

FE DOCKET NO.: 96-39-NG
APPLICANT(S): NORTH CANADIAN MARKETING CORP

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1	NORTH CANADIAN MARKETING ✓	APPLICATION	Application for Long-Term Authority to Import Natural Gas from Canada	96-06-19	96-06-19
2	DOE/FE ✓	ORDER	Order 1182-Granting Long-Term Authority to Import Natural Gas from Canada	96-06-26	96-06-26

RECEIVED
OFC OF FOSSIL ENERGY

JUN 19 1996

LAW OFFICES
BRADY & BERLINER
A PROFESSIONAL CORPORATION
1225 NINETEENTH STREET, N.W.
SUITE 800
WASHINGTON, D.C. 20036
TELEPHONE (202) 955-6067
FACSIMILE (202) 822-0109

CALIFORNIA OFFICES
LOS ANGELES
SACRAMENTO
BERKELEY

June 19, 1996

96-38-NG

Via Messenger

Mr. Clifford P. Tomaszewski
Director for Natural Gas
Office of Fuels Programs
Office of Fossil Energy
U.S. Department of Energy
1000 Independence Avenue, S.W.
Forrestal Building
Washington, D.C. 20585

Dear Mr. Tomaszewski:

Enclosed herewith are the original and fifteen copies of the "Application of North Canadian Marketing Corporation For Authorization to Import Natural Gas From Canada," for filing this date. Enclosed also is a check for \$50 00 for the filing fee.

If you have any questions concerning this filing, please do not hesitate to contact the undersigned. Thank you for your assistance

Sincerely,


Jane E. Stelck, Esq.

Attorney for
NORTH CANADIAN MARKETING CORP.

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF ENERGY OFFICE OF FOSSIL ENERGY
WASHINGTON, D.C.

_____))
NORTH CANADIAN MARKETING)
CORPORATION)
_____))

FE Docket No. 96-39NG

**APPLICATION OF NORTH CANADIAN MARKETING CORPORATION
FOR AUTHORIZATION TO
IMPORT NATURAL GAS FROM CANADA**

Pursuant to Section 3 of the Natural Gas Act (NGA), 15 U.S.C. §717(b), as amended by the Energy Policy Act of 1992 [Pub.L.No 102-486, 106 Stat. 2777 (1992)], and Part 590 of the Regulations of the Department of Energy, 10 C.F.R. §590, et seq, North Canadian Marketing Corporation ("NCM"), hereby applies for authority to import natural gas from Canada on a long-term firm basis. NCM requests authority to import up to 25 MMcf per day beginning as soon as the authority herein requested can be granted. The import authority requested herein would terminate 15 years from the date of first delivery. Deliveries under the agreement are anticipated to commence as early as July and not later than September, 1996.

I.

The exact legal name of the applicant is North Canadian Marketing Corporation, a California corporation with its principal place of business located at Santa Ana, California. North Canadian Marketing Corporation is a wholly-owned subsidiary of North Canadian Resources, Inc., a Delaware Corporation. North Canadian Resources Inc. is a wholly-owned subsidiary of Norcen Explorer Inc., a Delaware Corporation, which is a wholly-owned U.S. subsidiary of Norcen Energy Resources Limited ("Norcen"), an Alberta Corporation. All communications with regard to this matter should

be addressed to:

Mr. Sheldon D. Reid
President,
North Canadian Marketing Corporation
715 5th Avenue, S.W.
Box 2595 Station M
Calgary, Alberta, CANADA T2P 4V4
(403) 231-0727

and

Jane E. Stelck, Esq
Brady & Berliner, P.C
1225 19th Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 955-6067

II

In a Natural Gas Purchase Agreement dated March 4, 1994, NCM, a California Corporation and Hermiston Generating Company L.P., ("Hermiston") a limited partnership formed under the laws of the State of Delaware and owning and operating a combined Cycle Power Plant in the State of Oregon, set forth the terms under which, providing certain conditions precedent are realized, NCM proposes to sell and Hermiston proposes to purchase natural gas. A copy of this purchase agreement is attached hereto as Appendix 1.

The gas to be imported will be produced in the Province of Alberta, Canada. The gas will be received into the NOVA Gas Transmission Ltd pipeline system and transported to the Alberta border. ANG will transport the gas to the Alberta/British Columbia Border to Kingsgate, British

Columbia PGT will transport the gas to Malin, Oregon, under NCM's firm transportation agreement on PGT.

The natural gas to be imported under the subject long-term authorization will be used by Hermiston Generating Company, L.P. to generate electricity at its plant located at Hermiston, Oregon.

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.

III.

Section 3(c) of the NGA 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. Section 717b. Inasmuch as NCM's application is for the importation of natural gas from Canada, with which the United States has in effect a free trade agreement, NCM submits that its application meets the public interest.

The contract between NCM and Hermiston provides for gas sales to Hermiston using a two-part pricing mechanism. Hermiston will pay a monthly demand charge based on NCM's firm transportation arrangements on NOVA, ANG, and PGT, and a monthly commodity charge which includes an annual escalation clause. The monthly commodity charge is calculated by multiplying the Wellhead Price for the month in question by the total quantity of gas actually delivered plus

the aggregate quantity of NOVA Fuel Gas, ANG Fuel Gas, and PGT Fuel Gas, to the extent such fuel gas is not supplied by the transporting pipelines as part of their tariff or rate for service. The Wellhead Price effective on November 1, 1993 is \$1.635 per MMBtu, to be increased by 5.5% on November 1, 1994 and each year thereafter. The contract also provides for a Gas Inventory Charge ("GIC") which applies to any contract year in which the Actual Annual Quantity was less than the Minimum Annual Quantity (defined as 80 percent of the annual quantity).

IV

The terms of the proposed agreement with Hermiston provide for a volume of firm sales of 25 MMcf per day beginning as soon as possible, for a term of 15 years to commence on the date of first deliveries.


NCM therefore seeks authorization for imports of 25 MMcf/d beginning as soon as the requested authority can be granted, and continuing at that level for a term of 15 years, to commence on the date of first delivery.

V.

In conclusion, the agreement described in this application proposes natural gas imports which are fully consistent with the goals and criteria presented in U.S. law and regulation and fully consistent with the public interest. The benefits to the gas consuming public, and to those who will be supplied from the Hermiston Project, of long-term gas supplies are substantial. In short, the applicant believes that this proposed import agreement represents an example of precisely the sort of natural gas trade the Department of Energy seeks to foster, and hereby requests that the authority

be granted to import the gas required in performance of this agreement pursuant to §3 of the Natural Gas Act.

Respectfully submitted,
NORTH CANADIAN MARKETING CORPORATION.



Jane E. Stelck, Esq.
Brady & Berliner
1225 Nineteenth Street, N.W.
Suite 800
Washington, DC 20036

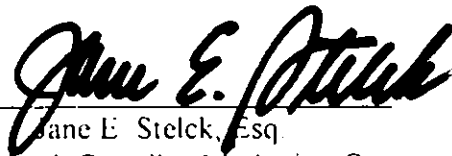
Attorneys for
NORTH CANADIAN MARKETING CORPORATION

June 19, 1996

Appendix 1

Statement and Opinion of Counsel

Having reviewed the Articles of Incorporation and Bylaws, as amended, of North Canadian Marketing, Corporation, a corporation organized under the laws of the State of Delaware, it is my opinion that the proposed imports of natural gas described in the application to which this document is attached are within the corporate powers of the applicant North Canadian Marketing, Corporation.



Jane E. Stelck, Esq.

Attorney for North Canadian Marketing Corporation

June 19, 1996

GAS SALE AGREEMENT

MADE AS OF THE 4th DAY OF March, 1994

BETWEEN

NORTH CANADIAN MARKETING CORPORATION, AS SELLER,

AND

HERMISTON GENERATING COMPANY, L.P., AS BUYER

TABLE OF CONTENTS

	PAGE
I INTERPRETATION	1
1.01 General Definitions	1
1.02 Heating Value and Volumetric Definitions	11
1.03 Industry Usage	13
1.04 Applicable Law and Selection of Forum	13
1.05 Time	13
1.06 Headings	13
1.07 Gender	14
1.08 Hereof, Etc.	14
1.09 Currency	14
1.10 Subject to All Laws	14
1.11 Severability	15
II CONDITIONS OF THIS AGREEMENT	15
2.01 The Conditions	15
2.02 Fulfillment of Conditions	16
2.03 Notification of Fulfillment of Conditions	16
2.04 Cooperation Between the Parties	16
2.05 Periodic Reports from Buyer and Seller	16
2.06 Termination of this Agreement	17
2.07 Subordination of the Project Lender	18
III TERM OF THIS AGREEMENT	19
3.01 Notice of Commencement Date and First Nomination	19
3.02 Term	19
3.03 Exterm Gas	20
3.04 Assignment of Transportation Arrangements	20
IV GAS SUPPLY	22
4.01 Nominated Quantity	22
4.02 Nominations	23
4.03 Reduction of Deliveries	24
4.04 Gas Inventory Charge	25
4.05 Buyer's Obligation to Take	26
4.06 Additional Gas Requirements	31
4.07 Curtailment	33
4.08 Fuel Gas Percentages	33

	PAGE
V SELLER'S FAILURE TO DELIVER	34
5.01	34
VI MEASUREMENT AND SPECIFICATIONS OF THE GAS	37
6.01 Units of Measurement	37
6.02 Sales Unit	38
6.03 Measurement	38
6.04 General Specifications	38
6.05 Preservation of Records	38
VII DELIVERY	39
7.01 Delivery Point	39
7.02 Transfer of Possession and Title	39
7.03 Delivery in a Common Stream	39
VIII PRICE	39
8.01 Demand/Commodity Service	39
8.02 Monthly Transportation Charge	40
8.03 Monthly Commodity Charge	42
8.04 Wellhead Price	43
8.05 Resale Price	43
8.06 Tolling for Gas Supplied From Other Sources	43
IX WARRANTIES, REPRESENTATIONS AND INDEMNITIES	44
9.01 Warranties	44
9.02 Indemnity	44
9.03 Payment of Royalties, Taxes Etc.	45
X BILLINGS AND PAYMENTS	45
10.01 Monthly Statement	45
10.02 Payment Date	46
10.03 Examination of Records	47
10.04 Failure to Pay	47
10.05 Adjustments	49
10.06 Limitation	49
10.07 Seller's Delay	50

	PAGE
10.08 Accuracy of Calculations	50
10.09 Credit Terms	50
XI FORCE MAJEURE	55
11.01 Performance Excused	55
11.02 Definition of Force Majeure	55
11.03 Exceptions	56
11.04 Continuing Obligation	57
11.05 Resumption of Obligations	58
11.06 Settlement of Industrial Disturbances	58
11.07 Source of Gas	58
11.08 Extended Force Majeure	58
XII ARBITRATION	59
12.01 Waiver	59
12.02 Further Assurances	59
12.03 Notices	59
12.04 Assignment and Enurement	60
12.05 Security Interest	62
12.06 Confidentiality	62
12.07 Legal Opinions to Project Lender	63
12.08 No Special Damages	63
12.09 Amendment	64
12.10 Extension of Transportation Agreements	64
12.11 No Amendment	64
12.12 Seller's Guarantor	65
12.13 PacifiCorp Acknowledgement	65
XIII MISCELLANEOUS PROVISIONS	65
13.01 Demonstrable Reserves	65
13.02 Export License and Removal Permit	69

EXHIBIT A

EXHIBIT B

EXHIBIT C

GAS SALE AGREEMENT

THIS AGREEMENT MADE AS OF THIS 4th DAY OF MARCH, 1994

BETWEEN:

NORTH CANADIAN MARKETING CORPORATION, a body corporate, incorporated under the laws of the State of California and having its principal office in Santa Ana, California, County of Orange (hereinafter called "Seller")

OF THE FIRST PART

AND

HERMISTON GENERATING COMPANY, L.P., a limited partnership formed under the laws of the State of Delaware and having an office in Bethesda, Maryland, County of Montgomery (hereinafter called "Buyer")

OF THE SECOND PART

Seller and Buyer are sometimes hereinafter referred to separately as "Party" and jointly as "Parties."

WHEREAS Seller is willing to provide a long term firm supply of gas for sale to Buyer hereunder.

WHEREAS Buyer requires a long term firm supply of gas for its proposed electricity generating plant to be located at Hermiston, Oregon;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the terms and conditions herein contained the Parties hereto covenant and agree as follows:

ARTICLE I - INTERPRETATION

1.01 General Definitions

The following words and phrases wherever used in this Agreement, including the recitals and the Exhibits hereto, shall have the meanings set forth below:

- (a) "Actual Annual Quantity" means, with respect to a Contract Year, the aggregate of the Nominated Quantities in effect for each Day of the Contract Year including Nominated Quantities during periods of Seller-declared Force Majeure, any quantities to be added pursuant to paragraph 4.05(d)(ii)(C) and any quantities of the Additional Available Quantity which Buyer would have continued to nominate but for Seller's request to reduce the Nominated Quantity under paragraph 4.05(d)(vi), in each case to the extent not double counted with the Nominated Quantities;

LESS

- (1) any quantities of gas delivered by Seller to the Delivery Point in accordance with Buyer's nominations but which Buyer failed to accept delivery of and (2) any quantities of gas nominated by Buyer but not delivered by Seller to the Delivery Point due to Buyer having claimed Force Majeure except as specifically provided for in Subsection 11.04(b), and (3) any quantities of gas not delivered by Seller on any Day when Seller has suspended deliveries under the Suspension Rights, in each case to the extent not double counted.
- (b) "Additional Available Quantity" or "AAQ" shall have the meaning attributed thereto in Subsection 4.05(d).
- (c) "Additional Gas" shall have the meaning attributed thereto in Subsection 4.06(a).
- (d) "Affiliate" of any designated person means any person that has a relationship with the designated person whereby either of such persons directly or indirectly controls, is controlled by or is under common control with the other, or holds or beneficially owns 5 percent or more of the equity interest in the other or 5 percent or more of any class of voting securities of the other. For this purpose, the term "control" means the power, direct or indirect, of one person to direct or cause the direction of the management or policies of another, whether by contract, through voting securities or otherwise.
- (e) "Alternate Fuel" shall have the meaning attributed thereto in Subsection 5.01(b).

- (f) "Alternate Fuel Damages" shall have the meaning attributed thereto in Subsection 5.01(d).
- (g) "Amendment" shall have the meaning attributed thereto in Section 12.11.
- (h) "ANG" means Alberta Natural Gas Company Ltd and its successors and assigns to the extent permitted by Exhibit A.
- (i) "ANG Contract" means the transportation contract originally dated July 10, 1991 (expires November 1, 2008, which contract is subject to extension at Seller's Guarantor's sole discretion for a period ending not earlier than twenty years from the Commencement Date) between Seller's Guarantor as shipper and ANG as transporter providing for firm transportation service of 1,121.1 10^3m^3 /day of gas under Rate Schedule FS-1 (or any successor rate schedule thereto) from the Alberta/British Columbia border receipt point to the Canada/U.S. border delivery point near Kingsgate, British Columbia.
- (j) "ANG Fuel Gas" means for any Day a quantity of fuel gas required to be supplied to ANG which will be deemed to be equal to: i) the lesser of the aggregate quantity of gas actually delivered to Buyer or the Nominated Quantity plus ii) PGT Fuel Gas, then multiplied by iii) the ANG Percentage.
- (k) "ANG Fuel Gas Capacity" means capacity under the ANG Contract equal to the Contract Demand multiplied by the PGT Percentage.
- (l) "ANG Percentage" means 1.4% unless and until modified from time to time by the provisions of Section 4.08 hereof.
- (m) "Annual Quantity" means, with respect to any particular Contract Year hereunder, the Contract Demand multiplied by the number of Days in such Contract Year.
- (n) "Base Project Capability" means 84,700 MMBtu/Day.
- (o) "Business Day" means each Day of the week other than a Saturday, a Sunday or any day which is a statutory holiday in either the Province of Alberta or the State of Oregon.
- (p) "Buyer's Arrangements" means all arrangements and agreements to be made by Buyer to enable it to accept delivery of the gas to be sold hereunder at the

Delivery Point on a firm basis for the Primary Term, to transport such gas to the Combined Cycle Power Plant on a firm basis for the Primary Term and to use such gas in the Combined Cycle Power Plant, and all other necessary arrangements and agreements to be made by Buyer to enable the commencement of deliveries hereunder, including but not limited to an arrangement with Cascade Natural Gas Corporation ("Cascade") for transportation of the gas via a lateral to be constructed by Cascade which will be capable of transporting the Base Project Capability and is expected to be completed prior to January 1, 1996.

