm basis at a price subject to annual adjustments. Indeck-Yerkes will be responsible for the deficiency charge on any day in which delivery of its maximum daily quantity of gas is not taken, as specified in the agreement. This natural gas will be used primarily as fuel for Indeck-Yerkes' Tonawanda cogeneration facility in New York. Indeck-Yerkes may also resell gas that is not needed at the Tonawanda facility to Niagara Mohawk Power Corporation (NiMo) or other distributors or end-users.

^{1/} 15 U.S.C. § 717b.

^{2/} Indeck-Yerkes currently is importing natural gas from Canada to be used as fuel for its cogeneration facility under blanket authorization granted in DOE/FE Order No. 1012 dated December 15, 1994 (1FE ¶ 71,064).

Under the Agreement, Indeck-Yerkes will take delivery of the gas from TransCanada Pipelines Limited (TransCanada) near Empress, Alberta, at the interconnection of NOVA Gas Transmission Ltd. and TransCanada. TransCanada will then transport the gas to the U.S./Canadian border to an interconnect with Tennessee Gas Pipeline Company (Tennessee) near Niagara Falls, New York. Tennessee will deliver the gas to the pipeline facilities of NiMo which will then deliver the gas to the cogeneration facility in Tonawanda, New York.

II. FINDING

The application filed by Indeck-Yerkes has been evaluated to determine if the proposed import arrangement meets the public interest requirements 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 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 must be granted without modification or delay. The authorization sought by Indeck-Yerkes 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. Indeck-Yerkes Limited Partnership (Indeck-Yerkes) is authorized to import up to 7 Bcf of Canadian natural gas over a period of eight years beginning on November 1, 1995, through October 31, 2003, under the terms and conditions of the gas purchase agreement dated October 31, 1995, with Talisman Energy Inc. (Talisman). This natural gas may be imported at Niagara Falls, New York.

B. Indeck-Yerkes shall file with the Office of Fuels Programs all executed natural gas supply contracts pertaining to the natural gas to be imported within 30 days of their execution.

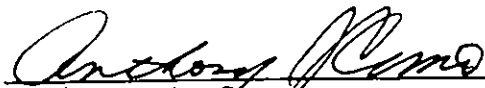
C. Within two weeks after deliveries begin, Indeck-Yerkes shall provide written notification to the Office of Fuels Programs (OFP), Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that the first import delivery of natural gas authorized in Ordering Paragraph A above occurred.

D. With respect to the natural gas imports authorized by this Order, Indeck-Yerkes shall file with OFP, 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, Indeck-Yerkes must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu delivered at the international border and paid to Talisman. Whenever volumes of gas are not used as fuel for the cogeneration facility in Tonawanda, New York, these volumes and prices must be reported separately. The monthly price information shall itemize separately the demand and commodity charges, fuel charges, and, if applicable, reservation fees. In addition, Indeck-Yerkes shall provide, to the extent possible, a breakdown of the import volume showing the amount sold in each State and to each of its customers.

E. The first quarterly report required by Ordering Paragraph D of this Order is due not later than January 30, 1996, and should cover the period from November 1, 1995, until the end of the fourth calendar quarter, December 31, 1995.

Issued in Washington, D.C. on December 21, 1995.



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

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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AUG 28 1998

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MOSCOW
ALMATY
LONDON
(A LONDON-BASED
MULTINATIONAL PARTNERSHIP)
SAO PAULO
IN ASSOCIATION WITH
TAVARES GUERREIRO ADVOGADOS

August 27, 1998

VIA FEDERAL EXPRESS

Mr. Patrick Fleming
Office of Fuels Programs
Fossil Energy
U. S. Department of Energy
Docket Room 3E-042, FE 50
Forrestal Building
1000 Independence Avenue
Washington, D.C. 20585

Re: Application of Indeck-Yerkes Limited Partnership
("Indeck-Yerkes") for Blanket Authority to Import
Natural Gas from Canada

Dear Mr. Fleming:

Confirming our telephone conversation of today, please be advised that it is the desire of Indeck-Yerkes that the long term authority granted it to import Canadian natural gas in DOE/FE Order No. 1136 dated December 21, 1995, be terminated pursuant to the Application filed by it on August 24, 1998.

Very truly yours,



Michael R. Waller

cc: Mr. Michael Janczak

LEBOEUF, LAMB, GREENE & MACRAE
L.L.P.

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IAI LONDON-BASED
MULTINATIONAL PARTNERSHIP

SÃO PAULO

IN ASSOCIATION WITH
TAVARES GUERREIRO ADVOGADOS

August 24, 1998

Office of Fuels Programs
Fossil Energy
U. S. Department of Energy
Docket Room 3F-056, FE 50
Forrestal Building
1000 Independence Avenue
Washington, D.C. 20585

REC'D DOE/FE
1998 AUG 24 P 11

Re: Applications of Indeck-Yerkes Limited Partnership
("Indeck-Yerkes") and Indeck-Oswego Limited
Partnership ("Indeck-Oswego") for Blanket Authority
to Import Natural Gas from Canada

Dear Sirs::

On June 23, 1998, Indeck-Yerkes and Indeck-Oswego filed a joint application to amend certain DOE/FE Orders authorizing the import of natural gas from Canada. After discussions with Mr. Patrick Fleming, it was determined that that application would not be pursued, and that Indeck-Yerkes and Indeck-Oswego would seek separate blanket authority to import Canadian natural gas. Therefore, enclosed for filing are an original and 15 copies of applications by each of Indeck-Yerkes and Indeck-Oswego for such blanket authority, and our check for \$100.00 to cover the filing fees for the two applications.

