

FE DOCKET NO.: 96-22-NG

APPLICANT(S): NUI CORPORATION

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1 ✓	NUI CORPORATION	APPLICATION	Application for Long-Term Authority to Import Natural Gas from Canada and Amendment to Existing Authority	96-05-01	96-05-01
2 ✓	DOE/FE	ORDER	Order 1165-Granting Long-Term Authority to Import Natural Gas from Canada and Amendment to Existing Authority Granted in 87-53-NG	96-05-16	96-05-16

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May 1, 1996

Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestal Building, Room 3F070  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

98-22-N

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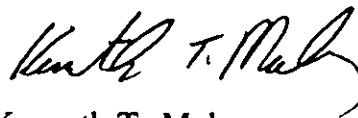
**Re: Application By NUI Corporation For Authorization To Import  
Natural Gas From Canada**

Dear Sir/Madam:

Pursuant to 10 C.F.R. Section 590.103, enclosed for filing are an original and fifteen copies of the Application By NUI Corporation For Authorization To Import Natural Gas From Canada under Section 3 of the Natural Gas Act. Also enclosed is one additional copy to be time-stamped and returned to our messenger. A check in the amount of \$50.00 for the filing fee imposed by 10 C.F.R. Section 590.207 is also enclosed.

Please call me if you have any questions regarding this application.

Yours truly,



Kenneth T. Maloney

Counsel for  
NUI Corporation

Enclosures

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

REC'D DOE/FE  
1998 MAY - 1 P 12:06  
96-22-NG

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: **In The Matter Of:** :  
: :  
: **NUI Corporation** : **FE Docket No.**  
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**APPLICATION OF  
NUI CORPORATION  
FOR AN ORDER AUTHORIZING THE LONG-TERM  
IMPORTATION OF NATURAL GAS FROM CANADA**

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. § 717b, and the rules and procedures of 10 C.F.R. § 590, NUI Corporation ("NUI" or "Applicant"), submits this Application requesting authorization to import natural gas from Canada for its overall supply pool to supply markets in the United States. NUI requests that this authorization be granted for a term ending on October 31, 2002. In support hereof, NUI submits the following:

**I. APPLICANT**

The exact legal name of Applicant is NUI Corporation. NUI is a corporation organized under the laws of the State of New Jersey and has its principal place of business in Bedminister, New Jersey.

Correspondence and communications in regard to this Application should be addressed to:

Paul J. Chymiy  
NUI Corporation  
550 Rt. 202-206  
P.O. Box 760  
Bedminister, NJ 07921

and

Kenneth T. Maloney  
Karen E. Georgenson  
Cullen and Dykman  
1225 19th Street, N.W.  
Suite 320  
Washington, D.C. 20036  
(202) 223-8890

## **II. AUTHORIZATION REQUESTED**

A. Applicant, through its operating division Pennsylvania & Southern Gas Company, has assumed certain contractual rights to purchase and import natural gas which originated in the Gas Purchase Contract ("GPSA"), executed August 1, 1988, between TransCanada Pipelines Limited ("TransCanada") and Tennessee Gas Pipeline Company ("Tennessee"), a Division of Tenneco, Inc.

In response to FERC Order No. 636,<sup>1</sup> Tennessee is unbundling its services and offering its entitlements under gas purchase contracts to interested parties. By a Partial Assignment Agreement ("Agreement") effective September 1, 1993, between Tennessee, NUI, and Western Gas Marketing Limited ("Western Gas"),<sup>2</sup> Tennessee permanently assigned to NUI its right and duty to purchase certain quantities of natural gas from TransCanada effective September 1, 1993. Tennessee is currently acting as an import agent for NUI, as provided by the terms of the Agreement. Tennessee will continue in this role until this Application is approved.

B. NUI requests authorization to import up to 1.96 MMcf of natural gas per day as provided by the Agreement.<sup>3</sup> NUI's purchase rights are valid through October 31, 2002, at which time both the Agreement and the GPSA expire. Total production and reserves available for importation are expected to be well in excess of any anticipated imports.

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<sup>1</sup> Pipeline Service Obligations And Revisions To Regulations Governing Self-Implementing Transportation; And Regulation Of Natural Gas Pipelines After Partial Wellhead Decontrol, III FERC Stats. And Regs. (CCH) ¶ 61,015 (1993).

<sup>2</sup> Western Gas, an Alberta corporation, is acting in its capacity as agent for TransCanada.

<sup>3</sup> The Agreement sets the maximum daily volume at 2,024 Dth. The conversion between volumetric and energy or heat content units will be carried out according to TransCanada's gas transportation tariff, as approved by the National Energy Board of Canada.

### **III. SUPPLY OF NATURAL GAS TO BE IMPORTED**

The gas to be imported will be produced in the Province of Alberta, Canada and supplied by various producer-suppliers of TransCanada. The gas will be received into the NOVA Gas Transmission Ltd. pipeline system and transported to the Alberta-Saskatchewan border. TransCanada will transport the gas to the existing delivery point at the Niagara point of interconnection in Niagara Falls, New York.

### **IV. MARKETS SERVED WITH IMPORTED NATURAL GAS**

The natural gas to be imported under the subject long-term authorization will be used by NUI to serve markets in the U.S., which consist primarily of the natural gas consumers served by NUI's Waverly Gas Service and Valley Cities Gas Service<sup>4</sup> local distribution company divisions. The natural gas will form part of NUI's overall portfolio of system supply available to serve NUI's existing and new markets.

### **V. ENVIRONMENTAL IMPACT**

No environmental impact is anticipated as a result of this program. Moreover, no new facilities will be needed to effect the importation or transportation of gas under the authorization requested.

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<sup>4</sup> These divisions were formerly part of NUI's Pennsylvania and Southern division.

## **VI. STATEMENT REGARDING PUBLIC INTEREST**

A. The NGA, Section 3(c), states that the importation and exportation of natural gas from or to "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 importation and exportation shall be granted without modification or delay." 15 U.S.C. § 717b. Because NUI's Application is for the importation of natural gas from Canada, with which the United States has in effect a free trade agreement, NUI submits that its application meets the public interest.

B. Additionally, approval of this import application will not result in the importation of new quantities of natural gas into the United States. Tennessee has previously applied for and received authorization to import this quantity of natural gas in ERA Docket No. 87-53-NG, Order 254-A. As a result of FERC Order No. 636 and subsequent unbundling, the contractual right to buy and import this quantity of natural gas has merely been transferred to NUI.

## **VII. COMPETITIVENESS OF THE IMPORT**

The importation of natural gas under the Agreement will remain competitive for the duration of the Agreement. Built into the Agreement is a provision which provides for the commodity charge to fluctuate with the published market price of natural gas on a monthly basis. Additionally, the Agreement permits price redetermination on an annual basis when

initiated by either party. These mechanisms will ensure that the Agreement remains competitive.

#### **VIII. FILING OBLIGATION**

NUI confirms its obligation to file with the Office of Fuels Program, Fossil Energy, within thirty (30) days following each calendar quarter, quarterly reports indicating the volumes sold and sale price at the International Border of any imports made.

#### **IX. TABLE OF EXHIBITS**

In support of this Application and pursuant to 10 C.F.R. § 590.202(c), the following Exhibits are attached:

Exhibit A -- Opinion of Counsel.

Exhibit B -- Partial Assignment Agreement between NUI, Tennessee and Western Gas

Exhibit C -- Gas Purchase Contract between TransCanada and Tennessee.

Exhibit D -- Verification




**X. CONCLUSION**

WHEREFORE, NUI submits that, for the reasons set forth above, this Application for authorization to import natural gas from Canada is consistent with the public interest. NUI, therefore, respectfully requests authorization, valid until October 31, 2002, to import natural gas pursuant to the terms and conditions described herein.

Respectfully submitted,

NUI Corporation

By:

  
\_\_\_\_\_  
Kenneth T. Maloney  
Cullen and Dykman  
1225 19th Street, N.W.  
Suite 320  
Washington, D.C. 20036

Dated: Washington, D.C.  
May 1, 1996

Of Counsel to  
NUI Corporation

*Exhibit A*

*Cullen and Dykman*  
*1225 Nineteenth Street N.W.*  
*Washington, D. C. 20036-2411*

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177 MONTAGUE STREET  
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GARDEN CITY, NEW YORK 11530-0755  
(516) 741-0900

May 1, 1996

NUI Corporation  
550 Rt. 202-206  
P.O. Box 760  
Bedminister, NJ 07921

Ladies and Gentlemen:

You have asked us to supply this letter in connection with the application of NUI Corporation, a New Jersey corporation ("NUI"), to the Office of Fuels Program, Fossil Energy for authorization pursuant to Section 3 of the Natural Gas Act to import volumes of natural gas from Canada up to a total volume of 1.96 MMcf per day.

In connection with this opinion, we have reviewed originals or copies, certified or otherwise authenticated to our satisfaction, of the Certificate of Incorporation and the bylaws of the Company. As to various questions of fact material to our opinion, we have relied upon statements of fact contained in the documents we have examined or made to us by officers of the Company who by reason of their positions would be expected to have knowledge of such facts. In addition, we have reviewed such provisions and have made such other and further investigations as we have deemed necessary in order to express the opinions hereinafter set forth.

For the purposes of Exhibit A to NUI's import application as prescribed by 10 C.F.R. § 590.202(c), based upon and subject to the foregoing, our opinion is as follows:

- (I) NUI Corporation is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

- (ii) the proposed importation of natural gas by NUI is within the corporate powers of NUI.

We understand that you intend to submit this letter to the Office of Fuels Program, Fossil Energy in connection with NUI proposal referred to above, and we hereby consent thereto.

Yours truly,



Cullen & Dykman

***Exhibit B***

**PARTIAL ASSIGNMENT AGREEMENT**

This Agreement is effective as of September 1, 1993 (the "Effective Date") among TENNESSEE GAS PIPELINE COMPANY, a Delaware corporation ("Tennessee"), NUI CORPORATION, doing business as Pennsylvania and Southern Gas Company (Penn & Southern"), and WESTERN GAS MARKETING LIMITED, an Alberta corporation ("Western Gas") in its capacity as agent for TransCanada PipeLines Limited.

**RECITALS:**

1. Tennessee is a purchaser of natural gas from Western Gas under a Gas Purchase and Sales Agreement dated as of August 1, 1988. (the "GPSA")
2. Pursuant to FERC Order 636, Tennessee is unbundling its services and offering its entitlements under gas purchase contracts to interested parties.
3. The GPSA authorizes Tennessee, with Western Gas' written consent, to assign and delegate to third parties (but without relieving Tennessee of its obligations, except as agreed to by Western Gas) all or a portion of Tennessee's contract rights and duties under such GPSA including Tennessee's rights and obligations to purchase gas.
4. Tennessee wishes to permanently assign its right and duty to purchase certain of the natural gas volumes and its related payment and other obligations under the GPSA pursuant to the terms and conditions set out herein and Penn & Southern wishes to permanently assume Tennessee's right and obligations in connection with such volumes pursuant to such terms and conditions.
5. Penn & Southern wishes to designate Tennessee as its agent for the limited purposes described below.

orig - CS 3/27/96  
rev - PSK "

- 2 -

6. Subject to the satisfaction of the conditions set out in this agreement, Western Gas wishes to consent to the assignment contemplated herein and to the terms and provisions hereof for the purposes of evidencing such consent and for the purposes of agreeing to the GPSA modifications set out herein.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1.