- (q) "Buyer's Offer" shall have the meaning attributed thereto in Subsection 4.06(a).
- (r) "Buyer's Term Sheet" shall have the meaning attributed thereto in Section 3.03.
- (s) "Canadian Regulatory Approvals" means all permits, certificates, licenses, orders, consents, authorizations and approvals as may be required by any governments, governmental agencies or regulatory bodies in Canada to permit the removal of the gas to be sold hereunder from the province of production, the export of the gas from Canada and otherwise to allow the transaction contemplated hereunder to commence, including but not limited to:
 - (i) a short term export order from the NEB; and
 - (ii) a short term removal permit from the ERCB.
- (t) "Combined Cycle Power Plant" means an electricity generating plant and related facilities, including possible cogeneration facilities, which plant is to have a nominal installed capacity of approximately 474 megawatts to be developed and operated and is currently owned by Buyer, at a site at Hermiston, Oregon to generate electricity for sale to PacifiCorp provided however that the ownership of a portion of the Combined Cycle Power Plant may be modified pursuant to the Option Agreement between PacifiCorp and Hermiston Generating Company, L.P. dated October 7, 1993.
- (u) "Commencement Date" means the date on which the Combined Cycle Power Plant is capable of reliably generating sufficient power to meet Buyer's obligations under the PacifiCorp Electricity Sale Agreement and Buyer has certified such to

PacifiCorp, provided that: (A) if such date is prior to July 1, 1996, the Commencement Date shall be deemed to be July 1, 1996; and (B) if such date is later than September 30, 1996, the Commencement Date shall be deemed to be September 30, 1996; unless the Parties otherwise agree in writing.

- (v) "Commodity Charges" means amounts payable from time to time by a shipper to a pipeline entity pursuant to contract or as may be mandated to be paid by a shipper by any regulatory body or agency or by legislation or regulations, in respect of any costs, charges, surcharges or levies chargeable or payable whatsoever for actual quantities or volumes of gas moved under a gas transportation contract in a Month, including fuel not supplied directly by Seller.
- (w) "Commodity Transportation Toll" shall have the meaning attributed thereto in Subsection 8.02(d).
- (x) "Confidential Information" shall have the meaning attributed thereto in Section 12.06.
- (y) "Contract Demand" shall mean a quantity measured at the Delivery Point of 20,000 MMBtu/Day.
- (z) "Contract Year" means a period of twelve (12) consecutive Months beginning on November 1 during the calendar year in question; provided however that the first Contract Year hereunder shall begin on the Commencement Date and shall end on the last Day of October next following; and provided however that the Contract Year in which this Agreement is terminated shall end on the effective date of the termination.
- (aa) "Current Exchange Rate" means for the Business Day in question the noon daily spot rate of exchange applicable to the exchange of Canadian dollars for U.S. dollars as quoted for such Business Day by the Bank of Canada.
- (bb) "Day" means a period of twenty-four (24) consecutive hours beginning and ending at 8:00 a.m. The reference date for any Day shall be the calendar date upon which the twenty-four (24) hour period commences.

- (cc) "Delivery Point" means a point or points at or near the point of interconnection between the facilities of PGT and those of the appropriate connecting downstream pipeline in or near Malin, Oregon, Stanfield, Oregon or near Hermiston, Oregon, and/or such other points as may from time to time be mutually agreed upon in writing by the Parties.
- (dd) "Demand Charges" means amounts payable from time to time by a shipper to a pipeline entity pursuant to contract or as may be mandated to be paid by a shipper by any regulatory body or agency or by legislation or regulations, to reserve and maintain the ability to transport quantities or volumes of gas on a firm basis for an agreed to period of time on a pipeline and which are payable irrespective of actual quantities or volumes shipped and including any amounts chargeable to a shipper's account as costs, charges, surcharges, or levies for the firm service or any related or connected fixed components thereto.
- (ee) "Demand Transportation Toll" shall have the meaning attributed thereto in Subsection 8.02(b).
- (ff) "Demonstrable Reserves" shall have the meaning attributed thereto in Subsection 13.01(a)(i).
- (gg) "Disputed Amount" shall have the meaning attributed thereto in Subsection 10.04(d).
- (hh) "ERCB" means the Alberta Energy Resources Conservation Board and any successor thereto.
- (ii) "Escrow" shall have the meaning attributed thereto in Subsection 10.09(a)(ii).
- (jj) "Exterm Gas" shall have the meaning attributed thereto in Section 3.03.
- (kk) "Exterm Transportation Arrangements" shall have the meaning attributed thereto in Section 3.04.
- (ll) "Force Majeure" shall have the meaning attributed thereto in Article XI.
- (mm) "gas" means, as the context may require, raw natural gas and/or residue natural gas remaining after conditioning or processing of raw natural gas.

- (nn) "Gas Inventory Charge" shall have the meaning attributed thereto in Subsection 4.04(a).
- (oo) "include(s)" and "including" means include(s) or including, but not limited to.
- (pp) "Independent Consultant" shall have the meaning attributed thereto in Subsection 13.01(a)(ii).
- (qq) "Index Price" shall have the meaning attributed thereto in Subsection 4.05(d).
- (rr) "Interest" means interest in U.S. dollars at the rate per annum equal to the prime rate as announced and published from time to time by Citibank, N.A. (or its successors) at its principal office in New York, New York, U.S.A., as its prime commercial lending rate plus two percent (2%) per annum.
- (ss) "Maximum ANG Fuel Gas" means the ANG Fuel Gas for any Day when the Contract Demand is nominated and delivered.
- (ti) "Maximum NOVA Fuel Gas" means the NOVA Fuel Gas for any Day when the Contract Demand is nominated and delivered.
- (uu) "Maximum PGT Fuel Gas" means the PGT Fuel Gas for any Day when the Contract Demand is nominated and delivered.
- (vv) "Minimum Annual Quantity" means, with respect to each Contract Year during the term hereof, a quantity equal to eighty percent (80%) of the Annual Quantity with respect to such Contract Year.
- (ww) "Month" means a period beginning on the first Day of a calendar month and ending immediately prior to the first Day of the next succeeding calendar month.
- (xx) "Monthly Commodity Charge" shall have the meaning attributed thereto in Section 8.03.
- (yy) "Monthly Statement" shall have the meaning attributed thereto in Section 10.01.
- (zz) "Monthly Transportation Charge" shall have the meaning attributed thereto in Subsection 8.02(a).
- (A) "NEB" means the National Energy Board and any successor thereto.
- (B) "Nominated Quantity" shall have the meaning attributed thereto in Section 4.01.

- (C) "Non-Performing Party" shall have the meaning attributed thereto in Subsection 2.06(e).
- (D) "NCMI" means North Canadian Marketing Inc. and its successors and assigns.
- (E) "NOVA" means NOVA Corporation of Alberta and its successors and assigns.
- (F) "NOVA Delivery Point Contract" means the transportation contract originally between NCMI as shipper and NOVA as transporter (expiring November 1, 2008, which contract is subject to extension at NCMI's sole discretion for a period ending not earlier than twenty years from the Commencement Date) providing for firm export delivery point transportation service of 1595 10³m³/day of gas under the FS Rate Schedule (or any successor rate schedule thereto) at the Alberta/British Columbia border delivery point near Coleman, Alberta.
- (G) "NOVA Fuel Gas" means for any Day a quantity of fuel gas required to be supplied to NOVA which will be deemed to be equal to i) the lesser of the aggregate quantity of gas actually delivered to Buyer or the Nominated Quantity, plus ii) ANG Fuel Gas, plus iii) PGT Fuel Gas, then multiplied by iv) the NOVA Percentage.
- (H) "NOVA Fuel Gas Capacity" shall be deemed to mean capacity under the NOVA Delivery Point Contract and the NOVA Receipt Point Contracts which is equal to the sum of: i) the Contract Demand multiplied by the ANG Percentage, plus ii) the ANG Fuel Gas Capacity.
- (I) "NOVA Percentage" means 1% unless and until modified from time to time by the provisions of Section 4.08 hereof.
- (J) "NOVA Receipt Point Contracts":
 - i) for all purposes of this Agreement other than Section 2.01, shall be deemed to mean one NOVA FS transportation agreement for firm receipt point service at the Progress Receipt Point Station No. 2153 having a maximum daily receipt volume sufficient to deliver into NOVA at the applicable time a quantity of gas equal to 125% of the sum of the Contract

Demand, the Maximum NOVA Fuel Gas, the Maximum ANG Fuel Gas and the Maximum PGT Fuel Gas; and

- ii) for the purpose of Section 2.01, means the various NOVA FS transportation agreements for firm receipt point service which are held by or for any of NCML, Seller, Seller's Guarantor or any other person supplying gas to Seller (which gas can be redelivered by Seller to Buyer) and which at any given time and throughout the Primary Term shall in the aggregate be sufficient to enable delivery of the Contract Demand plus all related fuel gas.
- (K) "PacifiCorp" means PacifiCorp and its successors and assigns.
- (L) "PacifiCorp Electricity Sale Agreement" means the Long Term Power Sales Agreement entered into as of October 7, 1993 for the sale of electricity produced at the Combined Cycle Power Plant between Hermiston Generating Company, L.P., as seller, and PacifiCorp, as buyer, a true and executed copy of which having been delivered by Buyer to Seller prior to the execution and delivery of this Agreement.
- (M) "PGT" means Pacific Gas Transmission Company and its successors and assigns.
- (N) "PGT Contract" means the transportation contract originally dated April 25, 1991 (expires November 1, 2023) between Seller's Guarantor as shipper and PGT as transporter providing for firm transportation service of 39,185 MMBtu/day of gas under Rate Schedule T-3 (or any successor rate schedule thereto) from the Canada/U.S. border receipt point near Kingsgate, British Columbia to the Malin, Oregon Delivery Point.
- (O) "PGT Fuel Gas" means for any Day a quantity of fuel gas required to be supplied to PGT which will be deemed to be equal to i) the lesser of the aggregate quantity of gas actually delivered to Buyer or the Nominated Quantity multiplied by ii) the PGT Percentage.

- (P) "PGT Percentage" means the percentage representing the fuel gas on the PGT system specified in the then applicable PGT tariff for transportation to the Delivery Point.
- (Q) "Primary Term" shall have the meaning attributed thereto in Subsection 3.02.
- (R) "Production Month" shall have the meaning attributed thereto in Section 10.01.
- (S) "Project Lender" means each and every person or agent(s) of such persons (the name, address and telecopy number of which shall be identified by Buyer by notice to Seller prior to the Commencement Date) which at any time and from time to time during the term hereof: (i) is to serve as a lender to Buyer in connection with financing of all or any of the construction, development, ownership, maintenance and operation of the Combined Cycle Power Plant including refinancings, or (ii) is granted any security interest by Buyer in the Combined Cycle Power Plant or any assets relating thereto (but who is not a lender included in (i) above), provided however that Buyer may from time to time during the term hereof by notice to Seller change any Project Lender for all purposes of this Agreement to any other persons so long as there shall not at any time be more than one address for service for all Project Lenders hereunder.
- (T) "Readjustment Date" shall have the meaning attributed thereto in Section 4.08.
- (U) "Regulatory Agency" shall have the meaning attributed thereto in Section 12.06.
- (V) "Release" shall have the meaning attributed thereto in Subsection 3.04(a).
- (W) "Renominated Quantity" shall have the meaning attributed thereto in Subsection 4.02(b).
- (X) "Security" shall have the meaning attributed thereto in Subsection 3.04(a).
- (Y) "Seller's Guarantee" shall mean the guarantee to be executed and delivered by Seller's Guarantor in the form attached to this Agreement as Exhibit A.
- (Z) "Seller's Guarantor" means North Canadian Oils Limited and its successors and assigns to the extent permitted by Exhibit A.
- (AA) "Seller's Transportation Arrangements" means for each Month such portion of the capacity under each of the ANG Contract, the PGT Contract and NOVA Delivery

Point Contract required to transport on a firm basis the Contract Demand plus the NOVA Fuel Gas Capacity and the ANG Fuel Gas Capacity. Seller's Transportation Arrangements shall also include the right pursuant to Section 3.04 to assign each transportation agreement to Buyer pursuant to NOVA, ANG, and PGT's currently effective tariffs, subject to Buyers' satisfying the applicable requirements set forth in such tariffs.

- (BB) "Shortfall Quantity" shall have the meaning attributed thereto in Section 5.01.
- (CC) "Supply Failure" shall have the meaning attributed thereto in Section 5.01.
- (DD) "Suspension Rights" shall mean Seller's right to suspend deliveries of gas hereunder pursuant to Section 2.07 and Subsections 2.06(f), 10.04(b), 10.04(c) and 10.09(c).
- (EE) "Transaction Notice" shall have the meaning attributed thereto in Subsection 4.05(d).
- (FF) "United States Regulatory Approvals" means all permits, certificates, licenses, orders, consents, authorizations and approvals as may be required by any governments, governmental agencies or regulatory bodies in the United States to permit the importation into the United States of the gas to be sold hereunder to commence, including the obligation to file with the United States Custom Service for entry into the United States.
- (GG) "Wellhead Price" shall have the meaning attributed thereto in Section 8.04.

1.02 Heating Value and Volumetric Definitions

- (a) The following words, phrases and symbols, wherever used in this Agreement shall have the meanings set forth below.
 - (i) "Btu" means one British thermal unit.
 - (ii) "cubic metre" or "m³" means that quantity of gas which at a temperature of 15° Celsius and at a pressure of 101.325 kilopascals absolute occupies one cubic metre.
 - (iii) "GJ" means one gigajoule and is equal to 1,000,000,000 joules.

- (iv) "gross heating value" means the gross or higher heating value of the gas expressed in MJ per cubic metre (MJ/m^3), produced by the complete combustion of one cubic metre of gas with air, at a temperature of 15° Celsius and at an absolute pressure of 101.325 kilopascals, with the gas free of all water vapour, the products of combustion cooled to a temperature of 15° Celsius, and the water formed by the combustion condensed to the liquid state.
 - (v) "joule" or "J" means the amount of work done when the point of application of a force of one newton is displaced a distance of one metre in the direction of the force.
 - (vi) "MMBtu" means 1,000,000 Btu's.
 - (vii) "MJ" means one megajoule and is equal to 1,000,000 joules.
 - (viii) " 10^3m^3 " means 1,000 cubic metres of gas.
- (b) All conversions to be done for or in any way in relation to this Agreement, from Imperial units of measurement to metric units or vice versa, shall be done on the following basis, namely:
- (i) 1,000 cubic feet of gas at standard reference conditions of 14.65 pounds per square inch absolute and 60° Fahrenheit shall be considered equivalent to 28.17399 cubic metres of gas at standard reference conditions of 101.325 kilopascals and 15° Celsius.
 - (ii) 1 cubic metre of gas at standard reference conditions of 15° Celsius and 101.325 kilopascals shall be considered equivalent to 0.035493730 thousand cubic feet at standard reference conditions of 14.65 pounds per square inch absolute at 60° Fahrenheit.
 - (iii) 1 MMBtu shall be considered equivalent to 1.054615 GJ's at standard reference conditions of 101.325 kilopascals and 15° Celsius.
 - (iv) 1 GJ at standard reference conditions of 101.325 kilopascals and 15° Celsius shall be considered equivalent to 0.9482133 MMBtu's.

Any such conversion from Imperial units of measurement to metric units or vice versa which are not expressly contemplated above, shall be carried out in accordance with the Canadian Petroleum Association (the predecessor to Canadian Association of Petroleum Producers) Supplementary Metric Practice Guide for the Petroleum and Natural Gas Industry and Services, latest edition.

1.03 Industry Usage

In this Agreement, words and phrases which are not defined herein and which have an accepted meaning in the custom and usage of the petroleum and natural gas industry in Canada, shall have that meaning.

