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May 31, 1995

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

RE: FE DOCKET NO. 95-44-NG

Dear Mr. Tomaszewski:

Enclosed for filing please find an original and 15 copies of the Application of Consumers Power company For Authorization To Import Natural Gas, together with the Fifty Dollar filing fee required by 10 C.F.R. 590.207. If there are any questions regarding this matter, please do not hesitate to give me a call.

Sincerely,

Francis X. Berkemeier

cc: WMLange, Washington  
SGregersen, Department of Energy

REC'D 202/FE  
MAY 31 1995  
U.S. DEPARTMENT OF ENERGY

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UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

Consumers Power Company )  
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FE Docket No. 95-46-NG

REC'D DOE/FE  
ENERGY EFF. PROGRAM

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APPLICATION OF CONSUMERS POWER COMPANY  
FOR AUTHORIZATION TO IMPORT NATURAL GAS

Pursuant to Section 3 of the Natural Gas Act, 15 U.S.C. § 717(b), as amended by Section 201 of the Energy Policy Act of 1992 "EPACT", P.L. 102-486, and the administrative procedures established by the Department of Energy ("DOE") thereunder, 10 C.F.R. Part 590, Consumers Power Company (hereinafter referred to as "Consumers Power" or "Applicant") respectfully applies for authority from DOE to import natural gas from Canada on a firm basis to the United States. The Natural Gas Act states that an import or export of natural gas from or to a nation with which there is a free trade agreement in effect requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification of delay [15 U.S.C. and 717b (c)].

Specifically, Consumers Power seeks DOE approval to import from Canada up to 14,000 Mcf per day under each of the long-term natural gas supply contracts it has negotiated with (1) Norcen Energy Resources Limited ("Norcen"), and (2) North Canadian Oils (collectively referred to as "Sellers") over a term extending through May 31, 1997. These contracts are appended as Exhibits A and B hereto, and authorization is requested for these imports pursuant to the specific terms of each contract.

Imports of natural gas under the contracts attached as Exhibits began in June 1994 under blanket authorizations obtained by the Sellers. Beginning August 1, 1994 imports were made pursuant to blanket authorization granted to Consumers Power in Docket FE94-50-NG. Since the terms of the contracts extend for more than two years, the instant Application is being filed to allow deliveries to continue for the balance of the terms of the contracts. Consumers Power requests that in view of the foregoing, the long-term authorization be granted within 30 days of the filing of this Application.

The legal name of Applicant is Consumers Power Company. Consumers Power Company is a Michigan corporation and is wholly owned by, and the principal operating subsidiary of, CMS Energy Corporation. Consumers Power has its principal place of business at 212 West Michigan Avenue, Jackson, Michigan 49201. Michigan Gas Storage Company, discussed later in this Application, is a subsidiary of Consumers Power.

Consumers Power is a combined natural gas and electric utility which provides retail electric and natural gas service in all 68 counties in Michigan's Lower Peninsula. Its total number of retail electric customers and retail gas customers is approximately three million. Consumers Power applies for the instant authority to import natural gas from Canada in order for such imported gas to serve as part of its own long-term system supply portfolio for retail service to its natural gas customers in the State of Michigan.

All correspondence or communication regarding this Application should be addressed to:

William M. Lange, Esq.  
Assistant General Counsel  
Fifth Floor  
1016 - 16th Street, N.W.  
Washington, DC 20036  
Telephone: (202) 293-5795

Francis X. Berkemeier, Esq.  
Consumers Power Company  
212 West Michigan Avenue  
Jackson, MI 49201  
Telephone: (517) 788-2115

By separate contracts entered into with each Seller, Consumers Power has secured firm commitments to supplies of Canadian gas having an initial aggregate maximum daily quantity ("MDQ") of 14,000 Mcfd each. Pursuant to these contracts, Sellers have agreed to provide such firm natural gas supplies to Consumers Power, pursuant to individual contract terms, at \$2.10 United States dollars per MMBtu through May 31, 1996 and \$2.20 United States dollars per MMBtu from June 1, 1996 to May 31, 1997.

In addition to providing the natural gas, each Seller is responsible for the cost of transportation to the delivery point and all production, severance, excise, *ad valorem* and similar or different taxes or charges prior to its delivery of the gas.

Each of these contracts provides that the Seller thereunder shall cause such gas to be delivered to Consumers Power on the international border between Canada and the United States, near the interconnect of the natural gas pipelines of TransCanada PipeLines Limited ("TCPL") and Great Lakes Transmission Corporation ("Great Lakes"). From that point on the international border, Consumers Power has arranged for the transportation of such gas on the pipeline systems of Great Lakes and ANR Pipeline Company to negotiated points of receipt into the Consumers Power and/or Michigan Gas Storage Company systems in the State of Michigan.

The subject Seller contracts are part of an overall portfolio of Canadian and domestic supplies negotiated by Consumers to diversify its gas supplies and reduce reliance on traditional domestic interstate pipeline suppliers. The transportation of the Canadian gas within the

United States will occur under firm transportation commitments held by Consumers Power on such pipeline systems.

Consumers Power believes that no additional facilities will be required to effectuate the proposed imports or to effectuate the delivery of the imported gas into the Consumers Power and/or Michigan Gas Storage Company systems. Thus, there is no anticipated detrimental environmental impact of the proposed imports, and no environmental assessments or studies have been performed.

Neither this nor any related matter is being considered by any other part of the DOE, including the FERC, or any other Federal agency or department.

Section 3(a) of the Natural Gas Act requires that this Application be approved if it is found by the Administrator to be "not inconsistent with the public interest." Section 3(c) provides that import arrangements such as those that are the subject of this Application "shall be deemed to be consistent with the public interest and . . . be granted without modification or delay."

While Section 3(c) indicates that import arrangements such as these "shall be deemed to be consistent with the public interest," 10 C.F.R. § 590.202(b) still requires that certain factors related to consistency with the public interest be discussed. Thus they are discussed briefly below.

Consumers Power has entered into the instant contracts with the indicated Sellers for firm natural gas service in order to satisfy its continuing need to diversify its system supply and to better realign its gas supply contracts with market realities. The imported supplies will

help to make its overall system supply more marketable. The pricing provisions discussed above are expected to continue to remain competitive for the remaining terms of the contracts.

The proposed imports constitute a dependable and reliable source of supply to Consumers Power both in terms of supply availability at the wellhead, and in terms of the security of the transportation of such gas to the delivery point at the international border.

The parties have made explicit contractual provision for the requisite security of this supply in the respective Seller contracts. In the individual contracts, Sellers have undertaken to indemnify Consumers Power for certain costs of alternate supplies in the event of delivery shortfalls.

It should also be noted that because of the proximity of Consumers Power's system to Canada, these agreements maximize the greater relative security to United States interests associated with pipeline transportation of imported natural gas over the United States/Canadian border compared with certain other energy import possibilities. The imports are also consistent with the United States-Canada Free Trade Agreement, and the initiatives thereunder, which recognize the strong historical trading partner relationships between the United States and Canada and the relative freedom from the political, economic and physical insecurities which may, in certain circumstances, occasion energy imports from the Middle East or which require transportation over the world sea lanes.

Wherefore, in view of the foregoing, Consumers Power submits that the import of gas pursuant to the terms of the subject Seller

agreements is not inconsistent with the public interest, and should be authorized under Section 3 of the Natural Gas Act. Specifically, Consumers Power requests that it be authorized (i) to import natural gas pursuant to the explicit terms of the Seller agreements set forth in Exhibits A and B hereto, and (ii) during the term of the Seller agreements and consistent with the contractual agreement between Consumers Power and the respective Sellers, to assign its rights and/or obligations with the respective Sellers to third parties when situations of *force majeure* or other supervening third party causes render the receipt of such imported natural gas to the Consumers Power system economically impossible or impracticable.

A statement is attached as Exhibit C pursuant to the requirements of 10 C.F.R. § 590.202(c) presenting the opinion of counsel that the proposed imports are within the corporate powers of Applicant. Also attached is a notarized statement providing the certifications and verifications required by 10 C.F.R. § 590.103(b).