**ASSIGNMENT, ASSUMPTION AND CONSENT**

- 1.1 The maximum quantity of gas which Penn & Southern will have the right to purchase each day from Western Gas and which Western Gas will have the obligation to sell and deliver will be a firm quantity of 2,024 Dth/day (the "Assigned Quantity"), out of Tennessee's previous entitlement of 25 MMcf/day. (The parties acknowledge that in keeping with the current practices of Western Gas and Tennessee in operation of the GPSA, the measurement of gas and conversions between volumetric and energy or heat content units will be carried out (on a dry basis) in accordance with TransCanada's gas transportation tariff, as approved by the National Energy Board of Canada from time to time.)
- 1.2 By this agreement, from and after the Effective Date, and subject to the terms and conditions set out herein,
- (a) Tennessee permanently assigns to Penn & Southern its rights under the GPSA with respect to the Assigned Quantity, together with a corresponding, proportionate share of its payment and other obligations with respect thereto, except as those obligations are modified herein (collectively, the "Assigned Rights and Obligations");

- (b) Penn & Southern accepts and assumes the Assigned Rights and Obligations and agrees with Western Gas to be bound by the terms of the GPSA, as modified by this agreement, as if it were an original party to the GPSA; and
- (c) Western Gas consents to the assignment of the Assigned Rights and Obligations by Tennessee to Penn & Southern.

### 1.3 Intended Effect

For greater certainty, the parties confirm that the intended effect of this agreement is that from and after the Effective Date, Western Gas will be Seller and Penn & Southern will be Buyer of the Assigned Quantity, under the terms of the GPSA, as modified by this agreement, as if the Assigned Quantity were the Daily Contract Quantity (as such term appears in the GPSA).

### 1.4 Defined Terms

All capitalized terms used in this agreement, but not expressly defined, are intended to have the meanings used in the GPSA.

## 2.

### PURCHASE OBLIGATIONS

#### 2.1 Minimum Annual Take

Penn & Southern hereby covenants with Western Gas that it will nominate, purchase, receive and pay for an annual minimum of 517,132 Dth of gas (which quantity is calculated based on a daily average of 70% of the Assigned Quantity).



## 2.2 Tennessee

In no event shall Tennessee take title to any of the gas acquired by Penn & Southern pursuant to this agreement.

## 3.

### PRICING

#### 3.1 Monthly Charges

Penn & Southern will pay the following monthly charges to Western Gas:

- (a) a portion of the Monthly Demand Charge associated with the Assigned Quantity, as determined in accordance with Article 4 of this Agreement; and
- (b) for each MMBtu of gas purchased during the month, the Commodity Charge determined pursuant to Section 3.2 of this Agreement.

(As used in this Section 3.1, and otherwise in this Agreement, "purchased" gas means quantities of gas nominated by or on behalf of Penn & Southern and tendered by Western Gas for delivery at the Point of Delivery)

#### 3.2 Commodity Charge

The Commodity Charge applicable to gas purchased in any month will be, for each MMBtu purchased, a U.S. dollar amount equal to the price reported (in the column entitled "Index") as the Louisiana and Offshore (Zone 1) posting for Tennessee Gas Pipeline Company in the table "Prices of Spot Gas Delivered to Pipelines", as shown in the first issue of Inside FERC GAS Marketing Report published in such month, less five (\$0.05) cents.

### 3.3 Index Replacement

In the event of cessation of publication of Inside FERC, or if Inside FERC ceases to publish the Louisiana and Offshore (Zone 1) price referenced in Section 3.2, Western Gas and Penn & Southern will promptly attempt to agree on another pricing index for use in determining the Commodity Charge. Such replacement index is to be as close a proxy as possible for the original indexing method. If Western Gas and Penn & Southern cannot mutually agree on another pricing index within 30 days, either party shall have the right to have such a proxy for the pricing index determined by arbitration in accordance with the arbitration mechanism provided for in the GPSA by giving written notice to the other. The purpose of any such arbitration will be to find a replacement price index which is as close a proxy as possible to the original indexing method.

### 3.4 Price Redetermination

- (a) The Commodity Charge defined in Section 3.2 will be effective for the period September 1, 1993 through October 31, 1994 and for each year thereafter until either party requires a redetermination in accordance with Section 3.3 or Section 3.4(b).
- (b) Effective for the year commencing November 1, 1995 and for every year thereafter until the termination of the GPSA, either Penn & Southern or Western Gas may require redetermination of the Commodity Charge by written notice to be given no later than 120 days nor more than 150 days prior to November 1 of the year in which such eligible redetermination is permitted. If the parties fail to redetermine the Price pursuant to a redetermination request by August 1st, either party may require arbitration in accordance with the provisions of this Section 3.4 and pursuant to the

mechanism provided for in the GPSA. The purpose of any redetermination or arbitration pursuant to this Section 3.4 will be to determine a Commodity Charge to be paid by Penn & Southern to Western Gas that will result in a gas commodity price that is comparable to and competitive with the market sensitive prices being paid by Penn & Southern to U.S. suppliers.

- (c) For greater certainty, Western Gas and Penn & Southern agree as follows:
- (i) price redetermination and/or arbitration will affect the commodity portion of the contract pricing only and not the Buyer's obligation to pay Transportation Demand Charges (as modified by Section 4.1 of this Agreement;
  - (ii) any price index change resulting from an arbitration contemplated by Section 3.3 will be made retroactive to the first month for which the original index component or information ceased to be available;
  - (iii) any price change resulting from an arbitration contemplated by this Section 3.4 will be made effective (with retroactive adjustments if necessary) as of the first day of November in the contract year following the year in which a renegotiation is commenced; and

### 3.5 Necessary Authorizations

- (a) Subject to Section 3.5(b), a redetermined and/or arbitrated Commodity Charge will be subject to receipt of all authorizations of Canadian and U.S. Regulatory Authorities which are required in order to implement such changes.

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(b) The effectiveness of an arbitrated price change (pursuant to either of Sections 3.2 or 3.3) will not in any way be conditioned on approval of the Western Gas netback producers or of Penn & Southern's state regulator.

3.6 As between Penn & Southern and Western Gas, the terms of the GPSA are deemed amended as required in order to implement the provisions of this Article 3.

4.

#### CANADIAN TRANSPORTATION DEMAND CHARGES

##### 4.1 Proportion of Monthly Demand Charge

Each month Penn & Southern will be responsible for payment to Western Gas of 70% of the total Monthly Demand Charge (as defined in Section 7.2 of the GPSA) associated with the Assigned Quantity for the period September 1, 1993 through August 31, 1994, 75% for the period September 1, 1994 through August 31, 1995 and 80% for the remaining term of the GPSA.

##### 4.2 Invoicing

The Monthly Demand Charges associated with the Assigned Quantity will be billed in the following manner:

- (a) From September 1, 1993 through August 31, 1994, Western Gas will bill Tennessee for 100% and Tennessee will bill Penn & Southern 70%;
- (b) From September 1, 1994 through August 31, 1995, Western Gas will bill Penn & Southern 75%; and

- (c) For the remaining term of the GPSA - Western Gas will bill Penn & Southern 80%.

#### 4.3 Tennessee Proportion

Western Gas and Tennessee acknowledge that responsibility for the proportion of the Monthly Demand Charges not payable by Penn & Southern is provided for in a separate agreement between them dated June 1, 1995.

#### 4.4 Acknowledgement

- (a) Notwithstanding any other provision of this agreement or the GPSA, it is acknowledged that Penn & Southern will remain obligated to pay the portion of the Monthly Demand Charge provided for in this Article 4 for the full balance of the Term provided that Western Gas is able to tender for delivery the total firm quantity nominated in accordance with Section 1.1. If Western Gas is unable on any day or days to deliver any portion of such quantity, Penn & Southern's obligation to pay demand charge will be proportionately reduced so that Penn & Southern will be required to pay demand charges only to the extent of the quantity Western Gas is able to tender for delivery.
- (b) For greater certainty, it is confirmed that notwithstanding Section 8.3 and subject only to Section 5.2(b) and paragraph 4.4 (a), the amount of the Monthly Demand Charge for which Penn & Southern will be responsible will not be affected by any renegotiation or arbitration of the pricing terms of this agreement or by the action of any state regulatory authority.

## ADMINISTRATIVE AND OPERATIONAL OBLIGATIONS

### 5.1 Appointment of Tennessee as Agent

For the period September 1, 1993 through March 31, 1995 Penn & Southern appoints Tennessee as its agent for the purpose of making any necessary communications or resolving any disputes or conflicts with Western Gas under the GPSA or this agreement including but not limited to, any nominations and processing of any allocations and payments to Western Gas that are required under the assigned GPSA. Except as set forth in Section 5.2 below, effective March 31, 1995 Tennessee will relinquish its role as Agent for all purposes, and all disputes, conflicts, etc. will be the sole responsibility of Penn & Southern and Western Gas.

### 5.2 Regulatory Authorizations

- (a) (i) Penn & Southern represents and warrants that it has, and will maintain, all necessary authorizations to purchase and resell the gas covered by the GPSA and this agreement except the import authorization from the United States Department of Energy that will be required to enable Penn & Southern to continue to purchase gas under the GPSA once Tennessee ceases to act as agent for Penn & Southern. Penn & Southern will seek to obtain an import license authorization as expeditiously as possible once this Agreement has been executed. In the event that the import authorization necessary is not received prior to March 31, 1995, then Tennessee agrees that it will continue to act as agent for Penn & Southern under this Agreement until such authorization is received by Penn & Southern.
- (ii) Western Gas may terminate this Agreement or any assignment under this Agreement, if Penn & Southern fails to maintain (either itself or through

Tennessee as its agent) regulatory authorizations sufficient to permit it to purchase and resell the Assigned Quantity.

- (b) (i) Western Gas represents that it has and will maintain all necessary Canadian regulatory authorizations (except as set forth in Article 7 of this Agreement and subject to the modifications required to its NEB export licence in order to substitute Penn & Southern and certain other assignees of Tennessee as purchasers of gas) to sell and deliver gas under this Agreement.
- (ii) Penn & Southern may terminate this Agreement if Western Gas fails to maintain all Canadian regulatory authorizations necessary to permit Western Gas to sell and deliver the Assigned Quantity

### 5.3 Billings and Payments

- (a) For the period September 1, 1993 through March 31, 1995, for all gas purchased by Penn & Southern, Tennessee will invoice Penn & Southern within fifteen (15) days following each month. In the absence of final allocation statements establishing the quantity actually purchased by Penn & Southern in such month, Tennessee's invoice to Penn & Southern will be based on the quantity nominated to Western Gas for purchase by Penn & Southern under the GPSA. Tennessee's invoice will specify the Price payable by Penn & Southern in such month, the volumes purchased and received during the month, the portion of the Monthly Demand Charges owed to Tennessee by Penn & Southern and the total dollar amount due and payable to Tennessee. Effective from April 1, 1995 through October 31, 2002, Western Gas will invoice Penn & Southern for all gas purchased by Penn & Southern.

- (b) Penn & Southern will remit payment to Tennessee or Western Gas (as the case may be in accordance with paragraph (a)), at a bank designated by Tennessee (or Western Gas, as the case may be), so that payment is received and Tennessee (or Western Gas, as the case may be) has good funds available therefrom on or before the twenty-fifth (25th) day of the month following the month of sale.
- (c) If Penn & Southern fails to pay all or any portion of the amount of any invoice to Tennessee or Western Gas (as the case may be) when due (except disputed amounts, if any), then interest thereon will accrue, at a rate of interest which is equal to the prime rate published by Chase Manhattan Bank, N.A. plus one (1) percent, as of the date such payment is due, until the same is paid. If such failure to pay continues for thirty (30) days Western Gas, in addition to all other remedies, may suspend deliveries of gas to Penn & Southern. In the event that Penn & Southern in good faith disputes any portion of the invoice, it may withhold payment of the disputed amount, provided it posts security therefore to the extent reasonably requested by Western Gas, and provided that if it is later determined that Western Gas is entitled to any additional payments, such payments will include interest at the same rate as set forth above. Similarly, to the extent that it may be determined that Penn & Southern is entitled to a refund of any funds paid to Western Gas, such refund will include interest at the same rate as set forth above.