1.04 Applicable Law and Selection of Forum

This Agreement shall be governed by and shall be construed in accordance with the laws of the Province of Alberta, excluding any conflicts of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction, and the Courts having jurisdiction in the Province of Alberta, or the courts of any other jurisdiction mutually agreed upon by the Parties hereto, shall have exclusive jurisdiction in relation to any legal proceedings arising in connection with this Agreement.

1.05 Time

- (a) Time shall be of the essence in this Agreement.
- (b) Unless otherwise specified herein, all references to specific times hereunder shall be references to Mountain Standard Time or Daylight Savings Time, whichever is then prevailing.

1.06 Headings

The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

1.07 Gender

Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires.

1.08 Hereof, Etc.

"Hereof", "herein", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection or Exhibit and the terms "Article," "Section", "Subsection" and "Exhibit" followed by a number and/or letter refer to the specified Article, Section, Subsection or Exhibit of this Agreement.

1.09 Currency

Unless otherwise expressly provided herein, all references in this Agreement to amounts expressed in dollars shall be references to amounts expressed in United States dollars.

1.10 Subject to All Laws

- (a) This Agreement shall be subject to all enforceable laws, orders, directives, rules and regulations of any governmental body or official having jurisdiction.
- (b) If any governmental or administrative approval, permit, order or other authorization shall be necessary relative to this Agreement and any provision hereof or any transaction contemplated hereby, each Party hereto shall use all commercially reasonable efforts to assist in the obtaining of such approval, permit, order or other authorization, including if reasonably requested by the other Party, by providing information, oral and written testimony, and certifications. Each Party will furnish to the other all non-confidential copies of petitions, applications or other filings which each submits to governmental agencies or regulatory bodies to obtain Canadian Regulatory Approvals, United States Regulatory Approvals and Federal Energy Regulatory Commission approval of the PacifiCorp Electricity Sale Agreement.

1.11 Severability

Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

ARTICLE II - CONDITIONS OF THIS AGREEMENT

2.01 The Conditions

The initial delivery of gas hereunder and the continuation of deliveries after they have commenced, shall be subject to the satisfaction of the following conditions, namely:

- (a) On or before October 1, 1994, Seller shall have obtained or caused to have been obtained all Canadian Regulatory Approvals, all Seller's Transportation Arrangements and the NOVA Receipt Point Contracts;
- (b) On or before October 1, 1994, Seller shall have obtained all United States Regulatory Approvals, including but not limited to an import authorization from the United States Department of Energy or the Federal Energy Regulatory Commission as may be required;
- (c) On or before October 15, 1994, Buyer shall have made all of Buyer's Arrangements to permit deliveries of gas hereunder for use at the Combined Cycle Power Plant and achieved the financial closing with respect to all of the financing necessary for the construction and commencement of operations of the Combined Cycle Power Plant.
- (d) On or before November 1, 1995, Buyer shall have commenced excavation at the project site and entered into a contract for the purchase of the combustion turbines for the Combined Cycle Power Plant.
- (e) On or before September 1, 1997, the Combined Cycle Power Plant shall have demonstrated capability to utilize not less than 80% of the Base Project Capability for the production of power and steam and Buyer shall have accepted the Combined Cycle Power Plant as substantially complete

under the terms of the engineering, procurement, and construction contract and delivered notice thereof to Seller.

2.02 Fulfillment of Conditions

Seller shall use all commercially reasonable efforts to fulfill its obligations and to fulfill the conditions set forth in Subsection 2.01(a) and (b) and Buyer shall use all commercially reasonable efforts to fulfill its obligations and the conditions set forth in Subsections 2.01(c), (d) and (e).

2.03 Notification of Fulfillment of Conditions

Seller shall notify Buyer forthwith in writing upon the fulfillment of the conditions set forth in Subsection 2.01(a) and (b) and Buyer shall notify Seller forthwith in writing upon the fulfillment of each of the conditions set forth in Subsections 2.01(c), (d) and (e).

2.04 Cooperation Between the Parties

Seller and Buyer shall cooperate with each other so as to assist each other in fulfilling the various conditions set forth in Section 2.01 in order that the delivery of gas hereunder may commence on the Commencement Date.

2.05 Periodic Reports from Buyer and Seller

- (a) Buyer shall promptly provide Seller with copies of all of the non-financial parts of all monthly or other status reports which Buyer will be providing to its Project Lenders, or PacifiCorp pursuant to the PacifiCorp Electricity Sale Agreement, in connection with the Combined Cycle Power Plant.
- (b) Following financial closing of the construction loan for the Combined Cycle Power Plant, Buyer shall provide Seller with annual audited financial statements of Buyer as soon as they are reasonably available and in any event within 120 Days following the end of Buyer's fiscal year and quarterly unaudited financial

statements of Buyer as soon as they are reasonably available and in any event within 45 Days following each quarter of Buyer's fiscal year.

- (c) Seller may, if it in good faith determines that it has insufficient information respecting Buyer's ability to meet its obligations as they become due under this Agreement, employ at Seller's own expense a nationally recognized independent accounting firm reasonably acceptable to Buyer to audit the accounts, books and records of Buyer relevant to the financial condition of Buyer. Seller shall provide Buyer with at least 30 Days prior written notice of the audit and Seller shall not be entitled to conduct such audit either during the period when Buyer's annual audit is being conducted by an independent accounting firm or immediately prior to Buyer's fiscal year end without Buyer's prior approval, not to be unreasonably withheld. Buyer shall use commercially reasonable efforts to cooperate with Seller's audit. Seller shall provide to Buyer copies of all audit results and reports.

2.06 Termination of this Agreement

- (a) If the obligations of Buyer as set forth in Subsections 2.01(c), (d) or (e) have not been satisfied, then Seller shall have the right to thereafter terminate this Agreement on at least ninety (90) Days notice to Buyer and PacifiCorp without any liability or penalty of any kind by either Party to the other, except for obligations which have accrued prior to the time of termination.
- (b) If either of the obligations set forth in Subsections 2.01(a) or (b) have not been satisfied, then Buyer shall have the right to thereafter terminate this Agreement on at least ninety (90) Days notice to Seller without any liability or penalty of any kind by either Party to the other, except for obligations which have accrued prior to the time of termination.
- (c) If any obligation or condition referred to in any such ninety (90) Day notice, as the case may be, or upon which any such notice is based, is satisfied prior to the date on which such notice is effective to terminate this Agreement, then the Party which was issued such notice shall notify the other Party prior to the end of the

ninety (90) Day period that the ninety (90) Day notice shall be of no further effect, such failure to satisfy such condition shall be deemed to be waived and this Agreement shall remain in full force and effect.

- (d) If any obligation or condition under Article II, except for Subsection 2.01(e), Subsection 2.06(f) or Section 2.07, shall not have been satisfied by the Commencement Date and this Agreement has not otherwise been terminated, then unless a notice to terminate for nonfulfillment of such obligation or condition has been served prior to the Commencement Date, any such obligation and any such condition shall be deemed to have been waived by the Parties hereto.
- (e) Notwithstanding the foregoing provisions of this Section 2.06, if either Buyer or Seller shall have failed to fulfill its obligations under Sections 2.02 or 2.04 (the "Non-Performing Party"), then the Non-Performing Party shall not, throughout the period of its failure to fulfill such obligations, have the right to terminate this Agreement as aforesaid. To the extent the failure of the Non-Performing Party has impaired the other Party's ability to meet its requirements under Section 2.01, such other Party shall obtain a Day for Day extension of its obligations under Section 2.01.
- (f) If the PacifiCorp Electricity Sale Agreement terminates at any time prior to January 1, 1996, Buyer shall immediately notify Seller of such termination and Seller shall have the right to delay commencement of deliveries or suspend deliveries hereunder unless and until Buyer or the Project Lender on or before January 1, 1996 posts and maintains a letter of credit consistent with the requirements of Section 10.09(a)-(c).

2.07 Subordination of the Project Lender

It shall be a continuing condition of Seller's obligations to deliver and sell gas to Buyer hereunder that the rights of each Project Lender to require and to receive payment of any amount, either directly or indirectly, from Buyer, shall be subordinated and made

subject to Buyer's prior obligation to pay Seller all amounts due hereunder. Such arrangements shall be for the term of this Agreement and be evidenced by an agreement between Seller and each Project Lender or, at Buyer's option, any Project Lender authorized to act as agent for the remaining Project Lenders, which shall provide that any Project Lender shall be bound by the provisions of this Section 2.07 and which shall require that the Project Lender, upon enforcement of its security and disposition of the Combined Cycle Power Plant, use commercially reasonable efforts to require the person(s) acquiring the Combined Cycle Power Plant to assume Buyer's obligations hereunder. If at any time, any Project Lender is not bound by this subordination provision, Buyer shall so advise Seller and PacifiCorp. Until Buyer demonstrates to Seller's reasonable satisfaction that each such Project Lender is bound by this provision, Seller may (a) suspend deliveries of gas hereunder or, (b) if Buyer has not posted a letter of credit consistent with Section 10.09(a), Seller may terminate this Agreement on thirty (30) Days notice to Buyer, PacifiCorp and the Project Lender, such termination to be subject to all obligations accrued prior to the effective date of termination.

ARTICLE III - TERM OF THIS AGREEMENT

3.01 Notice of Commencement Date and First Nomination

Buyer shall provide Seller with no less than one full calendar month's prior notice of each of the Commencement Date and the first nomination for any gas to be delivered hereunder.

3.02 Term

Subject to all other provisions hereof, this Agreement shall be effective from the date hereof and shall continue thereafter in full force and effect such that gas shall be sold hereunder for a term commencing on the Commencement Date and continuing thereafter up to and including the date which is the fifteenth (15th) anniversary of the Commencement Date (the "Primary Term").

3.03 Exterm Gas

If, prior to the twentieth (20th) anniversary of the Commencement Date, Buyer anticipates that it will have, or has or continues to have requirements for gas for consumption at the Combined Cycle Power Plant for the purposes of generating electricity thereat during any portion of any period occurring after the Primary Term and prior to the twentieth (20th) anniversary of the Commencement Date hereof even if deliveries of gas continue after the twentieth (20th) anniversary of the Commencement Date ("Exterm Gas"), then Buyer shall include Seller in the list of gas suppliers contacted by Buyer for the purposes of arranging the purchase of any Exterm Gas. Once Buyer has developed a term sheet containing customary terms and conditions for the tender of gas supply to Buyer ("Buyer's Term Sheet") or has entered into negotiations with an alternative gas supplier which negotiations, in Buyer's reasonable opinion, would result in an agreement that differs from the provisions of Buyer's Term Sheet, then Buyer shall give notice to Seller specifying all of such terms. The rights, obligations, terms and conditions set forth in Subsections 4.06(b), (c), and (d), as such pertain to Buyer's Offer for Additional Gas shall apply mutatis mutandis to each of Buyer's Term Sheets.

3.04 Assignment of Transportation Arrangements

In the event Seller does not provide Exterm Gas for 20,000 MMBtu/Day to the Delivery Point through the twentieth (20th) anniversary of the Commencement Date, the following provisions shall apply to the portion of Seller's Transportation Arrangements required to deliver such 20,000 MMBtu/Day to the Delivery Point net of any Exterm Gas provided by Seller ("Exterm Transportation Arrangements"):

- (a) if Buyer so requests within 5 Months before the end of the Primary Term, Seller shall assign or cause to be assigned to Buyer, effective as of the end of the Primary Term, the Exterm Transportation Arrangements for the full remaining term of such arrangements, provided that:
 - (i) Buyer first obtains the complete and permanent release from the transporting pipeline or pipelines of NCMI, Seller and Seller's Guarantor

(or any successor thereof) from any and all obligations whatsoever connected with the Exterm Transportation Arrangements (and Buyer shall use all commercially reasonable efforts to obtain such a release (the "Release")); or

- (ii) if Buyer cannot obtain such a release, it first provides Seller with a letter of credit, a parental guarantee or other security in a form, on terms and in an amount reasonably satisfactory to Seller to ensure that NCMI, Seller and Seller's Guarantor (and any successor thereof) shall not be responsible for such obligations (the "Security"); or
- (b) if Buyer does not request such assignment, Seller shall have the right to assign or cause to be assigned to Buyer (and Buyer shall accept such assignment), effective as of the end of the Primary Term, the Exterm Transportation Arrangements for the full remaining term of such arrangements, provided that Seller gives Buyer notice of such assignment at least 4 Months prior to the end of the Primary Term. If Seller's Transportation Arrangements are so assigned to Buyer, Buyer shall use all commercially reasonable efforts to obtain the Release or, if it is not able to do so, Buyer shall provide the Security and Buyer shall indemnify NCMI, Seller and Seller's Guarantor from any and all claims and demands whatsoever arising from or in any way pertaining to the Exterm Transportation Arrangements after the effective date of the assignment;
- (c) if Buyer has been assigned the Exterm Transportation Arrangements, until the twentieth (20th) anniversary of the Commencement Date, it shall comply with the terms and conditions of the Exterm Transportation Arrangements and shall not, except as required by pipeline tariffs or governmental requirements, agree to or otherwise amend, renew, terminate or surrender them; allow any such arrangements to expire; or assign to third parties or encumber all or any part of such arrangements, if any of the foregoing would adversely and materially affect NCMI's, Seller's or Seller's Guarantor's rights under the Exterm Transportation Arrangements for the period, if any, following Buyer's reassignment of such

transportation arrangements under Subsections 3.04(d) and 3.04(e), without the prior written consent of Seller;

- (d) Buyer shall have the right to reassign the Exterm Transportation Arrangements to Seller, effective as of the end of the twentieth (20th) anniversary of the Commencement Date and Seller shall accept such assignment, if Buyer has given Seller no less than 12 Months prior notice of its intention to do so, provided that Seller shall not be obligated to accept the reassignment if Buyer is in default of any of its obligations hereunder, including Subsection 3.04(c), or under the Exterm Transportation Arrangements;
- (e) Buyer shall reassign the Exterm Transportation Arrangements to Seller, effective as of the end of the twentieth (20th) anniversary after the Commencement Date, if Seller has requested such reassignment at least 11 Months prior to such date, provided that Seller shall not be obliged to accept the reassignment if Buyer is in default of any of its obligations hereunder, including Subsection 3.04(c), or under the Exterm Transportation Arrangements;
- (f) if Buyer reassigns the Exterm Transportation Arrangements to Seller, Seller, NCFMI and Seller's Guarantor shall obtain a Release or Security and provide an indemnity to Buyer equivalent in all respects to that contemplated in Subsections 3.04(a) and (b); and
- (g) all assignments of the Exterm Transportation Arrangements contemplated in this Section 3.04 shall be subject to the terms of the applicable pipeline tariffs.

ARTICLE IV - GAS SUPPLY

4.01 Nominated Quantity

Subject to the terms and conditions of this Agreement: (a) Buyer shall have the right for each Day during the term hereof from and after the Commencement Date to nominate and purchase a quantity of gas up to the Contract Demand (the "Nominated Quantity") from Seller for receipt by Buyer at the Delivery Point, and (b) Seller shall on each Day during the term hereof deliver and sell such Nominated Quantity to Buyer.

4.02 Nominations

- (a) Subject to the provisions of Subsection 4.02(b), Buyer shall provide Seller with notice 2 hours prior to the earliest of the nomination deadlines of NOVA, ANG, and PGT in effect at the applicable time of the quantity of gas nominated by Buyer for the Day in question.
- (b) Notwithstanding any other provision of this Agreement to the contrary, Buyer may change its nomination during the Day in question by informing Seller of such change consistent with Subsection 4.02(c) (the "Renominated Quantity") and Seller shall commence selling and delivering to Buyer such Renominated Quantity as soon thereafter as commercially reasonable but in no event later than the notice period required by ANG, PGT or NOVA to change pipeline nominations, whichever is longest, plus two hours after Buyer has telephoned Seller pursuant to Subsection 4.02(c).
- (c) Buyer when providing any nomination for gas hereunder or when making any change to a nomination already in place shall firstly telephone the nomination or change in nomination to Seller's gas operation personnel and in all cases promptly thereafter provide written confirmation of the nomination or change in nomination via facsimile transmission to Seller's operations group at the telecopy number so provided in Section 12.03 hereof.
- (d) For all purposes of this Agreement, a Nominated Quantity for any particular Day from and after the Commencement Date during the term hereof shall remain the standing nomination of the quantity of gas to be purchased hereunder on subsequent Days until such nomination is changed by Buyer in accordance with Subsections 4.02(a) or (b).
- (e) Buyer and Seller shall use all commercially reasonable efforts to cooperate and work together as necessary in order to develop, amend, implement and maintain nomination procedures that are consistent with the nomination and operational requirements of NOVA, ANG and PGT and of the appropriate connecting pipeline(s) downstream of the Delivery Point.