Respectfully submitted,

CONSUMERS POWER COMPANY

By Francis X. Berkemeier

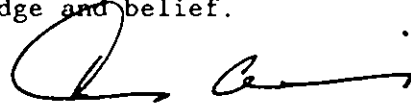
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William M. Lange  
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Washington, DC 20036  
(202) 293-5795

Dated: May 31, 1995

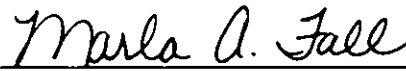
CERTIFICATION OF AUTHORIZATION  
AND VERIFICATION OF ACCURACY

I, Thomas A. McNish, Vice President and Secretary of Consumers Power Company, certify and verify: 1) that Francis X. Berkemeier of Jackson, Michigan and William M. Lange of Washington, D.C. are duly authorized representatives of Consumers Power Company for purposes of this Application for long-term natural gas import authority, and 2) that I have knowledge of the facts alleged in that Application and that those facts are correct to the best of my knowledge and belief.



\_\_\_\_\_  
THOMAS A. McNISH

Sworn to before me and subscribed in my presence this 31st  
day of May, 1995.



\_\_\_\_\_  
Notary Public, Jackson County, Michigan  
My Commission Expires:

**MARLA A. FALL**  
Notary Public, Jackson County, Michigan  
My Commission Expires July 20, 1999






CERTIFICATION OF AUTHORIZATION  
AND VERIFICATION OF ACCURACY

I, Francis X. Berkemeier, attorney for Consumers Power Company in the referenced matter, certify and verify that I have knowledge of the facts alleged in that Application and that those facts are correct to the best of my knowledge and belief.

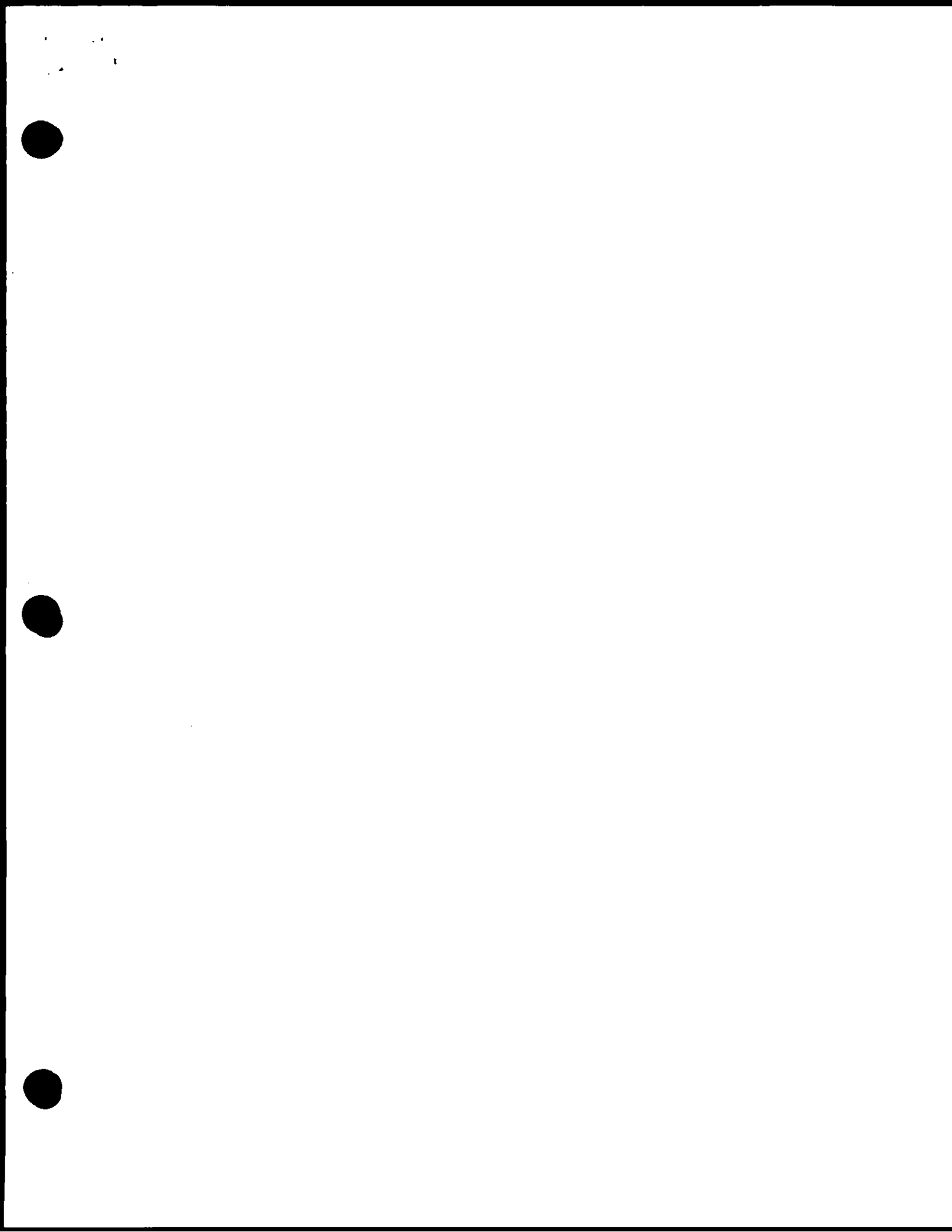
  
FRANCIS X. BERKEMEIER

Sworn to before me and subscribed in my presence this 31st day of May, 1995.

  
Margaret A. Prestler  
Notary Public, Jackson County, Michigan  
My Commission Expires: March 31, 1997

EXHIBITS TO APPLICATION OF CONSUMERS POWER COMPANY  
FOR AUTHORIZATION TO IMPORT NATURAL GAS

<u>Tab</u>	<u>Description</u>
Exhibit A	Firm Natural Gas Purchase Agreement between Consumers Power Company and Norcen Energy Resources Limited, dated June 1, 1994
Exhibit B	Firm Natural Gas Purchase Agreement between Consumers Power Company and North Canadian Oils, dated June 1, 1994
Exhibit C	Opinion of Consumers Power Company, dated May <u>31</u> , 1995



## FIRM NATURAL GAS PURCHASE AGREEMENT

THIS AGREEMENT, made as of the 1st day of June 1994, is entered into by and between CONSUMERS POWER COMPANY ("Buyer"), a Michigan corporation with its principal place of business in Jackson, Michigan, and NORCEN ENERGY RESOURCES LIMITED ("Seller"), a Canadian corporation with its principal place of business in Calgary, Alberta;

WITNESSETH THAT:

WHEREAS Seller owns or controls supplies of Natural Gas which are available for sale and delivery on a firm three-year basis; and

WHEREAS Buyer desires to purchase such Natural Gas from Seller, and Seller, pursuant to the terms and conditions provided for herein, desires to sell such Natural Gas to Buyer.

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

### ARTICLE I

#### INTERPRETATION

- 1.1 For the purposes of this Agreement, the terms and symbols defined in this Paragraph 1.1 shall have the following meanings, unless the context expressly or by implication otherwise requires:
- (a) "Agreement" shall mean this agreement in its entirety, including the foregoing recitals and premises;
  - (b) "BTU" shall mean the amount of heat required to raise the temperature of one (1) pound of distilled water from a temperature of fifty-nine degrees Fahrenheit (59°F) to sixty degrees Fahrenheit (60°F) at a constant pressure of fourteen and seventy-three hundredths pounds per square inch absolute (14.73) psia);
  - (c) "Buyer's System" shall mean Consumers Power Company's integrated high pressure gas transmission pipeline network.
  - (d) "City Gate" shall mean any point on Buyer's System where it has an interconnect with the transmission pipeline network of another company.
  - (e) "Cubic Foot of Natural Gas" shall mean the volume of Natural Gas contained in one (1) cubic foot of space at a pressure of fourteen and seventy-three hundredths (14.73) psia, at a temperature of sixty degrees Fahrenheit (60°F);
  - (f) "Day" shall mean a period of twenty-four (24) consecutive hours, beginning and ending at 8:00 a.m. standard time, in the time zone in which deliveries are made, or at such other place as may be mutually agreed upon by Buyer and Seller. The reference date for any Day shall be the calendar date upon which the 24-hour period shall commence;