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6.

**TERM**6.1 **Term of Agreement**

This Agreement will be effective from the Effective Date through October 31, 2002.

6.2 **Agency Role**

Except as set forth in Section 5.2 Tennessee's role as agent (and all associated rights and obligations described in this Agreement), will expire on March 31, 1995.

7.

**PRODUCER APPROVAL CONDITION**7.1 **Producer Approval**

It is acknowledged that the assignment of the Assigned Interest and the modifications to the GPSA provided for by this agreement are conditioned on the approval of Western Gas' netback producers and a finding of producer support by the Alberta Petroleum Marketing Commission for the assignment of the Assigned Interest to Penn & Southern, the pricing and other changes to the 1988 GPSA to be made pursuant to this agreement and the TGP Assignment Agreements, as well as for similar conversion arrangements being made concurrently with other customers with respect to other portions of Tennessee's purchase entitlement under the GPSA (collectively, the "Producer Approvals"). Western Gas will proceed, within 60 days of the execution of this agreement, to attempt to obtain the Producer Approvals.

## 7.2 Waiver/Termination by Western Gas

If the Producer Approval condition set out in Section 7.1 has not been satisfied in a manner satisfactory to Western Gas, in its discretion, on or before December 21, 1995, then Western Gas may terminate this agreement, and any obligation to continue to sell gas to Penn & Southern by giving written notice to Penn & Southern. The condition set out in Section 7.1 is for the sole benefit of, and may be waived by, Western Gas. The condition will be deemed waived if Western Gas does not give a termination notice as provided for above on or before December 21, 1995.

## 8.

### MISCELLANEOUS

#### 8.1 Assignment

- (a) Neither party will assign its rights or obligations under this agreement or otherwise in connection with the Assigned Interest, except with the prior written consent of the other party, which consent may not be unreasonably withheld.
- (b) Notwithstanding Section 8.1(a), no consent is required in connection with any assignment to a corporation affiliated with the assignor, provided however that no such assignment to an affiliate will operate as a release of the assignor except with the express written consent of the other party.

#### 8.2 Governing Law

The parties agree that: (i) the place of execution of this agreement will be deemed to be Harris County, Texas; (ii) the law of the State of Texas will control the construction, interpretation, validity and/or enforcement of this agreement.

8.3 Regulatory Bodies

This agreement will be subject to all valid applicable state and federal laws and orders, directives, rules and regulations of any governmental body or official having jurisdiction.

8.4 Modification of Agreement

No modifications of the terms and provisions of this agreement will be or become effective except by execution of supplementary written consent.

8.5 Notices

Except as otherwise expressly provided in this agreement, every notice, request statement or invoice provided for in this agreement shall be in writing directed to the party to whom given, made or delivered at such party's address as follows:

Tennessee:

For Billing Purposes:


Tennessee Gas Pipeline Company  
P.O. Box 2511  
Houston, Texas 77252  
Attention: Accounting

or

Tennessee Gas Pipeline Company  
1010 Milam, Suite 2100  
Houston, Texas 77002  
Attention: Accounting

Penn & Southern:

For Notices and/or Requests:

NUI Corporation - P+S Division   
550 Route 202-206  
Bedminster, New Jersey 07921-0760  
Attention: Vice President of Gas Supply

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Western Gas:  
For Nominations:

Western Gas Marketing Limited  
24th Floor  
580 - 8th Avenue S. W.  
Calgary, Alberta  
T2P 3V6  
Attention: Manager, Marketing  
Accounting

or

For other matters:

8th Floor  
55 Yonge Street  
Toronto, Ontario  
M5E 1J4  
Attention: Director, LDC Marketing

Any party may change one or more of its addresses for receiving invoices, statements, notices and payments by notifying the other parties in the manner as provided above. All written notices, requests, statements and invoices shall be considered properly given upon receipt at the properly designated address for the party receiving any such notice, request, statement or invoices.

#### 8.6 Waiver

No waiver by any party of any default of the other party under this agreement shall operate as a waiver of any other term or of any future default, whether of a like or different character.

#### 8.7 Defined Terms

All capitalized terms, if not otherwise defined in this agreement, are intended to have the meanings given in the GPSA.

### 8.8 GPSA

- (a) The parties agree that the following provisions of the GPSA, to the extent they relate to the Assigned Interest, are superseded by this agreement: Sections 1.7, 1.12, 1.13, 2.1, 2.2, 2.3, 2.5, Article V, Article VI, Sections 7.1, 7.2(ii), (iii), and (v), (vi), Sections 7.3, 7.4, 7.5, and 7.6.
- (b) To the extent that any term or provision herein conflicts with any other term and provision of the GPSA, the terms of this agreement shall control.

### 8.9 General

- (a) The entire agreement of the parties as to this Partial Assignment Agreement is contained herein (and, as between Tennessee and Western Gas, in their agreement dated June 1, 1995), and there are no prior or contemporaneous oral understandings, representations or warranties affecting this agreement.
- (b) This Partial Assignment Agreement is not intended to and does not create any rights or benefits for or on behalf of any parties other than Penn & Southern, Tennessee and Western Gas.
- (c) No amendment, revision, modification or extension of this agreement shall be recognized or binding upon the parties unless reduced to writing and executed by the parties.

### 8.10 Representations

In reaching this agreement, each party has relied upon its own knowledge and judgment and upon the advice of attorneys or other counselors of its own free choice. It is expressly understood, agreed and warranted that, in entering into this

agreement, no party has acted in reliance upon any representation, advice or action by any other party, except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first above written.

TENNESSEE GAS PIPELINE COMPANY

BY: [Signature]  
Agent and Attorney-in-Fact  
TITLE: Director, Gas Supply

NUI CORPORATION, <sup>P+S Division</sup>

BY: [Signature]  
THOMAS E. SMITH  
VICE PRESIDENT  
TITLE: SUPPLY AND PLANNING

WESTERN GAS MARKETING LIMITED,  
as agent for TRANSCANADA PIPELINES  
LIMITED

BY: [Signature]  
JOEL G. JOHNSON  
Vice President, Marketing  
TITLE: \_\_\_\_\_

EXHIBIT "A" TO THE  
ASSIGNMENT AGREEMENT  
DATED SEPTEMBER 20, 1993

TGP

QUA

ENTITY  
GPSA#

PRODUCER  
(DTE/D)

SOURCE

1736

TransCanada PipeLines Limited

Niagara Spur  
Meter #01-0902

2,024

Dated August 1,  
1988

(Western Gas Marketing Limited  
as agent)

*Exhibit C*



GAS PURCHASE CONTRACT

This contract is made as of the 1st day of August, 1988, by and between TRANSCANADA PIPELINES LIMITED, a Canadian corporation herein called "Seller," and TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC., a Delaware corporation, herein called "Buyer," pursuant to the following recitals and representations:

W I T N E S S E T H

WHEREAS Seller has a supply of natural gas under contract in Western Canada which is available for purchase by Seller for export and resale to Buyer in the United States; and

WHEREAS, Seller has made arrangements to transport such gas to a point on the International Border between the United States of America ("U.S.") and Canada near Niagara Falls, Ontario where Seller's natural gas transmission pipeline system interconnects with the facilities of Buyer, herein called the "Niagara point of interconnection"; and

WHEREAS Seller and Buyer have previously entered into a 1987 Precedent Agreement dated May 18, 1987, pursuant to which they agreed to seek to obtain certain approvals from the Canadian and the U.S. regulatory and governmental authorities, respectively, authorizing the sale and purchase of gas on the terms provided herein, and upon receipt of all such authorizations on terms satisfactory and acceptable to both parties, to enter into this Gas Purchase Contract ("this Contract"); and

WHEREAS all terms, conditions and requirements of said 1987 Precedent Agreement requisite to the execution hereof have been fulfilled; and

WHEREAS in accordance with the 1987 Precedent Agreement, Seller and Buyer now desire to enter into this Contract which provides for the export, sale and delivery by Seller and the import, purchase and receipt by Buyer of the volumes of gas herein provided, with the delivery of said volumes of gas to be made by Seller to Buyer at the Niagara point of interconnection.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be bound, Seller and Buyer agree as follows:

#### ARTICLE I

##### DEFINITION OF TERMS

1.1 The term "day" shall mean a period of twenty-four consecutive hours, beginning and ending at 8:00 a.m. Eastern Standard Time.

1.2 The term "month" shall mean the period beginning at 8:00 a.m. Eastern Standard Time, on the first day of the calendar month and ending at 8:00 a.m. Eastern Standard Time on the first day of the next succeeding calendar month.

1.3 The term "contract year" shall mean for the initial contract year, the period commencing on the date deliveries first commence hereunder and ending at 8:00 a.m. Eastern Standard Time on the first day of November next following such date, and any succeeding contract year shall mean

the period of twelve (12) consecutive months from the end of the immediately preceding contract year to 8:00 a.m. Eastern Standard Time on the next succeeding November 1.

1.4 The term "cubic foot" shall mean the volume of gas which occupies one cubic foot when such gas is at a temperature of 60 degrees Fahrenheit, and at a pressure of 14.73 pounds per square inch absolute.

1.5 The term "Mcf" shall mean 1,000 cubic feet.

1.6 The term "British thermal unit" or "Btu" shall mean the amount of heat required to raise the temperature of one pound of distilled water 1 degree Fahrenheit at 60 degrees Fahrenheit, at a constant pressure of 14.73 pounds per square inch absolute and the term "MMBtu" shall mean one million British thermal units.

1.7 The term "Total Heating Value," when applied to a cubic foot of gas, means the number of British thermal units produced by the combustion in a recording calorimeter at constant pressure, of the amount of gas which would occupy a volume of one cubic foot at a temperature of 60 degrees Fahrenheit, if saturated with water vapour, and under a pressure equal to that of 30 inches of mercury at 32 degrees Fahrenheit and under a standard gravitational force (acceleration of 980.665 cm. per second per second) with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air, and when the water formed by combustion is condensed to the liquid state.

1.8 The term "Canadian Regulatory Authorities" means each governmental agency or other authority in Canada which has jurisdiction over the matter in question, including without limitation the National Energy Board of Canada and the Governor General in Council.

1.9 The term "U.S. Regulatory Authorities" means each governmental agency or other authority in the U.S. which has jurisdiction over the matter in question, including without limitation the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (FERC).

1.10 The term "Daily Contract Quantity" shall mean the maximum quantity of gas which Seller is obligated to deliver to Buyer each day, pursuant to Article II hereof.

1.11 The term "Scheduled Daily Delivery" shall mean the quantities of natural gas which Buyer requests Seller to deliver in any one day, not to exceed in aggregate the Daily Contract Quantity in effect for such day, and which shall include gas requested by Buyer as part of the applicable Minimum Monthly Quantity, as Market Responsive Gas or as Make-up Gas, but shall not include Excess Gas.

1.12 The term "Minimum Monthly Quantity" shall mean for any given calendar month a volume of gas equal to twenty percent (20%) of the Daily Contract Quantity in effect during such month multiplied by the number of days in such month.

1.13 The term "Non-Proratable Supplies" shall mean those supplies of gas purchased by Buyer from suppliers other than Seller, which supplies are not subject to being reduced below certain levels of production because of Buyer's obligation to take casinghead gas, to protect from drainage, or to allow conservation practices to avoid waste and/or any other exceptional obligation to take gas not consistent with Buyer's normal obligations under its gas supply contracts.