- (f) In recognition of the operational difficulties and the inefficiencies resulting from any frequent alteration of its nominations hereunder, Buyer shall make a good faith effort to alter its nominations of gas hereunder as infrequently as is reasonably possible, provided however, Buyer's nominations will address the safe and reliable operation of the Combined Cycle Power Plant, Buyer's obligations to PacifiCorp and Buyer's desire to avoid transportation balancing charges and penalties.
- (g) Each Month, Buyer shall provide its best estimate of the quantities of gas that it expects to take during the following Month, provided however that Buyer shall not in any way be bound by such estimates which shall be provided to Seller as a courtesy to Seller but without in any way restricting or adding to Buyer's rights to take gas under the terms of this Agreement.

4.03 Reduction of Deliveries

- (a) Buyer shall provide prompt notice to Seller as to whether or not Buyer will be purchasing gas hereunder during the following periods:
 - (i) each period of intended reduction by PacifiCorp of its purchases of electricity under the terms of the PacifiCorp Electricity Sale Agreement; and
 - (ii) each period of scheduled maintenance of the Combined Cycle Power Plant as provided for in the PacifiCorp Electricity Sale Agreement.
- (b) Notwithstanding that Buyer may have notified Seller that Buyer will not be purchasing gas hereunder during any period as contemplated in Subsection 4.03(a), Buyer shall nevertheless have the right to subsequently nominate and to purchase gas hereunder from Seller on any Days during such period if Buyer complies with the nomination requirements set forth in Section 4.02 with respect to such Days.

4.04 Gas Inventory Charge

- (a) On the 25th Day of November following each Contract Year with respect to which the Actual Annual Quantity was less than the Minimum Annual Quantity, a Gas Inventory Charge shall be paid by Buyer to Seller in U.S. funds, such Gas Inventory Charge to be calculated in accordance with the following formula, namely:

$$\text{Gas Inventory Charge} = (A-B) \times C$$

where:

- A = the Minimum Annual Quantity for the Contract Year in question;
- B = the Actual Annual Quantity for the Contract Year in question; and
- C = \$0.40, provided however that such amount of \$0.40 shall be increased on November 1, 1996 by 5.5%. On the first Day of November of each Contract Year during the remaining term hereof there shall be a further increase of 5.5% from the amount in effect on the last Day of the immediately preceding Contract Year.

The payment provisions set forth in Article X, including without restricting the foregoing the place and manner of payment, the payment of Interest on overdue amounts, Seller's remedies for non-payment, adjustments and the limitation on disputes, shall apply, with all necessary changes, to the payment of the said Gas Inventory Charge. The amount payable by Buyer hereunder is to reasonably compensate Seller for costs involved in maintaining, at its expense, gas supply and deliverability and field facilities in order to meet its daily obligations under this Agreement. The Parties agree that under no circumstances whatsoever shall payments of the Gas Inventory Charge or any portion thereof be:

- (i) considered a penalty or otherwise be repayable to Buyer;
- (ii) entitle Buyer to take gas at a future time without the obligation to pay the price then in effect or to extend the term of this Agreement;
- (iii) entitle Buyer to nominate additional quantities of gas; or

- (iv) entitle Buyer to any other right or benefit of any nature or kind whatsoever.
- (b) For purposes of calculating the Gas Inventory Charge, the first Contract Year shall be deemed to have commenced on July 1, 1996. For the period July 1, 1996 through October 31, 1996, all gas purchased by Buyer from Seller for use in the Combined Cycle Power Plant, including but not limited to gas used for testing and start-up purposes, and gas remarketed by Buyer pursuant to Subsection 4.05(d) hereunder shall be considered to be part of Buyer's Actual Annual Quantity.

4.05 Buyer's Obligation to Take

- (a) Buyer has no obligation to nominate or take any portion of the Contract Demand under this Agreement on any particular Day except as provided for in Subsections 4.05(b) and (c). Except for gas required to be nominated by Buyer as provided for in Subsections 4.05(b) and (c), Buyer's sole obligation for failure to nominate or take any portion of the Contract Demand hereunder is as set forth in Section 4.04. Nothing in this Subsection 4.05(a) shall be construed to limit or diminish in any way whatsoever Buyer's obligation to pay the Demand Transportation Toll.
- (b) (i) On any Day on which the Combined Cycle Power Plant consumes gas, Buyer shall nominate a quantity of gas to be purchased from Seller (not to exceed the Contract Demand) which represents a pro rata portion of all of the gas to be consumed by the Combined Cycle Power Plant on that Day except that Buyer may nominate from Seller a non-pro rata portion of such gas, not to exceed the Contract Demand hereunder, to the limited extent reasonably necessary to correct imbalances among the gas suppliers to the Combined Cycle Power Plant caused by events of Force Majeure, Supply Failures by Seller or if required for transportation balancing. Seller's pro rata portion shall be calculated as follows:

20,000 MMBtu/Day divided by the Base Project Capability

- (ii) Subject to Subsection 4.02(b), Buyer shall, having nominated for the Nominated Quantity with respect to any particular Day, be obligated to take such Nominated Quantity on that Day if Seller is ready, willing and able to deliver it at the Delivery Point.
- (c) If Seller is capable of delivering the Contract Demand to the Delivery Point, Buyer shall not consume oil or fuel other than gas at the Combined Cycle Power Plant if the effect would be to reduce purchases of gas hereunder below the Contract Demand.
- (d) Buyer shall have the right but not the obligation to nominate for quantities of gas for resale by Buyer to third parties including PacifiCorp in accordance with the terms of this Subsection; provided that Buyer's right to nominate for gas for resale to third parties other than PacifiCorp shall be for the purpose of providing Buyer with opportunity to minimize or eliminate payments under Subsection 4.04(a). For any Day when the quantity of gas which Buyer would nominate from Seller for consumption at the Combined Cycle Power Plant (in accordance with Subsection 4.05(b)) would be less than the Contract Demand (the difference being the "Additional Available Quantity" or "AAQ"), Buyer shall be entitled to include in its Nominated Quantity all or any portion of the AAQ for resale to third parties including PacifiCorp in accordance with the following terms:
 - (i) the Nominated Quantity for any Day (including any nomination for all or any portion of the AAQ) shall not exceed the Contract Demand;
 - (ii) Whenever Buyer proposes to resell gas to any third party other than PacifiCorp, the following procedure shall apply:
 - (A) Buyer shall notify Seller in writing of all of the terms of any such proposed third party resale arrangement (including the price payable and identity of the gas purchaser) promptly upon making any such arrangements ("Transaction Notice"). Buyer shall not resell gas acquired under this Subsection 4.05(d)(ii) to any such third party without first obtaining Seller's election as described in this

Subsection. Seller shall have the right to elect not to sell gas to Buyer hereunder for resale to any third party under the terms of a Transaction Notice whenever Seller prefers to sell such gas into any market or to use such gas for any other purpose.

- (B) Seller shall use all commercially reasonable efforts to advise Buyer, within 24 hours of receiving a Transaction Notice, whether or not Seller elects to sell gas to Buyer for resale by Buyer under the terms of the Transaction Notice. Seller's election to Buyer may be provided verbally by telephone in which event Seller shall confirm such election in writing to Buyer by the end of the second Business Day following the Day during which Seller provided its verbal election to Buyer. If Seller fails to provide either a verbal or written election respecting any Transaction Notice to Buyer within 24 hours of receiving the Transaction Notice, Seller shall be deemed to have elected not to sell gas to Buyer for the purpose of such Transaction Notice.
 - (C) If Seller elects (or is deemed to have elected) not to sell gas to Buyer for the purposes of any resale arrangement proposed by Buyer in a Transaction Notice when the price offered under the Transaction Notice equals or exceeds the Wellhead Price in effect for the applicable Month in which Seller receives the Transaction Notice, then the quantity which Buyer would have purchased hereunder for such resale (but for Seller's election not to sell gas to Buyer for such purpose) shall be added to the Actual Annual Quantity for the purposes of Subsection 4.04(a);
- (iii) Whenever Buyer proposes to resell gas to PacifiCorp, Buyer shall notify Seller of the amount of gas to be sold to PacifiCorp prior to such resale. Buyer's notice may be provided verbally by telephone in which event Buyer shall confirm such resale in writing to Seller by the end of the second

Business Day following the Day on which Buyer provided its verbal notice to Seller. Seller shall have no right of election with respect to sales to PacifiCorp.

- (iv) the price to be paid to Seller for each MMBtu of the AAQ nominated by Buyer and delivered by Seller during the Month shall:
 - (A) in the case of sales by Buyer to PacifiCorp, be equal to 105% of the Wellhead Price in effect for the Month; and
 - (B) in the case of sales by Buyer to any other third party, be the price specified in the Buyer's Transaction Notice to Seller under Subsection 4.05(d)(ii);
- (v) the price to be negotiated by Buyer with any third party purchaser (other than PacifiCorp) shall be the best price reasonably available at the time. Buyer shall exercise commercially reasonable efforts to negotiate a price for sale to any third party purchaser (other than PacifiCorp) equal to or exceeding the Index Price in effect for the Day preceding the Day on which Seller receives the Transaction Notice. For purposes of this Section, "Index Price" for any Day shall mean the simple average of the range of prices per MMBtu as quoted under the heading "Canadian Gas" as found in the table entitled "Daily Price Survey" for quantities delivered to "NW Sumas" in the Calgary Edition of "Gas Daily". If, during the term of this Agreement, Gas Daily (1) is no longer published, (2) ceases to publish a price report providing the information specified in the definition of Index Price, or (3) materially alters the basis upon which the Index Price is determined and reported, then the Parties shall promptly meet, following the request of either Party, to agree upon an alternate publication for the purposes of this Section. If the Parties fail to meet within 10 Days of either Party requesting a meeting for this purpose or if the Parties meet but fail to agree upon an alternate publication within 20 Days following the request of either Party hereunder, then either Party may refer the matter to

arbitration for binding determination pursuant to the International Commercial Arbitration Act (Alberta). A single arbitrator shall select an appropriate reference in any publication for the purposes of setting the Index Price under this Agreement (taking into account the reasons that the original price reference was selected by the Parties). The arbitrator shall be entitled to (1) select a price reference in an alternate publication or (2) select a price reference in any publication and specify for adjustments which are to be made to such price reference for the purposes of determining the Index Price. Following a determination of the new price reference, such new price reference shall become the Index Price. In the event Seller determines in its sole discretion that the proposed price for resale to a third party (other than PacifiCorp) is not the best price reasonably available after taking into account the Index Price, Seller's sole right shall be to elect not to sell gas to Buyer for such purpose in the manner set forth in Subsection 4.05(d)(ii). In that event, the quantity which Buyer would have purchased hereunder for such resale (but for Seller's election not to sell gas to Buyer for such purpose) shall be included in the Actual Annual Quantity if Buyer has satisfied the requirements contained in the last sentence of Subsection 4.05(d)(ii); and

- (vi) except for quantities of the AAQ being resold by Buyer to PacifiCorp, Buyer shall, if requested to do so by Seller, promptly reduce its Nominated Quantity by all or the necessary portion (as applicable) of the AAQ then being nominated by Buyer in order to eliminate or reduce, to the extent of the AAQ then being nominated, any Shortfall Quantity which is caused by Seller's inability to deliver the full Nominated Quantity, provided that the Shortfall Quantity has not resulted from Seller's diversion of gas to other parties, except those parties with which Seller has firm commitments to serve.

- (e) If on any Day Buyer does not nominate for quantities of gas equal to the Contract Demand for its own use and/or for resale purposes in accordance with Subsection 4.05(d) or Seller has suspended deliveries hereunder pursuant to the Suspension Rights, Seller shall be entitled to utilize all or any portion of Seller's Transportation Arrangements for other purposes for Seller's sole benefit. Buyer's obligation to pay the full Demand Transportation Toll shall not be suspended or reduced during the time that Seller utilizes Seller's Transportation Arrangements and shall remain Buyer's responsibility and obligation.
- (f) Once deliveries of gas have commenced hereunder, Buyer shall deliver to Seller on or before the tenth (10th) Day of each Month a report containing the following information respecting the immediately preceding Month: (A) the quantity of gas consumed at the Combined Cycle Power Plant; (b) the quantity of gas sold to third parties pursuant to Subsection 4.05(d)(ii) and the price Buyer received for such gas from each of such third parties; (C) the quantity of gas sold to PacifiCorp pursuant to Subsection 4.05(d)(iii); and (D) the quantity of gas purchased by Buyer from any persons whomsoever for any purpose whatsoever. If actual data is not available, Buyer may employ estimates in such report, subject to adjustment in the Month following in order to reflect actual data. Upon receiving the adjusted data, Seller shall revise prior Monthly Statements to the extent necessary to reflect such actual data consistent with the provisions of Section 10.02.

4.06 Additional Gas Requirements

- (a) If, and at any time during the Primary Term, gas in excess of the Base Project Capability ("Additional Gas") is required for consumption at the Combined Cycle Power Plant (whether due to an unexpected requirement based on the original design, an expansion, a short term requirement, or otherwise), then Buyer shall include Seller in the list of gas suppliers contacted by Buyer for the purposes of arranging the purchase of the Additional Gas. Buyer shall specify all essential

terms which would be required to create a binding agreement and upon which Buyer is willing to purchase gas ("Buyer's Offer").

(b) Seller shall have the option:

- (i) at the time Seller receives oral notice of Buyer's Offer, if such Additional Gas is required for a period of less than 32 Days; or
- (ii) for 2 Business Days from receipt of Buyer's Offer if such Additional Gas is required for a period of between 32 Days and 365 Days; or
- (iii) for 30 Business Days from receipt of Buyer's Offer if such Additional Gas is required for a period in excess of 366 Days,

to elect whether or not it will supply all or any part of Seller's pro rata portion of the Additional Gas on the terms set forth in Buyer's Offer (Seller's pro rata portion shall be calculated in the manner specified in Subsection 4.05(b)(i) and shall be specified in Buyer's Offer).

- (c) If Seller elects to supply all or any part of its pro rata portion of the Additional Gas, it must do so under the same schedule and terms and conditions in Buyer's Offer except that should Buyer's Offer contemplate as a requirement that regulatory authorizations in any form be obtained by the prospective supplier, Seller shall have the option of supplying gas subject to the terms specified in Buyer's Offer regarding such regulatory authorizations or supplying the gas by utilizing then current regulatory authorizations or obtaining new regulatory authorizations of a character no more onerous than those then in place under which it is supplying the Contract Demand.
- (d) If Seller does not elect to supply Additional Gas or if Seller cannot obtain the required authorizations and transportation service within the required period in Buyer's Offer, then Buyer may purchase the Additional Gas from another gas supplier, provided that such gas supplier is not offered terms more favorable than the terms offered to Seller.

- (e) Whenever Buyer purchases Additional Gas:
- (i) if Buyer obtains such Additional Gas from another gas supplier, then Buyer shall only purchase such Additional Gas from such other gas supplier on any Day when Buyer has nominated for the Contract Demand from Seller if Seller is able to supply the Contract Demand on such Day; or
 - (ii) if Seller is to supply the Additional Gas, then Buyer shall nominate for such Additional Gas from Seller pro rata with all other suppliers of Additional Gas and only purchase such Additional Gas from Seller and others on any Day when Buyer has first nominated for the Contract Demand from Seller at the price then in effect under Article VIII.