- (g) "Delivering Pipeline" shall mean the natural gas pipeline of TransCanada Pipelines Limited;
- (h) "Delivery Point" shall mean the point on the international border between Canada and the United States near the interconnect of the Delivering Pipeline and the Receiving Pipeline;
- (i) "Interest" shall mean interest at the rate per annum announced and published from time to time by the Canadian Imperial Bank of Commerce as its prime rate of interest, plus one (1%) percent per annum;
- (j) "Mcf" shall mean one thousand (1,000) cubic feet of Natural Gas;
- (k) "MMBtu" shall mean one million (1,000,000) Btu;
- (l) "MMcf" shall mean one million (1,000,000) cubic feet of Natural Gas;
- (m) "Month" shall mean a calendar month except that the commencement and termination thereof shall be determined consistent with the definition of "Day" above;
- (n) "Natural Gas" shall mean a mixture consisting primarily of methane, but including other constituents which may include other hydrocarbons, nitrogen, carbon dioxide, hydrogen sulphide, helium and minor impurities, that are recovered or recoverable from an underground reservoir and that is gaseous at the conditions under which its volume is measured or estimated;
- (o) "Receiving Pipeline" shall mean the natural gas pipeline of Great Lakes Gas Transmission Limited Partnership.
- (p) "U.S. Transportation" shall mean the pipeline capacity which Buyer has contracted with Great Lakes Gas Transmission Limited Partnership (84,000 Mcf per day under Contract FT-024 dated September 19, 1990) and ANR Pipeline Company (58,765 dth per day under Contract 16850 dated November 11, 1993) ~~to the extent that it is used to~~ transport, along with other volumes, the volumes of gas being purchased pursuant to this Agreement. *[Handwritten initials]*

- 1.2 This Agreement shall for all purposes be construed in accordance with and shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties hereto attorn to the exclusive jurisdiction of the courts of law of the Province of Alberta.
- 1.3 To the extent practicable, the Natural Gas is to be exported under National Energy Board of Canada export authorizations previously obtained by Seller and imported under United States import authorizations previously obtained by Buyer or Seller, which will be maintained by Seller or Buyer, as the case may be, for the purposes of this Agreement. If any additional governmental approval, permit, order or other authorization shall be necessary relative to this Agreement, then each party shall, to the best of its ability, assist in the obtaining of such approval, permit, order or other authorization. Seller represents that it has the necessary U.S. import authorizations which can and will be used if Buyer so requests. If Seller uses its import authorizations, then Buyer shall reimburse Seller for all U.S. custom fees incurred by Seller for gas under this Agreement.

- 1.4 Every provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the balance of the terms of this Agreement.
- 1.5 The various headings contained in this Agreement are for reference purposes only and shall not affect, in any way, the meaning or interpretation hereof.
- 1.6 Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires.
- 1.7 "Hereof", "herein", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Paragraph or subparagraph, unless otherwise specifically stated, and the terms "Article", "Paragraph" and "subparagraph" followed by a number and/or letter refer to the specified Article, Paragraph and subparagraph of this Agreement.
- 1.8 There are no representations, warranties, covenants, or agreements made between the parties hereto with respect to the matters referred to in this Agreement other than as are set forth by the terms of this Agreement. This Agreement shall constitute the entire agreement between the parties hereto in relation to the matters referred to therein.
- 1.9 Time shall be of the essence in this Agreement.

## ARTICLE II TERM

- 2.1 This Agreement shall be effective as of June 1, 1994, and shall apply to all Natural Gas deliveries and receipts which occurred between the parties hereto prior to the date of signing of this Agreement and after 0800 hours, Eastern Standard Time on the 1st day of June 1994, and shall remain in effect until 0800 hours Eastern Standard Time on the 31st day of May 1997 (the "Term").
- 2.2 Prior to May 31, 1997, Buyer and Seller shall negotiate in good faith for an extension of this Agreement to November 1, 2001 at a price that is mutually agreeable to the parties. If the parties fail to agree on such an extension of this Agreement, the Seller may, at its option, require that Buyer assign to it (to the extent allowed by Buyer's contracts or agreements with Great Lakes Gas Transmission Limited Partnership and ANR Pipeline Company, or pursuant to capacity release regulations authorized by the Federal Energy Regulatory Commission), such portion of the Buyer's U.S. Transportation, which is sufficient to transport the Daily Contract Quantity for a term beginning on June 1, 1997 and ending on November 1, 2001. Buyer may amend or surrender capacity under the above agreements so long as such amendments or capacity reductions do not interfere with Buyer's obligations to Seller under this Article.

## ARTICLE III SALES AND DELIVERY COMMITMENT

- 3.1 Seller shall deliver, and Buyer shall receive at the Delivery Point, on a firm daily basis, during the Term of this Agreement, 14,000 Mcf/day (the "Daily Contract Quantity").

ARTICLE IV  
CONTRACT PRICE

- 4.1 For all Natural Gas received by Buyer and delivered by Seller hereunder between June 1, 1994 and May 31, 1996, Buyer shall pay Seller \$2.10 U.S. dollars/MMBtu (the then applicable "Contract Price"). For all Natural Gas received by Buyer and delivered by Seller hereunder between June 1, 1996 and May 31, 1997, Buyer shall pay Seller \$2.20 U.S. dollars/MMBtu (the then applicable "Contract Price").
- 4.2 The Seller shall arrange and pay for transportation to the Delivery Point and shall be responsible for all production, severance, excise, ad valorem and similar or different taxes or charges imposed on or in respect of the Natural Gas prior to delivery of the Natural Gas to Buyer at the Delivery Point. Buyer shall be responsible for and indemnify Seller with respect to all such taxes and charges that are imposed upon and after delivery of the Natural Gas at the Delivery Point, including, without limitation, State sales, value added, use and gross receipts taxes, provided always that if the sale of Natural Gas hereunder is exempt from the payment of any such taxes, Buyer shall provide Seller forthwith with a valid and effectual signed and dated resale exemption certificate (bearing date which precedes the date of the sale hereunder) as a precondition to its non-payment of any such taxes.

ARTICLE V  
SELLER'S FAILURE TO DELIVER

- 5.1 If Seller shall for any reason whatsoever, other than the occurrence of an event of Force Majeure or the suspension of deliveries by Seller pursuant to Paragraph 10.4 because of the failure to pay of Buyer, fail to meet its Natural Gas delivery and sale obligations to Buyer hereunder, Seller shall be liable to pay Buyer the difference between what Buyer pays for replacement Natural Gas delivered to its City Gate and what Buyer would have paid under this Agreement for such a City Gate delivery in the event of compliance by Seller with its delivery and sale obligations. However, Buyer shall, on a reasonable best efforts basis, obtain the lowest price possible for any such replacement Natural Gas purchased from third parties. Payment of such amount by Seller to Buyer shall be Buyer's sole and exclusive remedy for Seller's failure to meet its Natural Gas delivery and sale obligations to Buyer hereunder, and Seller shall not be liable to Buyer for any other losses or damages whatsoever, including without limitation, loss of anticipatory profits or any consequential, exemplary, punitive, indirect or other damages.

ARTICLE VI  
BUYER'S FAILURE TO TAKE DELIVERY

- 6.1 If on any day Seller is ready, willing and able to deliver the Daily Contract Quantity to Buyer and yet Buyer fails to take delivery of the Daily Contract Quantity set forth in Paragraph 3.1 hereof for any reason whatsoever, other than failure of the Natural Gas to conform with specifications set forth in Paragraph 7.1 hereof, or an event of Force Majeure, Buyer shall remain liable to pay for any and all Natural Gas not taken by Buyer and shall pay at the then applicable Contract Price as if the Daily Contract Quantity was taken on a daily basis by the Buyer.

**ARTICLE VII  
QUALITY OF NATURAL GAS**

- 7.1 The minimum gross heating value, quality, delivery pressure and temperature of the Natural Gas delivered hereunder shall conform to the minimum standards of the Receiving Pipeline.
- 7.2 If the Natural Gas tendered for delivery by Seller to Buyer on any day shall fail at any time to conform to any of the specifications set forth in Paragraph 7.1, then Buyer shall have the right, exercisable by notice to Seller, to require Seller to remedy any non-conformity and, in addition to all other remedies available to it, Buyer may, notwithstanding all other provisions hereof to the contrary, refuse to take such Natural Gas until such Natural Gas is brought into conformity with such specifications.

**ARTICLE VIII  
MEASUREMENT OF NATURAL GAS**

- 8.1 All Natural Gas delivered under this Agreement to the Delivery Point shall be measured by the Delivering Pipeline, as to energy content and volume, in accordance with the published terms and conditions specified in the gas transportation tariff of the Delivering Pipeline for deliveries of Natural Gas at the Delivery Point.