## ARTICLE II

### CONTRACT QUANTITIES

2.1 The Daily Contract Quantity hereunder shall be:

<u>Contract Period</u>	<u>Daily Contract Quantity (Mcf)</u>
November 1, 1987 through October 31, 1988	5,000
November 1, 1988 through October 31, 1989	10,100
November 1, 1989 through October 31, 1990	20,300
November 1, 1990 through October 31, 2002	25,000

provided, however, that any increase in Seller's obligation to deliver and Buyer's obligation to take will not commence during any contract period until Seller and/or Buyer have received authorization for and constructed the necessary facilities to permit the commencement of delivery of increased volumes hereunder.

2.2 Buyer shall have the right to elect a Daily Contract Quantity greater than that set forth in Article 2.1 hereof by serving written notice to Seller at least twenty-four (24) months prior to the date upon which such new Daily Contract Quantity is to become effective. Such notice shall specify the increased Daily Contract Quantity which Buyer elects and the date upon which

it is to become effective. The maximum Daily Contract Quantity that Buyer may elect under this Section 2.2 shall be 25,000 Mcf or such lesser quantity as results from Seller's prior elections under Section 2.3 hereof.

2.3 Seller may elect to reduce or eliminate any scheduled increase in the Daily Contract Quantity set forth in Section 2.1 by serving written notice to Buyer at least twenty-four (24) months prior to the date upon which such new Daily Contract Quantity is to become effective, which notice shall specify the amount by which such scheduled increase is to be reduced; provided however, that such election may not reduce the Daily Contract Quantity which is then in effect or which has been established by a prior election exercised by Buyer as provided in Section 2.2 hereof.

2.4 On each day during the term hereof as provided in Article VI, Seller shall export, sell and deliver to Buyer, and Buyer shall import, purchase and receive from Seller the Scheduled Daily Delivery.

2.5 In any month in which Buyer requires volumes of gas in excess of its Non-Proratable Supplies and the Minimum Monthly Quantity for such month, it is Buyer's intention to purchase a portion of such gas from Seller, provided that Seller's price is competitive with other purchases being made by Buyer in excess of its Non-Proratable Supplies. Buyer and Seller shall meet in person or by telephone conference call and determine, at least five days prior to the beginning of every month, the Market Commodity Charge for gas which Buyer is to purchase from Seller in that month pursuant to this section (referred to hereafter as "Market Responsive Gas") and the quantity of such Market Responsive Gas which Buyer, having regard to its estimated market requirements, expects to purchase in the month. Buyer undertakes to use its

best efforts, having regard to its actual market requirements for the month, to purchase in the month at least such quantity of Market Responsive Gas. Market Responsive Gas shall be taken after Buyer has purchased the Minimum Monthly Quantity for such month and has received any Make-up Gas to be recovered in the month, as provided for in Section 2.6(b) hereof.

The volumes of gas available for purchase pursuant to this subsection shall be referred to as Market Responsive Gas and for billing purposes shall be deemed to be taken after Buyer has purchased the Minimum Monthly Quantity for such month unless Buyer advises Seller otherwise, as provided in Section 2.6(b) hereof.

2.6 (a) If Buyer is unable to take at least the Minimum Monthly Quantity of gas in any month then Buyer shall pay Seller for such portions of the Minimum Monthly Quantity as it fails to purchase in such month. The aggregate of payments so made and outstanding from time to time shall hereinafter be referred to as "Buyer's Prepaid Gas Account".

(b) Buyer shall have the right to recover amounts of money paid for gas not taken pursuant to Section 2.6(a) hereof by purchasing in any month such volumes of gas in excess of the Minimum Monthly Quantity as is designated by Buyer to be "Make-up Gas". Such designation shall be made by Buyer on or before the 10th day of the month following the month in which such gas is taken. All other volumes purchased during the month in excess of the Minimum Monthly Quantity will be considered to have been purchased pursuant to the provisions of Section 2.5 hereof.

(c) For any month in which Buyer receives Make-up Gas, an amount, calculated by multiplying the Base Commodity Charge in effect for such month by the total number of MMBTU contained in the volume of Make-up Gas recovered, shall be deducted from Buyer's Prepaid Gas Account.

(d) Seller shall seek any necessary regulatory authorization to provide for a one-year extension of this contract if necessary in order to permit Buyer to make up any gas paid for but not taken pursuant to subsection 2.6(a) by crediting all gas taken during such period as Make-up Gas. If at the end of the term of this contract, there remains any amount in Buyer's Prepaid Gas Account, then Seller shall refund to Buyer 90% of such amount.

2.7 If, on any day during the term hereof, Seller has available for sale and delivery and Buyer desires to purchase and receive gas on such day in excess of the Daily Contract Quantity ("Excess Gas") in effect, then, subject to Buyer and Seller agreeing on the price per MMBtu to be paid by Buyer for such gas, to the availability of transportation and to the obtaining of all necessary government and regulatory authorizations, Seller shall export, sell and deliver to Buyer and Buyer shall import, purchase and receive from Seller such Excess Gas.

2.8 Gas delivered hereunder shall be delivered and received, as practicable, at uniform hourly and daily rates of flow, but, because of inability to maintain precise control, the daily quantity delivered or taken may vary two percent (2%) above or below the requested daily delivery; provided, however, that the total quantity delivered and taken during any month shall not vary more than one percent (1%) above or below the total of the requested deliveries for such month.



2.9 Buyer acknowledges that Seller delivers gas to all of its sales customers from the aggregate supply of gas producible from those gas reserves which are dedicated by gas producers to the performance of Seller's gas purchase contracts (such supply is hereafter referred to as "Seller's Supply Pool") and that Seller pays its producers a price for gas produced in each month which is the monthly weighted average price received by Seller for the sale of such gas in Seller's markets, after deduction for intervening costs (such method of payment is hereafter referred to as "Seller's Netback Purchase Arrangement"). Buyer further acknowledges that, as such reserves are depleted, the quantities of gas available from Seller's Supply Pool may become insufficient to meet on a sustained basis the daily requirements of Seller's firm sales customers. Seller undertakes in good faith to use all reasonable efforts, in anticipation of such event, to add newly contracted gas reserves to Seller's Supply Pool for purchase by Seller within Seller's Netback Purchase Arrangement so that full deliveries to Seller's firm gas sales customers may be maintained. If, notwithstanding Seller's good faith efforts, Seller is unable on a sustained basis to deliver the daily requirements of its firm gas sales customers as aforesaid, Seller shall be entitled to pro-rate the daily quantity of gas then available from Seller's Supply Pool among all such customers. Buyer's pro-rata share of such quantity shall be determined as the proportion thereof which the Daily Contract Quantity bears to the total daily contract quantities under all of Seller's firm gas sales contracts and Buyer's Scheduled Daily Delivery shall be limited accordingly.

During any period where Seller is exercising its right hereunder to deliver to Buyer its pro-rata share of available gas supply, the Daily Contract Quantity shall be reduced to that quantity which is equal to the Daily Contract Quantity multiplied by a fraction, the numerator of which is

the sum of Buyer's pro-rata shares during such period and the denominator of which is the sum of the Daily Contract Quantities otherwise in effect during such period.

During the month of June of each contract year, Seller shall provide Buyer with a written report of Seller's then current forecast for each of the succeeding five (5) contract years of the proven reserves which will be included in Seller's Supply Pool, the deliverability available from such reserves and Seller's total market requirements.

Seller shall give Buyer written notice of any period during which Buyer's Scheduled Daily Delivery may be limited pursuant to this Section 2.9 and, if possible, such notice shall be given no later than one hundred and eighty (180) days prior to the commencement of such period. If Buyer contracts for a quantity of Alberta gas to compensate for a limitation of Buyer's Scheduled Daily Delivery, Seller agrees, at Buyer's request, to use all reasonable efforts to assist Buyer in transporting such quantity to the Point of Delivery by use of firm transportation capacity otherwise committed by NOVA and Seller for the transportation of gas to be delivered hereunder at the same MDR specified in Section 7.2(i) hereof.

2.10 The obligation of Seller to deliver the Daily Contract Quantity, and the obligation of Buyer to purchase the Minimum Monthly Quantity, is hereby expressly subject to any condition or limitation contained in or imposed by any regulatory body, agency or authority, or any of Seller's or Buyer's Authorizations and such obligations shall be reduced to any limitation imposed by any regulatory body, agency or authority.

2.11 Nothing herein shall be construed as obligating Seller to sell and deliver or entitling Buyer to purchase and receive a total quantity of gas during the term of this Contract in excess of the volume that Seller is authorized to export and sell to Buyer.

2.12 Notwithstanding Article XIV, the provisions of this Article II shall not be subject to arbitration.

### ARTICLE III

#### POINT OF DELIVERY

The point at which gas is to be delivered hereunder by Seller to Buyer shall be the Niagara point of interconnection, such point hereinafter called the "Point of Delivery."

### ARTICLE IV

#### DELIVERY PRESSURE

Seller shall deliver gas to Buyer at the line pressure required for Buyer to take receipt of the volumes of gas purchased hereunder; provided, that such pressure shall not be less than seven hundred (700) pounds per square inch gauge.

### ARTICLE V

#### COMMENCEMENT OF DELIVERIES

Deliveries of gas by Seller to Buyer hereunder shall commence on November 1, 1987 or as soon as possible thereafter; provided, however, that

Seller shall have no obligation to deliver and Buyer shall have no obligation to receive and/or pay for gas hereunder until such time as the facilities required by each party to enable it to perform its obligations hereunder have been constructed, installed and all regulatory approvals required to operate such facilities have been obtained. Both parties agree to use their best efforts to have constructed and made available their respective facilities by November 1, 1987. Each party agrees to notify the other in writing as to when its facilities are available for service and deliveries shall commence as soon as possible thereafter.

#### ARTICLE VI

##### TERM OF CONTRACT

This contract shall become effective on the date hereof and shall continue in force and effect until 8:00 a.m. Eastern Standard Time on November 1, 2002.

#### ARTICLE VII

##### PRICE

7.1 For natural gas service hereunder, Buyer shall pay Seller the aggregate of:

- i) the monthly Demand Charge (MDC) as defined in Section 7.2(i); and
- ii) the product obtained by multiplying the MMBtu's of gas, comprising the Minimum Monthly Quantity under this Agreement during such month by the Base Commodity Charge

as defined in Section 7.2(ii) and in effect for such month; and

- iii) the product obtained by multiplying the MMBtu's of Market Responsive Gas as defined in Section 2.5, if any, delivered by Seller during such month, by the Market Commodity Charge in effect for such month as set forth in Schedule B attached hereto and made a part of this Agreement; and
- iv) the product obtained by multiplying the MMBtu's of volume(s) of Special Purchase Gas, if any, delivered during such month by Seller under this Agreement pursuant to the Special Commodity Charge(s) in effect pursuant to Section 7.2(vii) and as set forth in Schedule C, attached hereto and made a part of this Agreement.

7.2 For the purposes of this Article VII:

- i) "Monthly Demand Charge" (MDC) for any month shall be the product of the Daily Contract Quantity in effect for such month and the Monthly Demand Rate (MDR) where MDR is the sum of the following tolls:
  - A) the monthly demand toll, in Canadian dollars per MCF, on Seller's system, as determined by Canada's National Energy Board and in effect on the first day of the month applicable to the transportation of firm gas on Seller's system to the Point of Delivery (the "TransCanada Toll");

8) the average monthly demand toll, in Canadian dollars per mcf, as billed to Seller by NOVA, AN ALBERTA CORPORATION ("NOVA") for the firm transportation of gas on NOVA's system to the Alberta-Saskatchewan border during the twelve month period which immediately precedes the contract year in which such month is included (the "NOVA Toll").

Upon determining the MDR in effect from November 1, 1987, as provided herein, such MDR shall be converted to U.S. dollars using a rate of exchange which shall be the noon spot exchange rate for the U.S. dollar in terms of Canadian dollars for the month of October 1987, as published by the Bank of Canada.