4.07 Curtailment

In the event any producer or transporter of gas hereunder curtails or interrupts deliveries of gas for any reason, such that Seller cannot satisfy Buyer's nomination hereunder, Seller agrees to deliver gas hereunder on a pro rata basis with all other firm gas sales obligations of Seller under which gas is delivered to buyers at a delivery point interconnecting with the facilities of either ANG or PGT.

4.08 Fuel Gas Percentages

On the Commencement Date and on January 1, 1997 and on each January thereafter, ("Readjustment Date") the ANG Percentage and the NOVA Percentage shall be adjusted from the percentages that have been previously in effect hereunder as necessary to reflect the simple average of the monthly fuel gas ratios as were required to be provided by shippers on each of ANG and NOVA, respectively, during the most recent 12 Months preceding the Readjustment Date. Such percentages are to be adjusted prospectively effective as of the applicable Readjustment Date.

ARTICLE V - SELLER'S FAILURE TO DELIVER

5.01

If Seller shall for any reason whatsoever, other than the occurrence of an event of Force Majeure or the suspension of deliveries by Seller pursuant to the Suspension Rights, fail to meet its gas delivery and sale obligations to Buyer as set forth in Section 4.01 (a "Supply Failure") or shall reasonably anticipate the probable occurrence of a Supply Failure (the heating value of the difference between the Nominated Quantity and the amount of gas which Seller is able to deliver to the Delivery Point on each Day being hereinafter called the "Shortfall Quantity"), then the following shall apply:

- (a) Seller shall use all reasonable efforts to provide prior notice to Buyer of any anticipated Supply Failure as early as reasonably possible under the circumstances, such notice to include Seller's estimate of the anticipated Shortfall Quantity and the duration of the Supply Failure, and will keep Buyer informed throughout the Supply Failure of the expected duration of the Supply Failure and level of the Shortfall Quantity.
- (b) In the event of a Supply Failure, if fuel is required for consumption at the Combined Cycle Power Plant or by PacifiCorp (or by other third parties, unless Buyer is required to reduce its AAQ pursuant to Subsection 4.05(d)(vi)), Buyer shall have the right to obtain from other sources or drawdown from its storage, oil and/or gas ("Alternate Fuel") having a heating content equivalent to that of the Shortfall Quantity. In considering whether oil or gas is the more appropriate Alternate Fuel in any particular circumstances, Buyer shall consider the relative efficiency and relative cost of the two. Buyer shall notify Seller of its use of Alternate Fuel as promptly as practicable under the circumstances.
- (c) Should Buyer purchase Alternate Fuel in the circumstances of a Supply Failure to meet the fuel consumption requirements of the Combined Cycle Power Plant or of PacifiCorp (or of other third parties, unless Buyer is required to reduce its AAQ pursuant to Subsection 4.05(d)(vi)), then Buyer

shall be obligated to utilize all commercially reasonable efforts to acquire such Alternate Fuel at a price which shall not exceed the price payable by Buyer for a quantity of gas hereunder having the equivalent heating content and if the price for Alternate Fuel exceeds the price payable for gas hereunder as aforesaid, it shall be at the lowest price reasonably available to Buyer under the circumstances. To the extent Buyer purchases Alternate Fuel during the Supply Failure, Buyer will use commercially reasonable efforts to obtain Alternate Fuel from sources enabling maximum utilization of Seller's Transportation Arrangements if such supplies are available at the lowest price reasonably available taking into account the expected duration of the Supply Failure and the relative availability, efficiency and firmness of supply of each Alternate Fuel and Buyer's ability to use Seller's Transportation Arrangements. To the extent permitted by the affected pipelines, Seller shall make or cause to be made Seller's Transportation Arrangements available to Buyer to transport the Alternate Fuel obtained by Buyer. Under no circumstances shall Buyer be required to take any action under this Article V that could in Buyer's judgment, acting reasonably, adversely affect the reliable, safe and efficient operation of the Combined Cycle Power Plant. Buyer shall notify Seller as soon as reasonably practicable following use of Alternate Fuel of the quantity and price of Alternate Fuel consumed by Buyer because of a Supply Failure.

- (d) Subject to the fulfillment by Buyer of its obligations under Subsection (c) of this Article V, Seller shall be liable to Buyer for damages in the event that Buyer uses Alternate Fuel during the period of a Supply Failure to meet the fuel consumption requirements of the Combined Cycle Power Plant or of PacifiCorp (or of other third parties, unless Buyer is required to reduce its AAQ pursuant to Subsection 4.05(d)(vi)) to the extent of the Shortfall Quantity, such damages to be equal to the price of Alternate Fuel

and the reasonable additional expense incurred to transport the Alternate Fuel by means other than Seller's Transportation Arrangements to the Combined Cycle Power Plant to replace the Shortfall Quantity, to the extent that such amounts are in excess of what Buyer would have incurred in acquiring gas hereunder and in transporting it to the Combined Cycle Power Plant but did not incur because the gas was not delivered to Buyer at the Delivery Point. The amount of such damages shall hereinafter be referred to as the "Alternate Fuel Damages".

- (e) The Supply Failure shall be deemed to have ended when Seller (i) delivers notice to Buyer that the Supply Failure has ended and (ii) Seller has resumed delivery of the Nominated Quantity. If Seller is unable to resume delivery of the Nominated Quantity at the time specified in the notice to Buyer, the Supply Failure shall be deemed to continue until such time as Seller has delivered substitute notice to Buyer and delivery of the Nominated Quantity actually resumes.
- (f) The Parties hereto hereby acknowledge and confirm that the Alternate Fuel Damages as set forth in Subsection (d) above provide compensation to Buyer in an amount which is reasonable in light of the anticipated or actual harm caused by any breach of this Agreement by Seller if Alternate Fuel is reasonably available to Buyer, the difficulties of proof of any such loss and the inconvenience or extreme difficulty of otherwise obtaining an adequate remedy. The Alternate Fuel Damages is therefore Buyer's sole remedy in the event of a Supply Failure if Buyer is reasonably able to obtain Alternate Fuels. If Buyer cannot reasonably obtain Alternate Fuels, notwithstanding any other provision of this Agreement, Buyer shall be relieved of its obligation to pay the portion of Demand Transportation Toll applicable to the quantity of gas which Seller failed to deliver and for which Buyer could not obtain Alternate Fuels. Such Demand Transportation Toll relief shall be Buyer's sole remedy in the event of a

Supply Failure if and to the extent that Buyer cannot obtain Alternate Fuel.

- (g) Buyer shall deliver to Seller on or before the 15th Day of each Month an invoice setting forth any Alternate Fuel Damages payable hereunder and the price and volume of Alternate Fuels used by Buyer in the previous Month because of a Supply Failure. If any necessary information is not available by such Day, Buyer may base the invoice on reasonable estimates which estimates shall be separately identified and supported by appropriate documentation. Seller shall pay Buyer in U.S. funds by direct electronic transfer to the account of Buyer the amount invoiced on the 25th Day of the Month in which the invoice is delivered, subject to a Day for Day extension for each Day Buyer's invoice is delivered after the 15th Day. If the 25th Day of a Month is not a Business Day, then Seller shall pay Buyer as aforesaid on or before the first Business Day immediately before the 25th Day of the Month in question. If the invoice is based on estimate(s), the Parties shall make all necessary adjustments as soon as possible in the Month following in order to reflect actual pricing and the quantities of Alternate Fuel used, provided however, that such adjustments made in the following Month shall not include any Interest. Should Seller fail to pay to Buyer all or part of any Alternate Fuel Damages owing hereunder when such amount is due as aforesaid, Interest shall accrue on the unpaid part thereof commencing on the date when such amount is due. All such Interest shall be payable on demand by Seller to Buyer.

ARTICLE VI - MEASUREMENT AND SPECIFICATIONS OF THE GAS

6.01 Units of Measurement

The unit of volumetric measurement for the purposes of this Agreement shall be the cubic foot. Any volume of gas delivered hereunder at the Delivery Point during any Month shall be converted into a corresponding quantity of gas expressed in relation to its

gross heating content in MMBtu units, by utilizing the average gross heating value (in MMBtu/Mcf) of all gas delivered by all shippers on the PGT system at the Delivery Point during the Month in question.

6.02 Sales Unit

The sales unit upon which payment by Buyer to Seller shall be made hereunder, shall be expressed with reference to its gross heating value in MMBtu units.

6.03 Measurement

All gas delivered by Seller to Buyer hereunder shall be measured as to volume and gross heating value by NOVA, ANG and PGT in accordance with the provisions of their approved and published gas transportation tariff at the nearest metering facility located at or upstream from the Delivery Point. All such measurements made by NOVA, ANG and PGT (including all corrections thereof in accordance with their approved and published gas transportation tariff) shall be final and binding upon Seller and Buyer as to the gas delivered hereunder by Seller to Buyer for all purposes of this Agreement.

6.04 General Specifications

The minimum gross heating value, quality, delivery pressure and temperature of the gas delivered hereunder shall conform to the minimum standards of PGT at the Delivery Point pursuant to the PGT Contract and PGT's tariff as set forth in the approved gas tariff published from time to time by PGT.

6.05 Preservation of Records

Unless the Parties otherwise agree, each Party shall preserve all original records in such Party's possession in connection with the gas sold under this Agreement for a period of at least two (2) years.

ARTICLE VII - DELIVERY

7.01 Delivery Point

The gas to be delivered and sold by Seller to Buyer hereunder shall be delivered at the Delivery Point.

7.02 Transfer of Possession and Title

Possession of and title to all gas delivered hereunder shall pass from Seller to Buyer at the Delivery Point. Until such delivery, Seller shall be deemed to be in control of and to be in possession of, have title to and be responsible for such gas. After delivery Buyer shall be deemed to be in control of and to be in possession of, to have title to and to be responsible for such gas.

7.03 Delivery in a Common Stream

Buyer and Seller each recognize that the gas purchased by Buyer hereunder may be from a commingled stream of gas and shall be received for the account of Buyer at the Delivery Point by the appropriate downstream pipeline.

ARTICLE VIII - PRICE

8.01 Demand/Commodity Service

By the terms of this Agreement, Seller is to provide Buyer with a demand/commodity service. Accordingly, the price to be paid by Buyer to Seller hereunder shall consist of two components, as follows:

- (a) a Monthly Transportation Charge to be calculated and paid pursuant to Section 8.02 throughout the period from January 1, 1996 to the end of the term hereof regardless of whether or not nominations for, or deliveries of, gas are made hereunder during the Month in question; and
- (b) subject to Subsection 4.05(d)(iv), a Monthly Commodity Charge to be calculated and paid pursuant to Section 8.03 for the gas actually delivered

hereunder during the Month in question, and for associated fuel gas and/or line loss.

8.02 Monthly Transportation Charge

- (a) The "Monthly Transportation Charge" to be paid by Buyer to Seller shall, subject to Subsection 8.02(c), equal the sum of the Demand Transportation Toll and the Commodity Transportation Toll. The portions of the Demand Transportation Toll and the Commodity Transportation Toll which are payable in Canadian funds shall in each case be converted to and paid pursuant to Section 10.02 in U.S. dollars using the Current Exchange Rate.
- (b) Subject to Section 8.06, for each Month beginning January 1, 1996, the Demand Transportation Toll payable by Buyer to Seller (irrespective of Buyer's nominations to Seller during the Month) shall be equal to:
 - (i) All Demand Charges which are paid or would be required to be paid by NCMI, Seller or Seller's Guarantor under Seller's Transportation Arrangements each Month and the Demand Charges equal to the amount that would be payable by Seller to NOVA each Month as if Seller held, for the term hereof, the NOVA Receipt Point Contracts, less,
 - (ii) any portion of such Demand Charges referred to above (calculated on a pro rata basis) attributable to quantities nominated by Buyer hereunder up to the Contract Demand but not delivered by Seller during a Supply Failure when Alternate Fuel (the costs for which Seller is responsible under Section 5.01) was not reasonably available. Notwithstanding the foregoing and for purposes of clarity (but not limitation) it is specifically agreed that to the extent Seller is not delivering Buyer's nominations in whole or in part as a consequence of an event of Force Majeure or pursuant to Seller's rights to suspend deliveries of gas under any of the Suspension Rights, there shall be no reduction in Buyer's obligation to pay to Seller Demand Charges hereunder.

- (c) From January 1, 1996 until the earlier of the Commencement Date or July 1, 1996, the Demand Transportation Toll in Subsection 8.02(b), which shall be paid Monthly, shall be reduced by (i) an amount equal to PGT's published Demand Charge toll for firm service rate classification T-3 for firm service from Stanfield to Malin calculated at 20,000 MMBtu/Day at a 100% load factor for each Day in such Month(s) and (ii) an amount equal to fifty percent (50%) of the Demand Transportation Toll which would be payable for firm service to the Stanfield Delivery Point for each Month, which amounts shall be credited to Buyer as an offset to the amounts payable by Buyer to Seller in the applicable Monthly Statements.
- (d) Subject to Section 8.06, the "Commodity Transportation Toll" is the amount that is payable each Month and equal to:
- (i) All Commodity Charges which are paid or would be required to be paid by NCML, Seller or Seller's Guarantor under Seller's Transportation Arrangements each Month in respect of NOVA Fuel Gas, ANG Fuel Gas, PGT Fuel Gas (to the extent fuel gas is not supplied by the applicable transporting pipeline(s) as a part of their tariff or toll for demand/commodity service) and for all quantities of gas delivered to Buyer in the Month, plus, Commodity Charges equal to an amount that would be payable by Seller to NOVA, each Month, as if Seller held for the term hereof the NOVA Receipt Point Contracts and initially delivered into NOVA at such point all quantities of gas delivered to Buyer in the Month as well as all NOVA Fuel Gas, ANG Fuel Gas and PGT Fuel Gas to the extent fuel gas is not supplied by the applicable transporting pipeline(s) as a part of their tariff or toll for demand/commodity service; and
 - (ii) any amounts not covered in Subsection 8.02(d)(i) which would be payable in a Month pursuant to 8.02(e).
- (e) Without restricting the generality of Subsection 8.02(d), the Commodity Transportation Toll shall include:

- (i) all amounts which are paid or required to be paid by NCMI, Seller or Seller's Guarantor directly or indirectly for NOVA Fuel Gas, ANG Fuel Gas and PGT Fuel Gas or line loss, when such fuel gas or line loss is supplied by the applicable transporting pipeline(s) as a part of their tariff or toll for demand/commodity service.
 - (ii) any imbalance penalties, charges, or other amounts assessed to Seller or others by any of NOVA, ANG, and PGT and indirectly or directly caused by Buyer or by an event of Force Majeure.
- (f) For greater clarity, the Parties agree that any benefits or detriments accruing to Seller or others resulting from adjustments made by regulatory bodies and/or the transporting pipelines, to the components of the Demand Transportation Toll and the Commodity Transportation Toll shall enure to the benefit or detriment of the Buyer as the case may be.
- (g) Unless this Agreement is earlier terminated, Buyer shall commence payment of the amounts due under Subsection 8.01(a) on January 1, 1996.

8.03 Monthly Commodity Charge

The "Monthly Commodity Charge" for each Month shall be equal to the product obtained by multiplying the Wellhead Price for the Month in question by the sum of the following quantities of gas:

- (i) the total quantity of gas actually delivered to Buyer at the Delivery Point by Seller hereunder in the Month, plus
- (ii) the aggregate quantity of NOVA Fuel Gas, ANG Fuel Gas and PGT Fuel Gas, to the extent fuel gas is not supplied by the applicable transporting pipeline(s) as a part of their tariff or toll for demand/commodity service, calculated for each Day in the Month, plus the aggregate quantity of gas which NCMI, Seller or Seller's Guarantor would be required by the applicable transporting pipeline(s) pursuant to their tariff to provide as line

loss under any of Seller's Transportation Arrangements and NOVA Receipt Point Contracts to the extent it pertains to the quantities of gas delivered to Buyer hereunder and has not already been included as a component under Section 8.02 and thereby double counted.

8.04 Wellhead Price

The Wellhead Price hereunder effective November 1, 1993 shall be \$1.635 (U.S. funds) per MMBtu (dry). Such amount shall be increased by 5.5% on November 1, 1994. Thereafter on each November 1 throughout the remainder of the term hereof the Wellhead Price shall be increased by 5.5% from the Wellhead Price that had been in effect on the previous November 1.