**ARTICLE IX  
TITLE**

- 9.1 Seller hereby covenants, warrants and represents to Buyer that Seller shall have good right and title to all Natural Gas to be sold hereunder at the Delivery Point, free and clear of all liens, charges, encumbrances and adverse claims of every nature and kind whatsoever.
- 9.2 Title to, risk and responsibility for Natural Gas delivered under this Agreement shall pass from Seller to Buyer and shall vest in Buyer at the Delivery Point. Until delivery of the Natural Gas at the Delivery Point, Seller shall, as between itself and Buyer, be deemed to be in control and possession of the Natural Gas, and after such delivery, Buyer shall be deemed to be in control and possession of such Natural Gas.

**ARTICLE X  
PAYMENTS**

- 10.1 Monthly Billing:
- (a) Seller shall, on or before the fifteenth (15th) day of each Month (the "Billing Month") following the Month during which delivery of Natural Gas shall have been made under this Agreement (The "Delivery Month"), deliver to Buyer a statement for the Delivery Month showing the daily and total quantity (expressed in MMcf and MMBtu's) of Natural Gas delivered under this Agreement or, if such information is not then available, an estimate of such daily and total quantities; and a bill with respect to the Delivery Month, together with information sufficient to explain and support the amount billed:



- (b) Subject to Paragraphs 6.1 and 7.2, any estimates of any daily and total amounts shall be based on the nominated volumes for each day during the Delivery Month, adjusted for any known deviations, and the heat content of the Natural Gas shall be in accordance with the estimate of the Delivering Pipeline for the period in question.
- 10.2 Buyer shall pay Seller, on or before the 25th day of the Billing Month, the amount due to Seller with regard to Natural Gas sold or reasonably estimated to have been sold, in the Delivery Month, calculated in accordance with the provisions of this Agreement, by direct electronic transfer to the account of Seller, at the account number, transit number and bank specified on Seller's monthly statement. In the event that the 25th day of the Billing Month is not a business day, then Buyer shall pay Seller as aforesaid on or before the first business day immediately after the 25th day of the Billing Month. If Seller's bill for any Billing Month is based on an estimate of the Natural Gas sold in the Delivery Month, then the parties shall make all necessary adjustments in the Month following the Billing Month to reflect the actual volumes of Natural Gas sold. If the presentation of the bill to Buyer is delayed after the fifteenth (15th) day of the Billing Month, then the time for payment shall be extended by the number of days of such delay, unless Buyer is responsible for such delay.
- 10.3 Subject to Paragraph 10.6, Seller and Buyer shall each have the right to, at all reasonable times, and from time to time, examine the books, records and accounts of the other to the extent reasonably necessary to verify the accuracy of any statement, billing or computation made under or pursuant to the provisions of this Agreement.
- 10.4 Remedies of Seller for non-payment by Buyer are as follows:
- (a) Should Buyer fail to pay all of the undisputed amount of any bill that has been rendered as herein provided when such amount is due, Interest shall accrue on the unpaid part of such bill commencing on the date such payment is due. All such Interest shall be payable on demand by Seller to Buyer;
- (b) If any such failure by Buyer to pay continues for a period of twenty (20) days after payment is due, then Seller may, in addition to any other remedies that it may have under the terms of this Agreement, suspend further delivery of Natural Gas under this Agreement until such undisputed amount is paid. If such default continues for an additional period of thirty (30) days, then Seller shall have the right to terminate this Agreement by notice to Buyer specifying the reason for and effective date of the termination.
- (c) In the event Buyer should in good faith dispute any portion of the amount shown on Seller's statements, Buyer shall pay all of that portion of the statement that it does not dispute (the "Undisputed Amount"). Any amount which is disputed by Buyer in good faith (a "Disputed Amount") and which is thereafter determined to be owing by Buyer, together with Interest from the original due date of the disputed invoice, shall be due and payable by Buyer within twenty (20) days of final resolution of such dispute by written agreement of the parties, final judgment of a court of competent jurisdiction not subject to further appeal, or (if the parties hereafter mutually agree to submit such dispute to binding arbitration) final arbitration award.
- 10.5 Subject to the provisions of Paragraph 10.6, if it shall be found that at any time Buyer has been overcharged by Seller and Buyer shall have actually paid the bills containing such overcharge, then within thirty (30) days after the final determination thereof, Seller shall

refund the amount of any such overcharge and if such overcharge was the result of Seller's error then Interest shall be charged on the amount in question from the date the overcharge was paid to the date that Buyer is reimbursed for the overcharge. If any such overcharge is not a result of an error on the part of Seller, then no Interest shall be charged. Similarly, if it shall be found that Buyer has underpaid, the Buyer shall pay the amount underpaid, and if such underpayment was the result of the error of Buyer, then Interest shall be charged from the date that the underpayment occurred to the date the Seller is reimbursed for the underpayment. If any such underpayment is not a result of an error on the part of Buyer, then no Interest shall be charged.

- 10.6 Notwithstanding anything herein contained to the contrary, neither party hereto shall be entitled to dispute the volume of Natural Gas delivered, or the amount paid or payable with respect thereto, unless such dispute is raised by notice to the other party within one (1) year after the end of the Month in which the Natural Gas in question was delivered.

#### ARTICLE XI FORCE MAJEURE

- 11.1 Subject to the provisions of this Article, if either party to this Agreement fails to observe or perform any of the covenants or obligations herein imposed upon it under the terms of this Agreement, and such failure shall have been caused by Force Majeure, then such failure shall be deemed not to be a breach of such covenants or obligations and such covenants and obligations shall be suspended during the continuance of the event of Force Majeure (except for the obligation of a party hereto to make payment of any amounts then owing under this Agreement) to the extent that the failure is attributable to the Force Majeure.
- 11.2 The term "Force Majeure", as employed, herein and for all purposes relating hereto, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of a public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, arrests and restraints of governments and people, civil disturbance, repairs to remedy breakage, mechanical breakdowns, or accident affecting Buyer's System or Seller's facilities or pipeline facilities used to transport gas, the inability of any party hereto to obtain necessary materials or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (federal, state or local), including both civil and military, and any other causes whether of the kind herein enumerated or otherwise, 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. A regulatory disallowance of the pass through of natural gas or related costs shall not constitute an event of Force Majeure.
- 11.3 As soon as reasonably practicable after the happening of the occurrence relied upon or as soon as practicable after determining that the occurrence is in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under this Agreement, the party claiming suspension shall give to the other party hereto notice that by reason of Force Majeure (the nature and particulars whereof shall be therein fully specified) the claiming party is unable to perform the particular covenants or obligations.

- 11.4 The party claiming suspension by reason of Force Majeure shall give notice to the other party, as soon as practicable after the event of Force Majeure shall have been remedied, to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of the suspended covenants or obligations under this Agreement.
- 11.5 The party claiming suspension of its obligations as aforesaid shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so; provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming suspension of its obligation by reason thereof.

**ARTICLE XII  
MISCELLANEOUS**

- 12.1 Any notice, request, consent, direction, demand, waiver, invoice or other instrument required or permitted to be given under the provisions of this Agreement shall be in writing. Written communications as aforesaid may be given by delivery or by telex, telecopier or other form of instant written telecommunication, in each case addressed as follows:

**TO BUYER:** Consumers Power Company  
1945 West Parnall Road  
Jackson, Michigan  
U.S.A. 49201  
Attention: Director of Gas Supply  
Telecopier: (517) 788-1340  
Telephone: (517) 788-2105

**TO SELLER:** Norcen Energy Resources Limited  
715 5th Avenue, SW  
Calgary, Alberta T2P 2X7  
Attention: Manager of Natural Gas Marketing  
Telecopier: (403) 231-0098  
Telephone: (403) 231-0111

Any written communication as aforesaid, delivered by hand or sent by telex, telecopier or other form of instant written telecommunication, shall for the purposes of this Agreement be deemed to have been given or made on the Day on which it is received if such communication is received no later than 4:30 p.m. on a business day at the place of receipt, and if otherwise received, shall be deemed to have been given or made on the next following business day. Either party may give notice of the change of its address for the purposes of this Agreement in the same manner as provided above.