The MDR shall be converted into U.S. dollars only in a month during which there has been a change in the TransCanada Toll and/or the NOVA Toll following the procedure set forth above and using such exchange rates for the month preceding such month, as published by the Bank of Canada or shall be converted in the manner prescribed from time to time by the Canadian Government and regulatory authorities.

The MDC shall be adjusted upward or downward as appropriate pursuant to variations in the MDR occasioned by a change in one or more of such tolls.

11) "Base Commodity Charge" for gas delivered in a month means Buyer's Weighted Average Cost of Gas per MMBtu as

purchased from producers in the field (WACOG), excluding any surcharges, storage adjustments, or any other adjustments, reimbursements or add-ons, stated in U.S. dollars, as reflected in Buyer's Purchased Gas Adjustment (PGA) filing in effect on the 1st day of the month.

- iii) The MDR and Base Commodity Charge shall be set forth in Schedule A, attached hereto and made a part of this agreement, and any adjustments in such MDR and/or Base Commodity Charge made pursuant to this Section 7.2 shall be set forth in an amendment to Schedule A. Each such amendment to Schedule A shall also reflect all rates and charges previously in effect and the date when each such adjustment in MDR and/or Base Commodity Charge became effective.
- iv) If Seller fails or is unable to deliver or cause to be delivered during any one or more days the amount of natural gas which Buyer requests to be delivered, up to the Daily Contract Quantity, then the Monthly Demand Charge, as otherwise computed hereunder, shall be reduced by an amount equal to the Monthly Demand Rate times .0328 times the difference in Mcf between (i) the volumes of natural gas actually delivered during said day or days and (ii) the product of the Daily Contract Quantities and the number of days of such failure or inability to deliver.
- v) "Market Commodity Charge" means the price established each month by Buyer and Seller pursuant to Section 2.5 hereof. The Market Commodity Charge shall be set out in

the form of Schedule B which shall be signed by both parties.

- vi) "Special Commodity Charge" means that amount, in U.S. dollars, per MMBtu to be paid by Buyer for Special Purchase Gas pursuant to Section 7.3.

7.3 (a) The parties hereto recognize that there may be situations in the market where special arrangements with respect to term and price are necessary in order to assure the market for some portion of the gas available for delivery hereunder. Such situations may require direct sale or special marketing arrangements. Under the circumstances, Seller may, from time to time, offer certain volumes of gas for purchase as Special Purchase Gas.

(b) Schedule C, attached hereto and made a part of this Contract, shall be utilized by the parties hereto to set forth the Special Purchase Gas volumes and the applicable Special Commodity Charge offered by Seller from time to time. For each offer of Special Purchase Gas volumes made available by Seller as provided in Section 7.3(a) Seller shall prepare and submit to Buyer a signed amendment of Schedule C stating (i) the volume of Special Purchase Gas made available; (ii) the period during which the Special Purchase Gas will be available; (iii) the Special Commodity Charge applicable to such Special Purchase Gas; and (iv) any terms and/or conditions pertinent to such Special Purchase Gas.

(c) Each amendment of Schedule C will become effective when it is signed by Seller and submitted to Buyer. Such amended Schedule C will replace any previously effective Schedule C.



(d) On or before the 3rd day of each month, Buyer shall inform Seller of the volume of Special Purchase Gas purchased by Buyer during the prior month under Schedule C. Billings for Special Purchase Gas volumes shall be made by Seller as provided in Article 7.1(iv) and Article VIII of this Contract.

7.4 (a) The parties recognize the current market and supply situation encountered by Buyer. In the event that either party determines the aforementioned situation has changed and that the pricing and other provisions do not appropriately reflect the market and supply conditions then existing, either party may give the other party notice setting forth such party's concerns regarding the impact of such circumstances upon such provisions whereupon the parties shall meet to negotiate the terms and conditions that require changing; provided, however, that the terms and provisions of this Contract shall continue unless modified as a result of such negotiations.

(b) If at any time during the term of this Contract an application of Seller or Buyer for regulatory or governmental approvals deemed necessary by either party to allow the continued sale and purchase of gas under the provisions of this Contract is denied, or if authorizations are issued which, in the opinion of either Buyer or Seller, do not allow for the provisions of the Contract to be implemented in conformance with the intent and understandings of Buyer and Seller, then either Buyer or Seller may, by written notice to the other, require a renegotiation of those terms and/or conditions of this Contract which are not in conformance with the regulatory or governmental approvals. The parties agree that they will promptly meet to resolve such nonconformance issues expeditiously.

(c) Authorization by U.S. regulatory bodies of an appropriate rate structure for recovery of costs of gas purchased hereunder is recognized as the intent of both Buyer and Seller in this Agreement. In the event that Buyer becomes, directly or indirectly, subject to any final, non-appealable order of the Federal Energy Regulatory Commission, or any other governmental agency, which precludes Buyer from passing through, on an "as-billed" basis, the demand charges payable hereunder to Seller, Buyer may elect, by written notice to Seller within 30 days of the date of such order,

- i) if Seller has not commenced construction of facilities required to initiate deliveries hereunder in accordance with Article V, to terminate this contract; and,
- ii) if Seller has not commenced construction of such facilities as are necessary to allow Seller to deliver any increase in Buyer's Daily Contract Quantity scheduled in accordance with Section 2.1, to decline all or part of any further increase in Buyer's Daily Contract Quantity.

For the purposes of this section, Seller shall be deemed to have commenced construction of facilities if Seller has requisitioned materials or equipment for the construction of such facilities.

7.5 Notwithstanding any provisions hereof to the contrary, if in order to comply with or by reason of any present or future law, rule, regulation or order of the Energy Resources Conservation Board of the Province of Alberta, the NEB or of any other governmental authority of Canada having jurisdiction, now or hereafter in effect during the term of this Agreement, the basis or method of measurement of gas delivered hereunder is changed, then

the price for gas purchased hereunder shall be adjusted to compensate for the change in the basis or method of measurement, to the end that the total amount of money payable for volumes of gas purchased according to the measurement provisions set forth herein shall remain unaffected by such change in the basis or method of measurement.

7.6 By written notice of not less than 120 days, or more than 150 days prior to the end of a contract year, either party may require renegotiation of Section 7.2(ii) of this Article VII. If pursuant to any such renegotiation, there is agreement upon any modification, such modification shall become effective as of the first day of the first month following such agreement, but in no event earlier than the first day of the contract year following the date on which written notice of such renegotiation was given. If any renegotiation does not result in a mutually acceptable resolution of the negotiable provisions in Section 7.2(ii) of this Article VII within 60 days from the date of the written notice of the renegotiation, either party may require arbitration. The purpose of such negotiation or arbitration shall be to determine a commodity rate to be paid by Buyer to Seller pursuant to this Article VII which will result in a commodity price at the delivery point of gas purchased hereunder that is compatible with and competitive to the market sensitive prices paid by Buyer to U.S. producers.

7.7 (a) Upon not less than 15 days written notice by Buyer to Seller, Buyer and Seller shall meet to review the method by which Seller calculates the NOVA Toll pursuant to Section 7.2(i)B.

(b) Buyer may require renegotiation of the provisions of Section 7.2(i)B:

- i) if, within 30 days of Buyer's written notice to Seller under Section 7.7(a), Buyer and Seller have not agreed upon a mutually satisfactory method of calculating the NOVA Toll; and
- ii) upon thirty days written notice to Seller, if the structure of NOVA's tariffs and tolls has been substantially altered from the demand/commodity structure in effect on the date hereof.

If any such renegotiation does not result in a mutually acceptable resolution of the matter in issue, Buyer may require arbitration within 60 days from the date on which renegotiation was required. The purpose of such renegotiation and such arbitration shall be to determine a method of calculating the NOVA component of the MDR such that, in respect of each month, Seller shall recover from Buyer an amount which accurately reflects that portion of NOVA's total fixed costs for the month, including rate of return and income tax, which is properly allocated to the reservation by Seller of firm capacity on the NOVA system for the purpose of assuring the delivery to Buyer of the Daily Contract Quantity hereunder. Except as provided for in Section 7.6 and this Section, the remaining provisions of Section 7.2 shall not be subject to arbitration.

7.8 If any governmental or regulatory approval required for actions taken pursuant to Sections 7.6 and 7.7 of this Article VII is denied, the party receiving such denial shall give notice thereof ("Notice of Denial") to the other party within five (5) days from receipt thereof and the matters shall be resubmitted for renegotiation in accordance with the procedures set

forth in Sections 7.6 and 7.7. In the event that any such approval is granted subject to modification, the party receiving such modified approval shall give notice thereof to the other party within five (5) days from receipt thereof and within ten (10) days after such notice is given each party shall notify the other if the modification is not acceptable ("Notice of Rejection"). If such modification is unacceptable to either party the matter shall be resubmitted for renegotiation in accordance with the procedures set forth in Sections 7.6 and 7.7.

#### ARTICLE VIII

#### BILLINGS AND PAYMENTS

8.1 Seller shall render to Buyer on or before the fifteenth (15th) day of each month after the first delivery of gas hereunder a statement for the preceding month showing:

(a) the daily and total quantity of gas delivered hereunder;

(b) the weighted average Total Heating Value per cubic foot hereof;

(c) the total quantities of gas taken in such month by Buyer on account of the Minimum Monthly Quantity, as Make-up Gas and as Market Responsive Gas;

(d) the total quantity of gas, if any, not taken by Buyer during the preceding month for which Buyer is obligated to pay Seller;

(e) the amount of any deduction from Buyer's Prepaid Gas Account and the balance remaining in such Account as a result of the delivery of Make-up Gas in the month; and

(f) the total amount or amounts thereby payable to Seller, stated in Canadian dollars.

Buyer agrees to pay Seller on or before the twenty-fifth (25th) day of each such month the full amount billed to and payable by Buyer hereunder for the quantity of gas delivered by Seller to Buyer during the preceding month. All payments under this contract shall be made in Canadian dollars or such other currency as may be required by Canadian governmental or regulatory authorities to the Royal Bank of Canada, Royal Bank Plaza, Main Branch, Toronto, Ontario, for deposit to the account of Seller. Conversions from U.S. dollars of charges determined in accordance with Article VII hereof shall be calculated at the rate of exchange for such preceding month, which rate of exchange shall be the average of the noon spot exchange rates for the United States dollar in terms of Canadian dollars for such preceding month, as published by the Bank of Canada or shall be calculated in the manner as may be prescribed from time to time by Canadian governmental and regulatory authorities. If Buyer fails to make each such payment or any portion thereof, to Seller when same is due, and such payment is not successfully disputed by Buyer, interest thereon shall accrue, at the rate of interest which is equal to the applicable U.S. Dollar Base Lending Rate published by the Canadian Imperial Bank of Commerce, as of the date such payment is due, until the same is paid. If such failure to pay continues for sixty (60) days, Seller, in addition to all other remedies, may thereafter suspend deliveries of gas hereunder and if such default continues for thirty (30) additional days, Seller may thereafter, in addition to any

other rights Seller may have, terminate this contract; provided, however, in order for Seller to have the right to suspend deliveries or terminate this contract, Seller must first have notified Buyer in writing fifteen (15) days prior to exercising each such right of its intent to do so and give Buyer the right to pay the amount so due to Seller within such fifteen (15) day period; and provided further, that if Buyer in good faith shall dispute the amount of any such statement or part thereof and shall pay to Seller such amounts as it concedes to be correct and shall undertake and guarantee to make payment to Seller of such amount, if any, ultimately found due upon such statement after a final determination which may be reached either by agreement or judgment of the courts, as may be the case, then Seller shall not be entitled to suspend delivery of gas because of such non-payment unless and until default be made by Buyer.