8.05 Resale Price

Notwithstanding any other provision of this Agreement, the price to be paid by Buyer for any gas purchased pursuant to Subsection 4.05(d)(iii) shall be as specified in Subsection 4.05(d)(iv).

8.06 Tolling for Gas Supplied From Other Sources

The Parties recognize that (1) Seller is entitled to supply gas to Buyer under this Agreement with gas obtained from any source as determined by Seller, and (2) when Seller acquires gas from any third party supplier for delivery to Buyer hereunder, Seller may take delivery of such gas from a third party at a point or points so that Seller or others are not utilizing some or all of Seller's Transportation Arrangements and its NOVA Receipt Point Contracts (in respect of such gas). Notwithstanding any other term of this Agreement, for the purposes of calculating the Demand Transportation Toll and the Commodity Transportation Toll, all gas delivered by Seller hereunder shall be deemed to have been shipped by Seller to Buyer using the NOVA Receipt Point Contracts and the Seller's Transportation Arrangements as if and for all intents and purposes that all gas delivered hereunder at all times was comprised of Seller's own

equity gas production which had been received into NOVA using the NOVA Receipt Point Contracts and delivered to Buyer at the Delivery Point using the Seller's Transportation Arrangements.

ARTICLE IX - WARRANTIES, REPRESENTATIONS AND INDEMNITIES

9.01 Warranties

Seller hereby covenants, warrants and represents to Buyer that:

- (a) Seller shall at the time of the delivery of gas hereunder have the right to sell such gas to Buyer;
- (b) all gas delivered hereunder shall be free and clear of all liens, encumbrances and adverse claims of every nature and kind whatsoever; and
- (c) the gas delivered by it to NOVA shall conform to the specifications of Subsection 6.04.

9.02 Indemnity

- (a) Seller shall indemnify Buyer and hereby agrees to save Buyer harmless from and in respect of all suits, actions, debts, accounts, damages, costs, losses and expenses of every nature and kind whatsoever arising from or in connection with any adverse claims of any or all persons for royalties, taxes, license fees, levies or charges thereon the liability of which is intended to be borne by Seller pursuant to Section 9.03 (either directly or indirectly through reimbursement to Buyer) or to the gas which are applicable before the title to the gas passes to Buyer or which may be levied and assessed prior to the sale thereof to Buyer.
- (b) Buyer shall indemnify Seller and hereby agrees to save Seller harmless from and in respect of all suits, actions, debts, accounts, damages, costs, losses and expenses of every nature and kind whatsoever arising from or in connection with any adverse claims of any or all persons for taxes, license fees, levies or charges thereon the liability for which is intended to be borne by Buyer pursuant to

Section 9.03 (either directly or indirectly through reimbursement to Seller) or to the gas which are applicable at or after the title to the gas passes to Buyer or which may be levied and assessed at or after the sale thereof of Buyer.

9.03 Payment of Royalties, Taxes Etc.

As between Seller and Buyer, the price for gas sold hereunder shall be inclusive of, and Seller shall be responsible for the payment of all amounts with respect to royalties, overriding royalties, and all taxes including business transfer, severance, excise and all other similar taxes, levies, license fees and charges that are validly payable or exigible on the gas delivered by Seller to Buyer prior to the sale of gas at the Delivery Point hereunder, thereafter Buyer shall be responsible for the payment of all such taxes, levies, license fees and charges that are validly payable or exigible on the gas upon or after the sale of gas at the Delivery Point. Notwithstanding the foregoing and Section 9.02, Buyer shall be responsible for (and reimburse Seller as the case may be) for all and any U.S. energy, consumption and other taxes, levies or charges which are imposed by any U.S. state, federal or local legislation or U.S. state, federal or local agency or regulatory body on the movement or sale of gas or on Seller's Transportation Arrangements at any location in the U.S. including any point from or at the border of Canada and the U.S. to and including the Delivery Point.

ARTICLE X - BILLINGS AND PAYMENTS

10.01 Monthly Statement

Commencing February 1996, Seller shall deliver to Buyer on or before the fifteenth (15th) Day of each Month a statement (the "Monthly Statement") which shall set forth the amount payable (including the Monthly Transportation Charges) by Buyer to Seller for gas sold hereunder during or for transportation charges incurred in the immediately preceding Month (the "Production Month"). The Monthly Statement shall include information as to the actual volumes delivered hereunder during the Production Month and the heat content thereof and the applicable prices for the Production Month. The

Monthly Statement shall also include adjustments for prior Months pricing and transportation charges and variations in gas invoiced and delivered. If any of the necessary information is not available by such Day, Seller may issue a Monthly Statement based on reasonable pricing estimates and estimates of the daily and/or total quantity of gas delivered hereunder or the transportation charges payable hereunder during the Production Month which estimates shall be separately identified and supported by any available third party documentation.

10.02 Payment Date

Buyer shall pay in U.S. funds by direct electronic transfer to the account of Seller on or before the 25th Day of each Month, the amount specified in Seller's invoice as follows:

Seller's Bank:	First Interstate California
Bank Address:	1344 North Tustin Street
	Orange, California 92667
	ABA No. 122000218
	Account No.: 248-336868

If the 25th Day of a Month is not a Business Day, then Buyer shall pay Seller as aforesaid on or before the first Business Day immediately before the 25th Day of the Month in question. If the Monthly Statement is based on an estimate of pricing, quantity of the gas sold, or the amount of transportation charges, the Parties hereto shall make all necessary adjustments as soon as possible in the Month following in order to reflect the actual pricing, quantities of gas sold and transportation charges, provided however, that such adjustments made in the following Month shall not include any Interest on the adjusted amounts. To the extent there are any amounts in a Monthly Statement expressed in Canadian dollars, Buyer shall convert such amounts to U.S. dollars at the Current Exchange Rate in effect for the Business Day immediately before such payment is due and pay such amount in U.S. dollars. Seller may from time to time change the account or financial institution to which funds shall be transferred hereunder by providing fifteen (15) Days notice thereof to Buyer.

10.03 Examination of Records

Upon prior notice, either Party hereto shall have the right (at such Party's sole cost) at all times during normal business hours to audit those accounts, books and records of the other Party which are necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Agreement or related transportation agreements or verify compliance with any obligation under this Agreement. Any error or discrepancy in statements furnished pursuant hereto shall be promptly reported to Seller or Buyer, as applicable, and proper adjustment thereof shall be made within thirty (30) Days after final determination of the correct volumes or amounts involved; provided, however, that if no such errors or discrepancies are reported to Seller or Buyer, as applicable, within two (2) years from the end of the Month in which such errors or discrepancies occurred, the same shall be conclusively deemed to be correct.

10.04 Failure to Pay

- (a) Should Buyer fail to pay to Seller all or part of any amount owing by it hereunder when such amount is due, Interest shall accrue on the unpaid part of the amount owing commencing on the date such amount is due. All such Interest shall be payable on demand by Buyer to Seller.
- (b) Subject to Subsection 10.04(d), if any failure to pay continues after payment is due, Seller may, in addition to all other remedies that it may have under the terms of this Agreement or otherwise and subject to its giving at least the greater of five (5) Days or three (3) Business Days prior notice to Buyer, to PacifiCorp and to the Project Lender pursuant to Section 12.03 of its intention to do so suspend delivery of gas hereunder until the amount due is paid in full.
- (c) As a prerequisite to its recommencing deliveries hereunder following any such suspension, Seller may require Buyer to post a letter of credit with all the terms and requirements and continuing obligations set forth for letters of credit in Subsections 10.09(a)-(c) and (e) which shall apply mutatis mutandis except that

Seller shall be deemed for the 12 Month period following any Month in which payment was not timely made to continue to have the requisite reasonable and probable grounds requiring Buyer to post such letter of credit.

- (d) Notwithstanding the foregoing, if Buyer:
 - (i) shall in good faith dispute an amount owing or allegedly owing by it to Seller hereunder (the "Disputed Amount"); and
 - (ii) shall pay to Seller all amounts which it concedes to be correct; and
 - (iii) pays the Disputed Amount into an interest bearing escrow account or trust account held by an independent third party satisfactory to Seller acting reasonably in order to assure payment to Seller of the amount ultimately found to be due to Seller by agreement or by a decision of a court of competent jurisdiction, as the case may be (with interest earned on such amount while held in escrow or in trust, as the case may be, to follow the principal), then Seller shall not be entitled to suspend delivery of gas hereunder or continue a suspension as a result of any such non-payment unless and until a default occurs in relation to the conditions of any such escrow or trust arrangement.
- (e) If Buyer does not in good faith dispute the payment of an amount owing by it to Seller hereunder and pay the Disputed Amount into an account in accordance with Subsection 10.04(d), then Seller, in addition to any other remedies that it may have under the terms of this Agreement or otherwise, may on notice of at least thirty (30) Days to Buyer, to PacifiCorp and to the Project Lender pursuant to Section 12.03, which notice may be given only after the expiry of the notice period specified in Subsection 10.04(b), elect to terminate this Agreement subject to the right to receive payment for accrued obligations and without further obligation to Buyer and without prejudice to any claims that it may have against Buyer for breach of this Agreement or otherwise; provided however, that Seller may not terminate this Agreement if Buyer, PacifiCorp or the Project Lender pays the amount which Buyer concedes to be correct and pays the Disputed Amount

into an account in accordance with Subsection 10.04(d), in each case together with any Interest that may be due, during such thirty (30) Day period.

10.05 Adjustments

Subject to the provisions of Section 10.02 and Subsection 10.04(d), if it shall be found that at any time Buyer has been overcharged by Seller in relation to this Agreement and Buyer shall have actually paid the amounts in question; then within thirty (30) Days after the final determination thereof, Seller shall refund the amount of any such overcharge and if such overcharge was the result of Seller's error, then Interest shall be paid by Seller on the amount in question from the date the overcharge was paid to the date the Buyer is reimbursed for the overcharge. If any such overcharge is not a result of an error on the part of Seller, then no Interest shall be charged to Seller except commencing thirty (30) Days after Seller shall first have become aware of such overcharge and until the amount overcharged shall have been paid. Similarly, if it shall be found that at any time Buyer has been undercharged under the provisions of this Agreement, then within thirty (30) Days after the final determination thereof, Buyer shall pay the amount undercharged. If such undercharge was the result of Buyer's error, then Interest shall be paid by Buyer on the amount in question from the date the amount undercharged should correctly have been due hereunder to the date that Buyer actually pays the amount undercharged. If any such undercharge is not a result of an error on the part of Buyer, then no interest shall be payable by Buyer with respect to the amount undercharged except commencing thirty (30) Days after Buyer shall first have become aware of such undercharge and until the amount undercharged shall have been paid.

10.06 Limitation

Notwithstanding anything herein contained to the contrary, neither Party hereto shall be entitled to dispute the quantity of gas delivered hereunder in any Month, or any amount paid or payable hereunder unless such dispute is raised by notice to the other Party hereto within two (2) years after the end of the Month in question.

10.07 Seller's Delay

If Seller's delivery of a Monthly Statement to Buyer is delayed by any number of Days after the fifteenth (15th) Day after the Month in question, then the time of payment hereunder shall be extended by a like number of Days unless Buyer is responsible for the delay.

10.08 Accuracy of Calculations

All calculations with respect to the price of gas hereunder shall be carried to four significant figures and the price per sales unit as so calculated shall be rounded to the nearest one hundredth of one cent (\$0.0001).

10.09 Credit Terms

(a)(i) If at any time or from time to time on or after January 1, 1996, Seller has reasonable and probable grounds after taking into account the provisions of Sections 2.07 and 10.04(d) hereunder to believe that Buyer is not able to meet its obligations as they become due under this Agreement, then Seller may request from Buyer an irrevocable and unconditional letter of credit having a term not less than 60 Days from a financial institution and in a form and substance reasonably acceptable to Seller, to ensure that there is an amount available to Seller equal to two (2) Months revenue hereunder. The two (2) Months revenue calculation shall be initially made using the then applicable Contract Demand plus a quantity equal to fuel and line loss that would be required or consumed in delivering the Contract Demand on a peak day to the Malin Delivery Point, multiplied by 61, multiplied by the Wellhead Price in effect at the time of the request (however it is recognized to the extent the letter of credit extends into periods in which the Wellhead Price will change according to the terms of this Agreement, Buyer shall prior to such periods have increased the letter of credit to cover and reflect changes occurring in the Wellhead Price on a prospective basis for purposes of satisfying the two Month revenue calculation), then adding

amounts which would be due for a Monthly Transportation Charge under Section 8.02 for a two Month period, assuming a 100% load factor. Buyer shall, within twenty (20) Business Days of Seller's request, provide Seller with said letter of credit, provided however that if the reasonable and probable ground on which Seller's request for a letter of credit is based is a deemed ground pursuant to Subsection 10.09(b) or is due to a failure to pay under Subsection 10.04(c), Buyer shall within ten (10) Business Days of Seller's request, provide Seller with said letter of credit. Buyer shall renew or replace and keep in full force and effect each letter of credit provided by Buyer under this Section until Seller advises Buyer (pursuant to Subsection 10.09(e)) that there is no further requirement to maintain any such letter of credit. If any letter of credit is not renewed or replaced prior to the tenth (10th) Day before its stated maturity or expiry date or if Seller has not received appropriate confirmation of such renewal or replacement from the issuer of such letter of credit prior to such tenth (10th) day, then Seller shall be entitled to draw the full amount payable under the letter of credit then in effect.

- (ii) The amount drawn by Seller pursuant to the last sentence of Subsection 10.09(a)(i), if any, shall be placed into a trust account to be held by Seller in trust for Buyer at a bank that shall be rated at least "A" by Standard & Poor's or the equivalent by Moody's Investors Services, Inc. having assets of at least \$20 billion and shall be considered a "letter of credit" for all purposes of this Agreement. Seller shall invest the proceeds of such drawing in a daily interest-bearing trust account at such bank (which daily interest-bearing account and the interest accrued thereon being hereinafter called the "Escrow"). Any such draw by Seller shall relieve Buyer of its obligation to post a new letter of credit under this Section 10.09 unless and until Buyer fails to pay timely any amount specified in any Monthly Statement delivered by Seller under this Agreement (save and except for good faith disputes being pursued in accordance with the provisions of Subsection 10.04(d)). If Buyer subsequently fails to pay timely any amount due

hereunder (save and except for good faith disputes being pursued in accordance with Subsection 10.04(d)), Seller shall be entitled to:

- (A) withdraw from the Escrow in order to obtain payment for the sums then owing at the time of each such withdrawal on the subject Escrow by Seller; and
 - (B) suspend delivery of gas hereunder until Buyer posts a new letter of credit equal to two Months revenue calculation minus the balance in Escrow after the withdrawal pursuant to Subsection 10.09(a)(ii)(A).
- (iii) In the event the then current balance of the Escrow is zero and Buyer should fail to pay timely any amount (save and except for good faith disputes being pursued in accordance with the provisions of Subsection 10.04(d)) specified in any Monthly Statement delivered by Seller under this Agreement while a letter of credit is in place pursuant to this Article X, Seller shall have the right to draw on the letter of credit in order to obtain payment for sums then owing at the time of each such draw on the subject letter of credit by Seller.
- (iv) The amount withdrawn under any letter of credit shall be, subject to Subsection 10.09(e), promptly replenished (and Seller shall be immediately notified by facsimile) by such amount as would then be required to maintain for Seller the right to continue until the end of the term hereof to always access such letter of credit or any replacement or renewal thereof hereunder in a continuing amount equal to a two (2) Months revenue calculation. If the letter of credit is fully replenished as provided herein, Seller shall not be entitled to exercise its rights under Subsection 10.04(b) and (c).
- (b) Seller shall be deemed to have reasonable and probable grounds to believe that Buyer is not able to meet its obligations as they become due under this Agreement if any of the following occurs:
- (i) any "Insolvency Event" as defined under the PacifiCorp Electricity Sale Agreement;

- (ii) any termination or loss of or suspension of the PacifiCorp Electricity Sale Agreement;
 - (iii) if any Project Lender not subject to the subordination provisions of Section 2.07 takes any steps to exercise its rights under, realize under, or assume control of any aspect of the Combined Cycle Power Plant pursuant to any of its security;
 - (iv) following financial closing for construction of the Combined Cycle Power Plant, any failure of Buyer to provide Seller with new audited financial statements of Buyer (including an accompanying auditor's report) from a nationally recognized accounting firm within 120 Days of the end of each of Buyer's fiscal years; or
 - (v) if any such financial statements reveal or the accompanying audit report opines that there is a reasonable likelihood that a default may occur by Buyer in satisfying its financial obligations.
- (c) Seller shall have the right to delay commencement of deliveries, or suspend deliveries after notice to PacifiCorp and the Project Lender pursuant to Section 12.03 if:
- (i) Buyer fails to post any letter of credit, after a demand is made by Seller to so post such letter of credit, in accordance with the time requirements stipulated hereunder notwithstanding that Seller may not have had reasonable and probable grounds for such demand, it being understood Buyer may not refuse to post the required letter of credit when requested by Seller and that Buyer's sole remedy and Seller's sole liability in such eventuality shall be as is provided in Subsection 10.09(d); or
 - (ii) Buyer fails to increase or replenish the amount of any letter of credit in the required amounts or in the manner contemplated by Subsection 10.09(a) or Seller has not received appropriate confirmation pursuant to Subsection 10.09(a).