- 12.2 Each party shall from time to time during the term hereof upon any reasonable written request, make, do, execute and deliver, or cause to be made, done executed and delivered, all such further acts, deeds, assurances and things as may be reasonably required to carry out the intent of this Agreement.
- 12.3 Neither party shall have the right to assign this Agreement or any of its rights, benefits, duties and obligations hereunder without the prior written consent of the other party. Nothing herein contained shall, however, prevent or restrict either party from pledging, granting a security interest in, or assigning as collateral all or any portion of such party's interest to

secure any debt or obligation of such party under any mortgage, deed of trust, security agreement or similar instrument provided that the rights of the secured party shall be subject to the terms of this Agreement.

12.4 Either party hereto in its sole discretion may waive, without thereby prejudicing such party's right to rely on any other provision of this Agreement for such party's sole benefit, a breach or default of any covenant or provision of this Agreement. No such waiver shall, however, be effective unless it is in writing signed by the party giving the waiver and no such waiver shall operate as a waiver of any future breach or default, whether of a like or different character.

12.5 This Agreement and all data, documents and information of a confidential nature concerning the business or assets of either party to this Agreement which are made available or disclosed to the other party hereto pursuant to the terms of this Agreement (the "Confidential Information"), shall be kept and maintained on a confidential basis by the party hereto which is the recipient thereof. Each party hereto shall implement such measures and shall take such precautions as may be reasonably necessary to endeavor to ensure the confidentiality of all Confidential Information. Notwithstanding the foregoing, either party hereto may, disclose Confidential Information to any court, government, governmental agency, regulatory body or quasi-judicial agency ("Regulatory Agency") at any time and from time to time if and to the extent that it may be required by any Regulatory Agency or the rules, regulations, procedures, requirements or practices of any Regulatory Agency.

12.6 Subject to Paragraph 12.3, this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement effective as of the day and year first above written.

CONSUMERS POWER COMPANY

NORCEN ENERGY RESOURCES LIMITED

By: [Signature]

By: [Signature]

Name: S. S. DUTTA

Name: G.V. KENDA

Title: VICE PRESIDENT

Title: By Its Attorney-in-Fact

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## FIRM NATURAL GAS PURCHASE AGREEMENT

THIS AGREEMENT, made as of the 1st day of June 1994, is entered into by and between CONSUMERS POWER COMPANY ("Buyer"), a Michigan corporation with its principal place of business in Jackson, Michigan, and NORTH CANADIAN OILS ("Seller"), a Canadian corporation with its principal place of business in Calgary, Alberta;

WITNESSETH THAT:

WHEREAS Seller owns or controls supplies of Natural Gas which are available for sale and delivery on a firm three-year basis; and

WHEREAS Buyer desires to purchase such Natural Gas from Seller, and Seller, pursuant to the terms and conditions provided for herein, desires to sell such Natural Gas to Buyer.

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

### ARTICLE I

#### INTERPRETATION

- 1.1 For the purposes of this Agreement, the terms and symbols defined in this Paragraph 1.1 shall have the following meanings, unless the context expressly or by implication otherwise requires:
- (a) "Agreement" shall mean this agreement in its entirety, including the foregoing recitals and premises;
  - (b) "BTU" shall mean the amount of heat required to raise the temperature of one (1) pound of distilled water from a temperature of fifty-nine degrees Fahrenheit (59°F) to sixty degrees Fahrenheit (60°F) at a constant pressure of fourteen and seventy-three hundredths pounds per square inch absolute (14.73 psia);
  - (c) "Buyer's System" shall mean Consumers Power Company's integrated high pressure gas transmission pipeline network.
  - (d) "City Gate" shall mean any point on Buyer's System where it has an interconnect with the transmission pipeline network of another company.
  - (e) "Cubic Foot of Natural Gas" shall mean the volume of Natural Gas contained in one (1) cubic foot of space at a pressure of fourteen and seventy-three hundredths (14.73) psia, at a temperature of sixty degrees Fahrenheit (60°F);
  - (f) "Day" shall mean a period of twenty-four (24) consecutive hours, beginning and ending at 8:00 a.m. standard time, in the time zone in which deliveries are made, or at such other place as may be mutually agreed upon by Buyer and Seller. The reference date for any Day shall be the calendar date upon which the 24-hour period shall commence;

- (g) "Delivering Pipeline" shall mean the natural gas pipeline of TransCanada Pipelines Limited;
- (h) "Delivery Point" shall mean the point on the international border between Canada and the United States near the interconnect of the Delivering Pipeline and the Receiving Pipeline;
- (i) "Interest" shall mean interest at the rate per annum announced and published from time to time by the Canadian Imperial Bank of Commerce as its prime rate of interest, plus one (1%) percent per annum;
- (j) "Mcf" shall mean one thousand (1,000) cubic feet of Natural Gas;
- (k) "MMBtu" shall mean one million (1,000,000) Btu;
- (l) "MMcf" shall mean one million (1,000,000) cubic feet of Natural Gas;
- (m) "Month" shall mean a calendar month except that the commencement and termination thereof shall be determined consistent with the definition of "Day" above;
- (n) "Natural Gas" shall mean a mixture consisting primarily of methane, but including other constituents which may include other hydrocarbons, nitrogen, carbon dioxide, hydrogen sulphide, helium and minor impurities, that are recovered or recoverable from an underground reservoir and that is gaseous at the conditions under which its volume is measured or estimated;
- (o) "Receiving Pipeline" shall mean the natural gas pipeline of Great Lakes Gas Transmission Limited Partnership.
- (p) "U.S. Transportation" shall mean the pipeline capacity which Buyer has contracted with Great Lakes Gas Transmission Limited Partnership (84,000 Mcf per day under Contract FT-024 dated September 19, 1990) and ANR Pipeline Company (24,900 dth per day under Contract 16900 dated November 11, 1993) ~~to the extent that it is used to~~ transport, along with other volumes, the volumes of gas being purchased pursuant to this Agreement. *AL*  
*BR*
- 1.2 This Agreement shall for all purposes be construed in accordance with and shall be governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties hereto attorn to the exclusive jurisdiction of the courts of law of the Province of Alberta.
- 1.3 To the extent practicable, the Natural Gas is to be exported under National Energy Board of Canada export authorizations previously obtained by Seller and imported under United States import authorizations previously obtained by Buyer or Seller, which will be maintained by Seller or Buyer, as the case may be, for the purposes of this Agreement. If any additional governmental approval, permit, order or other authorization shall be necessary relative to this Agreement, then each party shall, to the best of its ability, assist in the obtaining of such approval, permit, order or other authorization. Seller represents that it has the necessary U.S. import authorizations which can and will be used if Buyer so requests. If Seller uses its import authorizations, then Buyer shall reimburse Seller for all U.S. custom fees incurred by Seller for gas under this Agreement.

- 1.4 Every provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the balance of the terms of this Agreement.
- 1.5 The various headings contained in this Agreement are for reference purposes only and shall not affect, in any way, the meaning or interpretation hereof.
- 1.6 Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires.
- 1.7 "Hereof", "herein", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Paragraph or subparagraph, unless otherwise specifically stated, and the terms "Article", "Paragraph" and "subparagraph" followed by a number and/or letter refer to the specified Article, Paragraph and subparagraph of this Agreement.
- 1.8 There are no representations, warranties, covenants, or agreements made between the parties hereto with respect to the matters referred to in this Agreement other than as are set forth by the terms of this Agreement. This Agreement shall constitute the entire agreement between the parties hereto in relation to the matters referred to therein.
- 1.9 Time shall be of the essence in this Agreement.

## ARTICLE II TERM

- 2.1 This Agreement shall be effective as of June 1, 1994, and shall apply to all Natural Gas deliveries and receipts which occurred between the parties hereto prior to the date of signing of this Agreement and after 0800 hours, Eastern Standard Time on the 1st day of June 1994, and shall remain in effect until 0800 hours Eastern Standard Time on the 31st day of May 1997 (the "Term").
- 2.2 Prior to May 31, 1997, Buyer and Seller shall negotiate in good faith for an extension of this Agreement to November 1, 2001 at a price that is mutually agreeable to the parties. If the parties fail to agree on such an extension of this Agreement, the Seller may, at its option, require that Buyer assign to it (to the extent allowed by Buyer's contracts or agreements with Great Lakes Gas Transmission Limited Partnership and ANR Pipeline Company, or pursuant to capacity release regulations authorized by the Federal Energy Regulatory Commission), such portion of the Buyer's U.S. Transportation, which is sufficient to transport the Daily Contract Quantity for a term beginning on June 1, 1997 and ending on November 1, 2001. Buyer may amend or surrender capacity under the above agreements so long as such amendments or capacity reductions do not interfere with Buyer's obligations to Seller under this Article.