8.2 Each party shall have the right to inspect and examine at all reasonable times the records and charts of the other party pertaining to the purchase and sale of gas hereunder. If any overcharge or undercharge in any amount whatsoever shall at any time be found and the statement therefor has been paid, Seller shall refund the amount of any overcharge received by Seller and Buyer shall pay the amount of any undercharge within thirty (30) days after the final determination thereof; provided, however, no retroactive adjustment will be made for any overcharge or undercharge beyond a period of twenty-four (24) months from the date the discrepancy occurred.

#### ARTICLE IX

##### QUALITY

9.1 Buyer agrees to accept from Seller at the Point of Delivery gas which shall meet the following quality specifications:

(a) have a Total Heating Value of not less than 950 Btus per cubic foot, unless otherwise agreed to by Buyer;

(b) be commercially free (at prevailing pressure and temperature) from objectionable odors, dust and other solid or liquid matters which might interfere with its merchantability, or cause injury to or interference with proper operation of the lines, regulatory, meters or other appliances through which it flows, and shall not contain any substances not contained in the gas at the time the same was produced, other than traces of those materials necessary for the extraction of hydrocarbons and the transportation and delivery of the gas and which do not cause it to fail to meet any of the quality specifications herein set forth;

(c) not contain more than one grain of hydrogen sulphide per hundred cubic feet of gas volume when tested in accordance with the following procedure: a strip of white filter paper previously moistened with fresh 5% lead acetate solution shall be exposed to the gas for one and one-half minutes in a previously purged apparatus through which the test gas is flowing at a rate of approximately five cubic feet per hour; the gas shall not directly impinge upon the test strip during the test. At the end of the stated time the test paper thus exposed shall be compared with a second test strip similarly prepared but not exposed to the test gas. If the exposed test strip is not noticeably darker than the comparison strip the gas under test shall be considered acceptable. If the exposed strip is definitely darker than the comparison strip the gas shall be tested quantitatively for hydrogen sulphide by the Tutweiler method;



(d) not contain more than twenty grains of total sulphur per hundred cubic feet of gas volume as determined by methods to be mutually agreed upon;

(e) not contain more than four percent (4%) by volume of a combined total of carbon dioxide and nitrogen; provided, however, that the total carbon dioxide content shall not exceed two percent (2%) by volume;

(f) be as free from oxygen as Seller can keep it through the exercise of all reasonable precautions and shall not in any event contain more than two-tenths of one percent (0.2%) by volume of oxygen;

(g) not contain more than four (4) pounds of water vapor per one million (1,000,000) cubic feet of gas, when measured at a pressure of fourteen and seventy-three one hundredths (14.73) pounds per square inch absolute and a temperature of sixty (60) degrees Fahrenheit.

9.2 If the gas offered for delivery by Seller shall fail at any time to conform to any of the specifications set forth in Section 9.1 of this Article IX, then Buyer shall notify Seller of such deficiency and thereupon may, at Buyer's option, refuse to accept delivery pending correction by Seller. Upon Seller's failure promptly to remedy such deficiency in quality, Buyer may accept delivery of such gas and may make changes necessary to bring such gas into conformity with such specifications, and Seller shall reimburse Buyer for any reasonable expense incurred by Buyer in effecting such changes. Any volumes which Buyer refuses to accept pursuant to this Section 9.2 shall be deducted from the Minimum Monthly Quantity for the relevant month.

ARTICLE X  
MEASUREMENT OF GAS

10.1 The unit of measurement of the gas delivered hereunder by Seller shall be one (1) Mcf of gas measured according to Boyle's Law for the measurement of gas under varying pressures with deviations therefrom as provided in Section 10.2(d) below on the measurement basis hereinafter specified.

10.2 The volume and Total Heating Value of the gas delivered hereunder by Seller shall be determined as follows:

(a) The unit of volume, for the purpose of measurement, shall be one (1) cubic foot of gas.

(b) The Total Heating Value of the gas per cubic foot delivered at the Point of Delivery shall be determined for any month by the use of a standard recording calorimeter, or any other mutually acceptable recording calorimeter having equal efficiency, installed by Seller at the Point of Delivery.

(c) The temperature of the gas passing through the meters shall be determined for any day by the continuous use of a recording thermometer so installed by Seller that it may properly record the temperature of the gas flowing through the meters. The arithmetical average of the temperature recorded each day during the period of time covered by the meter chart shall be used in computing gas volumes.

(d) The specific gravity of the gas delivered by Seller shall be determined by the use of a recording gravitometer of approved type which shall be checked at least once each month by the use of an Edward's Balance or any other approved method mutually agreed upon.

(e) The deviation of the natural gas from Boyle's Law shall be determined as follows:

(i) When gas is measured by means of an orifice meter, the factor for correction for deviation from Boyle's Law shall be computed in accordance with the American Gas Association's tables for that purpose as published in 1955, together with subsequent amendments and supplements, using the daily arithmetical averages of temperatures, pressure, specific gravity and a representative gas analysis as required by the tables.

(ii) When gas is measured by means other than an orifice meter, the factor for correction for deviation from Boyle's Law shall be the square of the factor determined by following the above described method for use with orifice meters.

(f) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch irrespective of actual elevation or location of the Point of Delivery above sea level or variations in actual barometric pressure from time to time.

10.3 (a) Seller shall install, maintain and operate, or cause to be installed, maintained and operated, at its own expense, at the Point of Delivery, a measuring station properly equipped with meters and other necessary measuring equipment by which the volume and the total heating value of gas delivered under this agreement shall be measured. When orifice meters are used, such meters shall be installed and maintained, and gas volumes shall be computed in accordance with the specifications prescribed in Regulations Respecting Gas and Gas Meters, dated April 4, 1952 and Specification No. 7 issued thereunder, effective March 1, 1956, of the Canadian Department of Consumer and Corporate Affairs, Standards Branch. Where not in conflict with such Regulations and Specification No. 7, the specifications prescribed in Gas Measurement Committee Report No. 3 of the American Gas Association published April, 1985, including any Appendix and/or any amendments thereto, shall be used in addition to and in conjunction with such Regulations and Specification No. 7.

If and when Buyer and Seller agree to the use of turbine meters, such turbine meters, together with auxiliary equipment shall be of a type approved for use by the Canadian Department of Consumer and Corporate Affairs, Standards Branch or any successor thereto. When turbine meters are used they shall be equipped with a counting device for indicating the actual volume of gas passing through the meter and gauges for properly recording the pressure and temperature relative to time of such gas. The data recorded by such a device shall be sufficient to allow the determination of delivery of volumes relative to time.

(b) Buyer may install, maintain and operate, at its own expense, such check measuring equipment as desired, provided that such

equipment shall be so installed as not to interfere with the operation of Seller's measuring equipment at or near the Point of Delivery.

(c) Buyer and Seller shall have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring or checking the measurement of deliveries of gas under this Contract. The records from such equipment shall remain the property of their Owners, but upon request each will submit, or cause to be submitted, to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within ten days after receipt thereof.

(d) All installations of measuring equipment applying to or affecting deliveries of gas shall be made in such manner as to permit an accurate determination of the quantity of gas delivered and ready verification of the accuracy of measurement. Care shall be exercised by both parties in the installation, maintenance and operation of pressure regulating equipment so as to prevent any inaccuracy in the determination of the volume of gas delivered under this Contract.

(e) The accuracy of Seller's measuring and testing equipment shall be verified by Seller at reasonable intervals, and if requested, in the presence of representatives of Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty-day period. Notice of the time and nature of each test to be conducted at the point of measurement shall be given by Seller to Buyer sufficiently in advance to permit convenient arrangement for Buyer's representative to be

present. Test and adjustments shall be made in the presence of and observed by representatives of both Seller and Buyer if present. If, after notice, Buyer fails to have a representative present, the results of the tests and adjustments shall nevertheless be considered accurate until the next tests and adjustments have respectively been made at Seller's expense, except that Buyer shall bear the expense of tests made at its request if the inaccuracy in the measurement of the volume and/or Total Heating Value of the gas is less than the amounts determined in accordance with Section 3(f) of this Article X.

(f) If at any time any of the measuring and/or testing equipment is found to be out of service, or registering inaccurately in any percentage, it shall be adjusted at once to read as accurately as possible. The volume and/or Total Heating Value of the gas desired to be measured or tested during the period in which such equipment was registering inaccurately, or was out of service, shall be estimated by:

- (i) using the data recorded by any check measuring equipment installed and registering accurately, or
- (ii) if such check measuring equipment is not installed or is not registering accurately, by correcting the error by calibration tests or mathematical calculations, or
- (iii) if the methods provided in subsections (i) and (ii) cannot be used, by estimations based upon deliveries under similar conditions during the period in which the equipment was registering accurately.

If the period in which such equipment was registering inaccurately or was out of service is not known or agreed upon, it shall be deemed to have been registering inaccurately or out of service for a period of sixteen (16) days or since the date of the last test, whichever period is longer. If it is determined in accordance with the foregoing that during such period:

- (i) the volume measurement at the average hourly rate of flow is in error in an amount exceeding two percent (2%), and/or
- (ii) the Total Heating Value measurement is in error in an amount exceeding one-half of one percent (0.5%), then the previous reading of the measurement equipment and/or the recording calorimeter, as the case may be, shall be corrected to zero (0) error in the manner set forth above and all records and billings for such period shall be recalculated accordingly to zero (0) error. No corrections in the records and billing shall be made for errors less than the limits specified above.

(g) Seller shall preserve for a period of at least six (6) years all of its test data, charts and other similar records.

(h) Seller agrees that it will make all necessary arrangements to assure that Buyer will have access to the meter charts and other data that it may reasonably require and that Buyer will have access to

the Point of Delivery to install the equipment and do such other things as it has the right to pursuant to the provisions of Section 10.3 of this Article X.

10.4 Where required by law standards of measurement shall be converted to metric measurement.

#### ARTICLE XI - POSSESSION, TITLE AND WARRANTY

11.1 Possession of and title to gas delivered by Seller to Buyer hereunder shall pass from Seller to Buyer or to Buyer's assignee (as provided by Article XV hereof) at the Point of Delivery. Until such delivery, Seller shall be deemed in control of and possession of and be responsible for such gas, after which Buyer or Buyer's assignee shall be deemed to be in control of and possession of and have title to and be responsible for such gas.

11.2 Seller warrants that it will at the time of delivery have good title to all gas delivered by it to Buyer or Buyer's assignee hereunder, free and clear of all liens, encumbrances and claims whatsoever and that Seller will indemnify Buyer or Buyer's assignee and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to the said gas or to royalties, taxes, license fees or charges thereon, which are applicable before the gas is imported to Buyer or Buyer's assignee into the United States. Seller agrees that as to the gas delivered to Buyer or Buyer's assignee by Seller hereunder, Buyer or Buyer's assignee shall also be entitled to all of the protection provided by the warranty of title set forth in each of the gas purchase contracts under which Seller has purchased such gas.



## ARTICLE XII - FORCE MAJEURE

12.1 Neither Buyer nor Seller shall be liable in damages to the other for any act, omission or circumstances occasioned by or in consequence of any act constituting force majeure and the obligations of Seller and Buyer then existing hereunder shall be excused during the period thereof to the extent affected by such events of force majeure. The term "force majeure" shall mean any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and peoples, civil disturbances, explosions, breakages or accident to machinery or lines of pipe, line freeze-ups, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, the denial, suspension or revocation of applicable export and/or import permits, and any other cause, whether of the kind herein enumerated, or otherwise, and whether caused or occasioned by or happening on account of the act or omission of one of the parties hereto which affects delivery or receipt of the gas at the Point of Delivery 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 failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within the control of the party claiming suspension. Under no circumstances will lack of finances be construed to constitute force majeure.