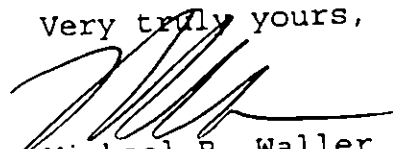
These two applications also seek the rescission and termination of all outstanding authority held by either Indeck-Yerkes or Indeck-Oswego to import natural gas from Canada, effective contemporaneously with the effectiveness of the new blanket import authority.

Exhibit "B" to each of these applications is tendered for filing separately from the applications, pursuant to the applicants' request for confidential treatment of the document comprising such Exhibit.

Office of Fuels Programs
August 24, 1998
Page 2

Please file stamp the extra copy of this transmittal and the extra copy of each of the applications and return them to our messenger. Should there be any questions in connection with this submission, please do not hesitate to contact me. Thank you for your assistance and cooperation.

Very truly yours,



Michael R. Waller

cc: Mr. Patrick Fleming

17000065

CHECK NO.

62.20
311

CITIBANK DELAWARE
ONE PENNS WAY
NEW CASTLE DE 19720

LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.

ATTORNEY BUSINESS ACCOUNT

700 RUSK STREET - SUITE 400

HOUSTON, TX 77002

ONE HUNDRED AND NO/100

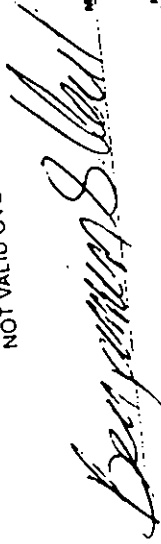
DATE 8-21-98

AMOUNT OF CHECK

\$100.00

NOT VALID OVER \$2,500.00

PAY TO THE ORDER OF
TREASURER OF THE UNITED STATES



3878116411

10311002091

1700006511

98-60-NL
98-61-NL



Department of Energy

Washington, DC 20585

AUG 25 1998

Mr. Michael Waller
LeBoef, Lamb et al.
1000 Louisiana, Suite 1400
Houston, Texas 77002

RE: FE Docket Nos. 89-21-NG, 89-22-NG, 95-112-NG, 96-89-NG,
96-60-NG, 98-61-NG

Dear Mr. Waller

This is in response to your applications filed August 24, 1998, on behalf of Indeck-Yerkes Limited Partnership (Indeck-Yerkes) and Indeck-Oswego Limited Partnership (Indeck-Oswego). You requested the Office of Fossil Energy (FE) of the Department of Energy (DOE) to vacate certain existing long-term and short-term blanket authorizations. In addition, you requested FE to issue new blanket import authorizations to Indeck-Yerkes and Indeck-Oswego.

Included with your applications as Exhibit B are Power Purchase Agreements between Niagara Mohawk Power Corporation and the two Applicants. The Power Purchase Agreements, for which you have requested confidential treatment, are not relevant to FE's public interest determination and FE is returning them to you.

Sincerely,

A handwritten signature in cursive script that reads "John W. Glynn".

John W. Glynn
Manager, Natural Gas Regulation
Office of Natural Gas & Petroleum
Import and Export Activities
Office of Fossil Energy



UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

REC'D DOE/FE
AUG 29 10 A 8:15

INDECK-YERKES LIMITED PARTNERSHIP)
_____)
_____)

FE DOCKET NO. 95-112-NG

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

DOE/FE ORDER NO. 1136-A

Indeck-Yerkes Limited Partnership (Indeck-Yerkes) is currently authorized in DOE/FE Order No. 1136¹ to import up to seven Bcf of Canadian natural gas over an eight-year term that began November 1, 1995. On August 28, 1998, Indeck-Yerkes supplemented an application the company had filed on August 24, 1998, with a request the Department of Energy rescind and terminate its authorization.


Indeck-Yerkes owns and operates a non-utility generating facility and sells its power output to Niagara Mohawk Power Corporation (NMPC). As the result of the implementation of a "Master Restructuring Agreement," effective June 30, 1998, between NMPC and certain non-utility generators, including Indeck-Yerkes, Indeck-Yerkes has entered into a new ten-year term power sales arrangement with NMPC at market sensitive prices. Due to this change in the nature of its contractual relationship with NMPC, Indeck-Yerkes also has entered into agreements to terminate its long-term gas supply contracts with Canadian

1/ 1 FE ¶ 71,221 (December 21, 1995).

producers. Future purchases of Canadian natural gas will be made in spot and short-term open market transactions with various Canadian suppliers.^{2/}

Accordingly, pursuant to section 3 of the Natural Gas Act, the authorization to import natural gas granted to Indeck-Yerkes Limited Partnership in DOE/FE Order No. 1136 is hereby vacated.

Issued in Washington, D.C., on September 10, 1998.



John W. Glynn
Manager, Natural Gas Regulation
Office of Natural Gas & Petroleum
Import and Export Activities
Office of Fossil Energy

^{2/} The Department is granting Indeck-Yerkes short-term blanket import authority by separate order.