## ARTICLE III SALES AND DELIVERY COMMITMENT

- 3.1 Seller shall deliver, and Buyer shall receive at the Delivery Point, on a firm daily basis, during the Term of this Agreement, 14,000 Mcf/day (the "Daily Contract Quantity").



ARTICLE IV  
CONTRACT PRICE

- 4.1 For all Natural Gas received by Buyer and delivered by Seller hereunder between June 1, 1994 and May 31, 1996, Buyer shall pay Seller \$2.10 U.S. dollars/MMBtu (the then applicable "Contract Price"). For all Natural Gas received by Buyer and delivered by Seller hereunder between June 1, 1996 and May 31, 1997, Buyer shall pay Seller \$2.20 U.S. dollars/MMBtu (the then applicable "Contract Price").
- 4.2 The Seller shall arrange and pay for transportation to the Delivery Point and shall be responsible for all production, severance, excise, ad valorem and similar or different taxes or charges imposed on or in respect of the Natural Gas prior to delivery of the Natural Gas to Buyer at the Delivery Point. Buyer shall be responsible for and indemnify Seller with respect to all such taxes and charges that are imposed upon and after delivery of the Natural Gas at the Delivery Point, including, without limitation, State sales, value added, use and gross receipts taxes, provided always that if the sale of Natural Gas hereunder is exempt from the payment of any such taxes, Buyer shall provide Seller forthwith with a valid and effectual signed and dated resale exemption certificate (bearing date which precedes the date of the sale hereunder) as a precondition to its non-payment of any such taxes.

ARTICLE V  
SELLER'S FAILURE TO DELIVER

- 5.1 If Seller shall for any reason whatsoever, other than the occurrence of an event of Force Majeure or the suspension of deliveries by Seller pursuant to Paragraph 10.4 because of the failure to pay of Buyer, fail to meet its Natural Gas delivery and sale obligations to Buyer hereunder, Seller shall be liable to pay Buyer the difference between what Buyer pays for replacement Natural Gas delivered to its City Gate and what Buyer would have paid under this Agreement for such a City Gate delivery in the event of compliance by Seller with its delivery and sale obligations. However, Buyer shall, on a reasonable best efforts basis, obtain the lowest price possible for any such replacement Natural Gas purchased from third parties. Payment of such amount by Seller to Buyer shall be Buyer's sole and exclusive remedy for Seller's failure to meet its Natural Gas delivery and sale obligations to Buyer hereunder, and Seller shall not be liable to Buyer for any other losses or damages whatsoever, including without limitation, loss of anticipatory profits or any consequential, exemplary, punitive, indirect or other damages.

ARTICLE VI  
BUYER'S FAILURE TO TAKE DELIVERY

- 6.1 If on any day Seller is ready, willing and able to deliver the Daily Contract Quantity to Buyer and yet Buyer fails to take delivery of the Daily Contract Quantity set forth in Paragraph 3.1 hereof for any reason whatsoever, other than failure of the Natural Gas to conform with specifications set forth in Paragraph 7.1 hereof, or an event of Force Majeure, Buyer shall remain liable to pay for any and all Natural Gas not taken by Buyer and shall pay at the then applicable Contract Price as if the Daily Contract Quantity was taken on a daily basis by the Buyer.

ARTICLE VII  
QUALITY OF NATURAL GAS

- 7.1 The minimum gross heating value, quality, delivery pressure and temperature of the Natural Gas delivered hereunder shall conform to the minimum standards of the Receiving Pipeline.
- 7.2 If the Natural Gas tendered for delivery by Seller to Buyer on any day shall fail at any time to conform to any of the specifications set forth in Paragraph 7.1, then Buyer shall have the right, exercisable by notice to Seller, to require Seller to remedy any non-conformity and, in addition to all other remedies available to it, Buyer may, notwithstanding all other provisions hereof to the contrary, refuse to take such Natural Gas until such Natural Gas is brought into conformity with such specifications.

ARTICLE VIII  
MEASUREMENT OF NATURAL GAS

- 8.1 All Natural Gas delivered under this Agreement to the Delivery Point shall be measured by the Delivering Pipeline, as to energy content and volume, in accordance with the published terms and conditions specified in the gas transportation tariff of the Delivering Pipeline for deliveries of Natural Gas at the Delivery Point.

ARTICLE IX  
TITLE

- 9.1 Seller hereby covenants, warrants and represents to Buyer that Seller shall have good right and title to all Natural Gas to be sold hereunder at the Delivery Point, free and clear of all liens, charges, encumbrances and adverse claims of every nature and kind whatsoever.
- 9.2 Title to, risk and responsibility for Natural Gas delivered under this Agreement shall pass from Seller to Buyer and shall vest in Buyer at the Delivery Point. Until delivery of the Natural Gas at the Delivery Point, Seller shall, as between itself and Buyer, be deemed to be in control and possession of the Natural Gas, and after such delivery, Buyer shall be deemed to be in control and possession of such Natural Gas.

ARTICLE X  
PAYMENTS

- 10.1 Monthly Billing:
- (a) Seller shall, on or before the fifteenth (15th) day of each Month (the "Billing Month") following the Month during which delivery of Natural Gas shall have been made under this Agreement (The "Delivery Month"), deliver to Buyer a statement for the Delivery Month showing the daily and total quantity (expressed in MMcf and MMBtu's) of Natural Gas delivered under this Agreement or, if such information is not then available, an estimate of such daily and total quantities; and a bill with respect to the Delivery Month, together with information sufficient to explain and support the amount billed;

- (b) Subject to Paragraphs 6.1 and 7.2, any estimates of any daily and total amounts shall be based on the nominated volumes for each day during the Delivery Month, adjusted for any known deviations, and the heat content of the Natural Gas shall be in accordance with the estimate of the Delivering Pipeline for the period in question.
- 10.2 Buyer shall pay Seller, on or before the 25th day of the Billing Month, the amount due to Seller with regard to Natural Gas sold or reasonably estimated to have been sold, in the Delivery Month, calculated in accordance with the provisions of this Agreement, by direct electronic transfer to the account of Seller, at the account number, transit number and bank specified on Seller's monthly statement. In the event that the 25th day of the Billing Month is not a business day, then Buyer shall pay Seller as aforesaid on or before the first business day immediately after the 25th day of the Billing Month. If Seller's bill for any Billing Month is based on an estimate of the Natural Gas sold in the Delivery Month, then the parties shall make all necessary adjustments in the Month following the Billing Month to reflect the actual volumes of Natural Gas sold. If the presentation of the bill to Buyer is delayed after the fifteenth (15th) day of the Billing Month, then the time for payment shall be extended by the number of days of such delay, unless Buyer is responsible for such delay.
- 10.3 Subject to Paragraph 10.6, Seller and Buyer shall each have the right to, at all reasonable times, and from time to time, examine the books, records and accounts of the other to the extent reasonably necessary to verify the accuracy of any statement, billing or computation made under or pursuant to the provisions of this Agreement.
- 10.4 Remedies of Seller for non-payment by Buyer are as follows:
- (a) Should Buyer fail to pay all of the undisputed amount of any bill that has been rendered as herein provided when such amount is due, Interest shall accrue on the unpaid part of such bill commencing on the date such payment is due. All such Interest shall be payable on demand by Seller to Buyer;
- (b) If any such failure by Buyer to pay continues for a period of twenty (20) days after payment is due, then Seller may, in addition to any other remedies that it may have under the terms of this Agreement, suspend further delivery of Natural Gas under this Agreement until such undisputed amount is paid. If such default continues for an additional period of thirty (30) days, then Seller shall have the right to terminate this Agreement by notice to Buyer specifying the reason for and effective date of the termination.
- (c) In the event Buyer should in good faith dispute any portion of the amount shown on Seller's statements, Buyer shall pay all of that portion of the statement that it does not dispute (the "Undisputed Amount"). Any amount which is disputed by Buyer in good faith (a "Disputed Amount") and which is thereafter determined to be owing by Buyer, together with Interest from the original due date of the disputed invoice, shall be due and payable by Buyer within twenty (20) days of final resolution of such dispute by written agreement of the parties, final judgment of a court of competent jurisdiction not subject to further appeal, or (if the parties hereafter mutually agree to submit such dispute to binding arbitration) final arbitration award.