12.2 Such causes or contingencies affecting the performance of this contract by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due

diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this contract relieve either party from its obligation to make payments of amounts then due hereunder nor shall such causes or contingencies relieve either party of liability unless such party shall give oral notice followed thereafter by notice and full particulars of the same in writing, by telegraph, telex or other available means of written communication to the other party as soon as possible after the occurrence relied on.

12.3 In the event, as a result of force majeure or due to any other reason or occurrence, Seller is rendered unable on any day, wholly or in part, to deliver to Buyer the Daily Contract Quantity provided for herein, then Buyer shall be entitled to receive such proportion of the total impaired deliveries at the Point of Delivery hereunder as the Daily Contract Quantity bears to the sum of the Daily Contract Quantities of gas delivered by Seller to Buyer and others at such Point of Delivery.

12.4 Seller's obligation to sell and Buyer's right to purchase gas hereunder shall be suspended during the effectiveness of any governmental action which results in the interruption of deliveries or which prevents, totally or partially, the exportation of gas from Canada under this contract, the importation of gas into the United States by Buyer or its transportation to Buyer; provided, however, that where the exportation, importation, resale or transportation is only partially prevented by the governmental action, Seller's and Buyer's obligations hereunder shall be suspended only to the extent prevented by such governmental action. During any period in which Seller's obligation to sell gas hereunder is suspended in whole or in part by

government action as aforesaid, Buyer may, upon ten (10) days written notice to Seller, terminate this contract. During any period in which Buyer's right to purchase gas hereunder is suspended in whole or in part by government action as aforesaid, Seller may, upon ten (10) days written notice to Buyer, terminate this contract. If either Buyer or Seller has served notice in accordance with this paragraph requiring the termination of this contract and if the suspension of Seller's obligation to sell or Buyer's right to purchase is withdrawn within the ten (10) day notice period, such notice of termination shall be void.

#### ARTICLE XIII - LAWS AND REGULATORY BODIES

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

13.2 Any final and non-appealable governmental action that totally precludes the continuing performance by either party of its obligations under this contract for the remainder of the term herein provided shall terminate this contract as of the effective date of such governmental action.

#### ARTICLE XIV - ARBITRATION

14.1 Except as provided in Articles II and VII any controversy between the parties arising under this contract not resolved by agreement shall be determined by a three member Board of Arbitration ("Board")

upon written notice given either by Seller or by Buyer. The written notice shall contain the name of one arbitrator, the matter in dispute, the relief requested, and the grounds therefor.

14.2 The party receiving such notice ("Receiving Party") shall within fifteen (15) days thereafter serve written notice on the other party ("Transmitting Party"), which notice shall contain the name of the second arbitrator, an answering statement, and other arbitrable matters that are in dispute, if any. If the Receiving Party fails to name the second arbitrator, then the Transmitting Party shall do so. The two arbitrators so appointed shall name the third arbitrator, or, failing so to do within ten (10) days of the second arbitrator's appointment, the parties shall attempt to agree upon and appoint such third arbitrator. If the parties are unable to agree within five (5) days on the choice of a third arbitrator, then upon the written request of either party, the arbitrators who have been appointed shall be discharged and new arbitrators appointed in accordance with the above procedure and the procedure herein shall be repeated until three (3) arbitrators have been selected.

14.3 The arbitrators selected to act hereunder shall be qualified by education or experience to decide matters relating to the particular question(s) in dispute and shall not be employees or agents of either Buyer or Seller or their affiliates or subsidiaries.

14.4 The arbitrators so appointed shall promptly hear and determine (after giving the parties due notice of hearing and a reasonable opportunity to be heard) the question(s) submitted and shall render their decision within ninety (90) days after appointment of the third arbitrator. If within said

period a decision is not rendered by the Board, or of a majority of either party may serve notice on the other party, requiring arbitrators be appointed in accordance with the above procedure herein shall be repeated until a decision is reached.

14.5 The decision of the Board, or of a majority thereof in writing, shall be final and binding upon the parties to the question(s) submitted, and the parties shall abide by such decision; provided that the effectiveness of such decision shall be contingent upon the receipt of all necessary governmental and regulatory approvals and conditions satisfactory to the parties. The written decision or a majority thereof may be issued with or without an opinion. If either party requests a written opinion with regard to a decision, one shall be issued expeditiously, but its issuance shall not delay compliance with the implementation of the Board's or majority's decision. Each party shall bear the cost of the services and the expenses of the arbitrator. Buyer and Seller shall each bear fifty percent (50%) of the cost of the services and the expenses of the third arbitrator. All other costs of arbitration proceedings under this Article XIV shall be borne by the party incurring them.

14.6 Any member of the Board may be removed at any time after his appointment, with or without cause, by written agreement of both Buyer and Seller. In the event of a vacancy in the Board due to the resignation (aforesaid) or resignation of a member of the Board who is appointed by either party, such party shall select a replacement and shall complete its selection not more than five (5) days after the occurrence

aforesaid) or resignation of the third member of the Board who is selected by the other members of the Board, the remaining members of the Board shall select a replacement member and give written notice of their selection not more than five (5) days after the occurrence of the vacancy. A new member of the Board selected by one of the parties shall accept the record of the proceeding as it exists at the time of selection, and the selection of such member of the Board shall not operate to extend the time for the Board's decision.

14.7 The failure of Buyer or Seller to participate in an arbitration proceeding as scheduled by the Board shall not delay the proceeding, and the Board is authorized to proceed to consider submissions, take evidence, and to issue a decision (which shall be final and binding upon the nonparticipating party) as though such party were a participant in the arbitration proceeding.

14.8 If any governmental or regulatory approval required by Section 14.5 of this Article XIV is denied, the party receiving such denial shall give notice thereof ("Notice of Denial") to the other party within five (5) days from receipt thereof and the matter shall be resubmitted for arbitration in accordance with the procedures set forth in this Section 14.8. In the event that any such approval is granted subject to modification, the party receiving such modified approval shall give notice thereof to the other party within five (5) days from receipt thereof and within ten (10) days after such notice is given each party shall notify the other if the modification is not acceptable ("Notice of Rejection"). If such modification is unacceptable to either party the matter shall be resubmitted for arbitration in accordance with the procedures set forth in this Section 14.8. Within fifteen (15) days from the date on which a Notice of Denial or Notice of Rejection is given, the

matter shall be resubmitted to the arbitrators that rendered the decision at issue. The arbitrators shall promptly rehear and redetermine the question(s) presented and shall render their decision within thirty (30) days from the date of resubmittal. The arbitrators shall give the parties due notice of such rehearing and a reasonable opportunity to be heard. Except as otherwise provided in this Section 14.8, any re-arbitration shall be conducted in accordance with the procedures set forth in this Article XIV. The procedures set forth herein for re-arbitrations shall be repeated until a decision of the arbitrators has received all governmental and regulatory approvals required to make such decision effective on terms and conditions satisfactory to both parties.

14.9 The requirements of this Article XIV may be modified or waived only with the written consent of both Buyer and Seller.

#### ARTICLE XV - TRANSFER AND ASSIGNMENT

15.1 Any company which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of Buyer or of Seller, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this contract. Seller may, without relieving itself of its obligations under this contract, assign any of its rights and obligations hereunder to a corporation with which it is affiliated at the time of such assignment. Buyer may, without relieving itself of its obligations under this contract, assign any of its rights and obligations hereunder to a corporation with which it is affiliated at the time of such assignment for marketing the gas hereunder on Buyer's pipeline system. Otherwise no assignment hereunder shall be made by either party

without the written consent of the other party first obtained. It is agreed, however, that the provisions of this Article shall not in any way prevent either party to this contract from pledging or mortgaging its rights hereunder as security for its indebtedness. This contract shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

#### ARTICLE XVI - MISCELLANEOUS PROVISIONS

16.1 No waiver by Buyer or Seller of any default of the other under this contract shall operate as a waiver of a future default whether of a like or different character.

16.2 The headings used throughout this contract are inserted for reference purposes only, and are not to be considered or taken into account in construing the terms or provisions of any Article or Section hereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

16.3 Every notice, statement or bill provided for in this contract shall be in writing directed to the party to whom given, made or delivered at such party's address as follows:

SELLER: 530 Eighth Avenue S.W.  
Calgary, Alberta, Canada  
T2P 3Y6

BUYER: Notices:  
Vice President - International Energy  
P. O. Box 2511  
Tenneco Building  
Houston, Texas 77252  
U.S.A.



Billings/Payments:  
Gas Purchase Administration Department  
P. O. Box 2511  
Tenneco Building  
Houston, Texas 77252  
U.S.A.

Either party may change its address from time to time by giving written notice of such change to the other party. Any notice, statement or bill or other document made, given or delivered hereunder by mail shall be deemed to have been effectively delivered to the addressee thereof at the end of the third (3rd) business day after the date of mailing by prepaid registered airmail in the U.S. mail or Canadian mail; provided that, at any time when there is a strike affecting delivery of either U.S. mail or Canadian mail, all such deliveries shall be made by hand or by telex. If any such notice, statement, bill or other document is delivered by hand or by telex to an officer of the addressee, it shall be deemed to have been received by the addressee as soon as such delivery or transmission has been made to said officer.

16.4 This contract shall be construed pursuant to the laws of the State of Texas.

16.5 This contract constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the parties concerning such subject matter.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in separate counterparts, each of which shall be deemed an "original" hereof, but all of which shall constitute one and the same instrument and have caused their corporate seals to be hereunto affixed, attested by the hands of their proper officers duly authorized in that behalf as of the day and year first above written.

TRANSCANADA PIPELINES LIMITED

Per *[Signature]*

Per *[Signature]*

TENNESSEE GAS PIPELINE COMPANY,  
A DIVISION OF TENNECO INC.

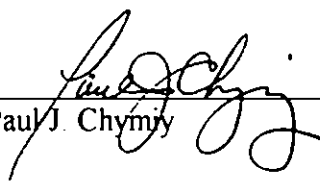
Per *[Signature]*  
Agent and Attorney-in-Fact. *CSA*

*Exhibit D*

**VERIFICATION**

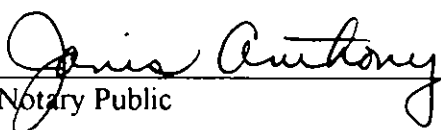
State of New Jersey     )  
  )     ss.:  
County of Somerset     )

Paul J. Chymiy, being duly sworn, deposes and says that he is Director of Planning of NUI Corporation, the Applicant above-named, that he has read the foregoing document and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Paul J. Chymiy



Sworn to before me this  
29<sup>th</sup> day of April, 1996

  
\_\_\_\_\_  
Notary Public

**JANIS ANTHONY**  
**A Notary Public of New Jersey**  
**My Commission Expires August 23, 1998**

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

1996 MAY 16 A 8:10

REC'D DOE/FE

\_\_\_\_\_  
NUI CORPORATION ) FE DOCKET NO. 96-22-NG  
TENNESSEE GAS PIPELINE COMPANY ) ERA DOCKET NO. 87-53-NG, et seq.  
\_\_\_\_\_ )

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

DOE/FE ORDER NO. 1165

MAY 16, 1996

## I. DESCRIPTION OF REQUEST

On May 1, 1996, NUI Corporation (NUI) 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 up to 1,960 Mcf per day of natural gas from Canada. The term of the authorization would extend through October 31, 2002. NUI is a New Jersey corporation with its principal place of business in Bedminster, New Jersey. The gas would be imported under a Partial Assignment Agreement (Assignment Agreement) between NUI, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), and Western Gas Marketing Limited (WGML)<sup>2/</sup> dated September 1, 1993. The proposed imports by NUI are volumes Tennessee originally contracted to buy from TransCanada PipeLines Limited (TransCanada) under a gas purchase and sales agreement (GPSA) executed August 1, 1988. This gas was subsequently resold by Tennessee to NUI (operating as Pennsylvania and Southern Gas Company) under one of Tennessee's existing import authorizations.<sup>3/</sup> Tennessee is

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<sup>1/</sup> 15 U.S.C. § 717b.