With respect to each Day during any such suspension, Buyer shall be deemed to not have nominated for any gas hereunder for all purposes of this Agreement such that the Nominated Quantity for any such Day shall be deemed to be nil.

Any suspension of deliveries by Seller pursuant to this Section 10.09 or any of the other Suspension Rights shall not operate to relieve Buyer from its obligations to perform its obligations under this Agreement, including without limitation obligations to make payments as set forth in Section 4.04 or Article VIII, nor shall any such suspension of deliveries pursuant to any of the Suspension Rights be deemed to constitute nonperformance of Seller under any provision of this Agreement. Should Buyer fail to post a letter of credit in the form as and when required hereunder or replenish any letter of credit as and when required hereunder and should such failure continue for a period of sixty (60) consecutive Days, then Seller shall at the end of such sixty (60) Day period have the right to serve a thirty (30) Day notice on Buyer, PacifiCorp and the Project Lender pursuant to Section 12.03 to terminate this Agreement (subject to payment of all obligations accrued to the time of termination) which termination shall be effective at the end of such thirty (30) Day period unless Buyer, PacifiCorp or the Project Lender has otherwise within such period achieved full compliance with all obligations in regards to this Section 10.09.

- (d) Without derogating from Buyer's obligation to post the letter of credit, if it is determined that Seller did not have reasonable and probable grounds to require a letter of credit pursuant to this Section or did not have the right to suspend deliveries under Subsection 10.09(c), Seller shall be required, as Buyer's sole remedy, to reimburse Buyer for the actual carrying costs of posting such letter of credit reasonably incurred by Buyer up to a maximum amount equal to 2.5% of the amount of the letter of credit per annum. It shall conclusively be deemed that Seller acted with reasonable and probable grounds to require a letter of credit, unless Buyer notifies Seller within ten (10) Days of Seller's request, with adequate

reasons and supporting documentation, that it believes Seller does not have such reasonable and probable grounds to support such request.

- (e) If after posting a letter of credit Buyer notifies Seller and is able to satisfy Seller, acting reasonably, that there no longer exist reasonable and probable grounds to believe that Buyer is not able to meet its obligations as they become due under this Agreement, Seller shall advise Buyer that it is so satisfied and Buyer shall no longer be required to maintain the letter of credit, provided that Seller's right to subsequently require a letter of credit to be posted shall not be prejudiced in any way. In the event that Seller fails to respond within ten (10) Business Days to Buyer's notice, it shall be conclusively deemed that such reasonable and probable grounds do not exist. Upon the elimination of Seller's reasonable and probable grounds for requiring security pursuant to this Subsection 10.09(e), any letter of credit posted by Buyer hereunder and any amount remaining in the Escrow, including any interest earned upon amounts therein, shall be promptly returned or remitted, as the case may be, to Buyer.

ARTICLE XI - FORCE MAJEURE

11.01 Performance Excused

Subject to all other provisions of this Article XI, if either Party to this Agreement is rendered unable by reason of Force Majeure, as hereinafter described, to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid and ongoing financial obligations of any nature whatsoever otherwise due under this Agreement, the obligations of the Party experiencing Force Majeure under this Agreement shall be excused to the extent necessary for the period of such Force Majeure.

11.02 Definition of Force Majeure

For the purpose of this Agreement, the term "Force Majeure" shall mean acts of God, including lightning, earthquakes and storms, strikes, lockouts or other industrial

disturbances, acts of the Queen's or the public's enemies, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, floods, fires, washouts, arrests and restraints, civil disturbances, explosions, breakages of or accidents to machinery or lines of pipe, hydrate obstructions of lines of pipe, freezing of wells or delivery facilities, well blowouts, craterings, the orders, acts or decisions of any court, government, or governmental authority, or administrative board or tribunal, any acts or omissions of third party gas suppliers which are caused by any event or occurrence of the character herein defined as constituting Force Majeure, any acts or omissions of any transporters of the gas to be delivered hereunder whether or not caused by any event or occurrence of the character herein defined as constituting Force Majeure, and whether or not any such transporter claims force majeure under the applicable transportation agreement, or any other causes, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension and which, by the exercise of due diligence, such Party is unable to overcome provided however that Seller shall not be entitled to declare Force Majeure for any action or any omission of any person, including Seller's Affiliates, unless such action or omission shall be due to an event or occurrence of the character herein defined as constituting Force Majeure.

11.03 Exceptions

Neither Party shall be entitled to the benefit of the provisions of Section 11.01 under any of the following circumstances:

- (a) to the extent the failure was caused by the negligence or contributory negligence of the Party claiming suspension;
- (b) to the extent that the failure was caused by the Party claiming suspension having failed to attempt diligently to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch;
- (c) if the failure was caused by lack of funds or with respect to the payment of any amount then due hereunder;

- (d) to the extent the failure was caused by a change in the market price for gas;
- (e) if the failure was caused by the inability to obtain or renew short term orders or long term export licenses from the NEB or short term or long term removal permits from the ERCB; unless, at the time Seller seeks to claim Force Majeure, the NEB or ERCB have suspended or terminated prior to their term a substantial majority of then existing long term removal permits or export licenses for Western Canadian gas;
- (f) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the Party claiming suspension shall have given to the other Party notice to the effect that such Party is unable by reason of Force Majeure (the nature whereof shall be therein specified) to perform the particular covenants or obligations.

11.04 Continuing Obligation

- (a) In the event of any claim by Buyer or Seller of an event of Force Majeure hereunder, Buyer's obligation to pay the full Demand Transportation Toll as set forth in Section 8.02 shall not be suspended or reduced in any way whatsoever and shall remain its responsibility and obligation.
- (b) Buyer's obligation to pay any amount to Seller pursuant to subsection 4.04(a) shall not be suspended, reduced or otherwise excused as a result of a Force Majeure event claimed by Buyer except to the extent that the Force Majeure event has caused the suspension or curtailment of firm deliveries on the Cascade lateral between the Delivery Point and the Combined Cycle Power Plant.

11.05 Resumption of Obligations

The Party claiming suspension shall likewise give notice, as soon as possible after the Force Majeure conditions shall have been remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its covenants and obligations hereunder.

11.06 Settlement of Industrial Disturbances

Notwithstanding anything to the contrary in this Article XI, expressed or implied, the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the particular Party involved therein and such Party may make settlement thereof at such time and on such terms and conditions as it may deem to be advisable, and no delay in making such settlement shall deprive such Party of the benefit of its right to claim Force Majeure hereunder.

11.07 Source of Gas

Notwithstanding anything to the contrary in this Agreement, Seller shall not be obliged to deliver gas from other than Canadian sources using Seller's Transportation Arrangements unless Seller is unable to deliver gas to Buyer from such sources because of an inability to obtain or renew removal permits or export orders or licenses under circumstances which do not constitute an event of Force Majeure hereunder pursuant to Section 11.03(e).

11.08 Extended Force Majeure

Either Party shall be entitled to terminate this Agreement on 60 Days' notice if the other Party has claimed a Force Majeure occurrence which has remained in effect for 365 Days, provided however that in the event Seller is the Party entitled to terminate this Agreement, such notice will also be provided to PacifiCorp and the Project Lender.

ARTICLE XII - MISCELLANEOUS PROVISIONS

12.01 Waiver

No waiver by either of the Parties hereto of any default by the other hereunder shall operate as a waiver of a future default whether of a like or different character.

12.02 Further Assurances

The Parties hereto shall do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement.

12.03 Notices

Except as provided in Subsections 4.02(c), 4.05(d)(ii)(B), 4.05(d)(iii) and 4.06(b)(i) any notice, request, demand or other instrument which may be required or permitted to be delivered, given or served upon any Party hereto and any invoice or payment required to be made to any Party hereto, shall be deemed delivered, given or paid to or served upon the Party in question on the Day following the Day received by the addressee, if in writing, and if either delivered by hand, or by overnight courier, in each case addressed, in the case of Seller, to:

North Canadian Marketing Corporation
Bentall Executive Centre
1551 North Tustin Avenue
Suite 900
Santa Ana, California 92701

Attention: Regional Marketing Manager
Telecopy No. (714) 543-6376
Telephone No. (714) 550-4300

and in the case of Buyer, to:

Hermiston Generating Company, L.P.
7500 Old Georgetown Road
Bethesda, Maryland 20814-6161

Attention: Fuels Procurement
Telecopy No. (301) 718-6908

and in the case of the Project Lender, to:

[name/address]

and in the case of PacifiCorp to:

PacifiCorp
920 S.W. Sixth Avenue
Portland, Oregon 97204-1236

Attention: Vice President, Power Systems
Phone No: (503) 731-2157
Telecopy No: (503) 731-2027

Buyer shall promptly advise Seller of an address for service for the Project Lender. Any written communication as aforesaid, if delivered or sent by telecopier, shall be deemed to have been given or made on the Day on which it was delivered or sent as aforesaid if received by the addressee(s) during normal business hours (unless such Day is not a Business Day, in which case delivery shall be deemed to have occurred on the next Business Day). Any Party hereto may from time to time change its address for service hereunder by notice to the other Party. Buyer may from time to time during the term hereof by notice to Seller change the Project Lender's and PacifiCorp's addresses for service hereunder.

12.04 Assignment and Enurement

- (a) Neither Buyer nor Seller shall have the right to assign this Agreement or any of its rights, benefits, liabilities and obligations hereunder without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld.
- (b) Notwithstanding the foregoing Buyer may assign this Agreement and any of its rights, benefits, and liabilities and obligations hereunder without the consent of (but with prior notice to) Seller:

- (i) to PacifiCorp pursuant to PacifiCorp's right to purchase a 50% undivided interest in the project assets under the Option Agreement between Buyer and PacifiCorp dated as of October 7, 1993 and PacifiCorp's rights under Subsections 11.3 and 16 of the PacifiCorp Electricity Sale Agreement subject to the requirement that PacifiCorp shall confirm in writing to Seller in the form of Exhibit B hereto concurrently with the execution of this Agreement that it will assume all of the obligations of Buyer under this Agreement to the extent of its interest in the assets of the Combined Cycle Power Plant;
 - (ii) by way of security only, to any Project Lender and to otherwise mortgage, pledge, hypothecate or otherwise encumber its interest in and to this Agreement as security for its indebtedness to any other person or party who is subject to the subordination requirements of Section 2.07;
 - (iii) to an Affiliate which obtains substantially all of Buyer's assets including the PacifiCorp Electricity Sale Agreement, provided that such Affiliate shall first confirm in writing that it will assume all of the obligations of Buyer under this Agreement, to the extent of the assigned interest and written notice of such assignment and assumption shall be transmitted to Seller.
- (c) Notwithstanding the foregoing, Seller may assign this Agreement and any of its rights, benefits and liabilities and obligations hereunder without the consent of (but with prior notice to) Buyer to an Affiliate which obtains substantially all of Seller's assets, provided that such Affiliate shall first confirm in writing that it will assume all of the obligations of the Seller under this Agreement to the extent of the assigned interest.
- (d) No assignment, whether consented to or not under this Section, shall relieve the assignor from its liabilities and obligations hereunder without the prior written consent of the other Party hereto or in any way alter the subordination of the claims of any Project Lender as provided for in Section 2.07.

- (e) Subject to the provisions of Sections 12.04 and 12.05, this Agreement shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and assigns.

12.05 Security Interest

Pursuant to Section 15 of the PacifiCorp Electricity Sale Agreement, Buyer hereby notifies Seller that Buyer has or will convey to PacifiCorp certain security and mortgage interests as described in Section 16 of the PacifiCorp Electricity Sale Agreement.

(Sections 15 and 16 of the PacifiCorp Electricity Sale Agreement are attached hereto and incorporated herein as Exhibit C.)

12.06 Confidentiality

All data, documents and information of a confidential nature concerning the business or assets of either Party hereto, which are made available or disclosed to the other Party hereto pursuant to the terms of this Agreement, other than such data, documents and information which:

- (a) is already possessed by the other Party hereto, with no valid restriction on its disclosure, prior to receipt from the other Party desiring confidentiality;
- (b) at the time of disclosure, is in the public domain; or
- (c) after disclosure, becomes part of the public domain by publication or otherwise, through no act or omission on the part of the recipient thereof;

(the "Confidential Information"), shall be kept and maintained on a confidential basis by the Party hereto which is a recipient thereof. Each Party hereto shall implement such measures and shall take such precautions as may be reasonably necessary to endeavor to ensure the confidentiality of all Confidential Information.

Notwithstanding the foregoing, either Party hereto may, without consultation but with prior notice to the other, from time to time disclose Confidential Information to any court, government, governmental agency, regulatory body or quasi judicial agency

("Regulatory Agency") at any time and from time to time and may thereby cause the Confidential Information to become public if and to the extent that may be required by any Regulatory Agency, or the rules, regulations, procedures, requirements or practices of any Regulatory Agency. This Agreement, including any Exhibits attached hereto, is Confidential Information. Notwithstanding the foregoing, Buyer may disclose this Agreement to entities engaged in the development or financing of the Combined Cycle Power Plant and PacifiCorp, provided the recipient agrees in writing to maintain the confidentiality of this Agreement.

12.07 Legal Opinions to Project Lender

If required by the Project Lender, Seller shall cause its legal counsel to provide, at Buyer's sole cost and expense, the legal opinions typically provided by legal counsel to Buyers or lenders involved in transactions similar in nature to that provided for herein, including an opinion confirming the due authorization, capacity, execution, delivery and enforceability of this Agreement. If Buyer provides a legal opinion to any Project Lender in respect of the due authorization, capacity, execution, delivery and enforceability of this Agreement, then Buyer shall cause its legal counsel to issue the same opinion addressed to Seller.

12.08 No Special Damages

Neither Party shall be liable to the other Party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages, including without limitation, any claims for losses or damages sustained by any third parties arising, in the case of all or any such claims, as a result of the failure to nominate, deliver or take the required quantities of gas and each party shall indemnify and save harmless the other from any and all such claims, provided, however, that this provision does not limit in any way Buyer's rights and remedies for claims arising from a breach of Article V hereunder or Seller's rights and remedies for claims arising from a breach of Article IV hereunder (except to the extent that any term

in either of such Articles expressly provides that a particular remedy is the only remedy available to a Party in the event of a particular type of breach by the other Party).

12.09 Amendment

- (a) Pursuant to Section 15 of the PacifiCorp Electricity Sale Agreement, Buyer hereby notifies Seller that Buyer cannot agree to materially amend or waive any provision of this Agreement without PacifiCorp's written consent, such consent not to be unreasonably withheld.
- (b) This Agreement cannot be changed orally or by the conduct of the Parties. Any amendment, modification or change may be made only by a writing signed by the Party against whom enforcement is sought.

12.10 Extension of Transportation Agreements

Seller shall timely and diligently exercise or cause to be exercised any and all rights under its contracts with transporters of the gas to be delivered hereunder as may be necessary to provide twenty (20) years uninterrupted firm transportation of the Contract Demand from the Commencement Date.