- 10.5 Subject to the provisions of Paragraph 10.6, if it shall be found that at any time Buyer has been overcharged by Seller and Buyer shall have actually paid the bills containing such overcharge, then within thirty (30) days after the final determination thereof, Seller shall refund the amount of any such overcharge and if such overcharge was the result of Seller's error then Interest shall be charged on the amount in question from the date the overcharge was paid to the date that Buyer is reimbursed for the overcharge. If any such overcharge is not a result of an error on the part of Seller, then no Interest shall be charged. Similarly, if it shall be found that Buyer has underpaid, the Buyer shall pay the amount underpaid, and if such underpayment was the result of the error of Buyer, then Interest shall be charged from the date that the underpayment occurred to the date the Seller is reimbursed for the underpayment. If any such underpayment is not a result of an error on the part of Buyer, then no Interest shall be charged.
- 10.6 Notwithstanding anything herein contained to the contrary, neither party hereto shall be entitled to dispute the volume of Natural Gas delivered, or the amount paid or payable with respect thereto, unless such dispute is raised by notice to the other party within one (1) year after the end of the Month in which the Natural Gas in question was delivered.

ARTICLE XI  
FORCE MAJEURE

- 11.1 Subject to the provisions of this Article, if either party to this Agreement fails to observe or perform any of the covenants or obligations herein imposed upon it under the terms of this Agreement, and such failure shall have been caused by Force Majeure, then such failure shall be deemed not to be a breach of such covenants or obligations and such covenants and obligations shall be suspended during the continuance of the event of Force Majeure (except for the obligation of a party hereto to make payment of any amounts then owing under this Agreement) to the extent that the failure is attributable to the Force Majeure.
- 11.2 The term "Force Majeure", as employed, herein and for all purposes relating hereto, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of a public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, arrests and restraints of governments and people, civil disturbance, repairs to remedy breakage, mechanical breakdowns, or accident affecting Buyer's System or Seller's facilities or pipeline facilities used to transport gas, the inability of any party hereto to obtain necessary materials or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (federal, state or local), including both civil and military, and any other causes whether of the kind herein enumerated or otherwise, 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. A regulatory disallowance of the pass through of natural gas or related costs shall not constitute an event of Force Majeure.
- 11.3 As soon as reasonably practicable after the happening of the occurrence relied upon or as soon as practicable after determining that the occurrence is in the nature of Force Majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under this Agreement, the party claiming suspension shall give to the other party hereto notice that by reason of Force Majeure (the nature and particulars whereof shall be therein fully specified) the claiming party is unable to perform the particular covenants or obligations.

- 11.4 The party claiming suspension by reason of Force Majeure shall give notice to the other party, as soon as practicable after the event of Force Majeure shall have been remedied, that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of the suspended covenants or obligations under this Agreement.
- 11.5 The party claiming suspension of its obligations as aforesaid shall promptly remedy the cause of the Force Majeure insofar as it is reasonably able to do so; provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming suspension of its obligation by reason thereof.

**ARTICLE XII  
MISCELLANEOUS**

- 12.1 Any notice, request, consent, direction, demand, waiver, invoice or other instrument required or permitted to be given under the provisions of this Agreement shall be in writing. Written communications as aforesaid may be given by delivery or by telex, telecopier or other form of instant written telecommunication, in each case addressed as follows:

**TO BUYER:** Consumers Power Company  
1945 West Parnall Road  
Jackson, Michigan  
U.S.A. 49201  
Attention: Director of Gas Supply  
Telecopier: (517) 788-1340  
Telephone: (517) 788-2105

**TO SELLER:** North Canadian Oils  
715 5th Avenue, SW  
Calgary, Alberta T2P 2X7  
Attention: Manager of Natural Gas Marketing  
Telecopier: (403) 231-0098  
Telephone: (403) 231-0111

Any written communication as aforesaid, delivered by hand or sent by telex, telecopier or other form of instant written telecommunication, shall for the purposes of this Agreement be deemed to have been given or made on the Day on which it is received if such communication is received no later than 4:30 p.m. on a business day at the place of receipt, and if otherwise received, shall be deemed to have been given or made on the next following business day. Either party may give notice of the change of its address for the purposes of this Agreement in the same manner as provided above.


- 12.2 Each party shall from time to time during the term hereof upon any reasonable written request, make, do, execute and deliver, or cause to be made, done executed and delivered, all such further acts, deeds, assurances and things as may be reasonably required to carry out the intent of this Agreement.
- 12.3 Neither party shall have the right to assign this Agreement or any of its rights, benefits, duties and obligations hereunder without the prior written consent of the other party. Nothing herein contained shall, however, prevent or restrict either party from pledging, granting a security interest in, or assigning as collateral all or any portion of such party's interest to secure any debt or obligation of such party under any mortgage, deed of trust, security

agreement or similar instrument provided that the rights of the secured party shall be subject to the terms of this Agreement.

- 12.4 Either party hereto in its sole discretion may waive, without thereby prejudicing such party's right to rely on any other provision of this Agreement for such party's sole benefit, a breach or default of any covenant or provision of this Agreement. No such waiver shall, however, be effective unless it is in writing signed by the party giving the waiver and no such waiver shall operate as a waiver of any future breach or default, whether of a like or different character.
- 12.5 This Agreement and all data, documents and information of a confidential nature concerning the business or assets of either party to this Agreement which are made available or disclosed to the other party hereto pursuant to the terms of this Agreement (the "Confidential Information"), shall be kept and maintained on a confidential basis by the party hereto which is the recipient thereof. Each party hereto shall implement such measures and shall take such precautions as may be reasonably necessary to endeavor to ensure the confidentiality of all Confidential Information. Notwithstanding the foregoing, either party hereto may, disclose Confidential Information to any court, government, governmental agency, regulatory body or quasi-judicial agency ("Regulatory Agency") at any time and from time to time if and to the extent that it may be required by any Regulatory Agency or the rules, regulations, procedures, requirements or practices of any Regulatory Agency.
- 12.6 Subject to Paragraph 12.3, this Agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement effective as of the day and year first above written.

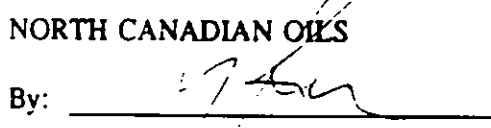
CONSUMERS POWER COMPANY

By: 

Name: A. J. Ouellet

Title: VICE PRESIDENT

3178 NORTH CANADIAN OILS

By: 

Name: G.V. KENDA

Title: By Its Attorney-in-Fact

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EXHIBIT C

**FINANCE GROUP**

Denise M Sturdy, Esq  
Shelley J Ruckman, Esq  
Teresa M Sebastian, Esq

General Offices: 212 West Michigan Avenue, Jackson, MI 49201 · (517) 788-0550

Facsimile · (517) 788-0768

Writer's Direct Dial Number · (517) 788-0179

May 31, 1995

Consumers Power Company  
212 West Michigan Avenue  
Jackson, MI 49201

Ladies and Gentlemen:

This opinion is furnished to you in connection with Consumers Power Company's application for authority to import natural gas, as prescribed by the administrative procedures of the Economic Regulatory Commission (10 CFR 590.202(c)). In its application, Consumers Power Company proposes to import natural gas from Norcen Energy Resources, Ltd., and North Canadian Oils.

I have examined the Articles of Incorporation and the By-Laws of Consumers Power Company and such other documents as I have deemed necessary or appropriate to render this opinion. It is my opinion that the proposed import of natural gas by Consumers Power Company is within its corporate powers.