<sup>2/</sup> When the Assignment Agreement was executed, WGML (an Alberta corporation) was acting as agent for TransCanada PipeLines Limited for the purpose of exporting the gas. WGML changed its name to TransCanada Gas Marketing Limited (TGML), effective July 17, 1995. Thereafter, TGML appointed TransCanada Gas Services Limited (TGSL), an affiliate, as its agent to operate, administer, and manage all natural gas contracts, effective August 1, 1995. As a consequence, TGSL now acts in the capacity as supplier and export agent for this contract.

<sup>3/</sup> See Tennessee, DOE/ERA Opinion and Order No. 254, issued July 15, 1988 (1 ERA ¶ 70,789), as amended by DOE/ERA Opinion  
(continued...)

currently acting as an agent for NUI, as provided by the terms of the Assignment Agreement, to import the gas from TransCanada Gas Services Limited (TGSL), acting as agent for TransCanada.

This application was initiated as a result of Tennessee's restructuring of its pipeline transportation, storage, and natural gas sales service under Order 636,<sup>4/</sup> issued by the Federal Energy Regulatory Commission (FERC) on April 16, 1992. The proposed authorization would enable NUI, which has been a sales customer of Tennessee, and on whose behalf Tennessee now imports the gas, to import gas directly from TGSL. This gas would be used by NUI primarily to serve consumers supplied by NUI's Waverly Gas Service and Valley Cities Gas Service local distribution company divisions.<sup>5/</sup>

Under the terms of the Assignment Agreement, Tennessee assigned to NUI its contractual rights to purchase 1,960 Mcf per day of Canadian natural gas through October 31, 2002, at which time both the Assignment Agreement and the GPSA expire. This assignment is consistent with the terms of the GPSA. NUI would import gas under the requested authorization using Tennessee's

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3/(...continued)

and Order No. 254-A (Order 254-A), issued October 31, 1989 (1 FE ¶ 70,262) and DOE/FE Opinion and Order No.592, issued March 18, 1992 (1 FE ¶ 70,551). Order 254-A was further amended by DOE/FE Order No. 1033, issued March 16, 1995. See Pennsylvania Gas and Water Company, 1 FE ¶ 71,092 (March 16, 1995). Under these orders, Tennessee currently is authorized to import 10,297 Mcf of gas per day through October 31, 2002.

4/ FERC Statutes and Regulations ¶ 30,939.

5/ These divisions were formerly part of NUI's Pennsylvania and Southern Gas Company division.

existing pipeline facilities which interconnect with those of TransCanada at the border of the United States and Canada near Niagara Falls, New York.

Under the Assignment Agreement, NUI is obligated to take and pay for 70 percent of the assigned contract volume. The commodity charge would be established monthly by subtracting \$.05 from the index value for Louisiana and offshore gas deliveries into the pipeline system of Tennessee as published each month in Inside FERC's Gas Market Report. The commodity charge may be renegotiated each year. NUI is also obligated to pay a monthly demand charge covering 80 percent of the demand tolls for transportation on TransCanada's pipeline system.

## II. FINDING

The application filed by NUI 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 (P.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 NUI 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. NUI Corporation (NUI) is authorized to import at Niagara Falls, New York, up to 1,960 Mcf per day of Canadian natural gas from TransCanada Gas Services Limited (TGSL) beginning on the date of this Order, and extending through October 31, 2002. This gas shall be imported consistent with the terms and conditions of NUI's Partial Assignment Agreement with Tennessee Gas Pipeline Company (Tennessee) and TGSL, dated, September 1, 1993, which is on file in this docket.

B. The natural gas import authorization previously granted to Tennessee, in DOE/FE Opinion and Order No. 254 (Order 254) et seq., is hereby amended to reduce the daily volumes that Tennessee may import. During the period beginning on the date NUI begins importing its gas through October 31, 2002, Tennessee's authorized import volumes shall be reduced by 1,960 Mcf per day. Under the revised authority, Tennessee's import volumes from TGSL shall not exceed 8,337 Mcf per day. All other terms and conditions of the import authorization contained in Order 254, as amended, shall remain in effect.

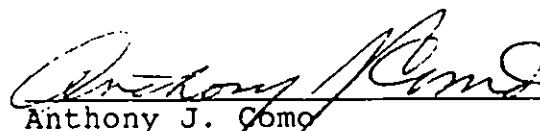
C. Within two weeks after deliveries begin, NUI shall provide written notification to the Office of Fuels Programs (OFP), Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the

date that the first import delivery of natural gas authorized in Ordering Paragraph A above occurred.

D. With respect to the imports authorized by this Order, NUI shall file with OFP, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. If imports occur, NUI must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu delivered at Niagara Falls, New York, and paid to TGSL. The monthly price information shall itemize separately the demand and commodity charges.

E. The first quarterly report required by Ordering Paragraph D of this Order is due not later than July 30, 1996, and should cover the period from the date of this Order until the end of the current calendar quarter, June 30, 1996.

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

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

9/6/96

**CULLEN AND DYKMAN**

1225 Nineteenth Street, N.W.  
Suite 320  
Washington, D.C. 20036  
(202) 223-8890  
Fax: (202) 457-1405

FAX TRANSMITTAL

DATE: 5/7/96 TIME SENT: 9:35

TO: Patrick Flemming

COMPANY: DOE

RE: NUI Import Application

FROM: Karen Georgeson

NUMBER OF PAGES, INCLUDING THIS COVER: 2

CLIENT/MATTER NO.: 4477-0001

MESSAGE:

*If you need more information, please feel free to contact me.*

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED, CONFIDENTIAL, AND PROTECTED FROM DISCLOSURE. IF YOU THINK YOU HAVE RECEIVED THIS FAX IN ERROR, OR IF YOU DO NOT RECEIVE ALL PAGES, OR HAVE ANY OTHER PROBLEM RECEIVING THIS TRANSMISSION, PLEASE CALL:

(202) 223-8890

SEND FAX CORRESPONDENCE TO (202) 457-1405

  
**TransCanada Gas Services Limited**

8th Floor, 55 Yonge Street, Toronto, Ontario, Canada M5E 1J4

(416) 889-2068 Fax (416) 889-2125

November 28, 1995

Cullen and Dykman  
1225 19th St. N.W.  
Ste. 320  
Washington, D.C.**BY FAX**  
**202-457-1405**

Attention: Mr. Ken Maloney, Esq.

Dear Ken:

**Re: Penn & Southern Gas Sales Contract**

As discussed, I am forwarding a final draft of the contract. The only wording change from the last version you saw is the extended date we discussed with respect to the producer approval condition in Article 7.

In case I have not already mentioned it, Western Gas Marketing Limited has changed its name to TransCanada Gas Marketing Limited. This is a name change only and will not affect our arrangement with Penn & Southern. TransCanada Gas Marketing Limited continue to act as agent for TransCanada Pipelines Limited. Because the contract is stated to be effective as of September 1, 1993, I have not changed the name of the entity as shown in the contract. Let me know if you have any concern about this.

As mentioned, we have promised Tennessee that the contract will be executed as soon as possible. In order to expedite the process, I have sent execution copies to our head office and (assuming you are satisfied with the draft) they will be forwarded to you next week for execution by your client.

Thank you again for your cooperation.

Yours very truly,

**TRANSCANADA GAS SERVICES LIMITED**  
David Purdy  
Manager, Toronto Legal Services

encl.

UNITED STATES OF AMERICA

[6450-01-P]

DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

NEW YORK STATE ELECTRICAL & GAS CORPORATION	)	FE DOCKET NOS. 96-15-NG
CHEVRON U.S.A. INC.	)	96-17-NG
TEXACO NATURAL GAS INC.	)	96-18-NG
TENASKA GAS COMPANY	)	96-19-NG
NORTH AMERICAN ENERGY, INC.	)	96-20-NG
IGI RESOURCES INC.	)	96-23-NG
NUI CORPORATION and	)	96-22-NG ✓
TENNESSEE GAS PIPELINE COMPANY	)	87-53-NG
WEST TEXAS GAS, INC.	)	96-24-NG
UNIVERSAL RESOURCES CORPORATION	)	96-21-NG

ORDERS GRANTING AUTHORIZATION  
TO IMPORT AND/OR EXPORT NATURAL GAS

AGENCY: Office of Fossil Energy, DOE.

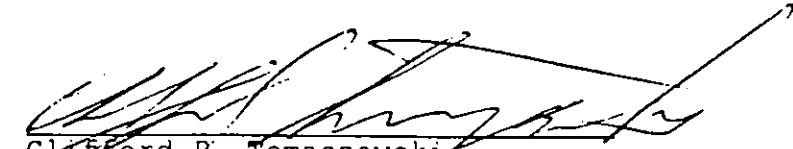
ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing various imports and/or exports of natural gas. These Orders are summarized in the attached Appendix.

These Orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3-F056, 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., on May 7, 1996.



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

## APPENDIX

### IMPORT/EXPORT AUTHORIZATIONS GRANTED

DOE/FE AUTHORITY	ORDER NO.	DATE ISSUED	IMPORTER/EXPORTER FE DOCKET NO.	IMPORT VOLUME	EXPORT VOLUME	COMMENTS
	1158	04/04/96	New York State Electric & Gas Corporation (96-15-NG)	50 Bcf/2-year term	Combined total	Short-term for 2 years from and to Canada
	1160	04/29/96	Chevron U.S.A. Inc. (96-17-NG)	73 Bcf/2-year term		Short-term for 2 years from Canada
	1161	04/29/96	Texaco Natural Gas Inc. (96-18-NG)	100 Bcf/2-year term		Short-term for 2 years from Mexico
	1162	04/30/96	North American Energy, Inc. (96-20-NG)	15 Bcf/2-year term		Short-term for 2 years from Canada
	1163	05/03/96	Tenaska Gas Company (96-19-NG)	200 Bcf/2-year term	Combined total	Short-term for 2 years from Canada and Mexico
	1164	05/14/96	IGI Resources Inc. (96-23-NG)	300 Bcf/2-year term		Short-term for 2 years from Canada
	1165	05/16/96	NUI Corporation (96-22-NG) & Tennessee Gas Pipeline Company (87-53-NG)	1,960 Mcf/per day		Long-term until year 2002 from Canada
	1166	05/16/96	West Texas Gas, Inc. (96-24-NG)		50 Bcf/2-year term	Short-term for 2 years to Mexico
	1167	05/20/96	Universal Resources Corporation (96-21-NG)	50 Bcf/2-year term		Short-term for 2 years from Canada

NUI Companies:  
City Gas Company of Florida  
Elizabethtown Gas Company  
Elkton Gas Service  
Natural Gas Services, Inc.  
North Carolina Gas Service  
Utah Billing Services, Inc.  
Valley Cities Gas Service  
Waverly Gas Service



550 Route 202-206  
P.O. Box 760  
Bedminster  
New Jersey 07921-0760  
Tel: (908) 781-0500  
Fax: (908) 781-0718

June 6, 1996

Mr. Thomas W. Dukes  
United States Department of Energy  
Office of Fuels Programs  
Attn.: Quarterly Report  
FE-53, Room 3H-087  
1000 Independence Avenue, SW  
Washington, DC 20585-0353

REC'D DOE/FE  
1996 JUN 10 P 1:04

Dear Mr. Dukes:

Please be advised that the date of first deliveries of natural gas to NUI Corporation pursuant to DOE/FERC Order No. 1165 in FE Docket No. 96-22-NG and ERA Docket No. 87-53-NG was May 17, 1996. The first quarterly Sales and Price Report will be filed in July, 1996, in accordance with DOE reporting requirements.

Sincerely,

Nancy Sobelson  
Director, Gas Administration