12.11 No Amendment

Buyer shall provide Seller with copies of all amendments to the PacifiCorp Electricity Sale Agreement promptly after such amendments are executed. Buyer agrees to not permit or acquiesce in any amendment to, waiver of any rights or benefits under, or variation or termination (other than termination pursuant to its terms as of the date of this Agreement) of the PacifiCorp Electricity Sale Agreement (an "Amendment") if any such Amendment whether by itself or when considered together with any other Amendment or Amendments at any time would materially and adversely affect the Seller's rights and obligations (including its anticipated economic benefits) under this Agreement or if the Amendment is inconsistent with the terms of this Agreement.

12.12 Seller's Guarantor

Seller shall cause Seller's Guarantor to execute and deliver to Buyer Seller's Guarantee attached hereto as Exhibit A concurrently with the execution of this Agreement.

12.13 PacifiCorp Acknowledgement

It shall be a condition precedent to Seller's obligation under this Agreement that Seller receive an agreement substantially in the form of Exhibit B executed and delivered by PacifiCorp.

ARTICLE XIII - SELLER'S RESERVES;
SELLER'S LICENSE AND REMOVAL PERMIT

13.01 Demonstrable Reserves

(a) For purposes of this clause the following definitions shall apply:

- (i) "Demonstrable Reserves" means deliverability and reserves of gas under the effective control of or available to either or both Seller and Seller's Guarantor or any wholly-owned subsidiary of either of them whose deliverability and reserves of gas are effectively controlled by either of them (Seller, Seller's Guarantor, and any such subsidiary hereinafter collectively referred to as the "Controller") and shall include all gas reserves owned by Controller of either a proven producing, proven unproducing, undeveloped, developed, or probable character, all gas deliverability and reserves which Controller controls or is entitled to purchase under contracts allowing Controller to purchase gas on the basis of firm, short term or long term contracts (to the extent such purchases are not exclusively and irrevocably dedicated to other markets), and shall include without limitation any and all production, joint venture, or joint operating agreements under which Controller may take gas when such gas is not being taken in kind by working interest or royalty owners, as well as gas dedicated to other markets but for which Controller shall have the

right to access the gas supply when such markets are not taking such production. At such time as either (1) Seller's Guarantor amalgamates with Norcen Energy Resources Limited ("Norcen") or (2) all or substantially all of the Seller's Guarantor's assets are transferred to Norcen and Norcen assumes responsibilities under the guarantee provided by Seller's Guarantor to Buyer hereunder, from that time forward, Controller shall be deemed to include Norcen and all of its subsidiaries and Affiliates. For purposes of any contracts delivering gas to Controller on a firm basis, Controller shall for all purposes of Demonstrable Reserves be deemed to have control of reserves pursuant to such contracts in the amount of the expressed firm daily obligations of seller's thereunder to deliver multiplied by the remaining Days in the term.

(ii) "Independent Consultant" means the first available firm from the following list of consultants except that if no such firm is prepared to accept the responsibilities of this position, then a replacement consultant or firm, residing in or having its principal office located in Calgary, Alberta, shall be selected, and such consultant shall be qualified by education, training and experience to render an opinion on the matters referred to it in accordance with the provisions of this Section 13.01.

- 1) Sproule and Associates Limited
- 2) Coles Gilbert Associates Ltd.
- 3) McDaniel & Associates Consultants Ltd.
- 4) Paddock Lindstrom & Associates Ltd.

(iii) Independent Consultant shall be required to execute a confidentiality agreement and keep confidential from all parties including Buyer, any and all information provided to it by or through Seller (including Controller) including information on reserves or contracts.

(b) Buyer may periodically at Buyer's expense, but in any event not more than once every even numbered calendar year commencing in 1998, serve notice prior to

June 1, in any such year, that it wishes to have assessed, utilizing the services of and based only on the advice of the Independent Consultant following the Independent Consultant's review of confidential information provided to such Independent Consultant by or through Seller, (whose advice Buyer shall accept), whether Controller has Demonstrable Reserves sufficient at that time to fulfill all of Seller's obligations (at a presumed annual load factor of 92%) under both this Agreement and all other Long Term Firm Sale Commitments (such other "Long Term Firm Sale Commitments" to mean in this Agreement contracts having original terms in excess of 5 calendar years and then in effect) and such to be considered based on the lesser of the then remaining terms of such contracts or the then remaining term of this Agreement.

In respect of the deliverability component of Demonstrable Reserves, it shall only be necessary for Seller to demonstrate to the Independent Consultant actual deliverability sufficient to meet or exceed Seller's aforesaid Long Term Firm Sale Commitments and the requirements for the then remaining term of this Agreement (both considered at presumed annual load factors of 92%), for the next following 30 consecutive Months. In respect of the reserve components of the Demonstrable Reserves, it shall only be necessary for Seller to demonstrate to the Independent Consultant that such reserves are sufficient to meet or exceed Seller's aforesaid Long Term Firm Sale Commitments and the requirements for the then remaining term of this Agreement (both considered at presumed annual load factors of 92%). When determining Controller's Demonstrable Reserves for the purposes of the preceding sentence, Seller shall be entitled to include in such total reserves number, the daily deliverability of Controller determined in accordance with this Section for the following 30 Month period (converting such daily deliverability to reserves by multiplying such presumed delivery quantity by the number of days in the following 30 Month period) but only to the extent any reserves of Controller are not double counted. If, in the opinion of the

Independent Consultant, Controller does not have such sufficient Demonstrable Reserves for such purposes, then Buyer, provided Buyer is not in default of any of its obligations under this Agreement, shall have the right, as its sole option and as its sole and exclusive remedies, to:

- (i) terminate this Agreement upon 180 days written notice to Seller (unless within such 180 day period Seller is able to so rearrange its affairs to have satisfied such of the aforementioned conditions described in the above subparagraph b which gave rise to Buyer's right to serve notice to terminate). Upon termination of this Agreement pursuant to this provision, Buyer or Seller as the case may be, shall be entitled to collect any amounts accrued to the time of termination and owing by the other. The guarantee provided by Seller's Guarantor shall remain in full force and in effect with respect to all obligations of Seller having accrued up to the date of termination. Nothing herein contained shall operate so as to suspend or terminate either party's obligations during the said 180 day notice period. If during any 180 day period which is commenced due to a Buyer's notice of a Demonstrable Reserves insufficiency, Seller is able to assign to Buyer firm gas supply agreements with reputable third parties under which the daily gas delivery obligations in the aggregate equal the Contract Demand and are committed solely to supplying Seller with gas for the remainder of the term, then Seller shall be deemed to have satisfied for the remainder of the term, its obligations to establish Demonstrable Reserves. In the event of a dispute regarding the adequacy of such third party gas supply agreements, then the Independent Consultant shall determine the adequacy of these contracts for the purposes of this provision. The assignments of the third party gas supply contracts shall be substantially in a form satisfactory to Buyer acting reasonably and shall be for security purposes, such that such assignments shall be prepared to provide for enforcement by Buyer only upon any unexcused material

delivery failure by Seller under this Agreement. The aforesaid 180 day period shall not be suspended during the period of any investigation by the Independent Consultant hereunder provided that if the Independent Consultant's final determination is not available by the end of the 180 day period, then the 180 day period shall be extended to the first day following the receipt of the Independent Consultant's determinations; or

- (ii) direct Seller to take such action as required to remedy the supply or delivery deficiencies as determined in the above subparagraph (b) within 180 days following issuance of the report of the Independent Consultant. If Seller does not remedy such deficiencies within such 180 day period, Seller shall curtail all interruptible sales and shall: 1) not enter into any new short or long-term contracts for the sale of gas to any other person; 2) not renew or extend any existing gas sales contracts with other persons; and 3) suspend deliveries under all non-firm gas supply agreements until such time as Seller's obligations hereunder are satisfied.


13.02 Export License and Removal Permit

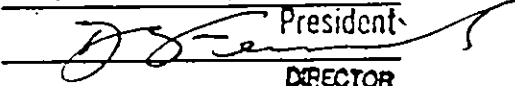
- (a) Seller shall, subject to Subsection 13.02(b) maintain in full force and effect throughout the Primary Term, a short term export order from the NEB and a short term removal permit from the ERCB adequate to permit delivery of the Contract Demand for each Day hereunder to Buyer.
- (b) If at any time (i) Seller has reasonable ground(s) to believe that it may not be able to obtain renewal of its short term export license or its short term removal permit, or (ii) Buyer notifies Seller that Buyer has reasonable ground(s) to believe (based upon a material change in event or circumstance from the date of execution of this Agreement) that Seller may be not able to obtain an export license or removal permit for the full remaining term hereof if it delays filing an application for such license and/or permit, which grounds shall be identified in its notice, and Seller is unable to demonstrate to Buyer's satisfaction (Buyer acting

reasonably) that such a material change in event or circumstance has not occurred, then Seller shall promptly file an application to obtain or cause to be obtained long term removal permits and export licenses of a nature no less onerous than those under which Buyer's other long term supply sources for the Combined Cycle Power Plant delivering gas out of Canada are then currently subject to, and which would allow the export and/or removal of the Contract Demand from Canada and Alberta for each day over the then remaining term of this Agreement and Seller shall use all commercially reasonable efforts to obtain promptly such export licenses and removal permits.

IN WITNESS WHEREOF this Agreement has been executed as of the
Day and year first above written.

NORTH CANADIAN MARKETING CORPORATION

Per:  President

Per: 
DIRECTOR

HERMISTON GENERATING COMPANY, L.P.

Per: 

Per: _____

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY 176 JUN 26 P 1:41

REC'D DOE/FE

NORTH CANADIAN MARKETING)
CORPORATION)
_____)

FE DOCKET NO. 96-39-NG

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

DOE/FE ORDER NO. 1182

JUNE 26, 1996

I. DESCRIPTION OF REQUEST

On June 19, 1996, North Canadian Marketing Corporation (NCM) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127, for authorization to import up to 25,000 Mcf per day of natural gas from Canada. NCM, a California corporation with its principal place of business in Santa Ana, California, is a wholly-owned subsidiary of North Canadian Resources, Inc., a Delaware corporation.^{2/}

The gas would be imported for sale under an agreement between NCM and Hermiston Generating Company (Hermiston) dated March 4, 1994. Hermiston is a limited partnership organized under the laws of the State of Delaware with an office in Bethesda, Maryland. The imported gas would be used to fuel a 474-megawatt combined-cycle cogeneration facility owned by Hermiston and constructed near Hermiston, Oregon. Commercial operation of the cogeneration facility is scheduled for July 1, 1996. Electricity produced by the cogeneration facility will be sold to PacifiCorp, an Oregon corporation.^{3/}

^{1/} 15 U.S.C. § 717b.

^{2/} North Canadian Resources, Inc. is a wholly-owned subsidiary of Norcen Explorer Inc., a Delaware corporation, which is a wholly-owned U.S. subsidiary of Norcen Energy Resources Limited (Norcen), an Alberta Corporation.

^{3/} Pursuant to the terms of an Option Agreement between Hermiston and PacifiCorp dated October 7, 1993, PacifiCorp has exercised its option to purchase an undivided fifty percent interest in the Hermiston cogeneration facility and its related assets. Financial closing on the Option Agreement is scheduled for July 1, 1996.

The proposed authorization would be for a term of 15 years from the date of first delivery. Deliveries under the gas sales agreement are anticipated to begin as early as July 1, 1996, and not later than September 30, 1996. The gas would be transported from the wellhead in the Province of Alberta by the NOVA Gas Transmission Ltd. (NOVA) pipeline system to the Alberta border. Alberta Natural Gas Limited (ANG) then would transport the gas to its interconnection with the pipeline facilities of Pacific Gas Transmission Company (PGT) at the border of the United States and Canada near Kingsgate, British Columbia/Eastport, Idaho. From the international border, the gas would be transported by PGT to Malin, Oregon, where Hermiston would take possession.

The contract between NCM and Hermiston provides that Hermiston would pay NCM a price for the gas that consists of a monthly demand charge based on NCM's firm transportation arrangements on NOVA, ANG, and PGT, and a monthly commodity charge which includes an annual escalation clause. The monthly commodity charge is calculated by multiplying the wellhead price for the particular month by the total quantity of gas actually delivered, plus the aggregate quantity of fuel gas used by NOVA, ANG, and PGT for transportation, to the extent such fuel gas is not supplied by the transporting pipelines as part of their tariff or rate for service. The wellhead price, which would be adjusted each November, starts at \$1.635 (U.S.) per MMBtu as of November 1, 1993. The commodity charge would increase by 5.5 percent on November 1, 1994, and each year thereafter. Notwithstanding the foregoing, the actual import price per MMBtu

paid by Hermiston at the international border would be the demand charge and the commodity charge, minus the transportation and fuel gas charges of PGT (which represents the cost of transporting this gas within the United States).

The contract also provides for a gas inventory charge which applies to any contract year in which Hermiston purchases less than 80 percent of the sum of the maximum daily contract quantities each year. If Hermiston takes less than the minimum annual obligation, it must pay a gas inventory charge on the volumes not taken. The gas inventory charge starts at \$0.40 (U.S.) per MMBtu, with 5.5 percent annual escalations beginning November 1, 1996. This charge would be paid by Hermiston on the 25th day of November following each contract year.

The contract includes a provision allowing Hermiston to remarket gas not used in the cogeneration facility to other purchasers in the United States at a price equal to its market value. The sum total of gas nominated by Hermiston each day, either for use at the cogeneration facility or for resale, may not exceed 25,000 Mcf.

II. FINDING

The application filed by NCM 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 NCM 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. North Canadian Marketing Corporation (NCM) is authorized to import at Kingsgate, British Columbia/Eastport, Idaho, up to 25,000 Mcf per day of Canadian natural gas for a period of 15 years beginning on the date of the first delivery, which shall not be later than September 30, 1996. This gas shall be imported consistent with the terms and conditions of NCM's gas sales agreement with Hermiston Generating Company, L.P. (Hermiston), dated March 4, 1994, on file in this docket.

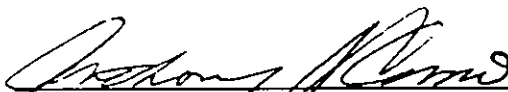
B. Within two weeks after deliveries begin, NCM shall provide written notification to the Office of Fuels Programs (OFP), Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that the first import delivery of natural gas authorized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

C. With respect to the natural gas imports authorized by this Order, NCM 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, NCM must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu paid by Hermiston at the international border, assuming Hermiston had taken possession there, instead of Malin, Oregon. The monthly price information shall itemize separately the demand and commodity charges, and, if applicable, any gas inventory charges paid by Hermiston. Additionally, the reports shall provide, by month, the names, volumes, and market area (State) for natural gas sold by Hermiston to any third-party repurchaser.

D. The first quarterly report required by Ordering Paragraph C of this Order is due not later than October 30, 1996, and should cover the period from July 1, 1996, until the end of the third calendar quarter, September 30, 1996.

Issued in Washington, D.C., on June 26, 1996.



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



Norcen
Energy Resources Limited

Debbie L. Robinson

Marketing Analyst

Direct Telephone: (403) 231-0008

Direct Facsimile: (403) 231-0158

E-Mail:

140 OCT 22 P 12: 24

October 1, 1996

REC'D DOE/FE
 OFFICE OF FUELS PROGRAMS

Office of Fuels Programs
 U.S. Department of Energy
 Fossil Energy, Room 3F-056
 1000 Independence Avenue S.W.
 WASHINGTON, DC 20585

Dear Sir:

RE: FE DOCKET NO. 96-39-NG

In compliance with DOE/FE Order No. 1182, North Canadian Marketing Corporation hereby confirms that the first import delivery of natural gas authorized in the above-referenced Order actually commenced July 1, 1996.

If you have any questions, please give me a call at (403) 231-0008.

Yours very truly,

NORTH CANADIAN MARKETING CORPORATION

Debbie L. Robinson
 Marketing Analyst
 Natural Gas Marketing

NORCEN TOWER 715 - 5th Avenue S.W.
 P.O. Box 2595 STN M
 CALGARY, AB T2P 4V4
 CANADA

General Telephone: (403) 231-0111
 General Facsimile: (403) 231-0187