Very truly yours,

Denise M. Sturdy



UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

1995 JUL 30 P 2:17

REC'D DOE/FE  
OFFICE OF FUEL PROGRAM

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CONSUMERS POWER COMPANY  
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)  
FE DOCKET NO. 95-44-NG

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

DOE/FE ORDER NO. 1068

JUNE 30, 1995

I. DESCRIPTION OF REQUEST

On June 2, 1995, Consumers Power Company (CPCo) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)<sup>1/</sup> and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting authorization to import a combined total of up to 28,000 Mcf per day of Canadian natural gas for a term extending through May 31, 1997. Consumers Power imports these volumes under two similar gas sales agreements, each dated June 1, 1994, with Norcen Energy Resources Limited (Norcen) and North Canadian Oils (NCO).<sup>2/</sup> Each agreement provides for firm delivery of 14,000 Mcf of Canadian natural gas per day. CPCo, a Michigan natural gas and electric utility with its principal place of business in Jackson, Michigan, is a wholly-owned subsidiary of CMS Energy Corporation. The point of delivery into the United States for this gas is at the international border near Emerson, Manitoba. Transportation from Emerson is provided by Great Lakes Transmission Corporation and ANR Pipeline Company to negotiated points of receipt into the Consumers Power distribution and/or storage systems. The requested authorization does not involve the construction of new pipeline facilities.

Each contract provides for a firm price of \$2.10 (U.S.) per MMBtu through May 31, 1996, increasing to \$2.20 (U.S.)

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<sup>1/</sup> 15 U.S.C. § b.

<sup>2/</sup> Consumers Power is currently importing these volumes under its blanket authorization granted by DOE/FE Order No. 962 on July 8, 1994 (1 FE ¶ 70,993).

per MMBtu from June 1, 1996 through May 31, 1997. Norcen and NCO are responsible for the cost of transportation to the international border. CPCo is liable to pay for gas not taken at the applicable contract price. However, if either Norcen or NCO is unable to deliver the daily contract quantity, each is liable to pay CPCo the difference between what CPCo must pay for replacement gas and the applicable contract price.

## II. FINDING

The application filed by CPCo 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 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 CPCo 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. This blanket order authorizes transactions under contracts with terms of no longer than two years.

ORDER

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

A. Consumers Power Company (CPCo) is authorized to import from Canada up to 14,000 Mcf per day of natural gas purchased from Norcen Energy Resources Limited (Norcen) beginning on the date of this Order, and continuing through May 31, 1997, pursuant to the terms of the contract between CPCo and Norcen dated June 1, 1994, filed in this proceeding.

B. CPCo is also authorized to import from Canada up to 14,000 Mcf per day of natural gas purchased from North Canadian Oils (NCO) beginning on the date of this Order, and continuing through May 31, 1997, pursuant to the terms of the contract between CPCo and NCO dated June 1, 1994, filed in this proceeding.

C. CPCo shall import this gas at the international border near Emerson, Manitoba, pursuant to the terms of both contracts filed in this proceeding.

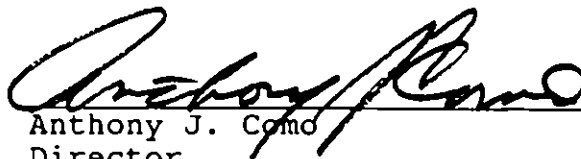
D. Within two weeks after deliveries begin, CPCo shall provide written notification to the Office of Fuels Programs (OFP), Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that the first import delivery of natural gas authorized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

E. With respect to the natural gas imports authorized by this Order, CPCo shall file with OFP, within 30 days following

each calendar quarter, quarterly reports showing by month the total volume (in Mcf) imported from Norcen and NCO and the average purchase price per MMBtu paid to Norcen and NCO at the international border.

D. The first quarterly report required by Ordering Paragraph C of this Order is due not later than October 30, 1995, and should cover the period from the date of this Order until the end of the third calendar quarter, September 30, 1995.

Issued in Washington, D.C., on June 30, 1995.



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

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UNITED STATES OF AMERICA

[6450-01-P]

DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

[FE DOCKET NO. 95-44-NG]

CONSUMERS POWER COMPANY

LONG-TERM AUTHORIZATION TO IMPORT  
NATURAL GAS FROM CANADA

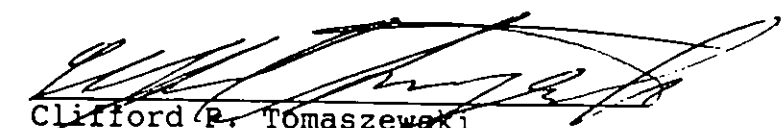
AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Consumers Power Company (CPCo) authorization to import from Norcen Energy Resources Limited and North Canadian Oils up to 28,000 Mcf per day of Canadian natural gas through May 31, 1997.

CPCo's 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., June 30, 1995.

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

in a cooperative effort with the Idaho Department of Fish and Game, the U.S.D.A. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Forest Service, the Upper Columbia United Tribes, the Kalispel Tribe, the Coeur d'Alene Tribe, and the Albeni Falls Interagency Work Group. The proposed action would allow the sponsors to secure long-term agreements with public and private landowners to protect and enhance a variety of wetland and riparian habitats in the Lake Pend Oreille vicinity of Bonner and Kootenai Counties, Idaho (T59N, T52S, R6W and R3E).

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

**DATES:** Comments are due to the address below no later than August 21, 1995.

**FOR FURTHER INFORMATION, CONTACT:** Robert Beraud, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621, phone number 503-230-3599, fax number 503-230-5699, or Robert Shank, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, phone number 503-230-5115.

**SUPPLEMENTARY INFORMATION:** BPA proposes to fund activities that would enable the sponsors to replace 25,587 habitat units lost as a result of the construction and operation of Albeni Falls Dam, and to conduct long-term wildlife management activities within the boundaries of the Albeni Falls Wildlife Study Area of approximately 232,848 hectares (575,360 acres).

Maps and further information are available from BPA at the address above.

John M. Taves,

NEPA Compliance Officer, Office of Environment/Fish and Wildlife.

[FR Doc. 95-18038 Filed 7-20-95; 8:45 am]

BILLING CODE 6460-01-P

### Office of Fossil Energy

[FE Docket No. 95-44-NG]

#### Consumers Power Company; 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 granted Consumers Power Company (CPCo) authorization to import from Norcen Energy Resources Limited and North Canadian Oils up to 28,000 Mcf per day of Canadian natural gas through May 31, 1997.

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

Issued in Washington, DC, June 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95-18034 Filed 7-20-95; 8:45 am]

BILLING CODE 6460-01-P

[FE Docket No. 95-49-NG]

#### Cascade Natural Gas Corporation; Order Granting Blanket 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 Cascade Natural Gas Corporation blanket authorization to import up to 56 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after June 30, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95-18035 Filed 7-20-95; 8:45 am]

BILLING CODE 6460-01-P

[FE DOCKET NO. 95-52-NG]

#### Sacramento Municipal Utility District; Order Granting Blanket 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 Sacramento Municipal Utility District (SMUD) blanket authorization to import up to 25 Bcf of natural gas from Canada. This authorization to import natural gas is for a period of two years beginning on the date of the initial delivery. The gas would be used as fuel for electric generation at cogeneration facilities owned by SMUD which are either existing or under construction.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 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, DC on July 10, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95-18036 Filed 7-20-95; 8:45 am]

BILLING CODE 6460-01-P

#### Federal Energy Regulatory Commission

[Docket No. CP95-607-000]

#### Northwest Pipeline Corporation; Request Under Blanket Authorization

July 17, 1995.

Take notice that on July 10, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95-607-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the new Western Market Center tap under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct, own and operate new tap facilities connecting its mainline transmission system with the Western Market Center Hub at Muddy Creek (Hub), in Lincoln





Communications regarding this notice are to be sent to:

Francis X. Berkemeier, Esq.  
Senior Attorney  
Consumers Energy Company  
Room M-1091  
212 West Michigan Avenue  
Jackson, Michigan 49201  
Phone: (517) 788-2115  
Fax: (517) 788-0768

William M. Lange  
Assistant General Counsel  
Consumers Energy Company  
Fifth Floor  
1016 16th Street, N.W.  
Washington, D.C. 20036  
Phone: (202) 293-5795  
Fax: (202) 223-6178

## II.

On March 11, 1997, a certificate of amendment to the articles of incorporation was filed with the Michigan Department of Commerce-Corporation and Securities Bureau to change the name of the company from Consumers Power Company to Consumers Energy Company.

## III.

Consumers Energy Company, on this 1st day of July, 1998, hereby adopts, ratifies, and makes its own, in every respect the filings and Import Authorization Orders associated with the captioned matters, heretofore made by/issued to Consumer Power Company, effective March 11, 1997.

Respectfully Submitted,

CONSUMERS ENERGY COMPANY

July 1, 1998

By: Francis X. Berkemeier

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